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TRUMP TRADE: MORE BARK THAN BITE?

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SUMMARY

Should we expect a *hard* Trump or a *soft* Trump for US trade policy when:

- The goal of a return to manufacturing jobs in the United States and the desire to adjust the United States' trade deficit are focusing Trump's attention on commercial vengeance through the renegotiation of bilateral agreements and the adoption of aggressive unilateral measures;
- The scheme based on tax adjustment at the borders, which would penalise imports, is triggering a civil war in the White House between the aggressive nationalists, the former Goldmann Sachs group and those in favour of the mercantilist trade of the 1980s, and at the same time it is eliciting strong criticism from the leading importers and from a number of export sectors;
- The USTR's report entitled *The President's 2017 Trade policy Agenda* calls into question the WTO's role as an impartial referee and affords priority to US commercial law;
- Trump's protectionist whims do not attract the wholehearted support of the Republican Party.

Two scenarios allow us to decipher the way in which these various parameters might be played out:

- Aggressive economic nationalism;
- A protectionist megaphone with limited disruption.

The reasons why the Europeans need to seriously prepare a graduated response to Donald Trump's protectionism are that:

- The United States is the primary destination for the European Union's (EU) exports;
- The growth differential between the EU and the United States makes it more vulnerable than China;
- The EU's geopolitical clout is difficult to mobilise in a trial of strength with the United States in view of the imbalance existing between the level of its economic integration and that of its political integration;
- Unlike the EU, Beijing's control over the Chinese economy allows it to pander to some of Trump's conceits and to appear as a winner.

While the latest developments would appear to argue in favour of a *soft* Trump, we cannot rule out an aggressive scenario, and so Europeans would be well advised to prepare responses:

- Faced with the major risk for Europeans of an attack on multilateralism, Brussels has to make the most of China's commitment against protectionism by forging a broad coalition with Asia, Africa and Latin America in the furrow of the initiative adopted by Angela Merkel in April 2017 with the WTO, the IMF, the World Bank and the OECD. In order to encourage this cooperation with China, the Council must adopt the new method of calculating the anti-dumping duty prepared by the European Commission now, in the spring of 2017.
- The risk of tensions and rifts within the EU must be averted by:
    - making a collective commitment to apply anti-dumping duty and European compensation measures in the face of Washington's unilateral targeting of certain member states' economic interests;
    - preparing the fiscal harmonisation of corporate tax within the euro zone in order to prevent certain member states from being tempted to practise fiscal dumping in response to a major cut in corporate tax in the United States.
- Lastly, Brussels' decision to accelerate bilateral trade negotiations throughout the world in order to occupy the place abandoned by the United States demands:
    - European leadership in promoting demanding welfare and environmental standards in trade agreements;
    - greater transparency in the conduct of all trade negotiations;
    - a commitment on the EU member states' part to invest major resources in assistance for the sectors and people most vulnerable to the opening up of trade.

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INTRODUCTION

According to a poll conducted by the Pew Research Centre in March 2017, 72% of Americans see foreign trade as an opportunity and not a threat[1]. However, since new US President Donald Trump's inauguration, uncertainty surrounds the new direction that US trade policy will be taking. This uncertainty is an equal source of concern both to the United States' trading partners and to American businesses and even to American consumers.

Trump's motto, *"America first"*, taken together with aim to fix the United States' trade deficit, with his aggressive rhetoric and with his pledge to defend American workers against "unfair competition"[2] pave the way for **protectionist scenarios which vary** depending on the range of measures adopted and on their sphere of implementation (according to the imports targeted: by company, by sector, by product or taken as a whole). It is still difficult to determine the factors that are likely to prevail in Washington's decision to operate a turnabout of US trade policy.

There is what we know. The then-candidate Trump's campaign promises, his inaugural speech on 20 January 2017, and his Address to Congress on 28 February 2017. The profiles of the people appointed to implement these policies. The USTR report entitled *The President's 2017 Trade Policy Agenda* published on 1 March 2017. Recent executive orders.

And then there is what we do not know: the way in which these different parameters are going to play out, their interpretation, the pressure groups' game, the reaction of US trade partners, and finally the modalities in which the decisions made are going to be implemented.

> "TO WHAT EXTENT DOES "LEVELLING THE PLAYING FIELD" MEANS "PLAYING DIRTY"?

To what extent does Trump's desire to rebalance US trade and to "level the playing field",[3] mean "playing dirty" by adopting aggressive unilateral measures, and thus risking a profound disruption of international trade by triggering an escalation in the targeted countries' response? What should the Europeans brace themselves for, while the United States is their largest export market (20.7% of EU28 exports in 2016) and they are themselves the United States' second largest importer ($384 billion in 2016) after China ($434 billion)?[4]

Deciphering these diverse parameters allows us to distinguish two scenarios, stretching from aggressive economic nationalism to a limited distortion curbed by the reality of the US economy's integration in international trade, from which Europeans can anticipate the measures they will have to adopt. Beyond the direct impact that these scenarios might have on the European economy, it is also necessary to take into account the tensions and divisions that they may generate between EU member states.

