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Article

## Commerce and Security Meet in the European Union’s Trade Defence Instruments

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### Abstract

Mercantilist policies, protectionism, Chinese and US violations of the spirit—if not always the rules—of the World Trade Organization, along with supply chain vulnerabilities, trade wars, and illegal state subsidies have all contributed to a rise in the weaponisation of commerce (using trade in response to, or to achieve, political decisions or acts) across the globe. The weaponisation and geo-politicisation of trade pose a challenge for the EU, which is poorly suited for a game of power politics. Its common commercial policy developed separately from the intergovernmental foreign and security policy. The level of exclusive EU competence differs across the two policy domains, as do decision-making processes. Drawing on work addressing ideational and instrumental levels of policy, we discuss how the EU is assessing the international environment through the ideational framework of strategic autonomy, and how this has shaped the construction of new trade defence instruments intended to protect against economic and technology-related security risks. Focusing specifically on trade defence instruments addressing security concerns, which are justified in the 2023 European Economic Security Strategy (especially in the pillar focusing on protecting against economic security risks), we show that the distinction between commercial policy and traditional security concerns is eroding.

### Keywords

economic security strategy; European Union; liberal international order; security; strategic autonomy; trade instruments; trade policy

### Issue

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### 1. Introduction

A core objective of the liberal international order (LIO) established by Europe and the US after the Second World War was separating commercial policy and security issues as much as possible, with the primary vehicle for the former being the General Agreement on Trade and Tariffs, and, since 1995, the World Trade Organization (WTO). The operating principle was non-discrimination between domestic and foreign goods (and later services) amongst members, with exceptions

for export controls for arms and dual-use goods and technologies. Defensive, retaliatory tools—predominantly tariff-based—were permitted against a country that discriminated against another member’s products, but these were mostly employed by developed economies; developing countries secured special treatment and exemptions (e.g., tariff-free market access and certain non-market exemptions). The General Agreement on Trade and Tariffs recognises the need for specific national security exemptions (WTO, 2023, Article XXI), but this was thought largely applicable only in the context of war,

and thus rarely invoked. Countries' security concerns thus largely remained the purview of foreign policy, not commercial policy.

However, the international environment has changed. Gone is the aspiringly universal version of the LIO, dominant in the 1990s and early 2000s (Buzan & Lawson, 2014). First came vigorous contestation (Costa, 2019), i.e., the emergence of a vocal opposition to some of its key tenets, both among newly influential actors and in parts of the West. Thereafter its fragmentation was accelerated by Brexit, the Trump presidency, Covid-19, and the war in Ukraine. These events gradually pushed the LIO in a more competitive, geographically fractured, security-oriented direction (Lavery & Schmid, 2021). More specifically, fragmentation of the LIO refers to a bundle of processes that range from challenges to the universality of human rights to the crisis of global governance instruments, from the bifurcation of tech to protectionist tendencies in trade policies. Fragmentation is thus "the transformation of the global rules-based order into a new global ordering architecture characterised by diversity and plurality" (Flockhart & Korosteleva, 2022, p. 466).

With this fragmentation has come mercantilist policies, protectionism, and Chinese and US violations of the spirit—if not always the rules—of WTO-centred trade, along with supply chain vulnerabilities, trade wars, and illegal state-subsidies, all of which have contributed to the rise in the weaponisation of commerce (using trade in response to political decisions or acts) across the globe. This has raised a spectrum of economic and technology-related security threats (European Commission, 2023a), posing a challenge for the EU, which is ill-suited for a game of power-political trade policy. The EU has traditionally behaved like a small power in the security field (with an associated preference for the status quo and predictability) and a great power in trade (with a corresponding appetite for grand projects; Toje, 2011). The level of exclusive EU competence differs across the two policy domains, as do decision-making processes and actor networks.

This article assesses the interaction and increasing overlap of these two rather distinct policy fields through the assessment of new trade defence instruments (TDIs), contributing to the literature on the transformation of the EU's common commercial policy and economic security. There is an emerging literature addressing the application of commercial and economic policy instruments in conjunction with instruments traditionally applied through foreign and security policies, such as sanctions (e.g., Adriaensen & Postnikov, 2022; Olsen, 2022; Schild & Schmid, in press; Schmitz & Seidl, 2023). However, there are continued calls for "a more thorough academic and intellectual debate about the intersection of economics, security, and geopolitics" (Hellendoorn, 2023). The hypothesis of this article is that there has been a rapprochement between the trade and security paths due to a common ideational framework, strate-

gic autonomy, exemplified through TDIs with security objectives. The centrality of these instruments is also emphasised in the 2023 European Economic Security Strategy (EESS), especially the second pillar, aimed at protecting against economic security risks (European Commission, 2023a).

