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García, María J.

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Article

Implementation of EU Trade Agreements Under an Assertive, Open, and Sustainable Trade Policy

María J. García

Department of Politics, Languages and International Studies, University of Bath, UK; m.garcia@bath.ac.uk

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Abstract

Since the 2010s the EU has expanded its preferential trade agreements, responding to challenges at the World Trade Organization and preferential trade agreements of key geoeconomic competitors. However, preferential trade agreements are only as good as their implementation. The EU *2021 Trade Policy Review* for a more assertive trade policy includes a greater focus on preferential trade agreement implementation. An analysis of preferential trade agreement implementation reports identifies challenges in operationalising these. It shows that since 2019 there has been an increase in EU recourse to formal dispute settlement mechanisms under preferential trade agreements demonstrating the shift to greater assertiveness. Interestingly, most of the cases are of limited economic significance to the EU but serve to reinforce the message of enforcement of trade rules.

Keywords

agreement enforcement; dispute; European Union; free trade agreements; preferential trade agreements; trade and sustainable development

Issue

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1. Introduction

Trump’s trade wars and overt challenges to the World Trade Organization (WTO), Chinese economic assertiveness, trade disruptions during the Covid-19 pandemic, and the war in Ukraine are the backdrop against which the EU has accelerated a trend towards the “geopolitisation of trade policy” (Meunier & Nicolaidis, 2019). The EU’s *2021 Trade Policy Review* represents the EU’s most overtly geopolitical trade policy and the presentation of the *2023 Economic Security Strategy* further reinforces that shift. Much of the commentary on this shift has centred on the unilateral measures adopted under these strategies, such as investment screening or the anti-coercion instrument (Erixon & Lamprecht, 2022; Gehrke, 2022), and on questioning the EU’s capacity to act geopolitically (Weinhardt et al., 2022). EU trade agreements are one of the three key components of EU trade policy, alongside unilateral trade measures and work at the WTO. They are, therefore, a key part of the

new trade policy, yet the impact of the new policy on these has been overlooked thus far by the literature. This article bridges this gap by turning attention to the implementation of EU trade agreements.

Focusing on the implementation of preferential trade agreements (PTAs) is especially relevant as the extensive literature on EU trade agreements has explained the rationale for PTAs (Dür, 2007, 2008; Eckhardt & Poletti, 2016; Garcia, 2013; Siles-Brügge, 2014) outcomes of negotiations (Adriaensen, 2016; Heldt, 2021), the politicisation of PTAs and trade policy (De Bièvre et al., 2020; De Ville & Siles-Brügge, 2015; Duina, 2019; Eliasson & Garcia-Duran Huet, 2018; Gheyle, 2020; Young, 2019), but with the exception of work unpacking the limitations of the trade and sustainable development (TSD) chapters in PTAs (Campling et al., 2016; Drieghe et al., 2022; Marx & Brando, 2016; Orbie et al., 2016, 2017; Potjomkina et al., 2020) has paid little attention to how well PTAs are implemented and what happens post-negotiations. Yet, the implementation of PTAs is

less straightforward than envisaged. As the European Commission Directorate-General for Trade (2022, p. 2) points out, the “impact [of its PTA network] depends on those agreements—alongside international trade rules—being properly implemented and enforced.”

This article highlights the need to focus attention on implementation processes and contributes to the literature by beginning to map and explore what policy areas raise challenges in PTA implementation and how these are resolved in practice, for example, through the work of joint bodies of PTAs or through legal dispute resolution to enforce the agreement. These insights deepen our understanding of the effectiveness of EU trade policies and of the EU as a trade actor. Given the new trade policy’s emphasis on PTA implementation, this article hypothesises that the number of complaints instigated by the EU within PTAs’ joint bodies should increase with the implementation of the open, sustainable, and assertive trade policy. A qualitative document analysis of EU PTA implementation reports was conducted to begin to ascertain what categories of issues are the focus of implementation challenges, establish the matters that are not resolved in joint bodies and end up in disputes, and ascertain whether the new trade policy has also correlated with increased PTA dispute activity, as we would expect from the focus on PTA implementation in the new policy. Drawing from recent scholarship on the characteristics of joint bodies created in PTAs tasked with the management and implementation of the PTA (Dür & Gastinger, 2021, 2023), we further hypothesise that problems in the implementation of PTAs are more likely to be resolved within discussions in joint bodies in EU PTAs with democracies, with more significant and interdependent economies, and in newer agreements where stronger joint bodies have been created.

The rest of the article is organised as follows. Section 2 introduces the key bodies for implementation and enforcement of PTAs. Section 3 contextualises PTAs within the *2021 Trade Review* and *2023 Economic Security Strategy* and charts expectations for enhanced PTA implementation resulting from these strategies. Section 4 describes the data sources used in the article and the approach taken to guide the data analysis. Section 5 categorises instances of implementation challenges and formal disputes to enforce PTAs reported in the European Commission’s reports on PTA implementation. Section 6 presents conclusions summarising conditions for the increased likelihood of disputes.