1. *The American Public Mood, Issues, expectations, polarization in U.S. society*, Pew Research Centre, March 2017.
2. In his inaugural speech, Trump called "to protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs."
3. Address by Donald Trump to a Joint Session of Congress on 28 February 2017
4. European Commission, "European Union, Trade in goods with USA"

1. US Trade According to Trump

1.1. Bringing back manufacturing jobs in the USA

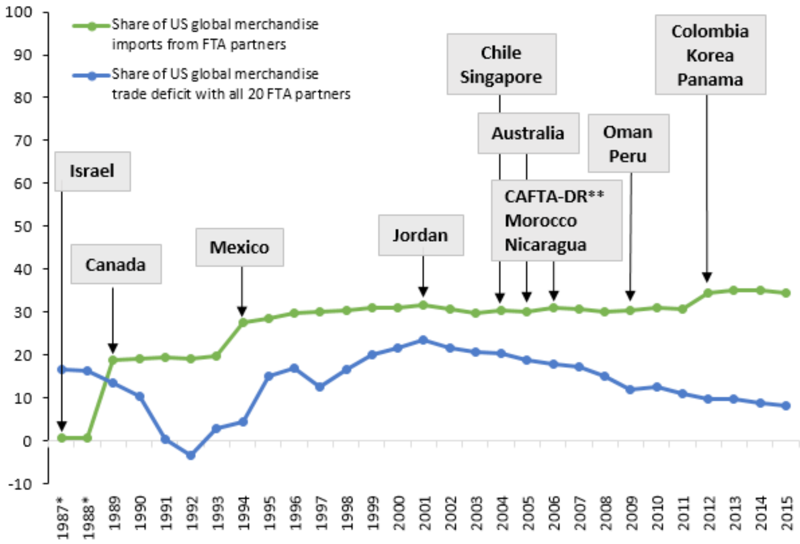
Both during his election campaign and today, in his capacity as President, Donald Trump has been focusing on t**he loss of jobs in the manufacturing industry since the 2000s**, or in other words since China joined the WTO in 2001. After losing almost 5 million jobs between 2000 and 2017[5], the manufacturing sector today accounts for only 8% of jobs in the United States. Trump's attention is focused on job losses in the motor and steel industries, without taking into account the reconversion of certain Rust Belt cities such as Pittsburgh, nowadays a centre of innovation in the health industry. In cutting corporate tax, possibly from 35% to 20% or even 15%, and in openly faulting named companies for relocating manufacturing activities, he plans to bring jobs back to the US.

2.2. Reducing the US trade deficit

But above all, Trump has his sights set on **the US trade deficit, which hit the figure of $500 billion in 2016 and continues to rise**[6] despite a surplus in the service trade. He wishes in particular to target those countries with which the trade deficit in goods was highest in 2016: $366 billion with China, $72 billion with Japan, $67 billion with Germany, $66 billion with Mexico. This deficit, according to Trump, is due to the poor trade agreements negotiated by his predecessors, and indeed he set the tone in his inaugural speech: "Protection will lead to prosperity and strength". Thus a executive order dated 31 March 2017 gave various federal departments and national agencies 90 days to prepare are report (*Omnibus Report on Significant Trade Deficits*) analysing the reasons for the United States' chief trade deficits in the goods sector.

However, we can see that the correlation between the 14 free trade agreements (FTAs) signed by the US and its trade in goods deficit is given the life by the figures (see table below) and that **the US has a trade deficit with 105 countries in the world**[7].

GRAPH 1 ► Impact of the 20 US FTAs on US imports and merchandise trade deficits with FTA partners, 1987-2015 (%)



** CAFTA-DR : Central American Free Trade Agreement–Dominican Republic, including Costa Rica, Salvador, Guatemala, Honduras, Nicaragua, and Dominican Republic..
Free Trade Agreements and Trade Deficits, Peterson Institute, March 31, 2016

5. American manufacturing activities dropped from 17.28 million jobs in January 2000 to 12.34 million in January 2017. *The President's 2017 Trade Policy Agenda, USTR*, 1 March 2017.
6. Website of the United States Census Bureau
7. As opposed to 130 countries with which the US has a trade surplus.

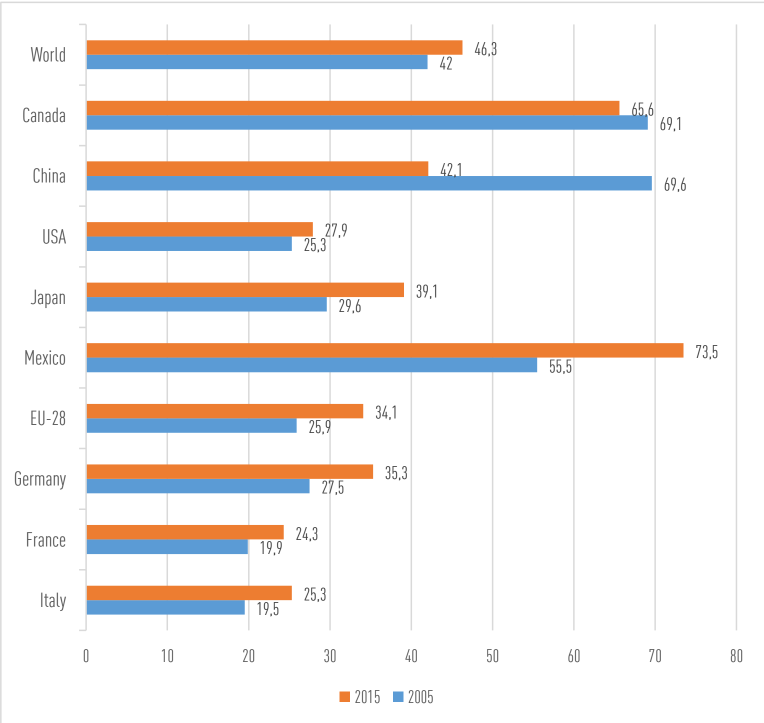
According to Gary Clyde Hufbauer and Zhiyao Lu, the 20 countries with which the US has a free trade agreement do not represent a growing part of the US trade deficit in goods. The blue line above represents the evolution of the US trade deficit in goods as FTAs are being signed, while the green line represents the average increase in imported goods from those countries. Yet despite fluctuations, the blue curve never grew persistently.

Without going as far as to call for the abolition of free trade, Trump's wish to restore "fair trade" sounds like trade vengeance designed to benefit US interests[8] rather than trade based on greater reciprocity.

