



# Policy Notes

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## Beyond Trade: An Overview of Recent EU Trade Treaties

### Introduction

The Uruguay Round trade negotiations started in 1986 and culminated with the 1994 Marrakesh Agreement. This bundled a reformed General Agreement on Tariffs and Trade (GATT), with a range of agreements extending well beyond tariffs on goods. It also transformed the GATT Secretariat into the World Trade Organization (WTO). The extended WTO remit covered, inter alia, agriculture, sanitary and phytosanitary (SPS) measures, subsidies, trade in services and intellectual property.<sup>1</sup> The result is that to be a WTO member a country must agree to all the packaged treaties.

Some areas were excluded from the package. Following massive civil unrest, the proposed multilateral investment agreement did not proceed. Other agreements, such as on government procurement, were agreed to be optional.

In the decades since then, the range of topics covered in bi-lateral and plurilateral trade agreements has broadened. This broadening in scope is the subject of this Policy Note. It focuses on the breadth of content of the five recently concluded EU agreements and the two currently being negotiated. The implications of the beyond trade in goods chapters for domestic regulations are a focus of attention.

### Recent EU trade treaties

In 2006 the EU adopted a new "Global Europe" strategy, bringing to an end its 1999 moratorium on bi-lateral trade negotiations.<sup>2</sup> In the 14 years since then, the EU has concluded major trade agreements with the Republic of Korea (Korea), Canada, Singapore, Vietnam and Japan.<sup>3</sup> There are current trade negotiations with Australia and New Zealand. All these treaties include many chapters that go well beyond the issue of preferential trade in goods between partners.

The first treaty to be negotiated was with Korea. Negotiations and implementation occurred extremely quickly (see Table 1).

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At the time, this treaty was unprecedented in its scope and speed,<sup>4</sup> perhaps because only 3 chapters – on government procurement, competition and sustainable development – went beyond the scope of the compulsory WTO agreements. Like the treaty with Korea, those with Singapore and Vietnam are also relatively short (16 and 17 chapters respectively). Both have chapters on non-technical barriers to trade in renewable energy. Additional chapters in the Vietnam agreement concern State Owned Enterprises (SOEs) and cooperation / capacity building (Table 2).

The treaty with Japan is longer, running to 23 chapters, while that with Canada has 30. One reason for the longer Canada treaty is that trade in services is broken into 8 different chapters. Both these treaties have chapters on subsidies and SOEs, which are otherwise issues included in the competition policy chapter. Both have additional chapters on co-operation. The Japan treaty is unique in having chapters on small and medium sized enterprises (SMEs) and on agricultural co-operation. The unique chapter in the Canada treaty is about exceptions, which are usually listed in annexes.

All five of these treaties have, of course, a set of chapters covering traditional trade in goods (including agriculture). These core chapters deal with tariffs & market access, trade remedies (anti-dumping provisions), technical barriers to trade (TBTs), SPS measures, customs and trade facilitation and dispute settlement. These six chapters are found in all the recent treaties, with some minor differences in their numbering. Other core chapters cover objectives and definitions (usually chapter 1), a chapter on transparency of the regulatory environment and administrative and institutional provisions (generally the last chapter). This Note does not cover investment provisions, which are complex because of the split competencies between Member States and the Union.

<sup>1</sup> There were also a range of other agreements in the package, see [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#top](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#top).

<sup>2</sup> <https://tinyurl.com/vydrv9sb>.

<sup>3</sup> There are also regional agreements (with the Caribbean Forum, Eastern and Southern Africa, Central America, some Pacific states and with the South African Development Community) and agreements with Ghana and Ecuador. These are excluded from this analysis.

<sup>4</sup> C. Lakatos and L. Nilsson, 2015, "The EU-Korea Free Trade Agreement: anticipation, trade policy uncertainty and impact", in European Commission *Chief Economist Note*.

