
EU trade policy

Frequently asked questions



IN-DEPTH ANALYSIS

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This paper seeks to serve as a key resource for policy-makers who need to understand complex issues related to international trade quickly. It also outlines the key academic debates and thorny issues and provides references to potentially useful further resources. The paper does not cover the state of play of trade negotiations or legislative files as these are covered in other EPRS publications.

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Executive summary

The EU's common commercial policy (CCP), or trade policy, has evolved gradually over the years to encompass a range of trade-related areas under the remit of European Union (EU) exclusive competence. The Treaty of Rome established the **common market** and the **customs union** with a focus on goods. Later treaties expanded the CCP to services and commercial aspects of intellectual property rights. Trade policy falls under the EU's **exclusive competence**, meaning that the EU manages trade policy and trade negotiations on behalf of the Member States. The determination of competence is critical for the procedures needed to conclude trade agreements, as in areas falling under **shared competence** these need to be ratified by both the EU and Member States. This has led to trade and investment agreements being split into two parts to speed up the ratification process for the trade parts, following European Court of Justice (ECJ) Opinion 2/15 (Singapore).

Whereas trade liberalisation is generally accepted to lead to **economic growth**, the impact on jobs varies both between and within countries. According to the European Commission, in 2018 trade supported 36 million **export-related jobs**. Trade can also lead to more **inequality**, however, in particular by widening the gap between skilled and unskilled workers or in causing the unequal relationship between developed and developing countries to become more entrenched.

Trade liberalisation in its most basic form involves the removal of **tariffs**, which are taxes or duties to be paid for an import. **Tariff rate quotas** charge lower rates within a certain quota, jumping to a higher tariff rate after the quota is exhausted. Tariffs are cut under World Trade Organization (WTO) agreements, with the most-favoured nation tariff representing the highest possible tariffs that WTO members can charge each other. In contrast, preferential tariffs are agreed to in trade agreements or customs union arrangements. **Rules of origin** have been developed in order to determine where goods originate from (or the 'economic nationality' of products). These rules are all the more important in the era of global value chains, where a significant proportion of European products' value comes from foreign sub-components or services.

Trade liberalisation also seeks to remove **non-tariff barriers (NTB) to trade**, these include protectionist measures to help domestic producers, subsidies, technical barriers to trade, or stringent sanitary and phytosanitary requirements. Lower NTBs can facilitate cross-border trade in services, which play a huge role in overall EU trade. However, data collection and measurement issues complicate efforts to understand the services trade. Trade defence instruments, meanwhile, enable the EU to react, for instance, to dumping or WTO-incompatible subsidies in partner trading countries, and form the protective front of EU trade policy.

The CCP focuses on fostering fair and free trade, furthering market access and supporting the multilateral, rules-based trading system. To achieve these objectives, the EU employs a range of legislative tools and negotiates trade agreements with trade partners. More specifically, over recent decades the EU has **aimed to spread open and free trade** based on mandates from Member States. After the breakdown of the WTO Doha Round, the EU initiated a period of concentrated focus on free trade agreements, which tackle both tariff liberalisation and NTBs, with a wide range of partner countries from America to Asia.

The EU has concluded **trade agreements** on multilateral, plurilateral and bilateral bases. EU trade agreements are adopted through a lengthy **procedure**, which involves distinct stages, namely preparation, a mandate to open talks, negotiations, textual agreement, initialling, signature, provisional application and, finally, entry into force. The EU also offers different **types of trade relationship**, ranging from deep integration on both regulatory and trade fronts, to simple

partnership and cooperation agreements that do not offer preferential treatment. Trade agreements are **enforceable** through a dedicated dispute settlement mechanism that allows parties to adopt economic remedies in the event of non-compliance. However, certain provisions in trade agreements, such as **trade and sustainable development** (TSD) clauses, have a different mechanism for settling disagreements that involves government consultations and recommendations issued by a panel of experts. Efforts to make trade policy '**greener**' include TSD chapters, but also provisions to support sustainable use of natural resources, biodiversity, forestry and fisheries. Trade agreements also include **human rights** clauses that aim to incentivise trade partners to improve internal governance.

EU **trade legislation** is adopted under the ordinary legislative procedure, and provides the framework for trade policy. Since the Lisbon Treaty, the European Parliament has played an important role in the CCP. **Parliament** must give its consent to trade agreements or trade-related legislation, while it also monitors trade policy developments through resolutions, hearings and workshops. The **European Commission** proposes and negotiates, while **the Council** authorises the opening of negotiations and decides on the conclusion of trade agreements. **Civil society and stakeholders** are encouraged to feed into this process on a regular basis.

Where technocratic negotiations were once sufficient, trade policy has undergone intense politicisation in recent years. Where trade policy used to be characterised by material arguments based on numerical simplicity, now it features normative disagreements and regulatory politics. This makes knowledge and understanding of the complex concepts and themes of EU trade policy all the more important.

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1. Introduction

This paper charts the development of EU common commercial policy over the course of six decades, from the Treaty of Rome to the Lisbon Treaty (Section 1.1). This development has not taken place without controversy, as explained in Section 1.2 on the evolution and scope of trade competences.

Basic questions relating to the economics of trade in the EU are discussed in the second chapter: these include an exploration of whether trade leads to growth (Section 2.1.), what are the effects of trade on employment (Section 2.2.), and whether trade leads to inequality (Section 2.3.).

Chapter 3 unpacks key trade concepts such as tariffs on trade in goods, rules of origin, non-tariff barriers to trade, and trade in services.

The aims of EU trade policy (Section 4.1.) and its formulation (Section 4.2.) are charted in Chapter 4. Each EU institution plays a designated role in concluding trade agreements. Parliament (Section 4.2.1) is a co-legislator for trade alongside the Council (Section 4.2.3.), while the Commission (Section 4.2.2.) proposes trade legislation and negotiates on behalf of Member States. Civil society and stakeholder involvement (Section 4.3.) is institutionalised through specific dialogues.

Chapter 5 outlines out the range of EU trade-related legislation (Section 5.1), including trade defence instruments (Section 5.2.), which make up the protective side of EU trade policy. The next chapter explains international trade agreements (Section 6.1.), and how they are achieved at multilateral level (Section 6.2.) and at EU level (Section 6.3), is explained. The various types of trade relationship (Section 6.5.) that the EU can offer trade partners and the enforceability of trade agreements (6.5.) are also covered.

The final chapter discusses an aspect of trade policy that has been particularly important for the European Parliament: trade and sustainable development. EU free trade agreements include a wide range of provisions that can support sustainable development chapters (Section 7.1.). The enforcement of the trade and sustainable development provisions (Section 7.2.) and the possibility of a sanctions-based model (Section 7.3.) is a matter of contention. Finally, the paper covers the specific provisions that aim to make trade policy greener (Section 7.4.) and human rights clauses in trade agreements (Section 7.5.).

2. Background: evolution and scope of the common commercial policy

2.1. The common commercial policy: from coal and steel to services and foreign direct investment

The **European Coal and Steel Community** (ECSC) was the first step taken by the six founding members (France, West Germany, the Benelux countries (Belgium, the Netherlands, Luxembourg), and Italy) towards European integration and a common commercial policy (CCP). The **Treaty establishing the ECSC** (signed in Paris in 1951) created a common market for the strategic industries of steel and coal in the post-war context and introduced the free movement of products without customs duties or taxes between the territories of the signatory states. The Treaty abolished and prohibited import and export duties, quantitative restrictions and discriminatory measures, as well as subsidies, State aid or special charges. The Treaty also set up the predecessor to today's

European Commission in the form of a common High Authority, which supervised the market, monitored compliance, and ensured price transparency.¹

The **Treaty of Rome**, or the Treaty establishing the European Economic Community (EEC), was signed in 1957 and became effective as of 1958. It established the EEC and a common market, beyond coal and steel, which was based on four freedoms: the free movement of people, goods, services, and capital.² In practice, the CCP emerged gradually during the 12-year transition period, intended to smooth the establishment of the common market (1957-1969), and has continued to evolve since.³

A CCP was necessary because the Treaty of Rome also created a customs union, which covered *all* trade in goods, abolished customs duties or equivalent charges between Member States, and set up a common external customs tariff.⁴ This was in line with the General Agreement on Tariffs and Trade (GATT), a multilateral agreement on trade in goods – the predecessor to the World Trade Organization (WTO). The GATT had entered into force in 1948 and required that a customs union *internally* remove customs duties and quantitative restrictions on trade in goods between members, and *externally* adopt the same common customs tariff in relation to third countries. Without the common approach to trade embodied in the CCP, the European Community would have faced free-rider problems, for instance if third country exporters entered the internal market through the Member State where the tariffs were lowest and then took advantage of free movement across the territory⁵. To manage this, Member States needed to pool their resources and transfer part of their trade competences to the supranational level. The aim behind the creation of the CCP was also to increase the Community's international bargaining power and leverage vis-a-vis third countries.

