

STUDY

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The role of the WTO in EU trade: State of play ahead of MC14



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STUDY

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ABSTRACT

This study examines the WTO's economic and legal value for the European Union and draws policy implications for the European Parliament ahead of MC14. *Economically*, it shows how MFN non-discrimination and bound tariffs reduce transaction costs and uncertainty for EU exporters – especially SMEs – and warns that a two-tier system of bilateral 'deals' would fragment markets and penalise EU high-value trade. It reviews recent quantitative evidence on the welfare and export gains from GATT/WTO Membership and assesses early findings on the Trade Facilitation Agreement, noting that trade-cost reductions abroad can benefit EU firms via supply chains. *Legally*, it maps how WTO disciplines shape EU legislation and how EU FTAs both embed WTO rules ('WTO-plus') and pioneer 'extra-WTO' and sustainability provisions. It also tests the available policy space to design 'buy European' procurement measures consistently with WTO/GPA commitments. *On reform*, the study analyses pragmatic pathways for integrating new plurilaterals, improving disciplines on State interventions (including transparency), addressing non-market practices (subsidies and public bodies), refining Special and differential treatment (SDT), and restoring a functioning dispute settlement system. Key recommendations urge Parliament to champion WTO stability, support integration of plurilaterals, help broaden participation in the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), and ensure credible use of EU enforcement tools against 'appeal into the void' tactics.

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List of abbreviations

AB	Appellate Body
ACP	African, Caribbean and Pacific States
Art.	Article
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CETA	Comprehensive Economic and Trade Agreement
CFREU	Charter of Fundamental Rights of the European Union
CIS	Common Economic Space of the Commonwealth of Independent States
COMEXT	Eurostat COMEXT database
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Commission
EMPA	Enhanced Multilateral Partnership Agreement
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
GSP	General Scheme of Preferences
ICN	International Competition Network
ICT	Information and Communication Technology
ICSID	International Centre for Settlement of Investment Disputes
IFDA	Investment Facilitation for Development Agreement
ILO	International Labour Organization
INTA	European Parliament's Committee on International Trade
IPRs	Intellectual Property Rights
JSI	Joint Study Initiatives
LDC	Least Developed Countries
MC14	14 th WTO Ministerial Conference
Mercosur-iTA	Mercosur interim Trade Agreement
MFN	Most-Favoured-Nation
Mode III	GATS Mode III
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
MSME	Micro, Small and Medium-sized Enterprises
NDC	Nationally Determined Contributions
NTB	Non-Tariff Barriers
OECD	Organisation for Economic Co-operation and Development
PA	Paris Agreement

PTA	Preferential Trade Agreement
RTA	Regional Trade Agreement
SCM	Agreement on Subsidies and Countervailing Measures
SDGs	Sustainable Development Goals
SDR	Services Domestic Regulation
SDT	Special and Differential Treatment
SMEs	Small and Medium Enterprises
SOE	State-Owned Enterprise
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
TEU	Treaty on European Union
TFA	Trade Facilitation Agreement
TFEU	Treaty on the Functioning of the European Union
TFI	Trade Facilitation Indicators
TRAINS	UNCTAD Trade Analysis Information System
TRIPS	Agreement on Trade related Aspects of Intellectual Property
TSD	Trade and Sustainable Development
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
US	United States
USAID	United States Agency for International Development
USMCA	United-States-Mexico-Canada Agreement
USTR	United States Trade Representative
WTO	World Trade Organization

Executive summary

MC14 at a systemic crossroads

The 14th World Trade Organization (WTO) Ministerial Conference (MC14) is taking place at a time of significant structural tension within the multilateral trading system. The Appellate Body's ongoing paralysis, the proliferation of unilateral and discriminatory trade measures, the expansion of industrial policy instruments, and the geopolitical reconfiguration of supply chains have collectively placed sustained pressure on the WTO. Nevertheless, global trade remains deeply interconnected and dependent on predictable rules. For the European Union (EU), whose prosperity depends on open markets, high-value exports and regulatory credibility, the WTO is a foundational pillar of economic stability. In this context, three interrelated dimensions are key for the European Parliament's current deliberations and positioning: (1) The WTO's economic value for the EU, (2) its legal role in shaping EU trade governance; and (3) pragmatic reform pathways warranting political engagement at MC14.

1. Economic value: The MFN principle, gains from WTO Membership and trade facilitation

The *Most Favoured Nation (MFN)* principle and tariff bindings remain central to the stability of EU trade relations. By ensuring non-discrimination and limiting arbitrary tariff increases, these principles reduce transaction costs and legal uncertainty for EU exporters. For firms integrated into global value chains, predictability is as important as tariff levels. SMEs in particular benefit from the simplicity of MFN, as they face higher administrative costs under complex preferential regimes. The increasing use of bilateral 'deals' and selective tariff measures risks creating a de facto two-tier system. Such fragmentation would disproportionately affect EU high-value manufacturing sectors and technology-intensive exports. In this context, uncertainty itself becomes a measurable trade cost.

The MFN principle faces critical pressure following the discriminatory US policy initiated in February 2025 and its December 2025 proposal to put limits to its application. In parallel, the EU's January 2026 submission on WTO reform and Commissioner Šefčovič's remarks advocate linking MFN treatment to reciprocity, fair competition and invite a broader dialogue staying within the rules. While aiming to preserve the multilateral system, this nuanced approach faces significant hurdles, including opposition from developing countries, the complexity of defining objective criteria for market openness, and the strategic risk of inadvertently accelerating global trade fragmentation.

Gains from GATT/WTO Membership are significant. For EU Member States, estimated average gains amount to roughly 5% of manufacturing GDP in welfare terms and over 7% in export expansion. Smaller and more open economies benefit most. However, these figures likely understate long-term gains, as earlier liberalisation phases and dynamic productivity effects are only partially captured.

The *Trade Facilitation Agreement (TFA)* is an example of how the WTO can address administrative trade costs, particularly in developing countries. Transparency, advance rulings and digital customs procedures are especially relevant for SMEs. Full implementation is essential for realising long-term efficiency gains.

2. Legal architecture: The WTO as a Structural Framework for EU trade policy and law

WTO rules are deeply embedded in EU trade law. The core instruments — anti-dumping, anti-subsidy and safeguard measures as well as provisions on regulatory barriers to trade — are based on WTO disciplines. This legal foundation strengthens the credibility of EU measures and reduces

their exposure to retaliatory action. The WTO therefore functions as both an external constraint and a structural reference point for EU trade governance.

EU free trade agreements (FTAs) operate within the WTO framework and rely on its exception clauses. At the same time, they extend commitments through deepening WTO disciplines in key areas such as intellectual property rights, addressing matters outside the WTO rulebook such as digital trade, competition, state-owned enterprises, energy and raw materials and by adding sustainability chapters reflecting EU constitutional values. Therefore, the WTO and EU FTAs are mutually reinforcing: multilateral rules provide stability, while FTAs serve as platforms for innovation and rule development.

As the case study on proposed 'buy European' clauses indicate, the WTO framework, and to a lesser degree also the Government Procurement Agreement (GPA) and FTAs offer quite some policy space particularly in view of strategic sectors, where the security exception may apply.

3. MC14 reform pathways: Priorities for political engagement

The credibility and relevance of the WTO depend on its capacity to adapt. MC14 offers an opportunity to advance pragmatic reforms in four interlinked areas.

1. *Plurilateral agreements* have become a means of making progress in areas such as digital trade and investment facilitation. A structured pathway for integrating such agreements into the WTO framework, while preserving transparency and openness to accession, would reconcile flexibility with multilateral legitimacy.

2. *Strengthening transparency and addressing industrial policies* Incomplete notifications, particularly regarding subsidies and the role of public bodies, undermine trust. Enhancing transparency disciplines is a prerequisite for effective monitoring and enforcement. Clarifying concepts relevant to industrial policies would contribute to a more level playing field without undermining the WTO's core architecture.

3. *Refining Special and differential treatment (SDT)*: The current approach to SDT, based largely on self-designation, has generated increasing tension. A more differentiated, targeted, needs- and evidence- based framework could improve legitimacy and effectiveness. Reform in this area requires careful calibration to avoid systemic deadlock.

4. A functioning *dispute settlement system* is central to enforceability. The paralysis of the Appellate Body has undermined confidence in the system and encouraged 'appeal into the void' tactics. The Multi-Party Interim Appeal Arbitration Arrangement (MPIA) provides continuity, but cannot substitute for a permanent solution. Restoring a fully operational, two-tier dispute settlement system remains a core EU objective.

Conclusion and recommendations

For the European Union, the WTO provides legal certainty, reduces transaction costs, and underpins both legislative coherence and external trade strategy. Empirical evidence confirms there are substantial economic gains, while legal disciplines structure EU policy choices. Therefore, defending and modernising the WTO is a strategic necessity. In this context, the following priorities warrant particular attention from the European Parliament:

1. Championing WTO stability and its core principles, including MFN, non-discrimination and tariff bindings, as the foundations of EU competitiveness.
2. Supporting the structured integration of plurilateral agreements within the WTO framework, reconciling flexibility with multilateral legitimacy.

3. Advocating strengthened disciplines on State interventions including transparency, particularly with regard to subsidies and public bodies, as a prerequisite for a level playing field.
4. Promoting a balanced refinement of Special and differential treatment, based on objective differentiation, while safeguarding support for the least developed countries.
5. Prioritising the restoration of a fully functioning dispute settlement system, including broadening participation in interim mechanisms such as the MPIA, and ensure credible responses to 'appeal into the void' tactics.
6. Ensuring that EU trade and industrial policies remain WTO-consistent to safeguard reciprocal market access and reinforce EU credibility as a rules-based actor.

1 Introduction

The world trade order is currently under severe strain. The United States (US) is endangering it by pursuing bilateral trade policies and 'deals', by adopting policies that undermine the core principles of the World Trade Organization (WTO), and by not engaging in negotiations on WTO reform or on the re-establishment of its dispute settlement system. In response, the WTO and its Members have launched a new reform initiative. The 14th WTO Ministerial Conference (MC14), which is due to take place in Cameroon in March, will play a pivotal role in this process.

The European Union is a major supporter of the WTO. The European Parliament, together with other parliamentary bodies, has long been committed to the WTO, its work and reform efforts.

This study will first examine the importance of the WTO and the international trade regime for the EU and its businesses. It will therefore begin by examining the core element of the WTO's trade regime: the most-favoured-nation principle and its significance for European businesses, particularly small and medium-sized enterprises. Next, it will consider the consequences of a two-tier system of world trade, in which the most-favoured-nation principle would apply between all WTO Members, while the US would conclude special 'deals' with selected partners that do not comply with this principle.

Subsequently, the current economic gains from the GATT/WTO system will be examined, as will the advantages of the WTO Agreement on Trade Facilitation.

In addition to these economic aspects, the WTO has a clear influence on the legal system of the EU and vice versa. With regard to the EU's trade policy, the key question is how the WTO's legal framework influences the EU's free trade agreements, and whether the EU goes beyond this with its partners. Finally, the role of WTO rules will be illustrated using the example of a current EU trade issue, namely the question of 'buy European' elements in public procurement.

Based on the WTO's significance for the EU, as assessed from economic and legal perspectives, this paper will analyse key issues and topics in the current reform debate with a view to making concrete recommendations. The analysis was supported through the findings from a round of 19 semi-structured interviews with experts, representatives of institutional actors, and key stakeholders to better understand whether the recent developments in international trade (for example, the aggressive tariff policy adopted by the US last year or China's declaration on renouncing the Special and differential treatment benefits) have reshaped the WTO Members' positions. The first issue to be discussed will be how to better integrate plurilateral initiatives and agreements into the WTO system, starting with a description of the EU's ambitions. Secondly, proposals for reforming decision-making in the WTO will be considered. This will be followed by an examination of the level playing field issue, particularly with regard to subsidies and the role of state-owned enterprises. Next, the classification of developing countries and the Special and differential treatment associated with this classification will be examined. The analysis will conclude with proposals for reforming the WTO dispute settlement system. Finally, the study's findings and conclusions will be summarised together with the recommendations.

2 EU gains from WTO: MFN, non-MFN bilateralism and Trade Facilitation

2.1 Advantages of MFN

The MFN principle, enshrined in Article I of the General Agreement on Tariffs and Trade (GATT), is a fundamental pillar of the rules-based multilateral trading system managed by the World Trade Organization (WTO).^{1,2} This principle mandates that WTO Members must immediately and unconditionally extend any advantage, privilege or immunity – such as reduced tariffs or streamlined administrative procedures – granted to one trading partner to all other WTO Members for like products and services. It is fundamentally a non-discriminatory trade policy, ensuring equal trading terms among Members rather than exclusive bilateral privileges.

The MFN principle acts as an institutionalised restraint on protectionism. If a country chooses to impose new or higher tariffs (where the existing tariff is not bound or is below the bound level), the MFN rule dictates that these tariffs must be applied uniformly to all WTO Members. This necessity for universal application forces domestic policymakers to internalise the full political and economic costs of protectionism, as it affects a broad range of trading partners, including friendly nations and potentially domestic firms reliant on imported inputs. This generalised application makes selective, punitive and discriminatory measures more difficult to impose, thereby promoting trade creation and generally supporting the objective of free trade.

According to WTO data, over 80 % of global trade in goods is conducted on MFN terms,³ highlighting its role in supporting global trade. MFN is reinforced by supporting rules and mechanisms. The principle guarantees non-discrimination, that is, uniform tariffs across all WTO Members subject to MFN, while tariff binding ensures the absence of unexpected tariff increases. Lastly, the WTO dispute settlement mechanism, in simple terms, provides solutions to cases where the above rules are broken. Therefore, for businesses engaged in cross-border activity, MFN treatment ensures that competitive conditions are not subject to sudden, discriminatory shifts, thereby enabling complex strategic planning, long-term investment decisions, and the smooth operation of day-to-day global operations.⁴ Moreover, national treatment is another complementary measure that prohibits preferential treatment of domestic firms (that is, domestic barriers in addition to tariffs), ensuring international competition.

While specific exemptions exist, such as preferential or regional trade agreements (customs unions, free trade agreements, economic partnership agreements) and instruments like the Generalised System of Preferences (GSP), these are structured exceptions that operate outside the basic MFN obligation. The MFN clauses are also found, inter alia, in the General Agreement on

¹ For the WTO legal texts, see https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

² WTO, *Understanding the WTO – principles of the trading system*. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm.

³ Gonciarz, T. and Verbeet, T. (2025). It has to be said that arriving at an accurate figure on the share of MFN is challenging as information on whether the exporters are using the preferences offered by FTAs or decide to export to a given country under the MFN conditions is not easily available. The quoted article uses: “takes into account trade remedies, including anti-dumping and countervailing duties, additional duties in the US and China, and the utilization of trade preferences by incorporating preferential tariffs and bilateral trade flows for 184 economies”.

⁴ ICC, (2025), *Why the most-favoured-nation principle matters for business*, <https://iccwbo.org/wp-content/uploads/sites/3/2025/03/2025-ICC-Why-the-most-favoured-nation-principle-matters-for-business.pdf>.

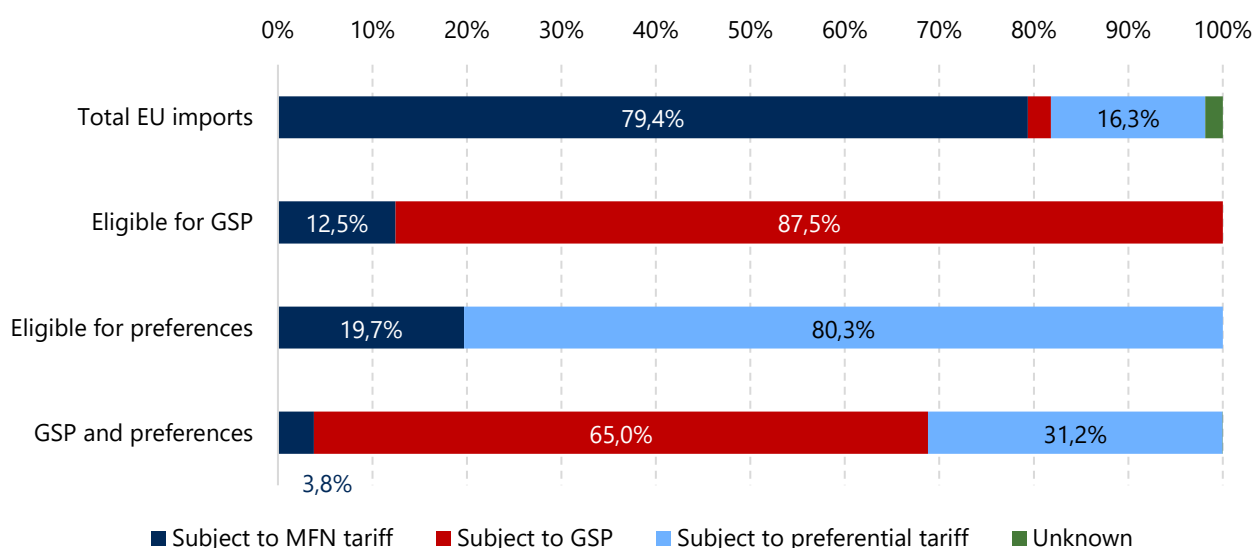
Trade in Services (GATS⁵), agreements on technical barriers to trade (TBT⁶) and sanitary and phytosanitary measures (SPS⁷), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

There are several other advantages of MFN, which also stem from the WTO negotiation procedures, which take place between large countries and coalitions of large and small countries. These multilateral negotiations allow smaller countries with limited bargaining power to ‘free-ride’ on tariff concessions negotiated by large players that would not be available in the absence of MFN. At a more micro level, MFN can also limit the ability of industrial lobbies to secure protection against selected partners. In principle, MFN also reduces trade diversion, as uniform tariffs make it more likely that cost-efficient producers will be the main exporters in a given market. Even in preferential agreements, if MFN tariffs are low, the agreements are less likely to cause trade diversion, as the margin of preference is not substantial.

2.2 Significance of MFN for EU businesses, including SMEs

The prevalence of MFN in EU imports is illustrated in Figure 1. It shows that in 2024, almost 80 % of extra-EU imports were subject to MFN, 16.3 % to preferences under preferential trading agreements, and a small portion to the GSP, which grants access to developing countries. While the share of MFN in EU imports is substantial, these numbers illustrate the simplicity of the MFN tariff. Notably, EU trade partners eligible for preferences may choose to export under MFN due to its simplicity. Both GSP and free trade agreements have, inter alia, rules of origin that set minimum thresholds for value added originating directly from the exporting country, and complex methods for calculating this content in value chains.

Figure 1. Shares of EU imports subject to different tariff regimes (2024)



Source: own elaboration based on Eurostat COMEXT data. The rows in the figure correspond to aggregates of imports grouped according to eligibility for preferential treatment. For example, “Eligible for preferences” includes imports from

⁵ WTO, (1994), GATS General Agreement on Trade in Services. https://www.wto.org/english/docs_e/legal_e/downloads_e/GATS_en.pdf.

