The European Union as an Actor in Bilateral Trade Relations

An Explanatory Assessment of the EU's Actorness in CETA

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Abstract

From the mid-2000s onwards, deep and comprehensive bilateral 'new generation' free trade agreements (NGFTAs) became the central instrument of the European Union's (EU) Common Commercial Policy (CCP). The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada was initially praised for its innovative scope and design and intended to serve as an archetype for future EU trade agreements. However, the agreement later encountered significant political and legal obstacles, exposing important operational weaknesses in the EU's trade treaty-making process amid intense societal opposition across Member States. As a result, the contentious case of CETA generated substantial political controversy, raising doubts about the Union's capacity to conclude ambitious trade agreements and, consequently, about its credibility as an international trade actor.

By constructing a theoretical framework for evaluating EU trade actorness and applying qualitative document analysis to primary and secondary sources, this thesis argues that the EU demonstrated an overall *medium degree of actorness* in the context of CETA. On the one hand, the Union displayed strong authority and recognition throughout the negotiations. On the other hand, its autonomy was considerably constrained by limited independent action and sustained Member State pressure to classify CETA as a mixed agreement, thereby granting national actors *de facto* veto powers. Furthermore, mixity and thus unanimity voting produced only a moderate capability to formulate and maintain the agreement, relying heavily on provisional application, issue linkages, policy-based side payments and subsequent textual adjustments to secure approval. Finally, the EU's opportunity structure remained moderate, shaped simultaneously by strategic and economic incentives favouring conclusion of the agreement and by intense anti-CETA mobilisation across Europe.

Keywords: EU actorness, external action, common commercial policy, free trade agreements, CETA

Abbreviations

AA(s)	association agreement(s)
ASEAN	Association of Southeast Asian Nations
BIT(s)	bilateral investment treaty(ies)
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CEG	capability-expectations gap
CETA	(EU-Canada) Comprehensive Economic and Trade Agreement
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
COREPER	Committee of Permanent Representatives
COSAC	Conference of Parliamentary Committees for Union Affairs
CSDP	Common Security and Defence Policy
CSO(s)	civil society organisation(s)
DDR	Doha Development Round
DG	Directorate-General
EC(s)	European Community(ies)
ECI	European Citizens' Initiative
EEAS	European External Action Service
EEC	European Economic Community
EESC	European Economic and Social Committee
EMPA	EU-Mercosur Partnership Agreement
EP	European Parliament
EPP	European People's Party
ESDP	Common Security and Defence Policy
eTA	Electronic Travel Authorization

EU	European Union
EURATOM	European Atomic Energy Community
EUSFTA	EU-Singapore Free Trade Agreement
FAC	Foreign Affairs Council
FDI	foreign direct investment
FTA(s)	free trade agreement(s)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GI(s)	geographical indication(s)
GMOs	genetically modified organisms
ICS	Investment Court System
INTA	(European Parliament) International Trade (Committee)
IO(s)	international organisation(s)
IP	intellectual property
IPR(s)	intellectual property right(s)
IR	international relations
ISDS	investor-State dispute settlement
iTA	interim Trade Agreement
JII	Joint Interpretive Instrument
MEP(s)	Member(s) of the European Parliament
Mercosur	Mercado Común del Sur ("Southern Common Market")
MGA	EU-Mexico Modernised Global Agreement
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGFTA(s)	new-generation free trade agreement(s)
NGOs	non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
PA	principal-agent

PDO	protected designation of origin
PGI	protected geographical indication
PT	process tracing
PTA(s)	preferential trade agreement(s)
RCI	rational choice institutionalism
S&D	Progressive Alliance of Socialists and Democrats
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TIEA	(Canada-EU) Trade and Investment Enhancement Agreement
TPC	Trade Policy Committee
TRIMS	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSD	trade and sustainable development
TTIP	(EU-US) Transatlantic Trade and Investment Partnership
UN	United Nations
US	United States (of America)
WTO	World Trade Organization

1 Introduction

1.1 Background

The European Union's (EU) common commercial policy (CCP) underpinned by its formidable market power is widely regarded as the most powerful external policy domain and a principal source of its global influence.[1] Scholars such as Lütz *et al*. describe trade policy as the EU's "central source of power" in external relations, while Bretherton and Vogler argue that the Union's economic strength underpins all its external activities.[2] Likewise, Meunier and Nicolaïdis emphasise that trade lies at the core of the EU's power, enabling it not only to act as a major trading actor but also to shape the domestic policies of trading partners through privileged access to its prosperous market.[3] The EU itself characterised its position in the 2021 Trade Policy Review as "the biggest *actor* on the world trading scene",[4] a view broadly reflected in the literature on the EU as a global trade power.[5] Accordingly, this thesis proceeds from this premise: "*The EU is an actor in international trade*".

Nevertheless, the contested and multifaceted nature of actorness raises three interrelated analytical issues. First and foremost, despite its centrality in the study of EU external relations, the concept of actorness "remains empirically underexplored".[6] Traditional international relations (IR) approaches, which equate actorness primarily with sovereign statehood, struggle to capture the EU's *sui generis* nature as a polity situated between a state and an intergovernmental organisation.[7] Consequently, understanding EU external action requires moving beyond state-centric approaches towards more pluralistic conceptions of political actorness.[8]

[1] Bradford (2020); Bretherton & Vogler (2006), Ch. 3; Damro (2012; 2015; 2021); Gstöhl & De Bièvre (2018); Orbie (2008b).
[2] Bretherton & Vogler (2006), p. 4; Lütz, Leeg, Otto & Dreher (2021), p. 23.
[3] Meunier & Nicolaïdis (2006).
[4] European Commission (2021a), p. 5 (emphasis added).
[5] Bretherton & Vogler (2000; 2006, Ch. 3); Burckhardt (2013); Elsig (2013); Garnizova (2022); Lütz, Leeg, Otto & Dreher (2021); Meunier & Nicolaïdis (2006; 2023); Woolcock (2010).
[6] Delreux (2014), p. 1019; Groen & Niemann (2013), p. 309; Huigens & Niemann (2011), p. 633. Several pertinent questions arise: (*a*) "*how can EU actorness be operationalised for empirical research?*"; (*b*) "*what constitutive attributes must the EU possess in order to qualify as an international actor in trade relations?*" Conversely, (*c*) "*what factors may hinder EU trade actorness?*".
[7] Börzel (2010); George (2004); Hooghe & Marks (2001); Huigens & Niemann (2011), p. 632; Niemann & Bretherton (2013), p. 263; Phelan (2012); Rosamond (2005).
[8] Bretherton & Vogler (2006), p. 12. For an overview of the literature on actorness, see Drieskens (2015; 2017; 2021).

The second issue concerns the temporal and contextual variability of EU trade actorness. Treating the notion of actorness – even in such a policy area as international trade which is integral to any discussion pertinent to the EU as a global actor for it provides the fundamental basis for the oldest, most consequential and potent manifestation of the Union's international 'actorness'[9] – as static is analytically misleading. As Jupille and Caporaso advocate, "the EU can be thought of as an evolving entity, composed of numerous issue areas and policy networks, neither a full-blown polity nor a system of sovereign states, which displays *varying degrees of "actorhood" across issues and time*".[10] Since the 1960s, the EU has actively engaged in numerous bilateral, regional and multilateral trade negotiations with diverse partners, each pursuing varying EU strategic interests (geopolitical and/or mercantilist objectives) and characterised by distinct power dynamics relating to negotiating asymmetries, EU legal competence, Commission autonomy, internal coherence and external perceptions of the Union.[11] Put simply, the EU's power in and through trade varies significantly across issue-areas and negotiating settings.[12]

Third, the literature consistently views actorness as "a *matter of degree*" rather than a binary condition.[13] The more appropriate question is therefore "*to what extent is the EU a global trade actor?*". As Sjöstedt points out,

> it is not easy to give an unequivocal answer to the question whether the [EU] is, or is not, to be regarded as an international actor…It is *not* necessary to assume that the capacity of being able to behave as an international actor is something undivisible, some sort of absolute quality which one has or has not…even if the [Union] is not *a full-fledged actor* it could be reasonable, and productive, to regard it as *a partial or a potential actor*. It is, in other words, possible that the capacity of being an actor is most appropriately conceived of as a *variable property* which the [Union] may possess *to a greater or lesser extent*.[14]

The criteria defining actorness operate along a *continuum* ranging from *strong* to *moderate* and *weak* levels, corresponding respectively to *high*, *medium* and *low* degrees of actorness and remain susceptible to both internal and external change.[15] Accordingly, the measurement and

[9] Bretherton & Vogler (2006, Ch. 3); Dür & Zimmermann (2007), p. 771; Young & Peterson (2015), p. 838.
[10] Jupille & Caporaso (1998), p. 214 (emphasis added). See also Sjöstedt (1977), p. 16. Hence, this begs the question of "*to which periods and specific trade contexts does EU actorness pertain?*".
[11] Dür & Zimmermann (2007); Gstöhl (2021).
[12] Meunier & Nicolaïdis (2006).
[13] Groen & Niemann (2013), p. 309; Niemann & Bretherton (2013), p. 266.
[14] Sjöstedt (1977), p. 14 (emphasis added).
[15] da Conceição-Heldt & Meunier (2014), p. 966; Lütz, Leeg, Otto & Dreher (2021), p. 4; Schunz, Damro & Gstöhl (2018), pp. 17-18.

assessment of EU trade actorness must be understood as "a *variable* in terms of time and content".[16]

Thus, having regard to the foregoing, examining EU trade actorness within a more recent political and scholarly context allows for a reassessment of its analytical relevance and explanatory power, thereby contributing to a more accurate and contemporary understanding of the Union's role in international commercial affairs. In this respect, investigating the EU as an actor in bilateral trade relations represents a compelling and timely inquiry for three main reasons. First, from the mid-2000s onwards, EU preferential trade agreement (PTA) policy shifted from being primarily motivated by political and soft-security considerations towards a more commercially driven strategy aimed at minimising trade diversions and exploiting EU market power by "harnessing globalisation".[17] This recalibration was shaped by the rise of emerging economies (such as China, India, Brazil and South Korea), the spread of bilateral free trade agreements (FTAs) through the United States' (US) 'competitive liberalisation' strategy – subsequently emulated by other major economies, including Japan and China, and the stagnation of the World Trade Organization (WTO) multilateral negotiations following the 2001 Doha Development Round (DDR).[18] Collectively, these developments accelerated the erosion of multilateralism and the corresponding rise of bilateralism, with 'new generation' PTAs emerging as the centrepiece of trade diplomacy for many states and economic blocs, including the EU.[19]

Second, the 2009 Lisbon Treaty significantly restructured the CCP and strengthened the EU's role as a trade actor.[20] Most importantly, it extended EU exclusive competence to include novel trade/trade-related issues, notably foreign direct investment (FDI),[21] enhanced the role of the European Parliament (EP) in trade treaty-making, and defined the CCP in accordance with the principles and objectives of the Union's external action (Articles 21 TEU, 205 and 207(1) TFEU).

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[16] Lütz, Leeg, Otto & Dreher (2021), p. 5 (emphasis added). See also Drieskens (2008), p. 600; Sjöstedt (1977), pp. 14-16.

[17] European Commission (2017c); Lütz, Leeg, Otto & Dreher (2021), pp. 38-42; Woolcock (2007; 2014b). See also the EU trade strategies: European Commission (2006), *Global Europe* trade strategy; European Commission (2010), *Europe 2020: Trade, Growth and World Affairs* trade strategy; European Commission (2015c), *Trade for all* strategy; European Commission (2021a), *Open, Sustainable and Assertive Trade Policy* strategy.

[18] Woolcock (2007; 2014b).

[19] Heydon & Woolcock (2009); Leblond & Viju-Miljusevic (2019), pp. 1836-1837 and 1840; Woolcock (2007; 2014a; 2014b).

[20] Woolcock (2008; 2010).

[21] Meunier (2017); Meunier & Morin (2017).

Finally, the increasing depth and scope of EU trade agreements, combined with the EP's increased role and frequent involvement of national legislatures in mixed agreements have rendered the CCP a highly *politicised* field.[22] This politicisation has intensified amid broader global challenges, including backlash against globalisation, the crisis of the WTO system, rising economic nationalism and unilateralism, Brexit, the COVID-19 pandemic, China's rise, and the renewed trade wars initiated under the second Trump Administration.[23]

1.2 Purpose, delimitation and research question

Despite several conceptualisations, the literature offers limited systematic empirical assessment of the actual extent of EU actorness in international politics.[24] Similarly, EU trade policy scholarship "remains underdeveloped, both theoretically and empirically".[25] Additionally, the evaluation of EU trade actorness in bilateral contexts remains relatively underexplored. Existing studies either concentrate on institutional aspects of EU trade policy while only indirectly addressing bilateral negotiations and *without* clearly operationalising bilateral trade actorness,[26] or adopt constructivist approaches that prioritise external structural conditions while neglecting internal institutional dimensions that are equally relevant.[27]

To address this gap, the thesis aims to critically assess EU actorness in global trade, with a specific focus on the negotiation and conclusion of bilateral trade agreements, using the *EU-Canada Comprehensive Economic and Trade Agreement* (CETA) as a *critical case* study. Holistically analysing the EU as a non-state actor requires a framework that integrates both internal institutional dynamics and the external environment in which it operates. Accordingly, this study combines endogenous and exogenous factors in a unified analytical approach. It draws on the frameworks of Jupille and Caporaso and Bretherton and Vogler, operationalising actorness through five interrelated criteria: (*i*) *authority*; (*ii*) *autonomy*; (*iii*) *recognition*; (*iv*) *capability* (policy formulation) – encompassing (*a*) cohesion and (*b*) coherence – and (*v*) *opportunity*.[28]

[22] Cabras (2024); De Bièvre & Poletti (2020); Leblond & Viju-Miljusevic (2019); Meunier & Czesana (2019). For the role of societal actors in the EU trade policymaking process, see Gstöhl & De Bièvre (2018), pp. 52-54.

[23] European Commission (2021a), pp. 1-3; Lütz, Leeg, Otto & Dreher (2021), pp. 24-25.

[24] Niemann & Bretherton (2013), p. 262.

[25] Poletti & De Bièvre (2014), p. 102.

[26] Burckhardt (2013); Dür, 2007; Dür & Zimmermann (2007); Elsig & Dupont (2012); Frennhoff Larsén (2007; 2017; 2020); Meunier & Nicolaïdis (2006; 2023); Orbie (2008b); Szymanski & Smith (2005); Woolcock (2010); Young & Peterson (2015).

[27] Bretherton & Vogler (2000; 2006, Ch. 3); Lütz, Leeg, Otto & Dreher (2021).

[28] Bretherton & Vogler (2006; 2013); Jupille & Caporaso (1998).

For the purposes of this thesis, actorness refers to the "EU's capacity to act" on the global stage, namely the ability "to behave actively and deliberately in relation to other actors in the international system" with a view to ascertaining "the extent to which the Union has become an actor in global politics".[29] However, the intent "is *not* to analyse the scope and influence of EU external activity".[30] As such, questions of influence/effectiveness, often associated with actorness, fall outside the scope of this study.[31] The thesis also does *not* centre on the EU in multilateral trade negotiations,[32] or bargaining power in trade talks,[33] although insights from these areas are used to support the theoretical operationalisation of actorness.

Ultimately, this study undertakes a systematic synthesis of empirical findings from the existing literature concerning the attributes of an actor, which are subsequently theorised within the framework of the CCP in order relate these attributes concretely to the case study of CETA and to evaluate the EU's overall trade actorness. In attaining the proposed objective, the following research question will be addressed:

- ***How and to what degree can the EU be regarded as an actor in bilateral trade relations?***

1.3 Research design

1.3.1 Methodology and materials

1.3.1.1 Process-tracing single case study

The thesis adopts a qualitative, *explanatory* and *theory-driven single case study* design. Theory-guided case studies are "explicitly structured by a well-developed conceptual framework" that emphasises selected aspects of reality in order to generate deeper explanation

[29] In corresponding order: Jupille & Caporaso (1998), p. 214; Sjöstedt (1977), p. 16; Bretherton & Vogler (2006), p. 13.

[30] Bretherton & Vogler (2006), p. 13 (emphasis added).

[31] Admittedly, "actorness logically precedes effectiveness" in the sense that the EU must possess a certain capacity to behave actively and deliberately in the international system so as to act effectively – however, this does not imply that assessments of EU effectiveness must also involve questions of actorness (Groen & Niemann, 2013, p. 311; Hoffmann and Niemann, 2017, p. 36 (note 2); Niemann & Bretherton, 2013, p. 267). Notwithstanding the relationship between actorness and effectiveness, the latter is a distinct variable which may or may not be the result of actorness – i.e., actorness may enable influence but does not inherently equal effectiveness/influence (Carbone, 2013, p. 343; Groen & Niemann, 2013, p. 309; Huigens & Niemann, 2011, p. 635; van Schaik, 2013, pp. 293-294) – and is therefore *beyond* the scope of this study.

[32] In this respect, see da Conceição-Heldt (2011; 2013); Damro (2007); García & Garmendia (2012); Kerremans (2011); Senti (2002); Young (2007; 2011).

[33] See Gstöhl (2021); Meunier (2000); Rhinard & Kaeding (2006).

and interpretation.[34] Accordingly, the theoretical framework structures the entire study by identifying and assessing the prerequisites of EU actorness.[35] This approach supports both the explanatory and evaluative objectives of the thesis: explaining why and under which conditions EU trade actorness emerges, persists or weakens, while simultaneously evaluating it against a set of theoretically derived criteria.[36] Given the in-depth nature of case study research, the analysis seeks to provide a *holistic* understanding of the selected case and its broader implications for EU trade actorness.[37]

To achieve this, the study employs process tracing (PT), a method designed to identify and trace the causal mechanisms linking the independent variables – the preconditions of actorness – to the dependent variable (*outcome*/*effect)*, namely EU trade actorness.[38] These mechanisms can be understood as a sequence of events connecting causes to outcomes and revealing how specific conditions produce particular effects.[39] As an instrument of causal inference, PT "focuses on the unfolding of events or situations *over time*" and "taking good snapshots at a series of specific moments", namely "key steps in the process" through which "change and sequence" can then be analysed.[40] The present study adopts a theory-first research PT approach, whereby clear empirical observables are derived from each element of the theorised mechanism and subsequently examined in the CETA case.[41] In this way, the study traces the empirical 'fingerprints' left by the different dimensions of actorness throughout the negotiation and ratification process.

PT has become a widely used methodology in studies of EU actorness across policy fields.[42] Here, the analysis covers the period from the 2007 EU–Canada Summit in Berlin, which paved the way for the launch of CETA negotiations, to the agreement's signing, provisional application and ongoing national ratification process. The study relies on

[34] Levy (2008), pp. 4-5. In general terms, a case study is defined as "an empirical inquiry that investigates a contemporary phenomenon (the "case") in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident" (Yin, 2014, p. 16).
[35] Yin (2014), p. 189.
[36] Meyer & Mayrhofer (2022), p. 274. Yin (2014, p. 238) also uses a similar definition of an explanatory case study in his glossary: "…to explain *how* or *why* some condition came to be (e.g., how or why some sequence of events occurred or did not occur)".
[37] Tight (2022), pp. 404; Yin (2014), pp. 53-56.
[38] Beach (2016).
[39] Beach (2016), p. 464.
[40] Collier (2011), p. 824.
[41] Beach (2016), pp. 468-470.
[42] To name a few examples: Batzella (2022; 2024); Delreux (2014); Gerards, Schunz & Damro (2022); Groen & Niemann (2013); Groenleer & van Schaik (2007); Jupille & Caporaso (1998).

qualitative document analysis of both primary and secondary sources.[43] Primary material includes official EU documents such as Commission, Council and EP press releases, speeches, reports, resolutions and conclusions, and secondary material consists of academic literature and specialised journalistic accounts published by reputable media outlets covering EU trade politics, such as *Euractiv* and *Politico*.

The case selection follows a *purposeful* sampling strategy, allowing the study to focus on a particularly suitable and analytically significant case. Negotiated between 2009 and 2014, CETA constitutes one of the earliest and most ambitious EU 'new generation' free trade agreements (NGFTAs), developed in line with the Union's 2006 and 2010 trade strategies.[44] It has been described as the EU's "most ambitious and progressive" trade agreement, a "landmark" accord and the "most far-reaching bilateral agreement" concluded by the Union.[45] Its innovative scope and design were intended to serve as a model for future NGFTAs, including the Transatlantic Trade and Investment Partnership (TTIP).[46] At the same time, CETA became one of the EU's most politically "contentious" trade agreements, generating intense conflict between EU institutions, Member States and societal actors.[47] The agreement's politicisation exposed significant institutional tensions within the CCP and raised broader questions regarding the EU's capacity to conclude ambitious trade agreements and maintain credibility as an international trade actor.[48] In this regard, CETA provides useful variation across dimensions of theoretical interest – namely, the criteria defining the quality of being a bilateral trade actor – by facilitating a more comprehensive and multidimensional understanding of EU trade actorness. Methodologically, it thus corresponds to a *theory-focused and concept sampling*, whereby a case is selected as an exemplar of a given concept to illuminate theoretical propositions and address the study's core research question.[49]

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[43] Morgan (2022).

[44] European Commission (2025a), p. 8. See also European Commission (2006), *Global Europe* trade strategy; European Commission (2010), *Europe 2020: Trade, Growth and World Affairs* trade strategy.

[45] Fahey (2017), p. 293; Hübner, Balik & Deman (2016), p. 12; Hübner, Deman & Balik (2017), pp. 844 and 847; Leblond & Viju-Miljusevic (2022), p. 107. A text-as-data analysis confirmed CETA's novelty in wording and formulation with only about 7% of its language copied directly from 49 previous trade agreements, living up to the appraisal of its uniqueness (Allee, Elsig & Lugg, 2017). For an overview of CETA's 30 chapters, see European Commission (2025a), p. 10.

[46] Leblond & Viju-Miljusevic (2022).

[47] Hübner, Deman & Balik (2017).

[48] See Kleimann & Kübek (2016); Oliver, von der Burchard & Marks (2016); Valero (2016b).

[49] Meyer & Mayrhofer (2022), pp. 277, 280-283; Seawright & Gerring (2008), pp. 295-296; Tight (2022), pp. 404, 408-409.

1.3.1.2 Limitations

A key limitation of this research concerns generalisability (external validity), namely the extent to which the findings can be applied beyond the specific context under examination.[50] This challenge derives from the nature of EU actorness itself, which varies significantly across policy domains and trade contexts. Accordingly, the EU's capacity to act in international trade cannot automatically be generalised to other areas of external action,[51] nor can findings derived from CETA necessarily be extended to all bilateral trade agreements with third countries or regional blocs. Such variation reflects differences in EU autonomy, cohesion and coherence, changing geopolitical opportunities and constraints, external perceptions of the EU, and the substantive content and legal status of particular trade agreements.[52] In this sense, "EU actorness varies not only across time, but also across policy sectors".[53]

This limitation is also inherent in qualitative case study research more broadly. Since case studies prioritise intensive analysis of a specific social phenomenon, they emphasise contextual depth rather than broad empirical generalisation.[54] The selected case should therefore be understood primarily as a means of illuminating broader theoretical concepts and mechanisms,[55] with the goal of achieving *analytic generalisation*.[56] Consequently, while the empirical findings of this thesis cannot be universally applied across all trade contexts, the analytical framework developed here may nevertheless be used to assess the degree of EU trade actorness in other bilateral trade relationships beyond the case of Canada.

