CLEER Summer School 2026

Weaponizing Market Power: EU Trade Policy in an Era of Trade Wars

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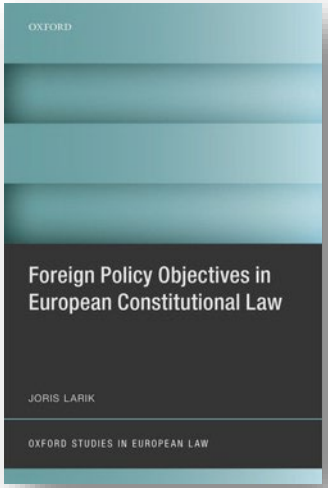
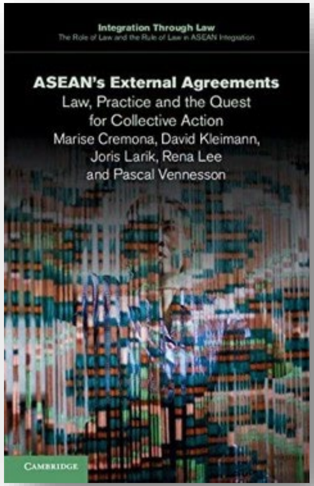
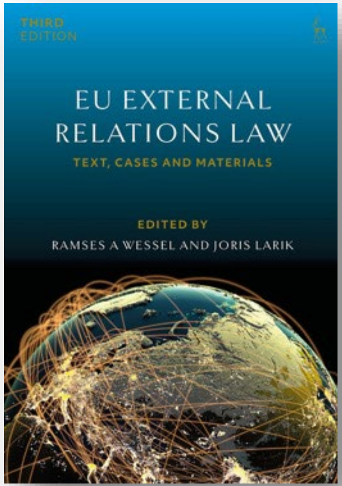
Introduction

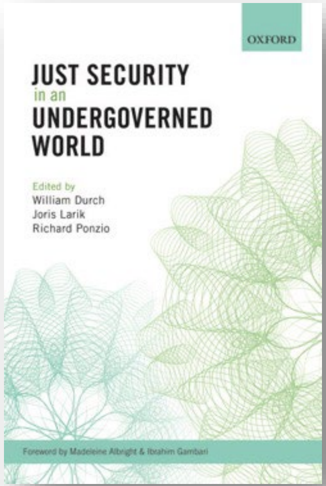
Dr. Joris Larik

- *Background in law and int'l relations, specialized in EU external relations*
- *Associate Professor of Comparative, EU and International Law & Director of Education, Leiden University College The Hague*
- *Visiting Professor, College of Europe*
- *Member of the permanent committee on European integration of the Dutch Advisory Council on International Affairs (AIV)*
- *Member of the CLEER Governing Board*









Overview

- Key concepts
- The evolution of EU trade policy
- “Traditional” EU trade instruments
- Democratic accountability and access to justice
- The “unilateral turn” in EU trade policy
- Diversifying partnerships

