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International Trade, the Conditions of an Ambition

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Executive Summary

The European Union is one of the most important economies in the world, representing 17% of global wealth. It is the leading consumer market thanks to the average purchasing power of its 500 million citizens, and exercises an exceptional force of attraction. 55% of American investments abroad are designed for it and it is still the leading export market for more than 80 countries. Citizens benefit from it since 30 million jobs depend directly on external trade. However, the economic situation, fears surrounding the loss of status, the danger of a decline in its collective preferences (normative, social, environmental) are leading some to believe that the EU is globalisation's "Trojan Horse". Whilst the lack of compromise on a world scale has led to a dead end, the will to increase bilateral approaches reveals, on the contrary, a joint ambition. This file attempts to establish what the conditions for this are.

1. REFOUNDING THE EUROPEAN TRADE POLICY BY ADAPTING IT TO THE NEW WORLD ECONOMIC AND GEOPOLITICAL CONTEXT.

• In a context marked by a slowing in multilateralism, in the wake of the stalemate in the Doha Round, and, at the same time, the rise of bilateralism, the trade policy has to be modernised. The rebalancing of the Chinese economy that is slowing external world trade and the exhaustion of the dynamic of international chains of value are leading to protectionist trends. This observation calls for a redirection of the European Union's trade policy.

• This is said firstly to be, typified by the continued modernisation of trade defence instruments in the wake of the rise of China as a market economy, as well as the competition coming from new players (BRICS, MIST).

• Then, by a progressively reduced implementation of "less duty" and contenting oneself to base customs duties on the level of damage caused in the event of dumping.

• Also via an institutional response to the challenges set by the diversity of agreements and notably in the face of the danger of the "veto". The future also involves discrete "Russian doll" agreements depending on modes of ratification.

• Finally, via the promotion of reciprocity in agreements made by the Union.

2. RESPONDING TO CONCERN OVER THE NEW AGREEMENTS VIA CLOSER INVOLVEMENT OF NATIONAL PARLIAMENTS AND CIVIL SOCIETY.

• Answering questions regarding the technical aspects of the most recent generation of trade agreement, questions regarding negotiation transparency and the challenge of traditional arbitration.

• Doing this by convincing European citizens that the Union can raise the conditions demanded in most trade partnerships.

• Via its powers of persuasion, the EU might respond to protectionist trends by deconstructing the idea that globalisation is akin to trade policy. In this respect the European Parliament has the power to reject a final agreement, and communication with the citizens is one of the vital issues in trade. The national political level and parliamentary debate also have a role to play both at the negotiation stage and during discussions over the mandate, as well as during the implementation of the agreements.

• From an institutional point of view, it is important for the Commission and the governments to work together to organise the responses and explanations to the legitimate concerns raised by civil society.

• Promoting transparency by publicly including MEPs and national representatives to open up and politicise debate over the negotiation mandates for a facilitated ratification as a result.

3. PLACING THE EUROPEAN TRADE POLICY AT THE SERVICE OF ITS DIPLOMACY AND MAKE IT A POWERFUL TOOL FOR THE UNION'S GLOBAL INFLUENCE.

• Within a multilateral trade system weakened by its economic sluggishness, its political contestation and institutional paralysis, the EU must go beyond the traditional trade giants and turn to those that are emerging, towards new zones such as: ASEAN, Mercosur, the Pacific Alliance.

• Due to the rise of its economy China might turn more towards Europe. Europe's first priority will be to gain better access to the Chinese market and have greater trade reciprocity given the growing structural imbalance in bilateral relations.

• The trade policy has to make political sense again via support being given to the losers in free-trade with the redesign of the European Globalisation Adjustment fund.

• In the case of the partnership with the countries in Africa, Caribbean and the Pacific, the aim will be for it to become a powerful collective tool, and not just be limited to the purely economic, but also geopolitical dimension. The consolidation of peace via dialogue between State and civil society is a factor of stable policy.

• Given the unpredictability of the American administration it will be vital for Europe to respond pragmatically but firmly to maintain its unity, protect its strategic interests, adhere to its political and trade goals and to take advantage of the opportunities opened up by the new situation in America.

• Concerning Brexit it will be vital to be able to defend the integrity of the European Single market and to strengthen the euro zone by providing it with true economic and political governance that can protect its geostrategic interests.

4. REASSERTING AND STRENGTHENING THE EUROPEAN NORMATIVE FRAMEWORK IN NEW AGREEMENTS BY HARMONISING UPWARDS.

• The new generation of agreements includes measures like the harmonisation of environmental and technical standards. The underlying idea is to push through a normative model, a socio-economic development plan, and at the same time resolve differences in interest between the partners.

• European trade policy must aim to promote harmonisation upwards by continuing to spread the European model adding chapters to future agreements devoted to sustainable development, social impact and consumer protection.

• The renewed EU-ACP partnership should be legally binding. This legal strength would guarantee predictability, transparency and mutual accountability. In an unstable situation the ACP framework is a factor of stability and enables the dissemination of European standards.

• Observers also point to the need for the modernisation and harmonisation of the legal framework of business within the ACP.

• At Union level recent institutional developments indicate that legal arms are needed given the developments in modern international trade. The continued modernisation of trade tools and the redefinition of competences during the drafting of the negotiation mandate are all measures that can provide response to the challenges set by new generation agreements (normative, transparency, reciprocity, diversity).

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Trade Policy : Europeans, to arms!

Anne-Marie IDRAC

The agreement between the European Union and Canada (CETA) and the shelving of the one with the USA (TTIP) has highlighted the vital nature of European trade issues and the concerns that they raise.

The resolutely protectionist options expressed by Donald Trump and by some European populist parties, and conversely the ultra-free-trade options put forward by some supporters of the Brexit show that the subject has finally gone off the technical scale.

"Trade" is the core of the main political issues in the construction of Europe: power regarding external players, distribution of power between community and national institutions, the defence of our social market economic model, ability to protect and convince our citizens.

Now the trade policy is under threat and must absolutely adapt to new political, social and economic situations.

EUROPE, A MAJOR, EFFECTIVE PLAYER IN WORLD TRADE

The European Union, the leading trade power in the world, if we add the exchange of goods and services together, has made trade one of the drivers behind its growth and the creation of jobs: our collective choice is clearly that of the opening of our external borders, in addition to the Single Market and the Competition Policy.

This makes Europe one of the most open economies in the OECD. With its 508 million consumers who enjoy high purchasing power, the European Union represents the main export market for over 80 countries. According to the World Bank, European customs barriers total an average 1.5%, against 2.81% in the USA, 2.41% in Japan, 2.79% in Canada. However, in certain sensitive sectors the WTO[1] notes that the EU also knows how to protect itself with the same levels of customs duties as Japan and the USA.

A fact that is not stressed enough is that the EU has a surplus trade balance, and this is growing: the goods surplus of 11 billion € in 2014 rose to 38 billion in 2016[2]. This data reveals however differences between the States, from Germany being the most in surplus, to the UK, which is the most in deficit from the point of view of merchandise.

The result of this openness is that Europe represents 15% of the world goods trade; it is the leading export power in terms of services. It is deemed that some 30 million European jobs depend on exports; in France, this means 10% of jobs. As for imports, we should recall that not only do they support household purchasing power, but also European industrial competitiveness, via the inclusion of components that are imported from elsewhere for use on sophisticated assembly lines.

In addition to this the European Union is still the first issuer and recipient of foreign direct investments (FDIs), notably from and towards OECD countries: outgoing FDIs are the source of power and the success of many European industrial and service groups; as for the incoming FDIs, these help to create many jobs in Europe.

From a political point of view the European Union has, along with the USA and via the WTO, been one of the major players in multilateralism. It played a major role in the launch of the Doha Round aiming to re-balance the world's trade system in favour of developing countries by greater market opening and

1. The WTO's web site offers new sophisticated tools that enable research on the customs duties of its members and tarif data

2. Eurostat, "The international goods trade" March 2017.

modernised trade rules. It also succeeded in taking specific leadership in relations with less advanced countries by opening its market to them duty and quota free, via the "everything except for arms" initiative in 2001, under the impetus of Pascal Lamy, the then European Trade Commissioner.
However, since the stalemate over the Doha Round, it now privileges bilateral or regional agreements given the inertia of the WTO. The agreement on July 1st 2011, signed with South Korea led to a 59.2% increase in exports, whilst imports only increased by 1%. This represented a surplus of 3.1 billion € in 2016[3].

EUROPEAN CHALLENGES ARE GLOBAL CHALLENGES

Less "grist for the mill" due the slowing in the growth of world trade
Whilst trade was increasing twice as fast as world growth, over the last five years this has drawn closer to the world GDP i.e. around 2.8% in 2015 and 2016. Moreover, developed countries' exports have been slower than developing countries, whilst conversely the imports of the developed economies have increased faster than those of the emerging countries. The EU's share in world trade has tended historically to decline due to the emergence of countries external to the OECD, notably China, which became the leading export country in 2015.

The WTO's multilateralism has broken down which means more regional agreements
The last ten years have been marked by a lack of consensus and diversity regarding the principles which should govern international trade, although the G20 have addressed the matter.

In the West, just as their global influence is waning, a desire for transparent, fair rules has emerged, notably with the idea of "fair trade" for certain European countries. The developing and emerging countries for their part have shown that they want to access the wealthy markets of the developed countries, by achieving preferential agreements for their development (in relation with the principle "Trade better than Aid"); these countries, with contrasted economies, are proving incapable of piloting multilateralism and Russia's accession to the WTO in 2012 has not simplified debate. In all, in spite of some technical progress on the facilitation of trade, the Doha Round has been in stalemate since 2008 and with it, trade multilateralism.

For these reasons, there has been an increase in bilateral and regional agreements. Some simply aim to achieve exclusive customs advantages over countries outside of the agreement; others, of a new generation, try to promote measures such the harmonisation of technical and environmental standards, transparent processes on the borders and the simplification of the rules of origin.

This last idea notably inspired the EU-Canada (CETA) and EU-USA (TTIP) projects that aim for the creation of a high level regulatory area to promote common interests and values in line with the "Europe 2020" and the "Trade for All" strategies[4].

Originally the idea behind these projects, notably the EU-USA partnership, was of geopolitical value: given Barack Obama's trans-Pacific goals and those of China, regarding ASEAN, the underlying idea was to assert our standards and our model of socio-economic development. The new American presidency considers trade relations solely from the point of view of trade balances, thereby freezing this process between the two continents. Its inspiration remains politically very interesting however.

New more politically sensitive issues: non-tariff barriers, investments and public procurement

3. Commission report at the European Parliament, at the Council, at the European Economic, and Social Committee and the Committee of Regions "the implementation of the free-trade agreements," November 2017.
4. European Parliament, "The European Union and its trade partners", 2016

*Traditionally focused on goods and the reduction of customs duties resulting in very low rates that were taken for granted, negotiation points have become much more complex and qualitative: sanitary and technical standards together with their monitoring tools, services, the location of jobs created by international trade, fair competition, intellectual property rights, sustainable development and digital.

This development in agreements, which matches those in trade, no longer just involve manufacturers and traders and the transit of their containers, but also issues related to consumer protection, which mobilise public opinion regarding their collective preferences. The variety and technical nature of all of these issues make it objectively difficult to have transparent negotiations and this leads to a great deal of fantasising.

However, the European negotiation mandates are clear: conceding ground on issues such as GMOs, the chemical processing of meat or the role of public services in education is to be ruled out. Negotiators cannot discuss standards that would be inferior to those in force within the European Union either.

*To this we might add questions about investment; since the Lisbon Treaty this competence has now been a community affair, whilst there were more than 1,100 bilateral agreements between the Member States prior to this. Beyond the technical and political difficulty in the transition over to communitisation, new issues have arisen in public debate, such as litigation settlement bodies; the challenge being made to traditional arbitrage led the Union in September 2015 to suggest a new system with the Court of Investments (ISDS), which is modernising a system that was totally private to date. Creating a common reference framework between EU Member states with the aim of protecting our technological acquis, together with one focusing on data security has become a major new stake.

*The liberalisation of public procurement is also a sensitive issue due to its scale (for example 16% of the EU's GDP, 1/7th of the American economy) and its regalian nature. Legally the EU is more open than the USA, since the 28 Member States are all signatories of the WTO's agreement regarding the opening of public procurement, whilst only 37 of the 50 American Federal States have signed it. In 2014 the "Buy American Act" was extended thereby forcing government agencies to purchase from local manufacturers and suppliers and obliged foreign companies to integrate American jobs and materials in their manufacturing processes. In Europe there is no equivalent mandate.

The idea of reciprocity that enables the opening of the Union's public contracts, if the trade partner does the same, is politically attractive, but not without its difficulties[5] : Externally any negotiation involves counterbalances; internally certain aspects of community competition policy and unrestricted opening to foreign investment might be challenged in part. The sensitivity of public opinion is such that innovation has to prevail.

EUROPEAN TRADE POLICY HAS TO BE REDESIGNED

Changes to economic power relations are clearly consolidating the need to act collectively at European Union level, and yet Europe no longer seems able to assert itself or protect jobs. The result of this is formidable political tension which have made the introduction of strong trade defence tools urgent, together with the demand for reciprocity in the agreements made by the Union. This is why the legislative package strengthening anti-dumping rules was adopted by the European Parliament on 15th November last. However, we have to remain watchful regarding its effective implementation.

Trade, a community competence under threat

"One of the jewels in the European crown" – according to the term coined by the European

5. Professeur Patrick Messerlin, « TTIP : la bataille de l'accès aux marchés publics », 11 juillet 2016, Confrontation Europe.

Commission's spokesperson – the trade policy has been federal since the Rome Treaties in 1957. It has helped greatly towards Europe's assertion in the world arena, comprising almost the only tool in the Union's external relations up to the Lisbon Treaty. The latter, whilst creating the foundation for a common diplomatic service (EEAS), balanced the Commission's exclusive negotiation power by bringing in the Council and the Parliament for the adoption of agreements.

Increasingly however the Union's exclusive competence is being criticised[6] . This is a result of the development in the content of the agreements, of the appearance – since the conclusion of negotiations between the EU and Singapore in October 2014 – of the idea of "mixed agreements", which partly include the competences of the Member States. Hence, national bodies, and not just those of community, are called upon to intervene in the process. The mobilisation of regional parliaments, as seen in Belgium during the agreement with Canada, highlights the fact that internal political pressure in the Member States can be strong.

Some go as far as to deny that the European institutions have the democratic legitimacy to approve trade agreements, whilst it is clearly the responsibility of the European Parliament to support or reject the adoption.

Conflicts over competence and legitimacy are leading to fears of "a veto" of common trade policy, the power of which lay, rather in its community nature. This is leading to the risk of two types of weakening: the loss of credibility on the part of the European negotiators regarding their external partners; a lack of ambition in the agreements that are reduced to their lowest common denominator, due to the difficulty in achieving unanimity on the part of the Member States, a fortiori if they turn to their national Parliament.

The issue of the planned "mixed" agreements and their mode of ratification were clarified in May 2017 by the ECJ in its opinion 2/15 on the free-trade agreement with Singapore. It is also vital to have a thorough political preparation of granting mandates to European institutions and supporting negotiators in the principles stages of negotiations.

The emergence of China, highlights the need to act

All countries in the Union, just like the USA, supported China's entry into the WTO in 2001. The implicit deal was then as follows: we, the Europeans, shall import Chinese goods for the greatest benefit of our consumers' buying power and invest in China to the benefit of the power of our industries and services; in exchange, you, the Chinese will achieve the massive creation of low-end manufacturing jobs in your "world workshop" and take advantage of our investments at home, together with the transfer of technologies.

Confidence then lay in the convergence of all countries towards the Western political-economic model; hence specific anti-dumping measures were only set in place for a time period of 15 years until December 2016, which was supposed to be adequate enough time for China to naturally become a "market economy". Which it is less now than ever before![7]

This deal has been adhered to from the point of view of the European consumers, but not from the industrial point of view, with a repositioning of some Chinese products – they are now becoming leaders in terms of certain high value added goods -, and more importantly, the dumping by government-subsidised Chinese manufacturers of their surpluses onto the Western markets: hence in terms of steel, overproduction has reached some 350 million tonnes, i.e. nearly the double of Europe's annual production. As a result market prices on certain steel products have dropped by 40% destroying 40,000 jobs in the Union since the financial crisis!

6. L'article 3 du Traité comprend la politique commerciale commune, régie par l'article 207 du TFUE.
7. Sur ce point, voir dans le dossier, Charles de Marcilly, « Octroi du statut d'économie de marché à la Chine : quelles réponses politiques face aux carcan juridique ? ».
8. cf. le position paper 2016/2017 de la Chambre européenne de commerce en Chine.

Moreover, whilst the constraints set on foreign investment in China are tending to grow stricter, the latter is now investing at a very fast pace more outside of its borders than foreigners are investing within its territory: three time faster in 2016 than in 2015.

As seen in several recent acquisitions of German industrial flagships, these investors can afford to offer very high prices, then they are the only ones to be able to guarantee full market access to the Chinese market.

Hence the idea of reciprocity is starting to trickle into community modes of thought. The Commission is planning an agreement on investments in China, whose chances of succeeding, from a political point of view, seem highly unlikely.

The requirement of better protection

Protectionism is not an option for Europe, but naivety, for which it can criticised, is not one either.

The present protective tools were not enough either, as recalled by the Commission[9] , although they have helped safeguard 315,000 jobs (in the iron, steel, chemical, ceramics and mechanical engineering fields). 39 anti-dumping and anti-subsidy measures in the steel sector have been set in place, 17 of which involve China. But the Commission has achieved the limits of what it can do in terms of European trade defence legislation, which only applies to 0.21% of imports. This is why it has tabled proposals to strengthen trade defence instruments:

*First of all it means bringing to an end the systematic application by the EU of the "lesser duty" rule, which goes well beyond the basic obligations defined by the WTO and prevents the EU from increasing its anti-dumping taxes. This rule comprises simply placing customs duties on a par with the damage caused by dumping, which usually leads to a reduction in import taxes paid on Chinese products. Hence whilst the Union taxes Chinese steel at 21.1% the USA taxes it at 266%, thereby redirecting Chinese export flows towards the European market.