In practice, the CCP meant that common customs duties were to be fixed by the Council based on a proposal from the Commission, which would also carry out other tasks entrusted to it.⁶ The Commission would submit the Council proposals for implementing the CCP, recommend the opening of negotiations and then conduct them; this is still the case today.

The CCP became vital following the expansion of international trade in the 1970s, enlargements, and the consolidation of the single market in 1986, to ensure EU competitiveness in a globalising world. In the 1971 landmark judgment *Commission of the European Communities v Council of the European Communities* on the European Agreement on Road Transport (ERTA), the European Court of Justice (ECJ) introduced its famous 'implied powers doctrine', enabling the Community to negotiate and conclude external agreements over a whole range of its broadly defined objectives.⁷ It made this power potentially exclusive by delimiting the Member States autonomous powers on the international scene to the benefit of the Community. The textual expression of this doctrine is in Article 3(2) of the Treaty on the Functioning of the European Union (TFEU), which provides that the EU shall have '*exclusive competence for the conclusion of international agreements – in so far as its conclusion may affect common rules or alter their scope*'. In 1979, the ECJ issued an opinion on the

¹ [ECSC Treaty](#), Article 4. See the [summaries](#) of EU legislation.

² Originally Article 3 of the Treaty establishing the European Community (TEC), currently Article 26 of the Treaty on the Functioning of the European Union ([TFEU](#)). N.B.: whenever appropriate, references are made to TFEU, which originated as the Treaty of Rome, and forms the consolidated basis of EU law.

³ Articles 110-116, Treaty of Rome.

⁴ Articles 28-32, TFEU.

⁵ A. Staab, *The European Union Explained – Institutions, Actors and Global Impact*, Indiana University Press. 2013, Chapter 15.

⁶ Articles 31-32 TFEU.

⁷ ECJ [Case 22/70](#), European Agreement on Road Transport.

International Agreement on Natural Rubber, in which it interpreted the Community competences widely under the Treaty of Rome, stating that the Community should be able to formulate a commercial 'policy', and not merely administer measures such as customs and quantitative restrictions.⁸

Key treaty developments for EU trade

ECSC Treaty, or the Treaty of Paris (signed in 1951, in force from 1952 to 2002), created a common market for coal and steel, which was integrated into the Treaty establishing the European Community after expiry.

Treaty of Rome (signed in 1957, in force since 1958), establishing the European Economic Community (EEC), created the common market beyond coal and steel, based on four freedoms, and the customs union.

Treaty of Amsterdam (signed in 1997, in force since 1999) and **Treaty of Nice** (signed in 2001, in force since 2003) added provisions furthering the inclusion of services and commercial aspects of intellectual property rights (IPR) in the CCP.

Treaty of Lisbon (signed in 2007, in force since 2009), is known in its updated form as the Treaty on the Functioning of the EU (TFEU), and forms the constitutional basis for the EU and its exclusive trade competence today.

Significant multilateral-level developments took place in the 1990s, when the focus of external trade shifted from goods, in particular industrial products, to encompass further areas. The WTO was established and multilateral treaties on services, public procurement and intellectual property were developed. It became increasingly important to bring these areas under qualified-majority voting (QMV) and therefore transfer sovereignty to the supranational level to address radical changes to the structure of the global economy. Against this backdrop, in 1997, the **Treaty of Amsterdam** included a new ('fast-track') provision that allowed the Council, acting unanimously and after consulting the Parliament, to extend the CCP to agreements concerning services and intellectual property at a future date without amending the Treaties.⁹ The **Treaty of Nice** further added that institutional provisions of the CCP would also apply to the conclusion of international agreements in services and commercial aspects

of intellectual property (IP), except for agreements relating to trade in cultural, audio-visual, educational, social and human health services, which would remain within the shared competence of the Community and its Member States.¹⁰ The Treaty of Nice also provided for international agreements in the field of transport to remain outside the CCP.¹¹

The **Treaty of Lisbon** (or Lisbon Treaty), which came into force in 2009, granted substantially more power in trade policy to the European Parliament. With an expanding trade agenda, it was important to enhance democratic legitimacy in the policy area by increasing Parliament's role. Parliament became a full-fledged co-legislator in the area of trade, having to give its consent to the conclusion of trade agreements and adopt trade legislation under the ordinary legislative procedure.¹² Article 207 TFEU forms the basis of EU external trade policy today. It extended the CCP to cover all trade in goods and services, the commercial aspects of intellectual property, as well as foreign direct investment (FDI). With the Lisbon Treaty, all four modes of supply for trade, as defined in the General Agreement on Trade in Services (GATS) fell under the CCP. The Lisbon Treaty also reformed the EU's external policy and recognised the interlinkage between foreign policy and international trade. This meant that the CCP has to abide by the same principles as the EU's external action, and resulted

⁸ [Opinion 1/78](#).

⁹ Treaty establishing the European Community (Amsterdam consolidated version), Article [133\(5\)](#) (ex. Article 113).

¹⁰ [Article 133\(5\) TEC](#) (Nice consolidated version).

¹¹ [Article 133 TEC](#), *ibid*.

¹² L. Van den Putte, F. De Ville, J. Orbie, The European Parliament's New Role in Trade Policy: Turning power into impact, CEPS Special Report No 89, May 2014.

in a need to enhance coordination between the EU's foreign and trade policy goals. In practice, this meant close cooperation in particular between the European External Action Service (EEAS) and the European Commission's Directorate-General (DG) for Trade, as well as the DGs for International Cooperation and Development and for European Neighbourhood Policy and Enlargement Negotiations and other DGs.

2.2. Evolution and scope of trade competences

The EU has exclusive competence with respect to the CCP.¹³ This means that the EU, on behalf of all the Member States, is responsible for external action in the field of trade including trade-related legislation and international trade agreements. Yet, the exclusive trade competence has not developed without controversy. Member States have been concerned about the loss of formal power over trade throughout treaty reforms, although they retain ultimate decision-making power in the Council (see Section 4.2.3.).¹⁴

Exclusive competence applies to all areas where an agreement would have implications for common EU rules. The Treaty of Rome did not contain a clear definition of what was to be exclusive competence in the area of CCP. Instead, it set out the following non-exhaustive list of example measures belonging to the CCP:¹⁵

- changes in tariff rates,
- the conclusion of tariff and trade agreements,
- the achievement of uniformity in measures of liberalisation,
- export policy,
- measures to protect trade such as those to be taken in case of dumping or subsidies.

With time, successive treaty changes and opinions of the ECJ clarifying competences, the scope of the CCP has evolved. Since the Lisbon Treaty, EU has had exclusive responsibility for trade in goods and services, commercial aspects of intellectual property (IP) (e.g. patents), public procurement, and FDI. For the conclusion of agreements in the fields of services, commercial aspects of IP and FDI, the Council shall act unanimously where this is required for the adoption of internal rules.¹⁶ In areas where the EU has adopted specific common rules, for example customs, Member States cannot sign agreements with non-EU countries that affect those rules.¹⁷ **Shared competence** means that both Member States and the EU have the power to adopt legally binding acts or international agreements and refers to a number of pre-defined areas.¹⁸ The Council votes by common accord (agreement of all Member States) when trade agreements cover areas of shared competence.

Determination of the legal basis of a trade agreement, and thus the competence, can have important political and procedural implications for the conclusion of EU trade agreements. With the Lisbon Treaty, the CCP was extended to services, commercial aspects of IP and FDI. The EU-Singapore Agreement became a test for the precise delimitations of these new areas of exclusive

¹³ Article [3\(1\)\(e\) TFEU](#).

¹⁴ See for example recent ECJ-cases: [Opinion 1/17](#) (CETA), [Opinion 3/15](#) (Marrakesh Agreement), [Opinion 2/15](#) (Singapore) and [Opinion 1/15](#) (Passenger Name Records).

¹⁵ Articles 110-113 Treaty of Rome.

¹⁶ See also ECJ [Opinion 1/94](#) confirming that trade-related aspects of IP and services, with some exceptions, were a shared competence and hence requiring unanimity.

¹⁷ See also ECJ [Case 22/70](#).

