

***CLEER Summer School 2024***

# ***EU Trade Policy***



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# Introduction

## Dr. Joris Larik

- *Background in law and international relations*
- *Assistant Professor of Comparative, EU and International Law at Leiden University*
- *Member of the CLEER Governing Board*
- *Member of the permanent committee on European integration of the Dutch Advisory Council on International Affairs*
- *Member of the European Commission's pool of arbitrators for bilateral trade agreements*





# EU Trade Policy aka Common Commercial Policy (CCP)

## Themes:

- The evolving scope and instruments of the CCP
- Democratic accountability and access to justice
- The “unilateral turn” in EU trade policy
- Post-Brexit EU-UK trade policy & relations

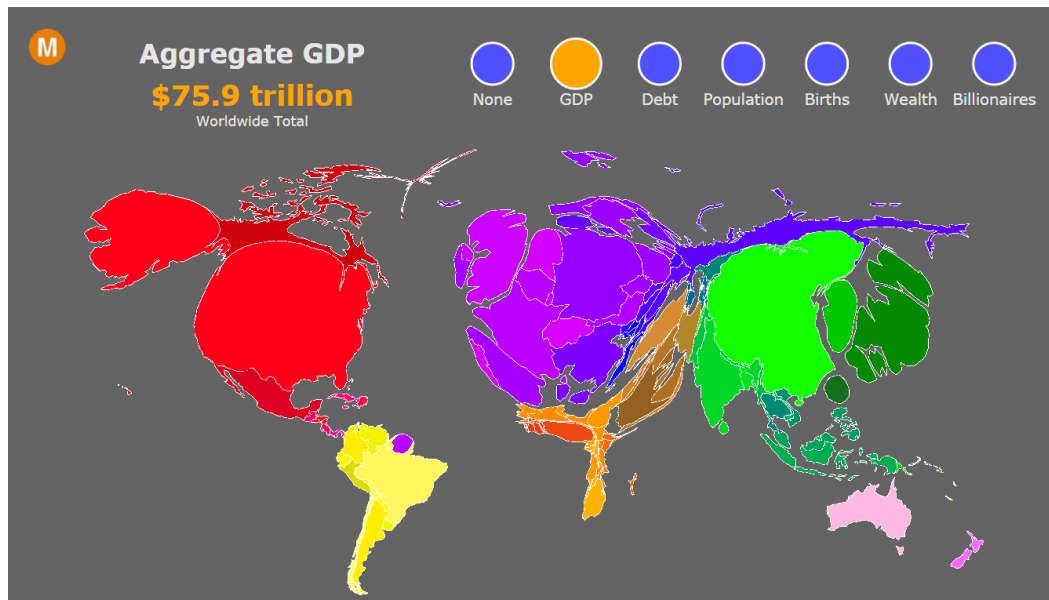




## Origins and development of the CCP

“Europe is an economic giant, a political dwarf, and a military worm.”

*Belgian Foreign Minister Mark Eyskens, January 1991*



<http://metrocosm.com/how-we-share-the-world/?ref=tw>



# The EU & MS at the WTO

## **Art. IX(1) WTO Agreement (Marrakesh Agreement)**

The WTO shall continue the practice of decision-making by consensus followed under GATT 1947<sup>(1)</sup>. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States<sup>(2)</sup> which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement<sup>(3)</sup>.

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2. The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.





### ***Opinion 1/75 (Local Cost Standard)***

[The Common Commercial Policy] is conceived in that article in the context of the operation of the **Common Market**, for the defence of the **common interests** of the Community, within which the particular interests of the Member States must endeavour to adapt to each other.

Quite clearly, however, this conception is **incompatible with the freedom to which the Member States could lay claim by invoking a concurrent power**, so as to ensure that their own interests were separately satisfied in external relations, at the risk of compromising the effective defence of the common interests of the Community.

