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Towards a new generation trade agreement: the modernization of the EU-Mexico Global Agreement, 2000-2020

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Abstract

Verso la metà degli anni Novanta, mentre il Messico firmava l’Accordo nordamericano di libero commercio con i due partner principali dell’America del Nord, gli Stati Uniti e il Canada, la quota europea del mercato messicano diminuiva in maniera costante. Difatti, nonostante il trattato di cooperazione firmato dalle due parti già nel 1991, il principale sviluppo ottenuto era stato semplicemente quello di dare una maggiore istituzionalizzazione alle reciproche relazioni politiche così come aumentare le possibilità di avere momenti di discussione riguardo l’impegno sociale da intraprendere sia a livello interno che nel piano multilaterale e condividere buone pratiche per lo sviluppo nazionale, i cui risultati erano comunque stati esigui. Allo stesso tempo l’Unione Europea si stava proponendo sempre di più come principale difensore dei diritti umani e della democrazia nel piano internazionale, attraverso un approccio che differiva sostanzialmente da quello del più grande competitore nella scena economica globale, gli Stati Uniti, proprio per il maggiore interesse ad assicurare la democrazia anche attraverso la conclusione di accordi commerciali.

I contatti tra il Messico e l'Unione europea sono diventati più consistenti proprio durante un periodo in cui il panorama internazionale è stato in misura sempre maggiora caratterizzato dal cosiddetto 'neo-regionalismo', iniziato alla fine degli anni '80, e da un bilateralismo rafforzato, diverso dall'ambiente multilaterale che l'UE ha sempre cercato di promuovere. Questo nuovo intorno non ha stravolto solo la politica estera Europea, ma anche quella di Paesi e entità esterne, come appunto quella dell’America Latina. Nella misura in cui la caratteristica di "non prossimità" non costituiva più un ostacolo al commercio, la rilevanza degli accordi transnazionali di libero scambio e degli accordi di partenariato è cresciuta grazie ad alcune caratteristiche che derivano dall'assenza di confini condivisi tra le parti di un trattato (come potrebbe essere l'assenza dei flussi migratori che contraddistinguono le relazioni tra gli Stati Uniti e il Messico) e dall'impatto ancora maggiore che questo tipo di trattati può avere sulla valorizzazione degli investimenti diretti esteri: alla luce di ciò potrebbe risultare più chiaro il progressivo e crescente interesse dell'Unione verso nuovi partner a livello mondiale, compresa la regione latinoamericana e i suoi singoli Paesi, i quali fino alla fine degli anni Novanta non erano mai stati considerati come una delle massime priorità della politica esterna dell'Unione.

Il Messico, in particolare, occupa da sempre un ruolo peculiare tra gli altri partner nella regione dell’America Latina e Caraibi (ALC), probabilmente come conseguenza dei legami storici che uniscono il Paese con Stati Membri europei come la Spagna e il Portogallo da un lato e con la Germania e il Regno Unito dal punto di vista economico e commerciale, come anche grazie alla sua posizione centrale nell'emisfero occidentale che lo rende un ponte naturale tra il Nord America e il Sud America. Fin dall’inizio del processo di liberalizzazione economica negli anni '80, il Paese ha

cercato di diversificare i suoi legami internazionali per evitare di essere sotto il 'dominio' dei soli Stati Uniti e ha ritrovato nell'Unione Europea un alleato chiave sia nei forum di discussione internazionali che per promuovere un più efficace dialogo interregionale, grazie al supporto che l'UE fornisce al processo di integrazione Latino-Americano e ai progetti di cooperazione e aiuti allo sviluppo. Più specificamente, vedremo come la storia dell'apertura commerciale messicana dimostri che dall'entrata in vigore dell'Accordo nordamericano di Libero Scambio nel 1994 con gli Stati Uniti e il Canada, considerato come la "pietra miliare" per l'inizio della conclusione di una rete di accordi di libero scambio con terzi, il paese ha iniziato ad adottare un'identità 'doppia', come paese sia latinoamericano che nordamericano, cercando così di ottenere il controllo della situazione geopolitica divisa di una regione in cui gli Stati Uniti mantengono l'egemonia al nord e la Cina ha iniziato sempre più a influenzare il sud.

Come conseguenza della volontà di dare un ulteriore sviluppo ai rapporti di cooperazione esistenti, nel 1997 l'Unione Europea e il Messico firmavano L'Accordo di Coordinamento Politico, Partenariato Economico e Cooperazione (Accordo Globale), il trattato commerciale transatlantico più completo e avanzato che l'UE avesse raggiunto con un paese emergente e il primo di questo genere con un paese in via di sviluppo, che ha ampliato il quadro preesistente includendo tre pilastri principali: quello politico, economico e di cooperazione. L'Accordo Globale costituisce da allora il quadro delle loro relazioni politiche ed economiche, accompagnato poi nel 2008 dalla conclusione del Partenariato Strategico, che ad oggi l'UE ha stretto con soli dieci Paesi in totale.

Durante le prime fasi della negoziazione dell'Accordo Globale, alla metà degli anni '90, le due entità hanno mostrato posizioni e interessi differenti, le quali hanno portato alla conclusione di un trattato contenente non solo disposizioni in vista della creazione di una zona di libero commercio, ma anche una "assicurazione" democratica proprio in forma della clausola democratica o "essenziale" presente nel testo. In questo contorno risalta la peculiarità che caratterizza l'Accordo Globale: quella di includere, oltre alle questioni economiche, argomenti sul dialogo politico e la cooperazione, così come un quadro istituzionale per approfondire le relazioni bilaterali e bi-regionali, le quali costituiscono una delle principali differenze con altri accordi di libero scambio firmati dall'UE nello stesso periodo con paesi di reddito medio e medio-basso.

Tracciare lo sviluppo Politica Commerciale Comune dell'Unione Europea sarà fondamentale per capire come la dialettica tra le competenze interne ed esterne dell'UE abbia influito sulla conclusione di un accordo che coinvolge una cooperazione sia politica che commerciale con un Paese terzo, e per valutare come i poteri di iniziativa esterni attribuiti alla Commissione Europea da un lato e al Parlamento Europeo dall'altro abbiano potuto effettivamente influenzare non solo l'esito dei negoziati, ma anche lo sviluppo di specifici interessi reciproci. L'evoluzione dell'equilibrio istituzionale interno dei poteri deve essere ricercata assieme ai cambiamenti delle strategie di politica estera dell'UE, il più interessante e importante dei quali è stata l'adozione di *"Un'Europa globale – competere nel mondo"* da parte della Commissione nel 2006, che ha segnato una svolta fondamentale alla luce della presenza più consistente degli Stati Uniti in accordi commerciali bilaterali e a causa del fallimento della Ronda di Doha all'interno dell'Organizzazione Mondiale del Commercio a favore di una maggiore apertura nei confronti di tratti al di fuori dell'ambito multilaterale. Il riorientamento della sua posizione è difatti apparso evidente nella misura in cui ha effettivamente aperto le porte alla firma di accordi di libero scambio di "nuova generazione" con partner, per lo più di tipo bi-regionale, come con l'ASEAN, il Mercosur, e bilaterale come appunto con il Messico, pur continuando a promuovere discussioni multilaterali nel quadro dell'OMC.

Inoltre, l'Accordo Globale e in particolare il Pilastro Commerciale che ne costituisce l'ossatura, conteneva disposizioni peculiari che rendono l'accordo importante da seguire, non solo per le mere implicazioni che ha avuto sulle relazioni tra le due parti, ma per quelle geopolitiche internazionali, come quelle che comportano un ulteriore approfondimento dei contatti tra l'UE e altri paesi o blocchi regionali latinoamericani, come potrebbe essere il caso del Mercosur e la più recente Alleanza del Pacifico anche in occasione dei forum di discussione istituzionalizzati tra UE e America Latina e Caraibi (ALC), in cui il Messico e l'Unione potevano vantare un maggiore allineamento nelle loro posizioni riguardo ad argomenti di rilevanza globale.

Ma dalla sua entrata in vigore, il contesto internazionale è cambiato sostanzialmente: nuovi temi sono stati introdotti nell'agenda di discussione multilaterale mentre nuovi attori sono comparsi, dalle economie emergenti che hanno preso sempre più peso nel mercato mondiale al coinvolgimento di organizzazioni internazionali e della società civile in affari di natura governativa, il cui peso politico ed economico si riflette anche in istanze all'interno di istituzioni come il G20 e le Nazioni Unite.

Allo stesso tempo le politiche commerciali si sono evolute, arrivando ad abbracciare non solo nuovi temi prettamente economici e, appunto, commerciali, come le tradizionali barriere e regolamentazione dei servizi, ma coinvolgendo anche i diritti umani tra cui i diritti dei consumatori e produttori, la protezione ambientale e il cambiamento climatico, gli investimenti esteri, i dati, la privacy, tra gli altri, andando a coinvolgere e integrarsi con la politica estera nella corsa alla leadership mondiale. Per questo motivo, nel 2016 le due parti hanno riconosciuto la necessità di rendere i loro rapporti non solo più dinamici, ma allo stesso livello di completezza e efficacia di quei trattati di nuova generazione che l'Unione Europea ha da tempo iniziato a concludere con altri partner, tra cui i più importanti e innovativi sono con il Canada, Giappone, Vietnam e Corea del Sud, sostenendo che i cambiamenti politici ed economici nelle relazioni bilaterali e nell'ambiente internazionale rendevano necessario modernizzare il quadro giuridico su cui si basava tale accordo. La politica commerciale svolge infatti un ruolo fondamentale nella promozione e nella protezione dei valori e degli standard dell'Unione europea, sia in patria che all'estero, essendo il veicolo della leadership europea su scala globale, e per questo motivo devono essere adattati per sostenere questi obiettivi. In questo contesto, l'UE sta cercando di perseguire il suo obiettivo principale di promuovere i suoi valori e standard usando il mercato come leva, mentre "si protegge da pratiche sleali e costruisce la sua resilienza per essere meglio attrezzata per le sfide future".

Di certo, i nuovi negoziati hanno trovato non solo un contesto mondiale diverso, ma anche le due parti sono profondamente cambiate: l'Unione Europea si è estesa, andando a contare oggi 27 Stati Membri, e le sue istituzioni, soprattutto dopo l'entrata in vigore del Trattato di Maastricht prima e di Lisbona poi, hanno ampliato in maniera evidente i propri poteri e responsabilità, dando la possibilità all'UE di stringere accordi di associazione con paesi terzi per rafforzare il suo ruolo internazionale, mentre il Messico ha iniziato dalla fine degli anni Ottanta un processo di liberalizzazione unilaterale dell'economica e di impegno nei confronti di organizzazioni e forum multilaterali, tra figurano l'entrata nell'OMC (Organizzazione Mondiale del Commercio) e nell'OCSE (Organizzazione per la Cooperazione e lo Sviluppo Economico).

Lo studio dell'evoluzione delle relazioni UE-Messico nel quadro dell'Accordo Globale e del relativo Accordo di Libero Commercio sarà necessario per comprendere l'impatto di tale testo non solo sulle relazioni commerciali bilaterali, ma anche su come queste siano state adattate a raggiungere gli ambiti della cooperazione e del dialogo politico, o, al contrario, come questi ultimi siano stati il motore per approfondire i legami economici tra le due parti, al fine di valutare al meglio i motivi e gli obiettivi che hanno portato alla sua modernizzazione

Introduction

Over the last 25 years, the evolving international agenda and changing global economic trends have had a great impact on international relations. Unilateralism and economic nationalism are increasing, with the year 2020 being on the verge of multilateral collapse and the pandemic exposing some of the challenges associated with a high degree of inter-connectedness. More specifically, the expansion of multilateral trade blocs and financial flows, the emergence of mega-regional free trade areas, the increase of economic and political weight of the so-called ‘emerging economies’ and, finally, the diffusion of power among multiple actors worldwide have made bilateral trade relations even more difficult to negotiate and at the same time more important for the effects they could have not only over commercial flows, but on politics and social environment as well.

Mexico and the European Union have tried throughout the years to deepen their ties at the bilateral level and the bi-regional one, notwithstanding the geographic distance, the enormous economic gap that naturally characterize an integrated area of 28, now 27, countries and an upper-middle income State and the internal political dynamics that shape each different priority, that have acted both as a drive towards its strengthening and, at times, as a real obstacle to it. Their actual relations are governed by the Economic Partnership, Political Coordination and Cooperation Agreement, known as the Global Agreement, which officially entered into force in October 2000. It was the very first treaty of this kind the EU had ever concluded with an emerging economy, the first transatlantic one, besides having been described for long as one of the ‘most comprehensive’ Free Trade Agreement. By 2015 the parties agreed for the necessity of its renewal to add more ambitious and innovative provisions especially on its Trade Pillar, in line with the new international and European standards and deeper level of liberalizations reached worldwide, so that after 20 years from its conclusion an ‘Agreement in Principle’ was reached in April 2020. The modernized Agreement is now under revision and has to be translated in all European languages before coming into force.

This thesis aims to study the evolution of EU-Mexican relations in the framework of the Global Agreement, and the needs and purposes that led to its modernization, to understand the impact of such a text not only on bilateral trade relations but also on how these have evolved to tackle cooperation and political dialogue, or, on the contrary, how the latter have been the driving force for deepening economic links between the two parties. The EU- Mexico Global Agreement (hereinafter: GA) and specifically the Trade Pillar that constitutes its backbone, contained peculiar provisions that make the agreement important to follow, both for the direct implications it had on the relations between the two parties, but fundamentally for the international ones, such as those involving further deepening of contacts between the EU and the Latin American region and the harmonization of common views in occasion of multilateral discussions over topics inside the global agenda. Now these provisions are being updated to be in line with the most recent “new generation” agreements the EU is signing with important countries as could be Canada, South Korea and Japan, thus this study will evaluate the decision to include Mexico among these partners and how can the country position itself in this context.

The study of the relevance of the Global Agreement will have to start from the consideration that it did not simply include a Free Trade Agreement, even though the economic and commercial topics assumed major importance both during the negotiations and for the promotion of its conclusion and still are the backbone of the relations that Mexico and the EU built over it. Indeed, the text is supported by three pillars, the economic, political and cooperation, which have been negotiated separately by means of two “instruments”, namely the Interim Agreement and the Joint Declaration, that allowed the Trade and Trade-related matters to enter into force before the GA did. However, once in force, it was the final text that governed all of the three pillars. Eventually, the Global Agreement was the means through which the two sides could reach a Strategic Partnership in 2008, fundamental to sustain political dialogue over those topics that could not enter into the priorities of the treaty as well for increasing the convergence of positions over topic discussed in multilateral fora.

This major focus over political relations is evident both considering the importance given to the Democratic Clause during its negotiations, and on the extent in which the liberalizations established by the Trade Pillar were not broad in its proper sense, compared with other FTA or Association Agreements the EU had already concluded with its Neighbours countries.

More specifically, the Interim Agreement created a Free Trade Area, eliminating all restrictions over 96 % of imported and exported goods during a transition period of 10 years, but included mainly asymmetric liberalization due to different schedule concerning tariff reduction on specific sectors as Agricultural and fishery goods and industrial products, with Europe approving to eliminate tariff barriers until 2003 while its sensitive sectors, as the agricultural one, remained protected, and Mexico having a longer transition period (2007). The idea was to achieve duty free market access as the same time of US and Canada would have done with Mexico, as far as the same asymmetrical liberalization schedule can be found in the NAFTA Agreement between Canada, Mexico and the United States, but not in other Agreements signed by the EU in the same period. Thus, most of the chapters included provisions similar, and in a similar extent, to those found in the NAFTA, as could be the example of the liberalization of trade in services, where the same NAFTA access was approved for European Countries, and of Govern Procurement, which provided that procedures could only be modified in the extent in which similar modifications were applied to the corresponding NAFTA and WTO

Government Procurement Agreement, while in other areas the agreement presumed just to avoid further restrictions in national legislation of each member State. Probably, the most comprehensive chapter included could be the Competition one, that established a set of precise guidelines for strategies to implement when actions that could restrict competition would take place. Bilateral Investments were not included in the text but negotiated singularly with Member States through Bilateral Investment Agreements (BITs), since the power to conclude them did not regard the European Commission (it can be included in FTAs now, but in a 'mixed' form) and for this reason the Dispute Settlement mechanism did not concern private parties.

The Trade Pillar included a revision clause which was particularly important during the years following the entering into force of the Agreement for those sensitive sectors as was the case of Agricultural and fishery, but most significantly after the Treaty of Lisbon in 2007 opened to the possibility for the European Union to negotiate Investment Agreements (which until the moment were indeed negotiated bilaterally by means of the BITs), Mexico expressed its determination to negotiate a "comprehensive, unique and ambitious" chapter on investment to be included in the Global Agreement. This was made possible thanks to the establishment of two bodies which are a unique characteristic of the Global Agreement, namely the Joint Council and the Joint Committee, that had the actual power to make decisions about the future provisions to add or modify and further negotiations to be undertaken in the light of the review clause, thus including the task to oversee the agreement's implementation and its future possibilities of updating.

Thus, although the Trade Pillar was indeed important for liberalizing trade in goods and services, we will follow the assumption that the Global Agreement mainly created a legal framework to the EU-Mexican political relations and their cooperation in various sectors. More specifically, political ties were based on the so-called 'Democratic Clause' for the protection of human rights, which approval and addition to the Agreement costed the two parties years of discussion, in the light of the reiterated refusal by the Mexican government to accept it. The clause constituted the base over which to build their relations and the provisions contained into the whole treaty, and the final approval of its introduction was seen as sign of a democratic turn of the Mexican government and of its commitment to human rights protection and to the rule of law. However, if in theory the introduction of such clause was indeed fundamental and helped improving the country image worldwide, as confirmed by researches and studies, in practice it did not have the hoped impact on Mexican internal legislation even in view of the fact that its 'soft law' characteristic, that is, the impossibility of creating mandatory provisions, a fact that was particularly evident during the six-year term of Mexican

President Felipe Calderón (2006-2012), during which the escalation of violence and the increased power of organized crime deeply worried the European Union and the international arena in general.

Finally, the Cooperation Pillar covered 30 different areas that go from assistance to Small and Medium Enterprises, combating drug trafficking, money-laundering and chemical precursors, Scientific and technological cooperation, to culture, education, environmental protection and human rights and democracy. This latter chapter in particular reinforced the democratic clause and was innovative in the extent in which it could constitute a precedent for the inclusion of such clauses in successive EU agreements with middle-income countries, given its potential in creating a legal framework for the establishment of periodic meetings and reports over the status of human rights not only by the parties involved, but by civil society as well.

Knowing the content of the text, this study will try to outline the motivation coming from each side for modernizing the Agreement: contextualizing the difficulties in negotiating the 2000 GA and those coming from its practical implementation in the years that followed with the evolutions of priorities among internal and external policies of the two sides would be important, as far as this method allows us to appreciate more the assessment of such treaty 20 years later, in a period in which, given the progresses made in the global arena alongside international-important events, the agreement is being updated to include new and more innovative measures.

The analysis will be carried out in two steps: the first one will go from the understanding of both the European Union and Mexican economic history and those processes that led the two entities to the decision of entering into bilateral agreements, to the moment in which the mutual interests coincided into the establishment of the Global Agreement. The second one will take the GA as a framework to assess the way it was actually used to improve EU-Mexican relations and to harmonize their positions over the bi-regional and international agenda. For this purpose, the so called 'performance gap' has been taken as a parameter during the evaluations of the implementation of the Agreement both from political and economic point of view, for understanding what still can be done to overcome it. Finally, considering its successes and/or failures in achieving the original purposes and the current situation of both parties' external relations, the study will try to evaluate the international significance that the new modernized text will have not only for the Mexican and the Union's side, but also for their triangular relations with the Latin American region and as a counterbalance to the increasing presence of mega-regional agreements.

The first chapter will follow the historical evolution of the EU Common Commercial Policy alongside the increasing powers attributed to the Commission on the one side and to the Parliament on the other, since the dialectic between the Union internal and external competences has had major influence over the way an international agreement with a third country could be concluded. Evolution in internal institutional balance of powers would be studied alongside the changes in EU foreign policy strategies, the more interesting an important of which is the adoption of the *"Global Europe Strategy for trade and growth* in 2006, that showed the new approach more open to the establishment of new generation of agreements with key partners. On the other hand, the second chapter will focus on Mexican trade policy and its opening in the 1980s to the neoliberal system, of which the most important example is the establishment of the NAFTA Agreement, that is still governing the majority of Mexican external trade flows. A background of the EU-Latin American ties will be drawn to reach particular relations with the country, since it will allow the understanding of the difficulty of having a solid approach toward a region that presents a high level of heterogeneity both at political and economic level. Finally, considering the legal framework of the Global Agreement, the evolution of the relations between the EU and Mexico will be divided in three different periods, marked by the election of the Mexican Presidents: Vicente Fox (2000-2006), Felipe Calderón (2006-2012) and Enrique Peña Nieto (2012-2018), to the present days with Andrés Manuel López Obrador (2018-2022).

In this way, we can assess the steps that have been made to overcome the asymmetries that are the base of the GA and of the EU-Mexico relations, since it involved two entities which differed enormously not only for the size of their economies (that could have been a minor problem), but mostly in the political sense: it involved an agglomerate of 28 states which embarked a long and difficult integration process and a country in the middle of a liberalization opening with weak institutions and a broad social inequality.

Chapter 1

The external trade policy of the EU

1. Influences on the evolution of European trade policies

The European Union trade power in the international system is undeniable linked to the history of its integration process and to the balance of powers held at times either by the European Community or the Member States. The long-lasting debate, discussed by many scholars that attempted to draw the whole history of its consolidation, on the democratic legitimacy of the Union competences over economic interventions and decision-making powers, has been subject to the change on trends throughout the Community's expansion, both because of the internal challenges, even in national governments of the Member States, and of external inputs, in an attempt to harmonise multilateral liberalisation and regional integration.[1] Indeed, the issue of the balance between community powers and local powers is at the base of some of the major actions taken towards the creation of a more unified union, as well as 'steps backward' taken by some Member States, as could be defined, for example, the leaving of the United Kingdom from the EU (Brexit) in 2020, or the influences by new nationalists and populists regimes, which are trying to hold tight the reins of their countries at the expenses of the possibility of an even more connected Europe.[2]

As integration grew deeper, the Union's foreign policy instruments, which were biased towards economic issues by default, began to have a major role in world politics, developing out of a functional necessity to unify foreign trade relations. In fact, the prominent role of the EU in world politics is very well linked to the way economic issues increasingly challenged the primacy of security on the global scale, while the IR discourse began to accommodate economic interdependence more

[1] The aim of these thesis is not to study the debate over internal and external powers of the EU or its entire integration history. However, its basic knowledge is fundamental to assess the Union Trade power and strategies. Discussions over the topic can be found in the large number of publications over the history of EU's Common Commercial Policy, see: M. Elsig, *The EU's Common Commercial Policy: Institutions, interests and ideas (1st ed.),* London, Routledge, 2002; G. Moens, J. Trone, "Commercial Law of the European Union", in *Ius Gentium: Comparative Perspectives on Law and Justice V.4*, Springer Netherlands, 2010; Dillon S., *International trade and economic law and the European Union,* Oxford [etc.]: Hart, 2002; M. Karol, "Common Commercial Policy of the European Union: Legal Position and Effects of the WTO Agreement within the Legal Order of the European Union", Paolo Borghi (coord.), *Dottorato di Ricerca in "Diritto Dell'unione Europea",* Università degli Studi di Ferrara,2013, among others.

[2] To analyse the current challenges faced by the EU, see for example: B. Hoekman, L. Puccio, "EU Trade Policy: Challenges and Opportunities", RSCAS Policy Papers 2019/06, Robert Schuman Centre for Advanced Studies Institute, European University, 2019; P. Leblond, C. Viju-Miljusevic, "EU trade policy in the twenty-first century: change, continuity and challenges", *Journal of European Public Policy*, 2019.

broadly in the 1980s.[3] Recently, European trade policy has been addressed mainly towards the creation of a more open and free trade regime while at the same time major historical events, such has the dismissal of the Doha Development Round of 2001, re oriented the focus over the necessity to adapt to a fast changing environment.[4]

Significantly, the influence on the evolution of trade policies over the European integration process ever since the 1950s relied both on external changes, the most important of which, when it comes to Economy and Trade, is certainly the creation of the World Trade Organization in 1995[5] from the General Agreement on Tariff and Trade (from now on, GATT), being the EU one of the most important players, alongside to the USA, of the international trade system), and on internal adjustment, as can be considered the enlargement of the Union, which came to include 28 - now 27 – Members.

More specifically, the GATT system, created after the idea that the disasters of the twentieth century could be traced to trade protectionism and economic nationalism, introduced major advances towards trade liberalization.[6] The major economies at the time, the US and the UK, began negotiating a post-war system governed by a stable currency exchange system and trade co-operation, as the one put in place through 1944 Bretton Woods conference, which lead to the creation of the International Monetary Fund and the World Bank. Still, these institutions could not work properly without an organization that controlled the management of the flow of goods.[7] The very first attempt of such an organization, the ITO (International Trade Organization), proposed by the US in 1945 after the satisfactory outcome of the Havana Charter, made little success, probably because it involved too much of a concession of sovereignty to an international institution for the time. Since the failure of the ITO, countries turned to the United Nation Conference on Trade and Employment to start a series of multilateral negotiations (rounds), in which the participants aimed to minimize barriers to trade and reducing quotas, tariffs and subsidies for certain products to all other parties, in order to boost economic recovery. The first sessions held under UNCTE brought to the creation of the General

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[3] In: M. Elsig, *The EU's Common Commercial Policy: Institutions, interests and ideas (1st ed.)*, p.3. To have a broader prospect, look at: Dillon S., *International trade and economic law and the European Union*, Oxford,2002; A.Tkachuk, "Common Commercial Policy of the European Union and its significance to the world trade. Transatlantic Trade and Investment Partnership case study", *Rocznik Integracji Europejskiej n. 10,* 2016; R.Alcaro, E. Jones (edit.), "European Security and the Future of Transatlantic Relations", *IAI Research Papers,* IAI-SAIS Bologna Center publication, 2011; K. Heiderson, *Europe and world trade*, Cengage Learning EMEA, 1995.
[4] *Ibidem.*
[5] *Ibidem.*
[6] Dillon S., *International trade and economic law and the European Union*, pp. 24-33.
[7] For Early GATT history, see S. Dillon, *International trade and economic law and the European Union,* pp 1-59; Miliou N.; O'keeffe D (edited by)*, The European Union and World Trade Law—After the GATT Uruguay Round,* Chichester, J. Wiley & sons, 1996, pp 3-30. History of WTO: C. VanGrasstek, "The History and Future of the World Trade Organization"*, WTO Publications,* Geneva, 2013. Subsequent references to GATT and WTO history are taken from the same publications.

Agreement on Tariffs and Trade, signed in Geneva in 1947 by 23 countries (it was later enlarged, with numerous other countries becoming contracting parties), among which appeared EU ones, and which was more a model of trade behaviour in an attempt to prevent nationals' quantitative restrictions, that a proper "trade law".[8] A total of eight rounds have been held under GATT, with countries keeping reducing tariffs and adding new provisions, and resulting to be one of the most successful instrument of multilateral trade liberalisation at the time. In 1993 the Uruguay Round negotiations led to a further cut in tariffs of around 40% and the establishment of the World Trade Organization (WTO) in 1994, after the signature by 123 countries of the Marrakech Agreement, which came in force on 1 January 1995. WTO encompasses GATT principles regarding trade in goods but adds to them provisions for trade of services under GATS (General Agreement on Tariff in Services) and Intellectual Property under TRIPS (Agreement on Trade- Related Aspects of Intellectual Property), as well as providing a framework for its members to negotiate agreements and a new dispute settlement procedure. It is, as a matter of fact, considered to have marked the biggest reform of international trade since the end of the Second World War. Since provisions contained in GATT regulated trade relations of all its parties, as well as the creation preferential trade areas, in this way the European Community as well could find its legal roots in one of the exceptions of GATT's main principle, the 'non-discrimination' rule, under Article XXIV. [9]

On the internal level, the dialectic between the Member States or the European Commission having exclusive decision-making powers over common commercial policy has shaped the history of European integration, and it cannot be understood in a proper way without taking into consideration the many judgements given by the Court of Justice over the matter. The main consequence, especially during the first decades of EU/EEC history, was the major engagement of the European Court of Justice (ECJ), the EU supreme court in matters of European Union Law established in 1952, that changed its name into Court of Justice of the European Union (CJEU) after the Treaty of Lisbon came into force. Thus, the ECJ has had a major impact in the evolution and enlargement of EU/EEC external power, since the very concept of 'common commercial policy' at the beginning was not self-explanatory but open to a wide range of interpretations. Therefore, it has been explained in clearer way during time, through opinions given by the Court to requests by either the Council or the

[8] The GATT was intended to be an interim agreement, prior to the establishment of an international trade organization by the means of the Havana Charter.

[9] General information about WTO and report of activities at https://www.wto.org/english/thewto_e/thewto_e.htm.

Commission, since both the Commission and the Member States tried to swing the judgments of the Court in their favour in order to keep the exclusive power to negotiate and conclude agreements.[10]

2. The Common Commercial Policy of the EU

The Common Commercial Policy (hereinafter: CCP) was created after the conclusion of the Treaty of Paris in 1951 that established the European Coal and Steel Community (ECSC), the main aim of which was the foundation of an institution that would bring about economic integration, although with subject-matter limitation to coal and steel sector, in order to harmonise the positions of Member States on national level. Its original objective reflected the preoccupations of the international trade agenda of the time, focusing mostly on trade in goods, with emphasis on tariffs and quantitative restrictions. Indeed, after the Second World War, the need to overcome the horrors of the conflict and to 'heal the wounds' lead to the meeting of the Congress, held at the Hague in 7-10 May 1948, which is considered to be the very first step towards the establishment of a united Europe. In the occasion, the message spread regarded the wish of creating a Union founded on economics, but enlarged to reach every people lives by creating legal, economic, governmental, social and cultural links that would embrace them, in order to avoid future wars and inhumanities. [11] The common foreign trade approach laid the groundwork for a broader common foreign policy, so that the idea of economic integration between the then 6 Member States of the Community, which was believed to be the pillar of hegemonic dominance, did not end up in sole scope of creating a single internal market, but was lately expanded in field such as development, regional and multilateral cooperation.

After the failure of establishing a 'European Political Community', during the Messina Conference of 1955 the foreign ministers of the ECSC Member States stressed the wish of having a 'one voice speaking commercial policy', with the necessity of establishing a renewed and broader Community in the form of a Custom Union.[12] As a consequence, on 25 March 1957 6 states (Belgium, Netherlands, Luxembourg, France, Germany and Italy) signed the Treaty of Rome, that led to the creation of the European Economic Community (EEC) on the one hand, and the European Atomic Energy Community (Euratom) on the other. The Treaty - which were, in fact, two- has been then amended numerous times during the years, as the community expanded, and the geopolitical and

[10] See: L. Medichini, "Trade Policy and the Court of Justice: A History of Ups and Downs. The Political Influence on the CJEU in the Definition of the CCP", *College of Europe Master Thesis*, 2018; Dillon S., *International trade and economic law and the European Union*, 2002.
[11] G. Moens, J. Trone, *Commercial Law of the European Union*, 2010, p.6.
[12] From the Messina Conference to the Rome Treaties (EEC and EAEC), Luxembourg, 2012. Full text: http://www.cvce.eu/obj/from_the_messina_conference_to_the_rome_treaties_eec_a, accessed 10/11/20.

internal context has changed. [13] Through the creation of a European Economic Community the CCP was extended in covering not only coal and steel, as it did during ECSC, but a broader field of exchanges between Member States as well as intra-European tariff cuts. However, its text showed a lack of real contents and clarity when it comes to 'trade law'.

The founders of the Community shared a coherent economic policy view, with the Treaty of Rome calling for an internal market with no obstacles to trade and strong competition, as well as for multilateral liberalisation; additionally, it contained a revolutionary aspect for the time, in the form of the possibility for the EEC to have external personality and to centralize the powers of the common commercial policy, therefore the authority to negotiate and conclude international trade and associations agreements, creating uniform instruments for its Member States.[14] Thus, because of the CCP the EU acts as a single player in the World Trade Organization and the multilateral system, but with Member States allegiances to national economies and the wish to protect national social and cultural features against the demands of Community law, the EU has been increasingly faced with the problem of how to configure itself within the GATT/WTO order.[15]

The Treaty of Rome enhanced the EU to reach a more complex level of integration through the harmonisation of economic activities and stricter relations among Member States, taking for the first time the form of a Custom Union. The creation of a custom union finds its roots in Article 3 EEC, which, in addition to the elimination of custom duties and quantitative restrictions to the import and export of goods, provided for the establishment a common custom tariff and a common commercial policy towards third countries.[16] This is made to be in fully conformity with article XXIV GATT, which precisely gave two options for contracting parties to set closer relations in the form of regional integrations: free trades areas or custom unions, the last one understood to mean the:

> substitution of a single customs territory for two or more customs territories, so that (i) duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the union.[17]

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[13] *Treaty Establishing the European Community (Consolidated Version)*, Rome Treaty, 25 March 1957. All subsequent EEC Articles are taken from the same Treaty.

[14] "The European Union's Trade Policies and their Economic Effects", *OECD*, 2000, available at: https://www.oecd.org/economy/growth/1886277.pdf accessed in 15/11/2020.

[15] Ibidem., See also: S. Dillon, 2002.

[16] Art 3 EEC explains the activities of the Community for the purposes set in Article 2. The list is seen as always expanding since the Single European Act came into force. Textbook that deeper explain the content and significance of the Treaty and articles could be: Arnull, Chalmers, *The Oxford Handbook of European Union Law*, 2015; Craig, de Búrca, *EU Law. Text, Cases, and Materials*, 6th ed. 2015; G. Moens, J.Trone, *Commercial Law of the European Union*, Heidelberg, 2010.

[17] GATT 1994: General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, *Marrakesh Agreement Establishing the World Trade Organization*, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) available at http://worldtradelaw.net/uragreements/gatt.pdf . GATT 1994 incorporates GATT 1947.

These two types of regional integration form were the only ones accepted by GATT regarding the creation of trading blocs, since the main idea at the base of the General Agreement was to avoid regionalisms in favour of multilateral trade liberalization.

The objectives of the new common commercial policy are to be found in Article 110 that, indeed, express the aim of contributing to the "harmonious development of the world trade […] taking into account the favourable incidence which the abolition of customs duties as between Member States may have on the increase of the competitive strength of the enterprises in those States." Since the process of the formation of the CCP could not have been done at once, Article 111 allowed to apply a transitional period during which MS would conduct adjustment to the requirements to ensure the uniformity of the CCP and the coordination of commercial relations with third countries. Article 113 provided that the European Commission had exclusive powers to pursue these aims and negotiate international agreements under the Treaty, submitting the proposal to the Council which acted by qualified majority, but reminded to Article 228 for what concerns powers of negotiating association agreements, agreements with third countries and international organizations.[18] Due to the fact that the language of the text of the Treaty was open to interpretations, during time most of the conflicts between Member States and the Commission regarded the extent in which Agreements which were being negotiating internationally actually came under Articles 113 and 228, leaving to the Court of Justice the responsibility to gradually shape the Community competencies.[19]

The EEC unilaterally applied internal tariff cuts to third countries already in 1959 and accelerated the timetable for aligning the national tariffs to the Common External Tariffs (CET), adopted during the 1960s in the event of the Dillon Round of GATT, but the Custom Union properly entered into force the 1st of July 1968. The main effect was the elimination of the last 15% of the original internal rates of import duties on industrial products between Member States and the complete application of the joint tariff of the Community to industrial imports coming from outside the area but did not include agricultural products. The trend towards a full integrated economy with a single currency led to political questions inside governments, especially those, as France and Italy, where people were still used to high protective measures. [20] However, as Hans yon der Groeben, Member of the Commission of the European Communities in Brussels, stated right after the announcement of the creation of the Custom Union, a "*stronger orientation towards common interests will be indispensable. The Common*

[18] See: S. Dillon, 2002; G. Moens, J.Trone, *Commercial Law of the European Union*, Heidelberg, 2010. L. Medichini, "Trade Policy and the Court of Justice: A History of Ups and Downs" 2018.
[19] Ibidem.
[20] H. Groeben, "The EEC is now a Customs Union", *Intereconomics*, Vol. 03, 1968, pp. 226-229. See also: C. Armin, "The EU Common Market*", East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Brill, Leiden; Boston, 2017, pp. 293–302.

Market is a constantly evolving process, whose aim is a complete economic and currency union. To reach this target, we need more and not fewer common policies”.[21]

While the first decade of the European Community appeared to be of transition towards the establishment of the common trade framework, the following period of the CCP development could be entitled as an elaboration of the same system. More specifically, in the 1960s the Community became a single “World Trading Power”, while the GATT Kennedy Round (1963–1967) tested the capacity of the Commission to generate proposals, mediate for a common stance and negotiate on the international arena.[22] However, this harmonization did not happen without objections from Member States. In this regard, we have to take into considerations 3 main judgements delivered by the ECJ in the period before the Uruguay Round of 1986-1994, which changed the overall aspect of world trade and whose importance derive by the fact that they revealed the favour of the Court in granting the Community exclusive powers. [23]

The first judgement was pronounced with regard to Opinion 1/75 (OECD Understanding on a Local Cost Standard), in which the Court was asked to examine the legality, under the EEC Treaty, and especially under Article 113 and 114 EEC, of the conclusion by the Commission of a OECD Agreement on the export credits, thus being under the CCP.[24] In its judgement, the Court affirmed that Member States must adapt to the common commercial policy, which draws upon the principles of uniformity being at the base of the common interests of the Community and that mixed competencies under article 113 would lead to “disparities”. Therefore, exclusive competencies of the Community are pivotal in defending its interests, so that, potentially, the field of action would be infinite. This opinion was the first building bloc of some supranational powers of the EU as a state-like actor. Thanks to it, the possibility of Member States to conclude international agreements on commercial policies have been excluded, and two important disciplines emerged, namely the discipline of ‘implied powers’ and the one of ‘parallelism’.