¹⁸ Article [4\(2\) TFEU](#).

competence, in particular concerning its investment provisions. Member States considered that the CCP covered FDI only, whereas the Commission considered the coverage potentially wider.¹⁹ In Opinion 2/15, the ECJ clarified that only FDI had become an EU exclusive competence, while **portfolio investment and dispute settlement were shared competences**. This led to the decision to split the EU-Singapore Agreement into two parts: the free trade agreement (FTA, EU-only) and the investment protection agreement (IPA, mixed).²⁰ The same logic was applied to the EU-Japan and EU-Vietnam agreements to speed up the ratification process. Initially, the Commission considered the EU-Canada Comprehensive Economic and Trade Agreement (CETA) an EU-only agreement but after discussions with Member States opted to submit CETA as a mixed agreement.²¹

3. Economics of trade

3.1. Does trade lead to economic growth in the EU?

The theory of **comparative advantage** predicts that countries stand to benefit mutually from trade as they specialise in what they produce best and buy from others that what they produce less efficiently. Higher levels of productivity are achieved owing to economies of scale, and trade is said to lead to economic gains in terms of gross domestic product (GDP), job growth, and diversified consumer choice. The theory of comparative advantage helps explain international trade patterns in the 1980s and 1990s where low-income countries and high-income countries specialised. Comparative advantage does not account for periods of intense intra-industry trade in similar goods and services that occurred between developed countries after the Second World War. However, since the rise of **global value chains (GVCs)** in recent decades, the theory of comparative advantage appears to apply again as producers and countries have specialised in very specific parts of the production process.²² Critically, as GVCs can incorporate imported parts for products ultimately destined for export, and vice versa, the measurement of trade flows gets muddled, making the determination of the impact of trade on growth more challenging.

Empirical literature has shown a **correlation** between rising international trade and growth at cross-country level.²³ The Organisation for Economic Cooperation and Development (OECD) has found that countries with **trade openness** (defined as the share of imports and exports as a share of GDP) typically also have a higher GDP per capita.²⁴ Possible explanations for this correlation are efficiencies derived from competition, access to larger markets, and learning effects.²⁵ However, demonstrating the **causal relationship** between trade and growth is not as straightforward. Later, Rodriguez and Rodrik (2000) noted that this relationship is not a foregone conclusion.²⁶ At macro-

¹⁹ L. Puccio, [A guide to EU procedures for the conclusion of international trade agreements](#), EPRS, European Parliament, October 2016.

²⁰ S. Hindelang and S. Schill, [EU investment protection after the ECJ opinion on Singapore – Questions of competence and coherence](#), Policy Department for External Policies, Study for the INTA Committee, February 2019.

²¹ W. Schöllmann, [Is CETA a mixed agreement?](#), EPRS, European Parliament, July 2016.

²² I. Zachariadis, [Global and regional value chains: Opportunities for European SMEs' internationalisation and growth](#), EPRS, European Parliament, February 2019.

²³ J.-J. Hallaert, '[A History of Empirical Literature on the Relationship Between Trade and Growth](#)', *Mondes en développement*, Vol. 135(3), 2006, pp. 63-77.

²⁴ OECD, '[The importance of global value chains](#)', in *OECD Compendium of Productivity Indicators*, 2018, pp. 76-77.

²⁵ E. Ortiz-Ospina, [Does trade cause growth?](#), Our World in Data Blog, October 2018.

²⁶ F. Rodriguez and D. Rodrik, [Trade Policy and Growth: A Skeptic's Guide to the Cross-National Evidence](#), National Bureau of Economic Research (NBER) Working paper 7081, April 1999.

level, academic studies have concluded that geographical distance from other countries is a predictor of economic growth,²⁷ and that international trade has a statistically significant effect on economic growth, indicating the presence of a causal link.²⁸ Others have argued that it is neither trade nor geographic distance, but the quality of institutions, such as the rule of law in a country, that accounts most significantly for economic growth.²⁹ In 2019, a review of evidence by the Peterson Institute of International Economics stated that one consistent finding across recent literature is that 'trade reforms that significantly reduce import tariffs have a positive impact on economic growth, on average, but as one would expect the effects differ considerably across countries'.³⁰

In the EU, where economic openness, geographical distance and quality of institutions all align, these predictions hold true both within its single market and beyond its borders. The EU single market is itself a case in point of trade having a positive effect on growth.³¹ It has been estimated that EU GDP increased at an estimated 1.7 % between 1990 and 2015, thanks to the single market.³² Meanwhile, even if external trade plays a role in EU economic growth, other domestic and global drivers, including fiscal and monetary policy, are the predominant drivers of overall growth in an economy.

3.2. Does trade create or cut jobs in the EU?

In certain cases, downward pressures on wages and jobs are attributed to trade. Trade can lead to structural job losses as international competition or outsourcing push out domestic production in

Key concepts for measuring trade

- Trade openness = exports and imports / GDP
- Investment openness = FDI / GDP
- [Trade balance](#) = exports - imports
- Market access refers to the conditions (tariffs, taxes, rules or regulations) a country has in place for export to their market. See: the Commission's [Market Access Database](#).
- Business and investment climate is a related concept referring to the economic and financial conditions (including the rule of law) for operating in a market. See the [Doing Business](#) measure (World Bank).

labour markets that are exposed to exports, such as manufacturing.³³ In recognition of these negative effects of global trade patterns on employment, the EU set up a Globalisation Adjustment Fund that Member States can mobilise to help workers who have lost their jobs owing to structural shifts stemming from globalisation. Economists have pointed out that trade has highly differential effects on jobs within countries, at all levels of development, even more than between countries.³⁴ This means that international trade creates winners and losers within countries depending on exposure to external import and export shocks. Trade can also create jobs directly in

export-driven industries, and indirectly as economic growth spills over into jobs created. In the EU,

²⁷ J. Frankel and D. Romer, '[Does Trade Cause Growth?](#)' *American Economic Review*, Vol 89(3), pp. 379-399, 1999.

²⁸ F. Alcalá and A. Ciccone, '[Trade and Productivity](#)', *The Quarterly Journal of Economics*, Vol. 119(2), May 2004, pp. 613-646.

²⁹ D. Rodrik and A. Subramanian, '[The Primacy of Institutions](#)', *Finance & Development*, June 2003.

³⁰ D. A. Irwin, '[Does Trade Reform Promote Economic Growth? A Review of Recent Evidence](#)', PIIE, May 2019.

³¹ E. Dahlberg, '[Economic Effects of the European Single Market - Review of the empirical literature](#)', Kommerskollegium, May 2015.

³² LE Europe, '[The EU Single Market: Impact on Member States](#)', Study for AmCham EU, February 2017, p. 134.

³³ E. Ortiz-Osborn, '[What's the impact of globalization on wages, jobs and cost of living?](#)', Our World in Data Blog, October 2018.

³⁴ N. Pavcnik, '[The Winners and Losers from international trade](#)', January 2019.

trade integration created an estimated 3.6 million additional jobs between 1990 and 2015.³⁵ As of 2018, according to the Commission, trade supported 36 million export-related jobs, which are also on average better paid in the EU and another 20 million outside the EU including in developing countries.³⁶

3.3. Does trade lead to inequality in the EU?

The rise in global inequality, understood in terms either of income or wealth distribution, has often been associated with international economic globalisation.

Inequality **within countries** has been found to increase with openness to trade in low- to mid-income countries.³⁷ Trade has a differential impact on skilled and unskilled workers,³⁸ with skilled and mobile workers indeed benefiting proportionally more, concentrating wealth in the higher echelons of society. Different sectors can be very differently impacted, depending on the presence of competition in the partner country. For instance, the most vulnerable EU sectors traditionally include textiles, footwear, leather (except for the luxury end of the market), basic and fabricated metal products, and certain manufacturing industries, while services sectors tend to be more robust in the global arena.³⁹

Inequality **between countries** can also increase, in particular when countries at different stages of development establish trading relationships, for instance by means of trade agreements. With imperfect competition conditions, specialisation at different ends of production processes or social dumping can occur. In the context of trade agreements, a key dynamic that has been argued to entrench inequality between developed and developing countries is protection of intellectual property rights if they confer an unfair market advantage, to patent-holders for instance.

However, openness to trade has also been found to lead to overall **welfare gains** – such as poverty reduction – that would suggest a different causal relationship. The endogenous growth theory suggests that trade-related growth also leads to increased living standards for citizens.⁴⁰ For instance, trade tends to place a downward pressure on consumer prices for the goods traded, meaning that the purchasing power can improve thanks to trade. The variety of goods and services available to consumers also increases, allowing for a wider range of choice and potential economic gains for consumers.

