



Department of Political Science

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**FREE TRADE AGREEMENTS IN THE EU:  
THE CASES OF MERCOSUR, CANADA  
AND JAPAN**

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# INTRODUCTION

The reduction of tariffs characterized the development of global trade since the 1940s and most of the world's states are now members of an association that promotes a multilateral approach towards trade liberalization. However, there was a considerable growth in the number of regional trade agreements in the last 30 years and the European Union in particular, concluded many bilateral free trade agreements recently. Free trade agreements have remarkably gained importance in public debates in the European Union. Many NGOs and citizens heatedly protested against the signature of the Transatlantic Trade and Investment Partnership agreement with the United States and the Comprehensive Economic and Trade Agreement with Canada when the deals were under negotiations. But President Trump's decision to stop the negotiations of the deal and his adoption of a more protectionist approach to trade have sparked controversy as well.

What are the real effects of bilateral EU trade agreements, why is the ratification process so difficult for some of them and how are they compatible with the World Trade Organization which promotes multilateralism?

To answer these questions, this work illustrates the general evolution of international trade since the end of World War II and the signature of the General Agreement on Tariffs and Trade, explaining the historical developments that led to the formation of the present-day framework, as well as the principles that regulate it, with a particular focus on the contrast between multilateralism and regionalism.

It subsequently outlines the institutional framework in which the EU agreements are negotiated and the development over time of the Common Commercial Policy, studying in detail the issues related to the ratification of agreements by member states' parliaments and the politicization which characterized trade policy in recent years.

Finally, the paper provides three case studies of recent free trade agreements signed by the EU with Mercosur, Canada and Japan. It examines in detail the reasons that brought the partners to liberalize trade, the provisions of the single agreements, the expected economic impacts of each of them and the issues which arose regarding their ratification. In particular, the differences in the ratification process and in the opposition the agreements encountered in civil society are analyzed in order to understand which the most controversial aspects in recent European trade agreements are and what the future trends might be to this regard.

# Chapter 1 – MULTILATERALISM, REGIONALISM AND THE WTO

## 1.1 Origins of Multilateralism: The GATT

After the end of World War II, many of the world leading economies strongly supported the creation of institutions that would regulate international economics. The Bretton Woods Conference led to the establishment of two international institutions regulating monetary policy: The International Monetary Fund (IMF) and the World Bank (WB). The need of a third institution, regulating international trade, was recognized during the conference, but it was not established because of the absence of trade ministries' representatives in Bretton Woods.<sup>1</sup> The recommendation to agree on international rules reducing trade barriers resulted in the 1947 United Nations Conference on Trade and Employment in Havana, Cuba, where 56 countries agreed to sign the so called Havana Charter, serving as the legal basis for the International Trade Organization (ITO). However, the organization was never formed because the U.S. senate refused to ratify its establishment, discouraging all other member countries to set up the organization, as the leading promoter was no longer supporting its foundation.<sup>2</sup>

Meanwhile, a smaller group of 15 countries (involved in the ITO talks as well) had been parallelly negotiating since 1945 in order to reduce trade barriers set up during the 1930s protectionism, which lowered world trade by 66% in only 5 years.<sup>3</sup> This group reached a deal on remarkable tariff concessions and liberalizing trading rules and was enlarged to 23 countries by 1947, when the contracting parties decided to sign the "Protocol of Provisional Application" in Geneva, giving birth to the General Agreement on Tariffs and Trade (GATT). One of the provisions of the GATT was the adoption of several rules established in the ITO Charter, as

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<sup>1</sup> Kenen P.B., *Managing the World Economy: Fifty Years after Bretton Woods*, Washington D.C., Institute for International Economics, 1994, p.131

<sup>2</sup> Milner H.V., *Interests, Institutions, and Information: Domestic Politics and International Relations*, Princeton, Princeton University Press, 1997, pp.139-141

<sup>3</sup> Krist B., *Did the Smoot-Hawley Tariff Cause the Great Depression?*, Washington International Trade Association article, 2014

<https://www.wita.org/blogs/did-the-smoot-hawley-tariff-cause-the-great-depression/>

the GATT signatories envisaged the possibility of the ambitious ITO project to never enter into force; therefore, the drafting of the ITO Charter was not a completely wasted effort.<sup>4</sup>

As a result, the provisional GATT agreement became the instrument for international trade regulation for 47 years, acting through the organization of eight major multilateral negotiations called “trade rounds”, that were firstly focused on reducing tariffs and subsequently covered non-tariff and anti-dumping measures as well, involving an ever-growing number of countries, until the Uruguay Round (1986-1994) was attended by 123 participating countries.<sup>5</sup> The GATT reshaped international trade through three main provisions: firstly, it granted the Most Favoured Nation (MFN) treatment to all the members, preventing from discrimination, except from a few particular cases like the possibility of a serious injury of domestic producers. Secondly, the agreement did not allow restrictions on the number of imported and exported goods; this provision also had few exceptions such as the case when a country had a surplus of agricultural products, or when the fledging industries of an emerging economy critically needed to be protected. Thirdly, from 1965, the developing countries joining the GATT could take advantage from the complete elimination of tariffs on import by the developed economies, boosting the growth of emerging markets and benefitting the developed countries as well, as they also received a reduction on tariffs in return from the states they were helping.<sup>6</sup>

Overall, it appears reasonable to affirm that the GATT succeeded in its purpose of reducing trade barriers and boosting global economic growth. It is commonly reported that the average tariffs were around 40% prior to the Geneva agreement in 1947<sup>7</sup>, but there is a lack of official information from that period. In a 2015 paper, Chad P. Brown and Douglas A. Irwing argue that the 40% indication is misleading, as it refers to the unweighted tariff average, while an import-weighted tariff average in 1947 for the key GATT participants (i.e. United States of America, Western Europe, Japan) would be around 22%.<sup>8</sup> Nevertheless, after the creation of the GATT, the official tariffs are known with certainty and it appears evident that, even

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<sup>4</sup> *The GATT years: from Havana to Marrakesh*, WTO official website  
[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm)

<sup>5</sup> *Understanding the WTO*, Geneva, WTO Publications, 2015, p.16

<sup>6</sup> Amadeo K., *GATT: Definition, Purpose, History, Pros, and Cons*, “The Balance” article, 2020  
<https://www.thebalance.com/gatt-purpose-history-pros-cons-3305578>

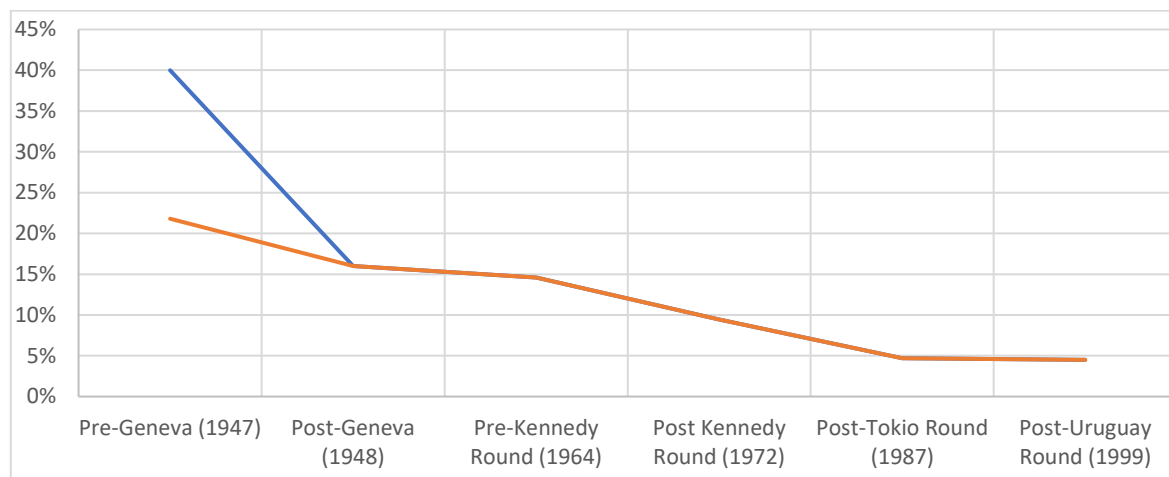
<sup>7</sup> *World Development Report 1987*, New York, Oxford University Press, 1987, p.134

<sup>8</sup> Brown C.P., Irwin D.A., *The GATT's Starting Point: Tariff Levels circa 1947*, Cambridge, National Bureau of Economic Research, 2015, p.17

considering the 22% average tariff as the starting point in 1947, there has been an impressive trend to reduce tariffs throughout the GATT era, until the average tariff became 4,7% after the Uruguay Round. The following graph clearly shows this trend:

### **Average tariffs for United States, European Union/Community, Japan:**

*The blue line represents pre-GATT data reported by the world bank (40% tariffs), while the orange line represents data obtained by Brown and Irving in their 2015 study (21,8% tariff)*



*(Source: Brown C.P., Irwin D.A., The GATT's Starting Point: Tariff Levels circa 1947, Cambridge, National Bureau of Economic Research, 2015, p.28)*

Despite its initial success in lowering the tariffs, the GATT survived as a provisional organization, with a limited mandate, and several problems started to emerge with time regarding its functioning: first of all, during the 1970s and the 1980s there has been an economic recession in Europe and North America and unemployment rates were raising in these countries, which hampered the development of multilateralism and free competition, as tendencies to seek bilateral agreements with competitors and boost domestic agriculture through subsidies were emerging.<sup>9</sup> Moreover, the number of participating states started to grow, as well as the complexity of the international trading system, due to its globalisation and the consequent expansion of international investment and trade in services. The GATT was not an adequate platform anymore for the regulation of international trade and its structure and dispute settlement mechanism needed to be modernized to deal with the reality of a globalizing world. The table below, clearly shows how the number of participant countries and covered

<sup>9</sup> *Understanding the WTO*, cit., p.17

subject grew over the GATT period, which caused the rounds to be increasingly longer, as it was ever more difficult to find agreements that would satisfy all participants and cover all the discussed subjects.<sup>10</sup>

### **The GATT trade rounds**

<b>YEAR</b>	<b>PLACE</b>	<b>SUBJECT COVERED</b>	<b>COUNTRIES</b>
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva (Dillon Round)	Tariffs	26
1964-1967	Geneva (Kennedy Round)	Tariffs and anti-dumping measures	62
1973-1979	Geneva (Tokyo Round)	Tariffs, non-tariff measures, “framework” agreements	102
1986-1994	Geneva (Uruguay Round)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of the WTO, etc.	123

(Source: *Understanding the WTO*, Geneva, WTO Publications, 2015, p.16)

## **1.2 From GATT to WTO: the Doha Round**

The Uruguay Round, which begun in 1986 was extremely complicated: it took almost four years more than planned to end the negotiations and the effort was immense giving the range of issues the negotiations covered and the number of countries that took part in the discussions. It has probably been the largest negotiation in human history and it covered almost all kinds of trade, including trading in services, the agricultural sector, textiles, and the

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<sup>10</sup> Ibid.



healthcare sector. The round also ended with the Marrakesh Agreement, that established the creation of a new organization, taking over the GATT's place as the platform for negotiations on international trade: The World Trade Organization (WTO).<sup>11</sup>

The WTO is an international organization that substituted the GATT organization, however the GATT agreement remains in force as part of the crucial agreements that the WTO is based on; in fact, the GATT agreement still covers the trade in goods, but the creation of the WTO implied new agreements that regard other areas of global trade. More specifically, there are about 60 legal texts (agreements, decisions, annexes, understandings) that have been signed during the Uruguay round and the agreements can be divided in 6 parts: a so-called umbrella agreement that established the WTO, the GATT agreement regulating the trade of goods, the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), dispute settlement and trade policy reviews.<sup>12</sup> The highest decision-making body of the WTO is the Ministerial Conference, which gathers representatives of all the countries and takes place every two years.

In 2001 the WTO launched the first and still ongoing round of negotiations: the Doha Development Round, also known as the Doha Development Agenda (DDA). The ambitious Doha Round was initiated with great hope, as one of its main goals was to reduce the inequalities between developed and developing countries that emerged after the Uruguay Round; however, the negotiations have not been successful so far. The first issue that emerged is the complexity and the ambition of the project: the subjects to find an agreement on were extremely broad, containing many conflicting interests. It has been suggested by expert that scaling back the broad scope of the negotiations could be a possible solution to this stalemate, as it would allow the parties to find some agreements, at least with regard to a number of issues that don't generate remarkable disagreements and conflicting interests. Nevertheless, this solution hasn't been seriously considered so far, probably because changing the scope of the negotiations would implicitly mean that the WTO members admit the failure of the system and distance themselves from the values and the intentions that originally led to the creation of this organization.<sup>13</sup>

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<sup>11</sup> Ibid., p.18

<sup>12</sup> Ibid., p. 23

<sup>13</sup> Spence M., *The Next Convergence: The Future of Economic Growth in a Multispeed World*, New York, Farrar, Straus and Giroux, 2011, ch.27, p.1

The second issue that hampered a successful conclusion of the Doha negotiations is the consensus decision making system, which implies that the all the WTO member states must sign the agreement in order for it to be recognized and adopted, contrary to the previous GATT procedure, that allowed the most economically and politically influential countries to find agreements that were especially convenient for them, compelling the developing countries to accommodate even when their interests were not considered. It is true that the GATT and then WTO agreements, over time, have been increasingly convenient for the developing countries; however, the developed economies never completely lost their predominance in the negotiations and the Doha round is not an exception, as several issues that are relevant for the less developed economies still remain unaddressed. What has remarkably changed since the establishment of the WTO is the relevance the smaller and less influential countries can have in the adoption of the agreements, as their signatures are now indispensable for the successful termination of a negotiation, and the developing countries have used this new power to make their voices heard in the Doha Round context.<sup>14</sup>

A good example of this contrast can be represented by the desire of the developing countries to adopt a certain degree of flexibility with regard to the trade barrier elimination in serious critical situations, similarly to what happened in 2007 and 2008 when, due to the global crisis, many countries suspended their free trade policies, protecting their economies through controls on prices, import and export. The possibility of a similar approach is demanded by the developing economies in situations when foreign competition seriously threatens to cause high unemployment rates in a specific production sector of a country. This kind of approach is not necessarily forbidden by the rules of the WTO, that envisage some exceptions to the free trade approach, but it is extremely complicated to find an agreement over the specific fields where this flexibility could be applied and the ways to avoid abuses in such situations, especially in those countries where it is particularly difficult to enforce rules, as the legal and judicial systems are not as developed and reliable as those of the rich and democratic countries.<sup>15</sup>

Moreover, a source of confusion over the status of the Doha Round itself emerged after the WTO Nairobi Ministerial Conference of 2015, as the general Ministerial Declaration, despite admitting that effort has been shown by all the organization's members to reach agreements on the issues of the round that have not been addressed yet, officially acknowledged

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid., ch.27, p. 2

that there are divergent opinions among the member states over the future of the Doha Round: part of the WTO members interpreted the Nairobi declaration as the admission that the initial intentions of the Doha Development Agenda have been set aside and the future negotiations, although being conducted under the name of the Doha Round, would abandon the consensus decision making system and would be a series of plurilateral negotiations on some specific issues; while another part of the WTO member states interpreted the Nairobi Declaration as a simple admission of the stalemate the negotiations reached, which however, in no way denies the initial programme of work set out by the Doha Development Agenda.<sup>16</sup> Since the initial programme of work focused on addressing the needs of developing countries, the possible new interpretation, that distances from the previous intentions, could cause conflicts and a breach of trust between the members of the organization, which would make the continuation of the negotiations extremely difficult.

Nevertheless, despite the many challenges the WTO is facing nowadays, it still remains the most successful example of international economic cooperation in human history: the trade barriers around the world have never been as low as they are today, the WTO established a rule based framework for international trade, an ever growing number of countries use the WTO dispute settlement system to resolve controversies, the transparency and surveillance mechanisms of the organisation allow an ever growing number of countries to access information on trade policies.<sup>17</sup> In general, the WTO still is the point of reference for international trade, which shows that despite all the difficulties, this organization has had a certain degree of success, which is proven by studies that confirm that a country's accession to the WTO has a remarkably positive effect on its economy's trade and investment.<sup>18</sup>

### **1.3 Most Favoured Nation**

In order to assess free trade agreements, it is essential to understand what is described by the WTO itself as the cornerstone of modern multilateral trading systems. It is the Most

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<sup>16</sup> Soobramanien T., Vickers B., Enos-Edu H., *WTO Reform: Reshaping Global Trade Governance for 21st Century Challenges*, London, Commonwealth Secretariat, 2019, p.7

<sup>17</sup> *The WTO at Twenty: Challenges and Achievements*, Geneva, WTO Publications, 2015, p.83

<sup>18</sup> Chemutai V., Escaith H., *Measuring World Trade Organization (WTO) Accession Commitments and their Economic Effects*, Journal of International Commerce, Economics and Policy, vol. 08, n°2, 2017

Favoured Nation (MFN) principle, based on the idea that discrimination towards the parties to the agreement should be avoided, granting that no other trading partner receives a preferential treatment regarding trade barriers, such as tariffs and quotas.<sup>19</sup>

The origins of what is now known as the MFN treatment date back to medieval times: evidence can be found that, back in the 11<sup>th</sup> century, merchants from Spain and France tried to grant themselves a better treatment from African princes through the creation of franchises where all members were charged equally to Italian cities such as Venice, Genoa, Pisa, Ancona and Amalfi, which previously were offered the most advantageous prices. Agreements of the same kind were also demanded by the Venetian merchants to trade with the Byzantine Empire at the same conditions as other specified cities. While in the Holy Roman Empire, the emperor conceded to some cities the same privileges obtained “by whatsoever other town”, e.g. privileges accorded to Mantua in 1055.<sup>20</sup>

However, the very first agreements of this kind were unilateral, until bilateral clauses appeared in the 15<sup>th</sup> century and the reciprocal favours on tariffs were extended from clauses matching the tariffs conceded to some specific countries, to more general clauses where the parties guarantee the same favours they accord to any other nation. Fully-fledged MFN clauses can be found in commercial treaties from the 18<sup>th</sup> century, such as the one in the 1713 treaty between England and France or the 1778 Treaty of Amity and Commerce between the United States of America and France.<sup>21</sup> But the most emblematic trade agreement that should be cited when describing the evolution of the MFN treatment is the Cobden-Chevalier Treaty of 1860: it is referred to as the first modern trade agreement<sup>22</sup> and it was the first of eight free trade agreements signed by Great Britain in that decade, giving rise to the golden age of free trade in Europe.<sup>23</sup>

Until the end of the 19<sup>th</sup> century, the MFN clauses have been predominantly conditional, meaning that the MFN treatment was only given under the condition that the beneficiary

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<sup>19</sup> *Basic Purpose and Concepts*, WTO official website  
[https://www.wto.org/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s6p1\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s6p1_e.htm)

<sup>20</sup> Yearbook of the International Law Commission 1969, *vol.II: Documents of the twenty-first session including the report of the Commission to the General Assembly*, Geneva, United Nations Publications, 1970, p.165

<sup>21</sup> Ibid.

<sup>22</sup> Grossman G.M., *The Purpose of Trade Agreements*, Cambridge, National Bureau of Economic Research, 2016, p.1

<sup>23</sup> Krasner S.D., “World Politics: A Quarterly Journal of International Relations”, vol.28, n°3, *State Power and the Structure of International Trade*, Cambridge, Cambridge University Press, 1976, p.325

reciprocally applies the same concessions to the country granting the preferential treatment.<sup>24</sup> The conditional approach might seem as a fair and impartial one, nevertheless it often creates controversy as it is sometimes difficult to determine whether the compensation for the preferential treatment has been equivalent or not. This is the reason why unconditional MFN treatment was revived after the first half of the 20<sup>th</sup> century, which was characterized by harsh protectionism in the period of the Great Depression.<sup>25</sup>

In fact, after World War II was over, many countries agreed that boosting international trade was the best way to recover economically and the GATT was signed with the declared purpose of reducing trade barriers between countries. The MFN treatment became the milestone of the GATT, as it is expressed in the first article of this agreement, which states that:

*“[...] any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded **immediately and unconditionally** to the like product originating in or destined for the territories of all other contracting parties.”*<sup>26</sup>

It is interesting to notice that the definition of the concept of “like product” could be very vague and this has caused disputes over time. There have been some determinations with this regard, especially during the pre-WTO era, in the GATT organization framework; these determinations usually serve as precedents to solve future disputes.<sup>27</sup> A good example is provided by the 1981 decision of the GATT Panel on Spain’s discriminatory tariff treatment on unroasted coffee, which was an issue raised by Brazil after Spain started applying different tariffs on four different breeds of coffee beans, which Brazil suggested should all be treated as “like products”.<sup>28</sup> The conclusion of the Panel has been that there actually was a discrimination

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<sup>24</sup> UNCTAD Series on Issues in International Investment Agreements II, *Most Favored Nation Treatment: A Sequel*, Geneva, United Nations Publications, 2010, p.10

<sup>25</sup> UNCTAD Series on Issues in International Investment Agreements II, *Most Favored Nation Treatment*, cit., p.11

<sup>26</sup> *The General Agreement on Tariffs and Trade (GATT 1947)*, WTO official website [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

<sup>27</sup> Ministry of Economy, Trade and Industry of Japan, *2015 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA*, Part II: WTO Rules and Major Cases, ch.1, p.306

<sup>28</sup> Ibid.

and the tariffs should be the same for all the varieties because all of them were sold in the form of blends, the consumers regarded all of the varieties as the source of the same beverage and in other countries that were members of the organization the tariffs on different varieties were the same. This decision set an important precedent, as it identified some crucial criteria to be taken into consideration when determining whether products can be considered as “like products” or not: the form in which the product is sold, the view of the consumers and the tariffs applied for the same products in other countries.<sup>29</sup>

Sometimes countries try to override the MFN treatment through practices that are called *de facto* discrimination; it occurs when countries violate the MFN principle without formally breaking the rules, such as when a country agrees on different tariff regimes for the same product, depending on certain conditions, which formally gives the possibility to any country to meet the conditions and benefit from more advantageous tariffs, but in practice creates discrimination. For instance, a Panel on “Canada – Certain Measures Affecting the Automotive Industry” decided that Canada was applying *de facto* discriminatory measures when it allowed the USA to export cars with no tariffs, under certain requirements, but when other countries requested to have the same treatment and applied for being included in this tariff-free system, their applications have been suspended, practically excluding them from a USA-dominated market, even though no formal rule was breached.<sup>30</sup>

In today’s WTO, the MFN principle is applied not only for the trade of goods, but it also concerns the trade in services and the trade-related aspects of intellectual property. Therefore, in addition to the GATT, it can be found in the GATS and the TRIPS, the other two main agreements of the WTO, which took the place of the GATT organization. In fact, article 2 of the GATS states that:

*“With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.”<sup>31</sup>*

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid., p.307

<sup>31</sup> *General Agreement on Trade in Services*, WTO official website  
[https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm#ArticleII](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#ArticleII)

While article 4 of the TRIPS states that:

*“With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.”<sup>32</sup>*

## **1.4 Exceptions to the MFN Treatment**

Even though the MFN treatment is the general rule in the WTO context and it represents one of the organization’s milestones, the GATT agreement still envisages particular circumstances under which it is possible for a country to disregard Article I of the agreement.

### ***1.4.1 Generalized System of Preferences***

One of the exceptions to the MFN principle has been designed in order to allow the developing and the least developed countries to grow economically despite the potentially unbearable competition that the MFN clause would generate. In 1971, the GATT adopted the Generalized System of Preference (GSP), a tariff system that allowed the developing countries to unilaterally benefit from lower tariffs in order to improve their economic situation. During the GATT Tokyo Round in 1979, the so-called enabling clause was adopted by the GATT members, giving a formal and persistent validity to the previously defined GSP, as the decision of the contracting parts states that:

*“Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.”<sup>33</sup>*

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<sup>32</sup> Uruguay Round Agreement: TRIPS, Part I- General Provisions and Basic Principles, WTO official website [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_03\\_e.htm#art4](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm#art4)

<sup>33</sup> Differential and more favourable treatment reciprocity and fuller participation of developing countries, WTO official website [https://www.wto.org/english/docs\\_e/legal\\_e/enabling1979\\_e.htm#fnt-3](https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm#fnt-3)

The core idea is that developed countries can decide to apply, for imports from specific developing countries, lower tariffs than the ones they apply to the rest of the world, disregarding the MFN principle. Moreover, the lowering of tariffs doesn't have to be reciprocal, which allows the exporting developing countries to grow their economies, competing on foreign markets, without reducing the tariffs for any of the products it imports; even though the "donor" countries usually demand some sort of non-economic efforts from the "beneficiary" countries, for example the adoption of better labour standards or improved environmental policies.<sup>34</sup>

Although this kind of approach, in theory, appears to be extremely beneficial at least for the developing countries, the reality is that the studies conducted on this matter showed unclear and mixed results about the actual benefit the countries gain from non-reciprocal trade preferences (NRTPs), that include the GSP: a 2014 study by Gil-Pareja<sup>35</sup> shows that there is a remarkable rise in the exports of the developing countries benefitting from the preferential treatment. At the same time a 2011 study by Herz and Wagner<sup>36</sup> shows a negative effect of this policy on the exports of developing countries, while the results of a 2009 study by Liu<sup>37</sup> are ambiguous.<sup>38</sup> The reasons for this mixed results are that the studies adopt different methodologies of analysis, often lack all the necessary data and don't take into account all the different effects the NRTPs can have on different countries and products.<sup>39</sup>

A more comprehensive study conducted in 2018 by Ornelas and Ritel<sup>40</sup> argues that the benefit the least-developed countries gain from NRTPs, depends on whether they are a member of the WTO or not. In fact, the WTO membership implies some institutional changes that are a precondition for the membership of a country and this kind of reforms allow a country to

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<sup>34</sup> Ornelas E., Ritel M., *The not-so-generalised effects of the Generalised System of Preferences*, Vox, Centre for Economic Policy Research, 2018

<https://voxeu.org/article/not-so-generalised-effects-generalised-system-preferences>

<sup>35</sup> Gil-Pareja S, Llorca-Vivero R. and Martínez-Serrano J. A., *Do nonreciprocal preferential trade agreements increase beneficiaries' exports?*, Journal of Development Economics, 2014, pp. 291-304

<sup>36</sup> Herz B. and Wagner M., *The dark side of the Generalized System of Preferences*, Review of International Economics 19(4), 2011, pp. 763-775

<sup>37</sup> Liu, X., *GATT/WTO promotes trade strongly: Sample selection and model specification*, Review of International Economics 17(3), 2009, pp. 429-446

<sup>38</sup> Herz B. and Wagner M., *The dark side of the Generalized System of Preferences*, cit.

<sup>39</sup> Ibid.

<sup>40</sup> Ornelas E. and Ritel M., *The not-so-generalized effects of the Generalized System of Preferences*, CEPR Discussion Paper 13208, 2018

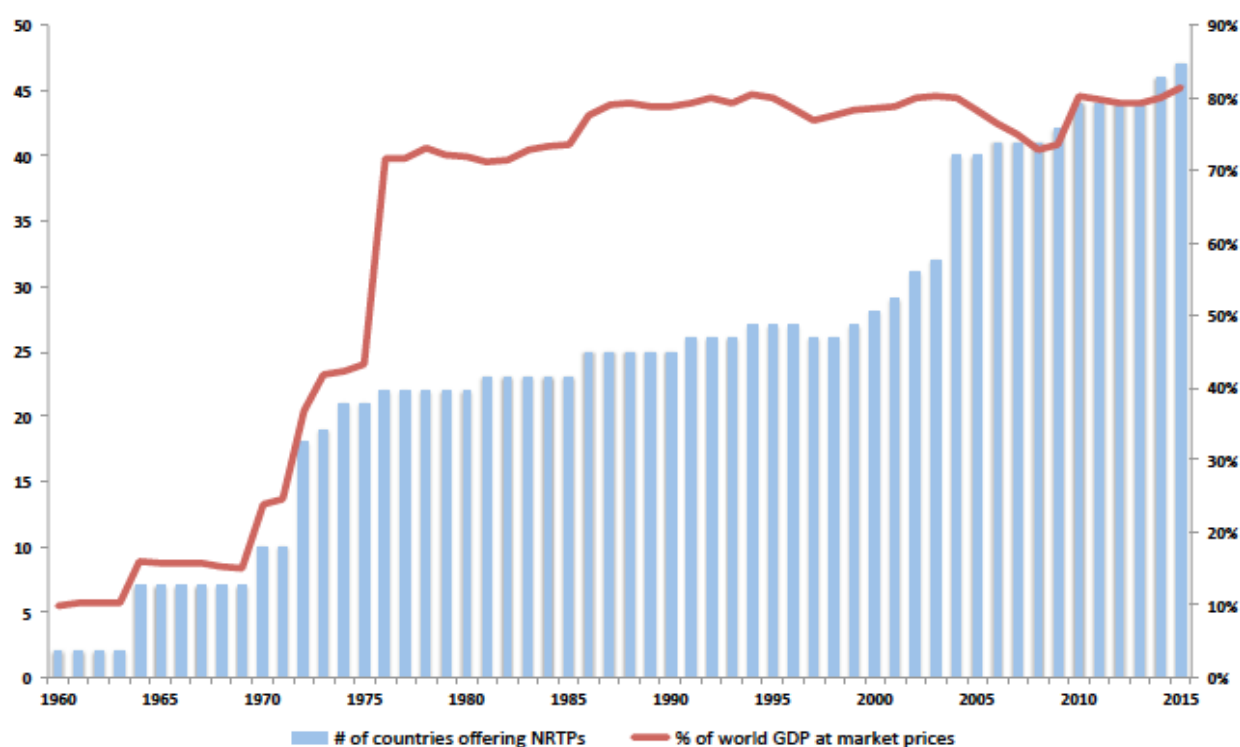


better allocate its resources, finding a way to remarkably increase their exports to more developed countries when facing lower tariffs, which is not the case when a poor country receives a preferential treatment without joining the multilateral trading system.<sup>41</sup> Therefore, it can be deducted that the preferential treatments granted under the GSP system of the WTO are usually beneficial for the developing countries involved.

In the last years, NRTPs have been constantly growing in numbers and gaining importance in international trade: all the developed countries in the world have a GSP programme nowadays and even some of the emerging economies set up their own GPSs.<sup>42</sup>

The following graph clearly shows the rise of this form of trade agreements in the last 60 years: the blue bars are measured in the left axes and indicate the numbers of countries offering NRTPs to developing economies, while the red line is measured the right axes and indicates the percentage of the world GDP that is produced by economies that offer NRTPs.

**Figure 1: Evolution of programs of non-reciprocal tariff preferences over time**



(source: Herz B. and Wagner M., *The dark side of the Generalized System of Preferences*, Review of International Economics 19(4), 2011)

<sup>41</sup> Herz B. and Wagner M., *The dark side of the Generalized System of Preferences*, cit.

<sup>42</sup> Ibid.

### ***1.4.2 WTO Agreement Article XIII***

Another possibility for WTO member-states not to apply the MFN treatment to other members is given by the 1994 Marrakesh Agreement that established the WTO. More specifically, article XIII of the agreement states that there is a possibility for a member of the organization to disregard the application of the multilateral trade agreements if

*“between a Member and another Member which has acceded under Article XII [...] the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference”<sup>43</sup>*

In fact, since the accession to the WTO only requires a two-third majority approval, there is a possibility that a WTO member-state is forced to accept the accession of a new member to the organization, despite having good reasons for not wanting to apply the MFN treatment to this new member. In order to avoid conflicts on this matter, the WTO Agreement allows the members that do not approve a new accession to deny the new member the MFN treatment, even after the accession, previously notifying the Ministerial Conference about their intentions.

In the same way, this article theoretically allows a new member to join the organization even when more than one-third of the members don't want to grant it a MFN treatment, as it is possible to notify the Ministerial Conference about the non-application of the agreements between the new member and all those countries that are reluctant to lower their tariffs, still allowing the applicant to join the multilateral system and apply a reciprocal MFN treatment to all the other members.

In practice, this article hasn't been invoked many times; the most relevant examples of its application are provided by the following table:

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<sup>43</sup> *Marrakesh Agreement Establishing the World Trade Organization*, WTO official website [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm)

### Notification of non-application of WTO agreement

COUNTRY THAT NOTIFIED NON-APPLICATION OF THE AGREEMENTS	DETAILS
<b>United States of America</b>	<p><b>1995</b> → Notified <b>Romania</b> of non-application of the Agreements (Repealed in February 1997)</p> <p><b>1997</b> → Notified <b>Mongolia</b> of non-application of the Agreements (Repealed in July 1999)</p> <p><b>1997</b> → Notified <b>Kyrgyzstan</b> of non-application of the Agreements (Repealed in September 2000)</p> <p><b>2000</b> → Notified <b>Georgia</b> of non-application of the Agreements (Repealed in January 2001)</p> <p><b>2001</b> → Notified <b>Moldova</b> of non-application of the Agreements (Repealed in 2013)</p> <p><b>2003</b> → Notified <b>Armenia</b> of non-application of the Agreements (Repealed in February 2005)</p> <p><b>2007</b> → Notified <b>Vietnam</b> of non-application of the Agreements (Repealed in January 2007)</p>
<b>Turkey</b>	2003 → Notified <b>Armenia</b> of non-application of the Agreements
<b>El Salvador</b>	2001 → Notified <b>China</b> of non-application of the Agreements

*(source: Ministry of Economy, Trade and Industry of Japan, 2015 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA, Part II: WTO Rules and Major Cases, ch.1, p.310)*

### ***1.4.3 GATT Article XXIV***

Undoubtedly, the most important exception to the MFN principle provided in the WTO is article XXIV of the GATT, that explicitly allows the formation of Regional Trade Agreements (RTAs) with lower tariffs than the ones applied to all the third countries. This is

allowed in the form of Free Trade Areas (FTAs) or customs unions. However, the article provides two essential conditions that have to be met in order to do so: first of all, any barrier to trade should be substantially eliminated in the region that decides to create a FTA or customs union; secondly, all the tariffs and other trade barriers with respect to third parties, should not be more restrictive on average that they are before the creation of the FTA or customs union.