In fact any unilateral action on the part of the Member States would lead to disparities in the conditions for the grant of export credits, calculated to distort competition between undertakings of the various Member States in external markets. Such distortion can be eliminated only by means of a strict uniformity of credit conditions granted to undertakings in the Community, whatever their nationality.



# The evolving scope of the CCP

## Art. 113(1) EEC Treaty (1957)

After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

## Art. 207(1) TFEU

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.

# CCP instruments and the Internal Market

- Common customs tariff
- Trade defence instruments
  - Anti-dumping measures
  - Anti-subsidy measures
  - Safeguards
- Trade Barriers Regulation
- Trade dispute settlement (incl. at WTO)







# CCP as a foreign policy tool

## Examples:

- GSP+
- Trade & Sustainable Development Chapters
- Essential elements clauses
- “Cross pillar/Treaty” measures such as sanctions and ENP
- (Attempts at) Interregional FTAs

## SL regains much-awaited GSP+ from EU

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Sri Lanka's GSP+ application was approved by the Council of Ministers of the European Union (EU) Thursday evening resuming the much-awaited trade concession to the country, Deputy Foreign Affairs Minister Harsha de Silva said.

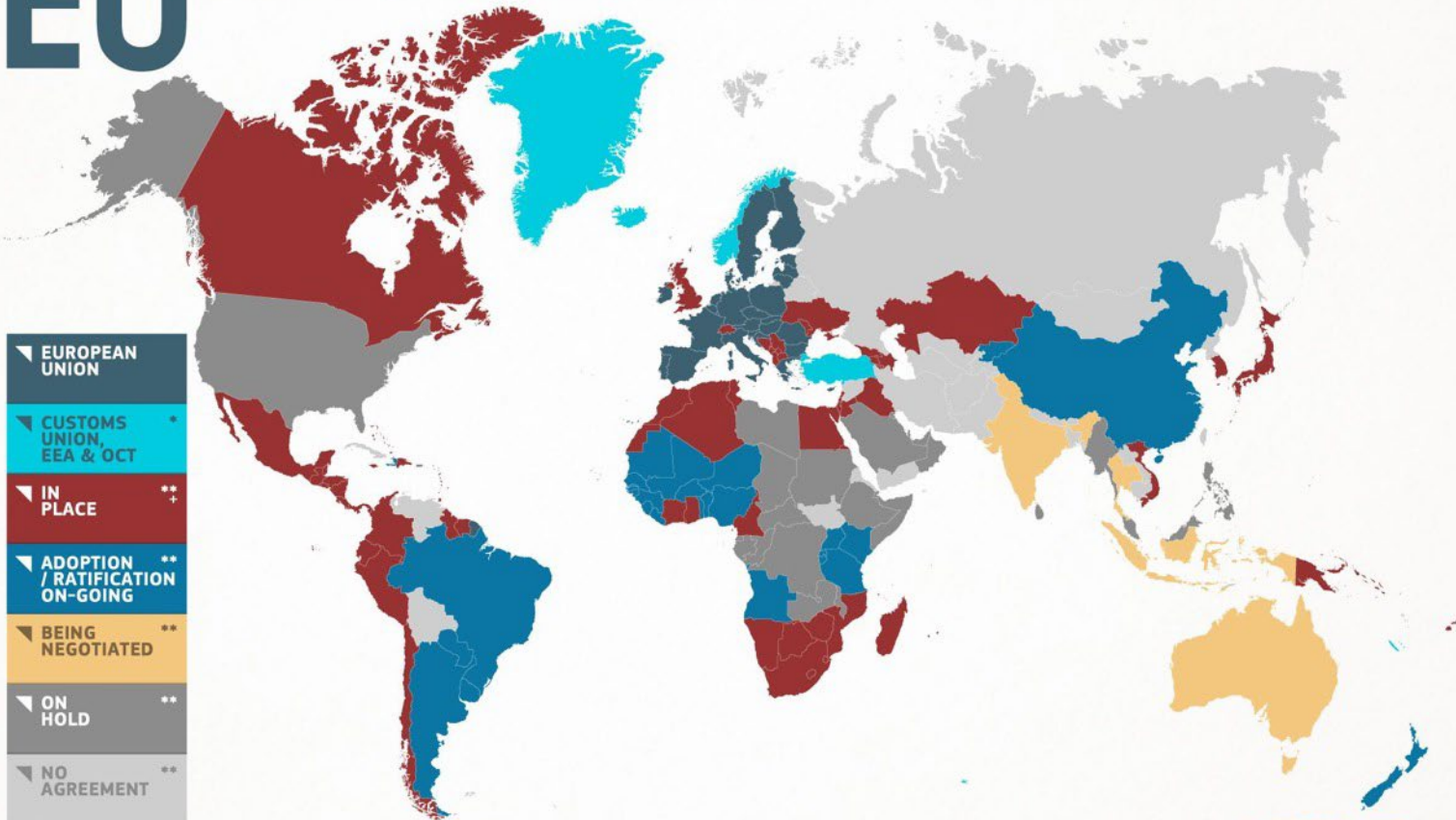
He said the concession would come into effect in less than two weeks. "It would only take 10 or 12 days for the EU to issue a gazette making it the law now. This is a huge victory for the government of Sri Lanka as well as the exporters of the country," Dr. de Silva told Daily Mirror.

