PROTECTIONISM
REPORT

GOWLING WLG

PROTECTIONISM:
A NEW ERA

AUTUMN/WINTER 2020

WHAT IS PROTECTIONISM?

For businesses, protectionist policies have made the trading landscape increasingly uncertain with growing complexities at national and international level affecting how industry operates. But what is protectionism and what must businesses navigate?

In the context of this report, protectionism refers to government policy of protecting domestic industries against foreign competition through tariffs, import quotas and subsidies, or other restrictions placed on the imports of foreign competitors.

Governments may implement protectionist policies with a view to improving economic activity in the main, but policies may also be the result of strategic concerns by government or as a result of scepticism towards multilateral trade arrangements.

Beyond barriers to trade, there is an increased movement towards foreign direct investment rules, monitoring and, arguably, inhibiting the acquisition of national assets, including technology. This may become the latest battleground and the new frontier of global supremacy between the US-China.

Protectionist policies are implemented by many countries to protect the economy at a localised, domestic level. However, many economists suggest that the world economy benefits from free trade more generally and protectionist measures are counterproductive on a global scale. Others posit an alternative view, that some limited protectionism is legitimate and indeed desirable in developing economies to permit nascent domestic industries to gain traction.

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WE ARE AT A DEFINING MOMENT IN TIME FOR BUSINESSES. A NEW PROTECTIONIST ERA.

Surging further up the business agenda, protectionism shows sustained and continuous growth to forge deeper into the global economy. Its effects, both positive and negative, are now being felt more than ever.

New frontiers have emerged. Businesses and markets must navigate: **the trade war** between China and the US; **increasing populism and nationalism**; security concerns; the **growth in importance of regionalisation**; the **limited access to capital**; cross border data flows; the **disruptive impact of technology**; and, of course, the **COVID-19 pandemic**.

Based on data analysis from the Global Trade Alert database, The Heritage Index of Economic Freedom and World Bank data up to autumn 2020, and identifying trends in protectionist interventions and broader trade policy, our findings are that protectionism has accelerated rapidly. Since 2018, countries have adopted more than triple the discriminatory measures than they have liberalising policies - with protectionist sentiment increasing most sharply in the last two years.

The 2020 global pandemic ongoing in the wake of continued fallout of major political events since 2017 and the resulting fragile economic landscape, has negatively affected trade flows – especially within Europe, and to and from the powerhouses of the US and China.

Technology and data flows have become the latest battleground of protectionism and the new frontier of global supremacy in the US-China trade war.

To succeed in this increasingly complex global marketplace, businesses need a legal partner with hands-on experience, who can provide effective advice and proven solutions for ever-changing complicated international trade matters.

Gowling WLG's market-leading EU, Trade and Competition team are experts in international trade law issues, including:

- National, EU and WTO trade defence investigations, acting for both complainants and third country importers;
- EU and UK Sanctions;
- Import and export controls; and
- Incoterms and international commerce.

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PROTECTING YOUR BUSINESS AGAINST PROTECTIONIST POLICY

Protectionist policies have more than doubled since 2014, with the number of protectionist measures accelerating in the last two years, according to our latest research. In our analysis, protectionist policies are those defined as discriminatory by the Global Trade Alert, which records and catalogues government announcements and policies in its database. Protectionist interventions are any policy or announcement that is almost certain to discriminate against foreign commercial interests. This covers a wide range of interventions, from state loans and subsidies to tariffs and intellectual property preventions.

There has been a sharp and sustained increase in discriminatory – or trade restricting – policies being enacted and implemented worldwide since the global financial crisis.

The data shows protectionist trends have not slowed, but rather continue to gain momentum abruptly over the past few years - driven by a few key markets.

This report provides an updated analysis of the unfolding protectionist landscape, exploring the challenges it raises. Several datasets were analysed to produce the global protectionism heat map (including the Global Trade Alert database, The Heritage Index of Economic Freedom and World Bank data) and identify trends in protectionist interventions and broader trade policy. This was supported by a comprehensive literature review of reports and articles to contextualise these data-driven trends.

KEY FINDINGS

- Protectionism has accelerated rapidly since 2018 – countries have now announced triple the discriminatory measures over liberalising policies since then.
- The fallout from major political events since 2017, and the resulting fragile economic landscape, has negatively affected trade flows – especially within Europe – but also to and from powerhouses the US and China.
- The countries to increase protectionist restrictive measures significantly since 2018 are the US, Russia and India.
- The US has adopted over three times as many restrictive measures in the past 3 years as it had between 2009-2017.
- Only Brazil and Argentina have significantly implemented liberalising measures – with the trade-war between China and the US seeing China's prior move towards trade liberalisation largely reversed.
- China is the most affected by restrictive measures due to the trade war with the US, the US is the second major economy most affected, whilst India has seen a near doubling in restrictive measures levied against it since our last report.
- Technology and data is the new battleground of protectionism, forming the new frontier of global supremacy in the US-China trade war.

