



Council of the
European Union

077933/EU XXVII. GP
Eingelangt am 27/10/21

Brussels, 27 October 2021
(OR. en)

13290/21

WTO 247

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	27 October 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 654 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on Implementation and Enforcement of EU Trade Agreements

Delegations will find attached document COM(2021) 654 final.

Encl.: COM(2021) 654 final



Brussels, 27.10.2021
COM(2021) 654 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

on Implementation and Enforcement of EU Trade Agreements

{SWD(2021) 297 final}

CONTENTS

I.	Introduction.....	2
II.	Making full use of the opportunities provided by EU trade agreements	7
II.1	Trading with preferential partners - main developments in 2020.....	7
II.2	Advancing implementation of EU trade agreements: Examples across the four regions (Asia, The Americas, Neighborhood and African Caribbean and Pacific countries)	10
III.	Supporting the take-up of trade agreements by small and medium-sized enterprises	21
IV.	Addressing barriers and finding solutions.....	27
IV.1	State of play of trade barriers and removal in a challenging year	27
IV.2	Facilitating complaints: The Single Entry Point	33
V.	Bilateral and multilateral enforcement of trade commitments: resolving disputes	35
V.1	Use of dispute settlement	35
V.2	Renewing the pools of arbitrators and experts in TSD	38
V.3	Responding to obstacles to dispute resolution	38

2021 Annual Report on Implementation and Enforcement

I. Introduction

This is the Commission's first consolidated report on trade implementation and enforcement actions. It follows the appointment on 24 July 2020 of the first **Chief Trade Enforcement Officer (CTEO)** in the Commission, to oversee and steer the effective implementation and enforcement of EU trade agreements and arrangements, with an explicit mandate to report to the European Parliament as well as to the Council and the public. This Report, which will be published annually, is the main instrument for doing so.

The shift towards an **even stronger implementation and enforcement** of trade commitments under the Commission of President von der Leyen stems from two main factors: firstly, following a 10-year period of intensive, successful negotiations expanding the EU's network of preferential trade agreements, the EU now needs to increasingly focus on their full and effective implementation. Secondly, the global trade policy landscape has changed very substantially in the last few years, with new challenges emerging. This includes structural imbalances, level playing field and market access issues, and the political use by EU trading partners of unjustified restrictive unilateral measures or even economic coercion, all of which the EU must address more assertively.

Structure of the Report

The Report covers **four priority areas in implementation and enforcement**:

1. Making full use of the opportunities provided by EU trade agreements (section II);
2. Supporting the take-up of trade agreements by Small and Medium-sized Enterprises (section III);
3. Addressing barriers and finding solutions (section IV) and
4. Bilateral and multilateral enforcement of trade commitments: Resolving Disputes (section V).

The Report presents the impact of the most economically significant EU trade agreements and actions by the Commission to eliminate trade and investment barriers in third country markets. It consolidates into a single report the former yearly report on the implementation of EU trade agreements¹ and its staff working document, as well as the former yearly Trade and Investment Barriers Report (TIBR)². It contains information on activities undertaken by the Commission in partnership with Member States under the Market Access Strategy to improve market access and help SMEs to make the most of EU trade agreements, and demonstrates how the Commission works with civil society. It also reports on trade enforcement actions

¹ First report issued in 2017; 4th and last report: COM(2020)705 of 12 November, available at [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2020\)705&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2020)705&lang=en)

² First report issued in 2010; 10th and last report: COM(2020)236 of 15 June, available at [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2020\)236&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2020)236&lang=en)

taken by the Commission under the dispute settlement mechanisms of the World Trade Organization (WTO), in bilateral trade agreements and under the EU's Trade Barrier Regulation³. Finally, the Report provides statistical data on trade and investment for the 37 main EU trade agreements for 2020 (goods) and 2019 (services) and covers significant developments up to the end of the second quarter of 2021.

As the EU-UK Trade and Cooperation Agreement only entered into force on 1 May 2021 (provisionally applied as of 1 January), it will be covered by the 2022 edition of this Report.

The **accompanying Staff Working Document**⁴ contains additional information completing section II.2 of the Report on each of the 37 major EU trade agreements that applied for a substantial period of time in 2020. The Staff Working Document also has information completing section IV.1 of the Report, notably a list of new barriers registered and those fully or partially resolved in 2020.

Areas covered by separate reporting (unilateral tools)

The following areas of implementation and enforcement are subject to stand-alone reporting by the Commission:

1. The use of **trade defence instruments** in case of dumped or subsidised imports harming EU industry, or action to tackle counterfeit goods or other infringements of intellectual property rights (IPR) of EU companies abroad are covered by the annual *Trade Defence Report*⁵ and the Commission's alternating biennial publications of the *IPR report*⁶ and *Counterfeit and Piracy Watchlist*⁷.
2. The Commission's use of **export and investment control policy tools**, notably the EU Regulation on *export control of dual use items*⁸ and the *EU's Foreign Direct Investment screening mechanism*⁹ will be covered by reports expected for mid-November 2021, which will provide for the first time a detailed overview of the EU

³ Regulation (EU) 2015/1843 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (codification); *OJ L 272, 16.10.2015, p. 1–13*

⁴ <https://trade.ec.europa.eu/doclib/html/159786.htm>

⁵ 39th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020; https://trade.ec.europa.eu/doclib/docs/2021/august/tradoc_159782.PDF

⁶ Report on the protection and enforcement of IPR in third countries of 27 April 2021;

https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf

⁷ Commission's Counterfeit and Piracy Watchlist; Staff Working Document (2020) 360 final of 14 December 2020; https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159183.pdf

⁸ Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), *OJ L 206, 11.6.2021, p. 1* (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0821>) (previously Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, *OJ L 134, 29.5.2009, p. 1* (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2009.134.01.0001.01.ENG&toc=OJ%3AL%3A2009%3A134%3ATO C)).

⁹ Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union; *OJ L 791, 21.3.2019, p. 1–14*

strategic investment and export controls. The latter has been reported on since 2013, on a voluntary basis. Under the new export control regulation annual reporting is now mandatory and transparency requirements apply.

3. Finally, information on the operation and monitoring and enforcement activity under the EU's General Scheme of Preferences (GSP) is also included in a self-standing report, issued every 2-3 years. On 22 September 2021, the Commission adopted its proposal for a new GSP Regulation¹⁰ in application from 1 January 2024.

New tools introduced in 2020

The priority given to effective implementation and enforcement has also led the Commission, in the second part of 2020, to introduce **new tools addressed directly to the stakeholder communities** to engage them in and improve the efficiency of the Commission's efforts in this area.

- ✓ In October 2020, in response to specific requests from stakeholders and the European Parliament, the Commission launched its new “**Access to Markets**” (A2M) portal¹¹, providing easily accessible and multilingual information about how EU trade agreements work in practice, including specific functionalities to help operators navigate their more complex features. A2M includes specific tools, which help people and businesses of all sizes to make the most of EU trade agreements (for example, the Rules of Origin Self-Assessment tool, ROSA). The aim is to further facilitate companies accessing third country markets.
- ✓ In November 2020, the Commission established within the Directorate General for Trade a **Single Entry Point**¹² (SEP) including a complaints mechanism to enable any EU-based stakeholder to lodge complaints about possible non-compliance by third countries with their international trade commitments vis-à-vis the EU. The SEP treats at parity complaints related to market access and complaints related to commitments in the area of TSD and complaints related to the GSP. This new tool is accessible via the A2M portal. A set of operating guidelines¹³ takes people step-by-step through the information they are required to submit in order to launch a complaint. Based on the first months of operation this guidance has been updated to make the process of filing complaints clearer and better supported. Coverage and functionality of the A2M and the SEP will continue to be upgraded over the coming twelve months, based on the continuous feedback from stakeholders.

¹⁰https://trade.ec.europa.eu/doclib/docs/2021/september/tradoc_159803.pdf

¹¹<https://trade.ec.europa.eu/access-to-markets/en/home>

¹²https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2134

¹³https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159074.pdf

This introduction of new tools directly actionable by stakeholders complements actions on implementation and enforcement, which are initiated by the services of the Commission on an **ex officio basis**, i.e. under the Commission's own administrative powers.

The Report looks at how these improvements taken together have led to concrete outcomes, stemming from:

- A **more systematic use of the institutional structures** established by EU trade agreements (notably the web of committees and sub-committees of EU preferential agreements) to ensure effective implementation of commitments by third countries and the resolution of market access barriers;
- An active **mobilisation of the Market Access Partnership** “ecosystem” to prevent and address trade barriers, including the Commission, Member States and EU stakeholder representative bodies, both in Brussels and in third countries (mobilising, for the Commission, the network of EU Delegations and Member States' embassies) to address non-compliance issues by third countries;
- A high level of activity in terms of **recourse to dispute resolution mechanisms** under the WTO and under bilateral trade agreements, where the EU has now initiated 4 such actions and has prevailed in two of these disputes in 2020 and early 2021, vis-à-vis the Ukraine and South Korea, respectively; as well as the completion of 2 investigations under the Trade Barriers Regulation;
- Continued **mobilisation of civil society representatives** in the implementation of EU Trade agreements and arrangements, notably the TSD commitments thereunder, including through the **Domestic Advisory Groups** (DAGs) and civil society fora and the support provided to their activities, as well as partnerships with international organisations such as the ILO.

New legislative instruments introduced in 2020 and 2021

In the area of trade enforcement in the broad sense, since January 2020 the EU has **reinforced its enforcement-related legal instruments**.

11 October 2020 saw the entry into force of the **EU Regulation on FDI screening** kicking off the cooperation mechanism¹⁴. On 12 February 2021, the amended **EU Trade Enforcement Regulation**¹⁵ entered into force, helping to overcome any possible paralysis of the EU's dispute resolution frameworks and widening the scope of remedial measures as a result of a trade dispute. An amended **EU Export Control Regulation** entered into force on 9 September 2021.¹⁶

¹⁴ See footnote 9

¹⁵ Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules; *OJ L 49, 12.2.2021, p. 1–5*

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:206:FULL&from=EN>

Completing the toolbox

Finally, the Commission **continues advancing a number of other important legislative and other instruments** to complete the toolbox. These instruments, taken together, ensure the EU will be better equipped to respond to the challenges in international trade, notably with (1) the means to enforce (through its Enforcement Regulation and the Multi-party Interim Appeal Arbitration Arrangement, MPIA) negotiated commitments under trade agreements, (2) autonomous legislation/instruments to ensure a level playing field in traditional trade and investment areas (e.g. foreign subsidies instrument, possible passage of an International Procurement Instrument), (3) autonomous legislation/instruments for ensuring the protection of EU interests in economic areas mostly connected to security (e.g. FDI screening, export controls, anti-coercion instrument) and (4) tools to support the EU's green and sustainable ambitions.

These are the concrete ongoing initiatives:

- A Commission **proposal for an International Procurement Instrument**, with progress in Council¹⁷ now opening the door to its finalisation in the coming months;
- A Commission proposal on a new legal instrument to deal with **distortions generated by foreign subsidies**¹⁸ in the internal market;
- A forthcoming Commission proposal for a new legal instrument to tackle **economic coercion** by third countries;
- A forthcoming Commission proposal for new legal instruments on **mandatory due diligence** and **deforestation**;
- The launch in summer 2021 of a **review of the TSD 15 Point Action Plan**¹⁹.

Alongside the continued, rules-based and proportionate recourse to traditional trade instruments (anti-dumping, countervailing of subsidies), these reinforced tools and the Commission's renewed focus on enforcement ensure a continuum of policy.

As the Commission continues developing new and improved tools and instruments to tackle the multiple challenges in implementation and enforcement, working with Member States and stakeholders (businesses, trade promotion organisations, social partners, civil society groups, non-governmental organisations) becomes increasingly important, as does cooperation with like-minded third countries, to breathe life into the commitments signed, and ensure that the tools and instruments continue to deliver real results on the ground.

