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Europe sets out its trade policy contribution to the Green Deal

Authors

Tancrède Voituriez

Senior Research Fellow, Governance of Sustainable Development

Klaudija Cremers

Senior Research Fellow, International Ocean Governance

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The European Commission published its new trade strategy on 18 February. Entitled “An open, sustainable and assertive trade policy”,[1](#) it provides welcome initial guidance on the external issues of the Green Deal. The strategy’s implementation will, however, be the real test of the extent to which the European Union is “greening” its trade agreements and of its ability to influence partner countries.

Spirit of the strategy

The European Union's new trade strategy emerges in a particular context. After five years of trade tensions between the United States, China and Europe, and a series of setbacks in the finalization of bilateral agreements (EU-Mercosur is on hold,² EU-Canada [CETA] is under scrutiny, and progress on a EU-US deal has stalled), the EU had to go back to the drawing board. It also had to meet the expectations of the European Parliament and the citizens consulted in autumn, all of whom called for a Europe that was less naïve in its commercial practices, more strategic in its choice of partners, and more sustainable in accordance with the commitments set out in the Green Deal. The EU strategy is therefore addressing, first and foremost, the European Parliament and EU citizens.

What is the EU saying to this audience? It is expressing much of what it has already said, along with some welcome additions. The opening of trade is a keystone of the European integration project and an effective means of enabling the EU to defend and disseminate its values and to satisfy its needs; this much was already known. Trade must be governed by rules guaranteeing fair and equitable competition, the priority in this area being to reform the World Trade Organization (WTO) to adapt the law to contemporary commercial practices, which is understood here to mean China's state capitalism; this was to be expected. This clarification is not, however, unhelpful in a context where the United States, which could make WTO reform one of its trade priorities, is named as the preferred partner. Trade policy is primarily aimed at increasing trade and commercial opportunities for European businesses and citizens. However, it must also strive to support all aspects of the Green Deal, which may cause tensions with the previous objective, including the objective to achieve climate neutrality by 2050; this is something new.

As a multilateralist, the EU is also realistic and affirms its ambition to defend its interests and assert its rights. Bilateral agreements, in particular, should help the EU to "satisfy its global geopolitical ambitions" by building alliances with like-minded partners. It is specified that any trade agreement with a G20 country should be based on a shared ambition to achieve climate neutrality as soon as possible. Such objectives should be reflected in national climate contributions. These ambitions also apply to biodiversity.

To those who might wonder why the EU is signing trade agreements with countries X and Y, the published document contains answers: to seize economic opportunities³ while ensuring that they are compatible with the Green Deal, and to defend values and interests within alliances serving the EU's geopolitical ambitions. These clarifications are not insignificant. They should, for example, enable the Commission to rationally justify postponing the signing of any Mercosur agreements because the positions and commitments on climate and biodiversity from Bolsonaro's Brazil, as they stand, tick very few of the boxes mentioned in the previous paragraph.

To the Commission's credit, it is modest about the practical scope of its text. The devil is in the detail (regarding its implementation), and since the role of a strategy document is not to become a multipurpose tool, it provides a word of warning that one of the main elements of its strategy will focus on the implementation of the agreements and compliance with their various new provisions—particularly those relating to sustainable development. The text affirms the central role given to the new Chief Trade Enforcement Officer (CTEO)—who will receive complaints and ensure their proper investigation—and indicates the forthcoming publication of an evaluation of the 15-point action plan from the "sustainable development" chapter of the EU's trade agreements, and its possible revision.

The internal market as a driver for climate action and the fight against biodiversity loss

The new EU strategy picks up the idea, proposed by several think tanks and NGOs in recent years, of using access to the internal market as a "carrot" or "driver" to induce partner countries to make additional efforts on climate change and the fight against biodiversity loss. It highlights that "imports must comply with European standards and regulations". These conditions, which are imposed on production methods, are deemed legitimate insofar as they

meet ethical considerations or the need to protect the global environment. These conditions will be embodied in the Commission's forthcoming legislative proposals on the carbon border adjustment mechanism,⁴ imported deforestation and due diligence. Health standards are not explicitly mentioned, probably deliberately, as they were a cause of much hostility in the CETA and Mercosur negotiations.

