

# As dinâmicas dos acordos comerciais da UE e o modelo europeu no contexto dos padrões de globalização e governança global

## EU trade dynamics and the European model in the context of globalization patterns and global governance

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**Abstract**—Este artigo argumenta que a dinâmica comercial da União Europeia (UE) e os (velhos e novos) desafios da globalização não podem ser vistos isoladamente das suas implicações para o modelo (económico, social, ambiental) europeu. A UE, tradicionalmente defensora do comércio livre e do multilateralismo, enfrenta um sistema comercial internacional cada vez mais desordenado e novas realidades que afetam o seu comércio externo (considerações ambientais mas também geopolíticas; política industrial). A promoção do comércio externo pode, no entanto, não se coadunar com os valores europeus, aos quais as revisões da política comercial da UE teoricamente se vinculam, e que recentemente passaram a incluir os objetivos do Pacto Ecológico Europeu. O artigo questiona se na prática a UE defende o modelo europeu de governação através dos seus acordos comerciais de nova geração, que constituem o principal veículo de concretização da sua política comercial. Estes estendem-se cada vez mais a áreas não tradicionais, o que implica que têm implicações sobre o modelo europeu de uma forma que os acordos comerciais tradicionais não tinham, através de múltiplos canais, incluindo a regulação (normas, também ambientais e laborais) ou cláusulas de proteção dos investidores. A questão - saber se a UE privilegia o comércio ao modelo europeu - reflete-se na dificuldade de encontrar um consenso necessário entre os Estados-Membros para assegurar a ratificação dos recentes acordos comerciais profundos.

**Palavras-Chave** — Modelo europeu; política comercial da UE; Nova geração de acordos de comércio; regulação; competências da UE versus competências dos estados-membros.

**Abstract**—This article argues that European Union (EU) trade dynamics and (old and new) globalization challenges cannot be seen in isolation from their implications for the European (economic, social, environmental) model. The EU, a staunch defender of free trade and multilateralism, faces an increasingly messy international trading system and new realities that affect its external trade (environmental and geopolitical considerations, industrial policy). Its quest to promote external trade may however sit uneasily with European values, to which EU trade policy reviews pay tribute by letter, most recently enshrining the objectives of the European Green Deal. This article questions the EU's unfettered defence of the European model in practice through its new generation trade agreements, which are a chief embodiment of its trade policy. Those increasingly stretch into non-traditional areas, which implies that they feed back into the European model in a way that traditional trade agreements have not, via multiple channels, including regulation (standards, also environmental and labour) or investor protection clauses. The issue whether the EU privileges trade over the European model is reflected in the difficulty to find a necessary consensus among member states to ensure the ratification of recent deep trade agreements.

**Keywords** — European model; EU trade policy; new generation trade agreements; regulation; EU versus member state competences.

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## 1 Introduction

THE European Union (EU), a staunch defender of free trade and multilateralism all along, has needed not only to come to grips with an increasingly messy global governance system but also with new realities in the international economic system. Several factors have contributed to a changed setting for EU trade. To start with, the multilateral approach to trade-rule making and even trade dispute arbitration has suffered setbacks. Bilateral and regional trade agreements have proliferated in this setting. To complicate matters further, the globalization of markets as experienced over the past three decades had also brought about manifold phenomena of internationalization beyond traditional goods trade (such as trade-related services, direct and financial investments, intellectual property rights), only partly covered by multilateral rules under the World Trade Organization (WTO) umbrella. On top of that, various shocks have more recently affected the international economic system. Those have led to a reconsideration of globalization patterns, most notably in light of the vulnerability of global value chains.

Global trade takes place under a weakened global governance umbrella. For most of the time in his history, the European integration project could count on a stable and conducive international framework and multilateral institutions that facilitated external trade growth, namely through the General Agreement on Tariffs and Trade (GATT) and its successor, the WTO, and further supported by the Bretton Woods system providing exchange rate stability until the 1970s. The GATT/WTO were the principal vehicle and

forum for opening up world trade and dealing with trade disputes. The multilateral approach had been rather successful in doing away with conventional trade barriers in successive negotiation rounds but started to encounter increasing difficulties in concluding multilateral agreements and to set new rules collectively.<sup>1</sup> It may hence not be surprising that multilateral trade rules should not have evolved in step with the global economic integration of markets and its accompanying phenomena. In recent times, even the WTO's smooth functioning in regard to multilateral trade rules (trade dispute arbitration) has been cast in doubt.<sup>2</sup> Countries are thus more exposed to power relations in international trade.

