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European Commission's public consultation on the review of the EU trade policy

Contribution by AFEP (Association of large French Companies)



AFEP, the French association of Large companies, welcomes the initiative by the European Commission to launch an anticipated review of the EU trade policy, notably to take into account the impact of the on-going sanitary and economic crisis on international trade and the EU economy.

AFEP already contributed to the debate by circulating in April 2019 a comprehensive paper on large French companies' priorities for the update of trade policy and is presently happy to be given the opportunity to submit further comments in the context of the on-going public consultation.

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■ Building more resilience-internal and external dimension

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

Despite significant assets (largest market in world, innovative and industrial basis, skilled labour force), the EU's position has been recently challenged by an increased competition of emerging economies, the rise of the US unilateralism and the consequence of US-China tensions, especially on the technology front. In addition to this conjunctural crisis being worsened by the Covid 19 pandemics, the EU could be severely **hit by the collapse of the multilateral trade system** and **distanced on new technologies**.

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In response to this worrying situation, French large companies call for a more assertive EU industrial and trade policy, focused on **strengthening the EU internal and external competitiveness** and **increasing the EU capacity to respond to challenges** posed by other trading powers, the US and China at the forefront.

Internal competitiveness as further explained under reply to question 2 and 6, requires **a genuine industrial policy focused on internal reforms, RD in technologies that would enable the green and digital transition and the emergence of EU-based global competitors**. French large companies **support the EU green deal and digital strategy** to move towards a more sustainable and efficient economy and see the renewal of the industrial policy as a key element to deliver on these objectives.

This internal shift towards a more competitive EU industrial basis implies a synergy of EU industrial and competition policies to this end. External competitiveness requires to sustain **efforts towards the opening to third countries markets through plurilateral or multilateral agreements** and the **adoption of level-playing field disciplines** to prevent or redress unfair practices. At the same time, the EU should adopt several **enhanced or supplementary trade instruments to reflect this level-playing strategy** (see replies to questions 2, 6, 8 and 12).

A more responsive EU trade policy also implies to work on **the overhaul of the multilateral framework** (see reply to question 3) and in parallel elaborate **comprehensive trade strategies towards the United State and China**, as already proposed by the European Commission and the European External Action Service.

Only such strategic tools might help the EU **defining the right policy mixt towards the two other main trading powers** and to be better protected against the impact of their on-going confrontation. This strategic review should **identify areas of cooperation and space for trade negotiations** in a multilateral or bilateral setting but also sectors for which the EU should be more **assertive towards both countries and/or seek larger alliance with other trading partners**. While large French companies think that stabilising and comforting trade ties with the United States and China in a multilateral or bilateral framework is important (see reply to question 5), they also value an **improved capacity to strengthen EU own position**.

With a view of defining FTA strategy, this should lead to the **definition of EU "geo-economic interest" in order to secure trade and investment corridors, notably in front of the Chinese One-Belt -One Road initiatives** (see again reply to question 5).

On a more defensive front, the EU should also protect its businesses against **extraterritorial effects of legislation adopted by trading partners**. AFEP advocates an **in-depth review of existing legal tools such as the "blocking regulation"** (regulation n°2271/1996) **to provide the EU with more credible responses** and suggest that, in the context of discussions on the e-evidence regulation and a EU-US

agreement on judicial cooperation, EU companies should be better equipped **to object requests by judicial authorities of third countries when they might result in communicating sensitive information** including on business secrets.

Similarly, EU strategic industrial interest should be **further protected**, especially during the on-going economic crisis. Large French companies welcomed the **adoption of the regulation on foreign investment screening in 2019** as well as the **communication published by the European Commission in March 2020 to the opportunity to adopt screening mechanisms in all Member States**. The enforcement of the regulation should give way to an effective cooperation between Member States.

Depending on this outcome AFEP suggests either (1) a **rapid strengthening of the regulatory framework with the obligation for all Member States to set up a screening device and a more binding EU-level decision making process for the most sensitive projects** or/and (2) allowing for structured cooperation either between Member States or **between the European Commission and the various EU industrial ecosystems identified under the renewed industrial policy**. The latter cooperation would in any event allow for a better oversight of sensitive transactions along the overall supply chain.

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

US-China trade tensions as well as the handling of Covid 19 sanitary crisis have shed light on the **vulnerability of certain EU supply chains** and the **EU further dependency on foreign markets** for the supply of essential final products such as pharmaceuticals or personal protective equipment (EPP) or **strategic equipment such 5 G technologies**.

This situation should be remedied via a mix of **plurilateral/bilateral/ domestic and trade measures**.

Unilateral responses

The reduction of EU dependency on high-technology products and services implies a **significant strengthening of the EU industrial basis**, and notably **an increased effort on RD** by the private sector and renewed policy to boost public investment and **EU attractiveness for private and intra-EU and foreign direct investment**.

Such a policy mix requires several domestic reforms (legal and administrative simplification and restructuring, taxation overhaul in a number of Member States) and should be **supported by the EU trade policy in terms of structural disciplines** (IPR protection and fight against forced technological transfer, level-playing field rules for competitive behaviour and social/environmental standards) and sectoral policies on **digital trade** as described under the reply to questions 3, 6, 8, 10,11 and 12. As mentioned in reply to questions 1 and 12, **investment screening mechanisms** also play an important role in preserving EU critical capacities in sensitive sectors.

The need of a sufficient degree of autonomy for the supply of essential or strategic goods or services may impose stockpiling or capacity building and, to a lesser extent, **specific and targeted relocation schemes** to be developed or at least coordinated at the EU level. AFEP suggests that the **identification of these sectors is made by industrial ecosystems following the approach developed for the renewed industrial policy** if and when appropriate. In this respect, it could be useful to set up **consultative committees gathering the representatives of these ecosystems** to specify goods and components to be targeted.

As far as legal means are concerned, large French companies alert against **any protectionist twist**. Unlike during the first phase of the Covid 19 epidemic, export restrictions should be limited to a small number of products and be made WTO compliant. The same way, except when security and public order in the sense of investment screening is at stake, **relocation schemes shall not be mandatory for EU businesses and shall not result in the ban of purchasing foreign products or procuring foreign services**. They should therefore be designed on a voluntary basis and funded with adequate public financial support to help covering relocation costs.

In any event, there is an obvious **need of improving the robustness and reliability of EU supply chains across the board**. A first and important step could consist, for each company, in **reviewing its entire supply chains and to identify both weaknesses and corrective measures to be taken**.