1.3. Affording priority to bilateral agreements

Trump intends to afford priority to **bilateral agreements rather than to regional or multilateral agreements,** and he delivered on one of his election campaign promises as early as 24 January by signing an executive order to withdraw the US from the TPP, the Trans-Pacific Partnership signed with 11 other Pacific rim countries, and which Obama decided not to submit to ratification by Congress. Trump reckons that bilateral agreements will allow him to make the most of the American market's attractiveness in order to wring greater reciprocity in market openness from his trading partners. Yet the ration of trade volume to GDP shows that the US economy is less open that the economies of the main countries with which it has a trade deficit.

TABLE 1 ► Trade in goods and services in volume (% of GDP)



(*) Coverage: World (excluding intra-EU trade)
(**) For EU and four EU member states: trade with extra EU-28, services are for EU-27 before 2010.
Ratio = (imports + exports) in volume / GDP
DG Trade, Statistic Guide,, p18, June 2016

The list of "Key Elements of a Model Trade Agreement", currently being prepared by the Administration appears in particular to target exchange rates manipulation, rules of origin and the adoption of strict environmental and labour norms, while opposing geographical indications on the ground that they are a constraint on trade.

8. "Trump's trade revanchism", Joakim Reiter and Guillermo Valles, Financial Express (Bangladesh), 5 March 2017.

1.4. Appointments: three clans seeking influence

While people in Washington admit that Trump has no economic expertise in the area of trade, the individuals appointed to key posts dealing with trade policy are probably more indicative of the potential influences on the President. They can be separated into three clans, although it is still too early to say which group will have the greatest access to the President's ear or to say how consistent the Trump administration is going to be on trade despite an aggressive approach to China.

First of all, there are the **economic nationalists** whose number includes Steve Bannon and Peter Navarro.

- Steve Bannon, the White House chief strategist, is an ideologue who wants to work for the revival of nationalisms and who criticises the constraints exercised by international or multinational organisations. He is acknowledged to have played an active role in support of the Brexit campaign through the London office of Breitbart News, which he ran, airing the positions of the "alternative American Right", a conservative movement close to the Tea Party which embodies white nationalism against multiculturalism and immigration, which are seen as a threat to the American identity.
- Peter Navarro runs the National Trade Council, a new entity which answers to the White House, next to the National Economic Council and the National Security Council. A professor at California University and himself a former Democrat, he has written numerous works castigating China's rise, accusing it of systematic cheating, of subsidising its exports to the US, of manipulating its currency, and of being to blame for the deindustrialisation of certain parts of the United States.

In addition, this group also contains people whom we might call **pragmatic**: two former Goldman Sachs employees.

- Gary Cohn, Director of the National Economic Council,
- Steve Mnuchin, Secretary of the Treasury.

Gary Cohn's recent appointment of Andrew Quinn, a former USTR member who took part in the TPP negotiations under Obama and who is favourable to multilateralism, as "special assistant" to the President for international trade, has attracted serious criticism from the economic nationalists, as indeed has the appointment of Kevin Hassett, who is hostile to protectionism, to head up the Council of Economic Advisors.

And lastly, two key posts have been given to two figures from the "**old school of trade**":

- Wilbur Ross is the new Commerce Secretary of State and he is in charge, in particular, of the promotion of exports, territorial attractiveness, industrial policy and trade defence. Aged 79, this self-made billionaire made his fortune by setting up his own investment company specialised in salvaging steel groups in deep water.
- Robert Lighthizer should be confirmed by the Congress as the US trade representative (USTR). A former USTR under Ronald Reagan during the trade-related trial of strength between the US and Japan, he went on to defend the steel industry when he was attached to the Skadden Arps law firm.

It is too soon to assess the influence of these two men, both of them experts in the business world and in trade defense procedures (anti-dumping, safeguard and anti-subsidy clauses), but they apparently tend to favour the mercantilistic approach to trade of the 1980s rooted in dealing with trade exchange rather than in the promotion of global trade regulation based on support for stringent environmental and labour norms, or intellectual property rights.

The relative position and interaction of these three clans is far from being finalised if the current state of civil war in the White House[9], which led to Steve Bannon's ejection from the National Security Council on 5 April, is anything to go by.

1.5. The primacy of the US commercial law

The USTR's report entitled *The President's 2017 Trade policy Agenda* published on 1 March 2017, before the US Congress confirms Robert Lighthizer in his post as USTR but on which he has apparently begun to

9. "White House civil war breaks out over trade", Shawn Donnan and Demetri Sevastopulo, *Financial Times*, 10 March 2017

impress his own approach, is also explicit regarding the new administration's treatment of the World Trade Organisation (WTO).

> "THE US IS QUESTIONING THE IMPARTIAL ROLE OF THE WTO"

Right from the introduction, **the report reminds us of the primacy of US national sovereignty and insists on the absence of any direct impact from decisions reached by the WTO's Dispute Settlement Understanding (DSU) panels.** It is the acceptance of these decisions by WTO members that has imparted legitimacy to that organisation since its creation in 1995. By calling into question the WTO's interpretation of unfair practices on the part of certain trade partners[10] and promising a "more aggressive" approach in defence of US interests, the US is questioning the WTO's role as impartial referee. According to the USTR's report, the US trade balance deficit is due primarily to the non-compliance of third countries with international trade regulations (via public subsidies, intellectual property theft, currency manipulation, breach of welfare standards and so forth), while the US, by contrast, appears to be the only country to have played honestly. Thus the USTR report announces a "fundamental" change in US trade policy to meet the demands of both the Democratic and the Republican electorates.

And finally, Washington's objection to the customary renewal of the G20's pledge to avert protectionism at the meeting in Baden-Baden on 17-18 March, has quite rightly been interpreted as a warning shot.

1.6. How much room for manoeuvre does Donald Trump have?

On the one hand, there are those things that the President can decide unilaterally. The 1974 Trade Act gives him extensive powers that do not require Congress's support in several areas, particularly in the field of trade policy (for instance activating clauses pulling the country out of free-trade agreements, in the sphere of trade defense and in the adoption of supplementary customs duty towards a third country), or by resorting to executive orders. On the other hand, there are those things that require a vote in Congress such as, in particular, levying a tax on imports, or reforming corporate tax which could include protectionistic measures.