2. Implementation of Preferential Trade Agreements

PTAs are “living agreements,” as they rely on the implementation of what has been agreed upon and constant monitoring and negotiation of disagreements, as well as the creation of institutional arrangements to make future decisions to further facilitate trade between the parties. Institutional frameworks and their operation are therefore critically important. Beyond consultations,

collaboration, and discussions within committees, PTAs also incorporate formal dispute settlement mechanisms as a backstop to guarantee enforcement should collaboration and discussions fail. These ensure the legal enforceability of the agreements. Dispute settlement mechanisms typically include an initial stage of formal consultations between the parties. If this does not foster a solution, the complainant can then ask for a panel to be set up to arbitrate on the matter either within the WTO’s Dispute Settlement Body or for a panel to be set up under the PTA. PTAs, therefore, incorporate an implicit recognition of the possibility that aspects of the PTA might not be implemented properly and that the parties require legal processes of redress to ensure the enforceability of commitments undertaken in PTAs.

Recent scholarly work is turning attention to these frameworks. Political research has focused on the rationale for the emergence of joint bodies (Dür & Gastinger, 2023), whilst legal scholars have concentrated on the legal standing of these bodies and how this interacts with WTO and other legal commitments (Durán, 2020). Drawing on large-*N* analysis of PTAs, new research has focused on determining what types of international agreements are most likely to create joint bodies (association councils, committees, working groups), namely those between democracies where higher levels of trust facilitate empowering these bodies to make decisions (Dür & Gastinger, 2021). This scholarship has determined that the EU includes joint bodies with greater responsibilities and decision-making authority in international agreements with partners with whom it has greater economic interdependence. The reason for this is that increased openness and trade (as facilitated by a PTA) with close economic partners can also cause more economic competition if reciprocal commitments are not fully implemented (Dür & Gastinger, 2023).

By focusing resources on the joint bodies with larger more relevant partners and where there is a closer interdependent relationship, some of the costs of joint bodies (both logistical costs and sovereignty costs) can be offset in favour of particular outcomes (Dür & Gastinger, 2023, pp. 1077–1079). Arrangements under the Trade and Cooperation Agreement (TCA) with the UK exemplify this. The TCA presents a greater multitude of joint bodies under the Partnership Council and institutional avenues for cooperation. Moreover, it incorporates innovative arrangements for a “level playing field” and “rebalancing arrangements” to ensure that regulatory divergence does not lead to the UK lowering environmental and social standards to a degree that it outcompetes the EU for investment, and becomes a back door to the EU, given its close relationship and market access as guaranteed by the TCA. The arrangements enable the parties, for the first time under an EU PTA, to take direct actions, including restricting trade, if measures in the other party are lowering environmental and social standards, without the need to wait for arbitration or dispute settlement, although there are strict requirements and tests

before actions can be taken (Collins, 2021). However, it is unclear exactly how this will work, and by providing an avenue for the parties to override adverse third-party rulings, it can bring the TCA into question (Lydgate et al., 2021). Nonetheless, the intention is to exercise control over economic decisions elsewhere and guarantee the implementation of the TCA.

Extant literature is, thus, beginning to consider the implementation of EU PTAs in terms of institutional structures, especially with regard to the effectiveness (or lack thereof) of the provisions in the TSD chapters (Campling et al., 2016; Hradilova & Svoboda, 2018). However, it has yet to fully delve into the types of implementation challenges that are encountered and how these are resolved, including the effectiveness of the joint bodies and institutional arrangements of PTAs in resolving implementation difficulties as they arise. The key aim of this article is to highlight the need to focus attention on implementation processes and to contribute to the literature by beginning to map and explore what policy areas raise challenges in PTA implementation, and how these are resolved, for example, through the work of joint bodies of PTAs or through legal dispute resolution to enforce the agreement. Following Dür and Gastinger's (2021, 2023) findings on joint bodies, we would expect PTAs with economically more significant partners, with partners with whom the EU is more interdependent, democracies, and newer agreements that have a broader scope of issues to have more successful joint bodies where implementation challenges are resolved within these bodies without the need to trigger dispute settlement mechanisms to guarantee the correct implementation of commitments.

3. EU Trade Policy Review 2021: An Open, Sustainable, and Assertive Trade Policy and the 2023 Economic Security Strategy

The Commission's new trade policy was prepared at a time of global upheavals, amid supply chain disruptions and rising trade protectionism resulting from the Covid-19 health crisis and President Trump's unilateral trade policy and disabling of the WTO and its Dispute Settlement Body's Appellate Body. These highlighted EU trade dependencies and forced a rethink of trade policy, not just to face up to these challenges, but to support other key strategies of von der Leyen's Commission like the European Green Deal and European Digital Strategy, tasked with addressing key climate and economic recovery challenges. The trade strategy is justified by the need to "recover from Covid-19" and to "implement UN Sustainable Development Goals" (European Commission Directorate-General for Trade, 2021, p. 1) and represents the EU's most geopolitical trade policy to date. Although EU trade policy has always incorporated geoeconomic considerations (Garcia, 2013, 2015), the dominant discourse and projected image have tended to downplay these aspects.

