

Perspectives on the Soft Power of EU Trade Policy

Edited by San Bilal and Bernard Hoekman



A VoxEU.org Book

CEPR Press

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Foreword

The global trade system is experiencing a period of concentrated uncertainty and turbulence, exacerbated by emerging trade conflicts, the rise of nationalistic and populist sentiments and the inability so far of the global trading system to adapt to the rise of emerging economies, all of which serves to undermine the rules-based global trading system. In this rapidly evolving and unpredictable context, the European Union must reposition itself, adapting trade and external policies in order to better pursue its economic interests, while also maintaining political, geostrategic, developmental, environmental and principles-based objectives.

In 2018, the RESPECT (**R**ealising **E**urope's **S**oft **P**ower in **E**xternal **C**ooperation and **T**rade) project was launched. Consisting of 10 ten partner institutions, including CEPR, and funded by the EU under its Horizon 2020 framework programme for research and innovation, the project aims to better understand and inform future EU strategy on the optimum use of available trade policy instruments and the alignment of EU and member state trade strategies to develop practical and operationally feasible recommendations as to how better to achieve EU external policy objectives.

This eBook contributes to the initiative with a collection of 20 essays that serve to complement the results of an anonymous survey which solicited views from trade practitioners in the EU and partner countries on the design and implementation of EU trade and external policies. Trade and trade policy have long been a central element of EU external policy, used to pursue multiple non-trade policy objectives (NTPOs). The survey asked whether this was an effective strategy? Does it come at the cost of attaining economic objectives? Has the emphasis on bilateral and preferential trade arrangements come at the expense of multilateral cooperation? The diversity of approaches and views that it presents illustrate the complexity of the EU trade-related policy agenda and suggest that trade-offs might not always be properly assessed, and the balance struck could be improved.

Overall, the message of the essays is that the EU should be more ambitious and should use its soft power more assertively, in particular to open up its partners' markets (including in key services sectors) and defending core principles, while promoting economic development outcomes based on its partners' priorities rather than its own.

The essays in this publication will ultimately contribute to the discussion and analysis of the factors that support or inhibit the realization of EU NTPOs, and better inform policymakers on implementing a coherent and comprehensive strategy for the future.

CEPR thanks San Bilal and Bernard Hoekman for their editorship of this eBook and Anil Shamdasani and Alex Southworth for their excellent and swift handling of its production. The contributions in this eBook reflect the views of their authors and not necessarily those of any bodies or institutions that the authors may be affiliated with. CEPR, which takes no institutional positions on economic policy matters, is glad to provide a platform for an exchange of views on this topic.

Dr Tessa Ogden
July 30th 2019

Introduction: EU trade and external policy in troubled waters

San Bilal and Bernard Hoekman¹

ECDPM; European University Institute and CEPR

The international trade scene is in turmoil, with the emergence of trade conflicts among major economies stirred by the US (Evenett and Fritz 2018, Bown and Zhang 2018) and resulting uncertainty for businesses, the weakening of multilateralism, and the inability so far of the global trading system to adapt to the rise of emerging economies. Increasing inequalities within countries and the rise of populism and nationalism have further contributed to put the international trade order into question. Societies confront major challenges in adjusting to rapid technological changes and the growth of the digital economy, responding to global problems such as climate change, and addressing universal values on human rights (including labour, social and gender issues) and attaining a universally shared 2030 Agenda on sustainable development. In this rapidly evolving and uncertain context, the EU has to reposition itself, adapting its trade and external policies to better pursue its economic interests, but also to achieve its political, geostrategic, developmental, environmental and principles-based objectives. Better harnessing its soft power to achieve its various external policy goals is a prerequisite, which in turn implies enhancing the coherence of the disparate policy instruments that are available to the EU and to its member states.

Trade policy is a major instrument of EU soft power. The EU has been very active in promoting its strategic interests, standards, values, as well as development objectives, by negotiating trade agreements with a wide range of partners and by providing unilateral trade preferences. Trade agreements and trade preferences for developing countries are central features of EU external policy. Although the EU is a strong proponent of multilateral trade cooperation in the World Trade Organization (WTO), a central plank of EU external policy has long been a strategy of negotiating bilateral and regional trade agreements. In recent years it has increasingly linked its trade policy to the pursuit

¹ This essay and the preparation of the eBook to which it is an introduction has been supported by funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 770680 (RESPECT: Revitalizing Europe's Soft Power and External Cooperation and Trade).

of non-trade external policy goals and values established in the Lisbon Treaty. This is reflected in conditioning preferential access to the EU market – whether through nonreciprocal trade preferences for developing countries or through reciprocal trade agreements – to respect for human rights and fundamental freedoms (Borchert et al. 2018).

The EU Generalised System of Preferences (GSP) is conditional on the level of development, with least developed countries getting free access to its market under the Everything But Arms regime, and on the respect of a number of core human rights and labour standards, with better market access to developing countries meeting higher commitments in this respect under the GSP+. EU trade agreements have also increasingly aimed at addressing a more comprehensive set of market access and regulatory constraints, as well as social, labour and environmental principles, notably with the systematic inclusion of trade and sustainable development chapters. With African, Caribbean and Pacific (ACP) countries, the EU has also been negotiating so-called economic partnership agreements (EPAs) with sustainable development objectives at their core.

While the EU has always pursued non-trade objectives in parallel with its trade policy, the 2015 ‘Trade for all’ strategy aimed to both strengthen the relevance of EU trade policy to pursue EU economic interests (thus also paying greater attention to the effective implementation of trade agreement to benefit European economic actors) and to bolster the values and principle-based approach to its external policy. Ensuring that trade benefits all, including developing countries and poorer people, is a central dimension of the EU strategy. The EU is also the lead provider of aid for trade and more generally of official development assistance (ODA), which can accompany developing countries endeavours in their own trade policies or in relation to the EU. Having set in place a comprehensive strategy, the challenge for the EU is to implement it in a coherent manner, which, given the multi-purpose nature of its trade policy, is not straightforward.

Trade has become a much higher profile policy area for the EU following the decision by the Trump administration to revert to “aggressive unilateralism” and pursue a more protectionist trade policy (Vangrasstek 2018). The resort to protectionist measures by the US and the tit-for-tat responses by targeted countries, including the EU, undercut the open, rules-based multilateral trading system. Trade policy is also a core dimension of the rising concern in the EU regarding the competitive implications of China’s industrial policies. Designing appropriate responses to international trade conflicts and tensions is one of the key tasks confronting the new Commission. Doing so is complicated by the increasing complexity of the trade and external policy agenda given that these policies increasingly include dimensions of domestic regulation of product

and factor markets that are of interest to many groups in society that are less concerned with traditional trade policy.

Action to sustain the rules-based multilateral trading system is an important element of the challenge confronting the EU (Hoekman 2019). The WTO was intended to be the global forum where countries agree on rules of the game for trade policies and resolve trade disputes. It has failed to perform this function. WTO rules were not designed for a world of global value chains and the digital economy. They were negotiated in a period when developing countries accounted for a much smaller share of global GDP and world trade. The first round of multilateral trade negotiations launched under WTO auspices – the 2001 Doha Development Agenda – provided an opportunity to update the rules, but ended in failure after coming close to a deal in 2008. The negotiating deadlock in the WTO that lasted for much of the past decade meant that it was not possible to engage in cooperative efforts to resolve trade tensions, as many countries took the view that the Doha Round needed to be concluded before new issues could be discussed. The opportunity cost of WTO deadlock has been substantial. Research suggests that foreign trade-distorting measures implemented since 2009 have reduced EU export growth by 10-20 percentage points (Evenett and Fritz 2017). Many of the instruments involved are only partially subject to WTO rules, and lie at the heart of the purported motivation for the unilateral recourse to protectionist trade measures by the US, as well as concerns about the competitive effects of China's economic policies.

In addressing these trade developments, the EU faces internal constraints (Hoekman and Puccio 2019), reflected in differences in trade policy preferences across the member states, as well as opposition to the negotiation of deep trade agreements by some civic interest groups. The underlying concerns vary across groups but often centre on the protection of regulatory standards and social values. Successfully addressing them will be critical, both because of the importance of trade for growth and jobs in the EU and because of the role trade can play in raising real incomes and stimulating sustainable development in neighbouring countries, Europe's partners in Africa and other developing regions.

As a long-standing proponent of multilateralism, the EU has an important role to play in providing leadership to strengthen existing and building new alliances to defend the rules-based trading system. This entails active support for WTO reform, including addressing the stalemate in dispute settlement process and tackling up front a range of critical issues, such as addressing the negative spillover effects of subsidies and the behaviour of state-owned enterprises, climate change (in line with the Paris Agreement), digitalisation and artificial intelligence.

The EU is actively negotiating with the US, including in talks on a bilateral agreement on industrial goods tariffs, revisiting possibilities for sector-specific regulatory cooperation² and a trilateral effort with Japan and the US focusing on common concerns regarding China's trade-related policies. The EU is also engaging with the US over WTO reform.³ In parallel, the EU has ramped up efforts to conclude trade agreements with major economies and developing countries as a means of improving the governance of trade relations and expanding cooperation to policy areas that affect the ability of firms to compete fairly for markets. The successful conclusion by the EU of FTAs with Singapore, Vietnam, Canada, Japan and Mercosur, and the ongoing negotiations of new FTAs with Indonesia, Australia and New Zealand and the revision of existing FTAs with Mexico, Chile and Tunisia, all reflect the active bilateral engagement of the EU.

How well has the EU been able to implement its ambitious multi-purpose trade agenda? Have the expectations been fulfilled? Has the EU managed to effectively pursue its non-trade policy objectives, relative to standards, values, sustainability and development? If so, has it been at the expense of more traditional trade concerns and market opening? How well does the EU use its soft power in the trade policy arena? What are the lessons from recent experiences, and how can these feed into the future EU trade policy agenda? What are the adjustments needed? Which issues require more attention? How broad should the EU trade policy agenda be? And what should the priorities be?

These questions lie at the core of an ongoing research project supported by the EU Horizon 2020 programme – Realizing Europe's Soft Power in External Cooperation and Trade (RESPECT).⁴ The essays collected in this eBook are a complement to an anonymous survey questionnaire that was implemented in 2018-19 soliciting views from trade practitioners in the EU and in partner countries on the design and implementation of EU trade and external policies, including development cooperation programmes. The first chapter of the eBook, by Matteo Fiorini, Bernard Hoekman, Nais Ralaison and Aydin Yildirim, summarises some of the responses to the RESPECT expert questionnaire. This survey also provided an opportunity for respondents to volunteer to prepare essays expounding their views or reflecting on their experience with different dimensions of EU external policy. This eBook collects 20 of the essays

2 European Commission, "EU-U.S. Trade Talks: European Commission presents draft negotiating mandates", press release, 18 January 2019.

3 The EU and the US have agreed to work together with Japan and other countries to discuss WTO reform. The European Commissioner met with the USTR and the Japanese trade minister to discuss this matter in January 2019. See the Joint EU-U.S. Statement following President Juncker's visit to the White House on 25 June 2018; "U.S. Rejects the EU's Trade Reform Proposal, Putting WTO at Risk", Bloomberg, 12 December 2018; and the Joint Statement of the Trilateral Meeting of the Trade Ministers of the European Union, Japan and the United States, 9 January 2019.

4 <http://respect.eu/cu/>

that were received. They provide perspectives on a range of trade-related issues and offer reflections on some of these questions.

The contributions are organised around four themes:

- 1. Reflections on EU trade policy:** Karl Falkenberg on the tension between bilateral/regional agreements and the need for multilateral rule-making; Katerina Meissner on differences in policies towards different world regions; Patricia Wruuck on the design of trade agreements; Angelos Pangratis on an EU-wide approach towards economic diplomacy; and Roderick Abbott with reflections on the evolution of EU trade policy.
- 2. Specific dimensions of EU trade policy:** Pascal Kerneis on the state of play and importance of improving access to foreign services markets; Steven Woolcock on governing access to public procurement markets; Pramilla Crivelli and Stefano Inama on protection of geographical indications; linkages between trade and innovation policy; and Riccardo Trobbiani on linkages between science and innovation policies and EU trade policy.
- 3. Relations with African, Caribbean and Pacific countries and Economic Partnership Agreements:** Junior Lodge on the EU as a trade and development partner to ACP countries; Mark Pearson on lessons of efforts to pursue regional integration in Africa; Dominique Njinkou on post-2020 trade and external cooperation between the EU and Africa; David Luke and Heini Suominen on rethinking the EPAs; Rob Floyd on the potential to strengthen EU soft power by better engaging with Africa; Louisa Santos on making the EPAs a central pillar of a comprehensive Africa-Europe alliance; and Peg Murray-Evans on the limits to soft power that are illustrated by the EPAs.
- 4. Trade and non-trade policy objectives:** Christian Bluth on lessons from TTIP for EU-US trade talks; Marco Bronckers and Giovanni Gruni on improving the enforcement of labour standards in EU trade agreements; Alice Sinigaglia and Sergi Corbalan on EU trade and development policies and Fair Trade; and Marc Bungenberg and Angshuman Hazarika on EU trade and development policy in Asia.

The diversity of approaches and views collected reflects the complexity of the EU trade-related policy agenda. Some broad trends tend to emerge, however. The EU has adopted a principle-based, yet pragmatic approach to its trade policy. It continues to see multilateralism as the core of its external policy and remains a lead advocate of the WTO system. Yet, in face of the stalemate of the Doha round, the EU has also increasingly been pursuing preferential trade agreements as a means to forge stronger economic and political relations at a bilateral level. In doing so, it may have contributed to weakening the multilateral rules-based system it supports, by pushing its own rules, standards and

principles. Increasingly, EU trade policy is being harnessed to its strategic and business interests, one reflection of which is the effort to foster its own economic diplomacy. While the framework for EU trade policy is comprehensive, the trade-offs it implies might not always be properly assessed, and the balance struck might be sub-optimal.

Overall, the message of the essays is that the EU should be more ambitious, more assertively using its soft power, in particular to open up its partners' markets (including in key services sectors) and defending core principles, while promoting economic development outcomes based on its partners' priorities rather than its own. The soft power of the EU should be pursued through constructive engagement and dialogue with its partners, linking its trade policy to broader strategic partnerships (such as the new Alliance with Africa and the EU partnership with ASEAN) and more systematically to the Sustainable Development Goals and Paris Agreement. Adopting a differentiated approach based on its developing partners geography and capacities (as in the case of the WTO Trade Facilitation Agreement, which could be emulated in other areas such as public procurement for instance), better supporting geographical indications of value for its developing partners, better fostering trade linkages to innovation and science-based approaches, supporting fair and ethical trade, and more forcefully enforcing labour rights are just some of the examples discussed in this eBook.

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1 EU trade policy and non-trade objectives: The RESPECT survey

Matteo Fiorini, Bernard Hoekman, Naïs Ralaison and Aydin Yildirim¹

European University Institute

The EU perceives itself as a normative actor in international relations. A key feature of the 2015 EU ‘Trade for All’ strategy is the call for trade and investment policy to take responsibility for supporting and promoting EU values and standards. It notes that doing so requires coherence across policy areas as well as commonality of action (European Commission 2015). Key policy areas include the common commercial policy, which determines the conditions for trade in goods and services as well as investment flows into and out of the European single market, official development assistance, and economic diplomacy programmes implemented by both EU member states and EU institutions. All these instruments are used by the EU to pursue its external normative goals.

The Horizon 2020-supported research project RESPECT (Realising Europe’s Soft Power in External Cooperation and Trade)² seeks to analyse the factors that support or inhibit the realisation of EU non-trade policy objectives (NTPOs) established in the Treaty of Lisbon – such as sustainable development, human rights, labour standards, and environmental protection. One component of the project comprises a web-based survey instrument. The RESPECT survey was designed to collect opinions on EU trade and trade-related external policies from a population of practitioners and expert observers. The survey centres on perceptions by practitioners regarding the drivers and implementation of EU trade policy and the appropriateness and effectiveness of trade as an instrument to pursue and achieve NTPOs.³ The RESPECT questionnaire complements existing survey instruments which tend to target public opinion more

1 The survey results that are reported in what follows are part of a project supported by funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 770680.

2 See <http://respect.eui.eu/> for a description of the project.

3 NTPOs include the promotion of human rights, labor, environmental protection and anti-corruption as well as economic development in non-EU countries

generally. The specific perspective taken in the survey aimed to add value to the body of existing evidence regarding views on the connection between trade policy and NTPOs.

The existing survey evidence for EU countries reveals several empirical patterns as regards public opinion towards EU trade and trade-related policy instruments. One source of survey data on the EU are the Eurobarometer polls. These are of three types: the standard survey, special polls, and flash editions.⁴ Responses to the standard Eurobarometer survey (Eurobarometer 2018) reveal that the majority of EU citizens (more precisely, 65% percent of the EU population) agree that the EU has sufficient power and tools to defend the economic interests of Europe in a global economy. This number has been relatively stable in the surveys undertaken in period between 2009 and 2018. However, opinions on the welfare effects of globalisation on EU member states, which has a bearing on a much broader set of policies than trade policy, reveal much greater polarisation in views. The free movement of people, goods, and services is recognised by the majority of the respondents (almost 60%, with very little variation over the period 2012-2018) as the most positive result of the EU in the standard Eurobarometer survey.⁵ While this suggests that trade and trade-related policies are regarded as positive dimensions of the EU, it leaves open the question how exactly trade policy fits in the constellation of EU soft power tools for the achievement of EU NTPOs.

A number of special Eurobarometer editions have focused more directly on trade topics. Eurobarometer special edition 152 (Eurobarometer 2001) revealed that Europeans trust the EU to defend their interests in international negotiations and thought the EU was well placed to compete on international markets. At the same time, it revealed that many also thought that freedom of trade would force the EU to lower its norms regarding the environment, public health, or consumer protection. Furthermore, respondents tended to perceive that the organisations tasked with economic policy cooperation did not defend the interests of the population at large: more than one third of respondents thought that international organisations did not represent their interests. In interviews undertaken in the context of the Eurobarometer special edition 357 in 2010, the majority of participating EU citizens expected the EU to use trade policy to create employment

4 A description of the three dimensions of Eurobarometer editions as well as the reports for all three types of polls can be accessed from the web portal of DG Communication at <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm>.

5 At the same time, from 2015 onwards, immigration, together with terrorism, appears at the top of the ranking of the most important issues facing the EU at the moment.

opportunities for European citizens (Eurobarometer 2010).⁶ The European Commission has also conducted several public consultations on trade topics. Between 2014 and the end of 2018, 19 trade-related consultations were undertaken. The majority of the trade consultations had a rather narrow focus, usually the effects or design of a specific EU trade agreement or trade-related regulation. Some had a broader scope – for example, soliciting views on a potential reform of investor–state dispute resolution mechanisms and the EU’s strategy on adaptation to climate change.

Complementary survey-based data collection efforts with a focus on trade and trade policy have been undertaken by other organisations. Particularly relevant are the surveys conducted by the Pew Research Center in 2014 and 2018 (Pew Research Center 2018) and Bertelsmann Stiftung on globalisation (Bluth 2018). The Pew surveys targeted public opinion in France, Germany, Greece, Italy, Poland, Spain, and the UK. They revealed that more than eight in ten Europeans perceive trade to be good for their country, with positive views increasing slightly since 2014. Four in ten Europeans said international trade creates jobs, while about a third believed trade leads to job losses. Roughly a third thought that trade undermines wages and nearly four in ten thought that trade leads to price increases. Bluth (2018) reports on a statistically representative online survey of 12 countries, including France, Germany, and the UK. Globalisation – defined as the increasing movement of products, ideas, money, jobs, culture, and people around the world – is seen as a force for good for the world by 40% of respondents in Germany, 41% in France, and 47% in the UK. This is much less than respondents in China (77%) or the average for surveyed emerging economies (64%).

None of these surveys and consultations included a systematic investigation of the linkages between trade policy instruments and NTPOs. The RESPECT survey aims at enhancing information on views on whether trade and trade-related policy can be an effective tool to attain NTPOs. By focusing on the EU’s external social and economic objectives, the RESPECT questionnaire goes beyond existing surveys that tend to centre on opinions regarding the effects of trade and trade policy within the EU. What follows presents some of the results that emerge from the survey.⁷ Data were collected on an anonymous basis using Qualtrics, an online survey application. A total of 511 respondents took the survey from 5 July 2018 to 24 June 2019. Respondents include individuals from academia, think tanks, EU institutions, EU member state officials, NGOs, business associations, firms, non-EU member state officials, and trade unions.

6 According to the Eurobarometer timeline (European Commission 2018), no other DG Trade Eurobarometer special edition has been produced after 2010. However, DG Trade has commissioned a number of Eurobarometer flash editions (the last one in 2014) to survey attitudes on cross-border trade and consumer protection. These provide information on consumers’ confidence and attitudes towards cross-border online shopping, featuring opinions on product safety, unfair commercial practices, and the reliability of claims regarding the environmental footprints of traded products and services.

7 A more comprehensive discussion and presentation of the survey results can be found in Fiorini et al. (2019).

Perceptions on the design of EU external policy

A central focus of the RESPECT survey is the role of EU trade and trade-related policy as a tool to promote and attain NTPOs in non-EU countries. A majority (55%) of respondents agree that the EU should make access to its markets by other countries conditional on non-trade outcomes (such as human rights, labour, environmental protection, and anti-corruption) (Figure 1).

Figure 1 The EU should make market access conditional on non-trade outcomes

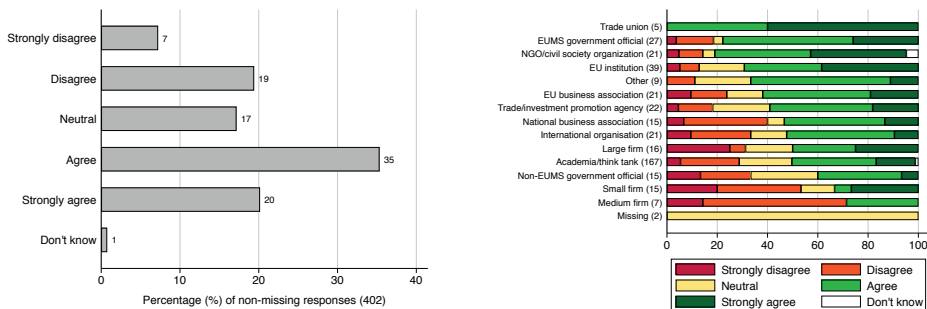
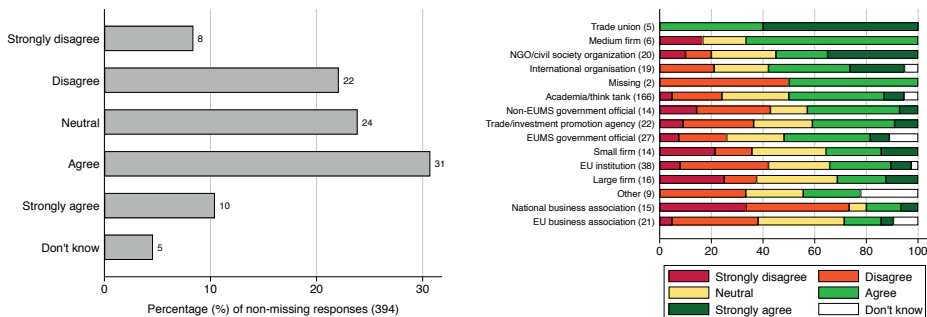


Figure 2 EU trade policy primarily serves the interest of the largest firms



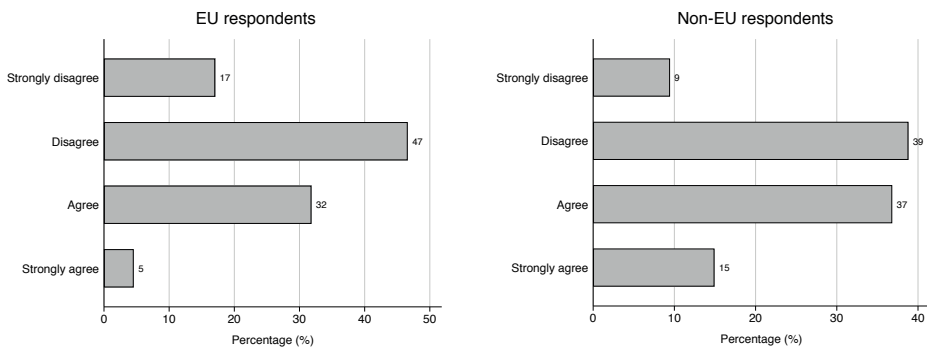
Other questions assess opinions on the political economy of EU trade and trade-related policy formation, in particular whether the design of trade agreements is efficiently informed by consultation of stakeholders, whether the formation of EU trade policy primarily reflects the interests of large EU member states or the largest firms. One half of respondents believe EU trade agreements are adequately informed by consultation of stakeholders. A plurality perceives large companies as particularly successful in shaping the formation of EU trade policy (Figure 2).

Policy instruments and effectiveness

A second part of the survey focuses on opinions on the effect of trade policy on trade flows, distinguishing between exports and imports. The results reveal a strong conviction as regards the positive role of trade agreements for EU exports and imports. This contrasts with the more varied range of views found in general public surveys cited above. The number of respondents that do not believe trade agreements are good for EU exports account for only 3-5% of the total, rising to 7-11% for EU imports. A similar strong and positive attitude emerges regarding EU development assistance, which tends to be considered a good instrument to support trade with non-EU countries.

Substantial polarization emerges when respondents are asked if inclusion of non-trade objectives reduces the effectiveness of EU trade policy (Figure 3). A majority of non-EU respondents either agree or strongly agree with this view.⁸ There is a relatively strong and stable positive belief regarding the capacity of EU trade policy to help realise NTPOs (Figure 4).

Figure 3 The inclusion of non-trade objectives reduces the effectiveness of EU trade policy



⁸ EU respondents comprise people working for EU institutions, EU member state governments, European businesses and analysts in research institutes. See “The Respect Survey Instrument: Descriptive Report” available at <http://respect.cui.eu/>.

Figure 4 EU trade policy supports the realization of EU non-trade objectives

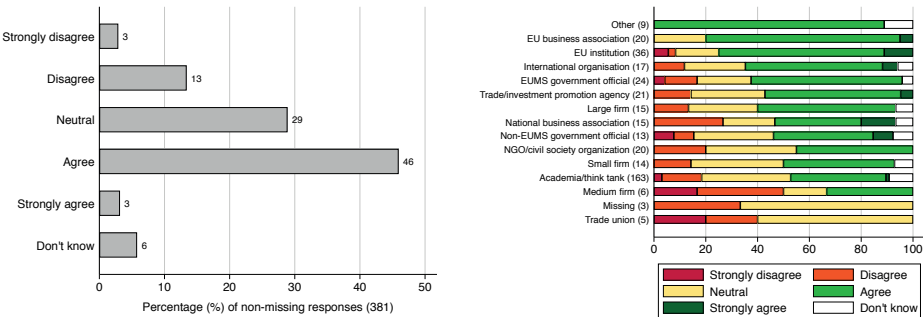
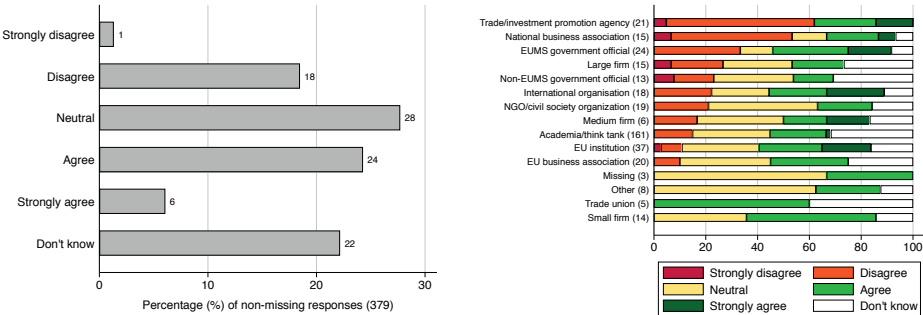


Figure 5 EU national trade promotion agencies work against each other



About one-third of respondents agree with the statement: “Activities of national trade promotion agencies of European countries work against each other” (Figure 5). The top three instruments to promote trade between EU and developing countries are held to be trade agreements, technical assistance, and direct investment by European multinationals in partner countries (Figure 6). As regards promoting NTPOs, the most frequently chosen instruments are targeted assistance for NGOs, unions and regulatory bodies, expert dialogues between the EU and partner country stakeholders, and technical assistance (Figure 7). The responses suggest limited support for the notion that trade is among the most effective instruments available to the EU to promote NTPOs.

Figure 6 What instrument most effectively promotes EU trade with developing countries?

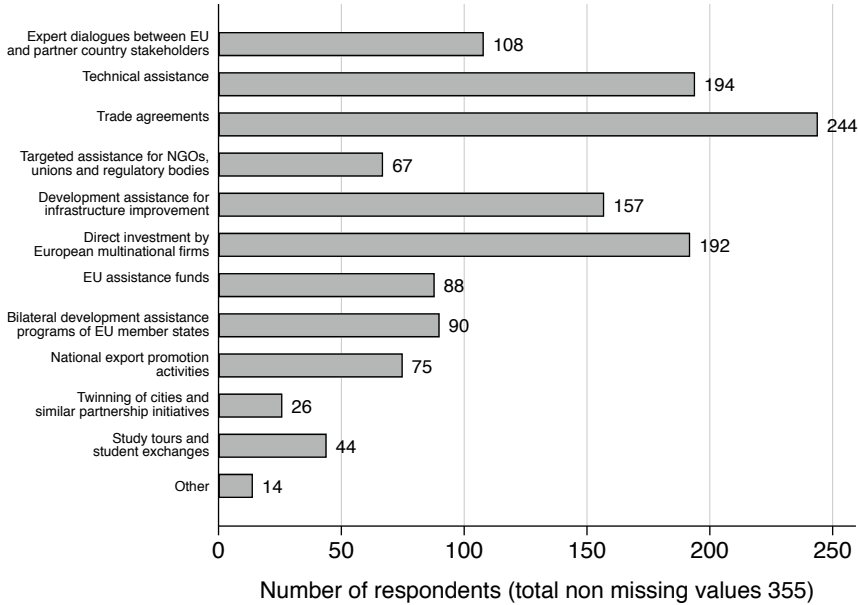
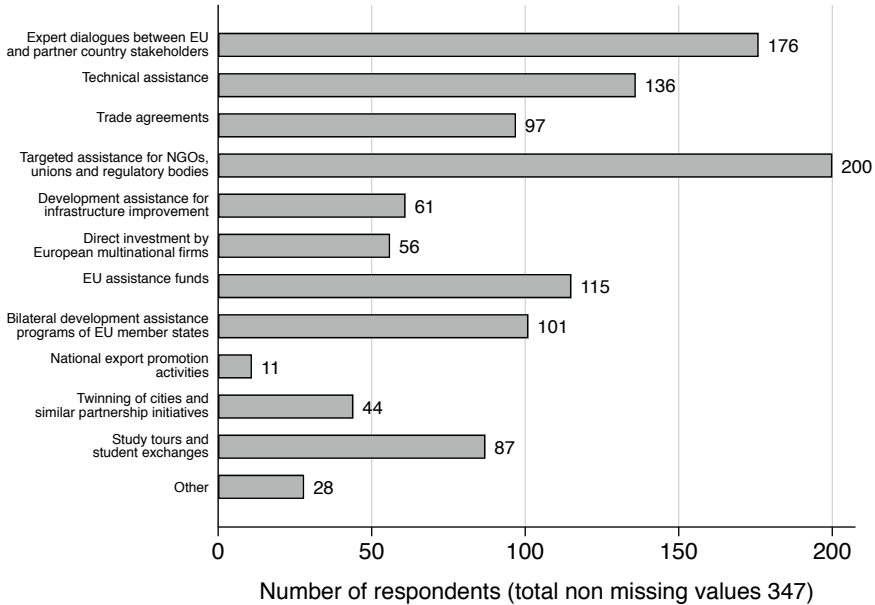


Figure 7 What instruments are most effective in promoting non-trade objectives?



Implementation and evaluation of EU trade policy effectiveness

The final part of the survey included questions on the implementation and evaluation of EU trade policy. A majority of respondents believes the EU is serious about realising non-trade objectives – such as human rights, labour, environmental protection and anti-corruption – in trade partners (Figure 8) as well as about promoting economic development in low income trade partners (Figure 9).

Figure 8 The EU is serious about realising non-trade objectives as part of its trade policy

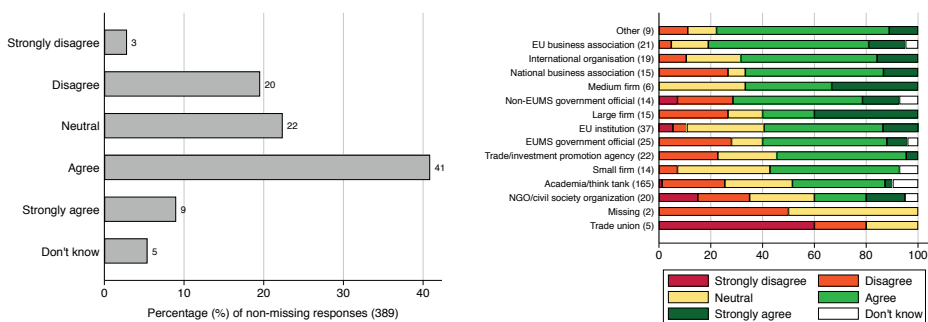
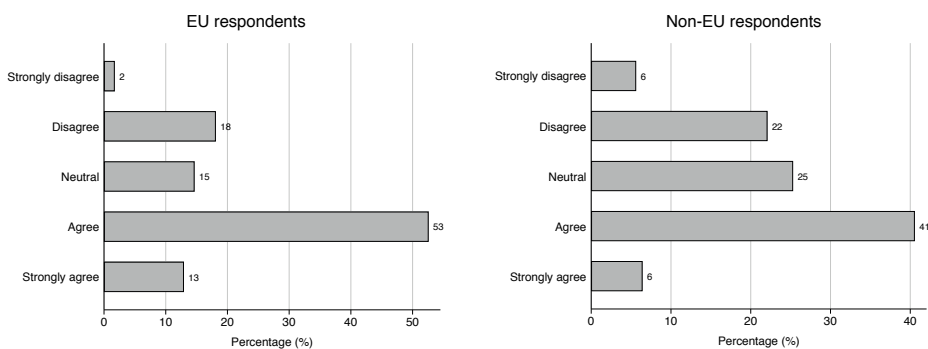


Figure 9 The EU is serious about promoting economic development of trade partners



Almost 40% of respondents believe the EU ignores violations of human/labour rights or environmental regulations if substantial export interests are at stake; a similar share of respondents agree or strongly agree that the EU only takes trade actions against partner countries regarding non-trade issues (such as labour standards) when there is pressure to do so by NGOs and public opinion. More than one-third of the respondents (36%) perceive there to be no meaningful monitoring of implementation of trade agreements

(Figure 10). However, respondents tend to be less supportive of the statement that there is effective monitoring of how the implementation of trade agreements impacts on non-trade outcomes (Figure 11).

Figure 10 There is meaningful monitoring of implementation of trade agreements

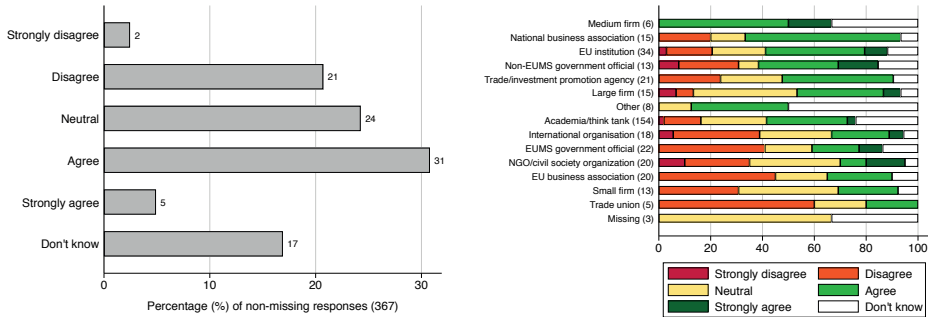
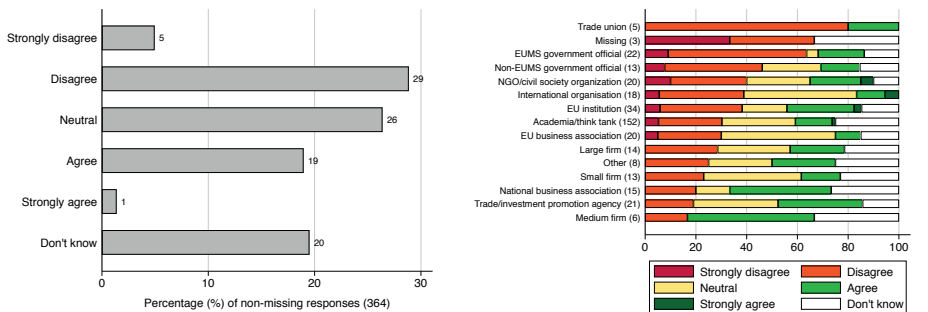


Figure 11 The EU monitors how the implementation of trade agreements impacts on non-trade outcomes



Concluding remarks

The survey results suggest most respondents tend to agree with the strategy of using trade policy instruments, and in particular market access, as a tool to attain EU external NTPOs. The majority of respondents also believes the EU is serious about realising NTPOs and promoting economic development in low-income trade partners. At the same time, some 40% of the surveyed population of experts and stakeholders believe the EU ignores violations of human/labour rights or environmental regulation when major trade interests are at stake. Similarly, more than one third of respondents agree that the EU only takes trade actions against partner countries regarding non-trade issues (such as labour standards) when pushed to do so by NGOs and public opinion. On the central theme of using trade (and trade-related) policy to attain NTPOs in external

relations, the respondents tend to agree that the EU should use trade policy to promote NTPOs and that in principle it is serious about it.

Many respondents believe that targeted assistance to NGOs and regulatory bodies and expert dialogues are the most relevant (effective) instruments to help realise NTPOs, while trade agreements and technical assistance are identified as the most effective policy instruments to promote trade between the EU and developing countries. Finally, the survey results reveal interesting patterns on a number of ancillary topics, including economic diplomacy, where opinions tend to be rather polarized with respect to the possibility that the activities of national trade promotion agencies of European countries work against each other.

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Part 1

Reflections on EU trade policy

2 Trade policy: Is there a way back to global governance? A European view

Karl Falkenberg¹

Former EU Director General for Environment, and former Director at DG Trade

The EU's trade policy has been multilateral for most of the post-WWII period. Its very existence had to be justified in terms of General Agreement on Tariffs and Trade (GATT) compatibility, notably with regard to GATT Art. XXIV. The EU was a driving force behind the creation of the WTO in 1995, against considerable US scepticism. The WTO at no point aimed at free trade. Its concept was based on transparency, progressive liberalisation, non-discrimination, and individual countries' rights to set their respective border measures. Successive rounds of negotiation secured substantive reductions and bindings of import tariffs. With the creation of the WTO, these principles were extended to trade in services and to the protection of intellectual property rights.

Since the early 1960s, the multilateral system has included the concept of differentiation between developed and developing countries. It allowed the creation of preferential tariffs for the imports from developing countries, on a non-discriminatory basis. From the outset, however, the notion of developing country was never clarified and with the emergence of competitive developing country exports this question became a growing bone of contention, leading ultimately to the breakdown of the latest multilateral round of trade negotiations, the Doha Round.

In parallel, the EU has been a user of bilateral trade policies, for basic geopolitical and development policies. Under GATT Art. XXIV deeper trade liberalisation is authorised under free trade agreements (FTAs) or customs unions. Even here, the requirement was to liberalise substantially all trade, not total free trade. The EU used this derogation to the non-discrimination requirement for the creation of its own customs union, and for free trade agreements with its direct neighbours, who opted against participation

¹ The views expressed in this chapter are strictly personal and do not represent positions held by or engaging the Commission of the European Union.

in the customs union, and Mediterranean partner countries. Under development policy considerations, the EU also used Art. XXIV provisions to extend contractual preferential access to its markets for the exports of its African, Caribbean and Pacific (ACP) partners. While the Generalised System of Preferences (GSP) schemes of developed countries contributed substantially to economic growth and industrialisation of a number of emerging economies, the same cannot be said about the successive EU–ACP agreements despite the better market access conditions offered. Environmental considerations played limited roles, essentially being addressed through human health as well as sanitary and phytosanitary (SPS) requirements, to be defined by individual import markets. Global environmental concerns only started to come up in the WTO in the 1990s, and comprehensive answers were never developed.