Our analysis draws on work by Daugbjerg and Kay (2020) who distinguish between the ideational and instrumental levels of policy. A policy pathway change occurs when there is both displacement of the existing idea(s) underpinning a policy, and alternative idea(s) resulting in new instruments. This differs from policy adjustment, which is when an existing instrument is altered or recalibrated (changing the intensity of the effect of the existing instrument; Daugbjerg & Kay, 2020, p. 254). After discussing the evolution of trade policy vis-à-vis security policy in the EU, we turn to the ideational progression of strategic autonomy, from the realm of traditional foreign policy to trade. We discuss how the EU is assessing the LIO through the ideational framework of strategic autonomy, followed by a presentation of where and how the interpenetration of economics and security are manifest in new TDIs, supporting our hypothesis.

## 2. Trade and Security Policies in the EU

EU foreign policy comes in multiple forms, executed by different institutional actors using a variety of instruments across different regions. It can be divided into four clusters: (a) the Common Foreign and Security Policy (CFSP), (b) the Common Security and Defence Policy, (c) external action (e.g., trade, enlargement policies), and (d) internal policies with an external dimension (e.g., energy, climate, migration policies; Petri et al., 2020). Traditionally, foreign policy refers to the first and second cluster, where security is the main goal and an "inter-governmental logic" dominates, meaning that member states are in control of policy decisions (e.g., unanimity rules in Council structures), with no, or very limited, transfer of competences to the supranational EU level. The other two clusters include policies with substantial transfers of competences to the EU level, thus providing institutional powers to the European Commission and—to a limited extent on trade—the European Parliament (Petri et al., 2020).

Trade policy is one of the few policy fields in which the EU has state-like competences (Gstöhl & De Bièvre, 2018). Extensive EU trade competences were in place from the beginning of its economic integration, while a nascent intergovernmental foreign policy arrived nearly 40 years later, with the 1991 Maastricht Treaty. Trade policy was, from its inception, premised on the post-war rules-based LIO and, in line with the General Agreement on Trade and Tariffs, focused on non-discrimination. It developed its own organisational esprit de corps—based on the idea that expanding trade and commercial links was good for both economic growth and political

stability (Roberts et al., 2019)—where its activities were not easily influenced by other parts of the European political system (Bossuyt et al., 2020).

The Directorate General for Trade does not fall under the competence of the European External Action Service (EEAS), which carries out the intergovernmental CFSP. However, the Treaty on the Functioning of the European Union (TFEU) specifies that “the common commercial policy shall be included in the context of the principles and objectives of the Union’s external action” (Consolidated Version of the TFEU, 2012, Article 207(1)). Thus, the EU’s external actions must also be consistent with other policies, such as safeguarding EU values, human rights, security, sustainable development, multilateral cooperation, and “the protection of its citizens” (Consolidated Version of the TFEU, 2012, Articles 3 and 21). In other words, the EU shall combine economic interest and political values in its external actions. Yet, the TFEU does not establish priorities among these objectives and there is an institutional divide. Subsequent security and trade strategies respectively mention each other, but linkages remained rather vague (Bossuyt et al., 2013).

At the same time, the scope of EU trade policy gradually widened to cover an array of policy measures affecting regulatory affairs (e.g., coordinating standards for public health or the environment, custom valuation methods, the integration of trade in services into international economic agreements, the growing importance of intellectual property rules, public procurement, and attempts to limit ruinous subsidy races). This met some opposition and pushback from member states, who felt the Commission began encroaching on their turf of “traditional” foreign policy, for example on inbound foreign investment screening, where the Commission ultimately acquired advisory power rather than decision-making authority (discussed in Section 4). Conversely, the EU has long concluded bilateral agreements that extend beyond mere commercial purposes (especially with neighbouring and developing countries), where the objective has often been to help third parties’ development and stability (Ariel & Haftel, 2021). Yet, the security-related provisions were largely aspirational, lacking monitoring and/or enforcement.

