"Made with EU" in the Industrial Accelerator Act: Resilience instead of Protectionism

Resilience Requires Diversification

Germany generally supports the "made with EU" approach set forth in the Industrial Accelerator Act (IAA) and proposes effective strategies to prevent adverse undermining. As a general rule, countries that have signed the WTO Agreement on Government Procurement (GPA), as well as partner countries with which the EU has concluded an agreement establishing a free trade area (FTA) or a customs union, are, in principle, to be treated as equivalent to "Union origin," because:

- Germany rejects protectionism and discrimination. In times of geopolitical and geoeconommic challenges, the EU relies on close partnerships—particularly its global network of free trade agreements—to enhance resilience and competitiveness.
- The EU must remain a reliable partner for its free trade partners and uphold its legal obligations thereof. The IAA's proposals must therefore be designed in such a way that they are effective and compatible with the EU's international obligations.
- It is not in our economic interest to close markets to one another. In this way, comparative cost advantages can be leveraged for the benefit of all.
- The IAA should be a component of an overall industrial policy strategy and establish a viable instrument at the EU level to support a level playing field.
- 'Made with EU' presents an opportunity: through the agreed free trade agreements, not only does the EU open up its market to its partners, but European companies also could gain further access to key export markets. 'Made with EU' can help to further open up market access for European companies to key export markets, provided that market liberalisation and competitive conditions – in the spirit of a level playing field – are also reflected by the partners. Including FTA partners could incentivize to work towards more ambitious free trade agreements with partner countries or regions who want to benefit from 'Made with EU' in the future.
- A 'Made with EU' approach can contribute to economic resilience by reducing critical dependencies and the risk of supply chain disruptions and supply shortages.
- Furthermore, allowing more bidders and products to participate also means greater competition and, consequently, lower costs for the state and access to potentially more advanced or better products compared with a more restrictive approach. These benefits can also accrue to EU companies in third-country markets if they are granted equal market access. Against this background, the IAA text should also include an opt-in option for the inclusion of further third countries (beyond GPA/FTA partners) on a reciprocal basis.

At the same time, the IAA must be structured in such a way that it is possible to react swiftly to activities aimed at adversely undermining its requirements and, as far as possible, to avoid creating incentives for them in the first place: This requires an effective 'opt-out' mechanism in the absence of reciprocity. In this way, incentives for mutual openness are created for the benefit of both parties. Moreover, FDI conditionalities aiming at technology transfer – as outlined in the IAA – are only effective if adverse undermining of union origin requirements is properly addressed (e.g. production sites by a third country in a country of "partner origin").

This approach also serves the objectives of the IAA: the IAA is intended to increase the resilience of European industry whilst reducing critical dependencies by establishing lead markets to support domestic production capacity for low carbon basic raw materials and net-zero technologies. This can only be achieved if we pursue a strategy of effective diversification. This is also necessary because, in some of the IAA sectors, independent EU production does not (yet) exist and is unlikely to be established in the short term. For example, an independent European battery ecosystem (cell production, battery materials) has so far only been established to a limited extent. The starting point for the technologies covered by the IAA varies greatly, which is why a nuanced discussion is required, taking into account the specific industrial landscape and technology in question.

Open markets on a reciprocal and transparent basis

Analyses[1] show that, in practice, fewer than ten of the countries, that fall within the 'partner origin' scope included in the IAA, are actually relevant as exporters to the EU for the products covered by the IAA.

Based on these analyses, we assume that only a few specific countries – and thus far fewer than those included in the actual scope – are directly and significantly affected by the requirements. Germany would ask the EU Commission to substantiate these findings. Germany is advocating for a reciprocal approach with regard to 'Made with Europe': Technologies will be treated as "partner origin" (and on equal footing with "Union origin"), if there is reciprocal market access with the country from which the technology originates.

Germany supports the mechanism provided for in the IAA to exclude third countries, originally included in the partner origin scope, from the 'made-with EU' approach on a case-by-case basis if their procurement markets or funding schemes remain closed to EU suppliers, in accordance with criteria to be defined in the IAA. This ensures a level playing field on a reciprocal basis and creates an incentive to keep markets open to one another. Germany points out that, before excluding a product, a company or a third country, originally included in the partner origin scope the European Commission, must first utilise dispute settlement mechanisms in accordance with the relevant FTAs and the GPA in order to address discrimination against EU suppliers.

If a partner country is under an obligation to treat EU companies equally (national treatment) in public procurement or in relation to support measures, and if these obligations are not

[1] https://www.delorscentre.eu/en/publications/detail/publication/how-to-make-the-industrial-accelerator-act-count

met, access to EU procurement markets and support programmes should also be withheld. Once equal treatment is once again guaranteed, this exclusion may be lifted.

Germany welcomes the recent proposal of the Presidency in Art. 7a para 2 that introduces the option to add or remove third countries via implementing acts. We ask the Presidency, together with the Commission, to further clarify and – if needed – to specify the circumstances which would lead to an exclusion of a Partner country or specific companies as provided for in Art. 7a para 2 lit. b. In this regard, we ask the Presidency and the Commission to specify, how considerations relating to the safeguarding of critical industrial capacity in the EU can, in duly justified cases, also be taken into account, while respecting our trade obligations.