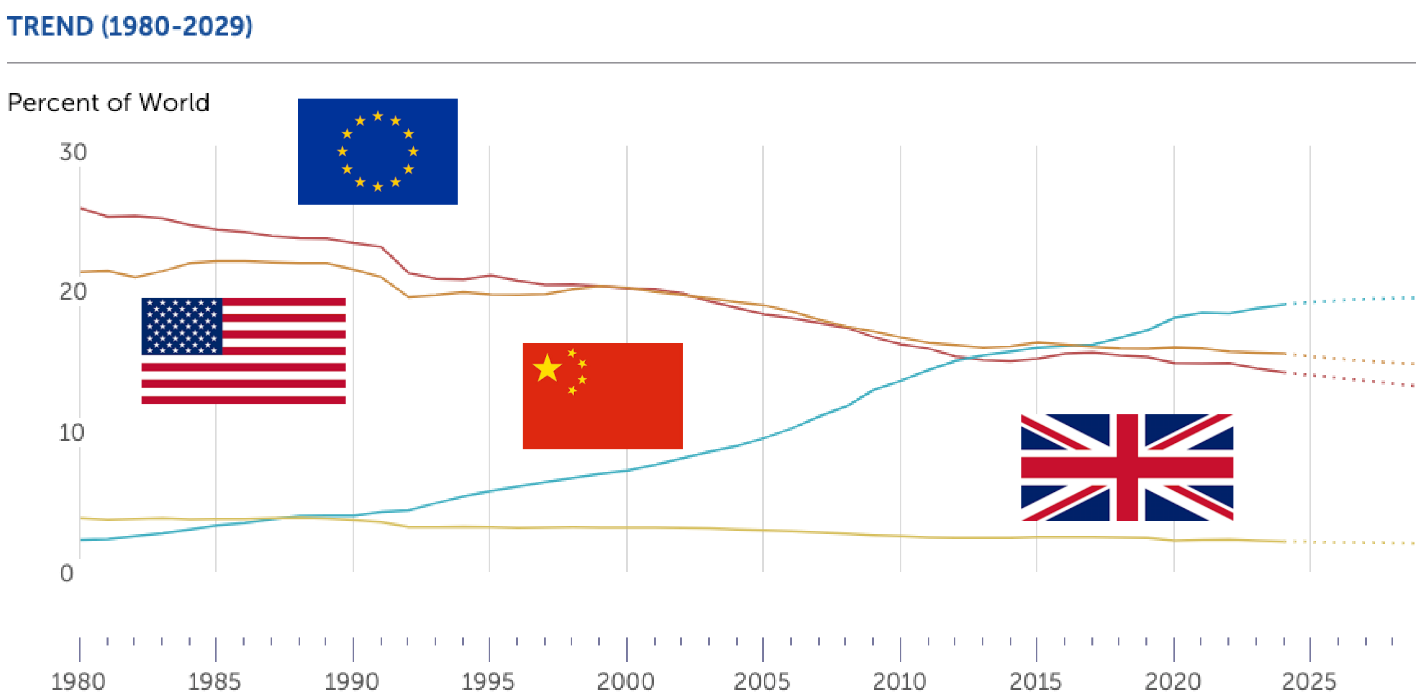
Key concepts

"Market Power Europe"

Chad Damro, *"Market Power Europe and the Research Agenda on Geopoliticisation and Economic Security" European Politics and Society (2025), 1–2*

"…the EU consequentially affects the international system and other actors by virtue of three central characteristics – its market size, institutional features and interest contestation – and acknowledges that the EU possesses tools often associated with coercion."

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



GDP based on PPP, share of world (Source: IMF 2024)

Belgian Foreign Minister Mark Eyskens, January 1991

Key concepts

“(Open) Strategic Autonomy”

European Commission, Trade Policy Review (2021), 4

‘the EU’s ability to make its own choices and shape the world around it through leadership and engagement, reflecting its strategic interests and values’

F Hoffmeister, ‘Strategic Autonomy in the European Union’s External Relations Law’ (2023) 60 Common Market Law Review 667, 673

‘Combining ... political understandings under the umbrella of EU external relations law, the meaning of strategic autonomy can thus be defined as follows: *Striving for multilateral solutions, while being able to take lawful action alone to safeguard the Union’s values, fundamental interests, security, independence and integrity!*’

"Economic Security"

European Economic Security Strategy (2023), 1 and 4

"With geopolitical tensions rising and global economic integration deeper than ever before, certain economic flows and activities can present a risk to our security. More than ever, our security is deeply intertwined with our ability to make ourselves more resilient and reduce the risks arising from economic linkages that in past decades we viewed as benign. … New geopolitical and technological realities requires us to adapt our approach, preserving the vast majority of Europe's highly valuable economic links to the world while ensuring that the new risks we face, which are narrow but critical, are effectively tackled.

…

The Commission and the High Representative have identified the following broad and nonexhaustive categories of risks to economic security namely risks related to: (1) resilience of supply chains; (2) physical and cyber security of critical infrastructure; (3) technology security and technology leakage; and (4) weaponisation of economic dependencies or economic coercion.

Trade as an EU "exclusive competence"

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.

- Codified today in Art. 3(1)(e) TFEU
- *But:* Linkages between trade and other (non-EU exclusive) policy domains such as the internal market, environment, and increasingly security

The evolution of EU Trade Policy

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.

