

Economic Security

Countervailing Duties

De-Risking

Export Controls
Strategic Technologies

Investment Screening
Systemic Rivalry

Enforcement Regulation
Trade

Protection

Resilience

Anti-Coercion Instrument
Geo-Economics

Blocking Statute
Sanctions

Anti-Dumping
Distorted Competition

The New Geo-Economic Instruments of the European Union

Imprint

© Bertelsmann Stiftung, Gütersloh

April 2024

Publisher

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www.bertelsmann-stiftung.de

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Printing

Hans Gieselmann Druck und Medienhaus, Bielefeld

DOI 10.11586/2024047

The New Geo-Economic Instruments of the European Union

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Key Findings

1. The EU has succeeded in closing significant protection gaps through new instruments.

The international landscape is marked by escalating geopolitical tensions, leading to the weaponisation of economic dependencies. In response, particularly since 2019, the EU has introduced a variety of new instruments aimed at safeguarding itself from unfair competitive practices, such as dumping and subsidies, and from coercive measures intended to effect political change through economic pressure. Additional measures were proposed by the EU Commission in January 2024. However, some of these proposals are still in the early stages of development, especially those concerning common export controls for critical technologies and the regulation of EU investments in third countries related to these technologies.

2. For the instruments to be effectively employed, the member states must develop a common strategy, based on which they must act collectively and resolutely.

Most of the new trade policy instruments can only be used if the Council of the European Union agrees by a qualified majority. There is therefore a risk that national special interests and concerns will hinder or at least delay effective EU action. This could be mitigated by a unified strategic vision among the member states that accurately assesses international economic security threats to the EU and endorses appropriate measures aligned with European goals and interests.

3. The combination of protective and promoting instruments is crucial for the success of the EU in the geo-economic age.

While the adopted protection instruments can shield the EU and its enterprises from economic harm, they do not, in themselves, foster competitive industries. Their impact is often temporary. It is, therefore, imperative to pair them with initiatives that bolster the EU economy and enhance its resilience, for example, through substantial investments in decarbonisation, digitalisation, and other future technologies, and by deepening the European single market.

1. Economic Security in a Changing Global Order

The decline of the liberal world order, traditionally led by the West, has prompted a significant reassessment within the European Union. The EU has been forced to acknowledge that its deep integration into the global economy now represents a vulnerability. Increasingly frequent disruptions in global supply chains are leading to shortages of critical goods for the population or are crippling entire industry sectors within the EU due to a scarcity of raw materials. While the economic repercussions for the EU are already substantial, the potential for political fallout could be even more profound in the future.

In this era of geopolitics, the economy is increasingly wielded as a weapon to pursue foreign policy objectives. The EU's market openness and comprehensive integration into the global economy expose it to particular risks. Its dependence on imports of critical raw materials, especially from China, places it at risk of political coercion.

With the adoption of the "Open Strategic Autonomy" concept in 2021 and the 2023 Economic Security Strategy, the EU aims to navigate these new geo-economic challenges by recalibrating its foreign trade and industrial policy.¹

Under President Ursula von der Leyen's leadership, the European Commission has introduced a broad array of new tools and reform measures aimed at bolstering

economic and, by extension, political security. Viewing itself as a "geopolitical Commission," the Commission's legislative initiatives serve a dual purpose: to safeguard the EU against unfair trade practices and harmful influences from third countries, and to strengthen the EU's industrial base through investments in future technologies, enhancing its resilience to external shocks by expanding domestic production capacities.

However, the EU's strategic pivot is proving challenging. As implied by the term "open strategic autonomy," the EU seeks to reconcile two essentially incompatible objectives to bolster its economic security: maintaining openness and supporting global free trade while simultaneously striving for autonomy. The latter, however, implies a degree of protectionism and restriction on free trade.

This dilemma is understandable given Europe's reliance on market openness for its prosperity, benefiting both from exporting its goods and importing raw materials. More fundamentally, the EU exemplifies how closer economic integration can lead to both prosperity and peace. Therefore, it struggles with the realisation that the "change through trade" paradigm has not prevailed in international relations, despite the high level of interdependence fostered by globalisation. Instead of an evolving rules-based order, might often prevails over right again.

1 European Commission (2021). "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Trade Policy Review - An Open, Sustainable and Assertive Trade Policy". [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0066#](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0066#;); European Commission and European External Action Service (2023). "Joint Communication to the European Parliament, the European Council and the Council on 'European Economic Security Strategy'". <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023JC0020>.

2. Resilience and Protection as Cornerstones of Economic Security

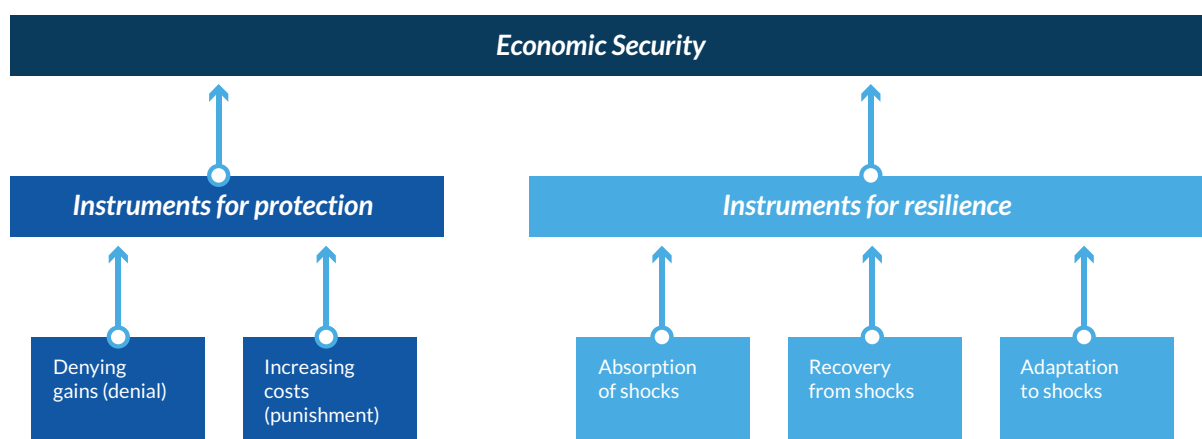
At its core, the EU’s strategy for safeguarding its economic security interests rests on two closely intertwined and mutually reinforcing paths. The first is the fortification of its own economic power. Encompassed under the broad term of resilience, this strategy includes all industrial policy measures aimed at enabling the EU to:

- Withstand exogenous shocks—whether man-made or natural—with minimal economic loss in the short to medium term (absorption capacity);
- Recover swiftly from such shocks (recovery capacity); and
- Proactively prepare for potential crises to minimise expected damage (adaptive capacity).²

The second defensive strategy, which is the focus of this study, involves the deployment of foreign economic policy tools designed to signal to potential adversaries that any actions against the economic and political interests of the EU will trigger countermeasures. These countermeasures are intended to ensure that the costs to the attacker will outweigh the benefits.

Drawing on deterrence theory, it is evident that the EU’s new trade policy leverages both deterrence through denial and punishment. In essence, the “denial” strategy aims to strip adversaries of the means and opportunities to achieve their objectives. Conversely, the “punishment” strategy seeks to deter hostile actions through the threat of economic sanctions that would inflict damage on the adversary’s economy. Should deterrence fail, these sanctions serve to underscore the EU’s resolve to retaliate and to penalise the adversary sufficiently to compel a retreat.³

FIGURE 1 Overview



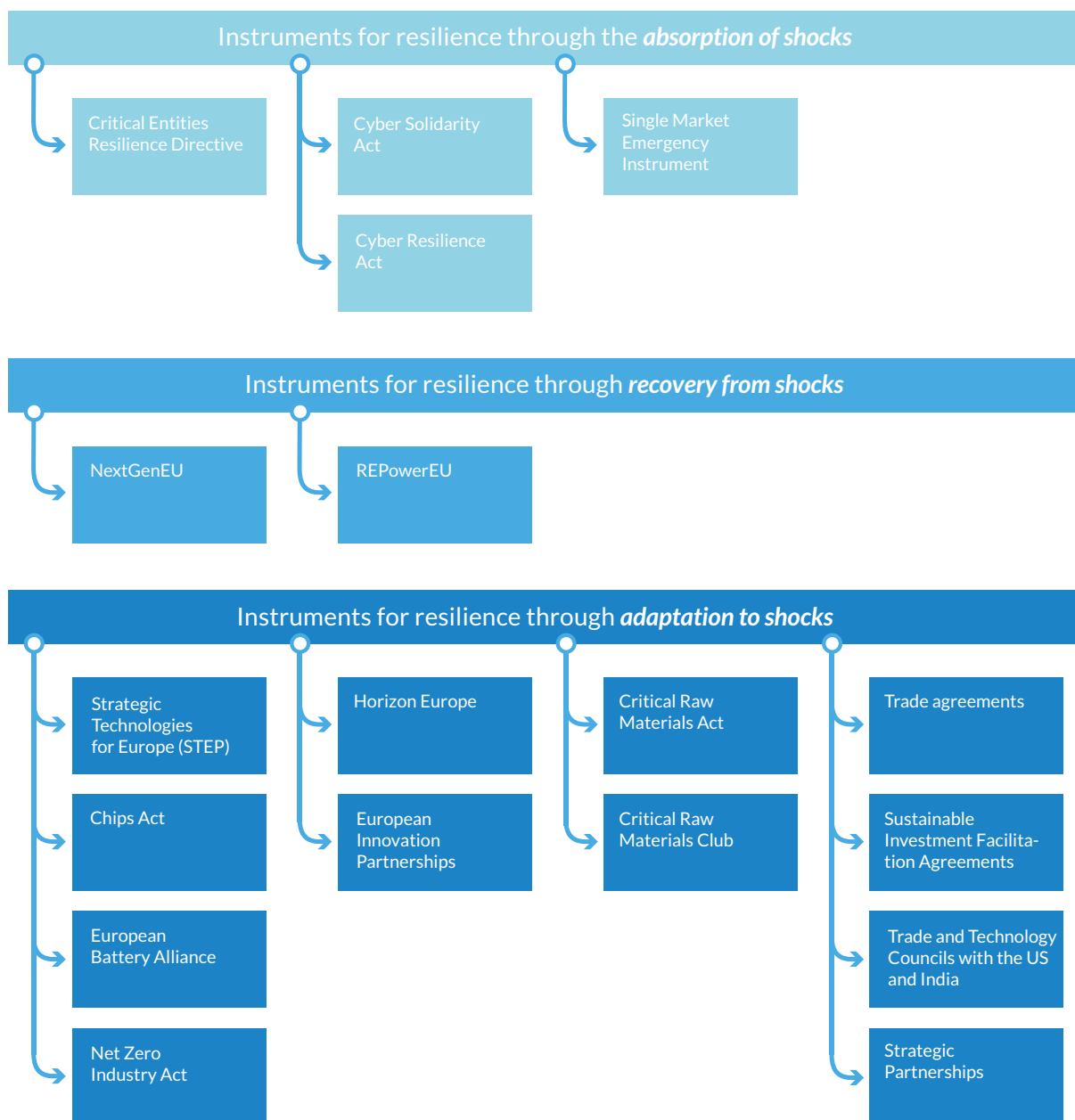
2 Brinkmann, Henrik et al. (2017). “Economic Resilience. A new concept for policy making?” Inclusive Growth for Germany. (Bertelsmann Stiftung, ed.). https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/NW_Economic_Resilience.pdf. p. 13.

3 Cf. Wilner, Alex S. and Andreas Wenger (2021). “Deterrence by denial. Next steps”. *Deterrence by denial: theory and practice*. eds. Alex S. Wilner and Andreas Wenger. Amherst, New York. 1–13. p. 7.