*See page 14 for actions for business to minimise the threat of protectionism and remain compliant and effective in an increasingly challenging global trade landscape.

PROTECTIONISM IS ON THE RISE

TRADE RESTRICTION DOUBLES DUE TO US-CHINA TRADE WAR

The fallout from major political events, chiefly the US presidential election in 2016 and the UK's decision to withdraw from the EU, has dragged on through the last year. The Trump administration's explicitly pro-American rhetoric and policy has resulted in a slew of trade disagreements. From tariffs on steel and aluminium imports from South America and the European Union, to the threat of a 25% tariff on €1.3 billion worth of French luxury goods, and disagreements over the North American Free Trade Agreement (NAFTA) destabilising free trade in that region. Recent statements by the US President Elect, Joe Biden, which emphasised the need to enhance US competitiveness before signing any trade deals suggest the new administration may be equally robust in defending US domestic industry.

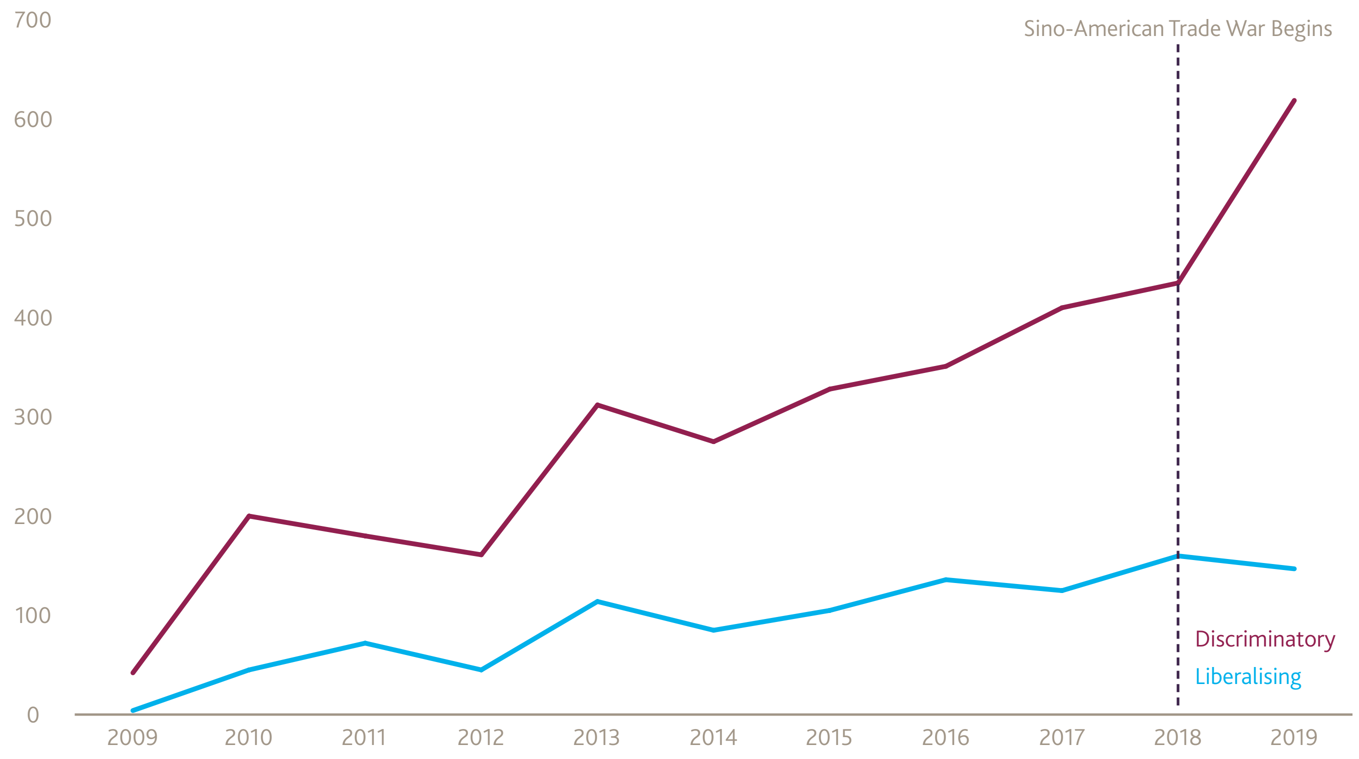
2018 saw the opening blows in what has become the defining trade disagreement of Trump's presidency. The then-nascent Sino-American trade war expanded in scope and animosity in the years that have followed and have in part driven the global growth in restrictive trade measures seen since 2018. Simultaneously, Brexit remains a drawn-out affair. Post the end of the transition period, from 1 January 2021, we may see emerge heightened protectionist measures as between the EU and UK.