1.4 Outline

The thesis is structured as follows. **Chapter *2*** reviews the literature on the various conceptualisations of EU actorness. **Chapter *3*** establishes the study's epistemological and theoretical foundations, explaining the criteria underpinning the analytical framework for

[50] Bryman (2016), pp. 42, 44 and 384; Tight (2022), p. 405; Yin (2014), p. 48.
[51] See Jupille & Caporaso (1998), p. 214; Lütz, Leeg, Otto & Dreher (2021), pp. 3 and 5; Sjöstedt (1977), pp. 14-16.
[52] See Dür & Zimmermann (2007).
[53] Drieskens (2008), p. 600.
[54] Bryman (2016), p. 384.
[55] Ibid.
[56] Yin (2013; 2014, pp. 40-45). Analytic generalisation denotes "the extraction of a more abstract level of ideas from a set of case study findings − ideas that nevertheless can pertain to newer situations other than the case(s) in the original case study" (Yin, 2013, p. 325). For the evaluation of a case study, analytic generalization does not merely contribute to abstract theory building, but it aspires to generalise to other concrete situations. Such generalisation is formed by a robust set of theoretical propositions underpinning the entire design of the case study, which, in turn, are empirically reinforced by the case study's findings (Yin, 2014, p. 41). In simple terms, analytic generalisation seeks, *inter alia*, to corroborate and advance theoretical concepts that have been referenced in designing the case study and/or new concepts that arose upon completion of the case study (ibid.).

assessing EU trade actorness. **Chapter *4*** provides the empirical analysis of CETA as the central case study, examining EU bilateral trade actorness through the proposed framework. Finally, **Chapter *5*** synthesises the main findings and presents concluding remarks, including recommendations concerning challenges to the EU's role as a trade actor.

2 Literature review

The more than half-century-old research on (EU) actorness transcends the prevalent state-centric IR theories and legal accounts that narrowly privilege sovereign states as the sole units of the global political system by essentially broadening the analytical IR scope to accommodate 'new' international actors, most notably emerging collective non-state entities characterised by complex interdependence, following their significant visibility on the global scene from the early 1970s.[57] As the external dimension of European integration progressed over the years, so too did the concept of EU actorness. Even though such a notion seeks to capture and assess the degree to which an entity qualifies as an actor in international politics, there is no universally accepted scholarly consensus on the generic properties that constitute an international actor. As a result, a multitude of various, often tailored, criteria and frameworks have developed to conceptualise actorness and assess all kinds of global entities and activities over time, across policy areas and between settings.[58]

The notion of 'actorness' was first introduced by Cosgrove and Twitchett in 1970 to evaluate the extent to which emerging collectives, such as the United Nations (UN) and the European Economic Community (EEC), could qualify as international actors.[59] Cosgrove and Twitchett formulated a tentative theory of actorness comprising three mutually interdependent tests for establishing an international organisation's (IO) capacity to act on the global stage: (*a*) the degree of *autonomous decision-making power* of its central institutions; (*b*) the extent to which its functions have an *impact on inter-state relations*; and, most importantly, (*c*) the *significance attached to it by its members* (and by third parties) in the formation of their foreign policies.[60] On this basis, they concluded that both the UN and the EEC constituted "viable international actors".[61]

Gunnar Sjöstedt later provided the first systematic operationalisation of actorness through the concept of 'actor capability', defined as "*a measure of the autonomous unit's capacity to behave actively and deliberately in relation to other actors in the international*

[57] Bretherton & Vogler (2006), p. 16; Cosgrove & Twitchett (1970); Sjöstedt (1977).
[58] Drieskens (2017, p. 1537; 2021, pp. 30-31).
[59] Cosgrove & Twitchett (1970), p. 11; Drieskens (2017), p. 1535.
[60] Cosgrove & Twitchett (1970), pp. 12-14 (emphasis added).
[61] Ibid, p. 49.

system".[62] For Sjöstedt, actorness depended on two core conditions. The first was a *minimal degree of autonomy* of the unit, stemming from (*a*) *separateness* – delimited and discernible from its external environment; and (*b*) *internal cohesion*, which is an essential requirement to attain an *actor capability*.[63] The second was *actor capability* itself, represented by a composite set of *structural prerequisites*, including goal formation, a Community pool of resources, decision-making mechanisms and external instruments of representation, that "reflect the potential capacity of the system under study to perform as an actor, that is to behave as a single unit in relation to other actors".[64] In accordance with these criteria, Sjöstedt concluded that the 'actor capability' of the European Community (EC) rendered it "some sort of half-developed international actor".[65]

Following relative stagnation during the 1980s, the debate revived in the 1990s amid deeper market integration, treaty reform and enlargement. Moving beyond earlier actor-centric approaches focused primarily on institutional structures, Allen and Smith introduced the exogenous concept of "presence", emphasising the EC's international role by reason of its 'being' rather than acting. According to them, the EC is "neither a fully-fledged state-like actor nor a purely dependent phenomenon in the contemporary international arena. Rather, it is *a variable and multi-dimensional presence*, which plays an active role in some areas of international interaction and a less active one in others".[66] A presence in the international sphere is "not the prerogative solely of 'actors' centred on people and institutions, but can be a property of *ideas*, *notions*, *expectations* and *imaginations*", defined by the place the EC occupies in the *perceptions and expectations* of policy makers, the capacity to act and mobilize resources, credentials and legitimacy.[67]

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[62] Sjöstedt (1977), pp. 13 and 16 (emphasis added). In Sjöstedt's exact words: "To be an actor is the same thing as to possess a quality, which is here called *actor capability*. The object quipped with this quality is a unit in the international system." (Ibid, p. 15).

[63] Ibid, p. 15. If the unit under investigation lacks autonomy in the minimal sense, they cannot possibly be conceived of some sort of actor in the international system. However, if the unit is autonomous enough the decisive criterion for ascertaining actorness is the possession of, as defined above, an 'actor capability' – autonomy is therefore a necessary, yet not sufficient condition, for a unit to be considered an international actor (Ibid). The more of an actor capability the unit possesses, the more of an actor it is. Once the actor capability is fully developed, it can be said that the unit in question is a full-fledged actor provided it chooses to behave as such (Ibid, p. 16.).

[64] Ibid, pp. 16-17 and pp. 74-111 (Ch. 5). The more these structural prerequisites are met, the greater the 'actor capability' of the unit.

[65] Ibid, p. 112.

[66] Allen & Smith (1990), p. 20.

[67] Ibid, pp. 21-22. Allen and Smith concluded that, despite the possession of few of the credentials of a unified international actor, the EC's presence in the contemporary international arena is significant due to "considerable structures, salience and legitimacy in the process of international politics" (Ibid, pp. 20 and 36).

With the imminent advent of the Common Foreign and Security Policy (CFSP) in the Maastricht Treaty, Hill advanced the idea of the '*capability-expectations gap*' (CEG) in 1993 as a non-static concept designed to provide a yardstick by which the process of change in European foreign policy could be monitored and measured.[68] The CEG, at that time, emphasised a large consequential gap between, on the one hand, the *expectations* (ambitions, hopes for and demands) of Member States and outside third parties regarding the establishment of a single, collective and effective European foreign policy, and, on the other hand, the EC's actual *capabilities* to meet these new heightened expectations, given its limited *ability to agree* on and sustain collective decisions (*cohesiveness*) and the constrained availability of *resources* and *instruments* at its disposal.[69] Despite some institutional reforms amid the signed 1997 Amsterdam Treaty, Hill's assessment of the CFSP concluded that the CEG – due to major material, operational and decision-making insufficiencies combined with high external expectations – had remained nearly as wide as it was five years ago.[70]

By the late 1990s, research on actorness flourished in response to the post-Maastricht evolution of the EU's global role. This period marked the consolidation of comprehensive conceptual frameworks that integrated both internal and external aspects of actorness, building upon previous analytical schemes. Those refer to the two most-cited formulas: one developed by Jupille and Caporaso comprising four main criteria; (*a*) *recognition*, (*b*) *authority*, (*c*) *autonomy* and (*d*) *cohesion*, and another framed by Bretherton and Vogler centring on three pillars; (*a*) *presence*, (*b*) *opportunity* and (*c*) *capability*.[71]

Subsequent enlargements and treaty reforms from the 2000s onwards, particularly the Lisbon Treaty, further strengthened the EU's international role and stimulated extensive scholarship on EU actorness across numerous policy areas. Voluminous scholarly work – with varying theoretical bases incorporating existing and/or novel approaches to conceptualising actorness – has since emerged, focusing on various cases of the EU's external action to examine its functioning and measure its potential influence in international affairs. These domains involve foreign and security policy in the context of the CFSP/CSDP,[72] humanitarian aid

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[68] Hill (1993; 1998).

[69] Hill (1993), pp. 315-321.

[70] Hill (1998), pp. 33 and 36. For a more recent application of the CEG in the CFSP/Common Security and Defence Policy (CSDP), see Toje (2008a).

[71] Bretherton & Vogler (1999; 2006; 2013); Jupille & Caporaso (1998). Since these two concepts of actorness serve as the fundamental theoretical and analytical framework for this study, they will be discussed in more detail in relation to the CCP in the next chapter.

[72] Brattberg & Rhinard (2012); Costa & Barbé (2023); Dryburgh (2008); Greiçevci (2011); Thomas (2012); Toje (2008a; 2008b; 2010; 2011).

policy,[73] (sustainable) development policy,[74] European neighbourhood policy,[75] environmental and climate policy,[76] energy policy,[77] investment,[78] international space governance,[79] as well as the EU's actorness in IOs and fora.[80] Another strand of literature transcends the idea of perceiving the EU as a *sui generis* entity, thereby adopting a comparative perspective on actorness between the EU and the Association of Southeast Asian Nations (ASEAN),[81] or in comparison of the EU's actorness to the US,[82] whereas few scholars attempted to go beyond the EU to investigate violent non-state actors[83] or other regional organisations.[84] Moreover, the 2010s marked the emergence of the notion of *effectiveness* along with the study of actorness. Scholars in this domain go beyond the question of whether and to what degree the EU can be classified as a global actor but consider instead the degree of *external effectiveness* of EU (purposive) action in achieving its desired goals in the international arena, namely the impact/significance EU activities and policies have on the international stage.[85]

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73 Brattberg & Rhinard (2013).

74 Bretherton & Vogler (2008); Carbone (2013).

75 Bengtsson (2008); Börzel & van Hüllen (2014); Hoffmann and Niemann (2017).

76 Bretherton & Vogler (2000); Delreux (2014); Groen & Niemann (2013); Groenleer & van Schaik (2007); Jupille & Caporaso (1998).

77 Batzella (2018; 2022; 2024).

78 Broude & Haftel (2022); Meunier (2014).

79 Béclard (2013).

80 Drieskens (2008); García & Garmendia (2012); Gehring, Oberthür & Mühleck (2013); Huigens & Niemann (2011); Kissack (2008); Senti (2002); Wunderlich (2012a).

81 Wunderlich (2012a; 2012b).

82 Brattberg & Rhinard (2013).

83 Aydinli (2013).

84 Hulse (2014).

85 Notable works of this effectiveness 'turn' include: Brattberg & Rhinard (2013); Carbone (2013); da Conceição-Heldt & Meunier (2014); Delreux (2014); Elsig (2013); Groen & Niemann (2013); Niemann & Bretherton (2013); Thomas (2012); van Schaik (2013). For a comprehensive conceptual review and the consolidation of a framework for analysing EU external effectiveness, see Schunz (2021).

3 EU trade actorness: a conceptual and analytical framework

For the operationalisation of the EU as a global actor in bilateral trade relations, the two formulas devised by Jupille and Caporaso (1998) and Bretherton and Vogler (2006; 2013) are appropriately combined.[86] Albeit both conceptual models entail a set of *interrelated* analytical criteria for assessing actorness,[87] they differ in their theoretical outlook.

The work of Jupille and Caporaso – which seeks to make the EU's role in global affairs measurable, but also creates a framework with relevance *beyond* the EU – is rooted in *rational choice institutionalism* (RCI), placing emphasis primarily on *internal dynamics*, namely variables related to the EU's institutional set-up, internal functioning and the interplay between the EU institutions and the Member States.[88] From an RCI perspective, institutions, understood as legal competences and formal decision-making rules and procedures, shape the EU foreign policy-making process and influence the Union's capacity to act on the international scene, thereby structuring and constraining its ability to function as a global actor.[89] A high degree of EU actorness in foreign policy occurs when the initial preferences of supranational institutions and Member States align; where they diverge, EU may only function as an international actor through the mediation of legal competences and formal decision-making rules and procedures as well as informal practices such as trade-offs, issue linkage or side payments.[90]

Conversely, Bretherton and Vogler build upon *social constructivism* to conceptualise international politics in respect of "the *processes of social interaction* in which actors engage. These formal and informal processes shape the evolution of actors' identities and provide contexts within which action is constrained or enabled".[91] Since, according to them, an exclusive focus on internal factors is deemed to be inadequate, their approach pays more attention to the *external context* in which the interplay of their variables manifest themselves.

[86] For the sake of theoretical parsimony, the notion of presence is excluded from the theoretical and analytical scheme, since its inherently non-purposive nature renders it of limited relevance to bilateral PTAs.

[87] Bretherton & Vogler (2006, p. 13; 2013, p. 376); Groenleer & van Schaik (2007), pp. 972-973; Huigens & Niemann (2011), p. 635; Jupille & Caporaso (1998), p. 220.

[88] Drieskens (2017, pp. 1536-1537; 2021, pp. 29-30).

[89] Groenleer & van Schaik (2007), p. 973.

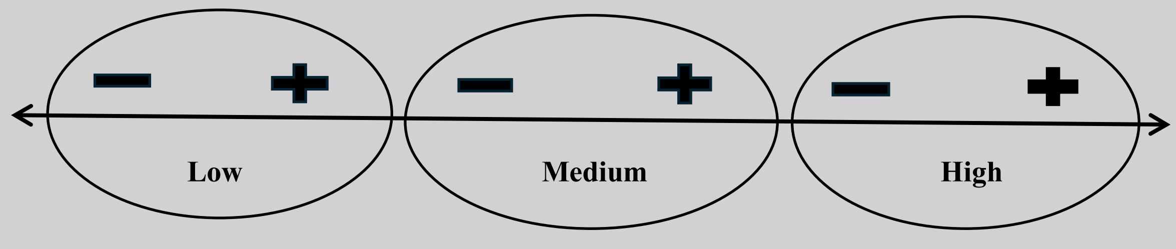
[90] Ibid.

[91] Bretherton & Vogler (2006), p. 13 (emphasis added).

In addition, their model treats the EU as a unique case – a *sui generis* actor – when evaluating actorness.[92]

To evaluate the extent of EU actorness in bilateral trade relations, the degree to which each constitutive feature under investigation – (*i*) *authority*; (*ii*) *autonomy*; (*iii*) *recognition*; (*iv*) *capability* to formulate policies: focusing on *(a)* cohesion and (*b*) coherence; and (*v*) *opportunity* – equally contributes to actorness must be assessed *heuristically* alongside their *cumulative effect*.[93] For purposes of measurement, which is ultimately a matter of interpretation based on the weight of the empirical evidence, these *criteria* can be classified as '*strong*', '*moderate*' and '*weak*', and accordingly three *degrees of actorness* can be framed: '*high*', '*medium*' and '*low*' (see ***tables 1*** and ***2***).[94] The aggregate score is constructed on the premise that overall actorness is a composite function of the distribution of strong, moderate and weak component scores across the relevant dimensions. As an indication on how the five components combine into the degrees of actorness, a *high degree of actorness* (13–15 points) requires *three strong* and *at least two moderate* components, thereby indicating a predominantly robust configuration of institutional capacity, recognition and opportunity. A *medium level of actorness* (8–12 points) presupposes *at least three moderate* components, reflecting a mixed profile in which functional capacity is present but systematically constrained by recurring structural, procedural and/or external limitations. A *low level of actorness* (5–7 points) results either from an overall *predominance of weak components* or from a configuration combining *three weak and two moderate* components, signalling a structurally constrained actor with limited capacity in external action and reduced ability to translate preferences into effective international outcomes (see ***table 2.1***).[95]

Table 1. ***Degree of EU actorness***



Author's own compilation

[92] Drieskens (2017, p. 1536; 2021, p. 30).

[93] Schunz, Damro & Gstöhl (2018), p. 17.

[94] Ibid, pp. 17-18.

[95] Based on a slightly modified yet analogous EU actorness measurement scheme provided in Schunz, Damro & Gstöhl (2018), p. 18. "While in theory many combinations of degrees of the components of actorness are imaginable, when examining EU practice, the attribution of a degree of actorness will consider policy-specific evidence from each component in order to arrive at a confident assessment." (Ibid).

Table 2. ***EU actorness measurement***

	Weak (1 point)	Moderate (2 points)	Strong (3 points)
Authority			
Autonomy			
Recognition			
Capability			
Opportunity			

Table 2.1

Level of actorness	Low	Medium	High
Aggregate score (Σ)	**5-7**	**8-12**	**13-15**

3.1 Authority

The first basic dimension of the EU's 'actor capacity' lies within its *authority* to act externally. Authority denotes the extent of legal competence delegated by the Member States to EU supranational institutions (*principle of conferral*), with the Commission as its main (yet not the sole) representative, depending on the policy area.[96] The authority of the EU on a policy issue is likely to influence the degree of EU actorness for it obliges Member States to operate through a 'single voice' by granting the EU the right to speak and act on their behalf on the international stage.[97] Although the Commission is the main external representative, the concept of authority comprises "all cases in which EU external representation is delegated to *a single European actor* on the basis of a Treaty provision or agreement in the Council".[98] Transfer of authority may either be treaty-based[99] or bestowed informally by Member States 'allowing' the EU to

[96] da Conceição-Heldt & Meunier (2014), pp. 964-965; Groenleer & van Schaik (2007), p. 974; Huigens & Niemann (2011), pp. 635-636; Jupille & Caporaso (1998), p. 216. Depending on the policy area in question, the EU may also be represented by the President of the European Council, the High Representative for the CFSP assisted by the European External Action Service (EEAS), and, to a moderate extent, the rotating Council Presidency (See Art. 17(1) TEU). Moreover, the judicial principle of conferral mandates that the Union's extent of authority to act in the international arena ultimately stems from the powers conferred upon it by those states (see Art. 5(2) TEU).

[97] Groenleer & van Schaik (2007); van Schaik (2013), p. 294; da Conceição-Heldt & Meunier (2014), esp. pp. 964-965; cf. Meunier (2000; 2014).

[98] Groenleer & van Schaik (2007), p. 974 (emphasis added).

[99] Authority is formally divided into (a) exclusive competence (full delegation of policy authority), see Arts. 2(1) and 4 TFEU; (b) shared (or mixed) competence (partial delegation), see Arts. 2(2) and 4 TFEU and Protocol (No. 25); (c) coordinating competences, see Art. 2(3) and 5 TFEU; and (d) 'complementary' competence, see Arts. 2(5) and 6 TFEU. Special constitutional arrangements apply for the CFSP/CSDP which operates on an intergovernmental basis and does *not* fall under the aforementioned competence categories; see Arts. 2(4) TFEU and 23-46 TEU; Horn (2025). Moreover, the early-1970s landmark ruling by the Court of Justice of the European Union (CJEU) that gave rise to the judicial principle of 'parallelism' between EC internal and external jurisdiction – later codified in Articles 3(2) and 216(1) TFEU – allowed the EC to extend its external powers beyond those expressly established in the Treaties to automatically encompass external action in matters in which it has the prerogative to regulate internally. For the judicial principle of 'parallelism' (*ERTA* doctrine of implied external powers), see Arts. 3(2) and 216 TFEU; Schütze (2014, Ch. 7; 2020, pp. 71-74).

represent them in mixed competence negotiations.[100] In the latter scenario, Member States decline their formal right to voice their respective positions, especially in a historically highly *communitarised* policy area such as trade, due to "the normative acceptance of the EU as a single actor representing the Member States",[101] or such delegation may result from a spillover in practice, as was the case of the investment chapters of free trade agreements.[102]

In the field of trade, the establishment of a customs union functionally led to the delegation of commercial policy to the supranational level, with the Directorate-General for Trade (DG Trade) of the European Commission assuming negotiating authority as the external trade representative and defender of a common commercial position on behalf of the whole EU.[103] The CCP is based on three principles: *(a)* a common external tariff regime; *(b)* common trade agreements with third countries; and *(c)* the uniform application of trade instruments across Member States.[104] One of the primary rationales for transferring sovereignty over trade policy to the supranational level since the 1957 Treaty of Rome, was the obtainment of greater leverage and bargaining power – and by extension, external influence – than Member States would have by acting individually *vis-à-vis* third countries in international trade negotiations by pooling together their resources and creating a large market attractive to foreign trading interests enabling the EU to act and speak with a 'single external voice'.[105]

The EU's CCP (Article 207 TFEU), in which the Union enjoys exclusive competence from the very beginning, represents the most frequently used Treaty provision in the exercise of the Union's powers in the field of external relations.[106] Albeit earlier Opinions of the CJEU contributed to clarifying the legal scope of the EU's exclusive competence in trade policy, subsequent treaty amendments – and particularly the 2009 Lisbon Treaty – substantially expanded that scope. In particular, a range of trade-related issues that had fallen outside the EU's remit in the 1990s, at the time of the conclusion of the Uruguay Round (1986-1994), were

[100] Brattberg & Rhinard (2012), p. 561.

[101] Groenleer & van Schaik (2007), p. 975.

[102] da Conceição-Heldt & Meunier (2014), p. 964; Meunier (2014), esp. pp. 998-999.

[103] Dür & Zimmermann (2007); Meunier (2007); Meunier & Nicolaïdis (1999).

[104] Meunier & Nicolaïdis (1999), p. 479.

[105] Elsig (2007), p. 932; Meunier (2000), p. 103; Meunier & Nicolaïdis (1999), p. 480.

[106] Bretherton & Vogler (2006), p. 67; Art. 3(1)(e) TFEU. Exclusive powers are "constitutionally guaranteed monopolies" where only the Union is entitled to act autonomously (Schütze, 2020, p. 76). In particular, Article 207(1) TFEU defines the Union's external authority in trade negotiations: "The common commercial policy shall be based on uniform principles, particularly with regard to changes in *tariff rates*, the *conclusion of tariff and trade agreements* relating to *trade in goods* and *services*, and *the commercial aspects of intellectual property*, *foreign direct investment*, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. *The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action*." (emphasis added).

incorporated into the CCP, alongside the innovative addition of FDI.[107] However, in light of Opinion 2/15 on the EU-Singapore Free Trade Agreement (EUSFTA), the CJEU ruled that provisions relating to (a) *non-direct investment* ('portfolio investment') and (b) *investor-State dispute settlement* (ISDS) are to be competences *shared* between the EU and Member States, ultimately rendering such agreements mixed.[108]

In analytical terms, *strong authority* (3 points) is attained when the EU acts with a 'single voice' in bilateral trade negotiations through unified external representation by a single European actor, primarily the Commission, on behalf of both the EU and its Member States. *Moderate authority* (2 points) entails the direct participation of Member States representatives in the negotiations on a single occasion, whereas *weak authority* (1 point) denotes two or more such instances.