Against this background of a weakened multilateral trade governance cum increasingly integrated world markets since the 1990s, the world has seen a remarkable proliferation of bilateral and regional agreements in general and of deep trade agreements in particular. As Fernandes et al. (2021a) observe, bilateral and regional trade agreements have surged from about 50 in 1990 to about 300 since the middle of the first decade of this millennium, with regional agreements taking over the trade agenda.

At a first glance, preferential trade agreements may seem to constitute a second-best solution to multilateral agreements for furthering free trade. However, the picture is much more complex.

Mattoo et al. (2022) show that deep trade agreements go much beyond the tariff cutting that is the object of conventional free trade agreements, in terms of breadth (scope) of issue areas but also depth (complexity). Moreover, by involving regulatory and other non-tariff measures they get into what were formerly exclusively domestic policy domains (Lamy, 2020). Fernandes et al. (2021a) clarify that WTO multilateral rules are still at the basis of regional agreements, but that

1. In the 1990s, the Uruguay round was already drawn out. In the following decade, the Doha round failed. In the WTO, an international organization with currently 164 members, agreements require unanimity of its membership, which in this millennium has come to include notably also Russia and China.

2. Referring here to the WTO appellate body, out of function due to unfilled vacancies ([https://www.wto.org/english/tratop\\_e/dispu\\_e/appellate\\_body\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm)). US President Biden continued his predecessor's policy of not nominating judges. For an appreciation of the background, see Bacchus (2022).

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in their absence deep trade agreements establish new trade rules; their details hence matter. As important determinants of international trade patterns, global value chain integration and welfare, deep trade agreements therefore shape economic development.

The deepening of preferential trade agreements beyond traditional trade policy, encompassing areas like competition, investment, and intellectual property right protection, has driven globalization (Laget et al., 2019). Specifically, the authors find that those deep trade agreements promote and facilitate global value chains in intermediate (rather than final) goods and services and that it is provisions that are outside the WTO's current mandate (such as investment and competition policy) that drive the effect on value added trade and on North-South trade in parts and components. Conversely, in regard to South-South trade in parts and components it is provisions under the current WTO mandate (such as tariff reduction and customs facilitation) that are observed to drive the effect of deep preferential trade agreements.

More recently, various crises have opened the perspective of a break with or induced changes to past globalization practice. Most acutely, there are the worldwide repercussions of the Covid-19 pandemic that erupted in 2020 and Russia's full-scale invasion of Ukraine in 2022. Those have exposed vulnerabilities of existing globalization patterns (resilience of supply chains, energy dependency, food supply). And, more long-term (hence more easily put on the backburner), there is the lingering issue of the carbon footprint of international trade (environmental sustainability). What is at stake is how to preserve the economic benefits from global economic integration, when the focus shifted to the viability of globalization patterns and the inclusion of strategic considerations linked to geopolitics and industrial policy. Plus, for the international economic system, addressing climate change is a chief challenge, requiring the internalization of environmental costs via carbon pricing also in international trade (Gaspar and Amaglobeli, 2022).

## 2 Main challenges for EU trade policy

Regardless of remaining a (increasingly lonely) defender of multilateralism and free trade, the EU, too, initially reluctantly, embarked on an increasing number of bilateral and regional international trade agreements. By summer 2021, the EU had summed some 130 trade agreements - in place (77), pending (24) or in the process of being adopted or ratified (24) or being negotiated (5). As a result, up to 40 per cent of EU external trade is governed by bilateral and regional agreements (Blot and Kettunen, 2021).

However, to the extent that preferential trade agreements have moved away from conventional tariff-cutting, becoming deeper over time, their welfare effects are no longer clear-cut. As Fernandes et al. (2021b: 2) put it, the economists' traditional approach to evaluate (preferential) trade agreements, based on the creation of market access, is inadequate to capture the complexity of policy areas that are covered by deep trade agreements.