However, the fragmentation of the LIO has spurred rethinking on whether and how EU trade policy can and should serve geopolitical goals, economic interests, and political values (European Commission, 2023a; Lumet, 2022; Petri et al., 2020; Weinhardt et al., 2022). The Commission recognises that “EU trade policy has to take into account these global trends and challenges to reflect the political ambition of a stronger Europe in the world” (European Commission, 2021a, p. 3). A stronger Europe means an EU able to act alone when necessary to defend its interests, and the 2021 EU trade strategy proposed revising and expanding TDIs in order to respond quicker to international developments, counter unfair trade practices, and safeguard its interests and values.

The 2021 trade strategy brought strategic autonomy—an ideational framework that first emerged within the intergovernmental foreign and security policy—into the realm of trade policy.

### 3. The Strategic Autonomy Framework

Daugbjerg and Kay (2020, p. 258) define the ideational level of a policy as the one that “refers to the basic conception of how the world is and/or ought to be.” It thus includes both a cognitive (how the world is) and a normative (how it ought to be) dimension. The former defines the nature of a policy problem and its cause, thus providing a foundation for how to address the problem. The normative dimension then defines what policy action is morally appropriate. In our case, strategic autonomy captures a recognition of a changed global trade environment where power politics dominates, as well as ideas of how to appropriately respond in order to exert influence and help restore the preferred, rules-based LIO.

The strategic autonomy narrative first emerged in the traditional foreign policy domain, before spreading into trade. We explore the amorphous concept, continuously recognising that strategic autonomy’s evolution from foreign policy and defence to trade reflects a changed international environment and the increased complexity of trade (e.g., Lavery et al., 2022; Schmitz & Seidl, 2023). A changing environment affects the capabilities needed to act autonomously and achieving such capabilities requires both a recognition of changes and a willingness to respond by developing and using new capabilities (Soifer, 2012).

The idea of strategic autonomy initially emerged in the context of French national security policy in the mid-1990s, referring to “an ability to decide and to act freely in an interdependent world” (Franke & Varma, 2019, p. 5; see also Lavery et al., 2022). European strategic autonomy was long perceived primarily as a French idea of what would constitute a stronger Europe (one less reliant on the US), but as the international environment changed the idea gained traction (Lavery et al., 2022), becoming an ideational framework for EU initiatives and action.

In 2003, the EU saw the international environment as “one of increasingly open borders,” in which “flows of trade and investment, the development of technology and the spread of democracy have brought freedom and prosperity to many people” and where “global threats, global markets and global media” required “an effective multilateral system” (Council of the European Union, 2003, p. 36). By 2016, the EU’s Global Strategy reflected a markedly different tone, where an “existential crisis, within and beyond the European Union” demanded a reassessment of strategies (EEAS, 2016, p. 7). While “a rules-based global order” centred around multilateralism remained the preferred option, the EU had to be ready to explore other options, and prioritise its own

security, since “in this fragile world, soft power is not enough” (EEAS, 2016, p. 44). More recently, the 2022 Strategic Compass conveyed an increasingly pessimistic (realist) view, describing a world of “conflicts, military build-ups and aggressions,” where interdependence can be “conflictual,” leading to “increasing attempts of economic and energy coercion” (EEAS, 2022, p. 10).

Two different external developments have driven this rethink of EU foreign policy, the result of which has been a gradual shift towards an EU foreign policy that is less premised on a predictable, rules-based international order, and more open to political discretion and explicit concerns about security. The first is the challenge to international organisations. Multilateral institutions have become less able to deliver—in terms of norm construction and enforcement—even when enforcement mechanisms exist, as is the case of the WTO (Kortunov, 2022). The Commission and the EEAS single out two factors as undermining multilateral institutions: “increasingly confrontational and unilateralist” relations between major powers and “competing visions and agendas on the global order” (European Commission, 2021b, p. 1). In such a situation, “the EU needs to become more assertive,” and more transactional if need be, because “we cannot be multilateralists alone nor only for the sake of it” (European Commission, 2021b, p. 1).

A second development undermining key tenets of EU foreign policy is the weaponisation of interdependence. In a situation in which “unprecedented levels of interdependence” coexist with “continued jockeying for power,” the capacity to “grant or deny access to networks underlies several of the most important contemporary geopolitical competitions” (Farrell & Newman, 2019, p. 43). Many of the same areas and developments driving interdependence are also terrains on which attacks between competing powers play out: “the internet, border controls, technology supply chains and [the] financial system” (Leonard, 2022, p. 4).

