

Research Article

Dissecting Trade Disputes between the European Union and Member States under the Jurisdiction of the WTO

Intan Innayatun Soepartha* 

Airlangga University, Indonesia

Diqa Qothrunnadaa Amanda Nur Sella 

Airlangga University, Indonesia

Baiq Elma Purnamawadita 

Airlangga University, Indonesia

Felicia Tanalina Ylma 

Airlangga University, Indonesia

Roberto Reyes Barrera 

Vrije Universiteit Brussels, Belgium

ABSTRACT: The European Union (EU) is a member of the World Trade Organization (WTO), and this membership operates in parallel with that of its individual member states. Within the WTO framework, the relationship between the EU and its members reflects a nuanced balance between supranational integration and the preservation of national sovereignty. This study examines that relationship by considering the EU both as a unified legal actor and as a collective of sovereign states. It focuses on the legal and practical implications of EU membership in the WTO, with particular attention to the dispute settlement mechanism, and analyzes how the EU and its member states assert their rights and fulfill their obligations within the multilateral trading system.

KEYWORDS: European Union, World Trade Organization, Dispute Settlement.

*Corresponding author, email: intan@fh.unair.ac.id

Submitted: 9 August 2024 | Reviewed: 26 March 2025 | Revised: 20 November 2025 | Accepted: 14 December 2025

I. INTRODUCTION

The European Union (hereinafter the EU) operates as a supranational organization in which its Member States voluntarily transfer portions of their sovereign authority to a collective entity whose decisions possess binding legal force.¹ As the only supranational union of its kind, the EU currently comprises 27 Member States, each of which is required to align its national legal system with supranational norms.² Consequently, national legal systems within the Member States are obligated to comply with EU legal rules. The EU Legal Order functions autonomously, grounded in the understanding that the EU's founding treaties extend beyond the scope of "ordinary international treaties." This distinct character grants EU Law a unique legal status, separate from conventional international law. As a result, EU Law governs the rights and obligations of Member States within the scope of its jurisdiction.

Its Member States confer the EU's supranational powers. Within the scope of these delegated competences, the EU exercises legislative, executive, and judicial functions independently. To the extent that authority has been transferred, EU law enjoys primacy over national law.³ This supranational structure distinguishes the EU from purely intergovernmental arrangements, in which state governments retain direct control over decision-making processes.⁴ The EU's decision-making authority derives from the deliberate delegation of powers from Member States to EU institutions within defined policy areas. Through this delegation, EU institutions are empowered to adopt binding decisions across a

¹ Virginie Mamadouh, "Beyond Nationalism: Three Visions of the European Union and Their Implications for the Linguistic Regime of its Institutions" (1999) 48:2 *GeoJournal* at 136.

² Rainer Bauböck, "Why European Citizenship? Normative Approaches to Supranational Union" (2017) 13:2 *Theoretical Inquiries in Law* at 457.

³ Lando Kirchmair, "EU Law and Member State Law" in *Rethinking the Relationship between International, EU and National Law: Consent-Based Monism* ASIL Studies in International Legal Theory (Cambridge: Cambridge University Press, 2024) at 195; See also, Mechthild Roos & David Howarth, "Pushing the Boundaries: New Research on the Activism of EU Supranational Institutions" (2017) 13:2 *Journal of Contemporary European Research* at 1014.

⁴ Ingolf Pernice & Katharina Pistor, "Institutional settlements for an enlarged European Union" in *Law and Governance in an Enlarged European Union: Essays in European Law* (Oxford: Hart Publishing, 2004) at 4 & 13.

wide range of functions, including legislative, executive, budgetary, appointment-related, and quasi-constitutional processes.⁵

The European Union (EU) and its Member States, as members of the World Trade Organization (hereinafter, the WTO), enjoy both rights and obligations under the WTO legal framework. Each WTO Member is required to ensure that its regulations and administrative practices conform to the WTO Agreements, as stipulated in Article XVI (4) of the Marrakesh Agreements Establishing the WTO. In this regard, the EU holds rights and obligations comparable to those of other WTO members.⁶ Within the EU legal framework, the general principles governing rights and obligations are set out in Articles 2 to 8 of the Treaty on European Union (TEU). Article 2 TEU affirms that the EU is founded on respect for human dignity, freedom, democracy, equality, the rule of law, and human rights. These values define both the rights of Member States and the normative boundaries within which EU action must operate. Accordingly, EU laws, regulations, and policies must avoid discrimination, intolerance, injustice, lack of solidarity, and inequality.

Article 3 TEU illustrates the objectives and actions through which the EU seeks to promote and protect these foundational values, thereby implying corresponding obligations for the Member States. More explicitly, Articles 4 and 5 TEU impose binding duties on Member States, requiring them to take all appropriate measures, whether general or specific, to ensure the fulfilment of obligations arising from the Treaties. In this sense, responsibilities flow directly from the rights guaranteed under EU law. Additionally, pursuant to Article 8 (2) TEU, the EU is empowered to establish agreements with neighboring countries that create reciprocal rights and obligations, extending its value-based legal approach beyond its internal legal order.

The EU holds membership in the WTO both autonomously in its own right and alongside its constituent Member States. Since 1 January 1995, the EU has been

⁵ European Parliament, “Supranational Decision-making Procedures” (2026), online: [www.europarl.europa.eu](https://www.europarl.europa.eu/factsheets/en/sheet/8/supranational-decision-making-procedures) <<https://www.europarl.europa.eu/factsheets/en/sheet/8/supranational-decision-making-procedures>> at 3.

⁶ Costin Horia Rogoveanu, “Features of WTO Dispute Settlement: The Standing of the EU” (2010) 10:3 Romanian Journal of European Affairs at 33.

an independent member of the WTO,⁷ which currently comprises 164 members.⁸ Notably, WTO membership is not limited to sovereign states; it also extends to separate customs territories that enjoy full autonomy in the conduct of their external commercial relations, such as Hong Kong, China; Macau, China; Chinese Taipei, and the EU itself.⁹ Both the EU and all 27 of its Member States are members of the WTO. This distinctive arrangement highlights the EU's unique status as a supranational entity within an international organization largely composed of sovereign states. The resulting duality of membership enhances the EU's capacity to shape global trade governance while reflecting its sustained commitment to promoting fair, transparent, and rules-based international trade

The EU's active engagement in the ongoing reform of the WTO, initiated at the Twelfth WTO Ministerial Conference in June 2022, reflects its commitment to preserving the organization's effectiveness and relevance in responding to the evolving challenges of global trade.¹⁰ Accession to the WTO involves a structured, multi-stage process that requires applicant countries to submit a formal application, disclose their existing trade regimes, and meet the conditions established by the relevant Accession Working Party. As a supranational union composed of 27 Member States, the EU has completed this process both in its own capacity and through the individual membership of each of its constituent states.¹¹ In practice, the EU acts as the EU's representative in WTO bodies, coordinating and advancing the collective interests of the Union and its Member States. This institutional arrangement ensures coherent representation and enables the EU to engage effectively in multilateral trade negotiations.¹²

As members of the WTO, EU Member States are required to comply with the rules and agreements that constitute the WTO legal framework. This includes

⁷ World Trade Organization (WTO), "The European Union and the WTO" (2009), online: *wto.org* <https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm>.

⁸ *Ibid.*

⁹ Peter Van den Bossche & Denise Prévost, *Essentials of WTO Law*, 2nd edn (Padstow: Cambridge University Press, 2021) at 21.

¹⁰ European Commission, "EU Calls for WTO to Address Current Policy Challenges through Focused Deliberation" (2023), online: *European External Action Service (EEAS) – Delegation to the World Trade Organization (WTO)* <https://www.eeas.europa.eu/delegations/world-trade-organization-wto/eu-calls-wto-address-current-policy-challenges-through-focused-deliberation_en>.

¹¹ European Commission, "The EU and the WTO" (2023), online: <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-and-wto_en>.