Economists (and not only) need to take a more differentiated view and account for the fact that specific policy areas and provisions in trade agreements have consequences, not all of them beneficial. A similar point has been emphasized by Rodrik's work, notably that economists have also failed to contribute to a full picture on trade, tending to emphasize gains from trade and not to discuss more complex consequences such as the distribution of benefits and the impact of regulation (Rodrik, 2018).

In parallel to the growth of deep trade agreements, EU trade policy underwent several modifications over the years in support of EU objectives. The Global Europe Strategy (European Commission, 2006) affirmed that EU trade agreements were to complement the EU's growth and jobs strategy (the Lisbon Agenda) through an external dimension. In 2015, EU trade policy was put also at the service of European values and principles such as high social and environmental standards (European Commission, 2015). Still, according to Felbermayr (2016) the EU's more active policy of negotiating bilateral trade agreements became guided by economic objectives rather than by political affinities and objectives. In 2021, the

European Commission (2021) presented its new trade policy strategy dedicated to the European Green Deal (EGD), which aims at reinforcing the EU's capacity to act as a global champion of open, rules-based trade that is sustainable and fair. It includes efforts to reform the WTO, strengthen the EU's regulatory impact and implement and enforce trade agreements, ensuring a level playing field for EU economic actors. In mid-2022, the Commission (2022) presented a communication on a new approach to trade agreements as to promote green and just growth, in which it puts forward how the implementation and enforcement of Trade and Sustainable Development (TSD) chapters of the EU's trade agreements are to be strengthened. TSD chapters had become to be systematically included in recent, modern EU free trade agreements aiming at putting to good use the leverage of trade and investment issues with respect to EU objectives (European Commission, 2018). The new approach is to include the use of trade sanctions if core TSD provisions are breached and is applicable to future negotiations and ongoing ones as appropriate.<sup>3</sup> Existing trade agreements are thus not covered by the upgrading effort.

Unlike what had happened in the case of traditional trade agreements, EU deep trade agreements became politically fraught. The EU used to be able to negotiate and/or conclude (traditional) trade agreements without arousing much public interest or opposition, despite protests against globalization. That changed with the EU-US Trans-Atlantic Trade and Investment Partnership (TTIP) and the EU-Canada Comprehensive Economic and Trade Agreement (CETA). The fact that they were much contested (with investment protection clauses and regulation among the key concerns), crystallized popular concern with the effects of globalization on society and the environment (see Rodrik, 2016).<sup>4</sup> The difficulty to find the necessary consensus among member

states to ensure the ratification of recent deep trade agreements is another factor to be reckoned with, indicating divergent preferences.

Leblond and Viju-Miljusevic (2019) explain that the EU has taken two strands of actions in response to the perceived politicisation of trade. On the one hand, it tried to make trade agreements and negotiations more transparent (for example, the Commission publishes explanatory documents, textual proposals and third-party correspondence and makes results of meetings with stakeholders and policy officials public). On the other hand, it has aimed at making agreements more progressive in order to make free trade more legitimate and politically acceptable in the eyes of European citizens and their concerns, meaning that it seeks to find an adequate balance between barrier-free trade and the right to regulate (environmental protection, labour standards). Those progressive elements include defending and exporting EU regulations and norms, increased transparency and implementing a new framework for screening foreign direct investment.

The approach that the EU takes to global trade is set to define its credibility as a global actor and its soft power. More importantly still, it will impact the (political) sustainability of the European integration project, which has come to incorporate the European Green Deal as one of the pillars of its economic model (Bongardt and Torres, 2022a).<sup>5</sup> Longer-term environmental concerns have for long and consistently been among European citizens' priorities. They should not be alienated in trade in the name of a short-run need to deliver results, whatever results. It is hence important to consider whether EU deep trade agreements incorporate and live up to EU objectives as enshrined in the European Green Deal. In a comparative analysis of the treatment of the environment across the most recent EU trade agreements (final or proposed), Blot and Kettunen (2021) conclude that as yet none is fully compliant with the European Green Deal's objec-

3. The Commission's Communication (2022) replaces the Commission's (2018) non-paper on TSD chapters in EU free trade agreements.

4. The same can be said for the plurilateral Trade in Services Agreement (TiSA). The backlash against globalization became directed against the Union, perceived as prioritizing economics over making sure that economic goals were compatible with social and environmental concerns.