Table 1: Post 2006 EU trade treaties

Partner	Negotiations commenced	Treaty signed	Treaty in force	Formally signed	# chapters (chs)	Pages in text		Treaty type
						main chs	total	
Korea (KR)	2007	2010	2011 (prov)	2015	15	73	1338	FTA*
Canada (CA)	2009	2016	2017 (prov)		30	230	1598	Comprehensive Economic and Trade Agreement
Singapore (SG)	2010	2018	2019	2018	16	125	753	FTA*
Vietnam (VN)	2012	2019	2020		17	159	1398	FTA
Japan (JP)	2013	2018	2019		23	168	897	Economic Partnership Agreement
Australia (AU)	2018	---	---					Trade Agreement
New Zealand (NZ)	2018	---	---					Trade Agreement

Note: These Free Trade Agreements (FTAs) are, like all the treaties in this table, preferential trade agreements. In addition to the FTAs, there are investment agreements between the EU and each of Korea and Singapore.

All five treaties also cover two other major areas that were included in the Marrakesh Agreement – services, movement of people and investment,<sup>5</sup> and intellectual property (IP).<sup>6</sup> As services trade occurs through several different ‘modes’ it raises many domestic regulatory issues. For example when such commerce involves establishing a branch office, possibly staffed by overseas personnel, all kinds of domestic regulations come into play. These were generally established to meet domestic social, economic and cultural objectives, but some can be seen as barriers to trade (see p. 3 below).

## Beyond trade chapters

The quintessential beyond trade chapter in trade treaties is, of course, the IP chapter. IP provisions sanction monopolies and restrict competition, raising prices for consumers. Care is therefore needed to ensure that the monopoly effect is strong enough to incentivise new inventions and other creations, *but no stronger than this*. Balance is the essence of good IP policy, as it is the *diffusion* of inventions through society that creates benefits, particularly increases in productivity. Over recent decades producer interests have dominated the design of IP policy. IP is not further discussed here as it is the subject of separate ANUCES Policy Note 4/2020.<sup>7</sup>

A number of chapters go beyond the compulsory set of agreements covered by the Marrakesh Agreement. Of these, perhaps the least contentious is [government procurement](#), where there is an optional WTO Agreement. All five of the recent EU trade treaties have procurement chapters. There are long lists of exceptions in the annexes.

## Government procurement

The Agreement on Government Procurement (GPA) is optional for WTO members, but among the countries considered here, only Vietnam is not a signatory to the GPA.<sup>8</sup> The objective of the GPA is to achieve open, fair

and transparent conditions in government purchasing. In general the structure of the recent EU treaties closely follows 19 of the 20 articles in the GPA.<sup>9</sup> There are minor exceptions – for example the Japan treaty does not include the first four articles. Four of the five treaties include a provision for continuing dialogue through a specified committee. The exception to this structure is the Korea treaty, which has only three very general articles, but does specifically include affirmation of GPA principles. There are 7 annexes to the Singapore treaty and 16 to the Canada treaty. These list the entities and types of commerce covered by the articles.

Interestingly, the proposed EU text for Australia departs from the detailed structure of the GPA. There are just five articles proposed, including one on institutional provisions (presumably a joint consultation committee, though blank at present). The proposed text begins by affirming GPA commitments before adding new provisions, including environmental, social and labour considerations. There are brief articles on the exchange of statistics and modifications to coverage, which is also covered in the GPA.

Government procurement can be used to promote innovation and/or the growth of smaller firms with innovative products. Weiss considers that the USA has “built the world’s most formidable technology development model based on procurement-driven innovation”.<sup>10</sup> Thurbon demonstrates, comparing the Australia-US and the US-Korea Free Trade Agreements, that procurement chapters in trade treaties do not necessarily operate to limit such use of procurement policy to achieve domestic economic goals. However such policies raise the potential for firms to become dependent on government, so need careful structuring and good exit strategies. Thurbon shows very effective use of such policies in Korea, but not in Australia.<sup>11</sup>

## Chapters on social and environmental issues

All five treaties have a chapter on trade and [sustainable development](#), including provisions for cooperation to

<sup>5</sup> The General Agreement on Trade in Services (GATS). This is often referred to as a services treaty, but the provisions on movement of people and investment are integral to trade in services.

<sup>6</sup> Trade Related Intellectual Property Agreement (TRIPS).

<sup>7</sup> H. Moir, Intellectual Property and Trade Treaties, *ANUCES Policy Note 4, 2020* ([tinyurl.com/ANUCES-Policy-Notes](https://tinyurl.com/ANUCES-Policy-Notes)).

<sup>8</sup> Those that are signatories are signatories to the 2007 revised GPA. See [https://www.wto.org/english/tratop\\_e/gproc\\_e/memobs\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm).