Finally, domestic policies including taxation, labour market conditions, as well as international capital flows remain some of the most powerful determinants of inequality.

³⁵ LE Europe, p. 40.

³⁶ Z. Kutlina-Dimitrova et al., [How important are EU exports for jobs in the EU?](#), Chief Economist Note No. 4, DG Trade, European Commission, November 2018.

³⁷ Pavcnik N., [The impact of trade on inequality in developing countries](#), NBER, 2017.

³⁸ Helpman E., [Globalization and wage inequality](#), NBER 2016.

³⁹ C. Salm and M.-C. André, [Benefits of EU international trade agreements](#), Briefing European Added Value in Action, EPRS, European Parliament, 2017.

⁴⁰ P. M. Romer, [The Origins of Endogenous Growth](#), *The Journal of Economic Perspectives*, Vol. 8, Nr 1, 1994, pp. 3-22.

4. Key trade concepts

4.1. How do tariffs work?

A tariff is a tax or a duty to be paid for an import. Historically, countries have charged importers when goods cross borders in order to reduce imports or make it more advantageous to produce the product domestically. Most tariffs are a percentage of the import price (for example, **ad valorem** 5 % to be paid on a good worth €100), but can also be a fixed fee for a certain quantity of an import (a specific amount per kg), which is more common for agricultural imports. **Tariff rate quotas** (TRQs) are two-tier instruments that charge a lower rate below a certain threshold, and jump to a higher rate once the quota is exhausted.

Under the WTO, countries have agreed to limit the tariffs they charge each other. For instance, in 2017, average tariffs applied by the three major trade players (the EU, China and the United States (US)) were all below 10 %, which is considered relatively low. Tariffs can be further lowered by FTAs. The EU also has **trade preference schemes** that eliminate or reduce tariffs for developing countries (i.e. General Scheme of Preferences, GSP+, or Everything But Arms). The EU's tariff rates for each product and each trading partner (e.g.: avocados from Australia) can be checked on the Commission's market access database.⁴¹

Key data sources for trade policy-making

Useful sources for **country profiles** on goods and services: [Economic indicators and trade with the EU](#) (EPRS; European Parliament), [trade statistics](#) (European Commission), [trade profiles](#) and [Aid for Trade](#) country profiles (WTO)

Big data visualisation tools: [Observatory of Economic Complexity](#) (MIT), [UN Comtrade analytics](#), [Atlas of Economic Complexity](#) (Harvard)

Tariff data: for EU Member States Eurostat Comext and [Easy Comext](#), globally [UN Comtrade](#) or [IMF Database](#) or [OECD Stats](#)

In the EU, tariffs are collected on behalf of the Commission by the customs authorities of the Member States in which goods arrive. A part is retained by Member States to pay for administrative costs, while the rest forms a significant part of the EU budget, which, in turn, feeds back to the Member States. High tariffs increase the price of imported goods and thus have a negative effect on trade volumes. Because of their direct impact on trade, and even though the WTO only allows increases in tariffs in exceptional cases, tariff hikes (or threats thereof) are occasionally used for political or strategic purposes, as well as to extract specific concessions from trade partners.

Under the WTO, a distinction is made between most-favoured nation (MFN), preferential, bound and applied tariffs. **MFN tariffs** are the highest tariffs WTO members can charge each other. **Bound tariffs** are the maximum rates a country commits not to exceed for specific products, while **applied tariffs** are the rates actually charged in practice, and can be less or equal to the bound tariff. **Preferential tariff rates** are lower-than-MFN tariffs that countries can agree to under customs unions or free trade agreements.

⁴¹ European Commission, [Market access database](#).

4.2. What are rules of origin?

Rules of origin (RoO) identify the **economic nationality of goods** so as to determine the tariff applicable and to prevent the circumvention of customs duties at the border. RoOs have an important impact on trade flows in combination with tariff levels, in particular for products made in many separate stages (e.g. textiles and apparel). For instance, without RoOs, products that are mostly made in a country with which the EU does not have a preferential trade relationship could be brought into the EU single market without paying the due tariff, by having just the final touches

Three basic rules are used to determine origin:

- The value-added rule is concerned with how much value is added in the partner country and how much elsewhere.
- The change of tariff classification rule looks at whether the tariff classification changes with the final product. Tariffs are classified according to the harmonised commodity description and coding system ('HS codes').
- The production activities rule sets out the production activities for the product and the materials it must be manufactured from.

Source: [Future trade relations between the EU and the UK: options after Brexit](#), Policy Department for External Policy, Study for the INTA Committee, European Parliament, March 2018.

added in a country that has concluded an FTA with the EU. RoOs essentially help avoid such situations and thus are an integral part of every FTA. Goods need to be either 'wholly obtained' from materials originating in countries of the FTA, or 'sufficiently transformed' in a country party to the FTA. In addition, **cumulation of origin** can allow the producing country to source the product in countries that are party to the FTA and still benefit from preferential tariffs. The EU has concluded a regional convention on pan-Euro-Mediterranean preferential rules of origin that brings under a single legal instrument all the rules of approximately 60 bilateral FTAs in the region to benefit from common rules and cumulate origin. Restrictive RoOs can obstruct trade in a significant manner when they require a

particularly high amount of a product to be locally made. This is compounded by today's globalised value chains, which mean that a significant proportion of European products' added value comes from abroad. In the same vein, strict RoOs can influence companies' long-run investment decisions (e.g. where to build a car factory).

4.3. What are non-tariff barriers to trade?

Non-tariff barriers (NTBs) are government measures **other than tariffs** that can impact exports and imports of goods and services. NTBs can be⁴²:

- protectionist measures that help domestic producers at the expense of others (e.g. local content requirements, import quotas);
- assistance measures that help domestic producers not (directly) at the expense of third countries (e.g. subsidies to state-owned enterprises); or
- non-protectionist policies that aim to safeguard legitimate concerns in the public interest (such as domestic health, safety and environmental protection) but that can involve further red tape (e.g. testing requirements for fruit). Technical barriers to trade (TBT) and sanitary

⁴² A. Deandorff, [Non-tariff Barriers](#), Study for USAID, 2013.

and phytosanitary (SPS) measures can fall in this category. These are also the most common type of NTB according to a 2016 International Trade Centre (ITC) survey.⁴³

In practice, EU goods exporters can suffer from inadequate recognition of geographical indications (GIs), i.e. labels protecting products linked to their geographical origin, e.g. in the form of protected names of cheeses or wines of specific regions). In trade in services NTBs range from visa restrictions and failure to recognise European workers' qualifications, to difficulties establishing local presence or limits to cross-border data flows for European companies. Several WTO rules deal with NTBs, for instance, with regard to import licensing procedures and customs valuation rules. EU FTAs can go further in removing NTBs and behind-the-border barriers; this is also a central objective of trade negotiations. Nevertheless, in practice, NTBs persist in the EU single market, especially in the services sector,⁴⁴ even though quantitative restrictions and measures having an *equivalent effect* are forbidden by the Treaty of Lisbon (Article 34) between Member States. This can be interpreted as a prohibition of NTBs. While it is particularly difficult to quantify the impact of NTBs, research has suggested that potential global trade in merchandise could increase by 9.7 % if action was taken to address NTBs in the areas of ports, customs, regulation and service sector infrastructure.⁴⁵

4.4. How are services traded?

Unlike goods, services have no physical form. The key multilateral legal framework regulating trade in services between WTO Members is the General Agreement on Trade in **Services** (GATS), which sets out four specific modes through which services can be traded:

- mode 1: cross-border supply (e.g. advisory services, insurance or financial services),
- mode 2: consumption of a service abroad (e.g. tourism, repairs),
- mode 3: commercial presence of the supplier (e.g. establishment of affiliate offices abroad or FDI),
- mode 4: presence of natural persons (e.g. consulting, construction services).

Commercial presence, which is essentially investment, is the most common mode for EU services exports to third countries (60 % in 2015),⁴⁶ followed by cross-border supply. A fifth mode has been suggested covering services that are incorporated or embedded in the production processes of traded goods (e.g. engineering or software design services). In theory, this would account more accurately for today's increasingly digital trade patterns, but it would be difficult to implement in practice. Under the GATS, the EU presents a single schedule of services commitments in line with its CCP. Within these commitments, Member States make their own limitations to their commitments. The EU tends to have more limited schedules for mode 4, except for specific categories mostly of high-skilled suppliers. Indeed, as EU services exports exceed merchandise exports in terms of value, the importance of services trade to the EU economy cannot be underestimated. However, data collection is a particular problem when it comes to trade in services (as opposed to goods). Most statistical offices do not publish services trade data by mode of supply even if pilot efforts have been made by the Eurostat and the OECD.