This article has drawn many criticisms over time, as it is considered to be extremely ambiguous and vague, as well as anachronistic, especially considered the position of developing countries. In fact, since the article was written in a period when many of the present-day developing countries still were European colonies, it only envisaged regional agreements between countries of a similar level of economic development. Developing countries have noted the deficiency of the article, asking for its improvement to protect their interests, such as in the case of the African, Caribbean and Pacific Group of States (ACP) in its negotiations with the European Union.<sup>44</sup> It is evident that different approaches should be adopted in the regulation of RTAs with regards to the level of a country's economic development, and it can even be argued that the article shows an inconsistency with other WTO regulations: in particular, the GATS envisages RTAs in the trade of services as well, but there it provides for Special and Differential Treatment for North-South services in RTAs.<sup>45</sup> The reason why the article as it is now damages developing countries is that the liberalisation of "substantially all trade" for a developing economy would mean that the more technologically advanced and industrialized countries would get free access to that market, causing a deindustrialization and the displacement of small farmers, which would have dramatic effects on the economic development and the unemployment rates.<sup>46</sup> Moreover, many of the poorest countries in the world considerably rely on tax revenue to grant education, healthcare and public services, therefore, a necessity to lower the taxes on many goods because of foreign competition, would cause the worsening of the population's life quality.<sup>47</sup> The necessity to adapt the article to the needs of developing countries is confirmed by the fact that the countries classified as Least Developed Countries (LDC) are not even asked to commit to bilateral liberalization in the Doha

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<sup>44</sup> South Centre Analytical Note, *Article XXIV and RTAs: How Much Wiggle Room for Developing Countries*, Geneva, South Centre, 2008, p.6

<sup>45</sup> Ibid.

<sup>46</sup> Ibid., p.8

<sup>47</sup> Ibid., p.9

Round, as mentioned in the section about the Enabling Clause, and have a quota-free access to European markets for all the good except from weapons.<sup>48</sup>

Also, some crucial formulations of the article are vague and open to interpretation. For instance, paragraph 8a states:

*“duties and other restrictive regulations of commerce [...] are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories”*<sup>49</sup>

There is no precise indication over the meaning of the crucial expression “substantially all the trade”, which has been interpreted in different ways: one possible interpretation is the quantitative approach, which could either consider the number of the tariff lines covered by the agreement, or the share of the total trade that is affected by the agreement; otherwise, a qualitative approach can be adopted, which draws attention on the importance of the sectors covered by the agreement and suggests that no crucially relevant sectors of a country’s economy should be left out of the tariff elimination.<sup>50</sup>

Other debates have risen over sentences such as “within a reasonable amount of time” and “other restrictive regulations of commerce”<sup>51</sup>, making this part of the GATT agreement one of the most controversial ones, but at the same time it is also one of the most important ones as the number RTAs is always rising and they seem to represent the most viable way to liberalize world trade nowadays, as there currently are 303 RTAs notified to the WTO in force in the world, among which 267 are made under article XXIV of the GATT Agreement.<sup>52</sup>

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<sup>48</sup> Ibid., p.7

<sup>49</sup> Article XXIV of the General Agreement on Tariffs and Trade (GATT 1947), WTO official website [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_art24\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm)

<sup>50</sup> South Centre Analytical Note, *Article XXIV and RTAs*, cit., p.12

<sup>51</sup> Ibid.

<sup>52</sup> *Regional Trade Agreements Database*, WTO official website <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

## 1.5 PTAs, FTAs, Effects on Trade

As explained previously, the WTO allows countries to ignore the MFN clause under certain circumstances, creating non-multilateral agreements with one or more economic partner, that grant benefits to which the excluded countries can't get access. To this regard, a more precise description of the different kinds of agreements that can be concluded is needed, to better understand the nature and the effects of such agreements.

Terms like Preferential Trade Arrangements (PTAs), Regional Trade Agreements (RTAs), customs unions and Free Trade Areas (FTAs) are often used interchangeably to describe a group of countries that conclude a deal which lowers the trade barriers between them; however, the nature, effect and legal basis of these kinds of agreements are not the same and it is important to exactly understand the difference.

A first distinction should be made between PTAs and RTAs, especially after 2010. The Doha Round in fact, despite being known for not having produced much agreements and results since its start, saw the adoption of two decision in 2006 and 2010 by the General Council. The 2006 decision was the adoption of the “Transparency Mechanism for Regional Trade Agreements”<sup>53</sup>, while in 2010 the General Council adopted a decision on “Transparency Mechanism for Preferential Trade Arrangements”<sup>54</sup>. Therefore, at least in the context of the WTO, there is a difference between PTAs and RTAs. The WTO considers as RTAs (sometimes called Preferential Trade Agreements, not to be confused with Preferential Trade Arrangements in a WTO framework) all those reciprocal trade agreements between two or more members of the organization that lower tariffs between the countries involved, provide a framework for the trade in services, and, in modern times, include regulations on human rights, labour, environment, going far beyond the simple trade policies.<sup>55</sup> PTAs on the other hand, are considered by the WTO to be those arrangements where developed countries adopt non-reciprocal measures with regards to the least developed countries; such measures are unilateral

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<sup>53</sup> *Transparency Mechanism for Regional Trade Agreements*, WTO General Council Decision of 14 December 2006  
[http://ptadb.wto.org/docs/pta\\_transparency\\_rta\\_en.pdf](http://ptadb.wto.org/docs/pta_transparency_rta_en.pdf)

<sup>54</sup> *Transparency Mechanism for Preferential Trade Arrangements*, WTO General Council Decision of 14 December 2010 [http://ptadb.wto.org/docs/pta\\_transparency\\_pta\\_en.pdf](http://ptadb.wto.org/docs/pta_transparency_pta_en.pdf)

<sup>55</sup> *Regional trade agreements and the WTO*, WTO official website  
[https://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm)

and they include the Generalized System of Preference schemes that were previously mentioned.<sup>56</sup>

RTAs can be divided into two major categories: FTAs and customs unions. FTAs are agreements in which countries decide to eliminate trade barriers between them, while not changing the trade barriers towards the rest of the world.<sup>57</sup> Famous examples of FTAs include the North American Free Trade Agreement (NAFTA), signed by the United States, Canada and Mexico; the European Free Trade Association (EFTA), signed by Island, Lichtenstein, Norway and Switzerland; the South Asian Free Trade Area (SAFTA), signed by Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka. Customs unions are agreements that work similarly to the FTAs, except from the fact that the parties to the agreement not only reciprocally eliminate trade barriers between them, but they also choose to adopt the same external tariffs towards the rest of the world.<sup>58</sup> Examples of such agreements are the EU and the MERCOSUR.

When an FTA or a customs union is created, two effects can occur to the economies of the signatory states: trade creation and trade diversion. Trade creation occurs when the member state of an RTA, after the elimination of trade barriers, starts importing goods from a relatively low-cost producer. The same goods that were previously produced internally, become less expensive for consumers after the creation of an FTA or a customs union, which leads to an increase in trade and a specialization for the member countries in the production of those goods that the countries have a comparative advantage for.<sup>59</sup> Trade diversion instead, occurs when the imports of a good switch from a relatively low-cost producer to a relatively high-cost producer as a result of a trade agreement with the less efficient producer.<sup>60</sup> For example, country A imports a good from country B, which produces it at the cost 7p, and the good is sold in country A at the price of 10p because of the addition of the tariff (3p). If the country A creates an FTA with country C, that produces the same good at the cost 8p, the import of that good for country A will shift from country B to country C because the final price will be

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<sup>56</sup> *Preferential trade arrangements*, WTO official website  
[https://www.wto.org/english/tratop\\_e/region\\_e/rta\\_pta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm)

<sup>57</sup> GATT art. XXIV (8a)

<sup>58</sup> GATT art. XXIV (8b)

<sup>59</sup> *Preferential Trade Agreements, Trade Creation and Trade Diversion*, WTO official website  
[https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_forum\\_e/wtr11\\_12july11\\_bis\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_12july11_bis_e.htm)

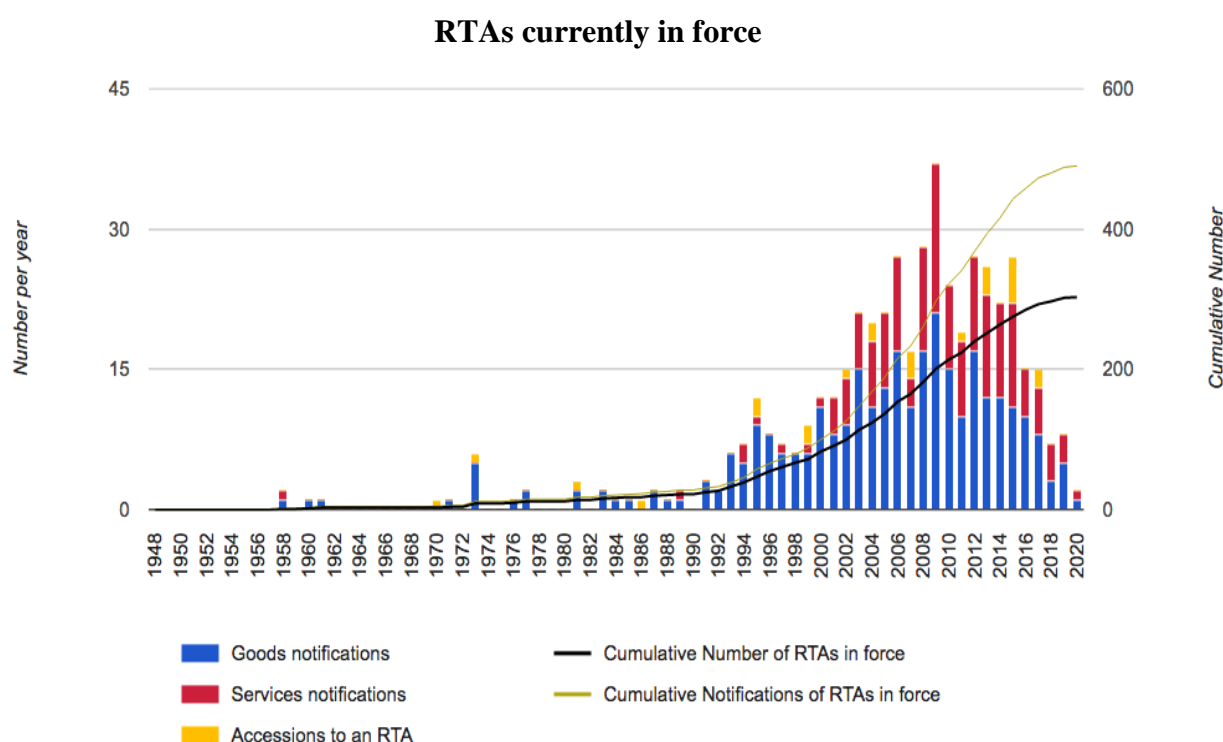
<sup>60</sup> Ibid.

cheaper for consumers (from 10p to 8p). But from a general perspective, in this example, the imports will move from a more efficient producer to a less efficient producer, which ultimately results in an overall loss for producers and consumers.

Considering the fact that trade agreements concern many sectors of the countries' economies, it is normal that they imply both trade diversion and trade creation flows and countries usually decide to enter an FTA or a customs union when certain sectors' expected net gains from trade creation and trade diversion outweigh other sectors' expected net losses. However, many of the outcomes of a trade agreement are difficult to assess and even after agreements have been in place for years, it is often not clear whether the gains would have been higher in doing otherwise.

## 1.6 Regionalism vs Multilateralism

Regional Trade Agreements have considerably grown in numbers during the last 30 years: with more than 300 RTAs actually in force, their number is approximately 10 times bigger than prior to the establishment of the WTO and after 2016, when Mongolia and Japan signed their RTA, there is an RTA in force in every member-state of the WTO. The Figure below clearly shows this tendency:



(source: Regional Trade Agreements Database, WTO official website)



This rapidly growing importance of RTAs brought many economists to analyse the effects of this kind of agreements and their relationship with the multilateral trading system, as regionalism, although allowed in the GATT agreement, is an opposed concept to the multilateralism the WTO pursues and represents an exception to the MFN clause.

In 1993, Baldwin<sup>61</sup> tried to explain why regional agreements were increasing exponentially with his so-called Domino theory: he argued that when a regional trading bloc is created, external countries may want to join it, and the bigger the bloc becomes, the higher becomes the cost of being excluded from that market; therefore the exporters of the non-member countries, which usually are influential groups of interest, engage in political activity to support the joining of a regional agreement, and the bigger the RTAs become, the more this phenomenon is emphasized<sup>62</sup>

The early studies from the 90s, when the RTAs started increasing, were usually critical about regionalism, like studies by Bhagwati<sup>63</sup> and Krueger<sup>64</sup> that stressed the divergency between the scope of the WTO and the nature of RTAs. Bhagwati in particular, believed that the creation of trading blocs would divert the attention from the pursuit of global free trade, creating a fragmented system in which the potential global benefits of multilateralism would be impossible to achieve; he therefore believed that RTAs could substitute or complement multilateralism.<sup>65</sup>

In the 2000s, Pal<sup>66</sup> supported the idea that the WTO is likely to be negatively affected by the proliferation of RTAs, because allowing such kind of agreements in order to supervise them, the WTO actually gives the possibility for countries to override its own rules,

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<sup>61</sup> Baldwin R., *A domino theory of regionalism* (No. w4465). National Bureau of Economic Research, 1993

<sup>62</sup> Goel A., Handa H., *Regionalism and Multilateralism: Complementary or Substitutes?*, Global Journal of Commerce & Management Perspective, Global Institute for Research and Education, 2018, p.25  
Original source: Baldwin R., *A domino theory of regionalism*, cit.

<sup>63</sup> Bhagwati J., *Regionalism versus multilateralism*. The World Economy, 15(5), 1992, 535-556

<sup>64</sup> Krueger, A. O., *Problems with Overlapping Free Trade Areas*. In *Regionalism versus Multilateral Trade Arrangements*, NBER-EASE Volume 6, University of Chicago Press, 1997, pp.9-24

<sup>65</sup> Goel A., Handa H., *Regionalism and Multilateralism*, cit., p.25  
Original sources: Bhagwati J., *Regionalism versus multilateralism*, cit.  
Krueger, A. O., *Problems with Overlapping Free Trade Areas*, cit.

<sup>66</sup> Pal P., *Regional Trade Agreements in a Multilateral Trade Regime: A Survey of Recent Issues*, Foreign Trade Review, 40(1), 2005, 27-48

undermining the ultimate goal and the credibility of the institution. Moreover, Pal states that the growth of RTAs could negatively affect the world welfare because it generates mistrust and the imbalanced power relations within the RTAs could lead to the exploitation of the developing countries by the rich economies.<sup>67</sup>

However, more recently, other authors started arguing that regionalism and multilateralism are not necessarily opposed to one another: for example, Nataraj<sup>68</sup> sustained the idea that multilateralism and regionalism are complementary concepts, as they both have the same ultimate goal to increase trade.<sup>69</sup> While Estevadeordal, Freund and Ornelas<sup>70</sup> went even further in stating that regionalism actually supports multilateralism.<sup>71</sup>

It seems correct to state that RTAs create both trade liberalization and trade discrimination<sup>72</sup>, that respectively imply trade creation and trade diversion. However, as argued by Freund and Ornelas, trade creation is usually the norm in RTAs, while trade diversion tends to be the exception and to have a limited magnitude.<sup>73</sup>

In conclusion, it appears that the opinions over the relationship between regionalism and multilateralism among experts have been divergent over time. It is possible that regional agreements undermine multilateralism, nevertheless, they have been by far the most utilized mean to liberalize trade in the last decades; therefore, it appears that the best way to approach this debate in the current international trade system is focusing on the inevitable coexistence of multilateralism and regionalism and on how to make this coexistence efficient.

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<sup>67</sup> Goel A., Handa H., *Regionalism and Multilateralism*, cit., p.26  
Original source: Pal P., *Regional Trade Agreements in a Multilateral Trade Regime*, cit.

<sup>68</sup> Nataraj G., *Emergence of RTAs and FTAs: Complementing Multilateralism*. Focus WTO, 6(6), 2005

<sup>69</sup> Goel A., Handa H., *Regionalism and Multilateralism*, cit., p.26  
Original source: Nataraj G., *Emergence of RTAs and FTAs: Complementing Multilateralism*, cit.

<sup>70</sup> Estevadeordal A., Freund C., Ornelas E., *Do regional trade agreements promote external trade liberalization? Evidence from Latin America*, 2006

<sup>71</sup> Goel A., Handa H., *Regionalism and Multilateralism*, cit., p.26  
Original source: Estevadeordal A., Freund C., Ornelas E., *Do regional trade agreements promote external trade liberalization?* cit.

<sup>72</sup> Freund C., Ornelas E., *Regional Trade Agreements: Blessing or Burden?*, Vox, Centre for Economic Policy Research, 2010

<sup>73</sup> Ibid.

## Chapter 2 – TRADE AGREEMENTS IN THE EUROPEAN UNION

### 2.1 EU Trade Negotiations and Institutions

The European Union's share of the world trade in import and export markets accounted for around 15% in 2018, which makes it the largest market in the world for international trade in goods and services.<sup>74</sup> Trade agreements with partners have been negotiated since the 1970s by the European Community and, later, the EU, concluding deals with around 70 non-EU countries from all the world, including customs unions, association agreements, stabilization agreements, partnership and cooperation agreements and free trade agreements.<sup>75</sup>

The negotiation of trade agreements in the EU involves the participation of several actors, such as the Commission, the Council of Ministers and the European Parliament. The rules, responsibilities of the actors and the trade policy are specified in the Treaty of the Functioning of the European Union (TFEU): article 218 of the TFEU sets out the rules for concluding international agreements in general, while other rules are provided in article 207 for trade agreements specifically, as it tackles the issue of the Common Commercial Policy.

Before the negotiations start and during the negotiations, public consultations and an impact assessment are conducted under the Commission's supervision in order to understand whether the agreement is desired, potentially beneficial and what the agreement's impacts will be on economic, social, human rights and environmental levels. These assessments are usually conducted by independent parties such as universities and think tanks and they became a norm in the trade agreement negotiation process since 1999, when the EU included the concept of sustainable development in its trade policy definition.<sup>76</sup> The Commission makes recommendations to the Council of Ministers, which has the duty to formally authorize the

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<sup>74</sup> *International Trade in Goods*, "The three largest global players for international trade: EU, China and the USA" Eurostat official website [https://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_goods#The\\_three\\_largest\\_global\\_players\\_for\\_international\\_trade:EU.2C\\_China\\_and\\_the\\_USA](https://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods#The_three_largest_global_players_for_international_trade:EU.2C_China_and_the_USA)

<sup>75</sup> *Negotiations and Agreements*, European Commission official website [https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#\\_under-adoption](https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_under-adoption)

<sup>76</sup> *A guide to EU procedures for the conclusion of international trade agreements*, European Parliament Briefing, October 2016, p. 4

opening of the negotiations, but cannot do it without the recommendations from the Commission.<sup>77</sup> The Council then issues the negotiating directives and has the authority to nominate a negotiator. The TFEU however, indicates that, in case of trade agreements, the negotiator of the Union should be the Commission, which conducts the negotiation process with the assistance of a special committee, appointed by the Council, that must be constantly updated on the state of the negotiations through reports.<sup>78</sup>

One of the biggest roles during trade agreement negotiations is played by the EU Commissioner for Trade, that is entrusted with the authority to supervise the negotiations. Being the reference figure for EU trade policy, the Commissioner for Trade chairs the Directorate-General for Trade in shaping up the commercial policy, has the power to propose the opening of discussions for new agreements, oversees the negotiations of multilateral, regional and bilateral agreements, and their finalization.<sup>79</sup> The specific priorities of every Commissioner's work are defined in their mandates and Mission Letters from the President of the European Commission, but generally speaking, the Commissioner is also responsible for guiding the work of the Commission in reforming the WTO, promoting the EU leading role in global trade, enforcing the mechanisms of defense from unfair trade practices, and, from 2020, overseeing the work of the Chief Trade Enforcement Officer, a post recently created by President of the Commission Ursula von der Leyen that has the task of monitoring the partners' commitments regarding their environmental and labour obligations and initiate dispute settlement procedures when needed.<sup>80</sup>

The Council of Ministers is the institution with the biggest decision-making power as far as trade policy is concerned, despite the Commission's leading role in the initiating and conducting the negotiations. This can easily be deduced from the fact that the regulations concerning the legal framework for the implementation of the EU Common Commercial Policy must be approved by the Council (jointly with the Parliament) before being adopted. Furthermore, the authorization of the Council is indispensable to start the negotiations for an international trade agreement, the negotiating directives must be mandatorily validated by the

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<sup>77</sup> Treaty on the Functioning of the European Union (TFEU), art. 207(3)

<sup>78</sup> Ibid.

<sup>79</sup> European Commission official website  
[https://ec.europa.eu/commission/commissioners/2019-2024/hogan\\_en#responsibilities](https://ec.europa.eu/commission/commissioners/2019-2024/hogan_en#responsibilities)

<sup>80</sup> Luyten A.E., Kim J.W., *Could the EU's Chief Trade Enforcement Officer enforce sustainable development commitments under EU trade agreements against non-compliant third countries?*, EU Law Live, May 2020

Council and the signings, provisional applications and conclusions of international trade agreements must all be authorized by decisions from this institution.<sup>81</sup>

Similarly to the Council, the European Parliament and its Trade Policy Committee must be notified about the progress of negotiations as well, although the formal approval of the Parliament is not required to adopt the mandate. The Parliament however, often expresses its political support or opposition towards specific trade agreements, as it is entitled to pass resolutions stating its opinions and concerns regarding the negotiations, which the Commission considers in the conclusion of the deals, making the requested adjustments to the agreement when needed, in order to secure the Parliament's approval. In fact, the European Parliament, despite not having any formal involvement in the beginning of the negotiation process (apart from the duty of information), needs to approve the final agreement in order for it to be adopted; therefore, its political stance on the negotiations is a crucial element for the Commission to take into account.<sup>82</sup>

The Court of Justice of the European Union (CJEU) also has a role in the shaping of EU trade agreements, as it is responsible for ensuring that the agreements don't violate any law provided by EU Treaties in their application or interpretation, through judicial review. Member States, the Parliament or the Commission can ask for an opinion of the Court over a planned agreement, before the end of negotiations and, in case the opinion states that it is incompatible with EU laws, the conclusion shall not take place unless the agreement is amended in conformity with the Treaties; in this case the judicial revision is made *ex ante*.<sup>83</sup> It can also be made *ex post* in case the Court is requested to issue an opinion after the agreement under discussion has been concluded and signed.<sup>84</sup> The practice shows that such opinions from the Court have mainly been used to determine the exact competences of the EU and its member states when entering a trade agreement.<sup>85</sup>

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<sup>81</sup> Devuyst Y., *European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements*, Journal of International Business and Law, vol. 12, Iss.. 2, Article 13, 2013, p. 208

<sup>82</sup> Luyten A.E., Kim J.W., *Could the EU's [...]*, cit.

<sup>83</sup> Devuyst Y., *European Union Law [...]*, cit., pp. 287-288

<sup>84</sup> *Ibid*, p. 288

<sup>85</sup> *Ibid*.

## 2.2 Evolution of the CCP until Lisbon

The Common Commercial Policy (CCP) was one of the crucial areas of the European Community from the very first years of its existence: The Treaty of Rome of 1957 already envisaged a common trade policy in article 3<sup>86</sup>, where the main activities of the Community were listed, and regulated its functioning in article 113, while the first trade agreements of the Community date as far back as the 1970s; it was indispensable for a group of countries in a customs union to clearly define the shared approach towards third parties in order to protect their economies, adopting common external tariffs and trade agreements.

However, the Treaty of Rome does not provide a comprehensive list of matters that should be treated under the CCP laws, neither does it contain an unambiguous definition of the common policy or its scope; rather, it provides a list of examples of subjects that are to be treated under the CCP, without clearly defining its limits.<sup>87</sup> Precisely, the first paragraph of article 113 of the Treaty of Rome states that

*“[...] the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.”*<sup>88</sup>

This ambiguity led to numerous disagreements between the Council, the Parliament, the Commission and the Member States over their competencies and the procedures to follow regarding the foreign trade subjects that are not mentioned in the Treaty of Rome, which led to several appeals to the Court of Justice.<sup>89</sup> A particularly heated debate was the one between the Council and the Commission, until the Commission unsuccessfully proposed, at the Intergovernmental Conference of Maastricht, to integrate all the matters related to external economic relations in the exclusive competences of the EU, meaning that not only the trade of

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<sup>86</sup> Treaty of Rome, art. 3(b)

<sup>87</sup> Bourgeois J., *The EC in the WTO and Advisory Opinion 1/94: an Echterbach procession*, Common Market Law Review 32, 1995, pp. 763–87

<sup>88</sup> Treaty of Rome, art. 113 (1)

<sup>89</sup> Niemann A., *The Common Commercial Policy: From Nice to Lisbon*, in: Laursen, F. (ed.), *The EU's Lisbon Treaty: Institutional Choices and Implementation*, Ashgate, 2012, p. 3

goods would be an exclusive competence, but also the trade in services, intellectual property, investment and competition.<sup>90</sup>

The issue became evident again during the negotiations in the WTO Uruguay Round framework, where both the Commission and the Member States claimed their authority in deciding over trade in services, intellectual property and investment policies. The result was a decision of the Court of Justice which stated that there was a joint competence of the Community and its Member States in trade agreements of the type and scope of the GATS (trade in services) and the TRIPS (intellectual property), leaving out investments.<sup>91</sup>

The Intergovernmental Conference that led to the Amsterdam Treaty in 1997 was another battleground over the issue and, despite the ambitious Commission's proposal, it ended up with little transformations in the practice, with the only noteworthy changing being the amendment to article 133 of the Treaty Establishing the European Community (TEC) (art. 113 of the EEC Treaty, art. 207 of the TFEU) that added the possibility to apply the article to services and intellectual property when such action is unanimously approved by the Council (instead of the qualified majority necessary for the trade of goods).<sup>92</sup>

A slightly bigger, but still poor progress was brought about in the conference that led to the Treaty of Nice, as the issues regarding article 113 were included in a broader discussion over the use of qualified majority in the decisions of the Council in general. It ended with the explicit granting of a Community competence on the agreements concerning the trade in services and intellectual property rights, which meant that only a qualified majority voting was necessary to start negotiations by the Commission on such issues. But there still were major exceptions which required a unanimous vote on agreements concerning the trade in areas such as cultural services, educational services, human health services and transport.<sup>93</sup>

Therefore, the progress made on the clarification of the competencies and the scope with regards to the CCP hasn't been remarkable until the 2000s, and the procedures to adopt in negotiating trade agreements on many CCP-related matters still were subject to discussions between the institutions and Member States of the EU. However, a significant progress on the issue was made with the signing of the Lisbon Treaty in 2007, as one of the main objectives of

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid. p. 4

<sup>93</sup> Ibid. p.5

the treaty was to increase the coherence of the EU external action. There are several notable provisions that shaped the EU trade agreement policy and procedure into what it is today: The role of the Parliament was significantly increased, not only because its influence in the negotiations process was enhanced, but also because the treaty requires the Parliament's consent for the conclusion of any international agreement, including trade agreements.<sup>94</sup> The former "explicit" competence of the EU on trade of services and intellectual property became an exclusive competence and investments were added to the list of exclusive EU competences as well.<sup>95</sup> The exceptions that required a unanimous vote instead of a qualified majority have been significantly reduced by adding a sentence that allows the Council to approve by qualified majority the agreements concerning those issues that previously required unanimity, as long as the agreement doesn't prejudicate some key features of the Union and its members such as cultural diversity and national organization; the article now states:

*"The Council shall also act unanimously for the negotiation and conclusion of agreements:*

*(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;*

*(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them."*<sup>96</sup>

Finally, the CCP has been placed in part five of the Lisbon Treaty, the one dedicated to the Union's external action, which means that it

*"shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union"*<sup>97</sup>

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<sup>94</sup> Ibid. p.6

<sup>95</sup> Ibid.

<sup>96</sup> TFEU, art.207 (4)

<sup>97</sup> TFEU, art. 205



Therefore, from the entry into force of the treaty, the trade agreements of the EU are legally bound to respect and support democratization, rule of law, human rights, the principles of international law and encourage the integration of all countries in the world economy.<sup>98</sup>

## **2.3 Mixed Agreements and Ratification**

The issue of EU competences in the negotiation of trade agreements with third parties has been a major source of debates and complications in the ratification of the agreements. This problem deserves some closer attention as historically it has caused noteworthy slowdowns and obstacles to the smooth entry into force of trade deals negotiated by the EU.

The previous chapter presented the evolution of the legal texts and their interpretation in defining the trade subjects which are to be considered exclusive external competences and those that are not. The reason is that the EU can conclude international agreements under three different competence areas: exclusive competence (discussed in Article 3 of the TFEU), shared competence between the EU and its Member States (Article 4 of the TFEU) and areas where the EU can support, coordinate or supplement Member States' action (Article 6 of the TFEU). Whenever the subjects treated in a trade agreement are not all under EU exclusive competences, the agreement is called "mixed" and, in order to be successfully concluded, not only the standard EU procedure for entering an international agreement is required, but there also is the need for all the EU Member States to ratify the agreement, with the involvement of all the national parliaments. The following charts show the division of competences in the 3 abovementioned categories and the different approvals every state needs to get from their parliaments to ratify a mixed international trade agreement:

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<sup>98</sup> Treaty on European Union (TEU), art. 21 (2)

### Division of competences between EU and EU member States

EXCLUSIVE COMPETENCES	SHARED COMPETENCES	SUPPORTING COMPETENCES
<ul style="list-style-type: none"> <li>• Customs union;</li> <li>• Establishing of competition rules for the functioning of the internal market;</li> <li>• Monetary policy for euro area countries;</li> <li>• Conservation of marine biological resources under the common fisheries policy;</li> <li>• Common commercial policy;</li> <li>• Conclusion of international agreements under certain conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• Internal market;</li> <li>• Social policy (aspects defined in the Treaty);</li> <li>• Economic, social and territorial cohesion;</li> <li>• Agriculture and fisheries;</li> <li>• Environment;</li> <li>• Consumer protection;</li> <li>• Transport;</li> <li>• Trans-European networks</li> <li>• Energy;</li> <li>• Area of freedom, security and justice;</li> <li>• Shared safety concerns in public health matters,</li> <li>• Research, technological development, space;</li> <li>• Development cooperation and humanitarian aid.</li> </ul>	<ul style="list-style-type: none"> <li>• Protection and improvement of human health;</li> <li>• Industry;</li> <li>• Culture;</li> <li>• Tourism;</li> <li>• Education, vocational training, youth and sport;</li> <li>• Civil protection;</li> <li>• Administrative cooperation</li> </ul>

(source: Division of competences within the European Union, EUR-Lex, European Union official website)

The conclusion of mixed agreements requires 36 different chambers of parliaments to approve it in 26 States; in Belgium, it needs to be approved even at the regional level, by regional parliaments, given the need to represent the different cultural and linguistic communities of the country. Moreover, in 16 of the EU countries, a referendum could be held in order for the citizen to assure their consent before the agreement is ratified. This is outlined by the following chart.

### Procedures for Ratification of Mixed Agreements

Country	National/Federal Level		Regional Level	Possible
	Approval	Chambers	Approval	Referendum
Austria	Yes	2/2	No	Yes
Belgium	Yes	2/2	Yes	No
Bulgaria	Yes	1/1	No	Yes
Croatia	Yes	1/1	No	Yes
Cyprus	Yes	1/1	No	No
Czech Republic	Yes	2/2	No	Yes
Denmark	Yes	1/1	No	Yes
Estonia	Yes	1/1	No	No
Finland	Yes	1/1	No	Yes
France	Yes	2/2	No	Yes
Germany	Yes	2/2	No	No
Greece	Yes	1/1	No	Yes
Hungary	Yes	1/1	No	No
Ireland	Yes	1/2	No	Yes
Italy	Yes	2/2	No	No
Latvia	Yes	1/1	No	No
Lithuania	Yes	1/1	No	Yes
Luxembourg	Yes	1/1	No	No
Malta	No	0/1	No	Yes
The Netherlands	Yes	2/2	No	Yes
Poland	Yes	2/2	No	Yes
Portugal	Yes	1/1	No	Yes
Romania	Yes	2/2	No	Yes
Slovakia	Yes	1/1	No	No
Slovenia	Yes	1/2	No	No
Spain	Yes	2/2	No	No
Sweden	Yes	1/1	No	No
Total	26/27 Member States 36/39 Federal Chambers		1 Member State	16/27 Member States

(source: Conconi P., Herghelegiu C, Puccio L., *EU Trade Agreements: To Mix or not to Mix, That is the Question*, 2020, p. 21)

The trade deals can enter in force provisionally after they are signed, without the necessity to wait for all the parliaments to ratify them, but they only enter in force in those parts that are exclusive EU competences and, most importantly, if a national parliament refuses to ratify the deal, all of its parts are revoked, including those that were provisionally applied.

Clearly, the ratification requirement significantly complicates the conclusion of trade agreements because even one of the 36 Chambers of Parliament that need to approve the deals can potentially nullify years of negotiations by voting against the agreement. This is even more noteworthy when considering the fact that until now, almost all the trade agreements concluded by the EU have been considered as mixed and have been ratified by every member of the Union before officially entering in force. The following figure shows all the trade agreements that have been notified by the EU to the WTO, their status and type:

## EU Trade Agreements

Agreement	Year of signature	Current Status (date of application)	Mixed
EU - Switzerland - Liechtenstein	1972	In force (1973)	Yes
EU - Iceland	1972	In force (1973)	Yes
EU - Norway	1973	In force (1973)	Yes
EU - Andorra	1991	In force (1991)	No
EU - San Marino	1991	In force (2002)	No
European Economic Area (EEA)	1992	In force (1994)	Yes
EU - Turkey	1995	In force (1996)	Yes
EU - Tunisia	1995	In force (1998)	Yes
EU - Israel	1995	In force (2000)	Yes
EU - Morocco	1996	In force (2000)	Yes
EU - Faroe Islands	1996	In force (1997)	Yes
EU - Palestinian Authority	1997	In force (1997)	Yes
EU - Jordan	1997	In force (2002)	Yes
EU - Mexico	1997	In force (2000)	Yes
EU - South Africa	1999	In force (2000)	Yes
EU - North Macedonia	2001	In force (2004)	Yes
EU - Egypt	2001	In force (2004)	Yes
EU - Algeria	2002	In force (2005)	Yes
EU - Lebanon	2002	In force (2003)	Yes
EU - Chile	2002	In force (2003)	Yes
EU - Albania	2006	In force (2009)	Yes
EU - Montenegro	2007	In force (2010)	Yes
EU - Serbia	2008	In force (2013)	Yes
EU - Bosnia and Herzegovina	2008	In force (2015)	Yes
EU - CARIFORUM	2008	Provisionally applied (2008)	Yes
EU - Côte d'Ivoire	2008	Provisionally applied (2016)	Yes
EU - Cameroon	2009	Provisionally applied (2014)	Yes
*EU - Pacific	2009	Provisionally applied (2009)	Yes
*EU - Eastern And Southern Africa	2009	Provisionally applied (2012)	Yes
EU - South Korea	2010	In force (2015)	Yes
*EU - Colombia/Ecuador/Peru	2012	Provisionally applied (2013)	Yes
EU - Central America	2012	Provisionally applied (2013)	Yes
EU - Georgia	2014	In force (2016)	Yes
EU - Moldova	2014	In force (2016)	Yes
EU - Ukraine	2014	In force (2017)	Yes
EU - Southern African Development Community	2016	Provisionally applied (2016)	Yes
EU - Ghana	2016	Provisionally applied (2016)	Yes
EU - Canada	2016	Provisionally applied (2017)	Yes
EU - Japan	2018	In force (2019)	No
EU - Singapore	2018	In force (2019)	No
EU - Vietnam	2019	Signed	No

(source: Conconi P., Herghelegiu C, Puccio L., *EU Trade Agreements: To Mix or not to Mix, That is the Question*, 2020, p. 22)

Before 2017, only the deals with San Marino and Andorra were not considered as mixed agreements and entered in force after their adoption by the EU, without the need of ratification from national parliaments; all the other agreements contained parts concerning some matters

that have been regarded as shared competences or areas where the EU supports, coordinates or supplements Member States' action, therefore requiring national parliaments' approval.