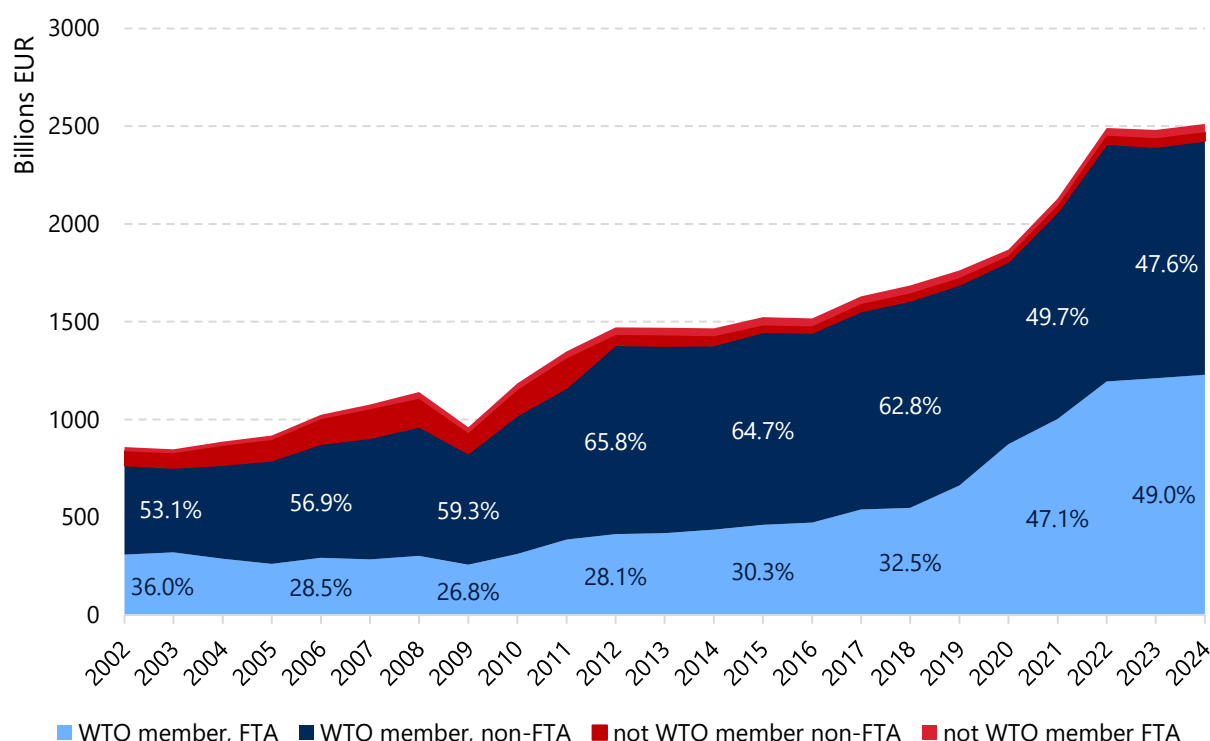
⁶ WTO, (1994), Agreement on Technical Barriers to Trade. https://www.wto.org/english/docs_e/legal_e/downloads_e/TBT_en.pdf.

⁷ WTO, (1994), The WTO Agreement on the Application of Sanitary and Phytosanitary Measures. https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

countries with preferential trade agreements with the EU. The percentages show the shares of the actual tariff regimes under which the goods were imported.

While in this study we are more interested in the situation of EU exporters than importers, the detailed data available only for EU imports show how MFN can facilitate trade even when other preferences are available. The considerations outlined above also apply to EU businesses that depend on intermediate goods imported from third countries, where MFN provides consistent, non-discriminatory rules of access to the EU market.

Figure 2. Structure of extra-EU exports, by partner



Source: own elaboration based on Eurostat COMEXT data. WTO Member, FTA: importer is a member of a trade agreement with the EU (FTA refers to any kind of preferential trade agreement) and a WTO Member; WTO Member, non-FTA: importer is a WTO Member but not a party to a trade agreement with the EU; not WTO Member, non-FTA: exports to non-Members of the WTO which are also not in a trade agreement with the EU.

Turning to EU exporters, trade with non-WTO Members in 2024 accounted for only 3.4 % of overall extra-EU exports. The bulk of exports (96.6 % in 2024) went to WTO Member economies, and in recent years roughly half of this has been with countries with which the EU has preferential trading agreements while the other half has been subject to MFN treatment. In 2024, MFN treatment can be approximated to account for at least 47.6 % of EU exports. However, the exact numbers are difficult to calculate, as some exports with third countries may be subject to special customs procedures, and, more importantly, some of the trade covered by regional trade agreements may be subject to MFN treatment for the reasons explained before. Thus, it can reasonably be assumed that around half of the EU's exports are subject to MFN. The benefits listed in this and previous sections therefore apply to a large part of EU exporters and importers. Anything that can significantly alter the functioning of the global trade order will likely have a significant economic impact on both groups of enterprises.

2.3 MFN versus the two-tier global trading system

The global trading system is currently facing a fundamental challenge with the emergence of a two-tier structure, where a substantial share of trade between the US and its chosen partners occurs outside the MFN framework, while MFN continues to govern the majority of trade flows between other WTO Members. This development stems from the rejection of trade rules and the implementation of unilateral tariff actions, which constitute a direct attack on the core WTO principles of non-discrimination and the stability of tariff bindings.⁸

This fragmentation drives a significant structural shift: trade is increasingly determined by *geopolitical distance* rather than classical economic principles of efficiency and comparative advantage.⁹ This is not uniform across all trade; research indicates that high-technology goods are substantially more sensitive to geopolitical considerations than lower-tech products, because for the latter it is easier to find close substitutes within countries' own geopolitical groups.¹⁰ Given that the EU's competitive advantage increasingly lies in advanced manufacturing and high-tech exports, this geopolitical segmentation poses a profound risk to the EU economy's future trajectory. Diversification of EU's export destinations is a crucial element of lowering the risk of large disruptions to trade due to geopolitical events.

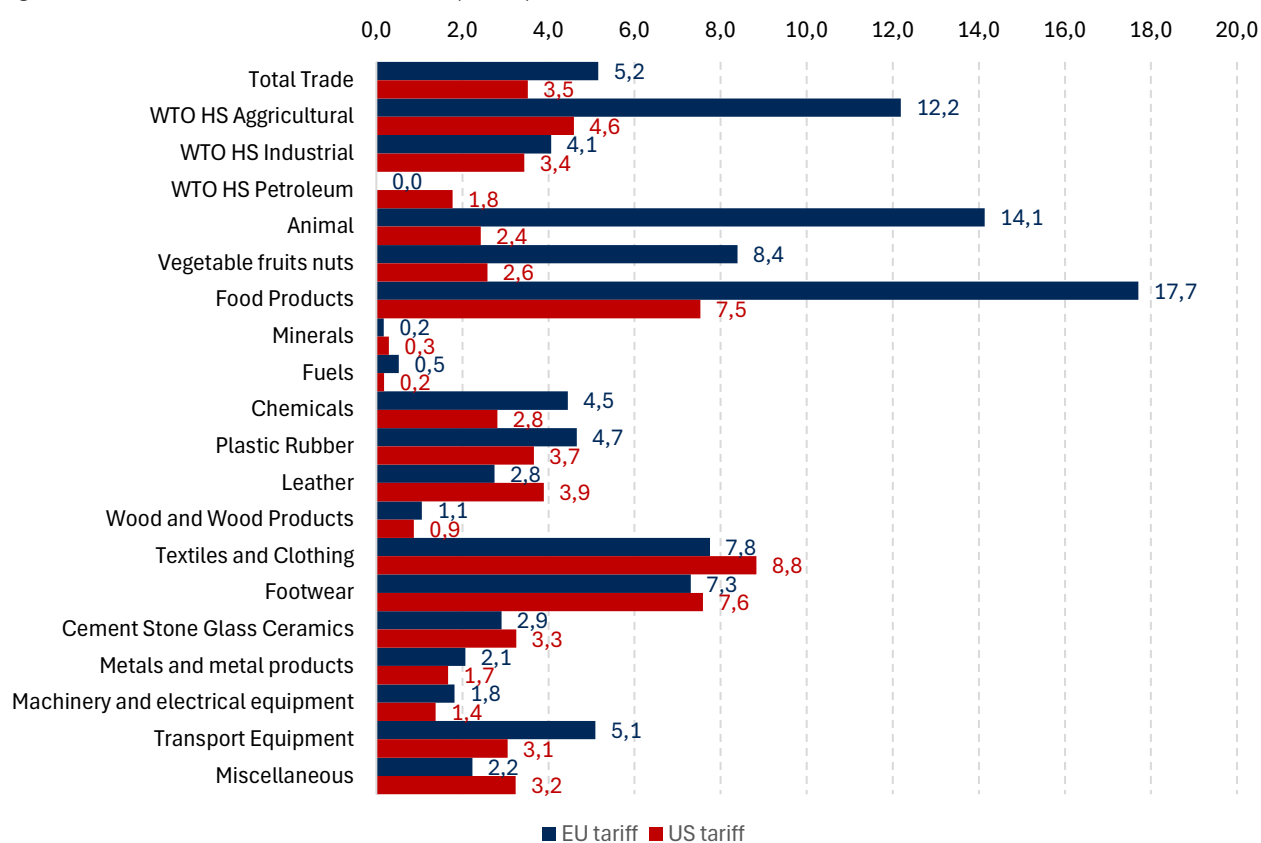
Furthermore, the erosion of MFN leads to profound trade policy uncertainty. The unpredictability that arises from countries being unable to provide consistent trade rules – turning strategic planning an extremely difficult undertaking – is more disruptive to businesses than tariffs themselves. The US 'reciprocal tariff'¹¹ threats and the numerous changes to the announced tariff policy over the course of 2025 show the degree of uncertainty that arises when even a single major country decides to ignore WTO rules.

⁸ See, e.g. Bercero, I. G. (2025).

⁹ Gopinath, G. et al. (2025).

¹⁰ See Airaudo, F. et al. (2025).

¹¹ 'reciprocal' here reflects the term used by the US administration, not to be confused with the actual meaning of reciprocity that has little to do with the US notion in this case.

Figure 3. Bilateral EU–US MFN tariffs (2023)

Source: UNCTAD TRAINS database; simple averages; ad-valorem equivalents.

The economic benefit of MFN is most clearly demonstrated by quantifying the tariff cost differences that arise when the principle is bypassed. Decades of WTO/GATT liberalisation have significantly reduced the baseline MFN tariffs across developed economies. For exports from the EU to the US market, the average MFN tariff is currently around 3.5 %. Similarly, the EU's overall MFN average tariff for all goods stands at 5.2 %.

This low MFN baseline establishes a high degree of efficiency and optimisation in global supply chains. However, this optimisation makes the EU economy acutely vulnerable to unilateral, non-MFN tariff actions. While countries can negotiate exceptions through FTAs, they cannot unilaterally impose selective tariffs that discriminate among WTO Members without specific legal justification (such as trade remedies or WTO-compliant exceptions). Non-MFN actions, typically framed under domestic legal provisions such as US Section 232 (national security) or Section 301 (unfair trade practices), ignore these WTO disciplines, leading to sudden and highly selective tariff hikes that exponentially increase costs relative to the existing low MFN rate.

US 'reciprocal' tariffs are based on a simplistic formula that sets the new tariff for each exporting country equal to the ratio of the US trade deficit to that country's exports. This scheme violates the MFN principle, as tariffs are exporter-specific by definition, and it also raises tariffs above bound levels. Bound tariffs cover almost all US imports and averaged 4.8 % in 2023.¹² Therefore, under WTO rules, there was little room to increase tariffs. Even under subsequent US agreements with major partners, such as the EU, United Kingdom, Japan and others, the tariffs introduced were at least 10 percentage points higher than those in the MFN tariff schedule. In specific sectors (cars

¹² WTO, (2023), *WT/TPR/S/434/Rev.1: Trade Policy Review – Report by the Secretariat – Revision*.

and selected metals), the tariffs introduced are more uniform across countries (though they still vary) and are set at a high level.

The EU–US trade deal sets the baseline tariff rate (unless an exception applies) at 15 % ad valorem, unless the existing MFN tariff is higher. The same tariffs apply to Japan, Switzerland and South Korea under similar agreements. The agreements vary. For Indonesia, Vietnam, the Philippines and Pakistan, the baseline rate is set at 19 %, while for the UK it is set at 10 %. US tariffs are set at 10 % for Brazil and most of Latin America, 15 % for Turkey, 30 % for South Africa, and 35 % for Serbia. However, the level of tariffs and their differentiation are currently significantly lower than those announced the first half of 2025. Some uncertainty remains about the level of tariffs applied to China, where negotiations are ongoing, and about the threatened 'reciprocal rate', which was 35 %. Moreover, Canada and Mexico, which are parties to the US–Mexico–Canada Agreement (USMCA), benefit from essentially tariff-free trade with the US. USMCA exports to the US require certificates of origin for the goods in either Mexico or Canada, which may be difficult to obtain, and it is therefore difficult to determine the extent to which imports from those two countries are tariff-free.

As far as sectoral tariffs are concerned, the US tariff on cars and car parts from the EU is 15 %. The same conditions apply to Japan and South Korea, while the tariff on products originating in the UK is 10 % plus the MFN duty. As far as the most important sectoral tariffs are concerned, copper (with some exceptions for aerospace products), aluminium and steel from all countries are subject to 50 % tariffs, except for the UK, where the tariffs are 'only' 25 %.¹³

Obtaining up-to-date information on current tariff levels is difficult, and the US tariff schedules have become very complicated; however, there is no doubt that they entail extra costs for exporters. There are two main consequences of the US tariffs: 1) they reduce overall US imports of a given product; and 2) they favour the suppliers of products with lower tariffs.

For example, EU wine producers face a 15 % tariff, whereas those from Chile, Argentina and Australia are subject to a 10 % tariff, and the tariff for South Africa is 30 %. The MFN ad valorem equivalent US tariff on wine was 3.5 % in 2023. Therefore, not only will there be a significant increase in the price of imported wine reflecting the increase in the tariff, which will reduce overall demand for wine imports, but also the EU's and South Africa's share of the US market is likely going to decrease in favour of countries subject to lower tariffs.

The situation is slightly simpler for car manufacturers. The existing MFN tariff on transport equipment was on average 3.1 %, so the implementation of a 15 % tariff will have a downward effect on cars imported from the EU, South Korea and Japan, which are the major car and car parts manufacturers. However, car parts and cars originating from the UK face a lower tariff, and UK exports may therefore be expected to be less affected less, while domestic supply in the US may increase. In general, the effects on producer prices and export volumes depend on the overall market power of EU products in the US market, with a higher tariff burden placed on EU producers supplying goods that are easily replaceable by goods originating in the US and countries subject to lower tariffs.

In the longer term, of course there is a great degree of uncertainty towards 1) the future status of the US trade policy and 2) more importantly, the status of MFN in global trade. Concerning the US trade policy, keeping the tariffs at the current level is likely to make firms rethink their supply chain policies. In particular, multinationals will begin replicating their production facilities in the EU and the US instead of relying on trade in parts, component and finished products. In one sense this is

¹³ See <https://www.tradecomplianceresourcehub.com/2026/01/02/trump-2-0-tariff-tracker/>.

the goal of US trade policy, i.e., relocation of production and increased investment in the USA by both domestic and foreign firms. However, this will likely dismantle the global value chains as we know them, create inefficiencies and reduce economies of scale, in particular in the advanced manufacturing sectors. This in turn, cancels the benefits from task-based comparative advantages¹⁴ that are largely impossible to assess ex-ante – but it is clear that in terms of physical output, the involved trading partners will be able to produce less in total in real terms and the net effects per country are ambiguous, depending on the structure and levels of the bilateral tariffs. From the point of view of the EU, exports to the US will unequivocally fall over the long term with no apparent possibilities to replace that loss with exports to other countries. All in all, the US is the largest single economy trading with the EU with which the EU has a sizeable trade surplus.

Looking more globally, the effects of completely dismantling the MFN as a rule are difficult to assess, as the level of tariffs and other trade barriers that can stem from such an arrangement is unknown. Luckily for the EU, as shown above, almost 50 % of its exports are subject to preferential trade agreements, which dampens the blow of increased uncertainty. However, unclear rules and the possibility of a maze of tariff arrangements and export restrictions can also introduce barriers to the import of essential supplies. Moreover, in the absence of WTO rules, partners would no longer be required to liberalize substantially all trade among themselves as a requirement to establish a free trade agreement. Thus, they could exclude a large part of trade from the FTA's coverage. While MFN is certainly not perfect, existing rules seem better than no rules at all. It is also rather unclear whether multilateral negotiations over a new set of rules are actually possible in the current political and economic environment.

In its reform paper¹⁵ (WT/GC/W/984) submitted on December 15, 2025, the US launched a fundamental challenge to the MFN principle, arguing that it was 'designed for an era of deepening convergence among trading partners' and that 'that era has passed'. The US contends that the MFN principle now impedes welfare-enhancing liberalisation by forcing countries to extend tariff reductions broadly, even to trading partners that the US considers to have 'economic systems that are fundamentally incompatible with WTO rules'. Specifically, the US argues that 'MFN impedes welfare-enhancing liberalisation while pushing Members to engage in one venue (the WTO) and attempt to develop a one-size-fits-all approach' – meaning if Country A lowers a tariff for Country B reciprocally, both must lower those tariffs for all countries unless specific exceptions apply.

The EU position on WTO reform, tabled on January 21, 2026, is more subtle and includes a significant evolution in its approach to MFN that partially converges with, while also differs fundamentally from, the US position. It sets out a vision for a 'substantially transformed WTO' centred on three pillars: predictability, fairness, and flexibility. The proposal advocates for a discussion on the role of the MFN and potentially some conditionality of access to MFN depending on the degree of openness or the size of commitments¹⁶. Moreover, the EU further proposes that 'reform discussions should reflect on how the rules can better accommodate more agile adjustments of tariff levels in light of changing realities and threats to certain sectors or value chains', which represents a rather significant shift from the EU supporting the MFN and existing WTO rules in the past.

Contrary to the US stance, the EU position envisages working within a reformed rules-based trade order. However, implementing this approach will face foreseeable challenges that may threaten to undermine the proposal even before substantive work can begin. In particular, smaller and

¹⁴ See, e.g., Raei, F. et al (2019).

¹⁵ WTO, (2025), *WT/GC/W/984 Communication from the United States on WTO reform*.

¹⁶ Šeščović M (2026), 'The WTO Needs an Overhaul', *Financial Times*, 21 January <https://www.ft.com/content/2f5e1b1c-07f8-4316-ab40-fd4e1482df9f>.

developing countries that benefit from the MFN approach (free riders) would certainly oppose it, making any conditionality framework appear as an attempt by major powers to exclude them from the trade benefits they currently receive unconditionally. Second, defining objective criteria for linking MFN treatment to market openness, fair competition, and transparency seems largely impossible, particularly without discriminating against actual violators and without reaching consensus on what these principles mean for major players in the WTO. Third, the proposal's inherent ambiguity about whether it seeks to condition MFN benefits or allow for selective tariff increases creates the aforementioned legal uncertainty that could trigger the very fragmentation the EU claims to prevent. Fourth, the EU confronts a strategic dilemma: while attempting to preserve multilateralism by proposing WTO-based reform criteria, it simultaneously legitimises the US position that MFN is obsolete, potentially accelerating rather than preventing the system's collapse into a power-based, bilateral arrangement. Similar arguments were also raised in an exchange during the INTA Committee debate preceding the MC14, along with recognition of MFN as a founding principle of WTO and the possibility of any changes thereof leading to the 'opening of the Pandora's box'¹⁷.