⁴³ ITC and European Commission, [Navigating non-tariff measures](#), 2016.

⁴⁴ M. Szczepanski, M., [Understanding non-tariff barriers in the single market](#), EPRS, European Parliament, October 2017.

⁴⁵ J. Wilson, C. Mann, and T. Otsuki, [Assessing the Potential Benefit of Trade Facilitation: A Global Perspective](#), World Bank policy research working paper 3224, February 2004.

⁴⁶ Eurostat, [Services trade statistics by modes of supply](#), 2019.

5. Formulation of EU trade policy

5.1. What are the aims of EU trade policy?

While its specific direction is subject to political agreement, in recent decades, EU trade policy has largely been characterised by a commitment to more open and free trade, which is considered to lead to growth and jobs. Since the 1980s, the Commission has broadly pursued **market access and trade liberalisation**, both in terms of tariffs and NTBs, with the exception of trade defence, even if the specific aims are more nuanced in different areas of trade policy.⁴⁷ Reasons for this suggested in academic literature include Member States' delegation of liberalisation to the supranational level,⁴⁸ bureaucratic expansionism, business pressures, and genuine beliefs in the 'win-win' nature of international cooperation and trade.⁴⁹ EU trade policy also aims to abide by the **precautionary principle**, as enshrined in the TFEU. This means that the EU prefers to play on the safe side where there are grounds for concern about dangerous effects on the environment, human, animal plant life, or health. Within these broad principles, specific objectives of EU trade policy are set out in the most recent Commission strategy or communication for trade, and are subject to political change.

In 2006, in the context of the suspension of the WTO Doha Round, the Global Europe: Competing in the world⁵⁰ communication highlighted the need for EU trade policy to be flexible so as to adapt to the rapidly changing environment, and initiated a **period of concentrated focus on FTAs** stretching beyond the EU's neighbourhood or former colonies. It also suggested that the new FTAs would need to be 'comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation, including in services and investment'. This has resulted in the development of a new generation of FTAs, which tackle NTBs and regulatory issues, as well as the traditional market access, in a more concentrated manner. A key rationale behind FTAs is to spread EU regulatory practices, standards and norms to partner countries and to ensure that trade takes place on the basis of rules.

In 2015, the 'trade for all' strategy⁵¹ set out to make trade policy more effective, transparent and to pay special attention to values within the EU, by being responsive to the public's expectations on regulations and investment, and outside the EU, by promoting sustainable development, human rights and good governance. The strategy also highlighted the importance of the multilateral rules-based trading system, as embodied by the WTO.

As of 2019, the EU has focused increasingly on a trade policy that protects in the context of trade threats from the US and seeks to 'level the global playing field' and improve reciprocity in the context of the rise of China.⁵² The Commission, Parliament, and the Council have all reiterated their support for the multilateral rules-based trading system; strengthening it in the face of global trade challenges is a top priority of EU trade policy.

⁴⁷ A. Young and J. Peterson, *Parochial Global Europe: 21st Century Trade Politics*, Oxford University Press, 2014.

⁴⁸ S. Meunier, *Trading Voices: The European Union in International Commercial Negotiations*, Princeton University Press, 2005.

⁴⁹ Bollen, Y., 'EU trade policy', *Handbook of European policies: interpretive approaches to the EU*, 2018.

⁵⁰ Global Europe - Competing in the world - A contribution to the EU's Growth and Jobs Strategy, [COM\(2006\) 567](#), European Commission, October 2006.

⁵¹ Trade for all - Towards a more responsible trade and investment policy, [COM\(2015\) 497](#), European Commission, October 2015.

⁵² EU Commissioner for Trade Cecilia Malmström's [speech](#) on trade trends, January 2019.

5.2. What are the roles of EU institutions in trade policy?

5.2.1. What does the European Parliament do?

In 2009, the Lisbon Treaty gave Parliament full legislative power in the area of **trade**. Under the ordinary legislative procedure, Parliament and Council are on an equal footing for the adoption of trade-related acts proposed by the Commission.

The Lisbon Treaty also increased Parliament's formal powers on **international trade agreements**. The Commission must inform the Parliament at all stages of negotiations. Most importantly, Parliament has a veto over trade agreements at the ratification stage when it must give its consent to the conclusion of an agreement with a yes/no vote. For mixed-competence agreements, Member State parliaments ratify in accordance with their own national procedures.

In practice, the European Parliament exercises a **monitoring function** that goes beyond the consent procedure. It can choose to adopt resolutions on the opening of negotiations and, over the course of negotiations, hold public hearings or workshops, and carry out relevant studies. Increasingly, Parliament also scrutinises the *ex-post* implementation of trade agreements with its implementation reports, in particular since the emergence of Parliament Committee on International Trade (INTA) technical briefings and monitoring groups, support from the dedicated studies commissioned by the Policy Departments, and the creation of the European Parliamentary Research Service in 2013, which provides independent analytical support. Finally, at **multilateral** level, Parliament participates in the work of the Steering Committee of the WTO Parliamentary Conference, and contributes to the Commission's work in the WTO with resolutions and reports. Parliament is also required to give its consent to WTO agreements as with other international agreements.

5.2.2. What does the European Commission do?

The European Commission has a central role in EU trade policy on account of the exclusive EU competence. It proposes EU trade legislation and also prepares and negotiates EU trade agreements with third countries (See Section 6). The Commission also publishes trade policy strategies, and implements EU trade policy. This can involve updating EU trade legislation through delegated and implementing acts.

Much of the literature on EU trade policy has focused on the dynamics between EU institutions. On the basis of principal-agent theories, it has been argued that the Commission is the primary agenda setter, owing not least to information asymmetries and Commission autonomy when it comes to trade.⁵³

5.2.3. What does the Council do?

With regard to trade agreements, Council authorises the opening of negotiations and decides on the conclusion of the agreement following the vote in Parliament. Council follows the negotiations closely. More specifically, the Trade Policy Committee (TPC) assists and advises the Commission in negotiations with third countries and in WTO-related work. The TPC meets monthly in its full-member configuration and the TPC deputies meet weekly. The TPC has also other configurations, namely on services and investment, steel, textiles and other industrial sectors and mutual recognition agreements.

⁵³ Y. Bollen.

Both trade agreements and trade legislation are adopted in the Council on the basis of qualified-majority voting, which means that the agreement needs to be supported by 55 % of Member States, representing 65 % of the population. However, in practice, Council adopts decisions by common agreement in areas of shared competence (e.g. commercial aspects of IP).

In academic papers, Member States' positions on trade are often characterised as 'given' or fixed (e.g. along the North-South divide), when it comes to being for or against free trade. However, Member States' approaches can be fluid and multidimensional leading to heterogeneous constellations taking place on specific areas of trade policy.

5.3. How is civil society involved in EU trade policy?

The role of stakeholders in feeding into EU trade policy is largely institutionalised. The Commission holds several public consultations per year on trade-related issues whereby stakeholders can express their views and provide data. The Commission publishes the proposals and a synopsis report after the consultation. The Commission also organises civil society dialogues (CSD) on trade issues, which discuss key concerns and seek to improve policies. Business representatives and confederations of industries attend the dialogues particularly actively. FTAs contain provisions for the creation of domestic advisory groups and civil society fora, which are organised on the EU-side by the European Economic and Social Committee (EESC). Parliament voices civil society concerns in its resolutions and organises public hearings where stakeholders have a chance to exchange views with decision-makers. At Member State level, each country consults their stakeholders on trade policy formulation in line with their national processes.

According to academic literature, businesses have a slightly higher success in influencing outcomes relative to other actors such as NGOs in EU trade policy, as predicted by rationalist political economy perspectives.⁵⁴ Nevertheless, civil society campaigns have led to several policy reversals. Cases in point include the rejection of the anti-counterfeiting trade agreement (ACTA), the Commission yielding to core demands (e.g. on transparency) in the context Transatlantic Trade and Investment Partnership (TTIP) talks between the EU and the US, and the criticism of investor-state dispute settlement provisions in EU FTAs, notably CETA.

⁵⁴ A. Dür, ['Measuring Interest Group Influence in the EU'](#), *European Union Politics*, 2008.