The shift towards bilateralism

The turn of the century marked a substantial reorientation of the EU's trade policy, away from the pursuit of multilateral solutions towards a more selfish EU export interest – to be present with preferential access in rapidly growing and/or important third-country markets. This goal should be achieved through deep market liberalisation, going well beyond classical tariff negotiations. Broader public interest in the EU for trade policy led to more focus on environmental and social concerns, both human and labour rights, but equally on the role and rights of foreign investors.

The shift towards bilateralism in the EU's trade policy started with the opening of free trade negotiations with Central and Latin America at the turn of the century. While partly motivated by cultural links, these negotiations contained an element of competition between the EU and the US for market access into a sizeable emerging regional market. This competition was most directly felt by Europe in the implementation of the North American Free Trade Agreement (NAFTA), which started in 1994. In the first years of NAFTA implementation, the EU lost about a third of its exports to Mexico to US and Canadian competitors. The EU started its own FTA negotiation, concluded in December 1997, basically seeking to establish NAFTA parity in market access. By the turn of the century, the EU had largely regained its lost market share in the Mexican market. So, bilateral trade negotiations do matter. They matter mainly with regard to partner countries with relatively high most-favoured nation (MFN) tariff protection. The EU lost almost no market share in the other two NAFTA markets – the US and Canada.

It should never be forgotten that bilateralism leads to very direct discrimination. The EU experienced the consequences of NAFTA, but other countries are having similar experiences. Argentinian wine pays substantially higher import duties in the EU than its Chilean competitors simply because the EU–Chile negotiations were successfully

concluded, while EU–Mercosur negotiations had been going on for some 20 years before their recent conclusion. When the EU negotiated an FTA with Korea, it became almost impossible not to offer a similar trade regime to Japan, because both countries compete for the same, relatively protected sectors in the EU market. Or how does one justify accepting to negotiate with Mexico and Canada, but not with the third NAFTA member? And so the slippery slope away from multilateralism shows its effects. Serious collateral damage of this policy shift is felt in developing countries. Where they had benefitted from preferential market access conditions into the industrialised markets, their preferences were eroded by every new FTA. They now have no better market access than many of the most competitive export countries.

Bilateralism also creates its own, sometimes weird logic. What economic motivation can there be for the EU or the US to negotiate an FTA with a small open trading hub like Singapore? The two largest markets in the world, respectively 500 million and 320 million people, still protected even if by relatively low tariffs, and an open port city of 5 million people, which thrives as a trading platform with no access restrictions whatsoever. It is difficult to come up with an explanation other than simply concluding a negotiation, just any trade negotiation, to produce a short media hype.

Trade agreements and nontrade objectives

Are bilateral trade agreements better for the environment? At first sight, one may have this impression, because these FTAs do contain references to environmental protection. But they remain largely nominal and do not contain effective border enforcement measures, despite the growing public concern over environmental dumping. How can the EU seriously discuss the need for border protection when concluding an FTA with Canada, one of the worst performing countries with regard to greenhouse gas emissions per head, in breach of Kyoto Protocol commitments? Or concluding FTA negotiations with Mercosur, when the incoming president reduces forest protection to allow more soya and meat production at the expense of climate change and biodiversity? Or opening FTA negotiations with Australia and New Zealand, knowing the heavy reliance of both countries on exports of basic commodities produced with very limited attention to greenhouse gas emissions, water management or biodiversity?

Are these agreements more focused on social impacts? Both in the importing and exporting countries? References exist to labour rights and human rights, but again without real enforcement means. Trade has lifted millions of people out of poverty, in China, Brazil, and other emerging economies, but this has essentially been on the basis of the multilateral trading system. Under prevailing neo-liberal ideologies, employment is not a relevant criteria. The reasoning is essentially price-based and

takes a consumer perspective. The result of these policies can be seen in the US, where large parts of labour-intensive processes have been outsourced over time. It can also be seen in Germany, with the largest low-wage sector in Europe; or in the UK with the recent Brexit referendum. These policies fuel social unrest, even with substantive price reductions for large parts of consumer goods.

The worst result of this turn towards bilateralism, away from non-discrimination, is what the world is experiencing at present with the latest US president. He is taking bilateralism to its weirdest, by seeking to secure balanced bilateral trade relations. You buy as many cars from me as you export to me! A total reversal of global supply chains that have developed with the implementation of an open, reliable multilateral trading system! And all we see as a reaction are heads of government flying into Washington to either make bilateral deals under US rules or argue for temporary individual exemptions. And CEOs that would have taken legal recourse against actions by previous presidents now promise more local investment inside the US to comply with this president's tweets. That is what some may call *realpolitik*, but it greatly undermines good governance.

The EU could or should have remembered its own development – building a larger domestic market by fully integrating member states' domestic markets, defining common external border policies that were progressively liberalised over time, but sufficiently high to continue to encourage inward foreign direct investment. For 40 years this model has served the EU's economic model fairly well, establishing and maintaining its status as the largest single trading entity in the world. This model was for a long time seen as 'the third way', before it also shifted towards more standard neoliberal policies at the turn of century.

Towards greater sustainability

The EU has tried to draw on this experience in its trade relations with ACP countries during the negotiation of the Economic Partnership Agreements (EPAs). Building on regional integration systems existing in the three regions – Africa, the Caribbean and Pacific – the EU sought to negotiate trade deals that would support the strengthening of regional markets behind common borders to be gradually reduced over an extended period of time. The approach would meet WTO reciprocity requirements aiming at covering substantially all trade, while providing sufficient time to strengthen the domestic production capability for goods and services, creating domestic employment opportunities under decent work conditions. Obviously, good domestic governance and respect for rule of law are preconditions for such economic transition to be successful.

So what would be a sustainable trade policy? It would have to assess economic, social and environmental impacts simultaneously and with equal weight. For this, the UN agreed Sustainable Development Goals (SDGs) provide interesting criteria and measurable indicators. The ‘leave no one behind’ objective alone argues for multilateral rather than bilateral approaches. The global environmental impacts and the growing stream of immigrants/refugees are other serious reminders of the need for global solutions. But trade policy alone will not be capable of resolving all the issues. We need coherent, holistic policies. Without proper fiscal policies, the distributive effects of trade among nations will not be passed on to their citizens. Without closing the fiscal loopholes allowing profits to be taxed not where they accrue, but in tax havens to which they have been shifted, the budgetary capabilities of nations to address fundamental social and infrastructural needs will continue to be undermined. We are talking big money here: in the EU alone, some €150 billion lost every year.

We need to implement proper competition laws. The subsidy cases against individual tax deals for large firms brought by the European Commission are a good first step, but they need to be strengthened in the merger and acquisition policy by introducing employment considerations alongside price effects. We need to define enforcement mechanisms for truly multilaterally agreed labour rights and environmental agreements as well as fundamental human rights. We need to treat foreign investors like normal citizens, with all the commonly accessible legal recourses against national legislation and administrative decisions, but without an additional parallel recourse open to them alone. Foreign investment cannot be above generally applicable domestic social or environmental legislation. Domestic policies will need to be aligned with regard to energy production, raw material use, food production, transport policies, and international finance, to name but a few. Trade alone will not be the answer. Domestic policies are going to be equally important. As the example of Korea has shown, the transition towards democracy, labour rights, and rule of law has to be fought on the home front. But there should be support from and opportunity within a global system. Our planet needs comprehensive sustainability policies in all areas of governance. The planet needs those new policies rapidly if we are to avoid the worst negative consequences that science-based models are identifying with ever increasing probabilities.

How do we get there? Well, there is not going to be a reversal of the bilateral deals that have been struck. The only way to eliminate the growing discrimination in international trade, the increasing complexities for economic operators, to name but the rules of origin, would be to multilateralise access conditions on an MFN basis under the WTO. This remains a big challenge for all sides. I do not think that there would be political support in Europe for multilateralising the EU–Canada agreement to China, India, Brazil or Russia, even if these countries were to fully reciprocate. I do not see a willingness of the

major emerging nations to offer such important market access conditions on an MFN basis either. I wonder whether the US would be prepared to envisage such a solution, even if only least developed countries were not to fully reciprocate.

This approach will have to be tested in Geneva, by returning to the negotiating table in earnest, rebuilding confidence in a multilateral system that all actors will seek to effectively implement, and accepting serious multilateral enforcement of rules agreed via credible binding litigation procedures. I do not think there is the slightest chance for such an approach as long as the race towards bilateralism is on. But the world needs a better trading system! Basically, we all know that multilateralism is the better solution, so why would anyone want to stubbornly continue further down the slippery slope of bilateralism?

About the author

Karl Falkenberg enjoyed a long career as an EU Commission official. He joined the Commission in 1977 as a textile negotiator. He experienced both multilateral negotiations in the WTO and bilateral trade negotiations with a wide range of developed and developing countries. In 1990 he joined the Jacques Delors as Advisor on German Unification and External Relations. He negotiated the WTO Protocols on Telecommunications, Financial Services, Maritime Transport and Audiovisual Services. From 2009 to 2015 he was Director General for Environment, covering domestic and international issues. He developed circular economy concepts for Europe, starting with better implementation of the major separately collected waste streams. He was the lead negotiator for the EU in the UN process leading towards the SDGs. In 2016, he presented a report on European implementation of SDGs to the Commission, called 'Sustainability Now'. Karl retired from the Commission in July 2017, and works since then as an independent consultant and lecturer on sustainability issues.

3 The EU and world regions: Multilateralism, bilateralism, and commercial realism

Katharina L. Meissner

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The election of Donald Trump as President of the United States has reinvigorated an age of economic nationalism. His retreat from the Trans-Pacific Partnership, the use of tariffs on aluminium and steel, and the return to economic sanctions have given rise to a protectionist wave in the global economy. In Europe, too, liberalisation of the global economy has been contested and civil society organisations brought protests against trade agreements with Canada or the US to the streets.

Yet, the EU is at the forefront of engaging in external relations with economic powerhouses and entire world regions. Since the breakdown of the Doha Round, much of this happens outside the WTO. The European Commission, on behalf of the EU, currently negotiates trade deals with more than 40 partners worldwide, targeting industrialised states, emerging economies as well as developing countries. The large majority of these negotiations are bilateral in nature, where the EU negotiates with single countries even if they belong to regional organisations. Active bilateralism in the EU's trade policy is surprisingly inconsistent with its proclaimed objective of supporting regional integration especially in the developing world. What are the motives of the EU when it pursues bilateral trade agreements? Why does it shift from negotiations with entire regional organisations to single countries?

The EU and its trade relations with world regions

The EU is a frontrunner of ambitious and comprehensive trade liberalisation, pushing for the abolition of tariffs as well as non-tariff trade barriers. As expressed in the European Commission's "Trade for all" strategy paper, liberalisation extends far beyond tariffs by targeting also investments, regulatory standards, public procurement, and services. At the same time, the EU commits itself vividly to multilateral institutions such as the

WTO. As part of the EU's credible commitment to multilateralism, the Commission prefers to pursue external relations with regional organisations. Such regional organisations persist in all world regions where states pursue economic or political integration modelled on the example of the EU (Lenz and Burilkov 2017). Based on the EU's continued commitment to multilateralism and its support for regional integration across the globe, scholars have identified 'interregionalism' as the guiding principle of EU external relations (Söderbaum 2015). Hence, the EU pursues many of its external trade relations towards regional organisations through interregionalism.

Yet, despite the EU's continued commitment to multilateralism and interregionalism, nowadays it turns more and more frequently to bilateral trade negotiations with single states. Next to bilateral negotiations with industrialised countries such as Canada (with the Comprehensive Economic and Trade Agreement, or CETA, in 2017), Japan (with the signing of the Economic Partnership Agreement, or, EPA, in 2018), and the US (talks on the Transatlantic Trade and Investment Partnership, or TTIP, which are currently on ice), the EU also increasingly singles out emerging markets or developing countries to pursue bilateral (trade) deals involving comprehensive or sector-specific agreements with trade partners all over the world. The scope of these agreements varies drastically. Some aim to integrate particular sectors such as textiles or are selective (e.g. investment agreements), while others target ambitious and comprehensive trade agreements covering trade in goods and agriculture as well as investments, regulatory standards, public procurement, and services. In other words, the EU's trade agreements vary regarding the venue of negotiations – bilateral versus interregional – just as much as concerning the scope of issues – selective versus comprehensive. This is surprising given the EU's supposed preference for economically ambitious and interregional agreements.

The differences in kind and scope of European economic relations with the rest of the world are puzzling; even more so because we observe variation across as well as within world regions. In the Gulf region, for example, the EU maintains selective economic relations in interregional format with the Gulf Cooperation Council. In many other world regions, by contrast, the EU's trade and political relations are comprehensive. One example is the negotiations on a comprehensive Association Agreement with the Mercado Común del Sur (MERCOSUR) (Doctor 2015). In Asia, too, the EU is currently trying to tie together several ambitious trade agreements with member states of the Association of South East Asian Nations (ASEAN).

Although the European Commission has a preference for ambitious and interregional negotiations, even the EU's trade strategies towards the same world region vary over time. Diachronic variation between bilateralism and interregionalism exists even in

cases of advanced and well-functioning regional organisations such as MERCOSUR or ASEAN. In both cases, the Commission eventually shifted to bilateralism (in 2007 and 2010) after many years of investing resources and time in interregional trade negotiations and of supporting these organisations financially and technologically. In 2007, the EU added a bilateral Strategic Partnership with Brazil to interregional negotiations with MERCOSUR. The Strategic Partnership does not constitute a free trade agreement, but Brazil and Europe are attempting to reach agreements on contested issues such as investments or regulatory standards (Meissner 2018a). These issues form part of interregional negotiations with MERCOSUR, too. In the case of ASEAN, the European Commission changed trade strategy from interregional to bilateral with several Southeast Asian states, including Singapore and Vietnam (Meissner 2016). Asia and Europe's objective is to consolidate these bilateral agreements in one interregional framework. This will remain challenging, however, given the diversity of these free trade agreements. In any case, bilateralism in the EU's trade policy is in tension with its support of regional economic integration and its credible commitment to interregionalism.

In a recent book (Meissner 2018b), I analyse the motives of the EU's trade policy towards Asia and Latin America. More specifically, I examine why there is variation in the European Commission's trade strategies across world regions as well as with the same regional organisation. Why has the EU switched strategy from interregionalism to bilateralism more and more frequently over the past decade? What are the implications of this change for economic integration in regional organisations outside of Europe? In answering these questions, the reader and I can also draw conclusions about the tension between the EU's commercial interests in furthering trade with potential partners on the one hand, and its values-driven interests in supporting regional integration among developing countries on the other hand. This tension is similar to different, often inconsistent interests put forward by EU decision makers in trade negotiations and reveals horizontal incoherence in Europe's external relations (e.g. McKenzie and Meissner 2017).

Between domestic politics and international relations

The large majority of the scholarship on EU trade policy focuses on explanatory factors *within* Europe rather than beyond it. These factors are rooted in domestic politics or in the EU's inner-institutional system – scholars focus on Europe's normative power, interest groups, or member states' preferences. First, thanks to the EU's DNA as a regional organisation, it supports integration among developing countries and hence interregional relations. Second, we know from the literature (Dür 2010) that the

European Commission initiates trade negotiations thanks also to lobbying by export-oriented interest groups. Third, heterogeneous preferences of EU member states provide the Commission with more discretion in international negotiations on trade deals (Da Conceição-Heldt 2010). From all three perspectives, the current literature observes that EU trade policy is primarily driven by inner-institutional characteristics.

Such a heavy focus on internal EU explanatory factors has led to a near complete neglect of systemic or international factors. This is remarkable given that trade policy is one of the most active and dynamic fields of EU external relations. Without systematic consideration of external explanatory factors, we underestimate the exposure of European trade policy to the international context of the global economy and how this influences EU trade negotiations. Neglecting factors rooted in the international system and their impact on EU trade policy has arguably led to biased results in favour of overestimating inner-institutional features such as European identity, interest groups, or member states' preferences. In Meissner (2018b) I fill this void in the literature and provide a systematic analysis of external explanatory factors, located on the international level, and their impact on EU trade negotiations with regional organisations in Asia and Latin America.

Next to a biased perspective in favour of inner-institutional factors on trade policy, the majority of research pursues case studies on EU relations with a specific region such as Asia or Latin America (e.g. Dür 2010). Given the focus on idiosyncratic cases, we can draw only limited generalisable conclusions about EU external economic relations towards world regions. I therefore provide a comparative perspective on EU trade policy towards Asia and Latin America, more specifically towards ASEAN and MERCOSUR. Furthermore, in order to maximise external validity, I offer an overview of cases from other world regions where the EU has pursued trade negotiations: Africa and the Southern African Development Community (SADC), Central America and the Andean Community (CAN), as well as the Gulf region and the Gulf Cooperation Council (GCC). Drawing on information from more than 100 interviews with officials and business groups from the EU, ASEAN, and MERCOSUR, I gathered original, empirical insights on EU external trade policy and offer a new perspective on European relations with these regions.

Based on my collected data, I show systematically and with in-depth empirical materials how and why the EU was driven by external factors in designing its trade policy towards regional organisations. In the EU's trade policy towards Asia and Latin America, inner-institutional variables such as Europe's commitment to interregionalism or lobbying groups were only of secondary concern. In all cases studied – Africa, Asia, the Gulf region, and Latin America – factors at the international level were central to the EU

when deciding what particular trade strategy to opt for. When designing its trade policy towards organisations in these regions, the EU aimed at ensuring and improving its economic and regulatory power vis-à-vis competitors such as China or the US. Hence, whenever there was tension between pursuing economic or regulatory power interests on the one hand, and the EU's political ambition to support regional integration in Asia and Latin America on the other, the EU prioritised commercial over political interests. What's more, the European Commission changed trade strategy in favour of bilateralism whenever its ambitions for a commercially comprehensive agreement were in conflict with heterogeneity within its partner region. In other words, the EU sacrificed interregionalism where it was in tension with economic interests.

Active bilateralism in the EU's trade policy

How does the EU react to external factors beyond its own territory, such as systematic changes in the global economy? What is their magnitude of influence vis-à-vis inner-institutional variables within the EU? Why and in what ways are international factors connected to the increasing use of bilateralism in Europe's external trade relations? Ian Manners (2002) describes the EU as a normative power. It is essentially based on the peaceful integration of European countries to promote stability and democratic, liberal values such as fundamental rights. Part of this scholarly perception of 'Normative Power Europe' is that the EU exports its values to the wider world, including its associated and neighbouring countries as well as partners further afield. As described earlier, the European Commission seeks to export its success story of regional integration to other world regions based on its identity as a regional organisation. A vital contribution to this support is interregionalism.

Amidst the EU's continued rhetoric on its commitment to interregionalism, in practice it puts growing emphasis on commercial competitiveness and a thirst for economic power. Analysed through a realist perspective, EU trade policy can be understood as a means to maintain, or even improve, its economic and regulatory power vis-à-vis China and the US in other world regions, as exemplified by trade dynamics with MERCOSUR and ASEAN. Commercial competition between the EU and the US is most intensive in the realm of regulatory standards. My interviewees reported how the European Commission tries to export EU regulatory standards such as rules of origin to other regions at the expense of the US's trademark politics. In addition to competing with the US, the EU has also faced China's rise to economic power since the early 2000s. This is most apparent in Latin America, where China's intensified investments and economic relations put the US and Europe under strain and in fierce competition. The intensity of commercial competition with China and the US goes some way towards explaining

why the European Commission puts so much emphasis on negotiating comprehensive and economically ambitious trade agreements.

In fact, the EU has not been able to conclude many ambitious interregional trade agreements (Meissner 2018c) except for its Economic Partnership Agreements (EPAs) with the Caribbean CARIFORUM or SADC. Negotiations on an association agreement with MERCOSUR have been ongoing for 20 years and were only concluded in July of this year (2019). In the case of ASEAN, the EU switched to bilateral negotiations and concluded bilateral trade agreements with Singapore and Vietnam. What were the reasons behind the failures in interregional negotiations? According to reports by my interviewees, interregional negotiations with ASEAN and with partners in Latin America, such as the Andean Community (CAN) or MERCOSUR, led to frustration for both Europe and the counterpart region. While the EU insisted on an ambitious and comprehensive trade agreement, member states within regional organisations in Asia and Latin America were unable to agree on a common position in negotiations. Given the members' heterogeneity in these regions, it was extremely difficult for them to agree on joint positions regarding negotiation issues that were crucial for Europe. Such issues include investments, services, as well as regulatory standards and public procurement. In theory, the EU could have pursued less ambitious agreements for the sake of reaching an interregional deal. Bolivia, in fact, proposed this in the EU–CAN negotiations on an association agreement (Szegedy-Maszák 2009). However, this would have required sacrifices on the European side concerning non-traditional negotiation issues such as investments or services. This was unacceptable to the EU, and Europe's preference for an ambitious economic agreement remained irreconcilable with CAN's heterogeneity (as was the case for trade talks with ASEAN).

The EU's shift to bilateralism in the context of trade relations with regional organisations might also be seen through a lens of pragmatic adaptation. Indeed, negotiators from the European Commission realised over the course of trade talks with ASEAN, for example, how a bilateral format would be more productive and efficient in delivering ambitious free trade agreements. Singapore was perceived as a natural first choice for bilateral talks by the European Commission given the country's openness in trade and its experience in negotiating ambitious agreements. Such dynamics of pragmatism are also reflected in María García's (2013) research on how the EU has moved from 'idealism' to more 'realism' in its trade policy. At the same time, however, some officials I interviewed were aware of the difficulties arising from bilateralism and how they may result in conflicting interests for ASEAN member states. This suggests that the Directorate General (DG) Trade made a conscious decision in favour of shifting to bilateralism, although this creates tensions in regional organisations.

Among the most frequent criticisms of EU trade policy is the allegedly strong lobbying by business groups – for example, in the trade negotiations with Canada on CETA. Such criticism implies the assumption that the European Commission and its preference for ambitious agreements is driven primarily by interest groups. In the cases I investigated, export-oriented actors were, however, only of secondary concern to the European Commission. Desk officers working in DG Trade are in regular contact with interest groups and consult them on trade negotiations. Yet, interviewees from the EU consistently reported that they design the timing and strategy of negotiations independently of interest groups. A case in point was the EU–ASEAN negotiations. Only after the European Commission had already decided to switch from interregional to bilateral trade talks starting with Singapore did DG Trade inform interest groups about its choice in the civil society dialogue (Meissner 2016).

The literature also ascribes strong influence to EU member states in shaping trade negotiations (Da Conceição-Heldt 2010). Under the condition of heterogeneous preferences among European countries, the European Commission is conceptualised as having more leeway in trade talks rather than in cases of member state alignment. However, in the negotiations I looked at in my research, including ASEAN or MERCOSUR, the European Commission was very skilful in using its discretion as sole negotiator and in pushing through its own priorities vis-à-vis EU member states. External economic relations towards Latin America are good example in this regard. Negotiations on an association agreement stagnated in 2004 but they were never official declared off the table. Hence, legally speaking the European Commission had a continued negotiation mandate authorised by EU member states in the 1990s, which it took advantage of to resume trade talks with MERCOSUR in 2010. This was perceived by EU member states a political scandal given that the European Commission made its decision without proper consultation with the Council or the European Parliament.

Trade policy incoherence

Will the EU be able to continue its proactive, liberal trade policy despite reinvigorated economic nationalism? I argue in favour given the European Commission's ability to adapt its trade strategy to changing external conditions and push its agenda even when facing concerns of interest groups or member states. What motives drive the EU in pursuing its trade policy energetically? While the EU factors in domestic interests when entering into negotiations with regional organisations, I found that the design decisions of such negotiations are driven primarily by external factors. Hence, the EU is eager to promote its own economic and regulatory power in other world regions vis-à-vis China and the US as its competitors. In doing so, the EU has frequently prioritised ambitious

and comprehensive trade agreements with single countries over political support for regional integration beyond Europe.

Interregionalism, unlike the protection of human rights, rule of law, or democracy, is not enshrined in the EU treaties as one of its core values. Nevertheless, it used to be a guiding principle of Europe's external relations and in its development policy that the EU explicitly commits itself to furthering regional integration in the developing world. Amidst this commitment, the EU's increasing use of bilateralism even with members of well-functioning regional organisations is an obvious inconsistency. The tension between Europe's values-based interest in promoting regional integration on the one hand, and its commercial ambition in negotiating comprehensive trade agreements on the other, reveals a stark horizontal incoherence in the EU's external relations.

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4 What future for EU trade policy and free trade agreements?

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Trade policy has never been uncontroversial. Yet in recent years it has come back in full spotlight with (fears of) globalisation seeming to reshape politics in developed economies, principles of the post 1945 multilateral trade system being put into question and (threats of) trade wars spreading.

For the European Union (EU), trade policy has been one of its successes, having managed to position the bloc as a true global actor. Yet, EU trade policy faces multiple challenges. These include conducting trade policy successfully in a more uncertain and confrontational international environment; dealing with the changing nature of trade, i.e. broadening beyond goods and being transformed by technology; and maintaining domestic support for its trade policy strategy and actions.

The EU's trade position and Free Trade Agreements

The EU is the world's largest trading bloc, covering 16.7% of global goods and services trade,² and the top trading partner for about 80 countries. The bloc ranks 2nd as an exporter of manufactured goods and leads globally as an exporter of services and for in- and outbound investment.³ A wide-ranging network of free trade agreements (FTAs) underpins its position in world trade and form a key element of the Union's trade strategy. FTAs open up markets for exporters and help to create a more predictable rule-based business environment, thereby also incentivising investment.

FTAs can vary considerably in terms of scope and ambition. Traditionally about reducing tariffs, trade agreements have broadened their scope, including provisions to tackle behind the border non-tariff barriers.

¹ The opinions expressed are the author's only. This essay should not be reported as representing the views of the European Investment Bank.

² For 2017. See European Commission (2018, 2018a) and DG trade website.

³ For 2017. Ibid. Investment position refers to global FDI shares (stocks) for 2016.

Services have increasingly become part, and FTAs have been including elements that are only partly or not at all, covered by WTO rules. Additional areas forming part of FTAs are for instance rules to foster free and fair trade, related to competition or intellectual property, but also on labour rights or the environment.

Historically, EU trade agreements have served as a policy instrument to strengthen bilateral ties between partners, as well as to promote policy principles or values such as labour standards or protection of natural resources.⁴ However, EU agreements to foster trade (and investment) have also sparked mixed feelings given the backlash against globalisation as well as EU-internal controversies over the power of the EU on behalf of its member states to strike comprehensive trade deals in recent years. In particular, controversies about the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and the later abandoned Transatlantic Trade and Investment Partnership (TTIP) with the US had put EU trade policymaking to a test.⁵

At present, the EU has close to 40 agreements with more than 80 countries across the globe.⁶ Out of total EU trade with third countries, the share of FTA-covered trade amounted to 32% in 2017 and could soon exceed the 40% mark, with new agreements entering into force, e.g. with Singapore, Vietnam, Canada and Japan.⁷

The EU's FTAs vary substantially, depending on partners and policy priorities. They can be classified into four types:

- “First generation” trade agreements, i.e. focused on trade in goods and tariff elimination, negotiated before 2006;
- Economic partnerships agreements with Africa, Caribbean and Pacific countries focusing on development needs and fostering gradual liberalisation in partner countries while the EU grants market access;
- Deep and comprehensive free trade areas (DCFTAs) deepening political association and preparing for economic integration with the EU; and
- New or “second generation” free trade agreements, i.e. comprehensive FTA's negotiated after 2006 with selected third countries that go beyond trade in goods, also covering services and potentially other aspects such as procurement, intellectual property rights and/or some investment related issues.

4 For the EU, this is reflected in the Trade for all strategy. See European Commission (2015).

5 See Wruuck (2017) for further discussion.

6 Source: European Commission (2018) and DG Trade website. Includes agreements in place and partly in place.

7 For trade in goods.

While the first two categories still make up the majority of existing FTAs, as commercial exchanges become increasingly dominated by services and shaped by digital technologies, new generation FTAs are also becoming more relevant. Furthermore, they can also play a role in helping to advance global trade rules and standards in certain areas.

“New generation trade agreements” with new challenges

The emergence of new generation FTA partly reflects the rise of global value chains and multilateral disciplines in some of these areas being less advanced.⁸ Arguably, these issues are particularly relevant for the EU given its position in world trade but the new type of trade accords also come with new challenges from a European perspective. These include controversies on the EU’s (exclusive) competency to strike comprehensive deals as well as opposition within the EU to the inclusion of some of the new issues, reflecting concerns about potential weakening of standards, e.g. for consumer protection, or trade agreements limiting the ability to regulate domestically.

Reconciling the European system of multi-level governance and internal sovereignty sharing with negotiating new generation FTAs is central for the EU to successfully negotiate accords. Yet, the EU’s ability to conclude trade deals is ultimately contingent on domestic political support. One lesson that can be learned from CETA is that EU negotiators need to be sensitive to domestic concerns about the (potential) effects of FTAs earlier in the negotiation process with a view to reduce the risk of agreements being called into question at a later stage and its credibility towards trading partners being put to the test.

EU trade policy: internal and external challenges

Stable trade relations with its partners are key for an advanced economy like the EU, its consumers and companies and FTAs play a vital role in supporting ties. In fact, the certainty they can add is (all the more) valuable in times of high (political) uncertainty.

To reap these benefits, EU trade policy needs to navigate domestic and external challenges. The context of world trade has changed in recent years, marked by harsher competition with emerging markets and the breakdown of multilateralism.

8 While trade and investment are closely linked, it is worth recalling some distinctions between agreements on trade compared to investment. First, the basic goal of rules in the two areas differs. Rules for trade originally aimed at smoothing flows of goods by reducing protection at the border (thereby encouraging trade) whereas arrangements for FDI are about protecting property rights of foreigners within another country’s borders (thereby attracting investment). Second, the degree of multilateralisation and institutionalisation is more advanced for trade.

This affects the EU in particular because its policy approach to trade and international relations is rules-based and traditionally focused on a multilateral approach.⁹ To the extent that rules and principles of global cooperation are ignored or undermined by other players, it also becomes more difficult for the EU to maintain its approach, because it can become harder to justify internally if other strategies are perceived as more successful in the short term.

Domestic challenges to EU trade policy and FTAs partly stem from traditional concerns about the distributional effects of trade, adjustment frictions and fears about job destruction. For the comprehensive agreements, concerns can also arise from fears that accords might lead to weakening of some European standards and protection of public services, as the controversies around the CETA agreement with Canada and the abandoned TTIP negotiations illustrate.

These experiences provide two major insights: first, negotiations about the comprehensive trade agreements can easily turn into wider and intense political debates about how to manage globalisation. Arguably, to the extent that the comprehensive agreements touch on areas that have traditionally been more in the realm of domestic politics, they also require greater trust in EU policymaking processes and EU trade negotiators. EU trade negotiators and policy-makers need to properly disseminate to the European citizens the objectives and outcomes of the EU's trade policy, as a way to mitigate rising mistrust towards EU institutions. Steps that can help to strengthen trust are for example the publication of negotiation mandates and the better information in the outcomes of FTAs. Strengthening continuous dialogue with different stakeholders and citizens at national and local level on trade policy is similarly an important element.

Public opinion on free trade and globalisation in the EU is mixed. However, EU citizens' overall views on globalisation have turned more positive again since 2011.¹⁰ Views are more favourable among the young and those that place themselves higher in social class strata. Positive views about globalisation and the EU tend to be correlated. Respondents who have a positive image of the European Union are more likely to have positive views on globalisation (69% vs. 31% of respondents who have a negative image), as are those who tend to trust the EU (69% vs. 39% of respondents who tend not to trust in the EU). However, about 30% of Europeans do not see globalisation as an opportunity and another 10% are not sure about its effects despite the economic recovery in recent years.¹¹

9 See for instance Art. 21 TEU, which states that the Union aims to "promote multilateral solutions to common problems".

10 See Eurobarometer 461 (2017).

11 See Eurobarometer. Views on trade tend to be more positive in times of economic recovery. Similarly, people who think that their economy is doing well tend to view globalisation more positively.

In addition, many Europeans doubt that trade increases employment or wages.¹² Similarly, opinions on whether the EU helps to protect its citizens from negative effects of globalisation are evenly split.

How to strengthen trust in the EU's capacity to manage globalisation?

Survey results should be read as a 'work assignment' for EU policymakers both with regard to mixed views on trade among the EU public and the sociodemographic composition. What can be steps to strengthen trust in the EU's capacity to manage globalisation for the benefit of its citizens? First, this can involve dedicated instruments to facilitate adjustment to trade shocks. Second, facilitating adjustment of individuals, regions and countries to trade shocks requires a comprehensive set of sound economic policies. The EU can help to foster these through economic policy coordination.

The establishment of the globalisation adjustment fund in 2007, to facilitate reintegration to employment of workers who have lost their jobs as a result of globalisation with financial support, politically acknowledged that from the EU's exclusive competency over trade policy follows some budgetary responsibility to deal with adjustment frictions.¹³ The Fund, together with the member states, supports for instance retraining of displaced workers or starting a new business. Over the years, it has also been used to cope with crisis-related redundancies. Looking ahead, some further adjustments to the programme may be worth considering. These include lower threshold criteria to facilitate the use for small and medium-sized enterprises and support to cope with redundancies resulting from globalisation and digitalisation.

Dedicated instruments like the globalisation adjustment fund help to support displaced workers and facilitate reintegration into the labour market. However, most policies that facilitate adjustment are under the exclusive responsibility of individual Member States and hence domestic policies to strengthen competitiveness and to reconcile open markets with social inclusion are central. To that extent, the EU's pillar of social rights defines a number of principles that can also be useful to complement an ambitious trade policy by fostering inclusion and facilitating adjustment for instance active support to employment and life-long learning.

¹² See Stokes (2018).

¹³ See [European Commission](#) for information on the Globalisation adjustment fund and Claey's and Sapir (2018) for further on reform discussion.

Delivering on the pillar of social rights is a joint responsibility of member states, other stakeholders and the EU setting the framework. The EU plays a role in fostering sound economic policies at member state level through economic policy coordination in the European Semester. To that extent, the country specific recommendations can make an indirect contribution to facilitate adjustment through increasing market functioning, resilience to shocks and employment creation.

FTAs: A look ahead

Back in 2016, the difficulties to conclude the CETA agreement had raised some questions as to whether the EU can still credibly and successfully negotiate with its partners. Overall, the past three years have shown that it can. FTAs with Vietnam, Japan and Singapore have been successfully concluded in the meantime,¹⁴ there are new negotiations for instance with Chile to modernize existing agreements, or for new accords with Australia and New Zealand and potentially a new attempt to negotiate an agreement with the US.

On the scope of supranational competencies, an issue critical in the CETA negotiations, the European Court of Justice (ECJ) provided greater clarity on the exact delineation of competences between the EU and Member States based on the trade agreement with Singapore in 2017.¹⁵ The ECJ opinion stipulates that non-direct foreign investment (portfolio investment) and dispute settlement fall in the area of shared competencies. Greater clarity on the scope of competencies in turn helps to define what issues should be negotiated together or form separate agreements that follow different procedures for ratification for mixed accords versus those under exclusive EU competencies.

As for trade policy communication, the publication of negotiation mandates and the regular reporting on the status of FTAs and their implementation are steps in the right direction. While negotiations on the next EU multiannual financial framework are not yet concluded, recent developments also point to reforms of the globalisation adjustment fund to facilitate its use for smaller firms and extent the scope particularly with a view to digitalisation.¹⁶

14 The agreement with Japan entered into force in February 2019. The EU Singapore trade and investment agreements were signed in October 2018 and following the European Parliament's consent now continue their respective ratification procedures. The EU FTA with Vietnam and the separate EU-Vietnam Investment Protection Agreement were both signed on 30 June 2019.

15 See Court of Justice of the European Union (2017).

16 See European Council press release 15/03/2019.

While these are all encouraging steps, looking ahead, the implications of digitalisation on trade and potentially domestic support for an ambitious trade policy require further consideration. Historically, technological change and trade are deeply intertwined. Technological advances have increased possibilities for global commerce, lowering transaction costs and extending the scope of what goods and services are tradable. This suggests that globalisation is far from over (or backtracking) but that digital technologies will increasingly shape goods and services trade over the coming years. At this point it is not yet clear what the effects of technologies such as 3-D printing or artificial intelligence (AI) on trade flows are going to be, for example whether spread of digital technologies is going to lead to re-localisation of parts of production chain, nearshoring or outsourcing of jobs that were previously considered as ‘safe from trade’.¹⁷ However, two points seem certain. First, FTAs will remain important for the EU as they provide a flexible instrument to accommodate changing trade patterns against the backdrop of digitalisation. Here, there is also a chance for the EU to lead in this area and define rules for digital trade through its FTA negotiations. Second, the possibilities to benefit from digital trade – for the EU and its partners – are going to depend on skills, innovation and the availability of digital infrastructure. For the EU, this means that domestic policies to support digitalisation and strengthening inclusiveness are key, also with a view to maintaining support for an ambitious trade policy.

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5 EU economic diplomacy: Enhancing the impact and coherence of the EU's external actions in the economic sphere

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European economic diplomacy as part of the EU's response to the changing world

The international context is dominated by competition among big powers and widespread questioning of globalisation, and presents unprecedented challenges for the rules-based multilateral system. There are multiple well-known causes for this evolution, including the overall fiercer economic competition due mainly to the emergence of new global powers, to new technologies and to a more connected world. Furthermore, states' distorting interventions in markets are also increasingly affecting trade, economic and investment activity, while unilateralism and protectionism have reached globally unprecedented levels. In this context, economic diplomacy has become a priority for many countries around the world.

In the development sphere, there is a growing emphasis on mobilising private sector resources for development in an effort to advance towards the considerable investment requirements of the 2030 Agenda of the Sustainable Development Goals (SDGs). The EU's relationships with developing countries are rapidly moving beyond the traditional donor-recipient relationship and increasingly appear to be economic partnerships of equals.

¹ Although the author is an official of the EEAS, the views expressed here do not coincide necessarily with those of the EEAS.

In this context, the EU must become more effective in both defending and advancing its economic interests beyond its frontiers and supporting the role of the private sector. The need for assertiveness was stressed by the June European Council in the Strategic Agenda 2019-2024. The EU has already responded in a number of ways, including trade policy initiatives, competition cases, screening of foreign investments, and calls for industrial policy measures.

Work on establishing European economic diplomacy (EED) was launched by the EU in 2016. Since then, important efforts have been deployed both in the EU's headquarters and in EU Delegations around the world to provide a solid foundation for a more integrated and proactive EED.

The content and policy context of European economic diplomacy

The importance of EU economic diplomacy has been recognised in the European Commission's "Reflection Paper on Harnessing Globalisation" adopted on 10 May 2017: *"A more integrated and pro-active European economic diplomacy would deliver better outcomes for our citizens. The EU and Member States should improve the coherence of external policies and tools to foster growth and jobs in Europe and become more efficient in pursuing our economic interests abroad"* (European Commission 2017).

Economic diplomacy is basically about having a coherent and focused approach for external economic policies (e.g. trade, climate, development, enterprise) and instruments (including grants, loans, and guarantees, as well as diplomatic and public diplomacy instruments), based on a strategic view of the EU's economic interests. EED requires enhanced coordination and consistency in headquarters between Commission services, the European External Action Service (EEAS), as well as with member states and financial institutions such as the European Investment Bank (EIB) and among other players, including EU Chambers of Commerce and other EU private sector organisations. It includes, in particular, using the wide network of EU Delegations around the world to optimise levers at the EU's disposal to help European businesses, especially small and medium-sized enterprises (SMEs), succeed on global markets. Examples of EED actions include better seizing the opportunities created by trade and investment agreements, overcoming persistent market access barriers for EU companies; promoting strategic pan-European commercial projects, engaging in setting international standards for new technologies, and strengthening European business organisations abroad.

EED has been deployed in full coherence and complementarity with the wider context of core EU principles and values and also existing EU policies, priorities and instruments, such as trade policy, regulatory cooperation, macroeconomic dialogues, and development cooperation – good tax governance, enlargement and neighbourhood policies, among others – including the External Investment Plan (EIP). For developing countries in particular, EED is conducted in full observance of the international commitments and global and EU frameworks that guide our development policy (the 2030 Agenda, the European Consensus on Development, and the ‘New Alliance for sustainable development and jobs’, for example) and should contribute to the goal of mobilising more private sector resources.

The July 2017 EED guidelines

The EEAS and the Commission issued EED guidelines to all Delegations with a view to identifying clear EED priorities and concrete action plans for individual non-EU countries. The EEAS is in charge of coordinating this process, in close cooperation with the Secretariat General of the European Commission and with the active involvement of relevant Commission services, such as DGs TRADE, GROW, DEVCO, NEAR, Foreign Policy Instruments (FPI) and others.