However, AFEP considers that **the initiative and the conduct of this review should be left to individual companies, the supply chain being a key element in their industrial strategy**. Not even mentioning confidentiality and trade secrets issues, **the structure as well as the sourcing countries of supply chains should remain business-level decisions** and be preserved from political/administrative interference. Moreover, the reliability of supply chains depends **on many other factors than the geographical origin of components** and remedies must be found within individual companies possibly product line by product line. A misapprehension of business operations could lead to unwanted results such as the disorganisation of value chains and a less performing output for EU companies.

Therefore, large French companies warn against **any EU regulatory framework that would impose specific structures for EU supply chains, disclosure of information on the supply chains or procedural steps to be taken by EU companies to investigate or modify their supply chains**. By contrast, **the issuance of non-binding guidelines on how to check and improve the robustness and reliability of supply chains could be a useful methodological tool** for middle-range companies that are not familiar with these practices. Again, **ecosystem consultative committees could be instrumental in designing the sectoral aspects of these guidelines**.

Multilateral and bilateral responses

Except for strategic sectors, AFEP agrees that overdependency to a single sourcing country can be rather redressed by a **geographical diversification** of supply chains than large relocation schemes within the EU, especially when there are clear obstacles to moving back production sites into the EU..

EU trade policy should therefore support this diversification both in **continuing to develop a vast network of bilateral FTAs** in complement to WTO commitments (based on criteria developed under reply to question 5) and **insist on a better implementation of existing FTAs and improved preferential rules of origin** (see replies to questions 4 and question 12 for horizontal comments). The EU efforts to expand its FTA coverage is even more important as it has become over the last decade a proper **"insurance policy"** against the failure of the multilateral system.

In addition, the Covid 19 sanitary crisis has highlighted the **importance of trade facilitation measures and custom cooperation in connection with sanitary measures**. Even if most trade irritants occurred at the early stage of the crisis resulted from deliberate trade restrictive measures adopted by individual countries (notably export restrictions or bans on critical products), **lengthy custom proceedings** based on **paperwork** and/or **restrictive sanitary measures on fret by aircraft or by ship** and on **crews** have in overall worsened the situation and delayed the supply of critical goods or components.

Hence, a fluidification of international supply chains requires a further effort towards the **digitalisation of custom proceedings** (see again reply to question 4) and the **strengthening of trade disciplines on the imposition of sanitary and phytosanitary measures to shipments and crews at the border**. Not

challenging the fact that an epidemic situation requires stringent emergency measures on the import of goods and the entry of individuals on each country's territory, **plurilateral negotiations could be opened on the establishment of "essential good trade corridors" as the EU has done within the internal markets, with sanitary protocols covering also the regime applicable for aircraft and ship crews.**

▪ Supporting socio-economic recovery and growth

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

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Large French companies are of the view that the rules-based multilateral trade system, and at its core, the WTO, should be **urgently rebuild to ensure its permanence and a rebound of international trade** with a view to sustaining the economic recovery. WTO reform should simultaneously target **the improvement of the organisation's functioning as well as the profound renewal and enrichment of the multilateral rulebook.**

WTO functioning

While departing from "member-driving" logic and consensus-based decisions might prove highly difficult, the WTO governance should be significantly revised to help the organisation delivering on its two main objectives: **designing predictable and adjusted rules** for international trade and **ensuring that they are properly enforced** via sound **transparency and monitoring tools** and an **effective dispute settlement mechanism(s).**

To move away from institutional paralysis, more room for manoeuvre should be given to the director-general as well as to chairmen of WTO councils to suggest members new negotiating platforms or propose compromise solutions in pending negotiations. More importantly, **conclusion of plurilateral agreements within WTO framework should be further encouraged with additional flexibilities such as derogations to the MFN principle**, which could incentivise non-Parties to join these new instruments and/or accept their full multilateralisation.

In addition to this organisational and architectonic changes, **appetite for new negotiations on market access and removal of trade barriers would be certainly increased by a substantive modification of rules on development issues** in the WTO, and **notably on special and differential treatment**. AFEP totally supports the EU objectives to redefine this regime, notably to make sure that **fast-growing emerging economies cannot enjoy a derogatory treatment which is no longer justified in term of development level and that constitutes a breach in terms of level playing field.**

Whereas it has long sustained the organisation's legitimacy after the Doha Round deadlock, the **enforcement function of WTO has been severely damaged** by the lack of transparency by Members on their trade and domestic policies and, even more, by the US blocking the regular functioning of the appellate body of the DSM.

The reform should then target a **rapid compromise on the reform of the appellate body with the US on board to make sure that there is an effective dispute settlement mechanism** to handle litigations between major trading powers. In the meantime, **operative rules in all WTO agreements should be revised to impose compliance with notification obligations by Members and ease counter-notifications**. This would imply to sanction lack of notification with the inversion of the burden of proof or even the possibility for Members to decide countermeasures for the most serious cases. In addition,

grave trade distortive measures revealed by trade policy review should also give way to countermeasures, possibly under the supervision of the General Council and the DSM.

WTO rulebook

From a business perspective, **three structural evolutions** in international trade **deserve an urgent update of WTO rulebook**.

First, WTO rules should be revised and supplemented to **remedy tensions triggered by the coexistence of market economies and state-influenced economies** that has so far proven trade-distortive at the expense of EU companies. As a matter of priority, the EU should pursue its cooperation with the US and Japan to **promote the revision of the Agreement on subsidies and countervailing measures with the enlargement of prohibited subsidies and actionable subsidies and the inclusion of state-owned enterprises** in the scope of the notion of public body.

With a view to strengthening EU trade defence instruments and notably the antidumping methodology, the **notion of market economy** in the GATT and the Agreement on GATT Article 6 should be further elaborated in order to avoid an application to sectors in which state influence remains overwhelming. **A body of horizontal rules on state-owned enterprises** is also required to address trade distortions outside of the scope of manufactured goods and establish a “competitive neutrality”.

The rulebook update should also aim at **redressing distortive practices in the field of investment and intellectual property**. AFEP supports EU efforts, in coordination with other trading partners, to promote the fight against forced technological transfers that can result in GATS, TRIPS and TRIMS revisions, notably to reinforce **prohibitions against the violation of patents or trade secrets at the occasion of licensing procedures** and when **conducting direct investment** in a host country.

Secondly, the need for **climate change mitigation and other environmental-friendly measures** and trade and investment distortions they might trigger without an international framework, **call for the introduction of a sustainable development pillar under the WTO**, both via a revision of core agreements and **the development of specific instruments**. AFEP suggestions are specified under the reply to **question 4** and mainly under **question 8**.