5. In fact, as stressed in the timely encyclical letter on the environment by Pope Francis (2015), there is also a moral obligation (especially by a supranational body that at the time represented over 500 million European citizens) that trade and growth policies be directed at achieving social and environmental sustainability and quality of life.

tives, although some moved in the right direction.<sup>6</sup> Still, Blot (2022) concludes that the new approach on TSD chapters is going in the right direction by setting a path for embedding sustainability in free trade agreements, introducing new measures and mechanisms to ensure that trade delivers sustainable outcomes.

The EU will also have to address the implications of recent geopolitical events and resulting impacts (notably Russia's attack on Ukraine) on globalization patterns. Foreign policy and geopolitics increasingly affect trade relations and indeed the very functioning of the internal market (the example of the EU's and the US's sanctions on Russia; China's boycott of Lithuanian (content) exports after Lithuania allowed Taiwan to open a representative office under its name). It has to come to terms with a reality in which blocs, including allies, put their interests first (including the USA, the latest case being the Inflation Reduction Act (IRA) in late 2022). For the EU it becomes difficult to defend the purity of free trade in response to geopolitics and competitor's industrial policy. As Couvreur et al. (2022) observe, while the practice had not been that pure before, the discourse is being adjusted to a more pragmatic and active stance.

As Lagarde (2022) put it, shifting value systems and shifting alliances are redoing the global map of economic relations, in three ways: prompting shifts from dependence to diversification, from efficiency to security, and from globalisation to regionalisation. These shifts occur at a time when domestic political pressures already appear to be pushing the major powers apart (Frieden, 2022). On the other hand, multilateral cooperation in the areas of climate change, international corporate taxation and sustainable development is a necessary public good for the international economic system to function (Gaspar and Amaglobeli, 2021).

In sum, the challenge facing the EU is hence no less than to find an equilibrium in which external

trade serves also European objectives and values.<sup>7</sup> The issue is whether the Union actively works towards a rules and value based international order, which delivers on EU preferences for quality growth and fairness and which prioritizes the overdue link between environmental sustainability and trade. The EU's self-declared leadership role in combating climate change provides a test case for its resolve. After all, economic growth cannot be sustained over time if the limits of the planet are not accounted for nor is trade sustainable if negative externalities are not priced in or taken care of.

### 3 A qualitative change in EU trade, with repercussions on the European model

At the time when the European Commission embarked on negotiating a new generation of international trade agreements, tariff barriers were already relatively low among WTO members. The fact that those - unlike conventional free trade agreements - aimed at abolishing also non-tariff barriers to trade might hence have seemed merely a logical next step. Yet, moving into doing away non-tariff barriers and therefore into other, domestic policy domains meant a qualitative change from trade into economic integration. In the fully integrated EU, it affects the European model, which aims to make compatible economic growth with high social and environmental standards, and could consolidate or weaken it.

That said, EU trade dynamics have been pushing the Union towards further deepening globalization through an ever-increasing number of deep and comprehensive new generation trade agreements with a growing geographical reach. For the EU, promoting external trade is attractive also as an exit from crises, even more so since trade is mostly an EU competence. While EU trade policy pays tribute to European values and

7. This is what Rodrik (2011: xix) calls the ultimate globalization paradox, namely an incompatibility between globalisation and democratisation: "A thin layer of international rules that leaves substantial room for manoeuvre by national governments is a *better* globalization. It can address globalization's ills while preserving its substantial economic benefits. We need smart globalization, not maximum globalization".

6. See also Blot, Oger and Harrison (2022).

objectives, it is not clear to what extent the European model - central to the EU's identity - is thereby being upheld, not least in light of the complexity of issues involved that would need to be contemplated in trade talks (Bongardt and Torres, 2017). The experience with the CETA, the EU's showcase new generation trade agreement, has underscored the complexity of issue areas and the difficulties associated with ratification of mixed agreements (Bongardt and Torres, 2018; Forum, 2018; Coutinho, 2022; Leblond and Viju-Miljusevic, 2022).

Fears voiced by member states or civil society that deep and comprehensive free trade agreements might not correspond to the preferences or values of society cannot be dismissed out of hand.<sup>8</sup> For instance, this could be the case if there was a race to the bottom of standards through regulatory competition and/or regulation being hollowed out by regulatory cooperation and being beyond democratic reach, or when investor state arbitration came to limit the policy space for future more stringent consumer and environmental protection.