The evolution of EU Trade Policy

The objectives of EU external action

Art. 3(5) TEU

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

- Preference for multilateral, international law-friendly approaches
- *But:* Also compelling justifications for unilateral action, when necessary

Art. 21 TEU

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

[…] It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

…

(h) promote an international system based on stronger multilateral cooperation and good global governance.

CCP instruments and the Internal Market

- Common customs tariff
- Trade defence instruments
  - Anti-dumping measures
  - Anti-subsidy measures
  - Safeguards
- Trade Barriers Regulation & International Procurement Instrument
- Trade dispute settlement (incl. at WTO, MPIA)

CCP as a foreign policy tool

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.

Examples:

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

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

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.

Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part

Art. 2

Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.

Art. 79(2)

If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority shall be given to those which least disturb the functioning of the Agreement. …

Democratic accountability & access to justice

- **Democratic checks** on EU trade agreements:
  - Consent of the <u>European Parliament</u> necessary for trade agreements (Art. 218(6)(v) TFEU *juncto* Art. 207(2) TFEU), and also for association agreements (Art. 218(6)(i) TFEU)
  - Consent of <u>MS parliaments</u> required in the case of mixed agreements
  - Important role of interest groups (business and NGOs) → interest contestation

Democratic accountability & access to justice

- 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 ?

Democratic accountability & access to justice

- After the CETA experience, the 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

Trade agreements & access to justice

Direct applicability of EU trade agreements

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'.

Direct applicability of EU trade agreements

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.

- Individuals generally cannot rely on EU trade agreements in court
- More manoeuvring space for the institutions to defend interests

The "unilateral" turn in trade policy

Examples:

- October 2020: **Foreign Direct Investment Screening Framework**
- January 2023: **Foreign Subsidies Regulation**
- December 2023: **Anti-coercion Instrument**
- *And:* **Related measures such as Chips Act, Critical Raw Materials Act,** and the **proposed Industrial Accelerator Act**

➢ 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)

The "unilateral" turn in trade policy

Focus: The Anti-Coercion Instrument

- Nicknamed the EU's "trade bazooka"
- Developed with a view to U.S. and China using their "market power" for political ends (e.g. Chinese pressure on Lithuania in 2021)
- Gained widespread media attention during the Greenland Crisis of early 2026
- Allows trade restrictions (tariffs, but also i.a. restrictions on services, investment, and public procurement)
- Decision by QMV in the Council (cf. unanimity in sanctions)

Source: The Times of India; AI image, picture credit: Google Gemini)