¹² *Ibid.*

adherence to the provisions of the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as well as other relevant WTO agreements.¹³ Member States are therefore obliged to implement these commitments within their domestic legal systems and to align their trade policies and practices with the objectives and disciplines of the WTO.¹⁴ In addition to the substantive compliance, the EU and its Member States are required to participate actively in the institutional processes of the WTO. This includes engagement in the Ministerial Conference, the General Council, and its subsidiary bodies,¹⁵ as well as participation in the Trade Policy Review Mechanism, through which their trade policies are subject to regular and systematic scrutiny.¹⁶

The WTO's dispute settlement mechanism, designed to resolve trade disputes among its members, applies to both the EU and its Member States. The EU has been actively involved in disputes covering nearly all stages of the WTO dispute settlement process and has participated both as a complainant and as a respondent. As a result, it ranks among the most frequent users of the system and has emerged as a central actor in WTO trade litigation.¹⁷ In practice, the EU acts as the representative authority in WTO dispute settlement proceedings, initiating and defending cases on behalf of the Union and its Member States. This role underscores the EU's institutional capacity to coordinate trade policy and to assert collective interests within the multilateral trading system.¹⁸

The paper examines the position of the EU and its Member States within the WTO dispute settlement system. It further analyzes the EU's legal and regulatory framework governing international trade and explores potential approaches for resolving disputes involving the EU or its Member States.

¹³ *Rights and Obligations of European Union Membership*, by HM Government (London, 2016) online: <<https://www.gov.uk/government/publications/rights-and-obligations-of-european-union-membership>> at 85.

¹⁴ World Trade Organization (WTO), *supra* note 7.

¹⁵ Piet Eeckhout, "The EU and Its Member States in the WTO—Issues of Responsibility" in *Regional Trade Agreements and the WTO Legal System*, by Iorand Bartels and Federico Ortino edn (Oxford: Oxford University Press, 2006) at 20.

¹⁶ *Ibid.*

¹⁷ Rogoveanu, *supra* note 6.

¹⁸ Bossche and Prevost, *supra* note 9.

II. METHODOLOGY

This article analyses trade disputes involving the EU and its Member States under the WTO framework. The study focuses on two main issues: the mechanisms for resolving trade disputes involving EU Member States and the role of the EU, as a supranational entity, in shaping and implementing the trade policies of its Member States. The research adopts a normative legal research approach to examine the complex legal relationship between the EU and its Member States in the context of WTO rules and dispute settlement mechanisms. The analysis draws on primary legal materials, including WTO treaties, agreements, and regulations, as well as the internal legal instruments of the EU and relevant national laws of its Member States. Secondary sources, such as international agreements and scholarly legal literature, are also used to support the analysis.

III. EU REGULATIONS UNDER INTERNATIONAL TRADE

A. The Diplomatic Machinery of the EU within the WTO

The European Community (EC) became an original member of the WTO in 1995, following its longstanding de facto participation in the General Agreement on Tariffs and Trade (GATT). This transitioned the EC's extensive and, in key areas, exclusive competences in trade policy.¹⁹ Pursuant to Article XI of the Marrakesh Agreement Establishing the WTO, all contracting parties to GATT 1947, including the EC and its Member States, automatically acquired original WTO membership, without the need for a formal declaration of competence. Within the WTO's institutional framework, each member is entitled to one vote. In this context, the EC's voting rights correspond to the number of its Member States that are also WTO members, subject to the limits prescribed by WTO rules.²⁰

Following the entry into force of the Treaty of Lisbon, the EU formally succeeded the EC as a member of the WTO. The treaty consolidated authority over international trade matters at the EU level, with the European Commission

¹⁹ Ernst-Ulrich Petersmann, *The Transformation of the World Trading System through the 1994 Agreement Establishing the World Trade Organization* (1995) *European Journal of International Law* at 168.

²⁰ *Marrakesh Agreement Establishing the World Trade Organization* [1994] Article XVI.

acting as the primary representative of the Union's interests in WTO proceedings. In practice, the designated EU representative speaks on behalf of all Member States, regardless of whether individual Member States are present. In the context of WTO dispute settlement, the EU's Legal Service assumes responsibility for defending the EU and its Member States in proceedings brought against them.²¹ This institutional arrangement reflects the post-Lisbon consolidation of external trade competence and reinforces the EU's capacity to act as a unified actor within the WTO system.

Negotiations within the WTO are conducted by the EU Commission on behalf of the EU, with coordination ensured through the Trade Policy Committee (Article 133 Committee),²² adhering to guidelines set by the Council of Ministers. The Commission regularly informs the European Parliament of significant developments in WTO negotiations. To conclude WTO agreements on behalf of the EU, the Commission must obtain formal authorization from both the Council and the European Parliament, after which ratification by the Council of Ministers generally requires a qualified majority vote. Following the entry into force of the Treaty of Lisbon, the European Parliament's role in the treaty-making process has been strengthened, requiring its consent before the final adoption of such agreements.²³ Taken together, the negotiation process in Geneva illustrates the complexity of EU diplomacy within the WTO. It demands close coordination among EU institutions and Member States, as well as the effective deployment of the Commission's legal, technical, and diplomatic expertise.²⁴

B. Regulatory Framework of the European Union in the Global Trade

The EU has adopted a wide range of regulations and policy instruments to govern and promote international trade. These measures are designed to ensure fair and equitable trading conditions, protect EU producers and enterprises from unfair

²¹ Julija Brsakoska Bazerkoska, "The European Union and the World Trade Organisation: Problems and Challenges" (2011) 7:7 *Croatian Yearbook of European Law and Policy* at 281.

²² Committee was provided in *Treaty Establishing the European Community (TEC)* [1957] Article 133.

²³ *Treaty on the Functioning of the European Union (TFEU)* [1992] Article 218.

²⁴ Bazerkoska, *supra* note 21.

competition, and advance the EU's economic interests in global markets.²⁵ As a participant in the WTO, both the EU, as a legal entity, and its Member States, in their individual capacities, are bound by the WTO's legal framework. The EU functions as a customs union with a common trade policy and unified external tariff, while its Member States simultaneously retain WTO membership in their sovereign capacities.²⁶ This dual structure requires both the EU and its Member States to comply fully with WTO rules, principles, and multilateral trade agreements.²⁷ The interaction between EU trade regulation and WTO obligations thus reflects the need for coherence between supranational governance and multilateral trade disciplines.

The Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU) together constitute the constitutional foundation of the EU, defining its objectives and competences in the field of international trade. The TFEU sets out the framework of the Common Commercial Policy (CCP) in Part Five, in particular Articles 206 and 207 (formerly Article 133 TEC).²⁸ These provisions confer exclusive competence enables the EU to act as a single actor in international trade agreements on behalf of its Member States, as affirmed by Article 3(1)(e) TFEU.²⁹ This exclusive competence enables the EU to act as a single actor in international trade negotiations, promoting coherence and consistency in its external trade relations. Articles 206 and 207 TFEU also provide the legal basis for the customs union and for trade defense instruments, which constitute core components of the EU's trade policy framework.³⁰

The overarching objective of the European Union's Common Commercial Policy (CCP) is articulated in the preamble to the TFEU, which emphasizes the contribution of a unified commercial policy to the progressive removal of barriers

²⁵ HKTDC Research, "Trade Regulations of the EU" (2022), online: *HKTDC Research* <<https://research.hktdc.com/en/article/MzM0NTYwOTQx>>.

²⁶ UK Parliament, "Trade under WTO Rules" (2016), online: *UK Parliament Publications* <<https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/72/7209.htm>>.

²⁷ European Commission, *supra* note 11.

²⁸ Friedrich Erlbacher & Tim Maxian Rusche, "Article 207 TFEU" in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin edn (Oxford University Press, 2019) at 1585.

²⁹ *Consolidated Version of the Treaty on European Union* [2020] Article 3.