3.2 Autonomy

Notwithstanding the Union's extensive external negotiating authority, the degree of autonomy enjoyed by the Commission in conducting trade negotiations with third parties does not necessarily correspond to the breadth of that authority. In the absence of a minimum degree of autonomy, EU action would merely reflect Member States' collective intentions and would be consequently attributed to them.[109] For Jupille and Caporaso, autonomy implies (*a*) the *distinctiveness* (separateness) of the EU's institutional apparatus from the Member States, and (*b*) the degree of *independence* of them and third actors (that is, the distinct institutions "should make a difference, compared to the baseline expectation of a decentralized state system working on the basis of power and interest") in respect of (*i*) discretionary goal formation, (*ii*) decision-making and (*iii*) implementation.[110]

As regards the Union's institutional distinctiveness, the conduct of EU external trade policy is in practice the result of a two-fold delegation process: initially, with the creation of the EEC, Member States transferred power for the negotiation and ratification of trade agreements to a supranational collective entity, the Council of Ministers, which, in turn,

[107] CJEU Opinion 1/75 ('exclusivity'); CJEU Opinion 1/94 ('joint competence'); Gstöhl & De Bièvre (2018), pp. 28-31; Meunier (2014; 2017).
[108] Gstöhl & De Bièvre (2018), p. 33; For a legal review of CJEU Opinion 2/15, see Cremona (2018).
[109] Gehring, Oberthür & Mühleck (2013), p. 852.
[110] Jupille & Caporaso (1998), pp. 217-218.

delegated the negotiating authority to the European Commission.[111] The EU's institutional architecture is indeed distinct from that of its Member States and is characterised by a highly EU centralised ('supranational') trade policy-making process, which, in turn, enhances, to a certain degree, the Union's autonomy and, therefore, its actorness in the global arena.[112]

Nevertheless, the EU is considerably constrained by the second indicator of autonomy, namely *independence* with regard to *discretionary goal formation* (i.e., the degree of freedom of action the EU (the agent), to accomplish objectives that were set by the Member States (principals)), *decision-making* (i.e., EU's ability to influence policy goals, that is, to have a genuine EU input *vis-à-vis* Member States in the decision-making process), and *implementation* (including *ratification*; that is, the legal and practical effect to the obligations arising from an international agreement after its negotiation).[113] While the Commission enjoys exclusive competence to negotiate trade agreements and externally represent the Union with a single voice, such exclusivity does *not* automatically suggest completely independent EU conduct from Member States (and other actors) during negotiations.[114] The Commission is legally obligated to conduct negotiations in line with the Council's adopted (or subsequently modified) negotiation 'mandate' and in continuous consultation with a Trade Policy Committee (TPC), which consists of representatives of the Member States and the European Commission and chaired by the Council Presidency, while also regularly informing the EP of the progress of the negotiations.[115] Moreover, the EU's autonomy in the ratification and implementation of trade agreements may be further constrained by the conclusion of mixed agreements.[116] For Jupille and Caporaso, autonomy exists "when *decisionmaking latitude* is wide, when *agency slack* is considerable, when decisions require going outside standard

[111] da Conceição-Heldt (2013), p. 28; Meunier & Nicolaïdis (1999), p. 480.

[112] Groenleer & van Schaik (2007), p. 970; Huigens & Niemann (2011), p. 634; Jupille & Caporaso (1998), p. 217; van Schaik (2013), p. 294. Put simply, in external trade policymaking, the European Commission acts as an agenda-setter by elaborating the proposal for the initiation and content of international trade negotiations, the sole negotiator and implementer of trade agreements; the Council authorises the opening and conclusion of negotiations, including the signing (and, if necessary, the provisional application) of the agreement primarily by *de jure* qualified majority voting (QMV) and provides negotiating directives to the Commission; the EP grants its consent through a simple majority vote; and finally, the CJEU issues an Opinion on the compatibility of a proposed trade agreement with the EU Treaties, where such compatibility is contested by a Member State or an EU institution. For the EU external trade treaty-making process, see Arts. 207 and 218 TFEU; Puccio (2016). For a detailed analysis of the (in)formal actors and processes in EU trade policy, see Gstöhl & De Bièvre (2018), pp. 47-83.

[113] Groen & Niemann (2013), p. 310.

[114] Groenleer & van Schaik (2007), p. 974; Jupille & Caporaso (1998), p. 218.

[115] Gstöhl & De Bièvre (2018), Ch. 3.

[116] Jupille & Caporaso (1998), p. 218.

operating procedures, and when *instructions are ambiguous*, incomplete, or depend on information that the principals cannot have".[117]

3.2.1 Supranational autonomy in bilateral trade deals

According to principal-agent (PA) theory, *autonomy* denotes the range of potential independent action available to agents – used either to advance the principal's goals or to act against them – after principals have established control mechanisms (screening, monitoring, and sanctioning procedures) intended to constrain their agents' behaviour by limiting the margin of maneuver in a given situation, whereas *agency slack* signifies "independent action by an agent that is undesired by the principal", manifested in two primary forms: "*shirking*, when an agent minimizes the effort it exerts on its principal's behalf, and *slippage*, when an agent shifts policy away from its principal's preferred outcome and toward its own preferences".[118] In the realm of EU external trade policy, supranational autonomy is defined as the European Commission's (the agent) successful pursuit of a private agenda contrary to the intention of the Member States (the principals).[119] Furthermore, *discretion* is a delegation of authority that "specifies the principal's goals but not the specific actions the agent must take to accomplish those objectives" giving the agent freedom of choice in carrying out the assigned task.[120] For instance, a discretion-based delegation mandate arises when the Council formulates its negotiating guidelines in broad terms, thereby granting the Commission substantial flexibility to determine, at its own discretion, the methods used to achieve the desired outcome.[121]

Thus, the key question is: *does (and to what degree) the Commission have autonomy in international trade negotiations in the sense of affecting the ultimate negotiating outcome?* The answer to this question is a topic of contention among scholars. Some posit Member State dominance over the Commission due to the many tools available to the principals to monitor and control the agent, whereas others stress the Commission's relative autonomy owing to, *inter alia*, inherent information asymmetries and greater technical expertise, use of 'cognitive framing' to highlight common interests and collective gains rather than conflicting preferences and potential losses, and the gradual expansion of the CCP's scope, encompassing new trade

[117] Jupille & Caporaso (1998), p. 218 (emphasis added).
[118] Hawkins, Lake, Nielson & Tierney (2006), p. 8.
[119] Tallberg (2000; 2002).
[120] Hawkins, Lake, Nielson & Tierney (2006), p. 8. See also Groen & Niemann (2013), p. 310.
[121] da Conceição-Heldt (2011; 2013).

issues over time.[122] In this connection, the single EU position in international trade negotiations may reflect the preferences of the Commission primarily through *agenda setting*, *agency slack* and *norm repackaging*.[123]

In analytical terms, PA theory (particularly agency slack) necessitates an inter-institutional conflict over heterogeneous interests between the Commission (the agent) and the Council (the principal), in the absence of which an alignment of interests would merely imply that "the agent's behaviour simply reflects the faithful execution of the principal's desires", and in such situations the agent *cannot*, in principle, be considered autonomous.[124] Autonomy is understood to diminish when the agent must adjust its agenda, whether partially or fully, to accommodate the heterogeneous preferences of collective and multiple principals, particularly when more actors are involved in the EU trade policymaking with(out) a contractual relationship as 'quasi-principals', such as the EP and civil society.[125]

Indeed, the Commission's autonomy has been further challenged since the 2009 Lisbon Treaty which granted the EP veto powers over the ratification of trade agreements. The EP now stands on a formally almost equal footing to the Council and its specialised International Trade (INTA) Committee is entitled to be immediately and fully informed at all stages of the negotiation and conclusion of trade agreements, including the definition of negotiating directives.[126] Albeit the EP formally lacks negotiating and amending powers in international trade agreements, the INTA Committee can voice its preferences and preconditions for its final consent through non-binding parliamentary resolutions, hearings,

[122] Damro (2007); Dür & Zimmermann (2007), pp. 779-780; Elgström & Frennhoff Larsén (2010); Elsig (2007); Lütz, Leeg, Otto & Dreher (2021), p. 27; Pollack (2006). The control mechanisms used by Member States in trade policy include tools available *prior to* delegation of negotiating authority: a specified trade policy-making procedure to which the agent ought to adhere, the Council's decision to authorise the opening of negotiations by screening and formulating a negotiation mandate (guidelines) to define the agent's action; *throughout* negotiations: the establishment of the TPC to supervise ongoing progress, regular reporting to the EP, possible mandate revision generated by a high convergence among Member States' interests, potential direct participation of principals at the negotiating table along with their agents; and *at the end* of negotiations: ratification authority for all trade agreements, judicial review, suspension or termination of the agreement's application (Damro, 2007, p. 886; Dür & Elsig, 2011, p. 329; Gstöhl, 2021, p. 105; Pollack, 1997, pp. 113-121; Tallberg, 2000; 2002).

[123] Meunier (2007), pp. 908-909. See also Damro (2007); Dür & Zimmermann (2007), p. 780; Elsig (2007), pp. 932-933. The Commission is regarded to have a certain level of autonomy if "it shaped the agenda in a direction opposite to that desired by (some of) the Member States and this agenda later constrained the options available to the parties in the negotiation"; "it negotiated to obtain policy outcomes in conformity with its own preferences and interests instead of following rigorously the terms of the original mandate as defined by the Member States"; or, "if it is indeed able to conceptualize a consensual common position that reshapes the preferences of the Member States" (Meunier, 2007, pp. 908-909).

[124] Damro (2007), p. 886; cf. Heldt (2021), pp. 577-578.

[125] da Conceição-Heldt & Meunier (2014), p. 965; Drieghe, Orbie, Potjomkina & Shahin, (2022); Dür & Elsig (2011); Elsig (2007); Elsig (2007), p. 932; Gstöhl & De Bièvre (2018), pp. 52-54; Orbie, Martens, Oehri & Van den Putte (2016); Pollack (2006), pp. 175 ff.

[126] See Arts. 207(3) and 218(10) TFEU; Framework Agreement on relations between the European Parliament and the European Commission (OJ L 304/47), 20.11.2010, para. 23.

opinions and questions to the Commission.[127] However, the presence of multiple principals does not necessarily decrease an agent's autonomy. On the contrary, a low degree of interest alignment among Member States (and/or the EP) is likely to increase the Commission's discretion and autonomy at the international level reinforced by the informational and procedural advantages given by its institutional position as sole negotiator.[128] Paradoxically, a high level of formal autonomy and thus EU actorness does not always translate into optimal outcomes for the EU loses its advantage to operate with a 'tied hands' approach, which in turn increases bargaining power.[129]

3.2.2 Mixed trade agreements: the bane of EU actorness?

Besides discretionary goal-formation and independent decision-making during negotiations, the EU may encounter limitations in exercising implementation powers, particularly in the context of 'mixed' agreements. These are agreements ratified jointly by the EU and its Member State, each one responsible for issues in their respective competences, because the subject matter extends beyond exclusive Union competence.[130] Since the principle of conferral restricts the EU to acting within its attributed competences, the Union cannot independently implement provisions falling under Member State competence, nor can it compel Member States to do so beyond areas covered by EU law.[131] Consequently, implementation and ratification responsibilities are divided between the EU and national – and in some cases regional – authorities.

Mixed agreements require parallel ratification by EU institutions and each Member State according to domestic constitutional procedures. Two forms of mixity exist. *Mandatory* mixity arises where an agreement covers both EU competences (or shared competence) and areas reserved exclusively to Member States, making national participation legally necessary. *Facultative* mixity, by contrast, concerns agreements falling within shared competences (insofar as no parts pertain to the Member States' exclusive competences) whether alone or

[127] Gstöhl & De Bièvre (2018), pp. 51-52; Ripoll Servent (2014).
[128] da Conceição (2010), p. 1114; Elgström & Frennhoff Larsén (2010); Gstöhl (2021), p. 105.
[129] De Bièvre (2018), p. 72; Groenleer & van Schaik (2007), p. 974; Gstöhl (2021), p. 108; Meunier (2014), p. 1001.
[130] Jupille & Caporaso (1998), p. 218.
[131] As Suse & Wouters (2019, p. 404, emphasis added) explain: "the Commission can bring infringement proceedings against a Member States for failure to comply with an international agreement that is binding upon the EU only *insofar as the breached provisions are covered by EU competences*".

combined with EU exclusive competence and therefore reflects a political choice by the Council rather than a legal requirement.[132]

Member States may favour mixity to preserve national veto powers during ratification, whereas they may avoid it where rapid approval is politically desirable.[133] In practice, Member States often encourage broad negotiating mandates in areas touching upon national competences precisely to retain influence through subsequent ratification procedures.[134] Conversely, agreements covering only exclusive EU competences (either *a priori* exclusive Union competences under Article 3(1) TFEU or implied exclusive Union competences under Article 3(2) TFEU) in their entirety must be concluded as EU-only agreements, *excluding* mixity.[135]

EU-only agreements offer several advantages, including faster ratification, greater legal certainty, more predictable implementation and increased procedural efficiency (see ***table 3*** for the relationship between mandatory and facultative mixity).[136] For these reasons, the Commission favours EU-only agreements over prolonged ratification processes, a great amount of legal uncertainty and the risk of parliamentary objection and/or referendums at the national level.[137] By contrast, Member States prefer mixity because it restores *de facto* veto power through domestic ratification and reinforces national visibility and presence on the international scene.[138] Accordingly, intergovernmental traits in foreign policy-making such as Member State's veto power to block decisions is likely to diminish EU actorness in global commerce.[139] Hence, EU-only agreements reinforce the EU's credibility as an independent trade actor, whereas mixed agreements tend to undermine the Union's autonomy and procedural efficiency in the conclusion of trade agreements.[140]

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[132] For the nexus of mandatory and facultative mixity, see Conconi, Herghelegiu & Puccio (2021), pp. 240-241; Gstöhl & De Bièvre (2018), p. 55; Kleimann & Kübek (2018), pp. 20-21; Suse & Wouters (2019), p. 405; Van der Loo & Wessel (2017), pp. 736-738.

[133] This was the case with the EU-Kosovo Association Agreement (AA), which was concluded as an EU-only agreement – as opposed to AAs being traditionally mixed – in order to circumvent a *de facto* recognition of Kosovo by the five EU Member States that do not recognise its independence which could otherwise have arisen through national ratification procedures. See Van Elsuwege (2017).

[134] Gstöhl & De Bièvre (2018), p. 55. In particular, Maresceau (2010, p. 16) argues that "if there is political consensus among the Member States that an agreement ought to be mixed, they will almost certainly manage to impose the mixed procedure, particularly by adding provisions which stand on their own and need Member State involvement."

[135] Kleimann & Kübek (2018), p. 20; Van der Loo & Wessel (2017), p. 737.

[136] Kleimann & Kübek (2018), p. 22.

[137] Conconi, Herghelegiu & Puccio (2021), pp. 242-244; Gstöhl & De Bièvre (2018), p. 33; Kleimann & Kübek (2018), pp. 23-24; Suse & Wouters (2019); Van der Loo & Wessel (2017), pp. 737-738.

[138] Chamon (2020), pp. 891-894; Van der Loo & Wessel (2017), p. 738.

[139] Groenleer & van Schaik (2007), p. 970; Huigens & Niemann (2011), p. 634.

[140] Chamon (2020), p. 893.

Table 3. ***Nature of EU competences and types of international agreements***
(Chamon, 2020, p. 892)

Areas covered by international agreement coming under…	Type of international agreement
EU exclusive competence	Mandatory EU-only agreement
EU exclusive competence + shared competence	Facultative EU-only or facultative mixed agreement
Shared competence	Facultative EU-only, facultative mixed or facultative member states-only agreement
EU exclusive competence (+ shared competence) + member states exclusive competence	Mandatory mixed agreement

The stagnation of the DDR prompted the EU to recalibrate its trade strategy towards bilateral NGFTAs with major trading partners.[141] These WTO+ deep, comprehensive agreements go beyond traditional tariff liberalisation by addressing a broad range of trade-related regulatory issues – including services, IPRs, investment, public procurement, competition, regulatory cooperation, trade and sustainable development' (TSD), and labour and environmental standards – thereby seeking not only to liberalise trade but also to deepen economic integration in areas insufficiently regulated multilaterally.[142] Although Member States often authorise the Commission to negotiate mixed trade agreements with a single voice to maximise bargaining leverage, disputes frequently emerge at the ratification stage regarding the division of competences and the question of mixity.[143] Despite the post-Lisbon expansion of the CCP, mixity remains common in PTAs, particularly in NGFTAs following Opinion 2/15, which confirmed that areas such as ISDS and portfolio investment fall outside exclusive EU competence. Mixity also persists in agreements pursuing broader non-trade political objectives – such as human rights, labour or environmental standards – or trade agreements within broader AAs, covering political dialogue, trade liberalisation and sectoral cooperation.[144]

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[141] Gstöhl & Hanf (2014); Woolcock (2014a).

[142] European Commission (2006), *Global Europe* trade strategy, pp. 8-10. European Commission (2025a), p. 8. See also European Commission (2010), *Europe 2020: Trade, Growth and World Affairs* trade strategy, pp. 10-12; European Commission (2015c), *Trade for all* trade strategy, pp. 14-20; European Commission (2021a), *Open, Sustainable and Assertive Trade Policy* trade strategy, pp. 12-14.

[143] Meunier & Nicolaïdis (1999, p. 482; 2000, p. 330); Woolcock (2010), pp. 4-5.

[144] Conconi, Herghelegiu & Puccio (2021), p. 247 ff; Dür (2012), p. 249; Gstöhl & De Bièvre (2018), pp. 33 and 55-56. Few examples of such mixed trade agreements include, *inter alia*, those with South Korea, Colombia/Peru/Ecuador, CETA, Singapore (in its initial form), Japan, Mercado Común del Sur/"Southern Common Market" (Mercosur), as well as AAs with Georgia, Ukraine, and Moldova. For an overview of the different policy areas addressed in EU FTAs and the corresponding need for mixity (or its absence), see Appendices in Conconi, Herghelegiu & Puccio (2021).

Analytically, autonomy is assessed across four dimensions: (*i*) institutional distinctiveness; (*ii*) discretionary goal formation (a discretion-based negotiating mandate); (*iii*) decision-making (the presence or absence of agency slack); and (*iv*) implementation (signing and ratification). Admittedly, the EU's institutional and procedural framework for trade treaty-making has remained largely embedded since the 1958 Treaty of Rome – notwithstanding certain adjustments over time – while Member States have generally opted for discretion-based delegation in EU trade policy by granting the Commission a broad negotiating mandate.[145] As such, these two criteria are expected to be fulfilled. However, the decisive indicators of autonomy are the agent's capacity to pursue its own preferences independently of its principals and its implementation powers, particularly regarding the signing and ratification of NGFTAs. *Strong autonomy* (3 points) therefore requires all four dimensions to be satisfied, including empirical evidence of agency slack and an EU-only agreement in which the EU acts as the sole signatory and conclusion is thus confined to EU institutions. *Moderate autonomy* (2 points) requires fulfilment of three criteria, whereas *weak autonomy* (1 point) is assigned where no more than two are satisfied.

3.3 Recognition

External recognition of the EU as a trade actor by others allows for presence in global politics, which is an essential condition for actorhood.[146] Two forms can be distinguished. First, *de jure* recognition involves two elements: either (*a*) diplomatic recognition under international law or (*b*) formal membership in an IO, either through accession to an existing IO or participation in the conclusion of an international agreement. Conversely, *de facto* recognition signifies the EU's acceptance as a full negotiating partner by other actors in the international system and its subsequent interaction *on a par* with these actors – thereby implicitly recognising the EU as an actor in world affairs – by limiting the Union's counterparts (both non-EU states and non-state actors) to approaching only the EU's main representative (e.g., the European Commission, the High Representative for the CFSP, or the Council Presidency) instead of, or in addition to, one or more EU member State(s) individually.[147]

[145] da Conceição (2010), p. 1122; da Conceição-Heldt (2011), p. 410. See also, in this respect, da Conceição-Heldt (2013).
[146] Jupille & Caporaso (1998), p. 215.
[147] Brattberg & Rhinard (2012), p. 561; da Conceição-Heldt & Meunier (2014), p. 965; Delreux (2014), p. 1019; Groenleer & van Schaik (2007), pp. 974 and 976; Huigens & Niemann (2011), p. 635; Jupille & Caporaso (1998), pp. 215-216.

3.3.1 The EU as a recognised actor in global trade

In global trade, the EU has long been recognised – both *de facto* and *de jure* – as an actor distinct from its Member States. Following the establishment of the customs union and the emergence of the CCP, the EEC began operating as a single entity in international trade relations from the 1960s onwards, gradually succeeding its Member States within the General Agreement on Tariffs and Trade (GATT 1947) system.[148] Although not formally a contracting party initially, the EEC participated directly in successive multilateral trade rounds, including the Dillon, Kennedy, Tokyo and Uruguay Rounds. Notably, since the 1970s, the EEC had been *de jure* recognised as the sole signatory of multilateral trade agreements since "most agreements negotiated within the GATT framework have been accepted by the EC, without acceptance by the EC Member States as such".[149] Member States authorised the Commission to negotiate on behalf of both themselves and the Community, even in areas beyond exclusive EC competence, in order to maximise collective bargaining influence. Hence, even where the EC lacked *de jure* exclusive competence in trade issues, it was nonetheless *de facto* recognised as the sole negotiator.[150]

Following the conclusion of the Uruguay Round, the GATT was formally institutionalised with the establishment of the WTO in January 1995, within which the EC (later the EU from December 2009) was legally recognised as an original, official member alongside sovereign states.[151] Although Member States also retain WTO membership, this dual representation reinforces rather than weakens the EU's *de jure* recognition as a trade actor, since external representation, negotiations and signature of multilateral agreements are systematically conducted by the European Commission and the EU's Permanent Mission to the WTO pursuant to Articles 207 and 218 TFEU.[152] While national representatives may participate in WTO meetings, it is essentially the European Commission (or the EU Ambassador to the WTO) who speaks 'with one voice' for the Union.[153] This 'Union-only' representation is equally evident in WTO dispute settlement proceedings, where DG Trade, in

148 Bretherton & Vogler (2006), pp. 66 and 72; García & Garmendia (2012); Gstöhl & De Bièvre (2018), p. 123; Woolcock (2010), p. 4.

149 García & Garmendia (2012), p. 53.

150 Woolcock (2010), p. 5.

151 Art. XI, Marrakesh Agreement Establishing the World Trade Organization. Besides trade in goods (GATT), WTO rules also encompass agreements on, *inter alia*, subsidies and countervailing measures, trade in agriculture, services (GATS), intellectual property (TRIPS) and investment (TRIMS) – many of which at that time covered areas falling within both exclusive EU and shared competence; see notably CJEU Opinion 1/94.

152 García & Garmendia (2012), p. 56; Gstöhl & De Bièvre (2018), p. 124.

153 Bretherton & Vogler (2006), p. 67.

cooperation with the Commission's Legal Service, assumes the leading role in initiating and defending complaints on behalf of the EU and its Member States.[154]

The EU's WTO membership significantly strengthened its external legitimacy and formal recognition as a trade actor. However, recognition depends not merely on legal membership but also on the EU's high level of *action capability* within the institution.[155] As Gehring *et al*. advocate, the EU enjoys full recognition within the WTO because of its enormous economic power, extensive autonomy in external trade policy and control over the governance resources relevant to WTO negotiations, despite residual competence disputes.[156] Coupled with its formally acquired WTO membership since 1995, these factors enable the EU to enjoy full recognition on an equal footing with other members of the organisation.[157]

Trade policy constitutes a clear example of the EU being recognised as an international actor even in the absence of formal membership. As the Union's authority in global commerce has expanded, third parties have become increasingly inclined to recognise the European Commission as the sole negotiator, while engaging less directly with individual Member States.[158] Beyond the multilateral sphere, the same dynamic is evident in bilateral trade relations, where the EU is actively involved in an extensive and rapidly growing network of economic partnerships. As of 2024, the EU had 44 preferential trade agreements in force – in addition to many others under negotiation or pending adoption – covering 76 preferential trade partners and accounting for 46.1% of total EU external trade.[159] In practice, international actors now accept the EU as their only legitimate negotiating partner in trade matters, with the result that EU Member States can no longer independently undertake meaningful trade obligations *vis-à-vis* third countries and IOs.

[154] Gstöhl & De Bièvre (2018), pp. 125-126; Gehring, Oberthür & Mühleck (2013), p. 855.

[155] Gehring, Oberthür & Mühleck (2013). In their research, *recognition* implies "that the non-EU member states of that institution *accept the EU as a participant in the process of decision making* about, and *implementation* of, co-operation agreements in addition to (or in place of) its Member States." In addition, *action capability* presupposes "control over a significant amount of governance resources of importance for that institution", such as "*legislative powers* on relevant issues that EU Member States have transferred to the EU and that are not controlled by them anymore, including *areas of exclusive EU legislative competence and areas of shared competence in which the EU has exercised its legislative power*; and *financial assets* relevant to the international institution" (Ibid, p. 854).

[156] Gehring, Oberthür & Mühleck (2013). These issues most notably include, external tariffs, trade in goods – including agricultural products via the Common Agricultural Policy (CAP), services, trade-related IPRs, competition policy, investment, and anti-dumping and countervailing measures.

[157] Gehring, Oberthür & Mühleck (2013), pp. 852-853 and 855.