¹⁷ The Council on 2 June 2021 agreed on a mandate for negotiations on an international procurement instrument with the Parliament; see <https://data.consilium.europa.eu/doc/document/ST-9175-2021-INIT/en/pdf>

¹⁸ Proposal for a Regulation on foreign subsidies distorting the internal market of 5 May 2021; COM(2021) 223 final; see https://ec.europa.eu/competition/international/overview/proposal_for_regulation.pdf

¹⁹ The public consultation on the TSD 15 points action plan was launched on 27 July and will run until 31 October 2021; https://trade.ec.europa.eu/consultations/index.cfm?consul_id=301

II. Making full use of the opportunities provided by EU trade agreements

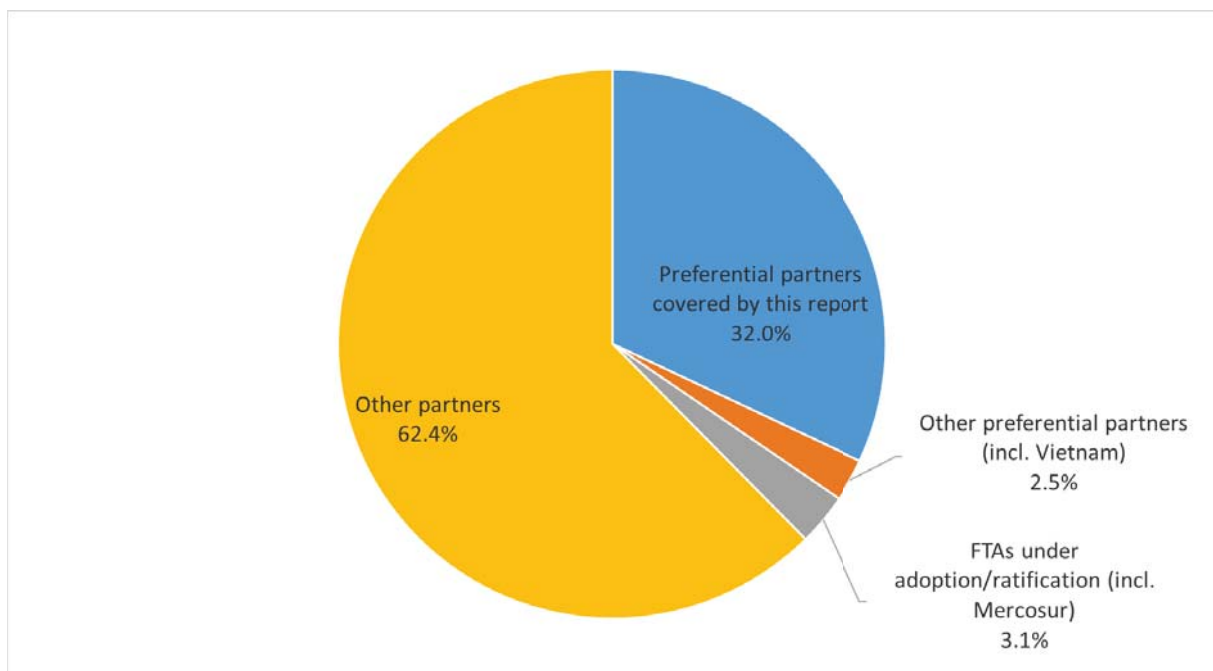
II.1 Trading with preferential partners - main developments in 2020

Statistics in this sub-section on the evolution of trade flows are based on Eurostat data for the EU27 in March 2021 and cover 37 major preferential trade agreements²⁰ with 67 partners, applied for the whole of 2020, representing more than 90% of EU preferential trade. More detailed information on these 37 major preferential agreements is set out in the Staff Working Document²¹ accompanying this Report. Data on use of tariff preferences by preferential trading partner countries and by EU exporters is published separately on the Commission's website²² to enhance transparency and encourage business associations and Member States to conduct their own research and identify the drivers which encourage people to trade under EU trade agreements or not. Patterns in preference use are also picked up in the regular *ex post* evaluation of EU agreements and in specific sectoral work²³.

In 2020 almost a third of EU trade took place under preferential trade agreements...

Trade with the 67 trading partners covered by this section in 2020 amounted to € 1,167 billion or 32.0% of EU total external trade, € 646 billion for exports and € 521 billion for imports, resulting in an EU trade surplus of € 124 billion.²⁴

Figure 1: EU external trade (2020)



²⁰ Since the EU agreement with Vietnam only entered into force on 1 August, it is not included yet in the quantitative assessment (statistics) below. The EU-UK TCA which entered into force on 1 January 2021 is not yet covered by this report since it has not been applied in 2020.

²¹ <https://trade.ec.europa.eu/doclib/html/159786.htm>

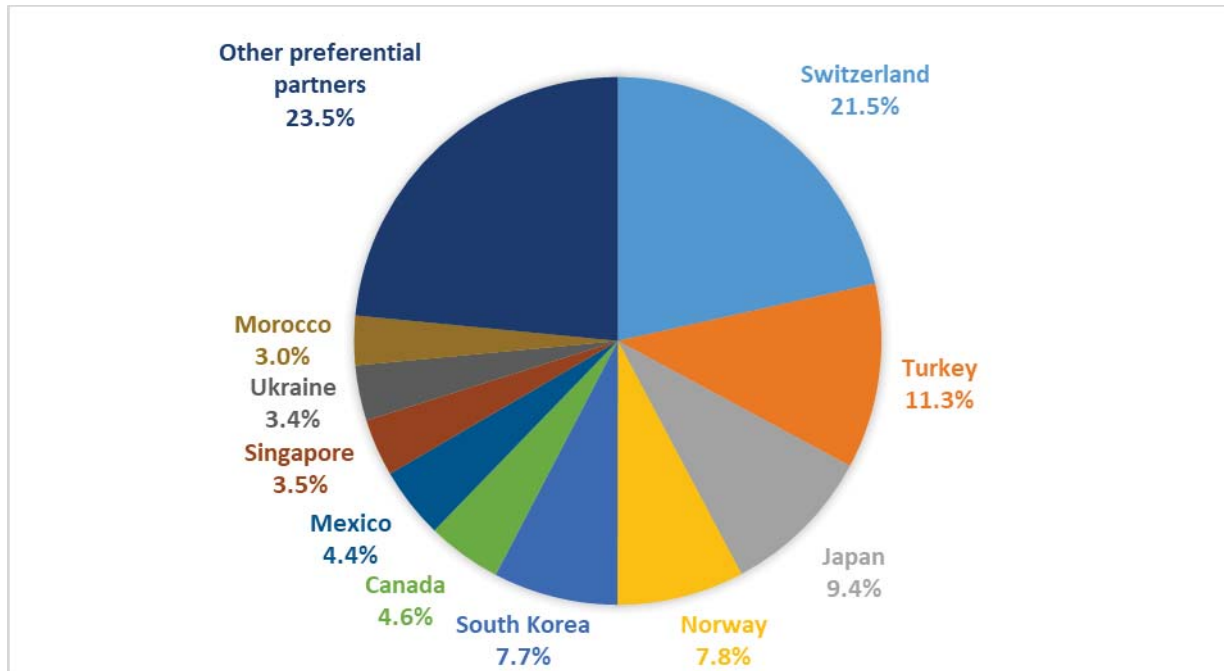
²² <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>

²³ For example, the Market Access working groups that took place in 2020 and 2021 dedicated to textiles and leather, footwear, tyres and medical devices.

²⁴ Trade with the all 77 preferential trading partners in 2020 amounted to € 1,259 billion or 34.5% of EU total external trade, € 672 billion for exports and € 586 billion for imports, resulting in an EU trade surplus of € 86 billion.

As shown by figure 2 below, Switzerland remained the EU's largest preferential partner, accounting for 21.5% of EU trade with the 67 trading partners covered by this report, followed by Turkey with 11.3%, Japan with 9.4%. Norway with 7.8% and South Korea with 7.7%. Together, these five partners accounted for more than half of EU preferential trade (57.7%). In terms of overall trade, Switzerland is the EU's fourth partner behind China, USA and the UK, while Turkey, Japan, Norway, and South Korea are in sixth to ninth place behind Russia and ahead of India.

Figure 2: EU trade in goods by preferential partner (2020)

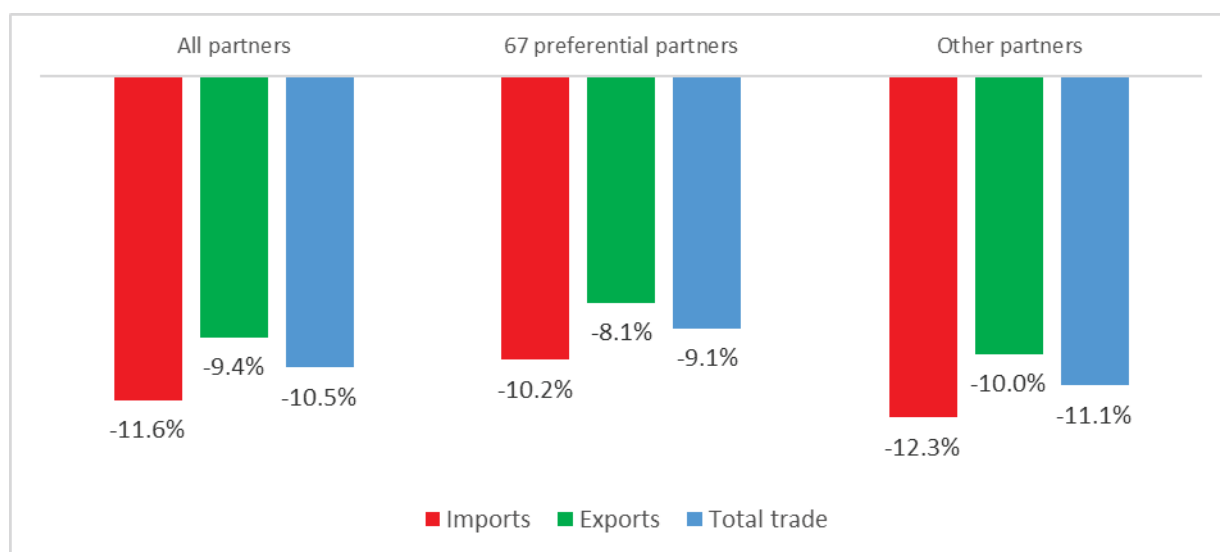


COVID-19 delivered a severe economic shock, but preferential trade held up slightly better

The economic impact of the COVID-19 pandemic was severe and trade with the 67 EU preferential partners fell by 9.1%. There were notable exceptions, for example, with an increase in exports of chemicals (largely driven by a 10% jump in pharmaceutical exports under the agreements covered). Overall, EU trade in industrial products with the 67 partners had a surplus of €116.8 billion, a rise of €2.1 billion compared to 2019.

As shown in figure 3 below, EU preferential trade held up more strongly than EU trade with its non-preferential partners (-11.1%) and trade with the rest of the world (-10.5%). The same trend was reflected in preferential exports of goods, with declines being about 2 percentage points smaller than for non-preferential trade.

Figure 3: Annual trade growth by partner (2019-2020)



Agri-food trade with preferential partners grew twice as fast as overall agri-food trade

Agri-food trade with preferential partners grew by 2.2%, i.e. down from 8.7% in 2019, but twice as fast as overall agri-food trade (which grew by 1%). Agri-food exports under preferential agreements grew by 1.8%, while imports grew by 2.7%.

Latvian grain reaches Japan

The EU-Japan EPA helped Dobeles dzirnavnieks, a leading grain processor in the Baltics and the largest pasta producer in Northern Europe, to get a foothold in Japan. “The clear framework that the EU set for exporting is key to help our business to expand to new markets. Our sustainable production model and our advances in organic production offer a high growth potential for Dobeles dzirnavnieks inside and outside the EU.” (Kristaps Amsils, Chairman of the Board, AS Dobeles dzirnavnieks)

Commission study on agri-food trade confirms the EU approach

A prospective **Commission study**²⁵ published on 26 January 2021 looks at the expected cumulative economic effects by 2030 of ongoing and upcoming trade negotiations on the EU agricultural sector, including specific results for some agriculture products after the conclusion of 12 trade agreements. The study finds that the cumulated implementation of the 12 FTAs would result in a balanced increase in both EU agri-food exports and imports, with a slightly higher increase in exports. The study also confirmed that the EU's approach of providing improved market access in the form of tariff rate quotas for the most sensitive products (mainly beef, sheep meat, poultry, sugar, and rice) enabled the EU to better protect the related sectors

²⁵ https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/trade/documents/jrc-cumulative-economic-impact-of-trade-agreements-on-eu-agriculture_en.pdf

The Commission in 2020, as required by the respective Regulations, has again monitored imports into the EU of certain industrial products and agri-food products....