The aim is to influence the perception and cost-benefit calculation of the other side. The efficacy of this approach hinges on three critical factors:

1. The credibility of the trade policy threat, which invariably entails costs to the EU's own economy and necessitates prioritising security policy interests over economic ones.
2. The adversary's tolerance for economic disadvantage as a consequence of the threat.
3. The attacker's risk assessment, contingent upon the first two factors.

FIGURE 2 Instruments for resilience



3. The Protection Instruments in Detail

Export Controls and Collective Risk Assessment: Protection Against the Transfer of Security-Relevant Technologies

*White Paper on Export Controls*⁴

What problem is this instrument intended to solve?

The European Union, committed to the principle of open markets, allows for the free export of goods, with the notable exceptions of weapons and dual-use items—those that can serve both civilian and military purposes. Despite this, many high-tech goods, such as microchips or artificial intelligence technologies, are traded freely, even when there is a high probability of their use in military applications or for cyber surveillance, potentially infringing on human rights. Furthermore, third countries like China are adopting strategies such as “military-civilian fusion,” aimed at leveraging civilian economy innovations for military purposes.⁵

This open trade stance leads to the transfer of technology and expertise to third countries, enabling them to replicate and produce these goods more cheaply. While not a new phenomenon and consistent with liberal market economy principles, this process now not only results in export losses but also enables third countries to use technology transfer against the EU for geostrategic gain, particularly when European companies are only allowed to operate in these countries as part of a joint venture.

How is it supposed to solve this?

In 2021, the EU reformed its legal framework for export controls with the Regulation on the control of exports, transfer, brokering, and technical assistance for the transit of dual-use items.⁶ As a member of the UN and other multilateral organisations,⁷ the EU applies the export controls adopted within this framework. Notably, the list of controlled goods (Annex 1) under the Dual-Use Regulation does not represent a unique EU adaptation but is a direct adoption of the Wassenaar Arrangement list.

In addition, the member states have enacted their own, often more drastic laws. To promote greater uniformity, transparency and protection, since October 2023, the EU Commission has been compiling a list of export restrictions from member states.

4 European Commission (2024). “White Paper on Export Controls”. <https://circabc.europa.eu/ui/group/aac710a0-4eb3-493e-a12a-e988b442a72a/library/a44df99c-18d2-49df-950d-4d48f08ea76f/details?download=true>.

5 Fritz, Audrey (2019). “China’s Evolving Conception of Civil-Military Collaboration | Trustee China Hand | CSIS.” <https://www.csis.org/blogs/trustee-china-hand/chinas-evolving-conception-civil-military-collaboration>.

6 Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (2021). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0821>.

7 The multilateral agreements on export controls include the Wassenaar Arrangement (<https://www.wassenaar.org>), the Australia Group for the Implementation of the Chemical Weapons Convention (<https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html>) and the export controls adopted by the Nuclear Suppliers Group (<https://www.nuclearsuppliersgroup.org/index.php/en/>).

This enables member states to adopt more stringent measures from their counterparts. Additionally, the Commission plans a “collective risk assessment” together with the member states concerning four critical technology categories: advanced semiconductors, artificial intelligence, quantum technologies, and biotechnologies. Despite these measures, the Commission, through its White Paper on export controls dated 24 January 2024, is making further efforts to encourage member states towards a unified EU-wide regulation that would also enhance the EU’s international standing.

Expanding export controls to specific cutting-edge technologies is deemed essential for security policy reasons, especially as the EU’s control list, tied to the Wassenaar Arrangement, is hindered by Russia’s prevention of list expansion. This situation highlights the importance of developing a common strategic approach to balance economic interests with security needs. A narrowly defined concept of security might lead to inadequate protection against emerging threats, whereas too broad a definition could endanger the EU’s economic performance and external relations. The distinction between economic and security policy aspects is increasingly blurred.⁸ Whether the focus on the four technology categories will provide comprehensive protection remains to be seen.

Can the instrument solve the problem?

However, the overall effectiveness of EU export controls largely depends on the EU’s market power and technological leadership.⁹ Export controls are politically significant only if third countries depend on key EU products and expertise, such as lithography equipment for modern semiconductor manufacturing. Yet, European companies are losing ground in many high-tech areas.¹⁰

The EU Commission, in consultation with a coordination group from the member states, revises EU-wide export control lists and grants EU-wide export licenses. National authorities are tasked with issuing national export licenses and imposing additional controls.

Who decides on the application of the instrument?

Protection Against the Effects of Extra-Territorial Sanctions

Reform of the Blocking Statute¹¹

Economic sanctions aim to modify the behaviour of states by imposing economic disadvantages, compelling them to alter their actions. The United States, and increasingly China, employ sanctions as a tool for political pressure in their quest for global

What problem is this instrument intended to solve?

8 Gehrke, Tobias and Julian Ringhof (2023). “How the EU can shape the new era of strategic export restrictions”. *ECFR*. <https://ecfr.eu/publication/the-power-of-control-how-the-eu-can-shape-the-new-era-of-strategic-export-restrictions/>.

9 Ringhof, Julian and Tobias Gehrke (2023). “Indispensable leverage: How the EU can build its technological edge”. *ECFR*. <https://ecfr.eu/article/indispensable-leverage-how-the-eu-can-build-its-technological-edge/>.

10 Breiting, Jan C., Benjamin Dierks, and Thomas Rausch (2020). “World class patents in cutting-edge technologies: The innovation power of East Asia, North America, and Europe”. <https://www.bertelsmann-stiftung.de/en/publications/publication/did/world-class-patents-in-cutting-edge-technologies>.

11 Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-3A31996R2271>.

dominance.¹² The extraterritorial nature of U.S. sanctions means European companies engaged with countries targeted by U.S. sanctions face the risk of legal action in U.S. courts, significant fines, and potential loss of access to the U.S. market. China exhibits a similar trend.

European entities often find themselves compelled to adhere to U.S. sanctions, even when EU foreign policy diverges significantly from that of the U.S. A notable instance was Trump's withdrawal from the Iran nuclear deal in 2018 and the re-imposition of sanctions on Iran in 2019, which saw European companies, including Siemens, PSA (Peugeot Société Anonyme), and Airbus, exiting Iran to avoid secondary U.S. sanctions.¹³

How is it supposed to solve this?