One notable example of the complications mixed agreements might imply is the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, that was signed in 2016, after 10 years of exhausting negotiations. The agreement was categorized as a mixed one in the expectation that national parliaments ratify it. However, one of the Belgian regional parliaments, the Walloon one, refused to give its consent for the Belgian government to sign the agreement, expressing concerns about the potentially negative effects such agreement could have on the agricultural model adopted in the region. The fact that Wallonia only represents around 0,7% of the total Eu population didn't impede its Parliament to put a veto on the signature of a deal that required 10 years of work from EU institutions. The deal was finally signed in 2017, after the Parliament of Wallonia was persuaded to give its consent, but its application remains provisional to this day as the ratification procedure is not completed in all the Member States and even now single parliaments are threatening to refuse to give their consent for a definitive ratification.<sup>99</sup>

Another similar situation occurred after the EU-Ukraine Association Agreement, negotiated from 2007 to 2012 and signed in 2014. Its provisional application began in 2016 but was only limited to those parts of the agreement that were exclusive EU competences, while the Member States' ratification was required for the agreement to come into force entirely. Every Member State ratified the agreement except from the Netherlands, as an advisory referendum was held in that country in order to assess the population's stance on the issue and the result was negative. It must be noted that only the 32% of the citizens entitled to vote expressed their opinion and 61% of them were skeptical towards the deal, being just a relative majority.<sup>100</sup> However, this referendum hampered the ratification procedure considerably, showing how just the 0,6% of EU citizens that voted for the agreement not to be signed, were able to have a huge influence on the adoption of a deal that was negotiated for many years, until the Dutch parliament finally gave its consent to ratify the agreement in 2017.

A turning point in the classification of international agreements occurred in 2017, when the CJEU issued a fundamental opinion on the EU-Singapore free trade agreement, namely opinion 2/15 of the 16<sup>th</sup> May 2017. The CJEU assessed the chapters of the FTA and clarified whether they should be considered as exclusive competences or not. A crucial debate was the one

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<sup>99</sup> Ibid., pp. 1-2

<sup>100</sup> *A guide to EU procedures [...]*, cit., pag.8

around the matters of Intellectual Property (IP) and Trade and Sustainable Development (TSD), that the Advocate General suggested to consider as shared competences in his legal opinion requested by the CJEU, because the IP chapter contained references to moral rights that are not part of the CCP (which is an exclusive competence) and the TSD chapter is to be considered as part of the environment and social policy, a shared competence, rather than the CCP. The Court however, expressed a different opinion and classified both the chapters as exclusive competences, motivating the decision by the fact that the reference to moral rights in the IP chapter and the TSD chapter were only there because they are instrumental to trade, and they are not *per se* objectives of the agreement in this specific case.<sup>101</sup>

The main implication of the Court's opinion is that there are areas where it is clear that the competence is either exclusive or shared, but at the same time, there are other areas where the decision over the classification of competences is not always clear and it may depend on the particular agreement and its aim. Whenever there is a subject that can fall under more than one legal basis, it is essential to understand which of those legal bases is the predominant one and which one is simply instrumental.<sup>102</sup> Such policy areas include Justice and Home Affairs, Sectoral regulatory cooperation, Transport services, IP rights, Trade and Sustainable Development, Culture. The distinction between mixed agreements and those that don't require the ratification of every Member State became much clearer. The EU-Singapore FTA was divided in two parts: one includes just the exclusive competences, was only signed by the EU and entered in force in 2019, while the other includes the shared competences and needs to be ratified by national parliaments.

After the aforementioned opinion, other two trade agreements were signed by the EU with the regular procedure, as they only include exclusive competences: the EU-Japan Economic Partnership Agreement and the EU-Vietnam Free Trade Agreement. This shows that the CJEU opinion on the EU-Singapore agreement clarified the distinction between exclusive and shared competences, and the EU preference has been to avoid mixed agreements since, as their ratification process can imply huge slowdowns and obstacles in their implementation.

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<sup>101</sup> Conconi P., Herghelegiu C, Puccio L., *EU Trade Agreements [...]*, cit., p. 5

<sup>102</sup> Ibid. p.6

## 2.4 Politicization of Trade Policy

Before the early 2010s, the commercial strategies and the trade agreements of the EU have been

an appealing issue just for economists and people who worked on them. However, there has been a remarkable increase of public interest about trade agreements in the last years, mainly due to two specific trade agreements that the EU was working on: The Transatlantic Trade and Investment Partnership (TTIP) agreement, that would have created the biggest free trade area in the world, as the EU and the USA account for around half of the world's GDP and around one third of the world's trade,<sup>103</sup> and the already mentioned CETA with Canada. Between 2014 and 2015 the engagement of informal citizens in taking strong positions against these agreements was impressive: more than 3 million people signed for initiatives aimed to stop the negotiations for the TTIP and CETA and there even was a global day of action against trade in 2015 with people gathering in squares all over Europe to show their disapproval.<sup>104</sup> This increase in public interest brought to a polarization of opinions towards the trade policy of the EU, and the contemporary increase of populism and Euroscepticism transformed trade policy into a subject of high political value, as globalization started to be seen as a threat by many.<sup>105</sup>

Nevertheless, not all the trade agreements the EU was negotiating gained the same importance and attention in public debates as the TTIP and CETA, which has been explained by D. De Bièvre and A. Poletti<sup>106</sup> through the identification of three necessary (but not sufficient) conditions that made certain Trade agreement become more politicized than others: first of all, the variation of the influence the EU and national parliaments have in concluding trade agreements<sup>107</sup>, which is a key factor in the case of the deals with Canada and the US, as they were negotiated shortly after the Lisbon Treaty enhanced the role of the Parliament in the conclusion of international trade agreements. National parliaments gave more importance to

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<sup>103</sup> *Countries and Regions/ United States*, European Commission Official Website  
<https://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>

<sup>104</sup> Young A. R., *Two wrongs make a right? The politicization of trade policy and European trade strategy*, *Journal of European Public Policy*, 26.12 2019, p. 1884

<sup>105</sup> *Ibid.*, p. 1885

<sup>106</sup> De Bièvre D., Poletti A., *Towards explaining varying degrees of politicization of EU trade agreement negotiations*, *Politics and Governance*, 8(1), 2020

<sup>107</sup> *Ibid.*, p. 4



trade agreements as well in recent years and insisted for them to be considered as mixed agreements much more than in the past;<sup>108</sup> therefore, public engagement in trade policy substantially increased, since the involvement of the national and EU parliaments implied intense discussions between parties and coalitions on the matter, as well as campaigns to attract votes.

Another reason identified to explain the high politicization of some trade agreements is the depth and comprehensiveness of regulatory commitments.<sup>109</sup> Trade deals in fact, no longer concern just trade in goods and the reduction of trade barriers; they also comprehend regulatory commitments on the trade of services, protection of intellectual property, respect of domestic health and safety standards, labor standards, human rights and environmental protection. The more a trade deal concerns such regulatory issues, the more people are prone to have a skeptical attitude towards international competition that might downgrade the regulatory standards in the country, which ultimately causes a higher degree of politicization of the issue.<sup>110</sup>

Finally, an important factor that influences the politicization of trade agreements is the perception people have about the relative size and bargaining power of the trading partner.<sup>111</sup> When the EU negotiates a deal with a much smaller economy, it is unlikely that the final result will be disadvantageous for Europeans, because the EU is one of the largest economies in the world and has a position of strength in front of a small partner that would be willing to sacrifice many privileges just to have access to the appealing EU market. This is not the case when the size of the trading partner's economy is comparable to that of the EU, which means that the EU doesn't necessarily have a stronger position in the negotiations and it is more likely that the final deal will imply higher costs for EU citizens. This perception of the trading partner's size could be a very plausible explanation of the impressively high degree of politicization reached by the TTIP, to the point that the negotiations stopped in 2016 and the agreement was never reached despite 14 rounds of negotiations.

The politicization of such an issue however, is not something that just occurs spontaneously, it implies the involvement of an agent that transports the debate in the political sphere. This agent has been the European Parliament for the TTIP and the CETA, consistently

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid., p. 5

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

with the role that parliaments have of being the point of connection between the political debate outside from institutions and the institutions themselves.<sup>112</sup> In a paper by C. Roederer-Rynning<sup>113</sup> it is argued that the parliament embraced this role of agent as a result of a phenomenon called parliamentary assertion, that indicates the institutionalization of the EU parliament in everyday policy-making and its role of representative of civil society organizations<sup>114</sup>, such as the 80 organizations from the EU and the United States that wrote a letter in 2013 to the USA president Obama, the President of the Commission Barroso, and the President of the European Council Van Rompuy in order to express their opposition to the way the negotiations are conducted. Especially their secrecy, which raised the suspicion that the result of such negotiations will privilege commercial interests, while damaging other public interest measures such as health and safety.<sup>115</sup>

## 2.5 Recent Developments

The unprecedented politicization of trade policy following the TTIP negotiations and the request for transparency in negotiations by civil society organizations haven't gone unnoticed by European institutions; thus, important changes have been introduced in 2015 when the European Commission presented its new trade and investment strategy, called "Trade for All". The foreword from the European Commissioner for Trade, Cecilia Malmström, remarked that the public interest in trade policy increased in recent years and the Commission's will is to pay attention to civil society's requests through a better mechanism of safety, human rights and environment protection and an increased transparency in negotiations, as she stated the following:

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<sup>112</sup> Roederer-Rynning, C., *Parliamentary assertion and deep integration: The European Parliament in the CETA and TTIP negotiations*, Cambridge Review of International Affairs, 30(5-6), 2017, p. 508

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Gheyle N., De Ville F., *How much is enough? Explaining the continuous transparency conflict in TTIP*, Politics and Governance, 5(3), 2017, p. 16

*“In recent years we have seen an intense debate about trade across the European Union which has some important lessons for EU trade policy.*

*It is clear Europeans want trade to deliver real economic results for consumers, workers and small companies. However, they also believe open markets do not require us to compromise on core principles, like human rights and sustainable development around the world or high quality safety and environmental regulation and public services at home. They also want to know more about trade negotiations carried out in their name.”<sup>116</sup>*

The new strategy consisted in twelve key initiatives which can be divided in four major areas of intervention. Firstly, the Commission has committed to improve the effectiveness of the EU trade policy through the following points:

- *“Updating trade policy to take account of the new economic realities such as global value chains, the digital economy and the importance of services.*
- *Supporting mobility of experts, senior managers, and service providers.*
- *Setting up an enhanced partnership with the Member States, the European Parliament and stakeholders to implement trade and investment agreements better.*
- *Including effective SME provisions in future trade agreements.”<sup>117</sup>*

The Commission also stressed the importance of a trade policy based on EU values, which will be taken into consideration more by:

- *“Responding to the public’s expectations on regulations and investment: a clear pledge on safeguarding EU regulatory protection and a strategy to lead the reform investment policy globally.*
- *Expanding measures to support sustainable development, fair and ethical trade and human rights, including by ensuring effective implementation of related FTA provisions and the Generalised Scheme of Preferences.*
- *Including anti-corruption rules in future trade agreements.”<sup>118</sup>*

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<sup>116</sup> *Trade for All: Towards a more responsible trade and investment policy*, European Commission publication, Publications Office of the European Union, Luxembourg, 2015, p. 5

<sup>117</sup> *Trade for All - New EU Trade and Investment Strategy*, European Commission official website <https://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/>

<sup>118</sup> Ibid.

A negotiation programme was also developed in order to shape globalization according to EU's best interests by:

- *“Reenergising multilateral negotiations and designing an open approach to bilateral and regional agreements, including TTIP.*
- *Strengthening our presence in Asia and the Pacific:*
  - *setting ambitious objectives with China*
  - *requesting a mandate for FTA negotiations with Australia and New Zealand*
  - *starting new ASEAN FTA negotiations with the Philippines and Indonesia, when appropriate.*
- *Ensuring EPAs are implemented effectively and deepening relationships with African partners that are willing to go further and with the African Union.*
- *Modernising existing agreements with Turkey, Mexico and Chile and the Customs Union with Turkey.”*<sup>119</sup>

Finally, a special attention has been given to the transparency of negotiations and trade, and investment policy in general. To this regard, the Commission started publishing regular reports on the state of negotiations, negotiating mandates, textual proposals and other related documents to keep the EU citizens as much informed as possible on the development of trade negotiations between the EU and its economic partners from around the world.<sup>120</sup>

After the publication of the “Trade for All” strategy in 2015, another important publication was issued by the Commission in 2017 to follow the path started two years earlier: a proposal containing a package of trade and investment measures that was called “A Balanced and Progressive Trade Policy to Harness Globalisation.”<sup>121</sup> The main provisions of the document include a set of measures to screen foreign direct investment coming in the EU<sup>122</sup>;

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<sup>119</sup> Ibid.

<sup>120</sup> *Transparency in Action*, European Commission official website  
<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1395>

<sup>121</sup> A Balanced and Progressive Trade Policy to Harness Globalization, European Commission Communication, COM(2017) 492 final  
[https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156038.pdf](https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156038.pdf)

<sup>122</sup> Ibid., p. 2

recommendations to open negotiations for trade agreements with New Zealand and Australia<sup>123</sup>; the decision to publish the Commission's recommendations for the trade agreements negotiating directives as soon as they are submitted to the European Council and the European Parliament, making them available for the general public<sup>124</sup>; a recommendation to open negotiations for the creation of an international court that would settle disputes between countries<sup>125</sup>; and finally, the creation of an advisory group to assist the Commission in the negotiation of trade deals, functioning as a point of juncture between the commission and other stakeholders, such as non-governmental organizations, consumer groups and employers organizations.<sup>126</sup>

Another issue that the Commission has tried to address in recent years is the stalemate caused by mixed agreements in the past because of the need of ratification from national parliaments. After the CJEU classified investment protection as a shared competence, the Commission preferred to separate investment agreements from trade agreements, which was the approach the Commission had in the proposal to start negotiations with Australia and New Zealand. Nevertheless, the Council explicitly affirmed in its 2018 "Council Conclusions on the Negotiation and Conclusion of EU Trade Agreements" that the absence of recommendations from the Commission on investments, with regard to the negotiations with Australia and New Zealand, should not set a precedent for the future, reclaiming the Council's authority on the decision of whether to include this subject or not in future trade agreements.<sup>127</sup>

## 2.6 Benefits of EU Trade Agreements

Once described the mechanisms and the changes occurred in EU trade policy, it is useful to assess the outcomes of EU trade agreements and the actual influence they have on consumers' lives, as this subject is often disregarded or associated with the assumption that

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> *Commission sets up advisory group on EU trade agreements*, European Commission official website <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1777>

<sup>127</sup> *Council conclusions on the negotiation and conclusion of EU trade agreements*, Council of the European Union Publication, May 2018, Brussels, p. 3

trade liberalization is beneficial, which has been widely supported by literature analyzing trade liberalization in general, without focusing on the agreements made by the EU.

A study published by Berlingieri, Breinlich and Dhingra in 2018<sup>128</sup> fills this gap by assessing the effects of the EU trade agreements made in the period between 1993 and 2013 on consumers' welfare. The study takes into consideration 39 agreements made in that span of time and the EU countries that the study is conducted on are the 12 States that were EU members before the enlargement of 1995 (Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom). The criteria chosen to describe the impact are the prices, the quality and the variety of products, where quality is defined as the characteristics of a product that increase the demand of that product when the price remains constant<sup>129</sup>, while variety is defined as the number of different origin countries that export the same product in the EU.<sup>130</sup> The analysis is made by controlling the alterations in the three indicators with regards to countries that signed a trade deal with the EU after the implementation of the trade agreements, and then comparing the results with a control group of countries that haven't signed a trade deal with the EU.

The results show that the biggest change trade agreements brought to European consumers is an increase in the quality of products, that grew by around 7% on average in a 5-year span, concerning products from countries that the EU had a free trade agreement with.<sup>131</sup> At the same time, the price and the variety of products doesn't seem to be considerably affected on average.

An important distinction should also be made based on the income of the considered EU countries: in fact, in high-income countries, such as Belgium, Luxembourg, Ireland and the Netherlands, there was a much greater increase in quality than in other EU members; on the other hand, low-income countries like Greece, Spain and Portugal didn't experience an appreciable increase in the quality of products, but saw a bigger reduction in prices that their high-income neighbors.<sup>132</sup>

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<sup>128</sup> Berlingieri G., Breinlich H., Dhingra S., *The Impact of Trade Agreements on Consumer Welfare—Evidence from the EU Common External Trade Policy*, Journal of the European Economic Association, Volume 16, Issue 6, December 2018, pp. 1881–1928

<sup>129</sup> Berlingieri G., Breinlich H., Dhingra S., *The consumer benefits of trade agreements: Evidence from the EU trade policy*, Vox, Centre for Economic Policy Research, 2018

<sup>130</sup> Ibid.

<sup>131</sup> Berlingieri G., Breinlich H., Dhingra S., *The Impact of Trade Agreements [...]*, cit., p. 1901

<sup>132</sup> Ibid., pp. 1909–1915

Finally, the found data have been used to calculate the variation in the Consumer Price Index (CPI), a measure defined as the change in the price the consumers pay for a basket of goods over time, which is adjusted for the effect of inflation and can be a very useful tool to understand more directly the effects of a trade agreement on consumers. The study reveals that the change in the CPI in the period from 1993 to 2013 was a reduction of 0,24%, which is a relatively small percentage, but it still means that European consumers saved around €24 billion every year thanks to the trade agreements of the EU.<sup>133</sup>

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<sup>133</sup> Ibid., p. 1918

## Chapter 3 – EU-MERCOSUR TRADE AGREEMENT

### 3.1 Background

The Southern Common Market, unofficially known as Mercosur, is a trade bloc of southern American countries that was created in 1991 and became a customs union in 1995. It currently includes four full members: Argentina, Brazil, Uruguay and Paraguay; the membership of Venezuela has been suspended in 2016 due to its inability to adapt to the political and economic criteria required by the organization, while other 7 countries (Chile, Bolivia, Colombia, Ecuador, Guyana, Peru, and Suriname) are now listed as associate members, meaning that they have a preferential access to the market, despite not having voting power for the political decisions of the organization.

With a total population of almost 300 million people<sup>134</sup> and a combined annual member states' GDP of \$4.6 trillion in 2019, Mercosur is the fifth largest economy in the world.<sup>135</sup> This trading bloc is particularly important for the economic interests of European countries, as it imports a remarkable amount of goods and services from more than 60,000 EU companies (€45 billion of goods in 2018, €23 billion of services in 2017<sup>136</sup>) and almost a million jobs in the EU are related to exports to Brazil alone.<sup>137</sup> The EU invests more than any other economic power in the Mercosur countries and is also the most important trading partner of the region, considering that more than 20% of the total trade of Mercosur member countries is done with the EU.<sup>138</sup>

Despite the strategic importance for European economy however, Mercosur has been the only significant trading partner in southern America not to have a trading agreement with the EU until 2019. This was due to the complexity of the negotiations between the two trading

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<sup>134</sup> *Mercosur in brief*, Mercosur official website <https://www.mercosur.int/en/about-mercursosur/mercursosur-in-brief/>

<sup>135</sup> International Monetary Fund website <https://www.imf.org/external/pubs/ft/weo/2019/01/weodata/weorept.aspx?sy=2019&ey=2024&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=80&pr1.y=7&c=213%2C223%2C288%2C298&s=NGDPD%2CPPPGDP%2CNGDPDPC%2CPPPPC&grp=0&a=>

<sup>136</sup> *The EU-Mercosur Trade Agreement explained*, European Commission official website <https://ec.europa.eu/trade/policy/in-focus/eu-mercursosur-association-agreement/agreement-explained/>

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.



blocs, that began in the 1990s and lasted more than 20 years, the largest span of time in the world to conclude the negotiations for a trade agreement.<sup>139</sup> The beginning of the talks can be identified with the Interregional Framework Cooperation Agreement of 1995, which regulates the relationship between the two organizations, while the official negotiations for a trade agreement began after the negotiating directives were issued by the Council in 1999.

During the first years of negotiations, there was a focus on agriculture, considering the production capacity of agricultural goods in southern American countries and the fact that the EU was the main importer of Mercosur agricultural products at the time. The discussions were also closely connected to the negotiations in the WTO context, as the Doha round began in 2001 and one of the main subjects treated in the WTO in those years was the removal of barriers on the trade of agricultural products.<sup>140</sup> The EU however, never agreed to a complete liberalization in the trade of agricultural goods with Mercosur, identifying them as sensitive products for EU economy. Notwithstanding EU's willingness for a general 90% opening, it refused to put forward a proposal that would go beyond the quota system for agricultural trade, only envisaging a gradual and partial opening of the market for such products in a 10-years span, which left the Mercosur countries frustrated.<sup>141</sup> The Mercosur's offer on the other hand, didn't meet EU's expectations concerning industrial products, telecommunication and financial services and government procurement.<sup>142</sup> Even though in 2004 many believed that the agreement was on the point of being concluded, the mutual dissatisfaction with the counterparts' offers, combined with the failing of the WTO Doha Round negotiations where the same topics were discussed in a multilateral context, caused a deadlock in the talks between EU and Mercosur from 2004 onwards, which wasn't broken until the dawn of the new decade.

From 2004 to 2010 in fact, there were little signs of willingness to resume the negotiations for a trade agreement, and the relations between the two organizations were limited to political dialogue and cooperation for development. There were several reasons that

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<sup>139</sup> Ghiotto L. and Echaide J., *Analysis of the agreement between the European Union and the Mercosur*, Hg. v. Anna Cavazzini MEP, Berlin, Buenos Aires, Brüssel, 2019, p. 8  
<https://eulacfoundation.org/en/system/files/MERCOSUR%20EU%20DIALOGUE.pdf>

<sup>140</sup> Ibid., p.10

<sup>141</sup> *Mercosur European Union Dialogue*, Brazilian Trade and Investment Promotion Agency (Apex-Brasil) publication, p.13  
<https://eulacfoundation.org/en/system/files/MERCOSUR%20EU%20DIALOGUE.pdf>

<sup>142</sup> Ibid.

reduced the mutual interest in a trade agreement: the Doha Round turned out to be a failure and it didn't seem plausible that the parties were able to find a compromise over what had divided them during the multilateral discussions<sup>143</sup>; the rise of new economic powers in Asia changed the balance of power and opened new markets in the east, switching the focus and the strategies of both the EU and Mercosur<sup>144</sup>; several eastern European states with uncompetitive agriculture-based economies became part of the EU, disincentivizing the EU from liberalizing the trade of agricultural products with Mercosur.<sup>145</sup> This period was a stalemate on the way for a trade deal, despite the formal reaffirmations of its desirability from the representatives of both the customs unions, during their regular meetings.<sup>146</sup>

The attitude started to change in 2010, when the potential benefits from a trade agreement became noticeable once again: the financial crisis ultimately became a strong incentive for the EU to look for new markets for exports and the persistent impasse in the WTO negotiations boosted the affirmation of the interregional approach as the primary means for trade liberalization.<sup>147</sup> Moreover, the economic rise of China caused concerns in the EU regarding its position in southern America, as the export of Chinese products and Chinese investments were significantly rising in the region.<sup>148</sup> The negotiations were initially characterized by the same obstacles that impeded a successful conclusion in 2004, aggravated by the internal differences of opinion in the Mercosur group, as Argentina and Venezuela had a much more protectionist position towards the agreement than the other members, especially Brazil.<sup>149</sup>

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<sup>143</sup> Sanahuja, J. A. and Damián Rodríguez, J., *Veinte años de negociaciones Unión Europea-Mercosur: Del interregionalismo a la crisis de la globalización*, Fundación Carolina, 2019, p. 11  
[https://www.fundacioncarolina.es/wp-content/uploads/2019/09/DT\\_FC\\_13.pdf](https://www.fundacioncarolina.es/wp-content/uploads/2019/09/DT_FC_13.pdf)

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid. p.10

<sup>147</sup> Ibid. p. 11

<sup>148</sup> Koleski K. and Blivas A., *China's Engagement with Latin America and the Caribbean*, US-China Economic and Security Review Commission, 2018, p. 1-2  
<https://fas.org/sgp/crs/row/IF10982.pdf>

<sup>149</sup> Messerlin P. A., *The Mercosur-EU preferential trade agreement: a view from Europe*, CEPS Working Document No.377, 2013, p.1-2  
<https://eulacfoundation.org/en/system/files/The%20Mercosur-EU%20Preferential%20Trade%20Agreement.pdf>

A decisive impulse for Mercosur was given by the negotiations of the TTIP between the US and the EU that formally began in 2013 and, together with the then ongoing talks for the Trans-Pacific Partnership (TPP) agreement, were a potential threat for southern American countries, which were not included. Despite the subsequent failure to conclude both the TTIP and the TPP, at the time when the deals were under negotiation they were a major concern for Latin America because a liberalization of trade between countries that are Mercosur's trading partners would have negative effects on Mercosur, given that southern America was excluded from the talks and was not supposed to benefit from the lowering of the tariffs, which would ultimately make it less competitive in the foreign markets.<sup>150</sup>

This boosted the Mercosur-EU negotiations and in 2016 the trading blocs exchanged market access offers for the first time since 2004, which ultimately brought to the conclusion of the deal in 2019. But the process that began in 2016 and resulted in the final signature of the trade agreement was extremely complex: the initial market access offers left many actors unsatisfied: the agricultural countries of Europe such as France, Poland and Ireland demanded a better protection of European agricultural products, fearing south American competition; Germany insisted that the access of its industrial products had to be facilitated, while the Mercosur Industrial Council on its part demanded a special clause that would protect the Mercosur industries from European competition, allowing them to develop.<sup>151</sup>

Nevertheless, the wary position towards traditional multilateral institutions of the Trump administration in the United States and the new politicized role trade agreements acquired in public opinion gave a decisive boost to the negotiations, as both the EU and Mercosur needed to secure the reciprocal access to their markets more than they feared competition. The outcome were 28 exhausting rounds of negotiations that finally resulted in a political agreement in principle, reached on the 28<sup>th</sup> June 2019, on the EU-Mercosur free trade agreement, as part of a broader Association Agreement between the partners, still under negotiation. Since the Association Agreement includes parts that fall under the shared competences of EU and its member states, therefore being a "mixed" agreement, it will have to be ratified by the national parliaments, only then the trade deal will enter into force; however, the EU institutions already showed a great enthusiasm after the reaching of a political

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<sup>150</sup> Schmieg E., *TTIP—Opportunities and Risks for Developing Countries*, Bonn: Stiftung Wissenschaft und Politik (SWP), 2015

[https://www.swp-berlin.org/fileadmin/contents/products/zeitschriftenschau/2014zs01engl\\_scm.pdf](https://www.swp-berlin.org/fileadmin/contents/products/zeitschriftenschau/2014zs01engl_scm.pdf)

<sup>151</sup> Sanahuja, J. A. and Damián Rodríguez, J., *Veinte años de negociaciones Unión Europea-Mercosur*, cit., p.

agreement that seemed to be a pipe dream for so many years. The former president of the European Commission, Jean-Claude Juncker, right after the publication of the agreement stated:

*“I measure my words carefully when I say that this is a historical moment. In the midst of international trade tensions, we are sending today a strong signal with our Mercosur partners that we stand for rules-based trade. Through this trade pact, Mercosur countries have decided to open up their markets to the EU. This is obviously great news for companies, workers and the economy on both sides of the Atlantic, saving over €4 billion worth of duties per year. This makes it the largest trade agreement the EU has ever concluded. Thanks to the hard and patient work of our negotiators, this is matched with positive outcomes for the environment and consumers. And that's what makes this agreement a win-win deal.”*<sup>152</sup>

### 3.2 Current Trade Flows

Currently, the EU is the second most important trading partner for Mercosur regarding trade in goods, in fact more than 17% of the total goods exported to or imported from foreign markets by Mercosur are due to commercial relations with Europe, with only China being a more relevant partner as it accounts for 22% of Mercosur's total trade in goods.<sup>153</sup> An even bigger role is played by the EU as far as Mercosur's trade in services is concerned, as it accounts for more than 26% of the region's trade in services with foreign economies.<sup>154</sup> Nevertheless, Mercosur doesn't have the same relevance for the EU if compared to other trading partners, as the European economy is much more developed and the commercial exchanges with Mercosur correspond to only about 1% of the total for the trade in goods as well as for the trade in services, making the southern American bloc the 11<sup>th</sup> largest economic partner for the EU.<sup>155</sup>

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<sup>152</sup> *EU and Mercosur reach agreement on trade*, European Commission official website  
[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_3396](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3396)

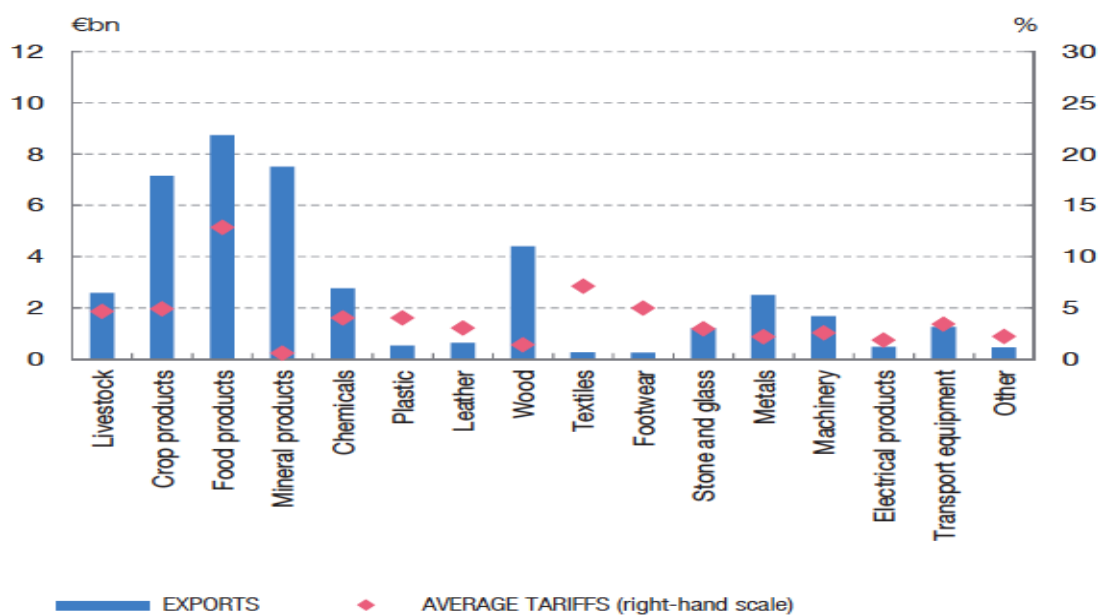
<sup>153</sup> *Mercosur*, European Commission official website  
<https://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/>

<sup>154</sup> Timini J. and Viani F., *The EU-MERCOSUR free trade agreement: main features and economic impact*, Economic bulletin, Banco de España [Artículos], n. 1, 2020, p. 3  
<https://repositorio.bde.es/bitstream/123456789/11802/1/be2001-art8e.pdf>

<sup>155</sup> *Mercosur*, European Commission official website  
<https://ec.europa.eu/trade/policy/countries-and-regions/regions/mercosur/>

The total difference between imports from and exports to Mercosur is fairly marginal: in 2019 the EU's exports to Mercosur have reached €41 billion, while Mercosur exported a total value of almost €36 billion in goods and services in Europe, meaning that the trade balance represents less than 0,01% of EU's GDP<sup>156</sup>. However, there are substantial differences concerning the sectors and the industries because with respect to the trade in services, the EU is clearly a net exporter, selling many different services to the Mercosur for a total value of more than €20 billion (€21 billion in 2018), while Mercosur's exports of services amounted to just €10 billion in 2018.<sup>157</sup> When it comes to goods, both trading blocs specialized in the export of products in the production of which they have a comparative advantage: Mercosur mainly exports agricultural products like vegetables, tobacco, soy and coffee (almost 40% combined)<sup>158</sup> to the EU, as well as animal products like meat (6,5%).<sup>159</sup> The EU exports to Mercosur instead, mainly consist of machinery (28.6%), transport equipment (12.7%), chemicals and pharmaceutical products (24.2%), that are sold in southern America with the application of remarkably high tariffs. The following charts describe the trade in goods between the EU and Mercosur in detail, as well as the tariffs applied:

**Mercosur exports to the EU (2018)**



(source: Timini J. and Viani F., *The EU-MERCOSUR free trade agreement: main features and economic impact*, Economic bulletin, Banco de España [Artículos], n. 1, 2020, p. 4)

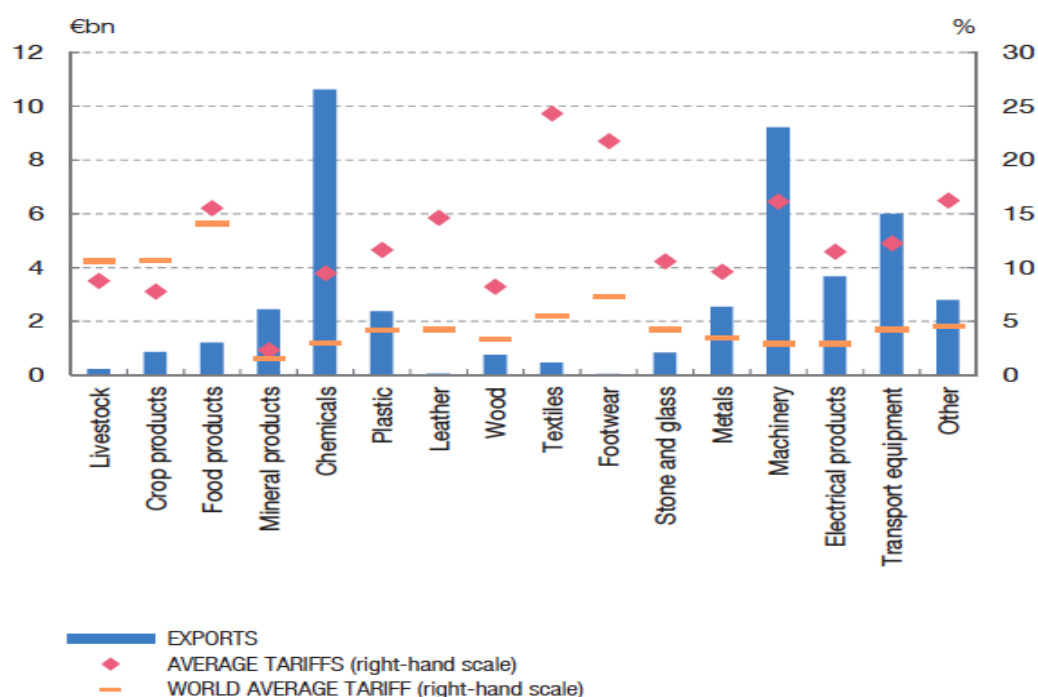
<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

### EU exports to Mercosur (2018)



(source: Timini J. and Viani F., *The EU-MERCOSUR free trade agreement: main features and economic impact*, Economic bulletin, Banco de España [Artículos], n. 1, 2020, p. 4)

It is also interesting to notice that the described trade flows are useful indications for the regions under consideration, but an analysis carried out by splitting these trade blocs in single countries would reveal substantially different situations. For instance, trade with the EU is more important for Brazil than for other Mercosur countries, as it amounts to almost €60 billion in 2019, which corresponds to more than 18% of the country's total trade<sup>160</sup>; while for Paraguay, trade with the EU only equals to around 10% of the country's total trade, corresponding to approximately €1,4 billion in 2019.<sup>161</sup> Relevant differences from country to country in the Mercosur trading bloc can also be detected in the sectors that are mostly involved in trade with the EU: for example, while Uruguay mainly exports wood (almost 60% of exports

<sup>160</sup> Brazil, European Commission official website  
<https://ec.europa.eu/trade/policy/countries-and-regions/countries/brazil/>

<sup>161</sup> Paraguay, European Commission official website  
<https://ec.europa.eu/trade/policy/countries-and-regions/countries/paraguay/>

to the EU in 2018<sup>162</sup>), the exports from Paraguay are mostly food and crop products (around 80% of exports to the EU in 2018, combined)<sup>163</sup>

Similarly, there are relevant differences in the trade with Mercosur of single European countries, concerning both the relevance and the characteristics of trade flows. For example, Netherlands' and Belgium's trade with Mercosur equals to more than 1,5% of their GDP<sup>164</sup>, while for Croatia and Latvia the trade flows with Mercosur only amount to around 0,2% of their GDP<sup>165</sup>. Moreover, despite the fact that the EU's balance of trade with Mercosur is close to equilibrium, this data is the outcome of many heterogeneous situations in single EU countries: several countries such as Germany, Belgium or France are outstanding net exporters to Mercosur, whereas other countries like Sweden, Netherlands and Poland are net importers;<sup>166</sup> Spain and Portugal on the other hand, present high surpluses in the trade of services, as well as similarly high deficits in the trade of goods with Mercosur.<sup>167</sup>

Overall, it is safe to say that the importance of the EU as a trading partner for Mercosur has decreased during the last 2 decades. Notwithstanding the fact that the EU remarkably enlarged by adding 13 new countries, the share of Mercosur's exports to the EU has significantly diminished between 1997 and 2007: while in 1997 Mercosur countries' exports to the EU represented the 25% of their total exports including exports to other Mercosur countries and 32% of the total exports excluding other Mercosur countries, these numbers dropped to 16% and 18% in 2017.<sup>168</sup> The main reason for this decline in trade with Europe is the emergence of China as an economic superpower in the last decades. In fact, from importing just the 4% of the total Mercosur exports in 1997, China became the most important commercial partner of the south American customs union and in 2017 25% of its total exports went to China.<sup>169</sup>

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<sup>162</sup> Timini J. and Viani F., *The EU-MERCOSUR free trade agreement: main features and economic impact*, cit., p. 6

<sup>163</sup> Ibid.