For the EU—itself an integration-through-law peace project—to view interdependence as a potential threat implies a big shift in its self-perceived international role. A succession of crises, such as Brexit, the Trump presidency, Covid-19, and the war in Ukraine, revealed the EU’s vulnerability associated with interdependence. These are “moments of truth” in which politics returns and displaces the “normal predominance of rules-based decisions” (Hutter & Kriesi, 2022 p. 342). Likewise, Rieker and Riddervold (2022, p. 460) find that although the EU continues to “promote and safeguard the rules-based international order,” this tends to be “overlooked when there is a widely felt perception that there is a security threat.” There is also growing support inside the EU for dirigisme, downplaying the role of market forces in sectors considered critical (Bora, 2023). These developments have shaped the conditions under which EU officials have thought about the adequacy of the EU’s approach to international politics (cf. Matthijs & Meunier, 2023; Weyand, 2023).

The European Council first referenced strategic autonomy in 2013, in reference to enhancing the strategic autonomy of the European defence industry; this was repeated by the Foreign Affairs Council in 2015 (Lavery et al., 2022, p. 60). A modest statement of wider foreign policy intentions followed in 2016, as the EU was to have the “ability to act and cooperate with international and regional partners wherever possible, while being able to operate autonomously when and where necessary” (EEAS, 2016, p. 8). By 2018, Corentin Brustlein (2018, as cited in Franke & Varma, 2019, pp. 5–6) observed that:

For Europe, being strategically autonomous requires the ability to set a vision of its role in its neighbourhood and on the world stage, to identify desirable political goals, and to craft and implement plans meant to achieve those, including through the use of military force....The question is...what benefits can be drawn from reaching higher degrees of European autonomy in the political, operational, and industrial realms.

Member states remained divided on the geography and functionality of strategic autonomy (Franke & Varma, 2019, p. 25). By 2020, the EU’s High Representative of the European Union for Foreign Affairs and Security Policy, Josep Borrell, began referencing the importance of economic security. He explained that strategic autonomy entails the ability “to act according to one’s own values and interests,” across all areas, including on “subjects of an economic and technological nature,” and for this, “the EU needs to learn to speak the language of power and have the capacity to act autonomously when and where necessary and with partners wherever possible.” (Borrell, 2020a). Thus, the need to develop autonomous capabilities now extended beyond defence and foreign policy. Seeking to reassure states fearful of hurting the transatlantic alliance, Borrell stressed that a “capable and strategically aware Europe is the best partner for the US—and also what Europe itself needs” (Borrell, 2020b). By April 2023, he emphasised how “the Commission is important for EU foreign policy. Economic security is crucial to our understanding of foreign policy, we need to include economic security as formally part of our foreign policy” (European Union, 2023).

On the Commission’s side, the idea of acting autonomously, outside of or in addition to the international institutionalised system of trade rules—that is, where the WTO is incapacitated, takes too long, or lacks authority to act—grew incrementally (Schmitz & Seidl, 2023). The 2015 trade strategy focused on free trade and managing globalisation with existing capabilities and an unaltered international system. By late 2019, the Commission began using strategic autonomy in reference to commercial policy (Damen, 2022), and by 2021 the EU’s trade strategy revealed a clear shift in discourse, underpinned by a paradigmatic pendulum swing



towards a new balance between managing globalisation (liberal) and trade-as-foreign-policy (realist; Eliasson & Garcia-Duran, 2023; Schmitz & Seidl, 2023). The focus was now on building resilience and strengthening the EU's autonomy; as a director at the Directorate General for Trade emphasised, the EU's 2021 trade strategy was a "deliberatively strategic document...on how the EU places itself in a geopolitical environment" (Amsterdam Institute for Social Science Research, 2022).

In reference to trade, strategic autonomy was prefaced with an oxymoronic "open" in order to assuage liberal-minded Northern Europeans that the EU was not pursuing protectionism; this also allowed sufficient strategic ambiguity to enable a consensus behind the concept (Gehrke, 2022; Schmitz & Seidl, 2023, pp. 5–6). The EU remains committed to pursuing market opening through trade agreements and upholding trade rules (both multilateral and unilateral) in WTO-compatible ways, but also insists that new autonomous trade instruments can help protect open and fair commercial exchange and safeguard economic interests (Lumet, 2022). The rebalancing represented through the trade strategy also signals an attempt at merging ideal-type approaches to decision-making under conditions of uncertainty and change: the principled (favouring both a rules-based trading order and improved resilience) and the pragmatic (experimenting with new instruments; Boin & Lodge, 2021).