Specific Monitoring Obligations (South Korea, Latin American Partners)

*The Commission, as required by Regulation (EU) No 511/2011²⁶, monitored **South Korea's imports of key car parts and electronics** from the most important suppliers (outside the EU). In 2020, Korea's imports of engines and parts fell by 19%, while imports of core car parts slightly increased (+5%). At the same time, EU imports of vehicles from Korea decreased by 16%.*

*Imports into the EU of **fresh bananas from Colombia, Ecuador and Peru as well as from Central America** were also monitored by the Commission, as required by EU Regulations No 19/2013²⁷ and No 20/2013²⁸. The evolution of imports in 2020 did not warrant any follow-up action. The Commission will continue to carry out regular analysis of the state of the market and the Union banana producers and, if need be, examine the situation together with Member States and the stakeholders.*

Trade in services declined, nevertheless the EU maintained a surplus in services...

For preferential **trade in services**, the latest figures available are those for 2019 (pre-COVID-19). Trade in services with the 67 partners covered by this Report grew by 7.8%, slower than total extra-EU trade in services (+10.5%). At the same time, trade in services with the 19 preferential partners covered by this report that took commitments in services²⁹ grew by 14%, thus more strongly than EU total trade in services overall. Preferential trade in services with all 67 partners covered by this section saw a trade surplus of €90 billion, albeit a decrease of 7.8% compared to 2018. Services trade grew strongest between the EU and its ACP partners (40%) and the three DCFTA partners (Moldova, Georgia and Ukraine: 16%).

II.2 Advancing implementation of EU trade agreements: Examples across the four regions (Asia, The Americas, Neighborhood and African Caribbean and Pacific countries)³⁰

A. Monitoring commitments under EU trade agreements and promoting new agreements

Monitoring what is happening on the ground is a key part of effective implementation....

From early on, the Commission **pro-actively monitors the legislative framework relevant for the implementation** of the commitments by the partner country. In some cases, the Commission tenders

²⁶ Regulation (EU) No 511/2011 (OJ L 145, 31.5.2011, p. 19); <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011R0511>

²⁷ Regulation (EU) No 19/2013 (OJ L 17, 19.1.2013, p. 1); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0019>

²⁸ Regulation (EU) No 20/2013 (OJ L 17, 19.1.2013, p. 13); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0020>

²⁹ Norway, Ukraine, Moldova, Georgia, Chile, Central America, Andean, Mexico, Canada, Cariforum, South Korea and Japan.

³⁰ Detailed information on individual agreements applied in 2020 can be found in the Staff Working Document: <https://trade.ec.europa.eu/doclib/html/159786.htm>.

dedicated projects to get a **precise overview of the state of play of implementation on the side of the partner country**, especially where more complex issues are at stake (e.g. non-tariff issues and steps requiring legislative action in partner countries). Here the work of EU Delegations is essential.

- *Example EU-Japan Economic Partnership Agreement:* Through a €1 million Partnership Instrument (PI) project (Support facility for implementation of the EU-Japan EPA) launched in 2019, the Commission, through its trade team in the EU Delegation in Tokyo, has been able to monitor the main steps taken by Japan starting from the first year of implementation of the EU-Japan EPA. The Commission issued a progress report in August 2020 covering the first year of EPA implementation³¹, which helped to focus on outstanding issues, such as procurement, when engaging with the Japanese counterparts in the relevant committees.³²

Promoting new agreements is key to help raise awareness among beneficiaries...

- *Example Singapore and Vietnam FTAs:* For its two most recent agreements, the ones with Singapore and Vietnam, the Commission in 2020 launched two projects under the Policy Support Facility of €285,000 and €700,000, respectively, to support the EU Delegations to promote the agreements. For Vietnam, this has led to action supporting the EU-Vietnam FTA, but also strengthening responsible supply chains, reducing plastic waste and fostering the circular economy. For Singapore, in addition to monitoring implementation, the project finances the organisation of multiple outreach seminars on specific aspects of the EU Singapore FTA, such as customs, trade facilitation, rules of origin, government procurement and services, as well as the preparation of a guide for business.

...and technical cooperation is often a catalyst for better implementation by EU trading partners.

Monitoring has been complemented by **technical cooperation** between the parties on specific issues, often supported by EU projects.

- *Example:* In 2020, the EU and the Andean countries worked towards improving the implementation of the Agreement, for example, through
 - ✓ the IP Key Latin America³³ project in the area of **IPR**³⁴;
 - ✓ a project dedicated to **Responsible Business Conduct in Latin America and the Caribbean**³⁵ implemented in partnership with the OECD, ILO and the UN Office of the High Commissioner for Human Rights;
 - ✓ seminars targeting specific concerns in the area of plant and animal health.

³¹ https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159026.pdf

³² https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159469.pdf

³³ <https://ipkey.eu/en/latin-america>

³⁴ See more information in the Report on the protection and enforcement of IPR in third countries, page 15; https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf

³⁵ Responsible Business Conduct in Latin America and the Caribbean: <https://mneguidelines.oecd.org/rbclac.htm>

B. Using the institutional framework under EU FTAs to gain market access, solve problems and further cooperation

The **institutional framework** under EU trade agreements is essential to pursue the EU's priorities in implementation. More than 200 committees and working groups, most of which meet annually, provide a structure that keeps constant check on the state of implementation to solve problems that arise. They bring together trade officials, as well as experts from across the Commission's departments and public administrations of partner countries, such as the customs officials responsible for applying the rules, or experts on environmental protection or labour rights. Agendas and reports of these institutional bodies are published on the Commission's website. In 2020, the COVID-19 pandemic meant that work was largely in a virtual format.

The institutional framework helped to gain market access

In 2020, this focus and framework succeeded in **opening further market opportunities** for trade in goods and services. Results were recorded not only in the area of tariffs and non-tariff measures, but also **public procurement** or **IPR**:

- *EU FTA with Colombia*: The Joint Trade Committee adopted a decision extending coverage under the Agreement to six new Colombian agencies at the central level of government.
- *EU FTA with Korea and EPA with Japan*: At the respective ministerial meetings of 2021 agreement was struck to extend the list of geographical indications (GIs) protected under the agreement, respectively, by 43 EU GIs and 41 Korean GIs under the EU-Korea Agreement; and by adding 28 GIs each for EU and Japan. The Joint Committee in January 2021 adopted Decision No. 1 on the enlargement of the list of GIs protected under the Agreement³⁶. However, in some other sectors, there are still difficulties in accessing both markets³⁷.

Ministerial level contacts provide an essential rendez-vous for solutions

The **annual ministerial meeting** of the (Joint) Trade or (Association) Committees can act as a focal point to **provide the necessary momentum to find solutions**, as well as initiating and providing direction to technical work throughout the year. These joint committees are often where parties decide on important implementation issues, and may agree on iterative steps to take them forward. Increasingly, the Commission, building on this approach, is seeking to insert mid-point stock taking meetings between joint committees to follow up on progress made.

- *Example Korea*: At the 2021 Joint Trade Committee, co-chairs adopted and signed an administrative amendment of the car sector annex that reflects technological and regulatory developments in the sector. The same meeting also mapped out a way forward on the follow up to remaining issues, following the panel findings in the bilateral labour dispute (see section V below).

³⁶ Decision No 1/2021 of the Joint Committee under the Agreement between the European Union and Japan for an Economic Partnership of 25 January 2021 on the amendments to Annexes 14-A and 14-B on GIs [2021/109] C/2021/82, OJ L 35, 1.2.2021, p. 31 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:2021D0109>)

³⁷ See more detail in the Staff Working Document: <https://trade.ec.europa.eu/doclib/html/159786.htm>

Early intelligence on draft measures has also helped the Commission to anticipate problems

The **institutional framework** under EU trade agreements supports swift and effective interaction on all implementation issues. This is, often, most effective at the stage when measures are still in draft form or not yet in force.

In 2020, this work has seen some **notable results to avert or remove trade irritants**:

- *Example Jordan: In bilateral discussions between the EU and Jordan under the EU-Jordan Association Agreement the EU expressed serious concerns about a planned measure to introduce a 5% “service fee” for customs processing on imported goods from the EU and, in recognising Jordan’s budgetary challenges, it stated its readiness to provide support to the country’s macro-economic stability through its Macro Financial Assistance instrument. Following these exchanges the measure was put on hold.*
- *Example Egypt: Following constructive discussions between the parties in the SPS Committee (animal and plant health), Egypt published a new standard for Feta cheese, which removed the reference to the level of yeast that had been in the earlier version³⁸. In another case, swift cooperation by Member States sharing information with the EU Delegation enabled the Commission to avert quantitative restrictions for imports of seed potatoes from the EU into Egypt.*

Once laws and regulations are in force rolling them back is more difficult, but in 2020 work in institutional bodies has delivered results...

Once they have materialised, trade barriers are much harder to remove. They are usually **addressed through discussions with the partner country in structures foreseen under the agreements, such as the trade committees** and subcommittees, starting at the expert level (sometimes reinforced by discussions at political level and in the respective WTO committees). 2020 saw a number of partner countries bring legislation or practice into conformity with the trade agreements.

Examples include:

- *CETA/wine industry: Following discussions in the Wines and Spirits Committee Canada committed to remove the federal excise duty discriminating EU imports by mid-2022 and Ontario and Nova Scotia will remove discriminatory measures on wines by mid-2023 and mid-2024, respectively. Despite remaining barriers, in 2020, Canada has become the EU’s 4th largest export market for wines.*
- *EU-Central America FTA/air transport: EU-Central America FTA/air transport: Following coordinated interventions by the Commission and Member States supported by business on the ground, Panama’s Civil Aviation Authority agreed to remove local ownership restrictions and KLM was issued a definitive license to provide ground handling and aircraft maintenance services. Before that, those ownership restrictions imposed by Panama, in contravention of the EU-Central America FTA prevented the EU airline company KLM from providing such services. This restriction also affected other EU airlines, as KLM was the only aircraft*

³⁸ Shipments of Feta cheese to Egypt were rejected over the last years due to the amount of yeast that surpassed the Egyptian standards. However, high yeast level is a natural property of Feta cheese and does not have a negative effect on human health.

maintenance service provider licensed by the European Union Aviation Safety Agency (EASA) in Panama.

...the Commission is ready to launch bilateral disputes, where barriers can't be solved via other means

In cases, where a solution cannot be found, the Commission is prepared to initiate **bilateral dispute settlement** under the procedures found in 31 of the EU's 37 preferential trade agreements covered by this Report and which allows to take countermeasures in case of non-compliance. More information on bilateral disputes in 2020 can be found in section V.

Implementation is not just about barriers: EU agreements in 2020 have supported more market opening and wider cooperation as well...

The institutional set up of EU trade agreements also maps out the path for **furthering cooperation** with trading partners on trade-related issues, such as **regulatory matters**:

Example: EU-Japan regulatory cooperation under the EPA Committee on Regulatory Cooperation:

- Japan and the EU recognised in their respective domestic regulations a number of wine-making practices that the other Party's producers use, including additives and enzymes, thus facilitating trade in the sector.
- Japan and the EU harmonised their technical regulations for cars with regard to four additional technical aspects, following the successful completion of implementation work on four United Nations Economic Commission for Europe (UNECE) regulations. Regulatory coherence was achieved through an amendment to the EPA, updating the list of UNECE motor vehicles regulations that both sides apply.

EU trade agreements can also offer a **platform for cooperation beyond trade**:

Example: EU-Canada regulatory cooperation under CETA on consumer safety and pharmaceuticals

- The Commission and Canada (Health Canada) are cooperating on consumer safety, implementing the administrative arrangement signed in 2018, joining forces on product recalls (for instance on toys in December 2020) and coordinated surveillance activities, e.g. on heavy metals in children's jewellery sold online.
- The EU and Canada as a result of bilateral cooperation between their relevant authorities, decided to recognise the results of each other's Good Manufacturing Practices (GMP) inspections carried out by either EU or Canadian inspectors in facilities located in third countries, in accordance with the CETA Protocol on the mutual recognition of the compliance and enforcement programs regarding good manufacturing practices for pharmaceutical products.

EU trade agreements, in particular regional ones such as Economic Partnership Agreements with the ACP countries, also provide a **solid basis to initiate a multi-stakeholder dialogue** to tackle important challenges in international and regional trade, such as sustainable value chains or child labour.