<sup>164</sup> Ibid., p. 7

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Baltensperger M. and Dadush U., *The European Union-Mercosur Free Trade Agreement: prospects and risks*, Bruegel, Policy Contribution, Issue 11, 2019, p. 5  
[https://www.bruegel.org/wp-content/uploads/2019/09/PC-11\\_2019.pdf](https://www.bruegel.org/wp-content/uploads/2019/09/PC-11_2019.pdf)

<sup>169</sup> Ibid.

This is a particularly relevant issue concerning the EU-Mercosur FTA, as it remarks that the high tariffs that characterize the trade between the two organizations presumably hampered the development of their trade relations. The tariffs EU exporters currently face when selling to Mercosur countries amount to around 13% for agricultural products and around 10% for the remaining goods overall, that annually amount to approximately \$4,4 billion paid by the EU in tariffs. While Mercosur, despite exporting to the EU with an overall average tariff of just 1%, faces particularly high tariffs in the agricultural sector, which is the most crucial for Mercosur international commerce and faces an average tariff of 8% for exports of agricultural products to the EU, which ultimately results in around \$1,6 billion annually paid by Mercosur exporters in EU tariffs.<sup>170</sup> It seems reasonable to assume that an FTA that significantly reduces these tariffs would give a remarkable boost to the trade between the blocs and could potentially result in an overall gain for consumers.

### **3.3 Provisions of the agreement<sup>171</sup>**

The agreement in principle envisages a remarkable lowering of the tariffs between the EU and Mercosur, that ultimately translates to a complete liberalization of 95% of the total tariff lines from the EU and 91% of the total tariff lines from Mercosur. However, transition periods of up to 10 years will be needed to reach this goal and in the case of some specific products that Mercosur considers as sensitive ones, the transition period is extended to 15 years before the complete achievement of liberalization.<sup>172</sup>

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<sup>170</sup> Ibid.

<sup>171</sup> A description of the agreement has been published by the EU Commission, this section is a summary of its main features

[https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157964.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157964.pdf)

<sup>172</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Title X - Trade in Goods

[https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158144.%20Trade%20in%20Goods.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158144.%20Trade%20in%20Goods.pdf) and

*Trade part of the EU-Mercosur Association Agreement*, European Commission, Export Duties

[https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158187.%20TIG%20-%20Annex%202%20Export%20Duties.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158187.%20TIG%20-%20Annex%202%20Export%20Duties.pdf)



## **Agricultural products**

The agricultural sector has been the main matter of disputes during the negotiations and is probably the most relevant issue of the agreement, as it is a crucial sector of production for Mercosur and a potential threat for European producers that are not as competitive. To this regard, the agreement provides for an elimination of tariffs for 93% of the EU export tariff lines concerning agricultural products, corresponding to 95% of the total export value of such products; the EU will be able to export products like wine, olive oil, fruit, malt and soft drinks to Mercosur without paying tariffs. At the same time, the EU will eliminate tariffs on 82% of Mercosur's agricultural goods exports and will only partially remove the high tariffs on some of the remaining agricultural products, such as beef, poultry, ethanol, rice and honey, through the application of tariff-rate quotas (combinations of quotas and tariffs, where the tariffs applied to an imported product are lower under an established amount and become higher after this amount is exceeded). Products like cheese and milk powders instead, will be subjects to equal reciprocal tariff-rate quotas, that will be applied after a period of 10 years.<sup>173</sup>

## **Industrial products**

Another crucial topic for the negotiation was the trade of industrial goods, as in this case the high competitiveness of European producers made it difficult for Mercosur countries to agree to the liberalization of trade. In the agreement in principle the EU commits to eliminate completely all tariffs on industrial products in a 10-year span, while Mercosur commits to liberalize in a 10-year period around 90% of the industrial goods exported by the EU, including crucial ones like machinery, chemicals and pharmaceuticals. Passenger vehicles are an exception, as liberalization in this sector will occur over 15 years, with a tariff-rate quota during the first years: for the quota of 50 000 units the tariff applied will be half of the one applied under the MFN clause; after a seven years period the tariffs will be gradually lowered until their complete removal after 15 years.<sup>174</sup>

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

## **Licensing**

There also are provisions in the agreement regarding import and export licensing. Import licensing is considered to be a barrier to trade, as it prevents the importation of foreign products and can be used to protect the local producers by hampering competition. However, in cases like trade of animal skins, trade of weapons or other dangerous materials, import or export licensing is a useful tool to prevent illicit or harmful behaviors. In the EU-Mercosur agreement, the partners commit to communicate each other their licensing procedures for both imports and exports, as they value transparency as a means to tackle unfair practices and in the great majority of cases the licensing will be automatic (license granted in all cases).<sup>175</sup>

## **Trade facilitation**

Regarding trade facilitation, the parties stress the importance of advanced and automated procedures for the release of goods, when such procedures are possible and commit to accelerate the elaboration of the bureaucratic requirements in order to expedite the process of importation and exportation, but without taking anything of importance of rule enforcement and strict controls. In addition, the governments undertake to update and modernize the procedures regularly, while consulting businesses and other stakeholders before the adoption of new rules. The mutual recognition of Authorized Economic Operators is also permitted, when there is a reciprocal interest and the same standards are applied reciprocally in their recognition.<sup>176</sup>

## **Trade defense and global safeguards**

The safeguard systems against dumping and subsidies will remain the same that are applied under the WTO regime, with the addition of small provisions on additional

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<sup>175</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Trade in Goods, art. 6  
[https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158144.%20Trade%20in%20Goods.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158144.%20Trade%20in%20Goods.pdf)

<sup>176</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Customs and Trade Facilitation  
[https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158151.%20Customs%20and%20Trade%20Facilitation.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158151.%20Customs%20and%20Trade%20Facilitation.pdf)

consultations and increased transparency.<sup>177</sup> But a significant innovation is brought about by the bilateral safeguard clause, which is a provision that protects the parties from unexpected raises in imports. In fact, the agreement grants a preferential treatment for many agricultural and industrial goods, which may ultimately cause a negative effect on the producers of countries that import such goods from competitive partners of the other trading bloc. When such negative effects are sudden and particularly negative, the safeguard clause allows a cancellation of the preferential treatment for limited periods of time (up to four years overall) and this possibility will remain valid for 18 years. Of course, strong justification will be needed in order to invoke the right to apply the clause.<sup>178</sup>

### **Trade in services**

The agreement also provides a considerable liberalization in the trade of services, which currently faces many barriers despite the rise in EU services exports to Mercosur in recent years. A particular focus is made on the removal of trade barriers concerning postal services, telecommunications, financial services, E-commerce and maritime services (a market sector that has been particularly difficult to access to until now). The parties however, remark the absolute recognition of the public authorities' right to regulate public services and the modality of decisions for the provision of services like healthcare or public transport will not be changed as a result of this agreement.<sup>179</sup>

### **Government procurement**

Public procurement has been another major issue of discussion during the long negotiations that brought to the agreement in principle. One of the main reasons is that

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<sup>177</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Trade Defense and Global Safeguards

[https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158157.%20Trade%20Defense%20-%20General%20Principles%20and%20Global%20Safeguards.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158157.%20Trade%20Defense%20-%20General%20Principles%20and%20Global%20Safeguards.pdf)

<sup>178</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Bilateral Safeguards Measures [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158158.%20Trade%20Defense%20-%20Bilateral%20Safeguards.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158158.%20Trade%20Defense%20-%20Bilateral%20Safeguards.pdf)

<sup>179</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Trade in Services and Establishment [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158159.%20Services%20and%20Establishment.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158159.%20Services%20and%20Establishment.pdf)

Mercosur countries don't allow any foreign country company to access the market of public procurement; until a few years ago this market was closed even for other Mercosur states. Therefore, the agreement is a huge victory for the EU, as Mercosur committed to remove barriers on public procurement from EU companies and grant fair competition between Mercosur and EU firms. Initially, this will only be done at the federal or central level, but in two years after the ratification of the agreement, EU firms will be able to tender for contracts with sub-central entities as well. Reciprocally, the EU will allow Mercosur companies to tender for contracts with authorities at the central level, enlarging the market access to sub-central authorities accordingly to the counterpart's actions.<sup>180</sup>

### **Geographical indications**

Another crucial feature of the reached deal is the protection of geographical indications, which is a relevant issue because the 1994 WTO agreement on intellectual property is not a sufficient tool to prevent the frequent imitations of European food and beverages such as “Grana Padano” or “Jamón Serrano” through the creation of deceptive names or the use of terminology that links foreign products to famous European trademarks or places of origin without any relation to the sold product. Such practices are banned in the EU-Mercosur agreement in principle and the enforcement of this rule seems to be much more efficient than under the WTO regime, with the explicit prohibition of the use of words like “imitation of ...” or “kind of ...” and even the possibility for border control authorities to directly take measures against the export of products with misleading names regarding the place of origin of a product. This provision will safeguard more than 350 European geographical indications, as well as 220 geographical indications from Mercosur, given that the rules apply reciprocally for both parties.<sup>181</sup>

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<sup>180</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Government Procurement [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158160.%20Government%20Procurement.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158160.%20Government%20Procurement.pdf)

<sup>181</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Intellectual Property [https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc\\_158329.pdf](https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158329.pdf) and *Trade part of the EU-Mercosur Association Agreement*, European Commission, Legislation of the Parties [https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc\\_158330.pdf](https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158330.pdf)

## Dispute settlement

Finally, a chapter of the agreement that is worth mentioning is the one on dispute settlement, given that it is a critical issue in the relations between countries and such an ambitious agreement must have clearly determined procedures for the resolution of disputes. What the agreement envisages concerning the disputes that may arise over trade related issues is that the first step should obviously be the attempt to find an amicable solution through consultations. To this regard, the parties can agree to entrust themselves to a mediator, having agreed a mediation procedure. In case it is not possible to settle the dispute in this way, Mercosur and EU representatives preventively select rosters of potential arbitrators that both parties consider to be impartial and qualified enough to settle future disagreements. Then, when a dispute arises, the party that feels offended can select 3 arbitrators from the roster to analyze the situation through public hearings, with the possibility to intervene for any stakeholder that wants to do so, and issue a final report that cannot be contested by the parties. The report is binding, and the party found to be guilty must immediately correct whatever doesn't respect the terms of the agreement, under penalty of counter-measures from the counterpart.<sup>182</sup>

### Main provisions of the EU-Mercosur FTA

TOTAL TARIFFS	95% of tariff lines liberalized by the EU 91% of tariff lines liberalized by Mercosur
TARIFFS ON AGRICULTURAL GOODS	82% of tariff lines liberalized by the EU 93% of tariff lines liberalized by Mercosur
TARIFFS ON INDUSTRIAL GOODS	100% of tariff lines liberalized by the EU 90% of tariff lines liberalized by Mercosur
TRANSITIONAL PERIOD	10 - 15 years for some sensitive products
NON-TARIFF BARRIERS TO TRADE	Automated licensing for most goods More transparency on technical regulation and standards

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<sup>182</sup> *Trade part of the EU-Mercosur Association Agreement*, European Commission, Dispute Settlement [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158170.%20Dispute%20Settlement.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158170.%20Dispute%20Settlement.pdf) and *Trade part of the EU-Mercosur Association Agreement*, European Commission, Rules of Procedure for Arbitration [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158171.%20Dispute%20Settlement%20Annexes.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158171.%20Dispute%20Settlement%20Annexes.pdf)

TRADE IN SERVICES	Removal of trade barriers on postal services, telecommunications, financial services, E-commerce and maritime services
INVESTOR-STATE DISPUTE SETTLEMENT	ISDS mechanism not included Possible inclusion in the future
GOVERNMENT PROCUREMENT	Removal of barriers at central, after 2 years, sub-central level
GEOGRAPHICAL INDICATIONS	357 EU geographical indications protected 220 Mercosur geographical indications protected
TRADE AND SUSTAINABLE DEVELOPMENT	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized

### 3.4 Possible Outcomes

To calculate the outcomes of this FTA, it is essential to understand how significant the resource reallocation will be after the agreement enters in force, as it is a crucial factor for the trade agreement to bring about positive results for both the parties involved. Given a situation when no resource reallocation takes place after the liberalization of trade because prices do not decrease (which may be due to phenomena such as low elasticity of the demand curve or a monopoly on exports in a sector), the result is that the previous government gains in tariffs become exporters' gains, which is just a reallocation of gains, with no added gains from trade. In this extreme example (which is just an abstract situation, unlikely to occur) the outcome of a full liberalization of trade between the EU and Mercosur would be a net gain of around \$3 billion for the EU<sup>183</sup> (equal to Mercosur's net loss), as the revenue for EU exporters from the removal of the high Mercosur tariffs outweighs the revenue of Mercosur exporters, making the EU a net winner. But the consumers are not affected by the FTA in this scenario, no trade gain is added, and governments would lose a considerable amount of revenue.<sup>184</sup>

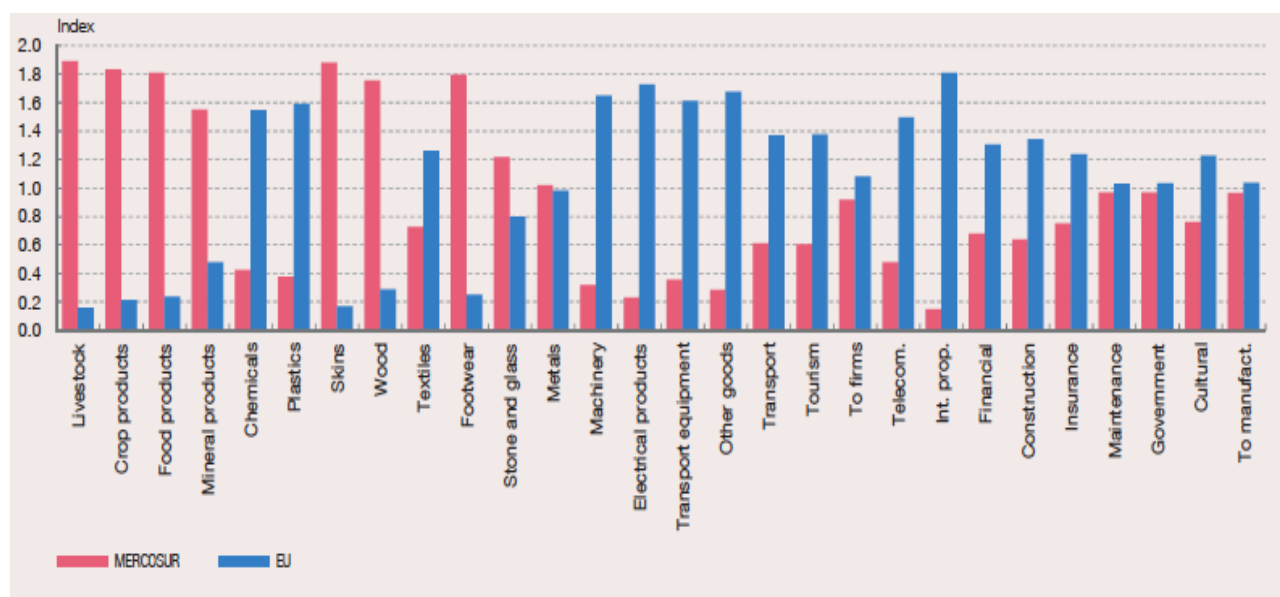
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<sup>183</sup> Baltensperger M. and Dadush U., *The European Union-Mercosur Free Trade Agreement: prospects and risks*, cit., p.6

<sup>184</sup> Ibid.

However, when considering the opposite scenario, that is when full liberalization of trade causes a decrease in prices and a subsequent reallocation of resources, the situation changes drastically, and both the trading blocs gain from the agreement. The following chart illustrates the comparative advantages that both EU and Mercosur have in different sectors:

### Comparative advantage index



(source: *Quarterly Report on the Spanish Economy*, Economic bulletin, Banco de España, 03/2019, p. 22)

Given that Mercosur has a comparative advantage in the production of agricultural goods, while the EU has a comparative advantage in the manufacturing sector, a scenario where all tariffs are removed and reallocation of resources occurs, implies a specialization of Latin American countries in the agricultural sector and a specialization of the EU in the manufacturing industry. This specialization expands the gains for both the trading blocs as the partners increase their overall production (i.e. static gains from trade). In addition, the enhanced competition brought about by the imports of products at lower prices when tariffs are removed, boosts inventions, innovation and productivity, thanks to a more efficient use of production factors, combined with an expanded market and economies of scale (i.e. dynamic gains from trade).<sup>185</sup> In this case, the combined static and dynamic gains from trade are remarkable for

<sup>185</sup> Baltensperger M. and Dadush U., *The European Union-Mercosur Free Trade Agreement: prospects and risks*, cit., p.6

both the EU and Mercosur, despite the loss of revenue due to the removal of tariffs. Both scenarios are just ideal representations and the agreement reached in 2019 doesn't remove all obstacles to trade, but this comparison shows how important the reallocation of resources is in order for the agreement to result in a win-win situation for the trading partners.

Researches used Computable General Equilibrium (CGE) models to simulate the possible impact of an agreement between Mercosur and the EU. Such models are sets of equations, based on a neo-classical approach to economics, that use actual baseline data to predict the reactions that markets may have to the introduction of new variables. A study done by Burrell A. *et al* in 2011<sup>186</sup> simulated the scenarios resulting in a 10-year span from the application of the 2004 EU proposal and the 2006 Mercosur proposal. Although neither of the proposals was accepted, the current agreement in principle contains many elements from them and can be considered as a midway between the 2004 EU and 2006 Mercosur proposals, therefore the study provides indications that can have relevance today.<sup>187</sup> An insight from a Bruegel institute publication<sup>188</sup> that examines this study summarizes the main differences between the proposals of 2004 and 2006 and the agreement reached in 2019:

Concerning industrial products, the FTA is midway between the 2006 Mercosur offer (M06) and the EU 2004 offer (EU04) as far as Mercosur tariffs are concerned (90% elimination), while the EU tariffs are completely removed in all proposals. Concerning agricultural products, the Mercosur tariff reduction on 93% of EU imports is more than proposed in EU04, but less than proposed in M06 (in exchange for a more significant reduction of tariffs from the EU side as well). While with regard to the agricultural goods subject to tariff-rate quotas, ethanol has been added in the FTA, which wasn't listed in this category in the EU04 and M06 proposals, and the quotas at zero tariff for Mercosur exports to the EU of beef and poultry have been expanded compared to the EU04 proposal but reduced compared to the M06 proposal.<sup>189</sup>

The 2011 study from Burrell *et al* suggested that the adoption of the 2004 or the 2006 proposals would have raised the exports from Mercosur to the EU by 3-4% by 2020, while the

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<sup>186</sup> Burrell A. *et al.*, *Potential EU-Mercosur free trade agreement: impact assessment*, JRC Reference Report, 2011 [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC67394/ipts%20potential%20eu-mercotur%20free%20trade%20agreement%20v1\(online\).pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC67394/ipts%20potential%20eu-mercotur%20free%20trade%20agreement%20v1(online).pdf)

<sup>187</sup> Baltensperger M. and Dadush U., *The European Union-Mercosur Free Trade Agreement: prospects and risks*, cit., p.7

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.



imports to Mercosur from the EU would have been increased by around 10%.<sup>190</sup> According to the study, both the EU and Mercosur would benefit in terms of GDP from the adoption of a FTA, despite the fact that EU producers would suffer big damage in the agricultural sector, as the losses in the agricultural sector will be overcompensated by the gains in the manufacturing sector.<sup>191</sup> However, the study also reveals a very valuable result: the gains in terms of GDP would be marginal for both the trading blocs, more specifically, the EU GDP would increase by just around 0,02%, while the Mercosur GDP would increase by around 0,12% in case of the adoption of the 2004 proposal, and by 0,16% in case of the adoption of the 2006 proposal.

Another study was carried out by Estrades C. in 2012<sup>192</sup>, with a particular focus on the effects of an FTA on Uruguay. In this analysis, the estimated impact of an agreement between the EU and Mercosur on their economies seems to be more relevant when assuming that the partners reach a full liberalization of commerce, with an increase of \$38,7 billion in the Mercosur exports to the EU and a \$44,4 billion increase in the EU exports to Mercosur.<sup>193</sup> A noticeable increase in welfare is also expected under full liberalization, especially in the small Mercosur economies: Uruguay (+ 4.4%) and Paraguay (+ 6,3%)<sup>194</sup>. However, when assuming that the liberalization does not include sensitive products like meat and motor vehicles, the study predicts a much more marginal gain for the trading blocs, with an increase of just 0,1% in the EU GDP and fairly marginal increases in the welfare of Mercosur countries as well.

A more recent impact assessment was done by the London School of Economics and Political Science (LSE)<sup>195</sup>, envisaging two possible scenarios: an ambitious one, with a very high degree of liberalization (almost full liberalization, excluding some sensitive products for the EU and a low incidence of non-tariff barriers to trade) and a conservative one, with a partial liberalization (90% of tariffs removed on industrial products by Mercosur, moderate reduction

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<sup>190</sup> Ibid.

<sup>191</sup> Burrell A. et al., *Potential EU-Mercosur free trade agreement: impact assessment*, cit., p. 127

<sup>192</sup> Estrades C., *Is MERCOSUR's External Agenda Pro-Poor? An Assessment of the European Union-MERCOSUR Free-Trade Agreement on Poverty in Uruguay Applying MIRAGE*, 2012  
[https://www.cepal.org/sites/default/files/events/files/documento\\_carmen\\_estrades\\_ifpri.pdf](https://www.cepal.org/sites/default/files/events/files/documento_carmen_estrades_ifpri.pdf)

<sup>193</sup> Ibid. p. 19

<sup>194</sup> Ibid. p. 29

<sup>195</sup> *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur*, LSE Consulting, London, July 2020  
[https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc\\_158892.pdf](https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158892.pdf)

of tariffs on sensitive agricultural products, higher incidence of non-tariff barriers to trade than in the ambitious scenario). The results of the assessment show that in both the ambitious and the conservative scenario, the EU would benefit from the agreement, but with a modest increase of only around 0,1% in the GDP, that is the result of an increase by approximately \$15 billion in the conservative scenario and an increase by approximately \$20 billion in the ambitious scenario. The gains for Mercosur countries appear to be more significant, especially for Argentina (0,5% increase of GDP in the conservative scenario, 0,7% increase of GDP in the ambitious scenario), but smaller in absolute terms, as the conservative scenario results in a \$10,3 billion increase in Mercosur countries GDP combined, while the overall GDP increase in the ambitious scenario is around \$16 billion. The following charts show in detail the macroeconomic impact calculated by the assessment in both the conservative and the ambitious scenario, considering GDP variations, welfare, wages and prices:

#### Conservative scenario of LSE study

Region	EU_28	Argentina	Brazil	Paraguay	Uruguay
<b>GDP (%)</b>	0.1	0.5	0.2	0.1	0.2
<b>ΔGDP*</b>	15.1	4.6	5.5	0.0	0.2
<b>Invest</b>	0.4	1.4	0.7	0.3	0.8
<b>Welfare*</b>	8.7	2.1	2	0	-0.1
<b>Real Wages (Skilled)</b>	0.2	0.2	0	0.2	0.2
<b>Real Wages (Unskilled)</b>	0.2	0.3	0	0.3	0.4
<b>Consumer Prices</b>	0.2	-1	-1.5	-0.3	-0.6

(source: Velut J.-B., Braeza-Breinbauer D., Lamprecht P., *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur* – Interim report, LSE Consulting, 2019)

### Ambitious scenario of LSE study

Region	EU_28	Argentina	Brazil	Paraguay	Uruguay
<b>GDP (%)</b>	0.1	0.7	0.3	0.1	0.4
<b>ΔGDP*</b>	20.9	6.4	9.0	0.1	0.4
<b>Invest</b>	0.5	1.6	0.8	0.4	1.4
<b>Welfare*</b>	12	2.9	2.9	0	0
<b>Real Wages (Skilled)</b>	0.3	0.3	0	0.2	0.3
<b>Real Wages (Unskilled)</b>	0.3	0.4	0	0.3	0.8
<b>Consumer Prices</b>	0.3	-1.4	-2.1	-0.5	-0.6

\* ΔGDP and welfare expressed in US \$ billions, other numbers expressed in % variations

(source: Velut J.-B., Braeza-Breinbauer D., Lamprecht P., *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur* – Interim report, LSE Consulting, 2019)

Overall, it appears that all the CGE models-based studies on a trade deal between the EU and Mercosur agree in concluding that a liberalization of trade would bring about positive results for both the partners, from a general point of view. However, there are differences as far as specific sectors are concerned and the total gains from trade could hide serious threats for uncompetitive sectors that open up to foreign competition, especially the agricultural sector in Europe. Moreover, the overall gains for both the economies in terms of GDP, although expected in all the impact assessments, appear to be rather marginal, ranging from a 0,02% to a 0,1% increase in EU GDP and from a 0,1% to a 0,4% increase in Mercosur GDP, as synthesized in this comparison between the studies:

### Expected GDP growth in the long run

	EU	Japan
<b>Burrell <i>et al</i> 2011</b>	+ 0,02%	+0,12 / +0,16%
<b>Estrades 2012</b>	+ 0,1%	
<b>LSE 2020</b>	+0,1%	+0,4%

Therefore, the agreement is a desirable achievement for the economic development of the EU and Mercosur, but its impact might not be as historical as advocated by the declarations of the EU Commission representatives after the announcement of the end of the negotiations.<sup>196</sup>

### 3.5 Ratification and Environmental Concerns

Being part of a broader association agreement that tackles matters that go beyond trade, the EU-Mercosur trade agreement will have to be ratified when the whole association agreement will be ready. As the agreement deals with issues that are not exclusive European competences, all the national parliaments will need to ratify it before its entrance into force. It is true that a provisional entrance in force can be applied for the economic part of the agreement (as trade is an exclusive European competence), but a failed ratification of the agreement as a whole would imply the nullification of all its parts, trade included.

The ratification of this agreement could be a problematic issue as there are many opponents, especially in Europe. One of the main reasons for the unwillingness to apply the FTA is the potential threat that it poses to the European agricultural sector: farmers from France, Poland, Belgium, Ireland and other EU countries strongly protest against the adoption of an agreement that exposes them to competition from Latin America and the parliaments of Austria, Wallonia and Netherlands have even rejected the current agreement, demanding for amendments. EU farmers' accusations are based on the assumption that the competition with Mercosur would be unfair, as the agricultural products in Mercosur are subject to lower sanitary, labor protection and environmental standards than the ones in the EU, which allows

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<sup>196</sup> *EU and Mercosur reach agreement on trade*, European Commission official website [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_3396](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3396)

southern American producers to reduce their production costs. The interest group for European farmers COPA-COGEA repeatedly criticized the agreement<sup>197</sup> and claimed that double standards are used for this sector, as Mercosur producers use MGOs and breeding techniques that are not allowed in the EU, on top of applying industrial farming that reduces costs and quality, while the model applied in Europe is a predominantly farming family model.<sup>198</sup> From the Mercosur side on the other hand, opposition to the agreement was expressed by the Argentine Wine Union, that accused the government of signing a deal that will harm Argentinian producers without an appropriate impact assessment.<sup>199</sup> Impact assessments and a better transparency have also been asked by the trade unions of the Mercosur countries in a joint statement, which revealed the fear of deindustrialization and job losses.<sup>200</sup>

But the major problem that causes objections to the deal in Europe is the environmental impact it will probably have in South America. In fact, the agreement is likely to foster an intensive production of goods that are directly or indirectly related to deforestation, which already is an alarming issue in Mercosur countries, especially Brazil. A 2009 sustainability impact assessment by Kirkpatrick C. and George C.<sup>201</sup> seems to confirm this fear. Goods such as beef, soy, sugar and bioethanol are among the main drivers of uncontrolled land-use and, although the deal might not bring about substantial changes in the commerce of beef and soy, it will certainly encourage an even more intensive production of sugar and bioethanol, as these were crucial goods during the negotiations and the tariffs on their export to the EU will be significantly reduced. The Commission claims that the chapter on Trade and Sustainable Development (TDS) will prevent from irresponsible practices, however there is no binding clause with regards to limiting deforestation and environmental damage and the EU didn't enforce the respect of environmental obligations on its economic partners in the past, as no expert panel has been created so far to investigate over a partner's misbehavior concerning

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<sup>197</sup> *EU-Mercosur – existing commission opens Pandora's box of double standards in agriculture*, COPA-COGEA Press release, 28/06/19

<sup>198</sup> Michalopoulos S., *EU farmers boss: 'Devastating' Mercosur trade pact exposes Europe's double standards*, EURACTIV article, 2 July 2019  
<https://www.euractiv.com/section/agriculture-food/news/eu-farmers-boss-devastating-mercotur-trade-pact-exposes-europes-double-standards/>

<sup>199</sup> Cortés P. P., *EU-Mercosur deal divides both sides of the Atlantic*, EURACTIV article, 10 July 2019  
<https://www.euractiv.com/section/economy-jobs/news/eu-mercotur-deal-divides-both-sides-of-the-atlantic/>

<sup>200</sup> Ibid.

<sup>201</sup> Kirkpatrick C., George C., *Trade Sustainability Impact Assessment (SIA) of the Association Agreement under Negotiation between The European Community and Mercosur*, Final Report, 2009  
[http://trade.ec.europa.eu/doclib/docs/2009/april/tradoc\\_142921.pdf](http://trade.ec.europa.eu/doclib/docs/2009/april/tradoc_142921.pdf)

environmental issues. After the recent fires that devastated the Amazon, climate change and illegal deforestation became even more prioritized issues and many NGOs came forward to oppose the ratification: in June 2020 the Veblen Institute, the Nicolas Hulot Foundation, ClientEarth, Fern and the International Federation for Human Rights filed a complaint to the European Ombudsman stressing that the negotiations were conducted without a sustainability impact assessment to serve as a point of reference and demanding to produce a sustainability impact assessment now that the terms of the agreement are known, before allowing the parliaments to ratify the agreement.<sup>202</sup>

Therefore, despite the fact that the 20 year-long negotiations over a trade deal have been concluded, the ratification of it appears much more difficult than expected and in order to convince the national parliaments and stakeholders that the deal is worth it, the EU Commission will probably have to include stricter clauses on environmental protection and set up better monitoring and enforcement mechanisms of the obligations in the TDS chapter.