2.4 Economic gains from GATT/WTO

The empirical literature on GATT/WTO trade effects expanded rapidly in the early 2000s, after the conclusion of the GATT Uruguay Round, the most ambitious round of multilateral negotiations ever held (and the last successful one). However, Andrew Rose's influential 2004 empirical study published in a top economic journal concluded that GATT/WTO Membership had no statistically significant effect on bilateral trade flows. This finding contradicted decades of policy assertions.¹⁸ The study, which employed a gravity model¹⁹ – the workhorse methodology for trade policy analysis – clearly revealed the non-significance of the GATT effect across numerous robustness checks conducted by the author. The paper ends with a conclusion that, from the current perspective, is rather pessimistic: *"Perhaps the GATT has not had much of an effect on trade ... but the WTO will"*.

The paper's results were highly controversial and sparked debate. For example, two papers from that time show positive bilateral trade effects of GATT, in particular for developing countries, with the outcomes depending on the type of membership and the type of commitments made.^{20,21} The growth and investment effects of accession to GATT/WTO were found to be conditional on the commitments made and the level of reforms required for accession.²²

There have been methodological advances in trade policy analysis since the early 2000s. In particular, the theoretical underpinnings of the gravity model have evolved, and with them the theory-consistent methods of estimation. Anderson and van Wincoop²³ established that gravity equations grounded in economic theory must capture 'multilateral resistance' terms – meaning the barriers each country faces vis-à-vis the rest of the world. Failing that, the results of gravity estimations can be biased. New estimation techniques have been developed, enabling more

¹⁷ See Horseman C. (2026), 'Lange: EU risks 'opening Pandora's box' on MFN rethink', Borderlex, <https://borderlex.net/2026/01/27/lange-eu-risks-opening-pandoras-box-on-mfn-rethink/>.

¹⁸ Rose, A. K. (2004).

¹⁹ The gravity model of trade predicts that bilateral trade flows between two countries are directly proportional to their economic size (GDP) and inversely proportional to the distance between them, analogous to Newton's law of gravity. It is a robust empirical tool used to estimate trade impacts, showing that larger, closer economies trade more, while trade costs reduce volume. The concept, usually attributed to Isard and Peck in 1954 and operationalised by Tinbergen in 1962 spurred over half a century of theoretical research and methodological improvements. The advantages of the model include low data requirements and a very good fit with statistical data on international trade.

²⁰ Tomz, M. et al. (2007).

²¹ Subramanian, A. and Wei, S.-J. (2007).

²² Tang, M.-K. and Wei, S.-J. (2009).

²³ Anderson, J. E. and van Wincoop, E. (2003).

precise estimation of the gravity model²⁴. Gravity-based general equilibrium simulation models have also been designed to estimate the welfare effects of trade liberalisation.²⁵ The current state of the art in gravity models allows precise estimation of the trade effects of bilateral agreements, as well as the impact of multilateral, non-discriminatory trade policy.²⁶

More recent literature is not only based on new methods but also on more recently available data series. While GATT-focused literature was largely inconclusive, the latest literature can also account for the effects of the WTO's substantial expansion. In particular, the estimates take into account that WTO Membership requires acceding countries to implement much more significant reforms. This affects not only the acceding countries themselves but also gains to incumbent Members from expanding the Organisation's reach. Therefore, even in the absence of post-Uruguay liberalisation rounds, the snowball effects of the GATT and the WTO can continue.

Two recent studies analyse the effects of GATT/WTO Membership on trade and welfare using a theory-consistent empirical framework and a large data set covering 186 countries over the period 1980–2016, which includes intra-national trade flows, a novelty required by state-of-the-art models. Larch et al. demonstrate that including domestic trade flows alongside international trade yields unbiased estimates of trade that are 140 % higher between GATT/WTO Members and approximately 72 % higher between Members and non-Members. In the EU context, it is worth noting that the paper does not show any significant effects of WTO Membership on trade between high-income countries. In contrast, the estimates for trade between high-income and low-income countries are less than half of those for trade between low-income countries, and one-third when one of the partners is not a WTO Member. These results seem to reflect the fact that high-income countries have historically been the core of GATT and that liberalisation between them progressed before the period of analysis, whereas in low-income countries, WTO accession involved large-scale liberalisation.²⁷

A complementary paper looks at the impact of the WTO²⁸ by providing a counterfactual analysis relative to the last year of the sample (2016), that is, comparing it to a scenario without WTO Membership. The underlying regressions show that the impacts of the WTO in the baseline model are similar to those obtained in the previous study. However, taking into account the effects of globalisation, the estimated average effect of WTO Membership falls by roughly half. The paper provides country-specific general equilibrium counterfactual estimates of the trade effects and welfare effects of WTO Membership, which are considerably heterogeneous. This is also the case for EU Member States with smaller open economies gaining more than others. Moreover, since many of the Central and Eastern European Members (Romania, Bulgaria, Lithuania, Latvia and Estonia) of the EU joined the GATT/WTO during the study sample, their effect is significant, as it combines their accession to the EU with the effects of WTO expansion on their exports. The simple average result for the EU-27 is 5.1 % of GDP coming from manufacturing in extra-economic welfare and 7.4 % of extra-exports.

²⁴ Silva, J. M. C. S. and Tenreyro, S. (2006).

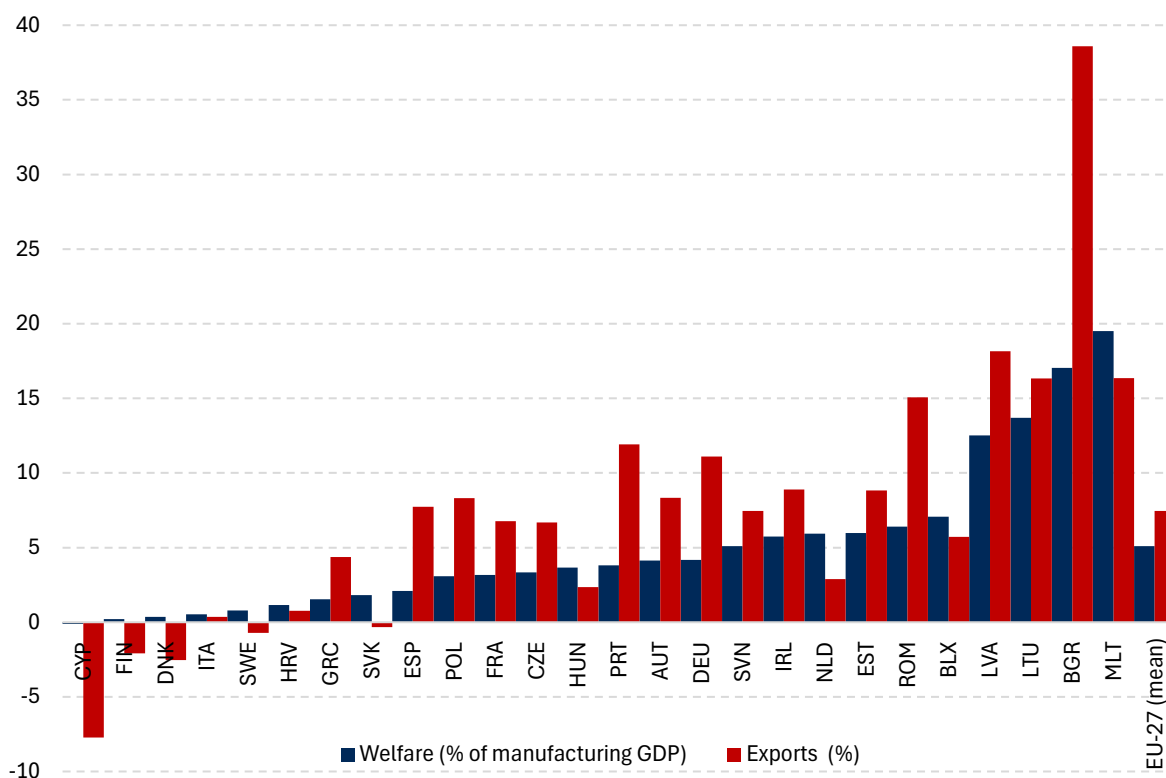
²⁵ See, e.g. Caliendo, L. and Parro, F. (2015).

²⁶ See: Yotov, Y. et al. (2016).

²⁷ Larch, M. et al. (2025).

²⁸ Felbermayr, G. et al. (2019).

Figure 4. Counterfactual effects of the WTO on welfare and exports



Source: own elaboration based on Felbermayr, G., Larch, M., Yotov, Y. V., and Yalcin, E. (2019). The WTO at 25: Assessing the Economic Value of the Rules-Based Global Trading System. The EU-27 mean is a simple average of country-specific estimates. Welfare is measured by the so-called equivalent variation (an idea close to the real value of consumption), expressed in percent of GDP/value added generated in manufacturing. Such measure rather than the percentage of total GDP is used by the authors because shares of manufacturing differ across countries and WTO mostly applies to trade in goods, which are primarily products of the manufacturing sector.

The above number could be regarded as a very rough estimate of the costs of non-WTO Membership. However, one should bear in mind that the pre-2004 EU Member States were part of the GATT system before 1980, some of them since its inception. As a result, the pre-1980 effects of trade liberalisation are missing from these estimates and may be underestimated, as they do not include the 30 years of trade liberalisation. These gains are impossible to estimate, as doing so would require constructing a counterfactual scenario for the global economy from 1948. Additionally, the estimates do not take into account the gains derived from the EU’s active use of the dispute settlement mechanism over that period,²⁹ cost savings resulting from WTO rules shaping the global value chains, or other productivity improvements associated with trade liberalisation. Nor do they reflect the fact that the WTO provides the framework for the EU’s numerous preferential trading agreements ensuring wide coverage of duty-free trade.

2.5 Current evidence on the benefits of the WTO Trade Facilitation Agreement

The WTO TFA, which entered into force in February 2017 after ratification by two-thirds of WTO Members, represents a multilateral effort to reduce non-tariff barriers (NTBs). The TFA’s mandate targets administrative barriers, including unnecessary inspections, excessive documentation

²⁹ WTO dispute settlement and case law project. (n.d.). *Global Governance Programme*, from <https://globalgovernanceprogramme.eu.eu/project/wto-dispute-settlement-and-case-law-project-2/>.

requirements, manual processes and a lack of coordination between border authorities, that impede international trade.

The TFA holds immense potential for EU SMEs because it addresses trade friction points that disproportionately affect smaller businesses. Trade-related transaction costs are notoriously highest in developing and least developed economies, and these costs affect SMEs most acutely due to their typical lack of capacity to comply with complex, manual, or opaque rules. In fact, the improved transparency and information availability mandated by the TFA can benefit small exporters more than their large counterparts.³⁰ A recent study³¹ shows that red tape affects SMEs and large firms differently. There are specific mechanisms in the TFA that provide high value to SMEs:

- The ability to seek an *advance ruling* on the classification of their goods provides SMEs with clarification and advice from border agencies, which is crucial for predictable pricing.
- Measures supporting the global transition from paper-based to digitalised trade, often through National Single Windows as well as other forms of *automation*, offer SMEs a pathway to internationalisation at lower cost and greater speed, enabling their integration into global value chains.
- The requirement for clearance criteria to be *public, transparent and easily understandable* ensures that SMEs can navigate new export markets without relying on expensive, large-scale customs consultants.³²

The TFA serves as a reinforcement mechanism for MFN by ensuring not only that tariffs are non-discriminatory, but also that the administrative and procedural ease of trade is applied universally. Ex-ante modelling conducted by the Organisation for Economic Co-operation and Development (OECD) using its Trade Facilitation Indicators (TFIs) estimated that the full implementation of the TFA could reduce trade costs by between 10.4 % and 11.8 % in OECD countries and by considerably more in middle- and low-income countries.³³ This magnitude of cost reduction is non-negligible for the efficiency of global supply chains. The expected macroeconomic effects were concentrated in the least developed and developing countries, while they were considerably less pronounced in high-income economies, including the EU. For example, according to a study by USAID, the growth of exports was expected to be faster due to the TFA by 2.2–2.3 % and economic growth by 0.05–0.07 %, ³⁴ with a large increase in bilateral trade in intermediate goods between developed and developing countries. In the WTO World Trade Report 2015,³⁵ the additional effects include trade diversification and a positive impact on foreign direct investment. The simulations presented show a further 0.25 % of GDP growth in developed countries compared to 0.9 % in developing countries in an ambitious scenario of full implementation, but in a more conservative scenario, 0.5 % vs 0.25 % respectively. The differences across studies stem from different simulation scenarios and from uncertainty about the initial levels of tariff equivalents for non-tariff barriers across countries. However, as red tape and NTBs may be higher in developing countries, optimistic scenarios envisage large-scale reductions in trade costs, leading to a significant asymmetry in expected

³⁰ ITC, (2018), *Supporting SMEs Through Trade Facilitation Reforms. Toolkit for Policymakers*.

³¹ Fontagné, L. et al. (2020).

³² Ibidem, see also: Barreiros, L. et al. (2025).

³³ OECD, (2018), *Trade Facilitation and the Global Economy*.

³⁴ Minor, P. et al. (2017).

³⁵ WTO, (2015), *World Trade Report 2015: Speeding Up Trade: Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement*.

effects. Such asymmetry is also present in other ex-post and ex-ante studies of trade facilitation measures.³⁶

The WTO TFA since its entry into force has followed a differentiated implementation schedule based on Members' development status and capacity, with developed countries committing to immediate implementation while developing countries and least-developed countries (LDCs) set their own timetables across three categories: Category A (immediate implementation upon entry into force), Category B (implementation after a transitional period), and Category C (implementation after a transitional period and receipt of technical assistance and capacity-building support). In January 2026, the implementation level of all commitments was 87.2 %: Category A was 62.3 %, including the immediate implementation upon entry into force by developed countries (23.0 %); Category B was 13.8 %; and Category C was 11.2 %. Implementation progress has been substantial, with 153 of 164 WTO Members (93.3 %) having ratified the TFA by 2020, and 57 countries achieving full implementation and 33 Members between 80 % and 99 % of commitments in January 2026. In 2025 and 2026, the implementation of the Category C is set to progress further. The five most common TFA measures requiring implementation assistance in 2025–26 are establishing single windows for trader document submission, ensuring border agency cooperation (Article 8), establishing risk management systems, establishing test procedures (Article 5.3), and providing authorised operator benefits, all of which demand substantial institutional capacity and technical support.³⁷

Given the gradual implementation of the agreement, its ratifications, and its entry into force in 2017, solid ex post evidence of its trade effects is somewhat scarce, as the effects are yet to materialise, particularly for developing and least developed countries, where implementation is spread over time. Moreover, the COVID-19 pandemic during the period of agreement implementation makes modelling overlapping trade policies slightly more difficult and prone to inaccuracy.

However, Beverelli et al.³⁸ use an econometric model to evaluate the trade effects and welfare effects of TFA. They show that TFA has a positive impact on trade between developing country partners and LDCs that have made TFA commitments, particularly in agriculture. For developed countries and the European continent, the macroeconomic effects are negligible.³⁹ Trade effects are statistically significant only for mining products and for exports to the Commonwealth of Independent States (CIS).

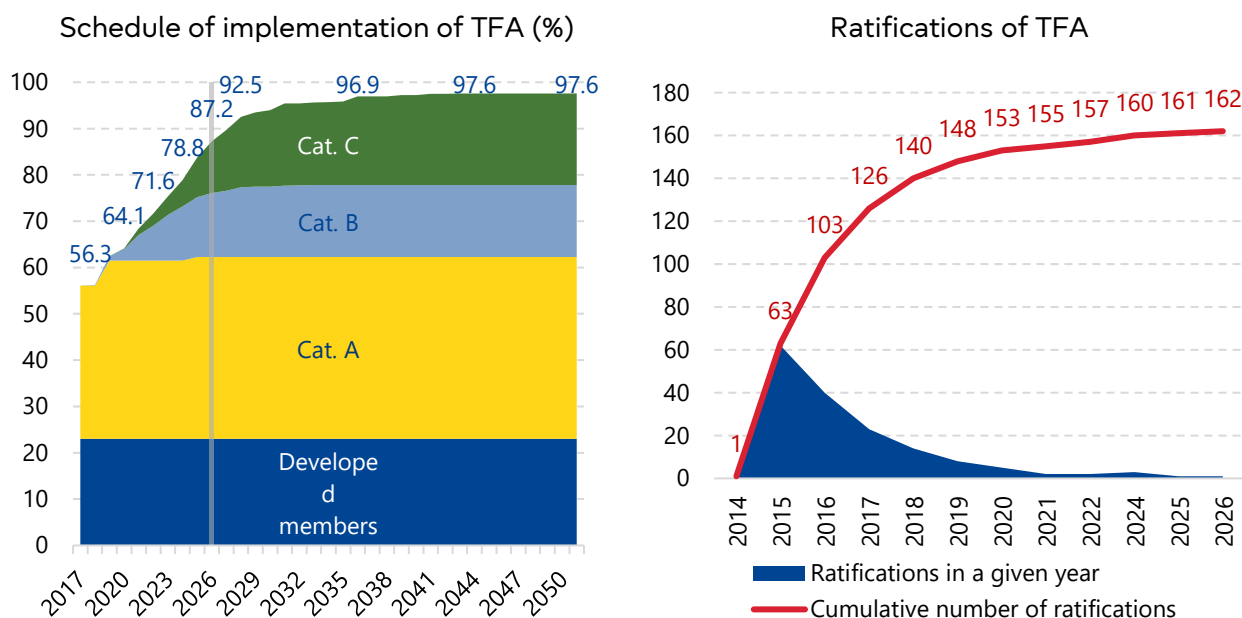
³⁶ See *ibidem*, p. 80 for a summary of results.

³⁷ All information in this paragraph is based on the WTO Trade Facilitation Database, <https://tfadatabase.org/en/implementation/technical-assistance-tracker>.

³⁸ Beverelli, C. et al. (2023).

³⁹ Not statistically different from zero.

Figure 5. Implementation and ratification of the WTO Trade Facilitation Agreement



Source: Own elaboration on WTO Trade Facilitation Database. Category A (immediate implementation upon entry into force), Category B (implementation after a transitional period), and Category C (implementation after a transitional period and receipt of technical assistance and capacity-building support).

Kumari⁴⁰ analyses the changes in OECD trade facilitation indicators and the impact of TFA ratification on bilateral trade. As far as trade facilitation indicators are concerned, the results show the importance of trade community involvement (private sector, traders), advance rulings, fees, automation of formalities, border cooperation and governance for trade in agricultural goods. In manufacturing, trade facilitation measures are associated with higher trade in the food, textile, wood and mineral sectors. However, the ex post effects of ratification of the TFA are generally insignificant, and it may have been too early for the study to capture the full effects of the trade agreement.