Trump's first major test will be **the adoption or otherwise of a 20% Border Adjustment Tax** (BAT) which has already sparked a lively debate among economic players. This tax was proposed by Senate Speaker Paul Ryan and by House of Representatives Ways and Means Committee Chair Kevin Brady. It is designed **to balance the VAT tax adopted in 166 countries** (with Mexico heading the list), which the US wrongly considers an export subsidy despite VAT being applied to domestic produce and imports alike. The BAT, also known as the "cash-flow tax", aims to repatriate profits held abroad by American companies while giving American producers a competitive advantage. It would allow companies established in the US to deduct costs associated with salaries, capital, R&D and other expenses. Based not on the origin of an activity but on its destination, it would indirectly lead to a sweeping adjustment at the border, because imports would not be concerned while revenue from exports would be tax-exempt. This system would have a major impact because it would concern American imports worth $2.7 trillion and American exports worth $2.2 trillion.

When discussing the scheme, Donald Trump prefers to talk **about "reciprocal tax" rather than about an adjustment tax**[11]. But the system would introduce both a distortion between goods manufactured in the US and imported goods, and would constitute a de facto subsidy for exports. The WTO countenances only indirect taxation such as VAT, which concerns consumption and does not introduce a distortion in competition between goods and services produced in a given country and those that are imported into that country. This, while **the BAT would have an impact on revenue, would lead to a distortion between national and foreign producers and would trigger a demand for compensation from the WTO** which, according to Peterson Institute Senior Fellow Chad Bown, could amount to close on $385 billion a year[12], when the highest amount of compensation enforced to date has been $4 billion in an affair which, we should note, already concerned US

10. As the US has won 91% of the 114 complaints it filed with the WTO since its creation in 1995 and lost 89% of the 129 complaints filed against it, one can hardly argue that the US have been subject to more unfavourable decisions in matters of trade remedies. "US trade Laws and the Sovereignty Canard", Dan Ikenson, Forbes, 9 March 2017
11. Interview on Fox Business, 12 April 2017.
12. "A Massive Retaliation in Trade?", vidéo, Peterson Institute for International Economics

companies' taxation system. Its systemic impact on international trade is all the more important if we consider that the DSU would probably be way out of its depth in handling such a massive dispute.

The BAT scheme has sparked **strong criticism from major importers**, particularly the mass retail industry, oil refineries[13], and certain export sectors that import intermediate goods and services and are alarmed by the negative impact that the BAT would have on their imports' price. In addition, big exporters fear retaliation from third countries, including in the farming industry. US yellow corn exporters are concerned over Mexico's announcement that it could well replace US imports with imports from Argentina and Brasil.

The BAT is also **perceived as a new tax on consumption**, given that the price of numerous daily consumer goods would go up. The retailers' federation, Americans for Affordable Products (AAP), with the backing of such food giants as Walmart or Target, calculates that the BAT would cost US households some $1,700 per annum, especially since 30% to 40% of fresh goods sold in US stores consists in imported goods. This would push inflation up by $1% in the first year after a tax of that nature came into force. In the light of these analyses, the BAT would also be in danger of **sparking a rise in the value of the dollar** and thus ipso facto an increase in the trade deficit, because it would cancel out the positive effect that the move would otherwise have had on US exports.

How far, therefore, will Congress be prepared to follow Trump in his protectionist initiatives? The priority of the Republican majority in Congress was to see the repeal of Obamacare, which has already failed once, and the introduction of tax cuts. With the failure of the health insurance reform, they are now likely to focus on a sweeping tax reform. We also need to take into account the state governors' electoral schedule, which is not going to encourage them to take risks by opposing Trump over trade issues. It is in their best interest to ensure their re-election in 2018 without sticking their necks out too far in opposing Trump over trade, because in 2020 the census held every ten years makes it possible to redraw constituencies and governors hold right of veto over on their redrawing. If they lose in 2018 and the new constituencies are not favourable to them in 2020, they are in danger of being excluded from the game for the next decade. Despite a certain amount of debate within the Republican Party over Trump's protectionist whims, it appears that we can expect little rebalancing from within the party.

> "TRADE COULD BE THE FIRST ADJUSTMENT VARIABLE THAT DEMOCRATS ARE PREPARED TO LET GO"

Moreover, the twenty or so Democrats favourable to free trade, who voted in favour of the Fast Track Act (FTA) in Congress giving Obama the authority to negotiate trade agreements before final ratification by Congress, have been left with the unpleasant memory of having been whipped for backing Obamacare in 2010 and do not seem prepared to stick their necks out over trade-related issues. Prioritising the defence of their values particularly in the social and welfare area, they could well decide that trade is the first adjustment variable that they are prepared to let go. Debates within the Republican Party do not appear to be conclusive at this stage, even if Paul Ryan himself is not positive in favour of raising custom tariffs. Given that it is difficult right now to decide between the risk of a *hard* Trump or a *soft* Trump in the field of trade policy, the two scenarios outlined below help us to decipher the way in which these various elements may play out.

2. Scenario A: An aggressive economic nationalism

2.1. Questioning the WTO

Trump would question the DSU arbitration panel's decisions and would **invoke the primacy of US law to reaffirm his right not to comply with any WTO decisions that are unfavourable to the US.** Moreover, in arguing that China benefits far more from the world trade system than the US, he would continue **to refuse**

13. In 2015, oil accounted for 13% of goods imported from countries with which the United States signed free trade agreements. *Free Trade Agreements and Trade Deficits*, Gary Clyde Hufbauer (PIIE) and Zhiyao (Lucy) Lu (PIIE), Peterson Institute, 31 March, 2016.

to grant it the market economy status that it has been seeking since the exemption granted to WTO members when China joined in 2001 to permit the adoption of anti-dumping measures in accordance with the so-called analogue country method expired in December 2016. Considering that the US was the first country, in conjunction with the Europeans, to build the multilateral system, these decisions could **lead to a major institutional crisis of the WTO** and deeply damage it.