[158] Woolcock (2010), p. 4.

[159] European Commission (2025b), pp. 7 and 11. For a full list of all EU bilateral FTAs in place, those pending ratification or currently under negotiation, see European Commission, 'Negotiations and agreements'. Available at: <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en>.

For analytical purposes, *strong recognition* (3 points) derives from the EU's combined *de jure* and *de facto* external legitimacy as a trade actor *vis-à-vis* a third party. *Moderate recognition* (2 points) requires fulfilment of one of these criteria, whereas *weak recognition* (1 point) satisfies neither.

3.4 Capability

Capability refers to "the internal context of EU external action (or inaction)" and comprises "those aspects of the EU policy processes that, by constraining or enabling action, govern the Union's ability to capitalise on presence or respond to opportunity".[160] In this respect, the most important dimension of capability concerns the Union's ability to *formulate policies* encapsulated in the concepts of *cohesion* and *coherence*.[161]

3.4.1 Policy formulation: a matter of internal unity and consistency

Jupille and Caporaso conceptualise cohesion through four interrelated dimensions: (*a*) *values*, referring to the similarity/compatibility of basic goals; (*b*) *tactics*, whereby diverging preferences and disagreements are managed through issue linkages, side payments, and package deals; (*c*) *internal procedures* and rules governing collective decision-making where conflict exist; and (*d*) *policy output*, namely the successful formulation of common policies and collective positions.[162] Cohesion may be threatened by both *horizontal conflicts* – between Member States or EU institutions – and *vertical conflicts* between EU, national or sub-national levels of governance.[163]

In trade policy, Member states frequently hold divergent preferences regarding the substance of FTAs. The Council's position emerges through bargaining shaped by ideological orientations towards liberalisation or protectionism, domestic economic interests, lobbying by business and civil society actors, and disparities in political influence and administrative capacity among Member States – for example, larger economies often exercise greater influence over the EU's collective negotiating stance.[164]

[160] Bretherton & Vogler (2006, p. 29; 2013, p. 381).
[161] Bretherton & Vogler (2013, pp. 381-385); Jupille & Caporaso (1998).
[162] Jupille & Caporaso (1998), pp. 218-220.
[163] Ibid, p. 220.
[164] Meunier (2007), p. 907.

Divergences also arise between EU institutions. While the Commission and Council tend to prioritise economic considerations, the EP has generally been more receptive to non-trade and normative concerns, presenting itself as "the voice of normative objectives" in EU external action.[165] Since Members of the European Parliament (MEPs) depend more directly on electoral constituencies, they are especially responsive to societal pressures and interest groups.[166] This may generate institutional tensions where commercial interests conflict with political values or contested provisions within trade agreements.[167] Conflicts may also arise between certain Member States and the EP *vis-à-vis* the Commission and/or the negotiating partner regarding the substance of FTAs, with these actors strategically leveraging their veto powers to extract concessions. Ideally, stronger EU cohesion exists where Member States and supranational institutions broadly converge on FTA objectives. In the absence of such convergence, collective action depends increasingly on formal rules, decision-making procedures and informal 'appeasement' methods.[168]

Tactical and procedural cohesion therefore become crucial in overcoming decision-making deadlocks.[169] These involve the strategic use of negotiation tools, such as trade-offs, issue linkages, safeguards, interpretative declarations, side payments and substantive adjustments of the accord to secure agreement among discontented actors. The Commission may, for example, reopen limited negotiations with third parties to accommodate specific national concerns and avoid blocking behaviour during negotiation, signature or ratification stages.

Besides the prescribed trade treaty-making process under Articles 207 and 218 TFEU and the principles of conferral and sincere cooperation, central to procedural cohesion is the collective decision-making rules of the Council and the EP by which preferences are aggregated internally and represented externally.[170] Cohesion, in this sense, does not necessitate total alignment of political views among Member States and MEPs, but rather it concerns the minimum required majority, as specified by voting rules, to successfully

[165] Frennhoff Larsén (2017); Leeg (2014), pp. 343-344; Lütz, Leeg, Otto & Dreher (2021), p. 78; McKenzie & Meissner (2017).

[166] Broadly, civil society organisations (CSOs) tend to attract greater engagement from left-leaning and green MEPs, whereas representatives of industry are more favourably received by conservative and liberal deputies. Nevertheless, certain matters – such as fundamental labour standards and sustainable development – appear to command wide cross-party support within the EP (Leeg, 2014, p. 344).

[167] Gstöhl & De Bièvre (2018), p. 199; McKenzie & Meissner (2017).

[168] Brattberg & Rhinard (2012), p. 562; Groenleer & van Schaik (2007), p. 973.

[169] Groen & Niemann (2013), p. 310.

[170] Jupille & Caporaso (1998), p. 219.

aggregate preferences into a collective common position.[171] QMV generally strengthens procedural cohesion by lowering the decision threshold compared to unanimity, which increases the likelihood of vetoes and necessitates greater appeasement efforts.[172] Formally, the Council signs and concludes trade agreements through *QMV* unless *unanimity* is required under Article 207(4) TFEU or the agreement is classified as mixed, thereby requiring (*de facto*) *unanimity* through national ratification procedures. In practice, however, Member States have generally reached *consensus* by accommodating most national preferences.[173] The EP grants consent by simple majority.

Another important instrument of procedural cohesion is the *provisional application* of mixed agreements under Article 218(5) TFEU.[174] Provisional application covers provisions falling within EU exclusive competence allowing parties to partially benefit from the envisaged agreement before its formal entry into force while national ratification procedures continue, and reflects the pragmatic attempt to reconcile two competing objectives: enabling agreements to produce immediate legal effects while preserving Member State participation as formal treaty parties.[175] Nevertheless, mixed agreements remain vulnerable to incomplete ratification. Since definitive entry into force requires approval by all parties, a single Member State may delay or prevent full implementation.[176] In such circumstances, only provisions falling within EU exclusive competence remain binding EU-wide, whereas the incomplete agreement may *de facto* enter into full force only within ratifying Member States.[177]

The ultimate objective for capability is *output cohesion*, which refers to the EU's ability to formulate and externally present a collective position despite internal divergences and "can largely be viewed as the result of preference [cohesion] mitigated/balanced by

[171] da Conceição-Heldt & Meunier (2014), pp. 966-967; Groenleer & van Schaik (2007), p. 974.

[172] Jupille & Caporaso (1998), p. 219.

[173] da Conceição-Heldt (2013), p. 28; Meunier (2003), pp. 78 and 80; Meunier & Nicolaïdis (1999), p. 480. In principle, unanimity applies for certain politically sensitive issues, such as trade agreements in the field of cultural and audiovisual services as well as health, education and social services (Art. 207(4) TFEU).

[174] Chamon (2020), pp. 892-893; Driessen (2020). Kleimann & Kübek (2018, p. 25) specifically elucidate: "Provisional application describes a situation where the governments of the states that sign an international agreement decide to give effect to the rights and obligations of the said agreement as a whole or in part, upon signature or on an agreed date, pending the entry into force of the treaty. Hence, provisional application covers the time period between the signature of a treaty and its entry into force."

[175] Chamon (2020), pp. 893-4; Conconi, Herghelegiu & Puccio (2021), p. 243; Driessen (2020), pp. 742-743 and 756; Lütz, Leeg, Otto & Dreher (2021), p. 38; Suse & Wouters (2019), p. 403; Van der Loo & Wessel (2017), p. 758.

[176] Van der Loo & Wessel (2017).

[177] Kleimann & Kübek (2018), p. 34; Van der Loo & Wessel (2017), p. 741 ff.

procedural-tactical [cohesion]".[178] Yet the existence of a common position alone is insufficient if actors subsequently undermine it. This introduces the related concept of *coherence*, defined as "the adoption of determinate common policies and *the pursuit of those policies* by EU Member States and institutions".[179] Put simply, coherence is a matter of consistency; a measure of political commitment to common policies.[180]

Whereas cohesion concerns the formation of a shared position, coherence concerns the consistency with which that position is defended externally. The negotiated outcome of an FTA may still be obstructed during the approval stage. Member States dissatisfied with the agreement may block adoption in the Council while the EP may withhold consent, as occurred with the Anti-Counterfeiting Trade Agreement (ACTA) in 2012.[181] These risks are particularly pronounced in mixed agreements requiring *de facto* unanimous ratification at both EU and domestic levels.[182] High coherence therefore presupposes sustained commitment by both Member States and EU institutions to the collectively negotiated outcome through external representation, ratification and implementation.[183] Ultimately, the degree to which EU actors consistently uphold the agreed position determines both the Union's capacity to act and its credibility as a coherent international trade actor (see ***table 4***).[184]

Analytically, *strong capability* (3 points) in policy formulation, understood as the successful conclusion of NGFTAs, presupposes a high level of output cohesion (a common collective external position) grounded in enhanced goal/preference cohesion and internal coherence (political commitment to that common position). Although practices of tactical cohesion (side payments, issue linkages, trade-offs, package deals) may sustain policy output in contexts of divergent preferences, weak commitment to the substantive content of the negotiated FTA, or strategic incentives to extract concessions from the EU or the third party,

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178 Groen & Niemann (2013), p. 310; Jupille & Caporaso (1998), p. 220 Although the authors use the term 'coherence', for the sake of definitional consistency and accuracy in line with Jupille and Caporaso's (1998) original formulation, I refer to this phenomenon as 'cohesion'.

179 Thomas (2012), p. 458 (emphasis added).

180 Bretherton & Vogler (2006, p. 31; 2013, p. 382). As da Conceição-Heldt & Meunier (2014, pp. 964 and 967, emphasis added) elucidate: "When it comes to displaying cohesiveness to the rest of the world, it is the degree to which the group comes up with a single message and manages to *present that message with a single voice, without members of the group breaking away and undermining the collective message*…there is variation in the 'voice' with which that common position is defended externally." The authors integrate the concepts of cohesion, coherence, and consistency within the broader notion of 'cohesiveness'.

181 See Dür & Mateo (2014).

182 da Conceição-Heldt & Meunier (2014), p. 967. Difficulties may arise even earlier, during the provisional application stage, when ministers from federal Member States, such as Belgium, cannot grant approval in the Council without prior authorisation from domestic legislatures.

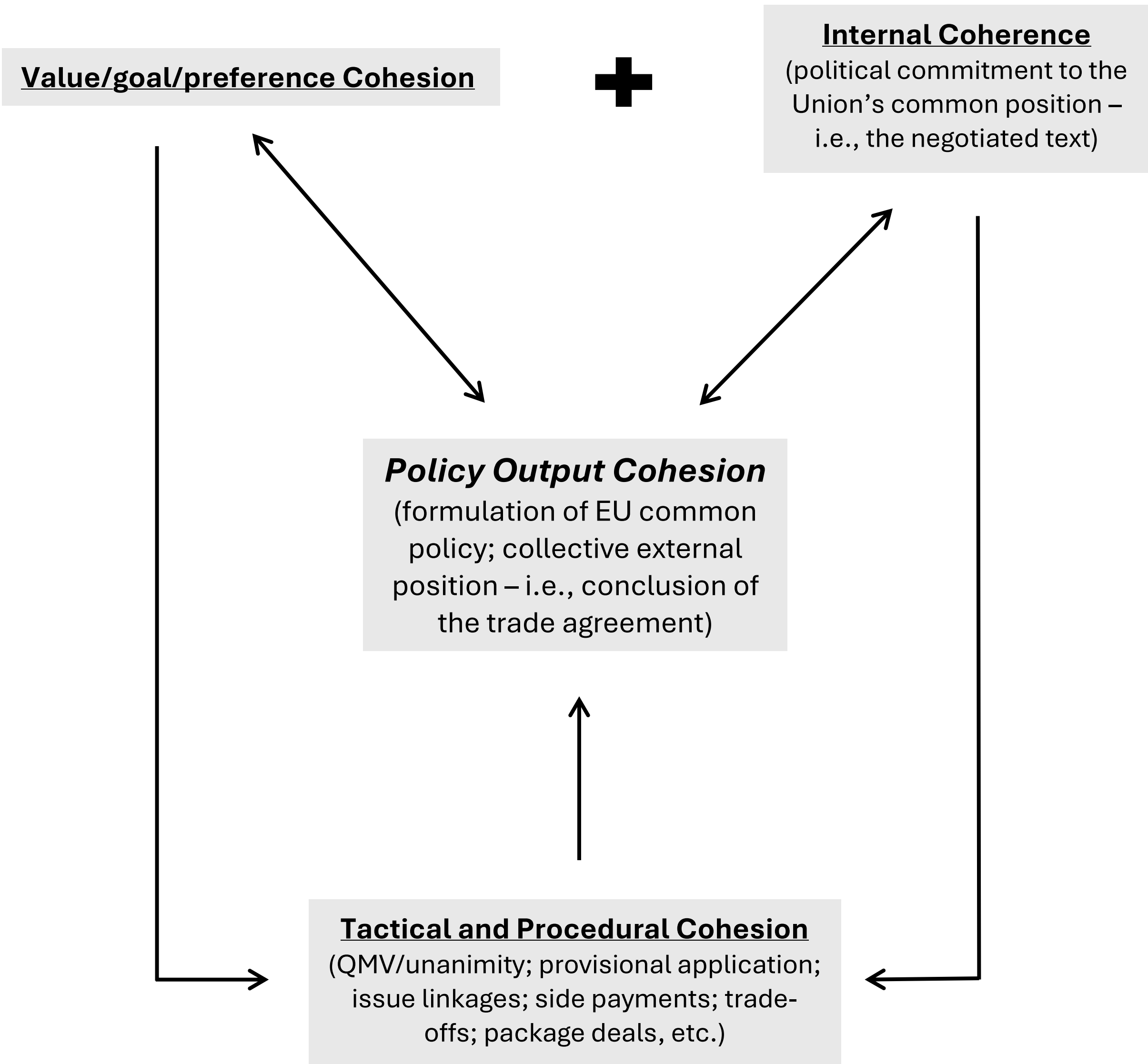
183 Thomas (2012), p. 459.

184 Brattberg & Rhinard (2012), p. 563; da Conceição-Heldt & Meunier (2014); Thomas (2012).

procedural cohesion ideally requires QMV and the swift conclusion of the agreement at EU level without recourse to provisional application resulting from mixity. *Moderate capability* (2 points) follows from mixity, unanimity voting and the use of provisional application, which, while preserving the EU's common position (output cohesion), nonetheless prevents full entry into force of the treaty and consequently constrains output cohesion due to potentially internal incoherence. *Weak capability* (1 point) similarly arises under conditions of mixity and unanimity voting, but in this case the EU is institutionally unable to sign the FTA and/or, at minimum, apply it provisionally, due to heterogeneous preferences, irrespective of practices of tactical cohesion.

Table 4. ***Capability in policy formulation***

Author's own compilation



3.5 Opportunity: the quest for political legitimacy

Lastly, opportunity refers to the structural context within which EU external action takes place, namely the external factors that enable or constrain actorness.[185] It encompasses the broader geopolitical, geo-economic and societal environment in which the EU operates and reflects "a dynamic process where ideas are interpreted and events accorded meaning".[186] In this sense, the degree of EU actorness is shaped by how the Union interacts with prevailing international *norms*, *institutions* and *interests* within its external environment.[187] Opportunity therefore includes developments at the international, domestic and societal levels, alongside the reactions of both state and non-state actors that may either facilitate or restrict EU action. Favourable geopolitical conditions and public support generally strengthen EU trade actorness and facilitate the conclusion of trade agreements. Conversely, political contestation and societal opposition may lead to the collapse of negotiations (e.g., TTIP), or ratification failure, as occurred with ACTA, thereby narrowing the opportunity structure for EU trade policy.[188]

A central component of opportunity for EU trade actorness is political legitimacy.[189] Given the redistributive effects of trade liberalisation, the CCP has long generated tensions between proponents of free trade and advocates of protectionism. Meunier distinguishes between two dimensions of legitimacy: *process legitimacy* and *outcome legitimacy*. The former concerns the process by which decisions are made; policies are deemed to be legitimate when "policy-makers are representative, accountable and placed under public scrutiny", whereas the latter focuses on (the contents of) the policy eventually made; a policy is considered legitimate when it efficiently solves problems in a way benefiting the public interest by delivering on its promises and improving the conditions of all, or almost all, individuals and groups in society.[190]

From a process perspective, EU trade policy has often been criticised for being conducted by unelected Commission officials insulated from direct electoral accountability. Yet this delegation of authority is also viewed as a deliberate mechanism to shield trade policy from protectionist pressures and allow for more apolitical, technocratic and strategic decision-

[185] Bretherton & Vogler (2006), p. 24.
[186] Bretherton & Vogler (2006), p. 24; Schunz, Damro & Gstöhl (2018), p. 16.
[187] Schunz, Damro & Gstöhl (2018), p. 16.
[188] See Dür & Mateo (2014).
[189] Bretherton & Vogler (2006), pp. 30-31; Meunier (2003); Woolcock (2010), p. 7.
[190] Meunier (2003), pp. 75-76.

making.[191] Nevertheless, the EU has sought to mitigate concerns regarding democratic legitimacy in three principal ways.

First, the Lisbon Treaty strengthened the role of the EP – the EU's only directly elected institution – by requiring parliamentary consent for trade agreements. The EP's ability to scrutinise negotiations and potentially withhold consent has enhanced democratic scrutiny and accountability of trade policy.[192] In mixed agreements, this legitimacy is further reinforced through the involvement of national parliaments in ratification procedures.

Second, EU trade policymaking incorporates both formal and informal channels for civil society participation. Business associations, trade unions, non-governmental organisations (NGOs), consumer groups and environmental organisations may engage with DG Trade through mechanisms such as the Civil Society Dialogue and the European Economic and Social Committee (EESC). Informally, interest groups may lobby actors at both national and EU levels, including national ministries, MEPs, members of the Committee of Permanent Representatives (COREPER), the INTA Committee, members of the TPC and Commission officials.[193]

Third, transparency has become a central objective of EU trade policy since the 2015 Trade Strategy.[194] The EU now publishes sustainability impact assessments, negotiating directives, draft proposals, negotiation reports and *ex post* evaluations throughout the negotiation cycle. These measures aim to improve openness, public trust and the perceived legitimacy of EU trade policymaking.[195]

At the same time, the increased involvement of the EP and civil society has significantly politicised the CCP, intensifying debates over "whether it is designed to support broad

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[191] Leeg (2014), p. 344. As Meunier (2003, p. 72) explains, "there are powerful rationales for insulating the trade policy-making process from interest group pressures. As a result of in part of collective action problems, there is a chronic imbalance between those who benefit from trade protection and those who pay the costs. Trade creates winners and losers. Those who benefit from trade liberalization are diffuse, and their gains are small, whereas those who lose from trade are concentrated and organized. As a result of this, the trade policy-making process can be easily captured by protectionist interests (such as farmers, manufacturers, and labor unions). Therefore, the authority for making trade policy is often delegated to the executive, in order to bypass these protectionist pressures."

[192] Frennhoff Larsén (2017; 2020); Hart (2020); Leeg (2014); Meissner (2016).

[193] Gstöhl & De Bièvre (2018), pp. 52-54; Lütz, Leeg, Otto & Dreher (2021), p. 33; Meunier (2003). For more information on the EU trade Civil Society Dialogue, see European Commission, 'Objectives of the EU Trade Civil Society Dialogue'. Available at: https://policy.trade.ec.europa.eu/analysis-and-assessment/eu-trade-meetings-civil-society/objectives_en.

[194] European Commission (2015c), pp. 11-13; see also European Commission (2021a), pp. 21-22.

[195] For the EU's efforts on transparency in EU trade policy, see European Commission, 'Transparency in EU trade negotiations'. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/transparency-eu-trade-negotiations_en; European Commission, 'Transparency in EU trade policy: 2023 statistics for DG TRADE'. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/transparency-eu-trade-negotiations/transparency-eu-trade-policy-2023-statistics-dg-trade_en.

European interests and principles or the narrow objectives of large firms".[196] Importantly, participation mechanisms do not grant societal actors formal decision-making authority, as the Commission remains under no legal obligation to incorporate their demands. Consequently, consultation risks becoming largely symbolic where stakeholder input is not meaningfully reflected in negotiated outcomes. From an 'outcome' perspective, trade agreements inevitably create winners and losers, often triggering societal contestation where economic or normative interests are perceived to be adversely affected.[197]

Admittedly, EU trade policy has become increasingly politicised in recent years.[198] Politicisation – defined as "an increase in the *salience* of trade policy, an expansion of the *number of actors* involved in the debate about trade, and the *polarisation* of positions assumed vis-à-vis trade policy"[199] – has significant implications for the EU's capacity to conclude trade deals, and its degree varies substantially over time and across commercial treaties and Member States.[200] Moreover, since politicisation broadly refers to "a situation in which a policy domain, previously subject to elite-driven policymaking, becomes the subject of public debate and controversy", it results from a contingent process necessitating agency: first, an actor moves an issue into the political realm and, second, successfully frames it as a threat to a given audience.[201] Several factors contribute to the politicisation of EU trade negotiations. First, the regulatory depth and comprehensiveness of NGFTAs extend trade policy into domestically sensitive areas, including environmental, health and safety standards. Second, the relative economic power of the EU's negotiating partners may influence whether agreements are perceived as leading to regulatory upgrading or downgrading. Politicisation is further intensified by public attitudes towards the EU, the distributive consequences of trade liberalisation amid heightened import competition, and the post-Lisbon inclusion of the EP in trade treaty-making.[202]

Therefore, a legitimate CCP, and thus favourable opportunity for EU trade actorness, requires the prior consideration and meaningful incorporation of concerns advanced by CSOs

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[196] Cabras (2024); European Commission (2015c), p. 12; Lütz, Leeg, Otto & Dreher (2021), pp. 24-25 and 81. A similar concern was recently voiced by Greenpeace against EU–Mercosur Partnership Agreement (EMPA). Greenpeace, 'Commission tramples democracy to force through EU-Mercosur trade deal'. Available at: https://www.greenpeace.org/eu-unit/issues/climate-energy/47916/commission-tramples-democracy-to-force-through-eu-mercosur-trade-deal/.

[197] Meunier (2003).

[198] Cabras (2024); De Bièvre & Poletti (2020); Leblond & Viju-Miljusevic (2019); Meunier & Czesana (2019).

[199] De Ville & Gheyle (2019), p. 20.

[200] De Bièvre & Poletti (2020); Dür, Eckhardt & Poletti (2020); Dür & Mateo (2014); Meunier & Czesana (2019).

[201] Cabras (2024), p. 139; Young (2019), p. 1885.

[202] See Cabras (2024); De Bièvre & Poletti (2020); Meunier & Czesana (2019).

and business associations into free trade agreements *before* opposition materialises at the signing or ratification stage. In such circumstances, legitimacy emerges from proactive measure than from reactive adjustments to contestation, irrespective of whether the Commission ultimately responds to external pressure to secure public trust. Accordingly, a strong opportunity for EU trade actorness manifests when there is no substantial societal opposition and public contestation about the conclusion of a trade deal.

In analytical terms, *strong opportunity* (3 points) involves "the existence of an external context that provides incentives for EU action", such as "significant crises or events requiring reaction or proactive action or external trends on which the EU cannot afford to be a by-stander".[203] Such conditions create favourable grounds for the conclusion of an FTA, including shared economic interests among the parties, and ideally enable the agreement's smooth conclusion or at least provisional application in the absence of political contestation and societal opposition. *Moderate opportunity* (2 points) – "crises, events or external trends that may prompt EU reaction"[204] – arises where economic or other benefits exist for the parties involved but are accomplished by intense anti-PTA mobilisation campaigns affecting ratification at the EU and, where appropriate, (sub-)national level. *Weak opportunity* (1 point) – "the absence of such trends and events" – denotes situations in which negotiations collapse due to divergent interests between the parties, as in TTIP, or ratification fails at the EU level, for instance where the EP rejects the agreement, as occurred with ACTA.[205]

[203] Schunz, Damro & Gstöhl (2018), p. 17.
[204] Ibid.
[205] De Bièvre (2018); Dür & Mateo (2014); Schunz, Damro & Gstöhl (2018), p. 17.

