TRIBUNE VIEWPOINT 6 JULY 2017

NOTRE EUROPE
JACQUES DELORS INSTITUTE

PROTECTING WITHOUT PROTECTIONISM?

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On 10 May 2017, the European Commission, continuing on the path laid down in the White Paper on the future of the European Union, published its proposal for "Harnessing globalisation". The purpose of this "discussion paper" is to initiate a debate with member states on how to address the challenges of changing global economic interdependence.

1. Strengthening the European Consensus on Trade and Investment Policy

With its attractive domestic market, the European Union is pursuing an active strategy of negotiating trade and investment agreements to ensure its position as the world's leading trading power and investor. The European Commission, as we know, has undertaken to accelerate bilateral negotiations with Japan, Mexico, Mercosur and other parts of the world, including investment agreements with China. It is a matter of occupying in the medium term the place that the withdrawal of the United States from the Trans-Pacific Partnership (TPP) and the protectionist reorientation ushered in by Donald Trump leaves vacant, including in global trade regulation, at a time when competition with China is intensifying.

The ambition of Brussels is twofold. On the one hand, it must aim to gain better access to markets in third countries, since the consumer appetite of the middle classes in emerging economies offers opportunities for European exporters; while ensuring that certain sectors are not penalised by this openness and that parts of the workforce are not relegated to the periphery with no possibility to engage in globalisation. On the other hand, the aim is to promote fair international trade and investment rules in order to defend European interests and foster the spread of demanding European norms on the international stage.

The proposals of the European Commission seek to respond to criticisms that in the absence of sufficient reciprocity in third countries (in areas such as public procurement, subsidies, social and environmental dumping, the fight against corruption, etc.), the EU's policy of openness exposes European interests to unfair competition, while, according to some, protectionist measures are gaining ground throughout the world, including in the G20 countries.

Numerous points have been put up for discussion by the European Commission. But how can we raise awareness among Europeans of a paradigm shift that strives to protect without protectionism? Building the necessary consensus for a proactive policy on trade and investment requires the implementation of key measures which underline the EU's ability to protect while exposing its economic actors to more competition. If there is initiative that could embody this change of narrative in the eyes of Europe's citizens, it is surely the control of foreign investment targeting strategic European sectors. The issue is all the more pressing in the case of China, as only bilateral channels are available, given the absence of multilateral investment disciplines.

2. Shielding strategic sectors from foreign investment

At the initiative of the new French President Emmanuel Macron, the European Council held on 22-23 June 2017 asked the European Commission to look into this issue. Yes, foreign investment in EU member states is still largely intra-European. Yes, the most important foreign investor remains the United States (representing in 2015 41% of direct investment stocks coming from third countries). Yes, the stock of Chinese direct investment in the EU is still limited (2% in 2015) but a sharp year-on-year increase (more than 90% between 2015 and 2016) should draw attention to the targets of these takeovers. China's public investment reserves (40% of GDP), coupled with an increase in strategic asset acquisitions in Europe in recent years (the port of Piraeus was bought by the Chinese shipping company COSCO, the Portuguese electricity distribution network by the Chinese State Grid Corporation, 49.9% of Toulouse airport by the Chinese firm Casil Europe, etc.) call for a better anticipation of the risks incurred in the medium term, namely a loss of control in strategic sectors with potential implications for national security (energy, telecommunications, transport, water supply, health sector, natural resources, etc.).

The lack of transparency in the financial structure of Chinese investment and the difficulties in tracking Chinese public subsidies, to which should be added the insufficient exchange of information between

Europeans, currently does not make it possible to provide a screening mechanism covering the whole of the EU, nor does it allow for an accurate anticipation of Chinese investment strategies in Europe.

Moreover, the asymmetry between China's openness to European direct investment and the conditions proposed by the European Union is at the heart of the ongoing bilateral negotiations. In China, foreign investment is subject to two kinds of checks. The first enables the authorities to veto any foreign investment if it is likely to affect the country's economic security, to involve a major industrial sector or to entail the transfer of traditional Chinese trademarks abroad. The second is to verify whether the investment targets a sector that is off-limits or to which access is restricted in accordance with a list established in light of the objectives of Chinese economic policy.

All EU member states wish to maintain the attractiveness of European markets for foreign investment, which is a necessary component of economic dynamism. However, in some cases the priority given to short-term economic interests may expose not only a member state but the whole of the European Union to security risks if the takeover of strategic infrastructure works to the advantage a third country which was to prove hostile.

3. Proportionate protection

It should be noted that a national security clause enshrined in Article XXI of the GATT agreements, while subject to interpretation, limits some trade without falling into protectionism. Along the lines of the control mechanisms set up in the United States by the CFIUS (the Committee of Foreign Investment in the United States created in 1975), several EU member states Austria, Denmark, Finland, France, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia and the United Kingdom) have already put in place systems to assess the impact of foreign investment on strategic sectors. But these systems operate with varying definitions of what constitutes a strategic sector (inspired by Article 65 TFEU, which refers to "public policy or public security" and Article 346, which mentions "essential security interests"), the investment threshold at which the controls can be activated (33% in France, 25% in Germany) as well as the timing of the control procedures (before the investment is concluded in France, after in Germany) and the institutional organisation of these controls.

In view of the disparities between the member states, it is hoped that the European Commission will take up this issue without delay and present an adequate proposal. The first challenge will be ideological. It will be a question of guaranteeing the sovereign right of member states to prohibit or impose conditions foreign investment, but above all of developing a narrative which shows that this form of protection does not pave the way for either indirect forms of protectionism or the adoption of protectionist measures in other domains.

The next step is to find a proportionate response which allows for the harmonising of member states' control capacities with regard to foreign investment and to champion a Europe-wide screening process. The European Commission could propose that each member state designate a national authority in charge of controlling foreign investment whose procedures would be harmonised with the corresponding institution in other member states. The adoption of regulations that would allow for a common definition of national security interests could also be modeled on the 2008 European Critical Infrastructure (ECI) Directive and the 2016 Directive on Network Security And information systems (NIS). Finally, a mechanism for exchanging information between member states would make it possible to set up a strategic screening process at EU level.

As the EU strengthens its anti-dumping instruments, this control capability would be emblematic of a commitment by European policy makers to pursue a proactive trade and investment policy that serves the interests of all European citizens. The willingness to "harness globalisation" through proportionate protection would by the same token help defuse the temptation of protectionism in Europe.

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ISSN 2257-5731

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