2.2. Withdrawal of the plurilateral agreements

Trump **would refuse to reconsider his decision to withdraw the US from the TPP** despite criticism from various economic sectors, particularly from farmers who had offensive interests in the agreement, and from economists and international trade experts[14]. This pullout and the conclusion, now less urgent, of the RCEP (Regional and Comprehensive Economic Partnership) between China and sixteen Asian countries, would bolster China's commercial clout in the region. The USA would conduct bilateral negotiations with Japan without winning the concessions that Japan had granted in the context of the TPP.

Trump would also invoke Section 125 in the Trade Act, which allows the President, after 90 days notice, to **decide to unilaterally pull the US out of FTAs currently in force without going through Congress**. He would pull the US out of NAFTA, the trilateral agreement with Mexico and Canada forged in 1994 to abolish all customs duty among the three countries. This means that Mexico would recover its MFN (most favored nation) status in the WTO[15]. While with Canada it would mark a return to the free-trade agreement between the US and Canada signed in 1988. Trump would call on the USTR to negotiate a bilateral agreement with each of the two neighbour countries, but the American leverage on negotiation with Mexico would remain uncertain because, according to Commerce Secretary Wilbur Ross speaking with CNBC on 3 March, the aim would be to stiffen regulations governing origin but also to smooth the exchange rate between the peso and the dollar, and to make standards of living with Mexico converge.

The TTIP talks with the European Union that Trump and his advisor Peter Navarro consider to be multilateral negotiations **would not be resumed**, even though Robert Lighthizer, in his comments during his confirmation process at the Senate on 14 March, did continue to adopt very cautious stance regarding this issue. The President's wish to conduct bilateral negotiations with each EU member states, an approach that is incompatible with EU law because that law assigns authority for trade negotiations to the European Commission on the Twenty-Eight's behalf, would translate into strong, targeted pressure on given member states, with Germany heading the list. This would increase the risk of an internal rift within the EU and could thus weaken it, which is just what Steve Bannon would want.

2.3. Unilateral measures against imports

Dispensing with the WTO's regulatory framework, Trump would resort to a battery of measures avoided until now on account of their incompatibility with multilateral regulations. He would adopt the **Border Adjustment Tax** (BAT) and would decide to unilaterally enforce **customs tariffs on imports from countries with which the US has the highest trade deficit**, starting with Mexico (+35%) and China (+45%) but with several EU member states coming just behind, the list being headed notably by Germany, Italy and France. Washington would use its "carousel retaliation" method consisting in imposing high tariffs on targeted products and countries, a few at a time, in order to amplify the overall impact. Trump could invoke the old transatlantic dispute over the European ban on imports of American beef from hormone-treated cattle[16], to justify punitive measures. While the first targets on which tariffs of 100% are imposed might be Perrier mineral water, Vespa scooters and Roquefort cheese, the extent of the list of targets would be an indication of just how hard Donald Trump intends to hit Europe.

14. *Charting a Course for Trade and Economic Integration in the Asia-Pacific* (7 Mars 2017), Report of an Independent Trade Policy Commission chaired by Wendy Cutler, Vice-President of the Asia Society Policy Institute (ASPI), who led the negotiation of the TPP to the USTR
15. According to the Trade Act of 1974, The tariffs applied in Mexico could amount to up to an additional 20 per cent of the tariffs applied to it on 1 January 1975 or 50 per cent of column 2 of the United States tariffs on the same date. This would only lead to a modest increase in customs tariffs. "President Trump Will Have Broad Presidential Authority to Terminate Trade Agreements and Impose Punitive Duties on U.S. Trading Partners", Hogan Lovells, 10 November 2016
16. Following the 2008 DSU decision to allow the US to obtain compensations, the 2009 agreement between the US and the EU, suspending US countervailing duties linked to imports of American beef not treated with hormones into Europe, was questioned at the end of the Obama administration, as Washington denounced insufficient EU market opening.

2.4. Incentives to keep US investments in the US

Reducing corporate tax from 35% to 15% along with **sweeping deregulation** would increase the attractiveness of the American market for US investments and for Foreign Direct Investment (FDI). While the US accounted for 40% of total FDI inward in the EU in 2014, those measures could significantly reduce the volume of such investments in the EU.

2.5. Retaliation and trade war

In pushing brutal bilateral negotiations through by brute force, Trump would afford priority to a **deal-based system** over a rule-based system and would offer his flank to retaliation on the part of third countries, triggering a global trade war scenario.

3. Scenario B: Protectionist megaphone with limited disruption

In this scenario **the balance between domestic economic and political forces would push the scales in a less protectionist direction**, although the President's rhetoric would barely change. There would be no profound rift but there would be greater aggressiveness than with past Administrations, which were already keen to promote enforcement, or which were already marking their distance from the WTO under Obama. Indeed Obama himself was very active in that connection with the WTO, filing no less than twenty-three complaints, fourteen of which were directed against China[17]. Yet a certain prudence had prompted him to file only those complaints that US lawyers considered he could win in the WTO, whereas Trump would like the filing of complaints to be implemented on a more systematic basis.

The Trump administration would **abandon the BAT plan**, considering that it would cause numerous US sectors or consumers to suffer from the measure's direct or indirect repercussions. It would be replaced by a fiscal reform project inspired by the proposal made by Dave Camp in 2014 when he was the chairman of the Finance Committee in the Chamber of Representatives, combining lower s with the territorialisation of the US tax system.

Instead, active lobbying from US importers on the White House and on Congress would also redirect the new Administration's offensive toward a more systematic enforcement of US trade law, using the entire battery of legal tools available to it to target, in turn, a specific country, a specific sector of industry or a specific product with bursts of legal fire, while remaining within the pillars of the WTO temple and endeavouring to comply with the Organisation's legal framework in order to protect itself also against active recourse to the DSU.

