

**European Trade Policy “En Marche”**  
**The Impact of Emmanuel Macron’s election  
as French President**

**Introduction**

**11 May 2017**

On 7 May 2017, centrist candidate Emmanuel Macron was elected President of France with 66% of the vote. Given the increased political weight of France in the European Union (“EU”) after Brexit, Emmanuel Macron’s position regarding free trade and globalisation is likely to shape the EU’s trade policies in the foreseeable future.

In the electoral program of his political party, “En Marche” (“On the Move”), Emmanuel Macron has included a chapter called “Europe to protect from globalisation”, describing his views on the future of EU trade policy. As the title of the chapter suggests, Emmanuel Macron intends to steer the EU towards more protectionist trade policies.

To achieve this objective, he proposes five measures that are analysed in more detail hereafter.

## 1. BUY EUROPEAN ACT

First, Emmanuel Macron proposes to adopt a “Buy European Act” (“**BEA**”), which would reserve European government procurement contracts – such as rail or infrastructure projects - for companies carrying out at least half of their production in the EU. This proposal is not new as it was already suggested by former French President Nicolas Sarkozy when he ran for a second term in 2012.

Such a measure would normally be in clear violation of the principle of national treatment – enshrined in Article III:4 of the General Agreement on Tariffs and Trade (“**GATT**”) and Article XVII of the General Agreement on Trade in Services (“**GATS**”) – which forbids treating foreign products or services less favourably than domestic products or services. However, Article III:8 of the GATT and Article XIII of the GATS exempt government procurement from the scope of these obligations.

The European Union, together with 18 other countries, is also a party to the Agreement on Government Procurement (“**AGP**”). The AGP applies to procurement contracts over a certain threshold offered by most governmental bodies in the European Union. Article III.1(a) of the AGP provides that all products, services and suppliers of other parties must be immediately and unconditionally granted treatment no less favourable than that accorded to domestic products, services and suppliers with respect to government procurement procedures. Hence, reserving European government procurement contracts to companies carrying out at least half of their production in the EU would blatantly violate this provision.

As a result, other parties to the AGP would be able to bring a dispute to the WTO against the EU. This could ultimately lead to retaliation under Article XX.3 of the AGP. It is worth noting, however, that, under this article, cross retaliation is prohibited as retaliation is expressly limited to concessions granted under the AGP but not under other WTO agreements.

The BEA, which was already criticised when it was first formulated in 2012, is attracting renewed criticism. European Commission Vice-President, Jyrki Katainen, took a clear position against Macron’s proposal. Whether this proposal will ever materialise is thus far from certain.

An alternative approach would be to push for the adoption of an EU International Procurement Instrument (“**IPI**”). This was originally put forward by the European Commission in 2012 and a revised proposal was presented in 2016.<sup>1</sup> The IPI would

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<sup>1</sup> European Commission, *Amended Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union’s internal market in*

allow the European Commission to initiate public investigations in cases of alleged discrimination of EU companies in procurement markets. In case such an investigation would find discriminatory restrictions vis-à-vis EU goods, services and/or suppliers, the Commission would invite the country concerned to consult on the opening up of its procurement market. Such consultations can also take the form of negotiations on an international agreement. As a last resort, the Commission could, after consultation with EU Member States, apply the new tool. This means that bids consisting of goods and services from the country concerned would, in a comparison with other bids, be considered as offering a higher price than the one they have put forward, thus providing European and non-targeted countries' goods and services a competitive advantage. To avoid the application of this tool, third countries would have to stop their discriminatory practices.

In brief, if the EU follows one of these two approaches, it will make it more difficult for companies from countries applying restrictive procurement policies to obtain EU public contracts.

## 2. ANTI-DUMPING INSTRUMENTS

Second, Emmanuel Macron wants to reinforce the EU's anti-dumping instruments. According to his electoral program, they should be more dissuasive and reactive to, in particular, unfair competition from China and India in the steel sector.

As Emmanuel Macron's electoral program states that he will defend a reinforcement of the EU's anti-dumping instruments, he will most likely support the European Commission's proposal to change the method of assessing market distortions in third countries to ensure fair trade in imports into the EU.<sup>2</sup>

In brief, the proposal would grant the Commission the authority to adjust costs on the basis of third country prices and costs where market distortions effectively exist. This would extend to all WTO Members the use of analogue country data to determine normal value, which is currently restricted to countries classified as non-market economies in the EU Basic Anti-Dumping Regulation. Compared to the previous non-market economy methodology of Article 2(7) of the Basic Anti-Dumping Regulation, the burden of proving that distortions exist would shift to the complainants. The European Commission, however, would mitigate this evidentiary burden by having its

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*public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries*, available at: [http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc\\_154187.pdf](http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154187.pdf).

<sup>2</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union*, available at: [http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc\\_155079.pdf](http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155079.pdf).

services prepare country and sectoral reports that set out existing distortions for use by potential complainants.

With Emmanuel Macron's support, the proposal is more likely to be adopted in the coming months.