On this basis, **the EU Delegations**, guided by the geographical services in headquarters, have successfully conducted wide-ranging consultations with member state embassies and European business organisations, European or bilateral chambers of commerce, the EIB and other member states financial institutions and have identified widely agreed EED priorities and action plans.

Member states on the ground in third countries and in Brussels have generally been very supportive of enhanced involvement of the EU in EED, usually because of the valuable contribution it represents considering the richness of EU instruments and the fact that it offers greater leverage to advance the EU's interests in the respective country. Several member states proactively instructed, from the beginning of the EED process, their embassies to accompany actively and contribute to EED.

The EU Heads of Delegation reports were reviewed individually and endorsed in Brussels through simplified and straightforward processes. The whole EED process is very streamlined, with brief reports quick deadlines and strong action orientation.

So far, around 110 countries from sub-Sahara Africa, the Americas, Asia and the Pacific, Europe, the Middle East, and North Africa have been covered through the EED consultation and have now agreed EED priorities and action plans – some at the regional level.

Member states have been involved in the Brussels part of the EED process in various settings throughout 2018 – meetings of DGs for Global Affairs in Ministries of Foreign Affairs (MFA), ad hoc meetings with interested MFA Directors of Economic Affairs, briefings to the regional working parties of the Council, and meetings with the Trade Policy Committee and the Market Access Advisory Committee.

Outcomes of the EED guidelines implementation process

Reaching agreed EED priorities and concrete EED action plans at the EU level together with member states embassies, the EIB and the EU private sector organisations in **around 110 third countries, and for more than 1,000 concrete actions**, is a great achievement in itself.

- It reinforces the role of the EU Delegations and makes the EU's external actions more coherent, efficient and visible vis-à-vis **both the EU constituencies and the local authorities** and brings about better outcomes on EED priorities and actions.
- The active involvement of several hundred EU officials in headquarters and Delegations and a few thousands of member state officials who have actively contributed to the EED process brings about a significant **evolution of the mind-set**, focused on more proactive EED involving concrete action around the world fostering jobs and growth in Europe.
- The implementation of hundreds of concrete actions brings the EU closer to the **preoccupations of its companies and its citizens** and, at the same time, projects a useful image, to both its partners and its competitors, of an EU that is determined to better defend its companies from unfair treatment and to pursue a genuine level playing field under all circumstances.

The identified EED priorities and action plans capture and complement aspects of existing EU policy objectives related, for example, to trade agreement negotiation and implementation and market access, but also broach key areas related to improving the business environment and facilitating investment and private sector cooperation, as well as pursuing economic opportunities in strategic sectors such as space and the green economy. The concrete actions proposed range from monitoring and intelligence, joint or separate EU and member state advocacy and a more proactive role for EU business

organisations to specific support to individual sectors or companies, more targeted support by the EIB, expanded instruments to support the internationalisation of SMEs, and other areas critical to furthering the EU's economic interests. In many cases, the EU Delegations and member state embassies have already taken concrete actions towards or together with the local authorities.

Conclusions: Two key directions for the future of EED

As the process of implementing the EED guidelines advances towards maturity in 2019-2020, a more **strategic view of EED interests** is being developed on a wider range of sectoral or thematic issues and at the bilateral or regional level, mostly emerging from the current bottom-up process initiated by the EU Delegations. However, it is to be expected that the next steps of the EED will be dominated by the headquarters' driven strategic EU priorities that may include issues such as advancing the international role of the euro; specific attention to specific industrial sectors or technologies; focusing on issues, countries, or regions where EU companies face discriminatory practices; and so on. It is also to be expected that EED will be more **systematically integrated in strategic documents and in high-level political dialogues** both within the EU with an increasing number of third countries and on an increasing number of themes and areas of economic importance.

Finally, **the EU's approach to its economic diplomacy is based on at least two solid principles** that will continue to remain valid even if the EED content evolves, which in fact open new horizons of cooperation with the EU's partner countries around the world:

- First, EED is about the EU's own interests, but EU integration itself is built on the principle that a sustainable own interest is one that is founded on **solid respect of your partner's interest** as well. EED is thus solidly anchored in pursuing a level playing field for all companies and heavily concentrated on eliminating market distortions. Most of the identified EED priorities and actions concern improvements to the business and investment environment, eliminating market distortions or distortive practices of others, and improving the role of the private sector and its resources. Thus, most EED priorities, in most countries, can be, and in many cases already have become, joint priorities with local authorities too.
- Second, the EU contributes consistently through its trade and other policies to the creation of a rules-based international system. EED demonstrates in a unique way that it is possible, even in the difficult international environment of today, to **advance and defend one's own interests without falling into the trap of increased protectionism and/or unilateralism** that undermine the rules-based international

system. On the contrary, one's own interests can be defended and advanced while at the same time contributing to the emergence of the improved rules-based multi-lateral system that a peaceful and prosperous 21st century requires.

In the wider context of the necessary adapting of the EU and its external actions to an international environment that is currently very challenging and is likely to deteriorate further, **EED emerges as an indispensable tool** for the defence and the advancement of the EU's global interests.

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6 A personal history of EU trade policy

Roderick Abbott

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This chapter reflects on my experiences in the area of EU external policy, and in particular in the management of the EU's external trade policy and negotiation of trade agreements. In the writing process, it has also become a brief review of how EU external policies developed from its beginnings in the Treaty of Rome to the global instrument it now is. I focus on the period 1970 to 1995, when I had direct experience of the EU's involvement in major multilateral negotiations in General Agreement on Tariffs and Trade (GATT); and to set that period in its historical perspective as well as to add some reflections on later developments after the WTO was established.

One caveat to the reader. The process of developing an external policy in any country is usually a gradual one, to some extent dictated by events. In the EU a network of relationships and policies towards third countries and the global community had to be developed in tandem with the creation of its internal structures; and it was shaped largely over a relatively short period of about 30 years, in parallel with its emergence as a major player on the international trade scene. To an extent, this was working at breakneck speed.

European Economic Community external policies

Any study of the European Economic Community (EEC) external policy has to begin with the provisions of the Treaty of Rome itself. This is appropriate since trade and development play a central role in the Treaty, both as a key element in the internal construction of the Community and in its relations with third countries. In its preamble there are already references to removing barriers to international trade and, given existing links between Europe and overseas countries, to its desire to ensure their development and prosperity. In context this meant the former colonial possessions in Africa of the six founding member states, but the seed of attitudes towards 'less-developed countries' in general was already planted.

Articles 2 and 3 spell out the tasks and policies of the Community which are heavily focused on internal and external trade. Policies are specifically established for a common customs tariff and for a common commercial approach to be applied to trade with third countries; and common policies for agriculture (regulating both production and external trade) and for transport (by air, by sea and by rail) were also established.¹ Development policy was equally an important external activity, stemming from Part Four of the Treaty. The initial focus, maintaining good relations with its former colonies, was broadened to include association agreements with Mediterranean countries and generalised policy support for developing countries through the United Nations Conference on Trade and Development (UNCTAD) and the provision of bilateral aid.

In consequence, external policy developed rapidly in two directions: external relations with wider relationships with other countries, and external trade policy driven by the need to interact with main trade partners. Commercial policy was at the centre of developments as the Community moved from bilateral relations with its neighbours towards major trade relationships with the US and Japan, and also to participation in multilateral negotiations under the aegis of the GATT.

Trade agreements

It was natural that the first area of the European Economic Community (EEC) external activity was an opening to the external world through the trade agreements with Greece and Turkey, neighbouring countries, in the early 1960s. In parallel, it engaged with GATT members as the Treaty of Rome came under scrutiny in Geneva, and the Community participated in multilateral negotiations in the Dillon and Kennedy rounds. The reason for this is easy enough to see: the EEC from the start was defining itself as a customs union that was compliant with the provisions of GATT. In consequence, its approach to international trade and its decision-making structure for trade matters became the first plank in its external policy. Through its participation in negotiations at the international level, the Community rapidly became a key player in trade matters and created a strong external policy position in international bodies.²

A second, more structural reason why trade became the central feature of the early external policy was that the common policies on trade and measures taken in this sector promoted the construction of the Community. Other policies for agriculture – focused

1 Treaty of Rome, Article 3 (b) (d) and (e) on original common policies, and Articles 110 – 116 on commercial policy. Development Policy is found in Part Four.

2 Article XXIV in GATT 1947. The strategy was later described as follows: “The introduction of the Common External Tariff would allow the EEC to be identified as a single customs entity vis-à-vis the rest of the world, [and designed] so as not to infringe GATT rules”. Cited from the official Commission History.

first on production, not trade – and for transport were implemented more slowly, while policies on internal matters such as competition and industrial development were developed later still. Years later, a senior Community official of the 1960s expressed his opinion: “I do not believe the authors of the Treaty foresaw the scale of the Community’s role in the world [at the time the commercial policy articles were drafted]”. In fact, by the time of the Kennedy Round (1964) and the first enlargement (1973) the EEC already accounted for 40% of world trade.³

Development policy

Another key component of the EEC external policy, equally mentioned in the preamble to the Treaty, was ‘overseas development’. This was implemented through Part Four, which sets out the provisions applicable to the French and Belgian colonial territories in Africa, and was closely linked to the debate about post-colonial responsibilities being developed by the United Nations. The legal basis for the policy was later consolidated by international treaties, such as the Yaoundé and Lomé Conventions, and its geographical scope was broadened in the 1970s, first by extension to the African, Caribbean and Pacific (ACP) former British colonies, then by Association agreements with Mediterranean countries.

Bilateral and plurilateral relations were also strengthened by the Community’s and member states’ provision of development aid. It is frequently said that the EU is the leading donor, or even the largest donor, of such aid in the world, and analysis of the OECD data on aid as a proportion of gross national income supports that view. While the absolute figures are high, it is also true that there are duplications between EU and member state programmes which reduce the effectiveness of the aid. Thus, in its formative years the Community was clearly driven by economic and trade factors which were at the heart of its need to establish its place in the international world. Commercial policy and trade arrangements were the principal areas of construction, with the development of industrial and social policies taking a second place.

Trade negotiations

A major purpose of this chapter is to uncover and put on record the mechanics of trade negotiations – the political/legislative process by which they are initiated, how they are prepared by sorting out preliminary problems, and how they are conducted in bilateral and multilateral contexts.

3 Edmond Wellentein, the first Director General for Trade, from 1958-1972, cited in the same history.

It is obvious that negotiations in different fora, on different subject matter and in different policy contexts will vary considerably. Multilateral negotiations in GATT for example would have involved 50-60 countries in the 1960s/1970s and would include both detailed bilateral and general exchanges on tariffs as well as broader discussion of rules. In the development context some policy elements depended on unilateral decisions – the Generalised System of Preferences (GSP), for example – although they were applied within a multilateral framework of agreed principles. The OECD discussions on development assistance (aid) followed a similar path.

What this implies is that there is no ‘one size fits all’ approach which provides guidance across the board on how to initiate, prepare, and conduct a negotiation. A case-by-case approach is inevitable. Furthermore, the domestic statutory requirements for embarking on negotiations with another country will usually be quite different, as they are today in Europe and the US. Let us see what happens.

Initiating a deal

Historically, the negotiation of a trade agreement starts from a move to seek a closer relationship with neighbouring countries, whether to deepen a political linkage or to gain some economic advantage. No doubt, often both. This was the genesis of early EEC contacts with Switzerland -almost surrounded by the Community – and of the EU agreements with Greece and with Turkey; and with the European Free Trade Association (EFTA) group (formed in 1962) and with a number of Mediterranean countries. The economic objective would be to build on the existing trade flows and on the fact that the two parties have an interest in trading with each other.

These agreements date from 50 years ago, and it is immediately obvious that the process of preparation, domestically or with the partner, was in those days less intensive than it is now. Stakeholders and civil society groups were not yet visible; and even the industrial and agriculture trade lobbies were less demanding. In a world where high tariffs and many restrictions were still common, liberalisation was a shared general objective. Much of the lobbying activity was done at the national level rather than the European level. In agriculture, where agreements included mechanisms for support and market creation as well as border protection, things were livelier. In actual practice, the feedback from a consultation process came mostly from the member states that were sitting at the table.

Domestic consultations which would confer democratic legitimacy to the negotiation were relatively rare. In theory a process between government and parliament leading to a political decision would be required to ensure passage of legislation. However, in the

EEC context in 1973, there were nine governments in one Council and no Parliament; legitimacy and political decision was a simpler affair. Ministers were representative of their country and were expected to have secured an agreement domestically by whatever customary process existed. The Commission, after consulting members, would seek a mandate from the Council of Ministers with no further democratic underpinning – leading to criticisms that there was a ‘democratic deficit’ – which at that stage there was.⁴

My first experience of this system was when the Commission was seeking a mandate for the Tokyo Round in 1973. The original mandate was short, no more than a page or so; and it did not commit anyone to any specific result, it was more a green light to participate on the basis of a fairly vague agenda, such as “a substantial reduction in tariffs and other barriers” or to secure a “Free Trade Agreement on goods, in accordance with GATT rules” if a bilateral agreement was envisaged.

These broad objectives were written up into a longer statement of intent in the trade ‘113 Committee’ where member states’ role was “to assist the Commission” in the negotiations. In 1973, rather surprisingly, this longer version was then written into the record of the GATT Preparatory Committee which was preparing the Ministerial Conference to launch the Round. Thereafter the Commission was expected to get prior agreement before making specific proposals, and to report back to members regularly on progress made.

Further preparation

The mandate process described is part of the political preparation, but at another level the preparations involved the collection and analysis of trade flows with other participants, on the basis of whatever detailed trade statistics could be found. Data were required for each individual product (5,000 items) and for each main sector (99 chapters), and average duties were calculated weighted by the trade where possible. This was always laborious, in the days before a single tariff nomenclature had been agreed, and before the Harmonised System of 6-digit or 8-digit identification of products was established. I can recall large sheets of graph paper with rows and columns and numbers written in in pencil – with subsequent revisions. Computer programmes for statistical purposes were being developed on an ad hoc basis according to many different policy priorities. We had to fight our corner for external trade against all other customers. We did what we could.

4 Even in later years when there was an elected parliament, it did not have a direct role in matters related to trade negotiation until the Lisbon Treaty in 2009.

Conduct of negotiation

Within the EEC the role of the Commission had been established during the GATT examination of the Treaty of Rome and in later tariff negotiations. It had the sole right to launch a negotiation proposal and was sole negotiator with third parties. This was designed for multilateral purposes, but the process was adapted for a bilateral agreement. In my time, the EEC-EFTA agreements had been signed and sealed, negotiated largely by the Commission officials responsible for the bilateral relationships. The agreements then had to be examined and defended in Geneva, which was my role; and data had to be available to prove that “substantially all the trade” was indeed covered by the deal, as requested by GATT Article XXIV.

The changing nature of trade

My observations so far draw from my experience of the EU some 50 years ago, and it is clear that much has changed in the trade agreement world since then. We know that the global economy has seen massive changes, with the advent of the internet supplying instant communication and universal access to information; and we know that globalisation has impacted on financial and economic relationships. International trade has not been immune to these effects, but I believe they have been compounded by other specific developments.

One change that has occurred was the result of the extension of the WTO rules from goods trade to trade in services, following the adoption of the General Agreement on Trade in Services (GATS) at the end of the Uruguay Round in 1994. The primary effect of this was to bring a wide range of service activities within the international rulebook, in many cases activities that primarily supply a service in the domestic economy, but which have more recently been developed to provide cross-border services into another country. These activities were then subject to different control mechanisms since physical checks at the border would no longer be possible.

Another change has been the alteration in the pattern of international trade due to globalisation and the advent of value chains. Previously, a nation’s trade was organised as a function of its production and involved bilateral linkages and exchanges from one market to another. In the *new order*, trade flows include inputs and intermediate products into the production process, with flows entering and then transiting the country on the way to another market. This raises new issues related to the origin of goods and services and their compliance with different sets of national standards.

These shifts in the composition and patterns of trade began to affect the public perception of trade policy and their expectations in relation to the content of trade agreements. The changes in the focus and context of trade began to be perceived by consumers as trade-related, and policy areas such as health and education or environment and climate change, previously seen as matters of domestic concern, were now thought to be part of core trade policy.

A much wider range of regulatory controls followed with a focus on transparency and on techniques such as impact assessments, aimed at checking the consistency of policy against a new set of parameters. This in turn created a situation where new stakeholders emerged – consumer lobbies and civil society began to influence the way that trade agreements were prepared and the process that conferred a degree of democratic legitimacy.

In my own experience, this shift in the process of managing a trade negotiation first became evident early on during the Transatlantic Trade and Investment Partnership (TTIP) negotiations in 2014-2017 between the EU and the US. Since 1995 the EU had begun to adapt its free trade agreements to include provisions on services. The Americans also adapted the North American Free Trade Agreement (NAFTA) to the services context, but elsewhere the changes due to GATS and their implications seemed to move more slowly.

A major exponent of this shift and its implications for trade has been Pascal Lamy, the former Director General of WTO, who has described it as a moment of transition from the ‘old trade world’ to a new trade order where changes will bring a radical 180-degree turn around from producers to consumers, and from protection to promotion. Producers hitherto had been concerned to secure new benefits from trade agreements either to increase their exports or to protect themselves against low-cost competition by imported goods.

In future, consumers and civil society groups would set aside such concerns and look to promote policy change on global issues by incorporating new obligations in trade agreements. The pressures created on their own government (or the EU) would provide new leverage to press a trade partner to accept their own norms as a condition of continued market access or to agree in the reverse direction to allow their norms to be adapted.

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About the author

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Part 2

Specific dimensions of EU trade policy

7 EU trade policy and services: The perspective from the private sector

Pascal Kerneis

European Services Forum

Services play a significant role in all global modern economies. In a world that is increasingly globalising, services sectors provide essential support to the rest of the economy.

Trade in services

From an EU-level perspective, the importance of services becomes clearer. Taking intra- and extra-EU trade in services together, the EU represents 41% of the world trade in services, while services represent 73% of EU GDP. Exports of services represent 32.6% of total EU exports in terms of balance of payments (BOP). Those BOP figures give the wrong picture, however, and do not reflect the real economy. An explanation for this dichotomy can be found by calculating trade not in terms of balance of payments at the border, but rather in terms of value added. The joint OECD-WTO Trade in Value-Added (TiVA) database indicates that there is a significant part of the services value added in the exports of manufactured goods, representing up to 34.5% of the value of EU exports of goods in 2016.¹ This means that services represent 58% of total EU exports in terms of value added. The EU is the largest exporter and importer of services in the world – it exported €912 billion of services in 2017 (an increase of 61% since 2010) and imported €720 billion (a total combined annual volume of €1,633 billion). This represents 23% of global trade in services (extra-EU), and also presents a positive balance of €191 billion, contributing to the strength of the EU economy. The world of trade has dramatically changed over the last 20 years, and the importance of services in trade needs to be properly assessed in the future trade policy.

¹ Also known as "Mode 5" services, as discussed in Foltea (2018).

Investment

It is not only in trade that services play a central role. Besides being the world leader of services trade, the EU is also the biggest world investor, investing €10.6 trillion in outward stocks (34% of global foreign direct investment, or FDI) and €9.1 trillion in inward stocks (29% of global FDI). Fifty-eight percent of outward FDI is invested by European services sectors in the rest of the world; and more importantly, 87% of EU inward investments are to the European services sectors. This is extremely significant and not sufficiently grasped by policy. Recently, the EU approved a new framework to screen FDI with the main purpose of keeping the EU open to investment while safeguarding Europe's security, public order, and strategic interests when it comes to foreign investments into the EU. FDI plays a vital role in European economies and the EU is seen as one of the most open investment regimes, according to the OECD FDI Regulatory Restrictiveness Index.

Employment

A recent report from the European Commission (Arto et al. 2018) reveals not only that EU exports support 36 million jobs, but also that 61% of this employment is in services. This means that 22 million services jobs are directly related to EU exports (goods and services) to the rest of the world. Significantly, most of these jobs were high-skilled jobs – 20% of EU jobs supported by EU exports to the rest of the world were high-skilled jobs in the services sector, 30% were medium-skilled jobs, while 11% were low-skilled jobs. The report also provides details of how the export of services creates jobs in the countries to which European services businesses export. In 2014, the services sector accounted for 47% of the employment outside of the EU supported by exports of the EU, a significant increase compared to 2000, when it was 37%. This means that more than 9 million services jobs outside the EU are created by EU exports.

The predominant role of the EU in the multilateral system

A necessary WTO reform

The EU has played a pivotal role in the creation and functioning of the WTO. The setting up of the multilateral system of the WTO has been the cornerstone for the development of the global economy since WWII. The establishment of international rules of law, with countries making commitments to respect their trading partners in exchange for mutually agreed access to each other markets, is the simple basis of today's international trading system. This system has been essential in the avoidance of major trade conflicts between nations and has allowed economies to thrive, elevating

millions out of poverty, creating millions of jobs, and fostering innovation and growth. The WTO is the right tool to set international trade rules that will ensure a level playing field among all exporters and investors. Hence, this system must be preserved. Services-related organisations such as the European Services Forum (ESF) call on WTO Members to modernise the organisation so as to transform the rules of the world trade of yesterday into a new rulebook for the 21st century. The WTO is currently facing a severe existential crisis. The reform and modernisation of the WTO will be the most important task regarding trade policy in the coming years. There is no doubt that the lack of progress in delivering new market access gains and new disciplines through the Doha Development Agenda (DDA) has contributed to weakening the WTO. The rules now need to be strengthened to ensure that all countries will apply the same disciplines with open markets but fair and non-discriminatory rules.

Strengthening the negotiating function of the WTO

A WTO e-commerce agreement

All trade in goods and services – from the placing of an order to the confirmation of delivery – now involves the electronic transfer of data. Data transfer is today's all-purpose means of business communication, spurring economic growth and innovation in all industries. The EU is the world's most data-dependent actor in the global trading system, illustrating the importance of enabling digital trade for the growth of the European economy. This explains why the ESF welcomed the fact that, at the end of the December 2017 WTO Ministerial Conference in Buenos Aires, trade ministers from 71 countries adopted a Joint Statement on E-Commerce. Seventy-seven countries are now participating in these plurilateral negotiations launched in March 2019 in Geneva, which look at setting up disciplines in various areas related to international e-commerce. These talks are on the flagship of the new and modernised negotiating function of the WTO.

WTO disciplines on services domestic regulation and investment facilitation

Other negotiations are still ongoing in the WTO, mandated by Article VI.4 of the General Agreement on Trade in Services (GATS) aiming at setting up disciplines in countries' domestic regulation of the various services sectors. Reaching an agreement by the 12th WTO Ministerial in June 2020 in Kazakhstan will demonstrate that the multilateral system is still able to deliver. More transparency on the licensing procedures and other regulatory aspects is a key demand of foreign companies looking to do business in hosting countries, and will contribute greatly to better international trade and investment in services sectors. In the same vein, the joint initiative towards a WTO Investment Facilitation Agreement, whereby signatories will commit to more

transparency in licensing and administrative procedures for all investors, will also shows the WTO relevance.

Trade in Services Agreement (TiSA)

Rules and commitments for market access in trade in services in the WTO, already through the result of the Uruguay Round and the creation of the General Agreement on Trade in Services and confirmed by the unfinished business of the DDA, have always been agreed through plurilateral negotiations. That was also the case during the Trade in Services Agreement (TiSA) negotiations, which unfortunately were suddenly halted at the end of 2016 ahead of a final ministerial council which could have led to the conclusion of an ambitious deal on trade in services. Such an agreement, dealing exclusively with services trade, would have been an acknowledgement of the importance of services in international trade. ESF encourages the EU to monitor the possibility of resuming these negotiations closely, as such an agreement will provide not only a new rulebook for the services trade, but also new market access commitments.

The necessary pursuit of bilateral trade policy

The negotiations of bilateral free trade agreements (FTAs) are a necessary complement of the multilateral agreements. The services industry is a strong advocate of concluding ambitious, deep, and comprehensive FTAs with all trading partners that demonstrate a willingness to work towards a strong commercial relationship with the EU, built on high standards and respect for sustainable development. EU FTAs should systematically aim at achieving liberalisation of services sectors markets in all modes of supply, from cross-border trade in services to movement of business persons, through the removal of barriers that are hampering or limiting foreign direct establishments.

Ongoing trade negotiations with ambitious services chapters

The EU is currently negotiating a long list of bilateral and regional trade agreements. Some of these negotiations should deliver high-standard agreements with ambitious services chapters and market access commitments, following the negative list approach that provides better transparency for business. This should be the case for the talks with Australia, New Zealand, and Chile; it should also be the case with Switzerland, the second biggest trading partner of the EU for trade in services. The EU exported €118 billion worth of services to Switzerland in 2017. Hence, the EU should modernise the agreements governing the trade relations with Switzerland with ambitious services components in a new deep and comprehensive FTA (DCFTA). The recent conclusion of

the agreement with Mercosur was long overdue, although given the very old mandate, the results for the services sectors are of medium quality. The most desired FTA that the EU should go for is a bilateral deal with India as soon as possible. The EU also has to further improve its trade in services relations with its Mediterranean and Middle Eastern neighbour countries – first by concluding the services and agriculture talks with Tunisia and Morocco, then by including Egypt in these discussions. To circumvent the stalled FTA talks with Gulf Cooperation Council (GCC) countries, the EU should envisage the negotiation of a regional investment agreement with these six countries. And European businesses support the revision of the Custom Agreement with Turkey as a tool to tackle the many existing barriers to trade and investment in that country. The talks with Indonesia have to go on so as to further open up the services market of this vast and populous country, and the negotiations with other Association of Southeast Asian Nations (ASEAN) countries, such as Malaysia, Philippines and Thailand, must resume as soon as the political situation is ripe. Services should also be a priority in the Economic Partnership Agreement (EPA) revision with some African countries and in the forthcoming negotiations of the Post-Cotonou Agreement between the EU and the African, Caribbean and Pacific (ACP) countries.

The incoming Commission will have to reinsert new momentum to the negotiations of the bilateral investment agreement with China, where European services companies encounter many trade and investment barriers. Investment negotiations should also be launched with Hong Kong and Taiwan. Last but not least, ESF deeply regrets the suspension of the negotiations of the EU-US Transatlantic Trade in Investment Partnership (TTIP) in October 2016. One can only take note that services are not on the agenda of the potential future mandate of partial EU–US trade talks that is currently being discussed. However, given the fact that trade in services represents 38% of total exports by the EU to the US, and 46% of the total exports from the US to the EU, services should not be forgotten as the EU advances in its trade talks with the US.

A better visibility and enforcement strategy for the services contents of EU FTAs

ESF commends the work of the outgoing European Commission, which achieved significant success in pursuing the ‘Trade for All’ strategy launched by Trade Commissioner Cecilia Malmström in 2015. Numerous trade negotiations and implementing trade agreements were agreed with partners around the world, such as Canada, Japan and South Korea, Colombia, Peru and Ecuador, as well as with Central American countries and with neighbouring countries in Eastern and Central Europe (Ukraine, Georgia, and Moldova). Ambitious deals with Singapore and Vietnam were made. These FTAs have contributed significantly to the liberalisation of services with our trading partners, allowing new business opportunities and strengthening the legal

security of doing business through binding rules of current regulatory regimes. The political conclusion of the EU–Mexico FTA revision is another success for EU trade policy.

A key challenge for the incoming European Parliament and European Commission will be communicating the benefits of the FTAs to service businesses, allowing them to better utilise the opportunities available under such deals. Negotiating agreements is of no value if those who are intended to benefit from them are unaware of their advantages. The European Commission has done excellent work to inform businesses in the manufacturing and agriculture sectors on the benefits of the FTAs for goods in terms of reductions in tariffs, understanding the rules of origin, or standards and other non-tariffs measures.

The incoming Commission must give equal attention to services companies, with targeted communication materials (licensing requirements, investment opportunities, working permits, etc.) informing economic operators in these industries of the opportunities an FTA can provide for their business, and where to find the practical information. Since trade in services represents more than 30% of total EU trade in terms of balance of payments and more than 55% of total EU trade in terms of value added, much more needs to be done in this area. Despite the amount of text in EU FTAs dedicated to services ranging between 30% and 50% of the total number of pages, almost nothing is dedicated to services industries when it comes to the implementation tools. This must be corrected. Trade in services statistics should be systematically detailed by sector, in all relevant publications, as is the case for trade in goods sectors. Information to help European services companies to better understand the agreements and how to export or set up a commercial presence should also be developed. The technical content of FTAs related to services needs to be explained in a digestible way for non-experts.

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About the author

Pascal Kerneis has served as Managing Director since ESF's creation in 1999. He is a lawyer specialised in European Law. Having completed his Ph. D. thesis on international Trade and European Law, in 1990, Pascal started his career as a legal expert for the European Commission. After having joined the European Banking Federation, he was closely involved in the WTO negotiations on financial services. In December 1997, in Geneva, he participated in the private financial services industry's effort to help the negotiators achieving a comprehensive agreement, with substantial commitments for the banking sector.

8 Differentiation and soft power as a means of promoting a balanced rules-based trading system: The case of public procurement

Steve Woolcock

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At a time when the United States is leading the trading system back towards a more power-based order the effective use of European Union (EU) soft power is important for both the EU and the international trade and investment order.

An open trading system is needed because of the economic benefits from cooperation in trade and investment. The alternative response to interdependence is economic nationalism with all its inherent dangers of conflict. Balance is needed between commercial interests and other legitimate policy objectives, for example sustainable development. History also suggests that the trading system also rests on an overall balance of benefits, something that for market access commitments is determined by reciprocity or in order to achieve differentiation, asymmetric reciprocity. This can be achieved through differentiation in commitments on tariff bindings or other market access commitments. But it is also necessary to work towards differentiation in terms of the application of trade rules.

The EU should continue to support a rules-based system

An open, balanced, rules-based system is necessary for the EU, because it is compatible with the EU's domestic acquis. The nature of EU trade and investment decision-making is also such that it does not have the option of pursuing a power-based approach. The EU has market power, albeit in relative decline, but more importantly there has never been and is unlikely to be a qualified majority, let alone a consensus, of EU Member

States in favour of power-based trade policy. Such a policy implies, for example, threatening market closure in order to redefine rules or renegotiate agreements. A rules-based system is also in the interests of other OECD economies and most developing countries that do not have the leverage or capacity to make such a policy credible.

The need for differentiation

The lesson from the Doha Development Agenda (DDA) and subsequent developments is that there needs to be differentiation in the rules between countries at different levels of development and with different circumstances. The trading system has changed and is no longer one in which the OECD economies can shape outcomes and provide the international public good of an open trading system. This was the case before the recent shift in US trade policy, but is even more so at a time when the US is not interested in shared leadership. The trading system has been evolving into a more heterogeneous, or multipolar system for some time, but the trade rules have not adjusted adequately.

One model for approaching the question of differentiation is the Trade Facilitation Agreement (TFA), which establishes rules for customs and border controls but links adoption of these to the capacity of members of the World Trade Organization (WTO) to implement them effectively. At a multilateral level the EU should promote such a practical, functional approach to differentiation and thus seek to avoid a confrontation that would result from an attempt to produce formal provisions on which country should be a declared or self-declared developing country.

Given the limited progress in multilateralism trade and investment policy is currently being shaped by preferential trade agreements (PTAs). So how should the EU use its soft power to promote the overall aim of an open, balanced, rules-based system in such agreements? Differentiation is again a crucial element here. De facto the EU does differentiate between PTA partners according to the level of their development. The agreement with Canada is more comprehensive than agreements with Columbia or the Caribbean Forum (Cariforum), the agreement with Singapore is more comprehensive than that with the Southern African Development Community (SADC), etc. There is also a differentiation between countries that come under the EU General System of Preferences regimes (GSP, GSP+ and Everything-but-Arms) and those African, Caribbean and Pacific (ACP) countries that have signed Economic Partnership Agreements (EPAs). But what does differentiation in rules look like in more detail and is it possible to develop and articulate a more coherent approach?

What constitutes a rules-based system?

It is first helpful to be clearer on what is meant by trade and investment rules. Four main elements can be identified:

- International voluntary norms, such as those developed in the World Customs Organisation and in the International Standards Organisation which are important for trade facilitation in international supply chains. There are also United Nations Commission on International Trade Law (UNCITRAL) and United Nations Conference on Trade and Development (UNCTAD) model laws or codes. The process by which these norms or standards are developed is influenced more by developed countries with more research capability knowhow and resources, but they are generally recognized as examples of international best practice and used as models by many countries. The EU is active in developing such standards and norms;
- Trade and investment agreements then form the next element of a rules-based system and these generally build on the international voluntary norms or standards and incorporate them in more binding obligations. With the lack of progress in the WTO this is now taking place predominantly in PTAs. In the case of the EU this means seeking comprehensive coverage;
- A third element of the rules-based system is the implementation and enforcement of such commitments and rules. Here there are arguably two elements, one soft law and one hard law. The soft law element consists of peer reviews and dialogue based on transparency. In the multilateral setting this is if the 'third leg' of the WTO, which has been criticized recently as becoming partially redundant because of a failure of WTO members to engage. In PTAs the soft law element finds expression in the many committees and working groups that are established for more or less every chapter of a given PTA. These have been criticized in academic circles as WTO-X, precisely because they constitute soft power. The EU PTAs include more elements of such soft power than other PTAs;
- Finally there is then the hard law element of implementation or enforcement, which involves the use of sanctions or retaliation, sanctioned by an agreement and only after conciliation and quasi-legal dispute settlement procedures have been completed.

What does it look like in practice?

With regard to rules included in EU PTAs one of the most controversial policy areas has been public procurement. In terms of the first element above, public procurement norms or regulatory standards have been developed through many years of dialogue in the OECD. These norms have also been adopted in the UNCTAD, in the shape of the Model Law on Public Procurement and have shaped and been shaped by standards developed by the donor agencies, such as the World Bank.

These norms and standards have then been adopted in trade agreements. There remains no multilateral agreement in the WTO, but a plurilateral agreement in the shape of the Government Procurement Agreement (GPA). Developing countries did not sign up to the GPA, in large part because there was no differentiation in the rules. Only when Art V was added in the 2012 revision that came into force in 2016, was there any differential treatment. Developing country members of the GATT/WTO also saw the inclusion of procurement almost exclusively as part of market access bargaining by the OECD members. Art V still makes the differentiation subject to the negotiation of an “appropriate balance of opportunities”. Various means of achieving differentiation are available under the agreement in addition to asymmetric commitments on coverage, but the provision on technical cooperation is still soft and it all depends on the application of the agreement.

There are normative and commercial reasons for including procurement in trade agreements. Procurement accounts for a large share of GDP (an average of 12% in OECD economies and much more in developing). In developing economies, it accounts for a major share of public expenditure. It is therefore important that public contracts are allocated according to clear, objective criteria that promote the balanced goal of sustainable development. Without rules or a regulatory framework governing the allocation of public contracts, there is a danger that discretionary power will be used to promote short-term political goals, i.e. the award of contracts for projects that help incumbents get re-elected or retain power. In many instances the allocation of public contracts is also a major source of corruption.

The EU’s commercial interest is due to the fact that it has comprehensively adopted international best practice, as expressed in the various codes and models, in binding EU law. There is therefore pressure to get its major trading partners and competitors to do the same.

So, how has the EU differentiated in the PTAs it has negotiated? Table 1 summarizes the position for public procurement chapters in selected EU PTAs. It illustrates that the EU has been applying a de facto policy of differentiation. The EU has also

been providing capacity building and other support for developing countries that are constrained by limited capacity. But this differentiation has been more the result of flexibility in negotiations than an articulated policy. There is also a tendency in the EU policy discourse to focus on market access rather than promoting suitable rules to help improve the practice of awarding public contracts.

Soft power as the way forward

By way of conclusion it can be argued that the use of hard power has had limited success in extending the rules-based trading system to include public procurement. Efforts to include it in the WTO were resisted because of the perception that it was part of a market access bargaining process that inevitably favoured the developed economies because the limited supply capacity and relatively high costs of compliance in many developing economies. There has also been opposition on the grounds that preferential procurement was seen as a development instrument and therefore part of the 'policy space' that needed to be retained. But there have been other sources of opposition to the adoption of rules in this policy area. Political motivations have been important when political decision makers have blocked greater transparency or more objective contract award criteria because they wish to retain discretionary power in the sense that governments, whether central or local, are reluctant to have disciplines over contracts. All too often a new road, hospital or school is seen as a means of gaining votes. Another source of opposition has been that national administrations simply do not have the resources to implement detailed rules on transparency and contract award procedures.

For the effective adoption of objective rules in government procurement soft power is therefore needed. Dialogue and persuasion are needed to bring about a genuine change in the culture surrounding public contracts that favours objective criteria and thus the best use of resources in promoting sustainable development. Without this the adoption of legislative reforms will mean little. Soft power in the shape of capacity building is also necessary to help with the creation of a professional cadre of procurement officials needed to implement reforms.

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9 The EU trade policy on geographical indications and the missing link with development

Stefano Inama and Pramila Crivelli¹

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The vigorous EU policy on Geographical Indications (GIs) is notorious both in World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) circles. The negotiations in WIPO leading to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications² have seen once again the EU and the US at loggerheads, with a number of developing countries and Least Developed Countries (LDCs) as bystanders. The same Geneva protocol has been the object of contention among the EU and its member states about the competence to sign. The European Court of Justice finally solved this dispute.³ The Geneva protocol is now open for accession.

Many LDC delegations in Geneva are insufficiently aware of the trade and development aspects of GIs, the importance of actively participating in WTO/WIPO deliberations, and the possible inclusion of GIs protection in free trade agreement (FTA) negotiations as a development tool to promote their traditional products. Nonetheless, there has been a quiet but steady increase in interest on the part of developing countries, including LDCs, towards adoption of GIs. Some, like Thailand, have adopted extensive GI policies to promote their agricultural products. The potential positive role of GIs for rural development has been well recognised by international organisations such as the International Trade Center (ITC), the Food and Agricultural Organization (FAO) and the United Nations Conference on Trade and Development (UNCTAD). The ITC produced one of first most comprehensive reports on GIs (Giovannucci et al. 2009); FAO has laid down the foundations of the linkage between rural development and territory

1 The views expressed in this chapter are those of the authors and do not necessarily reflect those of the United Nations. This contribution draws in part on Inama (2017).

2 For further details, see WIPO (2018).

3 The ruling of the European Court of Justice of 25 October 2017 in Case C-389/15 - Commission v Council - stated that the EU has exclusive competence for the Geneva Act of the Lisbon Agreement.

(Vandecandelaere et al. 2010), emphasising the “different steps of the origin-based quality virtuous circle”; while UNCTAD has defined a clear trade and development vision of GIs (UNCTAD 2016).

The economic development literature has shown that GIs can be considered as an opportunity to:

- protect local species that serve as raw material (e.g. ingredients) for potential GI products;
- jointly build codes, practices, or product specifications aimed not only at increasing process or product quality but also at creating symbolic quality in-person service attributes (Daviron and Ponte 2005), as a way to design rules to locally build awareness regarding environmental protection in the areas;
- support collective management (e.g. of the forest), and
- boost local cohesion among potential GI users and consumers.

In light of these findings, several international agencies, including FAO, UNCTAD and WIPO, have joined forces to promote the development of GIs in developing countries through various channels.

One of the major initiatives is the recent development of the Continental Strategy for Geographical Indications in Africa 2018-2023 mandated by the African Union (AU) and developed by the FAO:

“The continental strategy process relies on the involvement of key African players, at continental and regional levels, among which the African Union member States and the regional organizations specialized in GIs, OAPI and ARIPO.”⁴

The document “A continental strategy for Geographical Indications in Africa” was endorsed by the Second Ordinary Session of the Specialized Technical Committee (STC) on Agriculture, Rural Development Water and Environment in October 2017, with the following outcomes:

- *Outcome 1: An African vision on GIs as a tool contributing to sustainable rural development and food security and a GI African approach are developed and shared.*
- *Outcome 2: Enabling a legal and institutional framework at the national and regional levels for the protection of GIs.*

4 See the African Union document on a continental strategy for GIs: <https://au.int/en/documents/20190214/continental-strategy-geographical-indications-africa-2018-2023>

- *Outcome 3: The development and registration of GI products as pilots and drivers for rural and sustainable development are supported, to provide learning and demonstrative effects.*
- *Outcome 4: Market development for GI products is promoted through innovative approaches on local markets, through regional trade among the RECs and on export markets.*
- *Outcome 5: Research, training programs and extension are encouraged to ensure the identification, development and diffusion of the best African tailored practices and to contribute to the African approach, in a context of climate change.*
- *Outcome 6: Awareness of all stakeholders, including consumers, is created, communication among stakeholders and information to a wider audience are insured.*

An action plan for the implementation of the strategy has been discussed among the African Union, the Organisation Africaine de la Propriété Intellectuelle (OAPI), the African Regional Intellectual Property Organization (ARIPO), the European Commission, FAO, WIPO and the Agence françaises de développement (AFD). However, more than a year after the approval of the AU Continental strategy on GIs, no funding has been disbursed yet for the direct implementation of the action plan; only projects having limited geographical scope and funding are ongoing.⁵

Overall this lack of resource mobilisation for GI initiatives is rather striking. This holds true also for LDCs that have been at the centre of a strategy to limit migration, where GIs could potentially be an additional tool for rural development preventing rural exodus. In particular, lack of funding has been conspicuously visible in Niger, where rural communities took the initiative jointly with the government to develop, with their own funds, the books of specifications for four potential GIs and submitted them to the OAPI. However, without further technical support, the GI committee and rural communities are likely to face unsurmountable obstacles to obtaining GI registration.