To sum up, the two studies above show that while trade facilitation generally boosts international trade, it is particularly critical in developing countries, where trade barriers are high. The main impact is on agricultural exports and on the least developed countries, which rely most on them. The differences in the results underscore the role of commitments and the actual implementation of trade facilitation measures, as these appear to have a more tangible impact on trade. From the EU's point of view, the economic effects of the TFA seem so far to be moderate. Still, the long-term effects have yet to materialise through value chain restructuring, trade diversification, and, most importantly, the full implementation of TFA in the signatory countries.

3 WTO rules: How they shape the EU's rulebook

In order to understand the significance of the WTO and its reform for the EU and its trade policy, it is important to understand how the WTO shapes the EU's rulebook.

This influence has been clear from the outset: the six founding Members of the Treaty of Rome (1957) were Members of GATT, the predecessor of the WTO; they established a customs union in line with its provisions and even used parts of the GATT text as a template in certain areas.

⁴⁰ Kumari, M. (2024).

Furthermore, much of the EU's current legislation is based on WTO rules, as exemplified by the Union's legislation on anti-dumping,⁴¹ subsidies⁴² and safeguard measures.⁴³

However, as will become clear, the WTO's role is particularly relevant in the context of EU free trade agreements, which are one of the key elements of EU trade policy. This is because the parties to such agreements do not merely follow the WTO rulebook; they also develop additional rules of their own, thereby contributing to the international rule-making of world trade alongside the WTO. In the case of the EU, this has been coined the Brussels effect.⁴⁴

Finally, the relevance of the WTO rulebook will be briefly assessed in light of a recent policy debate within the EU on 'buy European' clauses and related initiatives.

3.1 EU FTAs and the WTO

Among the myriad economic and trade agreements, free trade agreements play a special role because of their breadth and depth: they seek to regulate trade relations between the parties comprehensively and at a fundamental level and are closely linked to the WTO. As for EU trade policy and its position with regard to the WTO, the question arises to what extent FTAs follow WTO rules and where they go beyond them. Conclusions can also be drawn about the relationship between the WTO and the EU as a player in such agreements.

3.1.1 EU FTAs in overview

Free trade agreements are a powerful instrument of EU trade policy. Since 2006, the Union has built up a network of 44 agreements with 76 parties.⁴⁵ Its scope is unique worldwide, even though China has been pursuing a similar strategy for some time.⁴⁶ The content, structure and scope of EU FTAs have changed over time and depend on economic and trade relevance, the level of development, existing trade flows and strategic factors. Nevertheless, the agreements have much in common in their structure and the topics covered. They are often classified according to the degree of WTO influence or the extent to which they reflect the parties' own initiative. From this perspective, the various components of EU FTAs are often categorised as follows:

- All EU FTAs contain sections that strictly follow WTO guidelines. These are all provisions that serve to establish a customs union or free trade area and thus allow for an exception to the most-favoured-nation principle pursuant to Article XXIV GATT and Article V GATS.
- The parties to EU FTAs also agree on a wide range of additional rules that supplement those of the WTO, facilitate their implementation, clarify the terms and raise standards. These rules are often referred to as 'WTO-plus'⁴⁷ to make it clear that the parties are creating their own additional obligations that go beyond WTO rules.

⁴¹ Regulation (EU) 2016/1036 of the European Parliament and the Council, OJ L 176/21, from <https://eur-lex.europa.eu/eli/reg/2016/1036/oj/eng>.

⁴² Regulation (EU) 2022/2560 of the European Parliament and the Council, OJ L 330/1, from <https://eur-lex.europa.eu/eli/reg/2022/2560/oj>.

⁴³ Regulation (EU) 2015/478 of the European Parliament and the Council, OJ L 83/16, from <https://eur-lex.europa.eu/eli/reg/2015/478/oj>, which serves as the legal basis for further EU safeguard measures such as the safeguards regarding the imports of certain steel products implemented in 2018, see Commission Implementing Regulation (EU) 2018/1013, OJ L 181/39, from https://eur-lex.europa.eu/eli/reg_impl/2018/1013/oj/eng.

⁴⁴ See Bradford, A. (2020).

⁴⁵ See information provided by the European Commission, https://commission.europa.eu/topics/trade_en.

⁴⁶ Stoll, P.-T., (2025) at p. 16. China has 23 free trade agreements and is currently negotiating 13 new agreements or updates, see <https://fta.mofcom.gov.cn/english/index.shtml>.

⁴⁷ See WTO, (2011), *World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-Existence to Coherence*, p. 11.

- The parties' own contributions become even clearer in a series of chapters dealing with subjects for which there are no WTO rules, or at least no explicit and meaningful ones. These sections are often referred to as 'WTO-extra'.⁴⁸
- Finally, the parties to EU FTAs regularly agree on commitments that relate to goals and values beyond the agenda of traditional trade policy; these are referred to as 'non-trade values'.

The content of the EU agreement with New Zealand⁴⁹ may serve as an example of the current structure and composition of EU FTAs, as it clearly illustrates their advanced and current status. The following overview lists the individual chapters of the agreement with their numbers and titles and groups them into columns according to the typology just explained.

Table 1. The Structure of EU FTAs: The chapters of the EU-New Zealand Agreement

Establishment	WTO plus	Beyond WTO	Non-trade
1. Initial Provisions			
2. National Treatment and Market Access For Goods			
3. Rules of Origin and Origin Procedures			
4. Customs and Trade Facilitation			
	5. Trade Remedies		
	6. Sanitary and Phytosanitary Measures		
		7. Sustainable Food Systems	
			8. Animal Welfare
	9. Technical Barriers to Trade		
		10. Trade in Services and Investment	
		11. Capital Movements, Payments and Transfers	
		12. Digital Trade	
		13. Energy and Raw Materials	
	14. Public Procurement		
		15. Competition Policy	
	16. Subsidies		
		17. State-Owned Enterprises	
	18. Intellectual Property		
			19. Trade and Sustainable Development
			20. Māori Trade and Economic Cooperation
		21. Small and Medium-Sized Enterprises	
		22. Good Regulatory Practices and Regulatory Cooperation	
23. Transparency			
24. Institutional Provisions			
25. Exceptions and General Provisions			
26. Dispute Settlement			
27. Final Provisions			

Source: own elaboration based on the agreement.

3.1.2 The WTO framework for EU FTAs

While the WTO serves as the core institution and rulebook of the multilateral trade system, it does not prevent its Members from concluding agreements among themselves, as long as they properly observe their WTO obligations. Not only do EU FTAs conform with this requirement; they

⁴⁸ See *ibidem* p. 11.

⁴⁹ EU-New Zealand Free Trade Agreement, OJ L 2024/866, from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400866 - page=1.

incorporate important parts of WTO agreements and explicitly commit parties to follow the entire WTO rulebook, thereby making violations subject to FTA dispute settlement.⁵⁰

However, in one significant point, FTAs depart from a fundamental WTO principle. FTAs aim to establish a customs union or free trade area in order to liberalise trade among the parties by way of reciprocal concessions on an exclusive basis. This 'preference' runs counter to the principle of most-favoured-nation treatment, which is a core element of all relevant WTO agreements and secures non-discrimination as a fundamental principle of the entire WTO system, as explained Section 1 from an economic point of view. Yet Articles XXIV GATT (trade in goods) and V GATS (services) allow for the creation of customs unions and free trade areas, on the condition that they liberalise 'substantially all trade'⁵¹ among parties within a reasonable period of time. While such exemption clauses allow a wide range of FTAs in the context of regional integration – as is the case with the EU itself – and even beyond, they are also intended to protect the world trade order from undue fragmentation and its Members against piecemeal and discriminatory arrangements, by requiring partners to liberalise 'substantially all trade'.⁵² Currently, 628 FTAs have been notified to the WTO. The WTO Committee on Regional Trade Agreements is responsible for ensuring that FTAs meet the requirements of the exception clause. However, its effectiveness is rightly called into question, one of the main reasons being that the committee takes decisions by consensus. A third of Members of the WTO can appeal against an FTA through the WTO dispute settlement on the basis of the most-favoured-nation principle if they claim that the FTA disadvantages them without the conditions for exemption being met.⁵³ Overall, WTO rules on free trade agreements are designed to allow scope for preferences while at the same time avoiding excessive fragmentation and unequal treatment in the world trade order.

EU FTAs respond to this WTO requirement by establishing customs unions⁵⁴ or, much more frequently, free trade areas. They contain reciprocal commitments to achieve the liberalisation of substantially all trade. The respective parts of FTAs contain general, but sometimes also very specific, market access commitments and deadlines for their implementation. In order to manage this kind of preferential trade, the origin of goods is defined in detail. EU agreements contain rules or origin determining imports that are covered by an FTA and its preferences. The WTO provides only a few guidelines for such 'preferential' rules of origin.⁵⁵ These are addressed in the short Annex II to the WTO Agreement on Rules of Origin, which, incidentally, explicitly concerns only 'non-preferential' rules of origin. This Annex confines itself mainly to issues of adoption, publication, application, legal review and notification, and contains barely any substantive standards.

The rules of origin in EU FTAs are complex, specific and standardised. They contain general as well as product-specific rules. A defining feature of EU FTAs is cumulation,⁵⁶ which allows goods to benefit from preferential treatment even if they have not been manufactured entirely in the partner country, but incorporate value added from third countries. This can effectively support regional

⁵⁰ See, for instance Art. 1.1 (2), 2.2, 2.10 (1), 2.11 (1), 2.7 (4), 21.23 Mercosur-iTA; Stoll P.-T. (2020), at 273 et seq.

⁵¹ See Tevini, A. (2011), para. 26.

⁵² See, Cumulative Notifications of RTAs in force (as of 11.03.2026), from <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>.

⁵³ E.g. WTO, (1999), *WT/DS34/R: Turkey – Restrictions on Imports of Textile and Clothing Products (Report of the Panel)*.

⁵⁴ The format of a customs union has been used rarely. The EU-Turkey association agreement is probably the most significant example, Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995, OJ L 35/1 of 13 February 1996.

⁵⁵ See Hirsch, M. (2011).

⁵⁶ See <https://trade.ec.europa.eu/access-to-markets/en/content/cumulation-0>; World Customs Organization, (2024), *Study on Accumulation/Cumulation*.

integration and supply chains. From a procedural perspective, EU FTAs largely allow for self-certification by exporters.⁵⁷

Overall, rules of origin are much more than the technicalities of customs clearance. The EU uses them as an important trade policy instrument to support regional integration and supply chains. This benefits EU companies in their imports and exports, especially SMEs, which are often particularly dependent on supply chains and for which the administrative burden plays a critical role.

In addition to such substantive rules, the basic framework of EU FTAs also includes institutional and procedural elements that enable a customs union or a free trade area to function. Each of the EU's FTAs, as well as most other FTAs, contains a dispute settlement system, designed along the lines of the WTO dispute settlement. In addition, FTAs establish a number of institutions to oversee the implementation, monitoring, and further development of the agreement, which closely mirror the institutional and organisational structure of the WTO; these are frequently referred to as 'joint committees' or simply 'committees'.

3.1.3 Beyond WTO rules: 'WTO-plus'

As they aim to substantially liberalise all trade among the parties in order to meet the requirements of the exception clauses, FTAs already surpass the level of commitment under the WTO, which provides for much less ambitious market access. The rules governing how FTAs function, such as rules of origin, can also be described as going beyond WTO rules.

The same is true for numerous other provisions, which can be said to strive for a 'better WTO' and are sometimes referred to as 'WTO-plus', since they aim to clarify, facilitate and improve the implementation and application of WTO rules, while also raising standards. Table 2 lists the most important EU FTA provisions that supplement existing WTO rules and disciplines and explains how they serve the EU's interests.

Table 2. WTO-plus components of EU FTAs

WTO standard	WTO-plus element	EU benefit
Tariffs on goods GATT: bound tariffs	<ul style="list-style-type: none"> • (almost complete) elimination • standstill clauses⁵⁸ 	<ul style="list-style-type: none"> • EU exporters, importers, SMEs, EU consumers
Rules of origin GATT Agreement	<ul style="list-style-type: none"> • preferential rules of origin 	<ul style="list-style-type: none"> • EU producers (with supply chains) and prevention of trade circumvention
Services trade liberalisation GATS concessions: positive list	<ul style="list-style-type: none"> • broader coverage⁵⁹ • negative list⁶⁰ • establishment 	<ul style="list-style-type: none"> • EU exporters, importers and consumers
Customs & trade facilitation TFA	<ul style="list-style-type: none"> • detailed advance rulings • e-customs • post-clearance audit • transparency • simplification 	<ul style="list-style-type: none"> • EU exporters, importers and consumers, particularly SMEs

⁵⁷ Hallak I. (2021).

⁵⁸ A 'standstill clause' commits the parties of an agreement to keeping the level of trade liberalisation at least on the level it was at the time of the conclusion of the agreement, e.g. EU – Canada Comprehensive Economic and Trade Agreement (CETA), OJ L 11/23, 14.01.2017, Art. 8.15, from https://eur-lex.europa.eu/eli/agree_internation/2017/37/oj/eng.

⁵⁹ E.g. digital services, e-commerce, financial technology and telecommunication.

⁶⁰ All services are liberalised unless explicitly excluded from the agreement.

Sanitary and phytosanitary measures SPS	<ul style="list-style-type: none"> • clarification, procedures • reference to international standards • equivalence recognition of SPS measures 	<ul style="list-style-type: none"> • EU businesses, exporters, importers, consumers
Technical standards TBT	<ul style="list-style-type: none"> • reference to international standards • mutual recognition of conformity assessments 	<ul style="list-style-type: none"> • EU businesses, exporters, importers and consumers
Public procurement GPA	<ul style="list-style-type: none"> • exceed GPA commitments 	<ul style="list-style-type: none"> • broader and deeper access for EU business in foreign procurement procedures⁶¹
Patents TRIPs	<ul style="list-style-type: none"> • extended protection for pharmaceutical and plant protection innovations 	<ul style="list-style-type: none"> • EU inventors, creators, industry and exporters
geographical indications TRIPs	<ul style="list-style-type: none"> • list approach⁶² 	<ul style="list-style-type: none"> • EU agricultural and food exporters

Source: elaboration by author.

3.1.4 'Extra-WTO': Trade rules outside the existing WTO rulebook

EU FTAs address topics that to date have not been covered by the WTO legal order at all or in any meaningful way. This is true for two long-standing issues, namely competition policy and controls, and the protection of foreign investors and their investments, including the related dispute settlement procedure. As their inclusion in the WTO rulebook has proved impossible, these topics have been addressed in a number of bilateral agreements. EU FTAs contain their own rules regarding these matters or refer to the relevant agreements. On the other hand, such 'extra-WTO' components of EU FTAs address issues that reflect more recent developments in international trade as well as new priorities, for which international debate and rulemaking are only just getting started. Such chapters often envisage close cooperation among parties. In a pioneering vein, EU FTAs often call on the parties to promote these topics in plurilateral or multilateral fora, in particular within the WTO. The most relevant 'extra-WTO' components of EU FTAs are listed in Table 3 below. 'Occurrence' indicates whether an entry is a long-standing element of FTAs or was introduced only recently. The table also contains short descriptions, adds context, and indicates the benefits for the EU and the actors concerned.

Table 3. Extra-WTO components of EU FTAs

Element	Occurrence	Description	Context: WTO or other international context and remarks	Benefit
Protection of foreign investors	<ul style="list-style-type: none"> • standard, frequently in separated agreement 	<ul style="list-style-type: none"> • standard of protection • Investor-state arbitration • investment court system⁶³ 	<ul style="list-style-type: none"> • ICSID, UNCITRAL 	<ul style="list-style-type: none"> • Protection of EU investors abroad

⁶¹ E.g. More sectors and entities covered, and lower thresholds lead to improved market access for EU businesses.

⁶² While there is no automatic recognition of foreign geographic indications under the WTO framework, free trade agreements can ensure mutual recognition or a list of mutually recognized geographical indications.

⁶³ EU-Indonesia, EU-Vietnam, EU-Singapore, EU-Mexico, EU-Chile, EU-Canada (CETA).

Competition	<ul style="list-style-type: none"> • long-standing standard 	<ul style="list-style-type: none"> • cooperation, • reference to pre-existing agreements 	<ul style="list-style-type: none"> • EU initiatives in the WTO failed • Several bilateral agreements EU or Member States⁶⁴ • ICN 	<ul style="list-style-type: none"> • Enforcement of EU competition rules in other jurisdictions
Digital trade	<ul style="list-style-type: none"> • emerging 	<ul style="list-style-type: none"> • free flow of data • no server / data localisation • protection of personal data and privacy 	<ul style="list-style-type: none"> • proposed WTO agreement on electronic commerce⁶⁵, • other EU arrangements with third states 	<ul style="list-style-type: none"> • protection of EU consumers, dissemination of EU standards
Energy and critical raw materials	<ul style="list-style-type: none"> • emerging 	<ul style="list-style-type: none"> • bans on export restrictions, equal access to infrastructure • prohibition of price discrimination 	<ul style="list-style-type: none"> • EU energy and resource partnerships 	<ul style="list-style-type: none"> • EU energy security and supply chain security
State-owned enterprises	<ul style="list-style-type: none"> • emerging 	<ul style="list-style-type: none"> • non-discriminatory treatment • commercial consideration • reference to OECD guidelines⁶⁶ 	<ul style="list-style-type: none"> • some marginal references in the WTO agreement • OECD standards⁶⁷ 	<ul style="list-style-type: none"> • level playing field
Sustainable food systems	<ul style="list-style-type: none"> • emerging 	<ul style="list-style-type: none"> • cooperation 	<ul style="list-style-type: none"> • Included in UN SDGs • Food safety only partially covered in WTO SPS 	<ul style="list-style-type: none"> • dissemination of EU standards
regulatory cooperation	<ul style="list-style-type: none"> • Emerging in advanced agreements (CETA) • Sometimes limited: Mercosur-ITA: ecommerce 	<ul style="list-style-type: none"> • joint development of new standards 	<ul style="list-style-type: none"> • international standard organizations 	<ul style="list-style-type: none"> • EU businesses

Source: elaboration by author.

3.1.5 Non-trade values and sustainable development

EU FTAs go far beyond adding to WTO disciplines ('WTO-plus') or setting out new and innovative rules on trade and economic issues ('WTO-extra'). They also pursue objectives outside the traditional pattern of trade policy and regulation, which may be called 'non-trade' values and often reflect the EU's constitutional values. Ever since the EU–South Korea agreement concluded in

⁶⁴ Other than the competition chapters in EU FTA's the EU also established a number of cooperation agreements concerning competition law (e.g. with the U.S., Canada, South Korea, Japan and Switzerland), see https://competition-policy.ec.europa.eu/international-relations/legislation/dedicated-competition-cooperation-agreements_en.

⁶⁵ WTO, (2024), *INF/ECOM/87: Joint Statement Initiative on Electronic Commerce*.

⁶⁶ OECD, (2024), *OECD-Doc. C/MIN(2024)13/FINAL.: Guidelines on Corporate Governance of State-Owned Enterprises*.

⁶⁷ For instance the OECD Guidelines on the Corporate Governance of State-Owned Enterprises, see https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/06/oecd-guidelines-on-corporate-governance-of-state-owned-enterprises-2024_68fa05cd/18a24f43-en.pdf.