Thirdly, the move towards **digitalised economies and trade flows** will require **new sets of disciplines** as well as a possible **revision of existing instruments such as GATS or TRIPS**. A first important step toward this direction is the **ongoing e-commerce** initiative that should clarify that electronic transmissions are not subject to custom duties and should lay down basic principles on digital trade. AFEP position on the matter is developed under the replies to **questions 4, 10 and 11**.

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

Maximising the benefit of existing FTAs

Maximising the benefit of existing FTAs for EU company largely depends on a **better implementation and enforcement of these agreements on the EU side**, the case of the implementation by our trading partners being commented under the reply to question 12.

For EU exporters or EU companies sourcing in third countries for their final products, **custom proceedings remain a key issue for using lower tariffs provided by FTAs**.

Standardisation and simplification of preferential rules of origin (PRO) should be prioritised to help EU suppliers **complying with PRO requirements** and EU companies **to best adjust their supply chain when changing sourcing countries**. As experienced in the case of the EU-Japan EPA, protocols on certificates required to prove the compliance with PRO **should insist on the reduction of administrative burden and burden of prove imposed on exporters/importers**.

As mentioned under the reply to question 2, large French companies insist on the **need for further trade facilitation measures**. While the Trade Facilitation Agreement (TFA) has allowed for major progress, the EU should incentivise its trading partners to **speed up the implementation of this agreement**.

More generally, custom proceedings should undergo a **larger digitalisation process**. Via on-line submission of custom declarations and required documentation and the generalisation of blockchains as an authentication process, **clearing proceedings should be accelerated for the benefits of exporters and importing authorities**. Therefore, the **digitalisation of custom proceedings and interoperability between custom electronic systems** should become an important aspect of EU-proposed trade facilitation and custom cooperation chapters.

As far as services and investment are concerned, the main room for improvement remains the field of **domestic procedures**. Even when a sector enjoys large market access and/or national treatment commitments, establishment or cross-border service supply may be hindered by **excessively long registration or licensing processes, confidentiality and IPR issues**, administrative burden due sometimes to a fragmentation of competent authorities and lack of pre-judicial dispute settlement mechanisms. The promotion of **electronic proceedings** should be one of the core elements of EU-proposed chapter on domestic procedures along with **transparency, diligence, and protection of IPR**.

AFEP supports the **development of investment facilitation frameworks** either under the current initiative being **negotiated under WTO umbrella** or in the **EU FTAs**. In addition to disciplines listed above, principles such as **single-window, administrative support and mediation** for investors are welcome.

However, large French companies insist that **investment facilitation should not be an alternative to the lack of investment protection and keep requesting the conclusion of investment agreements with third countries covering both market access and protection** and, to maintain the attractiveness of the EU for EU investors, **the adoption of an intra-EU protection framework after the dismantlement of bilateral investment treaties**.

Regulatory cooperation

As in a number of technical areas, and especially in the field of digital and green technologies, international mandatory standards have not been developed or are still in progress, **international regulatory cooperation is a key element to facilitate the convergence towards harmonised** or, at least, **compatible/interoperable technical requirements and should be systematically promoted under the WTO and under the EU bilateral FTAs**.

As already foreseen in several EU FTAs, regulatory cooperation should be envisaged **as an alternative and/or a complement to alignment on international standards** and designed in a **two-track mode**: commitment to **cooperate in international fora** with a view to reaching common position on new international standards and commitments to a **bilateral cooperation to improve common understanding on respective regulations, ease convergence in regulatory approaches and when possible facilitate mutual recognition** (see below).

AFEP recommends the development of ambitious regulatory cooperation frameworks in the field of **digital technologies to cover emerging technologies** (AI, blockchains, Internet of Things, digital identities etc) and horizontal **cybersecurity requirements**. Similarly, international cooperation on regulatory approach and standards for green technologies is also required to **complement and support negotiations on market access for green goods and services** (see reply to question 8) and avoid that **standards on low carbon emissions for instance are developed in a discriminatory manner or are made incompatible**.

Without limiting each Parties' rights to regulate, regulatory cooperative frameworks established in EU FTAs should promote, along with disciplines developed in relevant provisions on domestic regulation, **best practices in the preparation of domestic technical regulations for standardisation and/or licencing procedures : increased transparency, risk-based approach, non-discrimination, search for maximum interoperability, alleviation of administrative burden, non-disclosure of IPR protected elements and prohibition of forced technological transfers, consultation of interested parties and pre-notification to the other Party for comments**.

Another important aspect of regulatory cooperation is the development of **mutual recognition agreements**. Achieving, on a sectoral basis, mutual recognition of respective technical standards is of course a first best but large French companies also value efforts toward the **mutual recognition of conformity assessment procedures and conformity assessment tests** to the extent there is a **degree of reciprocity in market access terms** for certification services in both jurisdictions.

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

Not denying the importance of a vast and diversified FTA network (see replies to questions 2 and 4), AFEP is supportive of **prioritizing trade negotiations with major trading partners and specific geographical areas** in line with their importance for the EU companies and the need to best use EU negotiating capacities.

As far as major trading partners are concerned, specific attention should be paid to the **United Kingdom, the United States and China**.

For the time being, achieving a **comprehensive economic and strategic partnership with the United Kingdom is an urgency** for large French companies given the geographical proximity, the size of the UK market and the economic integration that took place before the withdrawal from the EU. In case both parties cannot agree on a deal covering most aspects of the bilateral trade and investment relationship before the end of the transition period, **this would remain important to dedicate important resources for the later conclusion of complementary side-agreements**, bearing in mind that the overall result should **strike a satisfactory balance of commitments and meet level-playing field criteria and disciplines mentioned** under replies to questions 1,3, 6, 8 and 12. On this latter point, AFEP fully supports EU negotiating directives.

Subject to the conclusions to be drawn from the strategic review suggested under the reply to question 1, large French companies believe that the **EU should still try to negotiate trade agreements with the US and China when relevant to sort out major irritants or comfort the multilateral system**. While the TTIP experience has proven that negotiating a comprehensive agreement with the US or China is extremely difficult, it is possible to target arrangements under the WTO or a plurilateral setting and sectoral bilateral arrangements.

In case of the US, **regulatory cooperation, industrial tariffs, aircraft subsidies and certain digital trade aspects should come in the forefront**. As for China, large French companies call for a rapid and fruitful conclusion of the EU-China investment treaty and **for an alignment on structural disciplines agreed in the US-China “first stage” agreement** if these concessions cannot be granted under the WTO.