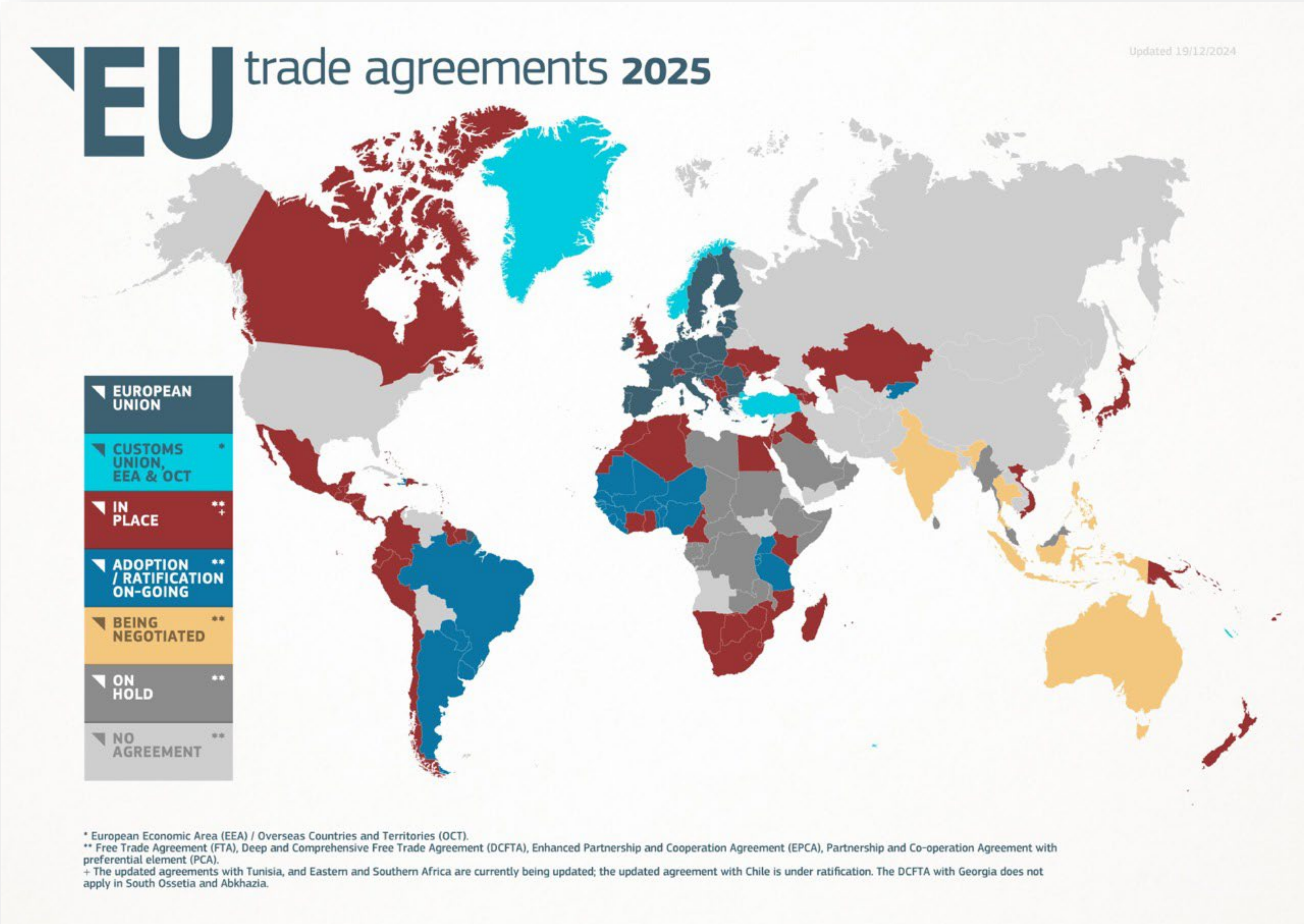
- It's a trade instrument legally (Art. 207 TFEU legal basis)
- But: Is it really? Or rather foreign and security policy?

The Turnberry Trade Deal of July 2025 and the deepening disillusionment with the U.S.

Diversifying partnerships

What about the WTO?

- EU (and the MS) are Members of the WTO
- However: WTO largely stuck, dispute settlement blocked by U.S.
- U.S. trade wars under the Trump administration; use of tariffs ("Liberation Day" 2 April 2025)
- Geopolitical "hedging"; "middle power" cooperation; "multi-alignment"


EU trade agreements 2025
Updated 19/12/2024
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), 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 agreement with Chile is under ratification. The DCFTA with Georgia does not apply in South Ossetia and Abkhazia.

Focus: EU-Mercosur

- 20+ years of negotiations
- Would be largest inter-regional FTA to date
- "Political agreement" in Dec. 2024
- **EU-Mercosur Partnership Agreement (mixed)** and the **Interim Trade Agreement (iTA) (non-mixed)** signed on 17 Jan. 2026
- 21 Jan. 2026: EP requests Opinion from CJEU (Art. 218(11) TFEU
- Nonetheless: iTA applied provisionally from 1 May 2026
- Undemocratic or geopolitical expediency?

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 Majd/Getty Images*

By Michael Nienaber
June 23, 2024 at 2:42 PM GMT+2

Mercosur Summit in Montevideo, Uruguay December 2024

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 (“market power”)
- In EU (external) policymaking trade is increasingly intertwined with security and other considerations (“economic security”)
- But that also raises difficult (apparent) trade-offs (e.g. environment vs. competitiveness; alliance-building vs. democratic checks) and thus requires sometimes difficult balancing acts
- The EU is equipping itself with more unliteral instruments but is at the same time engaging with new old and new partners around the world in the quest for “open strategic autonomy”