Populist and protectionist measures have affected the global economy, which is increasingly feeling the strain of falling trade growth alongside broader regional economic slowdowns. For example, a fall in global trade growth of 5.5% in 2019 (of which 2.5% was explicitly tied to the Sino-American trade war) coincided with a 1% fall in global GDP growth in the same year. Compounded by slowing global trade and political uncertainty, fears of recession were already growing prior to the COVID-19 pandemic, which has now guaranteed some form of recession amongst nearly all developed economies. Australia, Canada, France, Germany, Italy, the UK and the US all expect projected growth for 2020/21 to be significantly lower than in 2019.

Such a fragile economic landscape has fostered further protectionist policies, negatively affecting trade flows as economies seek to protect their domestic industries – especially within Europe – but also to and from the US and China. Increasing geopolitical tension, alongside what now looks set to be a once-in-a-century global recession, threatens global trade with a vicious cycle of protectionism, economic contraction, and yet more protectionism in response.

With protectionism accelerating most rapidly in the last two years, countries have announced over three times as many discriminatory measures as liberalising policies since 2017.

NUMBER OF NEW MEASURES THAT CAME INTO FORCE EACH YEAR



Source: Global Trade Alert 2019

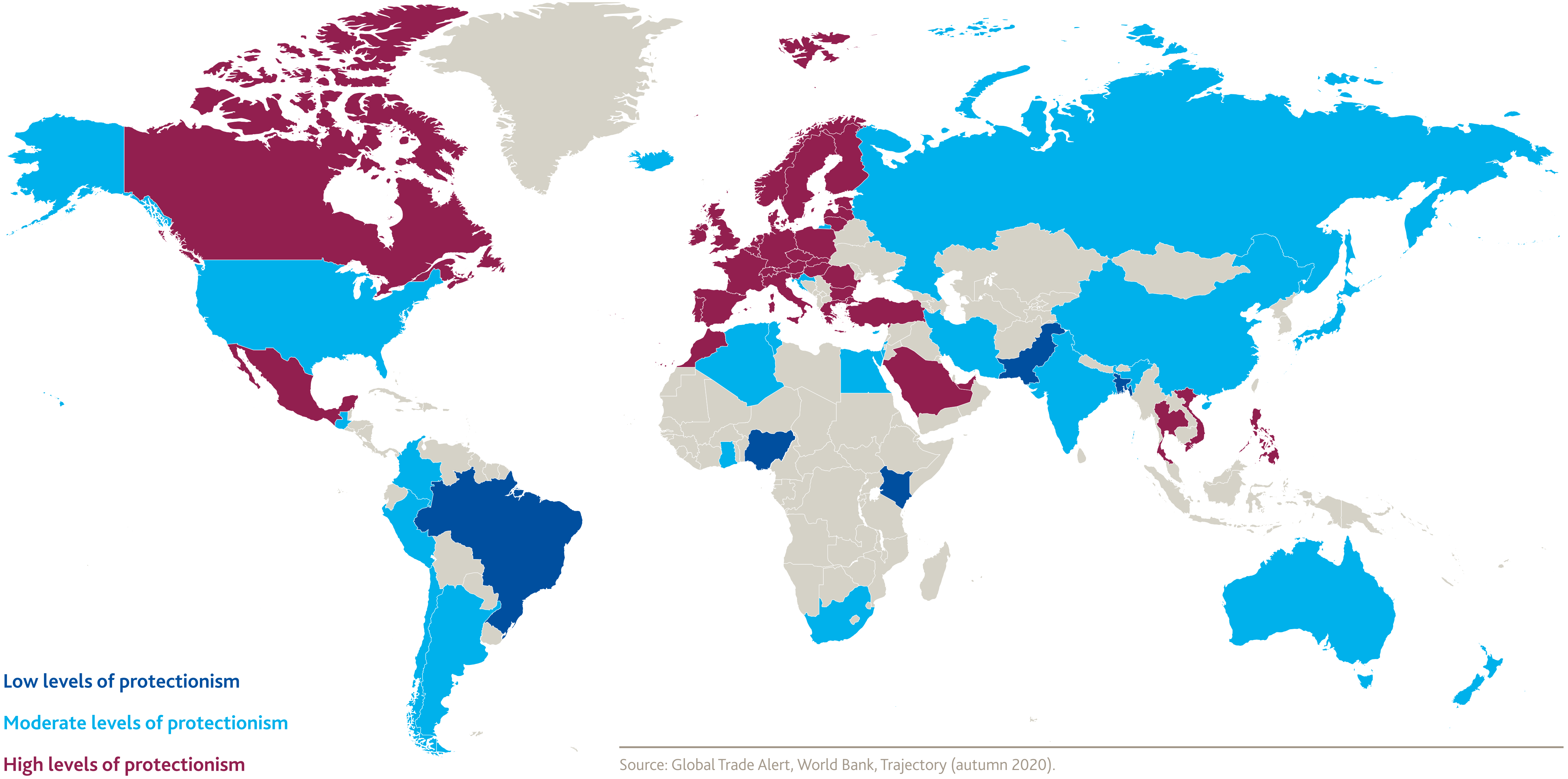
PROTECTIONISM: A NEW ERA • MAPPING PROTECTIONISM

MAPPING PROTECTIONISM

THE OVERALL IMPACT OF PROTECTIONISM

In order to understand how protectionism affects various countries, we looked at several key indicators, including their reliance on imports, the number of liberalising vs restrictive policies and finally the impact of its protectionist policies.

For example, although the US has been affected by more restrictive trade measures, such as trade tariffs and non-tariff barriers, than liberalising ones; it has a very low reliance on trade as a percentage of GDP. This makes it only moderately susceptible to protectionism by other countries. On the other hand, where the US has opted to impose trade tariffs on imports, this has resulted in higher prices for US consumers[1]. Other markets, in contrast, might be doing relatively little to drive the protectionist climate, but due to their reliance on trade are more greatly affected.



Source: Global Trade Alert, World Bank, Trajectory (autumn 2020).

[1]Save for steel, where economic analysis has found that the importers have absorbed the increased tariffs.

PROTECTIONISM: A NEW ERA • MAPPING PROTECTIONISM

WHO HAS BEEN DRIVING PROTECTIONISM SINCE 2017?

We first analysed protectionism in 2017, exploring the issue as it started to take centre stage amid increased hostility between the US and China, the challenges facing the World Trade Organisation, and growing uncertainty as to the future relationship between the UK and the EU. Our report included research into trade data from 2009 to 2017 to understand the key players in global protectionism and how they affect other countries. In this report, using data research from the Heritage Index of Economic Freedom, Global Trade Alert, and World Bank Databank, we look at the period since, exploring protectionist measures between January 2018 and August 2020.