4 Analysis: the case of CETA

During the second half of the 2000s, amid a stalled multilateral trading system and the fallout of the global financial crisis, Canada was prompted to recalibrate its international economic policy in an era marked by the proliferation of FTAs. Deepening relations with the EU – a large integrated market and its second most important trading partner after the US – offered a means to expand commercial opportunities beyond North America, reduce its dependence on the US and avoid marginalisation in a rapidly evolving global economy.[206] On the European side, frustration with the lack of progress within the WTO framework, combined with the rise of FTA-driven "competitive liberalisation" pursued by major economic powers such as the US, China and Japan, pushed the EU to shift towards a more commercially oriented trade policy. In line with the Commission's 2006 *Global Europe* trade strategy, it increasingly prioritised the negotiation of ambitious bilateral and regional PTAs with key (emerging) partners, including South Korea, Japan, India, ASEAN and Mercosur.[207]

Although Canada's pursuit of a bilateral agreement with the EU was motivated by the economic objective of diversifying its trade away from US overreliance, the EU's interest in Canada was "an *opportunistic choice* to begin the more export-driven trade principles laid out in Global Europe, as there is clear room for growth between the two entities as well as a place to *test procurement* outside of Europe, laying it as a foundation for future FTAs".[208] The objective to successfully include public procurement as a test-run in CETA was regarded as one of the Union's greatest victories shifting from the existing WTO-based 'non-discriminatory' access to an 'unconditional access' at *all* levels of government for EU companies in Canada.[209] Indeed, the then EU Trade Commissioner, Cecilia Malmström, praised that "Canada opens procurement more in CETA than in the WTO's Government Procurement Agreement, NAFTA*, and the Transpacific Partnership".[210] Additional factors explaining the EU's willingness to deepen economic relations with a seemingly non-essential partner included the failure of multilateral trade and investment negotiations during the DDR, the growing geopolitical and geo-economic challenge posed by emerging economies such as

[206] Deblock & Rioux (2010), p. 40.
[207] European Commission (2006); Woolcock (2014a).
[208] Hübner, Deman & Balik (2017), p. 847 (emphasis added).
[209] Sinclair, Trew & Mertins-Kirkwood (2014), p. 25.
[210] Hübner, Balik & Deman (2016), p. 13. *NAFTA: North American Free Trade Agreement.

China, and pressure from key Member States – particularly France, the UK and Germany owing to their strong commercial and historical ties with Canada – alongside lobbying by European business groups advocating the launch of trade negotiations with Ottawa.[211]

The collapse of bilateral negotiations on a Canada-EU Trade and Investment Enhancement Agreement (TIEA) in 2006, together with encouragement from the then EU Ambassador to Canada, Dorian Prince, to advance the idea of a transatlantic commercial pact – subsequently endorsed by Quebec Premier, Jean Charest, at the World Economic Forum in January 2007 – paved the way for EU and Canadian leaders to agree, at the 2007 EU-Canada Summit in Berlin, to launch a joint study on "Assessing the costs and benefits of a closer EU-Canada economic partnership".[212] Issued in October 2008, at the next EU-Canada Summit in Quebec City, the study estimated that, by 2014, a trade deal between the two would boost the Union's gross domestic product (GDP) by €11.6 billion and its exports to Canada would increase by 24.3% (€17 billion), and Canada's GDP by €8.2 billion with its exports to the EU going up by 20.6% (€8.6 billion).[213] The EU would profit mainly from government procurement liberalisation, higher IPRs protection, investment and services whereas Canada would especially benefit from the removal of customs tariffs on certain agricultural products (pork, fish, seafood, wheat and hormone-free beef), investment in a wide variety of sectors (energy, environmental industry, natural resources, aerospace, transportation, defence, life sciences and communication technology) and services liberalisation.[214]

With such potential economic advantages, a scoping exercise, laying out a negotiating agenda on trade and investment – i.e., '*Canada-European Union Joint Report: Towards a Comprehensive Economic Agreement*' which was to build on the abandoned TIEA – was released in March 2009 to "define the scope of a deepened economic agreement and to establish the critical points for its successful conclusion, particularly the involvement of Canada's provinces and territories and the EU Member States in areas under their competencies".[215] At the EU-Canada Summit in Prague in May 2009, Canada and the EU announced the launch of formal negotiations towards a CETA, reaching an agreement in principle in October 2013 after

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[211] Hübner, Deman & Balik (2017), pp. 848-849. The provincial government of Quebec was also particularly active in extensive lobbying efforts directed at EU officials and sought to persuade the Canadian federal government to pursue a commercial agreement with the EU (Hübner, Balik & Deman, 2016, pp. 16-17; Kukucha, 2013, p. 529).

[212] Adeba (2006); Esau (2007); Leblond (2010), pp. 74-75.

[213] European Commission & Government of Canada (2008).

[214] Duchesne & Morin (2013), p. 14.

[215] Canadian Parliament, House of Commons (2012), p. 3; European Commission & Government of Canada (2009).

nine negotiating rounds, followed by the publication of the draft text in September 2014 and the completion of the legal review of its English version in February 2016.[216]

4.1 Canadian perceptions of the EU as an (economic) actor

The conferral of legal personality on the EU (including the then EEC and EURATOM) allowed it, from the outset, to engage in substantive international relations with third countries and IOs. The EU and Canada have maintained close political and economic ties since the establishment of the ECs in the late 1950s, as evidenced by a broad array of bilateral sectoral and framework agreements.[217] In Canadian eyes, the EU's *de facto* recognition as an actor dates back to 1959, with the conclusion of the EURATOM-Canada agreement for cooperation in the peaceful uses of atomic energy. The formalisation of EU-Canada relations in trade and economic cooperation, however, solidified with the 1976 bilateral 'Framework Agreement for Commercial and Economic Cooperation' which constitutes "the EU's oldest formal relationship of this type with any industrialised country and the EU's first cooperation agreement with an industrialised country". In addition, several trade-related sectoral agreements were concluded in the 1990s and 2000s, relating to, *inter alia*, Customs Cooperation (1998), Mutual Recognition (1998), Competition Cooperation (1999) and Wine and Spirits (2004).[218] *De jure* recognition of European-Canadian relations has also manifested in formally institutionalised interactions under the multilateral commercial framework of GATT, both before and after the establishment of the WTO. The EU/EC acted as a *de facto* contracting party of GATT on behalf of its Member States since the 1960s, while it has been a full-fledged WTO member on a par with state actors since 1995. Bilateral agreements within the GATT/WTO framework have been concluded to settle various trade issues directly or indirectly involving Canada, including the Agreement on Trade in Alcoholic Beverages (1989), the Agreement settling a WTO dispute on scallops (1996) and several agreements concerning the conclusion of GATT Art. XXIV: 6 negotiations.[219]

The joint report on 'a closer EU-Canada economic partnership' explicitly acknowledges that the bilateral relationship is "wide-ranging, long-standing and, for the most

[216] Council of the European Union (2009a); European Commission (2025a), p. 8.
[217] Verdun (2019).
[218] European Commission & Government of Canada (2008). Additional agreements include 'Declaration on European Community-Canada Relations' (1990); 'EU-Canada Agreement on Higher Education and Training (1995, 2000); 'Joint Political Declaration on EU-Canada Relations' (1996); Agreement on Scientific and Technical Cooperation (1996); Veterinary Equivalency (1998).
[219] European Commission & Government of Canada (2008).

part, well-functioning”. In 2008, the EU was Canada’s second most important partner for trade (goods and services) and investment, while Canada ranked as the EU’s eleventh most important trading partner in goods and its fourth most significant partner in terms of investment.[220] This is further corroborated by a comprehensive research project on the EU’s external image, published in 2007, at a time when CETA was soon to be set in motion. According to the study, Canada perceived the EU as “primarily an *important international economic actor* and *a large and attractive market*”, one of which Canadian companies had yet to take full advantage. Both the EU and Canada share similar values and interests, more closely aligned than those characterising Canada-US and EU-US relations, with EU economic, environmental and political practices occasionally cited as a model to emulate, particularly among Canadian reform-oriented liberals. However, the EU does not occupy a substantial role in Canadian perceptions beyond the issue of trade expansion.[221] Overall, for analytical purposes, the EU’s *de jure* and *de facto recognition* as an economic actor in the eyes of Canada is empirically *strong*, thereby reinforcing EU trade actorness.

4.2 A ‘turbulent’ opportunity: from economic and strategic interests to societal contestation

In addition to long-standing and cordial transatlantic relations, a confluence of favourable geopolitical and geo-economic conditions facilitated the emergence of an EU-Canada FTA. At a time marked by globalisation euphoria – characterised by a proliferation of PTAs alongside a stalled multilateral trading system and a severe worldwide economic downturn – Canada had strong *economic incentives* to enhance competitiveness and reduce its heavy reliance on the US, a dependence perceived as both a vulnerability and a source of unease. Diversifying its commercial partnerships, particularly with the EU as a potential counterweight to the US (a role historically associated with the UK and the Commonwealth), formed a central element of Ottawa’s strategy, alongside a broader effort to reinvigorate its regional and bilateral trade and investment agenda.[222] The combination of NAFTA and CETA would position Canada as the only major industrialised economy with preferential access to the world’s two largest markets:

[220] European Commission & Government of Canada (2008).

[221] Croci & Tossutti (2007). The report on Canada’s perception of the EU was the overall result of information gathered from such target groups as *political elites*, *public opinion*, *the press* and *organised civil society*. Although an indispensable ally, the EU received relatively *limited* attention as an international *political* actor, largely due to its perceived lack of capacity to address most global threats, with the partial exception of macroeconomic instability and migratory pressures. Cooperation in political matters between the two parties, aside from the framework of the North Atlantic Treaty Organization (NATO), remained underdeveloped, and the EU was scarcely regarded as a potential international political counterweight to the US.

[222] Croci & Tossutti (2007); Government of Canada (2008).

the EU and the US. For Canada, CETA could represent an NGFTA offering an opportunity to depart from the NAFTA template and potentially set a benchmark for future trade negotiations, including with the US.[223] Its added value lies in significant NAFTA+ advancements in scope and coverage, most notably through the inclusion of provincial competences – reflected in both their substantive coverage and the direct participation of provincial governments in the negotiations – as well as expanded market access in services via government procurement and the introduction of innovative regulatory cooperation mechanisms, including mutual recognition.[224]

For the EU, the Commission's 2006 *Global Europe* trade strategy aimed to liberalise new trade areas of economic growth and competitiveness, with an emphasis on services, intellectual property (IP), investment, public procurement and competition while simultaneously promoting EU regulatory practices and standards on the international stage. The strategy identified prospective FTA partners on the basis of strong market potential, characterised by high growth rates and relatively elevated tariff protection against EU exports, from which Canada was initially excluded.[225] CETA was conceived as a *strategic* and *political* opportunity – facilitated by Canada's successful lobbying of individual EU Member States governments, including France, Germany and the UK – to test a deep and comprehensive next-generation FTA with an OECD* economy and the EU's first G7 partner, serving as a 'testing ground' for enhanced transatlantic regulatory cooperation and a new international baseline for parallel and future agreements with advanced economies (CETA has indeed served as a forerunner for TTIP and the EU–UK Trade and Cooperation Agreement following Brexit).[226]

Furthermore, given that Canadian provinces and territories are responsible for implementing international commitments negotiated by the federal government within their respective competences (in such areas as public procurement, agriculture, labour, health, sustainable development and the environment, which fall under shared or exclusive provincial/territorial jurisdiction), the Commission, from the outset, leveraged this institutional reality by making the provinces' active participation and direct involvement in the negotiations a precondition for concluding a transatlantic agreement.[227] This approach marked a departure

[223] Woolcock (2011).
[224] Woolcock & Sauvé (2015), p. 8; Hübner (2011), p. 6.
[225] Woolcock (2011), p. 23.
[226] Allee, Elsig & Lugg (2017); Duchesne & Morin (2013), p. 16; Hübner (2011); Leblond & Viju-Miljusevic (2022); Woolcock (2011). *OECD: Organisation for Economic Co-operation and Development.
[227] Hübner (2011), p. 8; Hübner, Balik & Deman (2016), pp. 16-17; Kukucha (2011); Leblond (2010), pp. 76-77.

from earlier WTO frameworks and previous Canadian bilateral trade agreements where provinces had been largely excluded and, most importantly, reflected lessons drawn from the failure of the 2006 TIEA, which was ultimately undermined by insufficient provincial cooperation.[228]

Despite the opportunistic economic and/or strategic interests of the two parties, CETA has been the subject of intense societal opposition. EU trade policy has become increasingly politicised in recent years.[229] The transatlantic negotiations of CETA and TTIP have served as emblematic examples of this shift since the early 2010s.[230] Although several reinforcing conditions fuel the politicisation of EU trade negotiations,[231] two general factors contributed to the late but strong rise of influential anti-CETA civil society groups across the EU: first, the launch of *TTIP negotiations with the US* in 2013 and second, the aftermath of the *2008 global financial crisis* and the *2010 Eurozone crisis*, which generated greater scepticism towards globalisation.[232] As regards the latter, NGO activism and backlash against the transatlantic agreements are seen as part of "a broader and generalised rise of *populism*, *euroscepticism* and *anti-trade mobilisation*".[233] Indeed, growing discontent with globalisation amid *import competition* has fostered economic nationalism and increased the political salience – that is "significance, importance and urgency that the general public ascribes to a certain issue on the political agenda" – of EU trade policy.[234] Perceptions of globalisation in advanced economies have shifted from enthusiasm or neglect to concern and opposition, with anti-globalisation politics embraced by the far left, the populist right and mainstream parties.[235] The uneven distributional effects of trade liberalisation concentrated in specific industries and regions (e.g. agriculture in France), especially in the case of outsourcing or cheaper imports from emerging economies – create high adjustment costs and heighten the politicisation of PTAs.[236]

Additionally, *public attitudes towards the EU* must be factored in. Since FTAs are negotiated at the European level, Eurosceptic audiences are more prone to distrust of EU trade deals, as Euroscepticism "represents a fertile breeding ground for interest groups seeking to

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[228] Canadian Parliament, House of Commons (2012), p. 4; Hübner, Balik & Deman (2016), p. 16; Hübner, Deman & Balik (2017), pp. 849-850; Leblond (2010), pp. 75-76.

[229] Cabras (2024); De Bièvre & Poletti (2020); Leblond & Viju-Miljusevic (2019); Meunier & Czesana (2019).

[230] De Bièvre (2018); De Ville & Gheyle (2019); Duina (2019); Young (2019).

[231] For a review of these factors, see Cabras (2024); De Bièvre & Poletti (2020); Meunier & Czesana (2019).

[232] Hübner, Deman & Balik (2017), p. 852.

[233] De Bièvre (2018), p. 77 (emphasis added).

[234] Cabras (2024), pp. 142-143; Meunier & Czesana (2019), pp. 1848.

[235] Meunier & Czesana (2019), p. 1853.

[236] Cabras (2024), pp. 142-143; Meunier & Czesana (2019), pp. 1854.

mobilize opposition against the agreements".[237] Agents of politicisation are thus more effective among sceptical publics that view EU institutions as lacking legitimacy to regulate domestically sensitive matters affecting daily life.[238] Citizens' orientation towards EU-negotiated FTAs can be shaped through heuristic processing driven by political cueing and elite framing.[239] Public opinion is also influenced by interest group lobbying through 'outside strategy' tactics – such as press releases, information events, demonstrations, protests, petitions and media advertisements – aimed at raising issue salience and shaping positions.[240] Mobilisation tends to be higher on salient issues, and public opinion, in turn, is more likely to affect public policy when salience is high.[241] Unlike firms and business associations, NGOs rely upon more fluctuating membership fees and donations; their appeal rests on the popularity and relevance of their campaigns rather than members' immediate self-interest.[242] Driven primarily by membership growth, they pursue "a strategy of presence and agenda-setting at the cost of influencing negotiated outcomes and their implementation".[243] Acting as agents of politicisation, organised interest groups may deliberately instigate distrust, indignation and opposition to trade agreements, as with CETA and TTIP, by focusing on a limited set of issues suited to mobilising discontent and fear.[244] The threatening nature of such issues need not be real. In CETA, civil society actors selected elements for mobilisation that were neither new (such as the ISDS system) nor even part of the EU negotiation agenda (e.g., 'mandatory' regulatory cooperation; where in reality it was less binding and on a voluntary basis).[245]

A second reason for the anti-CETA campaign lies in the overwhelming politicisation of the TTIP spilling over onto the CETA negotiations.[246] In February 2013, TTIP negotiations were launched while CETA was nearing conclusion, the latter attracting limited public attention in Europe. Both transatlantic treaties shared an ambitious scope and relatively similar content: elimination of nearly all tariffs, services liberalisation, cooperation on regulatory convergence, investment and ISDS. Yet CETA was more comprehensive, providing for reciprocal opening of government procurement (absent in TTIP) and liberalising services

[237] Cabras (2024), p. 142.
[238] See Zürn, Binder & Ecker-Ehrhardt (2012).
[239] Dür & Schlipphak (2021); Hicks, Milner & Tingley (2014).
[240] Dür & Mateo (2014), p. 1203.
[241] Dür & Mateo (2014).
[242] De Bièvre (2018), p. 77.
[243] Ibid.
[244] De Bièvre & Poletti (2020), p. 248.
[245] De Bièvre & Poletti (2020), p. 248; De Ville & Gheyle (2019), p. 22; Duina (2019).
[246] De Ville & Gheyle (2019), pp. 21-23.

through a negative-list approach (whereas TTIP used a positive list).[247] As 'new generation' deep and comprehensive PTAs, both extend beyond 'at-the-border' barriers (i.e. tariffs and quotas) to pursue far-reaching "behind-the-border" market integration across regulatory harmonisation, services, government procurement, competition policy, investment, IP, labour and environmental standards.[248] This comprehensive trade agenda has raised concerns among political and social actors over potential regulatory downgrading in sensitive areas such as environment, health and safety in the face of international competition.[249] Moreover, deep integration touching regulatory domains central to a bloc's identity and values has been perceived as constraining member states' sovereign and democratic right to regulate.[250] The multifaceted nature of NGFTAs thus increases public salience and prompts political activism from CSOs questioning the legitimacy of the EU trade policymaking.[251]

The professionally orchestrated anti-TTIP campaign run by CSOs – primarily in Germany, France, Austria, the Netherlands and Belgium (and far less vocal in southeastern and Scandinavian EU countries) – generated mass protests against the liberalisation of public services, the perceived undemocratic lowering of health and safety standards, and the alleged 'pro-big business' ISDS.[252] The highly politicised nature of TTIP quickly spilled over to challenge the near-concluded CETA negotiations, with mobilised NGOs framing the latter as "TTIP's little brother" and as a "Trojan horse" for American multi-nationals.[253] CSOs focused their anti-CETA critique on two main controversial areas: the negative list approach and, to a greater degree, ISDS.

The first controversial element was the shift from a positive to a negative list in services liberalisation. This expansion envisioned to liberalise even future sectors marking a victory for corporate interests. European public sector unions deemed it "unacceptable that the EU was changing the way it dealt with public services in trade agreements without any discussion with civil society" warning this undermined the EU's legal framework "built on the premise that Member States have broad freedom to define, organise and regulate public services". This

[247] De Bièvre (2018), p. 73.
[248] Young & Peterson (2006).
[249] Cabras (2024), pp. 140-141; De Bièvre & Poletti (2020), p. 247.
[250] Duina (2019), pp. 1869-1871; Leblond & Viju-Miljusevic (2019).
[251] Meunier & Czesana (2019), p. 1853.
[252] De Bièvre (2018), pp. 74-77.
[253] De Ville & Gheyle (2019), p. 22.

flexibility would erode, since ‘it is just not possible to set in stone, or foresee, shifting public needs’.[254]

Nevertheless, the most contentious link between TTIP and CETA – often labelled “twin transatlantic trade agreements” – was the investment dispute settlement mechanism.[255] CSOs argued that ISDS allowed foreign corporations to sue EU member states for damages incurred from new legislation that adversely affects investment profitability, thereby undermining national sovereignty.[256] It was further feared that ISDS could enable Canadian firms to challenge European regulation in the public interest, including health and safety (i.e. genetically modified organisms (GMOs)), climate and environmental policies. Crucially, CETA was portrayed as a fallback should TTIP fail. Given that many US multinationals had subsidiaries in Canada, they could use CETA to initiate investor-state claims against the EU and its Member States even if ISDS was excluded from TTIP or the agreement collapsed.[257] Despite Canada’s smaller economic weight – and therefore lower perceived capacity to drive EU deregulation compared to the US[258] – NGO campaigners depicted CETA’s ISDS as a ‘back door’ enabling US multinationals to sue EU governments via Canadian affiliates.[259] Admittedly, 21 out of 28 Member States lacked inter-state arbitration provisions with Canada; ISDS was thus perceived as a major change.[260] Nevertheless, many EU countries had already concluded thousands of BITs containing vague rules on investment protection and arbitration before the 2009 Lisbon Treaty. As De Bièvre notes:

> *The NGO campaign* however, *presented investor-state arbitration as something entirely new*, and portrayed its inclusion in EU trade agreements as a Trojan horse, in which the horse are the multinationals undermining the state of Troy’s sovereignty to a degree never before seen in history.[261]

[254] Healy (2014), p. 66. Public services were not fully exempt from competition: only those “supplied in the exercise of governmental authority” qualify – i.e. “neither on a commercial basis nor in competition with one or more economic operators” – thereby endangering public monopolies ensuring equal access to services for citizens. See CETA Art. 9(1); Fritz (2015); Hübner, Deman & Balik (2017), p. 853.

[255] De Ville & Gheyle (2019), p. 22.

[256] Hübner, Deman & Balik (2017), p. 852.

[257] Ibid, pp. 852-53.

[258] Regulatory downgrading is more likely when the EU negotiates with an equally strong or stronger market, as perceived in TTIP (De Bièvre & Poletti, 2020). Conversely, the weaker the economic power of the counterpart, the lower the risk that the EU will concede on sensitive regulatory issues, reducing CSO mobilisation and politicisation (Cabras, 2024). Since the EU is the second largest economy in terms of GDP worldwide and Canada was only its 11th largest trading partner, an agreement with Ottawa was driven more by strategic than economic considerations. Brussels therefore possessed greater bargaining power and flexibility to pursue regulatory coordination through convergence towards its own standards (See Gstöhl, 2021). The larger the EU market relative to its partner, the greater the costs that partner may be willing to incur to secure access (De Bièvre & Poletti, 2020; Damro, 2012).

[259] De Bièvre (2018), p. 76; De Ville & Gheyle (2019), p. 22.

[260] Hübner, Deman & Balik (2017), pp. 852-53.

[261] De Bièvre (2018), p. 76 (emphasis added).

The anti-CETA/TTIP campaign became the largest and most cohesive civil society mobilisation in the EU. The 'Stop TTIP' European Citizens' Initiative (ECI) gathered over 3 million signatures (July 2014–June 2015), urging repeal of the TTIP mandate and non-conclusion of CETA.[262] Although the Commission refused registration in September 2014, its admissibility was upheld by the EU General Court in May 2017 and registered in July 2017.[263] By then, CETA had already been signed (30 October 2016) and, as such, the ECI had become devoid of purpose inasmuch as it aims at a proposal from the Commission for a decision of the Council not to sign CETA.[264] Moreover, an online consultation on ISDS launched by the Commission between March and July 2014 showed 97% of nearly 150,000 respondents opposed it.[265]

In response to public contestation, several Member States and parliamentary groups – notably the Progressive Alliance of Socialists and Democrats (S&D) in the EP – demanded ISDS reform and CETA's classification as a mixed agreement, requiring national (and, where constitutionally applicable, regional) approval.[266] It must be noted that EU PTAs negotiated under the post-Lisbon institutional framework, entailing an enhanced role for the EP, such as CETA and TTIP, are more likely to intensify the politicisation of EU trade policy.[267] The EP has become the principal venue through which interest groups influence EU trade policymaking, acting not only as a platform for organised societal mobilisation but also as an active agent of politicisation by exerting veto-driven pressure to strengthen its position *vis-à-vis* the Council and the Commission.[268] Additionally, the expansion of the trade agenda into regulatory matters falling partly within member state competence – such as ISDS and portfolio investment – resulting in mixed agreements, grants national parliaments *de facto* veto powers and increases the likelihood of politicisation within national and regional legislatures.[269] Sub-national politicisation of CETA materialised most clearly in the veto exercised by the Belgian regional parliament of Wallonia (see following sections). In essence, opposition to CETA may be understood as "the result of a cascade of dissimilar actions by multiple actors: politicisation

[262] Deutsche Welle (2015); Kroet (2014).