The 2021 policy departs from previous ones by explicitly adopting a language that borrows from EU security discourses. The policy is described as leading to an "open strategic autonomy" that "emphasises 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" (European Commission Directorate-General for Trade, 2021, p. 8). It emphasises the need for the EU to identify and address strategic dependencies in supply chains, enhance the resilience and competitiveness of EU economies, ensure sustainability and fairness in trade, engage with the multilateral system and others to bolster the rules-based system, and increase the EU's assertiveness. This is further emphasised in the *2023 Economic Security Strategy* with its focus on reducing risks to supply chains, to EU technology and critical infrastructure and the single market, and the risk of weaponising economic interdependencies by means of promoting innovation and technological capacity, protecting the single market from unfair trade practices and partnering with others to strengthen international institutions and diversify economic ties through trade agreements (European Commission Directorate-General for Communication, 2023).

A series of new and updated unilateral trade measures have been developed to address this international context and operationalise this assertive policy (De Man et al., 2022; Erixon & Lamprecht, 2022; Ibáñez, 2023). These include measures to tackle economic distortions, defend against economic coercion and secondary sanctions, protect critical assets, and link values and sustainability to trade (Gehrke, 2022). Incipient literature on the "open, sustainable and assertive trade policy" has noted the dangers of these measures potentially leading to a more closed EU market and retaliation from trade partners (Erixon & Lamprecht, 2022; Gehrke, 2022), and how the measures with a more automatic application (Carbon Border Adjustment, Deforestation Initiative, Corporate Sustainability Due Diligence) are likely to apply to top trading partners like the US, China, and UK, increasing costs in trade (Ibáñez, 2023, p. 79). The difficulties the EU faces in acting in a geopolitical way, for example, member states pursuing greater trade with China at the expense of concerted action, the ambiguity of the Commission's framing of geopolitical and geoeconomic interests in trade measures (Weinhardt et al., 2022), and the absence of a "serious debate...on geopolitical interests and values" (Gehrke, 2022, p. 76) have been the other focus of the literature.

PTAs, the focus of this article, play an important part in the new economic strategy as part of the partnership pillar and in the open, assertive, and sustainable trade policy, but they have not been featured in the literature on the new trade strategy. The *2021 Trade Policy Review* committed to strengthening the EU's focus on correct implementation and full enforcement of PTAs' commitments and ensuring a level playing field through the following measures: (a) making full use of the opportunities

existing in PTAs by supporting stakeholders to utilise these and access the Access2Markets portal; (b) monitoring the proper implementation of PTAs; and (c) addressing non-compliance through the WTO or bilateral dispute mechanisms in PTAs (European Commission Directorate-General for Trade, 2021, p. 22). PTA implementation is, therefore, an important aspect of the EU's more assertive and geopolitical trade policy.

The *2023 Economic Security Strategy* further reiterates the significance of PTAs as one of the EU's tools to achieve its commercial interests. The strategy revolves around three pillars: (a) promoting EU economic competitiveness (boosting innovative technologies, improving the single market); (b) protecting the EU's economic security (e.g., investment screening, preventing corporate links that could result in technologies going elsewhere, or EU infrastructures being accessible to foreign powers, using trade defence instruments); and (c) partnering with countries with similar concerns and interests, including through PTAs to ensure compliance with international rules and diversify supply chains and economic ties (European Commission Directorate-General for Communication, 2023, p. 3). Full implementation of the EU's PTA network, and expansion of the network, is considered an important step towards diversifying supply chains, "de-risking" business, and reducing interdependencies (European Commission Directorate-General for Communication, 2023, p. 13), and is an integral part of the partnering pillar of the strategy. Supply chain disruptions and protectionism at the height of the Covid-19 pandemic and further disruptions caused by Russia's invasion of Ukraine in 2022 account for rising concerns within the EU and the desire to take a more geopolitical approach to trade and economic policy, as described in the *Economic Security Strategy*.

So what do these strategies mean for PTAs and their implementation? The *2021 Trade Policy Review* (European Commission Directorate-General for Trade, 2021, p. 10) includes respect for global trade rules and implementation of PTAs as two of the three core objectives of the policy, and PTAs are a key part of the partnership pillar of the Economic Security Strategy. In light of this, we would expect the analysis of the implementation of PTAs to reveal a concerted effort to ensure PTAs are being correctly implemented, with an increase in the number of matters being discussed, resolved, and, when not resolved, an increase in the number of implementation challenges leading to disputes to ensure enforcement of commitments from 2020, the time when this policy was developed. We would also expect a rise in disputes related to sustainability, as worker protection is also considered a key aspect of the *2021 Trade Policy Review* (European Commission Directorate-General for Trade, 2021, p. 10), not in vain, the Trade Review dovetailed in time with the European Commission's review of the 15-point action plan for the implementation of Trade and Sustainability Chapters in PTAs which was undertaken in 2021–2022 following the 2018 15-point plan.

The reform resulted from the 2017–2018 debate instigated by the European Commission on improving the effectiveness of TSD chapters in PTAs. Responding to criticisms from the European Parliament and civil society groups over the weak enforceability of labour and environmental commitments in PTAs, given the TSD chapters' sui generis dispute resolution mechanism, modelled on International Labour Organisation (ILO) procedures and eschewing possible financial penalties and trade preference withdrawal, the European Commission launched discussions on TSD. The 15-point action plan eschewed a sanctions-based model and instead proposed a series of measures to improve the implementation of TSD chapters, including improving coordination with the European Parliament and member states, improved monitoring, financial assistance to stakeholder groups to support the monitoring of the implementation, and making greater use of the sui generis dispute resolution mechanism (European Commission, 2018a).