More generally, any discussion on the EU's approach to global trade needs to take into account that external trade and regulation interact and impact the European model. As we have argued elsewhere, it is noteworthy that the EU's new generation of deep trade agreements magnifies the issue of regulation, which is already complex in internal EU trade, in an international trade context (Bongardt and Torres, 2017 and 2020b). In regard to economic integration in the single market, preference convergence determines the possibility of harmonization. Mutual recognition is the default option in the case of divergent preferences. Crucially, its acceptability hinges on sufficient trust among member states that rules will be similar in their effect as well as functioning supervision and enforcement capacity. Systems competition and regulatory arbitrage have at times proven problematic even within the Union since the EU has become more heterogeneous over time and are bound to be a larger issue with respect to third countries, be it Canada, the US, or others.

8. ee De Ville and Siles-Brügge (2017) on the case of the TTIP.

As Duina (2019) puts it, the complex regulatory issues ultimately were seen as putting at stake European values and beliefs, put differently, the European way of life as opposed to the American way of life.

On the upside, international trade agreements could offer the EU an opportunity to condition globalisation in line with societal preferences. Deep trade agreements in particular could be an easier and speedier way to disseminate EU values and principles on the global stage. Yet, there is little evidence that the EU has aimed to be a global rule maker in the past. Young (2015) finds that the EU has not used regulatory coordination to try to export its rules and standards and that it has generally settled for granting equivalence. Unsurprisingly then, critiques persist and centre on fears that those trade agreements could undermine environmental and labour standards and give multinational firms the power to challenge national laws and limit the EU's and member states' regulatory space.

A trade focus may easily lead the EU to overlook the complex and potentially broad consequences for society of the new generation economic and trade agreements. Just recall that the EU only belatedly integrated the environment and the Paris Climate Agreement in recent trade deals (with Japan and South Korea), that it abandoned the climate issue to achieve a trade truce with the US, and that in (the EU-Mercosur agreement), the potential environmental impact (of agricultural trade on the deforestation of the Amazon rainforest) might still derail the ratification of the mixed agreement. It remains to be seen to what extent the TSD chapters align trade with EU principles. As Blot (2022) points out, there is significant progress but some concerns remain with respect to monitoring efficacy, the evolving nature of trade and environmental issues, and the applicability of the enforcement mechanisms.

Still, EU ambitions to condition globalization could also become frustrated at the outset if the bloc were not able to ratify negotiated and signed deep trade agreements. The EU has successfully negotiated many deep trade agreements but ratification has proven more complicated (even CETA, the EU's blueprint for deep trade agreements, is still only provisionally applied, awaiting ratifica-

tion by all member states<sup>9</sup>). In its Singapore decision, the Court of Justice of the European Union had clarified the competence distribution between the EU and the member states. Trade agreements that involve member state competences qualify as mixed agreements and require ratification by all member states and even some regions. The Commission proposal to split trade agreements into two separate ones, in line with competence distribution, is meant to speed up ratification with respect to those issue areas falling under the EU's exclusive competence on trade.

However, while doing so could bolster the EU's credibility as a global player, by itself it does nothing to address the source of unease at the member state level with the erosion of competences, which is ultimately rooted in divergent preferences. And, of course, it presupposes that trade partners agree with this split. Conversely, national and regional veto power might work as checks and balances, obliging the Commission to widen its trade focus to the defence of (a modernized and sustainable) European model. CETA provides an interesting case study.<sup>10</sup>

Assuring the voice of the European model (preferences) in trade-focussed negotiations is a challenge that the EU needs to take up in its new trade dynamics for the sake of its own (environmental, economic and political) sustainability.

9. To date, 10 out of 27 EU member states have not yet ratified CETA (<https://carleton.ca/tradenetwork/research-publications/ceta-ratification-tracker/>)

10. In the case of CETA, contestation by civil society and the refusal by the Belgian region of Wallonia to sign the original agreement resulted in some amendments before CETA could be signed by at the EU-Canada summit. Wallonia obtained a number of assurances, among others on investor-state dispute settlement, ISDS (which was initially not to be replaced by the investment court system, ICS), regulatory cooperation (requiring common agreement by member states), safeguards with respect to genetically modified organisms, a guarantee of the precautionary principle (see Magnette, 2016).

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