Example: Using Economic Partnership Agreements with African, Caribbean and Pacific partners the EU has launched a multi-stakeholder dialogue on child labour under the Sustainable Cocoa initiative

- EPAs with Ghana and Cote d'Ivoire: Under the sustainable cocoa initiative, which was launched by the Commission in September 2020, Ghana and Cote d'Ivoire are now associated to the EU's multi-stakeholder dialogue on sustainable cocoa production/value chain and pursue similar dialogues on the ground and Cameroon has joined as an observer in 2021. The objective of the multi-stakeholder dialogue is to make progress in eliminating child labour and child trafficking in cocoa supply chains, enhance the protection and restorations of forests in cocoa-producing regions, and ensure a living income for cocoa farmers. The cocoa dialogue brings together key EU stakeholders, including representatives of Member States, the European Parliament, industry and civil society organisations.

While the 2020 COVID-19 pandemic had a severe negative effect on trade, EU free trade agreements continued to facilitate trade and investment.....

Today the EU is the number one trading partner for 74 countries around the world, including in Asia, Africa, the US, the Western Balkans and the EU's Neighbourhood. Trade agreements in 2020 continued to facilitate trade between the EU and its partners and to reinforce the position of the EU as an investor, although the COVID-19 pandemic brought a number of supply chain disruptions, decrease in demand and a significant decline in both overall and preferential trade.

..but challenges remain with some of the EU's oldest and biggest preferential trading partners, such as Switzerland, Turkey and Norway.....

Challenges remain in the EU's relationships with some of its oldest and biggest preferential partners, based on older agreements that are more limited in scope:

- With **Switzerland**, the EU's first preferential partner (4th largest overall, 3rd largest for services), no progress was made in 2020 on the ratification of the Institutional Framework Agreement negotiated in 2018. The Federal Council has decided to stop negotiations on the Institutional Framework Agreement. This needs to be in place in order to unlock the potential for further bilateral trade.
- With **Turkey**, the EU's second largest preferential trading partner, negotiations on a modernised Customs Union can start only once the Council adopts the related negotiating directives. Turkey has maintained trade barriers in breach of the Customs Union agreement, notably through a substantial broadening of the number of additional tariffs it imposes beyond the Common Customs Tariff. Other concerns have included requirements for certificates of origin for EU goods. Following the amendment of the Turkish Customs Code in January 2021, a series of high level contacts and technical meetings with Turkey took place, after which Turkey informed the EU that it had sent instructions to all Turkish customs administrations and had held information meetings with economic operators to clarify the situation. Concerns persist in regard to the application by Turkey of localisation requirements in the pharmaceutical sector. The non-discriminatory implementation of the Additional Protocol to the Association Agreement towards all Member States including the Republic of Cyprus also remains a key demand by the EU.
- With **Norway**, the EU's fourth largest preferential partner, no progress was achieved on the Commission's request for a review of the trade regime for processed agricultural products. While EU exports of processed agricultural products nevertheless increased, they remain below their potential due to high customs tariffs. Negotiations on geographical indications

remain suspended. Engagement is needed both on processed agricultural products and geographical indications.

C. Trade and sustainable development in focus

In 2020 sustainable development has remained firmly in the spotlight with the launch of the early review of the 15-Points Action Plan...

The implementation and enforcement of **trade and sustainable development** (TSD) Chapters is a priority of EU trade policy. The **15-Point TSD Action Plan** published in February 2018³⁹ has guided efforts to improve further the implementation and enforcement of TSD Chapters in EU trade agreements, by providing a consistent framework and strategy. This plan, which is currently being reviewed in the light of the developments in trade policy and the response needed to the COVID-19 pandemic, sets out actions in four main areas: improving the way the Commission works together with Member States and the European Parliament, facilitating the monitoring and advisory role of civil society towards the parties of the agreements, delivering results and increasing transparency and communication.

... and the first dispute under the EU-Korea FTA

The TSD dispute under the EU-Korea trade agreement was the first bilateral dispute settlement case initiated by the EU and also the first on TSD provisions. It was launched at the end of 2018,⁴⁰ due to the EU's concerns about Korea's lack of respect of the principles relating to certain fundamental labour rights and failure to ratify four fundamental ILO Conventions, as laid down in the trade agreement. The Panel of Experts' ruling was issued on 20 January 2021 and found that Korea had not complied with its obligations. The dispute with Korea also illustrates well the importance of the **assertive use of the enforcement tools** foreseen in TSD Chapters, when needed.

³⁹ See Non-paper of the Commission services: Feedback and way forward on improving the implementation and enforcement of TSD Chapters in EU Free Trade Agreements of 26 February 2018 http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf

⁴⁰ More detailed information on the dispute can be found in section V.

The dispute settlement case against South Korea

The **Panel clarified** that: (1) compliance with the fundamental labour principles enshrined in the ILO was a binding commitment of ILO members and of the parties to the trade agreement, even in the absence of ratification of the conventions, (2) there was an ongoing obligation to make continuous and sustained efforts to achieve the ratification of fundamental ILO Conventions that was binding on the parties (Korea therefore remains under an obligation to do so), and that making continuous and sustained efforts means making realistic efforts to achieve ratification not just giving lip-service, (3) that there was no need to show the violations of the provisions at stake have effects on trade.

The developments in Korea since the Panel show that TSD provisions can lead to **real changes on the ground**: (1) Already ahead of the issuance of the Panel's report, in December 2020, the Korean National Assembly passed a series of legislative amendments to the Korean Trade Union and Labour Relations Adjustment Act (TULRAA), which aim to bring it in compliance with the principle of freedom of association. (2) On 26 February 2021, the National Assembly completed the ratification of three of the four pending fundamental ILO Conventions (No 87 on Freedom of Association and the Right to Organize, No 98 on the Right to Organise and Collective Bargaining and No 29 on Forced Labour). (3) Using the institutional structures under the Free Trade Agreement, the Committee on TSD and the Trade Committee in April 2021 agreed on a process to monitor the implementation of the recommendations in the report of the Panel of Experts that will include a joint examination of the changes made to the trade union law and of moves towards the ratification of the one outstanding fundamental ILO Convention No 105 on Abolition of Forced Labour.

Close monitoring of the TSD provisions in EU trade agreements is key...

Despite the COVID-19 pandemic, **all TSD committees** – with the exception of Vietnam- **took place as foreseen** in 2020 and the first two quarters of 2021, including the first meeting of the TSD Board established under the **EU-Singapore FTA**. The meetings of Domestic Advisory Groups of both trading parties to the EU-Singapore FTA and the civil society fora were also held virtually, which allowed many more civil society organisations to participate and have their voices heard.

..... and the ratification of ILO conventions by the EU's trading partners has remained a high priority

A key priority for the EU TSD engagement with several FTA partners has been the **ratification of fundamental ILO Conventions and the implementation of the labour commitments**. The most prominent example was the dispute settlement case with **Korea**, as mentioned above. The continued engagement with **Vietnam** is also noteworthy, highlighting the space for progress provided by the ratification procedure and the particular role of the European Parliament at that stage. In 2020, Vietnam continued working on the legislation to allow the implementation of its new Labour Code, which entered into force on 1 January 2021 (after adoption on 20 November 2019). The EU continued to support this process via collaboration with the ILO and through close engagement with the Vietnamese authorities. Notwithstanding this, and in the absence of implementing legislation, it is not possible yet to establish free trade unions in Vietnam.

The Commission has again been working closely with the International Labour Organization...

The Commission has in cooperation with the ILO provided technical assistance to **Georgia** to support the country in adopting a new Labour Code in September 2020. This has resulted in greater approximation to international standards and to the relevant EU law, and a new law on labour inspections. Collaboration with the ILO also allowed the Commission to offer technical assistance to promote labour rights in rural areas in **Colombia**, thanks to a project to strengthen labour inspection. It also allowed the organisation of a workshop on labour inspection in **Peru** in February 2020. In 2020, the EU also provided technical assistance to improve the labour inspection in the agricultural sectors of **Ecuador** (to be implemented in 2021).

Implementation of environmental sustainability commitments is also of growing importance

In the area of **environment**, the Commission continued its close engagement with **Vietnam** on Forest Law Enforcement, Governance and Trade (FLEGT). The Voluntary Partnership Agreement (VPA) between the EU and Vietnam entered into force in June 2019 and Vietnam continued working on regulations needed to implement the timber legality assurance system. Close cooperation continued also with **Ukraine** with regard to the reform of the Ukrainian forest-based sector, focussing on wood harvesting and trade and, in particular, steps taken against illegally forested timber.

The review of the 15 Points Action Plan on TSD is looking at ways to strengthen implementation and enforcement...

The review of the EU Commission's **15-Point Action Plan** of February 2018 was launched in 2021 (frontloaded from 2023) and includes a broad public consultation as well as a comparative study on implementation and enforcement of TSD provisions in EU trade agreements. Overall, the TSD review will look at all relevant aspects of TSD implementation and enforcement, including the scope of commitments, monitoring mechanisms, the possibility of sanctions for non-compliance, the "essential elements" clause as well as the institutional set-up and required resources.

In implementing TSD provisions in EU trade agreements the Commission draws on the advice of EU DAGs helping it to connect with civil society in the EU and partner countries.

Twelve EU trade agreements⁴¹ provide for the involvement of **civil society** in advising on the monitoring and implementation of their TSD Chapters, in particular, through the creation of **DAGs** on either side. EU DAG members include a mix of stakeholder representatives at EU level as well as smaller organisations dedicated to specific topics; a majority of members are selected following a public call for interest, while others are appointed by the European Economic and Social Committee (EESC), which also provides the secretariat for the EU DAGs. The Commission supports the work of both EU and partner countries' DAGs through a Partnership Instrument project as well as the joint work of Commission staff in Headquarters and trade teams in the EU Delegations.

⁴¹ 11 of these agreements are covered by the present report, the 12th one, the Trade and Cooperation Agreement with the UK, is not yet covered as its application only started on 1 January 2021.

Examples of activities by EU DAGs relevant for implementation of TSD chapters

South Korea labour dispute: Supporting the Commission to advance EU efforts to bring South Korea into compliance with labour commitments under the EU-Korea FTA, EU DAG Members brought to the attention of the Commission information on potentially problematic elements within the Korean legal framework and practice related to core ILO principles and ratification of the fundamental ILO conventions. The EU DAG plays an active role in monitoring compliance with the TSD panel report.

Human rights issues in Andean countries: The EU DAG during its two meetings in 2020 with the Commission reported on violence against trade union leaders and environmental activists in Colombia, the situation of the banana sector in Ecuador, the monitoring of labour and environmental issues in Peru, and the socio-economic impact of COVID-19 on the EU and the Andean partners. The Commission used this input for its discussion with the trading partners in the TSD committee meetings.

The establishment of a structured dialogue with civil society has proven difficult for some of the EU's trading partners, who have had limited engagement with their civil society. EU Delegations are encouraged to reach out to host countries as the latter put the structures in place and to provide advice and support, as needed, as the following example shows:

- EU -Vietnam FTA (EVFTA): The Commission through its trade team in the EU Delegation in Hanoi has actively supported the setting up of the Vietnam DAG following the entry into force of the FTA. This support has been channelled mainly through a project promoting the engagement of social partners (business & workers' organisations) and civil society (Non-Governmental Organisations (NGOs). This has been appreciated both by local civil society and by the Vietnamese administration, given the limited experience of independent Civil Society Organisations in Vietnam.

D. Analysing the effects of trade agreements (*ex post*) to improve implementation

Learning from the real impact of existing agreements helps to improve implementation in the future...

The Commission **evaluates the impact of its trade agreements over time**, usually for the first time after five years of implementation, to verify if the expected outcomes have been achieved. Two *ex post* evaluations were completed in 2020. These covered the Economic Partnership Agreement (EPA) with **CARIFORUM** (its second evaluation after ten years in force) and FTAs with the **six Mediterranean countries**.⁴² They were published in January and March 2021, respectively. Both studies point to the main outstanding issues and where the focus in implementation should be placed, also identifying problems more typically encountered with the regions.