Regarding the prioritisation of specific geographical areas, large French companies are of the view that this should be done on the basis of **transparent and objective criteria**, such as, by descending order, **economic growth** and **potential market for EU products and services**, **“geo-economical” interest** of countries or regions (i.e. strategic role of a region in the diversification of EU supply chains or in establishing/comforting **trade and investment corridors**), convergences with trading partners on negotiating objectives etc.

Combining the two first sets of criteria, AFEP still favours **ASEAN countries** as top priority trading partners for the conclusion of comprehensive FTAs, Thailand and Malaysia being in the first place and to a lesser extent – due to political complexity-South Asian countries. **These two regions offer the most promising markets for EU businesses in terms of trade and investment opportunities** and make up for **valuable alternative to China with a view to rapidly diversifying the supply chain and consolidating an “Indo-pacific” trade corridor** beneficial for the development of EU companies in the Asia and the Pacific region.

Large French companies have nonetheless **a strong interest in developing closer trade and investment ties with neighbouring countries**, and in particular, **Middle East, Turkey, and Africa**.

As far as Middle East countries and Turkey are concerned, two prerequisites are needed. On the one hand, **several existing trade irritants should be first resolved**, especially when they jeopardise existing frameworks such as the EU-Turkey custom union. On the other hand, while the Euromed framework can still be used for targeted results such as preferential rules of origin standardisation, the **effective deepening of trade liberalisation should occur under more favourable formats** such as bilateral FTAs or more limited regional agreements.

Recognizing the important potential of African countries and the need to counterbalance Chinese influence on the continent, AFEP calls for a parallel move **between the deepening of EU-Africa FTAs and regional/panafrican economic integration**.

Extension of existing region-to region EU agreements in the field of services, investment and government procurement would prove effectively beneficiary if African regional communities concerned are simultaneously **making progress towards trade liberalisation and facilitation, economic convergence and improved connectivity** within each region and, then, at Panafrican level. With a view to incentivising African countries to this move, EU could include such parallelism as a conditionality for further liberalisation. In the meantime, the EU **should continue to provide, in addition to SPG treatment, further technical assistance** especially on **custom matters**, to help African countries meeting the TFA requirements and to make domestic custom infrastructures fit for further integration.

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

As clarified under the reply to questions 1, 4, 10 et 11, **a strong synergy** is required between EU trade policy and EU industrial policy along with EU competition policy. This implies **a better alignment of EU trade policy with EU industrial policy objectives** (covering manufacturing industries but also services such as B2B services and digital services), with the understanding that developing EU industry cannot result in an increased protectionism.

Structural alignment

To ensure the long-term competitiveness of EU industries, **EU trade policy should protect and value its companies' investments in terms of RDs in the EU and in third countries.** This requires continued efforts to **promote higher IP protection standards at multilateral and bilateral levels**, notably in **targeting TRIPS plus disciplines in FTAs and an improvement of TRIPS agreement to reinforce the protection of patents, industrial designs and trade secrets** and to fight against forced technological transfers.

At the same time, since the development of a strong industrial basis in the EU cannot be envisaged without export and also investment in third countries, both to procure supplies and to gain market access, EU trade policy should continue to **eye ambitious investment agreements including both investment liberalisation and protection** as mentioned under reply to question 4.

From there, EU industrial policy can only succeed if **a level playing between EU industries and third countries' competitors is achieved.** In addition to the support to RD and technological advances, it requires that the EU continues to promote **international disciplines on competition and subsidies, on regulating state-owned enterprises' activities as described under the reply to question 3.** In parallel to this international framework, the EU should use a set of **unilateral tools, from trade defence instruments to a future "IPI" and a legislative package on foreign subsidies** to further guarantee fair competition with third countries as explained under the reply to question 12.

Contribution to the new objectives of renewed industrial policy

When it comes to fuel the post-Covid 19 recovery, EU trade policy should contribute to strengthen EU supply chains throughout mostly **diversification and targeted relocation schemes** as outlined under the reply to question 2.

Regarding the transition toward a more sustainable economy, the EU trade policy alignment on the EU industrial policy requires a full set of **multilateral, bilateral and unilateral solutions** to be described in detail under the reply to question 8 : **WTO sustainable development pillar, green annexes and sustainable development chapters in bilateral FTAs** and unilateral measures (border carbon adjustment and mandatory green standards for instance).

The digitalisation of the EU economy should be supported by a **dynamic EU digital trade policy** that would create **new business opportunities in third countries via the opening up of foreign markets for a vast array of digital services** and also **protect EU innovations and products in the context of digital trade.**

As outlined in detail under the reply to questions 4 and mainly 10-11, **EU trade policy should contribute to the liberalisation of cross-border data flows** which will be the new "fuel" for a number of digital services and the rise of "industry 4.0" in the EU as well as the development of **artificial intelligence or block chains solutions in a cross-border context** while reinforcing **non-discriminatory cybersecurity requirements and the fight against counterfeiting on e-commerce platforms.**

Finally, to make sure that EU trade policy can best adjust to the very different needs of industrial sectors, large French companies suggest that **the new methodology adopted for the renewed industrial policy -isolating specific ecosystems and identify tailored policy measures-**is also applied to trade policy. This might be very useful to determine, ecosystem by ecosystem, the most appropriate set of tools and the right balance between these instruments (improved market access, reinforced regulatory cooperation or/and level-playing field measures).

▪ Supporting the green transition and making trade more sustainable and responsible

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

AFEP fully agrees that **EU trade policy should contribute to the transition of a more sustainable world economy**, with **three main objectives** to be met simultaneously:

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- **improving the impact of international trade in terms of climate change mitigation, biodiversity and social standards;**
- **making sure that this move towards a more sustainable economy and trade creates new market opportunities and more jobs** and
- **reducing the competitive edge** that discrepancies in environmental and social standards between trading partners can generate at the expense of the EU companies with the risk of carbon leakage and job offshoring.

To concretely deliver on this objectives, large French companies advocate **the further development of rules on trade and sustainable development at multilateral and bilateral level** but also **a set of unilateral measures**.

WTO and plurilateral framework

On the WTO front, it is urgent to first clarify how **UN sustainable development goals can be achieved in the context of international trade rules without resorting to GATT or GATS general exemptions** to adopt climate-mitigation measures for instance. To open the debate and initiate new negotiations on the matter, the EU should promote the reactivation of the mandate given to the Committee on Trade and Environment (CTE) to **examine how to legally articulate WTO rules with multilateral environmental conventions** such as the Paris Agreement and **to enable the conclusion of a new body of rules on trade and environment and trade and social standards (“WTO sustainable development pillar”)**

In parallel with this architectonic review, the EU should trigger or/and join initiatives among likeminded WTO members towards the **launch or the revival of concrete multilateral/plurilateral negotiations on “green” trade disciplines** that could at some point integrate the WTO SD pillar. The EU could for instance consider joining the WTO coalition on **the Fossil Fuel Subsidies Reform (FFSR)** and supporting **initiatives on trade of recycled goods such as plastic**.