6. EU trade-related legislation

6.1. What are the different EU laws relating to trade?

EU legislation in the area of trade is adopted by the ordinary legislative procedure. EU trade-related legislation can be both horizontal and country-specific. Legislation in other areas such as customs, enlargement or foreign policy, also have important interlinkages with trade.⁵⁵

Key EU trade-related legislation

Investment

- Bilateral investment treaties (BITs) (1219/2012)
- Disputes between foreign investors and EU governments (912/2014), clarifying whether the EU or Member States pay the costs for claims
- FDI screening framework (2019/452)

[Trade defence instruments](#) (see also Section 5.2.)

[EU Enforcement Regulation](#) provides the legal basis for the EU to suspend concessions under WTO

Imports and exports, specific products

- Codified common rules for imports (2015/478) and codified common rules for exports (2015/479)
- Exports of cultural goods (required licences 116/2009)
- Dual-use export controls (428/2009)
- Trade arrangements (i.e. export refunds and imports duties) for processed agricultural products (510/2014)
- Export credit insurances (Directive 98/29/EC) protecting exporters against non-payments by foreign buyers
- Common rules for the application of safeguard measures to imports from certain non-EU countries (namely non WTO countries i.e. Azerbaijan, Belarus, North Korea, Turkmenistan and Uzbekistan) if they may cause serious injury or threat to EU producers (2015/755)
- Imports of textile products from certain non-EU countries, namely North Korea (2015/936)
- Trade in seal products (1007/2009), which was also the subject of the famous WTO dispute EC-Seal Products (DS400)
- Allocation of import and export quotas and licences (717/2008)

Sustainable development

- Generalised tariff preferences (978/2012) set out rules for general scheme of preferences (GSP), GSP+ incentive scheme, and the full tariff- and quota-free imports under 'Everything But Arms' (EBA)
- Trade in conflict minerals laying down due diligence obligation (2017/821)
- Trade in rough diamonds (implementing the Kimberley process certification system) (2368/2002)

⁵⁵ Eur-lex [summaries](#) of trade legislation.

6.2. What are trade defence instruments?

If EU commitments under the WTO constitute the multilateral sphere and EU FTAs represent the bilateral aspects of trade policy, EU trade defence instruments (TDIs) can be viewed as unilateral measures the EU can resort to in order to protect its market in the context of open markets.⁵⁶ TDIs are not protectionist measures. For the EU, they are based on WTO rules, specifically the Anti-dumping Agreement (ADA) and the WTO Agreement on Subsidies and Countervailing Measures (ASCM). TDIs were modernised in 2018, along with a new methodology for calculating dumping margins (adopted in 2017) and they seek to protect European companies against unfair trade practices.⁵⁷

6.2.1. What are anti-dumping duties?

Dumping occurs when foreign products are sold at an artificially low price in the EU. This can involve, for instance, non-EU product imports supported by distorting subsidies or other support measures, for instance in order to gain a market share (predatory dumping) or sporadically to offset a temporary surplus of a product. To counter this, the EU can impose anti-dumping duties, which are the most commonly used TDI in practice. The Commission can autonomously adopt preliminary anti-dumping measures, and only a rejection by qualified majority in the Council can reverse them. The Parliament does not play a formal role for individual duties, but can adopt resolutions and co-legislates the underlying legislative framework under the ordinary legislative procedure.

Following an evidence-based complaint, the Commission can open investigations into whether there is dumping by the producers in the third country concerned, whether EU industry has suffered material injury (defined in Article 3 ADA), and whether a causal link exists between dumping and injury. Finally, the Commission checks that putting anti-dumping duties in place does not work against the European interest. When anti-dumping measures are imposed, they take the form of an *ad valorem* duty, a fixed amount on the price of a product or a minimum import price on the good in question. According to the 'lesser duty rule', these amounts cannot be higher than what is needed to prevent injury to EU producers.⁵⁸ The exporter can also commit to importing the good above a minimum threshold, which is called a price undertaking.

6.2.2. What are anti-subsidy measures?

Countries have the right to subsidise their domestic producers, except for certain subsidies and support measures that are set out in the WTO Agreement on Subsidies and Countervailing Measures (ASCM).⁵⁹ The key concept in anti-subsidy policy is 'injury', which means the EU needs to demonstrate that its domestic producers are harmed by the third country's practices. When a complaint brings evidence of injury, the Commission launches an investigation into whether the imports in question benefit from countervailable subsidies (i.e. actionable subsidies, as defined in the ASCM), whether EU industry is injured and, crucially, whether a *causal link* exists between the injury and the subsidised imports. Finally, the Commission verifies whether putting up countervailing measures would be in the EU interest.⁶⁰ Anti-subsidy measures aim to counteract distorting subsidies. They can take the form of a percentage of the price of the good, a fixed

⁵⁶ Y. Bollen.

⁵⁷ European Commission, [Europe's trade defence instruments now stronger and more effective](#), June 2018.

⁵⁸ [Trade defence instruments: Council agrees negotiating position](#), Council of the European Union, 2016.

⁵⁹ WTO [Agreement on Subsidies and Countervailing Measures](#), full text.

⁶⁰ [Anti-subsidy policy](#), European Commission.

premium on an amount (per unit) of the product, a minimum threshold import price, or a price undertaking where the exporter offers to sell the product above a minimum price rather than be subjected to a measure.

6.2.3. What are safeguard measures?

Safeguard measures differ from anti-dumping and anti-subsidy measures in their underlying logic, which does not focus on fairness. Safeguards (i.e. temporary withdrawal of tariff preferences) can be put in place when an EU industry is suddenly faced with an unforeseen and sharp rise in imports; they are therefore used very sparingly.⁶¹ When a Commission investigation concludes that safeguard measures are warranted (along specific and strict criteria), they can impose quantitative restrictions (i.e. import quotas or tariff quotas that would otherwise be prohibited) and surveillance such as a system of automatic import licensing. There are two separate safeguard regulations, one for WTO countries (Regulation 2015/478) and another for non-WTO countries (Regulation 2015/755). In addition, under FTAs, the EU can also apply safeguards in cases of import increases that threaten to seriously injure domestic industry. This was streamlined in 2019 into the Horizontal Safeguards Regulation (2019/287).

7. International trade agreements and negotiations

7.1. What are trade agreements?

Trade agreements aim to liberalise trade, either by removing or reducing customs duties, or by abolishing non-tariff barriers to trade (NTBs). They can be multilateral (WTO), bilateral (e.g. FTAs), regional, or plurilateral (certain WTO agreements, e.g. on e-commerce). The EU's objectives range from purely economic (gaining market access and facilitating low-cost imports), political or strategic (arguably in the Eastern Partnership), to decreasing NTBs, promoting EU's approach to managed globalisation,⁶² or even achieving regulatory alignment to EU norms and standards. Contrary to what is often argued, academic research has found that the EU has not focused on exporting its regulations through new generation FTAs.⁶³ Others have studied more broadly the liberal discourses associated with trade and the proliferation of FTAs in the EU.⁶⁴

7.2. How does the EU negotiate at multilateral level in the WTO?

Because of the CCP, the EU acts as a single actor in the WTO. In practice, this means, for instance, that the Commission negotiates on behalf of the Member States in the WTO and represents them in the General Council of the WTO as well as other subsidiary WTO bodies. The EU Trade Commissioner represents the Member States at the WTO ministerial meetings. The Commission reports regularly to Council and Parliament on multilateral negotiations and developments. It seeks a green light from Council for negotiations, and needs authorisation from both Council and Parliament to sign an agreement. Parliament also monitors WTO activities through the Parliamentary Conference on the

⁶¹ European Commission, [Safeguards](#).

⁶² R. Abdelal and S. Meunier, '[Managed globalization: doctrine, practice and promise](#)', *Journal of European Public Policy*, Vol. 17(3), Taylor&Francis Online, 2010, pp. 350-367.

⁶³ A. Young, 'Liberalizing trade, not exporting rules: the limits to regulatory co-ordination in the EU's 'new generation' preferential trade agreements', *Journal of European Public Policy*, Vol. 22(9), Taylor & Francis Online, 2015, pp. 1253-1275.

⁶⁴ Y. Bollen.

WTO, which it organises jointly with the Inter-Parliamentary Union. The conference is a forum where MEPs can influence the direction of discussions within the WTO in annual meetings. On the basis of files prepared by its Legal Service and DG Trade, the Commission also launches disputes and handles the cases in the dispute settlement mechanism, with Council support. It also proposes potential retaliatory measures to the Council.