Our analysis of trade measures implemented by more than 60 countries found a clear increase in protectionist measures, driven by the US. The North American superpower was largely insulated from the impacts of the trend it was driving.

This trend continues. Since January 2018 to August 2020 the US has adopted over 7,187 restrictive measures (compared to only 2,155 liberalising measures), nearly seven times as many as between 2009-2017 and more than any other market.

An 'America First' trade policy has been a cornerstone of Trump's approach so that the US is leading this charge is no surprise. This policy may endure into the next administration. However, other leading proponents of protectionism over the past three years are more varied.

Following the US, in terms of restrictive measures, our findings are India (2,538), Canada (2,479), Russia (2,261) and China (1,422). Within the European Union, Germany (1,358) and France (1,082) are the greatest proponents of protectionist measures between January 2018 and August 2020. In these nations, the ratio of liberalising-restrictive measures is even more unbalanced than in the US; Canada has announced just 101 liberalising measures in the same period.

WHO IS MOST AFFECTED?

According to our research, those most affected by protectionism are countries with the highest dependency on trade. This includes a number of EU markets – including Belgium, Czech Republic, Ireland and the Netherlands – all of which have been hit by around 300-500 restrictive trade measures since the start of 2018 (the Netherlands has been hit by 513).

However, the numbers of measures are only one part of the story. Restrictive measures are so impactful for these nations because their dependency on trade is so high. In all of these markets, the value of trade is at or above 150% of the total value of their GDP. In Ireland, it is 212%.

Dependency on trade is the key dynamic and means that some countries can be less affected even when hit with a slew of restrictive measures. The US, for example, has been affected by more restrictive measures than any other nation (except China) but its lower reliance on trade (it equates to just 28% of GDP) provides a buffer that the Trump administration has leveraged in its trade policy.

SPOTLIGHT ON CHINA AND THE US

The two superpowers are the undoubted drivers and focus of protectionist policies.

They are the most likely to have had restrictive policies levied against them – China has been hit by 1,473 since the start of 2018 up to autumn 2020 and the US 767 in the same period. Overall, this accounts for roughly 10% of all restrictive policies implemented in this period. Whilst the United States may have the relative protection of its low economic reliance on trade, the Sino-American trade war has still cost US companies around US$50 billion, and price increases on imported goods have cost American consumers a further US$50 billion a year since 2018.