➤ Promotion of the EU's values and principles (Arts. 3(5) and 21 TEU), linked to CCP via Art. 207(1) TFEU



Updated 18/09/2023

# EU trade agreements 2024



- EUROPEAN UNION
- CUSTOMS UNION, EEA & OCT
- IN PLACE \*\* +
- ADOPTION / RATIFICATION ON-GOING \*\*
- BEING NEGOTIATED \*\*
- ON HOLD \*\*
- NO AGREEMENT \*\*

\* European Economic Area (EEA) / Overseas Countries and Territories (OCT).  
\*\* Free Trade Agreement (FTA), Deep and Comprehensive Free Trade Agreement (DCFTA), Investment Agreement, Enhanced Partnership and Cooperation Agreement (EPCA), Partnership and Co-operation Agreement with preferential element (PCA).  
+ The updated agreements with Tunisia, and Eastern and Southern Africa are currently being updated; the updated agreements with Mexico and Chile are under ratification. The DCFTA with Georgia does not apply in South Ossetia and Abkhazia.





## *FTA between the EU and its MS, and Colombia and Peru*

### **Art. 1**

Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of the Parties. Respect for these principles constitutes an **essential element** of this Agreement.

### **Art. 8(3)**

Without prejudice to the existing mechanisms for political dialogue between the Parties, **any Party may immediately adopt appropriate measures in accordance with international law in case of violation by another Party of the essential elements** referred to in Articles 1 and 2 of this Agreement. [...] These measures shall be revoked as soon as the reasons for their adoption have ceased to exist.



# Democr. Accountability: CETA & Opinion 1/17

- *May 2009*: Launch of negotiations
- *Aug. 2014*: Main negotiations concluded
- *Feb. 2016*: Legal “scrubbing” completed (including new Investment Court System)
- *July 2016*: CETA declared “mixed” for political reasons (but also legally required?)
- *Oct. 2016*: “Wallonia crisis” and **Belgian two-part compromise**
- *27 Oct. 2016*: Joint Interpretative Instrument







## Democr. Accountability: CETA & Opinion 1/17

- *30 Oct. 2016*: Approved and signed by EU and Canada
- *15 Feb. 2017*: CETA approved by European Parliament
- *16 May 2017*: Bill C-30 receives royal assent
- ***16 May 2017*: Opinion 2/15 of the CJEU suggests “mixed” nature of new FTAs; but Dec. 2017 COTIF judgment clarifies facultative mixity**
- *21 Sept. 2017*: Provisional application starts
- ***30 April 2019*: Opinion 1/17 of the CJEU confirms that CETA’s ICS is compatible with EU law**







## Democr. Accountability: CETA & Opinion 1/17



- Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act ✓
- (Canadian Free Trade Agreement (CFTA)) ✓



- EU Parliament ✓
- Member State Ratifications:
  - Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden, and the UK\* ✓
  - 10 more Member States to go ?
- Council Decision ?



