



## FESI comments EU Trade policy review

*Brussels, September 2020*

The Federation of the European Sporting Goods Industry (FESI) welcomes the possibility offered by the European Commission to provide feedback on the upcoming review of the EU Trade Policy.

In these unprecedented times, when citizens and businesses are struggling with not only a sanitary but also an economic crisis, there is more than ever a need for a strong, clear and flexible EU Trade Policy that will support Europe during its long journey towards economic recovery

Please find below FESI contribution to the questions raised by the European Commission:

### 1. How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

Now, more than ever, it is critical that the EU continues to deliver on its agenda to advance an ambitious and sustainable trade policy that offers benefits for society at large, especially when protectionism is on the rise in many parts of the world.

The COVID-19 crisis has put global value chains under extreme pressure. The shortage of key products (medical products and personal protective equipment) during the first months of the lock-down in Europe rightfully raises the question of EU's manufacturing capacity to efficiently and rapidly cope with future health crises. While we do understand the need for more strategic autonomy in that context, this approach should be limited to only products considered as vital assets.

International trade must be at the core of the EU recovery plan to be successful. Any attempt to limit trade, increase protectionism and to withdraw within oneself as it is the case in other countries around the world will be detrimental to EU businesses and ultimately to consumers.

**2. What initiatives should the EU take – alone or with other trading partners - to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?**

The sporting goods industry is currently under serious stress due to the supply chain disruptions stemming from the ongoing COVID-19 crisis. The latter is an unforeseen and unprecedented chain of events that will have long-term consequences on the sourcing strategies of FESI members, on the industry's financial well-being as well as on consumer demand.

This crisis has demonstrated the need to further diversify supply chains that are already extremely complex. This effort can only be successful provided that the EU and its trading partners adopt clear, simple, and flexible trade rules.

From our perspective, the EU should continue its policy of FTA diversification as ratification of new trade agreements offers phenomenal business opportunities for EU companies to further diversify their supply chains.

The EU should also reaffirm the GSP system as a major tool for diversifying supply chains and providing developing countries with economic development, especially after COVID-19.

In addition, it is key to ensure that companies can maximize the benefits offered by FTAs. Complex and diverging rules of origin can be cumbersome and severely limit the market access benefits of FTAs. In that context, FESI calls for the adoption of the single transformation rule for all apparel products (Chapters 61-62) in all ongoing and upcoming FTA negotiations.

Last but not least, FESI welcomes the appointment of its first Chief Trade Enforcement Officer. The correct implementation and enforcement of trade agreements are as important as the provisions they contain. With protectionism on the rise, it is key to ensure that FTAs can run as smoothly as possible.

**3. How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?**

FESI strongly encourages the European Commission to continue engaging with its trade partners within the context of the WTO as progress at multilateral level bring the most benefits to economic operators. This should remain a priority of the next EU Trade Policy.

Nonetheless, history has demonstrated that reaching an agreement between 165 members can be challenging. Hence, bilateralism and regionalism must still be strengthened. In addition, we would recommend that the scope of upcoming WTO negotiations is as narrowed and specific as possible, focusing on areas with the highest chances of success. This strategy has proven to be efficient in the context of the

Trade Facilitation Agreement and we hope that this success can be replicated for the ongoing E-commerce negotiations.

**4. How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?**

The correct implementation and enforcement of trade agreements are as important as the provisions they contain. With protectionism on the rise, it is key to ensure that FTAs can run as smoothly as possible. In that context, FESI welcomes the appointment of its first Chief Trade Enforcement Officer and its willingness to regularly participate in discussion between economic operators and member states during meetings of the Market Access Working Group.