[263] Barbière (2017).

[264] COMMISSION DECISION (EU) 2017/1254 of 4 July 2017 on the proposed citizens' initiative entitled 'Stop TTIP'; European Commission (2017a).

[265] European Commission (2015b).

[266] De Bièvre (2018), p. 78 ff; De Ville & Gheyle (2019), p. 22; Hübner, Deman & Balik (2017), pp. 853-854.

[267] De Bièvre & Poletti (2020); Roederer-Rynning (2017). As the only democratically elected EU body and hence "the fulcrum of specific constituencies, citizen groups and organized interests' political mobilization", the EP serves as "an open forum for debate and lobbying on economic topics, with civil society non-governmental organizations (NGOs) being particularly active" (Cabras, 2024, p. 143; Roederer-Rynning, 2017, p. 508. See also Gstöhl & De Bièvre, 2018, pp. 53-54).

[268] Cabras (2024), p. 143.

[269] Broschek & Freudlsperger (2024); De Bièvre & Poletti (2020); pp. 246-247; Meunier & Czesana (2019), p. 1857-1858.

of the TTIP, linkage of the TTIP to CETA, and the lobbying of politicians at different levels".[270] Ultimately, the Commission was politically compelled to comply with Member States' and the EP's demands: proposing CETA as mixed; replacing ISDS with a more transparent Investment Court System (ICS) without re-opening negotiations during the legal scrubbing phase; and adopting a binding interpretative instrument clarifying contested provision on ISDS, regulatory cooperation, public services and the right to regulate.[271] As Hübner *et al*. elucidate:

> The fact that the Commission successfully created an updated ISDS system for future FTAs, and went to such lengths to include the new ICS provisions in CETA, highlights *the success of European civil society*, and *the EU's attempt to regain its democratic accountability* which was heavily bruised.[272]

Overall, CETA constituted an important testing ground for the EU to establish a precedent for the depth and comprehensiveness of 'new generation' PTAs, serving as a template for future commercial treaties. In this regard, the EU was driven primarily by strategic considerations, whereas Canada benefited mainly from the economic gains of transatlantic cooperation. Notwithstanding these advantages, CETA still faced intense societal opposition in several European countries, compelling EU policymakers to accommodate reservations, rebut criticisms, revise initial proposals and introduce last-minute amendments and additions. Consequently, CETA may be regarded as presenting a *moderate opportunity* for the EU's capacity to act in bilateral trade relations.

4.3 Authority 'by design'

CETA was the first NGFTA negotiated under the post-Lisbon EU trade policy. Following the entry into force of the Lisbon Treaty in December 2009, the Commission acted on the basis of its newly expanded exclusive competence over trade in goods and services, the commercial aspects of IP and FDI. After a web-based civil society consultation favouring enhanced economic cooperation with Canada, an informal scoping exercise and a commissioned Sustainability Impact Assessment report (published later in March 2011), the Commission, exercising its right of legislative initiative, submitted on 7 April 2009 a Recommendation to the Council to authorise the opening of negotiations for an Economic Integration Agreement with Canada, accompanied by draft negotiating directives outlining the Agreement's nature

[270] De Ville & Gheyle (2019), p. 23.

[271] De Bièvre (2018), p. 79; De Ville & Gheyle (2019), p. 22; Van der Loo & Pelkmans (2016), pp. 2-3. See also Council of the European Union (2016d), *inter alia*, paras. 2-4 and 6.

[272] Hübner, Deman & Balik (2017), p. 854 (emphasis added).

and scope – the Recommendation, following examination by the TPC, was adopted by the Council on 27 April 2009, which paved the way for the launch of CETA negotiations at the Canada-EU Summit in Prague on 6 May of that year.[273] According to these directives, the envisaged Agreement was to be comprehensive, balanced and fully consistent with WTO rules and obligations, while confined to trade and trade-related matters. It was intended to achieve a level of ambition exceeding existing WTO commitments that bind also the Canadian Provinces and Territories in all those areas under negotiation which fall wholly or in part under their jurisdiction.[274]

As regards the conduct of the CETA negotiations, Article 207 TFEU (formerly Article 133 TEC) was activated, under which the Commission, in particular DG Trade, its Chief Negotiator and negotiating team, drawing where necessary on expertise from other DGs, assumed the leading role on behalf of the EU and its Member States. Throughout the negotiation process, the Commission was required to regularly inform the TPC and the INTA Committee on the progress of negotiations.[275] Within its Recommendation adopted by the Council, the Commission acknowledged that "on matters falling within their competence, *Member States may attend* the negotiating sessions and will be consulted for the establishment of negotiating documents, through the [TPC]". Furthermore, since the Agreement intended to include provisions on criminal sanctions and procedures for infringements of IPRs – areas falling under the national competence of EU member states – "*the Presidency*, on behalf of the Member States, will *fully participate* in the negotiations on the basis of a position agreed by the Member States."[276] Following the expanded scope of the post-Lisbon CCP, the Commission also submitted a Recommendation for the modification of the negotiating mandate to include investment on 20 December 2010, which was approved by the Council in July 2011. The investment protection chapter sought to incorporate "areas of *mixed* competence, such as portfolio investment, dispute settlement, property and expropriation aspects".[277]

Be that as it may, in the context of the CETA negotiations, trade and trade-related matters falling within both EU exclusive and shared competences in a historically highly

[273] Hübner, Deman & Balik (2017), pp. 850-851.
[274] Council of the European Union (2009b).
[275] European Parliament (2011), para. 19; Fafard & Leblond (2012), p. 15; Gstöhl (2021), pp. 109-110; Hübner, Balik & Deman (2016), pp. 25-26; Hübner, Deman & Balik (2017), p. 851.
[276] Council of the European Union (2009b), pp. 17-18 (Title 15, para. 47), emphasis added.
[277] Council of the European Union (2011), para. 26a, p. 4 (emphasis added).

communitarised field such as the CCP were (in)formally negotiated by the Commission, while Member States' presence in such talks was largely limited to mere attendance or observation.[278] In areas of national exclusive competence, the Commission sought to preserve a 'single voice' on the international stage through the participation of the Council presidency, operating on the basis of a common collective position. Accordingly, the Union's (negotiating) authority extends to "all cases in which EU external representation is delegated to *a single European actor* on the basis of a Treaty provision or agreement in the Council".[279] This institutional configuration was reflected in the negotiation practice. Although the Canadian delegation comprised over 100 participants – including representatives from provinces, territories and municipalities who were present at all the CETA negotiating sessions and actively involved in many of them – the EU side was represented by only around a dozen people, primarily from the European Commission (and, where necessary, the Council Presidency). In certain sectoral negotiations, this asymmetry was especially pronounced, with approximately 15 Canadian officials sitting across the table from only two or three European negotiators.[280]

Such an arrangement aptly exemplifies the concept of 'two-level delegation' in EU trade policy. At the first level, Member States transferred the competence for negotiating and concluding foreign trade agreements to the supranational level as a whole. This is most visible at the negotiation and ratification stages, where *the Council of the EU* – rather than individual Member States – authorises the opening, signing and conclusion of commercial pacts. The second level concerns the practical delegation from the Council to *the European Commission*, the latter of which formulates proposals on the initiation, content and conduct of trade negotiation and externally represents the Union in dealings with third parties. Upon the conclusion of the negotiations, the Council ultimately decides whether to approve or reject the agreement.[281]

Overall, during the conduct of the CETA negotiations, the EU succeeded in maintaining a single European external voice, primarily through the Commission for most trade policy

[278] This is not least due to the Commission's extensive Treaty-based authority, but also to its superior informational capacity and technical expertise, which reduce transaction costs and enable the effective exploitation of the Union's collective bargaining power in asymmetrical relations with third parties. From a sociological perspective, Member States further acquiesce to EU representation in areas of shared competence, reflecting "the normative acceptance of the EU as a single actor representing the Member States" (Brattberg & Rhinard, 2012, p. 561; Bretherton & Vogler, 2006, p. 67; Groenleer & van Schaik, 2007, p. 975; Huigens & Niemann, 2011, pp. 636; Woolcock, 2010, pp. 4-5).

[279] Groenleer & van Schaik (2007), p. 974 (emphasis added).

[280] Fafard & Leblond (2012), p. 10; Hübner, Balik & Deman (2016), pp. 20-21; Hübner, Deman & Balik (2017), p. 850; Kukucha (2013), p. 530.

[281] Meunier (2003), pp. 77-78; Meunier & Nicolaïdis (1999), p. 480. It must be noted that upon entry into force of the 2009 Lisbon Treaty, EU trade agreements must also be ratified by the EP.

matters on behalf of the EU and its Member States, and occasionally through the Council Presidency for certain aspects of the Agreement. Consequently, the Union demonstrated *strong* external (negotiating) *authority*, which strengthens EU trade actorness.

4.4 Compromised supranational autonomy

4.4.1 Discretion-based mandate amid strong control mechanisms

During the CETA negotiations, the Commission enjoyed a *high* level of *discretion* with a highly cohesive Council (Member States were united, displaying a homogeneity of preferences and speaking with a single voice) and a less cohesive EP (marked by internal divisions and conflicting preferences among party groups).[282] Albeit the Commission holds negotiating authority, its conduct is closely scrutinised by multiple collective principals: *de jure* the Council and *de facto* the EP, as well as, in mixed agreements, national (and regional) parliaments. The Council exercises extensive formal control before, during and after negotiations through the granting (and revision at any time if necessary) of a mandate to open negotiations, continuous monitoring via the TPC and the power to approve or reject the negotiated text. By contrast, the EP cannot amend or adopt the mandate but must be regularly informed on the progress of negotiations and retains the power to ratify agreements alongside the Council. Consequently, non-binding EP resolutions must be taken into consideration by the Commission to avoid involuntary defection at the ratification stage.[283]

While discretion may shape autonomy, it does not determine it. High discretion combined with robust control mechanisms can limit the agent's autonomy.[284] As such, the Commission's autonomy, although facilitated by informational asymmetries, technical expertise and discretion-based delegation, may be curtailed by strong oversight and procedural constraints.[285] Accordingly, *discretion* denotes the scope of authority granted in the delegation contract (negotiating mandate) whereby the principal specifies objectives but leaves the choice of means to the agent, whereas *autonomy* refers to "the range of potential independent action available to an agent after the principal has established…screening, monitoring, and

[282] Heldt (2021), p. 588.
[283] Ibid, p. 579.
[284] Hawkins, Lake, Nielson & Tierney (2006), p. 8.
[285] da Conceição-Heldt (2013), pp. 24-25 and 28.

sanctioning mechanisms intended to constrain their behaviour".[286] Supranational autonomy thus captures the agent's capacity to advance a private agenda, introduce new policies and reshape the preferences of other actors.[287]

In the CETA negotiations, the Commission's independent action was notably challenged on two occasions. First, the structure of ISDS became highly contentious. The system envisioned a non-judicial arbitration framework allowing investors to sue Member States for public measures that adversely affect investment profitability. Critics of ISDS identified several shortcomings regarding the system: inconsistent and unpredictable rulings, limited transparency, insufficient procedural integrity, lack of appeals facility, insufficient safeguards against misuse, and an imbalanced relationship between ISDS and domestic legal systems.[288] In its 2011 resolution, the EP expressed its disapproval in respect of ISDS and urged the Commission to ensure that any such mechanism "does not inhibit future legislation in sensitive policy areas, such as environmental legislation".[289] Cohesion within the EP regarding CETA remained limited defined by a left-right divide. During the 2014-2019 institutional cycle, the S&D party – the second largest group in the EP (191 seats) – together with other leftist and green parties and largely supported by non-attached MEPs, threatened to reject CETA unless substantial revisions in the investment chapter were introduced.[290] Given their proximity to a blocking majority, the Commission faced significant pressure to accommodate these demands.[291] In parallel, the S&D emphasised stricter regulatory standards for GMOs while the European People's Party (EPP) called for stronger IPRs protection for European geographical indications (GIs). These cumulative pressures from the EP, acting as a *de facto* collective principal, constrained the Commission's autonomy by necessitating renewed negotiations with Canada.[292] Opposition to CETA's ISDS provisions was also voiced by Member States, notably Germany, which signalled a potential veto.[293] In a joint statement, Germany and France urged the Commission to explore alternatives to reform the ISDS clause.[294] In a mixed agreement such as CETA, the adoption of Council decisions for the

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[286] Hawkins, Lake, Nielson & Tierney (2006), p. 8. Discretion is formally delegated leeway, whereas autonomy is the agent's actual freedom in practice.
[287] da Conceição-Heldt (2013), pp. 24-25; Tallberg (2000).
[288] Hindelang & Sassenrath (2015), pp. 20-21.
[289] European Parliament (2011), para. 11.
[290] Gardner (2015).
[291] Group of the Progressive Alliance of Socialists & Democrats in the European Parliament (2015); Heldt (2021), p. 587; Roederer-Rynning (2017), pp. 520-521.
[292] Heldt (2021), pp. 587-588. Indeed, CETA provided protection for more than 145 food products with GIs (Bierbrauer, 2014).
[293] Euractiv (2014a).
[294] Barbière (2015).

signing and conclusion mandates *de facto* unanimity. This convergence of preferences across principals enhanced their collective capacity to control and constrain the Commission's autonomy.[295]

The Commission initially defended the ISDS provisions by pointing to their widespread inclusion in approximately 1,400 bilateral investment agreements to which EU Member States are already parties.[296] Nevertheless, amid intense politicisation of CETA (and TTIP) and strong opposition from CSOs, the Commission launched a public consultation on ISDS, which revealed overwhelming resistance.[297] In response, it proposed in September 2015 a new ICS to preplace ISDS in all ongoing and future EU investment negotiations, while CETA was still undergoing legal review. The ICS introduced a permanent tribunal and an appellate body; parties to a dispute are no longer permitted to choose their own arbitrators, instead judges shall be appointed by the parties to the agreement; ensured highly qualified and independent judges; guaranteed governments' right to regulate; enhanced transparency through public hearings; and allowed third-party interventions in disputes.[298] These adjustments resulted from sustained political pressure by both principals, the EP and Member States, who possess sanctioning powers, including the rejection of CETA. Albeit the mandate on investment protection was broadly framed and afforded the Commission substantial leeway in attaining the specified objectives, the agent's autonomy was eventually constrained by the principals' control mechanisms.[299] As the Trade Commission stated: "CETA takes on board our new approach on investment and its dispute settlement…We can confidently say that *we've met the expectations of both the Member States and the European Parliament*."[300] The prevalence of principals was further confirmed in an earlier press release: "The proposal for an Investment Court System builds on the substantial input received from the *European Parliament*, *Member States*, *national parliaments and stakeholders* through the public consultation held on ISDS. It is

[295] Heldt (2021).

[296] Euractiv (2014b).

[297] Crisp (2015); European Commission (2015b).

[298] European Commission (2015a); Lütz, Leeg, Otto & Dreher (2021), p. 73. In parallel to the TTIP negotiations, the Commission sought to work towards, in the longer term, setting up a permanent multilateral International Investment Court, that would over time replace all investment dispute resolution mechanisms provided in EU agreements, EU Member States' agreements with third countries and in trade and investment treaties concluded between non-EU countries. This would further increase the efficiency, consistency and legitimacy of the international investment dispute resolution system.

[299] In the modified mandate, the following broad guideline on ISDS was provided: "Enforcement: the agreement shall aim to provide for *an effective and state-of-the-art investor-to-state dispute settlement mechanism*. State-to-state dispute settlement will be included, but will not interfere with the right of investors to have recourse to the investor-to-state dispute settlement mechanism. It should provide for investors a wide range of arbitration fora as currently available under the Member States' bilateral investment agreements (BIT's)" (Council of the European Union, 2011, para. 26d).

[300] European Commission (2016a).

intended to ensure that all actors can have full trust in the system."[301] The latter statement further underscores the role of national (and regional) parliaments as an additional *de facto* principal, given that, in mixed agreements, their ratification remains necessary for full entry into force.[302]

A further oversight mechanism operated through the possibility of judicial review. This materialised when Belgium requested an Opinion from the CJEU on the compatibility of the ISDS chapter with EU primary law (Opinion 1/17). A negative ruling would have required either substantial modification or the removal of the chapter altogether, thereby severely constraining the Commission's independent action. The Court, however, upheld the compatibility of the investment dispute settlement mechanism, leaving CETA substantively intact.[303]

A second instance of restricted supranational autonomy arose at the conclusion stage, marked by an intense inter-institutional conflict between the Commission and the Council over whether CETA should be classified as an EU-only or mixed agreement, particularly regarding investment. Following the entry into force of the Lisbon Treaty in December 2009 – while the CETA negotiations were ongoing – the Commission submitted to the Council a "Recommendation for the modification of the negotiating mandate to include investment" on 20 December 2010. After examination by the TPC, the Council amended the mandate on 14 July 2011 to include provisions on investment protection and enforcement via ISDS. Crucially, it acknowledged that this extension covered "areas of *mixed* competence, such as portfolio investment, dispute settlement, property and expropriation aspects".[304] Nevertheless, the Commission decided to ignore this observation and relied on its technical expertise to maintain that CETA fell entirely within the CCP and therefore within the EU's exclusive competence.[305] This constitutes an example of agency slack – "independent action by an agent that is undesired by the principal" – and more specifically agency slippage: "when an agent shifts policy away from its principal's preferred outcome and toward its own preferences".[306] Against the

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301 European Commission (2015a).
302 Heldt (2021), p. 588.
303 Court of Justice of the European Union (2019).
304 Council of the European Union (2011), para. 26a, p. 4 (emphasis added).
305 European Commission (2016f). While Article 207 TFEU places FDI within the CCP, it fails to specify other forms, such as portfolio investment. The Commission argued that competence over the latter implicitly derived from internal market rules on the free movement of capital (Art. 63 TFEU), a position contested by several Member States (Puccio, 2016, p. 5; see also Opinion 2/15, para. 16 ff). This legal ambiguity prompted the Commission to seek judicial clarification on the scope of the CCP in the context of EUSFTA in 2015.
306 Hawkins, Lake, Nielson & Tierney (2006), p. 8.

backdrop of the planned signature of CETA at the EU–Canada Summit in October 2016, the Council ultimately asserted its dominance by exercising control not only at the ratification stage but already at the point of signature, thereby limiting agency slack.[307] Unlike the EP, the Council also holds the authority to approve the signing of the agreement and its provisional application, reinforcing its central role in constraining the Commission prior to the conclusion of the agreement.

Administrative measures (rules and procedures governing how the agent operates and interacts with its principals) further restricted the agent's autonomy.[308] Assuming the Commission proposed CETA as an EU-only agreement, thereby diverging from the principals' preference for mixity, it still depended on the Council's authorisation for signature. In practice, this creates strong incentives to align with Member States: a proposal can remain indefinitely blocked if the principal refuses to act. This is particularly likely in situations where the Council is divided on the legal basis, as a blocking minority (four Member States representing 35% of the EU population, with abstentions under QMV counting against) can prevent adoption. Most Member States, including France, Germany and Austria, opposed the EU-only approach and favoured mixity due to elements of shared competence.[309] Alternatively, the Council could have amended the proposal by unanimity (Article 293(2) TFEU). However, given that at least one Member State (notably Italy) reportedly supported a swift EU-only ratification, unanimity was uncertain.[310] To avoid further delays and ensure timely signature, it was ultimately in the EU's interest for the Commission to accommodate the Council's preference, despite maintaining a different legal view pending clarification by the CJEU. The Court later confirmed that ISDS and non-direct foreign investment fall within shared competence.[311] In this regard, the principal succeeded in avoiding 'agency loss' by changing the agent's position.[312]

Overall, throughout the CETA process, the Commission's independent action was consistently constrained by its principals: *de jure* the Member States in the Council and *de facto* the EP – at ratification, an additional *de facto* principal, namely national (and regional) parliaments, exercises *ex post* control in mixed agreements. Despite institutional

[307] Gstöhl (2021), p. 110; Hübner, Deman & Balik (2017), pp. 851-852.
[308] da Conceição-Heldt (2013), p. 25; Gstöhl (2021), p. 105; Damro (2007), p. 886.
[309] Dolle & Simões (2016); Hübner, Deman & Balik (2017), p. 851.
[310] Dolle & Simões (2016), p. 618; Greenpeace (2016); Moody (2016).
[311] Court of Justice of the European Union (2017).
[312] Gstöhl (2021), p. 110.

distinctiveness, informational asymmetries, technical expertise and broad discretion, the Commission remained subject to sustained political and institutional pressure. Its autonomy in decision-making was curtailed in two key instances: first, the Commission adjusted the ISDS framework in response to demands from the EP and several Member States to avoid involuntary defection at the ratification stage; and second, it was compelled to accept the classification of CETA as a mixed agreement to ensure its (speedy) signature.[313]

4.4.2 The battle for mixity and the path towards provisional application

The CETA negotiations were declared concluded at the EU-Canada Summit in September 2014, following more than five years of negotiations since their launch in May 2009. Albeit CETA's categorisation in terms of legal basis remained undecided at the negotiating phase, a heated discussion emerged between the Commission and the Council as regards the nature of the EU's competence to conclude the envisaged agreement, both before and after the legal 'scrubbing' period (September 2014–February 2016). In June 2014, sixteen chambers of national parliaments from EU Member States addressed a letter to the then Trade Commissioner, Karel de Gucht, attaching "great importance" to the ratification of comprehensive trade agreements such as CETA by national parliaments as mixed agreements, not least because of "the important role national parliaments have in the democratic decision making process of the EU", as well as the fact that "certain elements of policy areas such as services, transport and investor protection are within the competences of the member states". Another 'Letter of Concern' regarding CETA's legal status – signed by over 200 members of national parliaments across the EU in a side event to a plenary meeting of the Conference of Parliamentary Committees for Union Affairs (COSAC) – reiterated the need for the Agreement's mixity two years later.[314] Additional pressure was exerted by the governments of Germany, France and Austria, as well as by CSOs in the context of an increasingly politicised domestic public discourse.[315]

One of the outcomes of the Council meeting on 13 May 2016 was the emphasis of "the view shared amongst ministers that *CETA is of mixed EU and member state competence* and should be signed and concluded as such", which was planned to be signed at the EU-Canada

[313] See Uyar Okcu (2025).
[314] Dutch Parliament (2016); Kleimann & Kübek (2018), p. 14; Schöllmann (2016); Svoboda (2019), p. 193; Tweede Kamer (2014).
[315] Gstöhl & De Bièvre (2018), p. 200; Hübner, Deman & Balik (2017), p. 851; Lütz, Leeg, Otto & Dreher (2021), p. 38; Svoboda (2019), p. 193.