Certainly, these disciplines have been stressed by the ERTA Case (European Road Transport Agreement) in 1971, over the possibility of the Commission to overcome the Member States in a

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[21] H. Groeben, “The EEC is now a Customs Union”, *Intereconomics,*1968, p.229.
[22] A. Tkachuk, “Common Commercial Policy of the European Union and its significance to the world trade. Transatlantic Trade and Investment Partnership case study”, *Rocznik Integracji Europejskiej*, 2016, pp.481-496. See also L. Coppolaro, *The Making of a World Trading Power: The European Economic Community (EEC) in the GATT Kennedy Round Negotiations (1963–67),* Routledge 2nd edition, 2016.
[23] For a more comprehensive study about the interaction between the Court of Justice and the development of CCP, see L. Medichini, *Trade Policy and the Court of Justice: A History of Ups and Downs. The Political Influence on the CJEU in the Definition of the CCP*,2018; Sara Dillon pp. 319-385.
[24] *OECD Understanding on a Local Cost Standard*, Opinion 1/ 75 [1975] ECR I-355. For deeper explanation of the judgement, see L.Medichini, S.Dillon, M. Elsig.

third party agreement.[25] The importance of this opinion came from the fact that the Court underlined the legal personality of the Community, therefore its possibility to confront with third countries, and stated the existence of 'implied powers': if the Community has acted internally, basing its legislation on a Treaty provision, then it has powers to legislate on the same subject even externally, if the subject creates common policies. Besides, the Court was brought to pronounce upon the possibility of a mixed agreement in such cases in which the subject did not rely only on those provisions given by the CCP and Articles 113-228 in Opinion 1/78 (Natural Rubber Agreement). In this case it took into consideration the changing nature of the world trade system, therefore not only the categories included under the CCP of the EEC Treaty, but even those who were, at the time, becoming of major interests in the regulation of international trade, as could be considered commodity agreements.[26] The context within which the issue had to be framed, namely the fast-evolving landscape of international trade, obliged the Court to promote a wide interpretation of the CCP competences, in order to prevent it from becoming "nugatory".

Therefore, mixed agreements in such areas not covered by traditional CCP were possible, as was financial arrangements even though they had direct effect on the economic policies of Member States. However, the competence of the Community did not really extend beyond the traditional conception of trade of goods, reflecting the idea, at least until the 1980s, that general trade could concern only goods and goods-related measures. It was not until Uruguay Round that trade in services began to be addressed, although it did already account for roughly 30% of international trade.[27]

On 17 September 1984, Council Regulation No 2641/84 on the strengthening of the common commercial policy with regard to protection against illicit commercial practices was approved, establishing a New Commercial Policy Instrument (NCPI), in response to US Trade Act 1974 section 301 for the purpose of excluding from the US market aramid fibres manufactured by the Dutch AKZO company.[28] This regulation granted to the Community the possibility to exercise its rights and full powers of investigation towards commercial practices of third countries, although little use was made of it.[29] Nevertheless, it was particularly important to mention since it has been replaced in 1994, after

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[25] *Commission v Council (ERTA)*, Case 22/ 70 [1971] ECR 263. Explanation of the judgement in L. Medichini, S. Dillon, M. Elsig.

[26] *Opinion given pursuant to the second subparagraph of Article 228(1) of the EEC Treaty* (Opinion 1/ 78) [1979] ECR 1979 -02871. Explanation of the judgement in L. Medichini, S. Dillon, M. Elsig.

[27] N. Bayne, "In the Balance: The Uruguay Round of International Trade Negotiations", *Government and Opposition*, vol. 26, no. 3, 1991, pp. 302–315; see also: *Understanding the WTO: Basics - The Uruguay Round*, WTO website, available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

[28] Council Regulation (EC) No 3286/94 [1994] OJ L 349. See: L. Medichini, S. Dillon, M. Elsig.

[29] *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, since the Uruguay Round, transformed the GATT into a legal regime, and established within it a Dispute Settlement Body (DSB), text available at https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm.

the negotiation of Uruguay Round, by the Trade Barrier Regulation (TBR) which showed the even less tolerance towards unilateral solutions and commercial policy measures, favouring an action in compliance with international obligation, and a broader concept of trade law not just concerning flow of goods, but even certain services and intellectual property rights. [30]

As we can see, the concept of common commercial policy was of broad definition, and always expanding in scope, with the European Court of Justice favouring this process, at least until the beginning on the 90s, a period which showed a clear fatigue toward the integration and in favour of granting Member States more sovereignty powers. Additionally, constitutional matters were to be decided by politicians and not judges, so that even the few important judgements asked to the Court by the Council or Community saw a broader intervention of Member States in giving procedural opinions in the backstage process.[31]

Two main subsequent events helped consolidate EU external dimension: the adoption of a Single European Act in 1986 (SEA) and the finalization of the Uruguay Round, with the Marrakesh Agreement signed in order to create the World Trade Organization. The overall qualitative and quantitative enlargement of the EU during the years brought both to a more intensive will to create a solid uniform market, and to the efforts undertaken by Member States to keep control of their national interests within the union. Namely, the Single European Act helped put the commercial policy at the centre of the Community objectives for the international policies, aiming at a more complex expansion of the common market, which would further the intra-European development and cooperation and build competitiveness towards third countries. Although the SEA did not change the institutional structure of the EC for better implementing common policies, it did trigger the negotiation of trade agreements with commercial actors at regional level, as could be the EFTA (European Free Trade Area) and the Euro-Mediterranean Partnership. [32]

It was not until the 1990s, however, with geopolitical changes within and outside Europe, that the common commercial policy saw a proper 'revolution': in 1992 the EEC Treaty was amended, coming to be known as the EC Treaty, and the new Treaty of Maastricht, or 'Treaty of the European Union' came into force in 1 November 1993. It revised the institutional base of the former European Economic Community and created a proper European Union based upon three pillars: the European Communities, the Common Foreign and Security Policy (CFSP) and the cooperation in the field of

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[30] *Council Regulation (EC) No 3286/94* of 22 December 1994.

[31] S. Dillon, 2002; G. Moens, J. Trone, *Commercial Law of the European Union*, Heidelberg, 2010. L. Medichini, "Trade Policy and the Court of Justice", 2018. K. Heiderson, *Europe and world trade*, 1995.

[32] *SEA: Single European Act*, 17 February 1986, 1987 O.J. (L 169) 1, 25 I.L.M. 506

Justice and Home Affairs (JHA).[33] During the Maastricht negotiations, the Commission had argued for the replacement of the CCP with a "common external economic policy" which would include, inter alia, services, investments, intellectual property rights and competition.[34] Yet, the public debate over the Treaty of Maastricht rose many important questions about the future of the EU and its foreign policy, in so far as those provision over new external economic policies were not being completely accepted by Member States. Article 2 EC, which set the aim of the new Commission, saw an important re-wording, putting at the centre of its goals to promote *"a balanced development of economic activities, sustainable and non-inflationary growth respecting the environment [...] a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among MS."* Under the revised article, it was evident that the CCP was still actually the external projection of the provisions concerning the single internal market; nonetheless, challenges in as much as supranational powers could be held by the Commission still account for the Court to determine their scope. Some of the most important judgements of this period showed an inclination of the Court toward a more 'pacific' approach regarding the wish of Member States to maintain sovereignty over certain aspects of policy making, although consolidating some others in favour of the Community.[35]

Most significantly, Opinion 1/94 on World Trade Organization of 1994 had the potential to clearly define the competences of the Community and its Member States regarding the Agreement establishing the WTO. The Commission asked for exclusive competences even over GATS and TRIPS, which under the WTO system of 'all of nothing', had to be accepted by all the members. Basing its main claims on ex Article 113 EEC, which the Court had already recognised as conferring 'exclusive competence' to the Community, it stressed the importance of being up to date with the changes of the global economy, within which trade in goods was being extensively replaced by trade in services. Yet, the Court legitimated the exclusive competences of the Commission under WTO only regarding the trade of goods, stating that only the first provision of GATS, which concerned cross-border supply, could be aligned with EU law, whereas the others concerned different provisions of the Treaty regarding the treatment of third-country nationals and rejecting completely the exclusive

[33] Official Journal of the European Communities, *Maastricht Treaty, TEU or Union Treaty: Treaty on European Union,* 7 February 1992, O.J. (C191) 1, 31 I.L.M. 253. All subsequent EC Articles are taken from the same treaty.
[34] M. Cremona, "A Policy of Bits and Pieces? The Common Commercial Policy After Nice", in *Cambridge Yearbook of European Legal Studies* 4, 2001-2002, pp. 61-92.
[35] S. Dillon, 2002; G. Moens, J. Trone, *Commercial Law of the European Union*, 2010. L. Medichini, "Trade Policy and the Court of Justice: A History of Ups and Downs.", 2018; M. Cremona, "A Policy of Bits and Pieces? The Common Commercial Policy After Nice", 2002.

competence over TRIPS, since Intellectual property rights did not relate specifically to international trade. It therefore granted mixed competences over GATS and TRIPS.[36]

The Court, clearly, had a rather restrictive approach in this opinion, which had an important impact on the dynamism of CCP that, while it was extended on all aspects of trade in goods and some of trade in services, still rested on shared competences between Commission and Member States, through the recognition of the 'duty of cooperation' between them and the rejection of the idea of implied powers where the internal power to harmonise had yet to be exercised, thus threatening the unity of the Community when a consensus over a certain international action would not be reached.

A step towards the solution of this problem was made with the negotiation of Treaty of Nice, in 2001, during what the conclusions reached by the Court with Opinion 1/94 was almost rejected and replaced with the assumption that "the Community became competent to conclude under the scope of CCP all the agreements concerning the 'consumption abroad', 'commercial presence' and 'presence of natural persons", all sectors that formerly fell outside the sphere of the common commercial policy.[37] The Treaty of Nice expanded the definition of common commercial policy in an important way, since it came to include the possibility to extend its application to agreements covering services and commercial aspects of intellectual property, although with safeguard clauses to prevent international agreements from going beyond internal rules in areas where the Treaty did not allow harmonization, and with many aspects still resting upon shared competences.[38]

3. The Treaty of Lisbon and the new EU trade strategies

The relevance of the conclusions gradually reached with the Treaty of Lisbon in 2007 can be only fully understood by looking at its context. The first decade of the XIX century saw an expansion of actors in the global scene, which include, inter alia, representatives of the civil society, organizations representing social and political players, and in general, representing smaller interests, and which reflected the ongoing expansion of global trade agenda towards political issues. The main consequence was the reinforcement of the mutual relation between economic and political sensitive themes, which were reflected into the evolution of the European Union in the extent in which it moved

[36] Opinion 1/94 *on Competence of the Community to conclude international agreements concerning services and the protection of intellectual property - Article 228 (6) of the EC Treaty*, [1994], ECR I-05267. Explanation of the judgement in L. Medichini, S. Dillon, M. Elsig.
[37]Official Journal of the European Communities, *Treaty of Nice, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*, 10 March 2001.
[38] M. Cremona, "A Policy of Bits and Pieces? The Common Commercial Policy After Nice", 2002.

from a period in which it exported a policy of ‘managed globalization’, sustaining the WTO policies and the strengthening of a multilateral system, to one described of ‘deep integration’.[39]

The inability to reach a successful cooperation among countries at multilateral level had been evident since the failure of the Doha Rounds in 2001, where a major issue concerned the treatment of developing countries and their claim over the fact that advanced economies did not fulfil their promises undertaken with previous rounds (implementation issues). Moreover, its aim was to achieve major reforms on the international trading system through the introduction of lower trade barriers and revised trade rules, as well as the so called ‘Singapore Issues’, which refer to the four working groups created during the 1996 Ministerial Conference in Singapore, set up to work on opening to new areas as investment, competition policy, transparency in government procurement and trade facilitation. No consensus has been reached yet over the subjects, except for trade facilitation, which Agreement entered into force on February 2017 upon ratification by two-thirds of WTO members, providing for the simplification and harmonization of export and import processes. In this general context, most countries of the world, even those that until the 90s had pursued mostly protectionists measures in the form of import-substitution and national economic strategies, started engaging in a ‘competitive liberalization’ as an insurance on preferential bases, which rested upon the idea of reciprocity and the conclusion of bilateral and plurilateral trade agreements. [40]

This overall tendency is reflected in the EU new trade strategies undertaken at the end on 1990s and beginning of 2000s, a period that saw the increasing necessity to work on clear and coherent priorities for the EU to further enhance its international trade. The Commission, indeed, launched in 1996 a *“Market Access Strategy”* (MAS), the main aim of which was to facilitate EU export through multilateral and bilateral agreements by identifying and removing market access restriction imposed by third countries to EU firms and to ensure full implementation of the Uruguay Round obligations to partners.[41] By 2006, the *“Global Europe’ Strategy: A Contribution to the EU’s growth and Jobs Strategy”* was launched, which main purpose was the reinforcement of the EU competitiveness

[39] See: M. Telò, “Interregionalism and World Order: The Diverging EU and US Models”, in *Globalization, New Regionalism and the Role of the European Union. Competing Regionalism and Global Governance in a Post-Hegemonic Era*, 3rd edition Routledge, London, 2014.
[40] See: M. Dee, “The EU’s Changing Role Performance in the WTO’s Doha Round”, *The European Union in a Multipolar World: World Trade, Global Governance and the Case of the WTO*. Global Reordering. Palgrave Pivot, 2015, London; S. W. Hartman, “The WTO, the Doha Round Impasse, PTAs, and FTAs/RTAs”, *The International Trade Journal*, 27:5, 411-430, 2013.
[41] The MAS has been later improved in 2006 by establishing a Market Access Partnership (MAP), which is based on a better coordination among Member States, businesses and the Commission in order to better tackle the problem of barriers, and, later, in 2015, by extending it to become more integrated with monitoring the implementation of EU trade agreements. For more about the Market Access Strategy of the EU, see: European Parliament, *The EU’s Market Access Strategy: does it reach its main goals?*, DG for External Policies - Policy Department Study, 2017.

beyond the borders in trying to assure national treatment for European business abroad and as an answer to the proliferation of many Free Trade Agreements negotiation,.[42]

As stated in the Purpose of the Communication, the strategy was indeed born out of the worries about the loss of market share in developing countries because of the increasing number of FTAs concluded among trading partners, who, as a result, had better market access conditions than the EU.[43] Thus, new requirements for ensuring European competitiveness were established, lying both on internal and external actions: improving the single market and its openness to global trade and investment creating fair conditions for trade abroad not only by reducing tariffs, but even by tackling more sensitive areas as could be non-tariff barriers (NTB)[44], and focusing on new trade fields, as IPR, services, investment, public procurement and competition, while ensuring social justice and cohesion at home. The strategy particularly stressed the need to 'cover sustainable development concerns, by involving public participation, including in ensuring that social and environmental commitments are fully implemented', in line with recently evolution in the global political and social scene.[45] Finally, *Global Europe* envisaged a "new generations of FTAs" to respond to the challenges, in particular bloc-to-bloc agreements with the Association of Southeast Asian Nations (ASEAN), MERCOSUR and the Gulf Cooperation Council as well as bilateral deals with important trading partners such as South Korea, India and Russia, among the European Neighbourhood Policy (ENP) with Ukraine, and with China.

The possibility of a successful negotiations of these bilateral agreements came after the coming into force of the Treaty of Lisbon, that was revolutionary in three main ways: first, it clarified EU competences in trade policies. Second, it amplified the role of the European Parliament for the first time, ensuring it joint powers alongside the Council regarding trade policies and agreements.[46] Last, it included trade policies into the scope of EU external actions. In force since 1 December 2009, it amended the Treaty of Maastricht of 1992 (which came to be known as the Treaty of the European Union or TUE) and the Treaty of Rome of 1957 (now, Treaty on the Functioning of the European

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[42] European Commission, *Global Europe: Competing in the World, A Contribution to the EU's Growth and Jobs Strategy*, Brussels, 4.10.2006.

[43] M. Maes, "The EU's Global Europe Strategy. Where is that Strategy Today?", Introductory presentation made at the informal meeting "*Building of A Common Platform Between Developing Countries*" organised by South Centre in Brussels on 4-5 December 2008.

[44] Non-tariff barriers are measures that acts as barriers to international trade but differ from customs tariffs since they come to include: 1) Regulations; 2) Rules of origins and 3) Quotas.

[45] *Commission of the European Communities: Impact Assessment Report*, op. cit., pp. 11-12.

[46] Up to that time the EP had not played a very significant role, more than formally giving its assent for association agreements and when domestic legislation of the EC had to be changed. In the years that lead to the Treaty of Lisbon, however, the Commission and the Council had consulted the EP more intensely when concluding regional or bilateral trade agreements, as could be the case of the EU- Korea Agreement or the one with ACP countries (Africa Caribbean and Pacific.

Union, or TFUE).[47] Its main aim was to ensure the effectiveness of EU policymaking, internal and external, after its enlargement, and actually gave a very straightforward interpretation of the CCP, using less ‘words’ and articles to illustrate its scope.[48]

One of the main areas in which the Treaty of Lisbon bought innovations is under the new Article 205 TFUE regarding the extent of external action of the EU, that came to include trade policies as well: this legally gave the possibility to the EU to use trade policy as an instrument to reach other objectives, based on the fact that it had already served broad foreign and strategic policies during time, especially through the negotiation of association agreements with the EU’s near neighbours in order to promote economic and thus political stability within the wider European security area.[49] Article 206 TFUE (ex. Article 131 EC) specifies the main aim of the CCP, as a remind of the principle of pursuing trade liberalisation under the rules set out by GATT in 1947, and the objective of the external action, which was not anymore just focused on trade, but a mean to pursue political and social ambitions as well. Therefore, the Treaty of Lisbon essentially put into writing those practices, as could be the support of human rights, promotion of sustainable development and policies to tackle climate change, environmental protection, the support of democracy and the rule of law, preservation of peace and reduction of poverty, that have been considered as core values for the EU and thus had to be included in future trade agreements (Art. 21 TEU).

Article 207 TFUE, although giving a more extensive definition of the CCP, is still non-exhaustive in so far as it could not be restricted by upcoming changes in the geopolitical and international trade context; however, Article 207(6), indeed, provides that EU policy “shall not affect the delimitation of competences”, stressing the fact that EU external powers are not limited in as much as they have been harmonised with internal ones. This regards even those aspects of trade in cultural, audio-visual, environmental and health services which had only rested upon mixed competences until then, thus not coming completely under EU law, although subject to unanimity due to their politically sensitive nature. As to Intellectual Property, the Court, in a case of 2013[50], confirmed that the entire TRIPS fall under the CCP, since it concerned commercial aspects of intellectual property rights, therefore it falls completely under Article 207 TFUE provision regarding ‘trade-related’ aspects of IP.

[47]Official Journal of the European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 17 December 2007. All Subsequent TFEU and TEU Articles are taken from the same Treaty.
[48] S. Woolcock, “The Treaty of Lisbon and the European Union as an actor in international trade”, *ECIPE Working Paper*, no. 01, 2010.
[49] Ibidem.
[50] Judgement of the Court (Full Chamber) *Case C- 414/ 11 Daiichi Sankyo and Sanofi- Aventis Deutschland v DEMO Anonymos Viomichaniki kai Emporiki Etairia Farmakon,* 18 July 2013.

A revolutionary aspect of the Treaty of Lisbon is the involvement of FDI (Foreign Direct Investments) into the scope of the CCP, as a further step towards the conformation to the WTO system, although not without important objections, mostly because of the fact that the majority of international investment law is (still) involved in Bilateral investment treaties (BITs) and FTAs, which are together called International Investment Agreements (IIAs). Discussions over time have focused on whether the concept of FDI under the CCP corresponds to the regulation of investment in these IIAs. Investment agreements and investments chapters inside free trade agreements, now negotiated directly by the Commission, include substantive protection standards as well as an enforcement mechanism in case of disputes, with the investor-state arbitration (ISA) being the main form of Investor-State Dispute Settlement (ISDS), included into the negotiation of some of the most important EU FTAs (CETA and TTIP). [51] It was at the moment of negotiations of said agreements, among other, that public opposition over the system grew to be one of the most controversial part of the process, leading to partially interrupting trade negotiations with the US. During such debates and in the event of the judgement of the Court on Opinion 2/15 concerning EU-Singapore Agreement (EUSFTA) on 2017, the full Court (CJEU) drew the division of competences between the EU and its Member States over the CCP, confirming that the EU has exclusive competences over the ratification of FTAs with third countries for what concerns most of the aspects of the agreement but shared competences with Member States when it comes to Non-Direct Investments and Investor-State Dispute Settlement (ISDS). Said Opinion is at the base of future EU-only FTAs of new generation, when they do not involve such provisions on their agenda.[52]

Before the Treaty of Lisbon, the CCP was basically a separated field from the external action of the EU. Yet, the XXI century reforms have been subjected to a period of profound changes and uncertainty both internally, since the outburst of the debates over the benefits of FTAs by Member States and the civil society, and externally, with the multilateral trading system gradually losing its appeal and leading to a more fragmented distribution of powers. The very first part of the decade right after the Treaty of Lisbon was characterized by the necessity of responding to a global financial crisis and appeared as a confirmation of the Global Europe Strategy of 2006 which had prioritised the conclusion of a new generation of comprehensive trade agreements with key partners.[53] The period was marked by a growing interdependence among countries, with an increasing integration between

[51] M. Araujo, A. Billy, "The EU Deep Trade Agenda: Law and Policy", *Oxford University Press*, 2016.
[52] *Opinion pursuant to Article 218(11) TFEU — Free Trade Agreement between the European Union and the Republic of Singapore*, Opinion 2/15 (Full Court), [2017], Digital records.
[53] G. Van der Loo, M. Hahn, "EU Trade and Investment Policy since the Treaty of Lisbon: Achievements and future priorities", *CEPS Research Report*, October 2020.

the EU, North America and the Asian-Pacific Region especially, which constituted the three main players at the global level.

In this context, Trade Commissioner Karel De Gucht published in November 2010 the new Communication that laid the foundations of EU trade and investment policies until 2015: "*Trade, Growth and World Affairs: Trade Policy as a core component of the EU's 2020 strategy"*. It followed the necessity to defend, and evolve, the nature of EU interests in the always changing international trade system while leaving the 2008-9 financial crisis behind, furthered EU commitment to an "open, fair and rules-based trading system" that would deliver jobs and growth and underlined the need to improve its position as global player in international trade.[54] The main objectives outlined were the need to ensure a sustained growth and guarantee the sustainability of the social market economy in a period of evolution of bilateral negotiation, to finalize the Doha Round negotiations in order to confirm the central role of multilateral trade liberalisation and rule-making system, however, with the awareness that said Round would not have been able to tackle and to complete the agenda of competitiveness-driven FTAs, and finally to deepen the relations with old and new strategic partners, namely the US, China, Russia, Japan, India and Brazil. The new strategy envisaged entering into bilateral negotiations with the ASEAN Countries (Singapore, Vietnam, Malaysia and Thailand) and, mostly, into a Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US, which was believed to have the possibility to re-start WTO rounds. A need to further enhance coherence between the EU's internal and external policies was increasingly stressed, since a cohesive cooperation would have helped developing stricter relations with third countries, as well as addressing behind-the-borders regulatory issues. Moreover, it put emphasis on reciprocity among partners, especially over the promotion and respect of human rights, labour and environmental standards, adding new provisions on sustainable development and investments on FTAs.[55]

With the new 2015 *"Trade for All: Towards a more responsible trade and investment policy"* strategy of Trade Commissioner Cecilia Malmström, many features of common commercial policy changed, opening the floor for even more heated debates over the new generations of Free Trade Agreements.[56] One of the main pillars of the new strategy involved the use of trade agreements and trade preference programmes as levers to promote, around the world, values like sustainable development, human

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[54] European Commission, *Trade, Growth and World Affairs Trade Policy as a core component of the EU's 2020 strategy,* Brussels, 9.11.2010.

[55] See: Van der Loo, M. Hahn, "EU Trade and Investment Policy since the Treaty of Lisbon: Achievements and future priorities", 2020*;* B. Hoekman, L. Puccio,"EU Trade Policy: Challenges and Opportunities", *Robert Schuman Centre for Advanced Studies Policy Papers,* 2019/06.

[56] European Commission, *Trade for all - Towards a more responsible trade and investment policy*. Luxembourg: Publications Office of the European Union, 2014.

rights, fair and ethical trade and the fight against corruption. Moreover, "Trade for All" was completely in line with President of the European Commission Juncker pledge to listen and respond to EU citizens' concerns, since it put transparency during negotiations at the core of its purposes.[57] In order to pursue this objective, the Commission consulted hundreds of organisations representing civil society and government representatives in Brussels and national capitals: the result was a strategy that strived to publish the key texts of negotiations, as happened to the Transatlantic Trade and Investment Partnership (TTIP), which was at the centre of increasing controversies. As to trade agreements, the WTO system remained the key to each and every EU policy, notwithstanding the fact that it stays unchanged since the stall of the Doha Rounds. In particular, the strategy pursued for new bilateral and plurilateral agreements, introduced a mechanism in order to include interested countries in already established trade agreements using the same approach of the plurilateral FTA with Colombia and Peru of 2012, which was enlarged to Ecuador in 2014. The key aim for trade agreements remained the Asia-Pacific Region, with the EU-Japan FTA, the modernisation of old FTAs with Mexico and Chile and the Custom Union with Turkey at the centre of attentions, as well as the conclusion of a deal with Canada. Yet, as stated by a report of 2017 on the first years of the strategy implementation, it saw an "unprecedented public debate about the purpose and legitimacy of trade agreements, linked with renewed concerns about the effects of globalisation", as world trade increasingly witnessed countries turning to protectionist measures and domestic policies that could damage other countries.[58] In May 2017, the Commission invited a debate on what the EU could do to shape globalisation in line with its shared interests and values, at the end of which it published a package of new initiatives to be integrated with the already existing trade strategy in order to ensure that EU trade policy would evolve to meet the Union's overarching economic and political aims, including by enhancing coherence between trade policy and other EU external and internal policies.[59]

4. Main characteristics of FTAs/PTAs

The rapid, if sometimes uneven expansion of multilateral trade from the late 1980s came to an abrupt end after 2009 as many large, developed economies adopted more 'protectionist' policies to address

[57] European Commission, *Trade for All: European Commission presents new trade and investment strategy*, News Archive, Brussels, 14 October 2015.

[58] European Commission, *Report on the Implementation of the Trade Policy Strategy Trade for All Delivering a Progressive Trade Policy to Harness Globalisation*, Brussels, 13.9.2017. See also, for example: V. Gunnella, L. Quaglietti "The economic implications of rising protectionism: a euro area and global perspective", *ECB Economic Bulletin*, Issue 3/2019; A. Bongardt, F. Torres, "Comprehensive Trade Agreements: Conditioning Globalisation or Eroding the European Model?", *Intereconomics*, Volume 52, 2017 · Number 3 · pp. 165–170.

[59] European Commission, *Report on the Implementation of the Trade Policy Strategy Trade for All*, 2017.

balance of payments problems exacerbated by the 2008–2009 financial crisis.[60] As the European Union evolved in the form of regional economic integration, alongside the GATT/WTO both regional trade agreements (RTAs) and preferential trade agreements (PTAs) grew out of the necessity of going beyond its provision, even due to the failure of multilateral organizations to tackle the problems coming from the changing international trade system. Yet, bilateralism and preferential treatments are phenomenon that have existed in the international stage since before the emerge of a multilateral trading system. Following the different approach of the Commissions throughout the years and the needs of the changing world trade, a clear timeline of the evolving use of FTAs can be traced. For the purpose of this thesis, we will limit in investigate EU bilateral trading patterns after the conclusion of GATT in 1947, as well as the characteristics and evolutions of its trade agreements.

The legal bases for the conclusion of regional and preferential trade agreements are to be found, as in the case of Custom Unions, in the text of the General Agreement on Tariffs and Trade of WTO, essentially consisting of two main doctrines: the first one regards the rules of non-discrimination, while the second one concerns removing barriers to international trade. The doctrine of non-discrimination is composed by two principles, one stating that, as parties to the GATT, Members shall grant Most-Favoured Nation (MFN) treatment of non-discrimination to the products of all other WTO Members under Article I, and the other regards the national treatment under Article III, which provides that a foreign product, once inside the domestic market, should be treated as every domestic product.[61]

As already mentioned, Article XXIV GATT, as well as Article V of GATS, provides two possibilities of exemption to the MFN rule, in the form of regional integrations, as could be custom unions and free trade areas. Although this kind of mechanism could appear to be an actual contradiction to the MFN rule inside the WTO system, considering that it implies granting a more favourable treatment only to contracting parties of such agreements, this is accepted if certain conditions previously stipulated are observed.[62] As a matter of fact, in 1994 the Uruguay Round Understanding on the Interpretation of Article XXIV attempted to increase multilateral surveillance over regional trade arrangements by "clarifying the criteria and procedures for the assessment of new or enlarged agreements and improving the transparency of all XXIV agreements".[63] During the Doha Round,

[60] J.K. Sundaram, "Free Trade Agreements, Trade Policy and Multilateralism". *Development vol 59*, 40–47 (2016).
[61] GATT 1994: *General Agreement on Tariffs and Trade 1994*, Part I-II
[62] For deeper information about GATT XXIV and GATS V, see : Md. R. Islam, S. Alam, *Preferential Trade Agreements and the scope of GATT Article XXIV, GATS Article V and the Enabling Clause: An Appraisal of GATT/WTO Jurisprudence*, Published online by Cambridge University Press: 24 April 2009.
[63] Uruguay Round Understanding on the Interpretation of Art. XXIV of the GATT 1994, available at http://www.wto.org/english/docs_e/legal_e/10-24.pdf.

parties attempted to negotiate further rules for regional trade agreements, until in 2006 the WTO General Council established a new provisional Transparency Mechanism for RTAs that provides for early notification by WTO Members of FTA negotiations, transformed into a permanent one in 2015 during the 10th Ministerial Conference in Nairobi.[64]

One other important exemption to the MFN rule under the GATT is the Generalised System of Preferences (GSP), introduced in 1971 after UNCTAD (United Nations Conference on Trade and Development) recommendations and whose aim is to grant preferential treatments to developing countries. Currently, a total of 13 countries (Australia, Belarus, Canada, the European Union, Iceland, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the United States of America) grants GSP to more than 130 developing countries throughout the world. The EU approach to preferential treatments under GSP, established by Regulation (EU) No 978/2012, differs according to the need of each country, and is divided into Standard GSP for low and lower-middle income countries, GSP + (Special Incentive Arrangement for Sustainable Development and Good Governance) for vulnerable low and lower-middle income countries that implement 27 international conventions related to human rights, labour rights, protection of the environment and good governance and EBA (Everything But Arms), that grants special arrangements of the Least Developed Countries (LDC) . To be eligible to the GSP, a low and middle-low income country must be classified as such by the World Bank and not benefit from another preferential access to the EU market by the means of FTAs, unless being a LDC. Nowadays, a total of 70 countries are granted GSP under EU legislation, the majority of which under EBA. [65]

When it comes to a Free Trade Area, it can be formed when two or more parties decide to liberalise trade among them creating preferential trade liberalization policies by ensuring the elimination of trade barriers and /or the prohibition of future discrimination measures. It differs from a custom union for it does not create common external tariffs for non-members. It further differs from a Preferential Trade Area in the extent of which this type of agreement grants preferential access to specific products among parties but does not eliminate completely all the barriers to trade. It is assumed that, mostly because internal trade flows would increase after the elimination of barriers, FTAs would as well lead to a rise of international trade. Nevertheless, up to now there has been an always growing debate over

[64] J.A. Crawford, “A New Transparency Mechanism for Regional Trade Agreements”, *Singapore YearBook of International Law and Contributors*, 2007.
[65] Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. See also: European Commission, *The EU’s Generalised Scheme of Preferences (GSP)*, August 2015.

if such agreements would instead strengthen private monopolies and corporate powers at the expanse of multilateral collaboration, a question that is yet to be answered.[66]

Recently, the international trade scene has witnessed a steady increase in RTAs among WTO members, and in the European Union, although one of the main problematic aspect of creating free trade agreements in compliant with GATT/GATS was that of excluding certain economic sectors, therefore not granting the elimination of tariffs on 'substantially all trade' required.[67] In particular, even though the majority of the agreements in force are of bilateral nature, the last years have seen an increase in plurilateral trade agreements negotiations, a trend that could be underlined looking at the Trans Pacific Partnership (TPP) between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States, and at the world's newest multilateral trading bloc, namely the Regional Comprehensive Economic Partnership (RCEP), signed on November 2020 by 15 members of the Asia-Pacific region, which accounts for 30% of global GDP.[68] The first one, however, was not ratified by President Trump in 2017, leading the remaining countries to establish a new deal, the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) Agreement, based on the same provision of the previous. As of September 2020, an overall of 306 RTAs were in force, corresponding to 496 notifications from WTO members, counting goods, services and accessions separately. The largest number of RTAs in force are found in Europe (EU has 43 as of September 2020, and EFTA states 31), reaching a number of 101 if those which have just been notified to the WTO are added, and the East Asia region being second (92). [69]

It is often believed that the failure of the Doha Round negotiations led to an increase in the number of both FTAs and PTAs, since one of the main issues was how to tackle the question of the coexistence of developed and developing nations in trying to define a fair distribution of rights and obligations for each Member, and to overcome the idea that major powers use multilateral institutions at their interests, an issue that still makes achieving the required consensus extremely challenging among the more than 150 members of WTO by the Single Undertaking Rule (all or nothing).[70] On the

[66] See: IMF Staff, Global Trade Liberalization and the Developing Countries, November 2001, available at https://www.imf.org/external/np/exr/ib/2001/110801.htm, accessed 13/11/20.
[67] See: J.J. Schott, "Free Trade Agreements: Boon or Bane of the World Trading System?", in J.J. Schott (ed.), *Free Trade Agreements: US Strategies and Priorities*, Institute for International Economics, Washington, DC, pp 3-33, 2004; A. Dynefors-Hallberg, *A Legal and Political View on Regional Trade Agreements in the GATT/WTO - GATT Article XXIV,* Master Thesis Department of Law Göteborg University, 2008.
[68] EEAS Press Team, *The Regional Comprehensive Economic Partnership – what does it mean for the EU?* 19/11/2020
[69] RTA Section, WTO Secretariat, September 2020, WTO Website available at https://www.wto.org/english/tratop_e/region_e/region_e.htm. Accessed 13/11/20.
[70] See: Y. Akyüz, W. Milberg, R. Wade, "Developing Countries and the Collapse of the Doha Round: A Forum". *Challenge*, 49(6), 6-19, 2006; S. W. Hartman, "The WTO, the Doha Round Impasse, PTAs, and FTAs/RTAs", *The International Trade Journal*, 27:5, 411-430, 2013.

contrary, although it is true that from the end of the XX century the number of RTAs increased steadily, it is also true that free trade areas already existed at the time of the creation of the EU.[71]

Up until the coming into force of the Treaty of Lisbon, the EU approach had always been of favouring multilateral negotiation and imposing a de facto moratorium on new FTAs, because new bilateral negotiations would have weakened the EU's position in pushing for a comprehensive multilateral round.[72] On the contrary, there are several motivations for which the EU never really ruled out the conclusion of particular FTAs, even during the 1990s. One of that, as already said, is certainly the difficulties in multilateral negotiations, as became especially evident during the Doha Round. The US started to develop its own trade negotiations, forming an agreement with Israel in 1985, as well as the trilateral North American Free Trade Agreement (NAFTA) with Mexico and Canada in the early 1990s. In this way, it showed its own interpretation of bilateral negotiation as an alternative to multilateralism. Moreover, many other significant regional agreements also took off in Asian countries, which were increasingly growing and concluding regional agreements, leaving the EU without an important presence in the region. At the same time, the European Union started changing its approach towards bilateral and plurilateral agreements even on the domestic side, through the Global Europe Strategy of 2006.[73]

In present days, EU Trade agreements could be of three types, depending on their content and scope of action: Economic Partnership Agreements (EPAs), that support developing countries, FTAs, which open markets between parties and Association Agreements, which contain political implications. Moreover, the EU concluded non-preferential trade agreements with several country partners, under Partnership and Cooperation Agreements (PCAs). In contrast, unlike US Trade Agreements, that follows the model of the NAFTA, the EUs' ones differ from content and type. [74]

For the aim of this thesis, we will take into consideration the European division of FTAs into "generations", which differs from the international one and is based on the emphasis put in different areas and on some important characteristics deriving from the context in which they have been

[71] The very first example of a free trade association in the European zone was the European Free Trade Area (EFTA), established in 1960 between seven countries that were not yet ready, at the time, to join a broader level of integration in the form of the European Community: Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. An important step towards a stricter cooperation between the two economic areas was made in 1992, when the European Economic Area (EEA) was formed between EU Member States and 3 of the four EFTA members (minus Switzerland, with whom the EU signed an afterward bilateral agreement), and which enlarges the Single Market provisions to those EEA EFTA members upon the adoption of its legislations and other horizontal policies, such as social, environmental, development and educational policies. This kind of agreement was particularly significant because it showed the will from the EU side to facilitate trade with a particular regional partner without taking the form of a custom union. See K. Heidensohn, *Europe and World Trade*, Thomson Learning, 1995, pp 88-106.
[72] S. Woolcock, "European Union policy towards Free Trade Agreements", *ECIPE Working Paper*, Brussels, 2007
[73] *Ibidem.*
[74] *Ibidem.*

negotiated, according to the Report from the Commission on Implementation of Free Trade Agreements of 2019 and further research.[75]

- “First generation" agreements, negotiated before 2006, mostly focus on trade in goods and tariff elimination and on preparation to the entrance into the single market;
- Deep and Comprehensive Free Trade Areas (DCFTA) create stronger economic links between the EU and its neighbouring countries and extend to new sectors, including intellectual property rights, services and sustainable development;
- Economic Partnership Agreements (EPA) focus on the development needs of African, Caribbean and Pacific regions, fostering gradual liberalisation in partner countries while the EU grants market access; [76]
- ‘New Generation’ agreements, which have been negotiated after 2006 and aim to develop stronger rules-based and values-based trade regimes with the trading partner countries concerned and include dedicated provisions on trade and sustainable development, as well as address challenges faced by modern economies and societies.

5. First Generation FTAs

One of the main reasons for the EU to conclude agreements after the end of the Cold War and during the period of enlargement was certainly of political nature, since there was the necessity to create a stable economic and political order with the Eastern and Central European neighbours on the one hand, and political stability with the Mediterranean countries on the other.

During the time of the creation of the EEA, the incentive to the creation of Association Agreements with Norway, Iceland and Switzerland was because of proximity. To be more precise, it was in the first half of the 70s that most of these countries became part of the EFTA, as an alternative to the EEC. The refusal of said countries to join the EEC brought to the conclusion of bilateral agreements, with the aim of removing barriers to trade in particular sectors (mainly industrial and some agricultural). The four main barriers to be eliminated concerned “1) import customs; 2) export customs; 3) quantitative restrictions and measures having equivalent effect; 4) discriminatory

[75] European Commission, *Implementation of EU Trade Agreements 1 January 2019 - 31 December 2019,* Brussels, 12.11.2020. Based also on P. Wruuck, “What future for EU trade policy and free trade agreements?”, in *Perspectives on the Soft Power of EU Trade Policy*, European Investment Bank, 2019; M. Katunar, M. Maljak, S. Martinić, “The Evolution of the EU’s Foreign Trade Policy”, *Pravnik N. 48*, 1 (96), 2014.
[76] European Commission, *EU trade agreements: delivering new opportunities in times of global economic uncertainties*, News Archive, Brussels, 14 October 2019.

taxation."[77] The EEA was considered at the time to be the largest multilateral trade zone in the world, and, up to the beginning of the 1990s, it was far larger than its American counterpart, the NAFTA.[78] Currently, relations with these countries remain strong, namely Norway is the EU's third-largest preferential trading partner country under preferential trade agreements and Switzerland remained the EU's top trading partner, although both the FTAs have been modernized, or negotiation have started in the last years, in order to increase the level of market liberalisation and access to EU internal market.