The dynamics of the reform, including pressures from civil society and the European Parliament, and the reform per se lie beyond the scope of this article but have been analysed elsewhere (see Durán, 2020; Harrison et al., 2019; Hradilova & Svoboda, 2018). What is relevant for this article, is the emphasis placed on the implementation of TSD chapters in PTAs. Given this background, we would also expect more mentions of environmental and labour matters in PTA implementation documents and more reliance on disputes. To determine if this is the case and begin to categorise the kinds of challenges that arise in PTA implementation and the subjects that lead to disputes, we now turn to the EU's PTA implementation reports, which focus on implementation between 2016 and 2021.

4. Approach and Data

Since 2017, the European Commission has published an annual report on the implementation of its PTAs in the preceding year. These reports cover all EU PTAs, and as new PTAs are ratified and entered into force, these are also included in the next report. These reports are an important source of information on PTA implementation, as they are compiled using official trade statistics, information from EU delegations around the globe, and by those with access to the various joint bodies, i.e., joint committees created by the PTAs and the discussions undertaken in each of these with PTA partners. Crucially, they report on the same information in a consistent way year-on-year, making it easier to compare across years and to trace developments over time. PTA implementation reports are publicly available from the European Commission website. These are available between 2017 and 2022, so a total of six years are covered in this article. This is a convenience sample based on the years for which reports are available. Unfortunately reports from previous years are not available and joint committee minutes are not uniformly available. The timeline that is available

covers two years prior to the start of the von der Leyen's commission and its geostrategic shift (2016–2018) as well as the years when the new trade policy was being designed (2019–2020) and the initial year since its launch (2021), allowing for some initial observations of whether more challenges are being raised and whether more disputes are being initiated under the new policy.

The format of the reports changes slightly from year to year. The initial report presents information by PTA grouping (earlier PTAs pre-dating 2006; Eastern Neighbourhood countries; Economic Partnership Agreements with African, Caribbean, and Pacific states, more modern post-2006 PTAs). Subsequent reports do that as well, but also carve out specific sections to report on key themes across PTAs, namely agri-food and the trade and sustainability chapters where progress and challenges in all PTAs are discussed, showing that these are two areas of particular concern to the EU. From 2021, the reports take a different format and amalgamate the Commission's report on the implementation of PTAs with other trade enforcement actions (including at the WTO) and include some comments on submissions to the Single Entry Point, created in the *2021 Trade Policy Review*, that enables firms and stakeholders to submit to the Chief Trade Enforcement Officer's team their examples of non-implementation of PTAs and trade barriers they encounter for direct investigation. It is important to note that these reports do not include information that the European Commission reports on separately, namely the implementation of trade preferences and compliance with conditionality under the EU's generalised system of preferences with developing states, foreign direct investment screening, use of trade defence instruments (anti-dumping, anti-subsidies, and safeguard measures), and activities on infringements of intellectual property rights.

Given that the focus of this article is PTAs, the absence of these aspects does not constitute a problem. As this article aims to explore challenges in the implementation of EU PTAs and how the EU reacts to these in light of the new open, sustainable, and assertive trade policy, within the joint committees for PTA implementation and/or through recourse to dispute settlement, the reliance on documents from the European Commission does not introduce a bias into the study. Although not the focus of this particular article, the Commission's reports do mention concerns raised against EU practices by PTA partners, showing they relate to what is covered in the joint committees and not just EU concerns. These reports highlight the most relevant issues relating to each PTA and may be missing discussions on matters that are not conflictual and examples of collaboration or socialisation and cross-fertilisation of ideas on making regulations or policies on certain issues that may arise from the formal and institutionalised discussions at joint committees. Although the most recent report presents a general summary of cases reported directly by business and civil society to the Chief Trade

Enforcement Officer through the Single Entry Point, it fails to provide details of these; it is therefore not possible to ascertain whether business and civil society are reporting the same concerns as those being raised in joint committees of PTAs or other issues. For this reason, a Freedom of Information request was made to the European Commission to receive documentation on the Single Entry Point since its inception. Another request was made for minutes and documents of the joint committees for PTAs, as these are not available in a consistent manner online. Although the request has not been rejected, it has been subjected to various delays, meaning it has not been possible to collect this data in time for this thematic issue.