For example, in the case of the **EU-CARIFORUM EPA**, lack of administrative capacity of the authorities/agencies remains an issue of concern as well as a lack of awareness of the agreement on the side of business and insufficient respect of transparency obligations. At the same time, given the development dimension of the EPA, its successful implementation by the 14 CARIFORUM States depends significantly on the relevant development cooperation funding. The new partnership

⁴² The study covers Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia; <https://op.europa.eu/en/publication-detail/-/publication/fab9bddd-9106-11eb-b85c-01aa75ed71a1>

programme under the Neighbourhood, Development and International Cooperation Instrument (NDICI-Global Europe) of the Multiannual Financial Framework (MFF) 2021-2027, creates opportunities for such tailored support on the identified trade related challenges. The evaluation also identified areas where the EU needed to do more, in particular as concerns greater Member States' engagement, improved communication and support for business-to-business links and platforms.

In the case of the **six Euro-Med Association agreements**, the study points to the need for a further reduction in the number of non-tariff measures, such as non-automatic import licenses or un-notified technical regulations, which cause unpredictability and distort local business operations. Moreover, the study recommends the simplification of administrative procedures, the application of internationally recognised standards and avoiding of unnecessary duplication of conformity assessments. Improving the business environment would have to be accompanied by enhanced EU support and cooperation on policies upgrading competitiveness, skills and removing logistical constraints. The identified objectives will not only inform the FTAs implementation process but could also guide reflections for EU aid-for-trade support in the period 2021-2027.

III. Supporting the take-up of trade agreements by small and medium-sized enterprises

SMEs and family businesses represent around 99% of all companies in the EU, and account for half of Europe's GDP

Global markets remain an important source of growth for SMEs, who account for one third of all EU exports, supporting more than 13 million jobs in the EU⁴³. In 2020, the Commission stepped up efforts to help SMEs make the most of trade rules and agreements, as well as making it easier for them to flag concerns on how trade agreements and rules are being followed.

Information gaps and lack of know-how can represent a barrier to trade and investment in their own right, weighing particularly heavily on smaller companies. First, trade agreements are of no use if the potential beneficiaries do not know about them and unless they understand how to access the advantages in the concrete case. Even if SME's are not exporting directly, trade agreements can matter to them because of their role in global supply chains. Second, even where companies are aware of WTO rules and EU preferential agreements their benefits do not materialise automatically. Therefore, while trade promotion is the competence of Member States, business associations or trade promotion authorities (TPOs) the Commission in 2020 continued supporting their activities, including by way of guidance, outreach (including in particular through EU Delegations in partner countries), dedicated interactive online tools or help desks and centres catering to SME's needs.

Trade agreements with developing countries offer market access opportunities that local SMEs are eager to seize, and they provide incentives for reform that development cooperation can further build on. Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries, for example, have a strong development dimension: their successful implementation depends on

⁴³ DG TRADE Chief Economist Note of May 2020:
https://trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158778.pdf

addressing these countries' internal constraints to trade through Aid for Trade. The Staff Working Document accompanying this Report includes examples of how EU Delegations work to address trade barriers through Aid for Trade. The EU Aid for Trade Progress Report 2020 contains further information on the Commission's and Member States' support for SMEs in developing countries to make the most of EU trade agreements.⁴⁴

A. Access2Markets and Rules of Origin Assessment Tool (ROSA)

2020 saw the launch of the Access2Markets portal, offering a free, one-stop shop source of information about trade...

The Commission's new portal for imports and exports **Access2Markets**⁴⁵ launched in October 2020 with its integrated **Rules of Origin Assessment Tool (ROSA)** offers a wealth of free, searchable, multi-lingual, and up-to date information. It covers 122 export markets outside the EU and 190 source markets. Companies can consult information on tariffs, taxes, quotas, import formalities and procedures for their imports and exports, and they can compare rules of origin across all EU trade agreements. While available to any user, it is particularly helpful for SMEs.

...the platform includes a self-assessment tool to help businesses find their way through the rules of origin in different EU agreements

ROSA, the Rules of Origin Self-Assessment Tool

ROSA guides users through a set of questions to assess whether or not their products fulfil the rules allowing users to qualify for preferential treatment under an EU trade agreement. To make life easier for companies, ROSA contains also clear instructions on the documentation required as proof of origin to obtain tariff preferences and includes a function to compare the rules across various agreements. Currently ROSA is being used around 500 times a day.

Access2Markets has been well received by up to 10,000 daily users, 70% of them being from the EU. Its usage is significantly higher than that of the tools it replaced (Market Access Database and Trade Helpdesk). Access2Markets and ROSA have been developed in close cooperation with both business associations and chambers of commerce and are being constantly improved based on user feedback. This good start was reflected in the platform winning the public vote in the 2021 **European Ombudsman's Good Administration Awards**⁴⁶, a recognition of its delivery of a citizen-focused service in times of crisis.

Access2Markets is set to expand with future modules on services and procurement in coming years and most agreements in ROSA by the end of 2021...

As part of the improvements, the scope of **Access2Markets is being extended** to include other core elements of EU trade agreements:

⁴⁴ European Commission, *EU Aid for Trade Progress Report 2020 – Review of progress on the implementation of the updated EU aid for trade strategy of 2017*, Publications Office of the European Union, Luxembourg, 2020 (<https://op.europa.eu/en/publication-detail/-/publication/f022db96-d854-11ea-adf7-01aa75ed71a1>).

⁴⁵ <https://trade.ec.europa.eu/access-to-markets/en/home>

⁴⁶ <https://www.youtube.com/watch?v=EXkldaJvv5E>

- A **searchable database covering a number of service sectors** under EU agreements is being developed on a pilot basis, and specific sectoral guides zooming in on certain regions or countries, for example, in the area of plant and animal health provisions.
- **ROSA's geographical coverage is also being extended** to cover most trade agreements by the end of 2021. Today, it already captures 26 trade agreements with 36 countries (including the UK, Central American partners, Columbia/Peru/Ecuador, Vietnam, Canada, Japan and South Korea).
- A new dedicated tool - **Access2Procurement**⁴⁷ –launched in September 2021 covers government procurement under EU trade agreements, starting with the members of the Government Procurement Agreement (GPA) and the EU-Canada agreement (CETA); coverage will be gradually extended beyond that.

A new tool to improve information on public tenders

Access2Procurement is a new IT tool integrated into the Access2Markets platform. Its purpose is to help European suppliers find out whether they are eligible to bid on a given government procurement contract in a third country. Based on the answers users give to three or four questions regarding the procuring entity, the subject matter of the procurement, and the expected value of the contract, the new tool gives a quick and highly reliable assessment on whether the user is entitled to participate in the bidding process. This will help bidders to determine whether or not a procurement project in a third country is covered or not by that country's market access commitments vis-à-vis the EU under the WTO Government Procurement Agreement or a bilateral agreement.

B. Guides, help desks, SME centres and cooperation with networks

In its communication efforts, the Commission continues to focus on the benefits EU trade agreements offer to businesses, particularly SMEs....

The Commission in 2020 continued **producing a series of guides** to help business navigate the agreements, backed up by dedicated training sessions and webinars for stakeholders, complementing activities by EU Member States and business. The **EU Delegations** play an important role in awareness raising and support economic operators wishing to reap the benefits of the agreement.

- Example Canada: In 2020, the Commission continued to develop specific guides and to organise webinars to assist EU businesses, which are or want to become active on the Canadian market. This work covered nine areas from highly technical subjects like alternatives to methyl bromide treatment for exporting certain plant products or opportunities for clean technology companies to more general subject like public procurement opportunities in Canada at federal and sub-federal level or an overview of IPR in Canada. All these guides and reports are publicly available on the Commission's website⁴⁸.
- Example Japan: In 2020, the trade team in the Tokyo EU Delegation developed a Step-by-Step Guide to provide market access information to companies completed by sectoral guides.⁴⁹

⁴⁷ <https://webgate.ec.europa.eu/procurement/#/step1>

⁴⁸ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1720&title=CETA-factsheet-and-guides>

⁴⁹ Guide for EU suppliers on government procurement in Japan: https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159028.pdf ; step-by-step guide providing market

SME centres in key markets, supported by the EU, have an important role....

To help SMEs internationalise and assist them in accessing negotiated benefits in partner countries, the **Commission continues to sponsor SME centres in China and Japan**, in close liaison with Member States, national and European business associations abroad and trade promotion organisations. The **EU-Japan Centre for Industrial Cooperation**⁵⁰ has 2,233 registered members. It is jointly funded and managed by the EU and Japan⁵¹ in cooperation with the Member States' Trade Promotion Organisations. It is providing multiple services⁵² to SMEs *inter alia* via the EPA Helpdesk⁵³, via the Japanese Tax & Public Procurement Helpdesk⁵⁴, and promotes technology transfers between the EU and Japan via a dedicated Helpdesk⁵⁵. The **EU SME Centre in China** is a Commission funded project which since 2010 helps European small and medium-sized enterprises get ready to do business in China. Currently in its third phase, the project is scheduled to run from October 2020 to March 2022. The EU SME Centre in its phase 2 (July 2014 to April 2020) was funded by the EU with a total budget of €5.9 million and has 14,163 registered users on the EU SME Centre website.

SME centers in Japan and China

Examples of activities of the EU-Japan Centre for Industrial Co-operation in 2020:

- ✓ 16 EPA-related webinars (via the EPA Helpdesk) with 925 participants;
- ✓ 18 factsheets guiding SMEs on key aspects of the EPA;
- ✓ 21 webinars with 810 participants.

Examples of activities of the EU SME Centre's in China (Nov 2014- April 2020):

- ✓ 307 trainings in China and the EU for over 12.000 EU SMEs;
- ✓ 28 Memoranda of Understanding signed with government agencies and business support organisations in China and Europe;
- ✓ 270 partnerships between the EU SME Centre and partner organisations;

...and are supported in some cases by thematic teams as well

EU companies (in particular smaller ones) are often confronted with practical challenges and limitations when it comes to IPR protection in third countries, such as forced technology transfer, procedural deficiencies, backlogs in rights registrations, non-registration of certain rights, non-deterrent level of sanctions for IPR infringements, lack of expertise, corruption, lack of awareness and lack of transparency. To help them effectively tackle these challenges, which may impact on their efforts to internationalise, the Commission has established **thematic SME helpdesks on IPR in key regions, notably China, Latin America and South-East Asia**.⁵⁶ These helpdesks support EU SMEs

access information to EU companies: <https://trade.ec.europa.eu/access-to-markets/en/content/eu-japan-economic-partnership-agreement>

⁵⁰ <https://www.eu-japan.eu/>

⁵¹ The EU side provides financing under the COSME Work Programme 2020 (€ 5.6 million; April 2020-March 2022).

⁵² <https://www.eu-japan.eu/summary-activities>

⁵³ <https://www.eubusinessinjapan.eu/library/news/epa-helpdesk>

⁵⁴ <https://www.eu-japan.eu/japan-tax-public-procurement-helpdesk>

⁵⁵ <http://www.eu-jp-tthelpdesk.eu/>

⁵⁶ https://intellectual-property-helpdesk.ec.europa.eu/ip-thematic-areas_en

to both protect and enforce their IPRs in EU trading partner countries' territories, through the provision of free information and services.

C. Deepening of cooperation with business and business networks

To reach companies on the ground, the Commission in 2020 continued to **deepen its cooperation with representatives of EU business interests** in the EU and in third countries, including Enterprise Europe Network (EEN)⁵⁷, the European Business Organisations' World Wide Network (EBO WWN)⁵⁸ and Member States' Trade Promotion Organisations (TPOs). The Commission's objective is to promote the exchange of views with those organisations to improve market access for European businesses in third countries.

The EEN is providing advice on FTAs concluded by the EU. The EEN thematic group for SME internationalisation regularly shares information about latest trade related issues via the EEN community platform. The expert group also organises webinars for local businesses and EEN advisers and runs help desks to spread information on trade agreements:

The European Enterprise Network - recent activities

- On 27 January 2021, the EEN thematic group for SME internationalisation organised a webinar "Meet our international partners: EEN Singapore", highlighting the opportunities and support available for EU business keen on doing business in Singapore taking advantage of the FTA.
- EEN Vietnam started a helpdesk to assess enterprises needs regarding the EU-Vietnam FTA that entered into force on 1st August 2020, including by running surveys, organising meetings etc.
- In November 2020, the EEN - in close cooperation with DG TRADE - hosted a dedicated hands-on training on the functionalities of the Access2Markets portal. The webinar was well received and more than 200 EEN advisers followed the training. More practical/hands on training sessions are planned in the future.