*In addition to this the Commission is suggesting the modernisation of the legislation surrounding unfair competition linked to subsidies and a new way of calculating dumping regarding imports from countries where there are market distortions or where the State's influence over the economy is omnipresent. Even though China is not the only one, this has been a politically honourable and potentially effective way out of the problem of China's admission to the virtual status of "market economy": but with the simultaneous introduction of innovative, adapted protection measures to the reality of distortions.

Response on the part of the Member States to the Commission's proposals was a good indicator in terms of measuring their will to act in an orderly manner against abusive behaviour and to assert Europe's power. However, traditionally the positions of the 28 are not aligned easily because of economic culture or trade balance and sometimes, unfortunately, because of short-term domestic policy.

The States that are against the proposals to strengthen the trade defence instruments say that taxing imports more would damage businesses, since they need cheap components to boost their competitiveness in terms of the manufacture of high value-added products. I remember having discussions in the North of Europe that were against these protective measures on the influx of Chinese solar panels because these allowed the acceleration of energy transition.

The trade policy must make political sense again

The announcement made by American President Donald Trump of the death of the draft transatlantic trade project, which has also been challenged in Europe is bad news, since this project promised new protective balances of standards and values before the rise of

9. f position paper 2016/2017 by the European Chamber of Commerce in China "A robust trade policy for jobs and growth", COM(2016) 690 final, 18th October 2016

emerging countries[10]. Criticism from various sides (environment, agriculture …) targeting the CETA and the draft agreement with Mercosur are opening up new debates.
More than ever before, with a renewed rise in protectionism, it is vital that the EU's trade policy recover its strength.
However, this will not quell concern nor achieve acceptance on the part of the citizens without political measures to restore confidence, such as negotiation transparency. From a social point of view, an open social market economy must go hand in hand with support to those who lose out in free-trade; hence the European Globalisation Adjustment Fund, which is not adequately funded and too complex in terms of access, should be redesigned.

More generally and offensively, other community and national political tools must be chosen with greater care in order to assert the competitiveness and competitive potential of our businesses, our capacity to innovate and our skills.
This does not just concern the strength of our trade exchanges but also our economic and social model of development.

10. Peter S. Rashish, "Le partenariat transatlantique : dernière chance pour une mondialisation à l'occidentale ? », Annuaire français de relations internationales 2016

The Slowing in World Trade: a structural break, the cause of uncertainty

Sébastien JEAN

As the financial crisis of 2008-2009 fades into the past, it is increasingly clear that world trade has slowed both structurally and for the long term. This was not immediately evident because the crisis affected trade very badly, which is generally two or three times more volatile than the GDP. Indeed, trade mainly comprises manufactured goods, the demand for which is more cyclical than for services and agricultural products. Investments comprising a high share of imports are also more volatile than the rest[1] . In addition to this the fact that exports themselves increasingly include imported intermediate inputs has also accentuated the cyclical nature of trade. Finally, during an acute financial crisis as that of 2008-2009 the restriction of trade credits and deterioration in guarantees (even more vital for exports than for national transactions) limit international trade[2] . Hence after a contraction of more than 10% in 2009 the volume of the trade in goods and services made a vigorous recovery in 2010, with growth of nearly 13%, whilst the world GDP increased by 4.1%. After this roller coaster ride it might have seemed natural to recover pre-crisis trends, and when the growth of trade proved relatively slow, it was initially interpreted as an economic hazard, a kind of after effect of the crisis. And yet the years are passing and – almost without exception over the last five years the forecasts put forward by international organisations, if we look to those made by the WTO, IMF and the World Bank regarding the development of world trade, were systematically too optimistic for several years running between 2011 and 2016[3] .

1. A STRUCTURAL BREAK

Hence the break is a clear one. Over the fifteen years prior to the crisis (1993-2007), the volume of world trade in goods and services increased by 7.2% on average per year, more than twice that of the volume of the world GDP (3.1%[4]). Between 2012 and 2015 trade only grew at a pace of 3.3% per year on average, barely faster than the GDP (2.6%). The recent trend has been more irregular with almost total stagnation in trade for a year and a half (according to the monthly CPB data, Netherlands, acknowledged for their quality, the volume of world trade in July 2016 did not rise above its December 2014 level), followed by quite a striking revival, particularly in the autumn of 2016. This recovery seems to be temporary however, linked to the recovery in industrial output, and does not seem to mark a long-term break with the trend, namely the 2.4% average annual growth in world trade in volume observed since mid-2011, i.e. a growth rate similar to the one for GDP.

Of course, the slowdown in GDP growth and therefore in demand, mechanically plays a role in trade and this role appears all the more important since we are referring to the relatively dynamic period preceding the crisis. Although this led the IMF to highlight sluggish demand as the main reason behind the slowdown in trade, this conclusion is hardly convincing as we look at the situation with greater hindsight[5]. Hence the now emerging break with the trend does not concern a slowdown in trade in the strict sense of the term as much as it does a decline in the ratio between the rate of growth in trade and that of the GDP, often called trade to growth elasticity. For a time, sluggish

1. Bussière, M., Callegari, G., Ghironi, F., Sestieri, G. & Yamano, N. (2013), "Estimating Trade Elasticities: Demand Composition and the Trade Collapse of 2008-2009", American Economic Journal: Macroeconomics 5(3), 118-51.
2. OMC (2013), Rapport sur le commerce mondial 2013. Facteurs déterminant l'avenir du commerce mondial.
3. Jean S. (2016), « La croissance du commerce mondial en deçà des attentes de l'OMC. Comme prévu ! », CEPII Blog, 29 September 2016, http://www.cepii.fr/BLOG/bi/post.asp?IDcommunique=480
4. Source: base WEO, October 2016, IMF, calculation based on market exchange rates.
5. Jean S. (2016), "Comments on IMF's "Global Trade: What's behind the Slowdown?" – or why there is more to trade slowdown than weak demand", CEPII Blog http://www.cepii.fr/BLOG/bi/post.asp?IDcommunique=483.

investment was used as a major factor in explaining this, but again the argument does not withstand analysis as far as the recent period is concerned. Of course, investment rates are at an all-time low in many countries, particularly in the industrialised countries, but it has stopped declining which means that investment is not increasing less on average than the other elements that make up demand.

The increase in the share of services in our economies is another possible explanation, since services are traded less than goods. However, this does not seem enough to explain the slowdown, firstly because this secular trend has not experienced collapse concomitant to that of trade. The international trade in services has also slowed even though it has withstood better than the goods trade.

Finally, in explanation of the slowdown in world trade, two factors clearly stand out, even though their respective contribution to this remains uncertain. They are linked to China and international chains of value. There is also a question about the previous and future roles of protectionist policies.

2. CHINA'S ECONOMIC READJUSTMENT IS SLOWING ITS FOREIGN TRADE

The role of the Chinese economy should be highlighted because this country, which has become the world leader in the export of merchandise since 2009, has for the last decade been undertaking a major task of readjustment. The proof of this lies in Beijing's political agenda and the attention being lent to the value given to the domestic market. Xi Jiping recalled in October 2017, during the XIX Congress of the Chinese Communist Party, the importance of the so-called "Silk Road" project (One Belt, One Road). The latter means the development of interlinked investments and transfers of technology. During the same Congress the Chinese leader also set the country up to be an "economic, strategic and ideological giant." Another indicator bearing witness to the re-balancing of the Chinese economy is an agreement now being prepared between China and Saudi Arabia with in fine an agreement so that Saudi oil imports will be issued in yuan, thereby freeing it from the use of the dollar. Hence in the 2000s China reached an extraordinarily high level for a country of this size, since exports represented up to 35% of its GDP in 2007. This remarkable extraversion resulted from the development strategy pursued by the Chinese government, which mainly relied on opening, and in particular, on exports to facilitate the introduction of a market discipline and access to modern technologies, whilst simultaneously maintaining a strong dynamic to accumulate productive capital and production efficiencies. The attraction of foreign direct investment on the part of multinationals from wealthy countries and the assembly trade, in which they have gladly engaged, combining imported inputs with low cost Chinese labour, has been a key factor. In spite of its success this strategy was only ever a first stage. The long-term sustainability of Chinese growth required readjustment in several ways. Basically, the domestic market was to take over from external outlets that could not, in the long term, maintain their initial dynamic, given the already high market share achieved by Chinese export firms, and consumption was to supersede high investment in relation to the GDP, consequently growth was to rely on services more than on industry and exports more on national outlets than on the assembly of imported inputs.

This overall development started at the beginning of the 2000s and was reflected in trade, with a limit to the level of opening, since the export to GDP ratio declined after 2007 to return to 26% in 2015, whilst the trade surplus, which rose to 8% of the GDP, returned to lie within the range of 2 to 4% of the GDP. This slower pace especially concerned the assembly trade by foreign companies which only represented 33% of Chinese exports in 2015 against 46% in 2007. Beyond readjustment this trend was part of a strategy to boost the sector, whereby China progressively gained wider control of the components necessary for its exports of finished products, and to move upmarket, via the progressive increase in the quality and technology of its manufactures. Hence the unit value of Chinese manufactured exports has increased faster than that of its competitors in most sectors over the last ten years[6] . The rapid increase in Chinese salaries leaves no other choice. Recently China's external trade has not even shown any growth trend: according to

6. Lemoine, F. & Ünal, D. (2017), 'China's Foreign Trade: A "New Normal"', China & World Economy, à paraître.

the WTO in the third quarter of 2016 the volume of Chinese exports were lower than their level two years ago, whilst the volume of imports were lower than their level in the third quarter of 2012, down by 10% in comparison with their highest point in 2014![7] Even though the most recent figures show recovery, it is still too early to deem that this will last; the least we can say is that China is no longer the locomotive for world trade that it was for many years.

3. THE DYNAMIC OF INTERNATIONAL CHAINS OF VALUE IS EXHAUSTED

The second major factor to explain the slowdown which is not disconnected from the first, but cannot just be reduced to that either, is the slowing in the extension of global value chains. With this we mean the fragmentation of the production process into a great number of tasks undertaken in different countries in order to take best advantage of differences in wages, the cost of capital, qualifications, technologies and the availability of inputs. The chain of productive tasks, the sources of value added, that is fragmented ever more finely between countries has led to increasing international trade. This process played a central role in the speeding up of world trade between the 1990's and 2000's. It is notably reflected in the fact that the value of exported manufactures between two countries no longer just corresponds to the displaced value added between them. This is the case with the value of imported inputs and those which will then be re-exported (towards the country of origin of the flow or towards a third country) after transformation or incorporation into another product. In all, only a fraction of the exported production is really exported value added, and this fraction diminishes as the international chains of value become fragmented. Hence this fraction is said to have decreased, according to the most recent estimates, from 78% in 1990 to 68% in 2008 regarding all products, and from 59% to 46% in terms of manufactured goods[8]. Although the equivalent figure is not yet available for the most recent years, this downward trend has clearly stopped now and has even reversed slightly. In other words, the international fragmentation of the chains of value has stopped extending and has even decreased slightly. This is shown by the direct fragmentation gauge developed by the OECD, but also by the decline in intermediary consumption in world trade[9]. This break in trend alone would explain the slowing of world trade in comparison with the pre-crisis period in terms of more than two percentage points, ie around half of the overall slowdown that has been observed[10]. Hence the flows, in which the international fragmentation of value added chains is the highest, are also those where growth has clearly been lower than expected, if we base ourselves on an analysis of pre-crisis factors[11]. The corollary of this observation is that the slowdown in international trade is not as sharp if we measure the flows of value added rather than gross output. However, it should be stressed that the break in question here is mainly a clear cut in the trend of ever finely fractioned international chains of value added, which does not necessarily mean the decline of this phenomenon. Even though some multinationals have taken advantage of progress in robotics and the reduction of labour cost differentials to repatriate a share of the previously relocated production to rich countries, we can speak, for the time being anyway, of a significant step backwards. The fashion surrounding the terms of relocation or reshoring does not hide the fact that statistics do not indicate any dramatic development in this direction.

This break in the international division of labour raises several issues, particularly that of understanding its determining factors, notably the share played by economic policies in this and their possible protectionist bias. The first element of explanation lies in the profits made in the international extension of international chains of production, which tend to decline as the process moves forward: the most profitable arbitration has already been implemented. Also, although foreign direct investments have continued to rise in absolute terms, they have significantly declined in proportion to the gross formation of fixed capital in low or intermediate revenue countries, dropping from nearly 13% in 2007 to under 9% in 2014[12]. As for transport and distance coordination costs, the pace of their reduction has probably slowed and the profits to which they give rise are also yielding less. Finally, economic policies cannot indefinitely be made to foster

7. These figures are not seasonally adjusted but concern the entire third quarter.

8. A Portrait of Trade in Value Added over Four Decades, Robert C. Johnson, Guillermo Noguera, NBER Working Paper No. 22974. The figure mentioned refers to their measurement excluding the rest of the world for which their data is incomplete.

9. Cf. Haugh, D.; Kopoin, A.; Rusticelli, E.; Turner, D. & Dutu, R. (2016), "Cardiac Arrest or Dizzy Spell: Why is World Trade So Weak and What can Policy Do About It?", OECD Economic Policy Papers 18, OECD.

10. See the converging estimates on this point by Haugh et al. (2016), op. cit., et Timmer, M. P.; Los, B.; Stehrer, R. & de Vries, G. J. (2016), 'An Anatomy of the Global Trade Slowdown based on the WIOD 2016 Release', GGDC Research Memorandum 162, University Of Groningen, Groningen Growth And Development Centre

11. Crozet M., Emlinger C. and Jean S. (2015), "On the gravity of the trade slowdown", in The Global Trade Slowdown: A New Normal?, edited by B. Hoekman, VoxEU-CEPR. See also Jean, S. (2015), 'Le ralentissement du commerce mondial annonce un changement de tendance', La Lettre du CEPII 356.

12. Hakobyan S. & Lederman D. (2016), "XXX", World Bank Working Paper 7777. The trend is more difficult to decipher in the developed countries where this ratio is more unstable.

extraversion as was the case in most countries during the 2000s[13].

Moreover, the recent period has highlighted that the fine international division of manufacturing processes can also be a weak link, which seen as such can limit its deepening. The earthquake in Japan in 2011 or the floods in Thailand in the same year disrupted work in factories that were sometimes established on the other side of the world, particularly in the electronics industry. The economic and financial crisis also showed just how powerful and rapid the transmission of macro-economic and financial crises can be in this context.

4. PROTECTIONISM HAS NOT CAUSED THE SLOW-DOWN, BUT THE LATTER MEANS THERE IS A THREAT OF A RETURN TO PROTECTIONISM

The return of protectionism is another possible explanation. Crises are periods that favour protectionist response, with governments and businesses trying to compensate for the decline in demand by a reduction of foreign shares on the national market. Aware of the dangers of the slippery slope inherent to trade wars, the G20 countries solemnly committed during the London Summit in 2009 to "reject protectionism".

This commitment has not prevented some protectionist reactions however and the WTO deemed in November 2016 that nearly 3,000 measures restricting trade had been introduced by the member States since 2008, 2,200 of which were said still to be in force. This observation is difficult to interpret however since a high number of measures that aim to facilitate trade were taken at the same time and comparable data is not available for the period prior to the crisis. The number of measures also says little of the effective impact of the restrictive measures, which the WTO deemed in 2014, in regard to those in force, covered less than 4% of the world's imports[14]. The supervisory work undertaken as part of the Global Trade Alert project[15] also suggests that a certain number of measures slip under the WTO's radar, but again data does not allow us to form a precise idea of developments in comparison with the pre-crisis period and quantitative studies have not revealed a significant link between the extension of these measures and trade slowdown[16].

It remains that the slightest dynamic changes the political forecast on free-trade. Exports were generally seen as a primordial factor to boost growth prior to the crisis: in the wealthy countries, by taking advantage of the rapid expansion of the emerging markets; in the developing countries, by taking advantage of the technologies of multinationals from the most advanced countries. Since trade is now no longer synonymous to growth, governments and populations increasingly see a zero-sum game in which it is vital to protect oneself from foreign competition as seen in the example of the strengthening of European trade defence tools. Requests for protection have always existed but they are increasingly pressing. Tension regarding how the cake is to be divided up is all the stronger since the latter's growth has been stunted, leading to fear that not everyone will get a fair share.

This is all the more so since China's industrial and trade power are the source of fear. In the wealthy countries it is seen by many as a factor of deindustrialisation, even though it has contributed to this in a very limited way according to all of the analyses now available: in some poor countries, in India for example, it is deemed a threat in terms of its industrialisation strategies. The way China functions is still extremely centralised, which raises the question of whether the competition that it causes is fair to its partner countries, which respect stricter rules from the point of view State intervention, and notably regarding subsidies in support of selected sectors. The controversy over China's status as a market economy, linked to the December 2016 deadline of specific transitory measures provided for on the occasion of its accession to the WTO in 2001, reflects these questions to a backdrop of massive overproduction in the steel sector.

Brexit plus the American presidential election are emblematic of this political response to globalisation. In particular, coming from a country that was the main architect and leader of the multi-lateral system as we know it, President Trump's protectionist rhetoric comprises a serious threat to the institutional context of trade exchange. Although the greatest uncertainty still remains about how he will implement it, the

13. See for example Bureau J.-C., Guimbard H. & Jean S. (2016), "Competing Liberalizations: Tariffs and Trade in the 21st Century", CEPII Working Paper 2016- 12 , May 2016 , CEPII.

14. WTO (2014), Rapport sur le commerce mondial 2014. Commerce et développement: tendances récentes et rôle de l'OMC, World Trade Organisation.

15. www.globaltradealert.org

16. See for example Crozet et al. (2015), op. cit.

political importance he gives to the issue indicates that he could go a long way. His decisions in this area (relinquishment of the Trans-Pacific Partnership (TPP), the tense renegotiation of the NAFTA, the extremely aggressive and unusual use of trade defence tools) are not reassuring by any means, even if in the main announcements have prevailed rather more over acts. His rejection of multilateralism is also worrying for the future of the multilateral system which is now being rejected by its historic craftsman and leader.

The risks are real for a multilateral trade system that has been weakened by its economic sluggishness, its political contestation and its institutional paralysis.

Although until now protectionism does not seem to have played a leading role in the slowdown of world trade, its re-emergence might well speed up the trend, and even lead to a considerable decline. Nothing is certain as long as dynamics and chain reactions play a key role in trade developments, but uncertainty is weighing heavy and the consequences could be deep and long lasting.