2009,⁶⁸ EU FTAs have included a chapter on trade and sustainable development.⁶⁹ TSD chapters aim to secure labour standards and environmental protection. The chapters refer to international labour standards – mostly of the International Labour Organization (ILO) – and multilateral environmental agreements. While initially focusing on preventing trade distortions caused by differing levels of protection, TSD chapters increasingly broaden the responsibilities of parties beyond a strict trade focus. Initially merely referring to multilateral environmental agreements, they now also include specific commitments, as reflected through reference to Nationally Determined Contributions (NDCs) in the context of climate change. More recently, chapters on trade and gender or animal welfare have been introduced. Table 4 provides an overview of the relevant elements, their occurrence and context, and how they serve EU priorities and interests.

Table 4. Non-trade elements of EU FTAs

Element	Occurrence	Description	Context	Benefit
human rights	<ul style="list-style-type: none"> • standard • sometimes contained in separate partnership agreements 	<ul style="list-style-type: none"> • observance of human rights and democracy defined as an essential element of the agreement 	<ul style="list-style-type: none"> • international human rights instruments 	<ul style="list-style-type: none"> • implementation of the EU's values, Art. 2, 6, 21 TEU and CFREU
labour standards	<ul style="list-style-type: none"> • all TSD chapters as first introduced in EU-South Korea, 2010 	<ul style="list-style-type: none"> • prevention of 'social dumping' • reference to ILO standards 	<ul style="list-style-type: none"> • ILO standards and complaint procedure core labour standards 	<ul style="list-style-type: none"> • Art. 3(5) TEU: free and fair trade • EU Charters on social rights • level playing field • EU consumer interest
environmental protection	<ul style="list-style-type: none"> • ditto 	<ul style="list-style-type: none"> • prevention of 'environmental dumping' • reference to MEAs 	<ul style="list-style-type: none"> • MEAs 	<ul style="list-style-type: none"> • Art. 3 TEU
climate change	<ul style="list-style-type: none"> • mentioned already in EU-South Korea 2010 	<ul style="list-style-type: none"> • additional reference to NDCs (EU-NZ) • participation in UNFCCC and PA as an essential element (EMPA) 	<ul style="list-style-type: none"> • UNFCCC and PA • SDGs 	<ul style="list-style-type: none"> • Art. 11 TFEU, EU priority
animal welfare	<ul style="list-style-type: none"> • Emerging: EU-NZ 2024 	<ul style="list-style-type: none"> • definition, cooperation • tariff quota conditionality⁷⁰ 	<ul style="list-style-type: none"> • EU initiatives to establish an international standard 	<ul style="list-style-type: none"> • Level playing field • EU value • EU consumer interest
trade and gender	<ul style="list-style-type: none"> • ditto 	<ul style="list-style-type: none"> • Participation of women in trade and trade policy 	<ul style="list-style-type: none"> • CEDAW 	<ul style="list-style-type: none"> • EU value

Source: elaboration by author.

⁶⁸ EU-South Korea Free Trade Agreement, OJ L 127/1, 14.05.2011, from

http://publications.europa.eu/resource/ellar/a2fb2aa6-c85d-4223-9880-403cc5c1daa2.0022.03/DOC_1.

⁶⁹ See European Commission, COM(2022) 409 final, *The power of trade partnerships: together for green and just economic growth*, 22.06.2022.

⁷⁰ For a more detailed analysis of the example EU-Mercosur, see: Rudloff, B. et al. (2025)

[https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754477/EXPO_STU\(2025\)754477_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754477/EXPO_STU(2025)754477_EN.pdf)

3.1.6 Conclusion: The WTO and EU FTAs as mutually supportive and reinforcing

The relationship between the WTO and its rules and the EU and its FTAs is complex. As far as the role of the WTO is concerned, it is not limited to setting a few rules for FTAs. The WTO rules also serve as a kind of blueprint, as reflected particularly in the 'WTO-plus' elements, since in a number of areas they conceptually follow the structure and logic of the WTO legal order.

The WTO creates an environment of rules-based trade relations that ensure non-discrimination and a certain degree of market access, and in this way forms the basis for the EU's much more ambitious FTAs. Without this foundation, which is still accepted by most players today, trade relations would be much more volatile, fragmented and dominated by shifting power relations. In such a scenario, the EU would have to set completely different priorities for its trade policy and strive to secure the most basic elements of trade relations without being able to assert the more far-reaching priorities.

Conversely, the EU's FTAs also contribute to a stable world trade order with the WTO at its centre, which is particularly relevant in view of the current threat. EU FTAs oblige the parties to comply with WTO rules and incorporate several WTO rules. Thus, to some extent, the WTO rulebook can also be enforced through dispute settlement in FTAs between the parties. With extensive 'WTO-plus' rules, FTAs also promote the implementation of the underlying WTO rules.

This is not only true with regard to the relationship between FTA parties. While the core FTA chapters, which serve to establish a customs union or a free trade area, are strictly reciprocal and 'preferential', most other chapters are not, and they have important spillover effects that may benefit third country Members of the WTO.⁷¹

In addition, FTAs play a pioneering role by addressing issues for which there is still no consensus within the WTO, that reflect new and changing aspects of international trade realities, or that are not yet part of the international trade policy agenda. These rules often spread to other EU FTAs or FTAs between other partners and serve as a starting point for initiatives at the plurilateral level within or outside the WTO. In sum, the WTO and EU FTAs are mutually supportive and form part of a hybrid system of world trade governance. Under ideal conditions, the multilateral system of the WTO would be preferable to bilateral agreements. Under the actual conditions, and in view of the frequent lack of consensus and increasing tensions in world trade, FTAs that promote the WTO are not a stumbling block but a stepping stone for the world trade system. The EU would therefore be well advised to conclude further agreements of this kind.

3.2 A case study: 'Buy European' and WTO rules

In the context of a larger EU policy shift introduced by the trade strategy calling for strategic autonomy, and continued by the Union's economic security strategy, competitiveness plays a key role.⁷² The Commission has published a Competitiveness Compass for the EU⁷³ and legislation is currently underway to strengthen the EU's competitiveness by providing for a "European preference" or a "buy European" approach in various contexts. In this vein, the Commission has announced legislation on public procurement and proposed an Industrial Accelerator Act.⁷⁴ Any such legislative measure must comply with the EU's international commitments under multilateral

⁷¹ Pauwelyn, J. (2017); Stoll, P.-T. (2020) at 270 et seq; and Stoll, P.-T. (2025), 11 et seq.

⁷² This was highlighted by Mario Draghi's report, *The Future of European Competitiveness*, published on 9 September 2024, see Draghi M. (2024a) and (2024b).

⁷³ European Commission, COM(2025) 30 final, *A Competitiveness Compass for the EU*, 29.01.2025, p. 14.

⁷⁴ Proposal for a regulation establishing a framework of measures for the acceleration of industrial capacity and decarbonisation in strategic sectors, COM(2026) 100 final, Brussels, 4.3.2026

or plurilateral WTO rules or EU trade agreements. Generally, these rules require imported goods and, to some extent, services from foreign providers⁷⁵ to be treated no less favourably than domestic ones, but they also contain a variety of exceptions.

Regarding **public procurement**, the Commission could propose legislation introducing a European preference either generally or specifically for strategic sectors. In both cases, legislation would partially or completely exclude bidders from third countries from the tendering process. To ensure preference is given to EU manufacturers and service providers, the legislation might also require goods or services offered to originate in the EU to a certain extent or in their entirety. While such measures would certainly conflict with WTO rules on national treatment,⁷⁶ 'procurement by governmental agencies' is largely and explicitly exempt from these regulations.⁷⁷ These specific exemption clauses do not only cover restrictions regarding access of foreign tenderers but also allow for a partial or total "European origin" requirement regarding the goods or services offered.⁷⁸

However, European legislators cannot rely on such exemptions where the EU has committed to granting national treatment in procurement as is the case with the WTO plurilateral Agreement on Government Procurement (GPA) of 2012. The EU is a member of this agreement alongside 21 other WTO Members.⁷⁹ Under this agreement, the parties undertake to offer equal access to procurement markets, subject to more specific commitments⁸⁰ relating to the procuring entities covered and the goods and services covered. Consequently, EU legislation would require carefully drafted exemptions to ensure that EU commitments under the GPA are met. In addition to the GPA, the EU has made similar or even more extensive commitments⁸¹ in many of its bilateral trade agreements.⁸² EU legislation would also need to take these commitments into account.

While under the GPA and/or relevant EU trade agreements, government procurement is no longer a legitimate reason to exempt a party from the obligation to grant national treatment, exceptions are available on other grounds. Along the lines of Art. XX and XXI of the GATT, and Art. XIV and XIV *bis* GATS Art. 3 of the GPA and relevant EU trade agreements, exceptions are available for measures aimed at achieving specific policy goals such as those relating to national security, public morals, and the protection of human, animal, or plant life or health. These exceptions are subject to

⁷⁵ According to Art. XVII of the GATS, the obligation of a WTO Member to grant national treatment only applies for such sectors as inscribed in its schedule of concessions and is subject to conditions and qualifications set out therein.

⁷⁶ Namely Art. III:4 GATT for trade in goods and Art. XVII GATS for trade in services.

⁷⁷ For trade in goods: Article III:8(a) of the GATT, see Hestermeyer H. (2011), para. 114–117., and for trade in services: Article XIII of the GATS –see Fontanelli F. (2023).

⁷⁸ For trade in goods: Article III:8(a) of the GATT, see Hestermeyer H. (2011), para. 99–102., and for trade in services: Article XIII of the GATS –see Fontanelli F. (2023).

⁷⁹ The GPA Members are: Armenia; Australia; Canada; European Union; Hong Kong, China; Iceland; Israel; Japan; Republic of Korea; Liechtenstein; Republic of Moldova; Montenegro; The Netherlands (with respect to Aruba); New Zealand; North Macedonia; Norway; Singapore; Switzerland; Chinese Taipei; Ukraine; United Kingdom; United States of America, Armenia; Australia; Canada; European Union; Hong Kong, China; Iceland; Israel; Japan; Republic of Korea; Liechtenstein; Republic of Moldova; Montenegro; The Netherlands (with respect to Aruba); New Zealand; North Macedonia; Norway; Singapore; Switzerland; Chinese Taipei; Ukraine; United Kingdom; United States of America, see https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

⁸⁰ For the EU's commitments, see <https://e-gpa.wto.org/en/GPACoverage/Browse>.

⁸¹ E.g. CETA's procurement chapter includes a broader coverage of procurement entities, see EU – Canada Comprehensive Economic and Trade Agreement (CETA), OJ L 11/23, 14.01.2017, Chapter 19, from https://eur-lex.europa.eu/eli/agree_internation/2017/37/oj/eng. Japan and the EU agreed to establishing a single access portal where procurement notices are published, see EU – Japan Agreement for an Economic Partnership, OJ L 330/3, 27.12.2018, Art. 10.4, from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018A1227\(01\)-20220201&from=EN#bm504level1](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018A1227(01)-20220201&from=EN#bm504level1).

⁸² The issue of procurement is also addressed in the Samoa Agreement, which calls for "sustainable, transparent, competitive and predictable public procurement systems", Art. 41 of the Partnership Agreement between the European Union and its Member States and the Members of the Organisation of African, Caribbean and Pacific States, OJ L 2023/2862, 18.12.2023, from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302862, but the agreement falls short of stipulating a concrete commitment.

a number of conditions, including an appropriate link between the policy objective and the measure and the absence of unjustified discrimination. For a European origin requirement to be justified in this way, it must serve one of these policy goals. Careful consideration is warranted in this regard in view of the term 'security', as in the context of the WTO, GPA and EU trade agreements it has a different and more narrow meaning than the term 'economic security' as coined more recently in the EU. Furthermore, the exclusion of non-EU goods or services must meet the above conditions.

Implementing a **buy European approach in other contexts**, would raise similar questions. For example, if foreign investors were required to source some products or services locally in the sense of a local content rule, this requirement would prima facie conflict with the general rule of national treatment under Art. III:4 GATT. A similar obligation arises from Art. 2 of the WTO Agreement on Trade-related Investment Measures. The measure might again be permitted under the general and security exception clauses of the GATT, namely Art. XX and XXI and XIV and XVI *bis* GATS under a number of rather strict and narrow conditions as previously mentioned.

The same applies, where a buy European measure is facilitated by help of state aid or tax incentives thereby involving a **subsidy**.⁸³ Additionally, such a measure would invoke the WTO's specific rules on subsidies under the WTO Agreement on Subsidies and Countervailing Measures. This is of critical importance, as under Art. 3.1 (b) of the Agreement subsidies "contingent on the use of domestic over imported goods" are prohibited. The rule reflects the principle of national treatment. Granting financial support for the purchase of goods of European origin would indeed fall under Art. 3.1 (b) of the SCM Agreement. This is particularly noteworthy, as the SCM Agreement makes no exceptions.

In conclusion, it emerges that the Union has limited policy space under WTO rules and trade agreements to promote a 'buy European' procurement policy.

4 The WTO reform: Towards a reconstitution of the trading system

4.1 Ambition

The WTO reform debate is longstanding. Many of the current questions were identified in the Sutherland Report of 2005 and numerous subsequent proposals.⁸⁴ Faced with divergent positions of WTO Members the approach to date has been to seek pragmatic solutions or work-arounds in the hope of bringing all Members along. The approach has been disrupted by the recent overt challenge to the core principles of the WTO and the weaponisation of trade policy by the current US-Administration. National governments are still trying to absorb what this means for trade relations in general and the WTO in particular. There is a danger that other WTO Members will feel justified in following the precedent or currying favour with the USA for short term political or economic gains. The US position – that the WTO cannot deliver – has led many to believe that the WTO now faces an existential challenge. The broad view in Geneva is that the vast majority of WTO Members now recognise the need for reform and change in the WTO.

The current developments in the preparation for the MC14 are summarised in the paper by the facilitator on reform, Ambassador Peter Ølberg of Norway.⁸⁵ Recent meetings in January have shown positive support for this approach and for the view that at MC14 ministers should set clear

⁸³ See the Report of the WTO Panel on United States – Certain Tax Credits Under The Inflation Reduction Act, WTO-Doc. WT/DS623/R of 30 January 2026.

⁸⁴ Pauwelyn. J 2005. 'The Transformation of World Trade, Michigan Law Review 104 (1).

⁸⁵ WTO 2025. JOB/GC/483: WTO Reform-Written Report by the Facilitator to the General Council.

guidelines for a continuation of work on reform.⁸⁶ The recent US paper, presented during discussions in Geneva in December proposes dispensing with the core principle of MFN and argues that the WTO cannot redress imbalances in international trade.⁸⁷ In the position paper submitted by the EU mission to the WTO in Geneva there is reference to the need for a 'broader debate on fundamentals underpinning the current balance of rights and commitments..(that) should include reflections on the role of the MFN principle in today's context, its link to reciprocity and to Members' respective levels of openness, as well as possible new links between commitments taken and levels of tariffs'.⁸⁸ It is not clear what this means, but by referring to 'reflections on the role of MFN' it could be seen as an effort to keep the US engaged in the debate on reform. Alternatively, it could be seen as a recognition that greater flexibility is needed if progress in the WTO is to be achieved, such as through more plurilateralism. This reflects the current dilemma facing the WTO reform debate. On the one hand, there is the view that a multilateral trading system will only function if all the major trade powers support it, on the other hand, there is the reality that the US is putting unilateral solutions before collective efforts to resolve imbalances.⁸⁹

In terms of the ambition for MC14 the EU's position is of considerable importance. Many WTO Members look to the EU to continue its role as a leading supporter of the WTO as a vital part of a predictable, rules-based international trading system. The European Parliament may therefore wish to consider;

- stressing its unequivocal support for the core principles of the WTO as the basis for a rules-based and predictable trading system; and
- urging all WTO Members to use MC14 to establish a clear agenda for the WTO to enable the negotiation of real reform that will ensure credibility of the WTO.

The following sections of this paper show that there are the instrumental means of making progress by drawing on the past work in – and experience – of the GATT/WTO system. The multipolar nature of the trading system makes reform more difficult, but the vast majority of WTO Members stand to lose from a continued erosion of the rules-based order. What has been lacking has been a willingness to engage in negotiations and to move from safe positions of principle or entrenched positions based on national interests. As a major WTO Member with a clear interest in maintaining a rules-based trade and investment order it is incumbent on the EU to provide leadership with other likeminded WTO Members, to bring about genuine reform of the WTO.

4.2 More plurilateralism

Plurilateral agreements are seen as a way of overcoming the difficulty of reaching agreement between all 166 WTO Members when consensus is the norm in decision-making. Plurilateral approaches would enable those WTO Members that wish to do so to negotiate agreements that help the WTO keep pace with developments in the international economy. There is widespread acceptance among WTO Members that plurilateral approaches offer the best means of making

⁸⁶ On what Geneva delegations told 'facilitator Ølberg about WTO reform see TradeBetaBlog <https://tradebetablog.wordpress.com/text-olberg-report-wto-reform-july2025/>

⁸⁷ WTO 2025 WT/GC/W/984 *Communication from the United States on WTO reform*; See Wolff. A. 'Trump's proposed reforms of the WTO: some good, some not' PIIE. 19.12.2025; and Harbinson S. 'WTO Reform'- *Be Careful What You Wish For?* ECIPE.org January 2026.

⁸⁸ *EU Submission on WTO Reform*, January 2025.

⁸⁹ While the current US Administration has been keen to move decisively towards unilateralism, the view that the existing WTO regime does not serve US national interests is well established in the US domestic opinion. Hopes that the US will return to provide leadership in promoting international cooperation based on a multilateral rules-based order are unlikely to be fulfilled.

progress, but opposition exists. There is a diminishing number of WTO Members who are ready to block the application of plurilateral agreements and thus advancing the WTO agenda, even when the alternative is likely to be a power-based unilateral order.

Plurilateralism is not new. The post 1945 trading system progressed thanks to plurilateral negotiations. The GATT 1948 was negotiated by only 32 countries. Advances in rules-making in the 1960s (technical barriers to trade), 1970s (subsidies and countervailing duties, safeguards and public procurement) and 1980s (trade in services, trade related investment measures and agricultural subsidies) were made by a limited group of – mostly developed – likeminded GATT Contracting Parties.

When it came to implementing the rules on subsidies and countervailing duties and safeguards, agreements took the form of qualified MFN codes. These were qualified MFN codes because they only applied to signatories and did not extend any obligations or benefits to non-signatories. The GPA was incorporated as a non-MFN agreement but one that envisaged a progressive expansion of Membership. In the Uruguay Round the qualified MFN codes were fully incorporated into the GATT 1995. In services and telecommunications, some WTO Members adopted more advanced commitments, such as in the form of the Telecommunications Reference Paper (on competition in the communications sector) by incorporation as horizontal commitments in national schedules.