The implementation reports were analysed and coded manually. An inductive approach was deployed to ascertain from the data in which policy area implementation problems arise. This approach is consistent with the exploratory nature of the article aimed at gaining insights into implementation challenges and uncovering relationships to be examined in future larger studies. Areas mentioned in the reports as examples of inappropriate implementation or of concerns expressed by a party in the annual joint committee meetings were coded and grouped into the PTA chapter theme they correspond to. For instance, problems registering specific wine or cheese names fall under geographic indications (a particular type of intellectual property right), instances of food animal products not being allowed into a market due to concerns over safety (e.g., following an outbreak of swine or bird flu) correspond to sanitary and phytosanitary (SPS) matters. In the table in the Supplementary File, the PTA chapter theme has been included and highlighted in colour for greater ease of identification. Where specific concerns or problems were mentioned, these were tracked and coded in all subsequent reports to trace the evolution through to resolution within the joint committee, resolution following dispute settlement consultations or going through to a formal dispute settlement panel. Specific cases of disputes appear in red in the Supplementary File and are discussed in the next section. The coding of disputes included coding the stage of the dispute (within each Report), the PTA partner involved, the topic of the dispute, and the venue chosen for the dispute. PTAs allow the parties to choose where they wish to raise a formal dispute. They may take this to the WTO Dispute Settlement Body or they may request a panel of arbitrators be established under the PTA. PTAs preclude the same dispute being pursued simultaneously in different venues. What is relevant for our purposes is that a formal dispute is initiated, as that shows an issue has not been resolved within the joint bodies of the PTA.

5. Implementation Challenges in EU Preferential Trade Agreements

Over time, the EU has established PTAs with countries around the world, although not with its strategic

partners, rivals, and largest trade partners (the US, China, and Russia). Since the Global Europe trade strategy of 2006, the EU has engaged in new generation PTAs with Asian and American states designed to ensure greater market openness and avoid losing competitiveness vis-à-vis the US or China. It has engaged in deep and comprehensive PTAs with its neighbourhood as part of the Eastern Partnership. In 2000, the Cotonou Convention (replacing the Lomé Agreements) committed the EU and countries in the Africa, Caribbean, and Pacific group to negotiate new Economic Partnership Agreements, with reciprocal trade concessions as the WTO waiver allowing EU unilateral preferences for African, Caribbean, and Pacific states expired. The EU also has older PTAs, mostly with partners in its neighbourhood, from the 1990s and early 2000s. Older agreements are less advanced in various disciplines, including TSD chapters, which were first introduced in the 2011 PTA with South Korea. Prior to those, the EU has agreements with its Southern Mediterranean neighbours, a Customs Union with Turkey, and agreements with Norway and Switzerland. The table in the Supplementary File lists the various PTAs that are covered by the EU's PTA implementation reports. Given the absence of dedicated TSD chapters in older PTAs, PTA joint committees for these will not be discussing concerns regarding these matters nor can disputes be brought on this.

PTA implementation reports present a positive narrative of PTAs. They point to increased trade statistics and include mini case studies of EU firms that have benefitted from an agreement (e.g., how ASKET, a Swedish online-only men's ethical clothes firm, benefits from exports through PTAs; European Commission Directorate-General for Trade, 2019, p. 12). All reports stress EU cooperation with partners, especially with developing partners and near neighbours pointing to specific EU-funded technical capacity-building projects (Aid for Trade projects) to help these countries close the capacity gaps that preclude them from fully implementing the commitments in the PTAs, especially to

bring regulations closer to EU regulations (European Commission, 2017; European Commission Directorate-General for Trade, 2019, 2022).

When it comes to concerns relating to the implementation of PTAs, the reports focus on instances of partners' non-implementation that have been discussed in the meetings of the joint committees. Issues raised across all reports show a predominance of SPS measures in agricultural trade matters, as well as issues relating to intellectual property rights, mainly the incorporation of new EU geographic indicators and performance rights (see Figure 1). Technical barriers to trade (TBT), for instance in relation to certificates, or domestic spirit taxes also feature prominently, as do matters relating to transparency in public procurement processes and access for EU firms to contracts at different levels of government.

Key concerns raised relate to so-called "behind the border" trade issues, as these relate to domestic rules, standards, and regulations that states are often unwilling to alter. These are also the issues most likely to create tensions in PTA negotiations (see, for example, Kneller, 2020; Khorana & Garcia, 2013; Nicolas, 2009). Moreover, in the cases highlighted by the EU relating to wines and spirits (e.g., the provincial taxes and regulations in Canada and the differential taxes in Peru and preferential treatment for local pisco; European Commission, 2017, 2018b; European Commission Directorate-General for Trade, 2019), the authority to make changes lies with sub-national levels of government, that may well disagree with the commitments the central government has undertaken in the PTA. Nonetheless, the reports, especially from 2019, highlight progress made by the counterparties on these matters, including legislative changes, and attest to the use of joint committees to discuss matters and pressure partners into adapting to implement PTA commitments. This is in line with the hypotheses suggesting increased assertiveness as a more assertive trade policy takes shape and suggesting a greater likelihood of resolving matters within joint bodies in PTAs with other democracies.