## Split of agreements & democratic accountability

- EU started splitting trade agreements into
  - An EU-only trade agreement (enters into force quickly)
  - A mixed investment agreements (often not ratified)
- Renewed debate on effectiveness and democratic accountability of EU trade policy
  - Namur Declaration
  - Trading Together Declaration





## EU-Mercosur

- 20+ years of negotiations
- July 2019 agreement “in principle”
- Would be largest inter-regional FTA to date
- Not signed yet
- Not clear whether “mixed” or not
- Will probably not include Mercosur as party, but only its members
- Resistance in several EU Member States

### EU-MERCOSUR TRADE DEAL

- combined population of over 780 million
- will save more than \$4.5 bn worth of duties per year
- largest trade agreement the EU has ever concluded

### Lula victory revives EU trade hopes for Latin America

Lula wants to get an early trade deal with the EU. Brussels needs pledges on the environment first.



### Scholz, Milei Demand Swift Deal on EU-Mercosur Free Trade Pact



Olaf Scholz greets Javier Milei upon his arrival in Berlin, June 23. Photographer: Maryam Majid/Getty Images

By Michael Nienaber

June 23, 2024 at 2:42 PM GMT+2



# Trade agreements & access to justice

## Case C-280/93 *Germany v Council (Bananas)*

46 To accept that the role of ensuring that Community law complies with those rules devolves directly on the Community judicature would deprive the legislative or executive organs of the Community of the scope for manoeuvre enjoyed by their counterparts in the Community's trading partners.

47 It follows from all those considerations that, having regard to their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions.

48 That interpretation corresponds, moreover, to what is stated in the final recital in the preamble to Decision 94/800, according to which 'by its nature, the Agreement establishing the World Trade Organisation, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts'.



## Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

### Article 5: Private rights

1. Without prejudice to Article SSC.67 of the Protocol on Social Security Coordination and with the exception, with regard to the Union, of Part Three of this Agreement, nothing in this Agreement or any supplementing agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties.
2. A Party shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in breach of this Agreement or any supplementing agreement.





**Council Decision (EU) 2017/1247 of 11 July 2017 on the conclusion, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, ...**

...

Whereas:

(7) The Agreement should not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

...

Article 5: The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

# The “unilateral” turn in trade policy

- October 2020: **Foreign Direct Investment Screening Framework**
  - January 2023: **Foreign Subsidies Regulation**
  - December 2023: **Anti-coercion Instrument**
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- Part of “geopolitical awakening of the EU” and quest for “strategic autonomy”
  - Raises questions about role of institutions and possibilities for judicial redress
  - Also raises questions about international legality (WTO Law)





