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# The European Trade Policy in the time of Covid-19: Adaptation or change of paradigm?

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Crises reveal the state of a policy, reveal its ambiguities, strengths and shortcomings, and sometimes force a redefinition or clarification of its guiding principles to ensure its sustainability, if not its survival. Although at the height of the crisis, there is a reflex to completely overhaul what already exists, the constants and structuring considerations quickly tend to dampen the ardour for reform.

[1] H. Vedrine, « La mondialisation à l'heure des comptes », Terra Nova, 31 March 2020.

[2] T. Gomart, « Le Covid-19 et la fin de l'innocence technologique », Politique étrangère, 2/2020, pp. 25-38.

[3] B. Wilfert, « Covid-19. Globalisation is not the cause but the remedy », European Issue, n° 556, Robert Schuman Foundation.

[4] N. Gaillard, « Le Covid-19, accélérateur de post-mondialisation », Politique étrangère, 2/2020, pp. 59-70.

[5] This shortage can be explained by an inability of the European production apparatus to cope with increased demand (the case of hydro-alcoholic gel) but also, more problematically, by a complete dependence on imports from third countries (the case of paracetamol).

[6] As early as the beginning of March, the attitude of France and Germany, which had decided to restrict the export of protective equipment to other Member States, was criticised within the Council.

[7] Implementing regulation (EU) 2020/402 by the Commission 14 March 2020.

[8] More than 75 other governments decided to introduce this type of barrier at the end of April 2020.

[9] Regl. (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union.

In mid-spring 2020 and the widespread lockdown, the most authoritative voices were quick to associate the excessive openness of the European economy with its vulnerability, illustrated by difficulties of supply and the effects of shortages of certain emblematic products, such as protective masks, and respiratory assistance devices[1]. Somewhat before this, the brutal lockdown of a Chinese province central to the heart of global value chains had already slowed down whole sections of European economic activity. Following this the extreme domination of digital players illustrated Europe's powerlessness in a field that is nevertheless essential to contemporary geoeconomics[2]. While globalisation and the resulting technical and scientific progress may appear to its advocates to be a cure for the pandemic[3], the crisis and its continuation throughout 2020 indicate that the European Union must prepare for an accelerated entry into a post-globalisation era[4]. The implementation of the common trade policy, its orientations, philosophy and strategy are being directly challenged.

The first decisions adopted in the spring of 2020 tend to show that after a brief period of paralysis, the European Union was able to demonstrate, despite initial difficulties, a degree of responsiveness and pragmatism. This same pragmatism might also lead it to reorient its definition of relations with the rest of the world towards a more assertive protection of European interests, without giving in to the sirens of protectionism. One question remains: do current measures and proposals reflect a passing fad or a paradigm shift?

## IN THE HOUR OF URGENCY

The European institutions were first forced to act under a double political constraint. There was the violence of the pandemic in February and March 2020, and, once the shock was over, it was rapidly realised that there was a shortage of certain essential products, whether this meant masks or medical equipment[5]. Then there were the Member States which first haphazardly decided, in the name of national interest and without much transparency, to restrict certain exports of essential products, not only to third countries but also to other Member States[6]. Mid-March, the Commission tried to regain control as it adopted a decision setting up a common framework for exports of essential products to third countries only[7] while in practice the actual management of stocks and supplies has been delegated to the Member States. At international level, the EU was not the only one to make such restrictions[8] which remain broadly permissible under trade agreements, whether WTO rules or free trade agreements.

Still as a matter of urgency, in mid-March the Commission issued guidelines on foreign investment, calling on Member States to be vigilant and use all the tools at their disposal to prevent the current crisis from leading to the loss of critical assets and technologies to non-European interests. This invitation directly echoed the screening regulation adopted in spring 2019[9], which allows Member States to prohibit certain investments made by third countries for reasons of security and public order. Even though the regulation was not due to be implemented

until October 2020[10], the Commission encouraged Member States to take such measures in the spring, whenever a foreign acquisition or takeover might affect health infrastructure or essential supplies[11]. At the same time, the European Union encouraged international exchange where it might contribute to its public health interests. This was reflected in the Commission's decision to suspend customs duties and VAT on masks, protective equipment, test kits and medical devices at the beginning of April[12].