<sup>9</sup> The excluded article relates only to developing countries.

<sup>10</sup> L. Weiss, 2014, “USA”, in V. Lember, R. Kattel and T. Kalvet (eds.), *Public Procurement, Innovation and Policy*, Berlin, Heidelberg: Springer: 259-285.

<sup>11</sup> E. Thurbon, 2015. “The abandonment of procurement-linked strategic activism in Australia: standing still with room to move”, *Australian Journal of International Affairs*, 69(5): 577-594.

implement internationally agreed reductions in greenhouse gas emissions. The format for the first four of the treaties is similar, with the Korea treaty clearly setting a model. However, the later Singapore treaty has additional articles on timber and fish products – clauses which are also in the Vietnam and Japan treaties. The Vietnam treaty extends further, with specific articles on climate change and biological diversity. The climate articles are considered in more depth in an earlier ANUCES Policy Note, which focuses on the creation of a jurisprudence to establish the lawfulness of environmental exceptions to freer trade.<sup>12</sup>

Sustainable development issues in the Canada treaty have a different structure, with a shorter sustainable development chapter (just five articles), but lengthier chapters on [trade and labour](#) and on [trade and the environment](#). This last chapter parallels the other four treaties in terms of the content on environmental protection, with a similar 16 articles. The other four treaties cover [labour standards](#) in a single article in the sustainable development chapter.

### Competition chapters

A particularly interesting set of chapters concerns [competition policy](#). The Korea, Singapore and Vietnam treaties all have a single chapter on this, but also covering subsidies and SOEs. Subsidies and SOEs are each broken out into separate chapters in the Japan and Canada treaties. The objective of these chapters is to ensure both trading partners have domestic laws aimed at preventing anti-competitive conduct (particularly restrictive practices and effective market control through concentration). These specific goals are spelled out in the Korea and Singapore treaties, whereas the other three have much higher-level statements about fair / undistorted competition.

The articles on [subsidies](#) recognise that there can be situations where subsidies are needed to achieve public policy objectives.

Despite their cultural and economic disparity, all these countries have [State Owned Enterprises \(SOEs\)](#). The Korea and Singapore treaties simply undertake that there will be no discrimination on procurement by such enterprises. The provisions on SOEs in the other three treaties are far more complex.

### Trade in services

The movement of people and capital is integral to trade in services, depending on how these are delivered. 'Trade in services' is short-hand for this broader set of issues. As noted above all five treaties have extensive provisions on services industries covering, inter alia, the associated regulatory environment. Such regulations can impede trade. But this does not mean that they should automatically be lifted, as many are designed to achieve important social and cultural objectives. For example legislated monopolies for certain postal services are designed to ensure that all residents have access to a mail service regardless of how isolated their location. Similarly regulations about professional qualifications are designed to ensure high standards of delivery for health, legal, financial, engineering and architecture services, etc.

The General Agreement on Trade in Services identifies four different ways in which services can be traded across

national boundaries. When a consumer travels to another country to use, for example, tourist services, there are few regulatory issues raised. But for the other three modes of supplying services internationally, domestic regulation can be very important. This is particularly true when a commercial presence is established overseas as this involves regulations about establishing companies and regulations which limit particular service provisions (e.g. financial services) to companies owned domestically. Where services are traded through the movement of natural persons, a wide range of visa and immigration issues come into play as do professional qualification requirements.

The ANUCES has published a substantial analysis of trade in services, in the context of the current Australia-EU trade negotiations.<sup>13</sup> This discusses these issues in more detail and uses the OECD's Services Trade Restrictiveness Index to identify areas where Australia's services industries might benefit from increased competition.

### Good regulatory practice

The Japan treaty has chapters on corporate governance and regulatory co-operation and the Canada treaty has a chapter on regulatory co-operation. A chapter "good regulatory practices" is proposed for the New Zealand and Australia treaties. While preserving rights to national approaches to regulation, these chapters suggest some key principles designed to achieve good regulation – impact assessment, evaluation and assessment of alternative means of achieving objectives. They do require regulatory information to be public and that there be public consultations on proposed regulations.