The increasing attention given to GIs or other forms of protection for traditional products has gained increased awareness in developing countries and LDCs alike following attempts by multinational companies to capture the names of their traditional products. The dispute among the government of Ethiopia started when Starbucks applied for trademark protection for Shirkina Sun-Dried Sidamo coffee in the US. The Ethiopian government opposed it, but Starbucks insisted. After a public relations campaign by international NGOs (such as Oxfam) that generated about 90,000 complaints against Starbucks, the corporation reconsidered its position and entered into negotiations with Ethiopia

5 Source: FAO presentation at the executive workshop on Geographical Indications at the European University Institute, Florence, Italy, 9 October 2018.

(Hughes 2009, Mengistic 2012). After arduous and long negotiations, the government of Ethiopia, under the Ethiopian Coffee Trade Marking and Licensing Initiative, was able to file 36 trademark applications in Australia, Brazil, China, India, the US, Saudi Arabia, South Africa, Japan, and some EU countries.

However, this has not resulted in a victory for the Ethiopian coffee producers to successfully brand their coffee as a quality coffee rather than as a commodity. The trademark owned by the Ethiopian state is not successfully used by the producers to market their coffee since they are unable to establish an efficient organisation. The Ethiopian government is currently preparing to introduce a GI law, but at the time of this writing this has not yet happened.

So, how can farmers from LDCs access and protect their products given the different forms of protection? In the absence of progress at the multilateral level, the US and the EU will continue to try to tilt the balance in their favour when GIs are object of contention. Thus, developing countries and LDCs have to mature adequate ownership, protection, and labelling at the national level for their products through the adoption of *sui generis* protection taking on board the opportunities provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and progressively inform consumers about the nature and origin of their products.

The EU is one of the most important Aid for Trade (AfT) donors and the most vocal proponent of GIs. It is therefore counterintuitive that the EU is not investing more official development assistance (ODA) resources for the development and marketing of GIs in developing countries and LDCs. Much negotiating EU capital has been invested in inserting GI protection into EU FTAs with developing countries, including LDCs, with no corresponding efforts in providing assistance to these countries in developing their GIs. Where some progress has been recorded, it has been late and isolated. In addition, such progress was made possible thanks to funds provided by EU member states, not from the European Commission. This lack of coordination and vision by the European Commission among i) the agricultural aspects led by DG AGRI; ii) the trade aspects led by DG TRADE; and iii) the Aid for Trade funds, led by DG DEVCO, to promote the use of GIs in developing countries and LDCs is simply regrettable and short sighted.

By vigorously defending GIs in FTAs entered with developing countries and LDCs while not providing the necessary technical assistance to promote the potential GIs of the partner countries, the EU provides ammunition to those who perceive the EU policy on GIs, besides the rhetoric on cultural and gastronomic heritage, as reflecting a mercantilist intent to sell EU GI-protected products into developing country markets. As a proponent of GIs, the EU should considerably scale up AfT funds to assist partner

countries to develop their own GIs. Persevering on the current trend may nurture another reason for discontent towards EU institutions by EU citizens and consumers, and send the wrong message to the developing countries that are seeking to realise the potential of promoting and preserving their products through GIs or other *sui generis* systems.

What matters is to realise that third countries and their markets may ultimately determine the balance of power between the EU and the US over GIs. Making reference to their previous work in Ilbert and Petit (2009), Petit and Ilbert (2015) reiterated that “the emergence of many new players from the South could ‘change the balance of power on the GI issue’” and went even further when writing “[i]n the Development Round, it can be considered that the extension of protection is politically inevitable”. This, as acknowledged by the authors, did not happen nor there is evidence that the group of ‘friends of GIs’ is expanding at the desired pace even if there are encouraging signs towards GIs in a number of developing countries.

The scant attention given by the EU institutions to the promotion of non-EU GI products seems to be deeply rooted and profoundly self-defeating. Moreover, the previous EU law on GIs was found non-WTO compatible since it made it more difficult for non-EU GIs to be registered in the EU. If the EU institutions, policymakers, and civil society are really interested in and serious about making progress on GIs at the multilateral and bilateral levels, it is imperative to enlarge the vision and strategy beyond the promotion and protection of European GIs as “living cultural and gastronomic heritage”. It has to be recognised that such “living cultural and gastronomic heritage” also exists, albeit at different levels and in different forms, in developing countries and LDCs. This is the only way possible to generate the notion that GIs as much as traditional knowledge are part of IPRs and not a peripheral agricultural trade issue.

There must be a substantial scaling-up of aid policies to promote the use of GIs as rural development tools, and to this effect major coordination efforts by the European Commission among its different directorates – DG TRADE, DG AGRI and DG DEVCO – should be undertaken. Failure to do so will only further alienate the sympathies towards the EU stance on GIs from those developing countries and LDCs that may be interested in adopting GIs and will also widen the distance already existing between the EU consumers, citizens and the EU institutions. In order to be credible, especially *vis-à-vis* the recipient countries, this policy should be best carried out at multilateral level by supporting the initiatives launched by UN agencies and placed in the context of the Sustainable Development Goals (SDGs).

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10 Science and innovation and EU trade policy: Bridging a conceptual and policy gap

Riccardo Trobbiani

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Scientific and technological innovation represent key assets for potential EU global leadership. On the one hand, technological innovation stands as a main driver of long-term economic growth and represents a key factor to maintain the economic competitiveness of advanced economies *vis-à-vis* emerging ones. On the other hand, science and innovation (S&I) must provide solutions to address global challenges related to a myriad of issues including environment, health, water, food production.

Among the policy tools at the disposal of EU soft power, trade plays an undeniably central role in projecting EU priorities externally. Soft power consists of “the ability to get what you want through attraction rather than coercion or payment” (Nye 2004: 5). In trade, the EU holds an exclusive competence, extensive experience and unique power of attraction as the largest negotiating bloc in the world. Thus, in addition to pursuing purely trade-related objectives, the EU has frequently used trade as a foreign policy tool with political, development or other aims (Keukeleire and Delreux 2014: 197-205). Issues related to climate action, health, food, security, development, human rights and more partly depend on trade dynamics. Capitalising on its power of attraction as a trade actor, the EU has often tried to influence third countries’ priorities and reproduce its models and preferences in other regions. This short article shows that this also applies to some aspects of science and innovation priorities and agendas, including in intellectual property rights (IPR), health standards and regulations, climate action and other S&I-sensitive domains. For all these reasons, trade policy should increasingly consider how free trade agreements (FTAs) and other trade agreements influence S&I, and, in turn, how policy choices and their implementation are influenced by scientific expertise.

However, neither EU policy documents concerning trade nor those dealing with S&I seem to properly assess these aspects. The EU generally recognises the importance of expert knowledge in policymaking and has a specific approach in this regard

(European Commission 2002, 2015a). However, the use of scientific evidence does not seem to dominate external policies in general and trade in particular. Also, the EU has progressively taken a broader approach to expert consultation including various sectors of civil society (Potjomkina 2018). In this context, the role of universities and independent research institutes is at best marginal. The lack of strategic thinking at the policymaking level is only partly reflected in academia, which has addressed civil society consultation and use of broader expert knowledge while lacking, however, a more specific focus on narrowly defined¹ independent scientific advice.²

This short essay proposes a first conceptual and policy reflection to fill this gap. It re-adapts two categories which were originally applied to relations between science (an innovation) and diplomacy (The Royal Society and AAAS 2010) to relations between S&I and trade policy. These categories are: ‘science in diplomacy’ (here *science in trade policy*), which concerns the use of scientific advice in support of foreign policy, and ‘diplomacy for science’ (here *trade policy for S&I*), it is to say the use of foreign policy tools to create the conditions for, or improve, scientific research and scientific cooperation between countries.³

A first section refines this conceptualisation and provides examples from recent EU trade policy and trade negotiations. Informed by this reflection, a second section looks at recent EU policy documents to highlight shortcomings in strategic thinking concerning the relationship between S&I and trade. Finally, the contribution reaches some preliminary conclusions and advances recommendations.

Conceptualizing the relation between S&I and FTAs

The relation between S&I and trade should be considered as moving in two directions. On the one hand, from S&I to trade, as scientific evidence informs decision-making for better policies. On the other hand, from trade policy to S&I, as the former has an impact on technological innovation and on the development of scientific solutions to global challenges.

Science in trade policy

The concept of *science in trade policy* helps clarify the relation between scientific expertise and trade, and how the former serves the latter in the case of FTAs negotiations

1 On the topic of narrow and broad conceptions of expertise in EU trade policy see Potjomkina (2018).

2 For exceptions see Vikhlyayev (2002), Pfotenhauer (2013), and Trobbiani (2017).

3 A third type, ‘science for diplomacy’, which expresses the potential of science in creating better relations between countries, was left out of the analysis because less relevant to the field of trade.

and other policymaking phases. For a purposeful use of trade as a soft power tool in certain S&I domains, the EU needs scientific advice to inform its choices.

First, scientific knowledge supports trade negotiations in designing and justifying technical standards. These standards can concern both the production and exchange of goods and services, and address regulatory, health, environmental, safety and other issues. Technical Barriers to Trade (TBT) including regulations, standards, and conformity assessment procedures can serve legitimate purposes, but they are often used to serve protectionist goals. For this reason, the 1995 WTO Agreement on TBTs clarifies these legitimate objectives, which include ‘national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment’. To assess whether a certain product would constitute a hazard, a risk assessment is needed, and should be based, *inter alia*, on ‘available scientific and technical information, related processing technology or intended end-uses of products’ (Art 2.2). EU regulatory cooperation with partner countries has explicitly been included in the TBT sections of EU FTAs. For example, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada includes in the potential regulatory cooperation activities between the two parties ‘conducting cooperative research agendas’ also with the aim to improve the quality of data gathering and research and avoid duplication (Art 21.4 (n)). Among the standards requiring scientific expertise to be defined, Sanitary and Phytosanitary (SPS) measures on food and feed safety, animal health and plant health constitute a central example. Here, the role of EU FTAs is to regulate procedural issues, to support the interpretation and application of WTO standards and to establish mutual recognition with third countries (Rudloff and Simons 2004: 2). Scientific expertise is therefore sought by the EU both on the international and European level. An expert group for Sanitary and Phytosanitary relations with third countries supports the negotiation and implementation of relevant agreement with scientific, technical and economic advice.⁴

Second, scientific advice and consultation with S&I stakeholders take place in the drafting of impact assessment and other studies accompanying the negotiation and implementation of trade agreements. Concerning EC impact assessments, ‘the collection and analysis of all relevant evidence, including data, scientific advice (...)’ represents one of the main steps of the preparation of the work (European Commission 2015b: 18). Directly supporting and steering the negotiation of EU FTAs, deeper Sustainability Impact Assessments (SIAs) are successively prepared by consultancies with a broad array of economic, scientific and technical expertise analysing the economic sectors involved, as well as gauging environmental, social and political implications. These

4 See Register of Commission expert groups and other similar entities: E02704, <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail&groupDetail&groupID=2704>.

can also rely on consultation with external stakeholders, including scientific and research actors. Case in point, the SIA for the CETA counted more than 40 academic and research institutions in a stakeholder network giving advice on various issues, notably environmental ones, and additional academic experts giving their input on investment matters (Development Solutions 2011: 33-37 and Annex 5). Additionally, ex-post assessments can be prepared by the European Commission services or external contractors. In the case of the EU-Chile Association Agreement, for instance, this was done by a pool of external academics and researchers. Scientists particularly contributed to inform the environmental impact assessment (ITAQA Sarl 2012). Finally, other EU or EU-commissioned studies on the potential effects of FTAs are often carried out outside of the framework of trade negotiations, both on specific agreements and on transversal issues (e.g. Boulanger et al. 2016).

Scientific and technical advice in bilateral trade relations does not end with the closing of the negotiation and assessment phases. In fact, FTAs and broader agreements often establish technical and scientific committees to monitor specific issues concerning trade relations between the signatories and to update technical provisions. For example, the EU-Chile Association Agreement created a Joint Management Committee on SPS Measures, also providing for the establishment of expert working groups to identify scientific and technical issues arising from the implementation of the agreement. Better specialized scientific groups including third-party experts can then be established on an ad-hoc basis within this framework.⁵

Trade policy for S&I

The notion of *trade policy for S&I* can help frame the role of FTAs and other instruments in boosting marketable innovation and research by liberalizing trade in S&I-intensive sectors, approximating third countries and regions to EU regulations and technical standards, creating shared guarantees for trade and investment and using access to EU market as a reward for the adoption of innovative solutions to societal challenges (e.g. environmental ones). These examples show how trade becomes a tool of soft power in advancing EU S&I priorities in certain domains.

First, in both services and goods sectors, increased competition from other markets pushes enterprises to enhance productivity, notably through investment in technology and innovation. The removal of non-tariff barriers (NTBs) to services holds a strong unrealized potential, as it globally relies on the outdated framework of the General

5 EU-Chile Association Agreement, Art. 16, http://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175caf0.0004.02/DOC_2&format=PDF.

Agreement on Trade in Services (GATS), conceived in a world where information and communication technologies (ICT) played a minor role. In this respect, the participation of the EU in the negotiations for the multilateral Trade in Services Agreement (TiSA), which are currently on hold, provides an opportunity to open trade and competition in a broad variety of ICT-driven services, fostering productivity and investment in innovation. Liberalization in services and data flows can also have a direct effect on innovation, allowing for better digital connections (e.g. online platforms) between companies, research centres and universities (Cory and Ezell 2016: 9). Technological innovation in response to increased competition is at times considered in EU negotiations, but strongly depends on the market size and type of the sectors liberalized. Case in point, the SIA of the EU-Japan Economic Partnership Agreement foresaw a likely, but relatively minor, effect on technological innovation (EC 2016).

Second, EU preferential trade agreements with third countries are increasingly addressing the protection of IPR. In 2014, an updated *Strategy for the protection and enforcement of intellectual property rights in third countries* identified stepping up IPR protection abroad, especially in developing countries, as a major challenge to protect EU innovation and growth (European Commission 2014a). In recognizing the mixed empirical evidence behind IPR protection effects on R&D investment, the CETA SIA foresaw mixed effects on Canada's innovation and, consequentially, on its GDP growth (Development Solutions 2011: 321-323). The potential winners of stronger IPR protection in Canada were identified, inter alia, in the innovative pharmaceutical industry, and a possible increase in R&D spending and foreign direct investment (FDI) inflows was hypothesized (Development Solutions 2011: 319). The protection of IP can also serve goals that go beyond pure economic interest and help address global challenges. As noted in the 2014 strategy 'IPR incentives are crucial to promote investment in green technologies. With regard to climate change, appropriate IPR regimes can play a positive role in stimulating the transfer and dissemination of innovative green technologies, which involves opportunities for right holders as well as for recipients' (European Commission 2014a: 11).

Third, *trade policy for S&I* can encompass cases where trade liberalization is used as a reward for the pursuance of policies favouring innovation in certain sectors (e.g. environment) and science-based solutions to global challenges. The Generalised Scheme of Preferences + (GSP+) are unilateral tariff preferences granted to 'vulnerable developing countries' for various products in return for the ratification and effective implementation of human rights, labour's rights, good governance and, most relevant, environmental measures. Among the eight international conventions on environment that are included in the GSP+ monitoring, most directly and indirectly require, for their implementation, the adoption of innovative technological solutions and support and

coordination with scientific authorities for data collection, research and monitoring. Some GSP+-relevant conventions on good governance also concern scientific research, namely the UN Single Convention on Narcotic Drugs, UN Convention on Psychotropic Substances and UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which aim at allowing these substances for medical and scientific use while taking them out of the illegal market (European Commission 2016b).

S&I and trade in current EU policies: Bridging the gap

A *New EU Trade and Investment Strategy* was presented by the EC in 2015 in the face of emerging global economic, social and political changes. The strategy mentions liberalisation in trade and services and the general opening of the EU market to the world as factors that can boost innovation within EU companies, but gives no elaborated account of these interactions (European Commission 2015c: 7–8). More recent EU communications on trade also fail to detail the role of S&I, even when dealing with sustainable and innovative approaches to trade like the 2017 EC Communication *A Balanced and Progressive Trade Policy to Harness Globalisation* (EC 2017a). Also, EU strategic documents concerning S&I fail to properly address trade. In 2012, the Communication *Enhancing and focusing EU international cooperation in research and innovation: A strategic approach* mentioned trade in a very marginal way, as the document promised coordination with other EU policies in order to support foreign policy goals (EC 2012). Almost two years later, another fundamental Communication, *Research and innovation as sources of renewed growth* did not even mention the word ‘trade’ (European Commission 2014b). Nor did the word appear in the 2015 publication from Directorate General Research and Innovation (DG RTD) *Open Innovation, Open Science and Open to the World* (EC 2015d).

In practical terms, when it comes to trade negotiations, a specific cooperation between DG Trade and DG RTD is not in place. Of course, the latter participates, whenever needed, in the inter-service cooperation mechanisms, like inter-service groups to steer and help prepare impact assessments of future trade agreements and inter-service consultations carried out on specific issues during the negotiation process by the lead negotiating DG (normally DG Trade) (Novotná 2016: 62–63). Also, broader bilateral treaties like association agreements often include science and technology cooperation agreements that fall under the competence of DG RTD, but that are mostly treated separately from trade negotiations.

Conclusion: Trade policy beyond trade

This short contribution constitutes a case study on how trade is used as a tool of EU soft power in some aspects of S&I, which is often made possible by the involvement of scientific expertise in the definition of trade policy. The categorization attempted in this article can provide a basis for further research on the bi-directional relations between Trade and S&I, which is needed both in terms of academic enquiry and policymaking. Concerning the latter, examples of how the EU has taken into account various aspects of the relations between S&I and trade policy exist. However, these are not part of a strategic policy approach or clear policy reflection.

S&I should have a stronger say in trade policy. The presence of trade-related issues concerning global challenges, the quick evolution and growth of high-tech and innovative sectors like computers, aeronautics, pharmaceuticals, biotechnology, genomics, nanotechnology and more, enlarge the potential impact of trade policy. This broadened scope calls for a stronger role of S&I actors both in driving and advising the negotiation of FTAs. DG Trade has progressively created various mechanisms for stakeholders' consultation and taken a broad approach to the notion of expertise. These fora include a recent 'Group of Experts on EU Trade Agreements' established in 2018. However, most of these groups are not targeted at independent research institutes and academia and in some cases even exclude their access (Potjomkina 2018). Impact Assessments should take scientific, not only industrial actors dealing with Research and Development, into better account. A specific inter-service group of cooperation between DG RTD and DG Trade could be activated with the aim of defining a strategy for structured engagement. Alternatively, this reflection could take place in the context of the European Economic Diplomacy Strategy, launched by EU External Action Service and the EC to ensure policy coordination among several DGs, member states, and other actors involved in the EU's external economic relations.

Trade has impact on S&I and this should be taken into better account. There has been increasing reflection on the effects of trade agreements beyond trade, and the 2016-2020 Strategic Plan for DG Trade has a specific objective for 'a sustainable approach to trade' (European Commission 2016c). However, there has been no strategic policy reflection on the impact of EU trade policy on innovation and on innovative scientific and technological solutions that can support Sustainable Development Goals, especially Climate Action. Stronger conditionality mechanisms for EU trade preferences should be geared towards innovative scientific solutions to climate, health and other science-based global actions. The environmental component of the GSP+ could be particularly stepped up. Also, the EC should take a leadership role in resuming and bringing forward the Environmental Goods Agreement and the TiSA negotiations.

More generally, trade policy should receive greater consideration in the processes of policy reflection which have been initiated under the Juncker Commission on how to better integrate science into policymaking (European Commission 2015c, 2017b). This becomes fundamental in a global environment where scientific evidence as a basis for policymaking and public support to science and innovation are increasingly under threat.

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Part 3

Relations with African, Caribbean and Pacific countries and Economic Partnership Agreements

11 The EU as a trade and development partner to the ACP: Some initial reflections

Junior Lodge

ACP-EU TBT Programme

The EU and the African, Caribbean and Pacific (ACP) group have shared a close and longstanding partnership spanning trade, political consultation, and development cooperation. Nevertheless, the partnership has become increasingly characterised by serial disappointments and tension on both sides. Beyond this, the EU has failed to engender political capital from its longstanding trade and development partnership with the ACP. The EU's failure to garner considerable political leverage from its Lomé/Cotonou relationship with the ACP can be attributed to an alloy of policy incoherence, weak strategic orientation, and bureaucratic obsession with process instead of fervent pursuit of development impact.

The EU is a major trade and development partner to the ACP group of countries. Trade data provide one metric of the importance of the relationship – 26% of total ACP merchandise exports in 2016 was sent to the EU. The benefits of the 1975 Lomé Convention (first ACP–EU legally binding partnership) conferred a number of trade provisions that spurred ACP development. Most notably, ACP countries gained non-reciprocal preferential access to the EU market. Special Protocols generated export prices that were considerably beyond world market prices. The Sugar Protocol also allowed the EU to act as a buyer of last resort, thereby ensuring the purchase of all ACP export volume. A final example of non-tariff preferential treatment can be discerned from STABEX,¹ which insulated ACP exporting states from a precipitous fall in world market prices. The EU policy reforms have retired these non-tariff trade benefits to the ACP, as evinced from provisions in Economic Partnership Agreements (EPAs).

Beyond trade, the EU has also been a major source of development aid to ACP countries. The EU's legal founding via the 1957 Treaty of Rome also facilitated the establishment

¹ Système de Stabilisation des Recettes d'Exportation.

of the European Development Fund (EDF), which has since committed €112.64 billion.² The importance of EU development assistance stems from a contractual obligation through its multi-annual framework, thereby allowing ACP beneficiaries to plan their respective development interventions. Furthermore, the management of EDF resources nominally entails mutual ACP–EU accountability – a feat not extended to other EU aid instruments. Yet, it should also be clearly stated that the crafting of EDF financial procedures remains the sole preserve of the EU along with the determination of height of respective National/Regional Indicative Programmes (NIPs/RIPs). Nevertheless, the principle of EDF co-management has also resulted in the establishment of a Joint ACP–EU Ministerial Council on Development Cooperation.

The ACP–EU partnership is managed through an expansive array of institutional bodies, including Joint Ministerial Trade Committees, Joint Ambassadorial Committees and the Joint Parliamentary Assembly. The ACP Secretariat frequently interacts on a clutch of key policy issues with various EU actors, in particular the European External Action Service (EEAS), DEVCO and DG Trade. The regular ACP–EU policy engagement has also contributed to the emergence of the last two major multilateral agreements – the Paris Agreement on Climate and the WTO Trade Facilitation Agreement.

Notwithstanding the revolutionary provisions of the Lomé Convention and *prima facie* close ACP–EU collaboration, the two sides share a tense relationship marked by serial disappointment and occasional spasms of anger. What explains the naked antagonism that has long engulfed the ACP–EU relationship? Allied to this, what are the factors behind the EU failing to engender political capital by translating its longstanding trade and development partnership. Courtesy of vignettes of experiences garnered, this chapter seeks to posit a series of arguments on strategic errors made by the EU in its trade and development partnership with the ACP. The EU's ambition to be an earnest and reliable trade and development partner to the ACP cannot be doubted. Yet, this noble EU endeavour remains compromised by a combination of policy inconsistencies, missed opportunities, failure to prioritise concrete developmental deliverables, and an inherent contradiction between a global economic actor and development partner. The ACP are not exempt from justifiable criticism of the manner in which their respective developmental ambitions have been pursued. A final section charts a number of steps that could be instituted by the EU to bolster its role as a major ACP trade and development partner.

2 A number of caveats surround this figure: (i) the overall sum is not entirely awarded to ACP countries as it also includes EU funding for both OCTs and EU Missions in ACP countries and regions; (ii) EU contribution to Cotonou Investment Facility administered by the EIB; (iii) the overall sum also includes EU contributions to global platforms such as the EIF and the Global Fund to Fight AIDS, Tuberculosis and Malaria that are not limited to ACP member states; and (iv) the figure reflects the level of EU commitments but not actual sums spent.

Below is an illustrative and cursory set of recent EU policy and institutional behaviours that underscore the systemic limitations of the EU as a trade and development partner to the ACP. More importantly, the series of examples show the EU compromising its own aspirations to be a main global development partner.

Ineffective EU political engagement

The first example stems from the 2015 EU-CELAC Summit ending with the crafting of a Brussels Declaration.³ The EU described the CELAC Summit as the main forum for dialogue and cooperation between Europe and Latin American and Caribbean states.⁴ Key EU-Latin American and Caribbean heads met (in addition to a Caribbean-EU side meeting) to discuss a range of germane issues. Yet one week later (on 17 June 17, inst.) the European Commission published an Action Plan aimed at pushing non-cooperative extra-EU jurisdictions to be both more cooperative and adopt international standards on transparency in taxation.⁵ The statement enumerated 12 Caribbean states and territories that were deemed “non-cooperative jurisdictions with respect to sharing information on taxation issues.” The EU intervention is problematic on a number of fronts. First, the EU made a major policy announcement one week after an important summit where EU leaders failed to either discuss or forewarn their Caribbean colleagues on an important economic issue that harboured grave consequences for affected small Caribbean economies. Second, the EU’s intervention came at a time when the affected Caribbean states and territories were already consulting with the OECD to comply with that body’s tax transparency guidelines. Third, the substantive issue remains that the EU, otherwise keen to underscore its multilateral credentials, had threatened Caribbean countries for failing to uphold OECD rules that affected jurisdictions have neither crafted nor contributed to. It might not have been by design, but the EU’s actions on transparency in taxation contributed to diluting Caribbean leaders’ trust in the EU.

Tariff rate quotas: A case of EU double standards

Another example of the EU’s failure to reconcile the impact of its domestic policies with its aspirations as a development partner can be gleaned from the design and

3 http://www.europarl.europa.eu/intcoop/eurolat/key_documents/summits_eu_alc/2_celac_eu_2015/declaration_brussels_en.pdf

4 <https://www.consilium.europa.eu/en/meetings/international-summit/2015/06/10-11/>

5 http://europa.eu/rapid/press-release_STATEMENT-15-5211_en.htm

administration of its multi-billion Common Agricultural Policy (CAP).⁶ Specifically, all EPAs with the ACP (except that with SADC, a hangover from the Trade Development Cooperation Agreement with South Africa) bar the use of quantitative restrictions. These free trade agreements (FTAs) with small, poor vulnerable ACP economies also oblige the developing countries' partners to extend any applicable domestic treatment to the EU. Yet, the EU currently has 24 FTAs in which tariff rate quotas (TRQs) are currently operative, including recently concluded trade agreements with Canada (2016) and a revised agreement with Norway (2017).⁷ Trading partners benefitting from the use of offered TRQs include OECD countries such as Switzerland, African states such as Egypt, Morocco and Tunisia, and Latin American economies such as Chile, Andean Pact and Central America. The EU appears willing to tolerate the use of TRQs by a wide array of its trading partners but insists on removing this defensive trade measure from the policy tools available to economically weak ACP countries.

This example of EU policy inconsistency is made more acute by the recognised significance of agriculture in ACP countries to promoting food security and alleviating poverty, with the attendant role of TRQs to protect domestic agricultural production. In addition, the CAP reform (coupled with the Global Europe strategy) has resulted in a marked shift in EU objectives from promoting food security to prising open global markets for European agricultural exports. As a result, the EU catapulted to become the world's leading exporter of agricultural goods, valued at a record €137.9 billion in 2017, along with a record agriculture trade surplus (also a record at €20.5 billion).

The overall impact of CAP reform on ACP countries remains debatable⁸ but two repercussions on ACP sugar exporters are readily evident. First, ACP export volume fell by 58.7% in 2017/2018 relative to the previous season, partially due to ACP sugar exports being displaced by EU beet sugar production. Second, the reduction in ACP sugar export volume was exacerbated by 37% fall in average price paid for ACP raw sugar in the same period.⁹

6 Beyond agriculture, the most glaring example of incoherence between economic policy and impact on development partners can be found in industrialised countries' response to the 2008 global economic crisis. According to Evenett and Fritz (2015), 494 trade measures were introduced resulting in a 31.5% decline in LDC exports between 2009-2013 – the equivalent of US\$265 billion in lost earnings. The EU was responsible for 64 measures affecting LDCs. The study did not quantify the specific economic injury to LDCs (most of which are ACP members) by EU action but the order of total export loss suffered remains considerable. Also, the negative impact on LDCs was in spite of numerous G20 pledges to shield the LDCs from harmful policies.

7 Author's own enumeration based on European Commission (2018).

8 A recent SWP research note (Rudloff and Brüntrup 2018) that finds that removal of the CAP would have negligible impact on EU agricultural production.

9 http://cpamonitoring.net/sugar-substitution-gaining-pace-in-eu-amid-falling-eu-import-demand/?_sft_category=sugar

The case of the TFA: Failure to replicate an innovative approach

The WTO's Trade Facilitation Agreement (TFA) constitutes a new architecture for articulating special and differential treatment by making the assumption of new trade rules commitments by developing countries contingent on the delivery of trade support measures. More specifically, Section II outlines the basis for the articulation of special and differential treatment for developing countries and the technical assistance required for such Members to implement their commitments. Article 13 of the TFA enumerates three categories of commitments with developing countries allowed to identify commitments that require longer implementation periods and the receipt of technical assistance. These trade facilitation measures (known as Category C obligations) become legal obligations only once both the affected developing country and industrialised country delivering trade capacity support both notify the WTO that the required capacity has been effectuated. Both the ACP and EU midwived this innovative approach to addressing one facet of the generally weak regulatory framework in developing countries, but both appear unwilling to extend this orientation to the treatment of other regulatory issues. Worse, the pioneering TFA approach to special and differential treatment has not been extended to negotiations of new ACP–EU trading arrangements, namely, EPAs. Here it should be noted that EPAs do provide for development cooperation on prioritised trade needs in ACP countries and regions. However, the EPA approach offers the promise of EU trade capacity support but does not make its actual delivery a trigger for ACP countries/regions to assume new trade rules. In addition, the interim EPAs almost definitionally are confined to trade in goods and therefore lack obligations on regulatory issues such as services (especially domestic regulation), intellectual property, competition policy, public procurement, e-commerce, and personal data protection. The EU's failure to propagate the TFA approach assumes both strategic and economic importance in light of the recognised need for ACP countries to address such trade regulatory issues as the basis for moving up global value chains and enhancing the competitiveness of export production.

The EU's handling of TFA implementation support to ACP countries exposes another limit of its muted strategic trade approach with the ACP group. During the height of TFA negotiations, the ACP was marshalled by the then Jamaican ambassador in his capacity as group convenor. His task included both convincing key WTO Members (industrialised and emerging economies) and assuaging the inherent scepticism of ACP members (principally in Africa) to support the group's novel policy approach. The ACP convenor's essential role in shepherding the successful conclusion of a new multilateral trade agreement has been widely recognised by his peers in Geneva and by DG Trade operatives at Charlemagne. Yet, this stellar achievement was not reflected

in the programming of his country's NIP under the 11th EDF. In fact, Jamaica's NIP fell from €123 million to €46 million under the 11th EDF. This precipitous fall in EU aid reflected the EU's new policy of graduation, i.e. radically reducing its aid from countries classified by the World Bank as middle-income states. Of greater import, the three prioritised sectors in the NIP – justice, environment and climate change, and public finance management – precluded support for the country to implement its TFA commitments. The lack of EU support for Jamaica's TFA implementation came despite the 11th EDF's NIP being signed nine months after the 9th WTO Ministerial Conference, where the new multilateral trade agreement was concluded. In emphasising the delivery of policy prescriptions (for example, through the conclusion of a new WTO trade agreement), the EU fully ignored the strategic value of rewarding a critical partner without whose efforts a key EU objective would not have materialised.

CEPA implementation: Missed EU strategic opportunities

The implementation of the CARIFORUM–EU EPA (CEPA) constitutes yet another missed EU strategic opportunity. It is generally accepted that EPAs were conceived as an EU policy initiative to craft new trade relations with Africa. With that assumption, it is reasonable to expect that the EU would have invested considerable political capital to ensure that the CEPA became an unfettered success, thereby offering a positive demonstrative effect to African EPA configurations. Instead of undertaking radical action to advance CEPA implementation, the EU retreated into its traditional fare of Ministerial meetings delivering choreographed set pieces with telegraphed interventions and results. The EU increased its assistance under the 11th EDF, mainly to support CEPA implementation. However, programming of the additional aid volume to the Caribbean remained delayed, highlighting the EU's reputation for being unable to deliver time-sensitive trade support. The risk-averse EU approach meant the preclusion of engagement with other international development partners, such as the World Bank and the Inter-American Development Bank, to support CEPA implementation. A proactive EU approach would have meant declaring at the Joint CARIFORUM–EU Council in June 2010 commissioning the Caribbean Regional Technical Assistance Centre (CARTAC) to support tax reform to mitigate the phasing out of other duties and charges. This failure is more astounding given that CARTAC, an IMF regional technical support, already benefits from EDF support on tax reforms. Mobilising targeted trade support by other international development partners would have signalled EU political determination to underpin CEPA implementation in a robust and innovative manner from the very outset. A measure of the business-as-usual approach to implementing a radical trade agreement can be gleaned from the fact that the three subsequent meetings

of the Joint CARIFORUM–EU Council have only delivered exhortatory statements to accelerate implementation of the new trade arrangement.

EU failure to surgically pursue development impact

The EU's reputation as a norm entrepreneur has driven the body's devoted pursuit of proselytising values such as good governance, human rights, and rule of law in its relations with ACP countries. However, this EU action accentuates the primacy of policy instead of robust delivery of development impact. The EDF has been consistently increased in nominal terms but its interventions are not tasked to attain maximum development impact. As a result, EU development cooperation support is not underpinned by either innovative delivery mechanism or razor-sharp focus on impact. Instead, the general focus has been on observance of sound EDF regulations. This process-driven approach ignores that the EU taxpayers' value is best secured by measurable development impact of invested aid resources. Note the contrast with the series of innovations arising from UK-funded trade support programmes, such as the Trade Adjustment Fund, TradeMark Programmes and CARTFund.¹⁰ These DFID-funded programmes deliver trade support interventions in a time-sensitive manner with less bureaucratic demands, and empower beneficiaries to craft meaningful projects. The EU's own rich experience includes funding the Caribbean rum project aimed at switching export production from bulk rum to higher-value bottled products. This was a successful case that addressed two of the most important challenges facing ACP economic operators - i.e. private sector development and attenuating the impact of preference erosion. In implementing the project, the EU granted a waiver to allow the beneficiary, the Caribbean rum trade association (WIRSPA), to manage its own project. In spite of the documented success of this project (e.g. Braun-Munzinger and Goodison 2010), the EU ensured that this EDF delivery mechanism was never replicated in spite of the urgent need to support ACP firms' competitiveness through enhanced capacity to apply modern trade regulatory tools to access the markets of industrialised countries.

Lack of openness in EU economic interests

The EU's stance towards Africa underscores the ease with which the EU eroded negotiation and political goodwill among a key group of development partners. West Africa–EU EPA negotiations (ECOWAS plus Mauritania) were concluded in February 2014 – almost exactly ten years after they were launched. The protracted delay in

¹⁰ For a brief evaluation of the innovations introduced by a modest UK-funded trade support programme in the Caribbean, see Gill (2011).

concluding the goods-only EPA rested on divergent views on the share of EU imports to be liberalised by the West African region. ECDPM reported that in light of the special characteristics of West Africa, a deal was struck at 75% of trade to be liberalised over the next 20 years, rather the EU request for 80% over 15 years.¹¹ The EC finally resiled from its substantially all trade benchmark for West Africa in a context marked by 13 of the West African countries being least-developed countries (LDCs) and therefore having recourse to Everything-But-Arms (EBA).¹² More significant is that the lengthy negotiation period led to a diminution of confidence among both parties, with the unsurprising result that three West African countries failed to sign the Agreement in 2014 and the signature of one (Nigeria) still remains outstanding.¹³

Beyond the diminution of precious negotiation capital and goodwill, EPA negotiations with African regions expose yet another EU strategic error. The EU remains incapable of openly declaring its stark commercial interests in its trade policy pursuits with Africa. The EU has strong antecedents, with the Yaoundé Agreement providing reciprocal trade arrangements euphemistically branded as ‘reverse preferences’. The EU continues to pitch its policies towards Africa either as a moral duty to support the poorest countries or to assist neighbouring developing countries to address illegal migration and fight terrorism. Specific EU trade interests are framed with the aim of spurring greater EU foreign investment to assist African economic development. Contrast this EU equivocation with China’s declaration of its interest in accessing African mineral and agricultural wealth. The Chinese stance has conferred African leaders with a recognition of their countries’ economic value, thus establishing the basis of an open partnership. It is undeniable that Africa is an attractive economic partner given its massive GDP (forecast to grow to US\$2.6 trillion in 2020) (McKinsey Global Institute 2010), fast-growing labour force, vast mineral and agricultural wealth, and physical proximity to major markets. Moreover, the EU’s persistent lack of openness with regards to its economic interest in Africa hampers the recalibration of the trade relationship into a post-colonial dispensation based on true partnership.

11 <https://ecdpm.org/talking-points/economic-partnership-agreements-west-africa-seals-deal/>

12 It should nevertheless be noted that EBA, which grants duty- and quota-free market access to all products, except arms, originating from LDCs is less advantageous than EPAs in a number of respects: (a) it is unilateral and can therefore be summarily withdrawn; (b) its trigger levels for trade defence tools are lower and can therefore blight beneficiaries’ export growth; and (c) it fully ignores provisions on new generation trade tools such as services investment, procurement, competition policy and intellectual property. Nevertheless, most LDCs favour EBAs as they tend to be defensive about exposing their domestic markets to imports, particularly from industrialised countries.

13 http://trade.cc.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf

What can be done? A few suggestions

Personalities matter

Former EU Trade Commissioner Pascal Lamy became WTO Director-General in 2005 in spite of the candidature of two ACP ministers.¹⁴ The Frenchman leveraged his vast professional network with ACP ministers honed during his stint as EU Trade Commissioner. This achievement was all the more remarkable given the prevailing atmospherics surrounding Lamy's tenure at the European Commission. Most notably, the collapse of the WTO Ministerial in Cancun incited deep distrust between developing and industrialised WTO Members; CAP reform triggered an erosion of the value of ACP trade preference; and the launch of EPA negotiations was controversial. In spite of these developments, Lamy's open engagement with the ACP and patent understanding of the group's trade and development concerns garnered him considerable political support among the tricontinental club of developing countries. Personalities resonate even more deeply in the context of the EU as a norm entrepreneur. In propagating its cherished values, the EU should invest more time and effort in sustaining relationships with its ACP trade partners to more effectively engage as opposed to the time-honoured tradition of lecturing. EU personalities thus become a more meaningful form of developing balanced partnerships with a longstanding group of developing countries.

Building partnerships

Beyond the weight of personalities, open and sustained engagement remains paramount in the pursuit of long-term ACP–EU trade partnerships. Such an orientation entails, *inter alia*, the EU retiring its endemic reluctance to openly acknowledge its manifest economic interests in resource- and labour-rich Africa. Increased EU openness should be complemented by ditching the choreographed summits and ministerials and opting instead for robust and business-like exchanges that allow for genuine policy dialogues, robust advancement of specific goals, and the clearance of implementation bottlenecks. Furthermore, EU partnerships should be extended to a broader cluster of development actors including parliamentarians, academics, opinion formers, economic operators, and civil society activists. Recent history has shown that trade policy reforms need to be owned by all invested ACP development partners and this ownership can only emerge from sincere EU engagement.