Contrary to widespread opinion, from the very first months of the Covid-19 crisis, the European Union was able to use its competence in trade matters to defend Europe's immediate and essential interests. Significantly, the traditional opening/closing trade cleavage proved inoperative in a context dominated by urgency and necessity. Nevertheless, criticism quickly reappeared of the European Union, long accused of being the Trojan horse of globalisation, causing a weakening of its productive apparatus, relocation of its strategic industries and weakening of its supply chains. On the other hand, countries like Germany, which were more dependent on exports and healthy international trade, soon feared protectionist pressures both inside and outside Europe.

As with all European action, it appeared that trade policy was being challenged in terms of its foundations and its *raison d'être*. The Commission soon became aware of this and as of June 2020 it initiated a [vast consultation](#) regarding the future of the trade policy. The response must include a lucid analysis of the current state of the international economic order.

### A TIME FOR ANALYSIS

The World Trade Organization has acknowledged that the Covid-19 pandemic represents an unprecedented upheaval in the economy and international trade, as production and consumption have been reduced worldwide. In the second quarter of 2020, merchandise trade suffered its largest decline ever recorded over any period, falling by 14.3% compared to the previous period[13]. Particularly hard hit, Europe experienced an unprecedented drop in its exports over this period

(-24.5%...)[14]. The volume of trade in goods is expected to fall by almost 9% in 2020 before a hypothetical upturn in 2021[15]. The drop in the trade in services was at least as strong and some sectors collapsed, such as air transport, whose activity declined by around 80% between January and April. The world GDP is expected to contract by almost 5% in the first year of the pandemic.

In its annual World Investment Report UNCTAD, estimated as early as the spring of 2020 that the volume of foreign direct investment, which totalled \$1.54 trillion in 2019, might shrink by 40% in 2020 and fall below \$1 trillion for the first time since 2005. Moreover the reduction in profits made by multinationals could prolong this downward trend in international investment, which UNCTAD has been observing for several years. Investment flows would only slowly start to rise again from 2022 onwards "*as global value chains are restructured to become more resilient, the capital stock is replenished and the global economy recovers*"[16].

At the same time, pandemic associated social distancing and confinement measures have meant that consumers are making greater use of online shopping, social networks, teleconferencing and viewing videos and films on platforms. It has become clear to everyone how highly dependent European countries, their populations, their businesses and even their governments are on the dominant American digital players. The fourth industrial revolution, manifested by the increased importance of digital technology and automation, has been underway for a decade and is expected to accelerate with the deployment of 5G. This technological revolution could, in this respect, have a profound impact on the structuring of world trade, leading to a relative relocation of production and, above all, its increased geographical concentration, as companies may be tempted to move closer to consumers and the most dynamic economic zones[17].

This collapse of world trade, coupled with its increased regionalisation and the rise of certain sectors, such as digital or e-commerce, is part of a deeper shift in the international economic order. The latter, following the

[10] See article 17 of regulation 2019/452.

[11] C(2020)1981 final, 25 March 2020.

[12] Decision (EU) 2020/491 Commission 3 April 2020 (OJ n° L 103I, p. 1-3).

[13] All of the data were collated on the WHO site and the page devoted to the consequences of the pandemic on international trade.

[14] Against a decline of 21% in North America and only 6% in Asia.

[15] However, the WTO expects trade in goods in 2021 to be well below pre-pandemic levels in any case.

[16] Excerpt from the UNCTAD's annual report on investment in world.

[17] On this subject see, "The Fourth Industrial Revolution - Changing trade as we know it", The National Board of Trade Sweden, October 2019.

collapse of the Soviet bloc, was based on a series of considerations that have long since fizzled out. This is particularly true of the economic domination of the Western world, which now competes with Asia, and the rise of China, in which the public sector and state-owned enterprises play a leading role. The Sino-American alliance in place since Nixon, which had already suffered a battering under the Obama administration, has been dramatically broken under President Trump. The international economic system dominated by large institutions (IMF, World Bank and WTO) is being torn apart. As far as trade is concerned, the logic of a multilateral legal order dominated by rules that crystallise a consensus in favour of non-discrimination, liberalisation and openness of trade has now been overturned[18]. Over the past decade or so, in response to the 2008 crisis, governments have increased protectionist measures in trade and investment. These unilateral decisions are now openly part of a logic of sovereignty and power and are defended as national security exceptions[19]. Moreover, WTO members have for many years been unable to agree on an ambitious reform of how its rules work. The most influential among them prefer to influence more directly the content of bilateral free trade agreements or even mega regional agreements, as China has just demonstrated with the signing of the RCEP treaty, which should further strengthen its position in Asia[20]. Many observers are thus betting on growing economic regionalisation, which could also win over other countries that have hitherto been less inclined to develop this type of trade strategy. The project for a continental African Free Trade Area (AFTA), which would comprise the 55 African Union countries, might promote intra-zone trade between economies that have hitherto been dependent on trade with external partners[21].