Kuang et al. (2023) identify the EU's discourse on strategic autonomy as initially referring to action independent of the US and the transatlantic alliance, while later moving into a "muscular interpretation of 'assertiveness'" (p. 24). Assertiveness, a willingness to use available tools to strengthen and safeguard economic security, is central to strategic autonomy (European Commission, 2021d), and re-emphasised in the 2023 EESS (the latter explicitly builds on the 2021 trade strategy and related documents; European Commission, 2023a, p. 3). Economic success and security concerns now jointly occupy officials' focus as they attempt "to control, to shape, or to manipulate certain economic links in the interest of notions of economic security or national security—or, indeed, autonomy and sovereignty" (Roberts et al., 2019, as cited in Gehrke, 2022, p. 65).

In analytical terms, there has thus been a change in how the EU sees the world and what it needs to do. While the EU continues to believe that the world should be based on common rules and multilateralism (its strategic autonomy is linked to "open"), it is now more assertive and includes security concerns in all aspects of EU foreign policy, including trade. This ideational change is reflected in some of its new TDIs; instruments also justified in the EESS.

#### 4. The New SecurityTrade Instruments

The instrumental level of a policy, as defined by Daugbjerg and Kay (2020), includes both instruments

and instrument settings (effects). The first "sets out the operational policy objectives and strategies for attaining them—the composition of policy instruments" while the second "refers to the calibration of the instruments" (Daugbjerg & Kay, 2020, p. 258). To confirm the instrumental change, we identify the creation of new EU trade policy instruments, in addition to alterations or recalibrations of existing ones; these instruments all address security concerns.

The call for new instruments grew alongside the incorporation of strategic autonomy in the trade vernacular. In 2016, the German government and business community, long hesitant to criticise China for fear of retaliation, became concerned with China's aggressive tactics when the Chinese Media Group (a state-owned firm) acquired the world-class robot company Kuka (Schild & Schmid, in press). Germany revised its investment screening regulations in 2017 and 2018, and, along with Italy and France, called for EU-level investment screening (Schild & Schmid, in press). By 2019, German business groups openly called for new instruments to deal with China's behaviour, and the French and German governments wanted a new EU industrial policy (Kalimo et al., 2023, p. 5). The Commission also recognised concerns with China (European Commission, 2019b) and the need for new tools, and included several proposals for new instruments in its 2020 communication on "a new industrial strategy for Europe."

The 2021 trade strategy (Open, Sustainable, and Assertive Trade Policy; European Commission, 2021a) is the first trade strategy where security concerns are important, but the language is carefully balanced to avoid conveying the idea that EU trade policy is (strictly) a geopolitical tool (Eliasson & Garcia-Duran, 2023), even as it acts in a world of power politics. It recognises, much like extensive academic research, that interdependence can be weaponised, and that the EU must defend its interests and values with new instruments (De Ville, 2022; Schild & Schmid, in press). The Open, Sustainable, and Assertive Trade Policy emphasises revising and expanding the EU's "toolbox as necessary to defend itself against unfair trading practices or other hostile acts" (European Commission, 2021a, p. 10).

The result is an extensive and diverse trade toolbox (Erixon et al., 2022). These instruments all—to some degree—overlap economic and security interests, with no consensus on their categorisation, as exemplified by Gehrke (2022) who divides instruments into groups according to whether they address economic distortions, economic coercion, sustainability and infrastructure, or supply resilience (cf. Jacobs et al., 2023). Meanwhile, Danzman and Meunier (in press) categorise them as either offensive or defensive, and sanctions or inducements. Taking into account our objective, we divide the TDIs (see Table 1) between those that primarily seek to manage globalisation (uphold free and fair trade, while supporting a combination of greening technology, sustainability, and unfair trade practices), and those

primarily targeting perceived security risks (economic and technological).

Both categories include TDIs which are recalibrations of old instruments and completely new instruments. We recognise, that in addition to TDIs, there are other instruments (e.g., the Green Deal, Regulation on Deforestation-Free Products, Critical Minerals Act, Digital Markets Act), forums (e.g., Trade and Technology Councils with the US and India respectively), and strategies (e.g., on global standard-setting) that all in different ways affect commercial relations with other actors. However, here we focus on the TDIs aimed at addressing security concerns. We do this for two reasons: First, we are interested in instruments that straddle trade and security; second, according to the EESS, the Commission considers these instruments part of a “holistic approach” to “protect our essential security interests” (European Commission, 2023a, p. 11).