3.1. Mobilising US legal firepower

Trump would call on the Commerce Department **to make systematic use of anti-dumping duty (AD) and of countervailing duty (CVD)**[18] against subsidies for certain goods from various countries in order to enforce major customs tariffs and to hinder the import of those goods. The decision of the Commerce Department on 30 March 2017 to impose duty of up to 148% on alloy steel cut-to-length plate coming from Austria, Belgium, France, Germany, Italy, Japan, South Korea and Taiwan, would be the opening shot in the game. Wilbur Ross even announced as long ago as on 18 January, when addressing the US Senate, that he intends to use the Commerce Department's option to self-initiate these complaints, even in the absence of a request from a specific sector of industry[19]. This is a procedure that has been used only rarely to date.

17. Office of the United States Trade Representative, Enforcement_
18. Antidumping and Countervailing Duties
19. Sections 702(a) and 732(a)(1) of the Tariff Act of 1930.

The US Administration would also adopt **a more aggressive approach to the implementation of AD/CVD measures** by launching anti-circumvention investigations. These investigations would mobilise major resources within the Commerce Department, although fewer than the new AD/CVD investigations[20].

Trump would also have extensive room to manoeuvre in order to decide on **a customs duty hike targeting a given country** without the need for Congress's approval.

Section 122 in the 1974 Trade Act would allow him to respond to a major deficit in the US' balance of payments by **enforcing a maximum 15% hike on customs duty and by adopting import quotas for certain goods**. The hike would require Congress's approval only if it would last for more than 150 days.

With those countries with which the US has a major trade deficit, the Trump administration would also resort to Section 301 in the 1974 Trade Act giving the USTR the opportunity to **adopt appropriate measures of retaliation against third countries that restrict US imports by "unjustified, unreasonable or discriminatory" measures** such as state subsidies, for example. In view of the fact that it does not require the US Government to wait for WTO approval before adopting such measures, Section 301 could be used very aggressively by the new Administration and it could trigger retaliation on the part of third countries before a WTO dispute settlement procedure rules against the US.

Furthermore, this strategic offensive could also be completed by the implementation of safeguard measures under Section 201 of the 1974 Trade Act, which would allow **a temporary restriction measure to be enforced against the import of a product** through a customs tariff hike or by other means, if a sector of industry is penalised or looks set to be penalised by a massive increase in the import of that product. Unlike AD/CVD complaints which apply to a given country, safeguard measures apply to imports from all third countries without exception, and thus they cannot target a specific country (such as China, for example). They are only temporary and are only applied to certain specific groups of products. They are administered by the US International Trade Commission (USITC) which is an independent agency and thus less likely to be the target of political pressure. And finally, WTO jurisprudence has restricted the conditions in which safeguard measures can be applied within a WTO framework, in particular through the need to prove that the increase in imports is linked to unforeseen developments.

Section 337 in the 1930 Tariff Act has also allowed the ITC to **file complaints for unfair commercial practices over intellectual property rights**, including the theft of patents and registered trademarks. This tool is used today by more sectors of industry than in the past, but Trump would not hold the right cards to allow him to make a more active use of it. The ITC's administrative law judges tend to treat these procedures more like a trial than a traditional commercial administrative legal procedure.

And lastly, **strong pressure would be brought to bear on states and municipalities for the Buy American Act to be stringetly implemented at every level in public markets**, even if its systematic implementation would be only limited for certain sectors of US industry whose output is insufficient to cover domestic demand.

3.2. An Ad hoc targeting of enterprises

Trump might also **directly target certain transnational companies whose imports he wants to reduce** or whose market share he wishes to restrict by threatening to put in place new barriers if they refuse to cooperate, or by using other retaliatory measures (against research credits and public procurements, even in the defence sector).

3.3. The difficulty in coping with the undervaluation of certain currencies

The last time China was targeted by an American procedure for manipulating the yuan with negative repercussions on the American manufacturing industry was in 1994. There are numerous economists today

20. "Possible Unilateral Actions under US Law", White and Case

who consider that the yuan is somewhat overvalued. If Trump reiterates his wish to attack China, as he did regularly in the course of his election campaign and again on his first day in the White House, and if the path of diplomacy does not prove sufficient to subdue the Chinese Central Bank, his opportunities for responding would probably be restricted to shutting Chinese investors out of US public procurements and calling on the IMF to beef up its monitoring of China's monetary policy. However, Treasure Secretary Mnuchin has already stressed that **monetary manipulation is not one of this Administration's priorities**. At the end of the day it would be more the Commerce Department's province to **cope with the undervaluation of currency as an export subsidy open to countervailing measures**, or as a reason for exporters dumping in those countries that attract the highest anti-dumping duties. The Mexican Peso, the Japanese Yen, or the Korean Won might also be targeted. Germany, too, might be targeted as Trump criticises Berlin for maintaining an artificially low euro that is beneficial for its exports. He might seek to intervene on the dollar by exerting strong pressure on the FED or through a number of nominations. This policy, which would call central banks' independence into question, would bring pressure to bear on the European Central Bank by aggravating the rift in Europe over the euro currency exchange and certain member states' criticism of Germany's current surplus.

3.4. Bilateral negotiations

In this scenario, the United States would also enter into bilateral negotiations with Japan. But rather than quitting the **NAFTA** outright, Washington would prefer **to update the agreement**. Above and beyond the will to build improvements into the agreement that the TPP entailed (transparency with regard to currency manipulation, greater discipline with regard to subsidies for state corporations, social and welfare standards and so forth), further chapters might be added (energy and the digital economy) and the chapters on countervailing duties and the settlement of disputes between investors and states might be revised. We might also expect a review of the rule of origin governing the amount of "domestic" added value of an export, which would be tantamount to impairing Canada's and Mexico's capability for exporting to the US with, obviously, a reciprocal impact on the United States. But aside from the cosmetic adjustment, a vote in Congress would be necessary, and in current circumstances that is by no means a certainty given that the Republicans are far from unanimous over NAFTA (the fast track authorising the President to negotiate trade agreements expires in mid-2018, and in the current context marked by strong tension in Congress its renewal for another three years is quite other than a foregone conclusion).