Like all international law, however, trade rules appear precarious and unstable, since they are subject to increasing politicisation. One of the major achievements of the WTO was the establishment of a dispute settlement mechanism which, although imperfect, tended to impose compliance by all with its multilateral body of rules. This was considerably weakened by the enduring paralysis of its Appellate

Body, brought about by the US government, which was originally behind its inception[22]. Instead, transactions of uncertain legal value are being made, like [the Phase 1 Agreement](#) signed mid-January 2020 between China and the USA, which was a mere armistice in the Sino-American trade war that flared up again with the pandemic. In its own way *Brexit* is a demonstration of the fragility of the rules and legal links which we thought irrevocable, confirmed by the UK with the clear threat made in September 2020 of an infringement of the commitments it had made during the withdrawal agreement in October 2019 regarding the status of Northern Ireland[23].

The situation of international trade and investment has changed for the long term. "Slowbalisation"[24], the regionalisation of trade and trade agreements at the expense of multilateralism, and the fourth industrial revolution, the increasing irruption of political and geopolitical considerations in the application of international trade and investment rules, the rise of protectionism are all ongoing developments that the Covid-19 pandemic has simply precipitated, and which are expected to shape the economic and trade system in the 21st century. The Union and its trade policy must necessarily adapt to this.

#### TIME FOR CHANGE?

Despite all these upheavals, the advocates of a Copernican revolution in European trade policy continue to struggle. The contrast between the recent changes in Economic and Monetary Union (EMU) and the relative conservatism that remains with regard to Europe's trade policies is, in this respect, interesting to analyse. As early as the spring, the risk of a major economic and budgetary crisis, which threatened the integrity of the euro area, forced the European Central Bank and the most orthodox States to break their traditional taboos. The latter came to accept a mutualisation of sovereign debts and to agree on an unprecedented recovery plan on 21 July 2020[25].

The break seems much less plausible in trade, where a form of continuity prevails. This is illustrated by the mission letter from the European Commission Vice-President responsible for Trade, Valdis Dombrovskis[26],

[18] V. A. Roberts, H. Choer Moraes and V. Ferguson, "Toward a Geoeconomic Order in International Trade and Investment", *Journal of International Economic Law*, 2019, 22, 655-676.

[19] See as an example the report by the special WTO group in the case *Russia-Traffic in Transit WT/DS512/R*, April 2019. UNCTED and the OECD also note a sharp increase in measures designed to restrict investments from abroad based on national security grounds.

[20] The Global Regional Economic Partnership, whose negotiations were launched in 2012, at the time in response to the draft trans-Pacific treaty initiated by the Obama administration but abandoned by Trump. The RCEP was signed at the end of 2020 between 15 countries in the Asia-Pacific region. This agreement brings together all the ASEAN countries as well as 5 other countries (Australia, China, South Korea, Japan and New Zealand). This text organises a major suppression of customs tariffs. Above all, it provides for a unified set of rules of origin that should facilitate and encourage intra-zone trade.

[21] The recent approval of this project by Nigeria, on 20 November 2020, is moreover a strong political and economic sign concerning its next realisation.

[22] This paralysis is the result of the US government's decision to block, from the end of 2015, any new appointments to the Appellate Body. There is no indication at this time as to what the Biden administration's position will be on this issue.

[23] The United Kingdom Internal Market Bill adopted in the autumn openly violates the Protocol to the Withdrawal Agreement on Ireland and Northern Ireland. The UK finally amended this controversial legislation in December 2020, in the context of the negotiation of the future Trade and Cooperation Agreement.

[24] Mr. Charrel, « L'ère de la "slowbalisation" a commencé car les ingrédients de l'hypermondialisation faiblissent », *Le Monde*, 17 December 2020.

[25] See the [conclusions of the European Council](#) July 2020.