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<sup>202</sup> Complaint to the European Ombudsman – The European Commission’s failure to complete a final sustainability impact assessment prior to the conclusion of the negotiations of the EU- Mercosur Free Trade Agreement, 15 June 2020 [https://www.veblen-institute.org/IMG/pdf/clientearth\\_et\\_al.\\_-complaint\\_eo\\_-\\_eu-mercrosur\\_fta\\_sia\\_version\\_2\\_150620.pdf](https://www.veblen-institute.org/IMG/pdf/clientearth_et_al._-complaint_eo_-_eu-mercrosur_fta_sia_version_2_150620.pdf)

# Chapter 4 – EU-CANADA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

## 4.1 Background

Canada is one of the most developed economies in the world: generating a GDP of approximately \$1,7 trillion<sup>203</sup>, it is the 10<sup>th</sup> world's richest country<sup>204</sup>, with a GDP at Purchasing Parity Power (PPP) exchange rates of almost \$2 trillion.<sup>205</sup> It therefore is a key economic partner for the EU and the trade with Canada amounted to more than \$72 billion in 2018, while trade in services almost reached \$35 billion in 2017.

The EU and Canada have a long history of good relations and economic cooperation, that began in 1976, when the EEC and Canada signed a Framework Agreement for commercial and economic cooperation, a non-preferential agreement where the parties committed to diversify and promote their commercial exchanges, which led the way to several other bilateral agreements that strengthened the connections between European countries and Canada.<sup>206</sup> Political agreements fostered the relations between the countries, as in 1990 the EEC and Canada signed the Declaration on Transatlantic Relations to strengthen their political affinity, in 1996 they established a stronger cooperation in higher education and training through the Canada-EU Joint Political Declaration and Action Plan of 1996, and in 2004 the countries agreed on a EU-Canada Partnership Agreement, which included the desire to enhance economic contacts as well. Bilateral sectoral economic agreements have also been signed by

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<sup>203</sup>International Monetary Fund website

[https://www.imf.org/external/pubs/ft/weo/2019/02/weodata/weorept.aspx?pr.x=33&pr.y=15&sy=2016&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=156&s=NGDP\\_RPCH%2CNGDPD%2CPPPGDP%2CNGDPDPC%2CPPPPC%2CPCPIPC&grp=0&a=](https://www.imf.org/external/pubs/ft/weo/2019/02/weodata/weorept.aspx?pr.x=33&pr.y=15&sy=2016&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=156&s=NGDP_RPCH%2CNGDPD%2CPPPGDP%2CNGDPDPC%2CPPPPC%2CPCPIPC&grp=0&a=)

<sup>204</sup> Silver C., *The Top 20 Economies in the World*, Investopedia, March 2020

<https://www.investopedia.com/insights/worlds-top-economies/>

<sup>205</sup>International Monetary Fund website

[https://www.imf.org/external/pubs/ft/weo/2020/01/weodata/weorept.aspx?pr.x=28&pr.y=8&sy=2017&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=156&s=NGDP\\_RPCH%2CPPPGDP%2CPCPIPC&grp=0&a=](https://www.imf.org/external/pubs/ft/weo/2020/01/weodata/weorept.aspx?pr.x=28&pr.y=8&sy=2017&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=156&s=NGDP_RPCH%2CPPPGDP%2CPCPIPC&grp=0&a=)

<sup>206</sup>*Framework Agreement for commercial and economic cooperation between the European Communities and Canada*, European Union External Action Service, Treaties Office Database

<https://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=267>

the partners, such as the Competition Cooperation Agreement of 1999 or the Agreement on Trade of Wines and Spirit Drinks of 2003.

In 2004, at the EU-Canada summit in Ottawa, the partners decided to significantly extend their commercial relations and started negotiations for a Trade and Investment Enhancement Agreement (TIEA), which would have tackled many areas that go beyond the mere access to market, as it was meant to regulate issues like investments, competition, online commerce, public procurement, intellectual property, financial services, sustainable development, mutual recognition of professional qualifications, and science.<sup>207</sup> The negotiations went on during three negotiation rounds between 2004 and 2006, but the parties did not succeed in finding an agreement and decided to suspend the discussions, in the expectation that the then ongoing Doha Round negotiations in the multilateral WTO context, could end successfully and clarify some of the points that caused a stalemate in the bilateral talks.<sup>208</sup> Despite its unsuccessful ending, the TIEA talks were a clear demonstration of the will Canada and the EU had of enhancing their trade relations and, given the lack of progress in the Doha Round negotiations, the sides decided to carry out a study assessing the possible impact of a closer economic relation, that was agreed on during the 2007 EU-Canada summit in Berlin.<sup>209</sup>

The result of the joint study was a 2008 report, called “Assessing the Costs and Benefits of a closer EU-Canada Relationship”<sup>210</sup>, that examined the possible effects of the removal of many barriers to trade in goods and services, mainly the non-tariff ones. The outcomes of the study claimed that removing trade barriers would result in an increase of more than \$41 billion in the trade between the partners in a 7-year span, corresponding to a 23% increase. This would be the result of an almost \$30 billion increase in the trade of goods and an approximately \$11 billion increase in the trade of services.<sup>211</sup> The study suggested that both sides would benefit in terms of GDP gains from the removal of trade barriers, with an increase of \$18,6 billion in

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<sup>207</sup> *Canada-European Union Trade and Investment Enhancement Agreement*, Global Affairs Canada <https://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/tiea.aspx?lang=en>

<sup>208</sup> Gauthier A., Holden M., *Canada–European Union Trade Negotiations: 1. Overview of Negotiations*, Parliament of Canada official website [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201053E#fn1](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201053E#fn1)

<sup>209</sup> Ibid.

<sup>210</sup> *Assessing the costs and benefits of a closer EU-Canada economic partnership*, Global Affairs Canada <https://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/study-etude.aspx?lang=eng>

<sup>211</sup> Gauthier A., Holden M., *Canada–European Union Trade Negotiations* [...], cit.



EU's annual GDP (+ 0,08%) and an increase of \$13,1 billion in Canada's annual GDP (+0,77%).<sup>212</sup>

The positive confirmations from the study convinced the EU and Canada to officially start the work for a comprehensive economic agreement and a "Joint Report on the EU-Canada Scoping Exercise"<sup>213</sup> was published in 2009, outlining all the areas the parties agreed to start negotiating on, which included: trade in goods; sanitary and phytosanitary issues; technical barriers to trade; trade facilitation; customs procedures; cross-border trade in services; investment; government procurement; regulatory cooperation; intellectual property, including Geographical Indications; movement of persons; competition policy and other related matters; institutional arrangements and dispute settlement; sustainable development.<sup>214</sup>

In April 2009 the EU Commission received the negotiating mandate from the Council and the parties formally announced the beginning of the negotiations for a Comprehensive Economic and Trade Agreement (CETA) after their summit in Prague in May 2009, with the hope that the negotiating process will be relatively quick and that the agreement would be ready in approximately 18 months.<sup>215</sup> The first round of negotiations started in October of the same year, in Ottawa, but the negotiations were longer than initially hoped and eight other rounds of negotiations from 2009 to 2011 were necessary to reconcile the differences between the EU and Canada positions, until the partners announced the successful conclusion of the negotiations in 2013 and agreed on a final version of the CETA text in 2014.

The Canadian provinces have a crucial role in implementing and ensuring compliance with some of the provisions of the agreement, more specifically they are directly involved in the provisions on agriculture and government procurement. For this reason, the EU insisted for their inclusion in the negotiations, to assure a more convinced long-term commitment from the Canadian side.<sup>216</sup> All ten provincial governments and three territorial governments (with a great

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<sup>212</sup> Ibid.

<sup>213</sup> Joint Report on the EU-Canada Scoping Exercise  
<http://www.esf.be/new/wp-content/uploads/2009/03/canada-eujointreport2009-03-05.pdf>

<sup>214</sup> Ibid.

<sup>215</sup> Fafard P., Patrick L., "Closing the deal: What role for the provinces in the final stages of the CETA negotiations?." *International Journal* 68, no. 4, 2013, p.1  
[https://www.jstor.org/stable/24709357?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/24709357?seq=1#metadata_info_tab_contents)

<sup>216</sup> Johnson C., Mathias M., *Sub-national government involvement in international trade negotiations* - evidence review, Wales Centre for Public Policy, 2018, p.7  
<https://www.wcpp.org.uk/wp-content/uploads/2018/04/Sub-national-government-involvement-in-international-trade-negotiations-ENG.pdf>

interest from Quebec and Ontario) were included in the negotiations, which is something that never happened before in the negotiations of a trade deal from Canada<sup>217</sup> and has slowed down the discussions as there were more stakeholders involved.

By the beginning of 2016 both sides finished the legal review of the document and the official signature of the agreement took place in Brussels in October of the same year, despite the strong opposition of the Walloon region which delayed the signature. The European parliament ratified the agreement at the beginning of 2017, notwithstanding the negative opinion on CETA from far-right and far-left European parties.<sup>218</sup> Being a mixed agreement, ratification from all the national parliaments and some regional parliaments in Europe is required in order for CETA to fully enter into force, however, the most important parts of the deal are provisionally applied from the 21<sup>st</sup> September 2017.<sup>219</sup>

## 4.2 Trade Flows before CETA

The European Union has been one of the most important economic partners for Canada for years, as the total amount of imports and exports between Canada and the EU has been constantly growing, reaching a total value of more than €64 billion in 2016 in the trade of goods<sup>220</sup> and around €30 billion in services<sup>221</sup>; this made the EU the second most important economic partner for Canada before the signature of CETA, as trade with the EU represented almost 10% of Canada's total trade with the world. The importance of Canada as a trading partner for the EU is not as big in relative terms, considering the size of the economies (€14,8

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<sup>217</sup> *The Roles of Provinces and Devolved Administrations in the Negotiation and Implementation of a Canada-UK Trade Agreement*, Canadian Social Sciences and Humanities Research Council official website [https://www.sshrc-crsh.gc.ca/society-societe/community-communite/ifca-iac/evidence\\_briefs-donnees\\_probantes/canada-uk/paquin-wooton-eng.aspx?wbdisable=true](https://www.sshrc-crsh.gc.ca/society-societe/community-communite/ifca-iac/evidence_briefs-donnees_probantes/canada-uk/paquin-wooton-eng.aspx?wbdisable=true)

<sup>218</sup> "European Parliament passes controversial EU-Canada CETA trade deal", *DW News*, February 2017 <https://www.dw.com/en/european-parliament-passes-controversial-eu-canada-ceta-trade-deal/a-37558610>

<sup>219</sup> "Ceta, da oggi in vigore il trattato di libero scambio Ue-Canada. Le misure principali", *La Repubblica*, September 2017 [https://www.repubblica.it/economia/2017/09/21/news/ceta\\_scheda\\_provvedimenti-176095790/](https://www.repubblica.it/economia/2017/09/21/news/ceta_scheda_provvedimenti-176095790/)

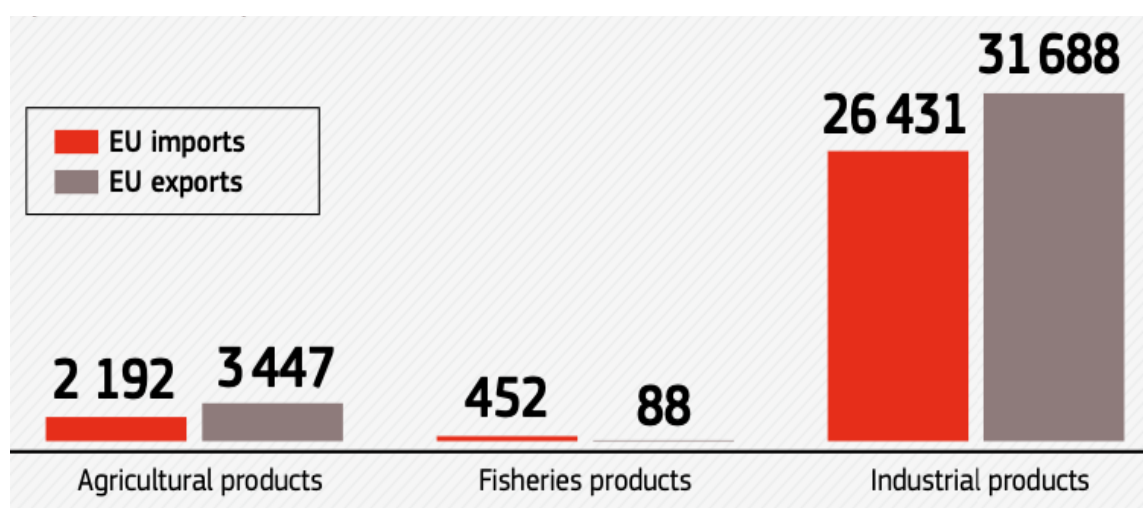
<sup>220</sup> *Guide to the Comprehensive Economic and Trade Agreement (CETA)*, European Commission Publication, 2017, p.5 [https://www.bia-bg.com/uploads/files/analysis/CETA\\_Guide/GUIDE\\_to\\_the\\_CETA.pdf](https://www.bia-bg.com/uploads/files/analysis/CETA_Guide/GUIDE_to_the_CETA.pdf)

<sup>221</sup> *The Economic Impact of the Comprehensive Economic And Trade Agreement (CETA)*, European Commission publication, 2017, p.14 [http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156043.pdf](http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156043.pdf)

billion GDP in 2016 for the EU, \$1,527 billion GDP in 2016 for Canada); in fact, Canada only accounts for 2% of EU's total trade with the world, which made Canada the 11<sup>th</sup> most important trading partner for the EU before the provisional application of CETA.<sup>222</sup>

As far as trade in goods is concerned, the EU is a net exporter and the trade balance was of almost €7 billion in 2015, as a result of approximately €35 billion of exports to Canada and approximately €28 billion of imports from Canada.<sup>223</sup> Industrial products are the most traded between the two partners, and in 2016 they accounted for almost 90% of the total trade between them. The most important among industrial products is certainly machinery, that is both exported from the EU to Canada (25% of its total exports of goods to the country in 2015) and imported by the EU from Canada (13% of the total imports of goods in 2015).<sup>224</sup> Other relevant product groups in the trade between the two sides are transport equipment (more than 14% of their total trade of goods in 2015), chemical products (around 12% in 2015), foodstuff, beverages and tobacco (almost 5% in 2015). For all of these goods the EU is a net exporter; the only relevant product group that Canada exports to the EU more than it imports from the EU is the one of mineral products. The following charts describe the trade in goods between Canada and the EU before the provisional application of CETA:

**Top goods exports from the EU to Canada in 2016 (€ million)**



(source: *Guide to the Comprehensive Economic and Trade Agreement (CETA)*, European Commission Publication, 2017, p.5)

<sup>222</sup> *Guide to the Comprehensive Economic and Trade Agreement (CETA)*, cit., p.5

<sup>223</sup> *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, cit., p.13

<sup>224</sup> Ibid.

### EU-Canada trade in most relevant product groups in 2015 (€ million)

HS section	Exports	Imports	Trade balance
Machinery and appliances	8,668	4,027	4,641
Transport equipment	6,698	2,594	4,104
Chemical products	5,737	2,239	3,497
Foodstuffs, beverages, tobacco	2,369	640	1,730
Mineral products	2,196	3,017	-821

(source: *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017, p.13)

The tariffs between the two sides before CETA were already generally low, with an average 3% tariff in the most important tariff lines.<sup>225</sup> Nevertheless, there were specific sectors in which exporters faced particularly high tariffs; for instance, the agricultural sector is considered to be a sensitive sector for the EU and, before the provisional entrance in force of CETA, many agricultural goods were imported from Canada with the application of remarkably high tariffs, as well as pork, beef and some seafood that was imported with tariffs up to 20%.<sup>226</sup> The highest tariffs exporters from both sides faced were relative to dairy products (79,3% in EU, 227% in Canada), processed food (15,5% in EU, 20,3% in Canada), ruminant meats (13,6% in EU, 10,7% in Canada), other meats (7% in EU, 6,3% in Canada) wearing apparel (9,4% in EU, 15,4% in Canada) and leather (8,2% in EU, 9,1% in Canada).<sup>227</sup>

Concerning the trade of services, it is interesting to notice that it increased impressively in the last 15 years: while in 2004 the EU imported around €7 billion of services from Canada and exported approximately €8 billion, when CETA was about to be signed, in 2015, the export of services from the EU to Canada increased to €18 billion (a 125% increase) and the EU

<sup>225</sup> *CETA: TTIP in a Canadian Disguise*, Confederal Group of the European United Left/Nordic Green Left report, p.6  
[https://www.guengl.eu/content/uploads/2016/10/CETA\\_Sept\\_2016\\_web.pdf](https://www.guengl.eu/content/uploads/2016/10/CETA_Sept_2016_web.pdf)

<sup>226</sup> *The nitty-gritty of EU trade barriers before and after CETA*, Export Development Canada (EDC) website, July 2017 <https://www.edc.ca/en/article/canada-eu-trade-barriers-ceta.html>

<sup>227</sup> *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, cit., p.32

imports of services from Canada increased to €12 billion (a 64% increase).<sup>228</sup> It is therefore a sector that undergoes a great development and the trade partners aim at further increasing their trade in services, as CETA contains comprehensive provisions on services and investment.<sup>229</sup> The trade balance in this sector is significantly positive for the EU, as it exported services to Canada in 2015 for a value 50% superior to its imports of services from Canada. The main services that the parties trade are related to travel (around 22% of the total bilateral trade in services in 2015), transports (around 22%), telecommunications services (around 9%) and financial services (around 6%).<sup>230</sup> The EU is a net exporter in all the most relevant areas, as shown by the following chart, indicating the sectorial division of the trade in services between the EU and Canada before the provisional application of CETA:

**EU-Canada services trade in 2015 (€ million)**

<b>SERVICES</b>	<b>EXPORTS</b>	<b>IMPORTS</b>	<b>TRADE BALANCE</b>	<b>PERCENTAGE OF TOTAL TRADE</b>
Travel	4.067	2.723	1.344	7,5%
Transport	3.915	2.765	1.150	6,7%
<i>Sea transport</i>	1.899	1.061	838	3,3%
<i>Air transport</i>	1.678	1.399	278	3,4%
<i>Other modes of transport</i>	311	276	36	0,6%
<i>Postal and courier services</i>	25	29	-5	0,06%
Financial Services	1.444	348	1.096	2%
Telecom., Computer, info. services	1,776	899	877	3%

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<sup>228</sup> Ibid., p.14

<sup>229</sup> *Guide to the Comprehensive Economic and Trade Agreement (CETA)*, cit., p. 21

<sup>230</sup> *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, cit., p.15

Services not allocated	742	10	732	0,8%
Charges for the use of intellectual property	987	365	623	1,5%
Insurance and pension services	416	113	303	0,6%
Other business services	3.664	3.375	289	7,8%
Construction	185	52	133	0,3%
Maintenance and repair services	550	826	-276	1,5%
Other services	254	581	-326	0,9%
<b>TOTAL</b>	<b>17.997</b>	<b>12.055</b>	<b>5.942</b>	<b>33%</b>

(source: *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017, p.14 and personal calculations)

Another crucial activity in the economic relations between Canada and the EU is Foreign Direct Investment (FDI), given that in 2015 Canadian investors owned a value of €228 billion in EU stocks, while EU investors owned a value of €249 billion in Canadian stocks.<sup>231</sup> These numbers are quite impressive, considering the difference in size between the two economies: the fact that Canadian FDI in the EU almost equals the EU FDI in Canada means that Canadian contribution to European economy is remarkable relatively to the size of its own economy (Canadian GDP is roughly 10% of EU GDP). In the 10 years prior to the signature of CETA, FDI stocks constantly grew between the two economies, in both ways, with an average investment flow of €13 billion per year for both Canadian outward flows to the EU and EU outward flows to Canada, although in some years the flows were considerably greater than in others. The result is that Canadian FDI stocks in Europe were 3 times greater in 2015 than in 2005, while EU FDI stocks in Canada increased by more than 260%.<sup>232</sup> FDI is a central

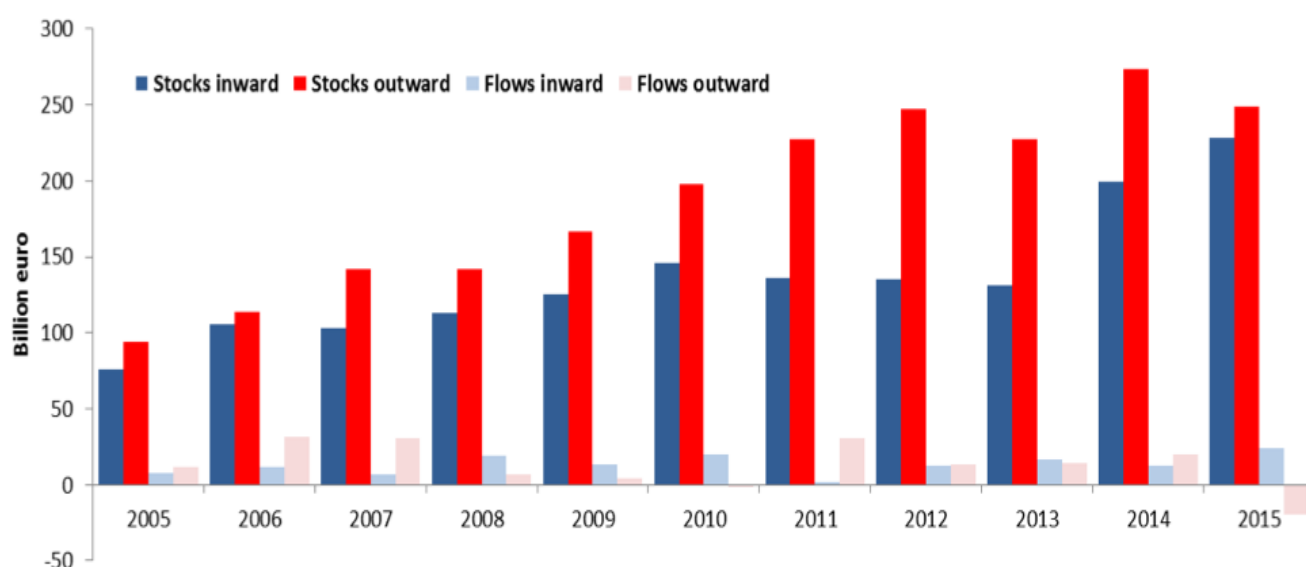
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<sup>231</sup> Ibid., p. 16

<sup>232</sup> Ibid.

element in EU-Canada relations, which can be proven by a comparison between the EU and the USA in this area: despite the far superior importance the US have for Canada as a trading partner (US account for 66% of Canada's total trade with foreign countries, while EU accounts for only 9%), the combined Canadian FDI stocks in Europe and European FDI stocks in Canada, equal to about 90% of the sum of Canadian FDI stocks in the US and US FDI stocks in Canada.<sup>233</sup> The variations in FDI stock and flows between Canada and the EU in the 10 years before the signature of CETA are described more in detail in the following chart:

**FDI stocks and flows of the EU with Canada (2005-2015)**



(source: *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017, p.16)

### 4.3 Provisions of the Agreement<sup>234</sup>

Concerning the trade of goods, the liberalization brought about by CETA is impressive, as the agreement envisages the complete removal of tariffs for 98,6% of all Canadian tariff lines (98,2% of which have been removed immediately after the provisional application, while the

<sup>233</sup> Ibid.

<sup>234</sup> A description of the agreement has been published by the EU Commission, this section is a summary of its main features

[https://trade.ec.europa.eu/doclib/docs/2014/december/tradoc\\_152982.pdf](https://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf)

others will be removed within transitional periods of 3, 5 or 7 years from the entrance in force) and for 98,7% of all EU tariff lines (97,7% of which removed immediately).

### **Industrial products**

All tariffs on industrial products will ultimately be eliminated by the agreement, and they have been removed almost entirely at the entrance in force: transitional periods are necessary for just 0,4% of the Canadian tariff lines and 0,6% of the European tariff lines: these lines include the automotive sector for both sides and the Canadian import of ships, as these categories of industrial products are crucial for the economies of the partners and will require some time to adjust to liberalization without significantly damaging local producers.<sup>235</sup>

### **Agricultural products**

In the agricultural sector, full liberalization will concern the trade in 90,9% of the Canadian tariff lines and 93,8% of the EU tariff lines, with transitional periods required for 0,8% of Canadian tariff lines and 1,7% of the EU ones. Some agricultural products however, are considered to be sensitive products by either the EU or Canada and will be subject to the same tariffs as before the entrance in force of CETA or will be treated under a tariff-rate quota system. The excluded from liberalization products include egg products, chicken and turkey meat for both sides, while the sensitive products that are subject to tariff-rate quotas are dairy for Canada and beef, pork and canned sweetcorn for the EU. A particularly relevant category of agricultural products for CETA are the processed agricultural products like wines, pasta or biscuits, that have been a major issue of debate during the negotiations and are among the main reasons why the EU wanted the agreement in the first place, as the EU is a major exporter of such products. The EU negotiators obtained a very satisfying result to this regard, given that trade of almost all the processed agricultural products is liberalized with the provisional

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<sup>235</sup> *CETA – Summary of the final negotiating results*, European Commission publication, p.1-2; *Text of the Comprehensive Economic and Trade Agreement* – Chapter two: National treatment and market access for goods, Government of Canada website <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/02.aspx?lang=eng>



applications of CETA, which considerably expands the exporting potential of the EU and might bring substantial gains to European producers.<sup>236</sup>

### **Rules of origin**

The agreement also deals with problems connected to the rules of origin systems applied in the EU and Canada, which differ appreciably, possibly leading to issues regarding the classification of certain goods as “Canadian” or “European” and, therefore, the possibility to apply CETA tariffs to the export of those goods. In order to find a common ground and avoid disputes, the sides agreed that for most goods European standards shall be applied in order to determine the origin of a product and the possibility to export it under CETA tariffs. Nevertheless, such criteria would be difficult to meet for some specific categories of goods produced in Canada, therefore, the EU allows derogations to the European rules of origin system for predetermined quotas of products imported from Canada in the automotive, textiles and processed food sectors. The less stringent rules of origin system is applied reciprocally by Canada in the textiles sector and all the imports/exports of products subject to derogation that exceed the predetermined quotas, must respect the standard EU rules of origin in order to be considered as “European” or “Canadian”.<sup>237</sup>

### **Technical barriers to trade**

Many technical barriers to trade are also removed by CETA, as the sides committed to cooperate with transparency in order to apply more uniformized standards in technical regulation, as well as in the testing and the quality certification of imported goods. The main provision that removes technical barriers to trade is the adoption of a protocol for conformity assessment that is recognized by both parties and allows Canadian authorities to test products

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<sup>236</sup> *CETA – Summary of the final negotiating results*, European Commission publication, p.3-5; *Text of the Comprehensive Economic and Trade Agreement* – Chapter two: National treatment and market access for goods, Government of Canada website; and *Text of the Comprehensive Economic and Trade Agreement* – Annex 2-A: Tariff elimination, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/02-A.aspx?lang=eng>

<sup>237</sup> *Text of the Comprehensive Economic and Trade Agreement* – Protocol on rules of origin and origin procedures, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/P1.aspx?lang=eng>

and release certifications that are recognized in Europe, without the need of another EU test when the product is exported from Canada; the application is of course reciprocal, and Canada accepts European certifications as well. This provision is a remarkable boost for the trade between the regions, as the exporters can now save the time and costs they previously needed for double-testing their products, which has a considerable impact on small and medium companies.<sup>238</sup>

### **Trade in services and investment**

Regarding trade in services and investment, CETA provides explicit and comprehensive lists of measures that shall be maintained after its entrance in force, while removing those that are not included in these lists. Annex 1<sup>239</sup> contains all the restrictions concerning investment and trade in services that the parties desire to maintain despite the agreement, while committing to keep those measures intact in the future; the services listed in Annex 1 include mining, environmental services and some professional services, which were already considerably liberalized, before the signature of CETA. Annex 2<sup>240</sup> on the other hand, lists all those restrictions in the trade of services and investments that the trade partners wish to maintain, while reserving the right to change them or add new restrictions in the future; such services are mostly public services that the partners do not wish to privatize like health, education or water

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<sup>238</sup> *Text of the Comprehensive Economic and Trade Agreement* – Chapter four: Technical barriers to trade, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/04.aspx?lang=eng>

<sup>239</sup> *Text of the Comprehensive Economic and Trade Agreement* – Annex I: Reservations for existing measures and liberalisation commitments, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A1-F.aspx?lang=eng>;  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A1-PT.aspx?lang=eng>;  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A1-EU.aspx?lang=eng>

<sup>240</sup> *Text of the Comprehensive Economic and Trade Agreement* – Annex II: Reservations for future measures, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A2-F.aspx?lang=eng>;  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A2-PT.aspx?lang=eng>;  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/A2-EU.aspx?lang=eng>

supply. In the sectors that are not listed in the annexes, the parties commit to remove the restrictions and discriminatory measures that hamper free trade in service, liberalizing several sectors which previously were not liberalized, such as telecommunications, postal services and maritime services.

### **Government procurement**

A particularly important part of CETA for the EU is the one on government procurement, given that until the application of CETA, the relationship between Canada and the EU in this area was substantially asymmetrical: despite the absence of a formal deal, the EU didn't hamper the access for Canada to the government procurement market, while the same treatment was not in place from the Canadian side and European firms were excluded from the Canadian procurement market. With the entrance in force of CETA however, the sides committed to grant fair access to each other to their public procurement markets, which is something Canada never agreed on with a foreign trade partner. Considering the insistence of the EU for the participation of Canadian provinces in the negotiations, the commitments concerning government procurement are extended to sub-federal public authorities and EU firms can now tender for contracts with federal, provincial and territorial entities, as well as with state owned corporations in Canada; the same treatment applies reciprocally concerning Canadian firms in the EU. There are only two exceptions with regards to public procurement in Canada: The Provinces of Quebec and Ontario, that had a key role in the negotiations, managed to keep some limitations in place regarding the government procurement of energy utilities and public transport, despite removing many obstacles for EU firms even in these two sectors.<sup>241</sup>

### **Geographical indications**

The EU achieved another important result concerning geographical indications, as the commitments in CETA implied the protection of 124 European names of foods in the Canadian market, forbidding the use of those names for producers that are not allowed to use them according to the EU law. Other names have been granted a partial protection, through solutions

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<sup>241</sup> *Text of the Comprehensive Economic and Trade Agreement* – Chapter nineteen: Government procurement, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/19.aspx?lang=eng>

that try to reconcile the EU need of protection for its geographical indications and the significant presence of such names in the Canadian market before the application of CETA: in some cases the solution is the coexistence of EU trademarks and the extra-EU ones that were already in the market, which is still a victory for the EU as the Canadian law usually applies the “first in time first in right” principle concerning trademarks<sup>242</sup>; in other cases the Canadian producers that used misleading EU geographical indications are given a period of time to gradually remove such names from the market; yet in other cases the use of EU trademarks is allowed for Canadian producers as long as the name is a French or English translation of the original version and doesn’t mislead the consumers regarding the actual geographical origin of that product.<sup>243</sup>

### **Trade and sustainable development**

CETA also includes a chapter on trade and sustainable development, which is a usual feature in recent EU association agreements, but is not as common in Canadian trade agreements, given that Canadian authorities usually prefer to sign separate agreements that deal with sustainable development standards. The European approach has been chosen for this deal and the parties commit to respect high labour standards as set out by the International Labour Organization (ILO), despite remarking the autonomy of each party in the regulation of its labour laws, as long as they are not in conflict with the high ILO standards. Environmental concerns are also treated in this chapter, as both sides agreed for the promotion of a responsible use of natural resources and the application of the Guidelines for Multinational Enterprises set out by the Organization for Economic Co-operation and Development (OECD), with strict monitoring procedures, that promote transparency in business conduct and include the participation of civil society organizations.<sup>244</sup>

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<sup>242</sup> Salvatici L. *Gli accordi commerciali e l'Italia: il caso del CETA*. Vol. 1. Roma Tre-Press, 2019, p.15  
<http://romatrepress.uniroma3.it/wp-content/uploads/2019/12/Gli-accordi-commerciali-e-l'Italia-il-caso-del-CETA.pdf>

<sup>243</sup> *Text of the Comprehensive Economic and Trade Agreement* – Chapter twenty: Intellectual property, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/20.aspx?lang=eng>

<sup>244</sup> *Text of the Comprehensive Economic and Trade Agreement* – Chapter twenty-two: Trade and sustainable development, Government of Canada website  
<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/22.aspx?lang=eng>

### **Main provisions of CETA**

TOTAL TARIFFS	98,7% of tariff lines liberalized by the EU 98,6% of tariff lines liberalized by Canada
TARIFFS ON AGRICULTURAL GOODS	93,8 % of tariff lines liberalized by the EU 90,9% of tariff lines liberalized by Canada
TARIFFS ON INDUSTRIAL GOODS	100% of tariff lines liberalized by the EU 100% of tariff lines liberalized by Canada
TRANSITIONAL PERIOD	3 - 5 - 7 years for some sensitive products
NON-TARIFF BARRIERS TO TRADE	Uniformized standards in technical regulation. Protocol for conformity assessment recognized by both parties
TRADE IN SERVICES	Removal of trade barriers, except from mining, environmental services and some public services
INVESTOR-STATE DISPUTE SETTLEMENT	Investment Court System (ICS) replaced the traditional ISDS system
GOVERNMENT PROCUREMENT	Removal of barriers at federal and sub-federal level, with limitations in Quebec and Ontario
GEOGRAPHICAL INDICATIONS	205 EU geographical indications protected
TRADE AND SUSTAINABLE DEVELOPMENT	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized

## **4.4 Possible Outcomes**

After the conclusion of the agreement, the European Commission published a comprehensive impact assessment<sup>245</sup> in 2017 to calculate the effects of CETA on the economies

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<sup>245</sup> *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, cit.

of the signatories, based on CGE model simulations. The simulations predict the impact of the agreement for the year 2030, compared with the baseline data that are relative to the year 2011.