More recently the Trade Facilitation Agreement of 2013 was adopted as a multilateral agreement through an amendment of Annex 1A of the Marrakesh agreement.⁹⁰ This was achieved by the use of progressive implementation that differentiated on a de facto basis between WTO Members according to their capability to implement the agreement.⁹¹ New plurilateral initiatives took the form of the Joint Statement Initiatives (JSI) begun at the 2017 at the Buenos Aires WTO MC. These were on Services Domestic Regulation (SDR), Investment Facilitation for Development (IFDA), e-commerce, and Micro, small and medium-sized enterprises (MSMEs). The SDR text was adopted by 71 governments in 2021 and implemented by integrating the provisions as additional (horizontal) commitments via GATS Art XVIII (i.e. through 'scheduling').⁹² This outcome, which the EU played a leading role in bringing to fruition, was challenged by India and South Africa on the grounds that plurilateral approaches undermine MFN and thus the interests of non-participants. India took the case of SDR to arbitration and in the end an understanding was reached that incorporation of the SDR provisions in national schedules would not set a precedent for other plurilateral agreements.

The IFDA was agreed in February 2024 by 128 WTO Members including 91 developing countries. The scheduling option for services investment works because it is possible for establishment to be scheduled under Mode III of GATS. Adding to schedules under the GATS is done by a certification procedure, which has the added benefit of ensuring transparency. Non-participating Members can raise objections if they believe the implementation affects their existing benefits. Such clearly defined procedures and conciliation options mean any effects on the benefits of the non-participating Member can be addressed. But scheduling is not considered an option for investment in goods, which leaves the adoption of the IFDA via Annex IV. This is more difficult because of principled opposition to the incorporation of plurilateral agreements in this form from a number of major WTO Members, and India in particular, which are ready to block the consensus necessary for the use of Article IV.

⁹⁰ The agreement was adopted in 2013 and entered into force in 2017 when two thirds of WTO Members had ratified it.

⁹¹ See WTO 2024 *Services Domestic Regulation: Good regulatory practice for services markets enters WTO rulebook*. https://www.wto.org/english/tratop_e/serv_/sdr_factsheet_feb24_epdf

⁹² Cantore.C and Mavroidis.P 'Scheduling is the Ace in the Hole,' International Economic Law and Policy Blog, 29.12.2025, <https://ielp.worldtradelaw.net/2025/12/scheduling-is-the-ace-in-the-hole/>

Broadly speaking, therefore there are two ways of incorporating the results of plurilateral negotiations – as stand-alone agreements via Annex IV or by integrating via schedules.⁹³ The stand-alone approach requires a consensus. Although the question of decision-making is on the reform agenda, no WTO Member is seeking a change in consensus as the norm and practice in the WTO. In the current climate stubborn opposition to plurilateralism seems likely to result in more power-based unilateralism – or further WTO-plus preferential agreements – which would undermine MFN even more and is likely to put smaller, trade dependent or less developed countries in a more adverse position. There is also opposition to plurilateral negotiations on the grounds that the agendas are shaped by – or tend to serve the interests of – a minority of developed economies. These WTO Members are seen as pushing their own selective interests but neglecting the established multilateral agenda. Finally, many less developed countries argue that they do not have the capacity to engage in plurilateral negotiations, although the large participation in the IFDA suggests that this may not be insurmountable.

Plurilateral approaches therefore offer one way of helping to ensure the WTO remains relevant, but it is important that this is done in a way that does not hurt non-participating countries and that all those that wish to engage fully in the process can do so. In this context there has been reference to agreeing on ‘guard-rails’ or guidelines for the negotiation of plurilateral agreements. From the point of view of WTO Members reticent about such ‘variable geometry’ approaches these could take the form of a commitment to all benefits being extended by means of an MFN clause. An alternative, less formal approach based on ‘do no harm’ to non-participants has been put forward. More generally guidelines might cover the need for negotiations to be transparent and open to all. Those favouring this approach, including the EU, favour an understanding that countries not wishing to participate should not be able to veto the deliberative process of seeking agreement between WTO Members that wish to cooperate.

The European Parliament may therefore wish to consider:

- support for an understanding that plurilateral approaches can be adopted and on guidelines on how agendas (topics) are chosen and negotiated.

4.3 Decision-making

The issue of decision-making relates directly to that of more plurilateralism, because the consensus norm is being used to block the incorporation of plurilateral agreements into the WTO. Consensus was the norm in decision-making in the GATT and this has been carried over into the WTO. As effective agreements entail binding commitments of Members, voting, although provided for in the WTO in certain instances, cannot be expected to form the basis for the adoption of WTO rules. The veto power afforded by the consensus has however been used to gain negotiating leverage and frustrate the will of a majority of Members to move ahead. This has been illustrated above with regard to plurilateral agreements, but consensus has also been used to block procedural decisions. The US has, for example, blocked the appointments procedure for the Appellate Body (AB) more than 80 times.

This has led some to support the idea of a ‘responsible consensus’. In one sense this would be nothing more than returning to the way consensus was used in the past. The idea of a ‘responsible consensus’ is that any use of the veto should be justified on the grounds of genuine national interest, be transparent in the reasoning for its use (i.e. not used to gain leverage for an unrelated

⁹³ Mamdouh, H, 2012 *Legal options for integrating a new investment facilitation agreement into the WTO structure* <https://intracen.org/file/iflegaloptionsmamdouhasofsept17finalpdf>.

policy issue) and come with an obligation to engage in negotiations. Another proposal is to allow more voting on procedural matters in order to avoid consensus being used to block a debate or new initiative. Another proposal is that decisions on the day-to-day functioning of the WTO could be dealt with at the level of committees and not always approved by a plenary of Members.

Whilst a responsible use of consensus and voting on procedural points have been supported by the EU, China, Singapore and a range of other countries it has been opposed by a number of other important Members. As noted above opposition has come from India supported by the ACP and the Africa Group on the grounds that the retention of a veto power is a principle of the GATT/WTO and essential for the defence of developing country interests. The EU has proposed other means of achieving greater flexibility in decision-making including constructive abstention, reservations under Article XVI and/or off-sets. The constructive abstention proposal draws on EU experience and foresees scope for a formal declaration from countries that do not support the decision. This would presumably set out conditions for not vetoing an agreement. While the WTO does not provide for reservations under general provisions, Article XVI does provide for reservations for annexed agreements. Offsets have been used, for example in the GPA to allow signatories to 'opt-out' of specific commitments on the grounds of development or other legitimate policy objectives.

As on other aspects of WTO reform there are therefore means of 'working-around' the deadlock of needing a consensus on ways of overcoming the blockage of consensus. The problem is one of politics or rather some WTO Members not being willing to move from long established positions. In terms of the work on reform and in particular MC14 no WTO Member is questioning the norm of consensus. But there is a widespread view that there is a need to get back to a position in which it is not used irresponsibly.

The European Parliament may therefore consider that any proposals for a radical change in the consensus norm are likely to be counterproductive in the context of MC14. But the European Parliament may wish to consider:

- urging all major WTO Members to consider the implications of blocking agreements or the initiation of negotiations in the WTO, when the result seems likely to be more power-based trade policy and less MFN.

4.4 The level playing field

The 'level playing field' question is one of the more difficult issues the WTO faces. Consequently, the general view in Geneva is that tackling it will take time. This difficulty flows from the perception in some WTO Members, in particular in the US but also in the EU, that the trading system is imbalanced and that this is due to state intervention, especially in China. In the GATT, the aim of maintaining a broad balance of benefits between Contracting Parties was achieved through multilateral rounds of negotiations. These provided an opportunity to readjust the balance of commitments and benefits. Since the establishment of the WTO there has been no successful multilateral round that might have corrected any imbalances. The question is therefore whether the existing provisions and rules can be used to ensure 'a level playing field.' Perceptions of imbalance mainly concern China due to its extensive use of industrial policy, its size – and for the USA in particular – the fact that it is viewed as a strategic challenger. Other emerging economies and in particular developing countries also wish to retain 'policy space' to pursue industrial development and thus achieve a level-playing field relative to the more advanced economies.⁹⁴

⁹⁴ The world view in many WTO members is that just as the advanced developed economies pursued industrial policies in the development – and to some degree still do – developing economies should not be precluded from using such policies.

With no general rebalancing through a multilateral 'package' the emphasis has shifted to a search for a level playing field in terms of competitive conditions and in particular the role of state ownership and subsidies. According to the Global Trade Alert 60 % of state intervention in markets takes the form of subsidies.⁹⁵ But remedies under the WTO for the trade-distorting effects of subsidies are not seen to be working effectively. Knowledge of the level and form of subsidies is not available because notification requirements are not being complied with. The subsidies and countervailing measures (SCM) provisions date from before 1995 and interpretation of the existing rules has resulted in controversy and contributed to the demise of WTO dispute settlement.

The question facing the WTO and MC14 is how to respond. The US response that has been sometime in the making, but has now taken its current disruptive form according to which: (i) the WTO cannot solve the problem of imbalances due to the principle of non-discrimination; (ii) the remedies available under the existing rules are ineffective; and (iii) the interpretation of existing rules is wrong. Put simply the US has 'given up' and effectively opted for unilateral solutions. This is set out in a US 15th December paper that rejects MFN, renounces any multilateral discipline of national remedies and rejects a two-tier dispute settlement procedure in which an appeal process engages in 'judicial activism' to interpret the rules.

The view in Geneva is that there is no quick solution to the problem. What is required is a better understanding of the role and impact of industrial policies in general. The difficulty with such continued deliberation is that it is likely to exacerbate the view that the WTO is unable to act. However, there are a number of specific agenda items that can help, starting with greater knowledge of what is involved.

4.4.1 Transparency

The EU addressed the lack of compliance with WTO transparency provisions in its Concept Paper on WTO reform in 2018.⁹⁶ Similar proposals were made again in the tripartite paper (EU, US and Japan) in 2020.⁹⁷ Various proposals have been made to motivate better compliance with transparency provisions such as denying non-compliant Members chairs of committees. The EU has argued that one possible route would be to adopt the approach of the earlier – now lapsed – Art 6.1 provision of the SCM Agreement that would establish a 'rebuttable presumption of serious prejudice (in specific cases) such as unlimited guarantees, subsidies given to ailing enterprise with no credible restructuring plan or dual pricing'.⁹⁸

The more far-reaching proposals for improving transparency take the form of financial penalties (up to 5 % of the Members WTO contributions), joint counter-notification and a greater role for the WTO Secretariat in assembling information on subsidies.⁹⁹ On the last point it is argued that there are more sources of information available other than the governments that provide subsidies. These

⁹⁵ Global Trade Alert The World's Trade and Industrial Policy Watchdog <https://globaltradealert.org>.

⁹⁶ See EU 'Concept Paper 2018. WTO modernisation: introduction to future EU proposals <https://circabc.europa.eu/rest/download/42115f40-e2ba-4a49-9162-de92098f15bd>

⁹⁷ See https://policy.trade.ec.europa.eu/news/eu-us-and-japan-agree-new-ways-strengthen-global-rules-industrial-subsidies-2020-01-14_en

⁹⁸ See EU Concept Paper op.cit. The Article 6.1 lapsed because it was covered by a 'sunset clause' of five years. When the renewal was due in 1999 there was no consensus in favour of its renewal.

⁹⁹ Counter notification is when the importing country that believes its industry is injured by a subsidy in the exporting country notifies the subsidy. Normally the government that provides the subsidy should notify. Joint counter notification is when more than one importing country notifies the existence of a subsidy in the exporting country.

could be used rather than relying on official sources. The US withdrawal from efforts to strengthen multilateral solutions necessitates a regrouping of countries that seek solutions within the WTO.¹⁰⁰

4.4.2 What is a 'public body'

Another major stumbling block concerns differences over how to determine when a government shapes the actions of an enterprise that it owns. This question arose in the dispute settlement case of US Definitive – Antidumping and Countervailing Duties on Certain Products from China (DS 379). In applying countervailing duties, the US Department of Commerce defined Chinese state-owned enterprises (SOEs) as 'public bodies' on the grounds that they were owned by the state. The alternative determination of a public body as one 'over which the state exercises its authority' was seen as impracticable or too difficult by the US Department of Commerce, especially given the lack of transparency. China disputed the US measures on the grounds that Chinese SOEs were not as a matter of law vested with the exercise of government authority and that the US had to show a connection between the government function and the specific financial contribution. The WTO panel in the case found in favour of the US. China appealed and the AB reversed the panel's decision. Third parties to the dispute were divided on the question, with the EU, Canada, Australia, Argentina and Mexico siding with the US and Brazil, India, South Africa and Norway with China, thus illustrating the divergent positions in the WTO.

The AB's decision came at a time when it was already in crisis with the US blocking appointments. The AB decision was seen by the US as another instance of judicial activism following the case of zeroing when determining the dumping margin in the application of US anti-dumping duties, which the AB had ruled to be against in violation WTO law. The case therefore contributed to the US view that the WTO was not capable of addressing imbalances due to 'unfair trade' practices resulting from the actions of Chinese state ownership.

The EU's position as set out in the concept paper of 2018 has been that the definition of a 'public body' is to be clarified in 'case-by-case analysis to determine whether state ownership or state-controlled enterprises perform government functions as well as when it exercises meaningful control.' In the trilateral statement of 2020 (see above) the EU agreed with the US and Japan that the AB interpretation was not correct.

Past experience suggests that empirical data and evidence is needed as the basis for any broad consensus on how to update rules on subsidies.¹⁰¹ The EU is active in informal work with other WTO Members to identify gaps in knowledge and information on how industrial policies affect trade. Efforts have also been made in other international organisations such as the OECD that has led to proposals for an approach based on 'competitive neutrality'.¹⁰²

The European Parliament may therefore wish to consider:

- supporting an agenda on reform that includes a review of the nature and scope of industrial policies as the basis for reform of the SCM Agreement;

¹⁰⁰ Despite its scepticism of the WTO's ability to effectively address the level playing field question the US does support efforts to strengthen compliance with WTO rules on notification.

¹⁰¹ This was often concluded in the OECD, see discussion of plurilateralism above, but also in the field of agricultural subsidies in which the OECD work established the nature and level of subsidies and thus paved the way to an agreement on agriculture in the Uruguay Round.

¹⁰² Competitive neutrality is the concept by which public or private, domestic or foreign enterprises face the same set of rules, see OECD 2024 *Competitive Neutrality Toolkit: promoting a level playing field*. https://www.oecd.org/en/publications/2024/06/competitive-neutrality-toolkit_c3fe45c3.html

- pressing for advances in improving transparency; and
- endorsing efforts by the EU in informal work with likeminded WTO Members and organisations on ways of achieving competitive neutrality or the equivalent.

4.4.3 National security

The GATT (in Art XXI), GATS (in Art XIV bis) and virtually every trade agreement include a national security exception. Until recently, WTO Members sought to avoid using it because of the inherent danger the provision poses for a rules-based trading system. The determination of what is required for national security reasons is still essentially left to WTO Members, even though some WTO jurisprudence has marked a few limitations. If governments interpret national security too broadly, or use to justify protection when trade or investment is not a real threat to national security, the rules-based system would collapse. If the WTO were to constrain a Member's ability to determine national security it is likely to drive that country to reject WTO discipline. Recent years have however seen ever more recourse to national security as justifying safeguards or other means of commercial defence. With no functioning appeal process in the WTO, Members found to have abused the claim of national security can simply 'appeal into the void' (see the section 3.6 below). In its December 2025 paper the US appears to be arguing for complete freedom to determine when restrictions are justified on grounds of national security.

The European Parliament may therefore wish to consider:

- MC14 including an agenda item on the need for all WTO Members to use national security exceptions responsibly.

4.5 Special and differential treatment (SDT): The classification of developing countries

In the context of WTO reform, the debate about the classification of developing countries essentially revolves around Special and differential treatment (SDT), since this determines eligibility for such treatment.¹⁰³ SDT consists of the special provisions included in the WTO agreements. On the one hand, it gives developing countries special rights; on the other, it enables developed countries to treat developing countries more favourably than other WTO Members.¹⁰⁴ The rationale behind SDT has evolved over the years. In essence, it aims to provide developing countries with a level playing field by allowing a degree of flexibility and exceptions to WTO rules. This is intended to enable them to build competitiveness and, ultimately, integrate more effectively into global trade.¹⁰⁵

The first SDT provision was introduced as early as 1954 –1955, alongside the revision of Article XVIII of the GATT, which recognised the need to protect nascent industries and to address balance-of-payment problems in developing countries through trade restrictions. Then, in 1979, another milestone in the development of SDT was reached, when the so-called 'Enabling Clause'¹⁰⁶ allowed developed countries to provide preferential treatment to products originating in developing countries on a non-reciprocal basis. This, in turn, resulted in acceptance of an exception to the MFN principle and provided the legal foundation for the establishment of the Generalized System of

¹⁰³ See Weinhardt, C., & Barros Leal Farias, D. (2025).

¹⁰⁴ For an overview of special and differential treatment provisions within the WTO see https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm.

¹⁰⁵ Hoekman, B. (2005).

¹⁰⁶ Officially called the *Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries*.

Preferences. SDT provisions have developed substantially since then, and when the WTO was established in 1995, they became an integral part of the WTO agreements.¹⁰⁷

These special rights now include provisions that, inter alia:

- require WTO Members to ensure that the trade interests of Members that are developing countries are safeguarded;
- give developing country Members greater flexibility in commitments, actions, and the use of economic and trade policy instruments;
- provide developing country Members with longer transitional periods;
- provide developing country Members with technical assistance;
- concern Members that are LDCs.¹⁰⁸

However, both developed and developing countries have long questioned the shape of SDT, and more broadly, the implications of the distinction between developed and developing Members in the WTO. For some developed countries – first and foremost the US – major emerging economies and other relatively advanced WTO Members are seen as taking unfair advantage by claiming SDT benefits. In their view, the rule of self-declaration as a developing Member has severely harmed the negotiating capacity of the WTO and diminished the benefits of SDT that the LDCs and other Members with specific needs should receive.¹⁰⁹ Certain developing Members, in turn, argue that they still lack the resources and capacity to commit to full reciprocity of obligations. They emphasise that such commitments would be incompatible with their developmental needs. They also argue that they have been unable to benefit fully from special treatment because SDT provisions are not sufficiently operationalised and effective.¹¹⁰

In his recent report on WTO reform, the facilitator to the General Council, Petter Ølberg, identifies five main challenges in the area of development and SDT:

1. Development constraints and limited policy space;
2. SDT ineffectiveness and institutional hurdles;
3. Lack of differentiation and criteria for access to SDT;
4. Unconstrained use of other flexibilities;
5. Ineffective technical assistance and capacity-building.¹¹¹

This list encapsulates concerns raised by both developed and developing Members. Discussions on the need to reform SDT have been underway since at least the Doha Round negotiations,¹¹² but the

¹⁰⁷ Tania, S. et al. (2024), pp. 123–124. While SDT provisions are a common component of WTO agreements, it is worthy to note that the extent to which they include them varies. See full compilation of SDT provisions in WTO agreements and decisions prepared by the WTO Secretariat – WTO, (2023), *Special and Differential Treatment Provisions in WTO Agreements and Decisions – Note by the Secretariat*, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/COMTD/W271.pdf&Open=True>.

¹⁰⁸ WTO, *Examples of provisions for differential and more favourable treatment of developing countries*, https://www.wto.org/english/tratop_e/devel_e/teccop_e/s_and_d_eg_e.htm.

¹⁰⁹ WTO, (2019), *WT/GC/757: An Undifferentiated WTO: Self-Declared Development Status Risks, Institutional Irrelevance – Communications from the United States*, p. 11.