The Blocking Statute seeks to shield European companies from the repercussions of third-country sanctions extraterritorially applied and related measures. This statute, which is regularly updated, enumerates sanctions unrecognised by the EU, and whose legal actions are not enforceable within the EU.

Under this statute, European companies are barred by the EU from adhering to demands or prohibitions stemming from the listed sanctions. Nevertheless, the statute allows for exceptions if companies demonstrate significant harm to their business interests from non-compliance with these sanctions.

Furthermore, the regulation enables European companies to claim compensation for damages incurred due to complying with the EU prohibition. The liable party, often a U.S. company or government body, is responsible for compensation, utilising assets they hold within the EU.

Can the instrument solve the problem?

The response of major European companies to the U.S. sanctions on Iran highlights their dependence on the American and, increasingly, the Chinese markets. They prefer to cease operations with sanctioned countries rather than jeopardise access to the U.S. or China, aligning with corporate rather than EU political objectives. The exemptions within the Blocking Statute undermine its prohibitions, rendering them ineffective in serving the EU's foreign and security policy interests. The regulation's protective measures seem insufficient to persuade companies to prioritise EU political goals over business interests, a stance the EU cannot enforce.

The EU Commission recognises the shortcomings of this instrument and is drafting a reform of the Blocking Statute. The aim is to facilitate European companies' adherence to the EU's stance and bolster its foreign and security policy goals by enhancing compensation payments and simplifying the application process for these payments.

Who decides on the application of the instrument?

The Commission, through delegated acts, identifies which foreign measures to block, with support from a member state committee. Sanctions for breaches of the Blocking Regulation are determined by the member states

12 Demarais, Agathe (2022). *Backfire: how sanctions reshape the world against U.S. interests*. New York.

13 Geranmayeh, Ellie and Jonathan Hackenbroich (2020). "2020: The year of economic coercion under Trump". *ECFR*. https://ecfr.eu/article/commentary_2020_the_year_of_economic_coercion_under_trump/.

Control of Foreign Direct Investment: Protection of Critical Technologies and Infrastructures

Reform of Inbound Foreign Direct Investment Screening¹⁴

Geopolitical advantages are increasingly sought through strategic investments in the EU by third countries. The acquisition of Kuka, a leading German robotics company, by China's MIDEA Group has raised significant concerns. It is not only the purchase of European companies specialising in key technologies by foreign state-owned or state-controlled entities that is scrutinised but also foreign acquisitions of critical infrastructures like ports, mobile networks, or gas storage facilities. These acquisitions pose risks of political blackmail through manipulation and threaten data security.

What problem is this instrument intended to solve?

To address these concerns, the EU adopted the 2019 Regulation for screening foreign direct investment (FDI) into the Union. This regulation was the EU's initial response to the risks associated with foreign acquisition of critical infrastructure, key technologies, or resources essential for security and public order under the free movement of capital. It established a cooperation mechanism for member states and the Commission to share information on foreign investments deemed critical. However, the responsibility for reviewing foreign investments lies with the member states, which are only required to report to the Commission. The European Court of Auditors in 2023 criticised the effectiveness of this procedure due to the variance in national screening mechanisms.¹⁵

A significant gap was identified by the European Court of Justice in the Xella judgement, revealing that companies within the EU owned by third-country entities or individuals¹⁶ could bypass screening mechanisms due to the freedom of establishment.

The EU Commission proposed a reform of the directive on 24 January 2024.

The proposed reform mandates member states to implement screening mechanisms and establishes binding minimum standards for national assessments. It plans to expand and specify the criteria for evaluating the security and public order risks posed by investments. Notably, member states other than where the investment is made can initiate an assessment if they anticipate negative implications for their security or public order. The Commission can also make assessments if multiple member states are affected, especially concerning sensitive infrastructures and technologies like artificial intelligence or quantum technologies, or strategic EU funding programs like Horizon Europe and Galileo, or if several investments follow a similar pattern or are made by the same investor. Binding decisions remain the prerogative of the member state where the investment occurs. The directive will also cover investments within the EU controlled by foreign investors.

How is it supposed to solve this?

14 European Commission (2024). "Proposal for a regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council". <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024PC0023>.

15 European Court of Auditors (2023). "Special report 27/2023: Screening foreign direct investments in the EU – First steps taken, but significant limitations remain in addressing security and public-order risks effectively". https://www.eca.europa.eu/ECAPublications/SR-2023-27/SR-2023-27_EN.pdf.

16 ECJ (2023). *Xella Magyarország Épít anyagipari Kft v Innovációs és Technológiai Miniszter*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62022CJ0106>.

Can the instrument solve the problem?

The reform limits member states' discretion in notifying foreign investments to the Commission, aiming for a more comprehensive understanding of security challenges and enabling an appropriate EU response. It also allows other member states to provide input. However, the reform would neither introduce an independent European investment control procedure similar to EU state aid law as long as investment control remains a national responsibility.

The varied national legislation and the absence of national review mechanisms in some member states present loopholes that the reform seeks to address. The current inconsistencies undermine the EU's credibility internationally.

The EU's legislative authority under the Common Commercial Policy extends only to direct investments, not portfolio investments. The exemption of portfolio investments,¹⁷ which do not aim to control or influence a company, from scrutiny is debatable, as intentions can evolve into hostile takeovers.

Who decides on the application of the instrument?

National screening mechanisms, established by most member states, review investments affecting only one member state. The Commission assesses investments potentially impacting the security or public order of multiple member states but can only issue recommendations.

Control of European Direct Investment Abroad: Protection Against Technology Transfer

*White Paper on Outbound Investments*¹⁸

What problem is this instrument intended to solve?

The issue at hand mirrors the concerns related to foreign direct investments (FDI) into the EU, focusing on the potential security risks stemming from European companies investing in third countries. Recognising similar challenges, the United States implemented a presidential executive order in August 2023, restricting American firms from making investments abroad in sectors deemed vital to national security, including semiconductors, microelectronics, quantum information technologies, and artificial intelligence.