Whilst our previous report indicated that China was not nearly as aggressive as the US in implementing restrictive trade policies – the last year has seen a marked uptick in China's willingness to enforce protectionist actions. Driven by the growing Sino-American trade-war, China has passed 1,422 restrictive measures. A large proportion of these, covering some US$75 billion worth of goods, were aimed squarely at the US market. The marked trend towards liberalising trade regulation that had defined China's trade policy in 2018 and early 2019 has ended – with only 892 such measures implemented since 2018, and only 50 of these in the last year.

The US has, in continued adherence to Trump's trade confrontation with China, implemented 7,187 restrictive measures since 2018, more than five times the volume of China and far outstripping the 2,155 liberalising measures from the same period.

Growing domestic demand in China is mitigating some of these impacts, but in recent years it has borne the brunt of an increasingly hostile trade climate.

PROTECTIONISM: A NEW ERA • A NEW ERA OF PROTECTIONISM

A NEW ERA OF PROTECTIONISM

The recent data and trends in global trade suggest not just a brief period of greater protectionism but potentially the end of globalisation as we know it. For over a decade, trade has not flowed as freely as before the financial crash; the populist sentiment that helped accelerate protectionist measures in recent years is part of this same trend.

The forces shaping this new era are varied: including the shift towards services, the availability of capital and the jostling of nation states for strategic technological advantage.

CAPITAL IS HARDER TO ACCESS

One factor that is often overlooked in the analysis of declining trade is the availability of finance.

Since the financial crisis, banks have been more hesitant to lend. This is partly because post-crisis prudential regulations have made it more expensive for banks in advanced economies to lend, but also because banks themselves have been hit by other trends (including low-interest rates and yield curves flattening; the latter is a trend that has appeared on both sides of the Atlantic in 2019).

An increasingly or excessively protectionist climate weakens the flow of capital and can indirectly stymie growth and investment. SMEs and companies based in emerging markets will be more vulnerable to tightening of access to capital – although the COVID-19 pandemic is likely to drive a reduction in capital availability across global markets. Some will turn to risky forms of protection such as currency hedging and long-term cashflow will become crucial to operations.

POPULIST SENTIMENT INCREASING

The number of populist leaders have nearly doubled since the 2000s. According to the global populism database, nearly 2.5 billion people around the world are living in countries that are at least somewhat populist.

The most significant expansion has occurred in the last six years. More populists came to power in Central and Eastern Europe, and the elections of Donald Trump, India's Narendra Modi, Mexico's Andrés Manuel López Obrador and Brazil's Jair Bolsonaro put populists in power in some of the world's most populous countries. Several of these countries – especially India, Brazil and the US are also among the leading proponents of protectionism today.