The Open, Sustainable, and Assertive Trade Policy emphasises the importance of protecting itself from “coercive action by third countries” and “distortions caused by foreign subsidies on the EU’s internal market” (European Commission, 2021a, p. 22) while limiting the transfer of technology to third countries (European Commission, 2021a, p. 19). To this effect, export control regulations were updated, both the FSFDI and Foreign Subsidy Regulation were approved, and an Anti-Coercion Instrument (ACI) was agreed in June 2023. The first is becoming an instrument to control access to certain technology, the second a method of screening investments threatening the single market and/or security, the third entails a coordinated transfer of competences to the Commission to control foreign acquisitions of EU firms, while the last ensures shared competency with the Council. All these new instruments provide the Commission with extensive powers, further embedding EU trade practices in the logic of power politics.

The Commissioner for the Internal Market, Thierry Breton, has often emphasised that Europe is facing a technology war between the US and China; there is a new global balance of power, and the EU must respond

with greater realism to ensure its sovereignty and the EU collective security (Breton, 2022). Export controls are perhaps the most classic trade instrument available to member states, and they have traditionally controlled exports of dual-use products, that is, goods or technologies that can have both civilian and military applications, with the justification of upholding commitments to non-proliferation (Mola, 2023, p. 124). Yet, the regulation was revised in 2021 to “better address risks associated with the rapidly evolving security, technology, and trade environment with a particular focus on the exports of sensitive, emerging technologies” (European Commission, 2023a, p. 10).

While enforcement and (potential) fines remain with member states, cross-border effects are evident in that the regulation now permits a member state to implement export controls solely based on another EU state’s legislation. The EESS explains that to improve “effectiveness and efficiency” (read: prevent or reduce threats to European values and interests), the Commission will present additional reforms to export controls by the end of 2023, including restrictions or bans on the exports of “enabling and transformative” technology (European Commission, 2023a, p. 5). This will be done alongside intra-EU “promotions” (read: state aid) to develop such technology in the EU. Furthermore, the High Representative of the European Union for Foreign Affairs and Security Policy and member states “will enhance the Single Intelligence Analysis Capacity,” a member State coordinating body for sharing civil and military intelligence, to better “detect threats to EU economic security” (European Commission, 2023a, p. 6). Thus, to ensure “Europe is a player, not a playing field” (Michels, 2021, as cited in Kuang et al., 2023, p. 15), the EU is now shifting the focus from only products and services traditionally applied to national security to economic and technological security writ large.

Safeguarding European innovation and technology in sensitive areas, and, with that, security interests, also played a major role in toughening the stance on investment screening. Although foreign direct investment is

**Table 1.** EU trade instruments.

For managing globalisation	To address security concerns
TDIs, updated in 2017 and 2018	Framework for Screening Foreign Direct Investments (FSFDI), in force since 2020
Enforcement Regulation, updated in 2021	Foreign Subsidy Instrument, in force since July 2023
Carbon Border Adjustment Mechanism, in force from October 2023	Export Controls, updated in 2021
Corporate Due Diligence, proposed in 2022, tentative agreement in 2023	Anti-Coercion Act, trialogue agreement in June 2023
International Procurement Instrument, in force since August 2022	

Source: Authors’ work based on European Commission (n.d.).

an EU competency, portfolio investments remain the purview of member states (Court of Justice of the European Union, 2017). The Commission initially (2012) proposed an EU-level FSFDI, but member states argued that the Commission encroached on their turf of domestic policies and security, and multiple efforts to revise the proposal floundered over the following years (Schild & Schmid, in press). Rather than exclusive competency, the adopted FSFDI (European Parliament and the Council Regulation of 19 March 2019, 2019) left the Commission with advisory and coordinating power (Sattorova, 2023).