Preferential trade exists between the EU and the developing countries of Mediterranean Basin and Middle Eastern. More specifically, in 1992 one tenth of all EU external exports were headed at said area, and it constituted roughly one third of the exports of those countries. In this context, the EU's started concluding preferential trade agreements, consisting in provisions to promote economic development and a closer integration with the single market, with eight partners in the region (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the occupied Palestinian Territories and Tunisia) since long. [79]

In 1995, the EU launched the Barcelona Process within the Barcelona Euro-Mediterranean Conference to enhance its relations with countries in the Mashriq and Maghreb regions. The dialogue was founded in three pillars (economical, political and cultural) and aimed at the establishment of a single free trade area (the so- called Euro-Mediterranean Partnership) both between the EU and the Southern Mediterranean countries and between the Southern Mediterranean countries themselves as well as a common space for peace, stability, security. [80] The goal has been perpetrated through the establishment of Association Agreements with most of the partners in the region (with the exception of Syria and Libya), the majority of which have been concluded between 1997 and 2005 and are mainly limited to trade of goods and the elimination of tariff barriers, so that they are currently being re- negotiated at a bilateral level, with the aim to further liberalise trade in agriculture, accreditation and acceptance of industrial products and regulatory convergence. Nevertheless, both the EU and Mediterranean countries have been hesitant to negotiate liberalisation of services, which remain one of the big grey areas of such agreements. The European Council launched in 2003 the European Neighbourhood Policy (ENP), which purpose was avoiding the possibility of diversions between the enlarged EU (now including eight former Central and Eastern European countries) and its neighbours and deepening relations with neighbouring countries that were not EU accession candidates, and

[77] M. Katunar, M. Maljak, S. Martinić, "The Evolution of the EU's Foreign Trade Policy", 2014.
[78] K. Heidensohn, *Europe and World Trade*, pp 88-106.
[79] Ibidem.
[80] M. Katunar, M. Maljak, S. Martinić, "The Evolution of the EU's Foreign Trade Policy", 2014

which became an 'umbrella' to new cooperation initiatives with neighbour countries. [81] Indeed, under the ENP a further step towards a closer relation with the region was given by the establishment of the Union for the Mediterranean (UfM) in 2008, through which new regional and sub-regional projects have been initiated in areas such economy, environment, health, education, migration, energy and social affairs.[82]

The main goal of the Euro-Mediterranean trade partnership is deepening the South-South economic integration through supporting the negotiation of FTAs among Mediterranean countries, although regional economic integration between Southern Mediterranean countries is still limited: intra-regional trade is a small fraction (5.9% in exports, 5.1% in imports) of the countries' total trade, one of the lowest levels of regional economic integration in the World. However, in 2004, Jordan, Egypt, Morocco and Tunisia concluded the Agadir Agreement, which established a free trade zone among the four nations and included the adoption of a harmonized set of rules of origin that permits cumulation and that is accepted by the EU. [83]

Unlike with the other states of the region, in 1995 the EU has developed a Custom Union under Article XXIV GATT with Turkey, which covers all industrial goods but do not involve agriculture (except processed agricultural products), services or public procurement, if not in the form of trade concessions. Moreover, besides providing for a common external tariff, said Customs Union foresees that Turkey is to align to the *acquis communautaire* in several essential internal market areas, notably with regard to industrial standards, as it has been a candidate to the EU since 1999. As to 2019, notwithstanding the economic difficulties of 2018, the EU is the first Turkey's import and export partner, as well as source of investments.[84]

One more group of agreements that are included within the first generation are those Association Agreements that have been concluded during the 1990s with the countries of the Western Balkan Region (Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro, Serbia, and Kosovo). EU relations with the countries of the Eastern European bloc go back to the 1980s, period in which the Comecon[85] and EU delegates agreed on a mutual recognition of the organizations. In particular, bilateral agreements were concluded between the EU and Comecon countries, although trade remained small up until the dismissal of the USSR and Comecon itself and relations have not

[81] History of UfM and the Barcelona Process, available at: https://ufmsecretariat.org/25bcnprocess/.
[82] EEAS Press Release, "Union for the Mediterranean (UfM)", 2016, available at https://eeas.europa.eu/diplomatic-network/union-mediterranean-ufm/329/union-for-the-mediterranean-ufm_en.
[83] EEAS Press Release, "Union for the Mediterranean (UfM)", 2016.
[84] European Commission, *Implementation of EU Trade Agreements 1 January 2019 - 31 December 2019.*
[85] Council for Mutual Economic Assistance, which came into being in 1949 and embraced the Central and Eastern Europe Countries (CEECs) and the former republics of Soviet Union.

been so easy because of a high political instability in the region, so that the EU assisted the war-affected Balkan countries only sporadically, mainly through humanitarian aid, military presence, and some trade concessions offered to selected countries.[86]

During the Zagreb Summit in 1999, The European Commission announced the launching of the Stabilisation and Association Process (SAP) with Croatia, The Former Republic of Yugoslavia (back then Serbia, Montenegro and Kosovo), Bosnia and Herzegovina, Macedonia and Albania, as an international instrument for economic assistance towards reconstruction and transition of the post-war period, as well as to pursue prospects for future integration in the EU. Under the SAP, Wester Balkans countries sought to establish Stabilisation and Association Agreements (SAA), which are tools towards economic development and political stability in the area, to create a long-term association with the EU. The EU perspective of these countries was further emphasized during the Feira European Council in 2000 first, and the Thessaloniki European Council in 2003 then (recently, the Sofia European Council in May 2018, too) so that these agreements can be described as of a 'mixed' kind and temporary, since they provide to be a legal instrument for a progressive integration into the EU market. The SAA establishes a bilateral free trade area between the associated country and the EU in conformity with GATT 1994 and WTO provisions during a transitional period. This free trade area created through the Interim Agreement is not to cover all trade between the associated country and the EU, but covers only industrial products, agriculture and fisheries, although with some exceptions which are not yet completely liberalised and are subject to preferential quantitative concessions. Once in force, the trade part of the SAA could come to involve even trade in services and GATS and needs to be notified to the WTO.[87]

Finally, both the 2000s FTAs concluded with Mexico and Chile can be regarded, at least until their modernization, as first generations' agreements, to the extent in which they mainly involved liberalisation of trade in goods and services. One of the peculiar provisions of these generation agreements is the one which provides that "products originating from the party may not enjoy a more favourable treatment when imported into the Community than that applied by the member states of

[86] K. Heidensohn, *Europe and World Trade*, pp 88-106.
[87] M. Uvalic, *EU policies towards the Western Balkans: The role of sticks and carrots,* AISSEC Conference Perugia, 25-27 June 2009. The transition period is now over for all the countries except for Kosovo, for which will end in 2026. Moreover, from 2013 a system of Pan-Euro-Mediterranean cumulation of origin is in place between the SAP countries of Western Balkans, the EU, EFTA States, Turkey, the countries which signed the Barcelona Declaration and the Faroe Islands through the conclusion of a single Convention which replaced the rule of origin protocols of each FTAs in the region, with the aim of simplifying its management and fastening its adaptation to changing market conditions. In 2020, a process has been launched to introduce the revised rules in the bilateral origin protocols, which will also enable the further development of integrated supply chains and trade within the area, which accounts for about 60 % of the EU's preferential trade. See: Official Journal of the European Union, *Explanatory Notes Concerning the Pan-Euro-Mediterranean Protocols on Rules of Origin*, 2007.

the Community between themselves“ [88], therefore granting the possibility to have a more favourable, or at least equal, treatment to member states products and which is not present in the next generations agreements. Both the treaties are undergoing further negotiations, so that they will be considered as of “new generation”.

6. DCFTA

The second group, or generation, of FTAs concluded by the EU are those included into the Deep and Comprehensive Free Trade Areas (hereinafter: DCFTA). This group of agreements, negotiated between the end of the 90s and 2014-2016 with just 3 countries, are part of a broader shift inside the European Neighbourhood Policy of 2004, with the aim of establishing, precisely, ‘deeper’ relations between the EU and its partners in the sense of a convergence of the latter to the EU legislation and single market. The 3 countries are Moldova, Georgia and Ukraine; Armenia should have concluded such an agreement, too, but withdrew in 2013. However, in 2017 a new Comprehensive and Enhanced Partnership Agreement was concluded, which could be seen as a first approach towards a likely future DCFTA with the country. The EU had already started liberalising some aspects of its trade with these countries long before the coming into force of DCFTAs, through the GSP system. Nevertheless, new provisions concluded in 2014-2016 boosted a new level of liberalisation, aligning domestic legislation on EU’s internal market law, therefore envisaging the elimination of non-tariff barriers through technical standards for industrial goods (TBT) and food safety regulations (SPS). [89]

DCFTAs are similar to the trade agreements inside the Euromed partnership for what concerns the area that they cover, although differing in the sense of the language being more ‘binding’, therefore not allowing country partners to rule over provisions, in a gradual attempt of convergence towards EU norms. That is, DCFTAs mainly focus on those areas where the EU has common policies of market regulation: standards, competition policy and protection of IPRs, as well as certain service sectors. Tariff barriers are prohibited on both industrial and agricultural products; yet the latter depend on the country partner. Literature over these agreements underlined extensively that one of the main purposes to conclude this kind of agreement has been to align country partners to EU legislation, both

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[88] *Agreement between the European Economic Community and the Kingdom of Norway* (signed 14 May 1973, entered into force 01 July 1973) OJ L 171 art 16.

[89] See: European Commission, *Implementation of EU Trade Agreements 1 January 2019 - 31 December 2019*. To consult the agreements: https://www.europarl.europa.eu/factsheets/en/sheet/172/three-eastern-partnership-neighbours-in-the-south-caucasus; B. A. Melo Araujo, “Legal Framework of the EU’s Deep Trade Agenda Competence, Decision Making, and Objectives”, in *The EU Deep Trade Agenda,* Oxford University Press 2016; M. Katunar, M. Maljak, S. Martinić, “The Evolution of the EU’s Foreign Trade Policy”, 2014.

in areas of product market regulations and in national policies, through removing barriers to trade and investment between all countries in the region and between the EU and the region, in so far as many provisions foresee internal reforms. The motivation is therefore not just of economic nature, but rather political, given the countries aspirations to become members of the EU. Ex post assessments showed that the DCFTAs indeed have accomplished results in the sense of higher growth and rising incomes in partner countries, as well as increased trade between the three states and the EU over the last two decades; yet, it still remains concentrated in few products and still has to face too many non- tariff barriers, so that mainly Georgia and Ukraine recently turned to China market, a situation that has increased due to the pandemic outburst. [90]

7. EPA

The EU started negotiating Economic Partnership Agreements with 79 ACP countries (Africa, Caribbean, Pacific) from 2002 in the form of regional partnerships, with the main aim of slowly integrating said countries into the world economy, promoting sustainable development and eradicating poverty. ACP officially became an international organization in April 2020, known as the OACPS (Organisation of African, Caribbean and Pacific States).[91]

The vary base of EPA lies in the trade pillar of the broader Cotonou Agreement, adopted by the Commission in 2000 replacing the Lomé Convention of 1957 between the EU, its Member States and ACP countries with the purpose to set the framework of political, economic and trade cooperation for a twenty-years period. It should have expired in February 2020 and being replaced by a new 'post-Cotonou' Partnership Agreement, although the negotiations of the new framework of cooperation have been delayed due to the outburst of the pandemic and parties have agreed to extend it until 31 December 2020.[92]

The intention to conclude regional trade agreements in the context of Cotonou was born out of the necessity of turning trade between EU and ACP in line with WTO obligations. In other words, the EU saw in RTAs the best way to comply with the WTO system in granting preferential treatments to

[90] Ibidem., See also: Akhvlediani, Emerson, Gumene, Gogoberidze & Movchan, *Evolution of trade between the EU and its Associated States: five years after the signing of the DCFTAs*, 3DCFTAs project, 15 October 2020 available at https://3dcftas.eu/publications/, accessed 11/11/20.
[91] E. Pichon, "After Cotonou: Towards a new agreement with the African, Caribbean and Pacific states", *EPRS - European Parliamentary Research Service* Briefing, January 2021.
[92] Press Release available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2291. For more about EPAs and their history, see M. Katunar, M. Maljak, S. Martinić, "The Evolution of the EU's Foreign Trade Policy", 2014; K. Heidensohn, *Europe and World Trade*, pp 141-143.

developing countries and LDC, since the general system in place with the Lomé Convention had been challenged as discriminatory for non-ACP developing countries and LDC both by civil society and NGOs.[93] EPA Agreements main distinction from normal FTAs can be found in their focus on ACP countries' development, taking into account their socio-economic circumstances. As a matter of fact, they came to include areas such co-operation and assistance to help partners better benefit from the agreements.

EPA talks have been in place between the EU and seven ACP regional groups, divided into Pacific, Caribbean, and 5 African regions (Central Africa, West Africa, Eastern and Southern Africa and East African Community). Inasmuch as the main aim of EPA was to gradually integrate ACP countries into global market, this implied fostering closer economic integration between the parties, by removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade, in full conformity with the provisions of the WTO. However, the deadline for becoming WTO-compliant of 2007 could scarcely being respected, so that Interim Agreements have been accepted, which consists in ACP countries liberalising around 80% of trade over a period of 15 to 20 years, while the EU grants duty free access from day one for almost all ACP exports of goods, improved and flexible rules of origin, financial support and development cooperation.[94] Moreover, because of ACP exports under EPAs should comply with EU standards, all agreements had to provide technical support, training and measures to promote knowledge transfer and strengthen public services and infrastructure. Economic partnership agreements are therefore considered as the "…most generous trade partnerships the EU has ever offered to any trading partner", offering "…best possible trade conditions".[95]

Conclusions of regional agreements appeared to be harder than expected, since countries, members of civil society, NGOs and business groups stated their concerns about possible implications of the agreements to the development of countries, so that the EU postponed the initial deadline of 2007 to 2014, with the condition that those countries which had signed an Interim Agreement, but did not yet started to implement it, would have lost the preferential market access to the EU. As to 2020, the majority of ACP countries either have concluded negotiations (32 countries out of 79) or are implementing an EPA with the EU. The EU is a major trading partner for the regions, accounting for more than 21% of their overall trade, that has increased by a 32,4% over the last 10 years (data back to 2019). It is Sub-Saharan Africa's second-biggest partner behind China, Caribbean's second-

[93] Ibidem.
[94] Council of the European Union, *Recommendation authorising the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions*, Brussels, 12 June 2002.
[95] M. Katunar, M. Maljak, S. Martinić, "The Evolution of the EU's Foreign Trade Policy", 2014.

biggest trading partner behind the United States and the Pacific region's third-biggest trading partner behind China and Australia.[96]

8. New Generation Agreements

The last group of agreements includes those negotiated and concluded after the coming into force of the Treaty of Lisbon, as well as the modernisation negotiations of such agreements that had been already categorized as of 'first generation', but of which current revisions are expanding scope and characteristics. It is the broader group when it comes to country partners featured and provision encompassed, concerning both the liberalization of trade in goods and services, as well as investments, public procurement, competition and subsidies and regulatory issues: they include in such ways both WTO + (obligations relating to policy areas already covered by some of the WTO agreements) and WTO-X (obligations in areas not covered by WTO agreements). Overall, the principal aim of these agreements is to develop stronger rules-based and values-based trade regimes with the trading partner countries concerned and include dedicated provisions on trade and sustainable development and, giving the geopolitical context in which they are being negotiated, they tackle major modern society issues and novelties, as could be small and medium-sized enterprises, telecommunication and e -commerce. [97]

New Generation' Agreements found their own legal base in EU context since the launch of the Commission *Global Europe Strategy* communication. Indeed, in putting momentarily aside multilateral framework for international trade, although still being committed to it, the EU found in new FTAs a way to promoting openness and integration 'fastest and further', while being comprehensive in scope and providing liberalisation for 'substantially all trade'. The new agreements foresee, therefore, starting from a key economic criteria which finds the potential partners based on their market potential and level of protection against EU export interests, besides having ongoing negotiations with EU competitors. Significantly, the EU started their negotiations right after the conclusion of similar agreements by those same partners with the US (as in the case of EU-Japan, which was stimulated by the conclusion of the US-Korea FTA) or were motivated by the need to

[96] European Commission, *Implementation of EU Trade Agreements 1 January 2019 - 31 December 2019*.

[97] See: M. Katunar, M. Maljak, S. Martinić, "The Evolution of the EU's Foreign Trade Policy", 2014; "A New Generation of Trade Agreements, An Opportunity Not to Be Missed?" in S. Griller, W. Obwexer, and E. Vranes, *Mega-Regional Trade Agreements: CETA, TTIP, and TiSA: New Orientations for EU External Economic Relations,* Oxford Scolarship Online, 2007; Patricia Wruuck, "What future for EU trade policy and free trade agreements?", 2019; A. Makarenko, L. Chernikova, "'New Generation' EU Free Trade Agreements: A Combination of Traditional and Innovative Mechanisms", in: Kovalchuk J. (eds) *Post-Industrial Society*, Palgrave Macmillan, 2020; A. Poletti, D. Sicurelli, A. Yildirim, "Promoting sustainable development through trade? EU trade agreements and global value chains", *Italian Political Science Review/Rivista Italiana Di Scienza Politica*, 2020.

ensure equivalent access for EU exporter in those regions that were at the moment experiencing a rapid economic growth. This therefore led to focus on ASEAN, Korea, Mercosur, Canada, Vietnam, Japan and Singapore as first key partners, as well as Mexico and Chile.[98]

As we were seeing, at multilateral level first generation agreements coped mainly with reducing protection focusing on trade of goods and services, creating tariff standards based on WTO obligations. A step forward was the recognition that good national regulatory practices were pivotal to minimize non-tariff barriers to trade and investments. Although at times they acknowledged this 'grey zone' that appears in the form of regulatory protectionism once the product has crossed the border[99], they are not easy to be detected, thus leading the EU to trying to evolve its approach to the issue by means of new FTAs. For instance, we can find articles referring to the WTO TBT Agreements as early as in the texts of the of the EU-Mexico and EU-Chile first FTAs, for example, but they are more precautious in the sense that they try not to obstacle national rights to regulate.[100]

After the Treaty of Lisbon, the EU gained responsibility for investment protection and dispute settlement, thus leading the new generation agreements to take a step further toward the harmonisation of national regulations and to setting global standards at a higher level for the benefit of trade. In addition, a greater public began to get interested in trade policy and to be concerned about social and environmental conditions and its impact on jobs as well as the respect of human rights, triggering in this way an unprecedented level of activism and criticism. Debates started growing namely during TTIP talks, so that the EU tackled the issue with the 2015 *Trade for All* strategy in underlining its commitment not only on trade and economy for itself but on reaching a higher level of responsibility and transparency in the framework on the new negotiations through publishing key texts and positions papers.[101]

With respect to their content, they aim at a far-reaching level of liberalisation not only concerning trade of goods, but services, investments, the digital economy and energy as well, with the elimination of quantitative import restrictions and all forms of duties, taxes, charges and restrictions on exports. Furthermore, they show an unequalled attention to NTB that, in focusing more on regulations, touch domestic cultural norms, something that normal cuts over tariff do not do, thus obtaining such high

[98] European Commission, *Global Europe Strategy*, 2006.
[99] For example, through two regulated by the WTO Dispute Settlement procedures, the SPS Sanitary and Phytosanitary Agreement and the Technical Barriers to Trade (TBT)
[100] Most new generations agreements include a chapter on Regulatory Cooperation, defined by the OECD as a way to "promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation, with a view to support the converging and consistency of rules across borders" (OECD, 2013). For more about international regulatory cooperation: https://www.oecd.org/gov/regulatory-policy/international-regulatory-cooperation-policy-brief-2020.pdf
[101] European Commission; *Trade for All*,2015.

level of criticism. In addition, the speed at which trade barriers have been removed when agreements have been concluded is said to have been ‘unprecedented’, in that by the end of the transitional period virtually all import duties between the parties have been removed (the first one to mark the beginning of this path being the one with South Korea). A further step was taken in putting in place a monitoring mechanism for FTAs and in tackling sustainable development, which became even more important since the 2000 UN ODM Agenda first, 2015 ODS later. Significantly, most of these agreements present an entire chapter (Trade and Sustainable Development, TSD) of provisions to promote labour and environmental standards, which should be monitored by civil society mechanisms. This includes provisions about labour standards and environmental protection, and the addition of an impact assessment on development before the launching of negotiations. The new strategy makes therefore sure to tackle sustainable development and transparency while granting to protect the European social model and values.[102]

At the same time during which the EU was negotiating new transatlantic comprehensive agreements, other global powers, as the USA and China, were doing the same. The resulting so called ‘mega-regional initiatives’ are going to transform and shape the international economic order while promoting more far-reaching geopolitical goals. Mega regional initiatives are described by Thomas Hirst as “deep integration partnerships between countries or regions with a major share of world trade and foreign direct investment”, which “beyond simply increasing trade links... aim to improve regulatory compatibility and provide a rules-based framework for ironing out differences in investment and business climates”[103]. The latest example is surely the RCEP, signed by 11 Countries in November 2020, which is by far the world’s largest trading bloc. During TPP and TTIP negotiations, in the event of The New Global Trade Agenda meeting at the Peterson Institute for International Economics, Anabel González, World Bank consultant on trade and investment, clearly explain the main concerns that such big agreements were rising, and that would be fundamental to tackle in order to shape future actions of the global community: the main dilemma concerned the extent in which these megaregional trade agreements could undermine the relevance of the multilateral trading system, the main forum in which developing countries and LDC could make their voice be heard, in the way that rules and disciplines provided could be better applied to more advanced economies.[104] New generation agreements tried in various way to solve this problem, mainly through the non-discriminatory principle, at the base of each negotiation, and in applying deep integration

[102] Op cit.: P. Wruuck, “What future for EU trade policy and free trade agreements?”, 2019; A. Makarenko, L. Chernikova, “‘New Generation’ EU Free Trade Agreements: A Combination of Traditional and Innovative Mechanisms”, 2020.
[103] T. Hirst, “What Are Mega-Regional Trade Agreements?”, *World Economic Forum*, 9 July 2014.
[104] Unedited Event Transcript, “The New Global Trade Agenda”, *Peterson Institute for International Economics*, Washington, DC, November 2, 2015.

provisions that could, in a way, commit countries to domestic economic reforms. Finally, some agreements (as could be the ones with South Korea and Japan for the EU, and NAFTA for the US), could be considered as laboratories for innovation, producing a 'domino effect' for other countries to begin implement the same reforms or obligations.

9. The new generation of EU FTAs: South Korea, Japan, Singapore, Vietnam, TTIP, CETA and Mercosur

The renewed EU approach towards agreements of new generation, as already mentioned, reflects the needs to go beyond WTO commitments while promoting a broader comprehensive liberalization agenda. It is, indeed, more 'flexible' than the United States model, which is mainly based on the NAFTA Agreement, since it includes provisions on technical barriers to trade and rules on government procurement, domestic regulation, regulatory cooperation and on investment protection which, although not being 'new' in the stricter sense of the word, they come to be merged into a single trade agreement. The new agreements negotiated show therefore a greater level of ambition, drawing from WTO rules but trying to include the 'Singapore Issues' (investment, government procurement, competition and trade facilitation), as well as trying to answer to the growing debate about whether these agreements really support EU interests and values. Moreover, discussions over the dispute settlement established by the Lisbon Treaty as possibly undermining Member States rights to regulate, transparency over the promotion of human, environmental rights and sustainable development and on the likely negative effects over non-parties countries and especially LDC have grown, particularly during the TTIP and CETA negotiations. [105] Starting from the broad scope of these agreements and their intrusive nature over domestic regulatory policies, it is of no surprise that they rose such harsh discussions and oppositions, leading civil society as well as national parliaments to question their democratic commitment and outcomes. Nonetheless, the idea of trade policies not being an end to themselves has been frequently stressed by the European Commission since the increased engagement into bilateral measures, inasmuch as they can have a wide range of effects over economy, labour standards, employment and the environment, as well as beneficial effects over the possibility for Europe to use such large agreements to 'shape globalization'. Indeed, Cecilia Malmström, EU Commissioner for Trade in the period from 2014 to 2019, stated in the occasion of the signing of CETA that "globalisation does put pressure on parts of our societies. We then have two

[105] About the EU and its approach to Mega- regional agreements: S. Griller, W. Obwexer, E. Vranes, "A New Generation of Trade Agreements, An Opportunity Not to Be Missed?"; S. Woolcock, *European Union policy towards Free Trade Agreements,* 2007.

options: we can take an easier path and pretend that we can reverse the tide of globalisation. Or we can take the more difficult path and try to shape globalisation according to our vision. [106]

We will look at some of the most important FTAs negotiated, some of them even concluded, by the EU to date, some of which involved a great deal of controversies, in order to understand which are the main aspects that can shape the future of EU trade policies. We can divide these agreements depending on the regions, into Asia-Pacific and the Americas.

The Asia-Pacific region has long been considered as crucial for EU interests, with the Union being one of the largest sources of Foreign Direct Investment flows into ASEAN and one of its largest trading partners. The dynamism that has characterized Asia countries' economies since the end of the XX century, and that is expected to continue, has produced a major shift on both Western countries and the USA towards its market, since the region is expected to contribute to almost 60% of global growth by 2030.[107] Moreover, it has become of greatest appeal after the recent signing of the RCEP between 15 diverse countries, as the mega regional free trade agreement could be a sign and incentive to foster regional integrations and a push towards an even greater involvement of the EU in the region, as stated by EU High Representative Josep Borrell.[108] However, recognition comes together with worries for its possible geopolitical implications, as it has been criticized, too, for its lack of provisions on sustainability and workers' rights, which are considered to be fundamental in EU trade policy, and for being less ambitious compared to the other mega regional agreement, the CPTTP.[109]

The need to strengthen the presence in the region date back to the Global Europe Strategy, in which the Commission envisaged the growing importance of concluding trade agreements with ASEAN countries and South Korea over EPAs and Central American proposals, given the economic growth that it was undertaking and the turn into bilateralism in intra-regional relations (see the New Age Economic Partnership Agreement signed in January 2002 by Japan and Singapore). Successively, in 2015 the European Commission stated that trade policies with the partners in the regions should be

[106] Cecilia Malmström, "CETA shows that Europe can shape globalisation", EURACTIV, October 2016 available at https://www.euractiv.com/section/trade-society/opinion/ceta-shows-that-europe-can-shape-globalisation/, accessed 26/01/21.
[107] ASEAN Investment Report 2018 – Foreign Direct Investment and the Digital Economy in ASEAN Jakarta: ASEAN Secretariat, November 2018. Available at: https://asean.org/asean-investment-report-2018-published/ accessed 26/01/21
[108] EEAS Press Release, "The Regional Comprehensive Economic Partnership – what does it mean for the EU?", November 2020, available at https://eeas.europa.eu/headquarters/headquarters-homepage/88997/regional-comprehensive-economic-partnership-%E2%80%93-what-does-it-mean-eu_en .
[109] See newspapers articles about the Agreement showing worries, as: S. Barbones, "Cutting Through the Hype on Asia's New Trade Deal", *Foreign Policy*, December 2020, available at: https://foreignpolicy.com/2020/12/02/trade-china-asia-rcep-tpp/, accessed 2/03/21; "Who gains from RCEP, Asia's new trade pact?", *The Economist*, November 2020, available at: https://www.economist.com/finance-and-economics/2020/11/19/who-gains-from-rcep-asias-new-trade-pact, accessed 7/03/21; H.G. Broadman, "RCEP Is Oversold As The World's Largest New Free-Trade Area", *Forbes*, November 2020, available at: https://www.forbes.com/sites/harrybroadman/2020/11/30/rceps-is-oversold-as-the-worlds-largest-new-free-trade-area/?sh=202d5a3e3c34, accessed 28/12/20.

updated to take account of new economic realities, more importantly of cross-border supply and value chains, whose rise is extremely evident in the case of Asia, a key player in the new international division of labour in a number of industries.[110] To illustrate, the emergence of GVC (Global Value Chains) has shaped trade flows of intermediate goods between the EU, Asia and North America, making the regions even more interconnected, with the Commission recognizing the commitment to identify opportunities for responsible supply chain partnerships. Since then, trade between the two sides has been growing alongside the evolving competences of the EU, as well as the economic and political background of Asian countries, which however still show a great deal of differences when it comes to the size of their markets. Trade Agreement have been negotiated by the EU with Singapore and Vietnam in the framework of the ASEAN strategy of region-to-region agreements, which recently became a Strategic Partnership in order to boost economic and security cooperation, as well as with Japan and South Korea, the latter being the very first Asian countries to have started negotiations with the Union. From 2018, the EU has started FTAs talks with both Australia and New Zealand, too, and rounds are currently still going on in 2020.[111]

The major stall in the intent to find a common field of agreements came after the introduction of sustainable development, fair and ethical trade, human rights and transparency as core characteristics of EU trade policies and preferences after 2015, which have been stressed as non-compromise policies in the event of the 2017 Communication "A Balanced and Progressive Trade Policy to Harness Globalisation". Thus, the possibility of these political issues in having negative impacts over the strengthening of trade relations with Asian countries has been a key focus during the preliminary talks and have much worried civil society.[112]

The EU-South Korea FTAs, concluded in 2011, is the first of a "new generation" of agreements that are comprehensive in scope and focus on substantially liberalising all trade: it was at the time of its conclusion the most ambitious ever signed in terms of liberalization of trade, the first of its kind to recognize indeed the linkage between trade and its economic, social and environmental effects, and to include a chapter on sustainable development, with labour and environmental commitments based on multilateral standards and agreements. It served to evaluate the possibility and benefits for the EU to implement such an agreement with economies showing high non-tariff barriers to trade and other regulatory measures. Besides, it is the first EU FTA to include non-state actor engagement as standard feature as part of the new Trade and Sustainable Development (TSD) chapter. It even is the first EU trade agreement to successfully include specific sectoral disciplines (namely, consumer electronics,

[110] European Commission, *Trade for All*, 2015.
[111] European Commission, *Implementation of EU Trade Agreements 1 January 2019 - 31 December 2019*.
[112] European Commission, *A Balanced and Progressive Trade Policy to Harness Globalisation*, Brussels, 13.9.2017.

automotive products, pharmaceuticals, and chemicals) on Non-Trade Barriers to trade, which shows a high level of accuracy into the study of regulatory practices of the partner. Indeed, it approached to Regulatory Cooperation which, through general and sectoral-specific provisions, aims to enhance regulatory dialogue between the two sides and to deepen regulatory convergence by means of harmonization of common sectoral standards.[113]

According to the Ex-Post evaluation of the Commission, as to 2018 the FTA has been effective in achieving most of its objectives: in liberalising and facilitating trade in goods and services and investments (EU exports of services to South Korea increased by 82%, compared to 66% for EU imports from the country, from 2010 to 2017, as well as EU inward FDI stocks increased by 112% and EU outward FDI stocks increased by 39%); it has contributed to the protection of the intellectual property rights and has succeeded in reducing non-tariff trade costs. Nevertheless, limited effects have been found in the account of promoting competition, on further liberalising the government procurement markets and on contributing to the objective of sustainable development, since for the Korean side has proved to be hard to fulfil some core commitments regarding workers' rights specifically. The EU has therefore requested in July 2019 a panel of independent experts to further examine the issue and looking forward to finding a common ground on the matter.[114]

Agreements with Singapore, Vietnam and Japan came into force in 2019, but all of them present ongoing negotiations concerning Investment Protection Agreement (IPA), or European Member States still need to ratify it. Namely Japan is considered to be a key allay for the EU in the Asia-Pacific region, given their strong economic and political links and commitments to democracy and the rule of law; actually, in the last decade flows of goods and services and investment towards the country were decreasing, with the Japan losing path in comparison to China and turning to intra-regional trade. Notwithstanding the decline, the conclusion of a FTAs was seen as fundamental to unlock the full trade potential of the two sides' relations while facing the US rising protectionist agenda, and at the same time to give EU exporters and investors a considerable comparative advantage in terms of market access compared to many of the EU's key competitors. Negotiated in a period in which major trading bloc, TTIP and CETA namely, were undertaking round processes and concentrating all attentions over them, and when protectionists measures were adding pressure over bilateral trade liberalisation, it rose little concern for the public debate and civil society at the moment, but it is having a major impact after its conclusion, mostly because of issues over treatment of disputes

[113] Official Journal of the European Union, L 127, 14 May 2011, *Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part*.
[114] European Commission, *Evaluation of the Implementation of the Free Trade Agreement between the EU and its Member States and the Republic of Korea*, Prepared by Civic Consulting and the Ifo Institute, May 2018.

between the state and investors. It is conceived as a 'EU-Only' agreement, since it only covers issues under the EU exclusive competence, while the investment protection standards and dispute resolution part is (still) being negotiated outside the framework of the trade agreement.

The main sectors to which the attentions have been focused as for commodities were agricultural products on the one hand, and the automotive and mechanical on the other, reflecting the relative competitive strengths of the two parties; namely, trade in services has a great potential within the agreement, as well as the differentiation between trade and foreign direct investment, which has been, and still is, a major problem during the negotiation given the imbalance of its pattern. The agricultural sector in particular is the issue that makes this agreement stand out in comparison to others, since it is an area in which tariffs still play a major role in international trade.[115] Despite the different focus, the Economic Partnership Agreement has achieved a high degree of trade liberalization, albeit those peculiar agricultural sectors which are particularly sensitive for Japan, granting up to 99% of tariff reduction, as well as agreed to the reduction of main non-tariff barriers, and has successfully addressed the issue of the naming of international standard setting bodies under the TBT Chapter (Technical Barriers to Trade), which needed specific sectoral Annexes in other agreements. In the trade in services chapter, the parties agreed on a rational, transparent, non-discriminatory regulation, and to maintain the right of Member States' authorities to keep public services public, as it did in all EU FTAs, but a negative list of commitments is used in the cross-border trade in services which is a major addition of this agreement.[116] Furthermore, it added a specific chapter on small and medium enterprises (SME), particularly welcomed by the European Parliament, that gave its endorsement to the creation of SME contact points to ensure their access to market information.

The Chapter on 'Corporate Governance' is unique as for it accounts for the first time that an international agreement covers such provisions, in order to facilitate market access granted to investors and service providers and encourage investment by promoting well-functioning markets and sound financial systems based on transparency, efficiency, trust and integrity. What's more, the parties agreed to include a chapter on Good Regulatory Practices, to promote regulatory cooperation among them through consultations and cooperation mechanisms, which is, too, a first time for the EU, however agreeing that it will not affect the right of either the EU or Japan to define or regulate its own levels of protection to achieve public policy goals. Finally, given the fact that major trade negotiation with Asian countries have almost been used by the EU as a 'test' for implementing the

[115] See: European Commission Fact Sheet, *Key elements of the EU-Japan Economic Partnership Agreement*. Brussels, 12 December 2018; H. Yoshimatsu, "The EU-Japan free trade agreement in evolving global trade politics", Asia Eur J 18, 429–443, 2020.

[116] Parties listed existing and future measures that do not align with the obligations under Market Access, National Treatment and Most-Favoured Nation Treatment in specific Annexes.

new Trade and Sustainable Development provisions, as we were seeing for the EU-South Korea FTA, this ambition is further enhanced with Japan. It is, as a matter of fact, the EU first agreement to explicitly commit to tackle the issue of the implementation of international standards of the Paris Climate of 2015 and to combat illegal logging in promotion of sustainable use of natural resources.[117]

In the framework of the EU-ASEAN relations, the Commission approved the start of negotiation on bilateral level both with emerging and advanced economies of the region, the first country of which was Singapore in October 2014 and which entered into force in November 2019. As a 'new generation', it tackles not only tariff and non-tariff reduction on trade in goods and services, but contains commitments on protecting intellectual property, liberalising investment, public procurement, competition and sustainable development as well. [118]The main innovation introduced with the agreement concerns investment protection, which replaced the investor-to state dispute settlement procedures included in many previous bilateral agreements with the Investment Court System, involving professional and independent, government-appointed judges obliged to observe the highest ethical standards and which hearings will be open to the public. The Investment Protection section is included in a different Agreement (IPA) negotiated separately, after the pivotal 2017 Court Judgement on Opinion 2/15 concluded that such issue came under mixed competences between the EU and Member States, thus helped shaping the future of trade agreements of the same generation.[119]

The last country of the region to enter 'in the same league' as South Korea, Japan and Singapore was Vietnam, considered to be one of the fastest growing country of ASEAN and EU second biggest trading partner in the area. EU exports to Vietnam are dominated by high technology products, including electrical machinery and equipment, aircraft, vehicles, and pharmaceutical products, while Vietnam's key export to the EU include telephone equipment, electronic products, footwear, textiles and clothing, coffee, rice, seafood, and furniture. The EU-Vietnam FTA entered into force on 1 August 2020 and is, up to now, one of the most ambitious and comprehensive with an ASEAN country and with a middle-income country, setting a new benchmark for Europe's engagement with emerging economies. It could be used as a model for next trade agreements of the same type with other ASEAN and developing countries, given that Vietnam had been granted unilateral preferential treatment to a large number of commodities under the GSP. In particular, in considering the developing nature of its partner, the EU has conceded to Vietnam a longer transitional period of 10 years to eliminate its duties on EU imports over certain sectors, in order to make producers gradually

[117] European Commission, "The Economic Impact of The Eu - Japan Economic Partnership Agreement (EPA)", *DG Trade*, 2018, full text of the agreement at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0192&from=EN.
[118] Text of the agreement at https://www.europarl.europa.eu/doceo/document/TA-8-2019-0089_EN.html.
[119] *Opinion 2/15 (Full Court)*, [2017], Digital records.

adapt. It even represents an important opportunity to promote EU-Vietnam value chain integration given the relatively new attractiveness of Vietnam for labour-intensive light manufacturing within Asia, via increased FDI and bilateral trade in intermediate goods and services. [120] Non-tariff barriers are tackled mainly in the car sector, with a coverage broader than any other FTAs, but a specific chapter over Non-Tariff Barrier to Trade and Investment in Renewable Energy Generation has been added, showing that in tackling trade issues, it is also possible to bring contribute to the climate change challenge through boosting trade in the sector. Indeed, when it comes to environment, it sets high labour, environmental and consumers protection standards and ensures that there is no 'race to the bottom' to promote trade or attract investment, meaning that neither parties can derogate from the provisions in order attract trade or investment. Moreover, it allowed the EU to push Vietnam to sign the eight fundamental ILO Conventions (International Labour Organization) on fundamental rights to work, as well as the Paris Agreement, involving civil society in the monitoring process. It is particularly important to mention the Government Procurement chapter, which shows a high degree of transparency and procedural fairness that can be compared with agreements concluded with more developed countries under the WTO Government Procurement Agreement (GPA), of which Vietnam is not part. Finally, it is of mixed nature, since, as happened during the EU-Singapore negotiation, the two parties agreed to split the agreement into two, where another separate agreement came to concern investment protection. It is upon said chapter that the Vietnam Agreement is particularly innovator, yet not having had much impact at the moment of its conclusion: except from including a whole chapter on investment protection, it incorporated a new dispute settlement mechanism based on a permanent dispute resolution system under which arguments about provisions included in the IPA can be submitted to a standing international and fully independent Investment Tribunal System. This would become of greater impact with the CETA Agreement.[121]

When it comes to the Americas, the EU has negotiated, and in some cases concluded, major agreements with Canada, Mercosur, Chile and Mexico, and talks were taking place in the framework of a free trade area with the United States, though it has not been ratified by President Trump in 2017 and has been declared obsolete and no longer relevant in 2019 by the Council. In this part we will focus on TTIP, CETA and Mercosur, given the importance of the first two in shaping successive agreements of the same generation, and of the latter in being the biggest trading bloc the EU has with Latin American (and middle-income) countries.