FESI highly appreciates the Commission's commitment to continuously enhance our trade relations with third countries by developing a strong network of FTAs. While making progress at WTO level remains challenging, bilateralism appears as the most efficient solution on a short-term perspective. Nonetheless, the negotiation of separate trade agreements further complexify trade rules as each agreement is different in nature. A potential solution to this shortcoming would be the development of regional agreements that would allow for a common set of rules between numerous trading partners. Back in 2007, an EU-ASEAN FTA was being considered. This approach was subsequently put on hold to privilege bilateral negotiations with each ASEAN country. Since then, excellent results have been achieved with the entry into force of the trade agreements with Singapore and Vietnam. Ongoing negotiations with Indonesia are also progressing at a steady pace. While those successes must be recognised, the end objective should remain a regional agreement between the EU and ASEAN as it will significantly ease trade between the two regions and improve access for EU exporters and investors. FESI thus urges the Commission to develop a clear Action Plan on the next steps to reach that objective in a foreseeable future.

The sporting goods industry also strongly supports the inclusion of chapters on Regulatory Cooperation / Convergence in all ongoing and upcoming FTA negotiations. At a time a product is manufactured, companies do not necessarily know in which market it will be sold. Diverging regulatory approaches between markets remove flexibility from economic operators as the same product may very well be compliant in one market and uncompliant in another. Mutual Recognition Agreements (MRAs) represent excellent tools to facilitate the placement in the market of new products and should be further promoted. In addition, we would recommend the possibility in FTAs to develop joint standards between trading partners – or at the very least the creation of a dedicate forum of discussions between the relevant standardisation bodies of both sides.

**5. With which partners and regions should the EU prioritise its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?**

The EU should continue engaging with South and South East Asian countries. On top of the geopolitical importance of the region, most of those countries are currently experiencing continuous growth and a rising middle classes making those markets highly attractive for EU businesses. The entry into force of the EU-Vietnam FTA is undoubtedly the greatest achievement of the EU Trade Policy for 2020. The EU should continue engaging and making progresses in FTA negotiations with its neighbourhood countries such as Indonesia. The resumption of the trade talks with India would also be a highly welcome development.

FESI also applauds the resumption of the trade talks between the EU and the U.S. An effective agreement between the two largest markets worldwide will strengthen the competitiveness of the European sporting goods industry, allowing the sector to maintain and expand EU jobs and investment in research, design, export, production, etc., and will improve our sector's ability to provide quality products to promote physical activity. FESI supports the Commission's approach to work on regulatory cooperation for specific sectors of the economy. During the previous negotiations for the Transatlantic Trade and Investment Partnership (TTIP), footwear and apparel have been both identified as sectors where further regulatory cooperation / convergence would be beneficial. While the new trade talks should not be considered as a re-opening of the TTIP negotiations, we would nonetheless urge both sides to take stock of the positive developments previously achieved at technical level for textile and footwear and replicate this exercise during future talks. This would avoid negotiators having to start from scratch in areas where good progress were reached.

Discussions with the UK should also obviously remain a priority for the EU. While the ratification of the Withdrawal Agreement was a relief for many sporting goods companies, this will be of little benefits if a trade agreement cannot be secured before the end of the year. We do know that both negotiating teams are currently working under extreme pressure and time constraints. However, the lack of predictability and visibility on the foreseeable future makes it highly challenging for companies to prepare themselves. Should a fully-fledged deal cannot be secured by the end of the year, we would urge both sides to at least adopt the provisions that are considered as the most consensual and continue working in parallel on a more comprehensive deal. While not ideal, this could significantly limit the impact of a no-deal-scenario.

Lastly, we would encourage the Commission to continue its dialogue with Turkey, in view of resuming its preliminary discussion on the modernisation of the EU-Turkey Customs Union Agreement.

**6. How can trade policy support the European renewed industrial policy?**

Every year, the sporting goods industry introduces around 150.000 new and innovative products. With fast-paced developments, innovation is at the heartbeat of our industry and is a major source of employment and revenue generation in the EU. The costs related to developing the innovations and other pre-production activities (services) are included in the customs value of products and, as a result, the industry has to pay import duties on these activities. In the WTO, such cases of services incorporated in goods are discussed under the name 'mode 5'.

By allowing research, development and design costs incurred in the EU to be deducted from the customs value for products imported into FTA partners, the EU would support and recognise the importance of numerous jobs in Europe that are crucial to the production of sporting goods.