Member states remain responsible for safeguarding their own national security interests (European Parliament and the Council Regulation of 19 March 2019, 2019, Article 1), but “the new framework places the Commission at the heart of a transnational information-sharing system” (Sattorova, 2023, p. 706). This ensures a “structured dialogue” (Lavery et al., 2022, p. 70) that allows the Commission to assess the security risks to the EU as a whole (cf. European Commission, 2019a). Now “member states should take utmost account” of the Commission’s opinion on investments affecting EU-funded projects or programs, and must justify in writing any decision that does not follow the Commission’s advice (European Parliament and the Council Regulation of 19 March 2019, 2019, Article 19). Articles 26 and 63 of the TFEU prohibit laws preventing capital movements for reasons other than security and public order, so the FSFDI cannot assess the economic costs and benefits of an investment, only its effect on security and public order (Articles 7 and 8). However, the regulation defines security in broad terms (cf. Article 4; Meunier, 2022; Sattorova, 2023, pp. 706–707). Additionally, and citing growing security concerns with technology transfers through EU firms’ outbound investments (an area unregulated at the EU level and where firms’ actions are only restricted by sanctions agreed upon by member states), the EESS justifies the Commission’s intention to propose outbound investment controls by the end of 2023 (European Commission, 2023a, p. 11).

Meunier (2022, p. 3) notes that “the success of the EU ISM [Investment Screening Mechanism] has paved the way for the subsequent creation of other commercial instruments at the border between trade and security.” The Foreign Subsidies Regulation was a complement to the FSFDI (European Commission, 2021c). Foreign subsidies may inflate and distort the price a foreign firm can pay for an acquisition or investment, or enable it to compete unfairly in public procurement bids (Luja, 2021; see also Danzman & Meunier, in press). Beyond levelling the commercial playing field, and designed with China in mind, the regulation is intended to minimise potential security risks. The Commission is provided further tools regarding foreign investment by preventing subsidised foreign entities (including state-owned or state-supported) from acquiring EU firms with sensitive technology and intellectual property that could be used against, or to exert pressure on, member states or the

EU (Danzman & Meunier, in press; European Commission, 2021c, Articles 1–6), justifications also used for the FSFDI.

The ACI is explicitly designed to deter third countries from weaponising commercial interests for the purpose of influencing political decisions. Coercion is defined as “a third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a member state” (European Parliament, 2023, Article 2). Several countries’ (e.g., the US and China) use, or potential use, of economic tools for political ends provided the impetus for the instrument (cf. Gehrke, 2022, p. 71). Such concerns were further validated when China imposed import bans on certain Australian goods in response to its support for an investigation into the origin of Covid-19, and all Lithuanian goods after the country allowed Taiwan to open an official office in Vilnius (Biukovic, 2023).

The ACI addresses coercion not covered by the WTO, nor addressed by any other international organisation (Biukovic, 2023, p. 2). The instrument is “complementary to other, more structural initiatives [the Union’s Industrial Strategy of May 2020] to enhance the resilience of the Union economic and financial system to various forms of external pressure” and “shall be consistent with the Union’s overall external policy” (European Commission, 2021d, p. 2).

The ACI is justified under international public law, referring to measures affecting the core functioning of a state (Biukovic, 2023; European Parliament, 2023). However, some legal analyses indicate that the ACI would have to be justified under the WTO’s security exception (WTO, 2023, Article XXI; see also, e.g., Fernández Pons, 2022). WTO panels have twice decided that Article XXI is judiciable and not entirely self-judging; the US wants to exclude security invocations from all adjudication, while the EU rejects such unfettered exceptions (e.g., Mola, 2023, p. 121).

The EU recognises the “special nature of national security interests” but argues that many such circumstances can be assessed (Permanent Mission of the European Union to the WTO, 2023). This leaves little room for compromise on a reformed Appellate Body (Petersmann, 2023), which in turn means it is unlikely that the EU’s criteria for coercion will be challenged under a redefined WTO definition of national security. Even so, the EU continues pushing for a reformed, functioning Appellate Body, since “in a geopolitical world...[you] can’t have a rules-based system without a functioning dispute system” (Amsterdam Institute for Social Science Research, 2022).