The study predicts a combined increase of almost €12 billion in trade between the partners, as a result of a €5,8 billion increase in EU exports and an almost equivalent €5,9 billion increase in Canadian exports, that corresponds to a slightly more than 8% increase in export for both countries. Increases in FDI are also expected according to the study, but in much smaller shares, as the expected increase in FDI from Canada into the EU only amounts to €630 million (+0,02%), while the expected increase in EU FDI into Canada is €1,2 billion (+0,33%).<sup>246</sup> The following chart summarizes these results:

### Expected increases in EU-Canada trade and FDI

Country/variable	€ billion	%
<b>Bilateral trade</b>		
EU	5.8	8.04
Canada	5.9	8.13
Total bilateral exports	11.7	
<b>FDI</b>		
Into the EU	0.6	0.02
Into Canada	1.2	0.33
Total FDI	1.8	

(source: *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017, p.36)

A sectorial analysis of the increase in trade reveals that the sectors that are expected to be affected the most in relative terms are the ones that had the highest tariffs before the signature of the agreement. As was pointed out previously, among the sectors in which exporters faced the highest tariffs were dairy, wearing apparel, meats and leather. According to the impact assessment, the increase in trade in these sectors in 2030 will be +132% for dairy, +135% for wearing apparel, +65% for non-ruminant meats and +80% for leather, confirming that the sectors experiencing the biggest boost in trade are the ones that faced the greatest obstacles

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<sup>246</sup> Ibid., p.35

before the signature of CETA<sup>247</sup>. However, the biggest absolute gains are predicted to be in other sectors: as far as the EU gains are concerned, the sectors that are expected to experience the biggest boost in absolute terms are the automotive sector (+€880 million in 2030), business services (+€644 million), chemicals (+€451 million) and wearing apparel (+€414 million).<sup>248</sup> While in Canada, the biggest gains for exporters are expected to be in the chemicals and plastics sector (+€907 million), the business services (+€738 million), non-ferrous metals (+€773 million) and processed food (+€498 million).<sup>249</sup> The following chart shows in detail the expected trade variations for each sector in the year 3030:

### Variations in EU-Canada sectorial trade

GTAP sectors	EU exports to Canada	Canada exports to EU	EU exports to Canada	Canada exports to EU
	€ millions		%	
Cereals & Oilseeds	15	208	8.8	13.1
Fruit & Vegetables	7	5	8.5	2.4
Processed Foods	199	498	13.9	61.5
Other Primary Ag.	21	14	9.0	9.0
Dairy	300	37	132	340
Natural Fibres	0	0	0.4	-0.8
Forestry	0	1	2.3	4.8
Fishing	0	14	1.2	20.7
Coal	0	0	0.1	-0.1
Oil	1	0	0.2	-0.1
Gas	0	0	0.3	-0.3
Other Mining	3	-6	0.5	-0.1
Ruminant meats	0	24	0.6	35.1
Other meats	55	10	61.5	72.3
Beverages & Tobacco	32	4	1.5	5.1

<sup>247</sup> Ibid., p.36-37

<sup>248</sup> Ibid., p. 37

<sup>249</sup> Ibid.

Textiles	182	41	46.9	56.3
Wearing Apparel	414	81	145	82.2
Leather	216	14	79.8	80.0
Lumber	123	19	24.5	3.9
Paper Products	3	-8	0.4	-0.6
Petroleum & Coke	103	68	4.9	8.9
Chemical & Plastics	451	907	5.4	12.4
Non-Metallic Minerals	96	19	16.5	15.7
Iron & Steel	5	7	0.3	1.5
Non-Ferrous Metals	8	773	0.7	4.0
Metal Products	128	69	12.0	7.3
Automotive	880	320	17.8	42.5
Other Trans Equipment	192	434	5.8	10.0
Electronic Equipment	17	96	2.3	9.1
Machinery	299	462	3.1	12.2
Other Manufacturing	83	17	29.1	4.6
Electricity	19	49	13.2	13.2
Gas Distribution	1	17	14.8	12.9
Water	2	0	13.8	13.5
Construction	7	20	8.1	8.0
Trade	108	69	7.9	7.9
Other Transport	118	44	7.5	8.1
Water transport	53	107	5.8	8.3
Air transport	248	189	5.2	8.3
Communications	78	92	7.2	7.9
Finance	280	98	5.9	8.0
Insurance	160	58	6.5	7.9
Other Business Services	644	738	6.3	7.9
Other services	278	293	7.3	7.8
<b>Total bilateral exports</b>	<b>5,826</b>	<b>5,906</b>	<b>8.0</b>	<b>8.1</b>

(source: *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017, p.37-38)



The study also focuses on the evaluation of the possible gains for EU companies from public procurement after the entrance in force of CETA, as this was one of the crucial issues for the EU, given that Canada already had access to European procurement markets. The EU successfully insisted for the inclusion of provincial and territorial governments in the negotiations and now, no other trading partner has the same access to the Canadian public procurement market as the EU under CETA, which means that European companies have a huge profit margin in this market. The study predicts that under the agreement, EU companies will annually gain C\$13 million from provincial level public procurement,<sup>250</sup> C\$399 million from local level public procurement<sup>251</sup> and C\$350 million from procurement by other public entities<sup>252</sup>, which equals to a total annual gain for EU companies of C\$762 million (roughly €500 million in 2020).

The partners are also expected to gain from CETA in terms of GDP, according to the Commission's impact assessment, but these gains don't seem to be as relevant as the economic size of both sides could suggest. In fact, it is predicted by the study that the application of CETA will imply an annual increase of €1,7-€2,1 billion in EU GDP and an annual increase of €2,4-€3 billion in Canadian GDP<sup>253</sup>, equivalent to an approximately 0,01% increase in EU GDP and an approximately 0,15% increase for Canadian GDP, which is fairly in line with the predictions made by other previous studies on the effects of CETA.<sup>254</sup>

Since CETA has been provisionally applied in 2017, it is now too soon to give a definitive evaluation of the agreement's outcomes; however, some first results from the liberalization of trade can already be seen when taking into account the data for the first two years of provisional implementation of the agreement. A first noticeable effect of the tariffs removal is that, as predicted by the Commission's impact assessment, those sectors which were previously characterized by high import tariffs, experienced an immediate increase in trade:

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<sup>250</sup> Ibid., p. 47

<sup>251</sup> Ibid., p. 48

<sup>252</sup> Ibid.

<sup>253</sup> Ibid., p.35

<sup>254</sup> E.g.: *A Trade Sustainable Impact Assessment Relating to the Negotiation of a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada*, European Commission report, June 2011

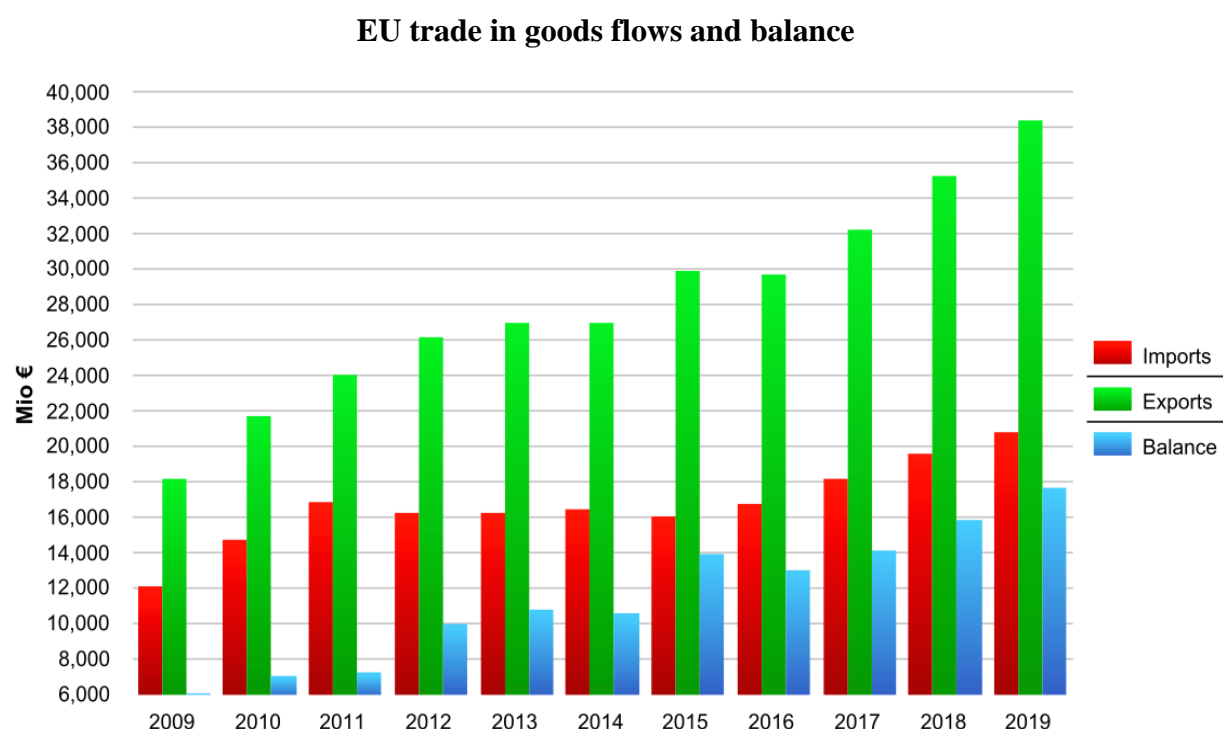
[http://trade.ec.europa.eu/doclib/docs/2011/september/tradoc\\_148201.pdf](http://trade.ec.europa.eu/doclib/docs/2011/september/tradoc_148201.pdf);

Tamminen S., Niemi J., Nilsson Hakkala K., *The expected economic impacts of the EU-Canada Comprehensive Economic and Trade Agreement in Finland*, VATT institute for Economic Research report, December 2017

<https://vatt.fi/documents/2956369/4207575/t187.pdf/9d299a73-864f-4e30-a9a1-b5ee4d5e4547>

after the first year of implementation, the EU imports from Canada of products that had a 5-10% tariff reduction after CETA increased by almost 27%<sup>255</sup>, while the imports of products that had a tariff reduction superior to 10%, increased by around 17%<sup>256</sup>

In general, the trade of goods between the EU and Canada increased during the first years of provisional implementation, as shown by the following chart:



(source: European Union, *Trade in goods with Canada*, European Commission publication, May 2020, p.3)

During the first year of implementation, the total trade between the partners increased by 10,3% and continued its growth afterwards at a slightly slower pace.<sup>257</sup> The producers that benefitted from liberalization the most in the EU are those working the sectors like machinery, chemical industries, transport equipment, mineral products and foodstuffs, beverages and tobacco.<sup>258</sup> While the Canadian exporters that grew more rapidly in this first period of

<sup>255</sup> *CETA benefits already visible a year after its entry into force*, Government of Canada website [https://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/year\\_one-premiere\\_annee.aspx?lang=eng](https://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/year_one-premiere_annee.aspx?lang=eng)

<sup>256</sup> Ibid.

<sup>257</sup> *CETA implementation - SMEs and regions in focus*, European Parliament publication, November 2019, p.11 [https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/644179/EPRS\\_IDA\(2019\)644179\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/644179/EPRS_IDA(2019)644179_EN.pdf)

<sup>258</sup> Ibid.

implementation are those producing aluminum, vehicles, energy products, base metals and pharmaceuticals.<sup>259</sup>

Concerning the trade in services, there has been an increase of €3,6 billion in the bilateral service trade during the first year of implementation, with the EU still remaining a net exporter in this sector. The sectors that benefit the most from the agreement are travel, transport, business, telecommunications services, which are most traded between the parties.

Overall, it seems that the agreement was boosting the trade between Canada and the EU before the COVID-19 pandemic slowed down international trade, and the first data on the impact CETA was having on the economic relations between the partners appeared to be in line with the predictions of the impact assessments made before the provisional entrance in force of the trade deal.

## 4.5 Ratification and Controversies

At first, the European Commission considered the agreement with Canada as an exclusive EU competence, meaning that the conclusion of the deal can take place without the ratification of all the national parliaments, as the Commission argued that the scope and the contents of the deal are the same as for the Free Trade Agreement with Singapore (EUSFTA) and, given that EUSFTA has been treated as a EU-only competence, CETA should be treated in the same way.<sup>260</sup> Some Member states however, strongly opposed this view and argued that several matters treated in CETA are to be considered as shared competences and, therefore, the agreement needs to be ratified by national parliaments before its full entrance in force, which has been confirmed by the European Court of Justice. This need for national parliaments' ratification caused huge debates and slowdowns in the conclusion of the agreement, because there are several controversial issues concerning CETA, that triggered a remarkable political opposition to the deal in some countries.

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<sup>259</sup> Canada's export performance under CETA, Government of Canada website <https://www.tradecommissioner.gc.ca/canadexport/0003967.aspx?lang=eng>

<sup>260</sup> European Commission, *Proposal for a COUNCIL DECISION on the conclusion of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part*, COM (2016) 443, p.4 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016PC0443>

A first issue that has been strongly criticized was the inclusion of provisions for investment protection in the deal, more specifically the dispute resolution system for disputes between states and investors. Despite the strong and reliable national judicial systems, the dispute settlement was initially entrusted to an Investor-State Dispute Settlement (ISDS) system that was strongly criticized because the tribunals could include individuals that had conflicts of interests, therefore increasing risks of corruption and partiality, and because there was not enough transparency and oversight granted by the ISDS system. Many opponents feared that this system would allow big corporations to breach the countries' right to regulate and to pursue their interests unhindered because of biased tribunals.<sup>261</sup> Moreover, this investment protection system didn't seem to be particularly necessary, as the partners were already among each other's top destinations for investments before the provisions in CETA. This opposition forced the EU to replace the initially envisaged ISDS system with a new Investment Court System (ICS), with more transparent procedures and, most importantly, with independent and publicly appointed permanent judges, that won't be able to take part in other investor-state disputes. The reform has partially allayed the strong opposition, however, there still are political forces and civil society organizations in Europe that are not in favour of the adoption of the ICS, which is a shared competence and will not enter into force until the whole deal is ratified by all European parliaments.<sup>262</sup>

Another matter of concern that triggered fierce objections to the trade deal is the environmental impact it might have: an environmental impact assessment commissioned by the government of France<sup>263</sup> stressed the lack of convincing environmental commitments and the mechanisms to enforce the respect of commitments under the TSD chapter didn't seem sufficiently effective to some of the critics. It is true that EU's environmental commitments are not noticeably different from the Canadian ones, as both economies are among the world leaders in the promotion of environmental sustainability, but the agreement may cause conflicts between the public and the private sector and many

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<sup>261</sup> *CETA implementation - SMEs and regions in focus*, cit., p.5-6

<sup>262</sup> Ibid.

<sup>263</sup> *L'impact de l'Accord Économique et Commercial Global entre l'Union européenne et le 29 Canada (AECG/CETA) sur l'environnement, le climat et la santé*, Independent Commission report to the Prime-Minister of France, September 2017  
[https://www.gouvernement.fr/sites/default/files/document/document/2017/09/rapport\\_de\\_la\\_commission\\_devaluation\\_du\\_ceta\\_-\\_08.09.2017.pdf](https://www.gouvernement.fr/sites/default/files/document/document/2017/09/rapport_de_la_commission_devaluation_du_ceta_-_08.09.2017.pdf)

don't think there are sufficient provisions to assure the respect of environmental standards.<sup>264</sup>

Several European states such as France, also expressed concerns with regard to the potential effects the liberalization of certain agricultural products like beef and dairy might have on European producers. Agriculture is always a crucial issue for the EU in the negotiation of international trade agreements and CETA provides for an elimination of more than 90% of tariffs in the trade of agricultural goods for both sides. The fear of the European counties with a developed agricultural sector was that Canadian competition would greatly damage the local producers, especially the small ones. However, the results of the first two years of provisional implementation of CETA show that such negative effects don't seem to take place and the EU recorded a surplus in the trade of agricultural products with Canada during this period, despite the initial skepticism.

The aforementioned matters caused significant slowdowns in the CETA conclusion and ratification processes; the first major issue arose in 2016, when the deal was about to be signed by the EU states' governments. The Walloon region blocked the signature for the Belgian government, claiming that CETA undermines the agricultural producers of the region, lowers quality standards for food and contains an ambiguous investor-state dispute settlement system. The deal was not signed until the Belgian government didn't agree to conduct an environmental impact assessment of the agreement and bring the tribunal for investor-state disputes before the ECJ, to determine its legitimacy.<sup>265</sup>

Later, opposition to the ratification of the deal has been shown in Italy in 2018, caused by the fear that Italian geographical indications and specialty foods are not protected enough in the deal from Canadian competition and imitations. And more recently, even the Cyprian Parliament expressed its opposition to CETA, voting against its ratification, which could prevent the agreement from ever being fully adopted if the new upcoming debates do not change the Parliament's position.

As of September 2020, 15 EU member states' parliaments ratified the agreement<sup>266</sup>, but in other countries the debate over the utility of the deal is still ongoing, fostered by the

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<sup>264</sup> *CETA implementation - SMEs and regions in focus*, cit., p.7

<sup>265</sup> *CETA Ratification Process*, EU learning, Centre for European Studies at Carleton University <https://carleton.ca/ces/eulearning/ceta-ratification-process/>

<sup>266</sup> CETA-Ratification details, Council of the European Union official website <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2016017>

public visibility CETA acquired in the last years. The first years of provisional implementation showed encouraging economic results, but it appears that it might not be sufficient to convince some political and civil society organizations easily, as demonstration against CETA are still ongoing across Europe.<sup>267</sup> The process towards a full entrance in force of CETA seems to be still long and the EU will probably need to negotiate and give better assurances to its citizens regarding the most ambiguous parts of the deals, as even one of the 38 state and regional parliaments that need to ratify the agreement, can veto its entrance in force.

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<sup>267</sup> *Protest in Sofia against the Ratification of CETA*, Novinite News Agency, February 2020  
<https://www.novinite.com/articles/203015/Protest+in+Sofia+against+the+Ratification+of+CETA>

## Chapter 5 – EU-JAPAN ECONOMIC PARTNERSHIP AGREEMENT

### 5.1 Ratification and Controversies

With a nominal GDP of more than \$5.000 billion, Japan is third in the ranking of countries with the largest economies in the world. The GDP of Japan and that of the EU combined, represent around 30% of the world's total production of goods and services, making the economic agreement between the two partners the largest bilateral trade deal ever concluded in terms of market size.<sup>268</sup>

The first pillar towards the conclusion of such an ambitious agreement was put on May 28<sup>th</sup>, 2011, at the EU-Japan summit, where the parties agreed that the economic partnership between them needed to be strengthened and that a free trade agreement was desirable for their future relations. The reason for this was an evident decline in the trade between EU and Japan, despite them being two of the biggest economies in the world and great advocates of trade liberalization: the EU exports share more than halved compared to the 1990s, as in 1990 the EU exported 6,9% of its total exports to Japan, while in 2017 this number dropped to 3,2%. An even more impressive decline was registered in the EU imports from Japan, which amounted to approximately 12% of the total EU imports in 1990, but dropped to just 3,7% of the total in 2017.<sup>269</sup> Therefore, the partners easily agreed at the 2011 summit that there were wide profit margins and opportunities for both parties from the reduction of trade barriers and decided to jointly conduct a scoping exercise to determine more specifically the trade areas that would benefit from the removal of tariffs and the desired level of liberalization.<sup>270</sup>

After the scoping exercise was successfully finalized, the parties decided to conduct an impact assessment of a possible free trade agreement, which was presented by the EU Commission in 2012, when the Commission asked the Council to give its consent to start

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<sup>268</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, Bruegel Special Report, September 2018, p.7  
[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603880/EXPO\\_STU\(2018\)603880\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603880/EXPO_STU(2018)603880_EN.pdf)

<sup>269</sup> Ibid.

<sup>270</sup> *EU-Japan*, European Services Forum website  
<http://www.esf.be/new/esf-eu-trade-policy/eu-free-trade-agreements/eu-japan/>

negotiations with Japan. The consent of the EU member states was given in November 2012 and the negotiations between the parties officially started in 2013, with the first round of negotiations being conducted in April in Brussels.<sup>271</sup> Other 18 rounds followed in the next years, until a political agreement on an EU-Japan Economic Partnership Agreement (EPA) was reached in July 2017. The agreement was approved by the European Council in 2018 and 3 months later the consent for signing the deal was asked to the European Parliament, which also commissioned an independent study on the agreement from the Bruegel institute<sup>272</sup> before giving its endorsement. The EPA was finally signed on 17 July 2018 with great enthusiasm from both parties, emphasizing the fact that not only the agreement would create opportunities and enhance economic growth, but it also has a great symbolical and geopolitical importance in a period when the United States, the world's leading economy, turned towards a more protectionist approach to economy, as the President of the European Commission in 2018, Jean-Claude Juncker stated that:

*“it is also a statement. For its content, its scope and also its timing. It is a statement by two likeminded partners that together represent nearly a third of the world's GDP and reiterate their commitment to uphold the highest standards in areas such as labour, safety, environmental or consumer protection. And what we're saying is that we believe in open, fair and rules-based trade. What we are saying is that a trade agreement is not a zero sum game, but a win-win for the involved parties.”*<sup>273</sup>

The agreement in fact, does not even contain the word “trade” in its name, preferring the more comprehensive concept of “partnership agreement”, which shows the intension of the parties to cooperate in different areas and form a “*strategic alliance*”<sup>274</sup>, as stressed by the EU Trade Commissioner Cecilia Malmström.

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<sup>271</sup> Ibid.

<sup>272</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit.

<sup>273</sup> EU and Japan sign Economic Partnership Agreement, European Commission website [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4526](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4526)

<sup>274</sup> *The Benefits of an EU-Japan Free Trade Agreement Brussels*, Speech by EU Trade Commissioner Cecilia Malmström, event at EU-Japan business round table, 11 July 2017 [https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155745.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155745.pdf)



For the EU, this agreement is a huge step in its strategy to become the reference point for the promotion of free trade and the global leader in the related standard setting. Moreover, the deal is a way for both economic powers to partially compensate for the unfulfilled expectations concerning a trade agreement with the United States. Indeed, both the EU and Japan were negotiating historically important trade deals with the USA, that would have allowed them to access the largest economy in the world: the EU was negotiating the controversial Transatlantic Trade and Investment Partnership (TTIP) agreement from 2013, while Japan reached a deal on the Trans-Pacific Partnership (TPP) agreement with the US and other 9 countries in 2016. The election of Donald Trump however, led to a much more protectionist approach to trade from the United States, that withdrew from the TPP in 2017 and stopped the negotiations for the TTIP, urging Japan and the EU to accelerate the EPA negotiations, in order to partially make up for the missed opportunities.

A particularly controversial issue during the negotiations for the EPA was the investment protection mechanism. In fact, the EU wanted to incorporate in the deal an Investment Court System (ICS) with independent and publicly appointed permanent judges, such as the one included in CETA, to resolve disputes between governments and foreign investors. Japan on the other hand, preferred the traditional Investor-State Dispute Settlement (ISDS) system that envisages a binding arbitration.<sup>275</sup> Since the parties were far from reaching an agreement on this particular matter, they took the decision to conclude the negotiations without including a chapter on the dispute settlement system, while continuing negotiations on this topic, that will be part of a separate agreement once the parties find a compromise. The absence of an investment protection mechanism in the deal is a very remarkable element of the EPA, as this is the reason why the EU was able to ratify the agreement right after the conclusion of the negotiations, through just the approval of the European Council and the European Parliament, and disregarding the national parliaments of the member states, that often slowed down the ratification process of trade agreements. In fact, as already mentioned in the second chapter, the Court of Justice of the European Union opinion 2/15 on the EU-Singapore free trade agreement, clarified the distinction between exclusive EU competences and those shared with its member states, including most of the ambiguous chapters such as Intellectual Property and Trade and Sustainable Development in the exclusive competences, motivating that the presence of shared competences in those chapters is marginal and only instrumental to trade. The chapter

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<sup>275</sup> Badarna M., *Essay: the Success of the EU-Japan EPA Negotiations*, “The New Federalist”, 31 January 2019 <https://www.thenewfederalist.eu/essay-the-success-of-the-eu-japan-epa-negotiations?lang=fr>

on investment protection however, was deemed to be a shared competence and its inclusion in an FTA implies the need for national parliaments' ratification. This is the reason why the EU did not insist for including the investment protection mechanism in the EPA with Japan and preferred to negotiate it in a separate agreement, similarly to what happened with the EU-Singapore FTA and the EU-Vietnam FTA: it allowed a quick ratification of the EPA, preventing single states or even regions from undermining the deal's full entrance in force.<sup>276</sup>

## 5.2 Trade Flows before EPA

As already mentioned, the EU and Japan are among the world's leading economies, with an outstanding market size, and their commercial exchanges were already significant before the signature of the trade agreement. Japan was the EU's 7<sup>th</sup> most important trade partner<sup>277</sup>, importing 3,2% of the total European exports, and exporting to the EU 3,7% of all the EU's imports; while the EU was Japan's 3<sup>rd</sup> most important trading partner (4<sup>th</sup> if including ASEAN as a whole in the ranking). Around 600.000 European jobs were linked to exports to Japan in 2018, while approximately 550.000 Europeans were working for Japanese companies.<sup>278</sup> In the last years before the EPA, the trade between the countries grew, as the sum of both partners' exports to the counterpart grew from around €140 billion in 2010 to more than €165 billion in 2017, even though the growth is more evident in the European exports, while Japanese exports remained more constant. These trade flows are predominantly composed by the trade in goods, as it makes up for 65% of the EU's exports to Japan and 80% of Japanese exports to the EU. The following charts resume the changes in overall trade in the period from 2010 to 2017 and the shares of goods and services exports:

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<sup>276</sup> Ibid.

<sup>277</sup> *Japan-EU trade in goods: €6 billion deficit in 2018*, Eurostat website, June 2019  
<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20190603-1?inheritRedirect=true>

<sup>278</sup> *A new EU trade agreement with Japan*, European Commission Publication, July 2018  
[https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155684.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155684.pdf)

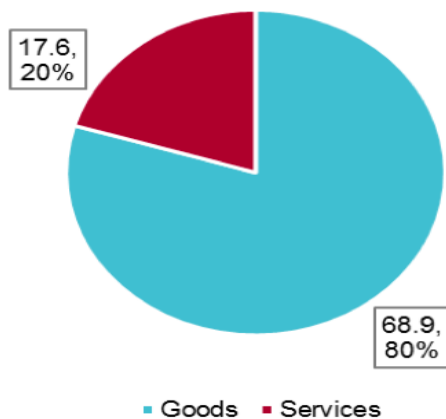
### EU's exports to and imports from Japan



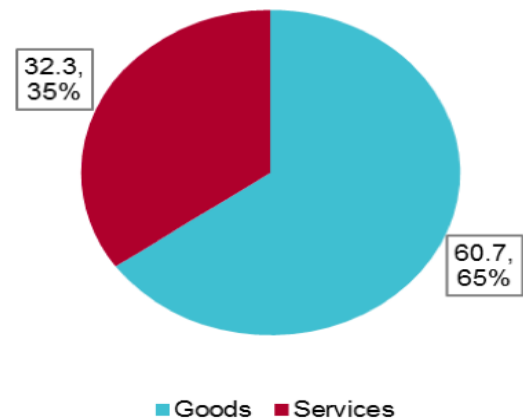
(source: Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, Bruegel Special Report, September 2018, p.10)

### Composition of EU-Japan trade in 2016<sup>279</sup>

EU imports from Japan



EU export to Japan

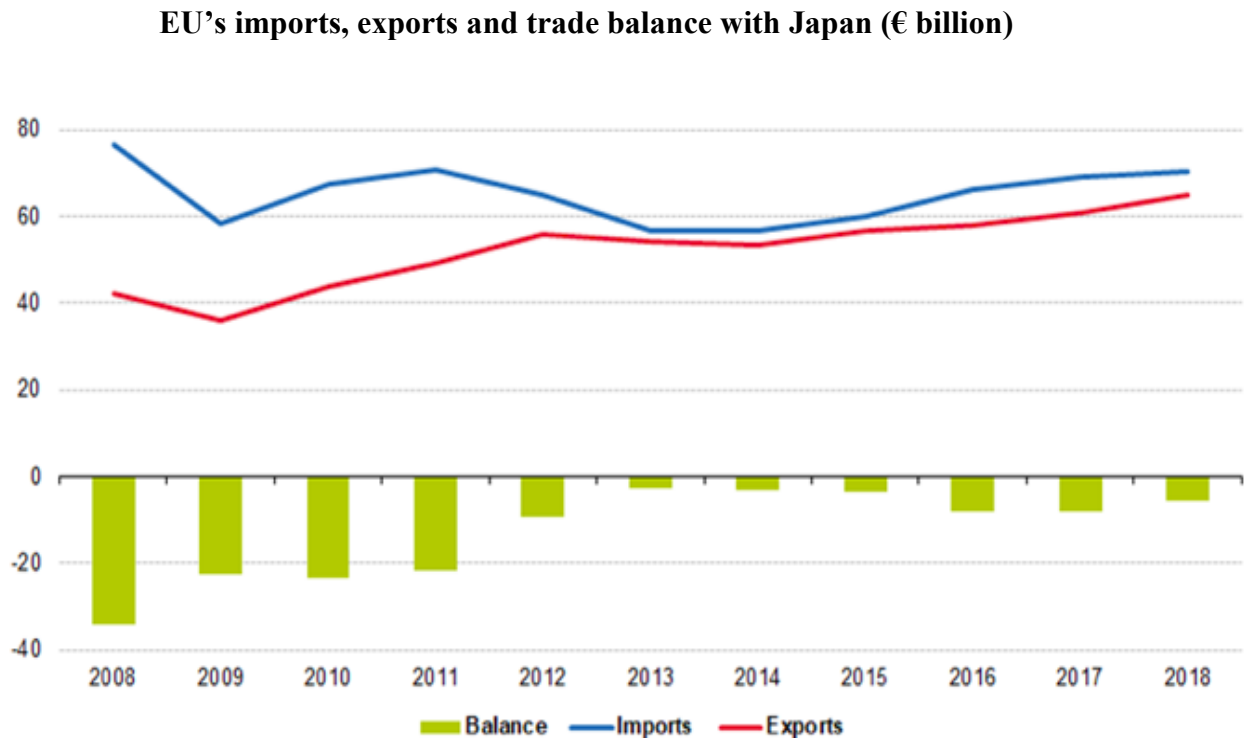


(source: Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, Bruegel Special Report, September 2018, p.10)

Concerning the trade in goods, the EU's total imports from and exports to Japan are fairly similar, even though a small surplus for Japan was registered in the 10 years prior to the signature of the EPA. In 2018 the value of EU's total export of goods to Japan was of almost

<sup>279</sup> Ibid.

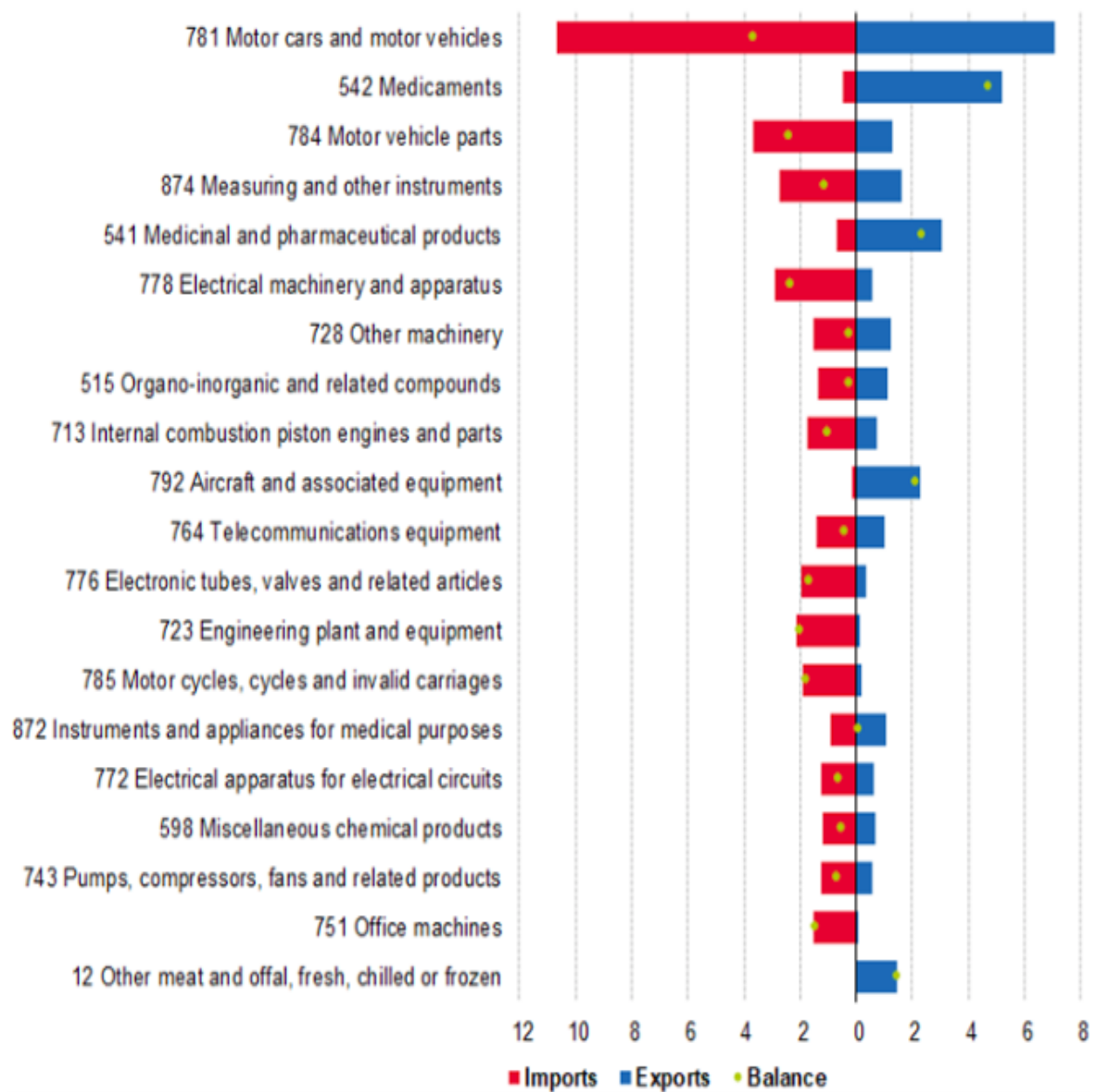
€65 billion, while the Japanese export of goods to the EU was of more than €70 billion. The following chart describes the variations in the trade of goods during the 10 years before the EPA:



*(source: Japan-EU trade in goods: €6 billion deficit in 2018, Eurostat website, June 2019)*

Both the European and the Japanese exports in goods are predominantly composed by machinery and vehicles, chemicals and manufactured goods, as these categories combined make up for 84% of the total EU's goods exports to Japan and 96% of Japanese goods exports to the EU. The EU is a net exporter of medicaments, while Japan is a net exporter of cars, vehicles and motor vehicles parts, even though these goods are also largely imported by Japan from the EU in absolute terms. A detailed picture of the trade in goods between the two partners is provided by the following chart:

### Most traded goods between Japan and the EU in 2019 (€ billion)



(source: Most traded products between EU-27 and Japan, 2019, Eurostat website)

Before the trade agreement, the tariffs on imports of both the EU and Japan were relatively low, as the countries are among the world's leading supporters of free trade. The average tariff on foreign imports in Japan was of 2,5%, if weighted for the amount of trade. However, there were remarkable sectorial differences to this regard: while the tariffs on the import of most industrial products were impressively low (0,1% for electrical machinery, 0 for non-electrical machinery and transport equipment), the same thing cannot be said about other goods, as Japanese tariffs on animal products were over 10%, the tariffs on tobacco and

beverages were over 15% and the tariffs on dairy products were over 63%. Similarly, the EU's tariffs on the imports of animal, fish and agricultural products were high before the agreement, reaching even 40% for dairy products, despite its large liberalization in other sectors.<sup>280</sup> European trade in goods with Japan is also considerably heterogeneous if considering single European countries: for example, great exporters to Japan are Malta (10,2% of its total exports), Finland (5,2%) and Denmark (4,4%); while the countries that import the most goods from Japan are Luxembourg (13,8% of its total imports), Belgium (7,3%), Hungary (4,5%) and Germany (4,2%). Other countries like the Baltic ones and the countries in the Balkan region, have very marginal trade with Japan in both imports and exports.