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[120] European Parliament, *EU external trade strategy vis-à-vis Asia*, DG for External Policies of the EU Policy Department Study, 2016.

[121] About the EU-Vietnam relations see: Official Journal of the European Union, *Free Trade Agreement Between the European Union and The Socialist Republic Of Viet Nam*, L 186/3, 2020; Delegation of the EU to Vietnam, *Guide To The Eu-Vietnam Trade And Investment Agreements, 2019*, https://eeas.europa.eu/delegations/vietnam/index_en.htm.

Although its negotiation has been put on hold, it is fundamental to speak about the Transatlantic Trade and Investment Partnership (TTIP) in so far as civil society and public debates have been very much engaged during the process, making said agreement one of the most controversial in the history of EU trade. Negotiations started in November 2013 with the main aim of boost the economic recovery after the global financial crisis by making EU and US rules over trade more compatible through enhancing trade and investments, features that categorize it as a WTO-plus kind of agreement. Another strategic view about the TTIP was its purpose to involve its precedents into, perhaps, another WTO round, therefore re-launching multilateralism and giving an incentive to global trade talks. Finally, it has been objected that the 'soul' of the transatlantic relationship is conceived by the idea of 'competitive interdependence': the two countries are competing at bilateral level through relations with third countries since the stall of Doha talks, while trying to advance their connections and promote their interests and values throughout the global economy. [122]

The agreement has certainly been the catalyst for unprecedented activism, as well as served as a turning point toward higher level of transparency. This is probably due to a higher level of engagement of non-traditional actors during the negotiations, because of the same unprecedented focus on NTB. More specifically, the first rounds of negotiations focused mainly on eliminating non-tariff barriers to trade as technical requirements (in order to avoid the necessity of producing different version of the same good to manufactures of the two parties) and standards for product, environmental and consumer protection. This part already triggered major oppositions, since sectoral NGOs as well as civil society and governments believed that common standards equal lowering environmental consumer and food standards. At the same time, the EU tried to respond to these growing opposition by using transparency to increase its legitimacy, based on the idea that the disclosure of EU positions papers should have been seen as a step towards the preservation of democracy against the confidential policy of the US. [123] On the contrary, it came to negatively shape public and national parliaments' opinions, given that leaks on the side of US positions led to even greater public controversy when the texts leaked gave the impression that the EU could lose its bargaining power over certain environmental and public health standards.[124] The Commission responded to growing oppositions through fact-checking analysis of trade and growth opportunities and reiterating the precautionary principle that applies in all agreements, not just the TTIP, as a core characteristic of EU trade

[122] T, Heron, L. Quaglia, "TTIP and Beyond: The New Political Economy of Transatlantic Economic Cooperation", in *EU Political Economy Bulletin*, pp 2-5, 2015.

[123] Indeed, the Commission established a civil society forum to report to civil society groups, published negotiating texts and established a new unit entitled "Transparency, Communication, and Civil Society" to enhance societal dialogue. For more about the argument see for example: E. C. Heldt (2019), "Contested EU trade governance: transparency conundrums in TTIP negotiations", *Comp Eur Polit* 18, pp. 215–232, 2020.

[124] However, it enhanced bargaining power vis-à-vis the US, though losing in negotiating discretion.

policy.[125] Thus, it became evident in the context of TTIP negotiations, that preferences of the general public and non-state actors could be fundamental in shaping the outcomes of such mega-regional agreements, therefore a focal point of EU trade strategy became, indeed, to use transparency in order to increase its legitimation.[126]

One other important contentious issue concerned the investment protection, namely the ISDS, on whether it would allow foreign (private) investors to initiate disputes against the State before an (international) arbitral tribunal when they consider having been subject to discriminatory practices. Major criticism came by German government, which believed that TTIP was the right field to reform the existing investment protection system, and in September 2015 the Commission published a draft proposal for the establishment of an Investment Court System, which features are also included into the EU-Vietnam, has we already saw, and later in CETA, in an attempt of establishing a multilateral investment court in the future.[127] The main innovations included provisions laying down more detailed and far-reaching obligations concerning transparency and third-party intervention in the dispute, which were already, in some way, included in the original CETA text, but were brought a step further.[128] Indeed, in the moment of its conclusion in 2014, the CETA Agreement included an already revised ISDS mechanism, notably with full transparency of proceedings and clear and unambiguous investment protection standards, but embodied the TTIP proposal in its final text, giving a sign of the EU intention to add this new system in all its future agreements.[129]

The Comprehensive and Economic Trade Agreement between the EU and Canada is the very first EU FTA with an industrialized Western economy of its size, although having such a small population, thus representing an interesting choice of partner. Its negotiations started in 2009 and, after a stall in 2016, it came into force provisionally in September 2017 with the exception of a few provisions (notably those relating to the investment court system).[130] It is a WTO plus kind of agreement, therefore, its main aims are to boost trade and generate jobs and growth through virtually eliminating all custom tariffs and other barriers to trade, while also promoting and protecting shared values and

[125] This is based on three assumptions: First, no trade agreement will ever lower the levels of consumer, environmental or social and labour protection; second, if ever a trade deal did make a change to the levels of protection the EU offers its citizens, that change can only be upward; third, nothing in trade deals will limit the EU's right to make new policies in the public interest , C. Malmström, "TTIP: What consumers have to gain", TACD Multi-Stakeholder Forum, Brussels 26 January 2016, Transcript of speech at http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154173.pdf
[126] For more, see European Commission, *Trade for All strategy*, 2015.
[127] European Commission, "Commission proposes new Investment Court System for TTIP and other EU trade and investment negotiations", News Archive September 2015.
[128] L. Pantaleo, "Lights and Shadows of The TTIP Investment Court System", *CLEER PAPERS* 2016/1, pp 77-92.
[129] The investment court was lately included in the text of CETA: European Commission, "CETA: EU and Canada agree on new approach on investment in trade agreement", New Archive February 2016.
[130] CETA must be approved by all national governments before being signed by the Council. In October 2016 the Wallonia parliament of Belgium rejected the deal due to the worries over the investment dispute settlement part of the text, inter alia, thus representing a major threat for its conclusion.

perspectives on the role of government in society.[131] Given that its negotiations began before those of TTIP, it actually evolved in a 'protected' way, thus driving major concerns from the public based on the appeal that it went against the Treaty of Lisbon claim to openness. TTIP and CETA have been ever since praised as possibly been the new models of mega-regional trade agreements, although after the dismissal of the first, the agreement with Canada became quite significant to set path for new deals of the same generation in a post-Brexit and Trump Administration period.[132]

Moreover, the negotiations were allegiantly "waiting" for the Court to pronounce on the Opinion 2/15 on the EU FTA with Singapore over its exclusive competence to conclude said agreement, as CETA would have accounted for the first 'EU-only' trade agreement in the light it the expansion of the CCP and Article 207 TFUE. In that case, the Court found exclusive competences over most of the trade part of the agreement, but shared competences over ISDS.[133] The Opinion, though, did not legislate over the likely compatibility of ISDS with the Treaties, which was of major concern especially after the "Wallonian-drama", given its pivotal role in possibly shaping the future of new generation agreements. ISDS in CETA had been already negotiated in a more 'sophisticated' way, although been seen as temporary if the new ICS system proposed during TTIP talks was to be approved. Belgium therefore submitted a request to the CJEU to evaluate its compatibility with EU law, that was confirmed by Opinion 1/17 in 2019. Cecilia Malmström welcomed the judgment, stating that such 'Opinion not only shows that it is legally sound, but also reinforces the EU's leadership role in the ongoing wider discussions to reform the multilateral investment dispute settlement system.', thus approving the inclusion of ICS into next EU trade agreements.[134]

It is fundamental to stress the importance of the Regulatory Cooperation Chapter, that applies horizontally to those chapters dedicated respectively to TBT, SPS, Cross Border Trade in Services, TSD, Trade and Labour and Trade and Environment. Indeed, it put the base for the creation of Joint Committee (JC) and a Regulatory Cooperation Forum (RCF) for promoting and enhancing cooperation and discussions between the parties. It is considered as a 'living document', since its response is based on the always changing circumstances and on the exchange of experiences, thus being based on a voluntary ground, meaning that parties are not obliged to engage in particular regulatory activity. Moreover, it gives the opportunity to stakeholders and other interested parties to

[131] Council of the European Union, *Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, Brussels*, 27 October 2016.
[132] We should now wait for the possible changes in the approach to mega regional deals from the new Biden-Harris Administration from January 2021.
[133] Article 207 TFUE refers to direct investments coming under EU exclusive competence but does not pronounce itself over non-direct investments.
[134] For more about Opinion 1/17 and the future of Investment Dispute Settlements, see L. Sachs, L. Johnson and J. Coleman (eds), "Yearbook on International Investment Law & Policy 2019", *Oxford University Press*, 2020.

engage in its activities, in order to gain a non-governmental opinion, although this being, too, on a voluntary base. However, a major characteristic is that, even if provisions and the voluntary nature could have addressed properly concerns over environmental protection, the agenda clearly focus on trade and innovation, while leaving the first rather vague. This is reflected in the same way with the two chapters about Sustainable Development and Environment, which appear to include few obligations in favour of 'softer' wording, as could be *'shall strive', 'encourage', 'promote'.* It is important to mention that, however, CETA obliges parties to cooperate with the Civil Society Forum to conduct a dialogue over sustainable development aspects of the agreement (included, too, into other FTAs, namely EU-South Korea), which is important in the light of the fact that its influence over the conclusion of such agreements is increasing.[135]

Coming to the Latin American region, it is fundamental to briefly talk about EU relations with Mercosur (Argentina, Brazil, Paraguay and Uruguay), which until recently was the only major trading partner in the area with whom it did not have preferential trade agreement. Their relations have been guided by the EU-Mercosur Framework Cooperation Agreement since 1999, and in 2000 negotiations have started for a comprehensive trade deal. After 20 years of talks, in an always changing global context, in June 2019 the two sides signed an agreement 'in principle' which is available for reading, although negotiations are still going on for some parts. The agreement is significant since it involves the 25% of global GDP, as well as in being the very first Mercosur agreement that involves trade in services.

In representing a large opportunity for growth and jobs while promoting sustainable development, it is fundamental to underline its implication in creating political tights between the countries. The aims are, as any other EU FTAs, to remove tariff and non-tariff barriers, even more for small and medium enterprises, to shape global trade rules getting Mercosur countries in line with EU standards while giving a strong sign against protectionism, and finally to protect joint values through obligations on trade and sustainable development. Moreover, it integrates value chains between the regions, thus enhancing competition in the market. Mercosur will fully liberalise 91% and the EU 95% of lines over a transition period of up to 10 years for most products, while some Mercosur more sensitive products will be granted a period of 15 years. The agreement recognizes the importance of customs and trade facilitation, so that in the chapter dedicated it goes a step further than the WTO provisions on the same argument in order to boost trade by providing rules of good governance, through maximum transparency, prior business consultations and the application of modern and automated

[135] CETA Chapter by Chapter publication by EU was used. For more about regulatory cooperation and environmental influences over CETA, see also N.M. Ohlendorf, C. Gerstetter, I. Bach, "Regulatory Cooperation under CETA: Implications for Environmental Policies", *The Ecologic Institute*, November 2016.

procedures for the release of goods. Finally, fully in line with the previous agreements, it includes provisions on the protection of the environment and workers' rights, and the commitment to the Paris Agreement on climate change and on protecting the Amazon ecosystem. [136] In this respect, it raised concerns from NGOs and the general public over the extent in which, contrary to its purposes, in increasing trade in agricultural product the FTA would actually go against the European Green Deal.[137] In fact, the major concern has been the conclusion of a deal with a region where countries are sacrificing forests to meet rising domestic and global demand for meat and livestock feed, for example, as in the case of Brazil, whose president is furthering weak environmental and climate protection measures as well as not promoting the rights of indigenous people. Brazilian policies are under questions by some Member States, therefore while the agreement is now under translation the European Parliament and national governments, namely France, the Netherlands and Austria have warned that they will not ratify the deal if Brazil does not improve its environmental actions. Mercosur, however, could be a fundamental opportunity for the EU to not bounce back to protectionists measures and keeping defending multilateralism and promoting good practices while saving its relations with a region which ties with China and the US are always increasing.

The importance for the EU to strengthen its position in Latin America is based on the need to contrast the gradual loss of preference since the stricter relations of those countries in the region with China and the US, as well as for their pivotal role inside international bodies and treaties, as WTO and the Paris Agreement. With the same objective, the EU is modernising the trade pillar of its 2002 Association Agreement with Chile to promote state-of-the-art trade related provisions. Negotiations were launched in 2017 after the EP recommendations, and they include chapters on trade and sustainable development (TSD), trade and gender equality, fight against corruption, as well as micro enterprises and SME. While the talks are still going on, an incentive is given looking at the results of the AA trade pillar, more specifically thanks to the inclusion of animal welfare protection, now featured inside the SPS chapter, which is evaluated to have played a positive role in the institutionalization of animal welfare in Chile, in particular for livestock production, and which could be of example for Latin American producers to follow the lead and adopt similar standards.[138]

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[136] European Commission, *EU-Mexico Modernised agreement: The agreement in principle*, Brussels, 2018.

[137] For more about the European Green Deal: European Commission, Communication from The Commission to The European Parliament, The European Council, The Council, The European Economic and Social Committee and The Committee of the Regions *The European Green Deal,* Brussels, 11.12.2019

[138] The inclusion of animal welfare in the bilateral agreement between the EU and Chile represented an international milestone to achieve a shared understanding on international animal welfare standards as well as to clarify the aims of the European Commission in this field," said Andrea Gavinelli, Head of Unit in charge of Animal Welfare at DG Sanco (European Commission) For more about the topic: http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151962.pdf .

Chapter 2

Mexico's external policy and its trade relations with the EU

1) History of Mexican commercial policy

To better understand the global implications of the EU – Mexico Agreement today, it is fundamental to look at Mexican historical, political and economic evolution and at the events that have been the watershed for its economic and commercial policy. In this way, we can interpret the role of the European Union not only on Mexico development, but even for its overall relation with the "Western Hemisphere". [139] The term is particularly important in the historical sense, since it has been used by most contemporary US Presidents to define the extent of the hegemonic ties with the countries in the Americas. When it comes to Mexico, it is often discussed whether it belongs to North America or South America. Historically speaking, it shares the same colonial roots as its neighbours in South America, as well as the language and some cultural elements: that is why when talking about 'Latin America', we will include both strictly south American countries and central American, therefore Mexico as well. On the other hand, from a geographical and economic point of view, Mexico belongs to North America, since the area extends from Canada to Panama and has direct access both to the US market through its northern border, and to European and Asian ones, thanks to the direct access to the Atlantic and Pacific Ocean routes.

In the period between the 1950s and 1960s Mexico, as the majority of Latin American countries, relied mostly on import substitutions policies (ISI) to lead towards industrialization, which consists in replacing the previous way of exporting primary goods (food and raw materials) while importing manufactured products from the United States and Europe with the domestic production of the latter in order to allow an increasing import of capital goods, and trying to enhance the development of new industries inside.

[139] For Western Hemisphere not in a pure geographical sense, scholars refer to the Americas, that is to say, North and South America comprehending Canada in the far north and reaching Argentina in Latin America, but most importantly, to the geopolitical ties which have always existed within the region and the US leadership over it. Lately, for example, President elected Joe Biden during an interview to Americas Quarterly, described the future of Latin America as very well linked to the need of a 'U.S. Leadership in the Western Hemisphere: https://www.americasquarterly.org/article/joe-biden-the-western-hemisphere-needs-u-s-leadership/.

Import Substitution ideas and practices began to spread after World War II, and they continued to be used even after economists began feeling sceptical of its outcome and promoting a more outward looking strategy for developing countries around the mid-1960s. The ISI policy in the Global South is related to the field of development economics, emerged in 1950s with figures such Raul Prebisch (first executive secretary of the United Nations Economic Commission for Latin America (ECLA), 1949–63, and the first secretary general of the United Nations Conference on Trade and Development, 1964–69), Hans Singer and Celso Furtado, among others, contrasting the idea of applying standard economic models to developing countries, in particular relating to free trade. It generated a widespread debate over the approach to follow over the development strategy of the new 'Third World'. Trade specialization, indeed, would prevent LDC from establishing a manufacturing base while relying too much on foreign imports, therefore keeping countries poor. These ideas are at the base of the so called 'dependency theory' that underlines the asymmetries in the exchange between the centre (wealthy states) and the periphery (underdeveloped states), at the expanses of the latter, as well as economic structuralism. [140]

The ECLA structuralist theory of ISI was indeed a way of understanding a spontaneous historical process of the first decades of the Great Depression and the period before the Second World War, when the export-oriented option was dismissed after the Havana Conference of 1947. Thus, ISI has played a central role in Latin American region ever since the disasters of the first half of the 20th century left Western Europe and the United States shattered, leading to a shortage of imports and the even lower demand of primary goods abroad. At the time, it was believed that it would bring greater economic independence from the world economy through the promotion of protectionists measures and the direct access of governments in specific heavier industries, as well as the establishment of economic activities especially in the agricultural and oil sectors.[141]

In particular, in Mexico the inward-looking development project came after the failure of the attempted liberal agenda started with President Porfirio Diaz (1876-1880; 1884-1911) at the end of the XIX century, consisting in enormous flows of foreign investments into Mexico, which however revealed to be a failure when it became evident that the country was getting always more dependent on United States imports. The Mexican Revolution (1910-1924) brought a new wave of

[140] D. A. Irwin, "The Rise and Fall of Import Substitution", PIIE Working Paper, July 2020. For Dependency theory analysis and economic structuralism, see Love (1990, 1994, 2005), V. FitzGerald (1989, 1994, 1998, 2000). In its 1950 Report, *The Economic Development of Latin America and its Principal Problems*, Prebisch rejected the international division of labour in which developing countries exported only primary products and imported manufactured goods from developed countries, stating that it 'has been proved false by facts'. In his view, exports were fundamental for foreign exchange earnings to pay for imports of capital goods, to promote domestic investments and growth (1950).

[141] W. Baer; "Import Substitution and Industrialization in Latin America: Experiences and Interpretations", *Latin American Research Review*, Spring, 1972, Vol. 7, No. 1 (Spring, 1972), pp. 95-122.

nationalization of national resources and lands, which expanded during the years of the presidency of Lázaro Cárdenas (1934-1940) to approve protectionist policies, which included social reforms, like the agrarian reform that benefited more than one third of the population and contributed in creating a larger consumer market, and the privatization of natural sectors –most importantly oil and mining - that had been reserved for domestic investment, decreasing substantially, if not completely eliminating, the role of foreign investment in almost all sectors. [142] As a result of Cardenas policies, resources were devoted to the industrial sector, increasing labour productivity throughout all the decade.

During the Second World War, the socially led growth of the Cardenas Presidency was replaced by a focus on economic prosperity through expanding infrastructures, industry and commerce: an export expansion steadier than the imports (in 1945, the level of exports where 48% more than in 1940), which regarded the manufacturing sector for the major part (38% of the total exports), was indeed made possible thanks to the high demand coming mostly from the Unites States. Mexican border with the US was indeed kept open, so that imports from the country increased in the post war period (in 1947 they were 93% higher than in 1945), which led the government to start taking protective measures in form of import restrictions, making ISI strategy important again.[143] The ISI model in Mexico produced a protected economy with strong state intervention, while allowing the so called "Mexican Miracle": the country's GDP grew over 6% in 1950-72 and reached an unmatched by other Latin American countries price stability when the inflation rate was brought below 3 percent.[144] In said country, however, these policies were supported by a modest export in primary products and stricter import restrictions in the form of forms of tariffs, subsidies, import, licenses, quotas, leading to increasingly social disparities and a growing economic gap, so that a new development strategy converged in the idea of diversifying exports, with new modest push towards trade liberalization during the mid-1970s.

Mexico therefore was, before the 1980s, a protected economy, both because of ISI measures and due to the attempts to avoid direct economic dependency from its northern neighbour, the United States. Between 1950s and 1960s exports to the US fell from a 12.3 percent to a 4.5 percent, while imports showed a drop of 2.2 percent, that, with the increasing import growth rate of the subsequent century, lead to a rising deficit in the current account.[145] The protectionist measures and the import substitution

[142] A. Chua, "The Privatization-Nationalization Cycle: The Link between Markets and Ethnicity in Developing Countries", *Columbia Law Review*, 95(2), pp. 223-303, 1995.
[143] D. A. Irwin, "The Rise and Fall of Import Substitution", PIIE Working Paper, July 2020.
[144] M. D. Ramirez; Stabilization and Trade Reform in Mexico: 1983-1989 p. 174.
[145] E. Buffie, A. Sangines Krause, "Mexico 1958-86: From Stabilizing Development to the Debt Crisis" in J. D. Sachs (edit.), *Developing Country Debt and the World Economy,* University of Chicago Press, 1989

industrialization only altered the nature of the dependency on imports from foreign countries, now consisting in either intermediate or capital goods as a response to the lack of exports. President José López Portillo (1976-1982), in addition, had agreed in 1977 to the implementation of a restrictive stabilization plan with the IMF (International Monetary Fund) during a period of three years, consisting both in trade liberalization and fiscal austerity, which resulted in a decline of the inflation rate from 27.2 percent to 20.7 and of the current account deficit, which fell over two billion dollars over the first year, with a slow growth in real GDP. However, thanks to the new oil discoveries, that made oil production rose by 14.3 percent in 1978, the leader decided to end the agreement in favour of a new industrialization promotion through government expenditures that would be financed by oil revenues.[146]

As a matter of fact, in the 1970s, the petroleum sector was indeed important, but in no way dominant. Before the Mexican Revolution, the petroleum sites were controlled by foreign firms (namely the British 'El Aguila' of sir Weetman Pearson , and North American 'Pan American Petroleum and Transport Company' of Edward L. Doheny, acquired during the last decade of the XIX century and which production started to grow during the first years of 1900s, when Mexican railroads and manufacturing industries began to use petroleum instead of coal), since the existing laws allowed the owners of the lands to exploit all its resources without any particular concession. In 1910s, new discoveries led to an expansion of international demand, which increased even more during the First World War, making Mexico the world's second largest crude oil producer in 1918, with the United States being the main export destination (80% of the overall Mexican production), followed by the UK and, to a lesser extent, Latin American markets. In 1920s, most oil wells exhausted their reserves, signing the decline of the Mexican oil production from the 14% of the worldwide production to the 3% in less than 10 years, at the same time of the decreasing of almost 50% of oil prices internationally. Between 1937-1938, tensions between oil multinationals and the government ended in the expropriation of properties of the formers and the creation of a state-owned oil company, PEMEX, as an attempt of the government to regain rights over strategic natural resources. The main reaction was an economic block imposed over Mexican oil exports which, in contrast to a growing domestic demand, prevented foreign currency to entering the country: without these inputs, investments and expansion of capacity were hard to reach, so that the overall production growth until the beginning of 1970s was around 4% while domestic consumption increased almost of 10%. Moreover, at the end

[146] M. Gavin, "The Mexican Oil Boom: 1977-1985", Working Paper Series 314 in *Trade Shocks in Developing Countries*, Oxford University Press, Washington, D.C.

of 1960s Mexico stopped exporting crude oil for the first time and resorted to importing petroleum products. [147]

The oil discoveries occurred in the second half of the 1970s (after the oil shock of 1973 which affected in some way the country, although being a producer) brought to a new fast increase in the production dynamism and to the introduction of an oil-based (inward-looking) development strategy, as a response to the fear of becoming dependent on imports. After almost a decade, they led as well to the resuming of exports, which in 1974 accounted for the 2,8% of the overall production, making Mexico a major oil exporter again from 1976.[148]

The approach of the Portillo administration to the new role of oil industry for the period between 1977 and 1981 was to finance economic growth on a long term and reinforcing the public sector's involvement in the economy through exploiting oil fields for exports rather than just domestic use. What's more, the president pursued an active foreign policy against the United States, as a part of the strategy to develop an image of a new, independent, Mexico. The period was as well characterized by an outstanding increase in domestic investment: while total real GDP rose by roughly 40 percent in those four years, real gross fixed investment was in 1981 more than 95 percent above the 1977 rate, both in petroleum and non-petroleum sectors.[149] Thus, the rapid growth in petroleum production and exports (production was in 1981 85% higher than in 1977) gave the impression that it was possible to eliminate the growth constraints and external payments problems to which Mexico was subjected for at least two decades.

However, despite the increase in investment rates, both public and private, the growth rate after the recession was not enough to avoid the major debt crisis that stuck in 1982. The optimism of a rapid economic recovery ceased to spread when governmental problems in controlling the national oil company (Pemex), the complete mismanagement of the oil opportunities, and an international recession led to a reduction in industrial dynamism, an increase in oil prices and the worsening of the balance of payment. Starting from the 1979 oil shock in which oil prices steadily increased, the rapid growth in the four years of the oil boom was replaced by a similarly recession in the subsequent four years of 1982-1985.[150]

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[147] For the origins and evolution of the history of Mexican oil, see Dr. Carlos Marichal and Ruiz Muñoz project of Colegio de Mexico "Fuentes para la Historia del Petróleo en México, 1900-2008" which, thanks to the collaborations of many scholars and researchers, could implement the Archivo Historico of PEMEX: petroleo.colmex.mx/.
[148] Ibidem.
[149] M. Gavin, "The Mexican Oil Boom: 1977-1985", pg. 12.
[150] *Mexico's Financial Crisis: Origins, Awareness, Assistance, and Initial Efforts to Recover*, Chapter Report 2/23/96Report to the Chairman, Committee on Banking and Financial Services House of Representatives. Available at: https://www.govinfo.gov/content/pkg/GAOREPORTS-GGD-96-56/html/GAOREPORTS-GGD-96-56.htm, accessed 21/12/20.

The downturn began when the United States and other major economies witnessed a sharp increase in short-term interest rates, which was followed by the decreasing of the demand of oil internationally. The volume of Mexican petroleum export declined more than 25% in a year. The total public sector expenditures got out of hand by 1980, increasing by 97.7 percent in the space of four years (it reached a record of $18.9 billion), which were not met by equal revenues, thus leading to a growing fiscal deficit. The exchange rate (fixed against US dollars) increased, and the value of the peso (the Mexican currency) began gradually devaluating from 1980 to 1982, falling almost by 50%. As an attempt to stabilize the peso, for the first time in 5 years Mexico drew from its reserve at the Fund. [151] However, banks began more reluctant to commit to long-term credits, so that the repayment of the debt started to appear as a high obstacle. During the Executive Board meeting on Mexico of July 1982, several Directors underlined that Mexico had the 'world's largest external debt' and, since international banks were withdrawing financing requirements, the only possibility left was to resort to adjustments programs. Another element that added to the deteriorating of the situation was the increasing dependence of Mexico on foreign exchange earnings derived from oil, particularly from 1979 onwards, leading the country to become even more dependent on oil exports. Until the end of the summer 1982, there was still the assumption that these commercial financing would be available at least until adjustment measures were to be taken by the new Presidency from December 1982. Notwithstanding these hopes, Mexico's external debt (which, until then, had been contracted at variable interest rates in US dollars) reached 49% of GDP, so that the 12 of August 1982 Finance Minister Silva Herzog announced that it was not anymore possible to meet its interest payments. [152]

Between August and November, new forms of restructuring the debt were applied in order to reduce the fiscal deficit by 1983: immediately after the threat of defaulting, both western central banks and Bank for International Settlements (BIS) agreed to arrange initial loans to Mexico, in order to allow the country to meet its interest payments to commercial creditors and negotiate an agreement with the IMF, demonstrating international commitment to rescue it from the crisis. However, bigger and protracted efforts would be needed: in December, an arrangement plan with the EFF (the Extended Fund Facility of the IMF) [153] of $3.75 billion was approved with the condition that the fiscal deficit would be reduced from 16.5% of GDP to 8.5% in 1983, as well as with the proposal to increase Mexican access to international markets through implementing further trade liberalization policies.

[151] Op. Cit.
[152] J.M. Boughton, "The Mexican Crisis: No Mountain Too High?" in Silent Revolution: The International Monetary Fund, 1979-89, IMF Publications, October 09, 2001, pp. 281-318. See also: M. Gavin.
[153] More info on IMF Extended Fund Facility at: IMF Factsheets, June 2020, available at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/20/56/Extended-Fund-Facility.

Further adjustment came through Mexico's participation in the Baker Plan first and the Brady Plan later on, which consisted in commercial banks creditors forgiving part of the debts and partially reducing interest rates while Mexico (as well as other debtor nations) approved rigid structural reforms as a way to receive IMF loans, which, inter-alia, included reductions in trade barriers, industrial deregulation and foreign investment liberalization, and privatizing the banking system. Indeed, during the annual Informe of 1st of September 1982, President López-Portillo declared the nationalization of private banks and the introduction of exchange controls, while Mexico turned extensively towards producing manufacturing goods to replace foreign imports, now under stricter control to reduce them by 43 percent on the total volume [154] which was facilitated by the preferential access to the United States market (a process that eventually led to the creation of NAFTA).

It was from 1984, with the new liberal measures approved by President Miguel De la Madrid (1982-1988), that Mexican economy underwent a clear turn toward liberalization, as part of the structural change reforms introduced to recover from the crisis. After the 1982 financial crisis, as a matter of facts, the necessity of diminishing the dependency on a single commodity, oil, and further enhancing exports became clear. In order to do this, import protection had to be decreased so that Mexico would gain some competitiveness in the world market, starting with the elimination of licensing requirements for the 17 per cents of imports, partially replacing them by tariffs, followed by a program of gradual elimination of all import licences between 1985 and 1989. [155]

Two main events occurred in the period between 1983 and 1989, which showed a significant sign of the new liberal position in the restructuring of the Mexican economy: first, the decision to join the GATT negotiations, and second, trade policies becoming integral part of economic stabilisation encouraging the pursuing of a Free Trade Agreement with the United States. These policies were part of a new, outward-looking, strategy of the De la Madrid Administration as a response of the 'errors of the past' that lead both Portillo and its precedent Echeverría to turn to populism when confronting an economic crisis.[156]

[154] J. M Boughton, "Containing the Crisis, 1983–85", in *Silent Revolution: The International Monetary Fund*, 1979-89, pp. 359-414. For more detailed macroeconomic adjustment during 1958-1986: E. Buffie, A. Sangines Krause, "Mexico 1958-86: From Stabilizing Development to the Debt Crisis", 1989.

[155] Data from OECD, *Trade liberalisation policies in Mexico*, Paris: Organisation for economic co-operation and development, 1996.

[156] M. Greene, *The Political Economy of Trade Liberalization in Mexico: The De La Madrid Administration, 1982-1988* – Thesis submitted for the PhD Degree in International Relations, The London School of Economics and Political Science, The University of London, March 1994.

2. The 1980s trade opening and liberalization reforms

Notwithstanding the protectionist measures of the ISI period, Mexico had participated in the Tokyo Round in 1973-1979, reaching several beneficial agreements and tightening the ties with some of its neighbours (it already received the most-favoured nation treatment and trade privileges from the US to promote its manufacturing sector). However, as internal debate grew in line with the fear of losing sovereignty in relation to a rising economic dependency from the United States, and the difficulty of small and medium industries to enter international competition, the final decision was not to join the GATT. After the oil boom-related confidence, indeed, the Portillo Administration put a stall to the negotiation process with GATT already in 1980 because it "imposed unilateral limits on Mexican development and in particular restricted Mexican control over its petroleum resources", as stated by The Secretary of Resources and Industrial Development, Jose Andrés Oteyza, momentarily affecting the liberalization measures started in 1977.[157] It showed in such a way Mexican preference towards "bilateral relation" with individual countries, linking its petroleum reserves to the political opportunity of gaining trade advantages with bilateral agreements.[158] It is, moreover, even related to the temporary rejection of entering into a wider economic integration area with industrialised northern American countries (United Stated and Canada namely), an idea already launched during the Carter Administration but soon abandoned.[159]

In 1983-1984, the need of a renewal of trade policies brought back the GATT debate when de la Madrid began to reduce tariff barriers and re converting new industrial sectors in an enhanced export activity only weeks after his election.[160] Export diversification and trade liberalization began without much international pressures, but as a part of the attempt to stabilize the economy and avoid the oil and debt- led development measures of the previous period, and to control the growing inflation.[161]

[157] For more about Portillo Administration changing of mind about Mexican joining GATT in 1980s: D. Story, "Trade Politics in the Third World: A Case Study of the Mexican GATT Decision", *International Organization*, Autumn, 1982, Vol. 36, No. 4, pp. 767-794. Moreover, the President made public four main reasons for the rejections, available at 'The GATT', Business Mexico (November 1985), p. 78., as well as looking at his memories at Jose López Portillo, *Mis Tiempos: Biografia y Testimonio Politico, Parte Segundo*, Mexico, DF: Fernandez Editores, 1988, pp. 801-2.

[158] Although we cannot really talk of bilateral relations during the 1970s yet, since the very first traditional trade pact came after, during the 1980s, when Mexico signed a framework agreement with the US in the form of an intergovernmental agreement on subsidies and countervailing duties, the first step towards the NAFTA Agreement.

[159] As we will see, after the oil discoveries the Carter Administration attention towards Mexico increased, as part to the 'special relations' to be built with the country. In A. Gandara, C. Sereseres, "U.S.-Latin American Relations Under the Carter Administration", *The Rand Corporation,* Santa Monica, California, 1980, p. 9.

[160] F. Gil Diaz, "Opportunities Presented by the Opening of the Mexican Economy Through Trade", *Banamex: Review of the Economic Situation o*f Mexico, Vol. LXII, No. 729, August 1986, p. 330.

[161] It is fundamental to note that, although Mexico began voluntarily a process towards liberalization, it did not come without costs: many entrepreneurs were threatened into bankruptcy as they did not have the financial resources for industrial reconversion, and the socio-economic costs were indeed high, as the living standards dropped by 25 percent during 1982-1985. For more about the implications of new trade liberalization policies: M. Faber, "Dissent on Debt: The Implications of Mexico's 1986 Rescheduling", *Development Policy Review* Vol. 5, No. 3, September 1987, p. 232.

What's more, even when the crisis grew in 1985, this strategy was intensified through the decision to join GATT in late November, later accepted in June 1986.

The decision was indeed a turning point in Mexican economy, not only underlining definitively the shift towards neoliberal reforms, but most importantly, showing its long-term commitment to a new kind of development strategy since the Second World War: as a matter of facts Mexico, in line with the issues brought by during the Doha Round, had always believed the GATT to serve mostly developed countries interests. On the contrary, in the mid-1980s the access to GATT was believed to be necessary for Mexico to resume growth through the participation in the international trade and turning its industries more competitive in the world market. On the other hand, the decision, in contrast to a long-lasting protectionist system of which small and medium business had benefited, showed the intention to internationalize Mexican economy to what for many critics signified a sacrifice of Mexican political autonomy.[162]

As part of the commitment to GATT, Mexico lowered its maximum tariff rates to 50% while trade-weighted average tariff fell from 25% in 1985 to about 19% in 1989. Moreover, Mexico import licenses were reduced from 100% up to just the 27.8% of the value of imports, and this programme of liberalization policies was seen as a fundamental response to the external economic shocks of 1986-1987, which brought the inflation at 160 per cent.[163] An addition to these policies was the announcement of the beginning of the negotiations of a free trade agreement with the United States in 1990. This did not come unexpectedly.

Mexico and United States have always been linked by historical, geographical and political ties. In 2019, Mexico was the United States' second largest trading partner and second-largest export market after Canada, as well as its second largest supplier of foreign crude oil, while the United States were Mexico's main source of foreign investment and tourism earnings.[164] However, through the years their relations have been regarded as 'asymmetrical': in the period into account here, that is to say the

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[162] The de la Madrid Administration had managed to liberalize Mexican trade gradually through openly stating that it would not join GATT, at least until 1985; indeed, both de la Madrid and the Secretary of Trade, Hector Hernandez Cervantes, repeatedly denied their favour of such step for example, at the annual meeting of the ANIERM (Mexican Importers and Exporters Association) in 1983, In Excelsior, a Mexico City daily (at D. Story, *Industry, The State, And Public Policy in Mexico*). For more about 1986 GATT negotiations: Sisniega, M.A. Olea. "Las Negociaciones De Adhesión De México Al GATT", *Foro Internacional*, vol. 30, no. 3 (119), 1990, pp. 497–535.

[163] *Trade Liberalization Policies in Mexico,* OECD, p. 14. Before the entering into GATT, import licenses were required on almost all products (on average, over 12.000 items entering into Mexico). Moreover, they were accompanied by high non-tariff barriers on specific sectors, like agricultural products. Another important sector to witness high restrictions from the 1960s was the automotive industry. With its entrance into GATT, Mexican government started liberalizing the industry however not entirely eliminating domestic-content requirements on products to meet export requirements as well as import tariffs over automobiles and auto parts.

[164] Data from the U.S Department of State, U.S. Relations with Mexico bilateral relations fact sheet Bureau of Western Hemisphere affairs, updated September 29, 2020 available at https://www.state.gov/u-s-relations-with-mexico/

1980s-1990s, indeed, the Mexican market accounted for only 9 per cent of the value of all US exports while Mexico was over 7 times more reliant on the US market for its foreign trade, which showed a rather different kind of interdependency. The degree of their relations changed through the years according to internationally-important events: with the emergence of the United States – URSS competition, the attention of the US towards Mexico 'relaxed', while during the period of the détente the new oil discoveries brought the US to rely more on it, with the Carter Administration giving Mexico unprecedented attention. The oil boom, as already said, gave Mexican Presidents the impression to finally gain independence, therefore turning to an anti-US rhetoric during both the Echeverria and Portillo Administrations and following a different foreign policy. [165]

The events of the 1980s, with the financial crisis and the consequent loss of the initial faith over the oil-led development, lead the new Mexican and US administrations to change their approach (in the form of de la Madrid 'openness' and Reagan willingness to recognize Mexican new importance), as well as forcing the need to change the purpose of a making Mexico international independent towards a more relaxed formed of international collaboration.[166] The new strategy, based on neoliberal theories, made its own the wish to set the Mexican economy on a non-inflationary, export-led growth path driven by sales of manufactured goods.[167]

Trade flows between the two countries had already increased in the 1970s after the oil discoveries: between 1977 and 1982, foreign trade rose from US$9.5 billion to US$27.4 billion.[168] However these trade flows were not part of a larger commercial agreement, but were part of two models, the Maquiladoras and the Generalized System of Preferences, which governed trade relations between the two countries before the 1980s.