As far as the increase of market opportunities is concerned, AFEP advocates the rapid **resumption of the plurilateral negotiations of the Environmental Goods Agreement** as well as its possible extension to **environmental services** for which EU companies are particularly competitive. To favour the convergence between trade negotiations and enforcement of the Paris Agreement, it would be important that **the notion of “environmental goods” also cover goods with lower carbon intensity in addition to “enabling goods”**. Regarding enabling goods, the EU should insist that, against attempts made by certain third countries, the list is limited to products directly contributing to climate change mitigation, improving energy security or providing access to cleaner energy. Last but not least, a **plurilateral initiative should be also launched on green standards applicable for trade in goods and in government procurement** to legally secure the use of such standards, avoid, as mentioned

under reply to question 5, the establishment of new technical barriers to trade and conversely make sure that **low-standard goods cannot benefit from tariff erosion**, preventing unfair competition.

Bilateral framework

Given the constraint of the WTO framework, **bilateral trade agreements certainly make up for a more promising avenue to adopt ambitious provisions on trade and sustainable development.**

While EU trade and sustainable development chapter already include comprehensive references to multilateral environmental agreements and International Labour Organisation (ILO) conventions, the emphasis should now focus on the **further incorporation of the Paris agreement obligations as well as national determined contributions** into bilateral FTAs and the **inclusion on provisions on the limitation of fossil fuel subsidies.**

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With a view to triggering additional market and investment opportunities, AFEP also suggest that **tariff erosion takes into account carbon content and/or energy efficiency of products**, via green annexes as in the EU-Singapore FTA or via a **general “decarbonisation” of tariff lines.** The same approach should be taken for **trade in services and investment liberalisation.** For services, negotiations could target **improved market access for green services and services with a lower carbon footprint.** As for the WTO/plurilateral framework, EU FTAs should also include **provisions on green standards.** In the field of direct investment, the EU could consider linking **market access with the application of instruments comparable to the EU taxonomy.**

Enforcement of multilateral and bilateral trade and sustainable development provisions

Based on the need for level-playing field in terms of social and environmental obligations, AFEP strongly supports that **trade and sustainable development provisions are entirely subject to dispute settlement mechanisms** and that **breach of commitments undertaken by Parties leads to countermeasures by the other Party(ies)** if the dispute settlement body reaches such determination.

In the context of EU bilateral FTAs, it might be appropriate to **maintain the dispute settlement setting** currently proposed by the EU in its recent agreements, namely **an expert panel** designated by both parties to review labour-related disputes and **extend it to disputes on the observance of environmental obligations.**

But, in contrast to the present situation, the proper enforcement of TSD chapters requires that the **expert panels are entitled**, after determining that specific obligations have not been adequately observed by the defending party, **to recommend countermeasures** that could be either the **withdrawal of specific commitments** such as tariff reductions or market access /national treatment schedules in services or **the imposition of financial penalties** as provided for in some non-EU FTAs.

Since the rationale for this “sanctionability” of TSD chapters should be mainly **to redress unfair competition due to the breach of social and environmental standards**, AFEP suggests that the recommendation by a panel whether a breach should give way to countermeasures is **based on a “competitiveness test”**, meaning that experts verify beforehand that **the violation in cause has effectively given a competitive edge to the Party’s businesses at the expense of the other Party’s companies.**

Unilateral measures by the EU

In any event, given the possible reluctance of trading partners to engage on more ambitious trade and sustainable development provisions or renegotiate existing FTAs to this end, the EU should adopt

unilateral trade measures to reflect its objectives in terms of green transition and combat unfair competition by other countries’ businesses based on lower environmental and social standards.

For instance, large French companies support the preparation of a legislative initiative on **a carbon border adjustment mechanism** to incentivise trading partners to adopt carbon pricing mechanisms provided that this tool is **combined with other trade measures** , is **explicitly designed to minimize carbon leakage effects** (via ETS free allowances or subsidies) and **is WTO compliant** to avoid large-scale retaliations from trading partners.

In this respect, a study commissioned by AFEP to be published soon brings **concrete evidences on the added value of a border adjustment mechanism** if it comes with **WTO compatible subsidies** and is **combined with appropriate international trade disciplines (see above)** to reduce both carbon emissions in third countries, foster growth and trade and reduce carbon leakage within the framework of the EU carbon neutrality by 2050.

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

AFEP, in line with practices developed by its membership, **promotes the extension of responsible business conduct (RBC) along the supply chain, as far as human rights, social rights and environmental standards are concerned** in all countries where French companies operate.

Large French companies therefore welcome the **further inclusion of RBC objectives in EU internal market and trade policy framework**, to the extent this policy shift:

- **ensures a level-playing between EU companies** regardless of the Member State where they are incorporated and/or have their headquarters
- does not result **in fuelling the existing gap between social and environmental standards** observed **by EU companies in the internal market and in third countries** in which they source their supply or locally produce, **and third countries- companies.**

As explained above, this gap is already providing third-countries companies with a competitive edge and, therefore, should not be widened.

Consequently, AFEP recommends that the strengthening of RBC considerations within the EU internal market legal framework comes along with an emphasis on RBC binding rules **in the context of bilateral FTAs under Trade and Sustainable chapters**. Where, in the current drafting, the adoption of RBC by Parties’ companies is simply encouraged and recommended, **EU FTA TSD FTAs should include the obligation for both parties to maintain a legal framework in which human rights, social rights and environmental standards are recognized and duly protected both by governmental authorities and employers.**

Regarding EU unilateral policy, AFEP fully supports the preparation of **a legislative initiative on due diligence that would set harmonized requirements in terms of due diligence for all EU companies and third countries companies** either legally established in the EU and/or placing products on the EU internal market.

To ensure a widespread effectiveness of RBC requirements and a level-playing between different types of economic operators, large French companies suggest that a future legislative instrument also applies to **a large scope of undertakings: private and public-owned companies** subject to private law, **non-profit making organisations engaged in business activities or public bodies regarded as**

undertakings for the purpose of EU competition law for instance . It is also worth considering the opportunity to provide for due diligence obligations on **EU central government and local authorities** in the **context of public procurement contracts**, using the precedent of the “clean vehicle” directive or other mandatory purchase of green goods.