14 These were Hon. Mukhisa Kituyi (Kenya) and Hon. Jayen Cuttaree (Mauritius).

Policy coherence

The European Commission has traditionally commissioned sustainable impact assessments (SIAs) to forecast possible developmental impacts of its trade policy on developing countries. However, SIAs offer *ex ante* assessments of possible impacts with no built-in mechanism to measure subsequent ramifications of EU policy on developing countries. In 2015, the EU introduced its Better Regulation Policy (BRP) including a set of toolkits on policy issues such as environment, migration and trade. According to the Commission, this policy coherence for development orientation should allow for improved *ex post* evaluation of the impact of EU policies on developing countries. Thus far, however, no evidence has emerged of these toolkits being used to gauge the impact of EU policy on developing countries. Instead, the Commission appears to use the BRP tool to justify its various policy interventions. One example is the positive contribution of the CAP in promoting food security in developing countries. It might be far more beneficial for the EU to regularly institute development audits on its policies. These audits would carry the same policy and legal weight as the European Court of Audits reviews of EU spending and processes. Moreover, the development audits would allow for the speedy conduct of requisite remedial action and benefit from regular exchanges with affected ACP partners with respect to possible corrective measures. Indeed, the mere existence of institutionalised development audits would improve the design and impact of EU policies as policymakers would be able to incorporate their results.

Development impact

Most EDF programming tends to be informed by demand-driven requests. Here again, the EU's belief is positive as it obviates a top-down approach where small institutional actors are crowded out from donor support. However, the downside of a demand-driven approach remains the absence of delivering the highest development impact on affected ACP countries and regions. Instead, a broader consultative approach based on identifying interventions yielding the best development effect is required. Complementing this results-based impact would be the use of innovative solutions with best practices from other EU member states and international development partners. In addition, there are recent examples of the EU supporting a slew of international organisations to deliver trade support to developing countries. However, such EU support tend to constitute an interim solution before the programming of EDF resources can be completed. This EU policy orientation should be retired and replaced by a more robust pursuit of synchronised support from a broad range of development partners, such as the African Development Bank, the Caribbean Development Bank, the Inter-American Development Bank, the World Bank, and the IMF – most of which have EU Member states as main shareholders.

In conclusion, the EU remains an earnest trade and development partner for the ACP group and its constituent countries and regions. The EU remains a significant trade partner, accounting for a quarter of ACP exports. In addition, EU donor support to the ACP remains financially significant, also in terms of the legal underpinnings, co-management, and facilitation of multi-annual planning. However, the EU's development efforts are often compromised by the weight of its economic interests, resulting in policy incoherence. In addition, the height of the EDF is prioritised as opposed to deploying bolder measures to secure development impact of the vast aid resources invested in ACP countries and regions. A number of measures could be instituted to remedy the referenced weaknesses in EU trade and development policy, most notably prioritising engaging personalities, building effective partnerships, pursuing policy coherence, and focusing on development impact. Yet, operationalising these proposals is predicated on the EU summoning the requisite political will to become a sustainable trade and development partner.

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12 Regional integration in Africa: Need for a paradigm shift?

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In a speech² delivered in Ghana on 12 January 2015, Cristina Duarte, Minister of Finance and Planning of the Republic of Cape-Verde, echoed the thoughts on regional integration of many in Africa when she said that African integration needs a big push to get it out of its current deadlock. She went on to say that “[t]he importance of regional integration has been debated and settled. In fact, we have been fighting for the idea of integration for the most part of the last five decades and have, arguably, made some successes towards its attainment. Yet, it is clear that a lot remains to be done.”

This chapter reflects on how regional integration could be revitalised through a change in process rather than a change in structure, taking the Common Market for Eastern and Southern Africa (COMESA) as an example of the philosophy and implementation of the African regional integration agenda.

COMESA and regional integration

COMESA came into being in 1994, ten years after the establishment of the Eastern and Southern Africa Preferential Trade Area (PTA). The main achievements, after 34 years of PTA and COMESA, could be summarised as:

- The creation of the COMESA Free Trade Area (FTA) in 2000 and supporting its continuous improvement and the launch of the Tripartite Free Trade Agreement and support provided to the negotiating process.
- The creation and support of regional trade facilitation instruments such as the Simplified Trade Regime, the COMESA virtual trade facilitation system (CVTFS); the non-tariff barriers (NTB) monitoring, reporting and elimination system; and so on.

¹ This chapter is a substantially condensed version of longer working paper (Pearson 2019).

² <https://www.tralac.org/news/article/6852-the-importance-of-africa-s-integration.html>

- The creation of COMESA trade facilitation institutions including the PTA Bank (now the Eastern and Southern Africa Trade and Development Bank), the Africa Trade Insurance Agency, the COMESA Re-insurance Company (ZEP-RE), Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA), the Leather and Leather Products Institute, the COMESA Clearing House, the COMESA Competition Commission and the Regional Investment Agency.
- The design, support and management of programmes aimed at deepening regional integration such as the Regional Integration Support Programme (RISP); the Regional Integration Support Mechanism (RISM); TradeMark Southern Africa (TMSA); the Regional Maritime Support Programme (MASE); programmes on climate change; etc.
- The design and implementation of transport facilitation instruments such as the COMESA Yellow Card; harmonised vehicle dimensions and axle load controls; harmonised road transit charges; and other instruments.

These are impressive achievements, although each has its qualifications and each has scope for improvement in terms of delivery of services and benefits to COMESA member states. However, if all of these achievements are added up, they do not come close to achieving what the member states of COMESA set out in Article 3 of the COMESA Treaty.

Why is it that COMESA, and its member states, are so far behind in deepening integration, compared to what was agreed and entered into as a Treaty obligation. There could be different answers, or a combination of different answers, including:

- The architects of COMESA were unrealistically ambitious in thinking that there could be free movement of people, a customs union, a common market and a monetary union.
- The top-down approach to achieving economic integration is flawed.
- The targets for COMESA are achievable but not within the time horizons envisaged.
- There were simply not enough resources available for COMESA to reach these targets.

Were COMESA targets unrealistically ambitious?

Based on what has been achieved in other regions in the world, notably Europe, it is difficult to argue that the COMESA integration targets, along with the AEC integration targets were, *prima facie*, too ambitious. What is different in COMESA is the lack of political will and ambition in the COMESA region. African countries have consolidated

and ‘thickened’ the borders that date back to the territorial demarcations drawn up by European powers in the Berlin Conference of 1884-5. Independent Africa maintains, to a large extent, the division created by the European colonial powers at the end of the 19th century, modified by changes in the political hegemony of the colonial powers after WWI and WWII. In essence, the borders of modern African nations were determined by the Europeans and are now fiercely maintained by independent African leaders. The explanation for the relatively poor level of integration of COMESA has more to do with the lack of national commitment to implement the aims and objectives of COMESA and the Abuja Treaty than because these targets were, *prima facie*, too ambitious.

Is the top-down economic integration approach flawed?

COMESA, along with the other Regional Economic Communities in Africa, adopts a top-down approach to regional economic integration. The COMESA Treaty was formulated by its member states with agreed time-lines for implementation that without reference to the specific actions needed to be undertaken to achieve a customs union, the common market and the monetary union. In contrast, the 1985 European Commission White Paper that set the date for the launch of the Single Market as the start of 1992 contained over 300 actions that were already programmed with the required technical assistance and budgets that were different for each country. The White Paper was a mapping exercise that identified exactly what needed to be done by each country for it to achieve inclusion in the single market from its position in 1985 to be a member of a fully functioning customs union by 1992. In addition, the actions that needed to be taken, ranging from changes in regulations to capacity building, were financed by the European Commission from a budget that was funded by its Member States. The European Commission also had the power to monitor implementation and to sanction countries that fell behind in the implementation process. The end result was that the Single Market, under an extremely challenging political environment, where many predicted the total collapse of the European integration experiment, was launched on time and the results are reflected in the growth of the economies that constitute the Single Market.

A top-down planning approach has its flaws but if the implementing states have the political will to implement what has been agreed, and sufficient resources are made available, and the rule of law can be applied to the implementation process, a top-down approach can be an effective method of achieving integration.

Is the timing too ambitious?

To prove that the timing was too ambitious we would need to show that member states had put activities required to achieve integration into motion and that there was not enough time allocated to allow due process to take place. This would mean, for example, that a bill (draft act) had been prepared and that the bill was making its way through the required readings and the select committees. This can take two to three years but there is no indication that any COMESA trade liberalisation policy is going through these processes necessary for domestication.

Parallels can be drawn with the process of introducing the COMESA-EAC-SADC Tripartite Free Trade Agreement (TFTA). The 2015 Tripartite Summit gave member states 12 months from the launch of the TFTA to conclude outstanding negotiations which included issues on rules of origin, trade remedies and tariff offers. However, the deadline of June 2016 was not met, and the commencement of Phase II negotiations – covering trade in services and other trade related matters – has been delayed, pending the conclusion of negotiations on Phase I issues. Ten years from the launch of the TFTA, the FTA is still not implementable because the rules of origin have not been agreed and there is no agreement on a tariff phase-down.

Economic theory tells us that there will be short-term winners and losers in the process of regional integration, although the long-term result should be beneficial when all the wins and losses are netted out.³ The challenge is to manage the process and manage the losers on all sides. Larger firms in the bigger economies in Africa have already carved out dominant positions without being offered trade preferences⁴ and would naturally probably not want to see their positions of dominance eroded through provision of trade preferences to their competitors. Conversely, smaller companies in all COMESA member states may fear competition from larger companies and economies when preferences come in. In the long run all will benefit from free trade, but unless these smaller, more vulnerable companies and economies are protected, they will not survive to see the long run. This mitigation is necessary but not easy and it is always difficult to strike the right balance between interventions that protect vulnerable groups in society while not reducing the benefits of free movement of goods, capital and services.

3 Between 1948 and 2004 the volume of world trade (in US dollars) increased by a multiple of about 150 and international trade has grown by 4% each year on average since 1920. In the same period, worldwide GDP has grown by an average year-on-year of 2.7%. So it is true to say that trade has driven economic growth and raised millions of people out of poverty.

4 Take, for example, the growth of Shoprite from a small grocer in the Western Cape of South Africa to a company that operates out of 2843 outlets in 14 African countries. Shoprite achieved this despite the lack of preferences and it is unlikely that it will want to make it any easier for its competitors to wrestle away the mantle of being Africa's largest food retailer.

Are there insufficient resources?

Over the period 2008 to 2017, COMESA's donors and international financing institutions have contributed just under \$300 million to COMESA integration programmes (Table 1). Over the same period, the COMESA member states contributed about US\$116 million. This means that although most member states have been independent for 50 years or more, they still rely primarily on European donors to finance their integration agenda.

Table 1 Contributions to COMESA by member states and donors (US dollars)

Year	Donors/IFIs	Member states	Total	Percentage contribution from member states
2008	11,495,378	5,721,491	17,216,869	33%
2009	36,254,505	9,364,825	45,619,330	21%
2010	15,794,134	12,205,283	27,999,417	44%
2011	38,867,731	11,950,661	50,818,392	24%
2012	32,239,878	12,192,452	44,432,330	27%
2013	46,189,702	13,770,631	59,960,333	23%
2014	32,835,426	10,360,456	43,195,882	24%
2015	27,224,730	14,344,161	41,568,891	35%
2016	24,001,896	11,685,773	35,687,669	33%
2017	16,697,021	7,866,388	24,563,409	32%
Total	291,311,845	116,074,509	407,386,354	28%

Source: COMESA Secretariat

One of the objectives of the Africa Union and its building blocks, including COMESA, has been to get Africa as a continent to stand on its own two feet and to be self-sufficient. There has been a lot of debate recently at the Africa Union level about how the Union can be self-sufficient and the current idea is to implement a trade levy that will finance its activities and so lessen, and then remove, Africa's donor dependency.

Options on how COMESA can become self-sufficient have also been explored, in line with the Treaty provisions, and these have been presented to the policy organ meetings over the years but the policy organs have preferred to maintain the status quo and rely on donor funding to finance COMESA's integration agenda. This is despite the fact that, under Article 168 of the COMESA Treaty, member states have undertaken to establish the Common Market Levy.

There is no doubt that although COMESA countries are either least-developed countries (LDCs) or lower- or middle-income developing countries, they could pay more to support African economic integration. The average expenditure of COMESA, including staff costs and programmes, varies by year but the annual budget is about \$40 million per year. A conservative estimate of the combined GDP of the now 21 COMESA member states (with Tunisia and Somalia joining in 2018) is \$800 billion. The annual expenditure of COMESA is, therefore, about 0.005% of the total GDP of its member states. Conversely, at the G8 meeting in Gleneagles in 2005, the then 15 EU member states committed to spend 0.7% of their gross national income (GNI) on development budgets to help low income countries grow economically and reduce poverty. This means that the EU countries are willing to commit over 100 times the percentage of their GNI to development of other countries that COMESA member states are willing to commit to COMESA and its integration programmes.

The challenges of donor dependency for regional integration is further compounded by COMESA member states' unwillingness to pay their own portion of the COMESA budget in full and on time.

Paragraph 6 of Article 166 of the Treaty provides that "Fifty percent of contributions due from member States shall be paid into the budget of the Secretariat within one month from the beginning of the financial year [which for COMESA is January] and the remainder shall be paid within six months from the beginning of that financial year". Two members consistently pay their annual contribution in full to COMESA by the end of January. The rest of the member states are equally consistent in delaying payments, so much so that some members are in constant arrears.

There are two reasons why COMESA member states should want to become self-sufficient in terms of financing their own integration agenda. The political reason is that it would seem contradictory to want to break the chains of colonialism and dependency but to continue to rely, unnecessarily, on handouts, which do not come free of all commitments, from the very same political powers that Africans have fought to be free of. The practical reason is that donors are fickle and necessarily answerable to their own tax-payers, who are also fickle, and so the rules of donor aid change continuously. The largest donor to COMESA, by far, has been the EU through the European Development Fund (EDF). Support from the EDF has changed over time, including that up until the late 1990s, regional programmes were defined as programmes that benefitted two or more countries.

The challenge with this approach was that member states of COMESA were able to define what regional projects were, with no reference to a prioritised regional integration programme. There was, therefore, no central focus or common goal to aspire to in terms

of regional integration targets, except in the Southern African Development Community (SADC), whose member states agreed that SADC would programme regional EDF funds. COMESA, through its Secretariat, successfully lobbied for a redefinition of regional projects under EDF so that the funds went to COMESA (after COMESA had been assessed⁵ by the EU as having the required financial, procurement and governance systems in place to manage EDF funds) and were then disbursed to member states on the basis of a Regional Integration Programme (RIP), as designed by the member states themselves. This was in line with the Paris Principles that acknowledged that donors would support the development agendas that were designed by the developing countries themselves.

Perhaps because of pressures from EU member states' electorates for the EU Commission to be more accountable for funds disbursed as grant aid, the European Commission (and member state administrations) are now demanding a greater say in where EDF grant aid is assigned. They now involve themselves in programming and directing funds through specific countries to specific projects that have been identified by the European Commission. It is unclear whether this new approach will support the regional integration agenda of COMESA but initial indications are that this new approach is not going to be as effective, from the regional perspective at least, as the previous approach. The lesson for the COMESA member states should not be that grant aid should be administered in a more flexible way, but that they should not rely on donor support to implement COMESA's regional integration agenda. This is the only way that COMESA and its member states can take control and own its regional economic agenda and its own development.

A related issue is whether the money available to COMESA was used efficiently and effectively, whether the programmes were well designed to meet the objectives intended and whether the projects were effectively implemented. To assess this would require a full value-for-money study using, for example, the methodology used by the UK's National Audit Office to measure the economy, efficiency and effectiveness of a project and the relationships between resources, inputs, outputs and outcomes. However, a cursory observation would indicate that the answer would be mixed, from projects and programmes being designed and implemented very effectively, such as the COMESA FTA, the COMESA 3rd party vehicle insurance scheme (Yellow Card) and the creation of COMESA institutions which were not well designed and implemented and did not

5 The Financial Regulation (FR) applicable to the General Budget of the European Union (EU) sets out that under indirect management the Commission can entrust budget implementation tasks to certain countries, organisations and bodies ('Entities'). These entities must meet requirements in up to seven areas relating to the internal control system, the accounting system, an independent external audit and rules and procedures for providing financing from EU funds through grants, procurement and financial instruments and Sub-Delegation.

achieve their expected results, including the Trade and Development Bank (formerly the PTA Bank), ZEPRE (PTA Reinsurance Company) and the African Trade Insurance Agency (ATI).

In summary, it is clear that there are insufficient resources from the COMESA member states themselves to achieve the COMESA regional integration agenda set out by the member states themselves in the treaty. The donors have financed almost all COMESA programmes, with resources of its member states used to finance costs of established staff. The lack of resources from member states to finance regional integration programmes is further exacerbated by delayed payments from member states, which, in recent years, has necessitated the use of the Reserve Fund to meet the costs of established staff. In terms of efficient use of resources, there are no indications to suggest that the resources available were not used efficiently, although it is also the case that there is, as always, room for improvement.

Conclusions and way forward

The regional integration agenda in Africa is under threat mainly because of complacency, donor dependency and lack of ownership of the integration agenda by African countries themselves. The COMESA-EAC-SADC Tripartite Free Trade Agreement, followed by the Africa Continental Free Trade Agreement (AfCFTA), is regarded as a renewed attempt by African countries to deepen economic integration through trade policy. Certainly, it is a very positive and encouraging development for those who believe that integration, and the creation of larger internal markets, is key to Africa's economic development. However, it is too early to celebrate any achievements except expressions of good intent. The TFTA has, after a very promising start, stalled and member states have yet to implement the two very basic components of a free trade agreement: rules of origin and a tariff phase-down mechanism. The AfCFTA negotiations, by entering into line-by-line negotiations on tariffs, could be embarking on the same path as the TFTA, hopefully not leading to the same place as the TFTA negotiations have got to, 10 years after the member states of COMESA, the East African Community (EAC) and SADC agreed, in October 2008, to negotiate the TFTA.

It would not be difficult for COMESA member states to re-invigorate COMESA and for COMESA to, once again, be one of the foremost regional economic integration organisations with a good track record of integration instruments and, in the process, create additional momentum for the AfCFTA. For this to happen, COMESA member states may want to consider the following:

Revisit why regional economic integration is important. As is mentioned above, Africa follows a Balassa model of integration, a model the EU also follows. The EU integration driver, as described in the Schuman Declaration, is to make war “not merely unthinkable but materially impossible”, and the EU has successfully met this overall objective. Africa, or its Regional Economic Communities (REC) building blocs, do not have a similar powerful integration driver where the risk of the counterfactual is too high a price to pay. Most African countries would probably view integration as a useful tool, but not an absolute necessity to achieve sustainable economic growth and poverty alleviation. This results in a lack of commitment to regional integration and so an unwillingness to cede power and authority from the national level upwards to a regional level.

There is, therefore, a need to redefine the aims and objectives of African regional integration with targets that can be measured and which have a stronger, and more direct, causal relationship to regional integration. The stages of the African Economic Community (AEC) attempted to do this but made the assumption that the instruments, commitments and finances to be used to advance from one stage to the next would be in place, given sufficient time, which was, in hindsight, a mistake. African governments might wish to lower the level of ambition to a trade facilitation ambition rather than a free trade agreement ambition. If, for example, the level of ambition was for all African countries to implement the WTO Trade Facilitation Agreement (TFA) this, in itself, would increase the amount of trade taking place between African countries. It would also provide a firm base, or stepping stone, for the negotiations to conclude the AfCFTA. The role of the Regional Economic Communities would be to assist their members in initially planning the core requirements to implement the TFA in each country and then to assist each country to secure the necessary financing and subsequently implementation.⁶

Moving to an implementation by law integration process. Currently, the decision-making process of COMESA is that technical discussions take place in sectoral meetings of experts (and possibly meetings of sectoral ministers), and a recommendation is made to the senior officials (permanent secretary level) of COMESA, who make a recommendation to the Council of Ministers (usually national ministers responsible for the trade portfolio), who then make a recommendation to the heads of state and government. If the heads of state and government decide to proceed, they issue a

⁶ There seems to be a commonly held misconception that as most African countries, who are WTO members, have ratified and notified the TFA that they are on course to implement its provisions. However, over 70% of Category C notifications of African Countries are “to be advised” which means that not only has the particular country not started implementation of that particular provision, they are not even able to articulate their technical assistance requirements. This is not surprising, giving the technical complexity of some of the Articles, but their implementation would greatly improve the trading environment.

directive, which is binding on all COMESA member states. The next step is for all member states to 'domesticate' the directive by passing this decision into national law.

The challenge for COMESA is the very low level of domestication of these directives into national law and there are no sanctions imposed for not domesticating. The result is that the decision is not implemented, and the regional integration programme the Summit decision is made on behalf of, does not get implemented. In theory, a member state that does not comply with a Summit directive can be taken to the COMESA Court of Justice, who has the authority to sanction said member state. But in practice, one member state has never taken another member state to arbitration through the COMESA Court of Justice. If, however, there were automatic sanctions imposed for no domestication this would not only improve the level of domestication, and so the level of implementation, it would also ensure that member states paid more attention to technical proposals and not simply wave them through because they know they don't need to domesticate and implement.

Use different approaches that combine a political (top-down) decision approach with a more pragmatic bottom-up approach. One approach is that of the EU model, illustrated by the European Economic Community's Single Market mechanism noted above, where a political decision on the passing of an Act and its timing are taken only after interventions have been planned in detail and resourced, systems to monitor implementation are in place, and there is a rules-based system to identify and address non-performance. Another approach is a bottom-up one, where each member state moves at its own pace in implementing a decision by a Regional Integration Organisation at its highest level and is responsible for securing its own resources to implement programmes decided on regionally. In this model, member states would plan regionally and implement nationally. This has the advantage of allowing those member states who want to move forward not to be held back by other countries. The disadvantage is that the slow movers will have to accept the decisions of the fast movers, as they will be joining a system that is already in place and operational.

Create an administration that is fit for purpose. Currently the COMESA Secretariat is responsible for coordinating implementation of the COMESA regional integration agenda but has difficulty in carrying out its mandated responsibilities because it is under-resourced and heavily reliant on donor financing. In order to reverse this situation COMESA member states could:

- Assess the level of staffing of the COMESA Secretariat needed to allow it to achieve the agreed programmes, the compensation needed to attract the necessary qualified staff, and introduce and implement (without political interference) a rigorous system of performance-based contracts for staff.

- Reassess their contributions to the COMESA budget, taking into account the need to attract highly qualified technical staff that could not only administer, but provide the technical assistance to implement integration programmes, rather than relying on short-term consultants.
- Pay their budget contributions as per the provisions of the COMESA Treaty and make an effort to move away from their donor dependency.
- Consider other ways of financing the Secretariat. For example, COMESA has set up several profitable companies and instruments over the years, but these do not contribute to the cost of running the Secretariat.

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About the author

Mark Pearson is an economist who has been living and working as a consultant to African governments, regional economic organisations, donor organisations and the private sector in Africa over the last 38 years, mainly in the Eastern and Southern Africa region and the Horn of Africa but also with experience in West Africa and Sudan. He has been working on trade, transport, infrastructure and regional integration issues since the 1990s. He has managed large donor-funded projects and led multi-disciplinary teams of professionals working on infrastructure, trade negotiations, trade facilitation and trade policy in a regional context.

13 Africa–EU Post-2020 trade regimes: Welcome to the past and back to the future

Dominique Njinkeu

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There is now a consensus that trade can be an engine for development, and trade preferences alone are insufficient to enable low-income countries to participate in the multilateral trading system. This conclusion has come about as a result of a complicated journey. The failed WTO Seattle ministerial in 1999 mobilized comprehensive analytical and advisory support that was instrumental in educating the main constituencies; this has facilitated key successes realized over the last two decades. Besides the European Commission, a selected list of contributors to this work includes UN institutions/agencies such as the UNDP, UNCTAD, and UNECA and non-governmental organizations such as the South Center, the International Center for Trade and Sustainable Development (ICTSD), the African Economic Research Consortium (AERC), International Lawyers and Economists Against Poverty (ILEAP), Third World Network (TWN), the Overseas Development Institute (ODI), the European Center for Development Policy Management (ECDPM), and the Commonwealth Secretariat (COMSEC). Various donors financed the analytical and advisory support, primarily the bilateral programs of several European countries such as the UK Department of Foreign and International Development (DFID), Holland, the Nordic countries; other non-European such as the Canadian International Development Research Center (IDRC).

We are yet to arrive at a consensus on how African countries can effectively use trade to engineer development; especially how to overcome the complex set of measures that prevent firms from competitively producing and inserting themselves in the lucrative segments of international value chains. Pro-Poor trade reform in Africa would need to embolden broader economic policy reform, significantly reduce trade transactions costs.

There has been some progress over the last two decades. For example, using the Program for Infrastructure Development in Africa (PIDA) as an operational framework, multilateral development agency financing and organizational reforms (e.g., the African Development Bank) enhanced the effectiveness of policy related to infrastructure. The scale of funding mechanisms has also been improving, particularly through public-private partnerships. Improved donor coordination through initiatives such as TradeMark East Africa (TMEA) has also created the opportunity for more transformative programs. A milestone on trade facilitation was attained with the World Trade Organization's (WTO) Trade Facilitation Agreement (TFA) at the 2013 Bali Ministerial conference. In Africa, the Trade Facilitation is both part of the Annex 4 of the protocol on trade in goods of the Boosting Intra-African Trade (BIAT) programme of the CFTA, alongside the Protocol of free movement of people and the Yamoussoukoro Decision on air travel, themselves Agenda 2063 flagship programmes. Several stakeholders, including the African and international private sectors, donors and development agencies are increasingly coalescing around the African Union to support both the BIAT and the TFA. Despite these improvements, However, whether these positive developments will address the myriad of impediments to intra-regional and international trade such as to make trade an engine of economic transformation in Africa in the post-2020 era remains doubtful, unless proper lessons are drawn, and appropriate actions implemented.

This essay focuses on lessons from the past two decades that can inform an approach that helps ensure that sustainable development aspirations embodied in the sustainable development goals (SDGs) materialize. It does so by referencing cases illustrating drivers of success and failures, given drawing the necessary lessons and proposing an action plan which would ensure both effective participation in the global economy and simultaneously address the complementary agenda for ensuring Africa can effectively use trade to engineer sustainable development and meet the SDG targets. The analysis is to be seen as a complement to platforms for formal state collaboration, with the most important for our purpose being the Africa-Eu partnership between the African Union (AU) and the European Union (EU).¹

The rest of this essay has five sections. The next section reviews the lessons from attempts at reforming the African-European trade relations over the last two decades. Section three reviews key priority areas for the post-2020 period. Section four provides an exploration of alternative approaches for moving the trade agenda. Section five proposes the operational framework for supporting a sustainable trade agenda for the continent. The last section concludes.

¹ See <https://www.africa-eu-partnership.org/en>

Building the post-2020 agenda: lessons from the last two decades

Recent experience provides some salient lessons. The first lesson is that an evidence-informed trade agenda is essential, especially to empower stakeholders to mobilize effectively to engineer beneficial policy changes. The process in Africa during the last two decades was plagued by a “numbers war” on the impact of various negotiation proposals, many of which were of dubious quality. A case in point is the impact studies on Economic Partnership Agreements (EPAs) that showed significant negative fiscal and economic impact (Morrissey 2011). These results prompted the request for major adjustment packages that were above the funding envelop that donor agencies could afford. Furthermore, given the level of utilization of funding allocation under the European Development Fund and other donor agencies, African countries would have an absorption capacity if funding for such ambitious adjustment programs were available. As a result, a useful discussion of policy options never materialized.

Second, a broad coalition of stakeholders under the leadership of a credible organization is essential to engineering policy reforms that address the core impediments of African trade. In cases that were informed by solid and independent research, a better outcome was attained. An example is the development of the Aid for Trade initiative. Before its launch at the 2005 WTO ministerial in Hong Kong and during the design and implementation phases, various organizations undertook peer-reviewed analysis that empowered stakeholders. Implementation has been facilitated by regular monitoring combined with opportunities for all actors to take stock during regular Global Reviews (Njinkeu and Cameron 2008; Newfarmer 2014). The WTO Trade Facilitation Agreement (TFA) is another success story; a key driver of the outcome of this process was the analysis and consensus built on the centrality of trade facilitation for African development. The game changer has been the role played by development agencies. A limitation has been the sustainability of actions most of which were part of short-term projects; as a result, the momentum created was not sustained.

Third, despite notable progress, most African stakeholders have an inward-looking policy mindset. Shifting towards an outward-oriented policy could start with pro-active efforts to boost trade among and between African countries. For this, a framework is provided by the AU CFTA agenda around which there is a need to form and sustain a solid consensus for implementation. Analytical and advisory work is needed to establish coherence between countries’ objectives and commitments between national, regional and multilateral reforms and understanding non-trade effects.

National governments are not paying enough attention to the fact that continental or regional decisions have differentiated implications on different member states, with the situation more complex where there is no political leadership and non-state actors are weak. As a result, despite the near consensus on the willingness to honor all CFTA-related commitments, there will be a need for proper economic and political economy assessment of the challenges and opportunities to alleviate the legitimate concern among trade stakeholders.

Some priority topics for the post-2020 agenda

The above provides a non-exhaustive and non-prioritized list of features of a successful post-2020 trade regime. African policy objectives post-2020 should focus broadly on the achievement of sustainable and inclusive economic growth and poverty elimination. The overarching framework should be the consolidation of regional trade reform by strengthening institutional mechanisms that foster cooperation to engineer economic structural transformation; this, in turn, would help overcome the small size effect of their national markets. African countries have historically entertained close relationships with the European Union, including the UK as traditional trading partners. A characteristic of the last 20 years was an effort to shift from previous preferential trade arrangements through the negotiation of the Cotonou Partnership Agreement (CPA) that aimed to transform the unilaterally provided preferential access to the EU into negotiated reciprocal ones in the context of Economic Partnership Agreements. Unfortunately, this process became a quagmire plagued by numerous impediments, leading to fundamental disagreement among key players on the sequence of liberalization. There will be a need to revisit this agenda altogether.

During the same period, African countries significantly examined, streamlined and consolidated their regional agreements, beginning with the Tripartite process consolidating the COMESA, EAC and SADC regions into a single market in Eastern and Southern Africa. The completion of a regional Common External Tariff in West and the negotiation of a Continental Free Trade Area concluded in 2017 are also worthy achievements. Implicit in both the CFTA and the EPA process has been the recognition that a more open trade regime among African countries and together with Europe will boost pro-poor trade and facilitate harmonious integration with the global economy, thereby facilitating economic transformation and the realization of the aspirations encapsulated in the UN 2030 and the African Union Agenda 2063. The CFTA provides the overarching framework for African trade formulation and implementation; it shall be the anchor for any trade discourse between Africa and third parties.

The decade beginning in 2020 is likely to be characterized by an aggressive push by Africa's trading partners for negotiated reciprocal agreements. The US African Growth and Opportunity Act (AGOA) was recently streamlined and renewed through 2025; it is very likely the post-2025 trade relations between African nations and the US will also centre on the phased movement towards reciprocal accords. Against this background, there remain deep-rooted concerns among African trade officials, the private sector and civil society that the objective of sustainable and inclusive economic growth and poverty elimination might not materialize. Addressing these concerns is of utmost importance and should build from the experience with African regional and trade policymaking on the continent since the year 2000, with a focus on understanding what worked and what did not work. Special attention needs to be paid to the drivers for these results, drawing the relevant lessons from the past to propose a way forward for boosting trade to secure a better outcome on the UN SDGs in 2030 and support the realization of the African Union Agenda 2063 for Africa's economic transformation.

A sound appreciation of the drivers of success or lack thereof is essential. The trade relations between Africa and the EU and US since 2000 were designed from two different perspectives. On the EU side, several studies were commissioned and paid for by European funds to assess the feasibility of the proposed reciprocal trade arrangement with the ACP countries. Most of these studies concluded with mixed results about their impact of the transformation of African economies. Two positive features of these studies could inform the process going forward. First, learning by doing principle was built into the process which enabled progressively African researchers to participate and ultimately take the lead in conducting these studies. Second, there was an extensive consultation of state and non-state actors which slowly has built the capacity for trade policy design and implementation. Overall a consensus emerged that these reciprocal arrangements were to be accompanied by adequately funded trade capacity building programs. On the United States side, reciprocity was not on the table, but rather eligible countries have been given preferential access to the US market until 2025. It should be expected that at the end of this period this AGOA preference is made WTO compatible. To support the AGOA preference, the US launched major trade capacity building programs through their regional trade hubs (in Accra, Nairobi, and Gaborone). Overall this created a conducive environment for more productive trade policy dialogue; contrary to the Africa-EU trade discourse related to Economic Partnership Agreement. One explanation was the explicit focus of the US support on aid for trade addressing impediments to harnessing the opportunities offered by AGOA. This was seen to be more aligned to African regional trade and regional integration agendas as opposed to the EPA that called into question previously periodized ambitions for building the African Economic Community.

It might be useful going forward to have two parallel processes: one focusing on trade policy and regional integration, and another focusing on aid for trade to help integrate Africa with Africa and with the rest of world.

The trade policy and regional integration process could draw the lessons for the numerous deficiencies that characterized the preparation and participation in the EPA negotiations process. It is necessary to properly review the process to identify and take the appropriate remedial measures. A properly informed reform position which is fully owned by stakeholders would have identified both challenges and opportunities of the proposed trade regimes; such an approach would also establish a common view on implementation. Such a common view, in turn, would have led to the development of appropriately designed and funded trade capacity building programs that would have alleviated the core impediments to trade and would have effectively boosted intra-regional trade and facilitated more effective participation in the global economy. Better use of the financial resources mobilized to support the process would have yielded a superior result to what was obtained. In the future, it is essential to put in place the institutional mechanisms for effective preparation for negotiations; this should include the ingredients for effective implementation.

Three topics are still central to African trade policymaking for trade in goods negotiations (see also AfDB 2017): concern for the possible loss of tariff revenue, prospects for industrial development in the long-term, and loss of national trade and industrial policy autonomy. Each of these needs to be properly researched, proper mitigating measures identified, and actions plans designed and implemented. First, loss of tariff revenue for countries that heavily rely on discriminate taxation of international trade transactions is an inevitable feature of any trade agreement that reduces import duties. It is necessary to determine the net impact of tariff reductions, with proper focus on segments of the economy that will lose. Even greater attention is needed for those weaker segments that cannot find alternative employment or shift their consumption. Second, fostering replacement domestic resource mobilization such as through the introduction of a value-added tax or the implementation of trade corrective measures is important. Fears of a loss of industrial capacity and output because of an inability of local firms to take advantage of new opportunities can be alleviated through a combination of transition periods, the use of trade corrective measures and aid for trade support for industrial adjustment and upgrading. The capacity to design and to implement such programs is crucially lacking. A third and related area is the loss of national trade and industrial policy autonomy because of restrictions on the use of instruments such as export subsidies, export taxation, export credit insurance, and the ability to use trade measures to assist domestic firms in competing.

Most of the time the concerns triggering a request for availing these instruments is usually due to an inadequate understanding of these trade policy instruments. Various analyses have shown that the negative impact of trade reform in Africa can be alleviated with an appropriate competitiveness agenda (World Bank 2014).

Approaches for policy formulation and implementation post-2020

A sensible approach to Africa is to prioritize six elements. First, the approach should centre on the evidence-informed offensive and defensive positions. African trade policy discourse is heavily focused on the challenge of reform and negotiation positions are limited to defensive positions. There is a need for a balanced examination of the offensive and defensive interests such as to give adequate attention to opportunities that could be created and how these can be harnessed to compensate for the negative impacts eventually. The exposure to international trade shocks, notably the variation of the price of traditional exports which lead to revenue volatility must be a major part of the assessment of the offensive and defensive positions. While these are not directly connected to the trade regime, they need to be considered in designing the sequencing of trade liberalization episodes. The request for reciprocal trade regimes in the post-2020 period with stronger and more competitive partners should materialize after the regional integration process has matured. Priority must be put on developing national and regional CFTA implementation programs, taking due account of sub-regional reform programs, trade commitments at the multilateral level and trade arrangements with non-African partner countries. Overall, the CFTA should be implemented and adjusted, before entry into force of tariff reduction part of the reciprocal trade regime with the EU and other non-African trading partners. Demand-driven independent research will need to support the post-2020 agenda. A priority area for support is the ongoing effort towards implementing the CFTA; it is essential that this undertaken as an overall framework for mainstreaming trade in the development agenda. Accordingly, major development partners include those associated with the Enhanced Integrated framework for Least Developed countries.

The second element is a framework for mobilizing actions for overcoming policy fragmentation. African trade stakeholders do not understand how and the extent to which the trade in goods and the trade in services agendas are intertwined. As a result, opportunities for services export trade are not capitalized upon. The relevant stakeholders need to be empowered to champion this new trade agenda, including manufacturing companies. The latter has a major stake in services liberalization but may not fully understand the importance of services for their business. Fragmentation

materializes itself in a disconnect between the different frameworks to articulate trade policy. In the post-2020 period African trade growth, both in goods and in services, will call for engagement at three levels: (i) domestic policy reform is undertaken at the national or regional level; (ii) bilateral trade regimes with foreign partners; (iii) multilateral agreements.

These trade arrangements cannot be considered in isolation but must be properly sequenced with the CFTA agenda. Policymakers need to think in terms of “goods AND services,” rather than “goods OR services.” One implication is an adjustment in trade policymaking institutional settings to consider the fact that servicification is one step towards modern trade rules in tune with current business models. In turn, this can help create growth and economic development. Further research is needed to fully understand servicification and its implications – both on companies, their business environment, and society, as well as on trade and trade policy. Overall, a process of consolidating the policy formulation institutional setting and educating and mobilizing the stakeholders in public and private sector is a priority to adapt African trade policy to the new industrial revolution.

Third, given the significantly reduced import tariffs, most of the challenges to trade policymaking in Africa in the post-2020 period will centre on factors that drive a wedge between producer prices in an exporting country and consumer prices in an importing country. Such costs arise from non-tariff measures and the behind-the-border regulatory policies on product standards connectivity to networks of land, air and maritime transport, and other core services such as distribution, finance, and professional services that are increasingly constituting a major contributing factor for the lack of competitiveness of manufacturing. Important drivers are associated with inefficient trade in services; in the regional context this depends on the quality of the prevailing regulation; therefore, it is essential to prioritize regulatory reform in broader trade in services agenda. This would, in turn, require that policy design goes beyond a traditional focus on boosting competition policy also encompasses nurturing the interface between services trade policy and the quality of economic regulation. In so doing, given that the trade in service agenda spans several ministerial departments, it will be necessary to have multi-stakeholders working groups that will set and oversee the policy agenda.

Fourth, for supporting regional integration and a smooth integration to the international trading system, there would be a need to establish a link between the servicification agenda and the broader cross-border trade cost agenda. One direct link is to reduce the costs due to regulatory heterogeneity that materialize in three possible ways (Fiorini and Hoekman 2018). The first is the asymmetric information on applicable rules and requirements to which business transactions are subjected. The second is

lack of compliance with international norms and standards which limit the export to international markets and prevent the participation of African producers in lucrative segments of the value chains. Another implication to the lack of appropriate certification or conformity to international norms and standards is the exclusion from the new trading order characterized by trade in tasks. The third manifestation of regulatory heterogeneity is the uncertainty and the variability in the administration of information and the certification process.

The fifth element is relevant capacity-enhancing and supply response measures designed and implemented preferably before or at worst simultaneously with the implementation of a sequence of trade liberalization. Analytical work to ensure appropriate sequencing of liberalization and deployment of adjustment measures is needed to smooth the negative impact with adequate capacity-enhancing measures. This would, in turn, ensure proper management of the economic and social impact of the shrinking and closing of non-competitive domestic producers and increased supply response of current and emerging competitive producers.

Finally, it will be necessary to nurture the link between reduction of trade costs and achieving the sustainable development goals (Hockman 2016). Overall these efforts could centre around a platform for identifying and addressing the root cause of these trade impediments. Such a platform would i) ensure timely access to relevant information on rules and regulations that affect trade costs; ii) inform the design of reforms and the capacity required for effective implementation; iii) empower stakeholders to identify the policy options to address any adverse distributional consequences. The platform would, therefore, enable networking and information sharing among businesses and chambers of commerce through integrated and interconnected trade information systems. The operationalization of the platform would require data collection for appropriate measurement and monitoring of trade cost; a second would be a peer-pressure process to address comprehensively and sustainably a trade cost reduction agenda.