The Maquiladora Industry, as part of the plan to step out of the crisis through globalization, consisted in transnational firms, in this case US's ones, operating in Mexican territory, and ever since its establishment in mid-1960s it contributed to the growth of non-oil exports and the development of the country's non-financial sector, as well as to the employment of workers alongside the US-Mexican border. The institution of these maquiladoras in the norther border increased the US presence

[165] M. Rosenblum, "U.S. Relations with Mexico and Central America, 1977-1999", *CCIS Working Paper 10,* University of California, San Diego, May 2000.
[166] A. Riding, "Mexico Has High Hopes for U.S. Relations Under Reagan", *The New York Times*, June 1981. Available at: https://www.nytimes.com/1981/06/07/weekinreview/mexico-has-high-hopes-for-us-relations-under-reagan.html accessed 11/01/21
[167] J. C. Moreno-Brid, "Economic Development and Industrial Performance in Mexico post-NAFTA", *CEPAL,* 16 de Abril 2007, Ciudad de México.
[168] US Department of Commerce, International Trade Administration, Official Statistics, 1993.

in Mexico as well as, with the GSP programme, it accelerated the formation of linkages within international economy.[169]

On the other hand, the GSP, as in the European case that we already discussed, have been introduced after the Kennedy Round of GATT (1963-1967) to enhance a favour mechanism towards the developing countries, and approved by the United States in 1969. However, the then Echeverría administration dismissed the programme as an attempt to 'divide Latin America'. It was later increasingly used by President Portillo, thank to whom, in 1980, Mexico ranked the fourth largest user of American GSP (out of 140 countries), trailing Taiwan, South Korea and Hong Kong.[170] Overall, the GSP programme helped diversifying Mexican exports while contrasting the protectionist agenda of the 1970s.

It was with President Salinas de Gotari (1988-1994), that Mexican trade liberalization strategy was fully institutionalized. In the first place, through those neo-liberal measures that can be summed up by the term "Washington Consensus", used by John Williamson in 1990 to describe the neo-liberal orthodoxy that prevailed in the US Treasury, the World Bank, and the International Monetary Fund, and whose principles consist in privatization; trade liberalization; public expenditure priorities; fiscal discipline; tax reform; interest rate liberalization; competitive exchange rate; foreign direct investment; deregulation; and property rights.[171] In the second place, and even most importantly, with the announcement in middle 1990 of the negotiation of a free trade agreement with the United States, expanded later in 1991 to Canada, which entered into force in January 1994.

President Ronald Reagan had indeed already proposed a North American Common Market to follow the path of the European Single Market, therefore started negotiating a free trade area with Canada in 1986, the text of which was later included into the negotiation of the Free Trade Agreement between the three countries and taken as a model to it. Despite being the most important Mexican trade initiative up to the moment, and still accounting as one of the most influential in regional and international economy, it is not the first agreement that involved free trade for the country: Mexico had already negotiated an Economic Complementary Accord (ACE) with Chile, which came into force in 1992. It included provisions on tariff reductions and non-tariff barriers elimination on peculiar goods, with the exclusion of petroleum and some specific agricultural products, however, it

[169] L. D. Taylor Hansen, "The Origins of The Maquila Industry in Mexico", *Comercio Exterior*, Vol. 53, No. 11, November 2003.
[170] US Department of State, U.S.-Mexican Relations (Washington, DC: Government Printing Office), p. 2. By 1992.
[171] A. Guíllen, "Mexico, an example of the anti-development policies of the Washington Consensus", *SciELO Estud*. av. vol.26 no.75 São Paulo May/Aug. 2012.

was far stricter in scope than the NAFTA, and, more importantly, it did not include references to some basic GATT principles, as the national treatment and the MFN rule.

3. The North America Free Trade Agreement (NAFTA)

The NAFTA (North American Free Trade Agreement) was the consolidation of the neoliberal model and enhanced the relations between the United States and Mexico even further, being a fundamental aspect of the international trade scenario and international economic relations up to the moment. It is considered as an historical milestone in worldwide trade relationships since, apart from the size of the markets concerned, it involved both developed and developing countries and accounted as one of the most comprehensive in scope and principles (it included not only trade in goods, but even investments, labour and environmental policies). The Agreement, moreover, was symbolic for the Mexican side in at least two aspects. First of all, it showed the government's belief that the future of Mexican economic growth would lie on its potential access to foreign markets and investments, starting from the rapid expansion of the manufacturing sector of which the United States were the first natural export market; and secondly, it foresaw a period of macroeconomic reforms that would prevent any other government to turn backwards into protectionist measures and State interventions.[172]

Given its particular importance in having shaped Mexican trade relations both with the US and the rest of the world, including naturally even the European Union, the impact it is having in the present continental economy and the prospects after the renegotiations of its text starting from 2018, under the Trump Administration, it is fundamental to understand its main purpose and objectives.

The North American Free Trade Agreement had, at the moment of its negotiations, much at stake for the Mexican side, a fact that is understandable even looking at the studies of economists and professors and media attention of the time which showed a mix of preoccupation and confidence, and taking into consideration the fact that it responded mostly to internal challenges, many of which have

[172] The macroeconomic reforms thanks to the NAFTA should have had drastic consequences, with the reducing in trade barriers and the increased market access produced, however, many scholars discussed the extent in which the Agreement should be taken into consideration in a more global point of view, since the external shocks and events highly influenced Mexican possibilities of development. Discussions of the events occurred during the 1990s recession at M. A. Kose, G. M. Meredith, and C. M. Towe, "How Has NAFTA Affected the Mexican Economy? Review and Evidence", *IMF Working Paper*, WP/04/59, 2004; J. C: Moreno-Brid, "Economic Development and Industrial Performance in Mexico post-NAFTA", *CEPAL*, 16 de Abril 2007, Ciudad de México.

changed in two decades, but which produced consequences on the ongoing dynamics of North American relations.

The very roots of the Agreement are to be found certainly in the financial crisis and economic reforms that Mexico was undergoing in the 1980s-1990s, but it had a deeper political mean too, at least from the Mexican side, although it was not at all a conceived to be a political union. President Salinas, indeed, tried in this way to answer to the new post- Cold War geopolitical assets, the dismissal of the bipolar order that Mexico had been trying to avoid and the emergence of regional groupings, that would have locked Mexican interests out the emergent economic blocs if it did not manage to assure its presence at international level. Indeed, the agreement was negotiated at almost the same time of the GATT Uruguay Round and takes its inspirations from the GATT main principles, the most-favoured nation and the national treatment, which we have already discussed in the previous chapter. It drove from basic trade liberalization objectives and amplified them to other issues which had never been tackled before.[173] What's more, many expectations were put upon the effect that a trade agreement with such big markets would have had on the Mexican side, both positives and negatives, with the former mainly regarding the likely creation of more jobs in tackling the ever-existent problem of immigration inflows into the United States while eliminating the possibility of unilaterally imposed countervailing duties and antidumping sanction and, on the other hand, likely negative impacts on Mexico's environmental regulations and environmental outcomes (linked to the fear of a reduction of environmental standards to benefit businesses).[174]

More specifically, the Agreement provided for the immediate elimination of tariffs on good and the elimination of tariffs and non-tariffs barriers on substantially all trade over a ten-year period (Mexico reduced its average tariffs from about 12 percent in 1993 to 1.3 percent by 2001 while the U.S. tariffs on Mexican imports fell from 2 to 0.2 percent) as well as provided for the liberalization of specific services and financial sectors, and investment flows, rules of origin, government procurements, intellectual rights, labour and environmental provisions. Moreover, it established dispute settlement

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[173] OECD, *Trade liberalisation policies in Mexico*, 1996.

[174] There are many texts that show Mexican interests in entering into a trade agreement with the US, much against its previous policy of furthering its independence from the country. Except from pure economic advantages, it would have definitively impressed the turning to liberalization, as well as enhanced Mexico image internationally, as happened, in fact, in the case of Mexico-Chile and the agreements with the EU and Japan. See: J. R. Espana, "Impact of the North American Free Trade Agreement (NAFTA) on U.S.-Mexican Trade and Investment Flows", *Business Economics* , July 1993, Vol. 28, No. 3, pp. 41-47. Moreover, major hopes relied in the idea of an increase 'export of goods, rather than people', as expressed by President Salinas de Gortari, since the increase in trade and investment would have led to reducing the wage differences between the US and Mexico, this would have affected the demand of labour in Mexico, thus the migration flows into the United States.

mechanisms to deal with foreign investment and trade and review mechanisms on antidumping and countervailing duties. [175]

Except from some important provisions on the trade side of the agreement, as could be the one that foresaw the disappearance of the Maquiladora industry over the years, making the firms located on the US-Mexican border more integrated in the Mexican economy, the major effects were expected to come from the investment provisions, through the expansion of the national treatment and most favoured nation to NAFTA investors. There were some sectors exempted from these provisions, most significantly the Mexican energy sector, over which the government kept the right to prohibit any foreign investment. Labour and Environment provisions were not included in the main text but provided for in two different side agreements in form of cooperation on such matters, as well as accounting for measures in the form of dispute settlement mechanisms to rely to when a country failed to enforce specific sector's law, making the NAFTA the first FTA to have been linked to such issues.

Right after the signing of NAFTA, it seemed that the neoliberal macroeconomic reforms and the new openness were brining successful achievements, with the Salinas Administration reaching the highest level of reserves in Mexican history as well a low inflation and an overall public sector surplus. However, the Washington Consensus reforms in Mexico did not reach the expected ideals. On the contrary, in as far as it was conceived as "political commitment between the globalized financial capital of the U.S. centre and internal Latin American elites", it is often discussed in ex-post assessments that it pushed towards a revision of power forces inside the country, favouring the establishment of a 'new oligarchy' which accounts for only the 1% of the entire population and the results in economic growth have been mediocre ever since the neoliberal opening [176]

The consequences over the years of the NAFTA Agreement on Mexican and the United States economy, as well as on the countries relations with the rest of the world have been intensively discussed, as the Trump Administration had warned against its dismissal already during its election

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[175] D. Lederman, & L. Servén, "Tracking NAFTA'S Shadow 10 Years on: Introduction to the Symposium", *The World Bank Economic Review*, 19(3), 335-344, 2005.

[176] The impact of neoliberalist reforms in Mexico and how they shaped its economic, social and political process have been widely discussed, and is being discussed at the present with the election of Andrés Manuel López Obrador after 7 cycle of neoliberal presidents. Whether the neoliberal system consequences have been negative or positive in the case of Mexico is beyond the purpose of this thesis, that will limit in outlining the overall tendency of scholars and focus on the historical data accessible in order to estimate the impact of the EU-Mexican agreement. For more about ex-post assessments and the end of neoliberalist era: A. Morton, "Structural Change and Neoliberalism in Mexico: 'Passive Revolution' in the Global Political Economy", *Third World Quarterly*, 24(4), 631-653 2003; S. Ellner, "Salient Characteristics of Mexico's Neoliberal Turn and Andrés Manuel López Obrador's Critique", *Latin American Perspectives*, Issue 235, Vol. 47 No. 6, November 2020, 4–19; A. C. Laurell, "Three Decades of Neoliberalism in Mexico: The Destruction of Society", *International Journal of Health Services* 2015, Vol. 45(2) 246–264; M., Carlos, "Mito y realidad de la globalización neoliberal", *Economía UNAM*, 4(11), 133-137, 2007.

campaign. However, in 2018 the negotiations of a modernized FTA among the parties begun, leading to the signing of the USCMA (United States- Canada-Mexico Agreement) or the NAFTA 2.0 as has been commonly addressed, which entered into force on July 1st, 2020. As observed by the Congressional Research Service in a 2017 assessment, updated in 2020, of the effects of the Agreement as a result from President Trump alternative threats to withdraw, or his wish to renegotiate it, while the NAFTA has been controversial from the first day of its proposal, much of the fears have not traduced into realities.[177] As a matter of facts, from the US point of view, the effects over its economy have been rather modest, since the amount of United States trade with Mexico and Canada weight less than how much it accounts for the two other countries GDP, and probably due to the rising presence of China in Latin America. Exact economic assessment has been hard to draw, because of lack of specific data associated with the agreement results, and because of the fact that its effects have been affected by many internal and external factors both prior to the coming into force of the agreement (Mexico, for example, had been unilaterally liberalizing its exports towards the United States since few years before the 1990s, so that the possible consequences cannot be told apart) and after that.[178]

Under the neoliberal model, Mexico became an export "power", the largest in Latin America, and opened its economy like no other country in the subcontinent. The NAFTA Agreement became fundamental for both Mexico and the international arena since it had the power to influence future US Agreement as well as multilateral trade, having an impact over negotiations in areas such as market access, rules of origin, intellectual property rights, foreign investment, dispute resolution, worker rights, and environmental protection. Moreover, it provided to be a model for future Mexican attempts to further liberalise its trade, in as much as after the beginning of its negotiation, it signed numerous free trade agreements with other countries in the region (namely Chile in 1991, Costa Rica, Colombia and Venezuela, Bolivia in 1994, as well as outside the hemisphere with Japan in 2004, and, as we will see, the European Union in 2000. In most of the agreements with Latin American countries, the text of the NAFTA Agreement was taken as an inspiration during the negotiations, with the needed changes.[179]

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177 M. A. Villarreal, I. F. Fergusson, "The United States-Mexico-Canada Agreement (USMCA)", CRS Report, Updated July 2020.

178 A. Chatzky, J. McBride, M.A. Sergie, "NAFTA and the USMCA: Weighing the Impact of North American Trade", *Council on Foreign Relations*, July 2020, available at: https://www.cfr.org/backgrounder/naftas-economic-impact, accessed 10/01/21; "U.S.-Mexico Economic Relations: Trends, Issues, and Implications", *Congressional Research Service*, June 2020.

179 OECD, *Trade liberalization policies in Mexico*, 1996.

4. European Union relations with Latin America

European relations with Latin American and the Caribbean countries have always been complicated for a number of factors, that go from the geographical distance, the heterogeneity of the region in its economic, political and social aspects, to the important influence of the United States that, unequivocally, did not help the integration and the development of such relations. However, during the years, Europe became gradually more interested in Latin American countries and specifically in Mexico, a focus that grew even more since the election of President Trump in 2016. For the purpose of understanding the degree of EU-Mexican relation importance for the region and their prospects of development, it is important to trace, at least summarily, the framework of European relations with Latin America.

Europe and Latin America share indeed a great deal of history since the colonization era. During the XX century, however, relations have been few sporadic, at least since the Monroe Doctrine was pronounced by President James Monroe in 1823 to limit the possibility of Spain to restore its colonization ambitions in Latin America, during the Theodore Roosevelt years: it was then used to assert the US possibility to intervene in a Latin American country when it fears a threat to its national security. Thus, it was formally a way to exclude Latin America from the sphere of influence of Europe while maintaining the United States role in it, not only in a pure geopolitical sense, but concerning general foreign policy, too.[180] But most significantly the ties between the two regions have always been, more than economic, political. This can be underlined by the fact that their relations have been based on common principles and value which include, inter alia, those of fighting for representative democracy, the rule of law and constitutional order. The European Union presented itself as an example of a successful deep integration project which had a great appeal in a region that showed, ever since the post-colonization era, great uncertainty and heterogeneity. The integration rhetoric has been used actively and deepened thanks to the already discussed Global Europe Strategy of 2006, the first time in which the EU started actively reacting to its main global competitor in the region, the United States.

As a matter of fact, the European integration period took most of the attention of both European Member States and the Community away from far partners as could be those in the Latin America region, favouring a focus on its Neighbours policies (countries in the Eastern Europe and the Mediterranean Basin). On the other hand, the degree of the complexity of European integration influenced to a great extent other regional grouping in Latin America to follow the same path, as in

[180] American History, *The Monroe Doctrine*. Available at https://www.britannica.com/event/Monroe-Doctrine, accessed 10/01/21.

the case of Mercosur and the Andean Pact, which is indeed a free trade area created with the purpose of reaching the form of a custom union and an increase in interregional trade. Efforts towards reaching greater integration in the region, in the form of 'open regionalism', has been not only fundamental for fostering contacts within the countries in it, but even for enhancing the dialogue, both political and economic, with other realities, as the European Union.[181]

When it comes to specific economic and trade-related ties between the EU and Latin America, until the 1970s they were almost inexistent. One of the few examples of the attempts of a proper dialogue after the Second World War could be identified in 1958, when the CEE signed a Memorandum on Relations with Latin America which, although not being binding, confirmed the beginning of a cooperation process between the two regions. In the early 1970s, through the Declaration of Buenos Aires, the need to closer cooperation between the regions was brought by the Special Latin America Coordination Commission (CECLA) with the aim of discussing the accession of basic raw material and manufactured products originating from Latin America into the Common Market, as well as its repercussion on the region. [182] This opened the doors to the so-called 'Brussels Dialogue' at political level, consisting in a series of meetings between representatives of the EU and the Group of Latin American Ambassadors in Brussels (GRULA), although it did not accomplish much, neither at the moment of the signing of bilateral agreements respectively with Argentina (1971), Uruguay (1973), Brazil (1974) and Mexico (1975).[183]

Most Latin American countries mostly followed Mexican example of turning from an import substitution strategy in the 1950s-1960s to a more neoliberal one in the mid-1980s, although not all of them in the same way and with the same consequences. During the debt crisis period, European creditors had relatively a minor importance in comparison to those of United States and, as a consequence of the recession, imports from the European Community further dropped from US$ 18.3 billion in 1980 to US$ 11 billion in 1982, as well as exports to the EC fell from US$ 22.7 billion in

[181] The term 'open regionalism' refers to "a process of growing economic interdependence at the regional level, promoted both by preferential integration agreements and by other policies in a context of liberalization and deregulation, geared towards enhancing the competitiveness of the countries of the region and, in so far as possible, constituting the building blocks for a more open and transparent international economy." From ECLAC, Latin America and the Caribbean: Policies to improve linkages with the global economy (LC/G.1800(SES.25/3)), Santiago, Chile, 1994 available at https://www.cepal.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/7/4747/P4747.xml&xsl=/tpl-i/p9f.xsl&base=/tpl/top-bottom.xsl#.

[182] Latin America Seeks Closer Cooperation with European Communities: Special Latin American Coordinating Commission (CECLA) Special Meeting at the Ministerial Level: Resolution, 1971. International Legal Materials, 10(2), 446-448, Translated for International Legal Materials by H. L. Clegett from the official Spanish text in CECLA Document CECLA/EXTR.70, Doc.16, Rev.2 July 29,1970.

[183] A. Oberda Monkiewicz, "Evolution of EU-Mexico relations: time for real partnership?", *Anuario Latinoamericano - Ciencias Políticas y Relaciones Internacionales*, 2017, vol. 4, 2017 pp. 187–202.

1980 to US$ 21.3 billion in 1982. What's more, a political fracture caused by the Falkland War between UK and Argentina provoked the suspension of the Brussels dialogue.[184]

Significantly, the mid-1980s signed a watershed both for economic and political reasons, since it signified the beginning of a period of openness of Latin America towards other countries, and the European Union among them, as a sign of emancipation from the United States. On the other hand, the entrance of Spain and Portugal in the EC in 1986 brought much attention to the region, since it was understandable for the two new Member States to ask for the Latin America countries the same treatment of that granted to the former colonies of France and the UK under the Yaoundé Conventions before and the Lomé Convention after.[185] Moreover, the year 1986 was particularly important as for the establishment of the San José dialogue between the EU and Central America to discuss the end of the conflicts in the area, marking the beginning of a real political dialogue to promote peace, democracy and conflict resolutions, and creating the foundation of what came to be known as the Rio Group, established with the Rio de Janeiro Declaration between Argentina, Brazil, Colombia, Mexico, Panama, Peru, Uruguay, and Venezuela. The relations with the Rio Group were indeed fundamental, since it became the basis for the beginning of bilateral political ties with most countries, within which was, indeed, Mexico, as well as being the stage of the development of more economic ones.

Thanks to the new trend followed by various countries in the region, in 1990s new investment projects were supported by European Development Banks in specific countries in Latin America (in 1993 and 1994 the Bank made loans up to 131 million)[186], as well as with the strengthening of a multilateral trading system through the Uruguay Round the political dialogue took the form of a more comprehensive one, increasing the scope in the way of both economic and industrial cooperation. Already in the mid-1990s trade flows between the areas had favourably increased by 41%, however, they were far from regular.

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[184] For the whole history of EU-Latin American relations, data and historical milestones from M. Rubiolo, "EU and Latin America: Biregionalism in a Globalizing World? Global Structures and Governance", *ZEU project*, VolkswagenStiftung, January 2002; F. M. Escobar, "La política de la Unión Europea hacia América Latina: el caso de México. The New Latin American Policy of the EU", A. Hoste University of Bradford DSA European Development Policy Study Group Discussion Paper No. 11, February 1999.

[185] After the Treaty of Rome established, under France request, and European Development Fund as a unilateral financial instrument to promote relations with France former colonies, in 1975, with the UK joining the EC, the Lomé Convention was signed with countries in Africa, Asia and the Pacific in order to encourage the development of a cooperation policy inside the European Community and further trade relations with those countries. This marked the beginning of the Development Cooperation policy which rule the relations with ACP countries (Africa, Caribe, Pacific).

[186] Data from Communication from the Commission to the Council and The European Parliament, *The European Union and Latin America: The Present Situation and Prospects for Closer Partnership, 1996-2000*, Brussels, 23.10.1995.

As the political dialogue between the EC and the Rio Group was institutionalized later on in 1990 by the Rome Declaration, after almost three years since their beginning, the institutionalized meetings began to show a more economic trends, focusing as well on development and cooperation, at the same time in which the EU was working to strengthen its relations bilaterally with countries and regional associations in Latin America (it is important to mention the EC-Andean Pact Cooperation Agreement of 1987, which extended the GATT most favoured nation rule to the parties, and which terms were successively extended to countries in Central America and, finally, lead to the renewal of the GSP system in 1995). Yet, in the report of the status of the relations and prospects for future ones of 1995, the European Commission already underlined the need of diversifying the strategy, following a path of closer relationships with specific, more advanced, realities such as Mercosur, Mexico and Chile to "meet the new needs of a highly heterogenous subcontinent seeking to consolidate the democratic process, the quest for international competitiveness and endemic poverty and social inequalities."[187] In this way, between 1990 and 1995 the EU began negotiating 'first generation' agreements with major Latin American countries, as Mexico, Chile, Argentina and Brazil.

In 1999, during the first historical Summit between the Heads of State and Government of Latin America and the Caribbean and the European Union, held in Rio the Janeiro, the wish to strengthen the links of political, economic and cultural understanding between the two regions in order to develop a strategic partnership was shared, as a result of which the parties adopted the Declaration of Rio de Janeiro. This step was of fundamental importance for the creation of the first effective institutionalized fora of dialogue and cooperation between the two entities in the form of a strategic partnership, as a result of the progress made in affirming Latin American presence in the international stage. The focus of the partnership was based on three pillars: 1. A political dialogue in compliance with International Law; 2. Economic and financial relations based upon trade liberalization and capital flow; 3. Cooperation in field like cultural, educational, human and social. [188] Moreover, it expressed the wish to co-operate at multilateral level, following the GATT rounds provisions implementation, in which Latin American countries were fairly new, in the framework of which start rounds of negotiations of bilateral pacts, which would take the form of Association Agreements.

This Summit signed the beginning of regular meetings between the two parties, held at biannual term, which contributed both to further the EU 'Global Actor' role in many fields, as provided by the Commission Strategy of 2006, so that in a decade period, the EU became Latin America's second largest trading partner, as well as the biggest investor in the region, and to properly tackle some of

[187] Communication from the Commission to the Council and The European Parliament, *The European Union And Latin America: The Present Situation and Prospects for Closer Partnership,* 1996-2000", 1995.
[188] I EU-LAC Summit, Rio Declaration, Rio de Janeiro, 28-29 June, 1999.

the main issues growing at global level. The second meeting, held in 2002 in Madrid, welcomed the positive impact given by the conclusions of the first trade agreement with Mexico, thus giving impetus to begin negotiations of other pacts following the same path, both with Chile and Mercosur, which included fundamental trade facilitations measures apart from political and cooperation commitments. Up to know, trade relations are governed by the EU-LAC Strategic Partnership and aim at achieving comprehensive openness which at first regarded mainly trade in goods, services and investments, while it was extended during the years to themes as intellectual property, technical requirements, STS, labour and environmental rights, as well as more peculiar issues depending on the bi-lateral agreements taken into consideration (the modernization of the EU-Mexico FTA, for example, will extend to subjects as anti-corruption provisions and so on..).

Moreover, since the enhancement of the UN Millennium Development Goals in 2000, the European Union tried to draw on its experience to help strengthen stability and security and bring sustainable development to Latin America, thus this being one of the fundamental goals of its Development Cooperation policy in the region. Although, the shared perception during the beginning of the XXI century that it 'failed' the region in fulfilling its promises in this field, as even underlined by the Commission Communication "A stronger partnership between the European Union and Latin America" of 2005, raised concerns about the visibility of the EU and the perspective of stronger relationships even with individual countries. [189]

As a response to the growing fear of losing path in the region, given that no real progress appeared to have been made since the lasts Summits, even in comparison to the major influence that the United States had over it, the Commission renewed its strategy through the new Communication '*The European Union and Latin America: Global Players in Partnership'*, which took into consideration the global situation and the 2008 financial crisis. [190] Indeed, given the new powers obtained by the Commission since the Treaty of Lisbon came into force and the new *Trade for All* strategy of 2015, it perpetrated the wish of supporting regional integration as well as furthering bilateral negotiations with individual countries and regional groups, in order to establish more comprehensive Association Agreements.[191] The ambitious communication served as a base for the Madrid Summit of 2010,

[189] European Commission, *A stronger partnership between the European Union and Latin America*, Communication from the Commission to the Council and the European Parliament, DG for External Relations B-1049, Brussel, 2005.
[190] The United States remained the main focus of most Central American countries trade relations, at least until the year 2010, which was a major turning point for main regional groups (Mercosur, countries of the Andean Community, Central America, for instance), given the beginning of trade negotiations with the EU (see the EU-Peru/Colombia Multi-Party Trade Agreement, recently enlarged to Ecuador in 2017, and the Association Agreement with Central American countries)
[191] Communication from the Commission to the European Parliament and the Council*: The European Union and Latin America: Global Players in Partnership*, Brussels, 30.09.2009 COM (2009) 495 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0495&from=EN.

during which the EU underlined the fundamental importance of such Summits to promote dialogue at ‘its highest level’, thus enhancing discussions over specific topics to be negotiated in the bi-lateral agenda, as could be renewable energies and climate change. Moreover, new challenges throughout the regions in the form of human trafficking, illicit drugs, spreading violence and crime were affecting countries development and governance. Themes as human rights, education, technology, drugs, science would become the focus of next bi-lateral discussion, as well as those of the real first Action Plan, redacted during the Summit, which contained proper initiatives to implement in order to lead to concrete results in these fields.

As a result, the EU needed to focus on such new themes which go beyond simple trade and economic related measures and in underlining even more the necessity of tackling the existent issues with a diversified cooperation mechanism “including free trade agreements that would go beyond the traditional model of North-South economic relations”.[192] The European Union had now developed different kind of relations with countries in the Latin America region, that go from interregional, subregional and bilateral types, which overall followed the same mechanism: they started as political dialogues and cooperation with the purpose of reaching regional integration and internal development (Strategic Partnerships) and grew to be proper Association Agreements or Free Trade Agreements with specific, more advanced, realities. In this atmosphere of heterogenic, diversified relations, the EU sought to reach a comprehensive economic agreement with what is considered as one of the most advanced, and as such, a priority, country in Latin America: Mexico, a strategic partner.

5. Evolution of Mexican relation with the European Union, 1900s – 1992

The historical background of EU-LAC relations was indeed important to understand at least the framework of the developing of specific relations between Europe and Mexico, in such a way that, throughout the years, it has been identified as one of the driving forces that led to major developments in the region, as well as, right now, a model for furthering relations with other countries.

As for the rest of Latin American countries, at the beginning of the XX the relations between the European countries and Mexico were few and sporadic: political relations concerned more the United States that they did with European States, while the only kind of attachments were of commercial and financial kind, especially with the United Kingdom, Germany, France and the Netherlands, and of social kind, as far as Mexico was seen as a ‘second class power’. Indeed, imports from Mexico

[192] Communication from The Commission to the European Parliament and the Council, *The European Union and Latin America: Global Players in Partnership*, Brussels, 2009.

accounted only for a very small part of the overall market flows of those countries (0,36% during the first decade of the 1990s) and concerned mainly the oil and mining sectors. From the end of the Mexican Revolution and during First World War, interactions became even fewer, since Germany, which was the main Mexican partner in Europe, had to suspend its exchanges with extra-European area after the naval block imposed by the UK and both the British and French cut almost completely the commercial flows, leading Mexican market to be dominated by the United States. The United Kingdom lost its position as main European power, that had held since Independence, in favour of the USA, and the interest and focus on Mexico almost disappeared. [193]

During the 1930s, Mexico began to open to the international community, driven by the influence of the United States over its economy, a fact underlined by the admission of membership in the League of Nations in September 1931, supported mostly by the Spanish government and other Western powers (namely, German, British, French, Italian and Japanese delegations), denying in this way the recognition of the already mentioned Monroe Doctrine.[194] For the commercial side, this did not change the spheres of influences over Mexico, on the contrary, the distance between the two sides was even stronger after the expropriation of the Petroleum Companies and the turning to national markets. This pattern was stable throughout the second post-war, a period in which the European countries were mostly concerned with political and economic reconstruction, the 'communist threat' and with the decolonization process of Asia and Africa, leaving space to a new scheme of geopolitical influences in the areas, more specifically, to the rise of the two main confronting superpowers: the United States and the Soviet Union. Mexico tried to keep an isolationist approach, both in the economic field, through the ISI measures, and in the political field, with some internationalist parenthesis during the Presidency of López Mateos (it was one of the few Latin American countries which did not ended the relations with the Soviet Union during the Cold War, as the newly created United Nation had wished).[195]

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[193] In this period, the role of the oil exports became of strategic importance for the country, leading Mexico to be the world's second producer (just after the United States): however, they accounted for a really small part of crude imports of western powers, which made them not essential. The other type of European (small and medium) companies in Mexico were involved in the mining and agricultural sectors, but many of them did not survive the post war period and the prices fall. See H. Williamson, *The American Petroleum Industry. The Age of Energy, 1899-1959*, Evanston, Northwestern University, 1963. For deepen historical datas about political and economic relations with Europe, see M. de Vesa, coord., *Historia de las relaciones internacionales de México, 1821-2010- Europa*, Vol. 5, Mexico: Secretaria de Relaciones Exteriores, Direccion General del Acervo Historico Diplomatico, 2011, pp. 193-234.

[194] M. O. Hudson, "Mexico's Admission to Membership in the League of Nations", *The American Journal of International Law*, Cambridge University Press, Jan.1932, Vol. 26, No. 1, pp. 114-117.

[195] Mexican foreign policy after the Revolution tried to focus mainly on internal matters, turning to protectionism. This 'neutral' approach allowed Mexico to keep focusing on its sovereignty against the dependency to third superpowers and, at the same time, to keep good neighbours policies with the Unites States during the Cold War, accepting to cooperate when it came to important matters for the US.

More specifically, Mexico tried to diversify its trade by re-establishing links with the UK and France at first (a direct shipping line was established between Tampico and Liverpool that reduced the costs of triangulation via New York, and work was done to re-establish another with Spain)[196], and by trade agreement with the Netherlands, Italy and Czechoslovakia, and in 1951 with France. Moreover, after the Cuban Revolution in 1959 motivated a Mexican strategy to diversify its relations and avoid the complete dependency with the United States, it became more than clear the wish of President López Mateos to find a 'third position' at the moment of its visit to General De Gaulle in France in 1963 first, which had become the new centre for Mexican-European relations instead of the United Kingdom, and later to other European and East European countries, in a period in which it appeared to approach the eastern socialist block. [197]

However, the successor of López Mateos, Gustavo Díaz Ordaz (1964-1970), did not seems to follow the same outward looking strategy, since it resumed the nationalist discourse and did not appear willing to take advantage of the economic and commercial evolutions happening within the European region (mostly, the emergence of a Common Market and a Common Commercial policy). Indeed, its foreign policy mostly involved having good neighbour relationships with Central American countries. On the other hand, neither the then European Community approached Mexico, for two main reasons which we have already discussed: the major interests in its newly constituted common market which made trade flows within the region more convenient, and Mexican post war protectionism imposing high tariffs on almost all products as well as barriers on foreign investment in order to protect local ones: more significantly, while between 1935 and 1939 the average of Mexico's exports towards Europe was 30%, in 1950 it only accounted for the 16.5%.[198] Moreover, during the 1950s there was a growing debate inside Mexico over the extent in which foreign investments were to be accepted: for this reason, most of the foreign capital was in mixed companies including a strong state intervention. Italy and the United Kingdom constituted the major investors, followed by Germany, the Netherlands and France. [199]

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[196] M. de Vesa, coord., *Historia de las relaciones internacionales de México, 1821-2010- Europa*, Vol. 5, Mexico: Secretaria de Relaciones Exteriores, Direccion General del Acervo Historico Diplomatico, 2011, pp. 329-

[197] S. Loaeza," La visita del General De Gaulle a Mexico: el desencuentro francomexicano", *Foro Internacional*, Vol. XXX I-2, Oct-Dec 1990; For more background on Mexican position during the Cuban Revolution and how it influenced López Mateos foreign policy: B. Torres, "El Gobierno de López Mateos: Intento de Diversificar los Vínculos con el exterior", in *De la guerra al mundo bipolar*, pp. 123-168, El Colegio de Mexico, 2010.

[198] M. de Vega, *Historia de las relaciones internacionales de México*, 1821-2010- Europa, p 369.

[199] As could be the case of the establishment of a subsidiary of the FIAT Italian Company in 1955-1956, the Diesel Nacional (DINA) for manufacture engines, to underline the importance of Italy in the total of European investments in Mexico. In: *Historia de las relaciones internacionales de México*, 1821-2010- Europa.

Table 1. *Distribution of Mexican imports by origin, 1940-2009*[200]

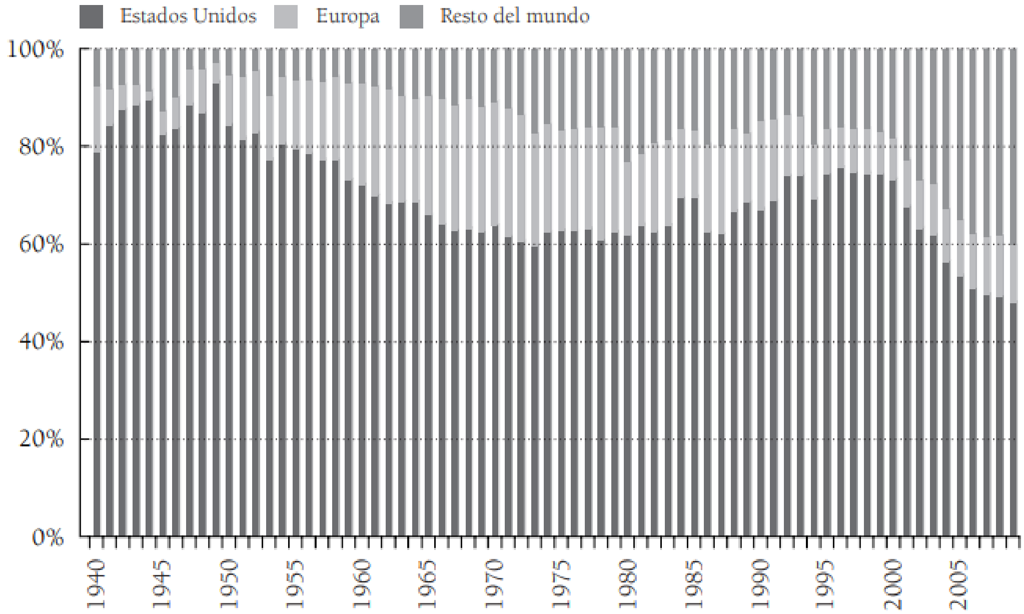
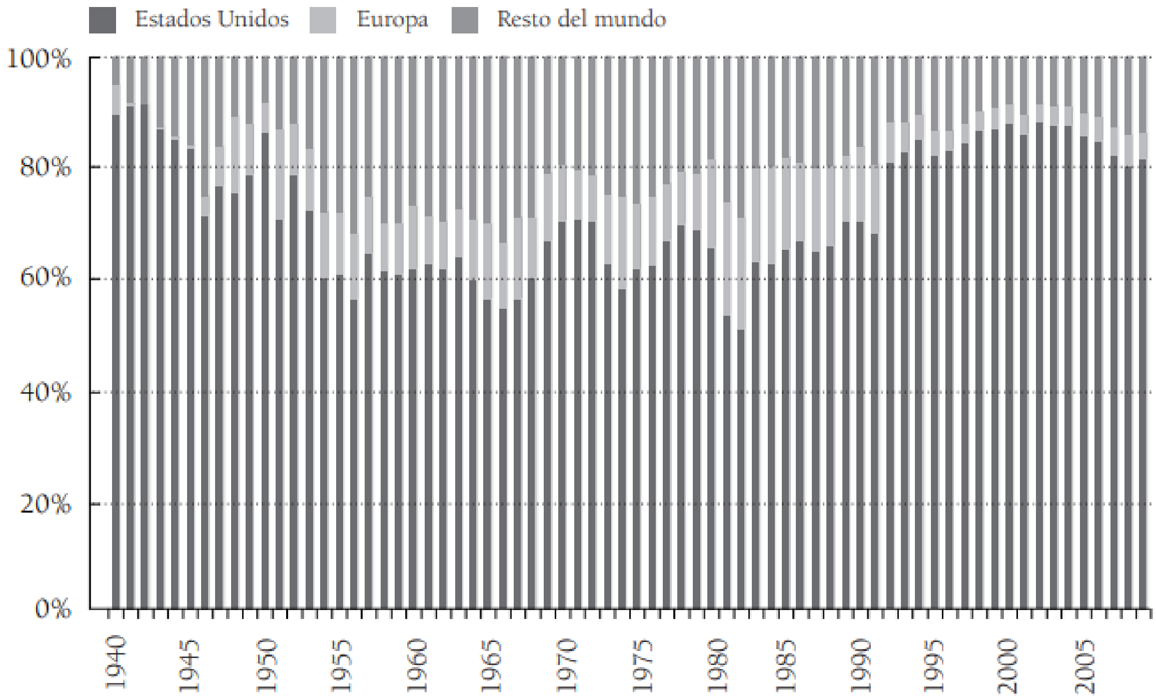


Table 2. *Distribution of Mexican exports by destination, 1940-2009*



[200] Table 1-2-3-4. Data from *Historia de las relaciones internacionales de México, 1821-2010- Europa*, taken from INEGI, "Sector externo", Estadísticas históricas de México, vol. II, Aguascalientes, INEGI, 1999, pp. 669 and 670; United Nations, International Trade Statistics, vol. 1: Trade by Country, 1977, 1983, 1995, and the Ministry of Economy.