How is it supposed to solve this?

In alignment with the EU's renewed strategy for economic security, the Commission announced plans for legislation to scrutinise and control European outbound investments.¹⁹ A white paper released in January 2024 highlights the lack of information regarding security-sensitive investments in third countries and suggests further dialogues with member states alongside data collection.

17 For the Free Trade Agreement between the European Union and the Republic of Singapore cf. ECJ (2017). *Opinion 2/15 of the Court*. <https://curia.europa.eu/juris/document/document.jsf?text=&docid=190727&doclang=EN>.

18 European Commission (2024). "White Paper on Outbound Investments". <https://op.europa.eu/de/publication-detail/-/publication/061d9f0d-bb7b-11ee-b164-01aa75ed71a1/language-en>.

19 European Commission and European External Action Service (2023). "Joint Communication to the European Parliament, the European Council and the Council on 'European Economic and Security Strategy'". <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:%3A52023JC0020>.

Monitoring critical investments of EU businesses in third states as proposed by the Commission would improve assessing the security risks posed by these investments. The extent to which a forthcoming law might establish a coordination framework—similar to the existing mechanism for screening FDI into the EU—remains uncertain, particularly given the member states' historical resistance to any perceived encroachment on their economic sovereignty. Industry lobby groups representing sectors that could be impacted have already expressed significant apprehension, fearing restrictions on their business autonomy and opposing any limitations on the free movement of capital.

Can the instrument solve the problem?

As of the latest discussions, specific proposals detailing a decision-making mechanism for this initiative have not been put forward.

Who decides on the application of the instrument?

Support for Private Companies in Enforcing their Trade Rights

Chief Trade Enforcement Officer, Central Point of Contact for Complaints

Market access restrictions in third countries pose significant challenges for companies, particularly small and medium-sized enterprises (SMEs), in leveraging the legal avenues provided by EU trade and investment agreements. The complexity and duration of legal procedures often render it impractical for many businesses to pursue legal action against discriminatory trade restrictions.

What problem is this instrument intended to solve?

To address these challenges, the Chief Trade Enforcement Officer, serving also as the Deputy Director-General in the Commission's Directorate-General for Trade, has been established as the primary contact point. This role is crucial for ensuring adherence to market access rights under bilateral and multilateral trade agreements granted to the EU and its businesses. Additionally, this officer is responsible for EU complaints before relevant arbitration tribunals, thereby facilitating smaller companies' ability to contest trade restrictions. The creation of a central point of contact for company complaints regarding foreign trade and investment barriers is aimed at further supporting this effort.

How is it supposed to solve this?

Moreover, the Access2Markets platform has been introduced as an exhaustive database offering vital information on customs duties, taxes, rules of origin, export measures, and trade barriers. This resource is designed to aid companies in planning their global trade in goods and services, investments, and procurement in third countries.

These initiatives are designed to streamline access to information and simplify the process for companies to challenge foreign trade restrictions, thereby diminishing the advantage of discriminatory trade practices. However, the overarching challenge for businesses, particularly concerning the duration and cost of proceedings, remains substantial. This is especially pertinent given the arbitration crisis within the World Trade Organization (WTO) since 2019, where the Appellate Body has been paralysed due to the United States blocking the appointment of new judges. The Multi-Party Interim Agreement on the Settlement of Trade Disputes (MPIA), initiated in 2020 under

Can the instrument solve the problem?

EU leadership as an alternative procedural avenue, is only available to the 26 states and customs territories that are signatories to the agreement.²⁰

Who decides on the application of the instrument?

Given that these modifications primarily pertain to the organisational structure of the Commission's work, the Commission autonomously determines their implementation.

Combating Market Distortions: Protection Against Unfair Competition

*Regulation on Foreign Subsidies Distorting the Internal Market*²¹

What problem is this instrument intended to solve?

The issue arises when foreign companies receive state subsidies, including direct aid or subsidised loans, which distort competition for European Union companies both globally and within the EU's internal market. Such subsidies enable these foreign companies to offer lower prices and invest more aggressively, thereby undermining the competitiveness of European producers.

How is it supposed to solve this?

The Foreign Subsidies Regulation aims to address or mitigate market distortions resulting from financial contributions received by foreign companies. This regulatory measure enhances the Commission's arsenal of competition tools, granting it the authority to examine market conditions closely. Through a two-stage process, if the EU identifies that competition is being adversely affected, it has the prerogative to block corporate mergers, mandate the repayment of subsidies, or bar companies from participating in public procurement processes.

Can the instrument solve the problem?

Competition policy within the internal market falls under the exclusive jurisdiction of the EU and is considerably less influenced by the divergent interests of member states compared to, for example, common commercial policy. This independence of the enforcement authorities is a cornerstone of European competition policy. Consequently, the Foreign Subsidies Regulation potentially equips the Commission with a powerful tool for independent action. Nevertheless, companies benefiting from subsidies can still expand in third markets lacking similar regulations, thereby indirectly securing competitive advantages within the EU's internal market. This regulatory power does not extend effectively to subsidies from third countries, such as those recently provided for electromobility under the American Inflation Reduction Act,²² which may encourage the relocation of European companies.

Who decides on the application of the instrument?

The European Commission is responsible for launching investigations and, where necessary, imposing measures on the involved companies. These decisions are subject to appeal at the European Court of Justice or within the framework of the WTO.

20 Choi, Bowon (2023). "Three Years of the Multi-Party Interim Appeal Arbitration Arrangement: An Interim Evaluation of Arbitration as a Means to Appeal WTO Panel Reports". *Kluwer Arbitration Blog*. <https://arbitrationblog.kluwerarbitration.com/2023/08/11/three-years-of-the-multi-party-interim-appeal-arbitration-arrangement-an-interim-evaluation-of-arbitration-as-a-means-to-appeal-wto-panel-reports/>.

21 *Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market* (2022). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2560>.