³⁰ European Commission, "EU Trade Relationships by Country/Region: Making Trade Policy" (2023), online: *European Commission – Trade Policy* <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/making-trade-policy_en>.

to international trade.³¹ This CCP also forms an integral part of the EU's external action, as it is directed primarily toward relations with third countries rather than intra-EU interactions among Member States.³² The EU's trade policy, as set out in Article 207 of the TFEU, establishes the legal framework for the common commercial policy, including the negotiation and conclusion of international trade agreements.³³ This framework is closely aligned with the EU's obligations under the WTO.³⁴ This policy is guided by principles aimed at promoting open and fair trade, supporting sustainable development, and protecting the legitimate interests of EU businesses and industries. In implementing its trade policy, the EU structures its regulatory measures in accordance with core WTO agreements and principles, notably the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Compliance with WTO commitments is reflected in the EU's adherence to tariff bindings, the principle of non-discrimination, including Most-Favored-Nation treatment, and transparency requirements.³⁵

Operationalizing the EU's trade policy relies on a range of instruments, such as:

1. Negotiation and Conclusion of International Trade Agreements.

Acting as a unified economic actor, the EU negotiates trade agreements with non-EU countries and regional blocs to facilitate market access and reduce trade barriers, both within and beyond the framework of WTO. These agreements typically address tariff reductions, intellectual property protection, and increasingly, sustainability and human rights commitments.³⁶ Free Trade Agreement (FTA) and Comprehensive Economic Partnership (CEP) agreements have thus become central pillars of the EU's external

³¹ Youri Devuyst, "The European Union's Competence in International Trade After the Treaty of Lisbon" (2011) 39 *The Georgia Journal of International and Comparative Law* at 650.

³² Piet Eeckhout, "EU External Relations Law" in *Oxford EU Law Library* (Oxford: Oxford University Press, 2011) at 222.

³³ Robert Schütze, *External Powers: Competences and Procedures* (Cambridge: Cambridge University Press, 2018) at 199.

³⁴ Antonis Antoniadis, "The European Union and WTO Law: A Nexus of Reactive, Coactive, and Proactive Approaches" (2007) 6:1 *World Trade Review* at 45.

³⁵ Piet Eeckhout, "Judicial Enforcement of WTO Law in the European Union – Some Further Reflections" (2002) 5:1 *Journal of International Economic Law* at 99.

³⁶ Diana Panke, "Communicative Power Europe? How the EU Copes with Opposition in International Negotiations" (2014) 19:3 *European Foreign Affairs Review* at 360.

relations and economic strategy. To date, the EU has concluded 46 trade agreements, including 45 agreements with third countries or regional trade areas, alongside the internal free trade agreements among its Member States. In addition, negotiations are ongoing with several partners, including Australia, India, and Indonesia.³⁷ A core objective of these agreements is the reduction or elimination of tariffs, in line with WTO principles aimed at trade liberalization. Tariff commitments are often implemented gradually over transitional periods. Beyond tariffs, EU trade negotiations address non-tariff barriers such as complex customs processes, restrictive technical regulations, licensing requirements, and discriminatory sanitary and phytosanitary (SPS) measures affecting food, animal, and plant health. Efforts in these areas commonly seek to enhance regulatory cooperation, promote standards alignment, or establish mutual recognition frameworks. In recent years, the EU has further refined its trade policy through the development of so-called 'new generation' FTAs, which extend beyond traditional market-access objectives to incorporate a strong commitment to sustainable development. Central to this approach are comprehensive Trade and Sustainable Development (TSD) chapters, which embed binding commitments to international labour standards, as reflected in International Labour Organization (ILO) conventions, and to environmental protection, including obligations under multilateral environmental agreements (MEAs) and the Paris Agreement. These chapters also establish institutional mechanisms for dialogue, monitoring, and civil society participation, such as dedicated committees and Domestic Advisory Groups, and increasingly address issues related to corporate social responsibility and responsible supply chains. Through this integration of these TSD provisions, the EU leverages its trade policy and market access to promote higher social and environmental standards globally, reflecting the Union's core values and its ambition to ensure that the benefits of trade contribute meaningfully to

³⁷ European Parliament (Directorate-General for Communication), "The EU's position in world trade in figures (infographic)" (2018), online: *European Parliament – International Trade* <<https://www.europarl.europa.eu/topics/en/article/20180703STO07132/the-eu-s-position-in-world-trade-in-figures-infographic>>.

sustainable development, notwithstanding ongoing debates over the most effective enforcement mechanisms.³⁸

2. Trade Defense Instruments (TDIs).

The EU employs trade defense instruments (TDIs), including anti-dumping, countervailing (anti-subsidy), and safeguard measures, in accordance with WTO disciplines while safeguarding the legitimate economic interests of the EU.³⁹ Trade defense constitutes one of the most congested areas of international trade policy, reflecting the inherent tension between trade liberalization and the protection of domestic industries. Under the WTO framework, instruments such as anti-dumping and countervailing measures permit members to impose duties exceeding their bound tariff rates, that is, the maximum tariff committed under their WTO schedules, on goods deemed to be unfairly traded.⁴⁰ Consistent with these rules, the EU's TDIs authorize the European Commission to investigate and address injurious dumping or subsidization by imposing additional duties where warranted. In practice, these measures are applied across a wide range of sectors and, in some instances, even against trading partners with which the EU has concluded free trade agreements. For example, in 2017, the EU maintained 99 anti-dumping measures and 13 countervailing measures in force. Because such duties increase the cost of imported goods, their frequent use has made them a recurrent subject of litigation before the WTO's Dispute Settlement Body (DSB).⁴¹

3. Addressing Trade Barriers in External Markets.

The EU seeks to identify and eliminate trade barriers encountered by EU firms in markets outside the Union by fostering close cooperation among the European Commission, Member States, and the business community.⁴² This coordinated approach aims to facilitate fair market access and to

³⁸ Wybe Th Douma, "The Promotion of Sustainable Development through EU Trade Instruments" (2017) 28:2 *European Business Law Review* at 198.

³⁹ Vladas Rimkus, *Trade Defence in European Union* (Ternopil: Ternopil Ivan Pul'uj National Technical University, 2014) at 42 & 48.

⁴⁰ Victor Crochet, "Trade Defence Instruments: A New Tool for the European Union's Extractivism" (2022) 33:2 *European Journal of International Law* at 388.

⁴¹ Pieter Van Vaerenbergh, "The Role of Trade Defence Instruments in EU Trade Agreements: Theory versus Practice" (2018) 21:2 *ZEuS – Zeitschrift für Europarechtliche Studien* at 217.

⁴² Paola Mariani, "The EU Market in Times of a Global State of Emergency: Internal and External Trade Barriers in the Age of Pandemics" (2021) 48:1 *Legal Issues of Economic Integration* at 6.

safeguard the competitiveness of EU economic operators abroad. In pursuing these objectives, the EU adopts differentiated strategies that respond to the specific circumstances of its external trade relations, including periods of global disruption. The COVID-19 pandemic illustrates this adaptive of EU trade policy. During the crisis, the European Commission introduced an export authorization scheme designed to regulate, and where necessary restrict, exports of certain goods from the EU. The primary objective of this measure was to secure adequate supplies of essential products within the Union and to protect public health. As such, it represents a defensive, internally oriented response, departing from the EU's customary outward-looking strategy of opening foreign markets. The implementation of this EU-level scheme required close coordination between the Commission and Member States to ensure effective and proportionate control.⁴³ Pandemic-related export controls demonstrate that EU trade instruments are inherently context-specific. These measures differed markedly from the EU's standard Market Access Strategy (MAS) and Market Access Partnership (MAP), which typically focus on proactively assisting EU firms in overcoming external trade barriers through diplomatic engagement, dispute settlement, and cooperation with partner countries. The pandemic thus necessitated a temporary shift away from the EU's usual market-opening approach.⁴⁴ This experience highlights the complexity of EU trade policy, which must address multiple forms of trade barriers, whether they hinder EU exports abroad,⁴⁵ restrict exports from the Union, limit imports into the EU, or even arise within the internal market. Identifying the nature and direction of a given barrier is therefore essential to determine the appropriate policy response, whether through instruments such as the MAS or MAP or regulatory mechanisms like the Trade Barriers Regulation aimed at addressing unfair foreign trade practices.⁴⁶

4. Facilitating International Commercial Transactions (Export Credits).

⁴³ *Ibid.*

⁴⁴ European Commission, "Accessing Markets – EU Trade – European Union" (2025), online: *European Commission – Trade Policy* <https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets_en>.