Support for SMEs is now built into many EU trade agreements...

To further help SMEs make use of EU trade agreements, recent agreements have included **dedicated SME chapters in EU FTAs**⁵⁹ which provide for transparency vis-à-vis SMEs and regular contacts between the parties' SME Contact Points. In 2020, the SME Contact Points established under CETA delivered an activity report to the CETA Joint Committee that met in July 2020 and started delivering on their work plan 2020-21⁶⁰, involving *inter alia* the EEN and tracking of SMEs progress under CETA. A meeting of the contact points established under the EU-Japan EPA took place in Feb 2021,

⁵⁷ The network, co-financed by the EU [COSME programme](#), is active in more than 60 countries and brings together 3000 experts from 600 member organisations. Its objective is to help small and medium-sized businesses in their international activities

⁵⁸ <https://eboworldwide.eu/>

⁵⁹ A SME recommendation has been agreed with Canada, the EU-Japan EPA and the TCA with the United Kingdom have SME chapters as do the agreements concluded with Mercosur and the modernised agreement with Mexico. SME chapters are also part of the negotiations with Chile, Indonesia, Australia and New Zealand.

⁶⁰ Work plan and activity report available at : https://trade.ec.europa.eu/doclib/docs/2020/july/tradoc_158910.pdf

where both sides reported about their initiatives to implement the information provisions under the SME Chapter.

IV. Addressing barriers and finding solutions

IV.1 State of play of trade barriers and removal in a challenging year

2020 has been a particularly demanding year: the health and economic crisis triggered by the COVID-19 pandemic has fuelled protectionism and made some partners more reluctant to remove barriers that predate the crisis.

The institutional bodies established by EU trade agreements provide an important route to detect, raise and resolve problems with trading partners with whom the EU has concluded preferential trade agreements. But business may encounter problems in areas not directly addressed by a trade agreement or in countries with whom the EU doesn't have a preferential trade agreement. Work to identify and remove barriers has thus continued 2020 at all levels (bilateral and multilateral), to meet concerns by EU businesses, who are facing restrictive measures or practices and are treated unfairly by EU trading partners, or who cannot compete on a level playing field. To facilitate complaints, the Commission, in November 2020 established on its Access2Markets portal the **Single Entry Point** (SEP), a one-stop-shop to provide information on trade barriers and/or trading partners failing to live up to their commitments on TSD.

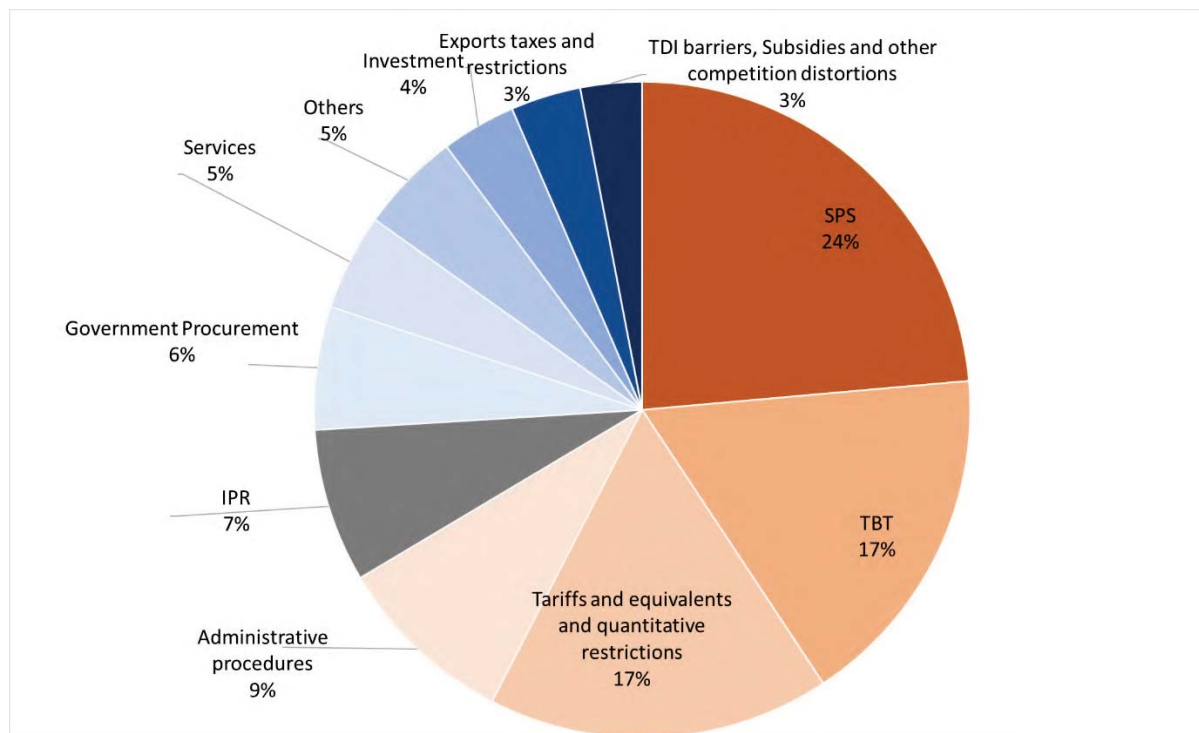
A. Stock of (total registered) trade & investment barriers as of 31 December 2020

As the below table shows, **462 active trade and investment barriers in 66 third countries** are listed in the Commission's database Access2Markets at the end of 2020:

Type of measure	Number of barriers
Sanitary and phytosanitary measures (SPS)	109
Technical barriers to trade (TBT)	79
Tariffs and equivalents and quantitative restrictions	78
Administrative procedures	41
Services & investment	39
Other measures*	37
IPR	35
Public procurement	28
Exports taxes and restrictions	16
Grand Total	462

* Other measures include barriers related to trade defence instruments (TDIs) and to subsidies, measures affecting competition, and other measures non-classifiable in previous categories.

Figure 4: Types of barriers in 2020



As can be seen from figure 4 above, looking at **types of barriers**, as in previous years, SPS measures (109) remained the largest category, accounting for a quarter of all barriers recorded, followed by TBT and tariff measures and quantitative restrictions (almost 80 each). These three categories made for almost 60% of all active barriers in 2020.

Looking at the **geographical spread**, in 2020 China remained the country with the highest stock and has 40 barriers (two more than in 2019); second was Russia, followed by Indonesia and United States (26 each), India (25) and Turkey (24). Other countries with ten or more barriers included Brazil, South Korea, Australia, Algeria, Egypt, Morocco, Canada and Malaysia.

B. The evolution of trade & investment barriers in 2020

The below table shows new barriers registered and barriers resolved in 2020⁶¹ as per type/category, showing a net increase (+8) in comparison to 2019⁶²:

Type of measure	New barriers ⁶³	Resolved barriers
SPS	13	17
TBT	5	6
Administrative procedures	5	4
Tariffs and equivalents and quantitative restrictions	5	2
Services & Investment	4	1
Other measures ⁶⁴	4	1
Government Procurement	3	1
Exports taxes and restrictions	1	1
IPR	1	0
Grand Total	41	33

Sanitary and phytosanitary (SPS) measures again came on top both in terms of new measures (13), but also for measure resolved (17), thus accounting for half of all barriers solved in 2020. The resolved SPS barriers meant, for example, opening for EU exporters the Japanese markets for certain EU beef products, allowing Belgian apples in Mexico and Thailand or getting South Korea to lift a ban on poultry from Hungary.

Technical Barriers to Trade (TBT) and barriers linked to **administrative procedures** were the second and third most common types.

In terms of **new barriers registered in 2020 per sector**, 43% were found in the **agriculture and fisheries sector** while the wine & spirit sector saw four new barriers and the automotive sector three. However, after agriculture and fisheries, the largest group of new barriers (8) were **horizontal measures** that can affect all exports to the trading partner country concerned (6) or measures that cover more than one sector (2). Together, **horizontal and multi-sector measures made up for a quarter of all new barriers** recorded in 2020⁶⁵, reflecting an increase in protectionist tendencies, further accentuated by the COVID-19 pandemic.

⁶¹ A complete list of new barriers reported and barriers resolved in 2020 can be found in the Staff Working Document: <https://trade.ec.europa.eu/doclib/html/159786.htm>

⁶² Tallying last year's measures (438 active barriers) with 2020 figures (41 new and 33 resolved barriers) would yield 446 barriers. The main difference stems from the fact that, to trace barriers partially resolved, the Commission has encoded follow-up active barriers as of 2020, leading to a nominally higher number of barriers while not altering the underlying trends.

⁶³ New barriers are the ones registered in Access2Markets along 2020.

⁶⁴ Other measures included barriers related to TDI and to subsidies, measures affecting competition, and other measures, non-classifiable in previous categories

⁶⁵ This large proportion of measures of horizontal effect hampers a proper quantification of trade flows affected.

Trade and investment barriers & COVID-19

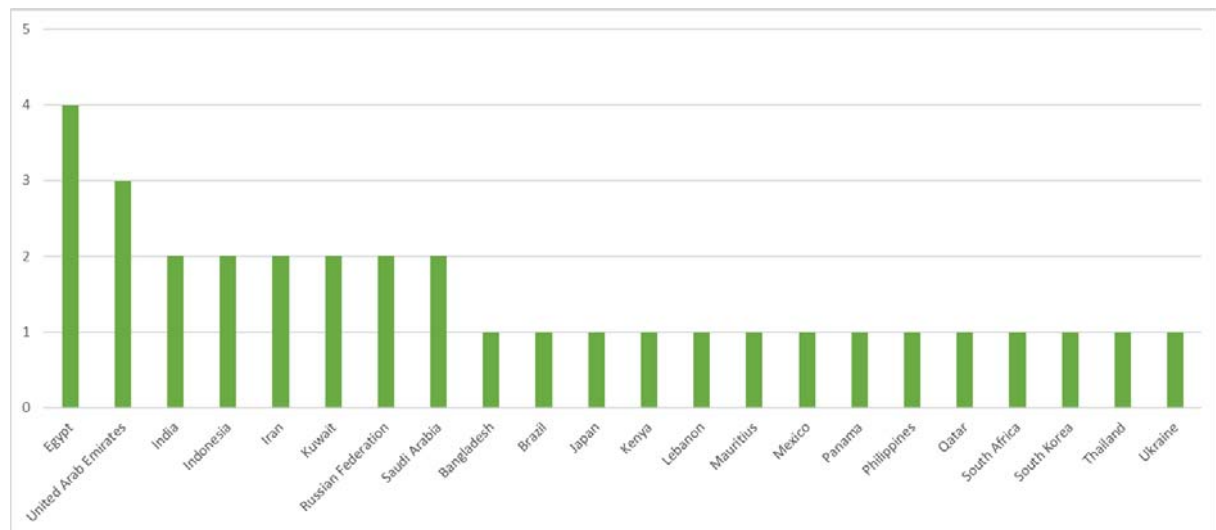
In the early stages of the pandemic, supply chain disruptions led to an explosion of demand for essential (health) goods and hence shortages and knee-jerk restrictive measures, followed by uncontrolled ramping up of the production (mainly in China), which brought with it concerns about safety and conformity with EU standards. The EU introduced a temporary transparency mechanism in the form of an **export authorisation scheme for personal protective equipment**, replacing national bans, both of which expired at the end of May 2020.

During the first phase of the pandemic, a number of EU trading partners introduced **export restrictions**. The Commission continues to monitor these measures to verify whether their duration is limited to the strict necessity, i.e. whether the measures are removed once the health situation allows⁶⁶. In cases where restrictions are found to affect the EU's supply of essential goods needed to cope with COVID-19, the EU is seeking to remove or mitigate the measure. An example includes Indian measures restricting exports of several critical medical supplies⁶⁷, which it proved possible to remove through engagement at the highest political level.

C. Barriers resolved in 2020

The Commission has proactively chased barriers in 2020 ensuring that 33 barriers were fully or partially removed in 22 trading partner countries, as can be seen from the figure 5 below.

Figure 5: Number of barriers resolved by partner (2020)



⁶⁶ Some of these measures were recorded in the EU's database for monitoring purposes (at Access2Markets <https://trade.ec.europa.eu/access-to-markets/en/barriers>)

⁶⁷ The supplies concerned by the restrictions included hydroxychloroquine (HCQ), other active pharmaceutical ingredients (APIs) and paracetamol formulations (over a third of India's production of the latter is exported to the EU).