[26] The latter replaced Phil Hogan. See. [the mission letter](#) dated 13 September 2020.

and by a resolution adopted by the European Parliament in November 2020[27]. These texts certainly reflect an acknowledgement of the new international trade situation, but they also demonstrate the concern not to call into question the essential, namely the achievement of free trade and the promotion of an open and "rules-based" multilateral trade system through a series of multi-, pluri- and bilateral agreements. The European Parliament, which calls for the continuation of the current trade negotiations, has only accepted the link between trade and "strategic autonomy" on condition that the latter is expressly qualified as "open", thus reflecting the fear that an innovative concept could lead to the justification of protectionism[28].

There are several reasons for this difference in the EU's response between the EMU and trade areas. The sovereign debt crisis, following the financial crisis of 2008, had already prepared minds and allowed certain taboos to be broken, in particular with regard to monetary policy[29]. On the other hand, the current upheaval in the international trading system has probably not yet been fully assimilated. Moreover, fiscal policies are still conducted by public actors, while trade policy decisions support a reality to which private actors are subject. A relocation of production in Europe, or in its close neighbourhood, cannot be imposed by decree. Such a reorientation depends on market forces, a complex system of supply chains and a firm industrial policy which is still in its infancy at European level.

The pandemic-related economic crisis should not overshadow factors that will continue to influence European decision-makers and, in particular, the Commission. Firstly, the EU is a first-class single market - if not, at least for a few more years, the world's largest. This economic reality has direct legal and political consequences: the European Union, if it so wishes, is able to make access to its market conditional on compliance with standards and agreements that are likely to meet its interests. This 'Brussels effect', which also offers European companies a decisive comparative advantage, can be measured by any of the Union's trading partners who wish to obtain privileged access to the European market, including the United Kingdom.

This is an element of power and a strategic advantage of which all Europeans should be aware.

Another important factor, which counterbalances the first, is the Union's dependence on the outside world. Recent studies certainly tend to put the dependence of European companies on value chains involving players in third countries into perspective. This dependence should not be underestimated, especially when it comes to certain essential resources such as rare earths or certain raw materials. This makes it all the more urgent to identify strategic value chains that are essential to the health and safety of Europeans[30]. The pandemic has, moreover, highlighted the need to question the sustainability of these value chains[31] and to complete, if necessary, the European legislative framework[32]. Conversely, the choice of autarky and self-sufficiency remains illusory given the small size of the European continent, its population, its natural wealth and the importance of international trade for European employment and economic activity. A renationalisation of trade policies would lead each of the Member States into a strategic impasse and a loss of real sovereignty, due to the low weight of their respective economies in world trade. The British example will soon prove this.

#### TOWARDS A TRADE POLICY AT THE SERVICE OF STRATEGIC AUTONOMY AND EUROPEAN "SOVEREIGNTY"?

Important signals point to a possible shift, in the medium and long term, in the direction taken by European trade policy. Far from being insignificant, semantic changes are emerging. In March 2019, for the very first time the European Union described China as a "systemic rival" and called for a better defence of the European interest against this country[33]. Taboo terms until recently, protection and strategic autonomy are no longer the reserve of diplomats[34]. Paradoxically just a few days before the inauguration of Joe Biden the signing of a global agreement on investment with China can also be seen as a reflection of this strategic autonomy. Although the revival of a transatlantic free trade treaty seems unlikely at present, closer cooperation could, undoubtedly, be engaged, or even formalised, in an agreement with the United States, with whom the subjects of economic and commercial

[27] European Parliament Resolution 26 November 2020 on the assessment of the Union's trade policy.

[28] In the aforementioned document, the Parliament thus welcomes "a debate on the concept of 'open strategic autonomy', unique to the European Union, and calls on the Commission to provide further information on its content".

[29] Mario Draghi's famous "whatever it takes" has thus prepared the way for the introduction of unconventional monetary policies, such as quantitative easing, which were subsequently validated by the Court of Justice of the European Union (CJEU, Peter Gauweiler, 16 June 2015, Case C-62/14; Heinrich Weiss, C-493/17, 11 December 2018). The reaction of the German constitutional court in spring 2020 shows, however, that the ECB's decisions are still the subject of fierce criticism in Germany (Judgment 5 May 2020 of the Constitutional Court regarding the so-called PSPP programme).