⁴⁵ European Commission, "Trade Barriers" (2025), online: *Access2Markets – European Commission* <<https://trade.ec.europa.eu/access-to-markets/en/content/trade-barriers>>.

⁴⁶ Robert Macdonald Maclean, *EU Trade Barrier Regulation: Tackling Unfair Foreign Trade Practices* (UK: Thomson, Sweet & Maxwell, 2006) at 24.

The EU participates in international initiatives governing export finance, most notably the OECD Arrangement on Officially Supported Export Credits, with the aim of promoting fair competition and ensuring a level playing field in the provision of export credits.⁴⁷ Through its engagement in this framework, the EU seeks to support European exporters while preventing competitive distortions arising from preferential state-backed financing. The Arrangement has been incorporated into EU law through Council Decision 2001/76/EC and Regulation (EU) No 1233/2011, underscoring its central role in the EU's export credit policy.⁴⁸ The core objective of the OECD Arrangement is to foster fair competition in international trade by limiting the trade-distorting effects of government support in export financing. Its underlying principle is that exporters should compete primarily based on product quality and price, rather than on the attractiveness of subsidized credit terms. To this end, the Arrangement establishes disciplines on key elements of export credits, including maximum repayment periods, minimum interest rates, and minimum insurance premium requirements.⁴⁹

5. Active WTO Engagement.

The EU actively engages in the work of the WTO to influence the development of global trade rules and to address trade barriers among WTO members. This engagement includes participation in multilateral negotiations, such as the Doha Development Round, as well as the strategic use of the WTO Dispute Settlement Mechanism (DSM) to resolve trade disputes.⁵⁰ The EU is a central actor within the WTO and regards the multilateral trading system as indispensable for the effective governance of global trade. The EU places particular value on the WTO's comprehensive framework of rules and procedures, often described as "thick institutionalism", which enhances transparency, fosters dialogue, and provides predictability in international trade relations. Among the WTO's

⁴⁷ Kamala Dawar, "EU Export Credit Agencies: Assessing Compliance with EU Objectives and Obligations" (2020) 4:2 *European Union's Horizon* at 5 & 9.

⁴⁸ *Aligning European Export Credit Agencies with EU Policy Goals*, by Lukas Schlögl, David Pfaffenbichler & Werner Raza (Brussels: European Parliament – Directorate-General for External Policies of the Union, 2024) at 9.

⁴⁹ *Ibid.*

⁵⁰ Silke Trommer, "The WTO in an Era of Preferential Trade Agreements: Thick and Thin Institutions in Global Trade Governance" (2017) 16:3 *World Trade Review* at 501.

core functions, the DSM occupies a position of special importance for the EU. The Union's substantial institutional presence in Geneva enables it to make extensive use of this mechanism.⁵¹ The availability of an impartial and binding system for the enforcement of trade rules is viewed as a key strength of the WTO, offering legal certainty and stability for EU traders and investors.

6. Exclusive EU Competence.

Trade policy falls within the exclusive competence of the EU, empowering the EU to legislate in this field and to conclude international trade agreements to the exclusion of individual Member State actions.⁵² Article 3 TFEU expressly confers exclusive competence on the EU in relation to the customs union and the Common Commercial Policy (CCP). This is reinforced by Article 2(1) TFEU, which provides that, in areas of exclusive competence, only the EU may legislate and adopt legally binding acts, while Member States may act solely if so authorized by the EU or for the purpose of implementing EU law. These explicit allocations of competence provide greater legal clarity than reliance on the more contested doctrine of implied powers.⁵³ The legal foundation of the EU's external trade relations is thus firmly anchored in the Common Commercial Policy (CCP) as set out in Article 207 TFEU.⁵⁴ Over time, the scope of the CCP has expanded significantly, driven by the deepening of the internal market and transformations in the global trading system. Initially focused primarily on trade in goods under the Treaty of Rome, the CCP's mandate was progressively extended, with the Treaty of Lisbon incorporating trade in services, the commercial aspects of intellectual property rights, and foreign direct investment.⁵⁵ As a result, the TFEU aligns the scope of the CCP more closely with the WTO governing trade in goods, services, and intellectual property. This development completed a gradual process of competence

⁵¹ *Ibid.*

⁵² Clair Gammage, "EU International Relations Law: The Power to Conclude International Trade Agreements" in *Handbook on the EU and International Trade*, by sangeeta khorana and maria garcía edn (UK: Elgar Online (Edward Elgar Publishing), 2018) at 36.

⁵³ Marcus Klamert, "A Primer on Union Competences" in *The Principle of Loyalty in EU Law* (UK: Oxford University Press, 2014) at 144.

⁵⁴ Gammage, *supra* note 52.

⁵⁵ Sophie Meunier & Kalypso Nicolaïdis, "Who Speaks for Europe? The Delegation of Trade Authority in the European Union" (1999) 37:3 *Journal of Common Market Studies* at 479.

consolidation and provided far greater legal certainty than the more ambiguous treaty formulations found in earlier instruments, such as the Amsterdam and Nice Treaties. Although special voting arrangements continue to apply to certain categories of trade agreements, the TFEU ultimately grants the EU full competence over services and intellectual property rights, equivalent to its authority in goods trade. This evolution reflects a distinctive form of "constitutional dialogue", in which Member States formally accept acknowledged an established institutional reality, namely the European Commission's central role in conducting trade policy, built on decades of technical expertise and sustained participation in the GATT/WTO system, even where earlier case law might have supported a degree of shared or residual Member State competence.⁵⁶

7. Role of the Council and European Parliament.

The Council of the EU plays a central role in the EU's trade policy architecture by authorizing the European Commission to negotiate international trade agreements on the Union's behalf and by adopting the decisions required for their signing and conclusion. Once negotiations are completed, the European Parliament (EP) exercises its role by granting or withholding consent to the negotiated agreements.⁵⁷ This institutional framework for the negotiation and approval of EU trade agreements underwent a significant transformation with the entry into force of the Lisbon Treaty. The treaty markedly strengthened the position of the EP, placing it alongside the Council and the Commission as a key actor in the EU trade governance. Prior to Lisbon, the Parliament's involvement was largely consultative, while substantive control rested with the Commission, as the chief negotiator, and the Council, which set negotiating mandates, oversaw the negotiation process, and concluded agreements. Although the EP could exert informal political influence, it lacked formal authority over the content of most trade agreements. Following the Lisbon reforms, the Parliament's power of consent has become a decisive element in the trade

⁵⁶ Piet Eeckhout, "Exclusive External Competences: Constructing the EU as an International Actor" in *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, by Allan Rosas, Egils Levits, and Yves Bot edn (The Hague: Asser Press, 2013) at 615.

⁵⁷ Lore Van den Putte, Ferdi De Ville & Jan Orbie, "The European Parliament as an International Actor in Trade: From Power to Impact" in *The European Parliament and Its International Relations*, by Stelios Stavridis and Daniela Irrera edn (London: Routledge, 2015) at 52 & 57.

policy process. This enhanced role grants the EP substantial leverage throughout the entire negotiation cycle, as both the Commission and the Council must take parliamentary preferences into account from an early stage to secure final ratification.⁵⁸ As a result, EU trade negotiations have become more politically visible and institutionally balanced, reflecting a broader shift toward increased democratic accountability in the Union's external economic relations.