22 Cf. Bown, Chad P. (2023). "Industrial Policy for Electric Vehicle Supply Chains and the US-EU Fight Over the Inflation Reduction Act". *Working Papers* 23-1. Peterson Institute for International Economics. <https://www.piie.com/publications/working-papers/2023/industrial-policy-electric-vehicle-supply-chains-and-us-eu-fight>.

Protection Against Unfair Trade Practices

Countervailing Duties Against Subsidies²³ and Anti-Dumping Duties²⁴

The escalating rivalry between China and the U.S.A. has led to an increase in subsidies aimed at gaining geostrategic advantages. Notably, Chinese companies' practice of dumping—selling goods at artificially low prices—alongside the EU's tentative responses, has edged European companies out of the market. This is exemplified by the solar industry, where Europe has become heavily dependent on Chinese imports. Furthermore, both China and the U.S.A. have started subsidising the development of key industries, such as electromobility, beyond the levels permitted by WTO rules, placing EU companies at a significant disadvantage. Within the EU, subsidies are tightly regulated under strict state aid laws that impose limits on state funding for strategically important industrial sectors.

What problem is this instrument intended to solve?

The European Commission typically responds to company complaints regarding state subsidies and dumping but can also initiate actions independently. In her 2023 State of the Union address, the President of the Commission announced the initiation of an investigation into battery-powered electric cars from the People's Republic of China.

How is it supposed to solve this?

The EU imposes anti-dumping duties and countervailing duties to counter unfair, competition-distorting price advantages of goods from third countries sold below the "normal" market price. Countervailing duties are punitive tariffs to safeguard against the import of subsidised goods, calculated based on the price differential between the market and subsidised prices. Given the significant distortions in the prices of production factors such as energy, labour, or land due to state interventions—particularly in China—these factors are increasingly considered in anti-dumping investigations.²⁵ The EU has, for example, imposed tariffs on certain steel imports from China.²⁶ However, the EU itself is also subject to retaliatory tariffs, as seen in the prolonged Airbus-Boeing dispute with the U.S.A. over aviation industry subsidies—a conflict that was resolved only after nearly two decades.

Can the instrument solve the problem?

While countervailing and anti-dumping duties serve as supportive measures, they fundamentally do not enhance the competitiveness of the impacted EU industry. Companies practicing dumping can continue to grow through scaling effects in third markets lacking anti-dumping measures, leading to efficiency gains and price and technical advantages that transcend mere dumping or subsidies and cannot be fully neutralised by tariffs alone. This is increasingly evident with electric cars from China.²⁷ Moreover,

23 Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (codification) (2020). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1037>.

24 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (codification) (2016). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32016R1036>.

25 cf. Zhou, Weihuan (2018). "Appellate Body Report on EU–Biodiesel: The Future of China's State Capitalism under the WTO Anti-Dumping Agreement". *World Trade Review*. (17) 4. 609–33.

26 For example, through Commission Implementing Regulation (EU) 2023/1122 of 7 June 2023 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (2023). https://eur-lex.europa.eu/eli/reg_impl/2023/1122/oj.

27 Jungbluth, Cora and Thieß Petersen (2023). "Why the EU Shouldn't Impose Anti-Dumping Duties on EVs From China". *Global & European Dynamics*. <https://globaleurope.eu/globalization/why-the-eu-shouldnt-impose-anti-dumping-duties-on-evs-from-china/>.

the sustainability of anti-dumping measures is challenged by the costs transferred to consumers and the potential for retaliatory tariffs from third countries, such as China's recent investigations into the allegedly artificially low prices of EU spirits in early 2024.²⁸

Who decides on the application of the instrument?

At the request of affected companies in the EU or on its own initiative, the EU Commission initiates investigations and, if necessary, proposes countermeasures, for example in the form of tariffs. The Council decides on their imposition by qualified majority. The countermeasures are subject to legal challenge by the foreign companies concerned at the European Union Court of Justice or the WTO.

Penalties Against Discrimination in Public Procurement

International Procurement Instrument²⁹

What problem is this instrument intended to solve?

Despite the EU's openness to allowing third-country firms to participate in its public procurement markets, many third countries practice favouritism towards domestic companies in contract awards or outright exclude foreign companies. Efforts to encourage the opening of these markets have been largely unsuccessful. The International Agreement on Government Procurement,³⁰ which establishes common standards at a plurilateral level, binds only 21 other WTO members besides the EU countries.³¹

How is it supposed to solve this?

The International Procurement Instrument (IPI) aims to counteract the unilateral benefits derived from the EU's open procurement markets by countries not party to the Agreement on Government Procurement. The European Commission is tasked with investigating signs of discriminatory procurement practices in third countries and engaging in consultations with them. Should these consultations fail to yield a resolution, the Commission has the authority to limit access for companies from the offending third country to EU procurement markets through an implementing act. Measures do not extend to least developed countries, which are exempt.

Can the instrument solve the problem?

The effectiveness of the IPI in incentivising market openness in countries with restrictive procurement practices may be limited, as companies from these countries infrequently bid for EU public contracts. China is a notable exception, given the high barriers to its market for foreign companies and the interest of Chinese companies in EU public contracts. The United States, a significant non-European market for EU businesses and a member of the Agreement on Government Procurement, does not

28 Hall, Casey and Dominique Vidalon (2024). "China targets EU brandy in tit-for-tat anti-dumping probe". *Reuters*. <https://www.reuters.com/world/china/china-launches-anti-dumping-investigation-brandy-imported-european-union-2024-01-05/>.

29 Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI) (2022). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1031>.

30 World Trade Organization (2022). "Agreement on Government Procurement 2012 and related WTO legal texts". https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf.

31 World Trade Organization (2023). "The Agreement on Government Procurement (GPA) - Parties and observers". https://www.wto.org/english/tratop_e/gproc_e/memobs_e.html.

fall under the IPI's scope. Despite its membership,³² the U.S. has numerous exemptions to the agreement and often prefers American companies, following the "Buy American" ethos, which substantially diminishes the opportunities for EU companies, particularly at the state level in the U.S.³³

The Commission initiates investigations either independently or following a complaint from companies or a member state. Should it determine that measures are justified and align with the Union's interests, it proposes an implementing act. This proposal is then reviewed by a committee of member states, which makes a decision based on a qualified majority.