Regarding the **material scope of such initiative**, AFEP takes the view that due diligence obligations should focus on a **limited list of risks, to guarantee effectiveness in risk management**: and to **avoid a major legal uncertainty**

- **Risks relating to the breach of human rights** as defined by the UN Guiding Principles on Business and Human Rights (rights referred to in the International Bill of Human Rights and principles regarding fundamental rights set out in the 8 ILO conventions)
- **Environmental risks** with an emphasis on air and water pollution, deforestation, and failure to provide a sustainable use of natural resources. Both climate change and reduction of biodiversity pose significant issues in terms of risk assessment since it is extremely **difficult to establish an effective causal link between a company’s specific activities and these two type of environmental damages**. If a due diligence legislation were to cover these two risks, the regulatory framework should therefore be very specific on due diligence requirements expected from EU companies.
- As the **fight against corruption requires specific processes and measures**, large French companies recommend to **deal with the issue throughout a stand-alone EU piece of legislation** as France and the United Kingdom have already done and **not to include it under a legislative initiative on due diligence**.

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As far as the reach of due diligence obligations is concerned, AFEP is of the view that requirements should **only apply upstream in the value chain and not downstream** (toward distributors, clients, or consumers). Market and consumption practices are indeed most of the time out of the control of selling individual companies. The same way, large French companies insist that due diligence requirements are limited to the **first tier of the upstream value chain, i.e., direct subcontractors or suppliers, upon which they can exert contractual leverage**. Any further obligation along the supply chain would be practically and legally difficult to enforce.

As Tier-1 suppliers already make up, in case of large French companies, for an impressively big number of business partners in a wide range of third countries, due diligence requirements should focus to the **most severe risks** and consist in an **obligation of conduct instead of an obligation to achieve results**. EU companies can be bound to **make best efforts to avoid the occurrence of risks** that they identified beforehand but should not be liable for it, **since a “zero risk” outcome is clearly beyond their reach**.

While it is worth considering transparency requirements on how EU companies deal with their due diligence obligations, AFEP warns **against the mandatory publication of the names of individual suppliers or other business partners** along the supply chain. **Identity of suppliers make up for a strategic business information and should be protected as any other business secret**, otherwise EU companies might be exposed to unfair practices by their competitors. Such disclosure is also prohibited by EU competition law to prevent anticompetitive agreements. Publication obligations should therefore **only apply to the risk management policy conducted by individual companies**, focusing on the **most severe risks identified and subject to due diligence schemes**.

Regarding the oversight of due diligence obligations, it would be **extremely difficult to set up national mechanisms being able to review and redress risk management policies** by hundreds of individual companies. Such supervising authorities could in addition overlap with **existing OECD contact points for their dispute settlement activities**.

Large French companies propose instead to provide for **the designation of independent third parties accredited for the control of due diligence information published by undertakings**, in addition to the verification of non-financial statements as envisaged by the European Commission in the context of the revision of the Non-Financial Reporting Directive (NFRD).

Concerning legal consequences of due diligence obligations, AFEP firmly believes, that, in line with the principle of a mere obligation of conduct, **EU companies should not be held liable for damages occurred in their upstream supply chain unless they have directly caused the damage or intentionally contributed to its occurrence**. Following UNGP and OECD guidelines, due diligence should not result in shifting responsibility either from governments to companies or from suppliers and/or subcontractors to clients.

For cases in which civil liability for direct damages could be sought, especially when human rights have been infringed, large French companies insist on **avoiding forum and jurisdiction shopping**. If the EU courts were recognized a universal competence for dealing with all breaches of human rights, **local judicial systems would be clearly disincentivised to improve their own standards**. The same way, applying on demand EU law to civil lawsuits in third countries would result in **imposing extra-territorial effects against local legal orders and compromise legal certainty**.

By contrast, AFEP values **extra-judicial grievance mechanisms at company level** as effective means to detect the materialisation of risks and negative impacts at an early stage. They should be established in accordance with effectiveness criteria set out in Principle 31 of UNGP and safeguard the anonymity of plaintiffs. Therefore, **reporting on these internal grievance systems should be limited to the categories of concerns raised in submitted complaints**.

As mentioned above, **OECD contact points** should be further promoted as a swift and **efficient channel to remedy grievances on an extra-judicial track**.

- **Supporting the digital transition and technological development**

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

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

As briefly mentioned in the reply to question 6, large French companies are of the view that **EU trade policy should play a major role in fostering and supporting the digitalisation of the EU and the world economy throughout ambitious digital WTO/FTA disciplines offering a satisfactory access to foreign markets for EU industries using digital solutions and EU digital service suppliers.**

Importance of crossborder digital trade and the risk of digital protectionism/trade distortive measures

Digital technologies are **bringing cross-border trade to a larger scale** than traditional means either via **digital service supply or via the facilitation of transactions for tangible goods**, this trend also **fostering the equipment in IT and data infrastructures**. As a result, digital trade is the fastest growing type of trade: in its 2019 World Statistical Review, the WTO highlighted that telecom and IT services (computer and information services) have been the fastest growing sector in terms of global exports, increasing by 15%. The COVID-19 crisis has undoubtedly **accelerated this trend, with profound implications for society and governments.**

At the same time, **new ecosystems underlying the “4th industrial revolution” require cross-border large flows of data and interoperability between IT systems at international level to be viable.** This is particularly the case for the internet of things (IOT) in which equipment data are often supposed to be transmitted to remote platforms for analysis and update.

However, increasing **digital protectionism is likely to block this potential and cut EU companies from third countries’ markets** if the current tendency for digitalisation is maintained.

This protectionism takes several shapes that should address EU trade policy : **restriction to free flow of data via data localisation requirements, mandatory licensing procedures and forced disclosure of key features of digital services** such as algorithms, source code or encryption keys, **development of discriminatory technical and cybersecurity standards, predatory behaviour by local digital service suppliers.** Lack of enforcement of IPR protection and unregulated sales of **counterfeited goods on e-commerce platforms** make up for another set of distortive measures.