To determine, without red tape, whether certain products from specific countries fall under the 'Made with EU' approach, the European Commission should draw up a product-specific list of countries or tool, based on an analysis of the provisions in the IAA. Consequently, for every technology listed in the IAA, and for every specific product/component included in this technology, there must be a list specifying which countries fall under the 'Partner Origin' definition. Such a list or tool is essential to provide businesses and public authorities with legal and planning certainty regarding which countries, products and components may be used to meet the requirements of the IAA.

Businesses and public authorities must be able to rely on this list/tool without having to carry out any own verification.

Effectively addressing adverse undermining

Furthermore, it must be ensured that products actually comply with the relevant rules of origin under the IAA and that there is no adverse undermining that would lead to indirect hight-risk dependencies of specific third countries; however, this is likely to be relevant only to a small proportion of European demand from a few partner countries.

In order to ensure the measures in the IAA are effective, adverse undermining must be addressed by providing a clear definition of the 'opt-out' criteria. The aim is to address the situation where companies from a third country establish production capacity in a partner country that falls within the scope of 'Partner's Origin' in order to meet the requirements of the IAA, and where such a situation would lead to indirect maintenance or establishment of high-risk dependencies from that third country ("adverse undermining"). The IAA should be designed in such a way that potential opportunities for adverse undermining can be addressed quickly and effectively, thereby preventing them from arising in the first place.

To this end, we propose a two-stage approach.

1. Preliminary examination by the Commission

We propose that a monitoring mandate for the European Commission should be included in the IAA. Importantly, attention should be paid to practicability and a low-bureaucracy design. The monitoring should initially examine the following criteria, amongst others, on a country-by-country basis in relation to IAA technologies for relevant countries. Relevant countries could be countries that establish production capacity in a partner country that falls within the scope of 'Partner's Origin' mainly for in order to meet the requirements of the IAA and where a significant share of production is targeted for the export into the EU, while at the same time direct high supply chain dependencies of the Union already exist from that third country.

There should be no automatic triggers, but rather indicators that authorise the Commission to take further action. The Presidency should, together with the Commission, submit a proposal for suitable criteria. The following points could be examined in this context:

(1) Increases in imports (of IAA technologies) from partner countries (GPA/FTA) into the EU, coupled with relevant increases in imports (of upstream and supplied products) into these partner countries from relevant third countries, each considered over the past five-year period (assessment in 2028 → period 2023–2028). The same applies to export volumes to the EU in relation to total production volumes in the partner country. This approach builds on the monitoring and resilience instruments provided for in the NZIA.
(2) Increase in FDI for the establishment of production facilities, warehouses, etc. for IAA technologies from relevant third countries.
(3) Increased participation of bidders from these partner countries in tendering procedures or funding programmes for products falling within the scope of the IAA.

However, it should be ensured that the following criteria are met so that the Commission would deem such triggers to be "*adverse* undermining":

(1) Import increases in a significant extent, both in terms of absolute numbers of the respective Partner country as well as its relative share of EU's total imports. Here not only the final assembled product will be of significance but the components as well. *OR*
(2) Situation would lead to indirect high-risk dependencies from the third country and therefore likely to threaten the security of supply in the EU. This is e.g. relevant if the third country controls significant shares of the world production capacity, input supply chains etc.

These criteria could be specified in an implementing act as foreseen in Art. 7 para 4.

In addition, we propose to amend Art. 7 para 2 lit. b:

(b) removal of a third country is justified to avoid high-risk dependencies or any other developments that are likely to threaten the security of supply in the Union of the products in question **or in cases of adverse undermining <u>taking into account its supply chain</u> relations with other third countries where direct high-risk dependencies of the Union exist. In this case, before the removal of that third country, the Commission shall first establish requirements for stricter controls of compliance with rules of**

origin of the respective agreement and allow for the removal of specific third country suppliers which contribute to the maintenance of high-risk dependencies.

2. Potential measures of the Commission

If the monitoring outlined above indicates that there are signs of adverse undermining, the European Commission can request short-term evidence from companies that includes information on possible adverse undermining in individual technologies or sectors.

When the Commission identifies cases of adverse undermining, it may

- establish the requirement for stricter controls of compliance of third country suppliers with rules of origin of the respective agreement or
- exclude specific companies/groups or even countries after a due process of consultation with the respective country or group. Clear criteria must be defined to determine in which cases adverse undermining occurs. This can generally be done based on different criteria that are requested in the aforementioned evidence, such as

(1) Date of the company's new establishment/relocation

(2) Consideration of the ownership structure of manufacturing in companies if more than 40 % of the global manufacturing capacity in the IAA technologies lies in the third country of which the foreign investor holds citizenship, via companies from a third country.

(3) Consideration of supply chain and core components and production technology at partner country manufacturers

Here too, the excluded companies/countries ultimately need to be included in a list/tool that actors such as contracting authorities can rely on without any further verification.

The Presidency should submit a proposal with the Commission for suitable criteria as to when and under what criteria companies or countries can be excluded by the Commission from or added to the scope of "Partner Origin" to ensure legal certainty. The introduction of a reversal of the burden of proof should also be examined.

Uniform definition for procurement and funding

The approach outlined above should apply uniformly to other forms of public intervention, auctions and public procurement. The Commission would thus provide and continuously update the various technology/country lists.

Approach is one part of an answer to reduce dependencies

The approach outlined above is just one measure to reduce dependencies among many. An international level playing field must be ensured. Furthermore, the NZIA still aims for the EU to cover 40% of its demand for NZIA technologies from European production by 2030.