### 3. INVESTMENT CONTROLS

Third, Emmanuel Macron proposes setting up, at EU level, an instrument to control foreign investment in the EU which would be similar to what has been done by the United States or China.

Discussions on stricter investment controls in the EU were sparked in 2016 by the acquisition of Germany's manufacturer, Kuka, by China's Midea Group. Earlier this year, Germany, France and Italy contacted the EU Trade Commissioner, Cecilia Malmström, to create the legal basis permitting national governments to "intervene in direct investments". The lack of openness and reciprocity in investment relations with third countries was pointed out as the reason to call for more protectionism towards foreign investments.

This has already led the EPP Group, the largest political group in the European Parliament, to introduce a proposal for a Union act calling on the Commission to create a European Committee on Foreign Investment to monitor, investigate and control foreign investments in European enterprises, and to negotiate equal access for EU investments towards third countries.<sup>3</sup> The proposal is currently being discussed in the European Parliament's international trade committee.

With the election of Emmanuel Macron as President of France, this initiative is likely to gain momentum and might impact EU's ongoing and future trade negotiations.

It has thus become more likely that foreign investment controls will be created at the EU level in the coming years, mirroring the approach taken by the EU's main trading partners.

### 4. EUROPEAN TRADE PROSECUTOR

Fourth, Emmanuel Macron suggests creating a European Trade Prosecutor ("**ETP**").

Article 86 of the Treaty on the Functioning of the European Union ("**TFEU**") already foresees the possibility of setting up a European Public Prosecutor's Office ("**EPPO**").

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<sup>3</sup> European Parliament, *Proposal for a Union Act submitted under Rule 46(22) of the Rules of Procedure on the Screening of Foreign Investment in Strategic Sectors*, available at: <http://g8fip1kplyr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2017/03/2017-03-20-Draft-Union-Act-on-Foreign-Investment.pdf>.

However, Macron's proposed office differs significantly from the EPPO, as the latter would only be in charge of prosecuting criminal offences affecting the financial interests of the Union.

In contrast, Emmanuel Macron's proposed ETP would be in charge of investigating violations of international obligations by the EU's trading partners, in particular, regarding environmental protection, taxes and labour standards. As such, this new function cannot be established under Article 86 of the TFEU.

For example, the ETP would be given the power to investigate violations of international agreements such as Chapter 23 on Trade and Labour and Chapter 24 on Trade and the Environment of the Comprehensive and Economic Trade Agreement ("**CETA**") concluded between Canada and the EU.

As there is no legal basis in the TFEU for a future ETP, it remains unclear how it will be established. In any case, the establishment of the ETP would most likely lead to a more aggressively enforced EU trade policy.

## 5. FREE TRADE AGREEMENTS

Finally, Emmanuel Macron has clearly come out in favour of free trade agreements ("**FTA**") during his campaign. As a matter of fact, Emmanuel Macron was the only presidential candidate who openly voiced his support for CETA and the Transatlantic Trade and Investment Partnership ("**TTIP**").

Emmanuel Macron does not exclude the possibility of modifying CETA, however. In particular, he suggested creating a commission of experts to assess the impact of the agreement on the environment and human health. Based on the results of this assessment, modifications could be proposed.

Furthermore, Emmanuel Macron has proposed to add to all EU FTAs chapters on fiscal cooperation, labour standards and environmental protection that would be subject to mandatory dispute settlements. Violations of those chapters would lead to trade retaliation. It remains unclear, however, whether Emmanuel Macron would only like to see those chapters added to future EU FTAs or whether he will push for renegotiation of all current EU FTAs.

Finally, Emmanuel Macron wants to change the way that the EU negotiates trade agreements by increasing transparency and civil society participation. In order to do so, his electoral program calls for the creation of surveillance committees composed of representatives of NGOs which would not only be involved in the negotiation process but also in overseeing the operation of FTAs and evaluating their impact. Importantly, Emmanuel Macron considers that future EU FTAs should not necessarily

be approved by national parliaments since trade policy is an exclusive competence of the EU.

Hence, while Emmanuel Macron will most likely push for more FTAs to be exclusively concluded by the EU, he will also try to ensure that those FTAs are not met by the same public uproar as CETA and TTIP by including labour and environmental chapters and increasing civil society participation during the negotiation process.

## 6. CONCLUSION

Although he was portrayed as a “free trader” in comparison to the “protectionist” Marine Le Pen, Emmanuel Macron’s trade policy is unlikely to depart from traditional French policies aimed at protecting domestic industries. The election of Emmanuel Macron as president of France on 7 May 2017 will therefore move EU trade policy in a more protectionist direction. This is, however, unlikely to be a fundamental shift since many of his ideas are already in some form or other under discussion at the EU level. In view of Emmanuel Macron’s protectionist policy aims and the reduced influence of the more liberal Member States following the departure of the UK, these protectionist proposals now stand a better chance of being adopted in the coming years.

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### Get in touch

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