Operational framework for a post-2020 trade regime

The intellectual foundation for African trade and regional integration has traditionally been shaped from outside the continent; the post-2020 African agenda should be fully African own and driven. This can be done through the formation of strategic coalitions to provide African nations greater coherence and a common strategic approach to both African integration and the global trading system. In so doing the focus could be on capacity development, policy research, knowledge sharing, information exchange and international. The operational plan could focus on three areas.

1. Trade policy research practice networks

The program needs to focus on addressing the typical public goods problem that characterizes the interface between research and policy. This would require the support of a pool of trade specialists (academics, consultants) who are credible and able to advocate policies.

These specialists could operate in a network that bridges the gap between research and policy by:

1. cultivating a desire at the policymaking level to increase research utilization;
2. fostering sustainable relationships with national governments and regional economic communities;
3. leveraging relationships to increase the organizational and institutional change necessary to foster individual capacity;
4. empowering strategic change agents and mobilizing institutions willing and able to champion the African transformation agenda; to that effect the program could partner with the national and regional policy research institutions, most of them supported by the African Capacity Building Foundation (ACBF).

It will not be necessary to create a new network, but primarily reinforce existing ones, such as those listed above.

2. Trade practice networks to support policy reform and project design and implementation

The second focus would consist of policy implementation support and actions to unlock investment opportunities. Such trade practice would mobilize professionals and could be hosted by development agencies or dedicated programmes focusing on complex and multi-country projects. This could entail facilitation of dialogue and networking among multiple stakeholders and across disciplinary fields on the conceptualization and implementation of complex projects. The programme could provide a framework for stakeholders to debate, cross-fertilize ideas and to better understand the consequences of their mode of operation and that of other stakeholders. Ultimately, the programme will enable increased capacity through peer-to-peer learning among government officials, businesses and civil society.

One example is a trade practice network that fosters cross-border trade facilitation with a focus on two domains. First is policy support to address logistical impediments along the supply chains to foster SME integration in regional and global value chains. This could entail establishing regional support and differential process execution for smaller

traders, supporting design and implementing sector or product-specific processes that address the needs of smaller businesses. Secondly would be the strengthening of regional border harmonization and operations through policy support in the implementation of a customs' modernization program.

3. Training and capacity development of trade practitioners

The third focus should be to strengthen the capacity of trade and regional integration practitioners. Numerous assessments have offered a comprehensive diagnostic of the biggest constraints to trade integration. Unfortunately, less progress has been achieved in going beyond the diagnostics, and effectively removing these constraints and boosting competitiveness. To achieve such progress, we need to pay attention to two elements. First is through a clear strategy for bringing line ministries into the process which would entail incorporating trade into national budget and public expenditure allocation. There would be a need for executive courses in selected specialized areas to provide to officials of these ministries the necessary expertise and exposure to best practices that are essential to effectively enable these ministerial departments to work towards a common goal and overcome their traditional sectoral biases. The second is to enhance synergies with export and sector strategies by bringing on board national expertise and expertise within and across different agencies. A related aspect is to align the trade agenda with national development processes and donor cycles. This would imply building the capacity of current trade practitioners, including officials of relevant government departments and regional economic communities, as well as other stakeholders (e.g., private sectors, parliamentarians) on trade issues. There would be a need to develop a package of training materials and resources that improve, coordinate and articulate regional skills development in support of industrialization. Effective public-private sector dialogue (PPD) around a complex agenda shall be part of such training.

Conclusion

The main objective of African countries in the post-2020 era is not fundamentally different from the situation in the previous two decades, namely, to be able to harness the opportunities created by trade to nurture economic transformation, to industrialize and improve the welfare of the average citizen. While the situation has improved significantly since 2000 and the Cotonou Partnership Agreement, and the benefit of multilateralism is increasingly appreciated, there remain deep-rooted concerns in many parts of Africa that the continent is not ready for reciprocal arrangements with more

developed trading partners. However, there is an (increasing) majority that believes accelerated liberalization within sub-regions, and on the continent in the framework of the CFTA is possible.

Once this process is well underway, it would be appropriate to envisage a phased movement towards reciprocal trading regimes with non-African trade partners.

The first element for success would include generation of demand-driven, peer-reviewed, independent analysis of offensive and defensive options. Unfortunately, most of the key players that assisted in the previous period have either closed or have significantly curtailed their trade work programme; partly because of limited funding.

A second element is continuing the aid for trade support centred on reducing trade cost. This could entail expanding trade facilitation support, for example by going beyond the current customs clearance-centric TFA. The expansion could encompass the regional transport corridor and the behind the border agenda.² It will be useful to complement the post-2020 programme with a collaborative framework with agencies involved with the implementation of the TFA (WCO, OECD, multilateral development banks, WTO, ITC, UNCTAD); furthermore, the programme should also connect with the implementation of the LDC trade in services waiver. (Hoekman 2017). A key operational framework would be a platform that supports the identification of trade bottleneck and peer-pressure process to ensure actions are effectively taken to sustainably reduce trade cost and make African products competitive regionally and internationally.

As indicated earlier this programme is complementary to those covered by the traditional states to states collaboration between Europe and Africa. While most of the proposed programme is in the remit of the European Commission, instruments in bilateral national collaboration would be more relevant, as was the case in the last two decades. The implementation of such a programme will require a scoping exercise to determine both the actors and the relevant financing instruments

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14 Towards rethinking the Economic Partnership Agreements

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Trade policy engagement between the EU and Africa has for some 20 years been around the Economic Partnership Agreements (EPAs). Only one of the five African EPAs that were envisaged is operational. The current situation is a hotchpotch of fixes essentially to ensure market access continuity for those countries that are not covered by Everything But Arms (EBA), which grants duty-free and quota-free market access to the EU for products from least developed countries (LDCs), while maintaining the impression that the remaining EPAs will eventually come on stream.

More recently, the EU itself has been rethinking its relationship with Africa both as a ‘neighbour’ and as a strategic partner, while in Africa determined steps are being taken to consolidate its balkanised markets and to accelerate economic integration. In this context, the objective of this chapter is to consider the reasons behind the failure of the EPAs and the possible future direction of EU–Africa trade relations.

What are the EPAs and how did they come about?

The EPAs are reciprocal, asymmetric free trade agreements between the EU and African, Caribbean and Pacific (ACP) countries. They were introduced to replace the traditional trade preferences granted by the EU to ACP countries with a new arrangement supposedly consistent with the requirements of the WTO.

The negotiations for the EPAs were launched in 2002. The African countries were corralled to negotiate in five regional blocs which, with the exception of the East African Community (EAC), are not consistent with the membership of the regional economic communities officially recognised by the African Union (AU). Three African negotiating

groups – West Africa,¹ the East African Community (EAC)² and the Southern African Development Community (SADC)³ – have concluded their negotiations. Negotiations are suspended for the remaining two blocs – Central Africa⁴ and Eastern and Southern Africa⁵ – with few countries having concluded interim agreements. Outside Africa, negotiations have also been concluded for the Caribbean bloc, and with few Pacific countries.⁶

The conclusion of negotiations on the African EPAs has been followed by only scattered signature, ratification and implementation of the agreements (Figure 1). Of the three blocs where negotiations have ended, only countries in SADC are implementing the agreement (the Southern African Customs Union since October 2016 and Mozambique since February 2018).

In West Africa and the EAC, the EPAs divided the countries. Nigeria, the regional economic power in West Africa, has not signed the agreement. This has been driven by the opposition from the Manufacturers Association of Nigeria and the private sector more widely, which has expressed concerns over the ability of the local producers to compete with European products. This has caused the regional process to stall, which in turn led Ghana and Cote d'Ivoire – concerned about losing market access to EU – to ratify their respective 'stepping stone' (i.e. interim) agreements with the EU. These bilateral agreements are being implemented while waiting for the regional process to catch up.

In the EAC region, signing of the EPA was scheduled to take place on the sidelines of the 14th session of the United Nations Conference on Trade and Development (UNCTAD XIV) in July 2016. This was however postponed as Tanzania expressed the need for further consultation on concerns over Brexit and the impact of the agreement on the industrialisation process. As the EAC EPA provides for entry into effect only

1 Comprising Mauritania and the Economic Community of West African States (ECOWAS) (i.e. Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, the Niger, Nigeria, Senegal, Sierra Leone and Togo).

2 Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania. South Sudan joined the East African Community in 2016, with commitments to gradually adopt all the Community policy instruments.

3 Mozambique and the Southern African Customs Union (SACU) (i.e. Botswana, Lesotho, Namibia, South Africa and Eswatini – formerly called Swaziland) signed on 10 June 2016. Angola has an option to join. See European Commission, "EU signs economic partnership agreement with southern African countries", 10 June 2016 (<http://trade.cc.europa.eu/doclib/press/index.cfm?id=1509>).

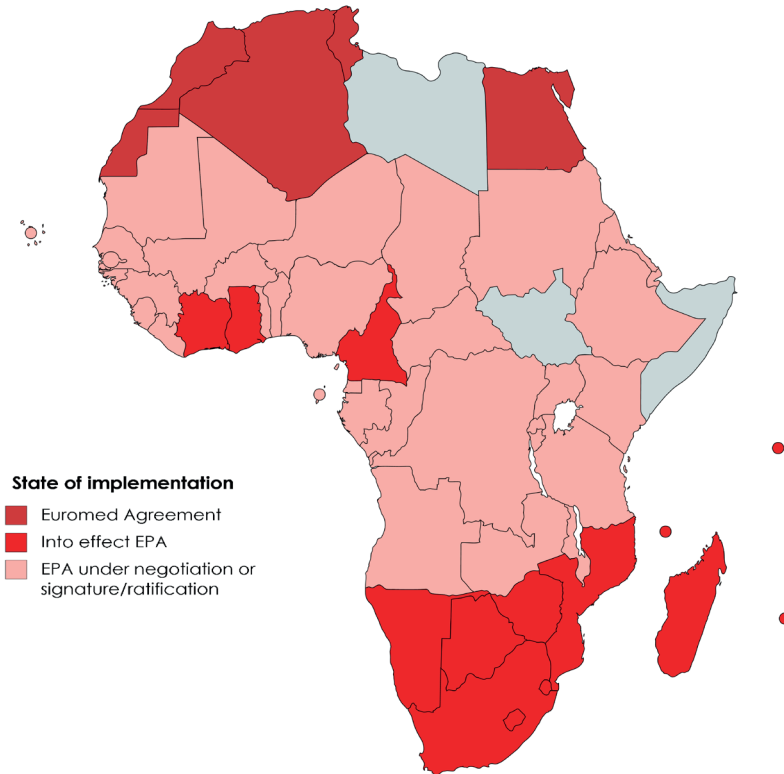
4 Cameroon, Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon and Sao Tome and Principe; also referred to as the Central African Economic and Monetary Community (CEMAC) interim economic partnership agreement.

5 Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Seychelles, the Sudan, Zambia and Zimbabwe.

6 See the European Commission's overview of EPAs at http://trade.cc.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf.

upon ratification by all EAC countries, the agreement is yet to be implemented in the entire region, although Kenya and Rwanda signed on 1 September 2016.

Figure 1 Status of EPAs in Africa



Source: Economic Commission for Africa, using *mapchart.net*.

In relation to the interim agreements, implementation is also limited. The interim Central Africa agreement was signed (in January 2009) and ratified (in July 2014) by Cameroon only. The agreement entered into provisional application in August 2014. In the ESA region, four countries (Madagascar, Mauritius, Seychelles and Zimbabwe), concluded an interim EPA in 2009, which has been provisionally applied since 2012, while “the Parties are exploring the scope and objectives of a possible deepening of the current agreement”.⁷ Comoros has also been implementing the agreement since February 2019.

⁷ See the European Commission’s overview of EPAs at http://trade.cc.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf.

The majority of African countries therefore access the EU market through other means. The most significant is the Everything But Arms (EBA) initiative, which provides access to all LDCs – including 31 African LDCs, which benefit from duty-free and quota-free access to the EU market for all products except arms and ammunitions. In addition, two African countries (Gabon and Libya) use the WTO most-favoured nation (MFN) regime, two countries (the Republic of Congo and Nigeria) the Generalized System of Preferences (GSP) arrangements, and Cabo Verde, which graduated from LDC status, an enhanced GSP+ regime. In North Africa, Algeria, Egypt, Morocco, and Tunisia are part of the Euro-Mediterranean Association Agreements.

What is behind the limited implementation?

The drawn-out process and the existing divisions – even at the very late stages of the negotiations – clearly indicate that not everything has gone to plan with the agreements. The most obvious reason is the contradiction built into the EPA itself. As many African countries are LDCs, they already had preferential access to the EU market through the EBA initiative. From the African side there was therefore little need for agreements of asymmetrical reciprocity, even if they included transitional periods and options for protection of sensitive sectors.

The objective of WTO compliance was never fully convincing. Securing a waiver for non-reciprocal agreements in the WTO is essentially a political process interacting with WTO law. For example, the United States African Growth and Opportunity Act (AGOA) was granted a waiver, and the EU itself had a waiver in place for the Fourth ACP–EC Convention of Lomé until 2000, and for the initial years of the successor Cotonou Agreement (until the end of 2007). There was no indication from the WTO that a further waiver would not be granted, even as the EU was required to dismantle specific schemes such as for sugar or bananas. Meanwhile, the EU was not an enthusiastic supporter of African demands in the Doha Round and trade frictions continue to exist, particularly in the area of agricultural domestic support.

In terms of the impact of the EPAs on the industrialisation prospects in Africa, African concerns are justified. An ex-ante impact study by the Economic Commission for Africa (ECA), based on the EPAs for West Africa and ESA, concluded that the implementation of the agreements would result in gains in bilateral trade between EU and the African countries. However, in absolute terms the gains for the EU were twice as much as for the African partners. The benefits to African countries were limited to a few non-LDCs

(which do not have access to EU markets through EBA) and were focused on a few non-industrial sectors (Mevel et al. 2015).

The impact of the agreements on Africa's industrial development is of interest because of the continent's structural transformation aspirations. The composition of Africa's trade with the EU has remained relatively unchanged over time, with mineral products, including oil and gas and related products, accounting for around 58% of all exports.⁸ At the same time, intra-African trade has developed so that about two thirds of trade is in manufactured goods. The more diversified nature of intra-African trade presents stronger potential for the development of regional value chains as a driver of industrialisation and structural economic change on the continent.

This is why boosting intra-African trade has become a priority. At the African Union Summit in January 2012, the heads of state adopted the Boosting Intra-African Trade Action Plan. The document identifies the priority actions to be taken to overcome barriers to trade between African countries, including in trade policy, trade facilitation, productive capacity, infrastructure, trade finance, trade information and factor market integration. At the same time, countries adopted the decision to fast-track the establishment of the African Continental Free Trade Area (AfCFTA). Negotiations were launched in June 2015, culminating in Kigali, on 21 March 2018, in the signing of the agreement on the establishment of the AfCFTA by 44 African Union member states. Since then a further 19 have signed. The required 22 ratifications were reached in April 2019 and the Agreement entered into force on 30 May 2019.

The previously mentioned ECA impact study also examined the dynamics between the EPAs and intra-African trade. It was found that the implementation of the EPAs ahead of the AfCFTA would result in losses in trade between African countries. On the other hand, if the AfCFTA were to be put in place first (i.e. fully implemented) before the EPAs, this negative impact would be mitigated. Trade gains by both African countries and the EU would be preserved, while intra-African trade would expand considerably, benefitting trade in industrial goods in particular. This points to clear benefits from strategic sequencing of trade policy, prioritising the AfCFTA process.

Another key issue is that the estimates for the impact on African exports to EU under the EPAs may not be fully realised. The sanitary and phytosanitary (SPS) requirements of the EU are known to form a barrier to trade from African countries. In the context of Brexit, another ECA paper (Luke and MacLeod 2017) suggests that EU technical barriers to trade have restricted the UK market for products in which Africa has a

8 Average of the 2009-2017 period, calculated using ITC data.

comparative advantage, such as tropical fruits and vegetables, fish, and bovine meats. In the fish and beef sectors, African exports to the EU have fallen following compulsory and expensive regulations. Regulations to prevent bovine spongiform encephalopathy (BSE) are being applied to African countries in which BSE has never been diagnosed.

What is the possible future direction?

Further progress on the EPAs is expected to be limited. At the same time, there is strong momentum on the AfCFTA as the ACP and the EU prepare to negotiate a post-2020 successor partnership to the Cotonou Agreement. It is therefore an opportune time to redefine the relationship between Africa and the EU. There is a strong case for a continent-to-continent approach, building on the deeper integration of the African continent under the AfCFTA. This would have the benefit of simplifying the hotchpotch trade arrangements between the two continents and set the foundations for an arrangement that would be consistent with Africa's aspirations.

Such an approach also has traction in Europe. In his State of the Union speech in September 2018, European Commission President Jean-Claude Juncker called for the “development of the numerous European-African trade agreements into a continent-to-continent free trade agreement, as an economic partnership between equals”.⁹ German Chancellor Angela Merkel has also expressed the opinion that certain EU–Africa trade agreements should be renegotiated. The post-Cotonou negotiating framework proposed by the European Commission notes the need for the new ACP agreement to take into account the strengthened regional frameworks that have emerged, proposing a structure where the common foundation is complemented with three regional compacts as protocols to the agreement.¹⁰ Trade, however, is not a central part of the envisioned agreement, and the EPAs have been assumed as the foundation of any new arrangement.

The evidence points to the need for a proper sequencing of trade liberalisation with the EU, after the AfCFTA is fully in place. In addition to this, going forward African countries will need to be clear on what the future relationship should look like to ensure it supports their developmental objectives. The current trade arrangements all involve an element of asymmetry in favour of the African parties. It seems fair to assume that this shared element would also be incorporated into any future agreement. Furthermore, moving towards a unified approach could encourage regional value chains through harmonisation and simplification of market access conditions and processes between

⁹ See https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech_en_0.pdf.

¹⁰ See https://ec.europa.eu/europeaid/recommendation-council-decision-authorising-negotiations-partnership-agreement-between-european_en.

Africa and Europe. For example, it would help to redress the asymmetries that currently exist between the various sets of rules of origin, through a pan-African cumulation system. This would ultimately have the potential to increase the preference utilisation rates, boost intra-African trade, and ensure better trade policy coherence, in line with continental strategies. African countries could also emphasise the need for stronger assistance on the issue of standards and SPS, which currently act as barriers to access the European markets.

In terms of the process, a continent-to-continent agreement implies a trade agreement between the two Unions. The modalities of the process would form a part of the negotiations. Until the new agreement is in place, the existing market access arrangements could be used to avoid disruption to trade. A transition period could also be agreed upon to facilitate the move to the new unified regime.

There is scope for a true partnership between Africa and the EU. Africa's integration agenda serves the interest of the EU, as lower intra-African tariffs, reduced non-tariff barriers, improved trade facilitation, and integrated markets will be a more dynamic environment for EU trade and investment. The EU has recognised this and is a strong supporter of the AfCFTA process. Some of this support was indirect in the sense that through the EPA negotiations, African negotiating capacities were built and honed. This served many African countries well in the AfCFTA negotiating rooms.

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15 Strengthening EU soft power by better engaging with Africa

Rob Floyd

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The EU, even with – and maybe because of – its current struggle to maintain cohesion, fiscal discipline, and globalist orientation, has an extraordinary opportunity to shape the future of an even larger and diverse economic community: Africa. The African Continental Free Trade Area (AfCFTA) was brokered by the African Union (AU) and initially signed by 44 of its 55 member states in March 2018. In May 2019 the agreement entered into force for 24 of the signatories that have ratified it. If successful, the AfCFTA will likely be the greatest move towards policy coherence in the history of the human race. Fifty-five countries – from the very small such as Seychelles (with fewer than 100,000 people), to the large and powerful such as South Africa and Nigeria – will need to ensure common policies for trade, investment, and the movement of people. Integration in Africa will need to account for the more than 1,500 languages spoken, and the more than 100 million people who speak Arabic. Africa will need to quickly understand lessons learned from other integration efforts – particularly the EU.

Insufficient coherence

With regard to development, while the EU and its member states may be lauded for efforts at policy coherence (as early as 1992 and then the Treaty of Lisbon), in fact they have largely pursued policies that led to a lack of coherence between African states, even while the EU was strongly supporting the African Union. In fact, Europe provides more than 50% of all aid to Africa – totalling €21 billion from the EU and its member states in 2016. This includes an EU Pan-African Programme of €845 million for the period 2014-2020 and €592 million for the African Peace Facility in 2017-2018. Importantly, this also includes €43 million for the period from July 2016 to June 2019 for the African Union Support Programme (AUSP III), whereby technical assistance is provided to the African Union Commission to build capacity, strengthen institutions, and enhance implementation of the Joint Africa-EU Strategy (JAES). This includes continental integration via the AfCFTA, but also initiatives related to science

and innovation, agriculture, and infrastructure. Overall this supports institutional and administrative capacity within the AU, which is imperative if the continent is to in fact operate as a union. While there are signs that the African Union Commission (AUC) and the role of the chairperson of the AU is strengthening, the AU as a whole remains fragile – and implementation of the AfCFTA will be its biggest challenge as it will significantly impact every part of society and the economy.

The need to build better on African strategies

While EU support to the AU is often graciously and publicly appreciated, it is clear that strong disconnects remain between EU development support and the long-term strategies of the AU and its member states. The African Union Support Programme has attempted to supplement political engagement, such as the AUC-EC joint meetings, with platforms for dialogue, AUC restructuring, and supporting policy frameworks (for example, the Comprehensive Africa Agriculture Development Programme, or CAADP), but has not necessarily been able to foster high-level strategic dialogue on specific areas that align to Africa's long-term strategy, particularly with regard to integration and trade.

The Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries, which the EU touts as the building blocks for African integration, have been moving ahead haltingly since their inception. It has been clear that the EU and African countries do not see EPA trade policy as equally beneficial to Africa. Particularly for countries with high protection, they see rapid market liberalisation as providing Europe with a terms-of-trade gain that will be irreversible. Countries in Africa generally are concerned about the impact on their local industries if European companies invest with force across sectors, and maybe most importantly reducing tariffs will lead to lower government revenues.

Engage in dialogues

One can argue that the very nature, size, and scope of the EU's development and trade apparatus prohibit technocrats and policymakers from asking African policymakers the most basic questions: What do you need? What are your own strategies? At the African Center for Economic Transformation (ACET), we have spent the past ten years supporting policy dialogue among African countries in areas such as extractives, manufacturing, resource mobilisation, agriculture, and skills. This dialogue among countries engenders peer-to-peer learning, but more importantly it allows African governments to identify their own challenges as well as successes that can be replicated

while implementing their own strategies. This allows for a level of strategic dialogue that is not subject to bureaucratic frameworks, the promise of loans and investment, or implicit or explicit political imperatives.

A unilateral Africa–Europe Alliance

In September 2018, the President of the European Commission Jean-Claude Juncker announced a new ‘Africa–Europe Alliance’ intended to boost investment and trade, while creating jobs. It proposes to do this with more blended finance, grants and loans, and guarantees; more EU development funding; and exploiting Economic Partnership Agreements, free trade agreements, and other EU trade regimes. The ambition of the Alliance is impressive, with an expectation to impact more than 58 million people with better infrastructure, better energy, and better skills. But it was announced before prior strategic dialogue with Africa’s leadership and stakeholders that could have helped to bring coherence among EU development strategies, and more importantly with Africa’s strategies – for example, implementation of the AfCFTA. To be fair, the EU was transparent in its very generous, but largely unilateral announcement. The EU formally indicated that consultation and dialogue on the programme, including its priorities, would take place after it was announced...

A response to China in Africa

Of course, one can understand global political realities. One week prior to the Alliance announcement, the Forum on China–Africa Cooperation (FOCAC) had concluded in Beijing, with the announcement from China of US\$60 billion in new financing. There was also a new narrative from China focused on building capacity in Africa, increasing imports of non-resource products, providing scholarships, green development, and so on. These are approaches, sectors, and topics that have often been the purview of Western development agencies. Combine the potential impact of FOCAC with the Belt and Road Initiative and the Asia-Africa Growth Corridor, and Europe’s traditional position at the pinnacle of development may feel in peril.

EU soft power potential

But rather than rushing to announce counter initiatives before consulting stakeholders, the EU has the potential to realise its soft power through key changes in approach.

1. Synergies with Compact with Africa

First, the EU can help bring coherence to global fora where it has the unique distinction of representing many nations. An example is the G20 Compact with Africa (CwA), which is an initiative of the German G20 Presidency to enhance investment in Africa. CwA countries include Benin, Burkina Faso, Guinea, Côte d'Ivoire, Ghana, Egypt, Ethiopia, Morocco, Rwanda, Senegal, Togo and Tunisia, while other partners are the G20 countries themselves, the World Bank, the IMF, and the African Development Bank. The CwA is governed through the G20 Africa Advisory Group (AAG), co-chaired by Germany and South Africa. At the African Center for Economic Transformation we support implementation of the Compact with peer learning, investment promotion, and peer review. But that means we also see first-hand the lack of coherence among G20 members in support to the CwA. While three members of the G20 are from Europe, the EU as a member represents an additional 25 countries, many of which have keen interest in Africa, often related to development, trade and migration. That said, of 46 CwA-related events since late 2017, most organised by G20 members, only one was an EU sponsored event. Likewise, while some in the G20 – and even non-G20 European countries – have made additional contributions to strengthen or accelerate the CwA, the EU has not done so. The EU could improve its coherence by better ‘crowding in’ international initiatives such as the CwA, building on its own new initiatives such as its External Investment Plan (EIP) and the recently announced Alliance, which envisages billions of euros in additional investment, particularly in infrastructure. The CwA is just one example, but the premise applies across dozens of G20, OECD, and other ‘club’ initiatives where the EU is a member.

2. Engaging in policy-specific strategic dialogue

Second, the EU can significantly advance policy coherence – and strengthen its own soft power – by engaging in policy-specific strategic dialogue that focuses in the first instance on Africa’s own strategies, challenges and needs. It can be argued there are few people currently engaged in EU–AU engagements who do not see a ‘talking past each other’ mentality, regardless of good intentions. The EU should ‘up its game’ vis-à-vis other development actors and investors to ensure a long-term, robust, and effective dialogue that truly advances transformative development in Africa, while also meeting the EU’s long-term objectives.

Such strategic dialogue needs to be high level, but also technical and practical. It needs to help identify key bottlenecks that are thwarting greater EU–Africa collaboration and at the same time thwarting transformational development in Africa. A new form of strategic dialogue would be grounded in robust analysis and primary research, facilitate

validation of reform recommendations, convene stakeholders for policy design inputs, and support implementation through partnership. A well-formulated strategic dialogue might focus on a selected number of topics and would be oriented to build trust and common positions in a transparent manner.

3. Drawing lessons from EU own integration experience

Finally, and linked to the point above on strategic dialogue, the EU can – and should – bring to bear the lessons learned, good practices, and failures of its experiment to inform the African Union, and in particular the AfCFTA. This could serve as a basis for strategic dialogue and learning, whereby the early iterations of the EU – from the Council of Europe in 1949, to the European Coal and Steel Community, to the Rome, Maastricht and Lisbon Treaties – can provide insights, options and solutions to Africa's most pressing issues on integration. Such dialogue could focus on very specific policy challenges such as trade, infrastructure, productive integration, free movement of people, and financial and macroeconomic integration.

For example, currently, Africa's share of world trade is lowest of all regions, at only 2%, but equally disconcerting is the very low level of intra-African trade. In 2014 intra-Africa trade was only about 16% compared to about 61% intra-regional trade in Asia and 69% in Europe. Thus building on the EU's experience in reducing barriers to trade would create larger regional markets, open up new trade opportunities for businesses, enable firms to expand with greater benefits in economies of scale, and lower prices of goods and services. Likewise, cross-border infrastructure development across the continent is perhaps the most visible manifestation of regional integration and interconnectedness. These include cross-border highways, railways, power and energy, and aviation. Implementing the myriad of programmes supporting infrastructure development (including those of the EU) require common approaches, harmonisation of rules, policies and regulations, where the EU experience can help Africa avoid costly mistakes. Finally, none of this be achieved without effective and fair labour mobility. EU frameworks can be used to identify solutions to skills gaps, entrepreneurship, inclusiveness, and innovations spreading out beyond national borders.

EU soft power to bridge disconnect with African aspirations

EU development and trade initiatives are large and impactful, but the EU can use its own soft power and own experiences to accelerate Africa's integration while achieving greater policy coherence, both within the EU and between the EU and other global agendas. While strong disconnects exist between EU development support and the long-term strategies of the AU and its member states, these can be bridged through an

honest strategic dialogue that builds confidence and solidifies the EU as a full partner. Such evolutions will not necessarily be natural nor easy, but can lead to redefining the way in which the EU supports Africa more broadly, and to more sustainable long-term development and trade collaborations over the decades to come.

About the author

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16 Economic Partnership Agreements as central pillar of a Comprehensive Africa-Europe Alliance

Luisa Santos

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Trade is undoubtedly playing a major role in shaping the world today from an economic and political point of view. Many countries, especially emerging markets in the developing world, are increasingly looking towards strengthening international trade to achieve their development objectives and promote regional integration. By doing so, these countries are paving the way to benefiting from an ever-changing global economy. The United Nations' 2030 Agenda for Sustainable Development recognises international trade as an engine for inclusive economic growth and poverty reduction. Particularly the 17th Sustainable Development Goal recognizes trade as a cross-cutting means of implementing the entirety of the 2030 agenda. For the European Union (EU) with its Single Market, intra-continental and overseas trade and investment have been instrumental to growth and prosperity over the last few decades. It has created jobs and generated income for people, giving businesses and consumers access to a wide range of high-quality goods and services at more competitive prices.

The EU has been committed to economic and political integration not only within Europe, but with other parts of the world. Of all the regions of the world with developmental needs, the EU has taken a keener interest in the African continent in recent years. Africa is regarded by many development experts as “the continent of the future” by virtue of its immense potential (e.g. wealth of natural resources, a young population, a rising middle class) for economic growth. Because of its proximity to Europe, Africa can be a privileged partner if both sides manage to transform current challenges into win-win solutions.

Over the years, African countries have collectively made notable progress in improving key development indicators, and several have now achieved the status of a middle-income economy. For Africa to achieve its full potential however, it needs to greatly improve on its current socio-economic status. Trade policy will be crucial for tapping on the region's potential and Europe can support these efforts with its large, highly demanding market and investment flows.

Whilst assistance from the EU to Africa in the past has mainly come through development aid, the focus of EU policies has recently shifted towards trade and investment. This move has been fuelled by the understanding that the massive investments, necessary to achieve the sustainable development goals, can only be set free if the private sector is at the centre of the efforts. It has also been encouraged by results worldwide, wherein a significant increase in developing country participation in global value chains has coincided with an equally sharp decline in extreme poverty. In this way, trade has helped increase the number and quality of jobs in developing countries, stimulated economic growth, and driven productivity increases.

Economic Partnership Agreements: instruments of development

The insight that open trade and regional integration would help developing countries to leverage global production networks for their development was already behind the paradigm shift in the EU's relations with the African, Caribbean and Pacific (ACP) group of countries that occurred in 2000 with the signature of the Cotonou Agreement. The agreement phased out the WTO incompatible Lomé regime¹ for ACP countries and foresaw the negotiation of six² asymmetrically reciprocal Economic Partnership Agreements (EPAs) based on pre-existing economic communities in the ACP region.

However, almost 20 years down the road, the negotiations have delivered limited results in Africa: while 14 African countries are currently applying an EPA, only one out of five African EPAs has really been implemented on a regional level.³ Moreover, all African EPAs are goods-only agreements reflecting a business model of the past. Services, investment or public procurement, all essential in today's trade and investment reality, are merely tabled for future discussions.

1 Under Lomé, the EU had granted ACP countries non-reciprocal preferential market access for goods. With the creation of the WTO, this regime had come under increased pressure: Under the GATT 1979 Enabling Clause, tariff discrimination in favor of developing countries was allowed. The Lomé framework, however, discriminated among developing countries (ACP and non-ACP).

2 In 2007, the five countries of the East African Community broke away from the East and Southern Africa ACP region to sign a separate interim EPA with the EU, thus creating a seventh regional group.

3 Southern African Development Community.

Recently the tide has turned: by signing up to the African Continental Free Trade Area (CFTA), one of the flagship projects of the African Union's Agenda 2063, most African countries have made a strong political commitment to bringing down tariff and non-tariff barriers to trade. Moreover, CFTA signatories also committed to address issues like trade in services, investment, intellectual property rights and competition, which many of them had considered rich-country interests until recently. This, combined with the new focus on investment climate and business environment in EU-Africa relations, seems to have brought deeper disciplines and rules back to the table in EPAs as well. The Parties to the Eastern and Southern Africa EPA, for instance, are currently exploring the possibility of broadening the scope of the agreement.

EPAs reduce barriers to regional and international trade. Building on existing regional communities established by African countries themselves, EPAs promote regional integration on the African continent through reducing tariff and non-tariff barriers to regional trade. In this way, they are building blocks to continental free trade:

- EPA-members need to give the same preferences they grant to the EU also to each other. If implemented properly, they will make their member countries more attractive to both domestic and foreign investors as companies choosing to set up a production plant in a member country can export to the entire region and the EU market without tariffs or quotas;
- They promote lower production costs in Africa by reducing the cost of imported inputs, which are needed to make final products, such as machinery;
- Combined with flexible rules of origin, which give exporters the freedom to source inputs from elsewhere, including from other African countries, without losing preferential access to the EU, they promote the development of regional value chains and the insertion into global value chains;
- Finally, EPAs stabilize the access to the EU market for producers in African countries. While many countries on the continent already enjoy preferential market access under the General System of preferences (GSP),⁴ this scheme is reviewed regularly, with a tendency to decrease the number of eligible countries.

EPAs also grant the assurances necessary for countries to become part of 21st century value chains by preparing the ground for rules and disciplines necessary to attract investment in value-adding sectors. The rendez-vous clauses in the African EPAs foresee the extension of the agreements to issues such as trade in services, investment, competition and intellectual property protection.

4 Including both GSP+ and Everything but Arms (EBA)

These are key to build investor's trust, attract Foreign Direct Investment (FDI) and promote further integration into global value chains for the following reasons:

- Technology transfer is facilitated by assurances that foreign knowledge owners will be treated fairly, and their intellectual property rights will be respected;
- Foreign investments in physical infrastructure, staff training and the development of long-term business relationships are facilitated by rules that safeguard property, rights of establishment and fair competition;
- Companies whose value chain extends over several countries need assurances on business-related capital flows (e.g. FDI, profit repatriation) to operate effectively;
- Coordinating international production facilities also requires the continuous two-way flow of goods, people and ideas. Thus, access to world class services (e.g. freight transport, telecoms, banking, logistics) and assurances on the short-term movement of managers and technicians is important for global value chains.

Finally, as asymmetric agreements, EPAs respect the differences in economic development between the EU and its ACP counterparts – while the EU opens its market fully to ACP imports, the ACP Parties reduce their tariffs gradually over many years. Moreover, sensitive product categories, often some agricultural products, are not covered by EPAs and the agreements make it possible for ACP countries to protect certain established or infant industries if they are threatened by sudden import surges from the EU. Provisions on labour rights and environmental issues as well as the link between EPAs and the respect of human rights and democratic principles, rule of law and good governance set out in the Cotonou Agreement promote development, growth and investment that is sustainable and inclusive. This is even more important at a time when other actors heavily investing in the region prefer sometimes to ignore these principles.

New EU-Africa Alliance: implementing an enhanced partnership

Of course, EPAs are not a miracle cure and they must be combined with smart domestic policy reforms aimed at improving the business environment and enabling the population to reap the benefits and explore the opportunities opened up by them. In this context, the European Commission's recent communication announcing a new Africa-Europe Alliance for Sustainable

Investment and Jobs does the right thing in taking a comprehensive approach for the enhanced partnership between our two continents, focusing on four key areas:

- Boosting strategic investment for job creation and strengthening the role of the private sector;
- Investing in people by investing in education and skills;
- Strengthening business environment and investment climate and
- Tapping the full potential of economic integration and trade.

Now words need to be turned into action by leveraging all EU policies towards Africa to achieve these ambitious goals. This requires a multi-stakeholder approach and as a first step, silos within the European Commission need to be broken down. Especially Trade and Development policies need to work closely together and better use the tools at their disposal – particularly EPAs, the External Investment Plan and the political dialogues thereunder – in a more coordinated way. The negotiation of the Post-Cotonou Agreement, which will govern EU-ACP relations after 2020, provides the first major opportunity to do so. As the goal to negotiate EPAs was first enshrined in the Cotonou Agreement in 2000, this successor agreement provides a golden opportunity to bring new momentum into the implementation and deepening of these agreements. But the difference to 2000 is that these agreements now form part of a broader set of interrelated goals and tools all working in the same direction: bringing the EU-Africa Partnership to the next level and promoting inclusive growth and sustainable development on the continent by creating the right framework for private investment and entrepreneurship. Our common goal should be that in 20 years' time we can look back and say that 2019 was the beginning of a successful transformation in EU-Africa relations, a first chapter in our joint success story.

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17 Limits to soft power in the Economic Partnership Agreements

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When I began researching the Economic Partnership Agreements (EPAs) as a PhD student, I wanted to explore the drivers and impact of the EU's attempts to export its model of economic and regulatory integration to other regions around the world. The EPAs were conceived as a series of preferential trade agreements between the EU and the group of African, Caribbean and Pacific (ACP) countries, designed to replace unilateral preferences provided under the longstanding Lomé Convention. More than this, the idea was that these negotiations would help to foster liberalisation of trade in goods and services and cooperation on a range of regulatory issues both between the EU and the ACP and within ACP regions themselves.

At the time, academic research was exploring the emergence of the EU as an important actor on the global stage and the rise of 'interregionalism' as a key phenomenon in international politics (Söderbaum et al. 2005, Bretherton and Vogler 1999, Telò 2007, Aggarwal and Fogarty 2004). Scholarship on the EPAs themselves had focused on the material asymmetry of these negotiations and had largely taken for granted the ability of the EU to impose its prospectus for region-based trade and regulatory integration on the much smaller and economically weaker ACP countries (Hurt 2003, Goodison and Stoneman 2004, Farrell 2005, Goodison 2007, Stoneman and Thompson 2007, Brewster et al. 2008).

It was clear from the very beginning of the negotiations in 2001, however, that the leverage associated with the EU's market power was highly uneven as a result of divergent levels of dependence on existing Lomé preferences amongst ACP countries. Furthermore, as the negotiations came to their first pressure point around the expiry of a WTO waiver at the end of 2007, it became clear that the decisions of ACP countries were not a straightforward reflection of the economic levers associated with the process (Murray-Evans 2015, Nyaga Munyi 2016). I therefore became particularly interested

in the role that ideas played in shaping the dynamics of the asymmetrical power relationship between the EU and the ACP countries.

In particular, aside from the uneven reach of the EU's market power, I wanted to understand why the EU's recourse to normative persuasion – or soft power – seemed only to have a limited impact on the outcome of the EPA negotiations. That is, many ACP countries did not seem to be persuaded by the EU's arguments that the EPAs were both a legal necessity and a boon to their development prospects. This was a puzzle in the context of the EU's own identity construction as a 'normative power' (Manners 2002) and the considerable negotiating resources that had been devoted to persuading the ACP countries of the merits of the EU's proposed model of inter- and intra-regional economic integration.

Limits to EU soft power

In Murray-Evans (2019) I argue that the reasons for the limited reach of the EU's normative persuasion can be found both in the way that the EPAs were themselves conceived and promoted, and in the way they were perceived and contested by those on the ground in ACP countries and regions.

The EPAs in the global trade system

First, the process of designing the EPA prospectus – which led to the Cotonou Agreement in 2000 – was itself significantly constrained. In some respects, these constraints were helpful to the EU. For example, the culmination of the Uruguay Round in 1994 had signalled the fuller integration of developing countries into the multilateral trade system. This broader context lent legitimacy to the EU's desire to use the EPA negotiations to encourage ACP countries to adopt trade policies that would see them become more integrated into the global economy. Indeed, the incompatibility between the Lomé Convention and WTO rules on special and differential treatment for developing countries, alongside the strengthening of multilateral dispute settlement mechanisms, was the principle justification for recasting the EU–ACP relationship on the basis of reciprocity.

However, the form of the EU's EPA prospectus was equally constrained by the idiosyncrasies of multilateral rules. The technical details are somewhat complex (Heron 2013, Gammage 2017, Murray-Evans 2019), but the upshot was that there was no single trade mechanism through which the EU could preserve preferential market access for the ACP as a group while also offering differential and more favourable treatment for the poorest developing countries (something for which there was a strong consensus in

Europe). Instead, the EU set out to negotiate reciprocal EPAs with the ACP countries while at the same time offering unilateral duty and quota free market access to all least developed countries (LDCs) under the separate Everything But Arms arrangement. This had the result of generating divisions between LDC and non-LDC ACP countries and exacerbating the unevenness of the EU's leverage in the EPA negotiations.