The European Union's trade policy challenged from

Charles de MARCILLY
Aurélien PASTOURET

The Bratislava Summit of 16th September 2016 brought together the heads of State and government, without the UK, in a bid to provide new impetus to Europe following the British vote. Regarding the external chapter on economic measures the 27 have simply asked for the assessment of the means available "to introduce a robust trade policy which capitalises on the open markets whilst taking on board concerns expressed by the citizens." This might sound surprising on the part of the world's leading trade power because of its lack of ambition. But opinion and certain governments are divided, and even disconcerted by the agreements discussed with Canada and the USA, even though the latter has now been suspended. Behind a feeling of impotence in the face of the dangers of globalisation, misconceptions of the institutional machine and split accountability accentuate the feeling that agreements that are being negotiated "behind the scenes", and even against the citizens, whilst the States are prescribers and decision makers of last resort. 2017 was also marked by the recognition of the need for greater clarification, explanation, promotion of the issues at stake in the European trade policy. This was reflected in the discourse by a major convergence regarding "Europe that protects". Both Jean-Claude Juncker and Emmanuel Macron are highlighting the need for the respect of standards, transparency and reciprocity. The general idea behind the trade policy is clearly to rely on a bilateral approach with third countries to give value to European collective preferences. Both leaders also point to the need to defend the EU's strategic interests via greater assessment of foreign strategic investments. Hence trade is considered to be a tool that will enable the shaping of a "fairer, more inclusive globalisation". The interest of a common trade policy is facing internal challenges however, which are undermining the collective capacity for negotiation.

The European Union is one of the main economies on the planet representing 17% of the world's wealth. The leading consumer market, via the average purchasing power of its 500 million citizens, it exercises an exceptional force of attraction. 55% of America's foreign investments are directed towards it and it remains the leading export market for more than 80 countries. Its citizens draw benefit from it since 30 million jobs depend directly from the EU's external trade.

However economic trends are causing a degree of uncertainty, as international trade growth stagnates at around 2.4% in 2017[1] , world growth is still lukewarm according the IMF[2] data, and the European Central Bank regularly expresses its concern about the euro zone's modest growth forecast. Moreover, thanks to deeper integration, trade and finance enable the development of globalisation which is reflected in the tripling of world trade since the 1990's. However, since its creation in 1995 the WTO has also witnessed a threefold increase in anti-dumping procedures or "temporary barriers" thereby revealing protectionist measures[3] . The limits being place on trade are worrying. The G20 members – representing 85% of the world's wealth – have been obliged to reassert their "opposition to all types of protectionism from the point of view of trade and investment" whilst many sectors – steel being the most emblematic – suffer from globalisation that is deemed as being imposed[4].

However, the European Union draws on the

1. World Trade Organisation, « World Trade Statistical Review » 1st October 2017.
2. IMF, «World Economic Outlook», 19th July 2016
3. Jean-Pierre Robin, « globalisation has already dropped down a gear », Le Figaro, 3rd October 2016
4. Press release by the G20 leaders at the Hangzhou Summit 4th and 5th September 2016

development of the agreements that it concludes with more than 140 partners[5] . Aware that 90% world growth will be outside of the Union in 15 years' time (according to the IMF), Europe is trying to promote privileged trade relations, and at the same time develop its standards and values[6] . To do this it now has to win over public opinion. But this is not the only challenge to which it has to rise. We can pin point four others: clearing the ambiguity between opening and protection, establishing robust defence instruments, managing complex ratification processes, and British uncertainty. Politically and legally, several answers were put forward in 2017. Without any clear implementation in regard to this, in the future, trade standardisation might be forced upon it, together with norms that are lower than those of its model and its aspirations. Will the challenge not be to show that the European Union can make globalisation more acceptable ? [7]

A/ MORE COMPREHENSIVE AGREEMENTS – A CAUSE OF CONCERN

a. Modification of the balance of power

The suspension in 2008 of the WTO's Doha Round can be explained amongst others by two changes. The first is the acceleration of certain economies which between the start of the discussions at the beginning of the 90's and the formal rounds have progressed significantly. China and India can no longer be classed as developing economies or emerging countries. The applicable rules have to be adapted according to the development in size and capabilities of the players or they may become obsolete as they offer unjustified advantages. The second development involves the upheavals in the economy that are not just focused on the goods trade. This means integrating new economic areas in the agreements (services, new technologies, investments, public procurement, competition, intellectual property rights, sustainable development …). Also known as the "four questions of Singapore[8] , issues linked to investments or public procurement face structural obstacles under the WTO.

This does not just concern the rules governing goods and customs duties, but it means widening the agreements to intellectual property issues and patents. The growing complexity of the chain of values, together with the emergence of economic giants, which are no longer "emerging", make a full agreement with more than 160 players highly unlikely. The 11th World Trade Organisation's Ministerial Conference that took place from 10th to 13th December 2017 in Buenos Aires (Argentina) confirmed the participants' inability to promote any new dynamic.

b. A doctrine focused on "mini-lateralism"

In this context, since there is not enough progress being made with all 160 WTO members, the European Union has drawn up a new approach, based on bilateral or regional trade agreements. Hence a new generation of comprehensive free-trade agreements extending beyond tariff reductions and the trade of goods (EU-South Korea, Peru, Colombia, Ecuador and Canada) have now been made. It also promotes agreements with a reduced number of partners, like the agreement on the trade of services (TiSA/Trade in Services Agreement) under negotiation at present by 23 of the Organisation's members.

In 2010 the Commission presented a communication entitled "Trade, growth and world affairs"[9] making international trade one of the pillars of the new Europe 2020 strategy[10] . In line with this, the new strategy "trade for all" defines trade as the main driver of growth and the creation of jobs, and also recognises the need for a coordinated approach to both internal and external policies. The development of this strategy is based on four pillars which are transparency, efficiency, including the so-called "last generations" issues, the promotion of values and the extension of the negotiation programme by deepening existing bilateral agreements redefined under a multilateral framework, i.e. the WTO.

5. Jean-Claude Juncker, « The State of the Union 2016 », 14 September 2016

6. Data published in «Trade for all : Commission presents new trade and investment strategy», European Commission , 2015, p. 8,

7. Antoine d'Abbundo, « Peut-on rendre la mondialisation acceptable » La Croix, 21st September2016

8. Four questions were added to the WTO's work programme at the Singapore Ministerial Conference in December 1996: trade and investment, trade and competition policy, transparency of public procurement and the facilitation of trade. (Source : WTO)

9. European Commission , "Trade, growth and world affairs. The trade policy at the heart of the Europe 2020 strategy", 2010

10. European Parliament, "The European Union and its Trade Partners" 2016

Historically and conceptually customs duties and tariff barriers have gradually been surpassed[11] by the need for regulatory convergence. The declared goal is to strengthen regulation cooperation and to define international standards. By doing away with regulatory red tape, free-trade agreements (FTAs) would allow both sides to aspire to better standards – in the area of the environment for example – with the aim of becoming points of reference. This approach is seen positively and represents a compromise in the face of the risks of "the downgrading of standards" and the ambitions raised by the NGOs. Proposals suggest for example the insertion of "climate vetoes" as part of any future trade negotiations. Today, a State like France would probably refuse to negotiate with the USA if an environmental chapter were not to be included in such a treaty.

The European Union, a normative power, has the arms with which to impose its collective preferences, but it must not miss out on regional agreements. This means defining standards that will be prescriptive, since they will be unavoidable in terms of their weight on the markets. However, the new American administration does not share this approach since it only sees the financial aspect of trade. Yet some even believe that the transatlantic agreements comprise the last chance we have to ensure that globalisation continues according to western values. According to this analysis the first goal of the negotiations with the USA would be to "re-assert transatlantic leadership so as to shape a new international economic system."[12] This approach is based on different axes and the strategies of the main blocs would adapt according to progress made in negotiations over the transpacific or transatlantic agreements. This means that beyond the traditional "trade giants", emerging countries in the international trade arena are trying to assert themselves rapidly as unavoidable partners. This is, for example, the case with the ASEAN[13], Mercosur[14] and the Pacific Alliance[15] countries. The USA has already taken the initiative to undo, renegotiate and strengthen their economic and trade ties with the countries of South and Central America, as well as with several emerging countries in Asia. In addition to this the European Union's goal is not to get left behind and to remain a normative power[16] in an international context in which it is perceived positively[17] in an international context in which it is viewed favourably. This is illustrated by the acceleration and signature of a political agreement with Japan 48 hours before the G20 meeting in Hamburg in July 2017 and which was formally signed in December.

The results of this ambitious policy are tangible. According to the European Commission on 10th November 2017 the European Union has 32 effective agreements including 60 partnerships, 43 which have partially entered into force and four agreements in force, but which are being renegotiated at present (Azerbaijan, Mexico, Morocco and Tunisia).

The European Union probably offers the most protective model in terms of social, individual and collective rights. It mobilises 50% of world spending on healthcare and solidarity. This model has not been copied elsewhere and will probably not be exported. European citizens fear regression, notably regarding social and environmental standards. One of the issues at stake is therefore to ensure that the Union is likely to see the conditions of most trade partners rising and not consent to a reduction in its collective choices.

c. Promoting upwards harmonisation

On interpreting the concerns expressed by some parliaments and representatives of civil society, the main fear that emerges is that European standards and norms will be harmonised downwards. Although we must not be naive, the feeling of having a defensive approach to trade and being a "losing" Union has to be tempered - on the public face of things at least. Indeed legally, and all the more from a political point of view, negotiators cannot discuss standards that would be lower than those in force within the European Union. Politically the legislator would not allow the regulator to encroach on his prerogatives. Public debate on the implementation

11. P Lamy "What future for European Union in World trade" Schuman Report 2014 p.99

12. Peter S Rashish, « Le partenariat transatlantique, dernière chance pour une mondialisation à l'occidentale »in Annuaire Français des relations internationales, 2016, Université Panthéon-Assas p. 487-497

13. Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Myanmar, Cambodia

14. Argentina, Brazil, Paraguay, Uruguay, Venezuela

15. Mexico, Colombia, Peru, Chile

16. On this point the trade agreements take on a geopolitical and not just an economic dimension. See Leveraging Europe's international economic power, Guillaume Xavier-Bender, GMF, March 2016

17. Trade agreements are not a race to the bottom, if they are properly written, but a race to the top." Discussion with John Kerry, German Marshall Funds, Brussels 4th October 2016 of the CETA and the risks of imports that are not in line with European standards show the need to clarify the content of the agreements and its practical effects. For example, hormone treated beef is banned in the European Union in virtue of the EU regulation n°464/2012 and it will remain so. The CETA agreement does not mean and does not legally have, the ability to modify this ban governed by EU law! The mandates granted to the Commission are explicit. Moreover, in a context of a balance of power between the parties involved and with the evident will for upward harmonisation the European Union systematically tries, under the framework free trade agreements, to spread its model and its own collective preferences. The addition of chapters devoted to sustainable development, social impact and consumer protection, discussed with some countries, which have not thought of these things, enables the promotion of a European vision. Regarding these issues surveillance committees have been created even though it is regrettable that they are only advisory. Moreover, one future risk is that political considerations regarding the effects of increasing trade such as CO2 emissions will restrict the content of the negotiation mandates even more.

However, examples help explain this collective added value. The Commission's proposal for a new judicial system regarding litigation settlements between investors that was presented in September 2015 underscores its strength of innovation including as far as highly controversial issues are concerned. The European Union offers an alternative to a system that has been paralysed for the last 40 years, whilst European investors[18] have had to turn to it more in the last decade[19] .

Moreover, with the exception of the so-called "second generation" agreements negotiated with the USA, because it goes beyond the area of customs and tariff barriers, open or concluded negotiations are underway with powers that are much weaker than the European Union. The balance of power therefore still lies with the 28, soon 27 Member States, as they assert their collective weight as the world's second export force and also as an internal market, with a potential of 500 million consumers today and 435 tomorrow once Brexit becomes effective.

B/ 5 INTERNAL CHALLENGES

a. Settling ambiguity: opening and concern

And yet globalisation is disrupting the established order, destabilising governments and public opinion, and for some, it means regression in terms of world governance. This concern is not just to be found amongst Europeans, and the States that are traditionally supportive of free trade are now promoting a more rigid line.

The Eurobarometer study shows how the position and questions put by European citizens regarding globalisation, trade and free-trade have developed over the last ten years.

In the spring of 2007 European opinion largely preferred free-trade to protectionism, in spite of the rumblings of the future crisis. Between 2007 and 2009 the number of people who considered free trade positively remained stable, totalling 77% (only 17% viewed it negatively). To be more precise, those supporting "protectionism" were mostly to be found in the Mediterranean countries[19] to which we might add Romania, Luxembourg and Ireland. Opinion was more divided in Italy and Slovenia, whilst Hungary and Slovakia clearly rejected protectionism by 78 and 79%. However, in 2009 the younger generations tended more towards a positive view of protectionism (43% amongst the 15-24 year olds).

Paradoxically globalisation, as an opportunity for economic growth, was supported by 59% of the citizens in the autumn of 2009, but this was especially the case with 70% of students. The views of globalisation and that of free-trade do not therefore necessarily follow the same curve. Although Europeans generally, and young people in particular, agree that opening to the rest of the world is necessary to growth and that it is potentially beneficial, they fear that

18. Press release, « The Commission proposes a new legal system for investments under the TTIP and other European negotiations on trade and investments", 16th September 2015

19. Eoin Drea, TTIP infocus, Wilfried Martens Centre for European Studies, April 2015, p.12

non-European economic agents will be a factor of instability because of their supposed superior ability to impose their rules on the game in terms of relocation, standards and investments. This ambiguous scenario is confirmed with the Eurobarometer of the spring 2015: it indicates that positive ideas about the economic aspect of globalisation was rising amongst European public opinion for the third time since it was the case amongst 57% of Europeans. The difference between positive and negative opinions regarding the economic role of globalisation lay at a record level of +29, ie the highest level since 2010. In the same vein we note that negative ideas of globalisation were still only a majority in Greece (62%) and Cyprus (50%)! The traditional "pro-globalisation" countries are still Sweden, the Netherlands, Denmark, Malta, Finland, Germany and Ireland. The opinion ratio is however tighter in France, Belgium and the Czech Republic. But the acknowledgement of benefits or of the inevitable nature of the globalisation of trade does not match support to the free-trade agreements negotiated by the EU. This highlights the total ambivalence of citizens' positions regarding international trade: the recognition that growth will come from outside, but a fear of a weakening in European standards[20] .

b. Media coverage – a source of paralysis

Peter S. Rashish notes that "a great share of opposition to the TTIP comes from a trend amongst public opinion to confuse globalisation with trade policy." [21]

In the European Union we note a contrast between the free-trade supporters and a more protectionist approach, carried along by concern and even a political agenda. The former are quite discreet basing themselves on the inevitable nature of globalisation, which is no longer a pertinent argument. The latter however rely on a strong, significant ability to mobilize. The Votewatch Institute[22] studied the main votes in the European Parliament on free trade agreements in 2015 and 2016 and it noted that MEPs mainly voted according to their national political family. However, this tradition is changing. In 2012 already the rejection of ACTA[23] illustrated the sensitivity of MEPs to public opinion in opposition to their party and their government, since they largely rejected an agreement that had been approved by 22 governments out of 27.

The influence of communication is evident if we look at public opinion and its perception of the agreement negotiated specifically with Canada[24]. The level of support to the agreement dropped sharply in response to campaigns undertaken by its opponents. Austria, Belgium and the Netherlands are the three Member States where domestic contestation to the agreement concluded with Canada was the strongest. Yet all of the Member States renewed the European Commission's mandate for the transatlantic partnership in June 2016 in a context that was however not very favourable to this prospect that has been suspended since the entry into office of the new American government. Regarding the CETA the ratification process is ongoing, but to date the Parliaments consulted have all validated the agreement in a context, it is true to say, that has been less exposed to the media than in the autumn of 2016.

It also appears that not only do certain States block the agreement (or speak of the possibility of doing so) to modify it, but they also do this in response to their public opinion. But since the ECJ's opinion 2/15 that indicated that new generation agreements are of a mixed nature; the States will take up a central position in the negotiation process, since they will have to support the agreement politically to then have it adopted by their national parliament. However, this legal clarification of competences also enables a pragmatic approach to the Commission's ambitions by focusing on trade chapters with exclusive content. This political approach undeniably influences the ability to negotiate, and it also affects collective credit. During debates over the agreement with Canada in September 2016, several MEPs questioned the image being portrayed and the ability to conclude agreements with other powers less moderate than Canada.

20. Greece (73% against 25%), Cyprus (79% against 15%), Malta (53% against 19%), Portugal (52% against 29%), Spain (48% against 40%)

21. By presupposing that European standards are superior to those of our trade partners which should be relativized.

22. Peter S Rashish, « Le partenariat transatlantique, dernière chance pour une mondialisation à l'occidentale »in Annuaire Français des relations internationales, 2016, Université Panthéon-Assas p. 487-497

23. Doru Frantescu, "Who is for and against free trade in the European Parliament", VoteWatch, 19th September 2016

24. Eurobarometer standards (82, 83, 84, 85) on the issue "what is your position on the free trade agreement and investment between the EU and the USA?". November 2014/ May2016

Since the European Parliament has the power to reject a finalised agreement, communication with the citizen is therefore one of the crucial issues at stake in trade policy. The possibility of including national parliaments will only accentuate this phenomenon. It would be extremely difficult to promote agreements that had been supported discreetly during the mandate, then approved once negotiated via parliament, given the mobilisation of their opponents.

In response to the failure of ACTA, the institutions now communicate more than ever before to explain almost in real time what is on the negotiation table. Being attuned with public debate has become one of the imperatives in order to achieve support for negotiated agreements. Live press conferences on the internet, meetings with citizens, NGOs and businesses – never before have negotiations with Canada or the USA been the focus of as many explanations and debates. This new state of affairs in terms of communication was also announced the in "trade for all" strategy. Many texts are also available to the public. The 1600 pages of the CETA agreement are online and the TTIP is available on the sites of some NGOs. However, the demand for transparency, albeit legitimate, also seems to be a means to blocking the agreements more than to amending them.

