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LARGE FRENCH COMPANIES' PRIORITIES FOR THE EU TRADE POLICY STRATEGY (2019-2024)

In a context of increasing trade tensions and technological changes that deeply modify international trade, Afep made a survey on large French companies' priorities for the update of the EU trade policy to be made at the beginning of the new European Parliament and Commission's term.

From this survey surfaced strong messages on the EU positioning and EU companies' competitiveness on the world stage, the need of an improved enforcement of free trade agreements, geographical areas and trade disciplines to be prioritised and a new emphasis on digital economy within trade policy.

1. The EU should further assert its autonomy toward its main trading partners when shaping and conducting its trade policy, develop market opening instruments, ensure fair and equal treatment for EU businesses on international markets and fully guarantee its own economic security.

2. The EU should rebalance its trade policy toward the enforcement of existing free trade agreements, notably through a better monitoring of implementing measures by our trading partners, a more systematic use of enforcement mechanisms and the potential triggering of trade defence instruments.

3. While it should continue to support the multilateral trading system, the EU should prioritise the conclusion of ambitious bilateral and/or plurilateral trade agreements targeting high-potential growth areas

4. Next EU free trade agreements should aim at removing non-tariff barriers for goods, services and government procurement contracts, strengthening businesses' technological assets and investing capacities, establishing rules on level playing field and supporting the digitalisation of international trade flows.

1

THE EU SHOULD FURTHER ASSERT THE AUTONOMY OF ITS TRADE POLICY AND FIND NEW MEANS TO DEAL WITH ITS MAIN TRADING PARTNERS ON AN EQUAL FOOTING

Internal and external strategy toward an increased competitiveness

- The EU should adopt **comprehensive economic and trade strategies**, in particular toward its **two main trading partners, the United States and China**, aiming at **reducing the competitive gap especially in high technologies and the digital economy**, ensuring a **level playing field between EU businesses and their US and Chinese competitors and better asserting EU position on international markets**. These strategies should be implemented throughout **EU internal policies, EU bilateral trade relationships with both countries, the agreements concluded with third countries and multilateral/plurilateral agreements**.

- Large companies therefore welcome efforts made by the European Commission and the **European External Action Service to sketch this new strategic framework towards China** in their joint communication published on 12 March 2019 and **call the Council to reflect this new approach in EU policies towards China**. They wish the **EU institutions could work on a similar document for the relationship with the United States** in addition to the on-going dialogue on bilateral trade negotiations.

- « intrinsic » competitiveness of EU businesses implies a **genuine industrial policy focused on RD in new technologies and the emergence of EU-based global competitors**. All EU policies should be mobilized to meet these trade policy targets.

- External competitiveness requires further efforts towards the **opening of third countries markets and the adoption of disciplines on level playing field at multilateral or bilateral level**, in particular to redress distortive policies by main trading partners but also to **reset EU trade policy in order to respond to challenges posed by their policies**.

- EU trade policy should be endowed, in addition to multilateral and bilateral trade negotiations, with **unilateral tools to gain and/or restore market access** in third countries especially in the field of government procurement (IPI initiative) or protection of intellectual property rights. **Such legislative instruments should be, alike trade defence instruments (see below), designed and used without any protectionist purpose and only aim to further open third countries markets when trading partners maintain trade barriers for EU businesses**.

- The EU should be also enabled to **push back restrictive effects of US or China initiatives for EU businesses in third countries**. Such a new approach should not be developed through « hostile » or protectionist measures (such as provisions against third parties in recent USMCA) but rather take the shape of positive conditionalities in EU partnership and cooperation agreements with third countries. While the implementation of One Belt One Road (OBOR or “New Silk road”) projects by Chinese operators goes along with privileges granted to Chinese companies at the expense of their competitors, **EU trade concessions as well aid programs granted** in EU partnership

agreements concluded with countries involved in these Chinese-designed projects **should include clauses on non-discrimination for EU companies for the participation in the construction of infrastructures and the use of these facilities.**