In addition to the plethora of activities that can be deemed coercive, and the extensive list of potential retaliatory measures, the ACI also merges two different decision-making processes: intergovernmentalism and unanimity (for the CFSP) and supranationalism and exclusive competence (trade). Heretofore all decisions to use sanctions to obtain political foreign policy objectives



(such as sanctions against Russia after its 2022 invasion of Ukraine) have been adopted by unanimity under the CFSP. The Commission's initial proposal would also have tilted power over sanctions to the Commission, but member states rejected that idea. The final ACI agreement stipulates that a member state may complain about coercion to the Commission, which has four months to investigate, after which the Council has 10 weeks to decide, through an implementing act, whether coercion occurred. This decision is taken using qualified majority voting rather than unanimity, another sign of the "commercialisation of foreign policy" enhancing the Commission's power in guiding policy (Meunier, 2022, p. 9). The Union, the Commission, or member states then engage the third country in consultations, negotiations, or mediation to resolve the issue or seek compensation for damages (European Parliament, 2023, Preamble Points 21 and 22, Articles 6–7). In doing so, the Commission can use other instruments under its authority induce a cessation of coercion (Preamble Point 25). If such engagement fails, the Commission draws up trade-related countermeasures, which have to be approved by the Council through an implementing act under the examination procedure (Articles 5 and 18), unless there are imminent threats of irreparable damage, at which point the Commission can unilaterally adopt an implementing act of limited duration (Preamble Point 35). This leaves member states with *de facto* veto rights over the Commission's findings, thereby defining what constitutes coercion. However, states may be reluctant to question each other's claims for fear of ending up on the receiving end in the future, thus the Commission's findings will—very likely—be determinant. This—*notwithstanding* other provisions—significantly enhances executive power in an area traditionally run by member states, intertwining foreign policy and economic interests.

## 5. Conclusion

The EU's political purpose and institutional structure were neither intended nor configured for power politics. However, the return of power politics and the increased weaponisation of trade has forced a rethink in Europe. While at the ideational level, the EU's preference remains a rules-based, multilateral trading system, there is now an embrace of (some form of) strategic autonomy, represented at the instrumental level by new and recalibrated TDIs. As De Ville (2023, p. 3) likewise observes, "having failed to create a world in its own image [rules-based], the EU has recently reinforced an arsenal of trade defence instruments to protect itself."

There is cross-fertilisation of the EU's areas of external relations, with security concerns permeating trade and traditional foreign policy, accompanied by increased Commission powers to both protect Union interests and retaliate against threats. An EU strong enough to deter or alter another country's policies (through new TDIs, especially the ACI) could also be seen as providing a global

public good by upholding norms and limiting the application of trade restrictions in pursuit of political goals (Kalimo et al., 2023, p. 19).

In its quest for strategic autonomy, the EU has also moved closer to the American and Chinese approaches of employing trade tools and industrial policy to pursue non-commercial objectives. However, key differences remain *vis-à-vis* American or Chinese trade policies (Bacchus, 2022; Eliasson et al., 2023; Schild & Schmid, *in press*). The EU's instrumental shift has not been accompanied by a complete normative shift to *realpolitik* (Schmitz & Seidl, 2023); the primary purpose of European TDIs remains defensive, to deter not attack. This comports with De Ville et al. (2023, p. 34) who note that EU "trading rules are modified but in pursuit of internationally-accepted policy objectives," and Danzman and Meunier (*in press*) who characterise the EU as a reluctant geopolitical player.

Importantly, the EU's normative preference remains a return to a rules-based international trading system, which is "the cornerstone of a system which protects everyone from arbitrary discrimination" because "a fragmented trading system based on power relations will harm everybody" (Lumet, 2022; Valero, 2021). In both the Open, Sustainable, and Assertive Trade Policy and the EESS, the Commission continues to support economic openness (fair and rules-based trade and investments), and reforms to the WTO (European Commission, 2021a, 2023a).

However, Danzman and Meunier (*in press*) question the possibility of reconciling geoeconomic instruments (even defensive ones) with an open economy in an environment where economic interdependence and integration are viewed with suspicion. Tools aimed at "merely" managing globalisation, for example the Carbon Border Adjustment Mechanism (Table 1), have been criticised for being restrictive. China's 2023 Foreign Relations Law (aimed at countering anything deemed "detrimental to Chinese interests") was in part a response to the ACI; the US Congress is discussing an act to counter economic coercion. Both the US and China have raised the possibility of further retaliation against what they perceive as "aggressive" EU trade policies (Eliasson et al., 2023; Krukowska et al., 2023).

The EU may be less keen on geopolitics than its main competitors, but the security logic central to its quest for strategic autonomy will guide policies for the foreseeable future. The empirical implications of the EU's attempts at greater strategic autonomy will depend as much on how the Commission uses its discretionary powers in security-focused TDIs as on how the targeted entities respond—an interplay destined to be the subject of future research.

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### Conflict of Interests

The authors declare no conflict of interests.

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