8. Trade Policy Review.

The EU regularly reviews its trade policy to ensure alignment with its strategic interests and to maintain responsiveness to changing global trade conditions.⁵⁹ Rather than treating trade policy as a fixed set of rules, the EU approaches it as a dynamic and evolving framework that requires ongoing evaluation and adjustment. This systematic review process serves two primary purposes. First, it ensures that the EU's trade remains closely aligned with a broad range of Union interests. These include core economic objectives, such as promoting economic growth, job creation, and the competitiveness of European industries, while safeguarding consumer welfare through fair prices and choice, as well as wider strategic priorities. The latter increasingly encompasses strengthening the EU's strategic autonomy, securing resilient and reliable supply chains for critical goods, and advancing EU values globally, including democracy, human rights, labor standards, and environmental protection. Second, regular trade policy reviews are essential for preserving the EU's capacity to adapt to rapidly evolving global trade dynamics and geopolitical developments. The international trade environment is being reshaped by the rise of new economic powers, of the accelerating digitalization of commerce, the growing importance of services trade, intensifying geopolitical competition, the pressing challenge of climate change, heightened expectations regarding sustainable development, and recent disruptions that have exposed vulnerabilities in global supply chains. In response, the EU may revise

⁵⁸ Marta Migliorati & Valerio Vignoli, "When Politicization Meets Ideology: The European Parliament and Free Trade Agreements" (2022) 52:3 *Italian Political Science Review / Rivista Italiana di Scienza Politica* at 350 & 361.

⁵⁹ Lars Nilsson, "The European Commission's Role in Trade Policy" in *Handbook on the EU and International Trade*, by sangeeta khorana and maria garcía edn (UK: Edward Elgar Publishing, 2018) at 79 & 90.

negotiating mandates, introduce new thematic chapters, such as those addressing digital trade, energy security, or access to raw materials, strengthen existing provisions, particularly in the area of Trade and Sustainable Development, or develop new policy instruments. Through this adaptive approach, the EU seeks to ensure that its trade policy remains effective, credible, and fit for purpose in an increasingly complex global context.

C. The Jurisdiction of the Court of Justice of the European Union (CJEU) in the European Union's Membership of the World Trade Organization (WTO)

The approach of the CJEU to WTO rules and decisions broader questions concerning the incorporation of international law into the EU legal order, particularly with regard to their application and enforceability within EU jurisdiction. Although the EU treaties do not expressly regulate the supremacy of international agreements, beyond affirming their binding nature, their domestic legal effects have largely been shaped through judicial interpretation.⁶⁰ In situations where international agreements are silent on their internal applicability, it is the CJEU that determines whether and how such agreements may be invoked within the EU legal framework.⁶¹ Historically, the CJEU has generally recognized and accorded direct legal effect to a wide range of international agreements, particularly trade and cooperation agreements. Notably exceptions, however, have been made for certain multilateral regimes, including the WTO and its predecessor, the GATT 1947, as well as the United Nations Convention on the Law of the Sea UNCLOS.⁶² In cases involving WTO law, the Court has consistently maintained that WTO agreements do not, as a rule, constitute a standard for reviewing the legality of EU measures.

As a customs territory, the EU holds WTO membership in its own right, alongside the individual membership of its Member States. Although the Member

⁶⁰ TFEU, *supra* note 2, Art. 216 (2) provides: 'Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.'

⁶¹ Case C-104/81, *Hauptzollamt Mainz v CA Kupferberg & Cie*, [1982] ECR 3641 .

⁶² Joint Case 21/72 and 24/72, *International Fruit Company NV and Others v Produktschap voor Groenten en Fruit*, [1972] ECR 1219 ; *Portuguese Republic v Council of the European Union*, [1999] ECR I-8395 ; *Intertanko and Others v Secretary of State for Transport*, [2008] ECR I-4057 ; *General Agreement on Tariffs and Trade*, 55 UNTS 194, 1994; *United Nations Convention on the Law of the Sea*, 1833 UNTS 3, 1982.

States coordinate their positions within the WTO framework, the European Commission singularly acts as the primary representative of both the EU and its Member States in most WTO activities, including dispute proceedings. In this capacity, the Commission serves as the principal negotiating authority for the Union in WTO fora, while the Council of the European Union represents the interests of Member States' governments by defining and overseeing the Union's negotiating mandate. Within this institutional context, the Court of Justice of the European Union (CJEU) performs a dual function. It operates, on the one hand, as the EU's internal judicial authority responsible for ensuring the consistency and legality of Union action, and, on the other hand, as a forum in which trade-related disputes may be adjudicated at the EU level, alongside, though distinct from the WTO Dispute Settlement Mechanism (DSM). The interaction between the DSMs established under regional trade agreements (RTAs) and that of the WTO remains a contested and unresolved issue in international economic law.⁶³

Regarding the CJEU, jurisdictional conflicts between RTAs and the WTO do not arise in the same manner. Such conflicts typically stem from overlapping jurisdiction over identical or closely related subject matter. In the EU–WTO context, however, this risk is substantially mitigated by the CJEU's established "jurisdictional monopoly" over disputes between EU Member States.⁶⁴ Article 344 of the Treaty on the Functioning of the European Union (TFEU) expressly confers exclusive jurisdiction on the CJEU in disputes concerning the interpretation or application of the EU treaties.⁶⁵ This principle was reaffirmed in the MOX Plant case, in which the Court held that Member States are precluded from submitting such disputes to external dispute settlement mechanisms established under international conventions.⁶⁶ that the Court's position is grounded in the view that provisions of international agreements falling within

⁶³ Joined cases C-120/06 P and C-121/06 P, *FLAMM and Others v Council and Commission*, [2008] ECR I-6513, para. 120.

⁶⁴ Mackel, "Article 292 (ex-article 219)" in *Commentaire article par article des traités UE et CE*, by p. léger edn (2000) at 1874; In similar words, see also, K Lasok & D Lasok, *Law and Institutions of the European Union* (2001) at 80.

⁶⁵ *Robert Wieschemann v Commission of the European Communities*, [1991] ECR I-6079, para. 35; *Opinion pursuant to Article 300(6) EC*, [2002] ECR I-3493, para. 11 & 12.

⁶⁶ Case C-459/03, *Commission of the European Communities v Ireland*, [2006] ECR I-4635 .

EU competence form an integral part of the EU legal order and therefore remain subject to the CJEU's exclusive judicial authority.

Since the entry into force of the Treaty of Lisbon, the EU's exclusive competence in WTO-related matters has been firmly established.⁶⁷ Consequently, unlike many RTAs, the EU does not encounter significant jurisdictional conflicts regarding WTO issues. This is due to the EU's exclusive authority over the Common Commercial Policy, combined with the CJEU's judicial monopoly, effectively precluding jurisdictional overlap in the EU–WTO context.⁶⁸

The CJEU performs a dual function in relation to WTO adjudication.⁶⁹ First, it acts as a domestic court, interpreting and applying EU law, which is treated as municipal law in proceedings before the WTO Dispute Settlement Mechanism (DSM). In this capacity, CJEU's judgments may serve as evidentiary material, assisting WTO panels in clarifying the content and interpretation of the domestic law at issue. Second, the CJEU may also be regarded as an international judicial body whose jurisprudence can carry persuasive authority in trade-related disputes. WTO panels and the Appellate Body have frequently drawn on external judicial decisions, including those of the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ), as sources of guidance and interpretative support. Such judicial cross-referencing reflects a broader practice within WTO dispute settlement of engaging with non-WTO legal sources, particularly principles of public international law.⁷⁰ This dual character of the CJEU results in nuanced and context-dependent approach by WTO panels and the Appellate Body when assessing the relevance and weight of CJEU case law in WTO proceedings.

The interaction between the CJEU and the World Trade Organization Dispute Settlement Mechanism (WTO DSM) has attracted sustained scholarly attention, particularly with regard to how each system engages with the decisions of the

⁶⁷ TFEU, *supra* note 2, Art. 3, 207. *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, OJ 2007 C 306, 2007.

⁶⁸ Michelle Q Zang, “Shall We Talk? Judicial Communication between the CJEU and WTO Dispute Settlement” (2017) 28:1 *European Journal of International Law* at 273-274.