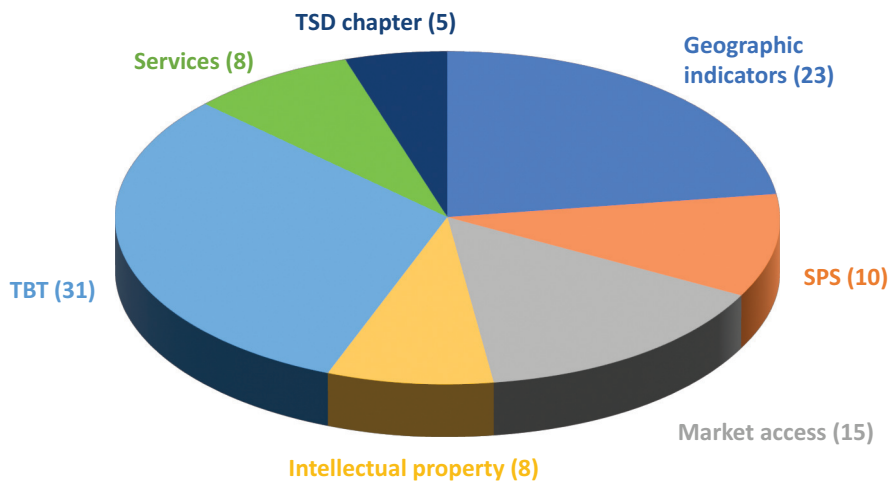


Figure 1. Most frequent issues reported as problems in PTA implementation reports, in % (2017–2021).

After SPS, geographic indicators, procurement and TBTs, market access is the most relevant category of concern. These have tended to focus on agricultural goods (e.g., improved access for beef exports to South Korea and Latin American states, gaining recognition from partners of EU regionalisation of animal supply chains to avoid temporary measures as a result of disease outbreaks being applied to all EU exports; European Commission, 2017, 2018b; European Commission Directorate-General for Trade, 2019), as well as in relation to specific actions by partners (e.g., Colombia’s import ban on frozen potatoes from the Netherlands, Belgium, and Germany; European Commission Directorate-General for Trade, 2019). Concerns over access for service providers have been noted in the case of Ecuadorian proposed rules for insurance providers, Japan’s courier and postal services, and Korean car repair and maritime transport services (European Commission, 2021). The table in the Supplementary File summarises key concerns raised in each of the reports. It shows how some concerns have disappeared, this represents progress made in the discussions and changes in practices. These show the potential for resolving matters within the joint committees and the importance of joint bodies as fora for amicable conflict resolution and a locus for influencing partner’s future policies and regulations. The reports highlight how discussions within the committees led Ecuador to drop localisation requirements for patents and a pro-

posed Ukrainian law for requirements for patents never materialised (European Commission, 2020).

However, not all matters are resolved in discussions. Figure 2 shows the cases when the EU has made recourse to dispute settlement processes within PTAs. In 2016, under the terms of the PTA with Peru and Colombia, the EU requested consultations and a panel at the WTO to address discriminatory taxes on spirits in Colombia. This triggered renewed interest from Colombia to discuss the matter and the case was dropped as Colombia changed its spirit tax laws. Since 2019, the EU has made more frequent recourse to dispute settlement procedures. Although this predates the *2021 Trade Policy Review*, it dovetails in time with the change of Commission, von der Leyen’s desire for a more geostrategic Commission, and the preparation of the new trade policy. It is also two years into Trump’s presidency, by which point the world was immersed in a series of trade confrontations and the WTO was seriously undermined. Against this backdrop, it is unsurprising that the EU would seek to implement PTAs in a more forceful manner, as its 2021 policy and subsequent *2023 Economic Security Strategy* demand.

From 2019 to date, the EU has initiated eight disputes within PTAs: five related to market access for goods (Colombia, Southern African Customs Union, Algeria, Turkey, Egypt), one related to supplies (Ukraine), one to access services and investment (UK), and one to TSD chapters (South Korea). In 2019, the EU started