Table 3. *Mexico's trade balance with Europe, 1940-1968*

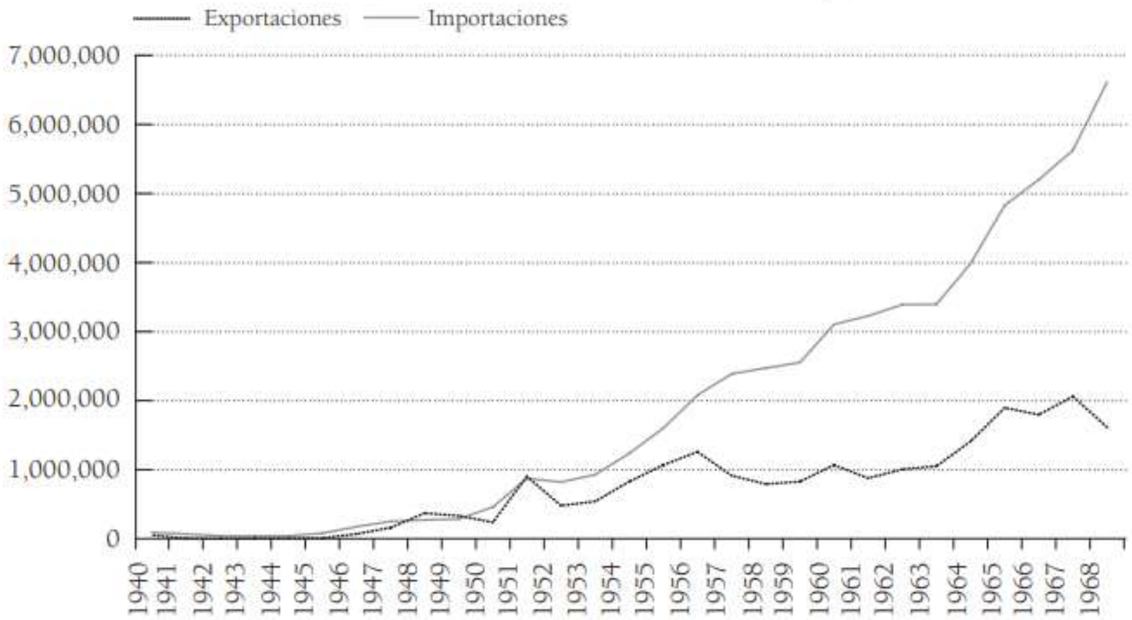
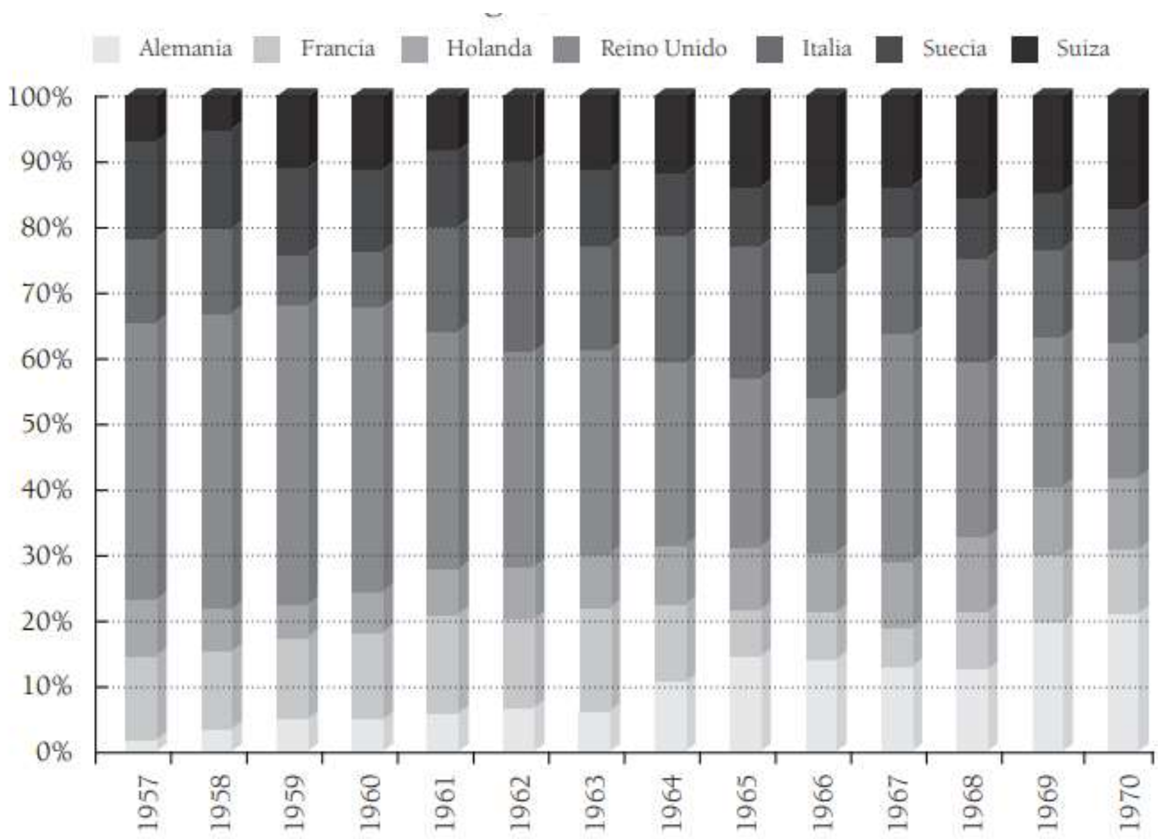


Table 4. *Distribution of European investment in Mexico by country of origin, 1957-1970*



The most important event, which brought real progresses into the deepening of the relationship was the reestablishment of diplomatic ties with Spain in 1977, which had been interrupted during the first Franco Regime (1939-1950): it was particularly important in a period in which the main Mexican partners in the European bloc, mainly Germany and France, were overwhelmed by Community concerns for which trade and financial issues had to be treated, for the most part, as a community matter. Spain, on the other hand, was not yet part of the Community, which made the country one of the main partners in the European region and a way to keep economic and commercial ties with it. Indeed, the European Community main focus on ACP countries through the Lomé Convention agreements and the higher protectionism established by the CAP (Common Agricultural Policy) did not favour the access to EEC market of Mexican products, which, during the period of 'relaxation' of the ISI policies, consisted mostly in raw materials and agricultural products.

Deeper European trade relations with Mexico started from the 1970s, a period coinciding with the presidency of Luis Echeverria (1970-1974)[201] who tried to put a virtual end to the 'special relationship' with the United States and with the favourable outcomes of the European Community integration process, when the country became the fourth one, after Argentina, Brazil and Uruguay, with whom the then EEC sign an Economic and Commercial Cooperation Agreement the 15 of July

[201] It is important to underline that, by that period, main external commercial matters of the single European countries were managed by the European Commission as part of the Common Commercial Policy.

1975, following the visit to the Commission of President Echeverria (1973) and the visit to Mexico (1975) of the Vice-President of the Commission in charge of external relations.[202] The EEC, now having greater decisional power over foreign commercial relations, was indeed important for a country like Mexico which had specific relations with countries as Germany, France and the UK, since bilateral relations with specific countries only became hard to follow with the coming into force of the Treaty of Rome.

The main objective of such non-preferential Agreement, which stayed in force for 15 years, was to establish a favourable commercial exchange in such areas which were of interests for both the parties, 'taking into account Mexico's position as a developing country'[203], but it did not actually institutionalize a political dialogue, a fact that is underlined even by the absence of references to democracy. It was focused on trade and economic cooperation and the establishment of a Joint Commission Mexico-EEC which would work on the trade barriers removal, since the European Community wished to recognize the economic potential offered by Mexico in response to the country wish to reduce its trade deficit with the community as well as diversify its international economic relations. Significantly, it introduced the most-favoured-nation principle, not only with regard to customs duties, but also to administrative regulations, taxes on goods or services imported or exported, quantitative restrictions, payments and transport. However, as even underlined by the informative note in the event of the fourth year from the entering into force of the Economic Agreement, although Mexican exporters could still benefit, apart from the MFN treatment, from the Generalized System of Preferences granted to all developing countries, only the 21% of all the Community's imports from Mexico were realized under the GSP as to 1977. [204] In this sense, it was a rather asymmetrical agreement, and it did not translate in an actual growth in trade flows or investments: it was limited to provide development cooperation assistance in the form of export promotion, even due to the high tariff barriers that prevent the complete access to European market.[205]

The limited impact of the agreement was even underlined by Mexican nationalistic and newly Third World-orientated measures and by EEC focus on ACP countries, and although the text provided for reaching the 'most balanced trade relation possible', it was hard to achieve it, given the country trade

[202] *Acuerdo celebrado el 15 de septiembre de 1975 entre los Estados Unidos Mexicanos y la Comunidad Económica Europea,* DOCE (Diario Oficial de las Comunidades Europeas), N L247 del 23 de septiembre de 1975.
203 European Communities Commission Press Release, *EEC-Mexico Trade Agreement Negotiations Concluded*, London, June 12, 1975, available at: http://aei.pitt.edu/55093/1/ISEC.65.75.pdf.
[204] Commission of the European Communities, *Mexico And the European Community*, Information notes prepared for the visit to Mexico of Mr Wilhelm Haferkamp, Vice-President of the Commission of the European Communities, from 12 to 16 November, October 1979.
[205] Promotion schemes under the development cooperation were based on seminars on marketing of Mexican manufactures, tourism and sales promotion.

deficit with the EU and the limited export diversification.[206] On the other hand, the European hopes for better access to Mexican natural resources were as well dismissed since it did not agree to expand the GSP to 'sensitive products' subjected to tariff barriers, turning to inviting entrepreneurs to meetings and courses for better managing the GSP.[207]

Overall, the measures taken by President Echevarria before and López Portillo after to attract European investments and open its exports to the region were a failure: imports from Europe went from 20.5% in 1970 to 12.5% in 1982 while export showed an irregular tendency, with deep differences before and after the oil boom of 1978. Bilateral relations with the main partners in Europe changed as well, with Germany becoming the most dynamic investor in Mexico, and the main import market (of capital goods) following only the United States and the UK. The only country with whom Mexico kept a surplus was Spain, since it was not part of the EEC at least until the 1986, to which it was the second oil exporter and from which it did not import much given the low competitivity of the country after the Franco regime.

The new President Miguel de La Madrid and his successor Carlos Salinas de Gortari gave a symbolic push towards openness right after the harsh financial crisis of 1982. Diplomatic relations with the European Union were further developed thanks to the bilateral dialogue of the San José Group in the event of the Central American crisis before in order to find a pacific solution to such conflict, later institutionalized in the Rio Group, signing the beginning of a decade in which Mexico opened its doors to the global arena, both politically and economically: from the 1985 entering into GATT, supported by European countries, to the signing of the NAFTA in 1994 and its membership in the OECD in the same year, which was particularly important for it converted the country to a 'bridge' between the interests of developed and developing countries, thus altering the traditional relationship between North and South.[208] Foreign policy was focused mainly on economic cooperation, that received new stimulus, and on the diversification of foreign markets, since internal politics tried to keep its emphasis on the non-intervention model, notwithstanding the changing international

[206] The trade deficit was due to the higher imports from the European Union compared with Mexican exports to the zone.
[207] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", *Journal of Interamerican Studies and World Affairs*, 42(2), 35-62, 2000.
[208] As even shared by *The European Union and Latin America: The Present Situation and Prospects for Closer Partnership 1996-2000* Commission Communication, in which it has been underlined the strategic importance of having stricter relations with Mexico, as it was one of the most globalized countries in the region. For more about Mexico joining OCDE: "México ingresa a la Organización de Cooperación y Desarrollo Económico", *Revista Mexicana de Politica Exterior*, Volumen 43, verano 1994, pp 164-166. Moreover, the EU approach to Mexico has been different from that of other important actors of Latin America: it involved bilateral relations, on the same path of the other parties of the North America Free Trade Agreement, rather than an Interregional one, as instead it did with Mercosur. Indeed, most of the bilateral relation of Latin America with European countries right after the creation of the United Nations and the appearance of a new international world order were managed by the bipolar regime of alliances against the common enemy, the soviet.

approach towards democracy and human rights after the end of the Cold War (a point of confrontation which returned during the later negotiation of the 'democratic clause' of the Mexico-EU Global Agreement). Moreover, particularly important was the acceptance of Spain in the European Community in 1986, to which followed the attempt to make their relations more 'European', meaning that the country became the main advocate for deepening relations with Mexico and to regulate their dialogue.

Another important step towards closer relations was the actual attempt to diversify Mexican exports towards the EU: between 1984 and 1989, oil exports fell from 85 percent to 49 percent while manufactured goods ones increased, but even more was the increase in business cooperation programmes and investment promotion. Moreover, new projects invested sectors like telecommunications and energy, which had not been considered before, and a new agreement was signed concerning trade in textiles.[209]

In 1991, recognizing the evolution of the relations between the entities and the favourable outcomes of the modernization and liberalization of Mexican economy, the 1975 Association Agreement was replaced by the Framework Agreement for Cooperation, a 'third generation' pact, even thanks to the renewed EEC development cooperation policy toward Latin America.[210] The parties undertook to promote the expansion and diversification of bilateral trade through the exchange of information and consultations on tariff matters, sanitary and technical requirements, legislation and practices related to trade, as well as on antidumping and countervailing duties that may be applied, a new focus on industry and intellectual property and a dispute settlement body according to GATT. Likewise, a Joint Commission was established, constituted by representatives of the two parties, which had to ensure the proper functioning of the agreement, and an evolutionary clause added to promote the increase in the extent of cooperation.[211]

In recognizing Mexico as a developing country, the EU centred its development cooperation projects on such areas concerning the most dynamic economic sectors of the country (see, for example, the EC International Investment Partners of which Mexico was the main beneficiary. the Multiannual program of business meetings between the country and the EC and the business centres created under

[209] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", 2000.
[210] Acuerdo marco de cooperación entre la Comunidad Económica Europea y los Estados Unidos Mexicanos (26 de abril de 1991), DOCE, N L340 del 11 de diciembre de 1991.
[211] See: F. de Mateo, "Relaciones comerciales entre México y la Unión Europea", *Revista Mexicana de Política Exterior*, pp 194-219; *Framework Agreement For Cooperation between the European Economic Community and the United Mexican States, Official Journal of the European Communities*, No L 340/ 2, 11. 12 . 91.

AL-INVEST).[212] The development cooperation improved, however the trade and investment sector did not see a major change, since it did not really address Mexican access to EEC market, and it affirmed the MFN rule although Mexico was already part of the GATT. A more important issue was that it did not include the democracy clause, which most agreements of the same kind of 'third generation' concluded with Latin American countries during the 1990s, included, since *"the Mexican government believed that this kind of clause constituted an unacceptable unilateral imposition, contrary to Mexico's noninterventionist constitutional foreign policy*"[213] For this reason, practical work on development field could not be reached, with Mexican authorities blocking many European projects on democratization (see, for example, funding for the Mexican Academy of Human Rights and for the National Commission for Mediation).[214]

The democracy clause, which is the term used to refer to the wider 'human rights clause', is an element included in all EU bilateral agreement, and it is conceived as an essential clause, therefore allowing the parties to partially or fully suspend a treaty in case of its breach. It is based on the 1969 Vienna Convention on the law of treaties, more specifically its Article 60, and is phrased in the same way among almost all EU agreement. However, given many partners often show different view over the provisions, therefore mainly bringing changes to the binding human rights international norms and on the inclusion or not of the rule of law. The EU supposed including the clause in its political framework agreements, to which free trade agreements should be linked, although in the absence of such framework agreements, it should as well be present in the comprehensive agreements including free trade provisions or trade cooperation provisions.[215]

Concerning economy, notwithstanding the attempts to improve Mexican global position, it failed in the extent in which it did not include real commitments to tariff reductions and on Mexican access to EU market, so that by 1995, the country foreign trade was still evolving around the United States one, which received 83 percent of its exports and originated 74 percent of its import, which the respective percentages for the EU accounted for the 11.5% and 4.5%. Notwithstanding its membership in OECD, Mexico kept receiving GSP treatment on manufacturing products while creating sensitive products lists concerning 29% of those goods, mostly agricultural and textiles. More specifically, exports became more diversified (primary goods and oil products diminished, while manufacturing

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[212] J. A. Munguía, "La política exterior de México hacia la Unión Europea, 1990-1995", *Revista Mexicana de Política Exterior* Vol. 49, pp123-148, 1996.
[213] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", 2000.
[214] R. Youngs, "The European Union and Democracy in Latin America", *Latin American Politics and Society*, 44(3), 111-139, 2002.
[215] I. Zamfir, "Human rights in EU trade agreements: The human rights clause and its application", *EPRS - European Parliamentary Research Service*, July 2019.

goods, especially the machinery and transport equipment, saw a favourable increase, accounting for over half of the total). [216] On the other hand, FDI (which have always seen Mexico as a preferential destination in Latin America) increased as well, even thanks to the Salinas Administration eliminating a great share of restrictions imposed by the Foreign Investment Law of 1973, so that the EU was the second source of investments in Mexico right after the United States in 1995, and its investments largely directed towards the privatization programme launched by the Salinas administration.

6. The framework of the 1997 Mexico-European Union Global Agreement negotiations

In the wake of Mexican accession to the NAFTA with the United States and Canada, European share of Mexican market was decreasing steadily, while Europe was presenting itself as an advocate for human rights and democracy, something that differed from the US approach. Thanks to the 1991 Cooperation Agreement, however, political relations began to be properly institutionalized, thus allowing discourse over social engagement and development to be further discussed between the parties, and to finally reach in 1997 what is known as the "Global Agreement", a new deal, the first one of its kind involving the EU and a developing country, that enlarged the cooperation framework into encompassing three main pillars: political, economic and cooperation. Indeed, in the years after 1991, relations between the European Union and Mexico grew in importance, a fact that is underlined by the increasing mutual visits by the then Mexican President De Gortari and representatives of the European Commissions, as well as by the visit of single Presidents of European Member States to Mexico (as, for example the then German President Richard von Weizsaecker, which was the first European leader to propose trade liberalization in the Atlantic region, seen as a bridge to attract investments between the two continents.)[217]

In 1994, the most intense European activism towards Mexico was received with a more 'waiting' attitude by the country, given its internal political and social unrest (the PRI presidential candidate for 1994 elections was murdered during a rally in Tijuana, which was only one of the multiple violence escalations during the year, that went from assassinations to kidnapping, which further affected investors' perception of Mexico) and increasing economic and financial problems, that

[216] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", 2000.

[217] Delegacion de la Comisión Europea, "Las Relaciones Union Europea-Mexico"',*Euronotas*, Junio 1997, available at: http://aei.pitt.edu/80084/1/eu-mexican_relations.pdf.

indeed ended in the so called 1995 'Tequila Crisis', the worst banking crisis in the history of Mexico, that led to the harshest recession in almost a decade.[218]

When the French Minister of Foreign Affairs, Alain Juppe, visited Mexico in January 1994, he proposed France as an advocate for a future larger economic agreement with the EU, since Mexico, notwithstanding the coming into force of NAFTA, was still open to cooperate with other international partners. The EU took into account the newly acquired international position of the Mexican government, its membership in the GATT and OCDE (actually promoted by the European Union) and de surplus in its commercial balance with the country, a disequilibrium that could be exploited but that was endangered by the stricter relations with the United States and Canada. Moreover, the Mexican National Development Plan 1995-2000, drafted by the new President Ernesto Zedillo, proposed a trade and industrial diversification strategy based on the belief that "foreign trade negotiations are essential to diversify exports, attain a 20 percent rate of annual growth in exports, and raise foreign investment". [219] The main aim of such policy was to gradually open Mexican market to achieve reciprocity with other major powers (without adversely affecting relationship with its neighbours) and included the EU as a top priority for diversification and for counter the major trade influence coming from the NAFTA Agreement with the United States and Canada. This idea was based on the fact that a real trade and investment dialogue with the European Union had never been engaged, while recurring mainly to cooperation and assistance: this kind of economic cooperation was however taken as a model for similar developing countries that wished to participate in the global arena.

The GATT Uruguay Round negotiations gave a fundamental push towards the institutionalization of multilateral dynamism, which had as a consequence the proliferation of more regional and subregional free trade agreements: in this background, the European Union could be allowed to diversify its preferences to ACP countries and extending it to other Latin American countries, with whom it developed common points of interests in such sectors like drugs war, social and environmental protection, among others. In manifesting its intentions to deepen the relations with Mexico, the EU proposed five kind of agreement that could be reached in the near future: from accession of sectoral annexes to the current agreement, and the extension of cooperation by means of the "evolutionary clause", to the establishment of a free trade agreement with Mexico, one with the

[218] The recession left Mexico with a more stable economy, with no major crisis and an expanding market, with flows of goods and investments to third countries steadily increasing. More about the 1994-1995 financial crisis in: A. Musacchio, "Mexico's Financial Crisis of 1994-1995", *Harvard Business School Working Paper*, No. 12–101, May 2012.
[219] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", 2000.

Group of Three or a limited one without agricultural and services sectors (which however was against Article XXIV of the WTO, that did not foresee the exclusion of important sectors from a FTA).

With this background, on May 2, 1995, Mexico and the European Union issued a Joint Solemn Declaration in Paris, which established the commitment to initiate talks aimed at the beginning of negotiations of an agreement which would constitute the framework for political, economic and social cooperation: they pledged to strengthen the political dialogue at higher level that would take into consideration 'common interests', based on the principle of reciprocity (while the agreements already in force with Mexico and other Latin American states were based on non-reciprocity), as well as to expand and increase cooperation and trade of goods and services liberalization (which did not include specific commitments before), according to WTO rules, between both entities, while sustaining the democratic principles and objectives of the United Nation Chart.[220]

Although the intentions were clear, strong resistances overcome the negotiations in the successive five years that brought to sign the Lisbon Declaration in March 2000. Difficulties came both by the Mexican national side and from the European Union. On the one hand, the idea of a free trade agreement with the EU was seen positively by various politicians inside the Mexican society, since it could constitute a counterbalance to the hegemonic power of the US and NAFTA, as well as by the left party (PRD), that foresaw a possibility to link a trade agreement to be a more general mechanism for collaboration and political dialogue (something of which, instead, NAFTA lacked).[221] On the other, most private sector was against the agreement for two specific reasons: the 1994-1995 macroeconomic crisis was still the main objective of Mexican business sector, as well as the recent coming into force of the North American FTA took most of the attention, and given the low influence that the European common market had on Mexican exporters, it was not believed to be a priority. Indeed, although the overall trade flows showed an increase between 1988 and 1994 of 180,27%, making the EU the second most important commercial partner, Mexico still accounted for a small part of total European trade, even strengthen by the fact that Mexico did not apply a uniform tariff framework for all European countries (it did happen at the opposite), and for all products.

To the European side, the contradictions came from various issues, the main one of which was the major focus, at the end of the 1990s and the beginning of 2000, that took the integration process and the divisions of powers among Member States. There was no consensus among them when it comes

[220] *Solemne Declaración Conjunta del Consejo de la UE y la Comisión Europea, por una parte, y los Estados Unidos Mexicanos, por otra*, París, el 2 de mayo de 1995.
[221] S. Gómez Lora, "La ventana europea: retos de la negociación del tratado de libre comercio de libre comercio de Mexico con la Union Europea", *Instituto para la integracion de America Latina y el Caribe*, 1 ed. – Buenos Aires: BID-INTAL, 2004.

to a trade agreement with Mexico: some countries, as Spain, had personal interests which justified their favourable positions over the launch of such closer relationship (underlined by the facts that Latin American component in EU trade policy had been strongly promoted by Spain ever since it became a Member in 1986, and more significantly, that the main approaches between the two parties have occurred mostly during Spanish presidency of the Union, as for example the institution of a biennial summit which brought together the heads of state and government of both regions and the push to conclude an Agreement with Mercosur)[222]; other, as France, saw its initial enthusiasm gradually decline, mainly due to the difficulties in assuring European interests at multilateral level (the Uruguay Round was taking place precisely in that period) and the fear of promoting further trade liberalization with entities such Mercosur or the United States.[223]

With the Paris Declaration, three pillars over which start the negotiations were individuated: political dialogue, cooperation and trade. However, it did not define clearly their scope. Mexico was particularly interested in the trade pillar of such agreement: indeed, the EU was negotiating at the same time similar agreements with Chile and Mercosur, which ended to give major importance to the cooperation and political dialogue more than on trade, considering the developing status of the two parties, an outcome that Mexico wanted to avoid. Therefore, the method of negotiation was one main source of disagreement in 1996: Mexico preferred to negotiate the whole agreement simultaneously, while the EU wished to do it in two phases (political dialogue and economic cooperation first, and trade liberalization later).[224] One other important focus was the democracy clause, excluded by the Framework Agreement of 1991: notwithstanding the absence of a mandatory status, the fact that the Declaration contained in its principles commitments to human rights and democracy was indeed important since the EU approved a regulation to include such principles in every agreements with 'third world countries', while Mexico stood up for its idea that such clause was 'humiliating', and a sign of dependency, actually blocking a proper cooperation in the field of human rights promotion and democratization.[225] The parties reached a compromise, and Mexico accepted the application of a modified democracy clause, overcoming an important obstacle.

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[222] Dirección General De Comercio Internacional e Inversiones, "España-México: Una Relación Económica Privilegiada", *Boletín Económico de Ice* Nº 3052 Del 1 Al 30 De Junio De 2014.

[223] France has been, indeed, one of the first country to suggest a new EU-Mexico agreement to the EU Council (based on an initial idea of a bilateral Mexico-France agreement), particularly on financial services, as a "counterbalance" to the preferred regional integration initiatives, as the one proposed by Spain with Mercosur.

[224] J. K. Zabludovky, S. Gomez Lora, "La Ventana Europea: retos de negociacion del tratado de libre comercio de Mexico con la Union Europea", Iniciativa Especial de Comercio e Integracion, *INTAL – ITD Documento de Trabajo*- IECI-09, Novembre 2004, pp 9-11.

[225] Until 1991-1993, the European rules over economic assistance to developing countries did not explicitly mention the promotion of democracy, a fact that changed with the 1993 Treaty of European Union which recognized it as one of the objectives of the EU development policy: Article 130U. Approved to be used in any international agreement, later in

Two years of talks and long and difficult negotiations, lead on December 8, 1997 to the signing of three instruments:

1. Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, on the one part, and the United Mexican States, on the other part (Global Agreement)
2. Interim Agreement on Trade and Trade-related Matters between the European Community on the one part, and the United Mexican States, on the other (Interim Agreement)
3. Joint Declaration between the European Community and its Member States and the United Mexican States (in the Final Act)

The division into three different acts was based on Mexican wish to properly address trade and trade-related matters separately, and for this reason the Interim Agreement (approved by the Mexican Senate in April 1998) was to be in force until the entry into force of the Global Agreement. EU member states approved in different way the trade liberalization agreement, following the same path of the negotiation of the previous Framework act: Spain favoured it immediately, while France and other states preferred the model of agreements used with Mercosur, since it feared that free trade could damage the Common Agricultural Policy. However, a European study published in 1995 showed that just 11% of Mexican exports concerned EU sensitive products, therefore could be excluded from the pact. In order to overcome internal difficulties, negotiations were to be carried out on a sector- by-sector basis and had to involve both the member states and the Commission, since services still fell under Member States jurisdiction while those concerning trade in goods require only a qualified majority and can be taken by the Commission. [226] This put the basis for the negotiation of a Mexico – European Union Free Trade Agreement, concluded in November 1999, which came into force in September 2000.

After two attempts to properly tackle the strengthen of their relations, the Economic Partnership, Political Coordination and Cooperation Agreement provided for an explicit commitment to democracy and reciprocal trade liberalization through institutionalizing the political dialogue based on mutual respect for democracy and human rights and reinforcing economic cooperation.[227] It included the most debated democracy clause and established a Joint Council including the European Commission, its Member States and Mexican representatives and which aim was to set the calendar

1995, it was provided that all EU agreements would include a democratic clause preceded by an 'application clause'. The issue was particularly important in the case of Mexico, which showed a high rate of human rights violation.

[226] J. Sanahuja, "Trade, Politics, and Democratization: The 1997 Global Agreement between the European Union and Mexico", *Journal of Interamerican Studies and World Affairs*, Summer, 2000, Vol. 42, No. 2, Special Issue: The European Union and Latin America: Changing Relations (Summer, 2000), pp. 35-62.

[227] Ibidem.

and scope of trade liberalization, the movement of capital and payments, and the opening of public procurement market. In the field of cooperation, it included new areas such as fight against drugs, democratization and human rights indeed. Moreover, it includes a "national security clause," which states that no provisions of the Agreement preclude the parties to take measures which considers necessary to the essential interests of its security in the event of serious domestic disturbances or conflicts or to prevent the disclosures of information.[228] Finally, the Joint Declaration on Services and Intellectual Property Matters established the terms of negotiation in areas under the competence of the member states.

Chapter 3

Modernization of the Mexico-European Union Global Agreement

1. Analysis of the Global Agreement and the 2008 Strategic Partnership

The negotiations steps of the Global Agreement between Mexico and the EU, that is said to have been the first of its kind with a Latin American country have been of key importance to understand the

[228] Official Journal of the European Communities, *Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part*, L 276/45, 28.10.2000.

respective positions of both the entities by 2000, as will be the internal changes that Mexico and the EU underwent alongside its evolution and implementation.

It is fundamental to stress two facts involving the understanding of the Global Agreement. The first one concerns its title. If in English the complete name is 'Economic Partnership, Political Coordination and Cooperation Agreement', usually referred as Global Agreement, the original name in Spanish is, on the other hand, "Acuerdo de asociación económica, concertación política y cooperación", that led to often refer to it as an 'Association Agreement', thus misunderstanding its nature: the "association" part refers in particular to the economic association, and not to the overall text.

The second refers to the economic and trade pillar. The Solemn Declaration of Paris presumed the "progressive and reciprocal bilateral trade liberalization of goods and services, consistent with WTO rules"[229], which could signify, inter alia, a simple liberalization of those sectors in the WTO framework, or a broader and proper free trade agreement, according to Article XXIV of GATT and Article V of GATS, which was the main Mexican aim. The conclusion in 1997 of the Interim Agreement on Trade and Trade-related matters did work properly for reaching the original purpose of the negotiations: it allowed commercial themes which were under the Community competencies (as were, at the moment, trade on goods, while services, investments and intellectual property had to be approved by Member States) to be negotiated at the moment of its approval by the Mexican Senate and the European Parliament only, stating in its preamble that *"*[…]it is in the mutual interest of the Parties to implement as speedily as possible, by means of an Interim Agreement, the provisions of the Global Agreement on trade and trade-related matters*;"*[230], thus reiterating the urgency of its conclusion. Moreover, a third instrument, the Joint Declaration, allowed other sectors (investment, services and intellectual property), to be negotiated before the Global Agreement. Thus, when it was first signed in December 1997 it created a simple institutional framework for the establishment of the Interim Agreement by the European Commission, which entered into force in July 1998 granting the possibility of negotiating trade issues without having the parliamentary approval, while allowing further negotiations on content development by the Joint Council in the area of trade in goods and related matters to be opened, as well on services by the Member States. During the ratification procedures of the three instruments, liberalizations of goods and services were enacted by Decision

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[229] Declaración Conjunta Solemne entre el Consejo de la Unión Europea y la Comisión Europea, por una parte, y los Estados Unidos Mexicanos, por la otra, París, el 2 de mayo de 1995. Fuente: *Revista Mexicana de Politica Exterior n.49*, Invierno 1995-1996.

[230] Official Journal of the European Communities*, Council Decision of 29 June 1998 concerning the conclusion of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part*, L 226/24, 13. 8. 98.

Nº 2/2000 of the EC-Mexico Joint Council of 23 March 2000 and Decision Nº 2/2001 of the EU-Mexico Joint Council of 27 February 2001 respectively, which articles constitute the Free Trade Agreement between Mexico and the European Union, complementing the legal framework of the Economic Pillar.[231]

Since liberalizations included in its final text were not broad in its proper sense, there are different opinions over the description of the Agreement as the 'first of its kind' and the 'most comprehensive' ever signed but the EU. These aspects have to be further analysed recurring to the testimony of Ramón Torrent, Director for External Economic Relations in the Legal Service of the EU Council at the time of the negotiations and who wrote '*Las Relaciones Unión Europea–América Latina en los últimos diez años'*, to which largely referred the DG-EXPO in its Analysis of 2016. First of all, the Agreement has been negotiated at the same time of two other deals with Chile and Mercosur within the initiative to negotiate bilateral arrangements with Latin American countries and trade blocs and envisaged to negotiate it in one single phase. However, the EU-Mercosur Interregional Framework Agreement did only open for the possibly of future negotiations and establishment of a proper trade liberalization due to difficulties in negotiating sectorial commercial openings while the EU-Chile trade negotiations ended in 2002.[232] In the EU-Mexico case, on the other hand, the Joint Council instituted by the 1995 Paris Declaration had the power to apply the agreement simply through its decisions, avoiding ratification by EU Member States, thus making it possible to have a more favourable dialogue with Mexico than it had with Mercosur, which Agreement did not present such a novelty. For this reason, the Mexico-EU Global Agreement was actually the first one to be ratified and concluded, therefore it can be identified as the first transatlantic agreement the Union has ever signed. When it comes to its description as being the 'most comprehensive' European agreement to the moment, it derives from its purpose of combining commercial and commercial-related liberalizations with the protection of democracy and human rights.

Going more in details inside the provisions, the Interim Agreement contained measures and timetable for bilateral, progressive and reciprocal liberalization of tariff and non-tariff barriers to trade in goods and other mechanisms which constituted the legal framework of the Free Trade Agreement, while inserting a Review Clause that opened to the possibility of further negotiating those sensitive chapters or sectors that would undergo changes during the years. The provisions, contained now in the

[231] European Parliament, *Analysis of the upcoming modernisation of the trade pillar of the European Union- Mexico Global Agreement*, Policy Department, Directorate-General for External Policies, April 2016-PE 534.012

[232] Look at: *The European Union and Latin America: the present situation and prospects for closer partnership 1996-2000.* Communication from the Commission to the Council and the European Parliament. COM (95) 495 final, 23 October 1995; A. Hoste, "The New Latin American Policy of the EU", *DSA European Development Policy Study Group Discussion Paper No. 1*1, February 1999.

Economic Pillar of the Global Agreement, involved 11 areas: 1. Market access, including tariff liberalisation schedule of trade in goods; 2. Origin Rules and customs cooperation; 3. Safeguards; 4. Standards, Technical Regulations and Conformity Assessment Procedures; 5. Sanitary and Phytosanitary Measures; 6. Government procurement; 7. Competition; 8. Trade in services; 9. Investment and related payments; 10. Intellectual property; 11. Dispute settlement.[233]

The main aim was the establishment of a free trade zone that abolished all restrictions on 96% of imports and exports while granting the national treatments to imported products, during a 10-years transitional period that presented different timetables for tariff reduction (for the EU the deadline for total liberalization was 2003 while for Mexico it was 2007 for industrial products and 2010 for agricultural and fisheries), thus showing the asymmetry characterizing the agreement, in the extent in which by 2003 only the 52% of Mexican tariffs were abolished on industrial products, while all of them were entering the EU duty-free. Liberalization did not touch those products which had protected denomination within the EU and was opened to revisions by means of a review clause for increasing liberalization in agricultural sector, services and investment.[234] The liberalization of trade in services followed Article V of GATS and covered all the four modes of services supply implied over a period of maximum 10 years, including commitment to eliminate "substantially all remaining discrimination" which, as to 2017 had not yet been implemented. [235] At the end, most services were included in the liberalization process, from telecommunications to distribution, energy, tourism, while maritime transport and financial services were covered by specific provisions.

Chapters as the Rule of Origin, that was based on the criteria that the product shall be fully produced in the exporting country, or should have undergone sufficiently processing or working, aimed to secure access to Mexican market at the same level of NAFTA products: as the Governmental Procurement area established non-discriminatory principles and national treatment and opened to further implementations if one party granted advantages to third countries, namely if changes would happen at NAFTA or WTO level and the Competition part was, similar to the NAFTA since it mostly regarded reaching coordination in domestic legislations. However, the latter was one of the most comprehensive and detailed of the FTA, since the parties agreed to adopt measures to avoid actions of which consequent restrictions of competition would affect trade flows and established a set of non-

[233] Official Journal of the European Communities, *Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part*, L 276/53, 28.10.2000. All the future quotes and descriptions of the Agreement's provisions are taken directly from the text.

[234] B. Rudloff, J. Simons, "Comparing EU Free Trade Agreements- Agriculture", in *In Brief series on trade for 2004-2005*, European Centre for Development Policy Management (ECDPM), No 6A- July 2004.

[235] European Commission, *Ex-post evaluation of the implementation of the EU-Mexico Free Trade Agreement*, Prepared by ECORYS, February 2017.

binding guidelines to implement when such actions were in place, that compelled the parties into maintaining cooperation and exchanging information.

Main differences with the NAFTA Agreement are to be found in the Intellectual Property Rights provisions (NAFTA had WTO plus IR protection), that simply stated the necessity to undertake effective measures to protect such rights, to commit to international conventions on the matter (such as TRIPs), and to establish a consultation mechanism; and on Investment Provisions, negotiated in form of BITs with Member States, that did not include a Dispute settlement mechanism; however, a general framework on promotion of investments regarding SMEs, exchange of information and commitments to encourage mutual investment was adopted. Finally, the Dispute Settlement Mechanism indeed concerned governments but not private parties, and a consultation process had to take place within the Joint Council through a Joint Council Decision containing the measures to be implemented and all the specifics, before proceeding to an arbitration panel. Its final decision was binding for the parties in question.

The Political pillar was based on a single article and on the Joint Declaration on political dialogue, and aimed to "cover all bilateral and international matters of mutual interest and leading to closer consultation between the Parties within the context of the international organisations to which they both belong" [236], through means of the Joint Council – one peculiar characteristic of the Agreement that cannot be found in other treaties of the same period - and the main administrative body constituted at ministerial level to examine the issues coming from the agreement, composed by Members of the Council of the EU and the Commission and Members of the Mexican Government. The Joint Council could be assisted by a Joint Committee of which it determined the duties. The Joint Council and Joint Committee were the source of changes when the Agreements had to be implemented: from trade and trade-related disciplines to the necessity of adding protocols and other implementing measures, decision would be taken by the two bodies. Their meetings were not open to public, therefore all the subsequent citations to those Summits are taken from press releases and declarations.