**7. What more can be done to help SMEs benefit from the opportunities of international trade and investment? Where do they have specific needs or particular challenges that could be addressed by trade and investment policy measures and support?**

To better help European SMEs benefit from the opportunities of international trade and investment, the focus should be placed on educating them about the benefits of the trade agreements negotiated by the EU. Numerous small companies are eager to use all the opportunities international trade has to offer but often lack expertise and access to key information. Authorities from both the EU and trading partners should put in place support mechanisms to help those companies understand and use the agreements to their advantage. The publication of guidance documents, development of dedicated FTA helpdesks and tailor-made communication campaigns in EU member states should all contribute to reaching that objective. In addition, reducing bureaucratic burdens and simplifying technical requirements would further encourage SMEs to utilize FTAs. This includes simplifying rules of origin.

**8. How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?**

EU trade policy delivers significant economic benefits and improve the livelihoods of people working in many sectors, both in the EU and in partner countries. Free and fair trade ultimately drives sustainable development and poverty eradication in partner countries, including developing countries. The sporting goods industry is fully aware that challenges still exist to the full enjoyment of labour rights and environmental protection in developing countries and aims to be an industry leader on addressing them. Sporting goods companies are actively engaging with their suppliers' factories, both directly and in cooperation with independent organisations (e.g. ILO, World Bank) and international programmes and partnerships to consistently upgrade the working environment. This industry engagement is part of a global effort where national governments and international organisations play a crucial role. However, as stated in the UN Guiding Principles on Business and Human Rights, the obligation to respect, protect and fulfil human rights and fundamental freedoms remains with the states. Therefore, state-to-state engagement and development aid programs are equally important for the respect for human rights.

The COVID-19 pandemic has been a shock to the global economy. The textile, apparel and footwear industry is one of the industries that have been hit particularly hard. The sporting goods industry is fully aware that pandemic has not stopped climate change and is actively addressing environmental challenges using the appropriate tools and measures. FESI is strongly committed to sustainability and it believes that taking action to mitigate climate change is of crucial importance in the years to come. The sporting goods industry is an

industry that already takes the environmental impact of its products and supply chain seriously. Many FESI members have signed the [UN Fashion Industry Charter for Climate Action](#), whereby they voluntarily commit to setting and meeting internal targets on renewable energy and energy efficiency in line with the Paris Agreement and rapidly scaling up energy efficiency and emission reduction programmes; to working collaboratively to develop emission-reduction pathways, work programmes, and tools necessary to achieve their emission reduction targets; and to investing in sustainable production and related technologies. Some FESI members have also signed [The Fashion Pact](#), committing – among others – to stopping global warming and supporting the efforts under the UN Fashion Industry Charter. Furthermore, FESI, together with the Sustainable Apparel Coalition (SAC) and the Global Fashion Agenda (GFA), has [recently published](#) a proposal that outlines seven key principles necessary for a green recovery for the entire industry, showing our strong commitment to the circular economy.

The European Union is currently deploying two key trade policy instruments to ensure a free and fair trade: progressive free trade agreements, with ambitious and binding trade and sustainable development chapters, and the Generalised Scheme of Preferences (GSP). The EU's trade policy is driving positive change, already contributing to lowering the environmental and social impact throughout supply chains. FESI strongly recommends the EU trade policy continue to support the industry's efforts and engagement with developing countries. FESI will carefully assess any new policy instrument, like the announced Carbon Border Adjustment mechanism, especially in their WTO compliance. FESI has already drafted some initial recommendations that can be found on [FESI website](#).

EU's FTAs present an opportunity to enlarge markets and improve regulatory coherence, and thereby expand trade and investment in economies, leading to more economic growth and employment both in the EU and the rest of the world. FTAs include ambitious Trade and Sustainable Development (TSD) chapter, whose aim is to promote long-term cooperation between the EU and the partner countries to foster sustainability and promote international standards. At the same time, FESI recognises that TSD chapters are not envisaged to provide instant solutions to complex issues, and hence the emphasis must remain on engaging with partner countries in a continuous manner to help them develop and implement international standards. In this regard, FESI welcomes the current approach of European Commission, aimed at strengthening cooperation with international bodies and stepping up monitoring of TSD issues. We caution the Commission against the application of sanctions in case of non-compliance with the TSD chapter, as this option runs many risks, not least the difficulty of proving trade injuries as a result of non-compliance with international standards. FESI wishes to stress that this option would put the EU at risk of isolating itself, where partner countries might not be willing to engage with an excessively demanding EU.