⁶⁹ *Ibid.*

⁷⁰ Joost Pauwelyn, “The Role of Public International Law in the WTO: How Far Can We Go?” (2001) 95:3 *American Journal of International Law* at 499 & 510.

other.. As a general rule, the CJEU does not accord WTO rulings direct effect within the EU legal order, unless it has determined that the specific WTO provisions at issue are directly effective. This judicial posture significantly reduces the risk of jurisdictional conflict between regional trade agreements (RTAs) and the WTO in the EU-WTO context, given the EU's exclusive competence in trade matters and the CJEU's jurisdictional monopoly. In this setting, the CJEU operates simultaneously as the EU's domestic court and as a judicial actor whose case law may be relevant in international trade adjudication at the WTO. The nature of the dialogue between the CJEU and the WTO DSM is therefore shaped by their respective approaches to WTO rules and rulings, in which in turn influence the form, scope, and intensity of their judicial engagement. As a result, their modes of interaction remain distinct and asymmetrical, reflecting the structural differences between the two legal orders.⁷¹

IV. REGULATORY FRAMEWORK FOR INTERNATIONAL TRADE MEASURES FOR THE EU MEMBER STATE

A. Complexity of Aligning National Laws with WTO Agreements

The European Union (EU) has developed a comprehensive system of product legislation that seeks to balance national regulatory autonomy with the need for harmonization among Member States. This balance is essential to ensure a level playing field and facilitate trade both within the EU and with third countries. Aligning national regulatory frameworks with WTO obligations presents a particular challenge, as domestic laws and policies must comply with the multilateral trade rules and principles established at the WTO level.⁷² Core WTO agreements, including the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS), provide the foundational framework for international trade by regulating tariffs, subsidies, and other trade-related practices. These agreements are complemented by the WTO dispute settlement system, which offers a structured mechanism for

⁷¹ Gina Orga Dumitriu, "CJEU and WTO Dispute Settlement Mechanism – Convergence or Divergence?" (2021) 1:1 *Adjuris – International Academic Publisher* at 23.

⁷² Anne Thies, *International Trade Disputes and EU Liability* (Cambridge: Cambridge University Press, 2013) at 81.

resolving trade disputes among Members through the WTO Dispute Settlement Body (DSB).

Harmonization represents a key method of legal integration within the European Union, aiming to align national regulatory frameworks while preserving a degree of legislative autonomy for Member States. Through this process, the Union establishes core legal principles, which Member States subsequently implement through domestic legislation. Unlike full legal unification, harmonization does not impose uniform rules; rather, it promotes convergence by creating functional equivalence between national legal systems and EU law. This approach allows for diversity in legal form and technique while ensuring consistency in regulatory outcomes.⁷³ EU directives serve as the principal legislative instruments of harmonization. They set binding objectives that Member States are required to achieve, while leaving discretion over the choice of form and methods of implementation to national authorities. This mechanism is expressly provided for in Article 288 of the Treaty on the Functioning of the EU (formerly Article 249 TEC), "Directive shall be binding upon each Member State to which it is addressed, as to the result to be achieved, but shall leave the choice of form and methods to the national authorities."⁷⁴

1. Coordination between the EU and its Member States

The European Community established a structured procedure for the negotiation and conclusion of international agreements on its behalf.⁷⁵ Its treaty-making powers are confined to areas in which the Treaty provides for the conclusion of agreements between the community and one or more states international organizations.” The relationship between international and domestic legal systems, long examined through the lens of the monist-dualist debate, highlights the conceptual independence of these legal orders.⁷⁶ In this understanding, international law and national law operate as distinct legal systems, each

⁷³ Tatiana Ruban, “EU Harmonization Within the Law of WTO” (2014) 1:2 *Intereulaweast* at 125 .

⁷⁴ *Ibid.*

⁷⁵ TFEU, *supra* note 2, Art. 300.

⁷⁶ Sharif Bhuiyan, *National Law in WTO Law (Effectiveness and Good Governance in the World Trading System)* (Cambridge: Cambridge University Press, 2007) at 29.

possessing its own sources, structures, and spheres of application, even as they interact in practice.

The EU legal system, as shaped by the Treaties and the case law of the Court of Justice of the European Union (CJEU), is often understood as reflecting a hybrid approach that lies between monism and dualism. Under a dualist conception, international law and domestic law constitute separate legal systems, each operating within its own normative sphere. This view traditionally emphasizes the continued legal autonomy of nation-states.⁷⁷ By contrast, monism holds that international law forms an integral part of the domestic legal order and may apply directly within Member States without the need for implementing measures. The EU does not fully conform to either model. While EU law exhibits monist features, most notably through the doctrines of direct effect and supremacy, it simultaneously preserves elements of dualism in its treatment of international law, including WTO law. In the WTO context, the EU participates on the same formal footing as other members, acting externally as a single entity while internally representing the collective interests of its Member States. Accordingly, the EU's positions and actions within the WTO largely reflect the aggregated economic and regulatory interests of its Member States, rather than an entirely autonomous supranational interest.

EU secondary legislation primarily takes the form of directives and regulations, which should be distinguished from non-binding instruments such as declarations, resolutions, guidelines, policy statements, notices, recommendations, and opinions, as well as from individual decisions that do not generally constitute legislative acts.⁷⁸ At the apex of the EU legal order are the Treaties, which combine procedural rules governing the functioning of the Union with substantive legal norms. Pursuant to the competences conferred by the Treaties, the EU adopts directives, regulations, and decisions as binding legislative instruments. Directives establish a binding legal framework that Member States are required to achieve, while leaving discretion as to the form and methods of implementation in national laws. Consequently, all Member

⁷⁷ *The Monistic and the Dualistic Theory in European Law*, by Emilian Ciongaru (Bucharest: Institute of Legal Research of the Romanian Academy, 2013) at 4.

⁷⁸ Ralph H Folsom, *Principles of European Union Law*, 2nd ed. edn (US: West, 2009) at 33.

States must transpose directives into their domestic laws within a specified timeframe, choosing the means best suited to their constitutional and legal traditions. Regulations, by contrast, lay down detailed legal rules and are directly applicable and binding in their entirety across all Member States. Below this, the EU adopts secondary measures to give effect to directives or regulations. These measures take the form of delegated acts and implementing acts, which further specify or operationalize legislative provisions in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union.

EU Law regulates administrative procedures in a largely general and framework-oriented manner, leaving significant discretion to the Member States. This approach is grounded in the principle of the “procedural autonomy of the member states”, according to which national authorities apply and enforce EU law in accordance with their own procedural rules, unless EU legislation provides otherwise.⁷⁹ As a result, the implementation of EU obligations typically takes place through national administrative systems, subject to the requirements of effectiveness and equivalence developed in the case law of the Court of Justice of the European Union (CJEU). Within this institutional setting, the alignment of EU and national laws with WTO agreements is primarily coordinated by the European Commission. Acting as the EU’s representative in WTO forums, the Commission negotiates trade commitments and ensures coherence between WTO obligations and the EU legal order. It works closely with both the European Parliament and the Council of the EU to secure ratification and implementation of WTO agreements in a manner that respects the EU’s constitutional framework and reflects the collective interests of its Member States and citizens.

In terms of the relationship between national regulatory autonomy and EU directives, the EU framework preserves a degree of flexibility for Member States in the implementation of directive-based obligations, while ensuring a sufficient

⁷⁹ Adrian Fabian, “Relation Between EU and the Member State’s Administrative Law” in *Razvoj Javne Uprave* (2012) at 185.

level of regulatory consistency across the Union.⁸⁰ This balance is achieved in part through the use of harmonized European standards, which operate as voluntary technical instruments designed to facilitate compliance with the essential requirements laid down in EU legislation. Where such standards are applied, they give rise to a legal presumption of conformity with the relevant essential requirements, thereby guiding market surveillance authorities in their assessment of compliance.