Lastly, the Cooperation Pillar embraced 30 broad areas (namely, Industrial cooperation, Investment promotion, Financial services, Cooperation on small and medium-sized enterprises, Technical regulations and conformity assessment, Customs, The information society, Cooperation in agriculture and the rural sector, on mining, on energy, on transport, on tourism, on statistics, Government,

[236] During the period of negotiations, the European Parliament did not have a key role yet, but stressed the necessity to institutionalize the political dialogue, resulting in this way in the addition to the Final Act of the Joint Declaration on political dialogue at parliamentary level, modelled on those included in the Association Agreements with European neighbour countries and with Chile.

Cooperation on combating drug trafficking, money-laundering and chemical precursors, Scientific and technological cooperation, Cooperation on training and education, culture, in the audio-visual sector, on information and communication, on the environment and natural resources, on fisheries, on social affairs and poverty, Regional cooperation, on refugees, on human rights and democracy, on consumer protection, on data protection and Health). The Cooperation on human rights and democracy reinforced the democratic clause (Art.1) and provided for the suspension of trade relations in case of strong human rights violation: this was an innovative part that is regarded as a precedent for the inclusion of such clauses in successive EU agreements with middle-income countries, given its potential in constituting a legal framework for the establishment of periodic meetings and reports over the status of human rights protection in the territories of the signature parties in relations to the treaty signed.

An aspect that should be underlined in the cooperation part regards the embedded framework for the institution of a regular dialogue which aim was to intensify and improve the course of actions and promote trade and investments as well as examine the possibility of modernizing sectoral agreements in addition to establishing new ones over the matter. For this purpose, in September 2005 a Joint Parliamentary Committee (hereinafter: JPC) was constituted, not directly linked to the GA, but as a part of an Annex to the Final Act of the Global Agreement, the aforementioned Joint Declaration on dialogue at parliamentary level, with the aim to institutionalize the interparliamentary dialogue between the European Parliament and the Mexican Congress. It was different from other JPCs established by similar treaties of the EU, since it was linked to both an international agreement and, from 2008, to a strategic partnership. The main commitment of the JPC was to assess the implementation of the GA, to exchange good practices and policies so to enhance them in internal legislations, mainly in those sectors in which Mexico still shows, up to know, major difficulties (as could be social equalities and cohesion, justice administration and human rights), and thus it has, since then, carried out various activities with the purpose of strengthening the parliamentarian control over EU and Mexican relations and, on the other hand, to learn about political and economic situation of each other and how to improve them, at the same time allowing both the parties to reach individual, thus different, goals at internal level.[237] Additionally, an important emphasis was placed on promoting joint activities to reinforce regional cooperation with Central America and the Caribbean, with a particular attention given to intra-regional trade, the environment, technological and scientific

[237] European Parliament, *The Modernisation of The European Union- Mexico 'Global Agreement'*, DG External Policies Study – Policy Department, Brussels, January 2015.

research, development of the communications infrastructure and initiatives aimed to improve the standard of living in the region.

Finally, both the parties committed in the political and cooperation pillars to include as a way of communication a civil society dialogue with legislative institutions both internally and bilaterally, a necessity further explored during the first EU-Mexico Summit in Madrid, as a way to enhance transparency and disclosure of information among the parties, through assuring the development of structures to involve civil society into external policies decision. In that occasion, the parties underlined the "convenience of having an open dialogue with Mexican and European civil society in order to take advantage of the opportunities offered by the Agreement".[238]

The favourable environment created by the strengthening of mutual economic links, the emergence of proper dialogue channels and the fact that the first pillar of the Global Agreement was based on political dialogue led the European Commission to propose on 15th July 2008 the establishment of a "Strategic Partnership" between Mexico and the EU.[239] The idea came from frequent allusions to the strategic importance of the relations of the parties which was mutually attributed and to the more active role often signalled during the EU-Mexico Summits, as underlined by the German Presidency of the Council of the European Union, Herman Van Rompuy in 2010 and the same from Mexican President Felipe Calderón, who on its side expressed Mexican interest in exploiting deeper the possibilities of expanding bilateral cooperation despite the existence of the Global Agreement, to touch those topics of international level importance and common to the global agenda.[240]

The status of strategic partners has been used ever since 1998 to frame EU relations with few important countries, namely Brazil (which was the first Latin American country to sign such an agreement even without a legal cooperation framework preceding it), Canada, China, India, Japan, Russia, South Africa, South Korea, the United States and, indeed, Mexico, for the purpose of enriching the bilateral dialogue on issues of mutual interests and promoting them in a multilateral scale. The partnerships were mostly established after the EU "*Global Strategy"* was launched, thus when the Commission was looking for increasing European presence in the global market by strengthening the tides with its major trading partners, but there is not yet a precise definition of content of a strategic partnership. Nonetheless, it is evident that these partners have a specific importance for the Union mostly to foster international cooperation, coming from their geopolitical

[238] Cumbre México-Unión Europea Boletín de prensa, Madrid, 18 de mayo de 2002.
[239] Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, *Towards an EU-Mexico Strategic Partnership*, Brussels, 15.7.2008, COM (2008) 447.
[240] S. Sberro, "Is the Mexico-EU Strategic Partnership of any relevance?", Instituto Tecnológico Autónomo de México, Mexico City, in *Strategic Partnership as an Instrument of EU Foreign Policy – Workshop Report*, November 2015.

significance at both regional level and in the international institutions, being all of them members of the G8 (largest IMF- advanced economies in the world) and G5 (the five largest emerging economies), among others important multilateral institutions.[241]

The Strategic Partnership with Mexico was reached after the presentation in 2005 by the European Commission of a strategy for a stronger partnership with Latin America in general, with the aim of promoting a network of association agreements with all the countries in the region, influence a deeper intra-regional integration to attract more European investments and eventually enhance economic development and develop sectoral dialogue, in which it defined both Brazil and Mexico as "major players which deserve special treatment because of their important role in regional affairs".[242] In this occasion, the Commission recognized the relevance of having bilateral free trade agreement like EU-Mexico and EU-Chile FTA which potential should be 'further exploited' as the competition coming from these treaties should push further interregional economic integration and the evolution regional markets which could be capable of facing it. Mexico, indeed, was the way through which obtain consensus in Latin America and to show a closure between advanced and developing powers. Therefore, the importance of developing an institutionalized political dialogue besides having a clear cooperation agenda with the country not only came from the opportunity of expanding the market in a bilateral way, but also on the role it could have in the whole region and its economic development and integration.

As explained by the researcher Claudia Franco Hijuelos, "because of the nature of the strong bilateral relationship and the continued operation of the Global Agreement, the strategic partnership is a recognition of Mexico's institutional maturity and potential in the international context."[243] This underlines the strategic – indeed- importance of recognizing such a status in accordance of a strong political and cooperation framework as was the Global Agreement, since the practice of assuring institutionalized bilateral summits would transfer a similar habit at multilateral fora level as well as

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[241] U. Pałłasz, "Strategic Partnerships in the EU's Foreign Policy Approach: Challenges and opportunities", in in Strategic Partnership as an Instrument of EU Foreign Policy – Workshop Report, November 2015.

[242] Communication of the Commission of The European Communities: *Strategy for a stronger partnership between the European Union and Latin America: detailed presentation*, Commission Staff Working Document, Brussels, 8.12.2005 SEC (2005) 1590. In being the European Union the largest provider of development cooperation financing, even before the signing of the Global Agreement it provided support in projects in Latin American countries, depending on each situation. The institutionalized cooperation strategies are based on a Multiannual Program, the first one covering the period 2002-2006 with a budget of 56.2 million euros by the European Commission, the second on 2007-2013 with a budget of 55 million and finally for the period 2014-2020 the Commission committed 100 million in grants. Projects are co-financed, generally depending on the parties' possibility, and each of them receive a specific treatment according to the type and duration, while the main beneficiaries could go from public institutions, companies, NGOs and universities among others.

[243] C.F. Hijuelos, "La Asociación Estratégica México - Unión Europea: origen y perspectivas", *Revista Mexicana de politica exterior* n. 89, pp 57-82, Mexico, 2010.

for strengthening bilateral cooperation in initiating new sectoral dialogues on tackling common-understood problems in a global perspective.

In explaining the motivations, the Communication showed the increasingly importance of Mexican role in the global scene, going so far as to define the country as a ‘model’ in Latin American region when it comes to its relations with the international financial institutions: it was, at that moment, one of the most important world’s destinations of FDI and the main source of FDI for Third Countries (US, EU and Japan) in Latin America. Moreover, it welcomed the country political and socio-economic reforms undergone since the late 1980s, its involvement with both South American and North American neighbours especially in economic and commercial sectors, but also its image as a bridge between developed and developing countries which could be a strategic asset for inspiring further actions at multilateral level and in the context of international institutions. However, the EU recognized the fundamental challenges it was still facing, in form of inequal distribution of wealth, an enormous north-south gap which was the main cause of migration flows towards the norther countries and the yet to be enhanced instruments for human rights and security protection among others. In appreciating the development of a fruitful political dialogue between the parties and the consequent implementation of cooperation activities in globally sensitive areas thanks to its institutionalization by means of the Global Agreement, it appeared the necessity to translate such a dialogue into proper instruments to coordinate efforts and strategies over international accepted topics. Beyond these progresses, the EU recognized a number of reasons for taking Mexico as a strategic partner, which would further enhance their relations from simple bilateral cooperation in the framework of the GA to a proper coordination in international and interregional fora, thanks to its participation to the EU-CELAC Summits as well: from the shared values to the awareness of the country growing role in the G5 Group which gave him the status and possibility of influencing global issues and its membership to the OECD, the motivations were shared by the Mexican Administration, to whom the status could enhance its image globally and regionally. The Council of the European Union approved the Communication on 13 October 2008 and in 2010 a Joint Executive Plan was published, containing the priority projects to be implemented in the following years, within the institutional structure created by the Global Agreement, and dividing them into three main focus: fourteen multilateral, two regional and eleven bilateral issues. New topics were added, as the fight against climate change and environmental protection among others.[244]

[244] Council of the European Union, *Mexico – European Union Strategic Partnership Joint Executive Plan*, Comillas, 16 May 2010 9820/10 PRESSE 126.

2. First years of Global Agreement implementation: 2002-2006

The good outcome of the negotiations of the Global Agreement was possible thanks to the priority set by President Ernesto Zedillo to foreign policy and to the steps undertaken towards the beginning of a course of democratization, evident in this case in the form of Mexican acceptance of the largely discussed Democratic Clause. His successor, Vicente Fox, took charge of the situation when the "most problematic" part was already set, and his elections had to be the sign of a new phase of Mexican (democratic) political and foreign life. He was the first president of the Partido Acción Nacional (PAN) after an uninterrupted 70 years 'reign' of the Partido Revolucionario Institucional (PRI), bringing major hopes and debates over the extent in which Mexican government would follow the same course of actions of its precedents, particularly regarding the strategies that would have been undertaken in multilateral and bilateral relations with third countries.[245] The enthusiasm for the new course was used as a mean for giving more international legitimacy to Mexican image internally and externally, and to promote the change of directions of its institutions, which in turn could prompt the country to follow up the measures for tackling in a more practical way those social aspects that needed a renewal.[246]

Notwithstanding the initial enthusiasm, at the end of his presidency there was still the impression that the agreement had not been leveraged at its maximum and that a long-term perspective was far to be implemented. There are some main reasons for this: on the one hand, the foreign policy of Vicente Fox did not include the European Union as a strategic partner in the strict sense and the new President's party did not have majority in the Congress, so that the actual capacity of the federal government to produce change was inferior to the one hoped; on the other, elements on the international scene (the Iraq war left indeed the EU divided) and on communitarian level (the expansion to 15 new Member States in 2004 and the dismissed project of an European Constitution) took most of the EU efforts.[247]

When it comes to the Mexican side, the new President foreign policy was mostly focused on promoting a new international image of Mexico and its renewed institutions, now more concerned

[245] Look at various newspapers' articles in the occasion of the elections, that announce the victorious 'transition to democracy': "Opposition wins Mexico election - End of an era as party is ousted after 71 years", *The Guardian*, 3 Jul 2000, available at: https://www.theguardian.com/world/2000/jul/03/mexico accessed 20/03/21; "Vicente Fox Wins Election, Ending PRI's Grip on Mexican Presidency", *The Wall Street Journal*, July 3, 2000, available at: https://www.wsj.com/articles/SB962620220470638063, accessed 7/03/21; J.J. Aznárez, "Fox abre hoy una nueva era en México", *El País*, 1 Dec 2000, available at: https://elpais.com/diario/2000/12/01/internacional/975625204_850215.html, accessed 27/02/20; etc…

[246] See: V. Fox Quesada, "La política exterior de México en el siglo XXI", *Revista Mexicana de Política Exterior*. Fuente: Presidencia de la Republica. Available at: https://revistadigital.sre.gob.mx/images/stories/numeros/n66/fox.pdf.

[247] L. Ruano, "De la exaltación al tedio: las relaciones entre México y la Unión Europea durante el sexenio de Vicente Fox", *Foro Internacional*, vol. 48, 2008.

with the respect of democracy and human rights, witnessed by the numerous presidential tours in the six years of his presidency; moreover, his agenda intended to take advantage of the country relevance as a bridge between North America and Latin America in order to reach a wider diversification of its economic international relations.[248]

The strategy to be implemented during Fox Presidency was exemplified in the Plan Nacional de Desarrollo (PND) 2001-2006. In the Foreign Policy chapter, it was indeed highlighted that its geopolitical strategic position and the necessity of development "forced" Mexico to take an active and central role in the creation of the post-bipolar international architecture, which is, by any means, globalized. This new global scene not only influenced Mexican economy but forced the country to consider new matters which were indeed fundamental for the new global agenda, as was the case of International Security that, as a consequence, became a priority in the following years. Moreover, the paper underlined the necessity of translating those abstract and general principles included in the foreign policy in practical lines to be adopted for interpreting specific economic, political and social needs of the government. [249]

According to the neo elected President Fox, the measures taken until that moment as well as the decisions of entering into free trade agreements had positive impacts in expanding Mexican economic relations, but they showed its weakness over democracy and transparency, so that:

> los cambios en México y en el mundo indican qué se debe conservar y qué desechar de esa política exterior […]' La política exterior de México debe seguir protegiendo los intereses medulares de nuestra nación.[250]

For this latter, the main accent in this occasion went on taking into account the developing of those principles of universal jurisdiction in new emerging areas entering in the global agenda, such human rights, environmental protection, fight against corruption and organized crime, war drugs and so on. The approval of the democratic clause within the Global Agreement became a precedent and first step towards the international recognition of Mexico as a country which promoted democratic values, and was used by the President during his presidential tours to gain recognition from European (and international) counterparts on the positive course the country was undertaking in its political system and to put more faith on the possibility of transforming the Agreement into an instrument from which

[248] Look at: R. Velázquez y R. Domínguez, "Relaciones México-Unión Europea: una evaluación general en el sextenio del presidente Vicente Fox", *CIDE n. 168*, Enero 2008; V. Fox Quesada, "La política exterior de México en el siglo XXI", *Revista Mexicana de Política Exterior*.

[249] Estados Unidos Mexicanos.- Presidencia de la República, *Plan Nacional de Desarrollo 2001-2006*. DOF: 30/05/2001. Available at: http://dof.gob.mx/nota_detalle.php?codigo=766335&fecha=30/05/2001.

[250] V. Fox Quesada, "La política exterior de México en el siglo XXI", *Revista Mexicana de Política Exterior*.

both parties could gain.[251] Significantly, during the first tour in the EU in September- October 2000 right after its election, Vicente Fox met in Brussels Javier Solana, the EU High Representative for the Common Foreign and Security Policy in order to stress his commitment to the Free Trade Agreement and approve the first steps for attracting more small and medium European enterprises to joint investments and creating more jobs in the country. [252] In this occasion, Solana underlined the high interest the EU had on Mexico not just on the economic and commercial side but, more importantly, politically, for its strategic position as a bridge to deepen relations with Central and Latin America and expressed its confidence that Mexico would put democracy and human rights as a starting point, and not an obstacle, to cooperation. It was the first of the many tours President Fox had along European countries that had as main objective to promote Mexican new political image 'after 70 years of being regarded as a nation of poverty, corruption, illiteracy and crime' as well as to attract more European foreign investment, stating that "México disfruta de una situación única, ningún país en el mundo dispone de sus ventajas […] estratégicas para la inversión".[253] In addition, the multilateral approval in certain peculiar topic concerning the new agenda was useful for boosting Mexican bilateral relations, especially with European countries such as Spain, France and the UK, which have been its main strategic partners in the region, and that welcomed the democratic fervour especially in the first years. With said countries, during his European tour in 2002 Vicente Fox promoted an active strategy focused on the argument that Mexico was the right mean for European goods to enter the US market duty-free.

In this regards, it is interesting to see how the public newspapers and medias depicted the attempts of Vicente Fox of promoting such an image during his frequent tours around Europe: most of the news of the local newspapers as *El Universal* and *La Jornada* and national European ones reported the many and frequent errors, misbehaviours in addition to doubts casted over public security and effective human rights protection measures undertaken by the Mexican government, so that, for example, European companies often conditioned new investments in the country to a more effective fight against organized crime. Some of the most outstanding errors included those regarding the alleged statement that the he "regretted" the commitment to an annual growth of 7% with the OECD and the way he used international fora to discredit opposite political parties as the PRI and PRD. To

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[251] R. Velázquez, R. Domínguez, "Relaciones México-Unión Europea: una evaluación general en el sextenio del presidente Vicente Fox", *CIDE n. 168*, 2008

[252] J.M. Venegas, "Busca la UE profundizar su relación con México",*La Jornada*, 6 Octubre 2006, available at: https://www.jornada.com.mx/2000/10/06/006n2pol.html, accessed 25/02/21.

[253] L.L. Muñoz, "La política exterior de Fox hacia la Unión Europea ¿cambio o continuidad?", *El Cotidiano*, vol. 19, núm. 120, julio-agosto, 2003, pp. 45-56. See also President Fox discourse to the European Parliament, 15 May 2002, Strasbourg, available at: https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20020515+ITEM-015+DOC+XML+V0//EN&language=EN, accessed 17/02/21.

these doubts concerning the economic and trade side of the relations have to be added questions regarding the proper commitment to democracy and security-related matters inside the country, which did not trouble only the European Union, but the entire international scene, too. One of the most worrying events occurred during the first years of Fox Presidency was the murder of the Mexican human rights activist Digna Ochoa, condemned by the UN High Commissioner for Human Rights as threatening "to dash the hopes that had risen recently in the country that intimidation and harassment of human rights defenders were finally being addressed seriously", while the EU issued a declaration underlining the hope for justice and proper investigations to be carried out. [254]

Notwithstanding the enthusiasm of the signature of the Global Agreement with the EU, the United States remained the major focus of Mexican external policy throughout the *sexenio* of Vicente Fox. This was underlined by the European Commission in the Country Strategy Paper 2002-2006 as well, in which it was stated that "The National Development Plan conceives relations with the European Union primarily within the framework of diversifying its foreign policy, of which the United States remains the main focus and central political priority."[255] Precisely for this purpose, President Fox believed in the possibility of looking at the European Union as a model for taking a step further its relations with the Unites States and Canada: in particular, he was looking at the EU Common Market and integration process as an example for proposing a long-term plan to expand NAFTA into a "North American Common Market" (a NAFTA +), notwithstanding, or better, trying to overcome, the enormous asymmetries deriving from the comparison of the three markets.[256] Indeed, efforts were put into the attempts to find joint solutions to problems such as immigration, a better integration of the energy sectors between the partners and a better control of the southern Mexican border.

Following these arguments, we can derive the second reason why there was not an outstanding impact in the first years of the Agreement: notwithstanding the wish of the Fox Administration to enact a real change from the seventy years of PRI 'reign' and its attempt to use the new democratic course of Mexico to deepen its international relations, it is evident that the EU in the framework of the Global Agreement was a strategic partner essentially when looking for a diversification of Mexican international relations and for economically and culturally promoting its image overseas, almost in a

[254] UN News, Top UN human rights official condemns murder of Mexican activist, 23 October 2001. Available in https://news.un.org/en/story/2001/10/18102-top-un-human-rights-official-condemns-murder-mexican-activist, accessed 22/02/21; European Union Press, *Declaration by the Presidency, on behalf of the European Union, following the killing of Ms Digna Ochoa y Plácido, Brussels*, 29 October 2001, 13298/01 (Presse 395).

[255] European Commission, *Country Strategy Paper 2002-2006 – Mexico*, Official Publications of the European Union, Brussels, 2002

[256] About Vicente Fox's NAFTA+ plan and its implications: J.E. Harman, "Mexican President Vicente Fox's Proposal for Expanding NAFTA into a European Union-Style Common Market - Obstacles and Outlook", *7 Law & Bus. Rev. Am. 207* (2001); M. Pastor, C. Wise, "The Lost Sexenio: Vicente Fox and the New Politics of Economic Reform in Mexico", *Latin American Politics and Society, 47*(4), 135-160, 2005

complete continuity with the foreign policy strategies undergone by the precedent presidents: the 'fantasy' was fading rapidly.

Mostly, the Global Agreement made possible the deepening of the political dialogue at bilateral level, thanks to the beginning of the democratic openness of the Mexican government, evident even in the case of the 2006 elections, when the EU sent an observatory mission after the invitation received in occasion of the EU-Mexico Summit[257] and the EU-LAC Summit[258], and in the increasing meetings to review significant topics for both the parties, made possible thanks to the institution of the EU-Mexican Summits at higher level (between the head of the Mexican executive and the current and incoming presidents of the European Council, the president of the Commission and the EU's high representative for Foreign Policy), of the Joint Council and the Joint Committee. The Joint Council work until 2001 was mostly focused on the liberalization of goods and services, on the accelerated elimination of tariffs in specific products coming from automotive and pharmaceutical sectors by and on the promotion of a Euro-Mexico Business Dialogue Initiative to further the possibility of exploit the GA for the private sectors, as well as on the establishment of specific key areas for deepening the sectorial cooperation.[259] During the first Joint Committee meeting in 2001, a Civil Society Dialogue forum was proposed in order to exchange views on how to better implement the Agreement, a proposal that the European Commission, which White Paper of the same year identified as a mean to open up the policy-making process, welcomed as a demonstration of a 'participative' democracy. The Forum, which took place in Belgium in 2003 and gathered more than 200 participants from NGO, trade unions and in a less extent, academia and business, was considered of great importance in order to discuss the limitation of the Agreement and the measures to consider in order to further exploit its possibilities regarding democratic and human rights issues on the one hand, and mechanisms to allow for greater participation by civil society on the other. The conclusion brought the organization of another forum of the same kind later in 2003 and an attempt to institutionalize it, as well as the creation of a Mexican ECOSOC and a Social and Environmental Observatory.

[257] There have been four Summits in the period 2002-2008, namely: First Summit in Madrid, Spain, 18 May 2002 (Vicente Fox Quesada, President of Mexico; José María Aznar, President of the Spanish Government; Romano Prodi, President of the European Commission); Second Summit in Guadalajara, Jalisco, Mexico, 29 May 2004 (Vicente Fox Quesada, President of Mexico; Bertie Ahern, Prime Minister of Ireland; Romano Prodi, President of the European Commission); Third Summit in Wien, Austria, 16 May 2006 (Vicente Fox Quesada, President of Mexico; Wolfgang Schüssel, Federal Chancellor of Austria; José M. Durão Barroso, President of the European Commission); Fourth Summit in Lima, Perú, 17 May 2008 (Felipe Calderón Hinojosa, President of Mexico; Janez Jansa, Prime Minister of Slovenia; José M. Durão Barroso, President of the European Commission).

[258] Secretaría de Relaciones Exteriores, *Anuncia la Comision Europea envio de una Misión Exploratoria para Evaluar Observación del 2 de julio*, Comunicado de Prensa 18 de abril 2006.; look at: N. Gomez Quintero, "Impulsa SRE presencia de observadores extranjeros", *El Universal*, 8 de julio de 2006, available at: https://archivo.eluniversal.com.mx/notas/354211.html, accessed 2/03/21,

[259] R. Velázquez, R. Domínguez, "Relaciones México-Unión Europea: una evaluación general en el sextenio del presidente Vicente Fox", *CIDE n. 168*, 2008

Interaction at multilateral level with the EU as a whole had various manifestations but showed the intentions of the Fox Administration to interact in harmony with both the Union and its Member States while avoiding opposing to the United States for matters of global importance: this is particularly evident over diplomatic issues, as in the case of the Iraq War, started by the US in 2003, just after Mexico assumed the rotating presidency of the UN Security Council in April of the same year: for the occasion, the country strongly condemned the attack and sought to end pacifically the conflict, taking into account the necessity of reinforcing the multilateral approach to solve the situation, even considering the possibly 'harmful' repercussions such a statement was feared to bring and the insistent attempts of the United States to gain Mexican approval.[260] In this occasion, each European Member State individually participated to the UN fora of discussion of the topic, showing different positions and point of views, thus hampering the attempt of the European Union to appear as a united counterforce and an alternative to the United States while promoting multilateralism and democracy, a situation that actually benefited Mexico, which could keep its characteristic neutral status in the occasion of approving the Security Council Resolution on the authorization of using military force in Iraq. On the other hand, over commercial and human rights' matters the enhanced interactions established by the Political Pillar of the GA showed their moderate success for example during those discussions within the United Nations where Mexico could show its more active role specifically over topics regarding peace and security, in line with the EU proposals as the one of the creation of a Human Rights Council.

On the bi-regional level, the possibility of having stricter contacts with Mexico had an important role during the EU-LAC Summits, the second on which was indeed in Guadalajara in 2004, notwithstanding the major problems that resulted by the absence of coordination inside the Latin American and the Caribbean region, which made it difficult to reach a consensus over the topics, regardless of the insistence of the EU of supporting Latin American integration as a prerequisite for undertaking further negotiations: this is probably the reason why it was easier to conclude treaties with individual countries, like Mexico and Chile, than with regions like Mercosur, and why these bi-regional meetings were at the same time used to deepen bilateral relations. However, most of the EU-LAC meetings constituted the occasion for the European and Mexican delegations to strengthen their ties and stimulate further talks over topics of bi-lateral interest (as were the promotion of trade and investments), which would happen in the framework constituted by the Global Agreement.[261]

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[260] Mexican decision in the Security Council could have in any case affected its bilateral relations. Historians warned the Mexican government to publicly and continuously oppose to the United States since the repercussions could be worse than the 'boycott of wine' toward France in early 2003 and affect the millions of Mexican immigrants staying in the US territory.

[261] L. Ruano, "De la exaltación al tedio", 2008.

When it comes to economic relations and trade flows, in the Fox period there was a visible increase in EU-Mexican trade, although discontinuous and asymmetrical; however, the difficult global economic situation of the first years should be taken into account, as well as the transitional period included in the Free Trade Agreement, according to which the first phase of tariff reduction's deadline was 2003. Based on Mexican Government official data, the total increase of trade flows in 2005 was of 27.2% more than the previous year, while Mexican exports to European countries summed an increase of 36.4% and imports of 24.3% in comparison to 2004. If we take into consideration the whole period of six years, industrial exports, which almost completely entered duty-free into the other party's territory, to the EU had an 81% growth (excluding oil), while agricultural exports (yet to be fully liberalized) showed a growth of 30%. Imports, mainly of capital goods, increased much more dynamically, showing a growth of 100%. The overall EU share of the Mexican total trade has increased from 6.5 % in 1999 to 8.2 % in 2005.[262]

Despite the actual growth in numbers, Mexican exports towards the EU accounted for only the 3.7% of the total, while those towards the United States overcome the 88%. What's even more outstanding is the fact that the trade deficit actually increased from being of 9 million dollars in 2000, year of the coming into force of the Treaty, to 16.9 million in 2005, with only a brief parenthesis of drop in 2002. The European Commission Delegation to Mexico explained the reason for such an increase: the imports of middle and capital goods, which function is fundamental for Mexican productivity development and modernization increased, since the main goods exported to the country are indeed power-generating machinery, transport equipment, chemical products and telecommunication equipment, increased much more significantly in comparison to exports.

Table 5: *Mexico's trade with the European Union (billions of dollars)* [263]

	1993	1995	1997	1999	2000	2001	2002	2003	2004	2005
EXPORTACIONES	2.7	3.3	3.9	5.2	5.6	5.3	5.2	5.5	6.4	9.1
IMPORTACIONES	7.7	6.7	9.9	12.7	14.7	16.1	16.4	17.8	20.9	26
BALANCE	-5	-3.4	-6.0	-7.5	-9.1	-10.8	-7.5	-12.3	-14.5	-16.9
COMERCIO TOTAL	10.4	10.0	13.8	17.9	20.3	21.4	21.6	23.3	27.3	35.1

Fuente: Secretaria de Economía, basado en datos del Banco de México, en la dirección electrónica: www.economia-snci.gob.mx/sic_php/ls23al.php?s=24&p=1&l=1#. Acceso junio 29, 2006.

[262] R. Velázquez, R. Domínguez, "Relaciones México-Unión Europea: una evaluación general en el sextenio del presidente Vicente Fox", 2008.
[263] Table 5-6. Data from Relaciones México-Unión Europea: una evaluación general en el sextenio del presidente Vicente Fox", 2008.

Investments, which were the second major focus of the Fox Presidency, showed a discontinuous line, too: if in 2005 Mexico received almost 6 million dollars, in 2006 the number decreased to roughly 4 million. However, President Fox did invest time and an active strategy in trying to promote EU investments in Mexico, as there are indeed proofs already during the EU-Mexico Madrid Summit in 2002 and the correspondent Summit with Latin America and the Caribbean: in this occasion, the two sides even recognized the potentiality deriving from the introduction of the Euro to further stimulate trade and investments between the two regions. In 2006 the European Union was the second largest trading partner and second largest source of FDI of Mexico, accounting for the 28.1 % of the total investments Mexico received between 2000 and 2006 (three time higher than it received during the previous six years). Moreover, if at the time the Agreement was signed, the EU counted 14 members, in 2004, thanks to the enlargement and integration process, 10 new countries entered into the Union, therefore into the Common Market zone. This signified for the Mexican entrepreneurs a larger spectrum of possibilities and an access to a market of more than 550 million consumers. [264]

Table 6. *European Union investment in Mexico 2000-2006 (millions of dollars)*

	2000	2001	2002	2003	2004	2005	2006	2000-2006
UE	3,188.7	4,221.2	4,910.5	4,629.0	11,799.9	5,861.7	3,845.0	38,456
TOTAL	17,776.1	27,487.1	19,342.1	15,345.2	22,300.9	19,642.7	14,638.3	136,532.4

Fuente: Secretaría de Economía. Dirección General de Inversión Externa.

Finally, in the cooperation field the European Union and Mexico signed a memorandum of understanding containing the priorities for cooperation for the period 2002-2006, where the EU committing a total of 56.2 million euros in aids to four areas (namely modernisation of the judicial system consolidation of the production structure in the south and south-east regions of Mexico, assistance to small and medium-sized enterprises aimed at ensuring that they capitalise on the Agreement, and Scientific and technical co-operation)[265] to what had to be added the horizontal programs destined to projects in Latin America and the bilateral founds that Mexico received from individual European countries, which however had a certain degree of coordination with the Union institution so to avoid having double commitments.

Some major steps towards economic bilateral cooperation have been made in the six-year term, which have had an important impact in sustaining the development of internal legislations as well, especially

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[264] Ibidem.

[265] European Parliament, *Note on the Political and Economic Situation in Mexico and its relations with the European Union*, Directorate-General for External Policies of The Union Directorate B - Policy Department, Brussels, April 2008.

in Mexico. A Financing Framework Convention was negotiated which constituted the legal framework for practical cooperation projects in Mexico and which opened the floor to the negotiations of further sectorial cooperation agreements on environment, science and technology, education among other, to be carried out in the light of a broader regional cooperation agreements. Moreover, two important economic cooperation programmes were put in place in order to allow Mexican companies to fully exploit the new access to European Common market: the PROTLCUEM and the PIAPYME. On May 13, 2002, the two parties signed a Framework Agreement on the Implementation of Financial and Technical Assistance and Economic Cooperation, that was the base for the conclusion, in 2004, of the Specific Financing Agreement which established the terms of cooperation for the Free Trade Agreement Facilitation Project between Mexico and the European Union, the PROTLCUEM. Its main aim was to promote bilateral trade, business and economic relations with simplifying the access and the use of the EU-Mexico Free Trade Agreement. The initial duration of such a programme should have been of four years, but due to initial problems, it actually was implemented from April 2004, with a budget of €19 million, co-financed in equal parts by the Federal Government of Mexico and the European Commission. The parallel project was the PIAPYME, the Integral Support Program for Small and Medium-Sized Enterprises, established in December 2003 with the aim of boosting the competitiveness and export capacity of small and medium-sized Mexican companies through providing them support and information and assisting with local and European technical training and technology transfer in key areas, and it was another way to take advantage of the potential of the Agreement since, according to the Mexican Secretary of Economy, these companies generated 78.5% of formal jobs and 52% of the country's Gross Domestic Product (GDP). [266] Finally, a Business Facilitation Project, was aimed to strengthen the Mexican institutional apparatus when implementing the Global Agreement Trade Pillar in pre-determined sectors, as customs, standards and technical regulations, investment, competition, intellectual property, and consumer protection, and led the two parties' private sectors to commit to the launch of a Mexico-EU Business Forum in 2002, which aim was to strengthen relations between the companies.[267]

At regional level, except form the horizontal programs as ALBAN,ALFA, @LIS, URBAL, EUROSOCIAL, among the others, the most significant action was the support that the European Union gave to the ambitious initiative of the regional development 'Plan Puebla Panama', which

[266]Máximo Romero Jiménez, "Estudio sobre la cooperación en el Acuerdo Global México – Unión Europea", *CEPAL - Documento de Proyecto*, UN, Santiago del Chile 2012.
[267] Trade Links, "Mexican Mission to the EU, FTA Mexico-EU: Six years promoting trade and investment", *Mexico-EU Trade Links*, July 2006 Year 6, no. 7, Brussels, available at :http://www.economia-snci.gob.mx/sic_php/pages/bruselas/trade_links/ing/juling2006.PDF.

enhanced public policies for human development, fighting against poverty, promoting investment and sectorial development in the south of Mexico and Central American countries, and which the EU welcomed as 'innovative' for its regional vocation.[268]

After six years since the coming into force of the Global Agreement and notwithstanding the expectations, its potential had not been fully exploited, mostly since Mexican business did not show to actually take advantage of the extent of the European market but remained focused, to the United States and the NAFTA market especially for exports and investments, while the deficit with the Union kept growing. What was clear after 2006 was that liberalizing trade was important in a globalized world, but not sufficient for reaching the diversification of relations which Mexican government aimed at since the 1980s: while it could be an instrument for development, internal commitments and a strong social policy would be necessary for having a stronger relation in the framework of the European social model.[269]

3. EU-Mexico relations in the framework of the Global Agreement 2006-2012

EU-Mexican relations during 2006-2012 were once again strongly compromised by international events, which almost monopolized the EU economic and foreign policy, and by internal unrest on the Mexican side: from the 2008 Economic and Financial Crisis, which showed the still weak and slow coordination apparatus that required consensus of all the Member States, to the War in Afghanistan after 9/11, among others, on the one hand, to the problems coming from public security and weak institutions which led Mexico to rank as one of the lowest country when taking into account the Rule of Law.[270] These situations affected Mexico likewise, not only for the fact that those European Union Member States that actually had more interests in keeping strong relations with the country, and more in general with the Latin American region, were focused in how to get out of the crisis (as is the example of Spain), but even in addition to the already problematic internal situation which the country was facing, so that external policy was not regarded as a priority for the new administration.

Apart from international matters, at least until 2009 the European Union was focused on reforming its institutions to adjust them for the second biggest enlargement, occurring between 2004-2007, that added 12 new Member States (reaching the total of 25) and the negotiations for the new Treaty of

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[268] European Commission, *Country Strategy Paper 2002-2006 – Mexico*, Official Publications of the European Union, Brussels, 2002.

[269] R. Velázquez, R. Domínguez, "Relaciones México-Unión Europea: una evaluación general en el sexenio del presidente Vicente Fox", *Documento de Trabajo CIDE N°169*,Mexico, January 2008

[270] A. Covarrubias Velasco, "La Política Exterior De Calderón: Objetivos Y Acciones", *Foro Internacional*, vol. LIII, núm. 3-4, julio-diciembre, 2013, pp. 455-482 El Colegio de México, A.C.

Lisbon, which significantly changed the internal assets and division of powers between the EU institutions and its Members. The changes had important impacts to Mexico as well, even in the diplomatic field, with the Delegation of the European Commission in Mexico acquiring the representative powers of a real embassy, thus representing the embassies of the Member States, and for the even larger appeal the new enlarged European Market had on companies and investors.

Mexican Presidential elections of 2006 led Felipe Calderón of PAN to take the Presidency for the next 6 years in a situation of chaos and uncertainty due to the alleged stolen victory to the PRD (Partido de la Revolución Democrática) candidate Andrés Manuel López Obrador, leaving a country divided in two, and the difficulty of not having once more the majority in the Congress.[271] The new Plan Nacional de Desarrollo 2007-2012 of President Calderón, however having a chapter dedicated to foreign policy, did not show a precise project for it, as many scholars tended to underline. The attempts to improve economy and democracy internally where overshadowed by continuous threats to public security and violence coming from drug wars and organized crime, that the Mexican Administrations ever since Vicente Fox tried to overturn with disastrous consequences: the necessity to focus on the issue brought the country closer to the United States, with whom shared the provisions assumed with the anti-terrorist plan[272], and the major focus for the six-year term to focus on national matters, as achieving sustainable social growth internally while assuring the elimination of extreme poverty and social inequalities, contained in a plan called '*Mexico 2030'*. The project for external policy was centred in harnessing the benefits of a globalized world for boosting national development and to promote Mexican interests abroad, since *"México puede y debe ocupar un espacio en la comunidad internacional, en los niveles regional y global, acorde con su importancia real y con su verdadero potencial y capacidades [...] su lugar en el escenario mundial no es acorde a su participación en el mercado*

[271] See local newspapers and research over the argument, as: F. Relea, "La apretada victoria de Calderón en México deja un país dividido en dos", *El País*, 06 Jul 2006, available at: https://elpais.com/diario/2006/07/07/internacional/1152223202_850215.html, accessed 2/03/21.; J. Tuckman, "Chaos erupts as Mexican president is sworn in", *The Guardian*, 2 Dec 2006, available at: https://www.theguardian.com/world/2006/dec/02/mexico, accessed 27/02/21; G.E. Emmerich, "Las elecciones de 2006 y su impacto sobre la democracia en México", *El Cotidiano*, vol. 22, núm. 145, septiembre-octubre, 2007, pp. 5-15, available at: https://www.redalyc.org/pdf/325/32514502.pdf.