The EU's use of WTO rules as a principle justification for the pursuit of the EPAs, furthermore, generated tensions in its normative case for the agreements as the negotiations progressed. Beyond its arguments about the legal necessity of transforming the EU-ACP relationship, the EU made a strong normative case that 'comprehensive' EPAs – incorporating the liberalisation of trade in goods and services as well as cooperation on regulatory issues – would support ACP development efforts. Yet it was clear that much more limited goods-only agreements would be enough to meet the requirements of WTO compatibility. In this context, the EU's attempts to conclude EPAs that included the controversial 'Singapore issues' – investment, competition, public procurement and trade facilitation – appeared inconsistent with its claim that WTO rules were the primary driver of the negotiations. This was particularly the case once three of these four issues had been cast out of the Doha Round negotiations in the face of developing country opposition in 2004.

Amidst high pressure tactics that were used to try to persuade ACP countries to agree comprehensive EPAs in time for the expiry of a WTO waiver at the end of 2007, the EU's normative arguments about the development benefits of the EPAs fell flat. This unravelling of the EU's legitimating narrative allowed those ACP countries and NGOs that objected the EU's approach to the negotiations to portray the latter as self-interested and coercive. On top of this, they pointed to the hypocrisy of the EU's insistence on WTO compatibility for the EPAs while it appeared simultaneously to be using the negotiations to try to bypass negotiating blockages in the multilateral system itself.

EPAs versus ACP regionalism

Aside from the contradictions that emerged within the EU's legal and normative case for the EPAs, there is a fundamental disconnect between the EU's understandings of the relationship between trade, regionalism, and development and those of its ACP interlocutors. These problems go beyond often-cited issues of ACP technical and institutional negotiating capacity and reflect a deeper mismatch between the EU's vision of regional economic and regulatory integration and the way that regionalism is institutionalised, practiced and imagined in other parts of the world.

Focusing on African regionalism in particular, overlapping regional institutions are a well-known feature of the continent's established pattern of economic governance.

During the EPA negotiations, the EU tended to see these as an obstacle to the realisation of its preferred vision of economic and regulatory integration. Indeed, EU policymakers and negotiators saw the EPAs as an opportunity to provide African actors with an incentive to 'rationalise' their regional economic structures. This view, however, failed to take account of the variety of purposes and understandings that are attached to Africa's overlapping regional formations by national elites. For example, regions may be seen not just as means of fostering integrated and efficient markets but, amongst other things, as sites for generating political solidarity, for fostering integration along functional lines and for accessing financial resources from donors. Furthermore, while these approaches to regionalism may be in some respects a function of the narrow interests of elites, they also reflect principled disagreement amongst African policymakers about the extent to which market-oriented forms of regionalism are the most appropriate in the African context.

The pattern of overlapping regionalisms in Africa was therefore much more entrenched than the EU's EPA negotiating strategy – which offered only a small amount of time for these to be resolved into mutually exclusive configurations – had allowed. On top of this, the regions in question not only lacked the technical and institutional capacity to engage in negotiations with the EU as unitary actors, but on a more fundamental level lacked the political will to grant supranational authority to a body that would be capable of doing so. Equally, political commitment to the vision of 'deep' regional economic and regulatory integration that the EU sought to promote through the EPAs was at best uneven in Africa, where states were still struggling to agree on and implement their own agendas for the reduction of barriers to trade in goods.

This unevenness was borne out in the response to the EPAs by individual African states. These responses were themselves shaped by both the specificities of national and regional circumstances and the different ways in which policy elites interpreted the choice set on offer in the negotiations. Some African states – for example Mauritius – were more positively disposed towards the EU's arguments about the mutually beneficial nature of deep regional and interregional trade and regulatory liberalisation. Others – such as Botswana, Swaziland and Lesotho – viewed the EPAs as an opportunity to lessen their dependence on a dominant regional economic actor, South Africa (see Murray-Evans 2015). More, however, were deeply suspicious of the EU's agenda for deep liberalisation, viewing it as driven by European self-interest and as potentially inimical to state-driven development strategies.

In other words, whether ACP states were receptive to the EU's normative case for the EPAs came down to both their position within existing regional political and economic landscapes and embedded ideas about the relationship between trade, regulation and

development. The EU's ability to influence the latter proved limited in the context of mistrust about its motives, which was partly engendered by perceptions that the EU's approach to the negotiations had been coercive and unsympathetic, for reasons outlined above.

Lessons from negotiating the EPAs

Based on the apparent limits to the EU's soft power in the case of the EPA negotiations, the following lessons could be tentatively drawn. The first is that the global institutional landscape in which the EU operates matters. This is because it provides constraints and opportunities for EU external action and the projection of soft power. Invoking outside institutional imperatives – such as WTO rules on special and differential treatment – can be a useful way of legitimating EU external policies by lending a sense that the proposed action is externally constrained or mandated. However, as in the case of the EPAs, such strategies for projecting EU power may become a hostage to fortune. This might be because the trajectory of EU policy diverges from that of the wider institutional environment. Likewise, it might be because calling on external legal imperatives in too dogmatic a fashion gives rise to perceptions of insincerity or coercion, thus undermining other normative claims about the benefits of the proposed policy or set of actions.

Furthermore, the institutional environment in which the EU operates is complex and multifaceted. In the area of trade, distinctive regional orders exist alongside the broader multilateral trade regime and are constituted and sustained by their own logics and the ideas and purposes that local policymakers ascribe to them. A good understanding of these dynamics is vital for the projection of EU soft power, as is a set of realistic expectations about what can be achieved in the context of these constraints. In the case of the EPAs, the expectation that African regions could be 'rationalised' to form viable negotiating blocs in relatively short order was not credible, nor was the idea that African negotiators who had vociferously opposed agreement on a series of regulatory issues in the WTO would be willing to accept the same in the context of the EPAs.

The EU was heavily criticised for certain aspects of its approach to the EPA negotiations. In particular its forceful attempts to secure comprehensive trade agreements in the early part of the negotiations, as well as its heavy-handed approach to existing regions, generated suspicion of the process amongst ACP interlocutors and served to undermine claims about the normative drivers of the EPA project. As much as these criticisms seem justified, my research also stresses that EU power – whether we are talking in material or discursive terms – is a good deal more constrained than is sometimes acknowledged. Navigating these constraints – whether in the form of multilateral rules and processes, institutional structures in counterpart regions and states, or the opposing ideas and

purposes of negotiating partners – is a considerable challenge, even for an actor that likes to think of itself as a leading market and normative power. The construction of narratives that seek to support and legitimise the EU's external action is clearly a key part of the region's soft power, but doing this in the context of a complex and shifting global institutional landscape is by no means a straightforward task.

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Part 4

Trade and non-trade policy objectives

18 Lessons from TTIP Toxicity for EU-US Trade Talks

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In the summer of 2018, it looked like a trade war between the US and the EU was about to start, including 25% of tariffs on EU car exports to the US that would have been particularly harmful for the EU car industry. But then, after a meeting of US President Donald Trump and EU Commission President Jean-Claude Juncker, both sides agreed to hold trade talks instead, attempting to remove many of the trade policy asymmetries that Trump perceived as unfair. Only a few years earlier, the Transatlantic Trade and Investment Partnership (TTIP) was a plan for a wide-ranging trade agreement that was discussed by negotiators of both sides between 2013 and 2016. When Trump was elected president the project was put on hold – but even if someone else had been elected US President, TTIP would have had an uncertain future. The reason for this is that by 2016, public opinion in the EU was getting increasingly hostile, in particular in Austria and Germany. After an initially positive mood in the EU, the TTIP brand became increasingly toxic, with even traditionally pro-trade constituencies rejecting the deal. In 2016, it even looked as if TTIP toxicity tarnished the support for increased international trade in general. After TTIP was frozen, public opinion returned to its normal state.

The simultaneously negotiated Comprehensive Economic and Trade Agreement (CETA) with Canada – often criticised in similar tones as TTIP – was met with considerably less hostility in most EU member states, although signature of the CETA was controversial and resisted by the Wallonia region of Belgium and unsuccessfully challenged before the Court of Justice by opponents to the treaty.

The fate of EU-US trade talks is of course uncertain. One relevant factor will be whether they will revive the violent criticism of TTIP. Will the toxicity of the TTIP brand poison any possible trade deal with the US, making it difficult for the EU to avoid punitive tariffs on cars and other products and thus an increasingly intensified trade war? This chapter discusses aspects of the TTIP that were particularly controversial and how these stumbling blocks might be avoided in a future EU-US trade deal. I base my

argument on survey data from the US and the EU, with an emphasis on public opinion in Germany which is of particular interest, as Germany usually views itself as a pro-free trade country but experienced a particularly large and negative swing in public opinion in the TTIP debate.

Why did public opinion turn against TTIP?

If one considers the EU as a whole, even during the peak of the TTIP debate, there was actually a majority in favour of TTIP. In Eurobarometer 86, for example, 53% were in favour of TTIP and 34% against (Eurobarometer 2016). However, TTIP would have been a mixed treaty, thus requiring ratification not only by the European Parliament but also by the national parliaments of the member states. This made passing TTIP considerably more difficult, as public opinion was particularly hostile to TTIP in a few member states, in particular in Austria and Germany. Table 1 presents public approval rates for the EU member states for 2015. Typically, stronger support was found in the Central European member states, the United Kingdom, Ireland and the Netherlands. In contrast, in Austria, Germany and Luxembourg more people disapproved TTIP than supported it. In Austria 67% rejected TTIP; in Germany 51% did so. At the same time, in the US, public opinion was also divided: 18% were against TTIP and 15% in favour, with a large share of the surveyed population being undecided (Bluth 2016). At that time, the Trans-Pacific Partnership (TPP) was much more prominently present in public debates in the US and mostly viewed critically, which may have had an impact on the support for TTIP.

Why did public opinion turn against TTIP in German-speaking countries that are not usually hostile to trade? It is not that opposition to TTIP reflected rejection of trade. Figure 1 shows there is a majority both in Germany and in the United States who think that increased trade with the other country is a good thing. This was even more the case in 2016 than it was in 2018. If increased trade with the US is not a problem in principle for German public opinion, then why the massive rejection of TTIP? How did public opinion in Germany collapse from 55% in favour in 2014 to only 17% in favour in 2016?¹

1 See Bluth (2016).

Table 1 Public opinion in the EU on TTIP in spring 2015, based on Eurobarometer

	In favour		Against		Neither for nor against	
	2015 (EB 83)	Change since 2014 (EB 82)	2015 (EB 83)	Change since 2014 (EB 82)	2015 (EB 83)	Change since (EB 82)
EU28	56	-2	28	3	16	-1
Belgium	53	-13	35	9	12	4
Bulgaria	67	3	15	1	18	-4
Czech Republic	62	0	23	-2	15	2
Germany	31	-8	51	10	18	-2
Denmark	66	-5	18	1	16	4
Estonia	63	-9	14	3	23	6
Ireland	77	6	12	-3	11	-3
Greece	66	5	28	-4	6	-1
Spain	63	0	19	0	18	0
France	53	3	33	1	14	-4
Croatia	63	-4	26	3	11	1
Italy	58	0	24	2	18	-2
Cyprus	64	5	21	-4	15	-1
Latvia	62	-4	21	3	17	1
Lithuania	79	0	7	-2	14	2
Luxembourg	37	-3	49	6	14	-3
Hungary	63	1	26	-2	11	1
Malta	79	4	7	-4	14	0

	In favour		Against		Neither for nor against	
	2015 (EB 83)	Change since 2014 (EB 82)	2015 (EB 83)	Change since 2014 (EB 82)	2015 (EB 83)	Change since (EB 82)
Netherlands	63	-11	27	9	10	2
Austria	23	-16	67	14	10	2
Poland	71	-2	14	3	15	-1
Portugal	60	0	23	0	17	0
Romania	78	3	10	-1	12	-2
Slovenia	46	-11	42	11	12	0
Slovakia	56	-6	29	3	15	3
Finland	58	-4	22	1	20	3
Sweden	64	5	23	-3	13	-2
United Kingdom	63	-2	20	1	17	1

Source: Eurobarometer (2015).

Figure 1 Public opinion on bilateral trade in Germany and the United States in 2018



Source: Bluth (2018).

The reason for this major swing was a strong rejection of some elements of TTIP that went beyond the associated reduction of tariffs. First, investor-state dispute settlement (ISDS) was one of the areas that was perceived particularly negatively by the German public. Second, regulatory cooperation was also viewed very negatively as US standards were generally perceived to be inferior to EU standards. Fears of inferior US products and possibly a regulatory race to the bottom were very present in the debate. To some degree, this perception can be explained by the extent of social-media campaigning by anti-TTIP groups in the German speaking countries (Bauer 2016).

The home bias in trust in domestic regulation is however not only a German phenomenon. To a lesser degree, it can also be found in the US (Bluth 2016: 20-21). There was a strong conviction in Germany that TTIP would negatively impact employment and labour market conditions, consumer protection, environmental standards, social standards and democracy and regulatory sovereignty in general (Table 2). The perceived positive effects on economic growth, international competitiveness and global influence were not enough to compensate for these negative side effects. In the US the general pattern is much less negative, although labour market and labour standards were also of concern there.

Table 2 Perceptions of the effects of TTIP in Germany and the US

	Germany				United States			
	Positive	Negative	Neutral	Don't know	Positive	Negative	Neutral	Don't know
Economic growth	27%	26%	19%	28%	29%	23%	8%	39%
Employment and labour market conditions	23%	28%	22%	28%	21%	27%	11%	41%
international competitiveness	29%	24%	19%	28%	24%	22%	11%	43%
Your country's global influence	23%	21%	26%	29%	31%	15%	16%	38%
Consumer protection (e.g. for agricultural products)	12%	48%	13%	27%	23%	22%	12%	43%
Environmental standards	12%	46%	16%	27%	18%	19%	20%	44%
Worker's rights/social standards	10%	40%	22%	29%	17%	24%	15%	45%
Cultural diversity	24%	17%	30%	28%	26%	12%	22%	39%
Public services	10%	27%	31%	31%	15%	13%	26%	46%
Democracy	10%	28%	32%	29%	20%	14%	23%	43%
Regulatory sovereignty	9%	37%	22%	32%	17%	22%	15%	47%

Source: Pew (2014).

In the course of 2016, the debate on TTIP in Germany became increasingly toxic. Criticism got so widespread, that hardly any political actor was willing to invest political capital in order to save this trade deal. The then minister of economic affairs, Sigmar Gabriel (SPD), who had been defending TTIP for a long time although it was vastly unpopular in his own party, declared in autumn 2016 that the TTIP negotiations were “dead” and “de facto failed”. After this assertion and the election of Donald Trump with his known sceptical stance on international trade as US President, TTIP was frozen as no side saw any likelihood of the talks succeeding.

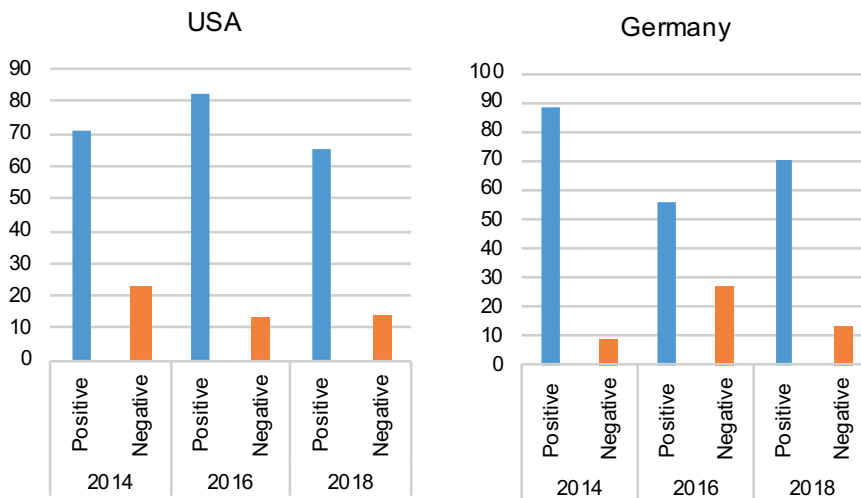
Implications for current trade talks between the US and the EU

The European Commission learned several lessons from the TTIP experience. First, it realised that the secretive way of holding trade talks prior to TTIP made it easy for critics to spread fears, including inaccurate statements of what is actually subject to the trade negotiations. The publication of negotiation mandates and public statements after negotiations rounds that were introduced in the wake of the TTIP debate increase transparency about what is actually subject to the negotiations and what is not. Second, already during the TTIP debate the EU has moved away from ISDS through private arbitration to a public investment court which is less likely to be perceived as granting corporations special rights. The Commission has also shifted its communication strategy away from highlighting aggregated welfare increases of a trade agreement which can appear rather abstract to laymen but uses a communication strategy that focuses on more tangible gains for local companies instead. These improvements make it easier to dispel some of the fears that have been associated with TTIP.

The TTIP debate risked tarnishing the image of free trade, at least in Germany if not in Europe. As Figure 2 shows, opinions trade suffered a shock from 2014 to 2016 when public support for trade in Germany collapsed from 88% to 56%. It has since recovered and in 2018 stood at 70%. The toxicity of the TTIP debate did not do irreparable damage to the opinions on free trade in Germany. The US, however, has been on an opposite trajectory. Support for free trade was particularly high in (early) 2016 but following the discussions on TPP and Donald Trump’s election, positive opinions on trade were in decline. This might indicate that there might be less appetite in America for trade agreements between the US and the EU in the future. For future trade agreements, it will be important to watch public opinion in particular in France, as the general mood is getting increasingly hostile towards international trade. Bluth (2018) reports survey data showing that French respondents were consistently more negative on trade related questions than the British or Germans. Notably, 27% of French respondents

believed that increased trade with the US would harm their economy (compared to 24% in Germany and 11% in the UK). This is also reflected in the hesitancy of the French government to approve the negotiation mandate for the new trade talks before the elections to the European Parliament in May 2019. There is a risk that many of elements that made TTIP unpopular would resurrect themselves once a serious public debate on a TTIP2.0 or TTIP-light would begin.

Figure 2 Public opinion on international trade in the US and Germany over time



Source: Bluth (2018), based on a YouGov survey commissioned by the Bertelsmann Stiftung.

The mandate for the new negotiations foresees two agreements, one on tariffs on industrial goods and one on conformity assessments.² This strategy is clever, for two reasons: First, the talks exclude agricultural products which had been particularly contentious in the TTIP debate. The EU should continue to resist any US temptations to include agriculture of specific agricultural sectors in the agreement as this would likely revive TTIP toxicity. Reducing tariffs on industrial goods is much less controversial the general support for US-EU trade should help obtaining public support for this element. Second, using two distinct agreements except of one makes things easier. An agreement on tariffs would likely not be a mixed agreement, meaning it can be approved by institutions at the European level without involving national institutions. An agreement on regulatory cooperation or conformity assessment is likely to be of mixed nature and hence needs approval on the national level. It is also likely to be

² At the time of writing, the mandate had not yet been approved by the European Council (05/03/2019)

much more controversial, as the TTIP debate has shown. Splitting the agreement in two should separate the two issues, tariffs and non-tariff barriers to trade and allow to treat them separately. Past experience shows, however, that related but distinct issues are not usually treated separately in heated public debates. Again, excluding agriculture is likely to make it easier to gather political support, as product standards for industrial goods are less likely to incite similar preoccupations as standards for agricultural products did.

A remaining element is the worry that increased trade would lead to adverse labour market conditions and lower labour standards. This criticism will need to be addressed in the debate about a possible new trade deal. The importance the US government has placed on such standards in the United States-Mexico-Canada Agreement (USMCA) shows these concerns are relevant for constituencies.

Conclusion

While the majority of EU citizens remain in favour of trade and trade agreements, opinions vary strongly from one member state to another. For mixed agreements, to which national parliaments need to consent, this adds further stumbling blocks for the ratification process. In the case of TTIP, the strong public opposition in the German speaking countries were the decisive factor to deal a deadly blow to the negotiations. Most of this sentiment was motivated by concerns about the undermining of perceivably higher European standards, most importantly in agriculture and environmental protection. By omitting trade in agricultural goods in the current US-EU trade talks, one important stumbling block has been removed. Other measures adopted by the European Commission in recent trade talks since TTIP also increase transparency and reduce the fear associated with trade talks. Once the ongoing trade talks reach a stage where they are being publically debated, two issues can possibly be contentious: worker rights and conformity assessment. Here, it is important to address public concerns early on to avoid that TTIP toxicity resurrects itself and torpedoes what might be Europe's best chance to avoid a trade war with its most important export market.

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19 Improving the enforcement of labour standards in the EU's free trade agreements

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The EU is an extremely active international actor in the area of trade, being widely involved in the negotiation and conclusion of free trade agreements (FTAs) with partner countries. All new-generation FTAs include a sustainable development clause between the parties promoting, among other things, a set of labour standards as well as Conventions of the International Labour Organization (ILO). For instance, most of the EU's FTAs contain provisions to protect the right to collective bargaining and freedom of associations or to forbid discrimination in the work place. On 17 December 2018, for the first time in history, the European Commission sought consultations with a partner state, South Korea, for failure to respect a labour standard obligation in an EU FTA, and panel proceedings may soon be initiated.¹ This is a notable development, which comes almost ten years after the entry into force of the agreement and the prolonged failure of the Asian EU partner to ratify and implement four of the eight fundamental ILO Conventions.

However, there is still a long way to go to rebalance the discrepancy between the enforcement of labour standards and of other obligations, concerning trade, investment and intellectual property, contained in the EU's FTAs. As a matter of fact, under the EU Trade Barriers Regulation (TBR), EU companies can file a complaint with the European Commission when a country is not respecting an obligation under an FTA.² This leads to a Commission investigation and a number of time-limited actions can follow against the state concerned. Various initiatives can be taken at the EU level before the more

1 See "EU steps up engagement with Republic of Korea over labour commitments under the trade agreement", European Commission press release (<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1961>). By early April 2019, the EU seemed close to initiating panel proceedings (see <https://en.yna.co.kr/view/AEN20190409006651315>).

2 Regulation (EU) 2015/1843 of the European Parliament and of the Council of 6 October 2015, OJ L 272/1 (hereafter: the "TBR"). For an introduction to the TBR see Bronckers and McNelis (2001).

burdensome and diplomatically taxing international dispute settlement mechanism is triggered. This system allows private parties to be actively involved in the enforcement of commitments made under FTAs, inspiring more confidence in their implementation.

Yet labour standards and environmental obligations are excluded for the time being from the set of rights which can be enforced via the TBR. This is the case even where EU FTAs already contain precise obligations to ratify and implement the relevant ILO Conventions including concerning core labour standards. This situation damages the capacity of the EU to uphold labour standards and leaves most labour violations unaddressed. This chapter puts forward a proposal to allow labour standards to be enforced, via a private complaint procedure in front of the European Commission. Only in the event that proceedings at the EU level do not lead to compliance would we then envisage a fully-fledged third-party adjudication system in the FTA itself, followed, if necessary, by financial and ultimately trade sanctions.

Modelling a private complaint procedure

It is not necessary to re-invent the wheel. We propose to model a private complaint procedure relating to violations of labour standards included in the EU's FTAs along the lines of the TBR, by amending that regulation. We discuss the main steps below.

Admissibility of a private complaint

It is important to design appropriate admissibility thresholds, since the Commission has limited resources and cannot be expected to investigate thoroughly and in a time-limited fashion each and every complaint it receives. Furthermore, engaging with a third country on the grounds that it may have violated its international obligations towards the EU also taxes diplomatic relations. Thus, complaints without sufficient merit should be filtered out.

Representativeness

When a social partner files a request, the European Commission would first check if the social partner is an interested party.

In our proposal trade unions would have a right to file a complaint independently. In fact, in our view, trade unions have their own interests in bringing a complaint with regard to labour standards violations and are in a position to autonomously provide sufficient evidence of the violation. Another reason to allow trade unions to complain independently about labour standard violations by an FTA partner of the EU is that trade

unions have a broader interest, also in the protection of shared values and fundamental rights.

We propose that the European Commission would accept complaints from social partners that are considered representative on the basis of the recognition procedure of Treaty on the Functioning of the European Union (TFEU) Article 154. This Article provides that whenever the European Commission is proposing EU legislation in the social policy field, management and labour unions shall be consulted. Such consultation can also lead to the conclusion of agreements between social partners and EU institutions.³ To put this procedure into operation, the European Commission had to identify the social partners to be consulted whenever required by EU law. This led to the creation of a list⁴ on the basis of studies that the EU Foundation for the Improvement of Living and Working Conditions (Eurofound 2013) conducts to identify social partners that are organised at the EU level and capable of being consulted and of negotiating agreements.

We submit that the same employer organisations and trade unions that are selected to take part in such procedures, and have extensive institutional experience in dealing with labour issues at the EU level, are also in a position to have the legal right to take action for the violation of one of the labour standards protected under EU FTAs. There is in fact already an institutional infrastructure in place allowing the European Commission to interact with these social partners (European Union 2012). The use of this list of social partners would drastically reduce the number of persons allowed to bring an action under the proposed procedure. The list includes umbrella organisations such as BusinessEurope and the European Trade Union Confederation (ETUC) as well as sectoral social partners.

Under our proposal, umbrella organisations would have legal standing to trigger an investigation for violations occurring in any economic area. Sectoral organisations would have legal standing for violations perpetrated in their sector of competence. Each organisation would be allowed to file a complaint independently. However, the European Commission could merge different complaints in the same procedure at a later stage.

Merits

When the European Commission receives a complaint from a representative social partner, it needs to conduct another check to filter out frivolous complaints, by

3 TFEU Art 155. See Barnard (2012: 47).

4 List of European social partners organisations consulted under Art 154, available at: ec.europa.eu/social/BlobServlet?docId=2154&langId=en.

assessing whether the complaint appears to have sufficient merit. In order to decide on admissibility it is sufficient for the Commission to conduct a preliminary analysis, which in the present TBR is based on sufficient evidence to initiate a procedure.

The TBR requires a petitioner to show that the FTA obligation establishes a right of action for the EU – a requirement that would not need to be adapted. In fact, according to the TBR, such a right of action exists when the relevant international rules “either prohibit a practice outright, or give another party affected by the practice a right to seek elimination of the effect of the practice in question”.⁵ This flexible formula captures violations of various types of labour standards currently found in FTAs – not just ‘hard’ obligations, but also ‘softer’ yet still meaningful standards.

A crucial point, however, is that the private complaint procedure should not require the demonstration of any effects on, or links with, trade, global trade patterns, or social dumping.⁶ Presently, petitioners under the TBR have to demonstrate some sort of trade effect.⁷ Already in respect of violations of trade agreements within third-country markets, this requirement is not to be interpreted stringently (Bronckers and McNelis: 441-442). Yet, this requirement would be entirely misplaced in respect of complaints concerning labour rights violations. In fact, experience has shown that it is very difficult to demonstrate the trade impact of labour right violations.⁸

The EU's interests

There is no need to modify the additional requirement present in the TBR that the investigation should be “in the interest” of the European Union. This leaves some discretion to the European Commission in deciding whether to open an in-depth investigation. Yet, the impact of this discretionary element in the Commission’s assessment should not be overstated, as experience in the trade area has shown (Bronckers and McNelis: 449-51).⁹ Indeed, once a private petitioner has shown it is entitled to bring a complaint (i.e. it is duly representative) and has brought sufficient evidence that a third country is likely to violate its FTA labour standards obligations, it would be politically very difficult for the Commission to decide that it would not be in the interest of the Union to even investigate such a complaint and to make inquiries with the third country. It should be recalled here that the Commission is obliged to

5 See TBR Art 2(1)(a).

6 *Dominican Republic – Central America – United States Free Trade Agreement, Arbitral Panel established pursuant to chapter twenty in the matter of Guatemala – Issues Relating to the Obligations Under Art 16.2.1(a) of the CAFTA-DR*, 14 July 2017, available at: bit.ly/2tiQos4.

7 See TBR Art 3.

8 See *Guatemala – Issues Relating to the Obligations Under Art 16.2.1(a) of the CAFTA-DR* (endnote 6); see also Polaski (2017).

9 See ECJ, Case 70/87 Fediol IV [1989] ECLI:EU:C:1989:254.

publish a reasoned decision in the Official Journal, and that such a decision is subject to judicial review.¹⁰

Internal investigation by the Commission

The present TBR defines the procedural steps to be taken by the European Commission when investigating the violations alleged in a private complaint it has declared admissible.¹¹ Most of these provisions can be utilised in an investigation of labour standards violations.

The Commission has the duty to inform the third country involved of the complaint. It also has the power, when necessary, to perform an investigation in the third country unless the country concerned objects.¹² Furthermore, the European Commission has an obligation to hear the parties concerned if they have made a written request for a hearing.¹³ In principle, this system allows the Commission to hear social partners in the EU and in the third country so that they can contribute to the evidence collected in the case. The nature of labour rights obligations might require slight adaptations to ensure that the petitioners are heard by the Commission and to support the participation of the social partners and private persons affected by the violation in the third country. Thus, we could imagine an obligation on the European Commission to reach out and collect evidence from these interested parties, even if they did not register their intention to take part in the investigation after the publication of the notice in the Official Journal.

There are useful experiences in other countries where this advanced model of fact-finding concerning labour standards violations is already a reality. For example, in the context of the enforcement of the Canada–Colombia Agreement on Labour Cooperation (CCOALC), a side agreement to the Canada–Colombia FTA, Canadian authorities performed extensive investigations within Colombia.¹⁴ When Canada concluded this investigation, it raised serious concerns about the protection of key labour rights in Colombia. Both governments then agreed on a three-year action plan to be undertaken by Colombia (2018-2021).¹⁵

¹⁰ TBR Art 13.4.

¹¹ See, notably, TBR Art 9.

¹² TBR Art 9.2.

¹³ TBR Art 9.5.

¹⁴ See “Review of public communication CAN 2016-1. Report issued pursuant to the Canada-Colombia Agreement on Labour Cooperation”, available at: www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/2016-1-review.html.

¹⁵ Available at: <https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/colombia-action-plan.html>.

It also seems appropriate to stipulate explicitly that the European Commission is to examine whether the ILO has made any relevant findings regarding the alleged labour standard violations. The ILO has shied away from third-party adjudication on the compliance of Members with its norms (see Koroma and van der Heijden 2015). But the ILO does have supervisory mechanisms, though in most cases these are ultimately consensus-driven – and consensus has become more difficult to find amongst social partners, especially after the 2012 stalemate on the right to strike (van der Heijden 2017). Still, it would be useful for the European Commission in its investigation to take on board any fact-finding or reflections in ILO reports that could help to shed light on the alleged violations.

Regarding the type of evidence to be collected, the TBR would require some adaptations as well. Presently, the Commission is supposed to consider only trade-related factors (e.g. volume of imports or exports, prices, impact on EU industry, effects on trade) to establish whether the complaining industry has shown that it is injured by the third country's violation of its international obligations.¹⁶ These factors are not particularly relevant for an investigation into violations of labour standards. As explained above, such violations may not, or not primarily, cause economic injury within the EU, but rather disrupt shared values that underlie the FTA with the third country. Establishing the violation itself, as well as such factors as its gravity and/or frequency, should be sufficient for a finding that the EU has a right of action against the third country concerned.

After an investigation of five or seven months,¹⁷ there are several possible outcomes under the TBR. First, the European Commission can conclude that there was no violation of the labour standard included in the FTA and that no further action should be taken.¹⁸ Second, without necessarily admitting to a violation, the third country might propose to take measures that would remove the need for the EU to take further action.¹⁹ Third, the EU and the third country might find that the best way to resolve the dispute is to conclude a new agreement between them.²⁰ Finally, the European Commission might find there is a violation, even though this is not accepted by the third country. In that case, the Commission would normally want to initiate international dispute settlement proceedings under the FTA before taking any further action.²¹

¹⁶ TBR Art 11.

¹⁷ TBR Art 9.8.

¹⁸ TBR Art 12.1.

¹⁹ TBR Art 12.2.

²⁰ TBR Art 12.3.

²¹ TBR Art 13.2.

International dispute settlement

In case the third country does not remedy the violation of the FTA's labour standards found by the Commission, the proposed procedure would move on to dispute settlement. To begin with, formal consultations are to be held involving the FTA's trade and sustainable development committee.²² If, within a short period (say, three months),²³ the consultations do not resolve the issue, the new FTAs envisage dispute settlement in the form of independent third-party adjudication.

The EU–Canada Comprehensive Economic and Trade Agreement (CETA), for instance, provides that the Panel should submit a “final report setting out the findings of fact, its determinations on the matter including as to whether the responding Party has conformed with its obligations under this Chapter”.²⁴ Compared to the general dispute settlement system of the FTA, the only thing missing is sanctions, as discussed below.

Taking enforcement of FTA labour standards more seriously is not just a matter of shoring up dispute settlement procedures, though. As discussed above, it also requires taking a second look at the patchwork of labour standards that have so far been included in the EU's FTAs, ranging from hard obligations to statements of intent that are as soft as butter.

Finally, in the event an FTA refers explicitly to an ILO norm, this should not stop adjudication by an international tribunal established under the FTA. This is similar to the the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which incorporates parts of the WIPO Conventions, such as the Paris Convention on Industrial Property²⁵ and the Berne Convention on Copyright.²⁶ Compliance with these conventions can therefore be sought in dispute settlement proceedings of the WTO.²⁷ However, when dealing with ILO-based norms FTA supervisory bodies or FTA panels should be encouraged to seek relevant information from the ILO,²⁸ while keeping in mind the limitations inherent in its consensus-based supervisory mechanisms (Koroma and van der Heijden 2015, van der Heijden 2017).

Sanctions

As the European Court of Justice recalled, should an EU treaty partner breach the sustainability provisions in an FTA, the EU would be entitled under general public

22 See, for instance, CETA Art 23.9.

23 See, for instance, CETA Art 23.10.

24 CETA Art 23.10 (11)

25 TRIPS Art 2.1.

26 TRIPS Art 9.1.

27 TRIPS Art 64.

28 See CETA Art 23.10 (9).

international law to suspend other commitments in the FTA or even terminate the agreement.²⁹ Yet, the EU's political institutions do not seem to consider this to be a viable threat to induce the EU's treaty partners to comply with their sustainability obligations. There is no public record of this ever having been seriously considered. In fact, rather than relying on principles of general international law, the debate in the EU has been whether to include any specific sanctions in its FTAs. For many years it was an article of faith for the EU to reject this. It was therefore noteworthy for the European Commission to raise the possibility that the EU might change this policy in its first non-paper of 2017. However, in its second non-paper of 2018 the Commission ultimately dismissed this idea (European Commission 2017, 2018).

We endorse the proposal of the European Parliament that an FTA panel should have the means to oblige a non-complying country to make financial payments as a temporary inducement until the date it brings itself into compliance with the labour standard it has been found to violate.³⁰ This is not unprecedented. As the European Commission itself noted, albeit only in its first non-paper of 2017 (European Commission 2017: 3). Canada for example envisages fines in the event of infringements of the sustainability chapters in its FTAs (other than CETA, notably because of resistance by the EU!). Furthermore, the EU itself has useful experiences too with financial penalties in the event of EU law infringements by member states. These can be demanded by the European Commission and imposed by the European Court of Justice. The amount of the penalties depends on factors such as the severity of the infringement, its duration, and the ability to pay of the offending country (i.e. its GDP).³¹

These experiences could be a source of inspiration when conceiving of a penalty scheme in relation to violations of FTA labour standards. The penalties that the offending country would pay could go into a fund which could be controlled by an independent body (e.g. the ILO), and which could help for instance to finance the development of international labour standards.

Finally, there are good reasons why the FTA should still include the option of imposing trade sanctions, including the suspension of trade preferences or of the entire agreement, if the country violating the labour standard does not bring itself into compliance and refuses to make financial payments. In our proposal, trade sanctions are in principle not to be used to enforce labour standards. However, the remedies in the general state-to-state dispute settlement could be extended to the sustainability chapter as extrema

²⁹ See *Opinion 2/15* [2017] ECLI:EU:C:2016:992, at para. 161.

³⁰ See "Resolution on implementation of the 2010 recommendations of Parliament on social and environmental standards, human rights and corporate responsibility" of 5 July 2016 (2015/2038(INI)), at para 22(d).

³¹ The Commission published an update of its calculus of lump sums and penalty payments in a Communication of 19 September 2018, available at: http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/financial-sanctions/index_en.htm.

ratio. The CETA, for instance, includes several provisions to assure compliance with the final panel report concerning trade obligations. These include, after the expiration of a reasonable period for compliance, the right of the offended party to suspend obligations.³²

In the WTO system, retaliation must be equivalent to the level of nullification or impairment of benefits, which means that the retaliatory response may not go beyond the level of harm caused by the other party.³³ This idea of economic injury to calculate the amount of the retaliation can be adapted to sustainability obligations, so that the value of the retaliation could approximate the financial penalties that the offending country is refusing to pay. For instance, a financial penalty of €10 million could be replaced by tariff increases on imports from the offending country amounting to €10 million.

So as to avoid any misunderstanding – sanctions are the final part, but not the main element of the reform we are proposing here. We are also not suggesting that private complaint procedures, coupled with sanctions, can or should replace dialogue between governmental and social partners in the implementation of international labour standards in the EU's FTAs. We do submit that more effective enforcement can be a useful complement to improve the implementation of these standards.

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³² CETA Art 29.

³³ “Countermeasures by the prevailing Member”, WTO (available at: www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c6s10p1_e.htm).

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20 EU trade and development policies: How has Fair Trade been used as a tool to achieve sustainability for people and planet?

Alice Sinigaglia and Sergi Corbalán

Fair Trade Advocacy Office

The EU has a key role to play in ensuring that international trade and global value chains contribute to sustainable livelihoods and human rights, within planetary boundaries. The advocacy work of the Fair Trade movement aims to create transformation policy change through a variety of EU policy initiatives that the EU could take such as adopting a binding legal frameworks for Human Rights Due Diligence in supply chains or sectorial EU strategies (including legislation and support measures) to ensure fair and sustainable supply chains, in particular in the cocoa and textiles supply chains. (Box 1 briefly describes key elements of the Fair Trade movement and the Fair Trade Advocacy Office).

In 2004, the Fair Trade movement joined forces to advocate for European policies in support of Fair Trade and Trade Justice, as well as to strengthen Fair Trade actors' capacities to engage with the European Institutions. For this purpose, Fairtrade International¹, the World Fair Trade Organization² and the World Fair Trade Organization-Europe³ set up the Fair Trade Advocacy Office (FTAO).⁴ Since then, FTAO has established long-lasting collaborations with key Directorate-Generals of the European Commission (EC) and Members of the European Parliament. FTAO is also a member of various EU advisory groups, such as the Multi-stakeholder platform on the implementation of the Sustainable Development Goals (SDGs), the Domestic

1 <http://www.fairtrade.eu>.

2 <https://wfto.com>.

3 <https://wfto-europe.org>.

4 <http://www.fairtrade-advocacy.org>.

Advisory Groups (DAGs) on trade and sustainable development for EU free trade agreements with Colombia and Peru, the EU-Central America Association Agreement, and the Consultative Committee on the implementation of the Economic Partnership Agreement between the EU and Cariforum.

Box 1 Fair Trade movement

The Fair Trade movement is made up of individuals, organisations and networks that share a common vision of a world in which justice, equity and sustainable development are at the heart of trade structures and practices so that everyone, through their work, can maintain a decent and dignified livelihood and develop their full human potential (International Fair Trade Charter 2018).⁵ Back in 2001, the main global Fair Trade actors agreed to define Fair Trade as “*a trading partnership, based on dialogue, transparency and respect that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South.*”

This chapter focuses on the measures the European Commission (EC) has and could take in support of the uptake and proliferation of bottom-up Fair Trade initiatives to support an increase in Fair Trade sales, growth in Fair Trade Enterprises, the effectiveness of Fair Trade civil society organisations (CSOs), the impact of Fair Trade campaigns, as well as other local actions that contribute to Fair Trade, such as local public procurement policies and measures to boost demand for Fair Trade products. In particular, we will look at these measures through the following political economy lenses:

- How have formal and informal institutions across the EU contributed to enabling policies for Fair Trade?
- How have grassroots initiatives and local actors influenced and/or supported these measures?