7.3. How does the EU conclude trade agreements?

Figure 1 – EU procedure for making trade agreements



Source: Author. For further details, see: L. Puccio, [A guide to EU procedures for the conclusion of international trade agreements](#), EPRS, 2016.

7.4. What are the different types of EU trade relationships?

FTAs do not exempt the EU from WTO rules, but allow the EU to go further with a trade partner providing certain WTO conditions are met. An important condition is that the trade agreement should cover 'substantially all trade' (GATT Article XXIV). Whilst there is no exact definition of what constitutes substantially all trade, the general principle is that the EU cannot conclude a trade agreement on specific sectors only, e.g. just cars.

The EU has different trade relationships with partner countries.⁶⁵ These are not models per se, as for instance the trade relationship between the EU and Switzerland is very specific as it arose incrementally over decades. The deepest trade relationship with the EU is EU membership itself. This implies, among other aspects, membership of the single market, participation in the four freedoms, and exclusive EU competence over trade policy. Beyond that, some of the main trade relationships that the EU can propose to its trading partners, ranging from deep to shallow, are listed in Figure 2.⁶⁶

⁶⁵ P. Eeckhout, [Future trade relations between the EU and the UK: options after Brexit](#), Policy Department for External Policies, Study for INTA Committee, European Parliament, 2018.

⁶⁶ Typologies of trade relationships can be conceptualised in several ways, also see breakdown by type of FTA by DG Trade [Report on the implementation of FTAs](#). Here the breakdown is based on the [slide for the future UK trade relationship](#) used by Michel Barnier, chief negotiator on the task force for the preparation and conduct of negotiations with the United Kingdom under Article 50 TEU, December 2017.

Figure 2 – Levels of depth of EU trade agreements with various partners



Image credits: R. Gino Santa Maria; PhotoSG; eMIL; niko185; 123levit; Tarik GOK; BEMPhoto; Chris Titze Imaging; shtiel / Fotolia.

Source: Author.

7.5. Are trade agreements enforceable?

At multilateral level, the WTO Dispute Settlement Understanding (DSU) provides the legal framework for enforcing commitments under WTO agreements. Decisions can be enforced in the form of trade compensation or sanctions (e.g. increases in tariffs). First, parties undertake consultations. Then, if no agreement is found, a panel is appointed. Potential appeals on points of law go to the highest instance, the Appellate Body. After a case is decided, countries must react by adopting remedies to bring the policy into line with the ruling or recommendations. If after a 'reasonable period of time', the defending country has not complied, the complaining country can ask for permission to retaliate.

In bilateral trade agreements, the EU includes a dispute settlement mechanism closely modelled on the WTO dispute settlement system. Since 2000, this model has been rather quasi-adjudicative in nature, whereas more diplomatic provisions prevailed before, and applies to the provisions of the agreement. As a first step, the EU can request information and then bilateral consultations over the violated trade provisions. Parties may ask to enter into a mediation procedure or to establish a panel under certain conditions. Temporary remedies are prescribed in cases of non-compliance, namely the suspension of concessions or obligations at a level equivalent to the impairment caused by non-compliance.⁶⁷ Joint committees are set up to monitor and supervise the trade agreements. Investor-state dispute settlement provisions are separate from this, and since the ECJ Singapore-decision have been split off into separate agreements (IPAs).

The ECJ jurisdiction can sometimes extend to trade partners determined by the depth of their agreements with the EU. This is the case in particular for deep and comprehensive free trade areas where legislative approximation and interpretation remains linked to ECJ jurisprudence. Disputes relating to regulatory approximation retain the primacy of the ECJ to give a ruling. For instance, in its Opinion 1/17 (CETA), the ECJ held that the dispute settlement mechanism under an FTA was compatible with EU acquis.

8. Trade and sustainable development

8.1. How does the EU support sustainable development through its FTAs?

In EU FTAs, sustainable development is understood broadly to have three main facets: economic development, social development and environmental protection. Sustainability is addressed notably in trade and sustainable development (TSD) chapters,⁶⁸ but also in many other parts of EU FTAs.

- Pioneering obligations to abstain from lowering environmental, labour or social standards were introduced in an agreement between the EU and Caribbean countries (EU-Cariforum Economic Partnership Agreement **2008**).
- The Lisbon Treaty made the pursuit of sustainable economic, social, and environmental development a specific EU policy goal from **2009** onwards.

⁶⁷ See for instance Chapter 21 on [Dispute Settlement](#) under the EU-Japan EPA.

⁶⁸ e.g. [EU-Australia trade negotiations – TSD chapter](#), February 2019.

- Since the EU-South Korea FTA (**2011**), TSD chapters have proliferated in EU trade agreements, and the need to include them has essentially become a red line in EU trade negotiations.
- In **2015**, the Commission's approach to trade took a turn towards a more value-based and inclusive trade agenda with the 'trade for all' strategy.

TSD chapters are a central articulation of the FTA's commitment to sustainable development. Before the EU-South Korea FTA, FTAs included more limited cooperation provisions, but did not have dedicated TSD chapters. TSD chapters include binding commitments related to labour and environmental protection, including climate change. These commitments are based on international standards taken from the International Labour Organization (the ILO fundamental conventions) and from multilateral environmental agreements (such as the Paris Agreement on climate). The chapters also include crosscutting areas such as corporate social responsibility or responsible business conduct and a prohibition on lowering environmental or labour standards with the objective of promoting trade and investment. Nevertheless, TSD chapters are far from the only provisions in FTAs touching on issues relating to sustainable development:

- Prior to launching trade negotiations, already in the scoping exercise, EU signals to partner countries that the **ratification of core ILO conventions** will be a prerequisite for the conclusion of the agreement.
- In the political agreements accompanying FTAs (**association agreements or strategic partnership agreements**), it is made clear that the relationship is based on a shared commitment to promote sustainable development.⁶⁹ In this way the EU can incentivise the commitment to multilateral labour standards already prior to the adoption of the agreement.
- Some of the core disciplines of FTAs on goods and services, including tariff schedules, have sustainability effects by encouraging **trade in environmental goods and services**. The EU has also been an active participant in plurilateral talks on the **Environmental Goods Agreement** in the context of the WTO.
- Finally, GATT Article XX, which is a **general exception** for measures taken, inter alia, for the **protection of human, animal or plant life or health** is fully incorporated into FTAs. This means that under certain conditions parties to the agreement may justifiably take measures otherwise prohibited by the FTA to achieve sustainability objectives allowed by the general exception.
- Important provisions for sustainability and removal of barriers to investment in green technologies are included in **energy and raw material (ERM) chapters**.⁷⁰ The provisions for instance ban import or export monopolies, and set out pricing rules, safety and environmental protection rules for offshore oil and gas operations, and requirements for making environmental impact assessments. In practice, the aim of these disciplines is to support the take-up of green energy among trading partners.
- Furthermore, public procurement chapters include a commitment to promote **greener public procurement** by taking into account environmental and social considerations throughout the procurement procedure.
- EU FTAs include the **precautionary principle**, which requires that protective measures not be postponed on account of a lack of scientific certainty.

⁶⁹ e.g. [EU-Canada Strategic Partnership Agreement](#), August 2016.

⁷⁰ e.g. [EU-Australia negotiations – ERM chapter](#), June 2018.

8.2. How are TSD chapters implemented and enforced?

The controversy around the enforceability of TSD chapters rests on two main cleavages.

8.2.1. Should the TSD chapter be subject to a general or a dedicated dispute settlement?

Disagreements under TSD chapters in EU FTAs can be addressed through dedicated provisions ('government consultations' or 'panel of experts') set out in the TSD chapter. In EU FTAs, TSD chapters, but also for instance the competition chapter or the trade remedies provisions, are **exempt** from the general dispute settlement mechanism, which in EU FTAs is modelled on that of the WTO. The general dispute settlement mechanism provides for **arbitration** while also allowing parties to take **temporary remedies** (e.g. suspend obligations to the trading partner or receive compensation) in the case of non-compliance with the arbitration ruling.