The Commission disposes of a **range of instruments, often applied in combination** to resolve trade barriers. In addition to activating the institutional framework under its bilateral trade agreements (see section II.2 B. above) the Commission uses **diplomatic channels** and high-level dialogues with its trading partners to solve barriers. It also regularly raises barriers in a multilateral setting in the WTO. It may also launch investigations under the EU's Trade Barrier Regulation (two examinations were launched in 2020 and completed in 2021; see further below).

Bilateral action proved to be an effective route to address barriers

Examples for efforts at the bilateral level:

- Saudi Arabia/plastic: Combined efforts by the Commission, EU Member States and business helped to avert a technical barrier on the certification of plastic materials by Saudi Arabia. Member States and industry associations reported to the Commission a new requirement that would make the use of certified oxo-biodegradable plastics mandatory for packaging. The Commission studied the issue and concluded that such restriction was not science-based (i.e. lack of evidence of the beneficial effects of oxo-degradable plastics on the environment). This and other scientific evidence presented by the EU Delegation to Saudi Arabia led the latter to abandon the technical regulation on packaging products.
- Indonesia/IPR: The Commission over the past two years has been raising with Indonesia the issue of local manufacturing as a precondition for patent protection for pharmaceuticals as this was a serious obstacle for European companies wanting to compete in Indonesia. The EU engaged with Indonesia through diplomatic channels and cooperated with like-minded countries to find a solution that is mutually beneficial both for the local and European innovative industries and consistent with international standards. In October 2020, Indonesia adopted a new Omnibus Law on Job Creation that removed the requirement. This meant an important move towards compliance with international standards covering *inter alia* the manufacture, importation and licensing of patented inventions in Indonesia.

...alongside action within the framework of the WTO and its various committees...

Given the proliferation of rules and regulations affecting international trade, the proper implementation of multilateral disciplines related to TBT is of utmost importance. Thanks to successful EU engagement at the **WTO TBT Committee**, a large number of such TBT-related barriers could be clarified, removed or prevented, thus facilitating EU exports. According to recent estimates, such measures affected around **€83 billion⁶⁸ worth of EU exports over the past decade** in a wide range of sectors, notably medical devices, pharmaceuticals, automotive, food and beverages, IT products, and electrical appliances, cosmetics, toys, textiles, ceramics or furniture.⁶⁹

... and the Trade Barriers Regulation offered an additional legal route in specific cases.

⁶⁸ This methodology estimates the current trade flows that benefitted from the elimination/prevention of TBT barriers and does not provide a quantification of export increases or other trade effects.

⁶⁹ See also publication by CEPS of February 2021: "Multilateral cooperation behind the trade war headlines: How much trade is freed up?"; by Lucian Cernat and David Boucher; https://www.ceps.eu/download/publication/?id=32164&pdf=PI2021-03_Multilateral-cooperation-behind-the-trade-war-headlines.pdf

The **Trade Barriers Regulation** (TBR) is a legal instrument that gives EU companies, industries, associations and Member States the right to lodge a complaint with the Commission about trade barriers in third countries. If the complaint fulfils the criteria for admission, the Commission examines the case to determine whether there is evidence of violations of international trade rules resulting in adverse trade effects or injury, and whether it is in the EU's interest to act. If the procedure concludes that action is necessary to ensure the respect of international trade rules and to remove the injury caused, appropriate measures can be taken, which may include the initiation of dispute settlement proceedings.

So far **24 TBR examination procedures** have been initiated with regard to trade practices of a wide range of trading partners (e.g. Brazil, Canada, Japan, Turkey). Two examinations were started in 2020 and concluded in 2021.

- Examples Saudi Arabia/tiles and Mexico/Tequila: On 5 May 2021, the Commission concluded the investigations concerning Saudi Arabian measures⁷⁰ restricting market access to EU ceramic tiles and concerning Mexican measures⁷¹ affecting Tequila exports to the EU. These investigations were initiated upon complaints of the respective business associations (i.e. the European Ceramic Industry Association (Cerase-Unie) and Brewers of Europe) and resulted in clarifying the legal situation and economic effects of the third country measures. The examinations found that Saudi Arabia's new technical regulations were hindering 75 to 80% of EU exports in ceramic tiles, valued at € 120-150 million per year, and affecting many EU SMEs, while Mexico's refusal to issue export certificates for Tequila to the EU might constitute export restrictions prohibited under WTO rules.

Having concluded these two examinations the **Commission is now in a better position to get these barriers removed**. The Commission will now engage with Saudi Arabia to ensure removal of these barriers, either through negotiation or bringing the case before the WTO. The Commission will also monitor pending administrative procedures in Mexico to ensure they remove the trade barrier.

D. The Market Access Partnership at work and its impact in 2020

Tangible results were achieved in 2020, notwithstanding the difficulties created by the COVID-19 pandemic, thanks to ongoing cooperation between the Commission, Member States and business. in the Market Access Advisory Groups in Brussels, but also in many Market Access Teams steered by trade teams in EU Delegations, and stakeholders providing information about the situation on the ground in our partner countries.

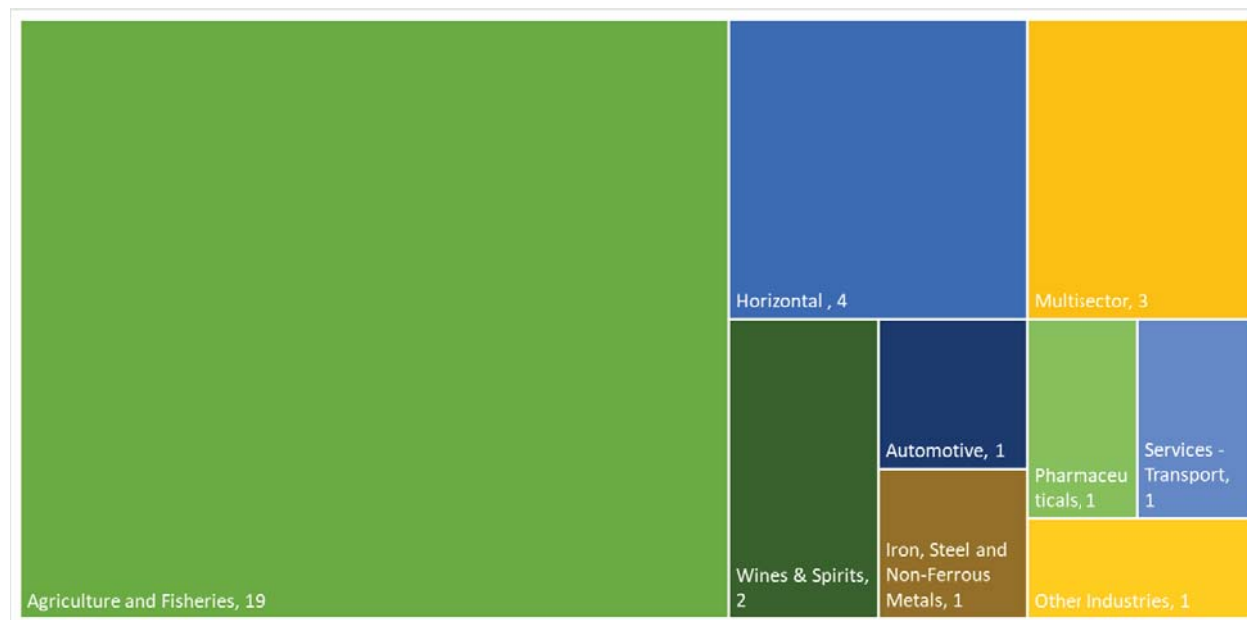
In terms of the **geographical spread of barriers resolved in 2020**, 4 were addressed in Egypt, 3 in the United Arab Emirates, 2 concerned India, Indonesia, Iran, Kuwait, Russia and Saudi Arabia, respectively, while one each was addressed in 14 other countries. Almost half the barriers resolved (15) were located in the South Mediterranean and Middle East region, as that the Commission reacts to the growing trend in protectionism in this strategic region. Seven barriers were resolved in South and South East Asia.

⁷⁰ https://trade.ec.europa.eu/doclib/docs/2021/may/tradoc_159564.pdf

⁷¹ https://trade.ec.europa.eu/doclib/docs/2021/may/tradoc_159563.pdf

As in previous years, the **sector that most benefitted** from the number of barriers removed was **agriculture and fisheries**, accounting for almost 60% of total barriers resolved. Seven of the resolved barriers (one fifth) corresponded to either horizontal or multisector barriers.

Figure 6: Number of barriers resolved per sector (2020)



Overall, **econometric analysis**⁷² carried out by the European Commission showed that, thanks to the removal of a number of barriers between 2014 and 2019⁷³, **exports from the European Union in 2020 were € 5.4 billion higher than they would have been if the barriers had still been in place.** These additional € 5.4 billion EU exports are tangible benefits of implementation and enforcement efforts carried out by the Commission, Member States and business within the Market Access Partnership.

IV.2 Facilitating complaints: The Single Entry Point

The launch of the Single Entry Point is helping to focus and mobilise resources to tackle trade barriers...

The launch of the **Single Entry Point**⁷⁴ (SEP) on 16 November 2020 should further improve the interaction between the Commission and stakeholders, raising complaints about market access barriers and infringements of TSD commitments and complaints related to non-compliance with the requirements under the EU “Generalised System of Preferences” (GSP). The SEP is designed in a way to ensure that the Commission can draw on a solid base of evidence in examining complaints,

⁷² The methodology applies to trade in goods only and does not allow inclusion of complex horizontal barriers affecting goods, nor barriers beyond goods.

⁷³ The analysis includes 130 barriers removed from 2014 to 2019. Only some barriers can be quantified by this analysis, notably the ones affecting EU exports in goods and which do not have a horizontal effect. The analysis does not cover barriers removed in 2020 because at least one full year of data after the barrier is removed is required to establish the impact on trade.

⁷⁴ See Operating guidelines: https://trade.ec.europa.eu/access-to-markets/en/form-assets/operational_guidelines.pdf

allowing it to act more rapidly and effectively in cases where it believes there are grounds to act. At the same time, the one-stop-shop mechanism and guidance provided by the Commission addresses the difficulty many stakeholders have been facing to identify the right channels and the information expected from them to launch complaints and to follow their course.

The SEP also benefits from a more streamlined approach to managing work on barriers inside the Directorate-General for Trade and across the wider set of services in the Commission, which are concerned by potential barriers. While keeping all barriers under review, some are prioritised based on their legal strength, their economic or systemic importance and the perspective for their removal.

... making it easier to prepare stronger cases

The SEP can be accessed via the online platform Access2Markets (see section III. A above), which allows to submit complaints on-line⁷⁵. Since its announcement in summer 2020 the SEP has been contacted more than 60 times with regard to possible complaints resulting in 17 formal complaints received.

... and helping the Commission to react faster and with greater effect...

The **Single Entry Point is already making a real difference** to the way the Commission works on barriers. As the below example shows, receiving the right information at an early stage heightens the chances of addressing barriers successfully through the full range of formal and informal channels available.

- **Example: Egypt/ceramic tiles:** A recent example is the temporary import ban imposed by Egypt on ceramic tiles. EU companies, acting through their industry association, with the help of the new one-stop-shop facility were able to act swiftly and, guided by the complaint form, were able to put together the information required only days after Egypt had published the measures. This allowed the Commission, with the help of the EU Delegation, to engage with the Egyptian authorities at an early stage, including via diplomatic contacts and by exchanging letters. In March 2021, following the initial three months' period, Egypt decided not to extend it and thus the measure has now expired.

At the same time, it is to be noted that all formal complaints to date have focused on market access barriers and not yet on sustainable development, reflecting the additional complexity of potential cases in that area, but also the greater familiarity of business stakeholders with the existing market access work. The Commission is regularly reviewing its operating guidelines on the SEP as needed and is adjusting them, considering comments from stakeholders.⁷⁶ This is important as the new complaint system comes with a responsibility for business and other stakeholders to provide well-argued and substantiated cases, wherever possible. Where this is done, the Commission will be well equipped to respond. In addition, the Commission always reserves the right to become active on its own initiative (by launching *ex officio* cases), both on barriers related to market access and to infringements of commitments on TSD.