Fair Trade and the EU: The state of play

Since the Lisbon Treaty (2009), promoting ‘free and fair trade’ has explicitly become one of the objectives of the EU relations with the wider world (TEU art 3.5). In its 2009 Communication “Contributing to sustainable development: the role of Fair Trade and non-governmental trade-related sustainability assurance schemes”, the EC recognised

⁵ <https://www.fair-trade.website/the-charter-1>.

the definition of Fair Trade as defined by the Charter of Fair Trade principles. In 2015, with the new EU *Trade for All* Strategy (European Commission 2015), the EC shifted to using the term “fair and ethical trade”, a new terminology which has not been explicitly defined in any EU official documents, thus adding some confusion.

According to Martens and Orbie (2018), “[the] EU does not intend to play a role in the elaboration of fair trade criteria and their monitoring, since, according to the Commission, their interference would jeopardise the dynamism that private fair trade labelling initiatives have displayed [...] However the EU seems willing to create a supportive environment for the advancement of fair trade”. Four strategic documents guide the EU approach to Fair Trade:

A. The ‘Trade for All’ Communication

On 14 October 2015, the EC adopted its current EU trade strategy, which includes for the first time a paragraph on “Promoting fair and ethical trade schemes” (Section 4.2.4):

Promoting fair and ethical trade schemes reflects EU consumer demand and contributes to developing more sustainable trade opportunities for small producers in third countries. There is a lack of information today about access to fair trade schemes for both producers and EU consumers. The Commission has a role to play in facilitating this connection and in raising awareness on both the supply and the demand sides.

The Commission will:

- *use the existing structure for implementation of FTAs to promote fair trade and other sustainability assurance schemes, like the EU organic scheme;*
- *address fair and ethical trade more systematically in the upcoming review of the EU ‘Aid for trade’ strategy and report on fair trade-related projects as part of its annual ‘Aid for trade’ report;*
- *promote through the EU delegations and in cooperation with the High Representative, fair and ethical trade schemes to small producers in third countries, building on existing best practice initiatives;*
- *step up support to work in international fora, such as the International Trade Centre, to gather market data in relation to fair and ethical trade markets, which could then serve as a basis to follow the evolution of the markets; and*
- *develop awareness-raising activities in the EU, in particular working with local authorities in the EU via the possible launch of an ‘EU City for Fair and Ethical Trade’ award.*

B. The EU's role in implementing the United Nations 2030 Agenda

As a follow-up of the UN 2030 Agenda and its Sustainable Development Goals (SDGs)⁶ on 21 November 2016 the EC published a policy document on the EU's approach to achieve sustainable development in the EU and globally. Unfortunately, this fell short of being a proper implementation strategy, which has been passed on to the next Commission. In the Staff Working Paper supporting the above-mentioned Communication, the Commission included the promotion of fair and ethical trade in the list of actions that the EC is already taking to implement the SDG 12 on the promotion of sustainable consumption and production.

C. The European Consensus on Development

The Consensus represents the shared vision and framework for action for development cooperation for the EU and its member states (MS). Its last update was in 2017 to ensure the alignment of development cooperation policies with the SDGs.⁷ In this last version of the Consensus, "fair, transparent and ethical trade" is recognised as a concrete way to strongly contribute to the implementation of the Agenda (point 54). "Supporting fair and ethical trade" is also identified as a tool for development cooperation policies and initiatives (point 106).⁸

D. The EU Aid for Trade Strategy

The updated EU Aid for Trade (AfT) Strategy 2017⁹ reviewed the EU AfT Strategy adopted 10 years earlier by the EU in response to the WTO-led AfT Initiative¹⁰ to help developing countries better integrate into the international trading system. The document acknowledges the role of 'fair and ethical trade' in promoting sustainable development. It also includes relevant commitments, such as the willingness to strengthen CSOs' participation in the Domestic Advisory Groups of trade agreements and to support value chains that are key for Fair Trade, such as coffee, cocoa, and cotton (pages 8-10).

6 <https://www.un.org/sustainabledevelopment/development-agenda>

7 https://ec.europa.eu/europeaid/policies/european-development-policy/european-consensus-development_en

8 Point 106 (...) Development cooperation will help to reinforce the inclusion and implementation of trade and sustainable development chapters in trade agreements, increased preferential access for vulnerable countries to the EU market and support for fair and ethical trade and further develop policies to ensure responsible management of supply chains (...)

9 http://europa.eu/rapid/press-release_IP-17-4488_en.htm

10 https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm

Fair Trade and the EU viewed through political economy lenses

Different factors contributed to the recent policy initiatives in support of Fair Trade. From a top-down perspective, the 2030 Agenda has played an important role in bringing institutions together and making them promote sustainable development in innovative ways. From a bottom-up point of view, Fair Trade actors have also been effective in positioning themselves as strategic partners in the implementation of this Agenda. In what follows, we briefly discuss how institutions, CSOs, Fair Trade actors, and citizens contributed to these results.

The role of institutions in providing political support

At EU level, the Commissioner for Trade Cecilia Malmström has frequently stressed the role of fair and ethical trade in a values-based trade strategy. The cross-party European Parliament's Fair Trade Working Group, an informal group of MEPs committed to Fair Trade, has also regularly called on the EC to use its policies to promote Fair Trade. At national level, the organisers of the successful German Fair Trade Capital Award (an initiative launched by the German Federal Ministry for Economic Cooperation and Development to raise the profile of local authorities and actors committed to Fair Trade) helped convince the European Commission to set up a European Award on 'fair and ethical trade'. At local level, the Fair Trade Town Campaign (a global initiative, which started in Garstang (UK) in 2001 and currently involves more than 2,000 towns across the globe) has also provided EU policy makers with concrete examples about how local initiatives on Fair Trade can support the objectives of EU trade and development policies.

CSOs/ Fair Trade actors

At EU level, the Fair Trade Advocacy Office (FTAO) has been advocating for EU enabling policies for Fair Trade for 15 years. FTAO also seized the 2030 Agenda as an opportunity to collaborate with other Brussels-based civil society organisations to advocate for EU actions promoting sustainable development through innovative tools, such as Fair Trade. The visibility of Fair Trade movement actors at national and local level also raised policy makers' awareness on Fair Trade and how Fair Trade schemes can help localise the 2030 Agenda¹¹. National and local Fair Trade actions also created close linkages between Fair Trade campaigns and other civil society initiatives launched

¹¹ <http://localizingthesdgs.org/library/view/200>

by church groups, trade unions, and other stakeholders. This also increased the grass-root support for enabling policies for Fair Trade at local, national, and EU level.

Consumers

The latest edition of the Eurobarometer report on the occasion of the European Year for Development indicates that half of all EU citizens would be prepared to pay more for a Fair Trade product.¹² As indicated in the ‘fair and ethical trade’ paragraph of the 2015 *Trade for All* Communication, the increasing interest and demand of EU consumers for sustainable products and services also pushed the EU to take concrete actions in support of ‘fair and ethical trade’.

The implementation of the current EU commitments in support of Fair Trade

As a follow-up to the “fair and ethical trade” paragraph of the *Trade for All* Communication, EU Trade Commissioner Cecilia Malmström launched the first EU Cities for Fair and Ethical Trade Award, mentioned above.¹³ The winner of the first edition of this award, Ghent (Belgium), was announced on 27 June 2018, during the first EU Cities for Fair and Ethical Trade Award Ceremony. Additionally, Dortmund (Germany), Saarbrücken (Germany), Lyon (France) and Madrid (Spain) received special mentions for education and community participation, inspiring procurement practice, innovation and global partnerships respectively. Managed by the International Trade Centre (ITC), the initiative has helped raise awareness on the role of local actors in supporting EU trade and development policies, as well as supported an exchange of information and good practices among local authorities committed to sustainable development. The Fair Trade movement actively participated in the set-up of this initiative: it was involved in the Technical Committee which defined the features of the award and the jury who selected its first winner. The participation of Fair Trade Towns in the Award was also high. Moreover, on 24 May 2019, ITC launched the report on the *European Union Market for Sustainable Products* (ITC 2019). Commissioned by the Directorate General for Trade of the European Commission (DG Trade), the report was the result of a two-year pilot survey and analysis of data from retailers in France, Germany, Italy, the Netherlands, and Spain.

12 See the Special Eurobarometer 421, “The European Year for Development – Citizens' Views on Development, Cooperation and Aid” at http://data.europa.eu/cuodp/data/dataset/S2022_82_1_421.

13 <https://www.trade-city-award.eu/>

The Chair of the European Parliament International Trade Committee, Mr Bernd Lange, also organised three EP breakfasts with EU Delegations (in Autumn 2016, 2017, and 2018) to proactively promote Fair Trade in the Global South. The gatherings were used by FTAO as an occasion to collect good practices among EU delegations (e.g. the initiative by the EU delegation in Brazil to promote the export of Fair Trade products from Brazil to EU). The EC is also expected to launch an online forum to help EU Delegations exchange information and examples of good practice on ‘fair and ethical trade’.

Other follow-ups of the EU trade strategy include a market report on the fair and ethical trade market in the EU, to be carried out by the International Trade Centre, on behalf of the EC, due in the first semester of 2019. The Chair of the European Parliament International Trade Committee, Mr Bernd Lange, also organised three EP breakfasts with EU Delegations (in Autumn 2016, 2017, and 2018) to proactively promote Fair Trade in the Global South. The gatherings were used by FTAO as an occasion to collect good practices among EU delegations (e.g. the initiative by the EU delegation in Brazil to promote the export of Fair Trade products from Brazil to EU). The EC is also expected to launch an on-line forum to help EU Delegations exchange information and examples of good practice on ‘fair and ethical trade’.

Recommendations for future EU trade and development policies promoting Fair Trade

In recent years, some concrete steps have been taken to support the uptake of Fair Trade initiatives. These are very much welcome. They should be seen as evidence that enabling the proliferation of Fair Trade is both in line with a values-based trade agenda and the sustainable development objectives. However, there is still scope for improvement in how EU trade and development policies could promote the uptake of Fair Trade in the upcoming 2019-2024 EU term.

In our opinion, the role of citizens, local policy makers and local civil society actors (e.g. universities, schools, volunteering organisations, and CSOs) will be crucial to motivate the new Commissioners and MEPs to further promote enabling environments for Fair Trade initiatives. These local actors will also be key to ensuring that EU measures in support of Fair Trade will be implemented and will have a positive and long-lasting impact at local and national level. With the launch in 2018 of the EU Cities for Fair and Ethical Trade City Award, the EU made a big step in support of local actions promoting Fair Trade. It is essential that the new EU Trade Commissioner maintains the EU Cities for Fair and Ethical Trade Award and expands it into a Fair and Ethical Trade week, including other actors such as schools and universities. This would be a

tangible incentive for local authorities, civil society organisations, universities, schools and companies to partner up and learn from each other.

According to the results of recent FTAO research, there are other concrete measures that the next EC could take in support of the uptake and proliferation of bottom-up Fair Trade initiatives (FTAO 2019). In particular, the research helped identify several challenges that the EU could help local actors overcome, such as their lack of opportunities to exchange and learn from each other, within and outside the EU, as well as their difficulty to finance innovative Fair Trade projects targeting EU consumers/buyers in the Global North and/or small producers in the Global South.

In addition, as suggested by De Schutter (2015), “European Development funds (both from the EU itself, but also from the EU Member States whom the EU could encourage in this direction) could be earmarked for capacity building and technical assistance of small producers in the South, as well as to give them the knowledge and tools to access Fair Trade markets”. They will also be key to allowing local actors plan, test, implement, and upscale innovative approaches and measures in support of Fair Trade in the Global North too.

The 2019-2024 European Commission should also build on the commitments of the current EU Trade Strategy to support the successful Fair Trade initiatives of various EU delegations and to encourage more proactive projects by these key institutions to increase the trade of Fair Trade goods and the exchange between local actors committed to Fair Trade in the Global North and the Global South.

Finally, public procurement is an important lever in the bottom-up promotion of Fair Trade practices. In line with Target 12.7 of the SDGs, contracting authorities in the EU should get support measures (e.g. platform for information exchange, guides, trainings, helpdesks, etc.) to increase gradually commitments to Fair Trade public procurement across EU towards 2030, when all public procurement in the EU should include sustainability criteria. Whenever relevant, public procurement should include Fair Trade criteria in their calls for tenders, within the legal framework of 2014 Public Procurement Directives.

In conclusion, these non-exhaustive proposals are only examples of the types of policies that the forthcoming 2019-2024 European Commission could take to continue the legacy of the Trade For All Strategy in support of a more ambitious value-based trade agenda that promotes bottom-up innovations in making trade achieve the EU sustainable development objectives.

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21 EU trade and development policy in Asia: Promoting core EU values

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The EU is Asia's largest trading partner, a major provider of humanitarian aid, and a key promoter of democratic principles, and both regions exchange large amounts of foreign direct investment (Khandekar 2012, Cameron 2017).¹ The EU also has four strategic partners in the region in China, India, Japan, and the Republic of Korea. The growing trade between the EU and Asia, along with the extended competences of the EU, has encouraged it to negotiate trade and investment agreements with a number of Asian countries with reasonable success, as seen through the agreements with Singapore, Vietnam, Korea, and Japan.

The EU recognises the role of future free trade agreements (FTAs) in the Asia-Pacific region, which has seen rapid growth and has worked towards pushing through stalled trade negotiations.² Even though it has signed a number of FTAs with individual countries within the Association of South East Asian Nations (ASEAN), the EU's ultimate goal is to have an EU–ASEAN FTA (Muxfeldt 2013).³ Since Asia has no single organisation which replicates the EU in terms of competences to regulate issues such as trade and investment among its member states, a 'mega-regional agreement' – a treaty between Asia, or parts of Asia, and the EU – is not an achievable option, at least at this time. The closest to such an entity which exists in Asia is the ASEAN, which wants to work towards a single market,⁴ and the Gulf Cooperation Council (GCC),

1 See also the EEAS factsheet on EU-Asia security at: http://eeas.europa.eu/archives/docs/asia/docs/eu_in_asia_factsheet_en.pdf (last accessed 25 November 2018).

2 "A Balanced and Progressive Trade Policy to Harness Globalisation", COM(2017) 492 final, 13.9.2017, p. 3.

3 See also "Commissioner Malmström visits Singapore to advance EU economic ties with South East Asia", European Commission press release, 2 March 2018 (<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1804>) (last accessed 23 November 2018).

4 See <http://investasean.asean.org/index.php/page/view/asean-economic-community/view/670/newsid/758/single-market-and-production-base.html> (last accessed 5 December 2018).

which almost has a common market in place.⁵ Until the Regional Comprehensive Economic Partnership (RCEP)⁶ becomes a reality, there is no organised counterpart for negotiation of a trade or investment agreement with the EU. Therefore, the EU has decided to aim for a country-by-country approach to trade and investment negotiations in Asia. Generally, it will also be possible to have an agreement to which the EU would be a member next to single sovereign Asian countries as other members (i.e. the Trans-Pacific Partnership model). Nevertheless, such an agreement does not seem realistic at the present time, as the structure, political background, and economic systems of Asian countries differ too much.

As part of a very diverse continent, Asian economies vary in size and level of development (Khandekar 2012). Countries like Japan and the Republic of Korea have a high level of economic development, while there are other Asian countries (such as Cambodia, Myanmar, and Laos) which depend on the EU's Everything-but-Arms (EBA) initiative for least-developed countries, under which these countries enjoy duty-free and quota-free access to the EU market.⁷ As such, a single EU policy for the entire Asian continent is not generally possible, even though the EU and Asia interact on a single forum through the Asia Europe Meeting (ASEM) initiative, which has 30 European countries (EU member states + Norway and Switzerland), the EU itself, the ASEAN Secretariat and 21 other countries (including Russia, Australia, and New Zealand) as partners.⁸

The EU and Asian countries do have membership of the WTO and the Energy Charter Conference (ECC) in common, albeit with major exclusions such as India, China, the Republic of Korea, and Singapore from the ECC, and Central Asian countries such as Turkmenistan and Uzbekistan from the WTO. The inability to reach all the countries on a common forum justifies the country-by-country approach.

Current EU strategy on trade and the promotion of core EU principles in Asia

The EU has embarked on the possibility to enter into FTAs with Asian countries because it realises the importance of building a strong trading relationship, but as of now it only has two FTAs fully in force (with the Republic of Korea and with Japan)

5 See "The GCC Common Market and Economic nationality" (last accessed 5 December 2018).

6 The RCEP consists of the member states of the ASEAN and six ASEAN FTA partners (Australia, the People's Republic of China, India, Japan, the Republic of Korea, and New Zealand); see https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership (last accessed 5 December 2018).

7 For an explanation on the EBA initiative and the current list of countries under the scheme, see <http://trade.ec.europa.eu/tradehelp/everything-arms>.

8 See <https://www.aseaninfoboard.org/about/overview>.

(European Union 2018: 34).⁹ Two more FTAs (with Singapore and Vietnam) have been signed recently and are at various stages of implementation,¹⁰ but the EU's overall push for trade agreements may have been slowed down by its policy on the inclusion of sustainable development clauses in trade agreements (Khandekar 2012). Irrespective of this, it has to be stated that the EU still does not have the recognition and visibility in Asia to reflect its economic importance (Khandekar 2012). Furthermore, the trade relations between the EU and Asia are complex and are based on a network of treaties with varied qualities and content.

The general EU trade policy in Asia is based on its Global Europe Strategy of 2006¹¹, which was subsequently reviewed through the "Europe 2020" Communication,¹² the 2010 Communication "Trade, Growth and World Affairs",¹³ the 2015 Communication "Trade for All",¹⁴ the 2016 EU Global Strategy (European Union 2016), the 2017 New European Consensus on Development (European Union 2017), and the 2018 "Joint Communication on Connecting Europe and Asia".¹⁵ Although all these Communications focused on issues such as sustainable development and transparency, the "Trade for All" Communication specifically recognised that core EU principles such as human rights, sustainable development, fair and ethical trade, and transparency would be promoted through trade agreements and trade preference programmes (Malmstrom 2015). The Commission reiterated its policy of non-compromise on these core principles through a 2017 Communication, "A Balanced and Progressive Trade Policy to Harness Globalisation".¹⁶ EU communications on country-specific strategies have also been issued.¹⁷

The promotion of sustainable development and policies to meet challenges such as climate change, environmental protection, and poverty is one of the core and overarching objectives for the EU in the region.¹⁸ These core objectives and principles for inclusion in trade agreements originate from Art. 21 of the Treaty on the European Union (TEU),

9 See http://europa.eu/rapid/press-release_IP-19-785_en.htm (last accessed 26 July 2019).

10 The EU–Vietnam Free Trade Agreement, the EU–Singapore Free Trade Agreement, and the EU–Japan Economic Partnership Agreement.

11 "Global Europe: Competing in the World a Contribution to the EU's Growth and Jobs Strategy", European Commission COM(2006) 567 final, 4.10.2006.

12 "Europe 2020 A strategy for smart, sustainable and inclusive growth", COM(2010) 2020, 3.3.2010.

13 "Trade, Growth and World Affairs Trade Policy as a core component of the EU's 2020 strategy", COM(2010) 612 final, 9.11.2010.

14 "Trade for All-Towards a more responsible trade and investment policy", COM(2015) 497 final, 14.10.2015.

15 "Joint Communication on Connecting Europe and Asia", JOIN(2018) 31 final, 19.09.2018.

16 Communication from the Commission, A Balanced and Progressive Trade Policy to Harness Globalisation, COM(2017) 492 final, 13.9.2017, p. 4.

17 For examples, see European Commission, "Joint Communication to the European Parliament and the Council, Elements for an EU strategy on India", Brussels, 20.11.2018 JOIN(2018) 28 final; and European Commission, "Joint Communication to the European Parliament and the Council, Elements for an EU strategy on China", Brussels, 22.6.2016 JOIN(2016) 30 final.

18 See http://ec.europa.eu/archives/docs/asia/docs/eu_in_asia_factsheet_en.pdf (last accessed 25 November 2018).

which states the principles under which EU's external relations must be pursued. The EU thus seeks to fulfil its social and economic obligations by the inclusion of these principles in its trade agreements (Asteriti 2017, Beaucillon 2017, Terhechte 2018). Other principles that have been prescribed under Art. 21 TEU and may be seen in EU FTAs include support for democracy and rule of law, preservation of peace, and abolition of restrictions on world trade.¹⁹ Considering that trade in goods within ASEM countries makes up more than 50% of their GDP (European Union 2018), the current EU–Asia trade strategy is focused on including provisions covering these core EU objectives in trade negotiations and free trade agreements (Muxfeldt 2018, European Union 2018). As such, the inclusion of provisions on human rights, sustainable development, and other recognised core EU principles is now a common feature, also in recent EU FTAs in this region (Nakanishi 2018).

Division between trade and investment

The EU's foreign trade policy and investment policy have traditionally been closely related, but owing to the Opinion of the Court of Justice of the EU (CJEU) with regard to the conclusion and ratification of the EU–Singapore Agreement,²⁰ the Commission has now decided to conclude trade agreements covered by its exclusive competence on trade separately.²¹ Considering this bifurcation, which has already been seen in the EU–Singapore and the EU–Vietnam agreements²² and the standalone EU–Japan Economic Partnership Agreement (EPA) (EUJEPA),²³ the remainder of this chapter will focus mostly on the trade agreements for coherency through comparison of their provisions.

On the subject of investment protection, the Asian countries follow divergent views on certain issues such as investment dispute settlement and protection standards. While the EU has decided to support the establishment of a Multilateral Investment Court (MIC) (Mamlstrom 2018)²⁴ and includes a reference to the establishment of the

19 Art. 21, Treaty on European Union, OJ C 326, 26.10.2012, p. 1.

20 CJEU, Opinion 2/15, 16 May, 2017, ECLI:EU:C:2017:376.

21 Council of the European Union, Outcome Of The Council Meeting- 3618th Council meeting, Foreign Affairs Trade and development issues, Brussels, 22 May 2018, 9102/18, p. 4; Binder, Krisztina, EU–Singapore trade and investment agreements closer to conclusion, European Parliament, October 2018, p. 5; EC Communication, A Balanced and Progressive Trade Policy to Harness Globalisation, COM(2017) 492 final, 13.9.2017, p. 6; Suse, Andrei, Wouters, Jan, The Provisional Application of The EU's Mixed Trade and Investment Agreements, Working Paper No. 201 – May 2018, Leuven Centre for Global Governance Studies, p. 6 et seq.

22 The original EU–Singapore FTA was divided into the EU–Singapore Trade Agreement and EU–Singapore Investment Protection Agreement; the EU–Vietnam FTA was divided into EU–Vietnam Trade Agreement and EU–Vietnam Investment Protection Agreement.

23 See <http://trade.cc.europa.eu/doclib/press/index.cfm?id=1684> (last accessed 5 December 2018).

24 See also, Council of the European Union, “Negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes”, 12981/17 ADD 1, Brussels, 20 March 2018.

court in its current negotiations on investment treaties,²⁵ a few of its Asian negotiating partners, such as Japan and India, do not support such a mechanism (Yanos and Ramos-Mrosovsky 2018). Other Asian countries including Singapore and Vietnam, however, have agreed to include the investment court system in their investment agreements (Mamlstrom 2018). There also exists differences in opinion on issues such as treatment of Chinese state-owned enterprises (SOEs) and their coverage under investment protection standards (Godement and Stanzel 2015), and internal differences among Asian countries over investment protection standards such as ‘most-favoured nation’ (MFN) and ‘fair and equitable treatment’ (FET), which were not included by India in its 2015 model bilateral investment treaty (BIT), but are present in the recent Chinese and Japanese BITs.²⁶ Considering these differences, it is highly unlikely that a common EU–Asia investment agreement would be possible irrespective of whether it was an EU only or a mixed agreement.

EU trade agreements and negotiations with major Asian trade partners

Although traditional discussions on EU–Asia trade focus only on the EU’s trade relations with China, Japan, India, the Republic of Korea, or ASEAN countries, Asia has many other important trade partners of the EU located in Central Asia and the Middle East.

EU trade agreements with Korea, Singapore, Japan, and Vietnam

The EU–ROK FTA (EUKFTA) saw the inclusion of new provisions on transparency and trade and sustainable development.²⁷ These provisions are a part of the values that the EU has sought to promote through trade agreements.²⁸ As of now, these provisions seen in the EUKFTA have also been carried through to the new FTAs with Singapore and Vietnam and an EPA with Japan, but with certain variations which are highlighted below.

Transparency: The issue of transparency is covered in all four agreements – the EUKFTA, the EU–Vietnam Free Trade Agreement (EUVFTA), the EU–Singapore Free Trade Agreement (EUSFTA) and the EUJEPA – but with variations in the actual

25 See http://europa.eu/rapid/press-release_MEMO-16-4350_en.htm (last accessed 5 December 2018).

26 See https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf (last accessed 5 December 2018); see also Ranjan and Pushkar (2017), Japan–Israel BIT, 2017; China–Tanzania BIT, 2013.

27 Chapter 12 and 13, Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (EU–ROK FTA), OJ L 127, 14.5.2011, p. 6.

28 Clause 4.2, “Trade for all Towards a more responsible trade and investment policy”, European Commission, 2015, p. 5.

provisions of the chapter. While three of the agreements provide for consideration of comments from interested persons on new proposed measures, the EUJEPA omits the provision.²⁹ The EUJEPA is also the only agreement that does not contain a broad provision on cooperation and exchange of information and best practices on regulatory quality and performance, and merely includes a provision on cooperation in international fora.³⁰ Amongst other provisions, the EUKFTA is the only agreement out of the four that does not provide for designation of officials to respond to enquiries on measures of general application under the agreement.³¹ It is also the only agreement that includes a non-discrimination provision for application of the transparency standards.³²

Trade and sustainable development: Trade and sustainable development is a separate chapter in all the four agreements, with provisions on the right to regulate, labour standards and agreements, review on sustainability impacts, civil society dialogue mechanisms and review mechanisms for the implementation of the provisions.

Variations are seen in the issue of multilateral labour standards among the four agreements. While the EUSFTA and the EUVFTA talk only about “consideration” of ratification of other ILO conventions except those specifically mentioned in the agreements based on domestic circumstances, the EUJEPA and the EUKFTA call for “continued and sustained” efforts towards their ratification without any mention of “domestic circumstances”.³³ The provision in the EUKFTA is, however, even slightly more stringent than that in the EUJEPA because it does not provide any discretion to the parties on which ILO conventions they “consider appropriate to ratify” and call upon them to make efforts to ratify “up-to-date” conventions of the ILO.³⁴

In relation to environmental protection, all three new agreements (EUVFTA, EUJEPA and EUSFTA) contain special provisions of forestry protection and fisheries.³⁵ However, the EUVFTA stands out amongst them as it contains a provision for a future *Forest Law Enforcement Governance and Trade (“FLEGT”) Voluntary Partnership Agreement*.³⁶ It is also the only agreement in the group that contains a separate article on “Climate

29 Article 17.3 EU–Japan EPA; compare with Article 12.3 EU–ROK FTA, Article 14.3 EU–Vietnam FTA, and Article 13.3 EU–Singapore FTA.

30 Article 17.7 EU–Japan EPA; compare with Article 12.7 EU–ROK FTA, Article 14.7 EU–Vietnam FTA, Article 13.7 EU–Singapore FTA.

31 See Article 12.4, EU–ROK FTA; Article 13.4 EU–Singapore FTA; Article 17.4 EU–Japan EPA; Article 14.4 EU–Vietnam FTA.

32 See Article 12.8, EU–ROK FTA.

33 Article 13.4 (3) EU–ROK FTA; Article 12.3 (4) EU–Singapore FTA; Article 16.3 (3) EU–Japan EPA; Article 13.4 (3) (b) EU–Vietnam FTA.

34 Cf. Article 13.4 (3) EU–ROK FTA and Article 16.3 (3) EU–Japan EPA.

35 Article 12.7, 12.8 EU–Singapore FTA; Article 16.7, 16.8 EU–Japan EPA; Article 13.8 and 13.9 EU–Vietnam FTA.

36 Article 13.8 (2) (a) EU–Vietnam FTA.

Change”³⁷ and one of the two agreements (the other being the EUJEPa) with a separate article on “Biological Diversity”.³⁸

With regards to a common provision both for labour and environmental standards, the three most recent agreements (EUVFTA, EUSFTA, EUJEPa) specifically mention the precautionary principle, which was omitted in the EUKFTA.³⁹ The EUVFTA and the EUSFTA also replace the civil society dialogue mechanism with interaction with stakeholders.⁴⁰

Other provisions: Recognising the important role of SOEs in Japan and Vietnam, and special circumstances governing their functioning, a separate chapter on SOEs was included in the EUJEPa and EUVFTA, which provide rules for their treatment under the FTAs.⁴¹ The EUSFTA is the only agreement within the four that refers to the Santiago Principles for sovereign wealth funds (SWFs).⁴² Lastly, considering the fact that among all the four agreements discussed above, only the EUVFTA was with a developing country, it is perhaps fitting that it is the only agreement which contains a separate chapter on “Cooperation and Capacity Building” which specifically covers sustainable development as one of the areas for cooperation.⁴³

Thus, it can be understood from the discussion above that the EU has been successful in the inclusion of provisions regarding its core principles such as sustainable development, fair and ethical trade, and transparency, with variations according to the specific situations. The progress on issues such as labour rights and environmental protection, particularly with Vietnam, has been impressive. It may be noted, however, that the failure to recognise the role of the civil society in agreements with Singapore and Vietnam may lead to future issues on the participation of these groups in the implementation and review process of these agreements (Orbie et al. 2016, Martens et al. 2018).

EU relationship with China and India

China and India are two major Asian economies which follow different economic models and political systems (Mandelson 2007) but have in common the fact that they do not have either a standalone or mixed trade or investment agreement with the EU. It is essential, however, that both countries are included as a part of the broader EU

37 Article 13.6 EU–Vietnam FTA.

38 Article 16.6 EU–Japan EPA; Article 13.7 EU–Vietnam FTA.

39 Article 12.9 EU–Singapore FTA; Article 16.9 EU–Japan EPA; Article 13.11 EU–Vietnam FTA.

40 Article 12.15 EU–Singapore FTA; Article 13.15 EU–Vietnam FTA.

41 Chapter 13 EU–Japan EPA; Chapter 11 EU–Vietnam FTA.

42 Article 16.8 EU–Singapore FTA.

43 Chapter 16 EU–Vietnam FTA.

agenda on issues such as climate change and sustainable development, with trade at the centre of the discussion (Barichella 2017). Furthermore, it also has to be taken into account that the China's Belt and Road Initiative (BRI) might lead to new linkages in the direction of bilateral/EU–China integration (Saarela 2018).

The EU needs a stable and coherent strategy for China that can deal with the large number of trade and political issues which affect the relationship, such as market economy status, climate change, and human rights standards (Maher 2016). As a major trade and investment partner, the EU needs to chalk out a strategy through which it can promote its core values through the future investment agreement as a stepping-stone and then work towards a possible FTA while maintaining the current trade relationship (de Jonquières 2015, Chi 2017, Rühlig 2018).

India and the EU face stalled negotiations on a proposed FTA and have disagreed on issues such as human rights and migration (Cameron 2017). Both parties also disagree on the inclusion of environmental and labour protection standards in the future FTA (Amighini 2016: 24, Vickers and Khorana 2018). It is essential that the EU and India work together since they share common values on democracy, human rights, and a rules-based global order, and India is an important partner for the EU in the region.⁴⁴ The EU and India are a part of a bilateral human rights dialogue in the form of the EU-India Human Rights Dialogue, which deals with a wide range of issues such as the death penalty, decent work, and gender issues.⁴⁵

EU–Central Asia relations

The EU has partnership and cooperation agreements (PCAs) with four of the five countries considered as Central Asian countries by the European Commission,⁴⁶ but no FTAs with any of these countries. With the exception of Kazakhstan, the other four Central Asian countries enjoy favourable access to EU markets under the Generalised Scheme of Preferences (GSP).⁴⁷ The EU has been successful in including provisions on the promotion of sustainable development, labour conditions, democracy, rule of law, human rights, and environmental protection in all the four PCAs, which is a significant

44 See https://ceas.europa.eu/headquarters/headquarters-Homepage/4010/eu-india-relations-fact-sheet_en (last accessed 25 November 2018).

45 See https://ceas.europa.eu/sites/ceas/files/eu_india_factsheet.pdf (last accessed 25 November 2018).

46 Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan; PCAs with all except Turkmenistan. On this, see <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-asia/> (last accessed 25 November 2018).

47 See <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-asia/> (last accessed 25 November 2018).

step in the promotion of the core EU values in the region, considering the political situation prevalent in the region.⁴⁸

EU and the Gulf region: A possibility for a stronger relationship

The Gulf region, which consists of the Gulf Cooperation Council (GCC) members, is an important trading partner.⁴⁹ The framework for trade with this region is, however, governed by an old EU–GCC cooperation agreement⁵⁰ without any significant mention of the core EU values such as rule of law, democracy, or sustainable development. It is important that the EU takes steps to revive the FTA negotiations with the GCC, which were suspended in 2008, to modernise the trading framework and promote core EU values in the region.

Other South Asian nations

The EU has ongoing negotiations for a trade and investment agreement with Malaysia, Philippines and Indonesia, while its negotiations for a similar agreement with Thailand has been suspended until the election of a democratically elected government.⁵¹ Negotiations are also underway for an investment protection agreement with Myanmar.⁵²

EU soft power through trade and investment agreements and current challenges

The EU and many of its Asian partners continue to have major differences over issues such as the inclusion of clauses regarding protection of human rights and sustainable development (Khandekar 2012, Youngs 2015). This must not overshadow the fact that the EU has enjoyed recent success in the promotion of its core values through trade agreements and specialised schemes which promote compliance with sustainable development and human rights standards through trade preferences.⁵³

The GSP, GSP+ and EBA schemes, with their clearly defined policies on sustainable development, are the flag bearers of the EU external policy for developing countries and

48 See Partnership and Cooperation Agreement between EC and Uzbekistan, OJ L 229, 31.8.1999, p. 3; Partnership and Cooperation Agreement between EC and Tajikistan, OJ L 350, 29.12.2009, p. 3; Partnership and Cooperation Agreement between EC and Kyrgyz Republic, OJ L 196, 28.7.1999, p. 48; Enhanced Partnership and Cooperation Agreement between EU and Kazakhstan, OJ L 29, 4.2.2016, p. 3.

49 See http://trade.cc.europa.eu/doclib/docs/2006/september/tradoc_113482.pdf (last accessed 25 November 2018).

50 EU–GCC Cooperation Agreement, OJ L 54, 25.2.1989, p. 3.

51 See http://trade.cc.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf (last accessed 5 December, 2018).

52 Ibid.

53 European Commission, “Report from the Commission to the European Parliament and the Council, Report on the Generalised Scheme of Preferences covering the period 2016–2017”, COM(2018) 36 final, 19.1.2018, p. 1.

have been largely successful in their objective of promoting the values of sustainable development and good governance.⁵⁴ A number of Asian countries (including Afghanistan, Bangladesh, Laos and Vietnam) benefit from the GSP, GSP+ or EBA criteria.⁵⁵ As the three schemes permit the suspension of benefits in case of violations of the prescribed standards which generally relate to the core EU values, the countries have incentives to adhere to them.⁵⁶ However, even if the GSP status is much desired, countries such as Cambodia have repeatedly seen incidents of serious human rights violations and political instability. While initially, the EU declined to remove GSP privileges as a reaction to the transgressions (Youngs 2015), it has recently been forced to react on these issues in Myanmar and Cambodia.⁵⁷

The implementation of the EU's goals for the promotion of human rights and democratic values has also seen double standards depending on the economic and political strength of the other country (Khandekar 2012, Cameron 2017). While the EU has pushed for strong sanctions on Myanmar, it has built a strong relationship with, and provided humanitarian aid to, Pakistan and only has an arms embargo on China, although the human rights record of all the three countries is regularly questioned (Khandekar 2012, Cameron 2017, Timmermann 2018).⁵⁸ Its reaction to human rights violations in Vietnam has also been questioned considering that it has moved ahead to sign an FTA with the country (Youngs 2015).⁵⁹ If it is to remain a convincing advocate of these issues, it is clear that the EU needs to build a consistent policy for support of democratic institutions and build stronger relationships with existing democracies, rather than compromising with specific countries based solely on economic considerations (Khandekar 2012, Timmermann 2018).⁶⁰ Rather than ignoring the human rights and sustainable development issues in major Asian economies, it must push forward for standalone FTAs or investment agreements that include normative clauses with these countries in order to succeed in the promotion of its core values in Asia; to date its record on success in human rights issues in Asia is rather patchy (Youngs 2015).

54 European Commission, "Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No 732/2008", COM(2018) 665 final, 4.10.2018, p. 7.

55 For more on these schemes and beneficiaries of the schemes, see <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/> (last accessed 25 November 2018).

56 Art. 19, Regulation (EU) No 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1; European Commission, EU trade policy encourages sustainable development and respect for human rights in vulnerable economies, January, 2018, http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156538.pdf last accessed 25 November, 2018).

57 See http://europa.eu/rapid/press-release_IP-18-4467_en.htm (last accessed 25 November 2018) and <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1936> (last accessed 25 November 2018).

58 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

59 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

60 See also <https://euobserver.com/opinion/143141> (last accessed 23 November 2018).

Furthermore, the EU–Asia relationship is influenced by the fact that, in many situations, the member states of the EU act in a standalone manner in Asia and the EU has to undertake independent political engagements and commercial diplomacy (Khandekar 2012, Youngs 2015). The EU member states, particularly the major economies of Germany, France, and the UK, have pushed forward their individual engagements with the Asian countries through multiple visits of their political leaders to further business deals (Youngs 2015). However, similar visits by top EU officials to push forward a common EU agenda or reciprocal visits by Asian ministers or officials to Brussels have been rare (Khandekar 2012).

The EU member states have also continued their individual policies on delivery of developmental assistance towards the Asian countries. The EU will have to better coordinate with its own member states in building its relationships in Asia. Until now, the EU has faced a lack of common policy which would protect the interests of the Union as a whole instead of merely building bilateral relations between a few member states and Asian countries (Khandekar 2012, Cameron 2017). It is a particularly significant challenge in its relations with China owing to a Chinese strategy of ‘divide and rule’ through which it has cultivated strong individual relations via forums such as ‘16+1’ and has also built strong trading and investment relations with individual countries (Maher 2016, Cameron 2017).

Conclusion: Charting the future of Europe’s soft power in Asia

The EU needs to have a realistic and dedicated Asia strategy, supported by its member states. It needs to understand, however that Asia has developmental issues even though it may be home to many large economies. ‘Asia’ is changing and the growth of regional agreements such as the RCEP implies changing global trade and political equations. However, as of now it cannot be seen as a ‘mega-regional’ that could be the counterpart of a comprehensive trade agreement; instead, the current country-by-country approach with regard to negotiation and conclusion of trade and investment agreements should prevail.

Major Asian economies such as China are likely to use their dominance in trade and investment to push forward their political agenda. This can be seen in the fact that securing a common EU position against human rights violations in China has been very tough due to lack of support from certain member states who decline to condemn China owing to economic considerations.

The EU can play a key role in this region owing to its status as a major trading power and a politically stable partner in a world which has seen increased geopolitical instability. It must seek to harness the strong relations built by its member states for the promotion of its trade policy and associated core principles. The EU has had limited success in Asia, especially in the ASEAN and Myanmar, on human rights and political issues. It has ongoing negotiations for FTAs with Thailand, Malaysia, Indonesia, and Philippines which are at various stages. It is known that these future FTAs are likely to contain specific provisions on sustainable development in line with the broader EU agenda. The successful conclusion of these FTAs is crucial, as support from Asia is essential for the EU to succeed in its policies on issues such as trade, sustainable development, and climate change. Furthermore, the EU also needs to represent itself as a unified entity with support from all member states to prevent any divisive policies and ensure that interests of all member states are protected. A people-centred approach, which reinforces core EU values while taking into consideration local sensitivities, would be recommended.

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The international trade scene is in turmoil: trade conflicts and tensions are generating uncertainty for businesses and undermining the rules-based global trading system. Trade and trade policy have long been central elements of EU external policy. Trade policy is used to pursue multiple objectives, including economic interests as well as political, developmental, environmental and values-based objectives. EU trade agreements not only aim at reducing foreign market access barriers but condition the terms of preferential access to the European single market on non-trade regulation in partner countries in areas such as social and labour standards. Is this an effective strategy? Does it come at the cost of attaining economic objectives? Has the emphasis on bilateral and preferential trade arrangements come at the expense of multilateral cooperation?

This collection of essays brings together different perspectives on some of these questions. The diversity of approaches and views illustrate the complexity of the EU trade-related policy agenda and suggest that trade-offs might not always be properly assessed, and the balance struck could be improved.

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