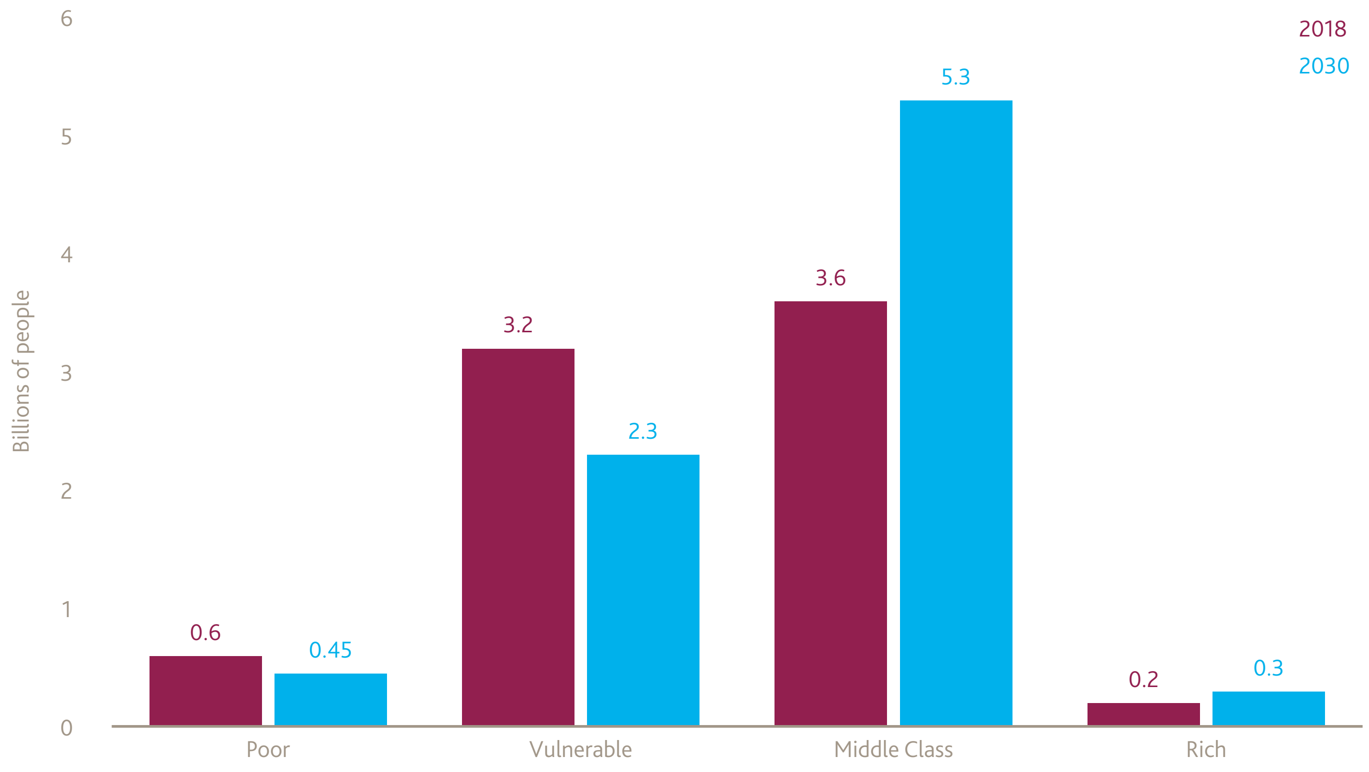
Germany, Norway, Sweden, Uruguay, Chile, France, Spain, Austria, the Netherlands and Canada have not had a populist leader in the past two decades. This is not to say that these countries are not strongly influenced by populism, especially through opposition parties or in the wider geopolitical and economic climate.

It cannot be presumed that the recent defeat of Donald Trump in the US November elections will lead to a waning of projectionist policies across the globe. However, with elections in Brazil not due until 2022, and Narendra Modi's BJP not facing re-election until 2024, it is likely that populism will remain a dominant force in global geopolitics for some time.

ASIAN POWERHOUSES INCREASE

Over the next decade, the size of the global middle class will grow to 5.3 billion people, making it comfortably the largest consumer group in the world.

MIDDLE CLASS DOMINANCE IN 2030



In the years ahead, emerging economies are projected to be the world's fastest-growing pockets of demand. By 2030, overall global consumption is forecast to reach $106 trillion, twice its 2017 level, with 60% of this increase coming from the developing world.

It is estimated that emerging markets will likely consume almost two thirds of the world's manufactured goods by 2025.

This will have major impacts on global trade from the stability of current supply chains to the cost of labour and the increase in the global pool of consumers. For businesses in Europe and North America it is imperative to recognise the competition posed by stronger emerging market businesses, and their advantage when catering for rapidly growing domestic demand.

Source: Global trends to 2030: European Strategy and Policy Analysis System 2018

PROTECTIONISM: A NEW ERA • EMERGING FRONTIERS:

EMERGING FRONTIERS:

HOW TECHNOLOGY IS AT THE HEART OF TRADE WARS

The technology-driven trade disputes, persistence of populism and ratcheting up of protectionism in recent years suggest that the current climate is not a blip, but the new normal.

In this new world, what are the key frontiers for businesses and policymakers to navigate? How might trade wars impact you?

TECHNOLOGY AS A BATTLEGROUND

It is clear that technology is already forming protectionist lines in global digital policy, establishing the new frontier for international trade relations. The ongoing storm over foreign support to establish and develop the UK's burgeoning 5G infrastructure highlights the role technology will play in this unfolding protectionist landscape. Chinese involvement in the scheme was approved in early 2020, only for the UK Government to U-turn in July, forcing companies to phase out all Chinese-made 5G kit by 2027.

As the debate rumbles on, it is increasingly clear that rolling out 5G is no small undertaking. Governments must make the airwaves available, planning law must allow for the implementation of more 5G masts, but also of small cells – transmitters that are likely to be placed on existing infrastructure. The development and deployment of the network is influenced by political concerns to a far greater degree. Companies are already jockeying for supremacy in the emerging mobile ecosystem with governments competing to put their businesses in the best possible position to benefit, while making their nations more attractive places to invest and do business.