Strengthened responses to unilateral measures by our trading partners

- The EU trade policy should continue to use **compensatory or rebalancing measures in case of unilateral restrictive measures imposed by our trading partners** such as the United States. French large companies support the imposition of such EU measures to the extent **that they are decided as last resort remedies and that they largely exempt products locally produced by EU companies or included in transnational value chains.**
- The EU should also **protect its businesses against extraterritorial effects of pieces of legislation adopted by trading partners.** In this respect, European Commission's next work program should include an in-depth review of existing legal tools such as Regulation n° 2271/1996 of 22 November 1996 (so called "blocking regulation") to provide EU countermeasures with an increased credibility.
- Last but not least, the EU should **further shelter its strategic economic interests.** Regulation on foreign investments screening adopted in February 2019 is a key element of this policy and should be **rapidly enforced in order to prompt a shared practice of investment screening and increased solidarity among Member States** in reacting to attempts to take over essential activities for EU security and the competitiveness of EU businesses. A prompt implementation of this instrument should be a first step toward a more integrated EU-wide approach.

2

THE EU SHOULD REBALANCE ITS TRADE POLICY TOWARD THE IMPLEMENTATION OF EXISTING FREE TRADE AGREEMENTS

- After the ratification of key agreements such as EU-Korea FTA, EU-Singapore, EU-Vietnam, EU-Japan EPA and CETA, the EU should dedicate **as much efforts to the implementation of the EU FTAs as to the negotiations of new agreements.** This is a matter of **credibility for the EU as a global trading power** and of **effectiveness for EU businesses.**
- The first major challenge consists in making sure that **our partners put their legal framework and trade policy in line with FTAs duly ratified.** In many instances, third countries with which the EU stroke ambitious deal have a relationship to legal norms largely departing from the legal culture in the EU and/or a significant lack of administrative capacities to absorb regulatory and practices changes resulting from FTAs, with increased risk of uncompleted or distortive enforcement of these agreements.
- The EU should therefore further develop **adjusted tools to monitor and accompany FTA" transpositions" and enforcement by trading partners.** In addition to existing cooperation programs, the implementation of EU FTAs should come along with the set-up of dedicated task-forces in the EU delegations in third countries that could send early warnings on lack of compliance or delays in transposing agreements. European Commission's headquarters should also assign supplementary staff to these follow-up activities.

- Another related challenge is to **make available effective remedies in order to redress breaches of commitments by our trading partners.**

- The EU should systematically **resort to existing bilateral dispute settlement mechanisms and not shy away from referring a dispute to the settlement body when prior consultations have not proved conclusive on the issue.** In parallel, most obvious breaches of an FTA by a trading partner, notably on time-limit for tariff erosion or removal of trade barriers **should give way to an automatic suspension of EU commitments,** which would impose to negotiate corresponding clauses under new FTAs. In order to maintain a certain degree of flexibility, notably when the other party has been successfully engaged on the issue, the Council could decide to block the suspending measure via a comitology decision.

- **Breaches of level playing field disciplines** in the field of competition (competition and subsidies) or regulatory framework (domestic regulations in services, anticorruption, corporate governance, environment, climate and labour) **should be actionable before a dispute settlement body and subject to sanctions defined in accordance with the type of rules being violated.**

- For the sake of effectiveness, the EU side should also **condition the launch of bilateral negotiations for the conclusion of preferential agreements to the trading partner abiding beforehand by its commitments under the WTO framework and/or bringing remedies to recurring market access issues met by EU businesses** (following the pattern of the so-called TBT list discussed with Japan ahead of the conclusion of the EPA).

- Ultimately, **possibilities to action trade defence instruments (safeguards, antidumping duties and anti-subsidies duties)** should be

further strengthened. The reform enforced since 2018 extended the scope of legal persons entitled to make a submission for the launch of investigations and shortened certain procedural steps but the EU legislator should go further, **including by allowing impacted industries to challenge a decision not to impose duties or to lift duties.** To strike a fair balance, the needs of downstream industries should also be fully taken into account when conducting the costs/benefits analysis of potential trade defence measures.

3.