The same applies to potentially confusing positions. Indeed, some governments do not defend publicly what they support in Brussels and use the trade agreements to domestic political ends, and even for their own electoral strategies. Finally, some parties use trade as a divisive issue, as was the case in the Netherlands, when on 6th April 2016 there was a referendum on the Association Agreement between the EU and Ukraine in a tense geopolitical context. Because of a new law that enabled 300,000 signatures to ask for a referendum on a parliamentary vote, a new political opportunity was provided by the association agreement. The supporters of the "no" vote did not campaign on the question asked, but used it as a symbol of the European Union. Citizens had the impression that the question asked was secondary, and questions, misconceptions and fear linked to the European project were expressed during this vote. Only 38.21% voted "yes" to this popular consultation in which only 32.8% of the Dutch turned out to vote.

However, trade negotiations undertaken by the Commission are done so on the basis of mandates. The latter are supported unanimously by the Member States and should undergo the same procedure to be withdrawn. Although the Commission asked in its communication, "trade for all", for the declassification of all mandates (ie to make them public), only three were declassified by the Council (USA, Canada and services (TiSA)). If in his 2017 State of the Union speech, the President of the European Commission acknowledged the new transparency imperative consisting in publishing all the future trade negotiating mandates, the declassification, on December 21st 2017 of the EU-Japan trade deal has remained very unnoticed. Two interpretations can be found. The first is related to the 2/15 ECJ ruling leading to a dilution of accountability between both EU Member States and the European Commission. The second is the consequence of the previous, the European Commission has more latitude in terms of communication and is therefore able to highlight certain chapters, provisions conveying a limited political risk.

As noted by the British Parliament "the traditional political obstacles to trade agreements lie in the fuzzy nature of the potential advantages put forward, whilst the costs are concentrated." [25] Transparency cannot just be a political end, it must retain its pedagogical virtue. On this point, during the adoption on the 26th of October 2017 of the negotiating directives for the EU-Australia and the EU-New Zealand free trade agreements, the European Parliament underlined that the publication of the negotiating mandates is now a common practice, as acknowledged by the following provision: "having regard to the Commission's Trade Package published on 14 September 2017 in which the Commission committed to making

25. *House of Lords, May 2014, quoted by Eoin Drea in The State of the Union, Schuman Report 2016* all future trade negotiating mandates public". Negotiations and even more so, second generation agreements, are the focus of arbitration between various chapters covering distinct sectors of activity. The Commission and the governments must also work together to organise responses and explanations given to legitimate questions raised by civil society.

In the eyes of the trade partners it might seem impossible to negotiate with a Union whose fragmentation makes the hope of concluding an agreement too precarious. In the future the public inclusion of MEPs and national MPs in the negotiation mandate seems all the more necessary with the diversity of certain agreements. Potentially this could reduce negotiators' prerogatives and would lead to a more rigid framework of the mandate's scope with the risk of restricting ambitions. However, this would surely prevent the "dramatics" of a situation as witnessed during the ratification of the CETA.

c. Showing its ability to protect itself by using adapted instruments

In just one decade the financial crisis and changes in economic power balances have increased the need to act collectively at European Union level. However national perceptions and choices regarding third countries often seem contradictory. Historic relations, geography or trade balances vary, which leads to blockages or inadequate response. European problems in adopting a strong position in order to define which status to give China are an illustration of this. The enthusiasm which prevailed in 2001 when China joined the WTO, with the possibility of it being granted the status of market economy following a transitional period of 15 years, now seems defunct. These outdated views of the emerging economies, which have become giants in one decade, but without wanting to adapt their common behaviour[26] , force us to rethink trade relations, notably in a defensive way. Jean-Claude Juncker stressed this in his speech on the State of the Union on 14th September 2016, "we must not be the naive supporters of free trade, but capable of responding to dumping with the same firmness as the USA." This is why the Commission is calling for rapid support to proposals in order to step up trade defence instruments that date back to 2013, whilst 12 States were still against it in 2016[27] . This wait-and-see attitude is not without consequence since the European Union – the third user of trade defence tools in the world – might possibly deprive itself of 90% of its anti-dumping measures, if it were forced to modify its methods of calculation [28]. Following the impetus provided by the European Commission in 2016 that aimed to strengthen the Union's trade defence, the Parliament and the Council supported the modernisation of the trade defence tools by signing an institutional agreement in October 2017. The response given by the Member States is a good measure of whether this strong institutional act on the part of the three players in the triangle (Commission, Council, Parliament) will go hand in hand with a true will to act in an orderly fashion against abusive behaviour, in the ilk of the measures taken in competition law. The increase in the number of litigation cases against Chinese businesses leads us to believe that Europe is awakening to the problem after years of relative inertia. The legislative "package" of measures at the end of 2017 shows a new approach. The two chapters of trade defence tools distinguish dumping on the part of countries with a market economy (USA, Canada, Argentina, Brazil …) and those which do not have one (like China for example). In each situation the new methodology is based on a more incisive political will in response to the fear of European naivety.

d. Diversity: the Challenge to Ratification

Trade policy has been federalised since the Rome Treaty in 1957. The Union's exclusive competence[29], which went mostly unchallenged for several decades, now seems to be under the fire of increasing criticism, with growing media coverage of the free trade agreements. This is encouraging several States and Parliaments to ask for more cooperation.

26. Jean-Claude Juncker, speech to the European Parliament, Strasbourg, 5 October 2016

27. The so-called "analogue country" calculation method

28. Article 3 of the Treaty comprises the common trade policy, governed by art 207 TFEU.

29. European Commission, « Conclusion of negotiations over investments between the EU and Singapore 17th October 2014.

An international agreement is said to be "mixed" when it involves one of the areas in which the European Union shares competences with the Member States, (article 4 TFEU). In this case the agreement is concluded both by the EU and by the Member States, which have to give their greenlight. After the conclusion of negotiations in the EU-Singapore agreement in October 2014 , the idea that trade agreements were the sole competence of the EU was brought into question. Out of concern for clarity and legal security the Commission called on the opinion of the Court of Justice regarding the nature of the EU-Singapore Agreement.

For their part the Member States want formal participation on the part of the national parliaments. During a Council meeting, conclusions state that national delegations deem the Singapore or Canadian agreements to be mixed. In their opinion the content of the agreements involves shared, if not exclusive, competences[30]. The ECJ took a decision on this indicating that the agreement was of a mixed nature. Indeed, the Court indicated in its opinion on 2/15 that the new generation of trade agreements were mixed since they contain measures that refer to areas that are not strictly exclusive to the Union. If the European Commission retains the exclusive competence to negotiate the measures related to trade policy some factors in the new generation agreements, given that they are part of an area that belongs to the shared competence between the EU and the Member States, are of a mixed nature. This court decision is not without consequence for the future of the European trade policy in that it will lead to further constraints[31].

This is the case in the agreement negotiated with Canada which highlights the problems linked to the unanimous ratification of such agreements by the Member States and national parliaments. The danger is that trade agreements will be polarised under the threat of veto and contradictory approaches which will accentuate citizens' apprehension and fear. Debates focus on de facto opposition and less on specific modifications, which have generally been integrated in the exceptions during the mandate. Under the negotiations over CETA on 23rd September 2016 during an informal meeting the Trade Ministers supported the conclusions of the agreement with Canada, the first to be concluded with a member of the G7[32] . However, in the weeks and months prior to this several States threatened to veto 7 years of negotiations for various reasons: Austria over the arbitration tribunals, Romania and Bulgaria over the non-suppression of visas for their citizens and Belgium because the support of the Walloon parliament – ie 0.7% of the European population – was vital to the federal government and was initially withheld on 14th October 2016 before being given the go-ahead. However, following the ratification of the CETA by the European Parliament on 17th February 2017, the latter entered provisionally into force on 21st September of the same year. It is now subject to the formal ratification of all of the parliaments of the Member States for its final entry into force.

This case has illustrated how difficult it is to obtain unanimity with the national parliaments, independently of the traditional diplomatic games that reoccur in each negotiation. Under the free trade agreements, the European Parliament represents the citizens during a vote of support or rejection. This competence, which was strengthened by article 281.6 of the Lisbon Treaty, comprised real progress in the support given to negotiations (thanks to non-legislative but politically far reaching resolutions) with the threat of veto if attention was not paid to them. Moreover, the unanimity rule of 38[33] national parliaments raises the issue of conflicts in democratic legitimacy: one national Parliament representing less than 1% of the European population can reject an agreement supported by 37 others.

In short, the mosaic of positions, goals and national interests have to agree with each other, whilst the Commission has worked for several years on the basis of a mandate given by the governments of each Member State! Underpinned by a feeling of general indifference at the beginning of the

31. Declaration by Jean-Claude Juncker, 5th July 2016. The Commission also asked the Court to say which possible parts were the responsibility of the States.

32. Informal meeting of the EU's Trade Ministers, Bratislava

33. 38 parliaments because some Member States have several houses that are called to vote process, the bitterly negotiated agreement, must, once it has been concluded with the other party, be the focus of debate and clarification. Under the mixed agreements the ratification process is very much like an army assault course. Each country, each parliament, and even each political majority, has its own interest. This process can but lead to blockages or multi-tiered agreements – by withdrawing the application of chapters from certain territories in order to remove obstacle, an option which is politically and legally questionable – and contrary to the European spirit. This will be all the more problematic if the States and the European Parliament approve negotiations; the treaty will be implemented temporarily as long as all of the national parliaments have not approved it: this truly is a Damocles sword and comprises a loss of collective credibility in terms of promoting European interests in world trade. This option was privileged for the agreement with Peru but in a different situation[34] . It is applied in the case of the agreement with Canada.

Transparent debate during the attribution of negotiation mandates to the Commission and support on the part of national parliaments would improve the democratic chapter of attribution of this competence and strengthen political support to collective negotiations. This means opening and politicising debates regarding mandates for a facilitated ratification afterwards. This approach would help reduce the risk of another "Acta" that was negotiated for several years before being rejected by the European Parliament following strong mobilisation on the part of the citizens.

e. British uncertainty is weakening the trade bloc

The result of the British referendum of 23rd June 2016 will have implications in terms of the European Trade Policy. The UK, which is the EU's second economy, representing 15.4% of the GDP in 2014, but especially 12.9%[35] of its world goods exports and 21.3% of its services exports to third countries in 2015, it is one of the engines behind the community's economy. Its history, its privileged links with certain parts of the world, its "hinterland", its financial market, its natural access to the Anglo-Saxon world are evidence of a discrete trading position within the 28. Its presence on the Single Market is a vital asset for third States, as stressed by the American President, and the Japanese and Chinese Prime Ministers when they visited Europe during the British referendum campaign in 2016[36] . The amputation of its second biggest economy will inevitably be costly to the Union, and also restricting access to its leading market will be painful for the UK.

Hence the implementation of the slogan "taking back control" will be a path full of pitfalls for London and the bearer of uncertainty, both for the Europeans, as well as its partners.

The appointment of Liam Fox as International Trade Minister in July 2016 confirms the clear, so often repeated wish to negotiate bilateral trade agreements once the divorce with the EU has been confirmed. World trade is therefore one of the Brexiteers privileged paths, since they believe that alone they will be able to negotiate better agreements than the 28 as a bloc, which represents 17% of the world's GDP however[37] . Although at this stage we do not know what the UK's final exit from the European Union will look like, according to the Brexiteers the weight of intra-European trade will condition the joint need for a "soft Brexit" and the negotiation of a free-trade agreement. Foreign Affairs Minister Boris Johnson gladly recalls that the UK is a consumer of French wine and German cars[38] and is counting on mutual goodwill to avoid too much disruption in terms of trade balances. As part of the "divorce" negotiations the choices made by the national government in their calculations will carry a risk in terms of their selfish interests and their individual trade balances[39] -, or whether they opt for a collective solution. 45% of British exports go to the internal market and comprised for example a trade surplus of 12.3 billion €[40] for France and 51 billion for Germany[41] in 2015, which will certainly be amongst the issues discussed in terms of the post-Brexit scenario along with access to the

34. Eurostat, statistics on international goods trade, March 2016
35. The conclusions of the G20 of 5th September 2016 reflect this « concern » that the referendum vote inflicts on the world economy
36. International Trade Secretary Liam Fox speaking at the launch of the World Trade Report 2016. 27th September 2016
37. «La Libre Belgique», 2nd October 2016 during the Conservative Party Congress in Birmingham.
38. Overall this means the EU but the UK's leading three trade partners which are in order, the USA, Germany and Switzerland (Eurostat)
39. « La France et le Royaume-Uni », a file of the French Ministry for the Economy, 2016
40. « Ranking of Germany's external trade partners», Federal Office for Statistics, 22nd September 2016

Single Market. Is this in the collective interests of the 27 in the long term however?

Legally trade is the Union's exclusive and the UK is tied by negotiations with third parties. The latter is finding it difficult to put together experienced teams of negotiators for a competence that has been devolved to Brussels for several decades[42] . Although Michel Barnier deems that the most likely scenario will be that of a simple free-trade agreement according to the Canadian model, given the British wish to leave the single market and customs union, it remains that the British government is planning rapid negotiations with third countries, without putting forward any specific timetable for this however.

Uncertainty is leading so certain difficulties the first of which is legitimate doubts raised by trade partners over the scope of the agreements that are under negotiation at present. A slowing in ongoing negotiations cannot be rule out. Can we negotiate an agreement as 28, which will only apply to 27? In practice the British are signing documents, attending meetings but everyone is acting as if they were no longer there! The result has been a certain amount of suspicion about the position adopted by the British in the trade negotiations. Clearly demonstrating national preference, the latter – like any other Union Member – has access to all ongoing discussions with third parties. Finally, if in an optimistic hypothesis the UK does leave the Union by the end of March 2019, it still retains its voting rights within the Council, and therefore its right to veto, which raises a Damocles sword over all of the agreements now under discussion. This hypothesis has not become a reality for the time being, but it remains legally possible. In these circumstances clarification by the British is vital if we are to avoid a harmful blockage to the European Union's ability to drive forward world trade. Does the same thing apply to 27+1? The position paper published on 9th October 2017 by the British government calls for an "ambitious economic partnership" and highlights the necessary transition period for the UK to adapt to a new legal system after its exit from the EU. This policy paper was received "politely" in Brussels. The meetings with Theresa May and her Indian, Canadian or American counterparts with whom the UK hopes for a strengthened economic partnership have incidentally not led to the desired effects. In terms of preference the critical size provided by the EU is more attractive. Although phase 2 of the Brexit negotiations will not start before the beginning of 2018 it remains that the articulation of the European and British trade policies will continue to be a source of tense debate since it has not yet been addressed publicly.

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Because there has not been any significant progress under the WTO, the EU is trying to strengthen its privileged relations with many countries. This prerogative as an exclusive competence is contested. The so-called new generation agreements, which enjoy wider scope, have mobilised civil society more than in the past. Of course, Europeans understand that globalisation is a source of growth, but they fear that their standards will be eroded downwards. Independent of any diplomatic conclusions, convincing the European citizens will determine their support, which is now vital in order to deepen these agreements. As far as the trade chapter is concerned the transparency of negotiations and the promotion of certain values – which are both vital – are not a guarantee for maximum efficiency in negotiations, or for a maximum extension of the agreements. Conversely, with the rise of parallel trade axes, the Union must act together if it is to remain a privileged and unavoidable partner. Above all this is about the credibility of a prescriber of standards and of promoting its collective preferences. This is the path that seems to have been chosen in view of the

42. Jennifer Rankin, "Brexit trade deals: the grueling challenge of taking back control", The Guardian, 17th August 2016 https://www.theguardian.com/business/2016/aug/17/brexit-trade-deals-gruelling-challenge-taking-back-control

ANNEX

ALL OF THE TRADE AGREEMENTS NEGOTIATED BY THE EU ON 1ST DECEMBER 2017

Free Trade Agreements (FTA)[1]:

=> Free trade agreements guarantee market access and the liberalisation of services ranging beyond the instruments in the GATS. These agreements aimed to liberalise the movement of capital whilst providing vital safeguard clauses in line with the mandates under negotiation

-Agreement signed : South Korea

-Under negotiation bilateral agreements with: Central America, USA, Canada (signed 30th October 2016), Colombia, Peru, Ecuador, Bolivia, Mercosur, Mexico (update of the negotiation adopted on 29th November 2017) Japan (political agreement 6th July 2017 and negotiation directive adopted on 29th November 2017), Myanmar [+ Malaysia, Singapore (since the ECJ's 2/15 opinion, the agreement as it stands cannot be concluded by the EU alone), Vietnam and Thailand, Indonesia (start of negotiations 1st September 2016, next round of negotiations 5th to 9th February 2018), and the Philippines at bilateral level even if the goal remains to reach a regional EU-ASEAN agreement. Australia, New Zealand (the Commission proposed negotiation mandates in September 2017, negotiations will start once the Council has adopted them.

Planned : Tunisia

-Suspended negotiations: India, Gulf Cooperation Council (CCG) and some countries in the Association of the South East Asian Nations (ASEAN)

Cooperation and Partnership Agreements (CPA)[2]:

=> These agreements aim to consolidate their democracy and develop their economy via in a wide range of areas as well as via political dialogue. A Cooperation Council to monitor the implementation of the agreements.

- Negotiations in view of updating the agreement in force: Russia

- 10 agreements concluded: the new independent countries of Eastern Europe, the South Caucasus and Central Asia, Armenia, Azerbaijan, Georgia, Kazakhstan, Kirghizstan, Moldova, , Ukraine, Uzbekistan and Tajikistan. The CPA between the EU and Mongolia entered into force on 1st November 2017.

- A new CPA underway with China

European Neighbourhood Policy (ENP):

=> This offers a privileged relationship to the EU's neighbouring countries. It comprises elements of economic integration and aims to support reforms designed to stimulate economic and social development.

Based on:
-CPA's concluded with the countries of Eastern Europe (which might include « Deep and Comprehensive Free Trade Area » (DCFTA), like those negotiated at present by Ukraine, China and Georgia
-Association Agreements[3] concluded with the Mediterranean countries (Euromed [4]) and action plans adopted in view of completing reform

Economic Partnership Agreement (EPA)[4]:

=> Aim to promote trade between the EU and the groups of countries in Africa, the Caribbean and the Pacific. They focus especially on the development

-Agreement concluded with the Cariforum [5]
-Agreement concluded with the EPA group of the Development of South African Development Community (SADC)
-Agreements being negotiated with the countries of Central and Western Africa.