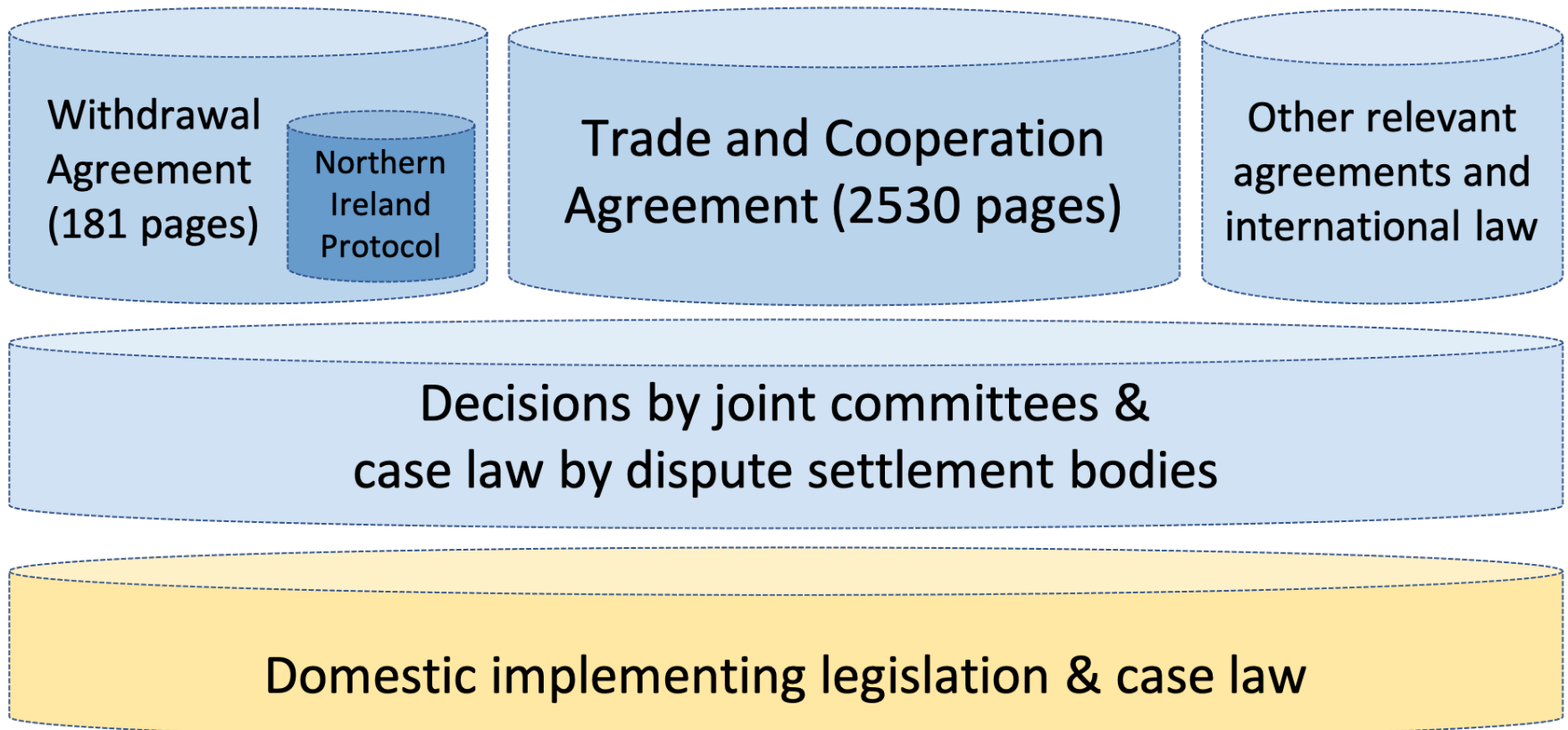
## Brexit recap

- *May 2015*: Conservative victory in UK general election & pledge to hold EU referendum
- *Feb. 2016*: Cameron's negotiations for UK special status
- *June 23, 2016*: UK referendum on continued EU Membership
- *Mar. 29, 2017*: UK triggers Article 50 TEU
- *Jan. 31/Feb. 1 2020*: UK leaves EU, Withdrawal Agreement enters into force, start of the transition period
- *Jan. 1 2021*: Prov. application TCA, enters into force on *1 May 2021*