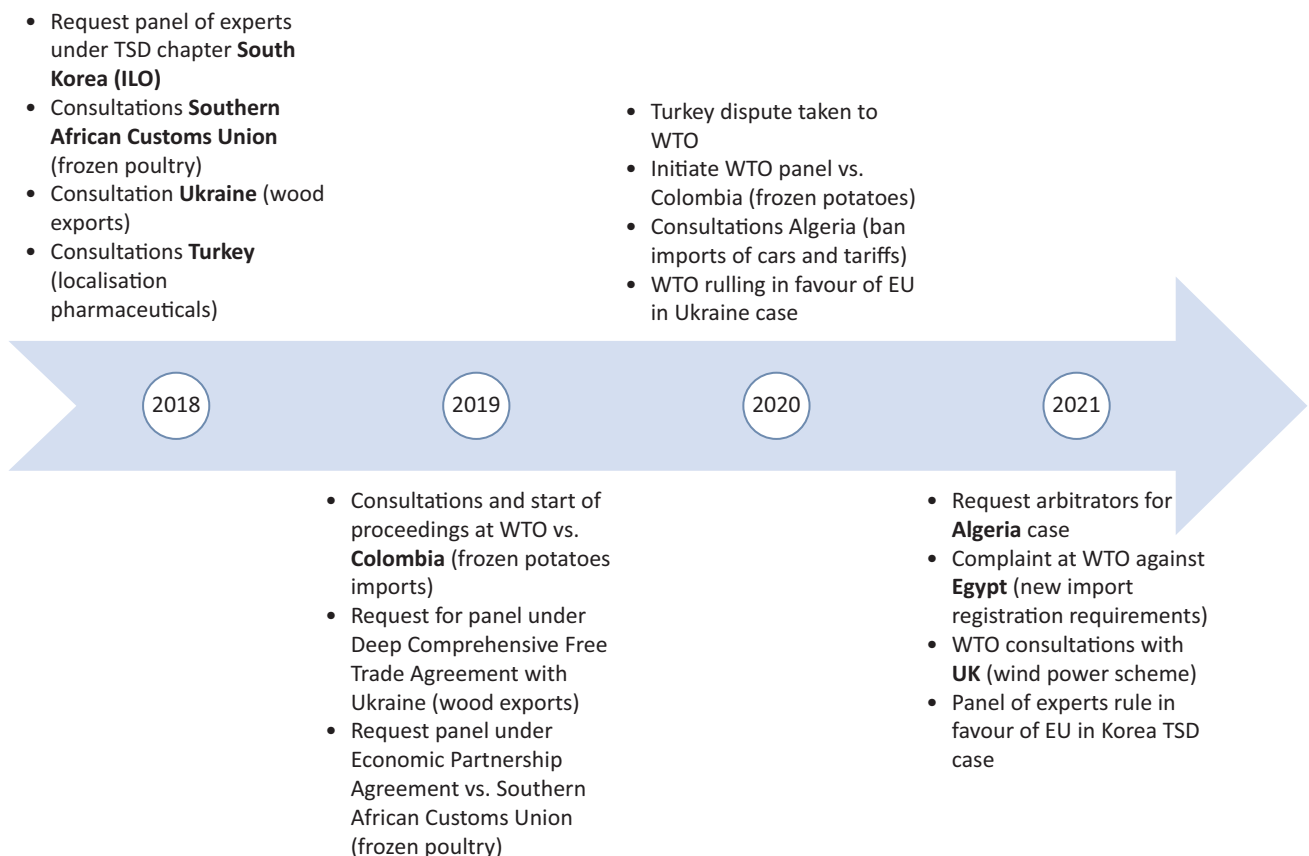


Figure 2. Disputes under EU PTAs.

consultations with Ukraine over its ban on the export of unprocessed wood. This continued to the establishment of an arbitration panel under the PTA the following year. The panel ruled in favour of the EU in December 2020; however, the implementation has been postponed due to the outbreak of war (European Commission Directorate-General for Trade, 2022). Crochet (2022) argues EU trade defence measures, like this one, are designed to guarantee EU access to raw materials, discouraging partners from processing goods themselves; it also represents a form of “extractivism.” As the EU’s own report admits during the time of the ban, Ukraine’s processed wood exports to China multiplied dramatically (European Commission Directorate-General for Trade, 2022).

In 2018, consultations were also requested under the Economic Partnership Agreement with the Southern African Customs Union over safeguards on the import of frozen poultry, leading to a request for a panel in 2019 and ongoing arbitration. In 2019, consultations were started at the WTO over Colombia’s ban on imports of frozen potatoes from some EU states; this led to the establishment of a panel the following year. In December 2022, the panel ruled in favour of the EU, and the EU and Colombia have agreed Colombia will implement changes in November 2023 (WTO, 2023). In 2018, the EU requested consultations at the WTO with Turkey over its localisation requirements for licensing of pharmaceutical products for the public health service, which could prevent imported drugs from being reimbursed and widely available. In 2020, the EU requested a panel at the WTO. In 2020, the EU requested consultations with Algeria over its ban on car imports and certain tariffs, and this proceeded to the panel stage in 2021, although the consultations did lead to the removal of over 100 tariffs (European Commission Directorate-General for Trade, 2022). In 2021, the EU started consultations at the WTO with Egypt over new import requirements. Pharmaceutical exports are amongst the EU’s top exports, and car exports, whilst less economically important, are also important to the EU economy and core EU states like Germany.

Using PTAs to ensure that existing market access is retained and moving to open dispute if an agreement cannot be reached in joint committees is unsurprising. What is more interesting about the cases relating to market access in goods is that some of these are of little economic value to the EU as a whole yet the EU has chosen to pursue these through dispute settlement (e.g., frozen potatoes from three EU member states to Colombia). In these cases, the EU is opting to proceed with disputes to ensure that partners implement all aspects of PTAs and to signal the intention to ensure that trade rules (both in PTAs and WTO) are complied with.

The symbolism of these actions is important, both domestically to show that the EU is implementing its own trade strategy and dispel criticisms from agricultural lobbies and civil society, as well as externally to

demonstrate to affected partners and others that the EU will not shy away from pursuing disputes to ensure that commitments in PTAs are enforced. It is also important to note that in most cases of PTAs affected where implementation challenges have ended up in disputes and not resolved within the discussions in the joint bodies (except the TCA), these were PTAs with states that are not dramatically important to the EU’s economy as a whole and in half of the cases (Algeria, Turkey, and Egypt) these are older PTAs covering a more limited scope and therefore creating fewer opportunities for issue-linkage in joint bodies. This aligns with expectations derived from Dür and Gastinger’s (2021, 2023) explanation of stronger joint bodies. In these last cases, commitment to the joint bodies is weaker as are the bodies’ powers and the inability to reach solutions within the joint bodies then triggers the initiation of disputes.