Ne tient pas compte des autres types de négociations commerciales plus spécifiques, sectorielles notamment.

1. http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=OJ%3AJOL_2011_127_R_0001_01
2. http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=URISERV%3Ar17002
3. http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv%3Ar14104
4. Maroc, Égypte, Israël, Jordanie, Liban, Algérie, Palestine, Tunisie [+ négociations suspendues avec Syrie et Libye]
5. http://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean/

Karine LISBONNE DE VERGERON

European Union, Brexit, USA: the strategic dimension of the new trade issues

Director of the Programme Europe for the Global Policy Institute and Senior Researcher. She has written many works of which Les relations UE-Chine et l'avenir du Soft power européen, stratégie pour une diplomatie culturelle européenne (LSE Ideas, 2015).The compromise found by London and the European Commission on Friday 8th December in view of the UK's exit of the EU provided for by article 50 TEU should enable the passage over to the next stage of negotiations on the future relations between the EU and the UK. The trade dimension of negotiations is still subject to several strategic factors however, including the settlement of the Northern Irish border. The special relationship entertained by the UK and the USA has for its part been largely challenged over the last months due to the declarations and economic decisions taken by President Trump as well as the clear vulnerability of the UK outside of the EU in the face of American interests. At the same time the attacks at the beginning of the year undertaken by the American government against the solidity of European economic fundamentals, particularly Germany and the single currency, raise a number of questions regarding the future development of trade relations between Europe and the USA. Although these threats have subsided somewhat over the last few months, the general upkeep of an American line tending towards protectionism cannot be ruled out. What are the new issues at stake and the challenges in this new state of affairs and strategic reshuffle? What answers can Europe give to this?

TRADE ISSUES RAISED BY BREXIT

Since the start of negotiations over Brexit last June discussions have focused on three issues that the 27 Member States of the European Union have defined as a priority: the financial settlement of London's commitments already taken within the EU, the fate of European ex-pats in the UK and the British in the EU and the future of the Irish border. The strategy initiated by the British Prime Minister comprised a dual negotiation: that of "logistic" details of the exit specific to the activation of article 50, and at the same time, a negotiation that focuses on the redefinition of a new EU-UK trade basis. Since the present mechanisms set out in the Lisbon Treaty only provide however for the first part of the discussions, Michel Barnier, the negotiator in chief of the Brexit for the European Commission recalled at the beginning of December that it would be legally impossible to negotiate "a new trade partnership" with the UK before the divorce had been completely finalised.

The new agreement found by London and the European Commission regarding the main outline of the exit should now lead to the start of the second stage of negotiations in view if the definition of a new trade relation between the EU and the UK. The issues included in the compromise notably include an indemnity of 40 to 60 billion € in payment of the British commitments in the Union's budget until the end of 2020, as well as the need of a solution sine qua non to prevent the reintroduction of a land border between the Republic of Ireland, a Union member, and Northern Ireland. In order to reach an agreement on this difficult issue the UK finally accepted to maintain a regulatory alignment with the EU on all of the issues concerning cooperation between Northern Ireland and Eire. Theresa May was indeed to guarantee the support of the Democratic Unionist Party (DUP) of Northern Ireland, on which depends any kind of majority of her government in the British parliament. This general agreement and principle might however give rise to serious

complications over the next few months with the settlement of the trade issue: if the UK were to opt for a total exit of the Customs Union and the Single Market, the return of the border would a priori be inevitable. The most difficult part therefore remains to be done.
The European Commission hopes overall that it will be able to start drafting a final treaty at the beginning of 2018, by starting time the first trade discussions at the same.

The timetable is complicated. The negotiation period over article 50 will be technically shorter than the planned two years since the agreement that is found (probably around September-October 2018) will then be subject to ratification over a six-month period, which would allow few final and consecutive negotiation opportunities for a new trade agreement by 2019, ahead of the next European elections. There remains a fundamental difference: negotiations over article 50 must be approved by the qualified majority. However, a new trade agreement is not limited in time and must be approved unanimously by the EU's Member States[1] . The British parliament itself admitted in a recent report that negotiations over a new trade partnership with the European Union would last at minimum between five and ten years [2].

The direction that seems to be privileged then in terms of trade will be rather that of a period of transition starting on 1st April 2019, which would be limited to two or three years to be able to negotiate the final conditions of the new partnership. In this case the UK will have to continue to respect all of the obligations associated with the European internal market including the free movement of people.

If there is no agreement over the principle of the period of transition or at the end of this the transactions between the EU and the UK would by default be governed by default by the non-discrimination principle and by the rules of the World Trade Organisation. British exports would then be subject to the EU's customs tariffs (2.7% on average in 2014 except for some sectors that are the focus of higher tariffs, notably in the car industry, agriculture and textiles)[3] . For the car industry alone, it might mean a tariff of 10% on cars and 4.5% on average on components – in all up to £4.5 billion in tariff costs for the British car industry – with major consequences on manufacturing costs and the competitiveness of the products sold[4] . In the dairy sector and products of animal origin, these tariffs might reach 15% to 30%. Incidentally it is believed that British farmers' revenues might fall by 17,000 € per year on average.

Basically at least two strategic options might be considered: the negotiation of a free-trade agreement or a customs union between the UK and the EU (i.e. a common external tariff). Strategic divergences are clear: a free-trade agreement would leave the UK free to negotiate other similar bilateral agreements with other partners (starting with the USA), a measure that would not be valid as part of a customs union[5]. For the European Union customs union would however mean that it would retain privileged access to the British markets by maintaining tariffs used with other third countries at their present rates. This option, which seems inconceivable for the UK, would however be the most profitable from the European standpoint. There also remains the difficult question of the trade in services, particularly in finances, which might have to be addressed separately[6] and not be included in negotiations regarding a free-trade agreement, if this option is chosen. The UK might therefore try to achieve a status that resembles that of Norway to avoid trade conditions that might resemble the scenario between the EU and Canada.

From a strategic point of view the commercial balance is much less favourable for the UK than for the Single Market with a high level of asymmetry. In 2015 British exports to the EU totalled nearly 45% of all of its exports, or 13% of the British economy, whilst the UK's share represents only

1. The most recent EU-Canada free trade agreement (CETA) required the successive ratification of 38 national and regional parliaments before it became effective.
2. According to the UKTPO's (UK Trade Policy Observatory), consultation of the House of Commons Standing Committee on International Trade, 2017.
3. Customs duties in virtue of the principle of the most favoured nation (MFN).
4.Report by the House of Commons' Standing Committee on International Trade, UK trade option beyond 2019, "No deal" - Trading under WTO rules alone, 7th March 2017.
5. Morgens Peter Carl, How to (BR)EXIT : a Guide for decision-makers, Friends of Europe, March 2017. Other British observers seem to privilege a third option: that of a free-trade agreement restricted to certain industrial sector but it would be extremely difficult to find a sectoral agreement that might satisfy the relative interests of the 27 EU Member States and those of the UK.
6. Ibid, p. 13.

7% of the EU's total exports on average or around 3% to 4% of Europe's economies if they are seen together[7] . In the financial sector alone, the revenues of the City of London's financial sales to the EU total nearly 45 billion € whilst the City generates £200 billion in activities overall and nearly 60 billion in tax revenues. Many financial businesses based in London anticipate that the exit of the EU will require improved compliance on the part of their activities with the continent as well as restrictions on transactions made in the European single currency.

To date the position of the London's financial market has been intrinsically linked to its importance in the sales, the purchase and management of assets established in euros (at more than 50% and up to 90% depending on the activities). Certain banks, including the HSBC and Goldman Sachs have already planned to move a share of the staff, speaking of relocating at least 1000 employees from the HSBC investment bank to Paris; Goldman Sachs plans to move around the same number of people to Frankfurt, whilst in all nearly 230,000 jobs in the City might be lost[8] . By hosting the new HQ of the European Banking Authority, Paris also hopes to be able to increase its attractiveness whilst the region of Ile de France should benefit from the direct relocation of 2500 jobs from the UK. The international establishments whose European HQ is in London are trying to anticipate the fact that in all likelihood, they will no longer have access to the "European passport" which allows them to use the British licence to trade within the EU. For the European Union this will mean limiting its opening to financial services to non-Member States (including post-Brexit UK), a key issue in the upcoming negotiation. In particular there will be the implementation of necessary regulatory developments so that activities focusing on transactions in euros will be located only in the euro zone, thereby also excluding clearing houses in the UK.

All of these factors will weigh heavily in the balance of trade negotiations with, at its heart, the issue of the free movement of people and the fate reserved for European citizens living in the UK at the moment. But the future of bilateral trade relations cannot be separated from two important parameters: on the one hand, there are the difficulties associated with the Irish border that might come to the surface again under the trade negotiations, as well as those linked to a new independence referendum in Scotland in the autumn of 2018, in spite of the weakening of the Scottish nationalists in the last general elections. Indeed, this referendum might very well challenge the unity of the UK. On the other hand, there is the development in Euro-American relations and Europe's ability to respond with one voice.

THE NEW AMERICAN SITUATION AND THE CHALLENGES OF A RETURN PROTECTIONISM

Whilst the vote on Brexit was largely influenced by a return of political populism, we must add that over the past year Donald Trump and his new administration in the USA have increased the threat of a return to protectionism with a mercantilist vision of international trade, together with the unpredictability of the continuity of the agreements that have been concluded. The American withdrawal from the Trans-Pacific Partnership signed in 2016 as well as the suspension of negotiations regarding the Transatlantic Trade and Investment Partnership with the EU, have indeed fed uncertainty about how President Trump will operate regarding trade in the future. In the USA repositioning towards "America First" is not new however. In 1992 for example, the billionaire and business leader Ross Perot, who was against the implementation of the North American Free-Trade Agreement (NAFTA) ran as an independent candidate in the presidential election and won 19% of the vote. 25 years later President Trump is not saying anything different as he challenges NAFTA[9].

The approach by Donald Trump which seems to

7. EU-UK Trade Statistics, Chamber of Deputies, N°7851, 6th January 2017.
8. According to Xavier Rolet, Director of the London Stock Exchange, Financial Times, 10th January 2017.
9. See Stephen Haseler, Trump's new world order: Brexit and Europe in a world turned upside down, Global Policy Institute et Blenheim Strategy, 2nd March 2017.

be prevailing, as a whole, will therefore be that of a foreign policy based on the conclusion of strategic bilateral agreements between nations or blocs and not on the upkeep of the American "empire" with universalist goals. This means that the USA would become a power like any other and that its allies would be seen as independent players with whom the Americans will conclude agreements – ententes which might only be temporary depending on national interests[10]. The strategy would also apply from the point of view of trade with the challenge being made to existing agreements and the wish to assert the primacy of the bilateral treaty over multilateral or regional relations.

The most important test in terms of trade and to be able to understand better this change in economic paradigm advocated by the American President, ignoring the declarations and trade intimidation and the protectionist measures potentially targeting specific sectors, will certainly be that of the ongoing negotiations regarding NAFTA. Whilst the campaign promise on the part of candidate Trump was to leave the latter, the president has since gone back on his intentions by accepting the prior opening of negotiations, it seems in the face of economic stakes raised by the car industry, which has a high profile in key States won by Trump in the last elections. It would for example be difficult to rebuild the American car industry rapidly at domestic level whilst simultaneously raising customs duties on foreign imports: according to the American Automotive Research Centre the introduction of a 35% tax on Mexican imports would lead to the destruction of 30,000 jobs in the USA (since 40% of components of imported cars are produced in the USA).

The 5th round of NAFTA negotiations have just been completed without any real progress being made, whilst the American positions that aimed to reverse its deficit advocate that the obligatory share of regional components be brought up from 62.5% to 85% in the automotive sector conditioned by the production of 50% of components or vehicles in the USA itself. The addition of a new clause that would automatically end the agreement every five years, by imposing a renegotiation of it, is also being strongly challenged by Canada and Mexico. The end of the ongoing discussions (which might still end in a unilateral withdrawal by the USA) will therefore be significant for the way that the trade protectionism targeted by President Trump will effectively be applied.

The effectiveness of the measures advocated at the start of the mandate might increasingly be challenged internally with a small window of action given the mid-term elections at the beginning of November 2018. In this context the American President has chosen to privilege a drastic cut in corporate tax down from 35% to 20%, only just approved by the Senate on 2nd December last to foster business competitiveness, together with a global tax reduction for private parties. In spite of resource forecasts, this tax reform is due to cost more than 1,000 billion $ over ten years.

The extremely unpredictable nature of the administration of President Trump obliges to lean on the side of caution. An import tax of 220% in September last on Bombardier's C-Series was a major setback for the UK which boasted the upkeep of a special relationship with the USA and the wish to negotiate a free trade agreement, which according to Theresa May, was to counterbalance Brexit. The European plan manufacturer Airbus which took a major share in this programme mid-October hopes to settle the problem via the assembly of the planes in its factories in Alabama. Although this decision is not therefore final and may easily develop by the beginning of next year, whilst the American Committee for International Trade is due to give a decision on the issue, it is an eloquent representative of the Trump Administration regarding the vulnerability of the UK outside of the common European market. Other targeted per sector protectionist announcements might follow, notably on the import of consumer goods like washing machines, thereby affecting South Korean manufacturers in the main.

10. Ibid.

The USA would have a great deal to lose in launching this type of measure more directly with the European Union, in spite of the announcements made at the beginning of the year targeting the euro zone and Germany. Euro-American trade represents nearly one third of world trade with a relative balance of interdependence. Indeed, the country counts for 17.6% of European trade and 21% of European exports, whilst the EU totals 18.7% of American trade and nearly 19% of its exports. In the face of all of these uncertainties it will be imperative for Europe to respond pragmatically and firmly to maintain its unity, protect its common interests and take advantage of the opportunities opened up by the new strategic situation.

CONSOLIDATING TRADE WITH CHINA AND ASIA: AN OPPORTUNITY FOR EUROPE

Threats to introduce tariffs as high as 45%, mentioned by President Trump just a few months ago against China have also now been abandoned, for the time being at least, in a complicated geopolitical context, notably regarding the North Korean issue. Indeed, China still holds a major share of the American debt, which in theory places it theoretically in a position of strength in the event of threats of trade retaliations, even though it is also being weakened given the close level of economic interdependence and its wish to maintain the renminbi at relatively stable rate.

President Trump's visit to China at the beginning of November finally led to a series of trade agreements to a total of 253 billion dollars, including the purchase of 300 Boeings by the national airline Air China. The country also committed to participate to a total of 43 billion dollars in the exploitation of natural liquid gas reserves in Alaska, thereby bearing witness to its wish to reduce the bilateral trade deficit (the USA was in deficit by 26.6 billion $ in October). At the same time China is trying to ensure the opening of new trade opportunities to limit its exposure to the American market. The withdrawal of the USA from the Trans-Pacific Partnership (TPP) therefore revived negotiations regarding the long-term development of a Regional Comprehensive Economic Partnership (RCEP) in Asia led by China which intends to rally, amongst other things, all of the Asian countries which have signed the TPP. In all this Asian trade zone would represent more than 25% of the world's GDP, with forecasts for 2050 that would place China at nearly 50% of the economic weight of this new entity.
The heart of the new Chinese policy might also turn more towards Europe to help the country's economy grow: a necessary stage to consolidate the development of the internal Chinese market, which might be damaged by a prohibitive American protectionism, if President Trump was to change position and review his initial announcements, thereby putting pressure on Chinese exports and investments. The issue here for Europe will be to gain better access to the Chinese market and greater reciprocity in trade given the growing structural imbalance of bilateral relations. The European Union is still China's leading partner, but it is increasingly dependent on the latter from the point of view of trade, which counts for 20% of the total of its imports, with a European trade deficit of 180 billion € in 2015.

A "stronger, more unified Europe" will therefore be the vital condition to seize the opportunity of closer strategic cooperation with China in terms of trade, in counterbalance to American threats and Brexit. Mid-November the European Commission and China started new talks over the long-term control of State aid and the system used to analyse competition fairness. But this needs to be taken further. The commitment and resolutely European ambition of French President Emmanuel Macron were greatly appreciated by Beijing, which is following with interest developments in the reforms to the euro zone and the common market. Europe would also benefit by adopting a much more strategic analysis of the new projects in the Silk Road that are to link China to the European markets and at the same time strengthen its economic presence in Asia more widely, via negotiations for a free-trade agreement with Japan, as well as the launch of negotiations with Australia and New Zealand.

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Fundamentally, this new situation provides an opportunity to strengthen the European project, with which political leaders must urgently reconnect. The German elections, with the breakthrough of the nationalist party AfD with 12.6% of the vote reminded us, shortly after the French elections of the vital importance to respond to the siren call of populism with a political vision that makes sense and brings hope regarding the assets of an independent Europe that is master of its fate as a continent. President Macron is right to carry forward an ambitious message for Europe and to foster the strengthening of Franco-German cooperation, the only possible response to make Europe economically and politically attractive again and to ensure that it continues to make its voice heard with strength and determination in the international arena.

In the final negotiations over the Brexit and in the discussions with the USA it will be essential to be able to defend the integrity of the European Single Market and to strengthen the euro zone by giving it true economic and political governance that can protect its geostrategic interests in the short and mid-terms. Between the USA and China there remains an area of size for Europe to assert its model, from a trade point of view and especially

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Post-Cotonou, the modernisation of the ACP partnership

Relations between the European Union and its 28 Member States and 79 States including 49 from Africa, 16 the Caribbean and 15 the Pacific (ACP) will be celebrating their 45th anniversary in 2020. That year will also mark the expiry date of the Cotonou Agreement, signed on 23rd June 2000. This framework was the cornerstone of cooperation and dialogue regarding politics, the economy, trade and development aid. Discussions have been launched by all parties to identify the possible content and the shape of future relations in a context in which requirements are mutual. Reduction of poverty, trade relations, the management of migratory flows, the fight to counter global warming, this partnership is a strategic issue for all of those involved. The formal launch of discussions with the ACP States is to take place before August 2018 at the latest. This paper aims to provide food for thought regarding the future of this unique forum in terms of representation and partnership which covers 700 million citizens in 10 countries.