Concerning the trade in services, the flows between Japan and the EU are not as balanced as in the case of trade in goods: the EU exported almost €30 billion of services to Japan in 2018, while Japan only exported a €14,6 billion worth of services to the EU, which makes the EU a net exporter of services with a remarkable surplus of more than €13 billion. This is the result of a sudden increase of Japanese imports of services from the EU in the last years; in fact, while the Japanese exports remained constant between 2016 and 2018, the EU exports of services grew by almost €5 billion in the two years prior to the signature of the EPA.<sup>281</sup>

As far as Foreign Direct investment is concerned, there has been a considerable flow of Japanese investments in the EU in the last years, in fact, with an average increase of approximately +10% per year, the Japanese investments in Europe went from around €150 billion in 2013 to more than €200 billion in 2016<sup>282</sup> (although slightly decreasing to €192 billion in 2018<sup>283</sup>). On the other hand, European outward stocks to Japan amounted to less than half of the inward stocks and have been constant from 2013 to 2016<sup>284</sup> (around €80 billion), but suddenly increased in the two years before the signature of the EPA, reaching almost €105 billion in 2018.<sup>285</sup>

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<sup>280</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit., p.11-12

<sup>281</sup> *Canada – Trade picture*, European Commission official website  
<https://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/>

<sup>282</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit., p.13

<sup>283</sup> *Canada – Trade picture*, European Commission official website, cit.

<sup>284</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit., p.13

<sup>285</sup> *Canada – Trade picture*, European Commission official website, cit.

### 5.3 Provisions of the Agreement

The agreement provides for an almost total elimination of tariffs from both sides in the long run, as the EU committed to eliminate 99% of its tariffs on imports from Japan, while Japan granted a 97% elimination of tariffs on imports from Europe after a transition period of 15 years. Transition periods however, are not required for the elimination of tariffs on the great majority of good and 86% of the tariff lines on exports from Europe have been eliminated by Japan right after the entrance in force of the agreement. The only products that will maintain the same tariffs as before the conclusion of the agreement are rice and seaweeds.<sup>286</sup>

#### Agricultural products

85% of all the agri-food products exported from the EU to Japan will be liberalized at the end of the 15 years transition period, which is an extremely important result for the EU as the tariffs on many agricultural products were remarkably high before the signature of the EPA, discouraging European producers from competing in such a big market. For some products like wines, the tariffs have been eliminated from the entrance in force of the deal, which already has an impact as wines are the second most exported category of agricultural products from the EU to Japan (around 13% of the total export of agricultural goods). The most exported agricultural product is pig meat (accounting for almost 20% of the total EU exports of agricultural goods to Japan), and the tariffs on its export to Japan will be gradually eliminated or reduced in a 15 years span. While the transition period for other meats like beef will be of 10 years. The tariffs on processed and fresh cheese will likewise be eliminated in a 15 years span, with the adoption of tariff-rate quotas in the transition period, which will increase gradually, while the in-quota tariffs will progressively decrease.<sup>287</sup>

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<sup>286</sup> Binder K., *Bilateral trade deal with Japan – largest to date for EU*, European Parliamentary Research Service, 2019, p.5  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633164/EPRS\\_BRI\(2019\)633164\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633164/EPRS_BRI(2019)633164_EN.pdf)

<sup>287</sup> Ibid.

## **Industrial products**

As far as industrial products are concerned, the elimination of tariffs in the trade between Japan and the EU will be total after the transition period. European producers will mostly benefit from the agreement in the textile, chemicals and cosmetics sectors. Some of the tariffs have been removed from day one after the entrance in force of the deal (like tariffs on leather goods), while in other categories of industrial goods liberalization will occur gradually in a 10-year span (like handbags and shoes). Concerning Japanese exports to the EU, the most relevant sector is by far the automotive one; and to this regard, the EU will totally eliminate its tariffs on the import of Japanese cars after a period of 7 years.<sup>288</sup>

## **Non-tariff barriers to trade**

The parties undertook to eliminate many technical barriers to trade, in order to facilitate the trade flows and encourage the counterpart's producers to export goods. For instance, in the trade of cars, which is a crucial element of the agreement, the partners agreed to accept the import of products that have been tested and certified according to international standards and the domestic regulations, without the need of double-testing, which often occurred before the signature of the agreement and discouraged the exporters in the automotive sector. Simplified procedures for the testing and certification of imported products in the sanitary sector have been reciprocally adopted as well, allowing quicker commercial flows.<sup>289</sup>

## **Trade in services**

The agreement remarks that the provision of public services such as healthcare and education is regulated by the governments and doesn't need to be privatized. But at the same time the partners agreed to facilitate market access of the counterparts' companies in sectors like telecommunications, transport, financial services and postal services. Moreover, the agreement allows for the families of foreign professionals to temporarily join them in the country where the concerned person is working in service provision.<sup>290</sup>

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<sup>288</sup> Ibid.

<sup>289</sup> Ibid.

<sup>290</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit., p.18



## **Investment**

Despite the aforementioned disagreement on the investment protection mechanisms, which still are under negotiation, the agreement contains other provisions that concern investments, which are extremely important as no other agreement on investment existed between the EU and Japan before the signature of the EPA. Such provisions include the prohibition for governments to use several performance indicators as a requirement to allow foreign enterprises to operate in the national market. Free movement of capital and payments are also guaranteed by the agreement in order to facilitate investment flows between the partners.<sup>291</sup>

## **Government procurement**

Before the EPA, public procurement between the EU and Japan was regulated by the multilateral Government Procurement Agreement (GPA), reached in the WTO context. The EPA however, improves the partners' access to the counterpart's government market, especially the EU's access to Japanese public procurement. In fact, Japan extend the access for the EU to 48 Japanese cities that have been identified as "core cities" during the negotiations. Moreover, EU competition has been allowed in new sectors of services that were not included in the GPA, such as telecommunications. Finally, new governmental agencies have been added to the list of Japanese public institutions that can buy goods and services from European providers, like the Information Technology Promotion Agency and Pharmaceutical and Medical Devices Agency.<sup>292</sup>

## **Intellectual property**

The chapter on intellectual property reiterates the obligations taken by the parties under the TRIPS in the WTO context and adds more specific provisions concerning trademarks, copyrights and trade secrets between the parties, as transparency and protection of intellectual

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<sup>291</sup> Ibid.

<sup>292</sup> Ibid., p.19

rights are highly valued issues by both the partners. Civil enforcement of intellectual property obligations is also encouraged, and border control authorities are allowed to directly take measures against the import/export of products that do not respect the regulations on intellectual property. From the EU side, the most relevant provision of this chapter is the one concerning geographical indications, as the agreement explicitly safeguards 205 European food products from potential unfair competition in the Japanese market.<sup>293</sup>

### **Trade and sustainable development**

In the TDS chapter, the parties commit to safeguard the rights of workers and consumers and adopt the highest international standards on environmental protection. Japan committed to make the best efforts to ratify all the fundamental conventions of the International Labour Organization (ILO), as the ones concerning the abolition of forced labour and discrimination in employment and occupation have not been ratified by Japan yet. Moreover, for the first time in an EU FTA, the parties remarked their commitment to the Paris agreement on climate change, stressing the importance of environmental protection as an indispensable value for a responsible and sustainable trade.

### **Main provisions of the EU-Japan EPA**

TOTAL TARIFFS	99% of tariff lines liberalized by the EU 97% of tariff lines liberalized by Japan
TARIFFS ON AGRICULTURAL GOODS	Majority of tariff lines liberalized by the EU 85% of tariff lines liberalized by Japan
TARIFFS ON INDUSTRIAL GOODS	100% of tariff lines liberalized by the EU 100% of tariff lines liberalized by Japan
TRANSITIONAL PERIOD	10 -15 years for some sensitive products
NON-TARIFF BARRIERS TO TRADE	Simplified procedures for testing and certification
TRADE IN SERVICES	Market access facilitated for telecommunications, transport, financial services and postal services

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<sup>293</sup> Ibid.

INVESTOR-STATE DISPUTE SETTLEMENT	Not included
GOVERNMENT PROCUREMENT	EU access extended to 48 Japanese cities and some governmental agencies
GEOGRAPHICAL INDICATIONS	179 EU geographical indications protected in varying ways 56 Japanese geographical indications protected
TRADE AND SUSTAINABLE DEVELOPMENT	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized

## 5.4 Expected Outcomes

Before receiving the Council's consent to start the negotiations, the European Commission published an impact assessment report in 2012, envisaging several scenarios depending on the comprehensiveness of the future FTA. In the most realistic approach, two scenarios were examined: the ambitious scenario assumed a 50% reduction on non-tariff barriers to trade from both Japan and the EU in the trade of services, and a 16,6% reduction on non-tariff barriers from the EU in the trade of goods sector; the conservative scenario instead, assumed a 20% reduction on non-tariff barriers to trade from both partners in the trade of services, and a 6,6% reduction on non-tariff barriers from the EU in the trade of goods sector. The outcome of this assessment predicted positive results for the economies of the countries involved, calculating that in the ambitious scenario the GDP of the EU would grow by 0,79% in the long run, while that of Japan would grow by 0,67%<sup>294</sup>; similarly, the Bilateral exports were expected to grow considerably in the ambitious scenario as well, with a 32,7% growth for the EU and a 23,5% growth for Japan.<sup>295</sup> As for the conservative scenario, the results were less significant, but still positive: a 0,34% grow in GDP and a 22,6% growth in bilateral trade for the EU, as well as a 0,27% grow in GDP and a 17,1% growth in bilateral trade for Japan.

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<sup>294</sup> Matthes J., *Towards a Free Trade Agreement with Japan?*, Policy Brief for the European Parliament, Cologne Institute for Economic Research (IW Köln), 27 September 2012, p.22

<sup>295</sup> Ibid. p.43

As the negotiations were successfully proceeding, another impact assessment was published by the European Commission in 2016<sup>296</sup>, which confirmed the predictions of the 2012 study in terms of overall GDP growth in the long term. This impact assessment however, focused on a more detailed sectorial analysis and specified that the exports of food and animal feed alone will make up for 55% of EU's total gains from the agreement, while 47% of the Japanese gains will come from the export of products in the automotive sector.<sup>297</sup> Nevertheless, these numbers were calculated considering the impact that the TPP agreement would have on the trade between EU and Japan, as the TPP had just been signed at the time. The fact that the US withdrew from the TPP the following year might affect the predictions of the 2016 impact assessment and, although the general indications on the future trade flows variations might be correct, the exact numbers should be taken with a pinch of salt.

A more recent publication from the European commission,<sup>298</sup> claimed that with the entrance in force of the agreement, the EU exports of processed food to Japan would increase by approximately €1 billion per year (+50%), the export of chemicals would increase by €1,6 billion (+7%), while the export of textiles and leather would increase by €5,2 billion (+220%).<sup>299</sup>

In 2018 the European Parliament commissioned an independent study on the effects of the EPA to the Bruegel institute.<sup>300</sup> In this assessment, previous studies on the EPA are analyzed and compared to studies on the EU-Korea FTA as well. The authors stress that the most recent studies agree in stating that the EPA will have a positive effect on the GDP of the partners, although not as optimistic as suggested by the aforementioned 2012 impact assessment, as the predictions on the growth of EU's GDP range from +0,06% to +0,14% in the long term.<sup>301</sup> The study also confirms the predictions on the sectorial growth in trade, claiming that European exports of agri-food products will increase significantly, while the

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<sup>296</sup> *Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan*, European Commission - Directorate-General for Trade report, 2016  
[http://www.tsia-eujapantrade.com/uploads/4/0/4/6/40469485/tsia\\_final\\_report.pdf](http://www.tsia-eujapantrade.com/uploads/4/0/4/6/40469485/tsia_final_report.pdf)

<sup>297</sup> Binder K., *Bilateral trade deal with Japan – largest to date for EU*, cit., p. 6

<sup>298</sup> *A new EU trade agreement with Japan*, European Commission Publication, cit.

<sup>299</sup> Ibid.

<sup>300</sup> Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, cit., p.30

<sup>301</sup> Ibid.

European automotive sector is expected to endure a slight contraction, as a result of an approximately 50% rise in the import of automotive goods from Japan in the long run.<sup>302</sup>

Since the agreement entered in force at the beginning of 2019, the outcomes of the first year of its implementation are already visible, and an early evaluation of its effects can be made, bearing in mind that the mentioned impact assessment studies look at the long term, therefore it is too early to compare them with the real effects of the agreement. The first consideration to be made is that the trade flows between EU and Japan increased by around 6,5% in 2019, confirming that the elimination of tariffs incentivized producers to export, considering that in the previous years the average growth in trade between the partners was of approximately 4,7%.<sup>303</sup> The EU total exports to Japan increased by 6,6%, while the Japanese ones increased by 6,3%.<sup>304</sup> The European sector that benefitted the most from the agreement during its first year of implementation is the one of beverages, that were exported to Japan 20% more than in 2018, with an impressive growth of 17.3% in the export of wine. Other EU goods registering remarkable growths in the trade with Japan are dairy products (+10,4%), meat (+12%, +221% on frozen beef exports), leather (+14%) and electrical machinery (+16,4%).<sup>305</sup> The following chart shows more in detail the products with the biggest increases in exports from the EU to Japan in 2019:

#### **Examples of growth in EU exports to Japan**

<b>PRODUCT</b>	<b>INCREASE IN EU EXPORTS TO JAPAN UNDER EPA</b>
Beverages	20%
Wine	17,3%
Cider	31,5%
Tea	39,8%
Pasta	14,9%

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<sup>302</sup> Ibid. p.31

<sup>303</sup> *Trade: First year of the EU-Japan Economic Partnership Agreement shows growth in EU exports*, European Commission press release, 31 January 2020  
[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_161](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_161)

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

Sunflower seeds	39,9%
Meat	12%
Pork meat	12,6%
Frozen meat of bovine animals	221%
Dairy	10%
Milk and cream	120,7%
Butter	47,8%
Cheese	7%
Leather articles	14%
Apparel	9%
Babies' clothing and accessories	108,3%
Electrical machinery	16,4%
Telephone sets and telecom. equipment	69%
Disks, tapes, storage devices	9,4%

(Source: Trade: First year of the EU-Japan Economic Partnership Agreement shows growth in EU exports, European Commission press release, 31 January 2020)

## 5.5 Controversies and Low Politicization

Despite the exclusion from the agreement of the chapter concerning the resolution of investor-state disputes, which is one of the main reasons of opposition to CETA, the EU-Japan EPA contains many other provisions that are comparable to the ones included in the deal with Canada. Therefore, considering the amount of protests all over Europe against the signature of CETA, as well as against the TTIP when it was under negotiation, it is remarkable to notice that such protest didn't characterize the negotiations and the signature of the deal with Japan, despite the fact that there are potential risks in several areas the EPA deals with, especially in the trade and sustainable development chapter.

For instance, the fact that labour and environmental protection are not sufficiently enforced has been pointed out by studies<sup>306</sup>, just like in the case of CETA, as there are not

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<sup>306</sup> Riccobono A., Bologna S., Commercio globale e diritto del lavoro: l'accordo di libero scambio UE-Giappone, "Giornale di Diritto del Lavoro e di Relazioni Industriali", 2019, pp.355-383

enough binding measures and no enforcement mechanisms to ensure the application of high standards in these areas, because the agreement only states a commitment from the parties to respect the international standards, with soft law mechanisms.

Few NGOs have also pointed out that the agreement disregards the low Japanese standards in animal protection, as there are no enforcing measures to compel the Japanese companies to improve animal protection practices, despite the government's signature on an agreement that states the value and importance of such practices. According to the standards of the World Organization for Animal Health, Japanese standards are the lowest in the G7 countries<sup>307</sup>, which is alarming, considering that the country annually produces more than 2 million tons of eggs, predominantly from caged hens, and around 2,5 million tons of intensive farming poultry.<sup>308</sup> Moreover, there is another typically Japanese issue that worries animal protection associations: the hunting of whales. In fact, hundreds of endangered species of whales are hunted in Japan every year, often under the flawed justification of scientific research, but the TDS chapter provides no measures concerning this issue, only limiting itself to say that the parties commit to implement the environmental standards of the related international agreements that they signed. Therefore, some have labeled this deal as a missed opportunity to improve the animal protection standards in Japan, raising them to the comparatively high European ones. Even if a party considers that the counterpart is not respecting environmental or labour protection standards, the only solution the agreement offers is the creation of a panel that would produce a report with recommendations for the partners; but no means are provided to ensure the implementation of those recommendations.

Consumers' rights could be endangered as well as a consequence of the EPA, according to some organizations like the advocacy group "Foodwatch", that warned European citizens about the risks of finding in European markets Japanese GMOs and products treated with pesticides that are not allowed for European producers.<sup>309</sup>

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<sup>307</sup> *EU-Japan Trade Agreement is a fact, despite weak provisions on animal welfare*, Euro Group for Animals publication, 12 December 2018  
<https://www.eurogroupforanimals.org/news/eu-japan-trade-agreement-fact-despite-weak-provisions-animal-welfare>

<sup>308</sup> Ibid.

<sup>309</sup> *Accord de libre-échange UE JAPON: la fuite en avant se poursuit et met à mal la démocratie en Europe, prévient foodwatch*, Foodwatch Press Release, 5 July 2018  
<https://www.foodwatch.org/fr/communiqués-de-presse/2018/accord-de-libre-echange-ue-japon-la-fuite-en-avant-se-poursuit-et-met-a-mal-la-democratie-en-europe-previent-foodwatch/>

Concerns for the economies of specific EU states have also been expressed after the signature of the agreement with Japan; for instance, some Italian producers complained about the fact that the agreement only protects 46 Italian geographical indications in the wine and agro-food sector, while there are 816 of them recognized in Italy.<sup>310</sup> In addition, even those geographical indications that are mentioned in the agreement, are only partially protected, as the EPA leaves the possibility for foreign producers to use parts or variations of the original name of the product, misleading the consumer (for example “Grana” instead of “Grana Padano” or “Bologna” instead of “Mozzarella Bologna”).

Many of these issues are the same that sparked controversy concerning CETA and the TTIP; however, in the case of the EPA, the opponents are just a few dissident voices in a general context where civil society is nowhere near as engaged in debates over the agreement as in the case of Canada and the United States. As already mentioned in the second chapter, this led researches to analyze the different factors that might explain the varying degree of politicization free trade agreement have in the public opinion of European countries, identifying three main factors: the enhanced role in trade agreements of the European Parliament and the national parliaments, the depth and comprehensiveness of regulatory commitments, and the relative size and bargaining power of the trading partner.<sup>311</sup> The case of Japan is interesting because it shows that the conditions identified by Bièvre and Poletti are necessary, but not sufficient for a trade agreement to become politicized in the EU. The EPA in fact, is made with the country that has the third biggest economy in the world, therefore, its bargaining power is considerable and even greater than that of Canada during the CETA negotiations, which indicates the presence of one condition of the study on trade agreements’ politicization. However, the other two conditions are not as evident in the EPA with Japan, mainly because of the decision to leave the investor-state dispute settlement out of the agreement: this decision makes the EPA less comprehensive than the deal with Canada and it allows the agreement to enter into force without the ratification of national parliaments as the agreement is not “mixed”, hence reducing their role. This is a plausible reason why there was no high politicization of the deal with Japan, despite many arguments in favor of its opposers, as many provisions in the trade and sustainable development chapter are the same as in the case

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<sup>310</sup> *Accordo Ue-Giappone su libero scambio. Coldiretti, un rischio per il Made in Italy*, “Italia a Tavola”, 18 April 2018  
<https://www.italiaatavola.net/alimenti/tendenze-e-mercato/2018/4/18/accordo-ue-giappone-libero-scambio-made-in-italy-perde-esclusivita/55358/>

<sup>311</sup> De Bièvre D., Poletti A., *Towards explaining varying degrees of politicization of EU trade agreement negotiations*, Politics and Governance, 8(1), 2020



of Canada. The exclusion of investment protection mechanisms from FTAs appears to reduce their politicization, therefore decreasing the number of opposers, and also allows for the agreements to fully enter into force more quickly, as they don't contain "mixed" competences to be ratified by national parliaments. This is likely to be one of the reasons why the Commission decided to negotiate investment protection mechanisms separately in the three recent FTAs with Japan, Singapore and Vietnam, setting a new trend that might be continued in the future to speed up the process of ratification.

## CONCLUSION

The WTO is probably the best example of international economic cooperation in history. However, the negotiations stalled in recent years because of the conflicting interests of its member states and the new consensus-based decision-making system. This caused an impressive rise in the number of regional trade agreements, which are allowed by the GATT as an exception to the general Most Favored Nation principle. Scholars have different opinions on the effects regional agreements have on global welfare and multilateralism: while some state that Regional Trade Agreements undermine multilateralism, others argue that regionalism and multilateralism are complementary and can coexist.

The EU has been a strong supporter of the regional approach to trade facilitation in the last years, signing many bilateral agreements that lowered trade tariffs, but also promote democratization, rule of law and the respect of the principles of international law. Nevertheless, the ratification of trade agreements is often a slow and difficult process in the EU, as the Free Trade Agreements (FTAs) commonly contain some chapters dealing with matters that have been considered as “mixed” competencies, meaning that the full entrance in force of these treaties requires a ratification from each member state’s parliament and also some regional parliaments. Moreover, due to the increased role of the European Parliament and the national parliaments, FTAs have gained an importance in public debate they never had before, as many people started pointing out the risks some trade agreement might involve for the environment, producer and consumer production and the economic performances of some EU states. Even so, studies show that the effects of FTAs for Europe have been positive overall, at least from an economic point of view. The quality of products has grown since the EU started to implement bilateral trade agreements and the Consumer Price Index decreased during the same period.

An analysis of the EU-Mercosur trade agreement shows that the deal puts in place a remarkable lowering of the tariffs, eliminates non-tariff barriers and contains other provisions that should facilitate trade and protect producers and consumers. Impact assessments agree in stating that the EU-Mercosur deal will be beneficial in the long term for both the trading blocs, although the benefits might not be as historically relevant as advocated by the European Commission, with expected GDP increases between +0,02% and +0,1% for the EU, and between +0,12% and +0,4% for Mercosur. Nevertheless, there is substantial opposition to the deal, especially from agriculture-based countries in Europe, as the agreement is thought to be a threat for European farmers, allowing the import of cheap agricultural products that might be

produced with MGOs and breeding techniques forbidden in Europe. It also raises environmental concerns because the liberalization of trade with Europe will foster deforestation, which already is a problem in Latin America. Therefore, the ratification process is complicated, and many national parliaments are skeptical about giving their consent for the agreement's full entrance in force.

Strong opposition in Europe has also characterized the signature of CETA with Canada, as some countries expressed concern that the low tariffs on agricultural goods imports would significantly damage their economies. Moreover, the choice to replace the usual Investor-State Dispute Settlement system with a new Investment Court System for investment protection raised criticism, and the Trade and Sustainable Development chapter appeared to many as lacking convincing environmental commitments and mechanisms to enforce the respect of commitments. The ratification process is therefore problematic, and only 15 national parliaments ratified the agreement as of today, with still ongoing protests all over Europe. Nevertheless, the first two years of provisional implementation of the agreement show positive overall results, as the total trade in goods between the partners increased by more than 10% during the first year and continued its growth afterwards at a slightly slower pace, while the bilateral trade in services increased by €3,6 billion during the first year. Long term results from CETA are also expected to be positive, as studies predict an annual increase of approximately 0,01% in the EU GDP and an approximately 0,15% increase for Canadian GDP.

The EU-Japan EPA is also expected to produce positive economic results, as it is the largest bilateral trade deal ever concluded in terms of the partners' market size. Recent studies predict an increase for EU GDP in the long term ranging from +0,06% to +0,14%. In the first year of the deal's implementation, the results confirmed the expectations, as the bilateral trade flows increased by around 6,5% and specific sectors like wine, dairy and meat production, benefitted from the EPA in the EU. Despite the agreement being very similar to those signed with Mercosur and CETA, the opposition to the EPA with Japan has been significantly lower and the agreement fully entered into force after the approval of the European Council and the European Parliament, with no need of ratification from member states' national parliaments. This ratification wasn't necessary because the deal, unlike CETA, doesn't include an investment protection mechanism, which has been considered a shared competence by the Court of Justice of the European Union; therefore, the agreement with Japan is not a "mixed" and doesn't require the slow ratification of every single EU member state. The low opposition to the agreement, which involves the same risks as CETA, can be linked to the absence of the investment protection mechanism as well, as it has reduced the role of the national parliaments

and the level of comprehensiveness of the agreement, both factors that have been theorized as linked to the degree of politicization of EU trade agreements.

Therefore, it appears that negotiating investment protection mechanisms in a separate agreement, reduces the opposition to FTAs and speeds up their ratification process in the EU. In fact, the European Commission decided to exclude the resolution of investor-state disputes from the most recent trade agreements with Japan, Singapore and Vietnam, which might become a trend for the future.

### Comparison of the agreements' main provisions

	<b>EU-MERCOSUR FTA</b>	<b>EU-CANADA CETA</b>	<b>EU-JAPAN EPA</b>
<b>TOTAL TARIFFS</b>	95% of tariff lines liberalized by EU  91% of tariff lines liberalized by Mercosur	98,7% of tariff lines liberalized by the EU  98,6% of tariff lines liberalized by Canada	99% of tariff lines liberalized by the EU  97% of tariff lines liberalized by Japan
<b>TARIFFS ON AGRICULTURAL GOODS</b>	82% of tariff lines liberalized by EU  93% of tariff lines liberalized by Mercosur	93,8 % of tariff lines liberalized by the EU  90,9% of tariff lines liberalized by Canada	Majority of tariff lines liberalized by the EU  85% of tariff lines liberalized by Japan
<b>TARIFFS ON INDUSTRIAL GOODS</b>	100% of tariff lines liberalized by EU  90% of tariff lines liberalized by Mercosur	100% of tariff lines liberalized by the EU  100% of tariff lines liberalized by Canada	100% of tariff lines liberalized by the EU  100% of tariff lines liberalized by Japan
<b>TRANSITIONAL PERIOD</b>	10 - 15 years for some sensitive products	3 - 5 - 7 years for some sensitive products	10 -15 years for some sensitive products
<b>NON-TARIFF BARRIERS TO TRADE</b>	Automated licensing for most goods; More transparency on technical regulation and standards	Uniformized standards in technical regulation; Protocol for conformity assessment recognized by both parties	Simplified procedures for testing and certification

<b>TRADE IN SERVICES</b>	Removal of trade barriers on postal services, telecommunications, financial services, E-commerce and maritime services	Removal of trade barriers, except from mining, environmental services and some public services	Market access facilitated for telecommunications, transport, financial services and postal services
<b>INVESTOR-STATE DISPUTE SETTLEMENT</b>	ISDS mechanism not included; Possible inclusion in the future	Investment Court System (ICS) replaced the traditional ISDS system	Not included
<b>GOVERNMENT PROCUREMENT</b>	Removal of barriers at central, after 2 years, sub-central level	Removal of barriers at federal and sub-federal level, with limitations in Quebec and Ontario	EU access extended to 48 Japanese cities and some governmental agencies
<b>GEOGRAPHICAL INDICATIONS</b>	357 EU geographical indications protected  220 Mercosur geographical indications protected	205 EU geographical indications protected	179 EU geographical indications protected in varying ways  56 Japanese geographical indications protected
<b>TRADE AND SUSTAINABLE DEVELOPMENT</b>	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized	Commitment to protect labour rights, human rights, environment, but enforcement mechanism criticized

## ***Bibliography***

- Amadeo K., *GATT: Definition, Purpose, History, Pros, and Cons*, “The Balance” article, 2020
- Badarna M., *Essay: the Success of the EU-Japan EPA Negotiations*, “The New Federalist”, 31 January 2019
- Baldwin R., *A domino theory of regionalism* (No. w4465). National Bureau of Economic Research, 1993
- Baltensperger M. and Dadush U., *The European Union-Mercosur Free Trade Agreement: prospects and risks*, Bruegel, Policy Contribution, Issue 11, 2019
- Berlingieri G., Breinlich H., Dhingra S., *The Impact of Trade Agreements on Consumer Welfare—Evidence from the EU Common External Trade Policy*, Journal of the European Economic Association, Volume 16, Issue 6, December 2018
- Berlingieri G., Breinlich H., Dhingra S., *The consumer benefits of trade agreements: Evidence from the EU trade policy*, Vox, Centre for Economic Policy Research, 2018
- Bhagwati J., *Regionalism versus multilateralism*. The World Economy, 15(5), 1992
- Binder K., *Bilateral trade deal with Japan – largest to date for EU*, European Parliamentary Research Service, 2019
- Bourgeois J., *The EC in the WTO and Advisory Opinion 1/94: an Echternach procession*, Common Market Law Review 32, 1995
- Brown C.P., Irwin D.A., *The GATT's Starting Point: Tariff Levels circa 1947*, Cambridge, National Bureau of Economic Research, 2015
- Burrell A. et al., *Potential EU-Mercosur free trade agreement: impact assessment*, JRC Reference Report, 2011

- Chemutai V., Escaith H., *Measuring World Trade Organization (WTO) Accession Commitments and their Economic Effects*, Journal of International Commerce, Economics and Policy, vol. 08, n°2, 2017
- Chowdhry S., Sapir A. and Terzi A., *The EU–Japan Economic Partnership Agreement*, Bruegel Special Report, September 2018
- Complaint to the European Ombudsman – The European Commission’s failure to complete a final sustainability impact assessment prior to the conclusion of the negotiations of the EU- Mercosur Free Trade Agreement, 15 June 2020
- Conconi P., Herghelegiu C, Puccio L., *EU Trade Agreements: To Mix or not to Mix, That is the Question*, 2020
- Cortés P. P., *EU-Mercosur deal divides both sides of the Atlantic*, EURACTIV article, 10 July 2019
- Council of the European Union, *Council conclusions on the negotiation and conclusion of EU trade agreements*, Council of the European Union Publication, May 2018
- De Bièvre D., Poletti A., *Towards explaining varying degrees of politicization of EU trade agreement negotiations*, Politics and Governance, 8(1), 2020
- Devuyst Y., *European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements*, Journal of International Business and Law, vol. 12, Iss.. 2, Article 13, 2013
- Estevadeordal A., Freund C., Ornelas E., *Do regional trade agreements promote external trade liberalization? Evidence from Latin America*, 2006
- Estrades C., *Is MERCOSUR's External Agenda Pro-Poor? An Assessment of the European Union-MERCOSUR Free-Trade Agreement on Poverty in Uruguay Applying MIRAGE*, 2012

- European Commisison, *CETA – Summary of the final negotiating results*, European Commission publication, 2016
- European Commission, *Proposal for a COUNCIL DECISION on the conclusion of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part*, COM (2016)
- European Commission, *The Economic Impact of the Comprehensive Economic and Trade Agreement (CETA)*, European Commission publication, 2017
- European Commission, *Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan*, European Commission - Directorate-General for Trade report, 2016
- European Commission, *Trade for All: Towards a more responsible trade and investment policy*, European Commission publication, Publications Office of the European Union, Luxembourg, 2015
- European Parliament, *A guide to EU procedures for the conclusion of international trade agreements*, European Parliament Briefing, October 2016
- European Parliament, *CETA implementation - SMEs and regions in focus*, European Parliament publication, November 2019
- Fafard P., Patrick L., "Closing the deal: What role for the provinces in the final stages of the CETA negotiations?." *International Journal* 68, no. 4, 2013
- Freund C., Ornelas E., *Regional Trade Agreements: Blessing or Burden?*, Vox, Centre for Economic Policy Research, 2010
- Gheyle N., De Ville F., *How much is enough? Explaining the continuous transparency conflict in TTIP*, *Politics and Governance*, 5(3), 2017
- Ghiotto L. and Echaide J., *Analysis of the agreement between the European Union and the Mercosur*, Hg. v. Anna Cavazzini MEP, Berlin, Buenos Aires, Brüssel, 2019



- Gil-Pareja S, Llorca-Vivero R. and Martínez-Serrano J. A., *Do nonreciprocal preferential trade agreements increase beneficiaries' exports?*, Journal of Development Economics, 2014
- Goel A., Handa H., *Regionalism and Multilateralism: Complementary or Substitutes?*, Global Journal of Commerce & Management Prespective, Global Institute for Research and Education, 2018
- Grossman G.M., *The Purpose of Trade Agreements*, Cambridge, National Bureau of Economic Research, 2016
- GUE/NGL European Parliamentary Group, *CETA: TTIP in a Canadian Disguise*, Confederal Group of the European United Left/Nordic Green Left report, 2016
- Herz B. and Wagner M., *The dark side of the Generalized System of Preferences*, Review of International Economics 19(4), 2011
- Independent Commission, *L'impact de l'Accord Économique et Commercial Global entre l'Union européenne et le 29 Canada (AECG/CETA) sur l'environnement, le climat et la santé*, Independent Commission report to the Prime-Minister of France, September 2017
- Johnson C., Mathias M., *Sub-national government involvement in international trade negotiations - evidence review*, Wales Centre for Public Policy, 2018
- Kenen P.B., *Managing the World Economy: Fifty Years after Bretton Woods*, Washington D.C., Institute for International Economics, 1994
- Kirkpatrick C., George C., *Trade Sustainability Impact Assessment (SIA) of the Association Agreement under Negotiation between The European Community and Mercosur*, Final Report, 2009
- Koleski K. and Blivas A., *China's Engagement with Latin America and the Caribbean*, US-China Economic and Security Review Commission, 2018