An instrument that the European Union has been using to promote sustainable development in developing countries is the GSP. FESI firmly believes that the latter, and especially the GSP+ and EBA regimes, have proven to help developing countries to become more competitive, build their domestic industries, increase employment and reduce poverty. In addition, these programmes have encouraged European companies to invest in developing countries while bringing their European values, e.g. social and environmental standards, with them. Therefore, the GSP programmes did not only drive economic growth, but also helped bringing sustainable business practices to poverty-stricken countries, such as high social and labour standards (living wages, health care, education and training etc.) and environmental protection (use of renewable energy,

waste reduction, energy and water saving etc.), which would further drive development and poverty eradication in those countries. Moreover, owing to several leadership programs, which have been developed and organised by sporting goods companies with the objective of encouraging sustainable strategies in global supply chains, our industry has acquired several key learnings. One is that local ownership and capacity is to be built and strengthened, in order to drive sustainable development. Capacity-building of national labour inspection systems is, for example, still a top priority. The EU is currently reviewing its GSP Regulation for the period starting from 2024. FESI believes that the GSP, GSP+ and EBA programmes are all still relevant and offer the right degrees of incentives towards sustainable development. Key suggestions to improve the scheme include, in FESI's view:

- Less strict rules of origin: single-transformation rule for apparel shall be the norm;
- Textiles and footwear shall not have a different graduation thresholds;
- Textiles and footwear shall not be categorised as sensitive products.

These points are further developed in FESI response to the public consultation on the new GSP Regulation. When it comes to the EU's monitoring process, this should be made more transparent. While the process should not be open to the wider public, it should provide registered third parties with more access to reports and findings by the European Commission. This would allow registered third parties to provide more meaningful feedback throughout the process. Furthermore, cooperation, early assistance and warnings, and allowing more lead time for countries to respond to shortcomings are also critically important.

#### **9. How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?**

In principle, trade policy is complementary to and can help businesses with their supply chain due diligence efforts. The UN Guiding Principles clearly state that it's first and foremost the state's responsibility to protect human rights. For that matter, trade policy can encourage other states to protect human rights, through trade agreements or the GSP system, and thereby assist businesses in their efforts to respect human rights in those countries.

Among its membership, FESI counts a large number of companies that have been operating supply chain compliance management systems for several years. This contributed to significant improvements in their supply chains, whose complexity requires a large amount of time and effort in order to establish a consensus with numerous actors. As part of these management systems, sporting goods companies are involved in private compliance initiatives to audit the social performance of their suppliers and to foresee and mitigate labour rights violations in their supply chains. FESI members have been applying true leadership practices in public disclosure and reporting for many years. In their regular reports, these companies describe progress in driving significant social and environmental improvements in their respective supply chains in an open and transparent manner. Already today, the majority of FESI members and suppliers are committed to external review and verification exercises that add credibility to their efforts and programmes.

Furthermore, sporting goods companies have a long-standing experience of being involved with and in global multi-stakeholder platforms such as ILO and OECD. FESI members are proactively engaging in a large number of public and private initiatives focused on improving supply chain conditions.

Drawing from this long-standing experience, FESI wishes to share key learnings on due diligence and global value chains and looks forward to an open dialogue and collaboration with the European Commission and other relevant stakeholders in order to contribute constructively to further discussions on a comprehensive European wide approach on due diligence.