While attractive on paper, the idea that the EU can exchange access to its market in return for environmental and ethical leadership raises a number of problems. Although not insurmountable, they should have been addressed in the text. The first of these issues is that the EU is implicitly put into a position of excellence, a position which it is probably wrong to claim so quickly. Its environmental performance is certainly respectable, its commitments within the Green Deal have been applauded in these columns,⁵ but these are not sufficient grounds for the EU to claim to be a champion, nor to make the assumption that the EU is a green oasis under threat from an oil spill. There is a fine line between a green oasis and a fortress, and the accusation of green protectionism. A line that is certain to be "strategically" crossed by some low-income or emerging countries, either delighted with the windfall or genuinely annoyed.

The second problem is linked to the previous one. It is well known that trade negotiations are games of give and take. Rather than publicly raising an eyebrow and lengthening the list of pre-requisites for access to the EU market, and then discarding them in the secrecy of the negotiations, perhaps it would be beneficial to be a little less assertive and allow a little more transparency into the game. The Commission, on the front line, is again working to improve practice here, but we know that the negotiation variables and implementation details of the strategy are regulated in part from the "back office" of Member States, to which only a select few have access. It is likely that most NGOs, researchers, and those active in the liberalized sectors would trade some of the conditions stated in the text for increased access to negotiations—which ultimately decide the conditions of market access. The final part of the text highlights the efforts made in the dialogue with civil society. However, it focuses the EU's priorities in this area on the implementation phases of the agreements.

What future for the "sustainable development" chapter?

The "sustainable development" chapter of the EU's bilateral agreements brings together all of the commitments of the signatory parties to the agreement in the areas of human rights, labour rights and the environment. It encourages cooperation in all of these areas. The provisions are binding and accompanied by a dispute settlement mechanism that avoids sanctions in favour of conciliation and cooperation. In January 2021, the Dispute Settlement Panel thus found South Korea to be at fault in the application of certain International Labour Organization (ILO) core standards, in breach of the provisions of the sustainable development chapter of the EU-South Korea agreement. As a consequence, the EU "will be working closely with South Korea to ensure it effectively implements commitments on workers' rights".⁶

Reams of articles have been written either in favour (the majority) or against (relatively few) the inclusion of a trade sanction mechanism in the sustainable development chapter. The main pro argument claims that it would "harden" the environmental and social provisions to the same level as the trade provisions. On the other hand, there is an argument that a strong point of the chapter and its ad hoc dispute settlement mechanism is that it allows complaints to be heard, even when violations have no effect on trade. While trade sanctions punish a country that violates its commitments, the country also derives a trade benefit from the violation. The difficulty of establishing exactly what trade benefits result from the violation of provisions in the sustainable development chapter has reinforced the Commission's view that these provisions need to be addressed in an ad hoc manner. There is no alternative to cooperation.

The EU needs to reach out to its trading partners

The contrast between sanctions and cooperation is actually less fundamental than it may seem. Sanctions are not possible without a willingness to cooperate. This is best illustrated by the WTO Dispute Settlement Body, which has the power to impose trade sanctions. This power was conferred on it by the countries that formed the GATT, who agreed to co-operate by liberalizing their trade on a reciprocal basis, providing that co-operation is accompanied by sanctions to prevent freeloader behaviour—or cheating, to put it in simple terms. Sanctions guarantee reciprocity, which is the *modus operandi* of trade liberalization. The same is true for bilateral agreements. Countries agree that sanctions should be applied in the event of a breach of market access commitments, with such access only being granted under the condition that this threat exists. The unilateral establishment of a sanction mechanism in the “sustainable development” chapter, capable of imposing “penalties” regardless of the trade effects of possible violations, runs counter to this logic. This mechanism can only exist if both parties demand it and they agree to cooperate on the various aspects of sustainable development. There is no indication today that this condition has been met.

Why has this happened? This is a particularly interesting and urgent question. To answer it, the EU will have to look beyond Europe and, following an exercise where Europe was mainly talking to itself, it will have to address its partners. And with the support of civil society, it will need to clarify the conditions under which the EU policies are received, however green and progressive they may be, to identify expectations, to receive possible grievances, and to isolate the tangible elements of cooperation on sustainable development on which it will be in the interest of both parties, together, to make progress.

¹ https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_645

² <https://www.iddri.org/en/publications-and-events/blog-post/eu-mercosur-agreement-eu-trade-policy-entering-new-phase>

³ “European stakeholders need to be aware of the opportunities EU trade agreements offer and be confident that they can reap the gains that the EU negotiated” (p. 19).

⁴ <https://www.iddri.org/en/publications-and-events/other-publication/europes-carbon-border-adjustment-mechanism-need-improved>

⁵ <https://www.iddri.org/en/publications-and-events/blog-post/eu-recovery-plan-towards-greener-recovery>

⁶ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2238>

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GOVERNANCE

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