¹¹⁰ Hegde V. et al. (2020), pp. 4–9.

¹¹¹ WTO, (2025), *JOB/GC/483: WTO Reform – Written Report by the Facilitator to the General Council*, p. 13. Note that not all Members feel that the report represents their views and some found it 'one-sided', see <https://twm.my/title2/wto.info/2025/ti251219.htm>.

¹¹² Hegde V. et al. (2020), pp. 9–10.

issue remains one of the most pressing points on the WTO reform agenda, as progress in this area is regarded by some Members (especially the EU and the US with respect to SDT eligibility) as essential to the organisation's credibility and prospective overhaul.

4.5.1 Points of conflict

In WTO practice, the status of a developing country eligible to benefit from special treatment is based on one of two premises: 1) classification as an LDC, as defined by the UN, or 2) self-designation¹¹³. The latter has proved controversial, as many major economies (such as China, India and Brazil)¹¹⁴ continue to consider themselves as 'developing countries', thus falling into the same category as significantly lesser developed economies, despite the remarkable socio-economic progress achieved by some of them in recent decades, as well as their significant weight in international trade and the relatively high competitiveness of some of their industries. Traditionally, the US has been the most vocal critic of this situation, arguing that "[s]ubstantively and politically, it is unacceptable for significant players in the trading system to benefit from preferential treatment. It is also untenable for WTO rules to apply to some Members, and not others, in perpetuity".¹¹⁵ The Commission has, to some extent, shared this view, asserting that "[i]t is not sustainable that two thirds of the membership – including some of the world's most significant economies – claim special and differential treatment".¹¹⁶

Consequently, proposals aimed at solving this problem have emerged. In 2019, the US suggested a set of categories of Members that would not be eligible for SDT in current and future WTO negotiations (i.e. exclusion criteria).¹¹⁷ The Commission, in turn, published a communication in 2021 setting out ideas on reforming the WTO, including SDT. In the Annex to this document, the Commission suggested a new 'agreement-by-agreement' approach to SDT that would be 'targeted', involve 'greater differentiation between developing countries' and be 'based on identified needs'.¹¹⁸ Similarly to the US proposal, this document listed criteria that would preclude Members from claiming SDT in ongoing negotiations and future agreements. Some of these criteria overlapped, for example membership of the OECD or classification as a 'high income' country by the World Bank.¹¹⁹

Although the recent communications on WTO reform from the US and the EU largely maintained these approaches, some changes also seem to have been introduced. This time around, neither of these documents explicitly mentioned the previously specified criteria, nor did they propose any

¹¹³ Please note that WTO rules do not define what a developing country is, and self-designation as such is more of a WTO practice. The EU does not recognise self-designation as part of the WTO's rules. However, some Members (China, India, South Africa, and others) claim that it is 'a fundamental rule in the WTO' (WTO, *WT/GC/W/765/Rev.2*).

¹¹⁴ Please note, however, that these countries differ in their approach to claiming SDT. In short, India is adamant about its developing country status and the associated flexibilities, whereas in 2025, China renounced the benefits of SDT in ongoing and future negotiations, while maintaining its developing Member status. In turn, Brazil's approach may demonstrate that this kind of decision is not irreversible: in 2019, the country announced that it would no longer claim SDT in ongoing negotiations. Yet, when President's Bolsonaro administration lost power, the new government reaffirmed the importance of SDT for Brazil. See more: Wolfe R. & Ungphakorn P., (2025), pp. 8-9, and Weinhardt C., & Schöfer T., (2022).

¹¹⁵ WTO, (2025), *WT/GC/W/984 Communication from the United States on WTO reform*, p. 2.

¹¹⁶ European Commission, COM(2021) 497 final, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(2021) 497 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0066>.

¹¹⁷ See *WT/GC/W/764*, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?CatalogueIdList=251580.

¹¹⁸ European Commission, COM(2021) 497 final, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(2021) 497 final.

¹¹⁹ Weinhardt C. and Ukpe A. (2024), *The EU and Developing Countries in WTO: Reforming Special and Differential Treatment*, pp. 7, 9.

specific differentiation criteria. The US emphasised that SDT may be appropriate for the LDCs but it should be seen as a 'tool to enable Members to achieve the capability to follow the same rules that all other Members must follow and in a timely manner'.¹²⁰ The EU's new position, in turn, suggested 'a granular, targeted and differentiated approach to development' that ensures that the most vulnerable developing countries can reap the advantages of engaging in international trade. The targeted, needs-based approach to SDT is coherent for the positions stated in 2021 and 2026. However, the newer communication called now for exploring 'objective and transparent' differentiation criteria of developing countries and emphasised that SDT should be 'when possible, time-bound'.¹²¹ Both the EU and the US therefore agree that exemptions from the rules should be limited in time and not a perpetual solution, and that the objective is for all Members to ultimately adhere to the same WTO rules.

Efforts to devise graduation rules based on criteria for levels of development have not been successful and remain unpromising. In 2019, a group of major developing countries, including China, India, Kenya, Pakistan and South Africa issued a communication¹²² defending the status quo option.¹²³ However, other Members (such as Singapore¹²⁴ and South Korea¹²⁵) declared that same year that they would not seek the SDT benefits in future WTO negotiations, even though they maintained their status as developing Members. The most significant and recent example of opting for such a solution is the modification of China's position. On 23 September 2025, premier Li Qiang announced that China would no longer seek the SDT benefits in current and future negotiations at the WTO, although it would retain its status of a developing Member.¹²⁶ Although WTO Director-General Ngozi Okonjo-Iweala praised China's decision as 'major news key to WTO reform'¹²⁷ and some Members have welcomed it as a significant step forward, it did not elicit similar reactions from the US or EU.¹²⁸ Some Members have perceived this decision as merely symbolic because China still holds the benefits that it has been using previously. Consequently, even though this decision may be seen as a political signal of what is possible in the case of major emerging powers, it has also proved to be a lengthy and politically costly process that nevertheless fails to solve the problem.

4.5.2 Scenarios of support by different WTO Member groups for specific solutions

According to a study by Clara Weinhardt and Aniekan Ukpe published in 2024, there are three main options on how to proceed with SDT reform in the WTO;¹²⁹ Ambassador Ølberg's more recent report¹³⁰ also identifies three broad approaches that have been highlighted throughout

¹²⁰ WTO, (2025), *WT/GC/W/984 Communication from the United States on WTO reform*, p. 2.

¹²¹ WTO, (2026), *WT/GC/W/986 Communication from the European Union – EU submission on WTO reform*, pp. 4–5, 9.

¹²² See WTO, (2019), *WT/GC/W/765/Rev.2*.

¹²³ Weinhardt C. and Ukpe A. (2024), p. 8.

¹²⁴ Ministry of Trade and Industry, Singapore, *Singapore reaffirms commitment to work with like-minded partners to strengthen the World Trade Organization*, 18.09.2019, .

¹²⁵ Chung, J. and Roh, J. (2019), *South Korea to give up developing country status in WTO talks*, Reuters, 25.10.2019, <https://www.reuters.com/article/business/south-korea-to-give-up-developing-country-status-in-wto-talks-idUSKBN1X404N/>.

¹²⁶ Embassy of the People's Republic of China in the Republic of South Africa, (2025), *China's Decision Not to Seek New SDT at WTO Shows Solemn Commitment to Upholding Multilateral Trading System*, 07.10.2025, https://za.china-embassy.gov.cn/eng/mtjj/202510/t20251007_11723491.htm.

¹²⁷ See <https://x.com/NOIweala/status/1970582260849012958>.

¹²⁸ In its draft motion for a resolution on the MC14, INTA 'notes' this decision and calls on China 'to ensure that this commitment is also reflected retroactively in the implementation of current WTO agreements', https://www.europarl.europa.eu/doceo/document/INTA-RD-781228_EN.pdf.

¹²⁹ Weinhardt C. and Ukpe A. (2024).

¹³⁰ WTO, (2025), *JOB/GC/483: WTO Reform – Written Report by the Facilitator to the General Council*, p. 6.

consultations with Members. Some of the options identified in these two papers overlap. If they are combined, four options can now be distilled for consideration. In short:

- the first option – maintaining the status quo (self-declaration as a developing country) and encouraging voluntary graduation;
- the second option – top-down designation of criteria (as proposed by the US in its communication published in 2019¹³¹ and, in part, by the EU in the Commission's communication published in 2021¹³²); in a similar vein, but with some difference, Ambassador Ølberg's report highlights, as one of the main approaches, 'considering eligibility based on differentiation criteria and time-bound limitations',¹³³
- the third option – a more targeted and needs-based approach;
- the fourth option – a broad approach focused on 'making SDT more precise, effective, and operational'.¹³⁴

Although WTO Members' positions usually reflect nuanced views of particular policy solutions, for the purpose of this analysis it is possible to generalise as follows: considering the traditionally asserted positions of WTO Members, one may assume that the first option is preferred by certain major emerging economies, such as China, India and South Africa which perceive SDT as a 'treaty-embedded right'; the second option is largely consistent with the position of the US and, to a somewhat lesser extent, with the EU's proposal; and the fourth option is favoured by many developing countries over discussions centred on eligibility¹³⁵ (however, making SDT more precise, effective, and operational is also of interest to many developed countries, as reflected in the MC12 Outcome Document¹³⁶ and the MC13 Declaration,¹³⁷ for example). The recent communication from the EU on WTO reform is consistent with elements of both the second and third options.

This landscape of divergent positions therefore raises the question of whether any of the available options could gain sufficient support. In their study, Weinhardt and Ukpe concluded that the most viable approach might be a combination of the 'introduction of sector-specific criteria for access to SDT' (i.e. 'differentiated differentiation') – to some extent consistent with the third option – with encouraging voluntary graduation, i.e. the first option. For the EU, this also means abandoning the criteria for precluding Members from claiming SDT in ongoing negotiations and future agreements that the Commission proposed in its communication¹³⁸ published in 2021.¹³⁹ As their work was published in 2024, we re-examined this question through a round of semi-structured interviews. Despite the significant developments in international trade that occurred last year, our analysis suggests that this approach can still serve as a useful indication of the direction in which the EU may wish to move in the near future. However, it should be noted that the discussion over the SDT is profoundly affected by fundamental differences in how Members understand the role of trade in

¹³¹ See https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?CatalogueIdList=251580.

¹³² European Commission, COM(2021) 497 final, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(2021) 497 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0066>.

¹³³ WTO, (2025), *JOB/GC/483: WTO Reform – Written Report by the Facilitator to the General Council*, p. 6.

¹³⁴ WTO, (2025), *JOB/GC/483*, p. 6.

¹³⁵ Weinhardt C. and Ukpe A. (2024), *The EU and Developing Countries in WTO: Reforming Special and Differential Treatment*, p. 8.

¹³⁶ See <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True>.

¹³⁷ See <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/DEC.pdf&Open=True>.

¹³⁸ European Commission, COM(2021) 497 final, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, COM(2021) 497 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0066>.

¹³⁹ Weinhardt C. and Ukpe A. (2024), *The EU and Developing Countries in WTO: Reforming Special and Differential Treatment*, pp. 4, 5, 13.

socio-economic development, and how they perceive their position on the international stage. This, in turn, suggests that the problem is fundamental and to a large extent will depend on the political will of the Members, rather than on technical solutions. Yet, this should not preclude the Members from exploring the solutions that could bring them closer to solving the impasse.

The European Parliament may therefore wish to consider:

- encouraging the voluntary graduation of some major emerging economies from the SDT benefits (and not from the 'developing country' status).
- engaging in efforts to persuade major emerging economies that increased differentiation within their group benefits those most in need of special support.
- endorsing a more granular, targeted, needs-based approach, proposed in the recent communication from the EU on WTO reform.
- supporting the abandonment of the top-down designation of the previously proposed criteria for precluding Members from claiming SDT in ongoing negotiations and future agreements, as this approach does not appear as winning broad support. However, given that the recent communication from the EU on WTO reform insists on the need to consider 'objective and transparent criteria' for differentiating between developing countries, the Parliament could explore ideas for such criteria proposed by developing countries rather than developed ones. This could help to gain broader support for such ideas and increase the sense of ownership among the Members that will be of primary concern for the SDT. These could encompass a wider set of criteria and include various indicators of multi-dimensional vulnerabilities, not only limited to trade or broader economic performance (e.g., the UN's Multidimensional Vulnerability Index). They may be designed in such a way as to focus access to benefits on Members who need such support the most, thereby ensuring that they truly serve a developmental purpose.
- backing the suggestion included in the recent communication from the EU on WTO reform that the implementation of trade agreements and accepting commitments by developing countries should be linked with technical assistance – drawing on the lessons learned from the TFA. Adopting a more targeted, needs-based approach would require an evidence-based approach, which would need to be complemented by technical assistance and capacity building measures, particularly for LDCs. Besides this, the approach adopted in the TFA provides an insightful indication of how the issue of self-designation as a developing country can be addressed, since it enabled each developing Member to decide on their own specific flexibilities. However, this is probably more relevant to regulatory agreements than to those concerning market access commitments.¹⁴⁰

4.6 Dispute settlement

The principal reason why the issue of WTO dispute settlement reform has turned into a 'crisis' is the absence of a functioning Appellate Body since 2019. This result was brought upon by the US through its persistent refusal to fill Appellate Body vacancies, until its concerns with the system were addressed. The key objections raised by the US administration (first President Trump term) against the WTO AB were: (i) reports taking much longer than the mandated 90 days to be issued; (ii) AB members staying beyond tenure to finish pending matters; (iii) reports containing legal

¹⁴⁰ See more Coelho C. F., Guijun L., Prazeres T., Tu X., & Yeend T, (2021), *Trade and development in the WTO: Toward a constructive approach to the issue of development status and special and differential treatment*, T20 Italy Policy Brief, available at: https://www.t20italy.org/wp-content/uploads/2021/09/TF3_PB03_LM04.pdf.

clarifications/opinions not essential for the ruling; (iv) appellate assessments going beyond issues of law; (v) requiring panels to follow previous AB reports and arguments; (vi) refraining from passing recommendations on expired measures; (vii) opining on matters beyond AB authority; and (viii) taking WTO committee proceedings as supporting material for treaty interpretation.¹⁴¹ Since then, other WTO Members, including the EU, have taken multilateral, club-type and unilateral responses – either to address US concerns, or to deal with the aftermath. Even though the subsequent (President Biden) administration engaged with the Members in good faith discussions,¹⁴² the US has continued to veto 130 Members repeated requests to the WTO Dispute Settlement Body (DSB) to fill the AB vacancy – a practice that continues to this date.¹⁴³ The current President Trump administration has shown no interest to restart the discussion on DS reform, except for recently commenting on the system’s inability to address US interests.¹⁴⁴

The loss of the appellate mechanism seriously maims the stability, credibility and predictability of the rules-based multilateral trade system. Furthermore, it disproportionately affects the Members like the EU who are frequent users of the system. The most tangible current drawback is ‘appeals into the void’ – denoting the practice of appealing to the non-existent AB for various motivations – with the real effect of freezing a dispute. Following table shows the numbers of pending appeals accumulated since 2018.

Table 5. Appeals into the void 2018–2025

Appellant	Pending appeals	Dispute Nr (member against)
US	9	DS597 (Hong Kong, China); DS564 (Türkiye); DS556 (Switzerland); DS552 (Norway); DS544 (China); DS539 (Korea); DS543 (China); DS533 (Canada); DS523 (Türkiye)
India	6	DS582 (EU); DS584 (Japan); DS581 (Guatemala); DS580 (Australia); DS579 (Brazil); DS518 (Japan)
EU	5*	DS616 (Indonesia); DS618 (Indonesia); DS494 (Russia); DS316 (US); DS476 (Russia)
China	2	DS558 (US); DS562 (US)
Indonesia	2	DS592 (EU); DS484 (Brazil)
Panama	2	DS599 (Costa Rica); DS461 (Colombia)
Thailand	2	DS371 (Philippines); DS371 (Philippines)
Canada	1	DS534 (US)
Dominican Republic	1	DS605 (Costa Rica)
Korea	1	DS553 (Japan)
Morocco	1	DS578 (Tunisia)
Pakistan	1	DS538 (UAE)
Türkiye	1	DS561 (US)
Total	34	

* Note: The number for the EU also includes appeals filed prior to MPIA formulation. Post-MPIA, two appeals were made against Indonesia for systemic reasons. EU refrained from appeal in one dispute with the same country. Source: WTO. Compiled by authors.

¹⁴¹ Office of the United States Trade Representative. (2020). *Report on the Appellate Body of the World Trade Organization (Feb. 2020)*. U.S. Trade Representative (Office of Robert Lightizer); Grieger, G. (2024); Hart, N. M. & Murrill, B. J. (2021).

¹⁴² WTO, (2023), *JOB/DSB/4: U.S. Objectives for a Reformed Dispute Settlement System: Communication from the United States (WTO Dispute Settlement Body document)*.

¹⁴³ WTO, (2023), *WT/DSB/W/609/Rev. 26: Appellate Body Appointments (WTO Dispute Settlement Body document)*.

¹⁴⁴ WTO, (2025), *WT/GC/W/984: Communication from the United States on WTO reform para 4.6*; Office of the United States Trade Representative, (2025), *Op-Ed by Ambassador Jamieson Greer: Why we remade the global order. U.S. Trade Representative (Office of Jamieson Greer)*.

This means that the trading system has reverted to what existed before the introduction of the Uruguay Round in which disputes were resolved politically, based on relative power, rather than strict compliance with agreed rules. In a sense, the position today is worse because major trading powers acted responsibly under the GATT out of a desire to ensure continued cooperation in international trade.

4.6.1 EU interests and steps taken

Restoring a fully functioning dispute settlement system is one of the explicit objectives of the Commission.¹⁴⁵ The position is already cognizant that, as a heavy-user of WTO dispute settlement, the EU is deeply interested in preserving a rules-based system for its businesses globally, also in being able to maintain and enforce its own domestic regulatory measures in a transparent, WTO-consistent manner. The deterrent function of a dispute settlement mechanism is also valuable to the EU, as a caution to other Members adopting WTO-inconsistent measures. A functioning, two-tier dispute settlement mechanism has no downsides for the EU-interests.

In pursuance of the above position, the EU has already taken effective cooperative and unilateral steps at appropriate levels. Multilaterally, the Commission cooperates in broad-based reform discussions at the WTO. Such cooperation includes participation in the so called 'Molina Process',¹⁴⁶ which successfully elicited cooperation from the previous US administration.¹⁴⁷ Encouraged thereby, a formal multilateral process was later sought to build upon the progress, most importantly on the issue of appeal/review. This progress, along with existing various reform proposals, is consolidated in a 2024 WTO report.¹⁴⁸ The Commission continues to believe in the importance and value of the multilateral negotiation track and therefore continues to engage in good faith exchanges with other Members. However, it is also the Commission's view that that more work is required to find consensus on pertinent issues (e.g. Appeal/Review).¹⁴⁹ Any breakthrough in this regard, in the run up to or during the MC14, is highly unlikely.