RELATIONS BETWEEN EUROPE AND THE ACP COUNTRIES SINCE THE 1950'S

A historic presence

During the period of decolonisation in 1957 the States of the European Economic Community aimed to maintain a type of cooperation with the "non-European countries and territories which held special relations with Belgium, France, Italy and the Netherlands.[1]"

In 1975 the former French, British, Belgian, Spanish and Portuguese colonies joined forces to form the ACP group that led to the Lomé Agreements. This act granted them true legal status as well as a common identity. These States were now able to promote a development model and claim privileged access to the Common Market. This political formula provided greater weight to certain States of the Caribbean and the Pacific, which otherwise would not have benefited from this type of development model in bilateral agreements.

The revised Lomé Agreements introduced conditionality with the obligatory respect of Human Rights and support of the rule of law, otherwise any funds allocated would be lost. Phase by phase programming was introduced, thereby enabling the improvement of follow-up. But in spite of the introduction of a forum for dialogue, cooperation between the EEC and the ACP was in fact limited to targeted trade agreements offering the possibility for the entry of some products onto the European market, along with their protection if prices varied. Although poverty declined, the share of the ACP countries on the internal market decreased from 6.7% in 1976 to 3% in 1998. But the limits to these first 25 years of cooperation lie in the lack of awareness of the institutional situation in the partner countries[2].

2000, Cotonou Agreement for ever deeper relations

In addition to this the Cotonou Agreement has aimed to move to another political level by strengthening the goals of conditionality. Signed on 23rd June 2000 for a duration of 20 years, with a 5-yearly review, the Cotonou Agreement will expire on 29th February 2020. It has strengthened the partnership and comprises

1. One of the authors moderated a seminar "For a sustainable partnership and development" organised by the Permanent Representation of France with the European Union on 24th April 2017. Talks helped in shaping this paper.
2. Article 131 of the Rome Treaty

three chapters – political, commercial and sustainable development. This all-encompassing agreement naturally has aimed firstly to help development in the ACP countries. One of the aims has been the diversification of their economy by fostering a support policy to entrepreneurship and investment.

A political asset

More than a trade agreement it is based on the introduction of sustainable development projects that helps the ACP countries integrate the world economy. However this agreement has been notably more demanding than the previous ones since the funds granted according to requirements, but also to results produced by the countries in question, substituted automatic aid.

The Cotonou Agreement has strengthened the political aspect of cooperation by conditioning European Development Funds (EDF) with the good management of public affairs and the respect of the rule of law and fundamental rights. New support withdrawal procedures in the event of corruption or infringements of Human Rights were created (articles 96 and 97). This is therefore an asset for Europe, since the agreement enables the spread of its "soft power" as it fosters the multilateral model and the appropriation of international standards by encouraging political and economic dialogue with all regional and local authorities.

Finally, the Cotonou Agreement has demonstrated a new geopolitical goal: the consolidation of peace via dialogue between the State and civil society as a factor for political stability. Civil society hopes to be better integrated in the next framework by playing a full role beyond simple consultation. The last chapter has however been the focus of controversy since it did not provide sufficient added value to crisis settlement.

The difficulties experienced in a common approach in the identification of solutions to certain crises has also been an obstacle. During the 32nd Parliamentary Assembly ACP-EU (19th-21st June 2017) European expectations to approve a settlement to the crisis in Burundi was postponed[3] . This was also the case at the 31st Assembly regarding a decision on Gabon. A significant number of the ACP countries do not consider this framework as a diplomatic tool for the settlement of internal crises. This chapter has to be clarified in the next negotiations in order to strengthen its usefulness and for it not to appear as obsolete (which the MEPs presented implied).

Moreover this agreement does not offer the guarantee of minority rights, one of the EU's political goals. For example in 2013 the European Parliament protested against the approach to homosexual rights in these countries[4].

A common diplomatic tool

The European Commissioner, Neven Mimica, European Commissioner for International Cooperation and Development, stresses that the agreement covers the "biggest, most comprehensive, most sustainable geographic group in the world; we are in the majority at the UN." The partnership aims to be a powerful collective tool. Within the international instances and forums regarding global issues, post-Cotonou should be used to strengthen this powerful tool that is beneficial for everyone. The collective support and dynamic of the EU-ACP encourages the partners – who are sometimes reluctant – (cf. the American withdrawal) to counter climate change. The success of the Paris Agreements approved by 195 delegations on 15th December 2015 shows the benefits of acting together. Collective issues, from peace to security, demography and migratory crises could benefit from the same impetus thanks to this dialogue framework. This is why, the revised EU-ACP framework will have to take on board all new issues that have been included on the 2030 agenda for development to the full.

3. Cécile Barbière, « L'UE échoue à convaincre le groupe ACP de sanctionner le Burundi », Le Monde, 23rd June 2017 http://www.lemonde.fr/afrique/article/2017/06/23/l-ue-echoue-a-convaincre-le-groupe-afrique-caraibes-pacifique-de-sanctionner-le-burundi_5150104_3212.html

4. Recommendation regarding the Council's draft decision on the conclusion of the agreement modifying the EU-ACP Agreement for the second time signed in Cotonou 23rd June 2000 and modified in Luxembourg on 26th June 2015, European Parliament 22nd March

Integrating globalisation …

The Cotonou Agreement comprises a significant dimension in terms of trade. Indeed in 2012 the EU was the second biggest ACP trade partner, after the USA. The EU takes the lead over Venezuela, China, Brazil, Canada and India. It represents 12.1% of the ACP countries' trade after the USA (35.7%) and ahead of China (6.9%).

According to the International Trade Centre between 2003 and 2012 the market share of the ACP countries in the world economy rose from 1.4% to 1.7%. Better still, the EU's market share in the ACP market rose from 10.9% to 11.5% over the same period. In spite of its weakness the zone's commercial weight increased between 2003 and 2012[5].

However, since 2010, the ACP countries have been impacted by consequences of the 2008 economic crisis. Hence the total value of their merchandise trade declined in 2015. Indeed in 2015 exports represented, 320.7 billion $ (in contrast to 495.1 billion $ in 2011); and in 2015 imports represented 439.6 billion $ (in contrast to 500.2 billion $ in 2014).

The revision of the Cotonou Agreement will therefore aim to reconcile the ACP countries with the expansion of trade, whilst 80% of the least developed countries still belong to the ACP group.

Via asymmetric trade agreements

Between 1975 to 2000 the four Lomé Conventions introduced a preferential trade system for the ACP countries. In a context of polarisation due to the Cold War, this agreement helped some States to introduce their economic almost "non-aligned" development model.

The ACP countries' economy is based on the export of raw materials and the Lomé Conventions introduced an asymmetric preferential trade system so that they could export their production to the EEC together with a system to compensate the loss of export revenues in the event of fluctuation in exchange rates or natural disasters. The privileged integration of the European Single Market was therefore identified as a vital source of development for these States.

As a follow up to its development strategy, strengthened by the limitations of multilateralism at WTO level[6] , Europe negotiated the economic partnership agreements (EPA) with 79 ACP countries in the agreement's 6 "groups"[7] , the aim of which is to create a joint partnership in terms of trade and development, supported by development aid.

From 2000 to 2008 access to the European market was made via non-reciprocal national preference, which comprised a system of derogations from the WTO's rules. In the following decade free-trade agreements were signed under the economic partnership agreements. However, their signature and then their implementation took time. Hence six EPA's were established but the ratification process was sometimes impeded. In 2008 Europe signed the first of these agreements with 15 Caribbean States. It provisionally came into force on 29th December 2008. In Africa the situation was rather more disorganised. In 2014 16 States from Western Africa, but also two regional organisations, the ECOWAS and the WAEMU, the community of Eastern Africa, introduced an agreement, but signatures are still ongoing. However, the countries of the South African Development Community signed the EPA in 2016. Finally, the interim EPA between Europe and the Pacific States was signed by Papua-New-Guinea and by Fiji in 2009, since these two countries represent most trade between Europe and the Pacific.

The ACP States have noted considerable advantages in the preferential trade agreements but also problems linked to the EPA negotiations under the 2000 framework agreement. The differentiation between the ACP countries and regions, the length of the negotiations and

5. "African, Caribbean and Pacific trade: prospects for stronger performance and cooperation", International Trade Centre, technical paper 2014.

6. See C.de Marcilly, "The EU's Trade Policy and its Internal Challenges", European Issue n°407, Robert Schuman Foundation, 17th October 2016

7. West Africa, Central Africa, East Africa, South Africa, Caribbean and Pacific certain effects have affected regional integration negatively. The EPAs are also challenged by civil society, which sees them as a destabilising factor between the least developed countries (LDCs) and the others. The LDCs have duty free access to the European Market with an "everything except arms" derogation system. The EPAs obliged them to open their markets to European exports but without anything in exchange. However, if there is a sudden increase in European exports safeguard clauses can be activated under certain conditions. The exit of the UK from the EU is also causing uncertainty. Legal security will have to be defined.

In addition to this one of the issues raised by the post-Cotonou revision will also be diversity. Agriculture represents 90% of exports, employing the majority of the working population. On average 20% of the national wealth comes from agricultural revenues with extremely different variations between the ACP countries. Half of the Chadian GDP for example comes from agricultural production against 1% on average in the Caribbean[8].

REAFFIRMATION OF THE EUROPEAN DEVELOPMENT POLICY

Post-Cotonou will be based on renewed European commitment in support of third countries. On 7th June 2017, the 28 Members of the European Union signed a strategic plan for the future European development policy. This new consensus represents a comprehensive cooperation framework. It takes up specific features of the European policy since the creation of the European Development Funds in 1959 and the framework of the 2030 sustainable development programme adopted by the UN in September 2015. This programme succeeds the Millennium Development Goals (MDGs) and notably sets 17 objectives. European consensus recalls that the eradication of poverty is still the main objective by integrating economic, social and environmental dimensions of sustainable development.

Europe's leaders have confirmed their commitment in three areas. They firstly acknowledge the high level of interdependence between the factors of development: security, humanitarian aid, migration, environment etc …. As a result, the new consensus aims to link in traditional development aid with other more innovative sources of financing, notably of a private nature. Finally, this consensus has promised to introduce better adapted partnerships between the various players.

AFRICA AT THE HEART OF THE DEVELOPMENT POLICY

The comprehensive framework can be complemented by individual initiatives on the part of the Member States vis-à-vis certain ACP regions. The African continent is of interest in particular, oscillating between two approaches: a development policy and the promotion of trade to which new priorities can be added. To reconcile these two approaches the German Economy, Cooperation and Development Minister presented his Marshall Plan for Africa on 18th January 2017[9] recalling support to "'value based cooperation' But we also have a mutual interest. Germany and Europe have an interest in guaranteeing the survival of human beings, limiting climate change, preventing waves of migration"[10] Taking the African Union's 2063 Agenda into account, this proposal places value on an endogenous growth model with "African solutions for African challenges" as well as the need for Germany to step up its development aid, alone or via international organisations. In an integrated vision of post-Cotonou follow-up it appears however that the messages sent by certain Europeans are being confused with the clear wish for a policy that is specifically integrated into a common framework.

This type of approach is also supported by the G20. Apart from the usual declaration by the G20 leaders setting global goals to counter terrorism, the migratory crisis, poverty, famine

8. Press release by the ACP secretariat: " The new ACP policy highlights the transformation of the products from the agricultural sector.», 15th June 2017

9. Africa and Europe - a new partnership for development, peace and a better future", German Minister for Economic Cooperation, Jan 2017,

10. Mathieu Bloch, "L'Allemagne a un plan Marshall pour "sauver" le continent africain", ARTE, 28th February 2017 and dangers to public health, unemployment, climate change, energy security and inequality [11] the Hamburg Summit on 7th and 8th July 2017 announced a unique partnership with Africa[12] . This partnership aims to strengthen private investment, develop quality infrastructures and access to renewable energy and support inclusive economic growth that supports African jobs as well as several EU-ACP relations goals.

A diversified budgetary chapter

The Post-Cotonou revision will take on board a diversified budgetary framework split between intergovernmental resources and funds that come directly from the European budget.
To implement this overall framework, the European development aid policy is equipped with several financial instruments and regional partnerships: the European development fund for the ACP countries and overseas countries and territories (OCTs), which finances projects resulting from the Cotonou Agreement, which is not part of the EU budget. It represents 30.5 billion € covering the period 2014-2020 (i.e. an increase of 8 billion in comparison with the period 2007-2013)[13][14].

The sources of financing are therefore outside of the European budget, which implies limited parliamentary control. The future of the EU's financing indicates a redefinition of the budgetary structure. Although scenarios remain open according to the concept paper presented in June 2017, will the perspectives for development aid be integrated into the general discussion regarding the multi-annual financial plan? A proposal by the Commission is expected before June 2018, just before the start of negotiations over the future post-Cotonou framework in August. With this in mind the ACP States are calling for a "specific financing mechanism that is a vital part in any post-Cotonou agreement."[15]

And what of the future?

Since November 2016 discussions within the Council have been underway and European view-points have to converge if they are to agree on a negotiation mandate for the European Commission at the beginning of 2018.
This Commission is responsible for the preparatory work to achieve a formal negotiation mandate from the Member States. On entering office Jean-Claude Juncker[16] said he wanted to revise the Cotonou Agreement at the same time as the strategic partnership with Africa. Moreover, in his mission statement in 2014, he clearly set out the perimeter for the preparation and launch of negotiations for a revised Cotonou Agreement. In the organisation set by Jean-Claude Juncker the High Representative steers the Commissioners' work. In addition to this Neven Mimica, with the support of the DG Development and Cooperation (DEVCO), is working in close cooperation with the High Representative.

A common roof, but distinct pillars

In its communication of 22nd November 2016 the Commission and the European External Action Service put forward three options based on the results of the public consultation launched on 6th October 2015.
The first option suggested a revised partnership with the ACP countries. The advantage of this is that it would retain the ACP format, without any type of flexibility, it would not lead to an agreement that takes on board the specific factors expected by the parties involved. Indeed, the situations in the ACP countries have developed differently since 1975. Finally, this option would not enable the increasing importance of regional organisations (notably the African Union).
The second option suggests a total regionalisation of relations between the States of Europe and the ACP countries. This approach, although reflecting the various continental aspects, would not respond either to the will of the ACP countries to remain united, nor the joint wish to

11. G20 Declaration "shaping an interconnected world", 7th and 8th July 2017, p.2
12. "G20 African Partnership", 7th and 8th July 2017,
13. "European Development Funds", European Parliament, 29th April 2014
14. see "General Overview of the Development Policy", European Parliament,
15. ACP Secretariat "memorandum on the basic principle for ACP-EU relations after 2020", 13th March 2017, p.4
16. European Commission, 1st November 2014

use the EU-ACP format to influence international institutions.

The privileged option is the third one which seems to find consensus on all sides. Revision here implies the conclusion of a "common framework agreement with three regional pillars": "the third option is an agreement with the partner countries, comprising three distinct regional partnerships with Africa, the Caribbean and the Pacific, with the possibility of the close involvement by other countries in a common framework. This framework would define common values, principles, vital details and interests, which implies cooperation between those involved, by using the ACPs' considerable 'acquis'. It would also provide for specific cooperation mechanisms in the world arena. The three regional partners would use and integrate those which already exist (for example the common EU-ACP strategy) and would establish priorities and actions focused on specific details in the partnership programme of each of the three regions."[17] The European Commission indicated that was more in favour of this option at the beginning of December 2017 when it recommended a draft negotiation directive under the partnership renegotiation with the ACP countries. Moreover, the High Representative and Commissioner Mimica presented a recommendation which states that only one agreement would be negotiated – a foundation agreement – which would comprise a common roof for the ACP countries and would be sub-divided into three regional pacts, proposing to include North Africa. As indicated in the Commission's recommendation "the partnership will be open and will enable participation to varying degrees and the membership of other countries which share the same values and which are contributing to achieving the same goals as the EU-ACP partnership."[18]

This proposal retains the acquis and the advantages of the EU-ACP format whilst allowing for differentiated development initiatives according to the regions.

The idea of a common roof with distinct pillars, but supporting the entire structure is used regularly. This vision underpins the present approach by consolidating it, whilst one of the criticisms made of the present format is its geographical limitation. This is why there is a trend amongst some Member States, notably carried along by Germany and the Netherlands, which want to promote a global approach to the development policy. This would not challenge the continuation of the present framework with the ACP countries, based on the result of this partnership and the privileged links that it provides.

Moreover, the European Union also has established complementary development strategies such as the EU-Africa strategy (since 2007) and the EU-Pacific Strategy (since 2012) which in practice pursue most of the joint goals in the Cotonou Agreements (support to peace for Africa (FPA), the three ongoing peace support operations; AMISOM, MICOPAX and MISMA[18]) and aid to infrastructures, the development of agriculture, the climate, innovation and the African Peer Review Mechanism (APRM) that targets the adoption of good governance. The new approach might lead to the rationalisation of all of these instruments as part of a common framework.

We should note that according to the scenario put forward by the Commission the possibility of integrating States outside of the ACP, such as those in North Africa or the least developed countries (LDCs) in the future, has not been ruled out even though they are the focus of different regional dynamics including in terms of their relations with the European Union.

A certain amount of flexibility would lead to the implementation and integration of the Addis-Ababa Action Agenda on Financing[19] : "This programme provides for national action, strategic frameworks creating favourable conditions and the role of a dynamic private sector, with

17. Joint Communication on the part of the European institutions "A renewed partnership with the countries of Africa, the Caribbean and the Pacific, 22nd November 2016

18. Since negotiations in Council are ongoing we might suppose, without this being guaranteed that the Commission's option 3 will be supported.

19. "3rd international conference on the financing of development : Addis Ababa Action Agenda, UN", 13th-16th Julyt 2015, https://www.uneca.org/sites/default/files/uploaded-documents/FFD3-2015/document-final.pdf everything based on a favourable international environment. The work undertaken by the partner countries should tend, as a priority, to fill in the gaps left by national government funding, including an improved mobilisation of national resources, increase the efficiency and efficacy of public spending and manage debt. Tax systems and fair, transparent, efficient, effective public spending frameworks, should be promoted. Particular attention should be paid to the fight to counter tax evasion and fraud as well as flows of illicit financing."