Any EU initiative shall:

1. make strong reference to and be based on existing and recognised global standards. Any initiative shall also include the possibility of recognising the compliance of supply chain due diligence industry schemes;
2. be flexible enough to avoid a “box ticking” mentality and stifling innovative processes and sound industrial relationships that have proven their benefits;
3. be reasonable in scope and results in a sufficiently clear and practically feasible EU-wide framework, with precisely defined responsibilities;
4. be founded on business enterprises’ own activities and activities directly linked to their operations, products or services by their business relationships;
5. keep the focus on human rights;
6. have a horizontal approach.

Additionally, FESI calls for the EU to:

7. work on the adoption of a common language and definitions;
8. take SMEs’ specificity into account: special incentives and capacity building are always beneficial;
9. continue and even strengthen its engagement, including an open consultation process with international organisations and governments of sourcing countries, for the purpose of building the required infrastructures and capacities;
10. promote continuous improvements and effective collaboration along the value chains.

The central role and responsibility of states for safeguarding human rights must be emphasised: enterprises cannot be put in charge of fully compensating lapses in governmental action. The risk of privatising human rights shall be avoided. Especially in view of the situation in countries with a weak governance structure and difficult political framework conditions, companies must not be made liable to compensate state failure. FESI calls for the EU and Member States governments to continue and even strengthen their engagement with developing countries, for the purpose of building the required infrastructures and capacities, e.g. to establish social security networks as a response to the COVID-19 crisis. Academic research has shown, for example, that social audits can be a helpful complement to national labour inspections, but never a complete replacement for them. The latter underscores the importance of capacity building for national labour



inspection systems as a top priority, especially as this enables to address deficits in all production sites within an entire economy and not just those connected to global supply chains and the sporting goods industry.

**10. How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?**

The digitalisation of trade instruments has significantly help companies streamline procedures and increase their presence on the international trade scene. For instance, the entry into force of the Union Customs Code was a key milestone for the digitalisation of many customs procedures. The development of several IT systems (some of them still ongoing) may have been challenging at a time, but moving away from a paper-based system to a digital one greatly enhanced the capacity of economic operators of all sizes to use all the opportunities international trade has to offer.

However, there is a strong need for consistency in the digitalisation of trade instruments. For instance, in the context of the EU-Vietnam Free Trade Agreement, economic operators exporting products manufactured in Vietnam into the EU cannot use the Registered Exporter System (REX) to claim tariff preferences but must instead request an EUR1 certificate for each shipment. There is a feeling that we are moving backward as Vietnam, being a GSP beneficiary country, is already using the REX system in that context. Companies have been thus requested to adapt their customs processes for this new digital tool when using the GSP but must come back to a paper-based approach when importing goods under the Free Trade Agreement.

Coherence and consistency of the digital trade tools between the different trade regimes is thus of paramount importance to avoid unnecessary paper-work and burdensome processes.

**11. What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?**

International transfers of data are becoming increasingly important for global companies, both for commercial and operational purposes. For example, the recent judgement by the Court of Justice of the European Union on the EU-US Data Protection Shield has significantly increased legal uncertainty for both European and U.S.-based companies and will potentially harm future data flows between the EU and the U.S. In a digitalized world, the business of FESI members depends on data that is sufficiently protected and can flow freely.

**12. In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?**

Current trade defence instruments have proven to be efficient and should remain unchanged. Focus should be placed however on tackling market access barriers to trade which are preventing companies from entering specific markets. Tariff and non-tariff barriers are amongst the most challenging issues faced by product compliance and logistic teams who often have little time to adapt supply and distribution chains to new regulatory changes in any given country. DG Trade market access unit and EU delegations have been doing a tremendous job in trying to remove protectionist measures from third countries. More resources should be provided to them to ensure that they can efficiently address the many issues they are currently facing. In addition, FESI welcomes the appointment of the new Chief Enforcement Officer as the fight against protectionist measures worldwide will be among its key priorities. Last but not least, we would like to stress the importance of including strong dispute settlement mechanisms in all ongoing and upcoming trade negotiations as the absence of such tool in some of the EU trade agreements has contributed to let clear violations of the agreements unanswered.

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**About FESI**

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Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1.800 sporting goods manufacturers (85% of the European market) through its National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 700.000 EU citizens and has an annual turnover of some 81 billion euro.

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