Scope and general level of ambition

Consequently, EU should rapidly embrace an **ambitious digital trade policy** fit for facing the **fierce technological and legal competition by trading partners** in this area. In operational terms, EU proposed provisions in plurilateral setting or in FTA negotiations should **cover a large spectrum of digital trade issues**, including on **emerging technologies such as artificial intelligence, blockchains or big data flows but also continue to improve trade rulebook for IT infrastructures covering 5G networks and cloud computing, in consistency with the EU internal framework.**

In a number of these area, **a right balance should be found between a certain priority given to the completion of the EU internal legal framework** for digital services and technologies and **the need of enabling disciplines for cross-border trade.** While the EU has so far tabled a low-ambition digital trade chapter proposal for ongoing FTA negotiations, **other trading partners are developing new sets of rules and regulatory cooperation frameworks, even via dedicated “digital trade agreements”.** Although it can rely on the gravity and attractiveness of its own regulatory framework as for the GDPR, **the current situation exposes the EU to be at some point in a situation of being a “ruletaker” instead of a “rulegiver” in the strategic area.**

Content of EU digital trade proposals in plurilateral and bilateral trade negotiations

On the substance, **insisting on the absence of duties on electronic transmissions and the liberalisation of cross-border data flows and, consequently, the prohibition of data localisation requirements** including the obligation to use local data centers or cloud computing facilities should **remain a key axis of the EU digital trade policy.** As mentioned above, data flows already play an important role for EU companies (operating or not in the IT sector) and **will be a major driver for artificial intelligence, internet of things or industry 4.0. applications.** This concerns more specifically big data and mixed data (personal and non-personal data) sets flows.

While liberalisation of data flow should not compromise the due compliance with GDPR obligations regarding the protection personal data of EU citizens within and outside the EU territory, **the current de facto exclusion of personal data from the EU-proposed drafting on cross-border data flows reduces the EU room for manoeuvre for obtaining reciprocal concessions by trading partners on the elimination of data localisation requirements.** In addition to this lack of leverage for improved personal data transfer from third countries to the EU, **the current status quo that consists in negotiating arrangements with third countries and adopting unilateral adequacy decisions,** ideally in parallel with FTA negotiations, has again proven its limitation with the recent CJEU ruling declaring the Privacy Shield agreed with the US not compliant with the protection of EU citizen’s rights under the GDPR.

In reaction to this, the possibility to **include personal data flows in the scope of EU FTAs with due safeguards could be a safer option with all trading partners,** to the extend they could agree on an **international standard for policy frameworks securing data flows with strong privacy safeguards** (against commercial misuse but also against governmental interference as seen in “Schrems II” case), and, **at least when the EU negotiates with countries that have adopted a very comparable legal framework for data protection.**

Disciplines enabling and securing digital trade, and, especially, digital transactions should also be further developed in the context of EU FTAs. In addition to provisions on the recognition of e-signatures and other certificates, EU-proposed texts should promote the mutual **recognition and the harmonisation of legal frameworks for blockchain technology and/or interoperability,** for instance, in referring to existing international instruments such as the UNCITRAL model-law on electronic transferrable records. By the same token, EU digital trade proposed chapters should also promote the

recognition of e-invoicing systems that are likely to **ease digital transactions** along with electronic transferrable records.

As far as software and artificial intelligence are concerned, **tailor-made intellectual property protection surfaces as a major common concern for large French companies**. In addition to a sound legal framework for IPR protection, there is an interest in protecting **code source, algorithms, encryption keys and their components** also from **mandatory disclosure and other form of public interference**, alongside the fight against forced technological transfers. EU digital trade proposed language should equally target the **facilitation of licensing procedures** in alleviating administrative requirements and exclude discriminatory treatment.

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On other aspects, AFEP suggests a **flexible and sector-based approach, reflecting the diversity of IA solutions and industries different expectations in terms of regulatory measures and supporting trade policy**. Numerous sectors still prioritize **self-regulation and voluntary standards**. Therefore, EU trade policy should in general **promote a risk-based approach for developing domestic regulations on AI**, as it is the case in the field of sanitary and phytosanitary measures : **focusing public regulation on the most sensitive/ risk-proven aspects of AI** and systematically **developing proportionate and non-discriminatory requirements**.

However, for many manufacturing sectors, **cross-border interoperability and international standardisation is a key element for a large-scale deployment of industrial AI applications**. Hence, AFEP suggests that the EU trade policy promotes, on a sectoral basis, such **international standardisation via a reference to existing international instruments in EU FTAs or commitments by Parties to align their domestic standards on international standard to be developed as in the field of TBT**.

As outlined under the reply to question 4, large French companies are supportive of **developing ambitious frameworks for international regulatory cooperation on digital trade matters** in the EU FTAs. Regulatory cooperation should concern all emerging technologies (AI, blockchains etc) and **include cybersecurity in general** to avoid that **legitimate cybersecurity requirements are turned into new trade barriers**.

Regarding IT infrastructures, Afep insists on the **need to combine national security concerns and strategic autonomy** on the one hand, and to **guarantee individual companies a vast array of technological solutions** on the other hand, in especially when they conduct cross-jurisdiction operations and a large amount of cross-border digital trade. These three objectives could be reconciled in promoting in EU internal policies as well as in EU FTAs **open architectures** including in the field of cloud computing or 5 G infrastructures, and **limiting restrictions to cases where foreign operators cannot rely on international commitments and/or pose national security issues for the specific operations in cause**.

▪ Ensuring fairness and a level playing field

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

Due to the coexistence of different models (market economies versus state-driven economies) and important gaps in environmental and social standards among EU trading partners, **the lack of fairness and level-playing field has become a major issue for EU companies** as expressed in a number of replies to this consultation.

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In response to a situation that has largely fuelled mounting trade tensions, **AFEP** fully agrees with the European Commission's preference (as outlined in the consultation note) for **an improvement of the international trade rulebook and dispute settlement mechanisms** instead of unregulated use of unilateralism. However, in echo to reply to question 1, a more assertive EU in the conduct of its trade policy requires that EU negotiators **are equipped with the appropriate tools** to react to unfair practices by third countries' companies and uncooperative behaviours by trading partners, especially if dispute settlement mechanisms are not operational. These imposes a significant **strengthening and enlargement of the array of existing trade instruments**.

Multilateral and bilateral disciplines supported by effective dispute settlement mechanisms

As explained in details under replies to questions 3, 6 and 8, AFEP is of the view that multilateral and bilateral disciplines on market liberalisation should be **systematically complemented by enhanced or new disciplines meant to ensure a level-playing field between EU companies and third countries competitors**. Hence, AFEP's replies to this consultation insist on **upgraded/new WTO, plurilateral or bilateral rules on competition, industrial and services subsidies, behaviour of state-owned enterprises** on the one hand and on **labour, environmental and climate standards** on the other hand.

Solutions proposed for the enforcement of TSD chapters in EU FTAs (systematic submission to standard or specialised DSM and countermeasures- see reply to question 8) should also **apply for the breach of rules on competition, service subsidies or the behaviour of SOEs**.