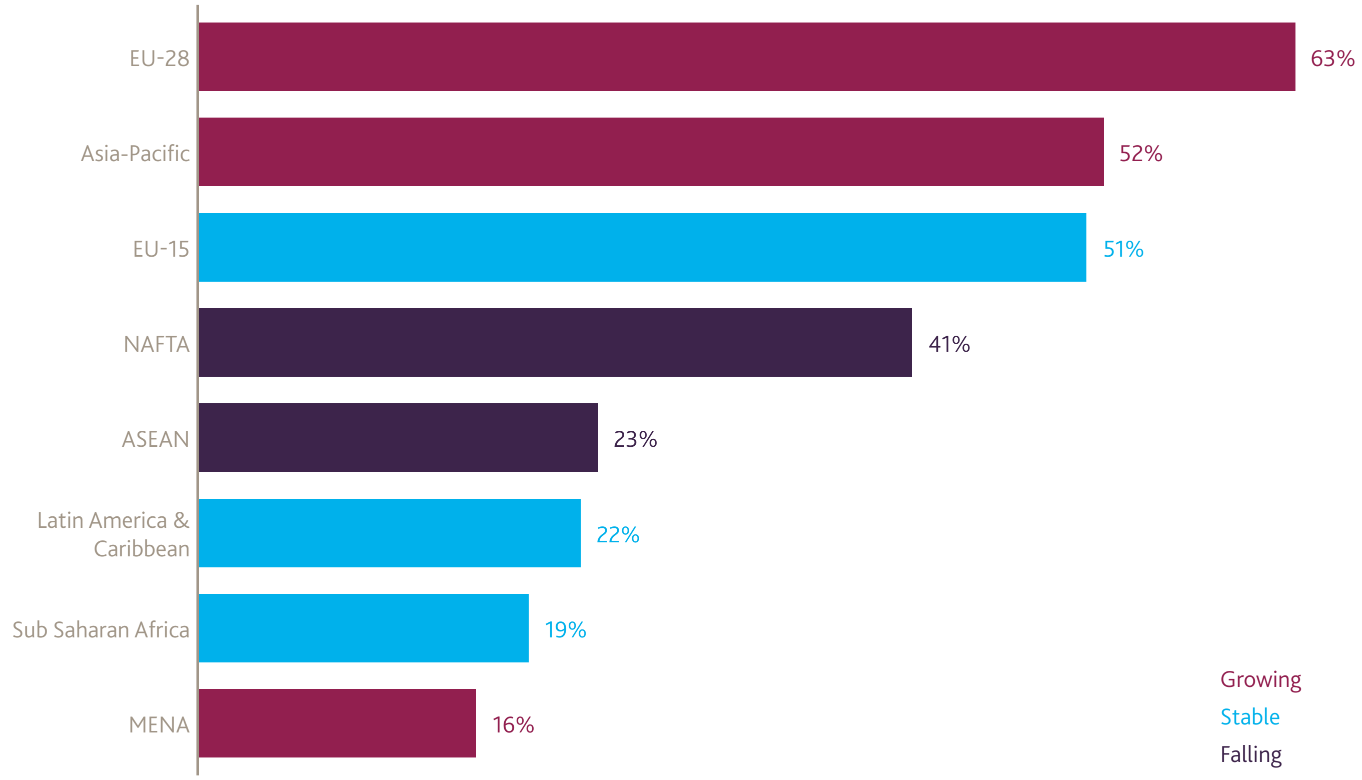
While the US has been the global leader of the digital age, this position has come under threat as Asian nations, particularly China, racing ahead when it comes to 5G. Leadership in the next era of digital communications is something of a zero-sum game; if China are the leaders, the US cannot be.

5G is just one example of how technology is fast becoming the central battleground in the emerging protectionist landscape. Nations will continue to jostle for competitive advantage in areas that have the potential to offer a key strategic advantage in the future.

AWAY FROM GLOBAL – TO POLYNODAL AND REGIONAL

As attention focusses on the trade war between two global superpowers, the US and China, the importance of regional trade has gathered pace.

SHARE OF INTRAREGIONAL GOODS TRADE, BY REGION, 2017



Recent trends suggest a trading future where regional ties are of greater strategic and economic importance than global ones. The intraregional share of world trade has increased by 2.7 percentage points since 2013. The biggest drivers of the trend toward regionalisation are increasing trade flows within the EU-27 and within the Asia–Pacific region, particularly trade centred on China.

This regionalisation also suggests that large poles of power might no longer be the key elements of the system. Rather, strategic nodes – points at which pathways interlink – may be more important. These nodes will partly be based on economic clout and influence, but also on wider relationships such as technology infrastructure, data flows and political alliances.

Regionalisation has also brought with it an increased focus on speed to market. Companies in all industries now have a wealth of real-time, granular sales and consumer behaviour data at their disposal, but it takes manufacturing and distribution excellence and the free flow of that data to capitalise on these insights. Speed to market enables faster responses to what customers want and less product waste from forecasting errors.