Who decides on the application of the instrument?

Penalties Against the Violation of International Trade Rules

Extension of the Enforcement Regulation³⁴

The enforcement of international trade rules is increasingly undermined by third countries blocking dispute settlement procedures. This obstructionism prevents arbitration tribunals from reaching decisions, even in instances of clear rule violations. A notable example of this issue is the impasse at the WTO Appellate Body, which has been incapacitated for years due to blockage by the United States, hindering the issuance of binding decisions.

What problem is this instrument intended to solve?

The Regulation on the application and enforcement of International Trade Rules allows the EU to adopt unilateral countermeasures in situations where third countries hinder arbitration. These countermeasures can include the suspension of trade facilitation measures for goods or services and trade-related measures to protect intellectual property rights against the countries in question.

How is it supposed to solve this?

The Enforcement Regulation addresses the vacuum created by the WTO deadlock. Although the potential for third countries to futilely appeal remains, such actions now carry potential costs for those states. Despite its availability, the instrument has not been actively used; for instance, the European Commission has not implemented countermeasures in response to Indonesia's export ban on nickel, even though the WTO ruled in favour of the EU at the first instance.³⁵ The reluctance stems from concerns among some member states about jeopardising their export prospects in one of Southeast Asia's most significant emerging markets.

Can the instrument solve the problem?

32 World Trade Organization (2023). "The Agreement on Government Procurement (GPA) - Parties and observers". https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

33 Cernat, Lucian and Zornitsa Kutlina-Dimitrova (2020). "Public Procurement: How open is the European Union to US firms and beyond?". https://cdn.ceps.eu/wp-content/uploads/2020/03/PI2020-04_EU-procurement-openness.pdf.

34 Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules (2021). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0167>.

35 World Trade Organization (2022). "Dispute settlement - DS592: Indonesia - Measures Relating to Raw Materials". https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm.

Who decides on the application of the instrument?

The European Commission is responsible for proposing implementing acts that outline specific countermeasures. These proposals can be enacted only if they receive approval from a committee of member states by a qualified majority.

The Instrument Against Coercive Measures: Protection Against Political Blackmail by Third Countries

*Regulation on the Protection of the Union and Its Member States Against Economic Coercion by Third Countries*³⁶

What problem is this instrument intended to solve?

This instrument addresses attempts by third countries to use economic pressure to achieve political objectives and restrict the autonomy of the EU and its member states. Notable instances include the Trump administration's threats of punitive tariffs in retaliation to France's digital tax proposal and China's significant trade restrictions on Lithuania following the opening of a Taiwanese representative office, illustrating the geopolitical leverage exerted through economic means.

How is it supposed to solve this?

The Anti-Coercion Instrument (ACI) establishes a legal framework under international law for adopting trade policy countermeasures, streamlining processes that were previously possible but challenging to implement. Initially, it requires determining whether trade restrictions by a third country qualify as politically motivated coercive measures. If so, and if consultations with the implicated country do not cease the coercion, the EU is authorised to impose proportional trade countermeasures aligning with Union interests.

Can the instrument solve the problem?

The ACI's success hinges on the credibility of the EU's countermeasure threats and the strategic calculations of the targeted state. Given that countries like China or Russia may accept significant economic drawbacks to fulfil their political ambitions, the deterrent effect of the EU's countermeasures is questionable. The EU's adherence to proportionality further diminishes its deterrent capability.

Moreover, the EU's perception as a fragmented entity in foreign and security policy—owing to member state sovereignty—complicates unified decision-making. Historical instances show China or Russia exploiting these divisions, undermining collective EU action. The diversity of member state interests often results in minimalistic compromises rather than the decisive responses necessary for effective deterrence.

Nonetheless, the ACI marks a significant advancement towards empowering the EU geo-economically. Unlike previous sanctions mechanisms, which necessitated unanimous member state agreement and were susceptible to blockages by individual states, the ACI requires only a qualified majority for enactment.

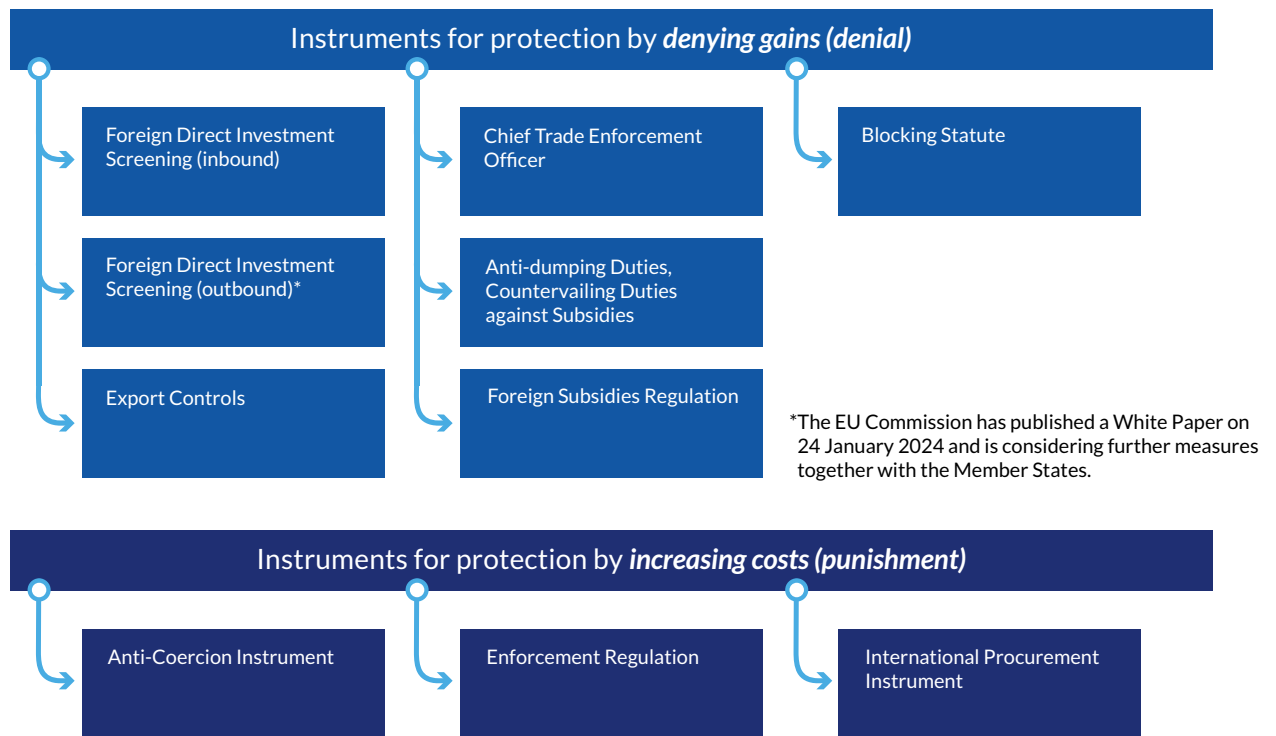
Who decides on the application of the instrument?