### Small and Medium-Sized Enterprises (SMEs)

The EU Economic Partnership with Japan includes a chapter on SMEs. With only four articles, this chapter simply aims at setting up effective electronic information dissemination about the treaty for each partner country. The proposed texts for Australia and New Zealand closely follow the text in the Japan treaty.

### Implications for Australia and NZ treaties

The Australian government does not publish negotiating text for trade treaties, so the sole source for information is the EU website. EU negotiation texts have been published for 23 chapters and two annexes for the Australia treaty and 22 chapters and four annexes for the NZ treaty.<sup>14</sup>

In respect of the goods chapters, compared to recent EU trade treaties, there are additional chapters on rules of origin, mutual administrative assistance in customs matters (Australia only), anti-fraud (customs) and capital movements. The services chapter also covers investment.

The proposed treaties, like the five earlier EU treaties, go beyond traditional trade in goods issues and raise many domestic regulatory matters, particularly across the services industries. The IP chapters (see ANUCES Policy Note 4/2020) also raise difficult regulatory issues for Australia.

Some Australian governments have shown a reluctance to commit strongly to issues such as the environment and

<sup>12</sup> O. Quirico, Codifying Border Carbon Adjustments? Climate clauses in EU trade and investment agreements, *ANUCES Policy Note 2*, 2020 ([tinyurl.com/ANUCES-Policy-Notes](https://tinyurl.com/ANUCES-Policy-Notes)).

<sup>13</sup> S. Nerlich and S. Ong, Identifying Opportunities in EU-Australia trade in services, ANUCES Briefing Paper, 10:3, Nov. 2019 at <https://tinyurl.com/y6col8rm>.

<sup>14</sup> <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1865> and <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1867>.

labour standards in trade treaties, so it will be interesting to see the final outcome on these more novel chapters. The proposed chapter on energy and raw materials – a new departure in EU treaties – may also raise some challenges. However the other new chapter - on digital trade – is likely to be less challenging.

Trade treaties now build in mechanisms for regular updating and cooperation between the trading partners across many matters that affect domestic regulation. They can thus be seen as living arrangements. This continuing engagement between the two parties adds to the complexity of the impact of trade treaties on domestic regulatory environments.

**Table 2: Content of recent major EU trade treaties**

Chapter content	KR	SG	VN	JP	CA#	AU	NZ
	(chapter number)						
<b>Trade in goods &amp; services chapters</b>							
Preamble/objectives/definitions	1	1	1	1	1		
Trade in goods	2	2	2	2, 3	2	y, y	y, y
Trade remedies (anti-dumping)	3	3	3	5	3	y	y
TBTs	4	4	5	7	4	y	y
SPS measures	5	5	6	6	5	y, y	y
Customs / customs facilitation	6	6	4	4	6	y, y, y	y, y
Services	7	8	8	8	9-16	y, y	y, y
Digital trade						y	y
Dispute settlement	14	14, 15	15	21	29	y	y
General / institutional / final provisions*	15	16	17	22,23	26, 30	y, y	y, y
(Regulatory) Transparency	12	13	14	17	27	y	y
<b>Beyond trade chapters</b>							
Government Procurement	9	9	9	10	19	y	y
Intellectual Property	10	10	12	14	20	y	y
Competition (subsidies, SOEs)	11	11	10	11, 12, 13	17, 7, 18	y, y	y, y
Sustainable Development	13	12	13	16	22	y	y
Trade and labour					23		
Trade and the environment					24		
NTBs/ renewable energy		7	7				
Energy and raw materials						y	y
Corporate governance				15			
Regulatory cooperation				18	21		
Cooperation / capacity building			16				
Dialogue and cooperation					25		
Agricultural cooperation				19			
SMEs				20		y	y
Exceptions					28	y	y

Source: compiled by author from final treaty texts and proposed texts for Australia and New Zealand, all from the EU website.

Excludes any chapters on investment provisions (e.g. chapter 8 in the Canada treaty).

Note: \* The Korea and Japan treaties each have a separate chapter on payments and capital movements. Such provisions are in the general / institutional chapters in the other three treaties.

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### Third Country Engagement with EU Trade Policy

*This project seeks to explore and improve understanding of the EU's evolving trade policy and its implications for third countries, including Australia and countries in the Asia-Pacific region. It boosts existing knowledge of the EU among third country partners and spreads EU trade policy content across third country institutions.*  
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