3.4. The WTO under pressure

In this scenario, Trump would be not seek to scuttle the WTO. However, his line would be even harder than that of Obama who, under pressure from Tim Reif, Chief International Trade Counsel of the Ways and Means Commission in the House of Representative and then General Counsel of the USTR, filed numerous complaints to the DSU[21] and simultaneously denounced judiciary activism on the part of the WTO portrayed as unfavourable to US interests[22]. **The US would welcome any favourable ruling from the DSU while any demand for compensation is seen as an excessive interpretation of the rules of the WTO** (ADA and ASCM).

Washington thus jeopardised the WTO's legitimacy by opposing the renewal of South Korean jurist Seung Wha Chang's mandate in the appeal body of the DSU because of his so-called lack of impartiality in those cases that the US lost.

But as in scenario A, **Donald Trump would refuse to acknowledge China's status as a market economy**. China would retaliate by most likely filing a complaint with the WTO just as it did against the Europeans over price comparison methodologies on 13 March 2017. This complaint would be joined by numerous other complaints filed by countries targeted by Washington's unilateral protectionist initiatives, thus placing the DSU under intense pressure.

21. Since the establishment of the Organisation in 1995, the United States has in fact filed 114 disputes against trading partners, more than 20% of all the 522 complaints filed by all the WTO members
22. The United States has already challenged some WTO rulings. During the Obama years, the WTO has already condemned the United States against Brasil in 2014 for the distortion created by the subsidies given to American cotton producers compared to Brasilian competitors. The United States had maintained them and had bought Brasilian cotton producers to try to resolve the conflict. The US also ignored the WTO's ruling that it discriminated against Mexican tuna fishermen by the using the label "dolphin-safe"

CONCLUSION: IMPACT AND POTENTIAL RESPONSE FROM THE EUROPEANS

What lessons can the Europeans learn?

First of all, taking into account Trump's ability to declare himself as the winner and to move on to something else, his decisions regarding trade policy will depend on the evolution of the US economy.

The **TTIP negotiations** will probably be suspended indefinitely. The basic outlines of the new direction in which Trump intends to steer US trade policy do not point to any short-term attempt to relaunch the dialogue in the short term, other than perhaps through **concertation over regulatory cooperation which might be on a sectoral basis**. Yet Brussels is going to have to pay heed to the concerns raised by civil society in several member states over this chapter in the negotiations.

Furthermore, **the EU, like China, is very heavily exposed to a protectionistic involution on the United States'** part; in fact, **it is even more heavily exposed than China** in view of the growth differential that it has with the United States: 1.5% GDP growth for the EU for the medium term as against close to 3% for the United States and close to 6% for China.

> "THE MOST CRUCIAL ISSUE FOR THE EUROPEANS WOULD BE AN ATTACK ON MULTILATERALISM"

The most crucial issue of all for the Europeans (as indeed it is also for Japan and for Australia) would be i**f Trumps trade policy were to lead to an attack on multilateralism**, because unlike in China's case, the EU's geopolitical clout is difficult to mobilise in a trial of strength with the United States in view of the imbalance existing between the level of its economic integration and that of its political integration. Also, unlike the EU, Beijing's control over the Chinese economy allows it to pander to some of Trump's conceits, as we have seen with Xi Jiping's pledge to import more Hollywood movies, more American beef, pork and soya and so forth.

The Europeans need to start seriously working on **safeguarding the WTO's role as an independent referee in trade clashes**—or in other words, that multilateral organisation's very legitimacy which rests less on a legal framework and more on diplomacy—by all accepting the results of its arbitration in every dispute. It is in the interest of the Europeans and of other WTO members to safeguard the fragile balance on which the regulation of international trade rests. Given that Xi Jinping stood up in defence of multilateralism in Davos in January 2017, the EU could **look favourably on cooperating with Beijing on this issue**. But the complaint filed with the WTO by Beijing against the EU without having filed a similar complaint, for the time being at least, against Washington, does not facilitate cooperation with China. **The Council's adoption of the Commission's proposal for a new system for calculating anti-dumping measures** in order to continue to defend the European market in the same way despite granting China market economy status, **is therefore the priority for spring 2017**. With no illusion regarding the normalisation of EU-China cooperation on sensitive issues such as state subsidies or the lack of reciprocity in public procurement opening, the Europeans might then try to involve Beijing in multilateral negotiations in which countries such as Japan and Canada would be their key partners.

This commitment should go hand in hand with **the need for Brussels to take out an insurance policy against US protectionism by forging a coalition mobilising Asia, Afria and Latin America** in the furrow of Angela Merkel's initiative involving a declaration against protectionism signed on 10 April with the leaders of the WTO, the IMF, the World Bank and the OECD. It is regrettable that the Chancellor's initiative did not come from the European Commision, which is still adopting a low profile in the preparation of a European response to Washington's initiative.

The fact of the matter is that the Europeans really do need to **start preparing a graduated response to Donald Trump's decision.**

Against a potential BAT—however less and less likely—or any alternative measure not compatible with WTO rules, Europe could **complain to the DSU**. It is worth noting that it takes an average of three years before a dispute brought to the WTO can be handled in the form of a complaint and even longer for validation of the use of countervailing duties[23]. When disputes concern prohibited subsidies and actionable subsidies that have damaged the plaintiff country's interests, procedures can be accelerated through shorter time-periods. But it would still only be a medium-term measure, while the damage suffered by European economies would be fairly immediate.