WITHOUT NEGLECTING THE WTO FRAMEWORK, EU TRADE POLICY SHOULD MAINLY RELY ON BILATERAL NEGOTIATIONS, FOCUSED ON MARKET ACCESS IN SPECIFIC PRIORITY GEOGRAPHICAL AREAS AND THE PROPER HANDLING OF RELATIONSHIPS WITH THE UNITED STATES AND CHINA

Clear support to WTO reform but priority to bilateral initiatives

- The WTO crisis, made even more obvious by the upcoming blocking of the DSM appellate body, reminds how central the WTO is in **providing an institutional framework and a basic rulebook for international trade relationships.**



- Large French companies therefore **support EU-lead and other coalitions' efforts to rebuild and equip WTO with revised disciplines aiming at better regulating international trade in the twenty-first century**, notably when trade tensions can only be addressed at multilateral level (overcapacities on steel or aluminium markets for instance, treatment for emerging economies).
- That being said, **bilateral or plurilateral negotiations (such as TiSA, EGA or electronic trade) remain the most efficient instruments to further liberalise trade with our trading partners and to expend disciplines on level-playing field**. In this respect, large French companies recommend that **EU policy makers follow the path initiated in 2006 with the « bilateral turn » of EU trade policy**.

Targeting market access in high-growth areas

- Bilateral trade negotiations **should more focus on priority geographical areas**, notably with regard to the **economic potential of trading partners as well as the cost benefit analysis of potential trade deals** (negotiating efforts and importance of trade barriers to dismantle versus the significance of the market to secure).
- Given their development level, **ASEAN and South Asia countries should come first in the EU negotiating agenda**. The EU should rapidly relaunch negotiations with the most valuable trading partners in the ASEAN region such as **Thailand and Malaysia** taking advantage, as far as Malaysia is concerned, of the CPTPP ("Trans-pacific 11 Agreement") acquis in numerous fields. Large French companies would also welcome the speeding up of negotiations with Indonesia, based on the size of its domestic mar-

ket. Equally, the value of the **Indian market fully justifies resuming bilateral negotiations on investment liberalisation and protection**, despite hurdles met so far as well as current protectionist trends.

- Albeit political instability and intraregional tensions, large French companies recommend that **bilateral negotiations with Middle East and North African countries** are resumed and/or strengthened, in parallel with a support to the relaunch of regional integration.
- **Custom union with Turkey should be deepened** with a removal of existing obstacles to trade through improved custom facilitation, dismantling of technical barriers and liberalisation of trade in services. The same attention should be paid to **economic ties with Maghreb countries**, especially in on-going negotiations with Tunisia.
- Large French companies have a growing interest in the markets of sub-Saharan African countries. **They support the European Commission's initiative toward a new partnership with African countries**, aiming at fostering interregional integration and concluding on the middle run an FTA with all African countries. Beforehand, the EU should deepen existing trade ties with every single regional block, and notably opening negotiations on non-tariff matters. Relationship to Africa should also target a disentanglement from trade axes forged by our main trading partners in the region (see first section).

Regulating tensions with the United States and China

- Under its comprehensive strategies towards the United States and China, the EU should **make sure that ongoing or upcoming bilateral negotiations result in relaxing trade tensions**



and forge a new balance of power with them, without departing from basic principles anchored in WTO rulebook or making new concessions at the expense of EU businesses.

- In the case of the United States, large French companies **support the maintaining of the ongoing trade high-level dialogue and the opening of bilateral negotiations on the basis of the so-called Juncker-Trump scheme in order to avoid a tariff war spiral** and obtain the dismantling of additional duties on steel and aluminium products. In this respect, the negotiating scope should include **all industrial tariffs including automotive product, a wide range of tools for enhanced cooperation on technical barriers (including notably chemicals) and even services and investment liberalisation, without touching upon agricultural goods**. In any event, the EU should not go down the path of voluntary quotas, in breach with WTO standards. In case of unilateral measures imposed by the United States, **large French companies support the adoption of rebalancing measures, subject to conditions mentioned above** (see first section).

- In the case of China, the EU should further combine **bilateral negotiations on investment and geographical indications and bilateral discussions on the WTO reform or the accession to the Agreement on government procurement (GPA) in order to convince China to enlarge market access for EU businesses and, above all, undertake commitments on level playing field disciplines**.

In the event negotiations on WTO reform would face a stalemate, the EU should push forward the **idea of a plurilateral agreement with the main players regarding improved disciplines for industrial subsidies and technological transfers**.