⁷⁵ Complaints on market access or regarding violations of TSD commitments can now be made on-line via the corresponding forms on the Access2Markets portal.

⁷⁶ First update taking account of stakeholders' input was made in September and can be accessed at <https://ec.europa.eu/trade/trade-policy-and-you/contacts/chief-trade-enforcement-officer/>

V. Bilateral and multilateral enforcement of trade commitments: resolving disputes⁷⁷

Effective upstream work on implementation, on pre-empting potential barriers and on tackling actual barriers before they become entrenched is at the heart of the Commission's new approach to implementation and enforcement. However, this work must be backed up by effective legal procedures for resolving disputes, to be used when necessary.

V.1 Use of dispute settlement

A. WTO dispute settlement

WTO dispute settlement remains important for effective enforcement, despite the current blockage of its Appellate Body function

The WTO dispute settlement system produces **independent and impartial rulings**, binding for the parties to the dispute, which can be **appealed**, guaranteeing the **quality and legitimacy** of those rulings.

The **WTO** offers a tried and tested dispute settlement system that can be used by the EU to enforce its WTO rights when other WTO Members do not respect their commitments. Up to June 2021, the EU had launched 104 of the 600 disputes brought to the WTO since 1995.

In the period covered by this report, the **EU brought a significant number of dispute settlement proceedings**. While the timelines of WTO disputes have inevitably been affected by the COVID-19 pandemic, the EU has actively promoted and supported measures in the WTO to keep the disputes on track, such as having panel hearings in virtual or hybrid form.

⁷⁷ For a detailed summary of, in particular, WTO cases involving the EU as complainant or respondent and cases under the EU's bilateral agreements, see the most up-to-date edition of the 'Overview of the EU's active dispute settlement cases', published on DG Trade's website (<https://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/>).

WTO dispute settlement proceedings

-Panel proceedings continued in a number of disputes initiated by the EU, including: against Turkey in the Pharmaceutical Products case (DS583); against Colombia concerning anti-dumping duties on frozen fries from Belgium, Germany and the Netherlands (DS591); against India over excessive Indian tariffs on certain goods in the information and communications technology sector (DS582); and against the US concerning certain measures on steel and aluminium products (DS548) and anti-dumping and countervailing duties on ripe olives from Spain (DS577).

-The EU **advanced to the panel stage** its dispute concerning Indonesia's nickel ore export ban as well as Indonesia's domestic processing requirements affecting nickel ore and iron ore. A panel was composed on 29 April 2021 in Indonesia — Measures Relating to Raw Materials (DS592).

-In October 2020, in the **EU's dispute against the US** concerning Large Civil Aircraft (DS353), the WTO's Dispute Settlement Body authorised the EU to suspend concessions in relation to the US up to the level of nearly four billion USD annually. Following the actual imposition of countermeasures by the EU on 10 November 2020, and the mutual suspension of countermeasures by the EU and the United States on 5 March 2021 for a four-month period, an Understanding on a cooperative framework for Large Civil Aircraft was reached on 15 June 2021, according to which countermeasures remain suspended for a further period of five years.

B. Bilateral dispute settlement

In 2020 the Commission continued its litigation work under the dispute settlement provisions of bilateral trade agreements ...

Dispute settlement procedures that are found in 31 of the 37 EU trade agreements covered by this report favour, as a first step, mutually agreeable solutions through consultations. This is feasible in cases where there is good will on both sides to swiftly address imbalances and to remove trade irritants detected in monitoring compliance with those agreements.

Where a mutually agreeable solution does not appear possible through consultations, either side may request the establishment of a dispute settlement panel.

Since 2018, the EU has requested dispute settlement under four bilateral trade agreements: the Association Agreement with **Ukraine**, the Free Trade Agreement with the Republic of **Korea**, the Economic Partnership Agreement with the **Southern African Development Community (SADC)**⁷⁸, and the Association Agreement with **Algeria**. Steps taken in 2020 and early 2021 include the following:

- In April 2020, the EU asked for the establishment of an arbitration panel with the **Southern African Customs Union (SACU)**⁷⁹ under the EU's Economic Partnership Agreement with the Southern African Development Community (SADC)⁸⁰ in relation to safeguard measures taken against EU poultry exports. The panel selection process, which had been temporarily

⁷⁸ The EU-SADC EPA applies between the EU and six countries from the Southern African Development Community (SADC): Eswatini, Botswana, Lesotho, Mozambique, Namibia and South Africa.

⁷⁹ 5 Members of SADC (Botswana, Lesotho, Namibia, South Africa, and Eswatini) formed a customs union.

⁸⁰ <https://www.sadc.int/about-sadc/overview/>

suspended due to the public health situation, was restarted on 22 November 2020 and is ongoing.

- Also in June 2020, the Commission seized the Association Council under its agreement with Algeria to address a number of import restrictive measures including an import ban imposed by **Algeria** on cars. As a result, constructive discussions between the EU and Algeria covering all challenged measures started in September 2020 were held in numerous rounds in 2021 in order to resolve the dispute in an amicable settlements.
- In relation to **Korea**, following delays linked to, among other things, the COVID-19 pandemic, the Panel of Experts in January 2021 gave its ruling on the case brought by the EU regarding Korea's obligation under the FTA to ratify fundamental ILO Conventions and regarding trade union legislation, see above, section II.2 C.
- In the case of **Ukraine**, a panel found on 11 December 2020 in the EU's favour as regards a ban on wood exports to the EU. Ukraine informed the EU in writing on 29 June 2021 of its progress to comply with the arbitration panel ruling' but was not in a position to notify any measure that it has taken to comply with the panel ruling.

Ukraine Dispute Settlement Case

In 2005, Ukraine started applying an export prohibition concerning a number of wood species in the form of unprocessed wood and sawn wood. Between 2015 and 2017, Ukraine extended the product scope of this **export prohibition** to cover the **export of all unprocessed wood**. As political efforts failed to resolve the issue, the Commission decided on 22 November 2018 to start dispute settlement proceedings with Ukraine under the bilateral EU-Ukraine Association Agreement (an arbitration panel was established on 28 January 2020).

The approach taken by the European Commission in this case was underpinned not only by a **strong legal basis** but also by the **economic impact** of the Ukrainian export ban. Whereas Ukraine has become in the meantime the second largest import source of (processed) softwood lumber for China, imports into the EU of unprocessed wood from Ukraine fell from 2 million tons in 2015 (14% of EU imports) to a negligible 2 000 tons in 2019, thus potentially seriously impacting the availability of relevant raw materials for the EU wood processing industry.

The arbitration panel issued its final ruling on 11 December 2020, concluding that the Ukrainian export ban on unprocessed wood was incompatible with Article 35 of the EU-Ukraine Association Agreement, which forbids export prohibitions. The ruling also **clarified** that the **relevant exceptions did not apply**, rejecting Ukraine's claim that the export ban on unprocessed timber was legitimately designed to protect Ukrainian forests. The panel only upheld this line of argument for a very narrow earlier export ban on sawn wood of ten very rarely traded wood species.

The case illustrates the EU's policy of taking **assertive action against export restrictions**, as they pose a **systemic threat** to international trade. This was also reflected by the EU's and other trading partners' action against certain Chinese restrictions on raw materials, or – more recently – the launch by the EU of a WTO dispute settlement case against Indonesia's export ban on nickel ore (DS592 – see box on WTO dispute settlement proceedings).

V.2 Renewing the pools of arbitrators and experts in TSD

In December 2020, the Commission called for applications in connection with the renewal of the pool of arbitrators and the separate pool of TSD experts for dispute settlement panels under trade agreements to which the EU is a party. A selection panel of experienced international judges and academics will examine the applications to confirm their suitability for appointment.

In line with Commission's adherence to the "Equal Representation in Arbitration Pledge", the Commission will seek to ensure gender balance in its proposals to the Council for rosters of arbitrators and experts, as well as in the appointment of arbitrators or of experts in TSD in specific disputes.

V.3 Responding to obstacles to dispute resolution

With the work of the WTO Appellate Body blocked, the European Union has been to the fore in efforts to find a temporary workaround pending a lasting solution.....

The WTO Appellate Body has been paralysed since December 2019, due to a blockage on appointments. It is therefore possible that disputes do not reach a binding conclusion where the losing party appeals a panel report to a non-functioning Appellate Body and refuses to agree to appeal arbitration under the WTO rules. A growing number of such cases cannot currently be processed, which has a negative effect on the stability and predictability of the environment for international

trade. The Multi-party interim appeal arbitration arrangement (MPIA), described below, seeks to address this problem.

A. Brokering the Multi-party Interim Appeal Arbitration Agreement (MPIA)

The “Multi-party interim appeal arbitration arrangement” offers participants binding and independent dispute settlement under WTO rules, and the possibility of appeals...

In April 2020, the EU and a group of other WTO Members set up the **Multi-party interim appeal arbitration arrangement**, known as the ‘MPIA’. This arrangement – which any WTO Member can join – means that participants commit to having any appeals in WTO disputes between them dealt with through appeal arbitration under the WTO rules while the Appellate Body remains unable to function fully.

Based on existing WTO rules, the **MPIA preserves, among its participants and for as long as the Appellate Body is unable to function fully, a right of appeal in WTO disputes**, as well as the right to binding and independent adjudication of trade disputes. This means that, in relation to the other MPIA participants, the EU continues to benefit from a fully functioning, two-tier dispute settlement system under WTO rules, despite the Appellate Body crisis. In addition, by preserving the possibility of such dispute settlement among its participants, the MPIA generally contributes to stability and to the preservation of rules-based trade. Up to 30 June 2021, the MPIA covered 25 WTO Members⁸¹. These include major WTO dispute settlement users and represent around half of the world’s gross domestic product. In July 2020, the participating WTO Members established a 10-strong standing pool of appeal arbitrators, from which three arbitrators per case are to be selected randomly to hear any appeals covered by the MPIA.

The **MPIA has been implemented in several disputes** where the parties are both MPIA participants, through the signature of appeal arbitration agreements corresponding to the MPIA model. These disputes include the EU’s case against Colombia concerning anti-dumping duties on frozen fries imported from certain EU Member States (DS591). Accordingly, if the EU succeeds at the panel stage this case, Colombia cannot seek to frustrate that outcome through an appeal before a non-functioning Appellate Body.

B. Strengthening the EU Enforcement Regulation (ER)

Changes to the EU’s Enforcement Regulation allow the EU to counter attempts by partners to prevent WTO or bilateral disputes reaching a conclusive decision

By amending its ‘**Enforcement Regulation**’ the EU broadened its possibilities for exercising and enforcing its international rights more assertively. The **amendments** introduced by Regulation (EU) 2021/167, which came into force on 13 February 2021, strengthen the EU’s capacity to act in two important respects.

- First, the amendments allow the EU to suspend or to withdraw its obligations towards a trading partner in situations of a breach of international trade rules or commitments by that

⁸¹ The EU, Australia, Benin, Brazil, Canada, China, Chile, Colombia, Costa Rica, Ecuador, the European Union, Guatemala, Hong Kong (China), Iceland, Mexico, Montenegro, New Zealand, Nicaragua, Norway, Pakistan, Singapore, Switzerland, Ukraine, Uruguay and Peru.

trading partner towards the EU where that trading partner seeks to thwart the final and binding conclusion of the dispute settlement processes concerned, be they under the WTO Dispute Settlement Understanding or in relation to bilateral or regional trade agreements. In other words, the amendments concern situations where, despite the EU's good faith and best efforts, a binding ruling on a trade dispute on breached EU's rights cannot be obtained. This could be due to the failure of the counterparty (the EU's trading partner) to take the required action (for example, refusing to appoint arbitrators under an international trade agreement of the EU) or to the counterparty appealing a WTO panel report to the non-functioning WTO Appellate Body and not agreeing to interim appeal arbitration under Article 25 of the WTO Dispute Settlement Understanding. Enforcement action through the suspension or withdrawal of the EU's obligations towards the trading partner concerned will effectively defend the EU's economic interests.

- Second, those amendments also broaden the scope of possible countermeasures by allowing the EU to take countermeasures in trade in services and in some trade-related aspects of IPR. The EU's range of options for enforcement measures is thus significantly wider and better adapted to today's knowledge-based society. Providing for such measures corresponds to the seriousness the EU attaches to the respect of commitments by its trading partners.