The European Commission undertakes the initial analysis of third-country measures either independently or upon request. Following this investigation, it recommends an action plan to the Council. If the Council identifies the existence of coercive mea-

³⁶ Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries (2023). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R2675>.

asures, it initiates consultations with the involved third country. To proceed with countermeasures, the Commission proposes an implementing act, which a committee of member states reviews and decides upon by a qualified majority.

FIGURE 3 Instruments for protection



4. New Tools, No Common Strategy Yet

The EU has embarked on a strategic pivot with the foreign trade policy laws enacted in recent years. It is now better positioned to shield itself from unfair trade practices. Moreover, for the first time, the EU possesses tools to actively defend against intentional, power-politically motivated disruptions to its trade relations by third countries. This is particularly true for the Anti-Coercion Instrument, designed to implement punitive actions by the EU in response to attempts at political blackmail through economic means. Initiatives have also commenced in other security-relevant domains, such as the control of exports of critical technologies and investments by European companies in these technologies within other EU countries. Only after the European Parliament elections in spring 2024 will it become clear how the security vulnerabilities identified in these areas might be addressed.

However, the adoption of these instruments marks merely the initial step. Their efficacy hinges on the EU's ability to credibly demonstrate that states acting counter to its interests will face severe repercussions (punishment) or will be unable to achieve their objectives without incurring disproportionately high costs (denial). This necessitates swift, unified, and decisive action from the EU.

Yet, the speed, cohesion, and decisiveness of the EU's actions are contingent upon its 27 member states. Except for a few instances where the Commission acts autonomously, the decision to deploy the new external economic tools rests with the member states. Throughout the legislative process, they have meticulously ensured that their decision-making authority is not compromised in favour of the EU level. Consequently, the Commission's role is limited to proposing or recommending actions, which are then subject to complex, multi-stage review and consultation procedures. The ultimate decisions on tightening export controls or imposing penalties rest solely with the member states, which vote by qualified majority in the Council.

This practice alone casts doubt on whether the EU has truly enhanced its capacity to act with these new in-

struments. Quick decision-making remains improbable. Previous trade crises have underscored the challenges member states face in presenting a united front, given their vast economic disparities and divergent interest preferences. Conflicting policy approaches to state involvement in the economy, the free trade orientation of northern member states like Germany, and the more protectionist stance of France and other southern European countries illustrate this. The significant differences in the reliance of member states' economies on exports and imports further complicate consensus on the acceptable costs of defending European interests, whether from lost trade or potential retaliatory actions by third countries. Without risk-taking willingness and solidarity among the member states, it becomes facile for revisionist and self-interested powers to exploit these divisions and thwart a collective response.

Furthermore, doubts linger about the EU's determination to serve as a credible deterrent. As a project founded on liberal ideals, promoting peace through law and economic interdependence, the EU has largely moved away from thinking in terms of adversarial relations and zero-sum outcomes. However, interest-balancing dialogues offer no shield against hostile states violating international law. Such crises demand forceful responses that inflict pain on the aggressor. Adversaries will not be deterred if they anticipate the EU will invariably adhere to the principle of proportionality. Effective deterrence by the EU requires convincing adversaries of its readiness to deploy countermeasures to defend its security interests, in ways that defy their calculations.

Given these structural challenges to acting unitedly and decisively, bolstering resilience—developing internal strengths—gains even greater significance for the EU's security relative to the new protective tools. Autonomy, underpinned by self-sufficiency in critical technologies and a globally competitive, innovative, sustainable, and socially equitable economy, may well be the most reliable form of reassurance. Should the EU succeed—and it possesses every opportunity—in transitioning its economy to climate neutrality and achieving people-centred digitalisation, it will not only enhance its appeal as a

global model but also reclaim its influence. This could foster new international partnerships supportive of climate-neutral transformations and diversify trade flows, especially with “Global South” countries concerning critical raw materials currently sourced predominantly from China.

Yet, reinforcing the EU’s resilience is imperative, as existing measures offer only temporary safeguards against specific shocks. Export restrictions on critical technologies might delay but cannot indefinitely prevent the development of equivalent production capacities in affected countries, exemplified by China’s escalating investment in future technologies. While anti-dumping and countervailing duties can protect European companies from unfair competition, they do not cultivate

industries capable of sustaining long-term global competitiveness. This necessitates substantial investments in green and digital future technologies, a re-evaluation of EU state aid law, and an unwavering commitment to deepening the internal market.

All protective measures, including the fortification of its economic base, do not absolve the EU from evolving into a strategic entity adept in foreign and security policy alongside trade policy. Failing this transformation, the EU risks inadequacy in shaping the future world order on par with powers like the U.S.A., China, or Russia, based on its values and interests. Soft power, rooted in an attractive and sustainable economic model, remains essential but insufficient for survival in an era where economy and security are inextricably linked.

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