[30] The European "open strategic autonomy" initiative, launched by the European Commission in the spring of 2020, provides a framework for consultation on the issue of supply vulnerabilities and could lead to the development of a common definition of goods and services deemed "critical".

[31] V. T. Buzek, Des Chaînes d'approvisionnement durable et un travail décent dans le commerce international, Exploratory opinion of the European Economic and Social Committee, REX/532, 18 Sept 2020.

[32] The Commission is expected to propose legislation on human rights and corporate due diligence in the near future. This text, which would complement the initiatives taken in this direction at national level (French law n° 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and commissioning companies) follows a study published by the Commission services in February 2020 (Study on due diligence requirements through the supply chain, DG Just, January 2020).

rapprochement could be numerous and thus strengthen Europe's position on the international stage. For example, the links between trade and the environment, carbon taxation or the digital sector, on which compromises between Brussels and Washington are still possible. In its own way the trade and cooperation agreement signed with the United Kingdom on 24 December, beyond the elimination of customs duties, establishes a form of European autonomy and sends out an unambiguous political signal: any third country neighbouring the Union which, in the name of its sovereignty, wishes to legislate freely, cannot then hope to benefit from the four freedoms of the single market.

Strategic autonomy can also be grounded in a singular European vision of international trade rules. This is the case for the will to promote social and environmental rules that may accompany, or even condition, trade preferences. Encouraged by certain Member States<sup>[35]</sup>, and by the European Parliament<sup>[36]</sup>, it is no longer out of the question for the Commission to strengthen the sustainable development provisions in its free trade agreements over the next few years by allowing the adoption of trade sanctions against partners that do not respect their environmental commitments.

A number of texts put forward by the Commission in recent months are part of a more assertive approach to the defence of European interests and promoting its values, by means of unilateral instruments if necessary. This applies, for example, to the proposal to facilitate the adoption of trade sanctions against partners who deliberately block a dispute settlement procedure brought against them before the WTO (the United States being directly targeted here)<sup>[37]</sup>. Another example is the Commission's White Paper that plans to extend

State aid rules to players operating on the European market<sup>[38]</sup>. Finally, if it were to see the light of day and be implemented ambitiously, the proposed carbon, or adjustment tax, at the EU's borders could redefine the long-term nature of international trade and contribute effectively to the emission reduction goals set in the Paris agreement. And not surprisingly, the agreement is met with both hope and reluctance, especially among non-EU companies and EU trading partners who are inclined to denounce green protectionism<sup>[39]</sup>.

However, the European Union's strategic autonomy cannot only be achieved and defended through its trade policy. First and foremost, it is based on a strong and competitive economy and a truly European industrial policy. Legislation adopted at European level, such as that proposed in the digital field (digital service act and digital market act), may encourage this, as may the development of common economic and budgetary governance. Again the post-crisis period cannot afford to overlook an all-inclusive economic policy, with its agricultural, industrial and defence aspects truly designed at European level. In addition to strategic investments, privileged access for European companies to public procurement, adaptation of competitive rules to the reality of global markets and an ambitious training, education and research policy must be put on the table. Over and above the principal guidelines of trade policy, strategic autonomy and European sovereignty will especially be based on an ambitious economic strategy that goes beyond national compartmentalisation.

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*[33] In the words of the Commission, "at the same time, China is, in different strategic areas, a cooperation partner with whom the EU shares closely integrated objectives, a negotiating partner with whom the EU has to strike a fair balance of interests, an economic competitor in the race for technological dominance and a systemic rival in the promotion of alternative governance models. This calls for a flexible and pragmatic "cluster approach" that gives the EU the means to defend its interests and values in accordance with its principles" JOIN(2019) 5 final, 12 March 2019.*

*[34] See the interview with L. Van Middelaar granted to the newspaper Le Monde 31 December 2020.*

*[35] See the non-paper by France and the Netherlands of 12 May 2020 on trade, its socio-economic and sustainable development consequences.*

*[36] European Parliament, resolution of 26 November 2020 regarding the assessment of the Union's trade policy*

*[37] COM(2019) 623 final, 12 Dec. 2019.*

*[38] White Paper on a level playing field for foreign subsidies COM(2020) 253 final, 17 June 2020.*

*[39] See the articles contributed by the interested parties in the current consultation process undertaken by the Commission.*

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