The 2021 consultations opened by the EU at the WTO with the UK under the post-Brexit TCA over the UK’s scheme to support wind power generation through tax refunds were successful and did not lead to arbitration (European Commission Directorate-General for Trade, 2022). The significance of opening a dispute (albeit in the early stages of one) was to demonstrate the willingness to ensure commitments are enforced properly. This was especially important given the fraught relationship between the UK and EU at the time over the Northern Ireland Protocol and disputes relating to that (see Murray & Robb, 2023). Given the interdependence of the relationship and strength of the joint bodies created in the TCA, it is surprising this was not resolved within the joint bodies; however, during the first year of the TCA, Prime Minister Johnson’s government’s virulent relationship with the EU over the Northern Ireland Protocol meant that the joint bodies did not operate as they should.

The final dispute has been under the TSD Chapter of the South Korea PTA. This dispute started in 2018 with consultations that led to a panel being established in 2019 under the TSD *sui generis* dispute settlement. This case was especially relevant as it was the first case brought under the scheme. It dovetailed in time with the implementation of the 15-point action plan on TSD implementation. Korea had not ratified the core ILO conventions, a substantive provision of the PTA (Durán, 2020, p. 1040), and its laws on trade unions ran counter to these and limited labour’s bargaining and association rights (see Van Roozendaal, 2017). The panel of experts agreed with the EU that Korea needed to make relevant changes to its laws, even if it was not gaining a trade advantage through its ILO-incompatible practices, and Korea subsequently changed its labour laws, ratified three out of the four outstanding ILO core conventions, and continues work to ratify the final one (European Commission Directorate-General for Trade, 2022). Nonetheless, it is important to note that the dispute was opened four years after stakeholder groups involved in monitoring the TSD chapter requested this action, and only once a more pro-labour government

under President Moon took office in 2017 and started to make reforms. The dispute, in fact, was triggered by a reversal of reforms. Nissen (2022) argues that in the dispute the EU focused on industries and workers that it would be most successful in getting South Korea to make reforms for, eschewing an opportunity to be more assertive in the dispute. Despite stakeholders' voiced concerns over violence against trade unionists in Colombia and certain labour practices in Vietnam, no consultations have been called with these partners to date. The PTA implementation reports do mention these and suggest satisfactory engagement and progress in regular discussions under the scope of the joint committee for TSD set-up by the PTAs and engagement in collaborative projects with these partners and the ILO, indicating that what appears to matter most is positive engagement within the joint committees and gradual improvements and that this can prevent formal disputes from arising.

6. Conclusions

This article contributes to the incipient literature on a more assertive trade policy by focusing on matters arising in the EU's implementation of PTAs. An analysis of European Commission PTA implementation reports reveals challenges to the implementation of PTAs. The Commission's key concerns tend to relate to the adoption and registration of EU geographic indicators, SPS barriers to agricultural exports, TBT matters, and access to public procurement markets. Most matters are eventually resolved within the regular discussions in the joint committees for implementation and monitoring of PTAs.

There have been few formal disputes brought under PTAs. However, what is clear is that these tend to occur when there is no engagement from the partner with EU concerns. In the cases that have been concluded, the EU has been successful (Ukraine wood export ban, Colombia ban on frozen potato imports, Korea ILO ratification), showing that the EU is not pursuing spurious cases but genuine breaches of PTA commitments. From 2019 onward, it is possible to observe an increase in disputes under PTAs. This dovetails in time with the changes in the international trade system, the undermining of the WTO by President Trump, and the start of discussions that led to the *2021 Trade Policy Review* and more assertive EU trade policy. The scarcity of cases and data to date (including a lack of details on the Chief Trade Enforcement Officer's caseload) poses challenges to determine with precision when the EU will trigger a dispute under a PTA. Further research once more cases are available and triangulation with materials from stakeholders would help to unpack more precisely the pressures leading to specific disputes.

Nonetheless, this article does present preliminary evidence that in line with findings relating to the design of joint bodies in international agreements (Dür & Gastinger, 2021, 2023), disagreements tend to be

resolved in joint bodies without leading to dispute settlement in more recent PTAs with broader scope, with economies with more interdependence with the EU, and more established democracies. These will be important variables to consider in future research on the workings of joint committees as more materials and testimonies from participants become available. Above all, this article advocates the value of focusing on the implementation of PTAs as part of the EU's broader agenda of assertive trade policy and of considering the symbolic importance of disputes. Most disputes relating to market access that the EU has instigated are of little economic relevance to the EU, but they serve to make the critical point that the EU will enforce its PTAs and demand respect for trade rules and commitments, which is the key message of the *2021 Trade Policy Review* and the *2023 Economic Security Strategy*.

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Conflict of Interests

The author declares no conflict of interests.

Supplementary Material

Supplementary material for this article is available online in the format provided by the author (unedited).

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About the Author



María J. García is an associate professor and head of the Department of Politics, Languages and International Studies at the University of Bath (UK). Her research focuses on EU trade policy and the political economy of free trade agreements. She is co-editor (with S. Khorana) of *Handbook of EU and Trade Policy* (2018, Edward Elgar) and (with A. Gómez-Arana) of *Latin America–EU Relations in the 21st Century* (2022, Manchester University Press), and a member of the UK’s Domestic Advisory Group for the implementation of labour and environment chapters in UK trade agreements.