"ANTICIPATE DIVISIONS EU MEMBER STATES"

It is also necessary to **anticipate the risk of divisions amongst member states over the responses to deliver to Washington against unilateral attacks targeting specific European interests.**

If the US targets European trade interests with bursts of hostile measures and sparks competitive distortion against a company, a sector, or a group of European industries, the EU can itself impose **anti-dumping duties or countervailing duties against such measures**, whether they involve subsidies for exports or subsidies favouring the use of national goods over imported good. **Member states' cohesion over the decision to use this tool will be of key importance in allowing the EU to be reactive**. It should be **agreed on in advance** in order to prevent the diversity of member states' economic interests preventing or delaying a collective decision—as it did over the Chinese solar panel issue.

At the same time, **the American decision to lower corporate tax to 15%**, which is also a strong temptation for the United Kingdom in the light of Brexit, **could create significant tension within the EU** if member states were to use their national competencies to cut their own corporate tax. On the one hand, a sharp drop in corporate tax would be impossible for those countries whose insufficient budget margins would lead in particular to a sharp reduction in resources for funding their welfare systems; while on the other hand, uncoordinated action to lower corporate tax within the euro area would lead to a form of internal devaluation that would spark a row over the tax dumping practiced by certain member states such as Ireland.

The Europeans should actively prepare a European harmonisation of corporate tax in order to prevent certain member states from being tempted to practise fiscal dumping in response to a major cut in corporate tax in the United States.

These rifts among member states might also be aggravated by **the pressure that Trump is putting on the Europeans to raise their level of military spending to 2%**, to better balance the European financial contribution to NATO by comparison with the US contribution. Whether to secure ongoing US involvement in NATO or because the Europeans could not buy the necessary volume of equipment and arms on the European market, the purchase of American technology by several member states to the detriment of Europe's own defence industry and technology, would only increase the EU's internal rift.

And finally, there is the goal of **accelerating the bilateral negotiations that Brussels is conducting throughout the world** in an effort to occupy, in the medium term, the place that withdrawal from the TPP and a protectionistic drive would force the United States to abandon, including in the regulation of world trade.

The other eleven signatories of the TPP confirmed their intention to move towards a "TPP minus one" in Chile on 11 March, but China could be the first beneficiary of this US pullout. While the Chinese authorities hasten to wind up the competing RCEP agreement, the Chinese initiative known as "One Belt, One Road" would bolster trade relations between Europe and Asia, which are already more substantial in terms of volume than transatlantic trade, and could contribute in the medium term to the economic isolation of a protectionistic America.

In addition, **the return to a mercantilistic approach to trade policy on the US' part**, directed towards deals that are favourable to US interests and detrimental to world trade regulation in favour of the struggle against climate change and respect for social and human rights, would probably l**eave it up to the**

23. "The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics", Henrik Horn, Louise Johannesson and Petros C. Mavroidis, Journal of World Trade, 45(6), 2011.

Europeans to exercise global leadership in the promotion of trade agreements incorporating strong environmental and social norms.

As things stand today, Brussels' current mobilisation to fill the vacuum left by the US in Latin America, in Asia and in Africa by speeding up certain negotiations and by launching new ones goes in the right direction and should be pursued. Where the TTP member states are concerned, the EU plans to conclude its negotiations with Japan in 2017 and to complete the trade agreements it already has with Vietnam, Singapore, Canada, Chile and Peru by opening up talks with Australia and New Zealand. Also in Asia, the will to accelerate the negotiation of an investment agreement with China was voiced at the Council of Europe meeting on 9 March when it was stated that "trade relations with China should be strengthened on the basis of a shared understanding of reciprocal and mutual benefits". The EU is also negotiating with Indonesia and the Europeans have responded in the affirmative to Mexican President Enrique Peña Nieto's call for an improvement in the existing EU-Mexico bilateral agreement in 2017. Brussels published its proposals for negotiations with the Mercosur on 4 April and it intends to ratify economic partnership accords with the countries of East and West Africa in 2017.

But **the course pursued by Europe's trade policy does not currently enjoy a strong consensus within the member states**, or in various sectors of the economy such as the farmers, in particular, who are mobilising to obstruct closer trade ties with the beef and cereal farmers of the Mercosur or of Australia and New Zealand.

To this, **one must add the anxiety that a part of European public opinion feels concerning the impact of open trade and globalisation**, with greater suspicion focusing on the procedural framework leading to the decision to initiate new trade negotiations and on their subsequent conduct. Europeans cannot **rebuild greater cohesion over the direction of trade policy** unless they **apply greater transparency to the negotiating process and pay greater heed to the negative impact of open trade on given sectors or given producers.**

"REINFORCE PROFESSIONAL RETRAINING POLICIES"

The issue is even more flagrant in the US. In focusing on "White America", which he alleges has been cold-shouldered by the opening up of trade, Donald Trump is concealing a far deeper problem linked to **insufficient welfare protection**. A study published by Brookings in March 2017 underlines the specific vulnerability of white Americans, compared to Blacks and Hispanics, by noting that the death rate among white Americans aged 45 to 54 dropped until 1998 but then showed a constant increase up until 2015 apparently explained by suicide, drug overdose and alcohol abuse[24]. Over the same period, mortality in Europe dropped by an average of 2% every year. In 2013 it was even half the figure for Swedes of the same age compared to their US counterparts. The authors point the finger at the US welfare system in particular in relation to health insurance and unemployment benefits. The US spends only one-fifth of the OECD average on training workers and only a quarter of the average on financial aid for the jobless. This finding underlines **the key role of accompanying policies for professional retraining that are necessary in the EU and far more so in the US**.

At this stage, and in view of the most recent developments, **a *soft* Trump appears to be more likely than a *hard* Trump**. But the divisions that a protectionistic involution in the United States can trigger among the Europeans are a threat to the European Union which needs to **calibrate its responses to US commercial initiatives in a more active manner** than it appears to have done to date. *Si vis pacem, para bellum* ("If you want peace, prepare for war").

24. Mortality and morbidity in the 21st century Anne Case, Princeton University Angus Deaton, Princeton University, Brooking papers on economic activity, BPEA Conference Drafts, 23-24 March, 2017.

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