Summit in October 2016.[316] Despite initially maintaining that, for legal reasons, CETA should be submitted as an EU-only agreement and, therefore, ratified exclusively by the European institutions, the Commission ultimately conceded to the Council's pressure – in view of the risk of delay or rejection in the Council – and presented CETA as a mixed agreement in its proposal for a Council Decision on the treaty's conclusion, accompanied by an explanatory memorandum on 5 July 2016.[317] Coincidentally, the debate on CETA's legal status overlapped with the pending judicial Opinion requested by the Commission in July 2015 concerning EUSFTA, which sought to clarify the delimitation between EU and Member State competences in trade agreements. This parallel was salient considering that CETA and EUSFTA had identical objectives and essentially the same contents. A clearer picture on the matter and legal guidance for future FTAs was therefore expected to emerge following the CJEU's Opinion. In a press release, the then Trade Commissioner, Cecilia Malmström, had characteristically asserted:

> […] I now hope that the deal with Canada can be signed, provisionally applied and concluded quickly, to the benefit of consumers, workers, and entrepreneurs – this is an agreement that Europe needs. Meanwhile, the open issue of competence for such trade agreements will be for the European Court of Justice to clarify, in the near future. *From a strict legal standpoint, the Commission considers this agreement to fall under exclusive EU competence. However, the political situation in the Council is clear, and we understand the need for proposing it as a 'mixed' agreement, in order to allow for a speedy signature*.[318]

Meanwhile, the then Commission President, Jean-Claude Juncker, had stated:

> The trade agreement between the EU and Canada is our best and most progressive trade agreement and I want it to enter into force *as soon as possible*. […] I have looked at the legal arguments and I have listened to Heads of State or Government and to national Parliaments. Now it is time to deliver. *The credibility of Europe's trade policy is at stake*.[319]

A common thread underlying these statements is the pronounced urgency surrounding the ratification and implementation of CETA. This urgency stemmed not only from its prolonged gestation since the failed 2006 TIEA, but also from its ambitious scope and its original schedule, under which the agreement was to be signed at the end of October during a summit in Brussels with Canadian Prime Minister, Justin Trudeau, and implemented in 2017. Although negotiations had formally concluded in 2014, the subsequent two-year period –

[316] Council of the European Union (2016f), p. 4 (emphasis added).
[317] Barbière (2016); Deutsche Welle (2016a; 2016b); European Commission (2016g), p. 4; Gantz (2017), pp. 370-371; Schöllmann (2016). For a review of the debate on CETA's 'EU-only' or 'mixed' status, see also Dolle & Simões (2016).
[318] European Commission (2016d).
[319] Ibid.

devoted to legal scrubbing, initialling and translation into all 24 EU official languages – exposed a deeper institutional impasse: the Union's inability to definitively determine the appropriate configuration of signatory parties alongside the practical implications of an 'EU-only' or 'mixed' commercial treaty. President Juncker initially maintained that CETA fell within exclusive EU competence, resisting the involvement of national – and, potentially, sub-national – parliaments, whose participation risked prolonging and possibly obstructing the ratification process.[320] His concern was that reclassifying CETA as a mixed agreement would not only introduce significant temporal delays but also cast uncertainty over its full entry into force.[321] More broadly, such a development threatened to undermine the EU's capacity to act autonomously in ratifying bilateral NGFTAs, while simultaneously jeopardising its credibility as a reliable trade partner – not only in the eyes of Canada, but also among other states engaged in, or contemplating, similar preferential trade agreements with the Union.

The judicial Opinion 2/15 delivered in May 2017 indeed confirmed that the political decision to frame CETA as a mixed agreement was legally well-founded. As a result, mixity drastically expanded the range of actors involved, and, with it, the number of potential veto players. Approval was thus required not only from the Council and the EP, but also through unanimous ratification by the national legislatures of *all* EU Member States that are constitutionally mandated to participate – amounting to 36 national parliaments (38 prior to Brexit), alongside regional (and community) parliaments at the sub-national level where applicable.[322] In practical terms, this institutional configuration necessitates the formation of a *de facto* joint unanimous signing and ratification by the EU and the Member States in their own right.[323] As a bilateral mixed trade agreement, CETA, therefore, designates both the Union and its Member States as contracting parties, each acting within the boundaries of their respective competences.[324] Hence, on 28 October 2016, the Council issued two Decisions on the signing

[320] Deutsche Welle (2016b).

[321] Vincenti (2016b).

[322] Conconi, Herghelegiu & Puccio (2021), pp. 253-254; Devuyst (2013), p. 266 ff; European Parliament – Directorate-General for the Presidency Relations with National Parliaments (2016); Grosek & Sabbati (2016); Kleimann & Kübek (2018), p. 14; Svoboda (2019), p. 194. In response to parliamentary questions, the then Trade Commissioner answered: "Following the *adoption by the Council of the decisions on the signature and provisional application of EU-Canada Comprehensive Economic and Trade Agreement* (CETA) and the signature of the Agreement at the EU-Canada Summit of 30 October 2016, the European Parliament has now given its consent. Both the Commission and the Council have confirmed that, in line with past precedents of other EU Free Trade Agreements (FTAs), CETA will be provisionally applied after *the European Parliament has given its consent* […] Since CETA was adopted by the Council as a mixed agreement, it can only enter into force fully and definitively when *all EU Member States have ratified the Agreement* in line with their national procedures" (European Parliament, 2017b).

[323] Kleimann & Kübek (2018), p. 14.

[324] Ibid, pp. 23-25. This is also explicitly reflected in the preamble to CETA, which states that the treaty is concluded between "Canada, of the one part, and the European Union and its Member States, of the other part", bringing the total number of signatories to 30 (the EU, Canada and 28 Member States at the time).

and provisional application of CETA and the Treaty was officially signed two days later at the 16th annual EU-Canada Summit in Brussels.[325] However, only those provisions falling within the EU's exclusive competence were subject to provisional application, pending the completion of national ratification procedures required for its full entry into force through a final Council Decision.[326] Conversely, several components falling under shared competence were excluded from provisional application.[327] CETA has been provisionally applied since 21 September 2017, following the EP's consent on 15 February 2017 (408 votes in favour, 254 against and 33 abstentions) and the adoption of implementing legislation in Canada which received royal assent on 16 May 2017. To date, 17 out of 27 Member States have ratified CETA.[328]

Admittedly, an individual Member State cannot formally block the provisional application of CETA under a QMV in the Council. However, in the case of mixed agreements, a single Member State overruled in the Council "can nevertheless block the provisional application of Union competences, even if [*de jure*] QMV is required for the Council's decision for signature and provisional application of that agreement by the Union… by *refusing to sign* the agreement" and, consequently, "it can *de facto* also veto the provisional application of parts of the agreement falling within Union competences, because this can only take place after the signature of the parties."[329] As discussed in the next section, this scenario nearly took place when the Belgian federal government was initially unable to proceed with signature after the Walloon "*non*".

Another complex, yet highly pertinent, scenario arises where one or more Member States refuse to ratify CETA *after* it has already been signed and provisionally applied. In such

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325 Council Decision (EU) 2017/37 of 28 October 2016; Council Decision (EU) 2017/38 of 28 October 2016; Council of the European Union (2016a; 2016c); European Commission (2016b; 2016c).

326 Council Decision (EU) 2017/38 of 28 October 2016, Recital 4; Schöllmann (2016); Council of the European Union (2016b), para. 15.

327 These include investment protection, portfolio investment, investment and investment dispute resolution, provisions from the financial services chapter insofar as they concern portfolio investment, protection of investment and the resolution of investment disputes between investors and states, the article on camcording in the IP Chapter, the administrative proceedings and review and appeal in the Transparency Chapter, and the part of the article on taxation in the Exception Chapter (Council Decision (EU) 2017/38 of 28 October 2016; European Parliament (2017a).

328 European Commission (2017b); European Parliament – Legislative Observatory (2017); Parliament of Canada (2017). CETA is yet to be ratified by the following 10 Member States: Belgium, Bulgaria, Ireland, Greece, France, Italy, Cyprus, Hungary, Poland and Slovenia.

329 Van der Loo & Wessel (2017), p. 759 (emphasis added). Before the provisional application of those parts of CETA falling within EU competence – authorised by the Council acting by qualified majority – mixed agreements must first be *signed by all parties*, including each Member State acting in its own capacity as a contracting party. This is reflected in CETA's 30 signatures (the EU, Canada and all Member States). Consequently, even where QMV suffices internally for the Union's decision to sign and provisionally apply the agreement, the absence of every Member State's signature prevents the agreement from being signed as a mixed treaty and thereby blocks provisional application. By contrast, had CETA been concluded as an EU-only agreement, QMV would have governed the entire process, and dissenting Member States could have been outvoted, without any need for their individual signatures (in that scenario, there would only be two signatories: the EU, represented by its authorised representative(s) and the Canadian government).

a case, the absence of any explicit deadline or temporal limitation on provisional application becomes critical: CETA does not impose a fixed timeframe, allowing provisional application to persist indefinitely. Indeed, the agreement "shall be applied on a provisional basis by the Union as provided for in Article 30.7(3) thereof, *pending the completion of the procedures for its conclusion*…".[330] While this mechanism ensures continuity, it simultaneously generates a degree of legal uncertainty for the third party, as it falls short of the stability associated with full entry into force. More broadly, it exposes structural limits in the Union's capacity to conclusively ratify NGFTAs, insofar as such authority remains contingent upon the completion of national procedures.

Regarding the potential termination of provisional application, Article 30.7.(3)(c) of CETA provides:

> A Party may terminate the provisional application of this Agreement by written notice to the other Party. Such termination shall take effect on the first day of the second month following that notification.

In this respect, the Council attached the following declaration:

> If the ratification of CETA fails permanently and definitively because of a ruling of a constitutional court, or following the completion of other constitutional processes and *formal notification by the government of the concerned state*, *provisional application* must be and *will be terminated*. The necessary steps will be taken *in accordance with EU procedures*.[331]

Accordingly, the ultimate failure of the ratification process would necessitate the termination of provisional application. Comparable statements were issued by Germany, Austria, Poland and Belgium, each reserving the possibility of invoking termination.[332] Although such declarations may appear to undermine the EU's autonomy and coherence as a trade actor, an important legal constraint must be emphasised: provisional application concerns only those parts of CETA falling within EU exclusive competence. Consequently, one or more Member States *cannot unilaterally* terminate its provisional application solely because ratification has failed at the national level.[333] A crucial aspect of the Council's and Member States' declarations is that any termination must occur "in accordance with EU procedures". Since Articles 207 and 218 TFEU do not set out procedural rules for terminating provisional application, "the same

[330] Art. 1(1), Council Decision (EU) 2017/38 of 28 October 2016.
[331] Council of the European Union (2016b), para. 20 (emphasis added).
[332] Ibid, paras. 21, 22 and 37.
[333] Kleimann & Kübek (2018), p. 30; Suse & Wouters (2019), p. 414; Van der Loo & Wessel (2017), pp. 761-762. As reflected in Article 216(2) TFEU: (parts of) an agreement "concluded by the Union are binding upon the institutions of the Union and on its Member States".

procedure should be followed as for the adoption of the provisional application (i.e. Art. 218(5) TFEU), requiring a *qualified majority*, and in several cases even unanimity (Arts. [207(4) and] 218(8) TFEU), within the Council".[334] While unanimity is not required for CETA, the attainment of a qualified majority in favour of termination appears politically implausible at present. With 17 Member States having already ratified the agreement, the remaining ten fall short of the threshold required to form the necessary majority. As a result, CETA risks becoming trapped in a form of institutional limbo – an incomplete mixed agreement subject to potentially indefinite provisional application.

Having regard to all the foregoing observations, mixity continues to pronounce the interdependence of the EU and all its Member States and has, as a consequence, the potential of significantly undermining the EU's attractiveness as an international partner while it endangers not only its autonomy, but also its internal coherence should a Member State threaten to reject its ratification at the EU and/or national level.[335] The instrument of provisional application is *not* meant to be a 'cure', but a temporary 'treatment' to the Union's incapability to conclude a 'new generation' trade treaty. Its very existence differentiating between areas of EU and shared competence indicates the EU's constrained autonomy as a distinct trade actor, insofar as it reflects the continued dependence on Member States' participation in the ratification and implementation stages. Ultimately, it is desirable for the agreement's incompleteness to be eradicated. As Driessen maintains,

> In principle it is necessary for all Member States to become parties to mixed agreements since, otherwise, a great deal of uncertainty may ensue as to whether, or to what extent, an agreement can be applied on the territory of a Member State that has elected not to ratify.[336]

Overall, albeit the Commission negotiated CETA under a discretion-based mandate, its supranational autonomy was considerably constrained in two respects. First, its ability to pursue a private agenda and reshape principals' preferences amid inter-institutional conflicts was limited by robust oversight and control mechanisms (*section 4.4.1*). Second, CETA's classification as a mixed agreement – making both EU institutions and Member States contracting parties – restricted supranational autonomy in concluding NGFTAs due to the EU's lack of competence in key areas, such as ISDS and portfolio investment, resulting in its provisional application. Consequently, having fulfilled two out of four dimensions (i.e.,

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[334] Van der Loo & Wessel (2017), pp. 761-762 (emphasis added). See also Titievskaia & Zachariadis (2019), p. 2.
[335] Chamon (2020), p. 893. For the Union's internal coherence and its effect on the overall output cohesion, see next section.
[336] Driessen (2020), p. 766.

institutional distinctiveness and discretionary goal formation), the EU's overall *autonomy* in the context of CETA can be characterised as *weak*, thereby diminishing its bilateral trade actorness.

4.5 Weak autonomy: a doomed recipe for incoherence?

The baptism of CETA as a mixed treaty effectively opened a 'Pandora's box', paralysing the implementation of the Union's CCP through the allocation of numerous veto rights. In practice, the need for *de facto unanimity* at the stages of signature and conclusion weakens *procedural cohesion*, as the attainment and preservation of a common collective position (output cohesion) becomes significantly more demanding.[337] Conversely, QMV governs provisional application, albeit only with respect to those provisions falling within EU exclusive competence. Moreover, *provisional application* is an inherently temporary and incomplete legal instrument of *procedural cohesion* that operates for the period while lengthy ratification processes take place for the purpose of safeguarding the Union's external common position, namely the negotiated text.

Admittedly, provisional application can effectively counteract the underestimation of EU trade actorness that would otherwise arise in its absence, particularly where delays in national ratification risk undermining the Union's external credibility and capacity to act. This mitigating effect is especially pronounced where provisional application extends to the vast majority of trade-related provisions of a mixed agreement. In light of the progressive expansion of the CCP and the corresponding strengthening of the EU's exclusive competences in trade, it is highly likely that provisional application will, in practice, cover the majority of core substantive elements of such agreements (as per Opinion 2/15), thereby projecting the EU externally, to a great extent, as an autonomous trade actor. Notwithstanding the formal incompleteness of the agreement's entry into force, "[t]he effectiveness of EU external action, and the effectiveness of international relations more generally, hinge significantly upon the provisional application of international treaties."[338]

Crucially, however, *policy output* is ultimately determined by the treaty's *full entry into force*. Insofar as CETA is provisionally applied, the Union's output cohesion can hardly be regarded as robust. This fragility is further exacerbated by delays, refusals, or incapacity on the

[337] See Jupille & Caporaso (1998), p. 219.
[338] Kleimann & Kübek (2018), p. 26.

part of Member States to ratify the agreement, thereby undermining the integrity of the EU's collectively negotiated position established under the Council's mandate.

The first major obstacle to the completion of CETA emerged in April 2016, when Romania – followed by Bulgaria a month later – signalled its intention to veto the signing (and ratification) of the trade deal. This stance constituted a political response to Canada's refusal to lift visa requirements for their nationals, aimed at exerting pressure on Ottawa, the Commission and other Member States.[339] Canada had a visa-free regime with all EU countries except Romania and Bulgaria, citing concerns over a high influx of unfounded asylum applications – particularly involving ethnic Roma applicants – as well as issues related to human smuggling and organised crime.[340] Although neither Bucharest nor Sofia objected to CETA on substantive grounds, they leveraged the ratification process to secure visa liberalisation for their citizens.[341] Their position was further reinforced by dissatisfaction with the perceived lack of EU solidarity.[342] Similar asymmetries existed *vis-à-vis* the US, which maintained visa requirements for nationals of Bulgaria, Croatia, Cyprus, Poland and Romania. However, unlike the TTIP, which was still under negotiation at the time, the negotiations for CETA had already been concluded. This rendered the Romanian and Bulgarian position particularly salient. Despite the legal framework, the Commission proved reluctant to adopt a delegated act imposing reciprocally visa requirements on Canadian nationals. This hesitation stemmed from concerns over the practical feasibility and broader consequences of such a measure.[343] The ambassadors of Bulgaria and Romania to the EU responded:

> We are disappointed by the way chosen by the European Commission to proceed further with the reciprocity mechanism. We expect the Commission to implement the relevant provisions and

[339] Gotev (2016d; 2016e).

[340] Patterson (2016).

[341] The positions of Bulgaria and Romania were not identical: Bulgaria appeared to be more flexible and agreed on a gradual lifting of the visa requirement, while Romania had insisted for a complete waiver starting in 2017 (Gotev, 2016b).

[342] Under the EU's visa reciprocity mechanism, where a third country fails to grant reciprocal visa-free access to nationals of a Member State, a 24-month period following formal notification triggers an obligation for a collective response: all Member States "should react in common, thus providing a Union response to a situation which affects the Union as a whole and subjects its citizens to differing treatment." On 12 April 2014, the Commission received notifications regarding a case of visa non-reciprocity with Canada (and the US). Under the EU's visa reciprocity mechanism, where such a situation persists, "if a third country has not lifted the visa requirements within 24 months after a notification of a non-reciprocity situation, the Commission is required to verify the situation and propose a temporary suspension of the visa waiver for the citizens of the third countries concerned for a period of 12 months" (European Commission, 2016e; REGULATION (EU) No 1289/2013).

[343] European Commission (2016e). In particular, the Commission stated: "According to the assessment, it is highly unlikely that Member States would be able to process the increased number of visa applications in accordance with the Visa Code within 90 days following the entry into force of such visa requirement decision and moreover such visa requirement could result in a decrease in the number of travellers from Canada and the U.S. […] The suspension would also likely entail *considerable, economic consequences, notably for the aviation industry, as well as have a substantial impact on the EU's external relations with two strategic partners*" (emphasis added).

regulations, thus safeguarding the Treaties and their fundamental principles of equality and non-discrimination for all European citizens.[344]

Following several months of negotiations in various formats between Canada, the Commission and the governments of Bulgaria and Romania, efforts to resolve the visa-waiver dispute intensified in anticipation of the upcoming October 2016 summit for the signature of CETA. These discussions ultimately culminated in September 2016 in the formulation of a roadmap towards visa liberalisation.[345] Despite this progress, at the Foreign Affairs Council (FAC) (Trade issues) on 18 October 2016, Sofia and Bucharest maintained reservations and insisted on receiving formal written assurances from Canada confirming visa reciprocity before lifting their veto on the agreement's signature.[346] Three days later, both governments announced that such assurances had been obtained: Canada committed to abolishing visa requirements for Bulgarian and Romanian nationals as of 1 December 2017, replacing them with an Electronic Travel Authorization (eTA) system.[347] Notwithstanding this breakthrough, Canada reportedly conditioned progress on visa liberalisation upon the successful signing and provisional application of CETA, thereby creating a form of issue linkage.[348] This conditionality implied that, had another Member State obstructed the agreement at that stage, Bulgaria and Romania would have effectively forfeited their leverage. In response, both countries appended statements on 27 October 2016 clarifying that, while they consented to the signing of CETA, subsequent ratification by their national parliaments remained contingent upon the actual lifting of visa requirements.[349] In doing so, they preserved leverage at the stage of full entry into force, particularly in light of Canada's earlier delays following the conclusion of negotiations at the 2014 EU–Canada Summit.[350] While Romania proceeded to ratify the agreement and notified the Council in December 2020, Bulgaria has yet to complete ratification, in spite of the eventual removal of visa requirements by Canada.[351]

Unlike the visa issue – known since the conclusion of negotiations in 2014 and thus amenable to resolution ahead of the planned EU–Canada Summit in October 2016 – Belgium's

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344 Gotev (2016d).
345 Euractiv (2016f); Gotev (2016f).
346 Council of the European Union (2016e); Gotev (2016b).
347 Gotev (2016c); Government of Canada (2016).
348 Gotev (2016c).
349 Council of the European Union (2016b), paras. 34-35. Similarly, in paragraph 33 thereof, the Commission also declares that it "will take all necessary steps to ensure that Canada confirms the full abolition of visa requirements for Romanian and Bulgarian citizens within a time-frame satisfactory to all sides, and at the latest by the end of 2017."
350 Gotev (2016e).
351 See Ratification details of CETA at: https://www.consilium.europa.eu/en/documents/treaties-agreements/agreement/?id=2016017.

refusal to sign CETA emerged only two weeks before the scheduled signature, owing to domestic constitutional constraints. On 12 and 14 October 2016, the francophone regional parliaments of the Federation of Wallonia-Brussels and the Walloon Region, respectively, voted by large majorities to reject CETA, thereby preventing the Belgian federal government from signing it in the Council – a move which deeply frustrated the Commission and all Member States, including the federal Belgian and regional Flemish governments.[352] The Walloon Parliament's opposition, however, was not sudden. As early as April 2016, it had adopted a motion instructing the Walloon government to object CETA.[353] The resistance of the francophone regions was driven largely by civil society concerns relating to agriculture (notably increased competition for Walloon farmers), the ISDS mechanism and the potential negative impact on EU food safety, social and environmental standards. These pressures placed the Belgian Prime Minister, Charles Michel, under significant strain to devise an alternative path forward, lest the EU fails to secure all required signatures before the EU-Canada Summit (initially) scheduled for 27 October.[354]

The Trade Council meeting of 18 October proved inconclusive, as Belgian, Bulgarian and Romanian objections prevented the adoption of decisions on the signing and provisional application of CETA.[355] As the Trade Commissioner observed, the stakes extended well beyond the agreement itself: "There are of course bigger things at stake than only this agreement…*It's about the credibility of the European Union to conclude trade agreements in the future*".[356] What followed over the next ten days amounted to political mayhem: a series of emergency meetings, late-night intra-Belgian negotiations, no less than three ultimatums from the Commission and sustained diplomatic engagement by both EU institutions and the Canadian government.[357] On 21 October, Canada's Trade Minister was almost in tears upon leaving the Walloon parliament in Namur, announcing in great disappointment the end and the

[352] de La Baume (2016); Euractiv (2016a; 2016b); Lütz, Leeg, Otto & Dreher (2021), p. 62; RTBF Actus (2016b); Van der Loo (2016); von der Burchard & Oliver (2016). Under the Belgian complex constitutional order, all five regional governments must give their consent to the federal government to sign a trade agreement. Namely, at the federal level: the Chamber of Representatives and the Senate – the latter lacks ratification powers, and at the regional/community level: (1) the Flemish Region, (2) the Brussels-Capital Region, (3) the Walloon Region, (4) the French Community (also known as the Federation of the Wallonia-Brussels) and (5) the German-speaking Community. It must be noted that the institutions of the Flemish Community and the Flemish Region are merged – one Parliament and one Government exercise both the regional and the community powers.

[353] RTBF Actus (2016a); Vincenti (2016a).

[354] Laird & Petillion (2017), pp. 171-172; Van der Loo & Pelkmans (2016).

[355] Council of the European Union (2016e); Gotev (2016b).

[356] Valero (2016b), emphasis added.

[357] Euractiv (2016c; 2016d; 2016e; 2016g; 2016h); Gotev (2016a); Kroet (2016); Marks & Oliver (2016); Marks (2016); Rankin (2016); Valero (2016a).

failure of the discussions with Wallonia.[358] Three days later, the Prime Minister admitted that Belgium was unable to sign CETA in the Council after failing to receive the assent from all regional governments, forcing the postponement of the 27 October summit.[359] Eventually, however, a last-minute consensus was reached on 27 October lifting the Walloon veto.[360] The Council adopted the necessary decisions the following day via a fast-track written procedure, enabling the agreement's signature at the EU-Canada Summit on 30 October. The compromise package consisted of (*i*) a non-legally binding intra-Belgium statement explaining the country's position on the conclusion of CETA and outlining a number of demands, including Belgium requesting an opinion from the CJEU on the compatibility of ISDS with EU primary law (i.e., Opinion 1/17), and (*ii*) a Joint Interpretive Instrument (JII) – a legally binding document addressing the concerns of CETA opponents by specifying the manner through which many provisions of the accord are to be interpreted without altering any of its substantive content.[361]

More drama ensued even after the formal signature of CETA. In the weeks preceding its provisional application in September 2017, Poland signalled to the Commission that it might withhold ratification unless its concerns regarding the ISDS mechanism, criticised as a parallel justice system, were adequately addressed. In particular, Warsaw advocated for an expansion of the judicial panel to include one judge from each EU Member State. Alternatively, it sought greater clarity on the method of allocating EU-appointed judges to specific cases, with a view to ensuring procedural fairness and avoiding any perception of systemic bias in favour of certain countries. At the core of Poland's position were concerns about judicial independence and impartiality, closely linked to both the composition of the tribunal and the procedures governing the appointment of its members.[362] To this day, Poland has not yet initiated the ratification process.