4

NEXT FREE TRADE AGREEMENTS SHOULD REACH A RIGHT BALANCE BETWEEN INCREASED MARKET ACCESS AND RULES ON LEVEL PLAYING FIELD AND BETTER TAKE INTO ACCOUNT THE ONGOING DIGITALISATION OF INTERNATIONAL TRADE

Continuous push toward the removal of non-tariff barriers

- Free trade agreements should continue to ease trade liberalisation in all dimensions of our economic relationships with trading partners. Despite the current United States tendency to focus their trade policy on tariffs or trade balance, the EU negotiating objectives should **still include tariff erosion, services market opening and dismantling of non-tariff barriers for goods, services and government procurement contracts**.

- Large French companies therefore recommend the **deepening of regulatory convergence and regulatory cooperation mechanisms in the field of technical standards**, and, in particular, mutual recognition of conformity certificates issued by third-party bodies. In this area, the EU should, as a matter of priority, seek the **wide spreading of EU standards or, alternatively, of international standards agreed in multilateral fora on a fair basis**.

- In a context of fierce technological competition, multilateral and bilateral negotiations should aim at **strengthening the protection of**

intellectual property rights, notably through « TRIPS plus » disciplines, a better protection of business secrets and fight against forced technological transfers imposed when EU companies conduct investment projects or go through licensing or certification procedures.

- Since their access to international markets largely rely on direct investment abroad, French large companies recommend that trade negotiations still **favour liberalisation of investment flows and protection of direct investments**, and in particular, the removal of discriminations against foreign investors such as the obligation de create joint-ventures with local partners or uneven access to loans.

- The splitting of free trade agreements into distinct trade agreements and investment agreements, decided for the conclusion of the EU-Japan EPA or the EU-Singapore FTA **should not result in investment protection disciplines being neglected**. These rules still make up for **the best instrument to secure a good business environment and guarantee a speedy settlement of investors-host State disputes**. The EU should therefore rather insist on **improving procedural rules in existing bilateral arbitration mechanisms** than try to convince other trading partners to establish a multilateral investment court that could result in additional procedural burden.

Developing level playing field disciplines

- Market access gains secured by free trade agreements can only be beneficial for EU businesses if they are backed by **disciplines aimed at ensuring a level play field** that can prevent predatory behaviours by third countries competitors (dumping practices possibly fuelled by distortive subsidies, unfair business practices or

levelling-down of labour or environmental standards).

- The EU should therefore continue to promote at multilateral and bilateral level **competition disciplines inspired by EU competition law as well as stronger disciplines framing industrial and services subsidies that cover subsidies to and by state-owned enterprises and enlarge the number of prohibited subsidies**, with a broader presumption system to prove alleged injuries.

- Equal and fair access to tendering procedures and conducting acquisition/merger operations on a mutual trust basis also requires the inclusion, in specific FTAs, of **anti-corruption disciplines and of a basic rulebook on corporate governance**.

- **Fair competition also commands minimal standards on labour, climate change mitigation and environment**. French large companies support a systematic link between free trade agreements and the Paris Agreement on climate change as well as the inclusion of climate-related disciplines to make sure that potential gaps in « carbon competitiveness » between EU and third countries are reduced. The **EU should insist on spreading best environmental practices throughout free trade agreements** (increased access for green technologies and services, measurement of the impact of existing antidumping and antisubsidies rules and measures on the reduction of carbon emissions).

Addressing the challenges of digital trade

- Given the rapid spread of digital technologies in international trade, **the EU should take a more offensive stance in the making of international and bilateral disciplines on digital trade**, with a view to curbing down restrictions imposed by



certain trading partners and **avoiding that the EU is eventually constrained to take up standards forged in free trade agreements concluded between third countries.**

■ EU trade negotiators should therefore **seek the removal of restrictions to data flows that are not based on objective public security grounds, and, notably the removal of data localisation requirements.** Negotiating directives

should also provide that **discussions on reciprocal adequacy decisions take place in parallel with free trade agreements negotiations, in order to ease flows of personal data at the time agreements entry into force.**

■ Free trade agreements should **establish frameworks for regulatory cooperation on standards relating to cybersecurity, artificial intelligence and e-commerce.**

***AFEP** is the French Association of Large Companies. It represents 115 of the largest companies operating in France. It takes part in public discussions by providing pragmatic solutions to foster the development of a competitive French and European economy.*

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