Legally binding

Finally, according to the European Commission, the partnership should be legal binding, recalling that it is in the Union's political interest to reassert its long-term commitment. The new partnership should remain flexible and responsive so that it can adapt as it progresses and also in terms of a constantly changing environment. Indeed, it is not strictly established in the Cotonou Agreement that the latter is legally binding. The phrasing in article 2 (on fundamental principles) is that "ACP-EC cooperation, is based on a judicial system and the existence of common institutions". This might be strengthened and clarified in the future since the binding aspect is as political as it is legal, with consultation and also sanction procedures, in the event of infringements of Human Rights, democratic principles and notably the rule of law.

The position of the ACP countries is being considered but relies on the common will. The collective ambition to pursue this partnership was expressed during the Port-Moresby Summit in June 2016 which took up the Sipopo Declaration[20] adopted in 2012 by the 7th ACP summit, recalling the group's unity as an intergovernmental organisation. The ACP countries support the binding nature of the future agreement and the geopolitical and geographical upkeep of the ACP group structured in six regions. This legal strength would guarantee predictability, transparency and mutual responsibility. This approach is strongly supported by all sides.

However the future framework and the wish for a more balanced partnership are points that are regularly recalled by the ACP countries, which complain of a one-way relationship in which they cannot make their voice heard, sometimes noting that "Europe does not speak with Africa but at Africa" [21]. As a result improving dialogue will be one of the aspects of the future negotiation. Overall it appears that the political chapter is still incomplete and has met with mitigated success.

The context calls for a stronger partnership

A change in paradigm is necessary to strengthen and improve the results of the post-Cotonou framework. Negotiations will have to go beyond this and strengthen the "partnership, rise beyond negative perceptions and also the colonial past, victimisation, charitable links involving dependency, the conditionality of aid, cumbersome procedures etc…" .[22]

The new attitude of the new American administration, the increasing influence of other regional powers, concern on the part of European public opinion about uncontrolled migratory flows, the risk of climate refugees and demography are encouraging a deepening of the future ACP-EU partnership. These geopolitical developments also highlight that the ACP countries are going to be under pressure from players with diverse interests and also differing behaviours (China, India, Israel, Turkey). For some observers China has become Africa's "big best friend" because it is providing a rapid solution to under development, even though it is sometimes over present. The Chinese make concessional loans: they lend money to African countries to build infrastructures and are paid back in mining concessions and the extraction of minerals; hence, according to Louis Michel, for a 10 billion $ loan, they withdraw 50 to 80 billion $ in minerals.

20. "Sipopo Declaration: the future of the ACP group in a changing world » 7th Summit of the ACP heads of State and government: challenges and opportunities", 13th-14th December 2012 http://www.acp.int/sites/acpsec.waw.be/files/final%20ACP2806512%20%20D%C3%A9claration%20de%20Sipopo%20%20%20-%2014%20dec.pdf

21. European Development Days, 7th and 8th June 2017, Speech by Louise Mushikiwabo, Minister for Foreign Affairs in Rwanda

22. Speech by Louis Michel, 24th April 2017

The ACP-EU framework does not aim to be limited purely to the economic sphere and trade. In an unsettled context the ACP framework is one factor of stability and enables the spread of European standards. This is what distinguishes it from other frameworks and there is a temptation to focus on the economic dimension. Is this strategic point of view, this necessary approach enough?

A risk also lies in the imbalance between the ACP countries. In terms of economic, strategic imbalances but also as a neighbour, all eyes seem to focus on Africa. And yet amongst the options presented the privileged approach would be the common framework. All sides should pay attention to equal and fair treatment, whilst great concern is now emerging about the "neglect" of the interests of economically weak countries in the Caribbean and the Pacific and also of those that are the most distant. In this framework post-Cotonou thought must integrate the OTC's more and encourage the deepening of the idea of introducing a "Pacific" pillar to balance the partnership[23] . The integration of "North Africa" is also an open option even though present rationale is far from this. Intra ACP economic relations and a form of emancipation thanks to "south/south" relations will lead to the balancing of the various pillars in the post-Cotonou Agreement.

The joint, coordinated management of migratory flows is one of the European priorities but also that of the ACP countries. Invited to the European Parliament on 15th June 2016, Alassane Ouattara, the Ivory Coast head of State noted that "intra-African migration is much higher than that seen between Africa and Europe."

The Cotonou Agreements also provide for a readmission clause of migrants who have entered Europe illegally. As part of the Europe's overall thought about the management of legal and illegal migratory flows, relations with the ACP countries and those of Africa in particular, are a political priority. The European strategy, based on specific agreements with third States on the model signed with Turkey on 29th November 2015 [24], might be reproduced with some ACP countries. In part the rationale of the framework agreement and regionally specific features might be support in the post-Cotonou Agreement. The consultation of the European Commission[25] has also led to the emergence of possibilities to improve the post-Cotonou framework as it has highlighted present limitations. More inclusive economic development, the effective nature of development of the private sector, connectedness, the promotion of foreign direct investments, migratory flows and governance issues have been the focus of progress noted by the authors [26]. Observers also point to the necessary modernisation and harmonisation of the legal business framework within the ACP countries. These points should find answers in the upcoming negotiations. The modernisation of structures, notably given the cumbersome nature of conjoint institutions, has to be clarified. Rationalisation is hoped for in order to rationalise the efficiency of the present structure of ACP-EU relations.

A new balance to be found

Once the negotiation mandates have been approved discussions should be subtly balanced. The issues at stake and the challenges highlight a common strategic future. Vigilance regarding a balanced partnership both between the parties involved and within the ACP block will be one of the aspects of the success of this agreement, which is an important tool in the project to spread economic and also political influence. However there seems to be a major temptation amongst some European leaders to focus on the first chapter, so as not to strain relations with certain States, which will be significant in responding to the migratory crisis. Moreover, it is a special balance that European negotiators will have to face in contributing to regional balance. The G20 Summit recalled that we cannot afford to be naive regarding development goals which are increasingly part of thought into mutual and even asymmetrical benefits.

23. Conference of 24th April 2017

24. See C de Marcilly, A. Garde, "EU-Turkey Agreement and its implications", European Issue n°396, Robert Schuman Foundation, 13th June 2016

25. European Commission: "Towards a new partnership between the European Union and the African, Caribbean and Pacific countries after 2020" JOIN(2015) 33 final

26. Blog Post, Neven Mimica, 29th March 2016

Charles de MARCILLY
Angéline GARDE

Status of market economy to China: What political answers can be given to this legal straitjacket?

The European Union is the world's leading exporter of goods and services and the first export market for 80 countries [1]. Imports and exports combined, trade with China totals 1 billion € per day.

The European Union is the world's leading exporter of goods and services and the first export market for 80 countries [1]. Imports and exports combined, trade with China totals 1 billion € per day.

Chinese exports are subject to specific conditions set when it entered the WTO in 2001, with the individual agreement of the Member States and according to the decision-making rules of this international organisation. The formal reason behind this at the time was that China did not meet the criteria to be a market economy; this led to the temporary introduction of specifically restrictive anti-dumping measures. These measures came to an end on 11th December 2016.

With the consultation by the Commission, hearings at the European Parliament, corporate involvement and petitions, the status of China as a market economy remains the focus of debate in Brussels. On 17th March 2016 the European Commissioner for Trade, Cecilia Malmström recalled that China did not meet European criteria [2]. All observers agree on this.
However, the legal measures adopted by the WTO do provide that the protective measures employed by Europe now no longer apply. Hence the main question is not about whether China is a market economy - it is not - but what the effects of the expiry of the measures set out in its WTO accession protocol are. Two legal systems - that of the WTO and that of the EU - are struggling to work in harmony.

On 12th December 2016 and with the expiry of some legal restrictions a Damocles sword appeared to hang over many European businesses. Some 250,000 jobs are directly involved by the lifting of anti-dumping measures specifically linked to the question of China's market economy. In response to this the European Union succeeded in reaching an institutional agreement in October 2017 that aimed to modernise its trade defence tools.

1. BEHIND THE FORMAL ISSUE OF THE MARKET ECONOMY STATUS, LIES THAT OF TRADE PROTECTION TOOLS

The WTO's measures fit badly with those of the EU

After fifteen years of difficult negotiation, the People's Republic of China joined the World Trade Organisation (WTO) on 11th December 2001 as a non-market economy. On this occasion it signed an accession protocol [3] with the 143 other members [4] and accepted several derogations which led to a temporary infringement of the WTO's rules. Most of these have now expired, such as the one on textiles in 2008. Their main goal was to reduce economic interventionism.

Article 15 of the protocol refers to market economy status (MES), a technical term used with tools to counter dumping, which according

1. Francesco Tenuta and Elfriede Bierbrauer, "The European Union and its Trade Partners" - Fact Sheets on the European Union - 2016. http://www.europarl.europa.eu/ftu/pdf/en/FTU_6.2.1.pdf
2. Introductory Speech by Cecilia Malmström, "Trade Defence and China: Taking a Careful Decision", 17th March 2016, http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154363.pdf
3. Accession Protocol of China to the WTO on 11th December 2001 https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3a%2fwt%2fl%2f432.doc&
4. The WTO comprised 143 members, including the People's Republic of China, on 11th December 2001. At present there are 162

to the WTO comprises the sale of a product on a foreign market at a price lower than that practiced on the domestic market and even below the cost price. If a difference between the normal value of goods (their price in the country of origin) and the export value is noted, then this is classed as dumping.

In 2001, a replacement market was created for those WTO member countries which imported Chinese goods (article 15–a-ii). It allows these countries to use an alternative method to the one based on a strict comparison of domestic prices or costs in China.

Prior to December 12th 2016 the European Union used the so-called "analogue country" method [5], in which the normal value was defined on the basis of the constructed price or the value in a third country with a market economy. For example, if market economy A exported product B at a higher price than China (country C), then the Union could say that the Chinese were undertaking dumping. Indeed, if product B was cheaper in China, whilst market economy A was based on the mechanism of supply and demand in defining its prices, this meant that China was exporting at a lower price than the market and therefore there was a distortion in the normal value. Hence, the analogue country method comprised a replacement market enabling the European Union to protect itself from dumping.

However, article 15-d limited this possibility to 15 years after the entry into force of the protocol, i.e. until 11th December 2016. As a result, as of 12th December 2016 the alternative method chosen by the EU, the so-called "analogue country" method [6], could no longer be used and should legally have given way to the "normal value" method advocated by article VI of the 1994 GATT agreement.

With this system a "product is deemed as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for a similar product when destined for consumption in the exporting country." This therefore implies a strict comparison with China's domestic prices and costs. In this case the "traditional anti-dumping" duties are applicable, but are clearly not as effective as far as the method applied since 2001.

What is a market economy?

Article 15-a-i) provides that if China can demonstrate that all or a part of its economy responds to market mechanisms then WTO members, including the EU, must adapt their rules to use the normal value method. Hence the question is raised whether China complies with market economy status.

The criteria used to define these market mechanisms are individually set out by the countries since the WTO offers no definition of them. Hence in order to enjoy economy market status within the EU, China has to meet with European criteria. The latter were defined in a regulation dated 27th April 1998 [7] then they were set out again in the regulation dated 30th November 2009 [8]. However, compliance with these criteria is not imposed if a country withdraws from the European list of non-market economies. In 2016 the EU included Vietnam, Kazakhstan, Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan and Uzbekistan on this list.

European regulations set out five criteria: "decisions made by companies regarding input prices and costs (...) are decided taking on board market signals reflecting supply and demand and without significant intervention by the State in this regard (...); businesses use a single set of basic accounting documents, which are the focus of an independent audit in compliance with international standards and which are used to this purpose; business production costs and the financial situation have not been distorted in any significant manner, caused by the old planned economic system (...); the businesses involved

5. Règlement N° 384/96 du Conseil du 22 décembre 1995 relatif à la défense contre les importations qui font l'objet d'un dumping de la part de pays non membres de la Communauté européenne (article 2 § 7)

6. Actuellement la méthode dite de pays analogue est utilisée pour la Chine et l'Arménie

7. Règlement N° 905/98 du Conseil du 27 avril 1998 portant modification du règlement (CE) n° 384/96

8. Règlement N°1225/2009 du Conseil

9. European Commission working document on the compliance of Chinese economy with the five European criteria governing the Market Economy, SEC(2008) 2503 final 19/09/2008 are subject to the laws pertaining to bankruptcy and property, which guarantee legal security and stability to business operations; exchange operations are undertaken at market rates."

According to a European Commission assessment in 2008 [9], China only met one of the five criteria required. The European Parliament's departments were surprised to see that there was no publication updating this information in a study dated December 2015 [10]. Business Europe, which represents European employers, quotes four European Commission reviews (2004, 2008, 2010 and 2011) which establish that progress has been made but that compliance regarding four criteria has still not been achieved [11]. At the same time, Business Europe states that since 2011 China has not provided any new evidence to update the review.

China's non-compliance with European market economy criteria is acknowledged by all economic and political players. Moreover, the main issue is not about whether China is a market economy - no one challenges the fact that it is not - but what the consequences of the expiry of the measures contained in article 15-a-ii) in the WTO's accession protocol will be.

Behind the issue of the status lies that of the method used to calculate anti-dumping duties

The issue of MES and the applicable anti-dumping measures was and therefore remains the focus of European debate. According to the European Commission "a modification of the MES under the EU's anti-dumping rules would also change the method used to calculate anti-dumping duties, which in the end would affect the European economy." [12] This is why the Commission is setting up an in-depth review of the potential economic consequences of a modification to the method, notably from the point of view of employment in the European Union. From 10th February to 20th April 2016, a public consultation regarding an alternative method has been launched. In its preamble the Commission recalls that even if a new trade defence instrument is developed, its efficacy would be weakened, and it would not prevent European businesses from being severely affected. With this the Commission implies that a change in the methodology is connected to granting the status of market economy and that the granting of this is the most probable outcome. [13] A European Commission document dated 2004 entitled "The Market Economy Status in Trade Defence Investigations" explains that "the possibility of treating China as a transition economy in trade defence investigations for a maximum period of 15 years was adopted and included in China's accession protocol to the WTO signed in 2001 (and that) there is therefore a clear legal framework for a common agreement (to be used) to address this issue."

Amongst the publications supporting this idea we might quote the Swedish Board of Trade [14] as well as studies undertaken respectively by Rao Weijia [15], Tietje and Nowrot [16], Graafsma and Kumashova [17] or the Economic Policy Institute [18] thereby placing the MES and its effects in terms of the methodology to be used against Chinese dumping at the heart of the debate. These authors believe that when article 15-a-ii) expires subparagraph i) will no longer be enough to waiver article VI of the 1994 GATT agreement. Hence there will no longer be any legal base to be able to use the methodology of comparison with a third country or to treat China as a non-market economy (NME). As a result, regulation 1225/2009 will have to be amended, and China taken out of the list of NMEs established by the European Union. This is Beijing's line of defence.

However; the automatic nature of this is the focus of diverging legal opinion. What expired in December 2016 was the paragraph that provided that the importer could choose to use a replacement market rather than the normal value market. However Chinese exporters will still have to prove that their economy complies

10. Barbara Barone, "In-depth analysis one year to go: the debate over China's market economy status (heats up)", European Parliament DG External Policies December 2015

11. Page 3, Business Europe, "China's Market Economy Status", Position Paper, December 2015

12. European Commission, "Orientation debate by the College into the treatment of China in anti-dumping investgations," 13th January 2016

13. Camille Le Tallec, "La Chine est-elle une économie de marché?", La Croix, 17th January 2016

14. Swedish Board of Trade, "Changes in EU Anti-Dumping Practice - Required by WTO Rules ", 3rd October 2015

15. Rao Weijia, (2013) "China's Market Economy Status under WTO Antidumping Laws after 2016", Tsinghua China Law Review vol. 5, 2013; Y. Yu (2013), "Rethinking China's Market Economy Status in Trade Remedy Disputes after 2016: Concerns and challenges", Asian Journal of WTO and International Health Law and Policy vol. 8, 2013

16. Tietje C., Nowrot, K., "Myth or Reality? China's Market Economy Status under the WTO Anti-dumping Law after 2016", Policy Papers on Transnational Economic Law No 34, December 2011

17. Graafsma, F., Kumashova,E., "In re China's Protocol of Accession and the Anti-Dumping Agreement: Temporary Derogation or Permanent Modification?", Global Trade and Customs Journal,no. 4, 2014,

18. Robert E. Scott and Xiao Jiang, Economic Policy Institute, Washington, "Unilateral grant of market economy status to China would put millions of EU jobs at risk", 18th September 2015 with the five European criteria defining a market economy. [19]

This subtler position is that defended by the European Parliament's legal department [20]. According to this interpretation, the granting of MES is not automatic, since China still has to prove its compliance with the five European market economy criteria (article 15-a-i) which will not be deleted. However, the expiry of article 15 a-ii) will oblige the European Union to change its methodology.

Thanks to article 15-a linked to article 150 in the report of the working group for China's accession to the WTO, the Union retains the possibility - under certain conditions - of using another methodology from the one set by the GATT agreement, which is a strict comparison of domestic costs and prices in China.
We must not confuse the granting of the MES with the end of the so-called "analogue country" methodology. Behind the political-legal debate lies the issue of protecting European businesses: without this methodology around 90% [21] of the anti-dumping measures that have been implemented to date would cease to be. Between 1995 and 2014, the EU has launched 99 anti-dumping procedures against China, i.e. 28% of all procedures launched. On average the European anti-dumping duties that have been applied totalled 44%, against 142% in the US and 80% in India. [22] Acknowledging the market economy status or changing methodology could potentially reduce these by between 9% and 17% [23]. However, since December 2016 with or without the MES, from a legal point of view, the EU can no longer consistently use an alternative method to that of the WTO. In preparation for possible unfair behaviour on the part of a subsidised economy the EU has decided to create a new trade defence tool by strengthening its anti-dumping rules; the European Parliament approved the EU's new anti-dumping method on 15th November 2017. In a normal situation the joint adoption of these legislative acts by Parliament and the Council following a proposal by the Commission (article 207 TFEU) would require several months. However, discussions were accelerated, the sign of decisive political will from the Commission to rise to the challenge set by Chinese dumping.