2. National Laws and WTO Agreements

In examining the relationship between the EU and the WTO, it is essential to consider the broader interaction between the WTO and other international and regional organizations. The coherence of WTO rules with parallel legal frameworks, as well as the WTO's engagements with a range of international entities, significantly affects both the effectiveness and the legitimacy of the multilateral trading system. This interaction reflects the WTO's dual role in promoting global trade liberalization while endorsing accommodating regional economic integration, a balance explicitly recognized in Article XXIV of the General Agreement on Tariffs and Trade (GATT). The establishment of the WTO Committee on Regional Trade Agreements further illustrates this role by providing institutional oversight of regional arrangements and their compliance with WTO requirements.

The EU comprises 27 Member States, each of which retains individual membership in the WTO. Collectively, the EU occupies a central position within the WTO and has consistently supported the promotion of open trade and economic growth through multilateral agreements and rule-based governance.⁸¹ As WTO members, all EU states, including major trading economies such as Germany, are legally bound by WTO rules and disciplines. Accordingly, Member States must ensure that their domestic laws and policies comply with WTO obligations by avoiding unnecessary barriers to trade and discriminatory treatment of foreign goods and services. Such alignment is essential for

⁸⁰ *United in Quality and Safety (An Introduction to Quality Infrastructure in Germany and the European Union for Policymakers and Trade Partners)*, by Annabel Brewka et al (Berlin: Federal Ministry for Economic Affairs and Energy, 2021) at 12.

⁸¹ Jan Wouters & Vineet Hedge, "Reform of Global Trade Governance: The Role of the European Union" (2022) 44:5 *Journal of European Integration* at 717.

maintaining a fair and predictable trading system, supporting economic stability, and fostering cooperation among WTO members.⁸²

In harmonizing domestic legislation with WTO obligations, states are required to ensure that their regulatory frameworks facilitate international trade and do not introduce discriminatory or unjustified barriers. Germany, a WTO member since 1995 and a contracting party to the GATT since 1951, has aligned its legislative framework with WTO commitments to support stable international trade relationships and ensure compliance with multilateral trade rules. In this context, Germany adopts regulatory measures consistent with WTO disciplines, including those permitted under Article XX of the GATT, which allows members to pursue legitimate public policy objectives, such as protection of public health, provided that such measures comply with the conditions set out therein.⁸³ As both the EU and its Member States are members of the WTO and are bound by the principle of non-discrimination, including as reflected in the General Agreement on Trade in Services (GATS), they participate in the WTO on an equal legal footing with other members. Consequently, WTO members are required to respect these obligations and to accord equivalent treatment to the EU and its Member States in accordance with WTO law.⁸⁴

A prominent illustration of the application of the direct effect doctrine is found in the *Germany v Council* case, which concerned Portugal's attempt to annul a Council Decision on market access for textile products originating in India and Pakistan. In this case, the European Court of Justice examined whether WTO agreements could be relied upon to challenge the legality of Community measures.⁸⁵ The Court rejected Portugal's claim, affirming the Council's position that WTO agreements do not, as a general rule, have direct effect within the Community legal order and therefore cannot be directly invoked before Community or Member State courts. The Court held that the legality of a Community measure may be reviewed in light of WTO rules only where the Community has clearly intended to implement a specific obligation arising from

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ Jian Xu, "WTO Members' Commitments in Education Services" (2009) 2:2 International Education Studies at 37 & 40.

⁸⁵ Case 280/93, *Germany v Council*, [1994] ECLI 367.

the WTO agreements, a principle commonly referred to as the Nakajima doctrine.⁸⁶ Consistent with this approach, the Court has also declined to give direct effect to reports adopted by WTO panels or the Appellate Body.⁸⁷ WTO provisions may thus be relied upon in EU law only where a Community act expressly refers to or incorporates them.⁸⁸

*B. Dispute Settlement Mechanisms for EU Member States and its Coordination
Mechanisms Between the WTO, EU Institutions, and Member States*

1. WTO Dispute Settlement Mechanism

The WTO dispute settlement system has evolved over more than four decades, building upon the earlier dispute settlement arrangements developed under the GATT 1947. Although the GATT avoided explicit use of the term “dispute”, it nonetheless anticipated the emergence of conflicts arising from the interpretation and application of its provisions.⁸⁹ This evolutionary process culminated in the establishment of the WTO Dispute Settlement Understanding (DSU), which formalized and strengthened the multilateral dispute resolution framework. The object and purpose of the WTO dispute settlement system are articulated in Article 3(2) and Article 3(3) of the DSU, which states that, “The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system....” Article 3(2) further underscores that “essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.” While the WTO dispute settlement mechanism is not without limitations, it has, for many years, played a crucial role in safeguarding the stability and reliability of the multilateral trading system.⁹⁰ This assessment was affirmed by the Panel in United States – Section 301 Trade Act, which characterized the DSU as one of the WTO’s most important instruments for protecting the security and predictability of the multilateral trading system.

⁸⁶ Case C-69/89, *Nakajima All Precision Co Ltd v Council*, [1991] ECR I-2069, para. 31.

⁸⁷ Case C-104/97P, *Atlanta AG v Commission and Council*, [1999] ECR I-6983.

⁸⁸ C-69/89, *supra* note 86.

⁸⁹ Mitsuo Matsushita, Thomas J Schoenbaum & Petros C Mavroidis, *The World Trade Organization: Law, Practice, and Policy*, 2nd ed. edn (New York: Oxford University Press, 2006) at 121.

⁹⁰ Peter Van den Bossche & Denise Prevoost, *Essentials of WTO LAW*, 2nd edn (Padstow Cornwall: Cambridge University Press, 2021).

To date, developed-country Members, particularly the United States (US) and the EU, have been the most frequent complainants within the WTO dispute settlement system. The legal framework governing dispute settlement is set out in Annex 2 of the WTO Agreement, namely the Understanding on the Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU). Article 1 of the DSU defines the scope and competence of the WTO Dispute Settlement Body (DSB), establishing its authority over disputes arising under the covered agreements, as well as the procedures for consultations and settlement between WTO Members. Article 1(2) further provides that, in the event of conflicts between the DSU and special or additional dispute settlement rules contained in other covered agreements, the Chair of the DSB shall determine the applicable procedure within days, with a view to avoiding procedural inconsistency.

WTO panel and Appellate Body reports become binding on the parties to a dispute upon their adoption by the Dispute Settlement Body (DSB). In resolving disputes, panels and the Appellate Body regularly engage with prior rulings and generally seek to maintain consistency with established interpretations, even though WTO jurisprudence does not formally recognize the doctrine of binding precedents.⁹¹ This practice promotes coherence and predictability within the WTO legal system. The DSU provides several avenues for resolving disputes between WTO Members, including:⁹²

- a) Consultations or negotiations;
- b) Adjudication by panels and the Appellate Body;
- c) Arbitration; and
- d) The use of good offices, conciliation, and mediation.

The DSU places primary emphasis on resolving disputes through consultations, particularly negotiations between the parties concerned. When consultations fail to produce a mutually satisfactory solution, the complaining party may request the establishment of a panel to adjudicate the dispute. Where a panel's findings

⁹¹ Mitsuo Matsushita, Thomas J Schoenbaum & Petros C Mavroidis, *THE WORLD TRADE ORGANIZATION: Law, Practice, and Policy*, 2nd edn (New York: Oxford University Press, 2006).

⁹² Bossche & Prevost, *supra* note 90.

are contested, either party may appeal the decision, in which case the dispute proceeds to review by the Appellate Body.⁹³

The jurisdiction of the WTO dispute settlement system extends to disputes between WTO Members arising under the ‘covered agreement’. As provided in Article 1(1) of the DSU, “the rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the ‘covered agreements.’”

The term ‘covered agreement’ refers to all agreements listed in Appendix 1 to the DSU, including the WTO Agreement, the GATT 1994, the GATS, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the DSU itself. The WTO dispute settlement process generally unfolds in four main stages: consultations, panel proceedings, appellate review, and the implementation and enforcement of rulings.