# Post-Brexit Law





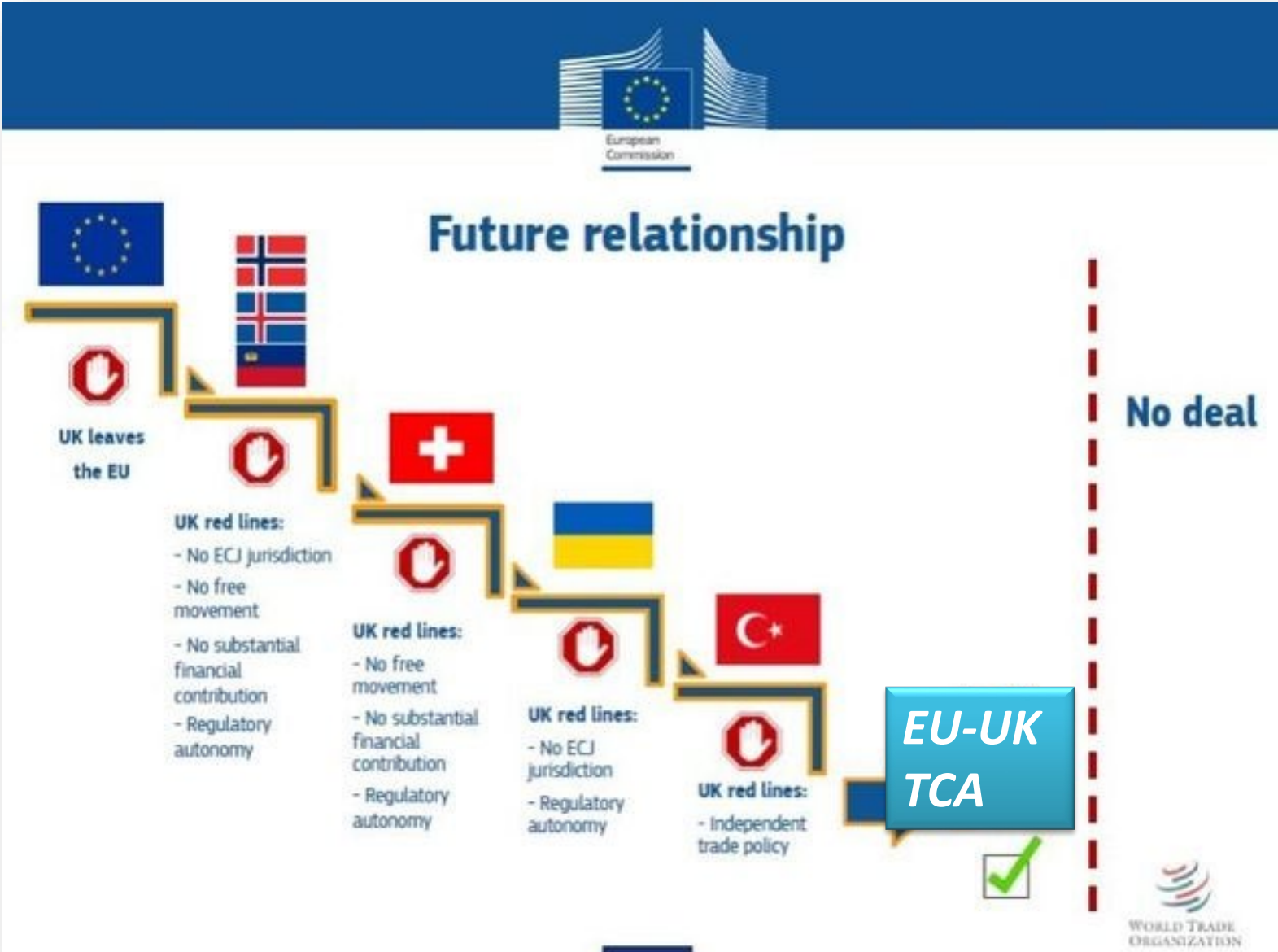
# EU-UK Trade and Cooperation Agreement

## *Form and parties*

- UK: “comprehensive Canada style free trade deal”
- EU: “Association Agreement” (based on Art. 217 TFEU)
- Parties: UK and EU/Euratom
  - EU-only agreement, non-mixed
  - No ratification by Member States required ( $\neq$  CETA)
- Still a “hard Brexit”









# EU Trade Policy: Take Aways

- The policy area where the EU is the most unified
- The policy area where leveraging collective economic weight is most obvious
- Three main functions:
  - Defending the internal market and promote economic interests
  - Using trade to promote a broader EU foreign policy agenda
  - Using trade to export regional integration and global governance à la EU
- Increasing “unilateral turn” and “geopoliticization”