As is well-known, the EU has been instrumental in establishing the MPIA mechanism in 2020 – to provide interested parties access to a 'second stage' hearing of their disputes during the absence of a functioning AB. It is important to note the MPIA is neither extra-WTO, nor a completely new mechanism. At its heart lies a uniform set of rules (closely echoing the AB process)¹⁵⁰ for arbitration under Article 25 of the DSU. MPIA parties commit to this interim process instead of a formal appeal for disputes between themselves, as long as the AB is not available.¹⁵¹ With the joining of Vietnam, MPIA Members are now 31 strong (considering the EU and its 27 Members as one, see Table 7). In 2025, Hopewell identified 12 Members among the top 30 most frequent users of dispute settlement

¹⁴⁵ See European Commission, 'The EU and the WTO', https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-and-wto_en

¹⁴⁶ WTO, (2024), JOB/GC/385: Agenda Item 11: Dispute Settlement Reform Process Statement by H.E. Mr. Petter Ølberg, Chairperson of the General Council (WTO General Council document).

¹⁴⁷ 'Molina Draft' contains many new proposals, including *inter alia*, ADR mechanisms, interpretative oversight by an advisory group, guidelines for adjudicators, ensuring swifter compliance, and technical assistance. For a critical reflection, see Van den Bossche, P. (2025).

¹⁴⁸ WTO, (2024), JOB/GC/385: Agenda Item 11: Dispute Settlement Reform Process Statement by H.E. Mr. Petter Ølberg, Chairperson of the General Council (WTO General Council document).

¹⁴⁹ Interview with an official from Directorate-General for Trade and Economic Security. In record with authors.

¹⁵⁰ WTO, (2020), JOB/DSB/1/Add.12: Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes – Addendum: Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU (Dispute Settlement Body document). It explicitly mentions that unless otherwise agreed, the MPIA shall be governed by the DSU, AB work procedures and rules of conduct, to the extent applicable (Rule 11 of the agreed procedure).

¹⁵¹ Ibid, Rules 1, 2.

that are not party to the MPIA. These are: US, India, South Korea, Taiwan, Thailand, Turkey, Russia, Argentina, Indonesia, Honduras, South Africa, Panama.¹⁵²

Table 6. MPIA membership

OECD	Non-OECD	(%) global trade
Australia; Canada; Chile; the European Union (27); Iceland; Japan; Mexico; New Zealand; Norway; Switzerland; the United Kingdom.	Benin; Brazil; China; Colombia; Costa Rica; Ecuador; Guatemala; Hong Kong, China; Macao, China; Malaysia; Montenegro; Nicaragua; Pakistan; Paraguay; Peru; the Philippines; Singapore; Ukraine; Uruguay; Vietnam.	59.5 %

Source: WTO & European Commission. Compiled by authors.

So far, the MPIA arbitrators have been engaged three times in two disputes, namely *Columbia – Frozen Fries* (DS 591)¹⁵³ and *China – IPRs Enforcement* (EU) (DS 611). In three other disputes,¹⁵⁴ MPIA parties were able to find a mutually agreed solution after the panel ruling and therefore avoid recourse to the arbitration.

In bilateral relations, the Commission also encourages its key trade partners to avoid appealing legal disputes into the void. For parties unwilling to sign the MPIA, one alternative approach has been to hold ad hoc arbitration under Article 25 DSU. This has been the case in *Turkey – Pharmaceutical Products* (DS 583). Parties to that dispute (EU and Turkey) made a special agreement under Article 25 of the DSU, pursuant to which they requested the Panel to suspend its activities prior to public circulation of its decision, and decided to enter a round of arbitration based on the panel’s confidential summary ruling.¹⁵⁵

Finally, in 2021, the EU amended its Regulation 654/2014 to unilaterally address uncertainties arising out of the dispute blockage by trade partners at the WTO or under other trade and investment agreements.¹⁵⁶ The regulation now allows the EU, among others, to suspend or withdraw concessions under the WTO agreement against any party blocking enforcement on panel rulings in EU’s favour.¹⁵⁷

4.6.2 Challenges to making further progress

While a multilateral solution is the most desirable outcome to restore the WTO dispute settlement process, it is also the hardest to reach in the short to medium term. Current scope of negotiation covers a great range of issues raised by the US and other Members, meaning that a significant convergence of views will take time to emerge. Also, Members expectations of results often do not align. For example, one dilemma could be deciding between having a two-stage system for the sake of it or preserving the essence of WTO dispute settlement as an automatic, compulsory, and

¹⁵² Hopewell, K. (2025).

¹⁵³ Both the original and the compliance panel ruling (Article 21.5 DSU) were subjected to arbitration.

¹⁵⁴ Canada – Wine (DS537); China – AD/CVD on wine (Australia) (DS602); China – AD/CVD on Barley (Australia) (DS598)

¹⁵⁵ WTO, (2023)., *T/DS583/R Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*.

¹⁵⁶ Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 concerning the exercise of the Union’s rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community’s rights under international trade rules, in particular those established under the auspices of the World Trade Organization, (Regulation 654/2014 – Consolidated text), Available: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0654-20210213 (2021).

¹⁵⁷ Regulation 654/2014 – Consolidated text, *ibid.*, Art. 3(aa) & 3(ba).

enforceable system of rebalancing.¹⁵⁸ As things currently stand, the biggest challenge to a negotiated multilateral solution is an unpredictable US administration. There is a generally shared view that Members should preserve the current progress, and only return to these issues once a cooperative US representation is back at the table.

It is also difficult to see whether, or how, the consensus requirement could be bypassed, to begin the process for filling in AB vacancies. The main challenge is that consensus is a rigid requirement for all DSB decisions.¹⁵⁹ Henry Gao recently proposed that the General Council (without convening as the DSB) should take over the issue of appointing AB members, in which case the decision can also be taken with majority support under Article IX of the Marrakesh Agreement.¹⁶⁰ However, it is difficult to implement since the DSU explicitly mentions that “[t]he DSB shall appoint persons to serve on the Appellate Body”.¹⁶¹

The MPIA parties cover a majority share in global trade, but the mechanism has not garnered popular support. Indeed, the mechanism has successfully prevented participating parties from appealing into the void – a laudable achievement on its own. However, its track record of resolving actual appeals remains sobering – engaged only in two disputes (both involving EU as a party) over the past years. Having a ‘critical mass’ of WTO Membership, including the most frequent users of the system, sign on to the MPIA is the main challenge here. In addition, since the MPIA is embedded within the current DSU framework, its financial (e.g. remuneration of arbitrators) needs are part of the WTO budget. Also, MPIA receives legal support from the staff previously working for the Appellate Body secretariat. In addition to drawing the ire of the US,¹⁶² the situation goes against the MPIA parties’ initial vision of having an independent support structure for the appeal arbitrators.¹⁶³

Despite the timely adoption of a unilateral countermeasure instrument, it remains unused and thereby prone to becoming an ‘empty threat’. Timely and proportionate countermeasure adopted by an injured state against the wrongdoing one is a lawful remedy available under customary international law. The EU will be justified in using the Regulation 654/2014 against the other party, when the latter uses ‘appeal to the void’ to block enforcement of the panel decision in EU’s favour. The Commission deliberated, yet refrained from using the instrument in *Indonesia – Raw Materials* (DS 592).¹⁶⁴ It could also have been used with respect of *India – Tariffs on ICT goods* (DS 582). Both of these disputes are currently appealed into the void.

4.6.3 Views of key Members and groupings

Current US administration’s view on restoring the AB or reforming the dispute settlement system overall has not been made explicit. However, available statements could be read between the lines as favouring a weakened, or altogether abolished appeals process, as well as hamstringing enforcement – reverting overall to the pre-WTO state of affairs.¹⁶⁵ Middle income countries with

¹⁵⁸ Pauwelyn, J. (2025).

¹⁵⁹ Article 2.4, Understanding on rules and procedures governing the settlement of disputes (DSU).

¹⁶⁰ Gao, H. (2025).

¹⁶¹ Article 17.2, DSU. Current appointment procedure (WT/DSB/1, para 13) is also explicit on this point.

¹⁶² Grieger, G. (2024), p. 7.

¹⁶³ WTO, (2020), *JOB/DSB/1/Add.12: Statement on a Mechanism for Developing, Documenting and Sharing Practices and Procedures in the Conduct of WTO Disputes – Addendum: Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU* (Dispute Settlement Body document), para. 7.

¹⁶⁴ Overview of EU’s active dispute settlement cases, (as of 10.01.2026) pp. 14-15,

<https://circabc.europa.eu/ui/group/7fc51410-46a1-4871-8979-20cce8df0896/library/a7faf6ef-3a86-487f-8e09-cb22a24826b4/details>.

¹⁶⁵ Current USTR Greer has referred to it as the ‘Turnberry System’ see ‘Office of the United States Trade Representative, (2025), *Op-Ed by Ambassador Jamieson Greer: Why we remade the global order. U.S. Trade Representative* (Office of Jamieson Greer); The administration response to General Council Chair’s year-end report in December 2025 was also silent on dispute settlement above.

large economies (e.g. India, Indonesia) may find the possibility of appealing into the void attractive, as it enables them to take more protectionist measures in the current geo-politically unpredictable environment, while facing less costs. The interest of non-frequent users in reforming WTO dispute settlement is more systemic and forward looking in nature. For lower-middle income countries, the issue of reform is not as 'time sensitive' as larger economies. As a result, such countries gain very little by joining MPIA.¹⁶⁶ Some may even suspect the MPIA as an indirect way to revitalise the AB, and question EU's good faith engagement in multilateral reform efforts. Despite the foregoing, the vast majority of Members support filling AB vacancies, with only the US vetoing.

In view of above, the European Parliament may wish to express its continued support for a multilateral, rules-based dispute settlement system with an embedded appellate function, while inviting other Members to join the MPIA as an interim solution. These points are already covered in the draft motion for resolution ahead of MC14 that is currently being debated¹⁶⁷. Going one step further, the Parliament may wish to:

- express its support for the fulfilment of the AB vacancies,
- underscore the desirability of ensuring true independence of the MPIA, and
- communicate its intention to work with the Commission in making appeals to the void costly by credible use of unilateral countermeasures within the bounds of the customary international law.

5 Conclusions and forward-looking recommendations

This study has examined the significance of the World Trade Organization from an economic and legal perspective and, from this viewpoint, has considered key elements of the current reform debate. This has resulted in conclusions and recommendations for the European Parliament.

The continued relevance of the WTO, MFN and FTAs

The first two parts of the study demonstrate the ongoing importance of the WTO to the EU. From an **economic perspective**, this applies to the **MFN principle**. The study highlights that MFN is of significant **economic importance** for European companies, including SMEs in particular. The principle also remains largely effective and is widely observed in world trade.

As analysis shows, a **two-tier division in the world trade system** in which most WTO Members would continue to operate on the basis of MFN treatment amongst themselves, but increasingly conclude separate bilateral 'deals' with the US, would be economically detrimental and could profoundly undermine the existing world trade order under the WTO.

A detailed economic assessment concludes that recent methodologically robust studies demonstrate significant benefits of WTO Membership. These studies also enable the **costs of a 'non-WTO' scenario** to be estimated. Similarly, positive conclusions are also reached following a detailed examination of the relatively new WTO Agreement on Trade Facilitation.

The WTO is also of great importance to the EU from a **legal perspective**. Not only do WTO rules determine the legality of European legislation and trade policy, but they also profoundly shape its architecture. This is particularly evident in the EU's FTAs which largely **incorporate WTO law but** often go **far beyond** the WTO's standards and in this regard may entail a positive spillover effect

¹⁶⁶ Interview with a developing country diplomat involved in facilitating the ongoing dispute settlement reform dialogue at the WTO. In record with authors.

¹⁶⁷ European Parliament, (2025), 2025/2875(RSP), Draft Motion for a Resolution, paras 11, 12, https://www.europarl.europa.eu/doceo/document/INTA-RD-781228_EN.pdf

and represent a pioneering function. Under the current conditions, WTO and the EU's FTAs are mutually supportive. By way of a case study on the recent 'buy European' initiatives, the study found that WTO law offers considerable policy space.

The following recommendations for the EU, and in particular the European Parliament, can be derived from these results and conclusions.

- Given the economic importance of the WTO, the European Union and the European Parliament should prioritise the WTO's existence and stability, providing sustained support for its further development and reform.
- They should promote public awareness of the importance of the WTO for the EU, European businesses and European consumers.
- The European Parliament should oppose unilateral, power-based approaches that would allow arbitrary discrimination among trading partners outside WTO disciplines. It should not legitimize the abandonment of non-discrimination as a core WTO principle.
- Instead, it should support the development of objective, transparent criteria linking MFN treatment to verifiable commitments on market openness, fair competition, and transparency, while ensuring such criteria do not become tools for excluding developing countries.
- The European Parliament should emphasize that MFN discussions must be coupled with reform of other WTO fundamentals, including dispute settlement restoration, to maintain the balance of rights and obligations.
- The European Parliament should consider supporting the conclusion of further EU FTAs as a second best solution and in a way, which promotes the stability and further development of the WTO.
- To this end, the European Parliament might play a significant role in ensuring, that EU FTAs are compatible with the promotion of an open rules-based order.
- In particular, the European Parliament may consider to actively promote innovative chapters and rules in FTAs and to develop and commit to joint initiatives within the WTO.

The WTO reform: Towards a reconstitution of the trading system

For an institution like the EU, which places rule of law at its very core, operational reforms of the WTO that would maintain and improve a rules-based trading system and reject proposals that would undermine the core principles and norms of the GATT/WTO. The European Parliament may therefore wish to **favour a pragmatic approach to reform** based on well-established GATT/WTO norms and procedures and **oppose radical reform proposals** (such as those suggested by the US). Keeping in mind the upcoming MC14, the following issues may deserve particular attention by the European Parliament.

Setting ambition

- In light of the recent overt challenges to the core principles of the WTO, and increased weaponisation of trade policy, the Parliament may consider clearly stressing its unequivocal support for the **core principles** of the WTO as the basis for a rules-based and predictable trading system;
- calling on the EU to work for a **clear agenda for preparatory work** on real reform that will ensure credibility of the WTO;

More plurilateralism

Like in the past GATT period, plurilateralism offers a means of progress in rulemaking. Any plurilateral negotiation should be transparent and open for all to participate. When it comes to implementation the model of adoption in national schedules offers one pragmatic solution but efforts should continue to persuade WTO Members not to block progress that does not affect their rights or obligations.

The European Parliament may therefore wish to consider:

- **supporting plurilateral approaches** as the best second-best practical alternative when a multilateral agreement is not possible and calling for the inclusion on the agenda of reform, an understanding on the framework within which they are chosen and negotiated.

Decision-making

Consensus was the norm in decision-making in the GATT, and this has been carried over into the WTO. The majority of WTO Members do not seek an end to this norm as effective agreements entail binding commitments and the 'buy-in' of all participating Members. Efforts to introduce more voting are likely to lead to long ideological disputes and thus result in a delay the WTO can ill-afford. The European Parliament may therefore consider that **efforts to change decision-making procedures, especially the consensus rule, may be counterproductive** for the reform agenda at MC14, but should **support efforts to return to a responsible use of the veto** power, especially by important WTO Members.

In view thereof, the Parliament may wish to:

- urge all major WTO Members to consider the implications of blocking agreements or even the initiation of negotiations in the WTO, when blocking multilateral initiatives seems likely to result in a more power-based trading system that will be especially detrimental to developing economies.

The level playing field

The 'level playing field' question is one of the more difficult issues the WTO faces. Consequently, the general view in Geneva is that tackling it will take time. This difficulty stems from the perception among some WTO Members that the trading system is imbalanced, due to market interventions by states, especially China in view of the scale of such interventions. In the GATT, the aim of maintaining a broad balance of benefits between countries was achieved through multilateral rounds of negotiations. These provided an opportunity to rebalance commitments and benefits. With no general rebalancing through multilateral 'packages', the emphasis has shifted to a search for a level playing field in terms of competitive conditions and, particularly by restraining the role of state ownership and subsidies. There are several avenues that can help.

The European Parliament may therefore wish to consider:

- supporting a reform **agenda that includes a review of the nature and scope of industrial policies** as the basis for reform of the SCM Agreement;
- pressing for real advances in **improving transparency**;
- endorsing efforts by the EU in informal **work with likeminded WTO Members and organisations** on ways of achieving competitive neutrality or the equivalent; and
- including an MC14 agenda item on the need for all WTO Members to **use national security exceptions responsibly**.

Special and differential treatment (SDT): The classification of developing countries

Regarding the discussion about the *classification of developing countries*, the European Parliament may wish to **support the current EU position** and contribute to it with refinement of some of its aspects and adding further considerations. First, this would mean encouraging **voluntary graduation** of the major emerging economies from the SDT benefits (and not from the 'developing country' status), so that they could contribute to solving the impasse in the talks about the reform, and at the same time, create fairer conditions for other developing countries. Second, this approach would mean opting for a more granular, targeted and needs-based approach that is embraced in the recent communication from the EU on WTO reform, along with exploring the stance on the 'objective and transparent differentiation criteria'.

Therefore, the Parliament may consider:

- endorsing a more granular, targeted and needs-based approach proposed in the recent communication from the EU on WTO reform;
- engaging in the activities aiming at convincing the major emerging economies that greater differentiation among developing countries is in favour of those who are most in need of special treatment;
- supporting the abandonment of the previously proposed criteria for precluding Members from claiming SDT in ongoing and future agreements. However, given that the recent communication from the EU on WTO reform insists on the need to consider the 'objective and transparent differentiation criteria', the Parliament could explore ideas for such criteria proposed by developing countries rather than developed ones. This could help to advance this discussion and win more positive outlook on this issue among developing countries. The criteria could include various indicators which are not only limited to trade or broader economic performance, but also related to e.g., multidimensional vulnerabilities, advancing differentiation among developing countries. This approach would therefore mean exploring the differentiation criteria used by other international organisations – in line with one of the objectives specified in the communication;
- backing an evidence-based approach to the discussion about development and SDT implementation, which would require to be complemented by technical assistance and capacity building measures, particularly for LDCs. This would align with the suggestion in the recent EU communication on WTO reform that the TFA can offer useful lessons in this regard. Besides this, the approach to SDT adopted in the TFA provides potentially helpful insights into how the issue of self-designation as a developing country can be addressed.

Dispute settlement

In view of the MC14, and in line with an ambitious, forward looking leadership role of the European Parliament, as revealed in the current draft motion for a resolution before the Parliament, also as proposed in this report, the Parliament may wish to:

- re-iterate its solidarity with the vast majority of WTO Members to restore a functioning Appellate Body, also **express support for restoring a functional and compulsory two-stage WTO dispute settlement** mechanism;
- consider **strongly encouraging WTO Members to find an agreeable method to overcome the consensus obstacle in filling AB vacancies;**
- consider **using its good offices to convince other developed and developing WTO Members on the MPIA's** exclusive role as an effective 'interim' mechanism that manages some of the worse fallouts of not having a functional AB;

- **underscore the desirability of ensuring the MPIA's independence**, both in terms of finance and legal support drawn from the WTO Secretariat;
- encourage the Commission to explore the possibility of bringing some of the assistance provisions developed under the current multilateral negotiation text to the MPIA mechanism, to make it attractive for low-income countries; and
- work jointly with the Commission to **make appealing into the void costly**. Among others, the Parliament may consider requesting the Commission to make credible use of the unilateral countermeasure instrument specifically against Members consistently appealing into the void.

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