2. The EU and Its Member States under the WTO Dispute Settlement Mechanism

The operation of the WTO dispute settlement system has significantly reduced the reliance on unilateral defensive measures, which states previously employed and which often provoked retaliatory responses, at times escalating into full-scale trade wars.⁹⁴ The EU, as one of the central pillars of the WTO and as the world’s leading exporter and second-largest importer, has consequently emerged as one of the most active users of the WTO dispute settlement mechanism. In parallel, the European Parliament closely monitors the evolution of disputes involving the EU, reflecting the political and legal significance of WTO litigation for the Union’s external trade relations.

The European Union has established domestic trade retaliation mechanisms that allow private entities to lodge complaints against foreign measures that adversely affect their rights under international trade law, even though such entities lack

⁹³ *Ibid.*

⁹⁴ Wolfgang Iglar, “The European Union and the World Trade Organization” in *Asia-Pacific in the New World Order* (2023) at 53.

standing to initiate proceedings under the WTO dispute settlement system.⁹⁵ In this context, the European Community (EC) adopted the Trade Barriers Regulation (TBR) in 1995 to assist European Union (EU) businesses in addressing trade barriers abroad, including export restrictions, discriminatory taxation, and infringements of intellectual property rights.⁹⁶ The TBR aims to promote international trade for EU operators, counter unfair practices by third countries, and ensure the effective exercise of the EC's rights under international trade law, in a manner consistent with WTO rules.⁹⁷ Designed as an instrument to protect the Community's trade interests, the TBR succeeded the New Commercial Policy Instrument adopted in 1984, which empowered the EC to respond to "illicit commercial practices" by third countries.⁹⁸

When the EU becomes a party to a dispute under the WTO dispute settlement mechanism, a key question arises as to whether the EU may, in effect, bring a claim against its own Member States. This issue is closely linked to the EU's legal architecture, which reflects a nuanced interaction between monist and dualist theories. Within this framework, the national laws of the Member States are required to conform to EU Treaties, which operate as supranational law. As noted above, the EU acts as the representative of its Member States in external trade relations and typically speaks and acts on their behalf within WTO fora.

The EU operates a single market that builds upon the European customs union to eliminate non-tariff barriers and ensure the free movement of goods, services, capital, and labour. This project traces its origins to the 1957 Treaty of Rome, which sought to dismantle barriers to enable the effective functioning of the European Common Market. The initial phase of market integration consisted of a ten-year programme launched in 1958, aimed at removing tariff barriers on industrial products. Further momentum was provided by the Single Market Program (SMP) introduced in 1985, which significantly deepened economic

⁹⁵ Intan Innayatun Soeparna, "The Nexus between State Liability Principle and WTO Law" (2016) 7:3 Asian Journal of Law and Economics at 4.

⁹⁶ *Trade Barriers Regulation (TBR), 09/434*, by European Commission, Directorate-General for Trade (2009) at 5.

⁹⁷ Matsushita, Schoenbaum & Mavroidis, *supra* note 91.

⁹⁸ *Ibid.*

integration among the Member States of the European Economic Community.⁹⁹ These efforts culminated in the adoption of the Treaty on European Union in 1992, which expanded the internal market to encompass hundreds of millions of citizens, abolished internal border controls, and promoted the harmonization of value-added tax and excise duty regimes to facilitate free movement of goods.¹⁰⁰

Article 26(2) of the TFEU defines the EU internal market as encompassing four fundamental freedoms: the free movement of goods, persons, services, and capital. The internal market is further underpinned by the principles of non-discrimination, mutual recognition, and harmonization through EU legislation. While these principles are designed to promote both regulatory coherence and flexibility in cross-border economic activity, the functioning of the internal market has not been immune to external pressures, including ongoing economic challenges. As a result, tensions may arise among Member States. However, such disputes are addressed through established internal EU mechanisms, thereby preserving the integrity and stability of the internal market.

The only dispute to date involving both the EU and one of its Member States in the WTO context is the *EU – Herring Case*.¹⁰¹ The dispute concerned the management of the Atlanta-Scandian herring fisheries in the North-East Atlantic and arose from measures imposed by the EU against the Faroe Islands in 2013. These measures prompted Denmark, acting on behalf of the Faroe Islands, to initiate arbitration and WTO proceedings against the EU. Denmark alleged that the EU's sanctions violated Article. I:1, V:2, and XI:1 of the GATT 1994, arguing that coastal states possess sovereign rights to manage fisheries resources within their respective jurisdiction. The case illustrates how the governance of fish stocks that straddle multiple jurisdictions can give rise to complex international trade and fisheries disputes.

According to the Dispute Settlement Body Report N WT/DSB/M/342, dated 16 May 2014, the representative of the EU addressed the DSB concerning the dispute. The EU expressed that, “The representative of the European Union said

⁹⁹ A I Abdullin & Y Y Akimenko, “Law of the European Union” in *Current Legal Problems* (Voronezh: VSU Publishing House, 2016) at 283.

¹⁰⁰ *Ibid.*

¹⁰¹ *European Union v Denmark (EU – Herring)*, by World Trade Organization – Dispute Settlement Body, WT/DSB/M/342 (2014) at 21-22.

that the EU regretted this panel request. In light of the ongoing negotiations of the coastal States on herring and mackerel, the EU believed that there was still room to find an amicable solution. The EU was convinced that its measures were in conformity with the WTO Agreements, notably the GATT, and would defend them vigorously.”¹⁰²

In August 2014, the EU agreed to lift its trade restrictions as part of a final settlement. In return, the Faroe Islands committed to terminating the arbitration proceedings and refraining from pursuing further action under the WTO Dispute Settlement Understanding. Although the dispute between Denmark and the EU was ultimately resolved through internal mechanisms, this case illustrates that an EU Member State may, under certain circumstances, effectively challenge EU measures through a WTO dispute settlement proceeding.

V. CONCLUSION

As a supranational entity, the EU exercises legislative, executive, and judicial powers within its legal order. As a member of the WTO, it not only complies with WTO rules but also actively contributes to the evolution of the multilateral trading system. The EU’s trade policy is firmly anchored in WTO agreements, reflecting its distinctive role and influence in global trade governance. This framework is structured around the Common Commercial Policy, which confers exclusive competence on the EU to negotiate trade agreements. Within this arrangement, the European Commission acts on behalf of both the EU and its Member States in trade negotiations and WTO dispute settlement proceedings, thereby ensuring coherence, legal certainty, and compliance with international trade obligations.

The EU has developed a comprehensive regulatory framework for international trade that seeks to balance national regulatory autonomy with the need for harmonization, both within the internal market and in its external trade relations. This balance is achieved through the alignment of national laws with core WTO agreements, including the GATT and the GATS. Harmonization operates by establishing fundamental legal principles at the EU level, which Member States

¹⁰² *Ibid*, para. 6.3.

then implement through domestic legislation, thereby ensuring coherence while preserving a degree of regulatory flexibility. The EU's legal order reflects a hybrid approach that combines elements of dualism and monism, with the European Commission representing the Union and its Member States in WTO negotiations and dispute settlement proceedings to ensure compliance with multilateral trade rules. Under the WTO's principle of non-discrimination, the EU and its Member States are entitled to equal treatment within the multilateral trading system. While disputes between WTO members, including the EU, are addressed through the WTO dispute settlement mechanism, disputes among EU Member States are resolved internally by the Court of Justice of the EU. The EU – Herring Case illustrates an exceptional situation in which a Member State, acting on behalf of a dependent territory, challenged EU measures before the WTO, highlighting the possibility, albeit limited, of Member State–EU disputes arising within the WTO framework.

ACKNOWLEDGMENTS

The authors would like to thank the EU Erasmus + Jean Monnet Module Program on EU Trade Policy and Sustainable Development (EU TSD), organized by the Faculty of Law, Universitas Airlangga, for its financial contribution to this research.

COMPETING INTEREST

The authors state that there is no conflict of interest in the publication of this article.

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