One year after its provisional application, Italy threatened not to ratify CETA under the populist coalition of the far-right 'Lega' and the anti-establishment '5 Stars Movement' in June

[358] Marks (2016); Rankin (2016).
[359] Gotev (2016a).
[360] Euractiv (2016e).
[361] Council of the European Union (2016b), para. 37; Laird & Petillion (2017), pp. 172-173; Van der Loo (2016). Some of the demands included the exclusion of ISDS from provisional application; Belgium's right to terminate provisional application as per Article 30.7 CETA; a commitment by Belgium to seek a judicial Opinion on the compatibility of ISDS with EU law; declaration by certain Belgian regions and communities that they did not intend to ratify CETA in its existing ISDS form unless their respective parliaments decided otherwise; the reservation of safeguards in respect of agricultural products; and confirmation that CETA does not affect EU legislation restricting or prohibiting the cultivation of GMOs, nor does it preclude the application of the precautionary principle.
[362] Shotter & Brunsden (2017). See also Art. 8.27 CETA; Jean Monnet Network on Transatlantic Trade Politics, CETA Ratification Tracker – Poland Status. Available at: https://carleton.ca/tradenetwork/poland/.

2018. The refusal was attributable to the inadequate protection of Italian speciality foods in the Canadian market, with Ottawa recognising relatively very few products with protected designation of origin (PDO) and protected geographical indication (PGI) labels.[363] Additional worries were expressed two years later by Italy's trade Minister in regards to the ISDS system, discouraging Rome from initiating the parliamentary ratification process.[364] A similar scepticism has persisted under the right-wing coalition led by Giorgia Meloni since 2022, in which 'Lega' remains a governing partner. As a result, Italy's ratification of CETA continues to face political uncertainty, leaving its final approval in Rome unresolved.[365]

Although CETA was narrowly approved in both the Dutch House of Representatives (72 in favour and 69 against) in 2020 and in the Senate (40 votes to 35) in 2022 amid a highly fragmented domestic political landscape,[366] in Ireland CETA failed to pass parliamentary approval due to the absence of consensus at committee level resulting from the legal uncertainty surrounding its compatibility with domestic law. Proceedings initiated by the Green Party led the Irish Supreme Court in 2022 to rule against the constitutionality of the EU trade deal, particularly regarding the ISDS mechanism, thereby necessitating amendments to the Arbitration Act 2010.[367] Although such amendments are currently underway, CETA's approval – initially expected in 2021 – has been delayed and its ratification remains uncertain.[368]

Other Member States have not yet brought the agreement before their legislatures. Under Viktor Orbán's far-right 16-year rule, Hungary had been a consistent roadblock to CETA ratification, instrumentalising the pact as leverage in broader disputes with Brussels and thereby preventing its full implementation. This stalling position is, nevertheless, likely to shift following Péter Magyar's centre-right victory in April 2026, accompanied by pledges to recalibrate Budapest's foreign policy and restore constructive relations with the EU and key external partners.[369] Meanwhile CETA remains effectively in limbo in Greece. Although Kyriakos Mitsotakis' 'New Democracy' government supports the agreement, it has yet to

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[363] Deutsche Welle (2018); Patterson (2018); Politi, Barker & Brunsden (2018); Rios (2018); Sisto & Jones (2018).

[364] Di Stefano (2020).

[365] Beattie (2022); Jean Monnet Network on Transatlantic Trade Politics, CETA Ratification Tracker – Italy Status. Available at: https://carleton.ca/tradenetwork/italy/.

[366] Borderlex (2022); Conconi, Herghelegiu & Puccio (2021), pp. 243-244; Dutch News (2020; 2022); Eurogroup for Animals (2020); Khan (2020); Moens (2020); NL Times (2022).

[367] McGee (2021); O'Donnell (2022).

[368] Comhlámh (2025); Irish Legal News (2025); Jean Monnet Network on Transatlantic Trade Politics, CETA Ratification Tracker – Ireland Status. Available at: https://carleton.ca/tradenetwork/ireland/.

[369] Canada Next (2026); Jean Monnet Network on Transatlantic Trade Politics, CETA Ratification Tracker – Hungary Status. Available at: https://carleton.ca/tradenetwork/hungary/.

initiate parliamentary deliberations, with ratification deferred until pressing domestic issues are settled.[370] Finally, Slovenian environmental NGOs threatened to challenge CETA in court as 'unconstitutional', citing concerns over the potential privatisation of water services and the ISDS scheme regarding water protection, while the prospect of a referendum further risked protracting the ratification procedure.[371]

Despite repeated threats, pessimistic projections and several near-failures, CETA ultimately endured, albeit without conclusion yet. It was not until July 2020 that a smaller Member State, Cyprus, became the first to formally block its ratification. The Cypriot parliament rejected the agreement by 37 votes to 18, primarily due to the absence of legal protection for the island's eponymous delicacy: 'halloumi' cheese.[372] Although the Cypriot government has not notified the Council that its refusal is permanent and definitive – instead signalling an intention to resubmit the agreement for parliamentary approval at a later stage – this rejection nonetheless pushed EU trade policy, once again, into uncharted and potentially hazardous territory, reminiscent of the earlier 'Walloon drama' four years ago. At the time of negotiating CETA, halloumi was not afforded GI protection in the EU. The Commission had, in effect, utilised its registration as political leverage over Nicosia to pressure for reunification of the island on the premise that a PDO designation should come only after the delicacy produced on both territorial sides is brought into a common EU system of health and safety standards.[373] Against this background, Cyprus appeared to exert pressure of its own on Brussels by withholding support for CETA.[374] A spokesperson for the center-left 'Movement for Social Democracy', one of the parties which opposed the deal, stated: "We request the registration of halloumi as a Protected Designation of Origin product from Cyprus as soon as possible, so that we can support the ratification of CETA", requiring Brussels to "handle the matter quickly and responsibly".[375] Nicosia's threat to torpedo CETA paid off and one year later Halloumi cheese was granted a PDO protection.[376] To date, however, the Cypriot parliament has not held a second vote on CETA, leaving ratification pending.

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370 eKathimerini (2022).

371 Maček (2023). Jean Monnet Network on Transatlantic Trade Politics, CETA Ratification Tracker – Slovenia Status. Available at: https://carleton.ca/tradenetwork/slovenia/.

372 Hazou (2020); Moens & Leali (2020).

373 Marks & Stefanini (2017).

374 Connolly (2020).

375 Moens & Leali (2020).

376 Euractiv (2021); European Commission (2021b).

More recently, the French Senate (upper house) became the second legislature to reject CETA, voting overwhelmingly against it (211 to 44) on 21 March 2024.[377] Amid farmer unrest and long-standing sensitivities surrounding unfair competition in the agricultural sector, left- and right-wing parties formed an unusual alliance to oppose and rebuke President Emmanuel Macron's government less than three months before the European elections. The devastating voting outcome returned the agreement to the National Assembly (lower house) – which had previously approved CETA in 2019 by a slim margin (266 in favour, 213 against and 74 abstentions) – for further consideration. However, the governing coalition no longer commands that majority, casting renewed doubt over the agreement's eventual ratification.[378] For the time being, the government has refrained from notifying Brussels, anticipating the possibility of a more favourable vote in the future.[379]

The foregoing examples empirically illuminate the significant degree of *internal incoherence* the EU may encounter in ratifying mixed trade agreements, which *de facto* require *unanimity* – hence *weaker procedural cohesion* – for their signing and conclusion. Several Member States sought – both before and after signature – to obstruct the Union's common position (output cohesion), namely the agreement's full entry into force. In some instances, objections focused on the substance of the pact, prompting demands for additional safeguards and assurances. In others, CETA became entangled in domestic political fragmentation or was instrumentalised for partisan purposes, while certain governments strategically leveraged ratification to extract concessions from the EU or Canada. Despite these pressures, the EU has thus far preserved its external common position – the negotiated text – primarily through the extensive use of *provisional application* and cross-issue political bargaining (*issue linkage*). Such bargaining has typically taken the form of *policy-based side-payments* rather than financial compensation, thereby facilitating consent and, in turn, *reinforcing procedural cohesion*. However, although provisional application may strengthen procedural cohesion in the short term, CETA's ratification has been delayed for nearly a decade. Several Member States have expressed opposition or threatened non-ratification; some have rejected the agreement without formally notifying the Council, while others have yet to initiate domestic approval procedures. This combination of prolonged provisional application – resulting from

[377] France 24 (2024); La galaxie Sénat (2024); Le Monde (2024).

[378] Assemblée nationale (2019); Leali (2024).

[379] Struna (2024a; 2024b). The French government reacted to the rejection of CETA by denouncing the political opportunism of the opposition parties. After the vote, the French Minister for Foreign Trade, Franck Riester, stated: "It was a political stunt played out before our very eyes in the Senate. The Republican and Communist senators have used CETA as a political manoeuvre in the middle of a European election campaign".

mixity and *de facto* unanimity – and uncertain conclusion prospects generates legal and political ambiguity, which may reasonably be characterised as reflecting a *moderate* level of EU capacity in *policy formulation*.

5 Discussion and concluding remarks

In summary, the EU's trade actorness in bilateral relations is substantially bolstered by the Union's *strong* performance in terms of formal negotiating *authority* – namely, external representation through a single European actor, primarily the Commission and, where appropriate, the Council Presidency – as well as by its equally *strong de facto* and *de jure recognition* as a single commercial actor *vis-à-vis* Canada. Furthermore, CETA demonstrated a *moderate opportunity* underpinned by the strategic and/or economic interests of both parties, although this was adversely affected by mounting societal opposition in Europe. Such opposition generated intense politicisation of the negotiations, thereby jeopardising both the signing and the ongoing definitive ratification of the transatlantic accord.

The EU's *capability* to conclude CETA (i.e. policy formulation) was likewise assessed as *moderate*, shaped by two opposing dynamics. On the one hand, lower procedural cohesion – resulting from the requirement of unanimity in the Council and among national legislatures for the signing and conclusion of the mixed agreement – prompted the Commission to resort to tactical cohesion through issue linkage and side-payments involving Member States such as Bulgaria, Romania, Belgium and Cyprus in order to preserve the Union's common position, namely the negotiated text, towards successful conclusion (output cohesion). Moreover, procedural cohesion was reinforced through the provisional application of those elements falling under exclusive EU competence, enabling the partial entry into force of the agreement while lengthy and uncertain ratification processes continued at the national and regional levels. On the other hand, overall output cohesion – that is, the definitive conclusion of the agreement – was repeatedly challenged by internal incoherence, as several Member States undermined the negotiated text and threatened to veto the agreement both before and after its signing, thereby prolonging and casting doubt upon its conclusion.

Finally, the EU's *autonomy* is evaluated as *weak* since the Commission's scope for independent action was considerably constrained by the robust oversight and control mechanisms exercised by the principals – namely, the Member States in the Council, the EP and, where applicable, national and regional parliaments. These mechanisms included the formal issuance and subsequent revision of negotiating mandates, informal resolutions shaping the substance of the agreement and ratification powers. The Commission's restricted autonomy became evident in the amendment of the ISDS mechanism following demands by the EP and several Member States (including Germany and France), some of which – most notably Belgium – were constitutionally bound by sub-national parliaments to accommodate domestic demands in order to approve the signing of CETA. This, in turn, compelled the Commission to comply to avoid involuntary defection during the signing and ratification stages. A second manifestation of principal control emerged when the Commission was politically compelled to classify CETA as a mixed agreement, contrary to its initial position that the agreement fell exclusively within EU competence, in order to circumvent the risk of further delays or a permanent blockage in the Council should Member States refuse to act.

In light of the foregoing empirical observations, the degree of the EU's *actorness* in bilateral trade relations in the context of CETA is evaluated as ***medium*** overall. This assessment comprises two strong components: 'authority' and 'recognition' (2 × 3 = **6**), two moderate dimensions: 'opportunity' and 'capability' (2 × 2 = **4**), and one weak parameter: 'autonomy' (1 × 1 = **1**), resulting in a total score of **11** out of 15 points (see ***table 5*** in the 'Conclusion' section below).

While CETA was widely praised as a "21st century gold-standard agreement" for EU external trade policy,[380] it also exposed several functional deficiencies in the EU's trade treaty-making process. Even though its mixed nature politically satisfied the Member States, it simultaneously placed the EU in a difficult position, with the potential to undermine the CCP itself. By granting veto powers to all 28 Member States at the time (now 27) and, consequently, to 38 national and regional parliaments (now 36), CETA's mixity called into question the EU's capacity to conclude NGFTAs and, by extension, its overall actorness in bilateral trade relations. The 'Wallonia saga', followed by the 'visa-issue' reservations initially expressed by Bulgaria and Romania, illustrated how easily the Commission could lose control over what has historically been one of its core competences. This became evident at as early a stage as the signing of a mixed trade agreement covering predominantly areas of EU exclusive competence, when two Belgian regions representing fewer than five million inhabitants (less than 1% of the EU population) were capable of derailing a comprehensive commercial agreement affecting approximately 510 million EU citizens (prior to Brexit).[381] Although CETA was ultimately signed, it has yet to be definitively concluded – a priority consistently reiterated at every EU–

[380] European Commission (2013).
[381] Kleimann & Kübek (2016); Oliver, von der Burchard & Marks (2016); Svoboda (2019), p. 195.

Canada Summit since 2019 – pending ratification by the remaining ten Member States. Its final conclusion therefore remains questionable and unpredictable in light of 38 accompanying statements, a JII and repeated threats of rejection by several Member States, two of which – Cyprus and France – have already voted against ratification.[382] Moreover, NGOs continue to possess an avenue for contesting the agreement through their influence on national and regional parliamentary approval processes. By contrast, had CETA been concluded as an EU-only agreement, it could likely have been signed and fully concluded by 2017 through QMV in the Council, following the approval of the EP and Canada in February and May of that year respectively.[383]

A CCP politically steered by 27 Member States on the basis of unanimity, alongside 36 national and regional legislatures involved in the treaty-making process, remains extremely vulnerable to ideological and partisan opposition originating even from relatively small sub-national political actors, as demonstrated by Wallonia. The possibility that a single Member State may effectively hold an entire NGFTA hostage for domestic, non-trade-related reasons constrains the EU's capacity to act internationally, weakens its credibility as a negotiating trade partner and discourages negotiating counterparts from making substantial concessions given the considerable risk that negotiated agreements may ultimately fail during the EU ratification process.[384] At the same time, the increasingly politicised and broad substantive scope of 'new generation' PTAs which have characterised EU trade diplomacy since the mid-2000s, has in practice rendered such agreements mixed, notwithstanding the post-Lisbon expansion of the CCP's treaty competences. Consequently, the involvement of national parliaments in the ratification of major trade agreements is likely to persist for the foreseeable future.[385] The central question, therefore, is what lessons may ultimately be drawn from CETA.

First, following the landmark Opinion 2/15 on the delineation of the CCP's scope, only the ISDS and non-direct forms of investment are shared competences. One possible – albeit risky – approach would therefore be for the EU to retain such provisions within the main text of future trade agreements, thereby rendering all future FTAs mixed agreements requiring ratification by 36 national and regional parliaments, as in the case of CETA. However, this approach entails a complex and cumbersome ratification process, generating legal uncertainty

[382] Van der Loo (2016).
[383] Kleimann & Kübek (2016); Van der Loo (2016).
[384] Conconi, Herghelegiu & Puccio (2021), p. 244; Kleimann & Kübek (2016); Lütz, Leeg, Otto & Dreher (2021), p. 63.
[385] Dür (2012), p. 249; Lütz, Leeg, Otto & Dreher (2021), p. 38.

for third parties regarding the extent to which provisions falling within shared competence apply across Member States. Furthermore, it entails the risk that the outcome of lengthy negotiations may be blocked by a few or even a single Member State, thereby undermining the efficiency of EU external action and negatively affecting the Union's relations with the third partner concerned.[386] It is argued that "if it had become clear that the EU is incapable of concluding trade agreements in the future without unanimous EU Member parliamentary consent, some potential FTA partners might have reconsidered initiating or pursuing negotiations".[387] In the context of CETA, despite rejection by the Cypriot parliament and the French Senate, termination of provisional application must occur "in accordance with EU procedures". Notably, neither legislature formally notified the Council that ratification had failed "permanently and definitively".[388] Furthermore, the applicable termination procedure must be pursuant to Articles 218(5) and (9) TFEU which requires a QMV – a threshold which cannot be attained by the remaining ten non-ratifying Member States alone.[389] In this respect, one possible alternative could involve permitting opt-outs for certain Member States exclusively in relation to the shared-competence provisions concerning ISDS and portfolio investment, thereby allowing CETA to be 're-proposed' as an 'incomplete mixed agreement'.[390]

A second alternative would be either (*a*) to *exclude* entirely from the scope of trade agreements provisions relating to portfolio investment and ISDS in order to facilitate the conclusion of EU-only agreements confined to matters falling within exclusive EU competence – as pursued in negotiations with New Zealand and Australia – or (*b*) to *separate* such provisions into a distinct side agreement or a BIT requiring national parliamentary ratification. Under the former model, the EU itself could conclude the principal (interim) trade agreement without the need for approval by national and regional parliaments, as illustrated by the approaches adopted in relation to Vietnam, Mercosur, Singapore, Mexico and Japan.[391] Indeed,

386 Svoboda (2019), pp. 195 and 205; Chamon (2020), p. 893.
387 Gantz (2017), p. 380.
388 Council of the European Union (2016b), para. 20.
389 Van der Loo & Wessel (2017), pp. 761-62.
390 Kleimann & Kübek (2018), p. 35; Van der Loo & Wessel (2017), pp. 763-764;
391 Conconi, Herghelegiu & Puccio (2021), p. 246; Driessen (2020), p. 771; Gantz (2017), p. 381; Kleimann & Kübek (2018), p. 36; Svoboda (2019), pp. 205-206. The division of the original comprehensive trade deal into two separate components – as in the case of Mercosur, namely EMPA and the interim Trade Agreement (iTA), and in the case of Mexico, the EU–Mexico Modernised Global Agreement (MGA) alongside a separate iTA – requires that the iTAs cover only those provisions falling within the EU's exclusive competence and therefore capable of being adopted solely at the European level by the Council and the EP. These iTAs are intended to be repealed and replaced by the principal agreements, namely EMPA and MGA, once the latter have been ratified by the relevant national and regional parliaments with respect to elements falling within shared competence and have entered fully into force.

following Opinion 2/15, the practice of *splitting bilateral commercial agreements* into separate 'trade' and 'investment' treaties was subsequently endorsed in the Council conclusions of May 2018.[392] As the Council notes:

> …in the future the Commission intends to recommend draft negotiating directives for FTAs covering exclusive EU competence on the one hand and *separate mixed investment agreements* on the other, with a view to *strengthening the EU's position as a negotiating partner*. It is for the Council to decide whether to open negotiations on this basis. It is equally for *the Council to decide, on a case-by-case basis*, *on the splitting of trade agreements*.[393]

This new architecture not only considerably accelerates the ratification process of comprehensive trade agreements, since provisions falling within the EU's exclusive competence become subject solely to approval by EU institutions under QMV – whether through an iTA embedded within a broader principal (mixed) agreement or through two formally distinct treaties – but also enhances the Union's efficiency and reliability in concluding bilateral commercial accords.[394] By isolating trade agreements from the legal and political risks associated with mixity, they become less susceptible to sub-national politicisation, thereby strengthening internal coherence and reducing the likelihood of non-signature and non-ratification.[395] At the same time, the new practice reaffirms, first, the EU's commitment to "endeavouring to obtain, to the greatest extent possible, a *consensus* in order to ensure that all Member States' interests and concerns are adequately respected in trade agreements"; and, second, its obligation to duly inform national parliaments, civil society and other relevant stakeholders throughout the negotiation process. In this regard, the EU has increasingly emphasised the importance of "addressing citizens' concerns and expectations and recognises the need to keep citizens continuously informed of the progress and contents of trade agreements under negotiation, thereby *strengthening the legitimacy and inclusiveness of EU trade policy*".[396]

Finally, the EU has sought to maximise the democratic legitimacy of its trade policy through the enhanced participation of the EP and increased transparency in trade negotiations. In the context of CETA, this included the declassification of the 2009 negotiating directives issued to the Commission, as well as the publication of the 2011 modification of the negotiating

[392] Council of the European Union (2018a); see also European Parliament (2017c), para. 10.
[393] Council of the European Union (2018b), para. 3 (emphasis added).
[394] Conconi, Herghelegiu & Puccio (2021), pp. 246-247.
[395] See Meunier & Czesana (2019), pp. 1857-1858.
[396] Council of the European Union (2018b), paras. 8-9.

directives authorising negotiations on investment protection.[397] This transparent and civil society-inclusive approach has been consistently promoted by the EU since the adoption of the 2015 *Trade for All* strategy, particularly in response to the intense anti-CETA protests and the broader politicisation of EU trade policy.[398] As regards the distributional effects of trade policy, commercial agreements inevitably produce both 'winners' and 'losers' across industries, income groups and regions due to the interaction between economic growth and import competition. In this respect, the EU may incorporate safeguards aimed at mitigating the adverse effects of import competition on sensitive sectors and strengthening existing compensatory mechanisms for negatively affected industries and individuals through various EU funding schemes, such as the European Globalisation Adjustment Fund (supporting workers made redundant by changes in trade patterns by co-funding targeted labour market policies – i.e., job searching, training, upskilling), European Social Fund (providing financial support to deal with the long-term consequences of the globalisation process) and the European Regional Development Fund (helping industrial reconversion and regional competitiveness).[399]

[397] Council of the European Union (2015).
[398] See European Commission (2015c), pp. 12-13; Roederer-Rynning (2017), pp. 519-520.
[399] Conconi, Herghelegiu & Puccio (2021), pp. 245-246.

Table 5. ***Assessment of EU actorness in CETA***

	Weak (1 point)	**Moderate** (2 points)	**Strong** (3 points)
Recognition: *(a)* *de facto* (third parties bilaterally/multilaterally interact with the EU rather than one or more individual Member States) and *(b)* *de jure* (conclusion of international agreements/international organisation membership) – GATT/WTO; Dillon, Kennedy, Tokyo, Uruguay and Doha Rounds; several bilateral sectoral and framework agreements between the EU and Canada, most notably 1976 'Framework Agreement for Commercial and Economic Cooperation'			✓
Opportunity: (Un)favourable circumstances for the negotiation and conclusion of NGFTAs – *economic/strategic benefits* and *societal opposition*		✓	
Authority: Legal competence to act with a 'single voice' in bilateral trade negotiations through *unified external representation* by a *single European actor* (European Commission/Council Presidency): common commercial policy – EU exclusive competence; Arts. 3(1)(e) and 207 TFEU			✓
Autonomy: (*i*) *distinctive institutional and procedural apparatus* for trade treaty-making (Arts. 207/218 TFEU), and 'independent action' in terms of (*ii*) *discretionary goal formation* (discretion-based negotiating mandate); (*iii*) *decision-making* (absence of 'agency loss'); (*iv*) *implementation; signing; ratification* ('mixed' trade agreement)	✓		
Capability (policy formulation) Conclusion of 'new generation' free trade agreements: *output cohesion* (common collective external position) → *goal/preference cohesion* + *internal (in)coherence* (political commitment to the Union's common position, i.e., the negotiated text) + *procedural/tactical cohesion* (unanimity voting, provisional application, issue linkages, side-payments, other 'appeasement' methods; safeguards, declarations, assurances, etc.)		✓	

Overall degree of EU trade actorness in CETA: **medium** (11/15 points) *

* *Low* level of actorness: 5-7 points. *Medium* level of actorness: 8-12 points. *High* level of actorness: 13-15 points.

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