Proper enforcement strategy complemented by new legislative tools

AFEP welcomes the designation of a **chief trade enforcement officer in DG TRADE (CTEO)** who will in charge, in addition to trade defence, of overseeing WTO and FTA implementation. This appointment, along with the pre-existing annual report of FTA implementation, the report on trade barriers and the set-up of an "enforcement department" in DG Trade, should be the **starting point for the development of a proper EU enforcement strategy**. For FTAs to prove efficient and effective, the EU **should not be lenient towards non-compliance by trading partners**.

On organisational aspects, large French companies recommend to **mobilise larger human resources to monitor the situation in our trading partners**, both in headquarters and **in the EU delegations abroad**, in the latter case to **find information on the ground** and to **supply administrative assistance to third countries when needed**. A significant part of the monitoring and fact-finding activities can even be outsourced to local law firms as it has been done for the preparation of several FTAs.

As far the implementation is concerned, EU enforcement teams should **closely monitor transposing processes in third countries to all relevant levels**, depending on the country's legal and administrative

settings This may result in **investigating legislative, regulatory but also administrative measures adopted at central or local level**. Equal efforts should be made for **enforcement practices as such** which largely depend on the **behaviour of administrative authorities and/or private operators**.

With a view to easing the transposition process, it would also be considered to make use of regulatory cooperation framework provided in EU FTAs (see below) to **induce a dialogue on the best way to implement WTO or FTA obligations**.

In response to lingering trade irritants and/or breach of WTO and FTA commitments, the EU should gain **political and legal leverage**.

AFEP recommends that the EU systematically introduces an **“enforcement” conditionality** before considering the opening of new negotiations on market access with a third countries : **no FTA negotiations or renegotiations could be launched before the country has undertaken concrete steps towards the removing of trade obstacles being maintained in breach with pre-existing commitments**. This could be materialised by the set-up of “trade barrier lists” identifying breaches of commitment and or failed enforcement, as it was already experimented with some trading partners.

In addition to this political tool, large French companies insist that **non-compliance cases are more systematically referred to dispute settlement mechanisms under the WTO or FTAs**. If the EU is finally better equipped for fact finding and legal analysis of local situations, this should also allow for bringing more substantiated cases before the panellists.

Ultimately, to face situations where dispute settlements mechanisms cannot be activated or reach a recommendation (which can happen in the case of a FTA joint committee), AFEP advocates for the adoption of a **full array of legislative instruments that would enable the European Commission to respond to breaches of commitments by trading partners**.

Hence, AFEP **welcomes** the agreement reached between the Council, the European Parliament and the European Commission on the **revision of the so called “Enforcement regulation”** to allow the EU to take countermeasures in the event of the dispute settlement body (WTO DSM or FTA joint committee) being blocked at the **stage of appeal or even in first instance**. The inclusion of services and EU-covered intellectual property rights in the scope of potential countermeasures is a very satisfactory outcome.

As also debated in on-going discussions on the revision of the Enforcement regulation and referred to the European Commission work programme for 2021, large French companies support **the adoption of a stand-alone “anti-coercion” instrument**. The EU should be in a position to adopt **rapid and temporary countermeasures in response to flagrant, intended and grave breach of WTO or FTAs commitments** by a trading partner, **even when the functioning of the competent dispute settlement body is not impaired**.

In that context, it is worth considering the possibility that **the anti-coercion instrument could also respond to trade distortions induced by extraterritorial measures** adopted by EU trading partners, including sanctions, **in complement to the revised Blocking Regulation** as proposed by AFEP under its reply to question 1.

Without going as far as the second branch of “Section 301” tool in the United States, such instrument, duly framed in time and in its extent, would in any case **reinforce EU credibility and deterring power** in potential trade wars to come.

As it comes to responses to breaches of international trade rules, the legality of such rapid redressive mechanism could be secured when negotiating new FTAs or updating them with the inclusion of clauses

on unilateral countermeasures with, of course, a framed scope. This could for instance take the shape of a **suspension of the EU commitments**, to be periodically reassessed by the Council.

Regarding the design of EU countermeasures, AFEP insists that **stakeholders are more involved in the consultation process prior to the submission of draft measures before the Council**. Moreover, countermeasures in response to US additional duties have raised the issue of their impact on products made by EU companies in targeted countries. In addition to political considerations (for instance targeting specific constituencies to increase political pressures), **large French companies therefore suggest that the European Commission attempts to exempt EU companies' products from the scope of redressive measures**.

Furthermore, when designing the list of EU countermeasures, the European Commission should also take into account **the likeliness of subsequent countermeasures by third country on sectors targeted by EU measures** and, therefore, **minimize that risk in focusing on sectors in which the EU trade balance is in deficit to better protect EU exports**.

Upgrade of existing trade defence instruments

Large French companies welcomed the overall revision of the antidumping basic regulation as well as the revision of the dumping calculation methodology adopted in 2017. The same way, the recent decision by the European Commission to consider, in the determination of dumped prices in a third country, distortive practices occurred in another country of supply is also a very positive development.

However, the full potential of these reform **has not yet been fully tapped to tackle environmental and social competitive edge**. AFEP then **encourages the European Commission to develop a specific methodology to assess the impact of lower standards on dumped prices** as provided for by the revised regulation.

In addition, large French companies suggest a **further relaxation of the procedural framework** to allow industries impacted by dumping or subsidising practices to **challenge a decision not to impose duties or to lift duties**. To strike a balance, **needs of downstream industries** should also be considered when conducting the costs/benefits analysis of potential trade defence measures.

Level-playing field supplementary instruments

As anti-subsidy basic regulation only applies to foreign industrial goods, EU companies are currently left unprotected against various market behaviours allowed by distortive subsidies granted by third countries governments or depending bodies. Therefore, AFEP is fully supportive of **the legal framework proposed by the European Commission** in its recently published White paper on foreign subsidies to address these distortions and, in particular- of the three-module approach (general tool, tool for acquisitions and tool for government procurement).

In the specific field of government procurement, the **lack of reciprocal market opening has long maintained an absence of level-playing field between the EU and its third countries rivals**, especially since some of them, like Chinese operators, are using their critical size obtained on a quasi-monopolistic market to compete on foreign markets and within the EU. To remedy this situation, large French companies continue to **call for the prompt adoption of the so-called "International Procurement Initiative"** "if possible, during the German presidency and the rapid opening of investigation cases.

About AFEP (www.afep.com)

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions, and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has around 113 members. More than 8 million people are employed by AFEP companies and their annual combined turnover amounts to €2,600 billion.

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