2. 12TH DECEMBER 2016, A NEW ERA?

The fear of economic predation and trade wars

Symbolically over the last few years, Chinese citizens and businesses have appeared on markets that are not really traditional, thereby highlighting new economic power that has been accentuated by an almost unequalled liquidity stock. With acquisitions in the art world [24] or in Western technologies [25], involvement in the international transfer of football players and the 67% ownership of the Greek port of Piraeus [26], China exemplifies fears of economic predation. Some sectors do not compare favourably: in 2015 it invested in wind power and in strengthening its infrastructures the equivalent of the total capacity of three of the biggest American producer States (Texas, Iowa and California).

The EU has noted, amongst others, two Chinese attitudes that imply a distortion of competition: subsidies enabling the sale of products below their production cost and the manipulation of exchange rates to foster exports. On 10th August 2015, in the face of the Shanghai stock exchange crash, Beijing made sharp reductions to the reference rates of the yuan against the dollar in order to cancel out the drop in its exports. No existing methods in the creation of anti-dumping measures - whether these are within the WTO or at European level, can directly address these two highly dangerous phenomena i.e. subsidies and currency manipulation.

Given this kind of contravention of free competition the EU acts by launching procedures

19. Speech by Bernard O'Connor, lawyer for NCTM during a hearing with the European Parliament's Committee for International Trade INTA entitled "Market economy status for China after 2016 ?" 28th January 2016
20. European parliament legal opinion on market economy status for China
21. INTA Committee, Report "New trade rules for China ? Opportunities and threats for the EU", February 2016
22. EPP Hearing on a Market Economy Status for China, 2nd March 2016
23. On 9th November 2015, a Chinese collector spend 170.4 million $ on a Modigliani painting. It was the second highest offer ever made for a piece of work sold off in auction
24. On 10th February 2016, Norway's Opera Software (search engine software Opera –5th in the world) announced that the Golden Brick Silk Road Investment Fund (Chinese) wanted to buy its structure for 1.2 billion $
25. On 20th January 2016, Cosco (China Ocean Shipping Company) spent 368.5 million € to by 67% of the Greek port of Piraeus
26. Business Europe's position, "China's Market Economy Status", December 2015, or the coalition of industries standing against MES: www.aegis.eu

and inflicting fines or customs duties. More than 50 anti-dumping measures are now ongoing against China covering 1.38% of European imports from this country.
According to some studies if China is granted the MES or if the EU changes its anti-dumping methodology all investigations would have to be based on the premise that the prices practiced follow market mechanisms. Moreover, by granting MES to China or if the "analogue country" methodology is abandoned, the EU -3rd user of trade defence tools in the world- would potentially deprive itself of 90% of its anti-dumping measures.

Hence, Robert E.Scott and Xiao Jiang believe that these developments would lead to a reduction of European output of 114.1 to 228 billion € per year; a reduction of 1 to 2% of the GDP and a threat of 1.7 to 3.5 million job losses. At national level this might lead for example to the destruction of 319,000 to 639,000 jobs in Germany and to 208,000 to 416,000 in Italy.

These forecasts are worrying certain sectors that are already in competition with emerging countries. Concern in the industries varies. Although some are confident and want to take advantage of the opening of a market totalling 1.38 billion inhabitants, others - like steel, electronics, textiles, toys, etc. are sounding the alarm.
The European Steel Associations recalled in a press release on 12th January 2016 that Chinese production might reach 400 million tonnes - i.e. nearly double that of European production (170 million tonnes). China has already announced the destruction of some 5 to 6 million jobs over the next three years, 1.8 million of which are in the steel and mining industries. An opening of the market would clearly threaten 330,000 jobs in the sector. In response to this the Commission presented measures on 16th March 2016 that aim to protect jobs and growth in the steel industry.
Given the mobilisation on the part of the economic players [27], political groups in the European Parliament have become worried about the possible impact if MES is granted to China [28]. Europeans fear that there will be a trade war. Obstacles to prevent entry to the Chinese market might be raised and businesses which are already established there, subject to further difficulties. The Member States are not all affected in the same way: 5,000 German businesses [29] are registered in China in comparison with 1,400 French ones [30]. Depending on their industrial network and the size of their exports, their prospects, goals and fears diverge.

Status quo regarding the proposals made in 2011

In 2011, European trade defence was already on the agenda. In September 2011 the European Parliament adopted a resolution on a new trade policy for Europe [31] followed by a Commission proposal on 10th April 2013 [32]. The text provided for the codification of the European Court of Justice (ECJ) and the WTO's jurisprudence, since the belief that threats of retaliation were enough to launch an anti-dumping investigation, the reimbursement of duties during the review investigation and the cancellation of the lesser-duty-rule [33] in the event of evasion.
On 21st January 2014, the European Parliament's "International Trade" Committee adopted a position encouraging the Union to "improve its method in the calculation of anti-dumping duties to take on board environmental and social aspects and development and to help SME's experiencing difficulties to take advantage of these tools." [34]
Following the amendments approved in February 2014 [35], the text included the aim to increase social and environmental dumping duties, the cancellation of prior investigatory opinions and the introduction of assistance services for SMEs.
A split then emerged between the Member States: during the debate in the Council on 21st November 2014, 11 States supported it,

27. EPP hearing on 2nd March 2016 ; S&D position 8th March 2016
28. File on Sino-German trade relations http://www.auswaertiges-amt.de/EN/Aussenpolitik/Laender/Laenderinfos/01-Laender/China.html#doc474918bodyText3
29. File on Franco-Chinese trade relations http://www.diplomatie.gouv.fr/fr/dossiers-pays/chine/la-france-et-la-chine/
30. European Parliament resolution of 27th September 2011 on a new trade policy for Europe
31. Commission proposal 10th April 2013 for a new European trade policy 2013/0103 (COD)
32. The lesser-duty-rule provides that authorities impose a reduced anti-dumping duty if this is enough to cancel out the damage
33. Parliament press release following the INTA Committee's adoption of the EU's trade defence instrument project 21st January 2014.
34. Parliament press release "Strengthening the EU's trade defence instruments", 5th February 2014
35. The European Parliament's Legislative Monitor, summary of the Council debate on 21st November 2014 on trade defence instruments

three others did so but with more restrictive definitions and 14 were against it. [36] Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, Malta, the Netherlands, the Czech Republic, the UK, Slovenia and Sweden [37] based their rejection on the deletion of the lesser-duty-rule. This prevents the EU from levying higher duties on the raw materials markets in view of preventing damage to European industry. Finally, 14 countries opposed the creation of distortions going beyond what is necessary to palliate market failures. Since then no consensus has been found.

In addition to this, some States have privileged a bilateral approach to their trade relations. In May 2013 Germany refused, in spite of the Commission's opinion, to sanction China in the photovoltaic sector. Hence it positioned itself in a Berlin-Beijing partnership with, in exchange, access to the Chinese market for its production machine manufacturers of the said solar panels and trade facilities in several areas such as logistics and research. [38]

Interrelated interests

EU-China relations justify a certain amount of reserve and those involved are extremely cautious. Cecilia Malmström recalls that three million jobs in Europe depend on the sale of goods and services on the Chinese market. It is also the fourth destination for European foreign investments (127 billion €), whilst Chinese investments only represent 3% of all investments in Europe [39]. Relations with the EU are also vital for China since the EU is its main importer totalling 300 billion € in 2014.

Since 2012 the European Union has been negotiating a bilateral investment agreement with China. This is supposed to "boost bilateral investments by opening the markets and establishing a legal framework to protect investments to improve legal security and predictability regarding long term investor relations between the Union and China." [40] On 28th September 2015 an agreement on the development of 5G networks and the formalisation of China's intention to take part in the Juncker Plan were announced. China was the first third country to formalize its contribution to a total of 10 billion € to the investment plan of 315 billion € put forward by the European Commission. [40]

4 scenario were possible in 2016

Finally, various interpretations of the situation were possible with four of these featuring in the analysis drawn up by the DG External Policy at the European Parliament in December 2015.

1) China would not automatically acquire MES and the EU would continue to use its "analogue country" methodology. This interpretation deemed that China's compliance with the five European criteria of what a market economy is, was a condition sine qua none for the attribution of MES and of a change in methodology. By adopting this approach, the Union would have put its own political and economic interests first and run a certain legal risk. If the WTO had been consulted a third party would could have decided which trade defence instruments applied. However, the time span involved in a possible complaint being lodged and addressed, enabled the definition of new instruments, especially since WTO decisions are a not implemented retroactively. However, deadlock at the Council could have occurred. From a diplomatic point of view, it was becoming difficult to accuse China of not respecting an agreement that Europe was not respecting itself.

2) China would not automatically achieve MES, but the EU could only continue to pursue a different method under certain conditions, and in all events, it would have to adapt its legal and administrative framework. The occasional application of the analogue country method would be justified via the combination of the opening of article 15-a and article 150 in the report by the working group for China's accession to the WTO. This scenario would be the most logical from a legal and also a political

36. Europaforum http://www.europaforum.public.lu/fr/actualites/2014/11/conseil-cae-commerce/index.html

37. Patrick St Paul, "Guerre commerciale UE-Chine : Berlin ordonne la fin des hostilités", Le Figaro, 27th May 2013

38. Institut Egmont, Insa Ewert, "The EU-China Bilateral Investment agreement, between high hopes and real challenges" February 2016, http://www.egmontinstitute.be/wp-content/uploads/2016/02/SPB68-Ewert.pdf

39. European Commission press release on negotiations for the bilateral investment agreement, "Negotiations on Investments between the EU and China before the visit of President Xi Jinping to Brussels" 24th March 2014

40. Jorge Valero, "Bruxelles et Pékin s'accordent sur la contribution chinoise au plan Juncker", Euractiv.fr, 14th April 2016.

point of view, since the expiry of article 15-a-ii) did not involve the granting of MES, the EU had no reason do so either.

However, it would have to comply with its legal obligations and stop using the analogue country method. Moreover, the EU would have to create a parallel trade defence tool thereby limiting the inevitable opening of the market.

3) China would acquire MES: the possibility of treating China like a non-market economy (NME) as a whole would be cast aside. As a result, regulation n°1225/2009 would be modified and China withdrawn from the list of NMEs. Granting market economy status to China was not obligatory legally, politically unthinkable and economically reckless. Effectively, as long as article 15-a-i) was valid China had to prove its compliance with the five European market economy criteria before asking for the status. In any event granting MES would not settle the economic situation, since the expiry of the "analogue country" methodology would not depend, as it stood, on this designation.

4) China's MES would be determined case by case, depending on the sectors/businesses involved. If price distortions were proven, then adjustments would be made. However, this method was contested by several trade partners [41]. The litigation settlement department at the WTO was to deliver a decision on this. This scenario meant that the general problem was brought down to the specific. Given the time needed to decide in a case by case situation, but also the legal limitations that this option entailed, it was not very likely that the EU could have saved itself this way.

For its part the Commission noted three scenario [42]:

1) Leave legislation as it stood and continue using the so-called "analogue country" method.

2) Change the method of calculation and withdraw China from the list of non-market economies without any further conditions.

3) Change the method of calculation and update the legal-administrative framework of trade defence instruments.

From a legal, political and economic point of view the last proposal - equal to scenario 2 put forward by the European Parliament - seemed to be the most reasonable if this process was implemented on 12th December 2016. This required real joint European action to be deployed within just a few months. This seemed unlikely.

European trade legislation dated back to 1995. Twenty years later it only responded in part to the demands of international trade. The optimism linked to the postponement of the MES question by negotiators in 2001 faced a State which did not meet - and which did not want to meet - the criteria of a market economy. Moreover, thought into this and, as a consequence, the reform of tools was legitimate, whilst bearing in mind that none of the possibilities that were open to the EU were neutral: there would be either a legal cost and an increase is litigation at the WTO, or an economic cost in terms of trade and investment with China.

It is a pity that the States blocked the Commission's 2011 proposal. It seems that the individual situation of each Member State, its trade balance, its industrial fabric and its sensitivity to foreign investments played against European interest.

However new thought into trade defence tools was underway. The Commission launched an initiative with a new public consultation linked to the problem raised by China, with the most recent dating back to 2008. The details communicated by the Chinese authorities in response to the market economy criteria were due to be made public. Transparency of debate and processes was a vital element in any decision that is essential to the European economy.

But control over the agenda was uncertain since any new proposals had to be submitted to the European Parliament and the Council. National sensitivities emerged once more, and the stalemate observed over the last few years did not speak in support of finding consensus rapidly.

41. Tamara Perišin, "Pending EU disputes in the WTO, Challenges to EU energy law and policy", p379, http://www.academia.edu/8743240/Pending_EU_Disputes_in_the_WTO_Challenges_to_EU_Energy_Law_and_Policy_Report

42. Introductory speech by Cecilia Malmström, "Trade Defence and China: Taking a Careful Decision" 17th March 2016

However, uncertainty about the methodology as of 11th December 2016 made a clear, quick choice vital, especially since most of the anti-dumping and anti-subsidy investigations launched by the Commission involved China. Following the initiative launched by the European Commission on the publication of its report on 9th November 2016 an agreement between the European Commission, the Parliament and the Council was found in October 2017 and the European Parliament adopted new anti-dumping rules on 15th November 2017, thereby strengthening European trade defence against Chinese imports. As a reminder in January 2014, MEPs suggested that the EU might respond more rapidly to unfair trade practice, that anti-dumping investigations be limited to 9 months (against 15 in the initial proposal), and that anti-dumping duties be imposed six months after the launch of the inquiry. With this in mind some States asked for more rapid response to unfair imports. Emmanuel Macron, the then French Minister for the Economy advocated this for example on 30th March 2016 hoping for a reduction from 9 to 2 months in terms of the time limits of anti-dumping measures and an increase in tariffs if necessary.

In addition to this, assessing the risk of dumping rather than noting it once it happened changed the approach and provided legal predictability and security, notably for SMEs. Anti-dumping procedures are long and costly. Very few small structures can afford this. Aggressive State strategies can integrate this cost and choose to be condemned, if they have the chance and in the meantime, they can conquer the market. In the case of the photovoltaic sector for example the anti-dumping procedure lasted 18 months. Launched in July 2012, the complaint lodged by the EU collective ProSun ended in December 2013 with the review of import tax rates. Hence China's trade policy ruined many European (in 2013 Siemens and Bosch relinquished the photovoltaic sector) and American (in 2011, Solyndra, Evergreen Solar, SpectraWatt) companies. In spite of the condemnation Chinese businesses succeeded long term in changing the structure of the market to the detriment of European industrialists.

Conclusion

More than 80 countries have granted China market economy status since 2005, like Australia for example which uses cost adjustments to establish the value of Chinese imports in cases of anti-dumping. Its margins are now much lower than those found by other WTO import countries. On car tyres Australia achieved a dumping margin of 10% whilst other WTO countries achieved between 40 and 60%. [43] Hence Australia is having problems with the adjustment system: half of its anti-dumping measures no longer work.

In the USA 129 anti-dumping investigations and compensatory measures were registered against China on 1st September 2015. They do not plan to grant MES to China in the near future [43]. Moreover, they do not have a list of countries that do not enjoy market economy status.

In a situation in which there are more and more questions regarding Europe's ability to protect its businesses, and notably SMEs, the answers put forward will be analysed in terms of protecting the European model in the face of unfair competitors. "Europe that Protects" cannot just remain a sound bite and maintaining the status quo would have been worrying. The answer can only be collective and Europe wide. The Union must be more aggressive regarding economies which do not give as much as they receive, since today, it is the most open economic area in the world. In these approaches, which are both offensive and defensive, it is engaging with proposals regarding a filter mechanism for FDI's from third countries and a new anti-dumping methodology (NOMAD). More particularly regarding China, an additional goal will be to counter its over production of steel and force it to manage its surpluses itself, whilst strengthening trade links to impose a change in manufacturing conditions and an improvement in workers' conditions.

43. Op. cit.

This last point might seem ambitious, but this goes hand in hand with a tightening of market access conditions in response to the suppression of the list of "non-market economy" countries. Litigation at the WTO is also likely since China deems that it is explicitly being targeted by the new methodology.

As is customary the European Union has chosen compromise to manage the difficult question of China's status as a market economy, but we should laud its ability in finding an ambitious inter-institutional agreement in under a year and after three years of stalemate. The transparency of debate has shown that national fears opposed the will of the European institutions. Although the perspectives of each Member State are specific, trade defence tools and methodology can only be shared. On 5th December 2017 the European Parliament adopted the second series of measures that aim to respond to the challenge set by third countries and the threats that their economic models make to European trade interests (44).

Indeed, after having agreed on the methodology chapter for the modernisation of trade defence tools in October 2017, MEPs came to agreement with the EU's ministers regarding the introduction of stronger defence tools to counter unfair imports. These new measures notably focus on an increase in customs duties on subsidised imports and/or that are the focus of dumping, as well as the reduction of the time taken to undertake an investigation reduced to eight months. The European Union is therefore the source of a phenomenon as it reverses the burden of proof towards the party exporting, both for non-market economies (new rules approved in October) as well as for countries that enjoy the status (legislative project concluded on 5th December).

As illustrated recently by the case of the electric bikes (45) the behaviour of Chinese companies is threatening whole sectors. Will the answers provided be enough? As indicated previously the length of time for an investigation to take place is still a relevant question given the gap in terms of financial power between the Chinese national giants and European SMEs which function with a limited working capital and treasury. For example, MEPs have ensured that an assistance service to SMEs will take on board complaints and investigation procedures and that unions will be involved during investigations and with the assessment of future customs duties - since SMEs are mainly dependent on orders and any obstacle to free competition on the market involved would be perceived as a threat to the continuation of their business activities. These remain responsive and not dissuasive or anticipatory measures. But it is certain that the EU, according to the approach adopted by the USA, has provided itself with stronger defence tools. This responds in part to the European wish to stop being "naïve" (46)

44. "Report to Congress of the U.S.-China Economic and Security Review Commission", 20th November 2014 http://origin.www.uscc.gov/sites/default/files/annual_reports/Executive%20Summary.pdf

45. La Libre Belgique, « les fabricants de vélos européens déposent une plainte anti-dumping contre la Chine », 2 octobre 2017.

46. Gisela Grieger, "Protection from dumped and subsidised imports", EPRS, European Parliament, 10th November 2017

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