In contrast, disagreements over the implementation of the TSD chapter are addressed through government consultations and the creation of a panel of experts, and it is not specifically stated that remedies are available. To resolve a TSD-related disagreement, the panel of experts (on trade, labour and environment) makes recommendations with a mutually agreed solution, which are followed up by a designated board. Civil society can contribute to this process at all stages, from the government consultation and panel work, to monitoring the implementation of the eventual panel report – unlike under the general dispute settlement mechanism. The rationale for this is that long-term improvements in labour or environmental policies require dialogue, capacity-building, and ownership, in particular if the trade partner is at a different stage of development.⁷¹

8.2.2. Should the EU shift to a sanction-based model for TSD chapters?

As a result in part of enforceability issues, there is a debate over whether EU FTAs need to shift to a sanction-based model similar to the one used by the US.⁷² The US and Canada have adopted a sanction-based approach to TSD. There, the civil society organisations may submit complaints, which are then discussed formally. In addition, there is a possibility to apply sanctions (in the form either of a withdrawal of trade preferences in the US, or fines in Canada) in case of non-compliance impacting trade or investment between parties. Sanctions are envisaged in the US only if a quantifiable impact from violation of FTA commitments can be demonstrated⁷³ and, in practice, sanctions have never been applied in response to TSD violations.

Proponents of a sanctioning mechanism have argued that the EU needs a more effective means of addressing non-compliance to achieve credibility. For the EU, a shift to a sanction-based model, even one slightly different from the North American model, is unlikely. A key reason for this is that sanctions under trade agreements are by their nature a way to compensate for **quantifiable economic injury** resulting from non-compliance. To adopt sanctions, the economic damage would need to be quantified, which is difficult to do for social and environmental standards. In other words, the current broad coverage of the dispute settlement mechanism (covering all the provisions included in the TSD chapters) would need to be limited because only violations with an effect on bilateral trade and investment would be relevant under the sanctions model. Another argument for

⁷¹ K. Hradilova and O. Svoboda, '[Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness](#)', *Journal of world trade*, Vol. 52(6), 2018, pp. 1019-1042.

⁷² INTA Workshop, [The future of sustainable development chapters in trade agreements](#), Policy Department for External Policies, European Parliament, June 2018.

⁷³ [TSD chapters in EU FTAs](#), Non-paper of the Commission services, European Commission, July 2017.

excluding the TSD chapter from the general dispute settlement mechanism is that compensation does not necessarily amount to lasting change in the sphere of sustainable development, whereas the Commission seeks to provide **positive incentives** for the implementation of FTAs.⁷⁴ Commentators have observed that the optimal moment to incentivise change is just before opening talks or at the negotiation phase when the EU can withhold the conclusion of the agreement until key ILO conventions are ratified for instance. Other researchers have argued that a sanction-based model incentivises reforms *ex ante* during negotiations, while under the EU model, which is focused in particular on policy dialogue and positive incentives, reforms take place both by the time of signature as well as *ex post* during the implementation of the FTA.⁷⁵ Finally, business representatives have argued that a sanction-based model would deter potential FTA partners from launching negotiations in the first place, which runs counter to the very objective of EU trade policy, which has been liberalisation.⁷⁶ In contrast, representatives of green or left-wing organisations point out that a panel of experts can only issue recommendations, and that these are ultimately not economically enforceable in the same way as the decisions of the FTA's general dispute settlement mechanism. In short, there is no consensus among stakeholders about adopting a sanctions-based model.

To advise specifically on the implementation of the TSD chapters, as well as monitor the implementation of the whole FTA, **advisory groups** are set up in both the EU and partner countries. These domestic advisory groups (DAGs) have a tripartite nature, seeking balanced representation between business, workers and environmental or other organisations. Meanwhile, a range of stakeholders from both sides work together on the joint civil society platforms or fora envisaged by FTAs. In practice, civil society mechanisms under FTAs are supported in their work by the European Economic and Social Committee (EESC).

During a debate that the Commission held from 2017 to early 2018, a broad consensus emerged that the implementation efforts of existing TSD chapters should in any case be stepped up. The Commission presented a 15-point action plan in February 2018 that has started to deliver tangible results in the four working areas identified, notably working together (partnering with Member States and the Parliament and working with international organisations), enabling civil society and business to play its role, delivering results, and transparency.⁷⁷ The Commission is committed to reviewing the 15-point action plan five years after its adoption (by 2023).

8.3. What does a green trade policy include?

FTAs include exceptions from trade commitments for measures the parties take to protect human, animal or plant health or life. In this sense, FTAs incorporate the GATT's Article XX general exception that seeks to ensure that trade does not stand in the way of broader societal concerns such as environmental protection. TSD chapters also include references to environmental institutions or international agreements (such as the Paris Agreement in the EU-Japan Economic Partnership Agreement (EPA), and typically include an obligation to implement the multilateral environmental agreements a party has entered into. TSD chapters support the conservation and sustainable use of natural resources, such as biodiversity, forestry and fisheries. Provisions on sustainable forest

⁷⁴ European Commission, [Feedback and way forward on implementation and enforcement of TSD chapters in EU FTAs](#), February 2018.

⁷⁵ I. Bastiaens and E. Postnikov, 'Greening up: the effects of environmental standards in EU and US trade agreements', *Environmental Politics*, Vol. 26 (5), Taylor & Francis Online, 2017, pp. 847-869.

⁷⁶ BusinessEurope, [Trade and Sustainable Development chapters in EU FTAs](#), 2017.

⁷⁷ European Commission non-paper.

management call for implementing measures to combat illegal logging, even if not going as far as requiring a full trade ban on illegal logging. FTAs promote corporate social responsibility and also public and private market-based policies and practices that pursue sustainability objectives, such as eco-labelling, fair and ethical trade initiatives, and climate-friendly goods and services. A prohibition on weakening or reducing the levels of protection afforded in a party's environmental law in order to encourage trade or investment is included in all TSD chapters.

Academic literature examining the relationship between environmental provisions on levels of pollution have found that a correlation exists between contracting to an FTA and lower levels of pollution.⁷⁸ This suggests that shifting to more rules-based trade might have positive climate impacts. However, insofar as FTAs expand trade, harmful effects include increased emissions from shipments or raw materials used. The possible mechanisms through which trade impacts the environment have been identified by the OECD in its work developing indicators to show the interaction between trade and environment⁷⁹ e.g. carbon emissions stemming from trade and production, the raw materials used for traded products, and exports of commodities such as grains or oil. At the same time, provisions on environmental goods can incentivise the development of trade in this area and foster more sustainable solutions for the benefit of the environment. EU also includes a non-regression clause, which is a commitment to avoid reducing standards to attract trade and investment, as well as refer to the precautionary principle in its FTAs.

8.4. Do trade agreements have human rights clauses?

Since the mid-1990s, the EU has systematically included human rights provisions in its agreements with third countries, including on trade. They take the form of an 'essential elements' clause that states that human rights and democratic principles *constitute an essential element of the agreement*, often accompanied by a suspension ('non-execution') clause. The suspension clause allows the parties to respond appropriately in the event of a breach of obligations, with suspension being a measure of last resort only. In practice, the EU has never suspended an entire trade agreement on this basis, and the human rights concerns are discussed in association councils or joint committees. An 'implementation' clause requires the parties to fulfil and ensure their obligations.

The objective of human rights provisions is not so much to penalise parties by suspending the agreements, as to provide positive incentives for countries to improve governance internally. Nor are the provisions aimed at benchmarking the selection of trade partners on the basis of human rights track records (human rights provisions are present in FTAs with low performers). Instead, the provisions give the EU a legal mechanism that can be used if necessary for addressing human rights violations, along with other, non-FTA tools such as human rights dialogues, sanctions under common foreign and security policy, withdrawal of unilateral trade preferences and a strategic application of development aid or financial assistance. Other trade and sustainable development provisions, for instance, those relating to social and labour rights, as well as to the environment, complement human rights clauses in trade agreements.

⁷⁸ L. Baghdadi, I. Martinez-Zarzoso and H. Zitouna, '[Are RTA agreements with environmental provisions reducing emissions?](#)', *Journal of International Economics*, Vol. 90(2), ScienceDirect, 2013, pp. 378-390.

⁷⁹ G. Garsous, '[Trends in policy indicators on trade and environment](#)', OECD Trade and Environment Working Papers, No 2019/01, OECD.

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This paper seeks to serve as a key resource for policy-makers who need to understand complex issues related to international trade quickly. It also outlines the key academic debates and issues, and provides references to further resources that could offer useful support to the work of policy-makers in the European Parliament. It seeks to provide immediate answers to the most commonly asked questions related to EU trade policy: from the evolution and scope of EU common commercial policy to the role of different EU institutions and the economics of trade. It includes explanations of key trade concepts. In addition, the paper covers the procedures for the conclusion of international trade agreements, types of trade relationship, and the specific characteristics of EU legal instruments in the area of trade. Lastly, it addresses the issues of trade and sustainable development, which have grown into a key area of concern for Parliament.

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