This does not always mean shifting manufacturing or onshoring, but it does mean that the regionalisation of manufacturing could make more commercial sense. Emerging technologies could also enable this by making local manufacturing cheaper.

Regional teams will also have better on the ground knowledge and consumer insight that makes product and marketing teams more efficient and agile.

Source: IMF, WTO, OECD, UNCTAD; McKinsey Global Institute analysis

IMPACT OF TECHNOLOGY ON TRADE

If global trade is to continue to decline then the next era need not be characterised by explicit protectionism.

The rollout of 5G infrastructure (outlined above) is one example of how emerging technology can become a battleground in this landscape. However, other technologies – such as distributed ledger technologies or mixed reality tech – could serve to smooth, rather than inhibit, global trade flows.

At the same time, the impact of automation on manufacturing could well drastically alter global trade flows by reducing labour costs, making it more cost effective to produce closer to the point of consumption. More widely, the growing global consumer market and the proportion of consumers with internet access will affect both levels of consumption and access to services.

The true impact of emerging technologies is unknown but it is likely that they will cause some fundamental shifts in the medium to longer-term. The three main impacts will be:

- reducing transaction costs through digital platforms and removing inefficiencies in transportation;
- altering economics and the location of production: with automation and additive manufacturing it may become competitive for developed economies to manufacture in-country; and
- changing goods: With the growth of renewables and electric vehicles, this will change consumer demand as well as potential target import markets.

MINIMISING THE PROTECTIONIST THREAT

ACTIONS FOR BUSINESSES:

Protectionism continues to surge further up the agenda for business, forging further into global policy. Its effects, both positive and negative, are now being felt more than ever.

The insight in this report pinpoints that protectionist measures and policies are rapidly increasing, having doubled over the last two years, which will have a profound effect on international trade. There are several steps those leading businesses with an international footprint should take:

1. UNDERSTAND COUNTRIES' APPROACH TO PROTECTIONISM

Analysis which examines countries with a high risk of protectionism for your industry will help to shape future decision making. Considering the respective levels of protectionism in different countries and the resulting benefits and disadvantages will become an integral part of any business's future investment plans.

2. CONDUCT A SUPPLY CHAIN AUDIT

Audit your supply chain (upwards and downwards) to be sure that you understand the commercial effects of increased protectionism on it. Areas such as currency manipulation, increase in tariff rates, IP, free flow of data, applicable tariffs relative to those imposed elsewhere, regulatory compliance and change of government all play a part. Are there long-term arrangements to which you are committed and might want to exit? Can you secure flexibility to manage the risk of change?

3. HAVE YOUR VOICE HEARD

Protectionism is driven at a diplomatic and political level – in order to begin to have influence, trade industry groups need to have voices heard at the right level. Trade associations need to be at the forefront of policy-making and lobbying, and constantly assess the impact of policy on member companies. They have a crucial role to play in ensuring the ongoing global competitiveness of their members and their industry as a whole.

4. STAY AGILE

Consider avoiding long-term commitments and enter short-to medium-term arrangements that will allow for flexible reassessment and negotiation depending on the country's protectionist policies. With necessary long-term deals, e.g. vital capital or infrastructure investment, consider milestones as break / review points or events for both sides. Be prepared to challenge existing practice and consider new options.

5. SPEAK TO A LEGAL ADVISOR

Seek out advice from legal experts to cut through the nuances of a rapidly changing global trade landscape. Ensure your business remains compliant, and effective, in line with the very latest developments in international trade law and policy. **See page 1 for a list of Gowling WLG's key EU, Trade & Competition contacts.**

OUR DATA

In 2017, Gowling WLG began researching and analysis on protectionism, launching our inaugural report, 'Protectionism: are you leaving yourself open?'

The report included exclusive research with 500 of the UK's top C-Suite and GCs, insight from our research into trade policies, as well insight from leading thinkers across a diverse range of sectors.

By studying trade policies implemented by more than 60 countries* since 2009 we built an international protectionism heatmap. In order to understand how protectionism affects various countries, we looked at several key indicators, including their reliance on imports, the number of liberalising vs restrictive policies and finally the impact of their protectionist policies.

Three years on, we revisit this theme to explore how trends in protectionist measures have developed since then and identify any new/emerging trends, proposing the next steps for countries and businesses in 2020 and beyond.

Our latest research was based on:

- Data analysis from the Global Trade Alert database, The Heritage Index of Economic Freedom and World Bank data
- Development of a protectionism heat map, identifying who was driving and being affected by protectionist policies

Gowling WLG, Official Legal Advisers - Birmingham 2022 Commonwealth Games.

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