- Krasner S.D., “World Politics: A Quarterly Journal of International Relations”, vol.28, n°3, *State Power and the Structure of International Trade*, Cambridge, Cambridge University Press, 1976
- Krist B., *Did the Smoot-Hawley Tariff Cause the Great Depression?*, Washington International Trade Association article, 2014
- Krueger, A. O., *Problems with Overlapping Free Trade Areas*. In *Regionalism versus Multilateral Trade Arrangements*, NBER-EASE Volume 6, University of Chicago Press, 1997
- Liu, X., *GATT/WTO promotes trade strongly: Sample selection and model specification*, *Review of International Economics* 17(3), 2009
- London School of Economics and Political Science, *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur*, LSE Consulting, London, July 2020
- Luyten A.E., Kim J.W., *Could the EU’s Chief Trade Enforcement Officer enforce sustainable development commitments under EU trade agreements against non-compliant third countries?*, EU Law Live, May 2020
- Matthes J., *Towards a Free Trade Agreement with Japan?*, Policy Brief for the European Parliament, Cologne Institute for Economic Research (IW Köln), 27 September 2012
- Messerlin P. A., *The Mercosur-EU preferential trade agreement: a view from Europe*, CEPS Working Document No.377, 2013
- Michaloupoulos S., *EU farmers boss: ‘Devastating’ Mercosur trade pact exposes Europe’s double standards*, EURACTIV article, 2 July 2019
- Milner H.V., *Interests, Institutions, and Information: Domestic Politics and International Relations*, Princeton, Princeton University Press, 1997

- Ministry of Economy, Trade and Industry of Japan, *2015 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA*, Part II: WTO Rules and Major Cases, ch.1
- Nataraj G., *Emergence of RTAs and FTAs: Complementing Multilateralism*. Focus WTO, 6(6), 2005
- Niemann A., *The Common Commercial Policy: From Nice to Lisbon*, in: Laursen, F. (ed.), *The EU's Lisbon Treaty: Institutional Choices and Implementation*, Ashgate, 2012
- Ornelas E., Ritel M., *The not-so-generalised effects of the Generalised System of Preferences*, Vox, Centre for Economic Policy Research, 2018
- Oxford University, *World Development Report 1987*, New York, Oxford University Press, 1987
- Pal P., *Regional Trade Agreements in a Multilateral Trade Regime: A Survey of Recent Issues*, Foreign Trade Review, 40(1), 2005
- Roederer-Rynning, C., *Parliamentary assertion and deep integration: The European Parliament in the CETA and TTIP negotiations*, Cambridge Review of International Affairs, 30(5-6), 2017
- Riccobono A., Bologna S., *Commercio globale e diritto del lavoro: l'accordo di libero scambio UE-Giappone*, "Giornale di Diritto del Lavoro e di Relazioni Industriali", 2019
- Sanahuja, J. A. and Damián Rodríguez, J., *Veinte años de negociaciones Unión Europea-Mercosur: Del interregionalismo a la crisis de la globalización*, Fundación Carolina, 2019
- Schmieg E., *TTIP—Opportunities and Risks for Developing Countries*, Bonn: Stiftung Wissenschaft und Politik (SWP), 2015

- Soobramanien T., Vickers B., Enos-Edu H., *WTO Reform: Reshaping Global Trade Governance for 21st Century Challenges*, London, Commonwealth Secretariat, 2019
- Spence M., *The Next Convergence: The Future of Economic Growth in a Multispeed World*, New York, Farrar, Straus and Giroux, 2011
- Timini J. and Viani F., *The EU-MERCOSUR free trade agreement: main features and economic impact*, Economic bulletin, Banco de España [Artículos], n. 1, 2020
- Treaty on the Functioning of the European Union (TFEU)
- Treaty of Rome, 1957
- United Nations, Yearbook of the International Law Commission 1969, *vol.II: Documents of the twenty-first session including the report of the Commission to the General Assembly*, Geneva, United Nations Publications, 1970
- UNCTAD Series on Issues in International Investment Agreements II, *Most Favored Nation Treatment: A Sequel*, Geneva, United Nations Publications, 2010
- Velut J.-B., Braeza-Breinbauer D., Lamprecht P., *Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur – Interim report*, LSE Consulting, 2019
- WTO, *The WTO at Twenty: Challenges and Achievements*, Geneva, WTO Publications, 2015
- WTO, *Understanding the WTO*, Geneva, WTO Publications, 2015
- Young A. R., *Two wrongs make a right? The politicization of trade policy and European trade strategy*, Journal of European Public Policy, 2019

## *Sitography*

- *Accord de libre-échange UE JAPON: la fuite en avant se poursuit et met à mal la démocratie en Europe, prévient foodwatch*, Foodwatch Press Release, 5 July 2018, accessed in September 2020 <https://www.foodwatch.org/fr/communiqués-de-presse/2018/accord-de-libre-echange-ue-japon-la-fuite-en-avant-se-poursuit-et-met-a-mal-la-democratie-en-europe-previent-foodwatch/>
- Article XXIV of the General Agreement on Tariffs and Trade (GATT 1947), WTO official website, accessed in May 2020 [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_art24\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm)
- *Basic Purpose and Concepts*, WTO official website, accessed in April 2020 [https://www.wto.org/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s6p1\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s6p1_e.htm)
- *Canada's export performance under CETA*, Government of Canada website, accessed in August 2020 <https://www.tradecommissioner.gc.ca/canadexport/0003967.aspx?lang=eng>
- *Canada-European Union Trade and Investment Enhancement Agreement*, Global Affairs Canada, accessed in July 2020 <https://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/tiea.aspx?lang=en>
- *Canada – Trade picture*, European Commission official website, accessed in September 2020 <https://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/>
- *CETA-Ratification details*, Council of the European Union official website, accessed in August 2020 <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2016017>
- *CETA Ratification Process*, EU learning, Centre for European Studies at Carleton University, accessed in August 2020 <https://carleton.ca/ces/eulearning/ceta-ratification-process/>
- *Commission sets up advisory group on EU trade agreements*, European Commission official website, accessed in June 2020 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1777>
- *Differential and more favourable treatment reciprocity and fuller participation of developing countries*, WTO official website, accessed in May 2020 [https://www.wto.org/english/docs\\_e/legal\\_e/enabling1979\\_e.htm#fnt-3](https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm#fnt-3)

- *EU and Japan sign Economic Partnership Agreement*, European Commission website, accessed in June 2020  
[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4526](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4526)
- *EU and Mercosur reach agreement on trade*, European Commission official website, accessed in June 2020  
[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_3396](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_3396)
- *EU-Japan*, European Services Forum website, September 2020  
<http://www.esf.be/new/esf-eu-trade-policy/eu-free-trade-agreements/eu-japan/>
- European Commission official website  
[https://ec.europa.eu/commission/commissioners/2019-2024/hogan\\_en#responsibilities](https://ec.europa.eu/commission/commissioners/2019-2024/hogan_en#responsibilities)
- *Framework Agreement for commercial and economic cooperation between the European Communities and Canada*, European Union External Action Service, Treaties Office Database, accessed in July 2020  
<https://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=267>
- Gauthier A., Holden M., *Canada–European Union Trade Negotiations: 1. Overview of Negotiations*, Parliament of Canada official website, accessed in August 2020  
[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201053E#fn1](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201053E#fn1)
- *General Agreement on Trade in Services*, WTO official website, accessed in April 2020  
[https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm#ArticleII](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#ArticleII)
- *Canada's export performance under CETA*, Government of Canada website, accessed in August 2020  
<https://www.tradecommissioner.gc.ca/canadexport/0003967.aspx?lang=eng>
- *CETA benefits already visible a year after its entry into force*, Government of Canada website, accessed in August 2020 [https://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/year\\_one-premiere\\_annee.aspx?lang=eng](https://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/year_one-premiere_annee.aspx?lang=eng)
- *EU-Japan Trade Agreement is a fact, despite weak provisions on animal welfare*, Euro Group for Animals publication, 12 December 2018, accessed in September 2020  
<https://www.eurogroupforanimals.org/news/eu-japan-trade-agreement-fact-despite-weak-provisions-animal-welfare>

- International Monetary Fund website, consulted in June 2020  
<https://www.imf.org/external/pubs/ft/weo/2019/01/weodata/weorept.aspx?sy=2019&ey=2024&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=80&pr1.y=7&c=213%2C223%2C288%2C298&s=NGDPD%2CPPPGDP%2CNGDPDPC%2CPPPPC&grp=0&a>
- *International Trade in Goods*, “The three largest global players for international trade: EU, China and the USA” Eurostat official website, accessed in May 2020  
[https://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_goods#The\\_three\\_largest\\_global\\_players\\_for\\_international\\_trade:\\_EU.\\_China\\_and\\_the\\_USA](https://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods#The_three_largest_global_players_for_international_trade:_EU._China_and_the_USA)
- *Marrakesh Agreement Establishing the World Trade Organization*, WTO official website, accessed in May 2020 [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm)
- *Mercosur in brief*, Mercosur official website, accessed in June 2020  
<https://www.mercosur.int/en/about-mercotur/mercotur-in-brief/>
- *Negotiations and Agreements*, European Commission official website, accessed in May 2020  
[https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#\\_under-adoption](https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_under-adoption)
- *Preferential Trade Agreements, Trade Creation and Trade Diversion*, WTO official website, accessed in May 2020  
[https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_forum\\_e/wtr11\\_12july11\\_bis\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_12july11_bis_e.htm)
- *Preferential trade arrangements*, WTO official website, accessed in May 2020  
[https://www.wto.org/english/tratop\\_e/region\\_e/rta\\_pta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm)
- *Regional Trade Agreements Database*, WTO official website, accessed in May 2020  
<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>
- *Regional trade agreements and the WTO*, WTO official website, accessed in May 2020 [https://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm)
- *The EU-Mercosur Trade Agreement explained*, European Commission official website, accessed in June 2020 <https://ec.europa.eu/trade/policy/in-focus/eu-mercotur-association-agreement/agreement-explained/>

- *The GATT years: from Havana to Marrakesh*, WTO official website, accessed in April 2020 [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm)
- *The General Agreement on Tariffs and Trade (GATT 1947)*, WTO official website, accessed in April 2020 [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)
- *The nitty-gritty of EU trade barriers before and after CETA*, Export Development Canada (EDC) website, July 2017, accessed in August 2020 <https://www.edc.ca/en/article/canada-eu-trade-barriers-ceta.html>
- *The Roles of Provinces and Devolved Administrations in the Negotiation and Implementation of a Canada-UK Trade Agreement*, Canadian Social Sciences and Humanities Research Council official website, accessed in August 2020 [https://www.sshrc-crsh.gc.ca/society-societe/community-communite/ifca-iac/evidence\\_briefs-donnees\\_probantes/canada-uk/paquin-wooton-eng.aspx?wbdisable=true](https://www.sshrc-crsh.gc.ca/society-societe/community-communite/ifca-iac/evidence_briefs-donnees_probantes/canada-uk/paquin-wooton-eng.aspx?wbdisable=true)
- *Trade for All - New EU Trade and Investment Strategy*, European Commission official website, accessed in May 2020 <https://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/>
- *Transparency in Action*, European Commission official website, accessed in May 2020 <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1395>
- *Transparency Mechanism for Regional Trade Agreements*, WTO General Council Decision of 14 December 2006, accessed in May 2020 [http://ptadb.wto.org/docs/pta\\_transparency\\_rta\\_en.pdf](http://ptadb.wto.org/docs/pta_transparency_rta_en.pdf)
- *Transparency Mechanism for Preferential Trade Arrangements*, WTO General Council Decision of 14 December 2010, accessed in May 2020 [http://ptadb.wto.org/docs/pta\\_transparency\\_pta\\_en.pdf](http://ptadb.wto.org/docs/pta_transparency_pta_en.pdf)
- *Uruguay Round Agreement: TRIPS, Part 1- General Provisions and Basic Principles*, WTO official website, accessed in April 2020 [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_03\\_e.htm#art4](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm#art4)



## ***Abstract***

The aim of this work is to assess and compare three trade agreements recently signed by the EU, while providing an institutional and historic context. The first two chapters explain how bilateral trade agreements are compatible with the WTO multilateralism and how trade agreements are concluded in the EU. The last three chapters assess the EU-Mercosur trade agreement, the EU-Canada Comprehensive Economic and Trade Agreement and the EU-Japan Economic Partnership Agreement. These agreements are analyzed in detail in order to understand the reasons for specific provisions, the possible impact they will have on the economies of the trading partners and the emerging trends for future EU trade agreements.

### ***Multilateralism, Regionalism and the WTO***

The GATT was created in 1947, becoming the instrument for international trade regulation, acting through the organization of multilateral negotiations called “trade rounds” that were firstly focused on reducing tariffs and subsequently covered non-tariff and anti-dumping measures as well. It involved an ever-growing number of countries, until the Uruguay Round (1986-1994) was attended by 123 participating countries. The GATT reshaped international trade through three main provisions: firstly, it granted the MFN treatment to all the members; secondly, the agreement did not allow restrictions on the number of imported and exported goods (although this provision had some exceptions); thirdly, from 1965, the developing countries joining the GATT could take advantage from the complete elimination of tariffs on import by the developed economies. Overall, it appears reasonable to affirm that the GATT succeeded in its purpose of reducing trade barriers and boosting global economic growth, as the average tariffs were reduced from 22% in 1947 (40% according to some sources) to 4,7% in 1999.

After the Uruguay Round, the GATT organization was replaced by the WTO, regulating not only the trade of goods (GATT agreement), but also trade in services (GATS) and intellectual property rights (TRIPS). In 2001 the WTO launched the first and still ongoing round of negotiations: the Doha Development Round. However, the negotiations have not been successful, as the subjects to find an agreement on were extremely broad, containing many conflicting interests, and the developing countries have used the new power of a consensus-based decision making system to make their voices heard, stalling the negotiations.

Nevertheless, despite the many challenges the WTO is facing nowadays, it still remains the most successful example of international economic cooperation in human history.

The Most Favoured Nation (MFN) treatment is one of the principles the WTO is based on and full-fledged MFN clauses can be found in commercial treaties from the 18<sup>th</sup> century. Until the end of the 19<sup>th</sup> century, the MFN clauses have been predominantly conditional, meaning that the MFN treatment was only given under the condition that the beneficiary reciprocally applies the same concessions to the country granting the preferential treatment. Unconditional MFN treatment was applied after the first half of the 20<sup>th</sup> century, which was characterized by harsh protectionism in the period of the Great Depression. In fact, after World War II was over, many countries agreed that boosting international trade was the best way to recover economically and the GATT was signed with the declared purpose of reducing trade barriers between countries. The MFN treatment became the milestone of the GATT. In today's WTO, the MFN principle is applied not only for the trade of goods, but it also concerns the trade in services and the trade-related aspects of intellectual property.

Even though the MFN treatment is the general rule in the WTO context and it represents one of the organization's milestones, the GATT agreement still envisages particular circumstances under which it is possible for a country to disregard it. One is the Generalized System of Preference, a tariff system that allowed the developing countries to unilaterally benefit from lower tariffs in order to improve their economic situation. Another possibility for a country to disregard the application of the MFN principle towards another country that joins the WTO is to notify the Ministerial Conference about this intention before the approval of the agreement on the terms of accession, and after expressing opposition to the new accession. Finally, it is possible to disregard the MFN treatment through the formation of a regional trade agreement, but two essential conditions have to be met in order to do so: first of all, any barrier to trade should be substantially eliminated in the region that decides to create a (Free Trade Agreement) FTA or customs union; secondly, all the tariffs and other trade barriers with respect to third parties, should not be more restrictive on average that they are before the creation of the FTA or customs union. These conditions, however, are considered to be extremely ambiguous and vague, as well as anachronistic, especially considering the position of developing countries.

To this regard, a more precise description of the different kinds of agreements that can be concluded is needed, to better understand the nature and the effects of such agreements. The WTO considers as Regional Trade Agreements (RTAs) all those reciprocal trade agreements between two or more members of the organization that lower tariffs between the countries

involved, provide a framework for the trade in services, and, in modern times, include regulations on human rights, labour, environment, going far beyond the simple trade policies. Preferential Trade Agreements on the other hand, are considered by the WTO to be those arrangements where developed countries adopt non-reciprocal measures with regards to the least developed countries. RTAs can be divided into two major categories: FTAs and customs unions. FTAs are agreements in which countries decide to eliminate trade barriers between them, while not changing the trade barriers towards the rest of the world. Customs unions are agreements that work similarly to the FTAs, except from the fact that the parties to the agreement not only reciprocally eliminate trade barriers between them, but they also choose to adopt the same external tariffs towards the rest of the world. When an FTA or a customs union is created, two effects can occur to the economies of the signatory states: trade creation and trade diversion. Considering the fact that trade agreements concern many sectors of the countries' economies, it is normal that they imply both trade diversion and trade creation flows and countries usually decide to enter an FTA or a customs union when certain sectors' expected net gains from trade creation and trade diversion outweigh other sectors' expected net losses.

Regional Trade Agreements have considerably grown in numbers during the last 30 years: with more than 300 RTAs actually in force, their number is approximately 10 times bigger than prior to the establishment of the WTO. Many scholars debated over the effects regional agreements have on global welfare and multilateralism: while some state that RTAs undermine multilateralism, others argue that regionalism and multilateralism are complementary and can coexist. It is possible that regional agreements undermine multilateralism, nevertheless, they have been by far the most utilized mean to liberalize trade in the last decades, especially by the EU.

### ***Trade Agreements in the European Union***

The negotiation of trade agreements in the EU involves the participation of several actors: before the negotiations start and during the negotiations, public consultations and an impact assessment are conducted under the Commission's supervision, the Commission makes recommendations to the Council of Ministers, which has the duty to formally authorize the opening of the negotiations, the Council then issues the negotiating directives and has the authority to nominate a negotiator. One of the biggest roles during trade agreement negotiations is played by the EU Commissioner for Trade, that is entrusted with the authority to supervise the negotiations, while The Council of Ministers is the institution with the biggest decision-

making power as far as trade policy is concerned. The European Parliament must be notified about the progress of negotiations and needs to approve the final agreement in order for it to be adopted. The Court of Justice of the European Union (CJEU) also has a role in the shaping of EU trade agreements, as it is responsible for ensuring that the agreements don't violate any law provided by EU Treaties in their application or interpretation, through judicial review.

The Common Commercial Policy (CCP) was one of the crucial areas of the European Community from the very first years of its existence, however, the Treaty of Rome does not provide a comprehensive list of matters that should be treated under the CCP laws. This ambiguity led to numerous disagreements between the Council, the Parliament, the Commission and the Member States over their competencies and the procedures to follow regarding the foreign trade subjects that are not mentioned in the Treaty of Rome. The progress made on the clarification of the competencies and the scope with regards to the CCP hasn't been remarkable until the Lisbon Treaty, which increased the role of the Parliament and classified the trade of services and intellectual property as exclusive EU competences.

But when an agreement contains provisions on a matter that is considered a shared competence, the agreement is called "mixed" and its full entrance in force requires the ratification from every EU member state's parliament and even some regional parliaments. This led to complications in the ratification process, for example when Netherlands initially refused to ratify the EU-Ukraine Association Agreement, slowing down the conclusion of the agreement even though every other state ratified it. A turning point in the classification of international agreements occurred in 2017, when the CJEU issued a fundamental opinion on the EU-Singapore free trade agreement, namely opinion 2/15 of the 16<sup>th</sup> May 2017, where the chapters on Intellectual Property and Trade and Sustainable Development were judged to be exclusive competences and a better clarification was provided over which the shared competences were.

Before the early 2010s, the commercial strategies and the trade agreements of the EU have been an appealing issue just for economists and people who worked on them. However, there has been a remarkable increase of public interest about trade agreements in the last years, mainly due to two specific trade agreements that the EU was working on: the TTIP with the USA and the CETA with Canada. Nevertheless, not all the trade agreements the EU was negotiating gained the same importance and attention in public debates as the TTIP and CETA, which has been explained by scholars through the identification of three necessary (but not sufficient) conditions that made certain trade agreement become more politicized than others: the variation of the influence the EU and national parliaments have in concluding trade

agreements, the depth and comprehensiveness of regulatory commitments and the perception people have about the relative size and bargaining power of the trading partner. The politicization of such an issue however, is not something that just occurs spontaneously, it implies the involvement of an agent that transports the debate in the political sphere. This agent has been the European Parliament for the TTIP and the CETA, consistently with the role that parliaments have of being the point of connection between the political debate outside from institutions and the institutions themselves.

The unprecedented politicization of trade policy following the TTIP negotiations and the request for transparency in negotiations by civil society organizations haven't gone unnoticed by European institutions; thus, important changes have been introduced in 2015 when the European Commission presented its new trade and investment strategy, called "Trade for All". The new strategy consisted in twelve key initiatives which can be divided in four major areas of intervention: improvement of the effectiveness of the EU trade policy, more consideration of EU values in trade policy, a negotiation programme to shape globalization according to EU's best interests and more transparency in negotiations and trade. Following this path, in 2017, the Commission also published a proposal containing a package of trade and investment measures that was called "A Balanced and Progressive Trade Policy to Harness Globalisation."

Ones described the mechanisms and the changes occurred in EU trade policy, it is useful to assess the outcomes of EU trade agreements and the actual influence they have on consumers' lives. A study shows that the main effects of the EU trade agreements made in the period between 1993 and 2013 on consumers' welfare are a +7% increase in the quality of products and a -0,24% reduction in the Consumer Price Index, which allowed Europeans to save around €24 billion every year.

### ***EU-Mercosur Trade Agreement***

Mercosur has been the only significant trading partner in southern America not to have a trading agreement with the EU until 2019. This was due to the complexity of the negotiations between the two trading blocs, that began in the 1990s and lasted more than 20 years, the largest span of time in the world to conclude the negotiations for a trade agreement. A decisive impulse for Mercosur was given by the negotiations of the TTIP between the US and the EU that formally began in 2013 and, together with the then ongoing talks for the Trans-Pacific Partnership (TPP) agreement, were a potential threat for southern American countries, which

were not included. The outcome were 28 exhausting rounds of negotiations that finally resulted in a political agreement in principle, reached on the 28<sup>th</sup> June 2019, on the EU-Mercosur free trade agreement, as part of a broader Association Agreement between the partners, still under negotiation. Since the Association Agreement includes parts that fall under the shared competences of EU and its member states, therefore being a “mixed” agreement, it will have to be ratified by the national parliaments, only then the trade deal will enter into force.

Currently, the EU is a very important trading partner for Mercosur, in fact more than 17% of its total trade in goods and 26% of the trade in services are due to commercial relations with Europe. Nevertheless, Mercosur doesn't have the same relevance for the EU if compared to other trading partners and the commercial exchanges with Mercosur correspond to only about 1% of the total for the trade in goods as well as for the trade in services. The total difference between imports from and exports to Mercosur is fairly marginal, however, there are substantial differences concerning the sectors and the industries: with respect to the trade in services, the EU is clearly a net exporter. When it comes to goods, both trading blocs specialized in the export of products in the production of which they have a comparative advantage: Mercosur mainly exports agricultural products like vegetables, tobacco, soy and coffee, while EU exports to Mercosur instead, mainly consist of machinery, transport equipment, chemicals and pharmaceutical products. Trade with the EU is more important for Brazil than for other Mercosur countries and, similarly, there are relevant differences in the trade with Mercosur of single European countries, concerning both the relevance and the characteristics of trade flows. Overall, it is safe to say that the importance of the EU as a trading partner for Mercosur has decreased during the last 2 decades and this is a particularly relevant issue concerning the EU-Mercosur FTA, as it remarks that the high tariffs that characterize the trade between the two organizations presumably hampered the development of their trade relations.

The main provisions of the EU-Mercosur Agreement are a liberalization of 95% of the tariff lines by the EU (82% of tariffs on agricultural products and 100% of tariffs on industrial products) and a liberalization of 95% of the tariff lines by Mercosur (93% of tariffs on agricultural products and 90% of tariffs on industrial products), with transitional periods of 10 or 15 years for specific sensitive products. Moreover, non-tariff barriers to trade are reduced through a better transparency on technical regulation and standards and the adoption of automated licensing for most goods. Barriers to the trade in services are removed on postal services, telecommunications, financial services, E-commerce and maritime services. Barriers to government procurement have been removed at the central and, after 2 years, sub-central

level. 357 EU geographical indications and 220 Mercosur geographical indications are also protected by the agreement.

Overall, it appears that all the CGE models-based studies on a trade deal between the EU and Mercosur agree in concluding that a liberalization of trade would bring about positive results for both the partners, from a general point of view. However, there are differences as far as specific sectors are concerned and the total gains from trade could hide serious threats for uncompetitive sectors that open up to foreign competition, especially the agricultural sector in Europe. Moreover, the overall gains for both the economies in terms of GDP, although expected in all the impact assessments, appear to be rather marginal, ranging from a 0,02% to a 0,1% increase in EU GDP and from a 0,1% to a 0,4% increase in Mercosur GDP.

The ratification of this agreement could be a problematic issue as there are many opponents, especially in Europe. One of the main reasons for the unwillingness to apply the FTA is the potential threat that it poses to the European agricultural sector: farmers from France, Poland, Belgium, Ireland and other EU countries strongly protest against the adoption of an agreement that exposes them to competition from Latin America. But the major problem that causes objections to the deal in Europe is the environmental impact it will probably have in South America. In fact, the agreement is likely to foster an intensive production of goods that are directly or indirectly related to deforestation. Therefore, despite the fact that the 20 year-long negotiations over a trade deal have been concluded, the ratification of it appears much more difficult than expected.

### ***EU-Canada Comprehensive Economic and Trade Agreement***

The EU and Canada have a long history of good relations and economic cooperation and, given the lack of progress in the Doha Round negotiations, the sides decided to carry out a study assessing the possible impact of a closer economic relation in 2007. The outcomes of the study claimed that removing trade barriers would result in an increase of more than \$41 billion in the trade between the partners in a 7-year span, convincing the EU and Canada to officially start the work for a comprehensive economic agreement. The partners announced the successful conclusion of the negotiations in 2013 and agreed on a final version of the CETA text in 2014 and the European parliament ratified the agreement at the beginning of 2017, notwithstanding the negative opinion on CETA from far-right and far-left European parties. Being a mixed agreement, ratification from all the national parliaments and some regional

parliaments in Europe is required in order for CETA to fully enter into force, however, the most important parts of the deal are provisionally applied from the 21<sup>st</sup> September 2017.

The European Union has been one of the most important economic partners for Canada for years, as the total amount of imports and exports between Canada and the EU has been constantly growing, reaching a total value of more than €64 billion in 2016 in the trade of goods and around €30 billion in services. As far as trade in goods is concerned, the EU is a net exporter and the trade balance was of almost €7 billion in 2015 and industrial products are the most traded between the two partners, as in 2016 they accounted for almost 90% of the total trade in goods between Canada and the EU. Concerning the trade of services, it is interesting to notice that it increased impressively in the last 15 years and the trade balance in this sector is significantly positive for the EU. Another crucial activity in the economic relations between Canada and the EU is Foreign Direct Investment (FDI), given that in 2015 Canadian investors owned a value of €228 billion in EU stocks, while EU investors owned a value of €249 billion in Canadian stocks.

The main provisions of CETA are a liberalization of 98,7% of the tariff lines by the EU (93,8% of tariffs on agricultural products and 100% of tariffs on industrial products) and a liberalization of 98,6% of the tariff lines by Mercosur (90,9% of tariffs on agricultural products and 100% of tariffs on industrial products), with transitional periods of 3, 5 or 7 years for specific sensitive products. Moreover, non-tariff barriers are reduced through uniformized standards in technical regulation and a protocol for conformity assessment recognized by both parties. The barriers on trade in services are removed for all the sectors except from mining, environmental services and some public services. The barriers on government procurement are removed at the federal and sub-federal level, except from some limitations in Quebec and Ontario. Finally, 205 EU geographical indications are protected by the agreement.

After the conclusion of the agreement, the European Commission published a comprehensive impact assessment in 2017 to calculate the effects of CETA on the economies of the signatories, based on CGE model simulations, which predicts a combined increase of almost €12 billion in trade between the partners. The partners are also expected to gain from CETA in terms of GDP, according to the Commission's impact assessment, but these gains don't seem to be as relevant as the economic size of both sides could suggest. In fact, it is predicted by the study that the application of CETA will imply an annual increase of €1,7-€2,1 billion in EU GDP and an annual increase of €2,4-€3 billion in Canadian GDP, equivalent to an approximately 0,01% increase in EU GDP and an approximately 0,15% increase for Canadian GDP, which is fairly in line with the predictions made by other previous studies on



the effects of CETA. Overall, it seems that the agreement was boosting the trade between Canada and the EU before the COVID-19 pandemic slowed down international trade, and the first data on the impact CETA was having on the economic relations between the partners appeared to be in line with the predictions of the impact assessments made before the provisional entrance in force of the trade deal.

At first, the European Commission considered the agreement with Canada as an exclusive EU competence; some Member states however, strongly opposed this view and argued that several matters treated in CETA are to be considered as shared competences and, therefore, the agreement needs to be ratified by national parliaments before its full entrance in force, which has been confirmed by the European Court of Justice. This need for national parliaments' ratification caused huge debates and slowdowns in the conclusion of the agreement because there are several controversial issues concerning CETA. A first issue was the Investor-State Dispute Settlement (ISDS) system that was strongly criticized, which forced the EU to replace it with a new Investment Court System (ICS). Another matter of concern that triggered fierce objections to the trade deal is the environmental impact it might have because of the lack of convincing environmental commitments and because the mechanisms to enforce the respect of commitments under the TSD chapter didn't seem sufficiently effective to some of the critics. Several European states such as France, also expressed concerns with regard to the potential effects the liberalization of certain agricultural products like beef and dairy might have on European producers. These matters caused significant slowdowns in the CETA conclusion and ratification processes, such as the opposition from the Walloon region that momentarily blocked the CETA signature by the Belgian government.

### ***EU-Japan Economic Partnership Agreement***

The first pillar towards the conclusion of an FTA between Japan and the EU was put on May 28<sup>th</sup>, 2011, at the EU-Japan summit, where the parties agreed that the economic partnership between them needed to be strengthened and that a free trade agreement was desirable for their future relations. They conducted a scoping exercise and an impact assessment, before the negotiations officially started in 2013. The agreement was approved by the European Council in 2018 and 3 months later the consent for signing the deal was asked to the European Parliament, which also commissioned an independent study on the agreement from the Bruegel institute before giving its endorsement. The EPA was finally signed on 17 July 2018 with great enthusiasm from both parties, emphasizing the fact that not only the

agreement would create opportunities and enhance economic growth, but it also has a great symbolical and geopolitical importance in a period when the United States turned towards a more protectionist approach to economy. A particularly controversial issue during the negotiations for the EPA was the investment protection mechanism. In fact, the EU wanted to incorporate in the deal an Investment Court System (ICS), while Japan preferred the traditional Investor-State Dispute Settlement (ISDS) system, so they took the decision to conclude the negotiations without including a chapter on the dispute settlement system, which allowed a quick ratification of the EPA, since there were no shared competences.

In the last years before the EPA, the trade between the countries grew, being predominantly composed by the trade in goods, as it makes up for 65% of the EU's exports to Japan and 80% of Japanese exports to the EU. In the trade of goods, the EU's total imports from and exports to Japan are fairly similar, even though a small surplus for Japan was registered in the 10 years prior to the signature of the EPA. Both the European and the Japanese exports in goods are predominantly composed by machinery and vehicles, chemicals and manufactured goods, as these categories combined make up for 84% of the total EU's goods exports to Japan and 96% of Japanese goods exports to the EU. Concerning the trade in services, the flows between Japan and the EU are not as balanced as in the case of trade in goods: the EU exported almost €30 billion of services to Japan in 2018, while Japan only exported a €14,6 billion worth of services to the EU, which makes the EU a net exporter of services with a remarkable surplus of more than €13 billion. As far as Foreign Direct investment is concerned, there has been a considerable flow of Japanese investments in the EU in the last years, while European outward stocks to Japan have been constant, but suddenly increased in the two years before the signature of the EPA.

The agreement provides for an almost total elimination of tariffs from both sides in the long run, as the EU committed to eliminate 99% of its tariffs on imports from Japan, while Japan granted a 97% elimination of tariffs on imports from Europe after a transition period of 15 years. 85% of all the agri-food products exported from the EU to Japan will be liberalized, while the elimination of tariffs on industrial products will be total. Simplified procedures for the testing and certification are applied and market access has been facilitated for telecommunications, transport, financial services and postal services. The agreement also grants for the EU the access to the public procurement market in 48 Japanese cities and some governmental agencies. 179 EU geographical indications and 56 Japanese geographical indications are protected by the agreement as well.

Before receiving the Council's consent to start the negotiations, the European Commission published an impact assessment report in 2012 and the outcome of this assessment predicted positive results for the economies of the countries involved. As the negotiations were successfully proceeding, another impact assessment was published by the European Commission in 2016, which confirmed the predictions of the 2012 study in terms of overall GDP growth in the long term. In 2018 the European Parliament commissioned an independent study on the effects of the EPA to the Bruegel institute. In this assessment, previous studies on the EPA are analyzed and compared to studies on the EU-Korea FTA as well. The authors stress that the most recent studies agree in stating that the EPA will have a positive effect on the GDP of the partners, although not as optimistic as suggested by the aforementioned 2012 impact assessment, as the predictions on the growth of EU's GDP range from +0,06% to +0,14% in the long term. Since the agreement entered in force at the beginning of 2019, the outcomes of the first year of its implementation are already visible and the first consideration to be made is that the trade flows between EU and Japan increased by around 6,5% in 2019.

Despite the exclusion from the agreement of the chapter concerning the resolution of investor-state disputes, which is one of the main reasons of opposition to CETA, the EU-Japan EPA contains many other provisions that are comparable to the ones included in the deal with Canada. Therefore, considering the amount of protests all over Europe against the signature of CETA, as well as against the TTIP when it was under negotiation, it is remarkable to notice that such protest didn't characterize the negotiations and the signature of the deal with Japan, despite the fact that there are potential risks in several areas the EPA deals with, especially in the trade and sustainable development chapter. As already mentioned in the second chapter, this led researches to analyze the different factors that might explain the varying degree of politicization free trade agreement have in the public opinion of European countries, and the case of Japan is interesting because it shows that the conditions identified by studies are necessary, but not sufficient for a trade agreement to become politicized in the EU. In fact, Japan has a considerable bargaining power, but the other two conditions are not met in the case of the EPA (reduced influence of national parliaments and reduced depth and comprehensiveness of regulatory commitments, if compared with CETA).