[272] The Mexican strategy to strengthen military repression against drug cartels and trafficking backfired in the sense that it actually triggered wars between them and with security forces, a consequence that can be seen with the difference in the number of executions before and after the Calderón six-year term, as the social cost of his war has become unprecedented. As the newspaper 'Foreign Policy' underlined, Mexico during his *sexenio* ranked one of the most violent countries in the world. See: https://foreignpolicy.com/2012/06/18/a-requiem-for-calderon/. Organized crime and narcotraffic power were not simply a Mexican issue: it involved the Unites States and Central and Latin American States as well. First of all, because the border with the US was the preferred rout for migrants and drugs traffic in the north, while arms went to the south. Second, because Mexico was the main producer of the marijuana that reached the US. The Plan Merida, a security cooperation agreement between Mexico, the US and Central American countries, was a clear example of shared commitment to the fight against the traffic of drugs and organized crime, and it showed the willingness of Felipe Calderón to strengthen the partnership and cooperation with the countries in the Americas and with the United States in particular.

mundial".[273] The focus, therefore, most in continuity with Vicente Fox presidency, was to diversify external political and economic agenda and to promote Mexico in the international fora, but a fundamental stress was given to national development: foreign policy had to be a mean through which to reach this purpose and not an additional problem, while trade and diplomatic policies were necessary to improve the living standards of Mexicans. The European Union, once again, appeared as important for furthering and diversifying trade flows and investment opportunities, through the support of the Global Agreement, besides for reaching a broader consensus in international fora. Interestingly, the PND even identified the Eastern Europe and Russia as regions where Mexico should increase its political and economic presence. Finally, it emphasized the Asia-Pacific region as another important market to expand to when looking for diversification (it had already established an Association Agreement with Japan) and starting relations with Africa and the Middle East for reaching higher consensus in multilateral organizations.[274] The necessity to have an active foreign policy instead of just a reactive one was true especially towards the Central and Latin American and the Caribbean regions, were the country should have had the mission to promote and institutionalize regional dialogues with the aim of reaching solutions and cooperation over common problems such as poverty, marginalization, inequality, and loss of human capital due to migration. Indeed, Felipe Calderón explicitly stated the wish to *"latinoamericanizar"* the country, first of all by entering into the Community of Latin American and Caribbean States (CELAC) and, later, by his membership in the Pacific Alliance (a trade bloc formed in 2011 by Chile, Colombia, Mexico and Peru).

European plan for relation with Mexico to be reached by means of the GA were tackled within the Country Strategy Paper 2007-2013 dedicated to it, and considered as a main objective to support Mexico in its transition to a more advanced stage of development "which combines environmentally sustainable economic growth, integration in the world market and social cohesion", as well as the fight against inequality, protection of the environment and the rule of law.[275] In considering that the social purposes of Vicente Fox had only partially been met, the Union put its faith in the *Mexico 2030* plan of Felipe Calderón, although stating that the objective of the Plan Nacional de Desarrollo 2002-2006 would have been still a reference for future EU-Mexico cooperation. Moreover, the European Union recognized that the country had serious 'social cohesion' problems but that it could 'mobilize

[273] "Plan Nacional de Desarrollo 2007-2012, Escenarios, Programas, Indicadores", *Centro de Estudios de Financias Publicas (CEFP) / 096 / 2007* , Diciembre 2007, available at: https://www.cefp.gob.mx/intr/edocumentos/pdf/cefp/cefp0962007.pdf.
[274] See *Plan Nacional de Desarrollo 2007-2013*; A. Covarrubias Velasco, "La Política Exterior De Calderón: Objetivos Y Acciones", *Foro Internacional*.
[275] European Commission, *Country Strategic Paper 2007-2012 – Mexico*, 22.05.2007 (E/2007/1063).

national resources' to its development,[276] and that *"a closer partnership with Europe could help Mexico identifying its own specific ways to enhance internal social cohesion"* while intending to adopt cooperation strategies which correspond to the level of development of the country and its growing role in the global scene. This is a clear proof of the different priorities set forth by the two parties, at least at the beginning of the six-year term of the Calderón Administration, since inside the Paper there was no actual mention of the fight against organized crime and/or drug wars, which on the other hand was a clear priority for the Mexican government. It was however included after the European Parliament repeatedly adopted resolutions to condemn the alarming violence escalations in the country, eventually asking the European Commission to review the Development Cooperation plan for Mexico, in plan for 2010, to include issues of security, strengthening governance and institution.

The strategy was outlined in a period in which the European Union appeared to be more interested in strengthening the ties with Latin America in general, based on cultural proximity, respect for sovereignty, concern for social rights and democracy and cooperation mechanisms to enhance regional integration, intentions that are shown both in the Communication of the *Global Europe Strategy* and in the various EU documents dedicated to the region, as well as in the practical establishment of Strategic Partnerships with Mexico and Brazil, the two most influent countries of Latin America.[277] However, in no part of the Communication was Mexico mentioned for its commercial and economic size or importance, a symptom that the European Union did not actually regarded the country as "strategic" when it comes to trade relations, whether or not it was important for assuring its presence in the Latin American region. The decision to establish a Strategic Partnership came in a period which showed no major motivations for such an upgrade: Mexico was yes an important player in the global arena, but it was not a decisive one, especially not the most decisive in the Latin American region, since it was the 14th largest economy in the world, well behind

[276] The European Union new strategy for development cooperation was based on the idea of allocating resources where they can have the greatest impact and are most needed to reduce poverty. Therefore, a differentiated approach was introduced since 2014 under a new Agenda for Change.

[277] See, for example, European Commission, *A stronger partnership between the European Union and Latin America*, 2005; Commission of the European Communities, Accompanying Document to the Communication from the Commission to the European Parliament and the Council, *The European Union and Latin America: Global Players in Partnership Ten Years of Strategic Partnership EU-Latin America*, Commission Staff Working Document Brussels, 30.09.2009 Nonetheless, a part of civil society has always warned against the possible repercussion of such a strategy, particularly on Latin American and the Caribbean, stating in a fundamental study that the signature of Strategic Partnerships with Mexico and Brazil 'makes clear the predominance of the economic component, particularly for transnationals' and that 'the EU has redesigned and is building a system of regional subordination towards LAC, in which the discourse on political dialogue, cooperation and the defence of human rights play a bait-and-switch role as transnationals try to consolidate their positions' according to the belief that the cooperation measures proposed by the EU did not concretely favour regional integration. See also: L. Becerra Pozos, N. Castañeda Bustamante, "Las Relaciones México- Unión Europea En el marco del Acuerdo Global y la Asociación Estratégica: Un balance desde la sociedad civil mexicana", *ALOP*, Ciudad de México, agosto 2013.

Brazil, the 31st largest military power; in terms of bilateral trade flows, it ranked 21st among the Union's trading partners, twelve places behind Brazil, and with most of FDI inflows coming from Spain, while the 80% of Mexican exchanges still remained with the United States. Moreover, the EU recognized that, although business confidence and investments trends had risen since the 1994-1995 banking crisis, Mexican market's competitiveness was lower than other advanced and developing competitors, while "environmental degradation has had an impact on the sustainability of the economic performance", and that trade flows between the two parties still remained negative, although partially balanced by the surplus with the US. [278]

Thus, the establishment of the Strategic Partnership in 2008 mostly signalled the emphasis put on strengthening political relations with the country as a way to add value to the Global Agreement, which already gave way to the institutionalization of such a dialogue, through structuring practical and specific objectives, achieving sectorial agreements and reinforcing coordination in multilateral fora. It aimed to tackling vertically those topics which were included in the GA, but were not part of a deeper focus, namely environment and climate change (a priority for the Calderón administration) and the reform of the international financial system (later on, international security was added as well) through the establishment of a practical Joint Executive Plan (JEP) during the V EU-Mexico Summit in 2010. The JEP became the framework for the organization of important new sectorial Dialogues and Forums, the most important of which are the Dialogue on Macroeconomic Issues launched in 2012, Dialogues on Social Cohesion, Education, Environment, Climate Change and Human Rights (both at bilateral and multilateral level) and on Culture launched in 2012 through the signing of two Declarations, with the aim of further reinforcing the bilateral cultural and education cooperation instruments already in place thanks to the Country Strategic Paper 2007-2013. [279]

The Strategic Partnership had therefore major consequences in harmonizing commitments to common goals at multilateral and bi-regional level, by identifying shared goals at bilateral level first, by increasing the potentiality of those forums already established by the Global Agreement. The new Summits at high-ministerial level took place in parallel to the EU-LAC meetings, while numerous reciprocal visits of both European and Mexican officials gave the impression of an actual wish to strengthen and develop the social agenda: for example, as a consequence to the visit of the technical secretary of the National Security Council, Alejandro Poiré, to Brussels, during a meeting on Security

[278] S. Sberro, "Is the Mexico-EU Strategic Partnership of any relevance?", *Instituto Tecnológico Autónomo de México*, 2015.

[279] European Commission and Government of Mexico Launch Policy Dialogue in Education and Culture", *EU Press Releases*, 11 de junio de 2009, Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_09_906, accessed 5/03/21; A. Morales,"Dialogan UE y México sobre temas de seguridad", *El Universal*, 16 de julio de 2011, available at: https://archivo.eluniversal.com.mx/nacion/187162.html, accessed 5/03/21.

and Justice where Mexican government aimed at intensifying cooperation mechanism over the fight against organized crime, a new bilateral dialogue over the theme was started, to add it as a priority issue.[280] In this way, the Mid Term review of the plan, in 2010, recognized indeed the importance of such strategic themes, thus enlarging the social cohesion project to include security, and the education and culture theme to include science and technology and the new, internationally important theme, of green economy. Indeed, the first EU-Mexico High level dialogue on Security was held in Brussels on 15th July 2011, during which it was agreed to "establish permanent contact between security and law enforcement agencies from Mexico and the EU, strengthen bilateral cooperation on the fight against trafficking of persons and drugs", among others specific measures to better manage the future forums on the issue.[281] Finally, it is important to underline that both the EU and Mexico recognized, in 2013, the different priorities set forth by the respective administrations, and stressed the necessity to define a new stage of bilateral relations through a "renewed strategic vision that allows the strengthening and enhances the effectiveness of the political dialogue, with a view to obtain concrete results." As a consequence, the First High Level Political Dialogue was launched in 2013.[282]

Interactions at multilateral level showed always more the necessity of a stronger bilateral dialogue, even due to the particular juncture coming from the Economic Crisis in the United States and the European Union, and the failure of the Doha Round on economic and trade issues: thanks to the new framework and the increased political ties, both Mexico and the European Union converged in the idea of the necessity of a multilateral trading system that should be 'healthy' and 'fair' and on the willingness to promote the negotiations of the Doha Round on the facilitation of trade and on giving priority to LDC interests. Moreover, major convergencies were reached over topics such as children's rights, death penalty abolition, gender equality, indigenous population rights, handicapped persons rights, on environmental issues, as showed by the United Nations Framework Convention on Climate Change (UNFCCC) negotiations in 2010 and the Cancun Agreement, and on the particular and most-discussed topic of humanitarian consequence of nuclear weapons and nuclear disarmament, over which Mexico later held one of the three major intergovernmental conferences in 2014.[283]

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[280] L. Ruano, "Inercia Institucional En Un Ambiente Difícil: Las Relaciones De México Con Europa Durante La Administración De Felipe Calderón, 2006-2012", *Foro Internacional*, vol. LIII, núm. 3-4, julio-diciembre, 2013, pp. 619-644.

[281] 11th Joint Committee European Union – Mexico Brussels, 26-27 October 2011, Joint Communique Final 27 October 2011.

[282] XII Joint Committee European Union-Mexico Mexico City, 10-11 June 2013 Joint Communiqué.

[283] It is interesting to underline the fact that the 2003 European Security Strategy did mention that that the proliferation of weapons of mass destruction was the greatest threat to security, in accordance with Mexican beliefs, whether in 2016 the strategy changed significantly, not alluding to weapons of mass distraction: indeed, the 2017 Treaty on the Prohibition of Nuclear Weapons does not see NATO member approving it, except for the Netherlands.

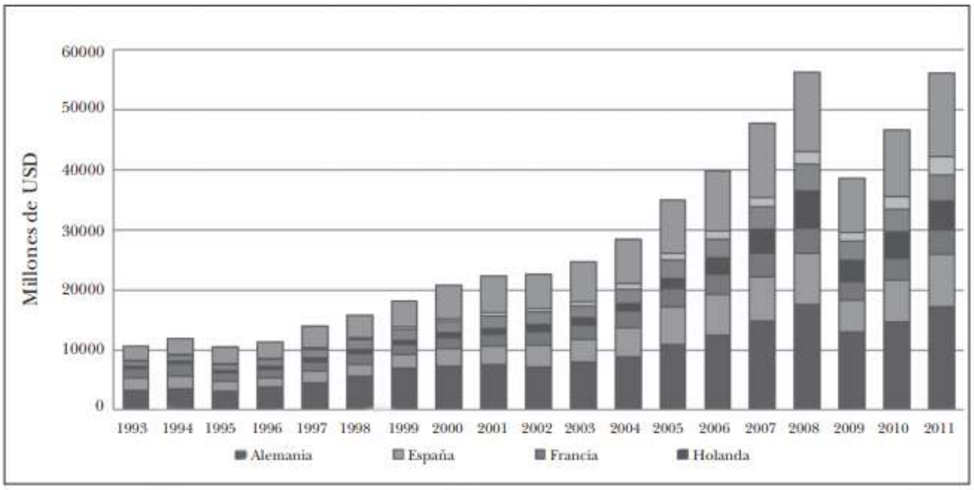
Economic and trade-related relations in the framework of the Global Agreement were on the one side affected by the 2008 economic crisis, which hit Mexico significantly since its major dependency on exports to the US that indeed decreased sharply, thus triggering a reduction of industrial production, to which had to be added the epidemic of H1N1 in 2010. President Calderón, since taking the lead of the government, actually tried to dismantle the bureaucratic burdens that still affected external trade, through a government programme in 2008 to eliminate the remaining tariff and non-tariff barriers. The general trade volume and investments grew during the period 2006-2012, however the share of Mexican market occupied by the EU decreased from 8.6% to 8%, while Mexican imports, especially form Germany, kept growing in comparison to the exports.[284] This data confirmed the initial worries from the Mexican side regarding the opportunities coming from such a Free Trade Agreement: that it could actually benefit the other side more than the Mexican one. If the fact that by 2003 all EU tariffs on industrial products would have been eliminated, while Mexico was granted a longer transitional period, had been seen initially as an advantage, by 2009, eight years after its coming into force, negative effects started to be evident: papers of ex-post assessment of the FTA from the Mexican side show that actually Mexican external trade was defined by transnational companies, in form of Mexican subsidiaries of European firms, so that exports were actually intra-firms trade, which did not help the development of Mexican SMEs and national industry at the same level as it did help EU companies' competitiveness in taking advantage of Mexico FTAs network.[285]

However, it is even true that the biennium 2008-2009 was the clue of the world economic crisis that hit the US and the EU specifically, indeed if we take into account the overall trade in goods between Mexico and the EU by the end of 2011, it showed a positive recovering, amounting more than 47 billion euros, an increase of more than 20% compared to 2010. Mexican exports to the EU increased by 30% since the same year, and nearly a third of them had Germany as main partner, specifically regarding technological and manufactures, with low participation of raw materials (with the exception of petroleum): namely, the sectors of machinery and transportation equipment (42% of the total), oil and gas (22%) and chemical products (7%) were the main ones. [286] Interestingly, Mexican exports showed an increase (7% by 2010) on the range of products being exchanged since the coming into force of the GA. Imports from the EU, on the other hand, showed a slower increase (16% in 2011 compared to the year before), leading the EU to being the 3rd Mexican supplier after the US and China, and more than three quarters of these imports are capital goods (18%) and inputs (60%) used

[284] L. Ruano, "Inercia Institucional En Un Ambiente Difícil", 2013.
[285] See: J. Villarreal (coord.), "Balance del Acuerdo Global entre México y la Unión Europea: a 8 años de su entrada en vigor", *Oficina Regional para México, Centroamérica y el Caribe de la Heinrich Böll Stiftung*, Ciudad de México, 2008.
[286] N. Oddone, H. Rodríguez Vázque, "Relaciones comerciales México-Unión Europea: un balance a 14 años del Acuerdo de Asociación", *Puentes*, Volumen 15, Número 8 - Octubre 2014. All data of the period are taken from the same study.

on manufacturing process. Significantly, agricultural products began increase their presence in imports from the Union since the Agreement came into force, while industrial products decreased their share, showing an actual sign of diversification of Mexican industries towards the external market, which was not accompanied by the diversification of external trade relations. In fact, notwithstanding the expansion of the European market, Mexican economic relation appeared still to be centred in only few countries, the US before all (with NAFTA concentrating the 80.5% of the overall Mexican exports and 52,6% of imports) while Germany, Spain, the UK, Italy, France and the Netherlands represented the 80% of Mexican flows of goods and investments with the Union, whereas only two countries (Spain and Germany) gathered almost the 54% of its exports to the EU and Germany, Spain and Italy the majority of its imports.

Table 7. *Mexico's total trade with the European Union by country, 1993-2011*[287]



Fuente: Elaboración propia. Información de la Secretaría de Economía con datos de Banco de México.

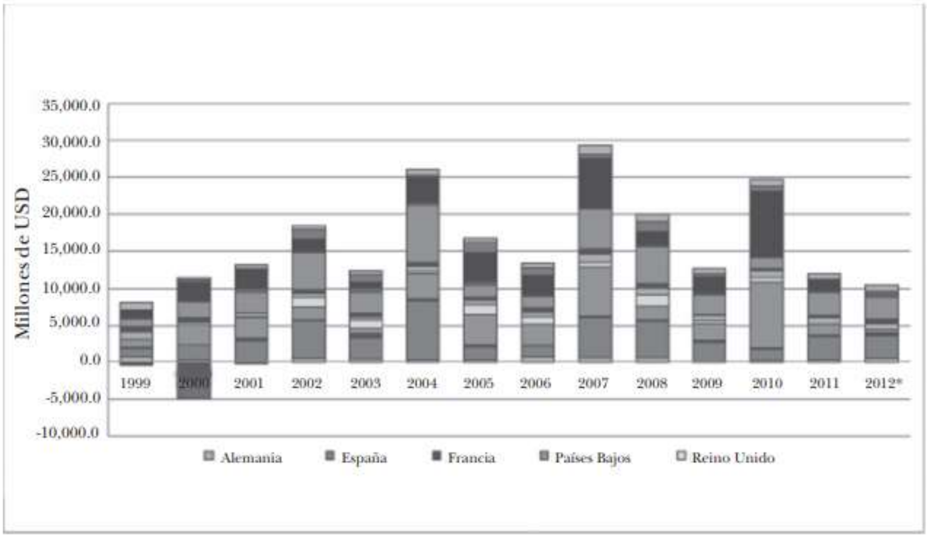
Furthermore, BITs did show a positive trend at the end of the six-year term, reinforcing EU's position as second source of foreign direct investment in Mexico. Between 1999 and 2012, the total amount of EU investments in Mexico was of 109.6 billion dollars, which represented the 36% of the total FDI received by Mexico in that period (the 36.6% of the amount was received by companies operating with European capital in the country); however, the majority of the sum (precisely,102 billion dollars) was allocated during the period 2000-2011, showing a growth of more than five times than in the period 94-99. The major investors remained Spain, which accounted for 42%, the Netherlands, 38%,

[287] Table 7-8: Data from L. Ruano, "Inercia Institucional En Un Ambiente Difícil", 2013

and the United Kingdom 8%. On the contrary, Mexico investments in the EU by 2011 accounted to 8.7 billion euros from the coming into force of the Agreement.[288]

In May 2011 the Mexican Secretary of the Economy, Bruno Ferrari and the Vice-President and Commissioner responsible for Industry and Entrepreneurship of the European Commission, Antonio Tajani met in Mexico to discuss over the possibility to strengthen bilateral trade relations between the two parties, in the light of the new opportunities coming from the Strategic Partnership. In this occasion, the necessity of increase economic cooperation was highlighted, with a particular emphasis on projects which aimed at strengthening competitiveness of Small and Medium enterprises and increase their access to European Market, in the form of the Competitiveness and Innovation Project Mexico-EU (PROCEI), which allocated 18 million euros for specialized technical assistance to SMEs, in order to help them increase production process efficiency and fulfil the EU's standards for entering the European market, and a second allocation of funding withing the Trade Facilitation project PROTLCUEM, co-financed by the federal government and the European Commission.[289]

Table 8. *Distribution by country of origin of European FDI in Mexico, 1999-2012*



Fuente: Elaboración propia con datos de la Secretaría de Economía, Dirección General de Inversión.

What can be inherited looking at the period 2006-2012 is that, at least during the first years, both Mexico and the European Union and its Member States were significantly more concentrated in their internal matters, which had both international and regional/national bases, going from the economic

[288] Trade Links, "Twelfth anniversary of the Mexico-European Union FTA May", *Mexican Mission to the EU*, April, June and July 2012 Year 12, no. 4, 5, 6, 7, 1050, Brussels, Belgium. Available at: http://www.economia-snci.gob.mx/sic_php/pages/bruselas/trade_links/ing/juling2012.pdf.

[289] Trade Links, "Mexico and the EU presented a new program to support SMEs", *Mexican Mission to the EU*, May 2011 Year 11, no. 5, 1050, Brussels, Belgium. Available at: http://www.economia-snci.gob.mx/sic_php/pages/bruselas/trade_links/ing/maying2011.pdf.

and financial crisis, to questions of international security, so that the whole pool of possibilities coming from the three pillars of the Global Agreement, but especially the trade and trade-related matters were not really exploited notwithstanding the attempts to better coordinate cooperation projects. The European Union showed its support for the fight against organized crime and the escalation of violence in Mexico that brought major worries to both EU institutions and European companies, although at the beginning it did not seem to occupy a priority position in the bilateral agenda, while Mexico (and Brazil) became strategic partner for the entity's relations with the Latin American region. Notwithstanding the difficulties and the still too small amount of trade opportunities resulting since the entering into force of the Global Agreement, the two parties managed to deepen their political interactions through establishing the Strategic Partnership that allowed to focus on practical projects not only regarding those topics that were seen as a priority inside the bilateral agenda, but even over discussions on climate change, international financial system reform and security, that mostly had visible impacts on the convergence of positions at multilateral level.[290]

4. The period 2012-2016 and the decision to modernize the Global Agreement

The period that goes between 2012 and 2018, characterized in Mexico by the Presidency of Enrique Peña Nieto, is particularly important, since it is during these years that the two parties started discussions for the future modernization of the Global Agreement. Thus, the two sides personal approaches towards external policies have to be once more assessed, as they have been in the study of the precedent six-year terms, as well as the contacts in bi-regional and multilateral environments, to understand more deeply the motivations coming from the two sides for undertaking such a path.

The 2012 Mexican presidential elections witnessed the PRI candidate Enrique Peña Nieto win against, once again, the PRD candidate Andrés Manuel López Obrador. Worries came from both the national and international scenes for the returning to power of the PRI party after a brief parenthesis of democratic-led PAN governments, which however, notwithstanding the initial enthusiasm and the positive image they shared to the world in the occasion of the 2000 elections, did not led to effective results neither internally nor for their foreign policy: significantly, the previous government engaged in disastrous fights against the narcotraffic and organized crime, which left the country shattered[291]

[290] L. Ruano, "Inercia Institucional En Un Ambiente Difícil", 2013..

[291] Since Calderón declared 'war' to the narcotraffic lords to 2012, up to 60.000 people have died violently and another 160,000 have been displaced. The number of executions in Monterrey, according to UNPD data, went from an average of 7 per month to 77 in the same year. More info about organized crime and drug wars, and its consequence in the

while the main external action was the returning to the US as the main Mexican interlocutor, which showed at times a clear detachment from interests in the Latin American region. In addition, at the end of 2011 Mexico appeared to be receding even on the economic side: the country was only the second largest power in the region, having been surpassed by Brazil (which indeed made part since 1999 of the BRICS group, the five new emerging economies constituted by Brazil, Russia, India, China and, from 2011, South Africa), that accounted for the major EU trading partner in the Latin American region, and violence was exploding as the war against organized crime left it on the edge of collapsing and, as the US government warned, of being a 'failed state'.[292]

In one of his first discourses to the nation Enrique Peña Nieto immediately committed to taking advantage of the historical opportunity to make Mexico one of the leaders of the world, while trying to overcome the social inequality obstacle to a healthy and growing economy, showing on the other hand a new PRI with no intention of returning to past habits of detachment from the bilateral (and international) arena and with the wish to establish a 'democracy with results' to bring Mexico forward, not only in being a world power but returning to be a fundamental player in Latin America and the Caribbean as well. He pledged to bring actual reforms and change to a country which international image had long been damaged by national issues and disparities, while concentrating most of his efforts on economic retrieval: a PRI following the traditional national strategy but more open to the world. [293]

An important sign of the foreseen changes to be brought by President Peña Nieto was given by his article published in *The Economist* page of November 2012, came to be known as the 'Mexico's Moment', in which he set out his priorities for his six-years term. In particular, regarding foreign policy, the new President stated that:

> '*as the largest Spanish-speaking country in the world, we ought to play a key international role in economic, cultural and political terms. We must recover our leadership in Latin America* […] *to deepen*

European Union in: E. Rodríguez Pinzón, "México y la UE: hacia una cooperación estratégica en el control de las drogas ilícitas y el crimen organizado", *Real Instituto Elcano*, ARI 38/2014 28 de julio de 2014

[292] See for example: I. Grillo ,"Analysis: Mexico a failing state?", *The World*, February 16, 2009, available at: https://www.pri.org/stories/2009-02-16/analysis-mexico-failing-state, accessed 10/03/21; A. Thomson, "Mexico rebuffs 'failed state' claims*", Financial Times*, January 18 2009, available at: https://www.ft.com/content/1146c7c4-e58e-11dd-afe4-0000779fd2ac, accessed 7/03/21; J. Moreno, "Mexico is not a failed state", *El País*, 30 Mar 2011, available at: https://english.elpais.com/elpais/2011/03/30/inenglish/1301462445_850210.html, accessed 13/03/21.; J. Ackerman, "Mexico on the brink", *The Guardian*, 20 Jan 2009, available at: https://www.theguardian.com/commentisfree/cifamerica/2009/jan/30/mexico-drug-trade-us, accessed 23/03/21.

[293] L. Prados, "Peña Nieto promete transformar México", *El País*, 1 Dic 2012, Mexico. Available at: https://elpais.com/internacional/2012/12/01/mexico/1354383595_336094.html, accessed 3/03/21; "Peña Nieto: 'Somos una nueva generación, no hay regreso al pasado'", *El País*, 2 July 2012. Available at: https://elpais.com/internacional/2012/07/02/actualidad/1341210063_555734.html accessed 7/03/21; M. A. Bastenier, "¿Vuelve México a América Latina?", *El País*, 27 Nov 2012. Available at: https://elpais.com/internacional/2012/11/27/actualidad/1354036375_417706.html, accessed 8/03/21.

our strategic partnership with our northern neighbours so that the North American Free-Trade Agreement becomes a renewed engine of growth. At the same time, to diversify our economic relations with the world, we must use the institutional framework that already exists to increase trade and investment with the Asia-Pacific region and the European Union."[294]

The Plan Nacional de Desarrollo 2013-2018, on the other hand, highlighted that the national progress, both economic and political, was understood as linked to the international situation and could not be separated by it, recognizing that global events, like the Economic Recession of 2008-2009, could have important effects on the country so that planning a strategy for internal development have to take into consideration that factors that could affect Mexican economy could be "more external than internal in nature."[295] This was true on the political field as well: the chapter *'Mexico, an actor with global responsibility*' had the ambition to include the country in peacekeeping operations, to serve as a constructive emerging power. Each of the priorities included in the PAN 2013-2018 had an international perspective: a symbol of the new wish of Mexican administration to exploit their global presence for national development as well as to include good practices and information coming from global fora, and on the contrary, to develop an economic and social solid foundation of the society so that to consolidate a global leadership and a strong presence in the international market. A year after the elections, the promises seemed to be accomplished, as the newspaper *Time* first page of 2014 showed: at international-important level, Peña Nieto could open Mexican oil reserves, after years of them being strictly privatized, to foreign investments, thus attracting a broader pool of FDI and making the country one of the new favoured. [296] The oil reform was not the only important national success that the new President could accomplish in the first year, a package of social, political and educational reforms was indeed important on the internal level and to rise the general international approval.

On the European Union side, foreign and trade policy were still, at least until 2015, generally outlined by the 2006 *Global Europe* strategy. However, new priorities were given at the conclusion of "new generation agreements" with Canada, starting by 2009, and the United States from 2013, respectively the CETA and the TTIP, so that discussion about the state of implementation of the Global Agreement, and of its possible modernization were frequently postponed. Actually, the broad

[294]*The Economist*, "Mexico's Moment", 21 Nov 2012. Available at: https://www.economist.com/news/2012/11/21/mexicos-moment, accessed 27/02/20. More on the ups and downs of EPN elections in the Special report dedicated to Mexico on The Economist: https://www.economist.com/special-report/2012/11/22/from-darkness-dawn.

[295] *Plan Nacional de Desarrollo 2013-2018*, Diario Oficial, Lunes 20 de mayo de 2013.

[296] "Saving Mexico: How Enrique Peña Nieto's sweeping reforms have changed the narrative in his narco-stained nation", *Time*, 24 February 2014. Available at: http://content.time.com/time/magazine/article/0,9171,2165465-1,00.html accessed 7/03/21.

discussions over the status of negotiations of such agreements and the problems coming from the high opposition they generated were fairly important to understand the atmosphere in which the opportunity of starting a new path with Mexico was about to take place and constituted a precedent from which to learn: European public opinion was mostly focused on CETA and the TTIP, as the first pages of newspapers as *The Economist, El País, The Guardian* or *Le Monde Diplomatique* of that period show, so that Mexico did not have a strong relevance. This is even when looking at the civil society point of view, which even in the case of the GA was seeking to have a more extensive role, expressing often its indignation towards the fact that the dialogue taken at institutional level through the Civil Society Dialogue forums still did not translate in proper actions to be taken to increase transparency and to involve it in the provisions' implementation.

Considering the bi-regional strategies, notwithstanding the new 'upgrade' coming from the LAC side with the creation of the CELAC and the consequent institutionalization of the strategic EU-CELAC dialogue, this did not give the expected result: there was still the impression that the declarations following the Summits lacked of consistency and of practical actions, as a consequence of both the lack of coordination from the Latin American side, which, as an example, did not manage to organize an internal summit before the bi-regional took place, as well as the diminishing priority given by the EU to the region and later on, for the discomfort coming from the new European Trade Strategy, the *'Trade for All - Towards a more responsible trade and investment policy'* of 2015, that introduced the end of bilateral aids for those countries of middle income. [297] More specifically, priorities for Latin America and the Caribbean were set by multiannual cooperation programmes, specifically by the medium-term strategy of 2007-2013, funded under the Financing Instrument for Development Cooperation, carried out through the ECLAC (Economic Commission for Latin America and the Caribbean) and the AECID (Spanish Agency for International Development Cooperation), for an amount of €556 million on social and territorial cohesion and regional integration. For these projects, in 2010 a Latin American Investment Facility (LAIF) was established with the aim of mobilizing additional financing by prompting governments or public institutions to invest, supported from the facility. Mexico was one of the beneficiaries of one of the first specific Climate Change programme financed by LAIF. The programmes indeed still identified Mexico as one of the countries eligible for cooperation under Official Development Assistance funding from the European Union for Latin America, with the main priorities concentrating on trade and social cohesion, good governance,

[297] Since the 2008 crisis, the Union foreign policy put more efforts into the relations with ENP countries and on the Russia-Ukraine conflict, while Spain, the main supporter of the establishment of stronger links between the regions, saw its power reduced since the Treaty of Lisbon came into force, since it reduced the competencies of the President of the Council. See K. Brudzińska, "Unused Potential of an EU–LAC Partnership", *PISM Bulletin*, No. 59 (791), 10 June 2015. See also European Commission, *Trade for al, 2015*.

human rights and support for institutional reforms, and education. From 2014, however, a new differentiated approach was introduced through the Agenda for Change, so that bilateral aid to more advanced economies were interrupted (the dialogue on regional cooperation was still on under the EU-CELAC strategic partnership)[298]: the framework for regional programmes was later substituted by the Multiannual Indicative Program (MIP) for Latin America for the period 2014-2020, during with the region would receive 925 million euros, that included the 'graduation' level for certain countries to be excluded by aids funding.

It is important to underline that, after the coming into force of the Treaty of Lisbon and more specifically since 2012, the European Parliament has had a major involvement in development cooperation arguments, which led to undertaking a number of concrete measures for increasing effectiveness in Latin America (positive faith was put, for example, into the cooperation EU- LAC to assist the latter countries in meeting challenges regarding trade facilitation, especially in the areas of customs and infrastructure, which was considered as the first step towards real market globalization), but not only. Indeed, some of the EP resolutions on foreign policy measures are fairly important to understand the Union approach to emerging economies in particular, and an example to cite is the Resolution of February 2012 on the EU foreign policy towards the BRICS and other emerging powers: in recognizing the growing economic and political relevance of the BRICS countries, the possibility of their increasing importance in the global scene, and the influence they could gain over other developing countries, the EU stressed the necessity of pursuing regular political dialogues and high-level meetings for 'ensuring an effective system of global governance' with the establishment of strategic partnership with the singular countries, but, more importantly for our study, it stressed the importance of Brazil for its leading role in the integration process of MERCOSUR. [299] Except for the BRICS resolution, important to estimate the new approach the EU had towards Brazil as the main interlocutor in Latin America, the EP stressed the need to harmonize bi-regional cooperation in order to not having negative effects coming from the exclusion of the most advanced economies into the

[298]E. Gomez Ramirez, "EU development cooperation with Latin America", *EPRS European Parliamentary Research Service* Briefing, November 2017
In December 2011 the new Community of Latin American and Caribbean States (CELAC) was created from the bases of the old Group of Rio, with the aim of further promoting regional integration and a sustainable development of all its member states through cooperation and economic growth. The very first EU-CELAC Summit was held in Santiago del Chile in 2013, to renew and deepen the Strategic Partnership coming from the previous EU-LAC Summits. In this occasion, the two sides emphasized their confidence in strengthening of the bi-regional dialogue at high level which would result "*in an even more balanced, efficient, constructive and symmetrical relation with complementarity and solidarity between the two regions*." More on the bi-regional relations with CELAC at: Council of the European Union, *EU-CELAC Action Plan 2013-2015*, Santiago, 27 January 2013, 5748/13; I Cumbre UE-CELSC, *The Santiago Declaration,* January 2013.
[299] Official Journal of the European Union, *European Parliament resolution of 2 February 2012 on the EU foreign policy towards the BRICS and other emerging powers: objectives and strategies*, 2 February 2012.

cooperation aids and the necessity of furthering the Union presence in the three countries of the G20 (indeed, Brazil, Mexico and Argentina), as having a 'blending' role for inter-regional development.[300]

However, when it came to trade and trade related matters, data shows that since the 1980s to the period taken into consideration, the EU had lost importance as a destination for Latin American exports and as a source of its imports, due to the increasing importance of the Chinese market share in the region: notwithstanding the free trade agreement, in Mexico the Union went from ranking second in both exports and inputs, only after the United States, to reaching the third position when Chinese market started to increase in importance internationally. Studies foresaw the downward trend to continue, only to be altered if bilateral trade dynamism coming from Association Agreements (and the Global Agreement as well) could deepen trade flows, with the principal partners of EU in Latin America being MERCOSUR, Mexico and Chile, which as a whole generated more than a half of the region exports. On the other hand, Foreign Direct Investment were fairly dynamics especially from European union countries, which were taking advantage of privatization reforms in areas such as banking, telecommunications and other services: Spain was the main investor, followed by the United Kingdom, France and Luxembourg in the financial sector, thanks to important process of business internationalization undertaken by those countries: in Mexico, however, which in the first decade of the XXI century the first source of FDI still remained the United States.[301]

Generally, by 2012 there was an atmosphere of delusion coming from both the Global Agreement and the Strategic Partnership between the EU and Mexico, which could have brought major changes in their relationship but once again did not seem to have met the expectations: the two parties had shared interests for global topics, but when it came to bi-lateral relation they lacked practical propositions and an active policy. From the Mexican side, proofs of the decreasing enthusiasm over such relation can be found in the surveys conducted by the Centro de Investigación y Docencia Económicas (CIDE), which showed a positive opinion of both the EU and especially of Spain, but they did not consider them as a priority for Mexico. And a priority to the EU was neither given by the new President, which put the partner as one of the last of its foreign policy agenda, only stressing the aim to promote "more dynamic relations with the EU" and to develop Mexico as an "Ibero-American cultural power", while recognizing Spain as the most dynamic and important partner in the region.[302] The XII Joint Committee meeting held in June 2013, the parties underlined the importance of having the dialogues resulting from proposal set by the Global Agreement and the Strategic

[300]E. Gomez Ramirez, "EU development cooperation with Latin America", 2017.

[301] R. Osvaldo (co), "Latin America and the Caribbean and the European Union: striving for a renewed partnership", *ECLAC Report*, February 2012, Santiago del Chile.

[302] S. Gratius, "El Nuevo Sexenio En México Y Su Relación (Poco) Estratégica Con La Ue", *FRIDE Policy Brief*, Nº 84 - Septiembre 2012.

Partnership coincide, thus the necessity of ‘defining a new stage of the bilateral relationship through a renewed strategic vision that allows the strengthening and enhances the effectiveness of the political dialogue, with a view to obtain concrete result’ and agreed, for this purpose, to constitute a group to discuss about the ‘upgrading’ of the GA. [303] This was true for the Trade pillar as well, since it was fundamental to ensure that the commercial part would respond to the dynamic conditions of international economy, thus the intention of moving forward in the sense of a modernization of the Free Trade Agreement was first expressed.

Particularly important were, in the first years of Peña Nieto administration, the “reconstruction” of bilateral relations with the major European country partners, as France, Germany and the UK. As underlined in the Informe Laboral 2012-2013 of the Mexican Secretary of External Relations, a Franco-Mexican Strategic Council was re-established, constituted by high level personalities coming from both the public and private sectors, in order to provide a space for dialogue on economic, investment, cooperation, educational, training, cultural, scientific and innovation matters and a source of information for both countries, in the light of the future visit of the French President Hollande to Mexico in 2014. The UK-Mexican relations were particularly fluid thanks to the possibility of exchanges in occasion of the G8 Summit under British Presidency, while the attempts to strengthen links with Spain and Germany became difficult for various reasons, among which are the economic repercussions of the crisis in the former, that still affected the country’s possibilities to exercise a strong influence over EU foreign relations in general, and the relations with Latin America in particular, as it did before, and the worries coming from the German side towards Mexican efforts to promote European tourism in its territory, and as part of the broader national strategy of promoting Mexican culture abroad, coming from the escalation of violence of the last years.

Between 2014 and 2016 the environment surrounding the relations between Mexico and the European Union was subjected to various changes, which could be at the base of the decision to update their status. In particular, the 2016 US Presidential elections ended with Donald Trump winning the next four-year administration, which was a major shock for Mexican relations with the main northern partner, as well as for the whole Latin American region: the President turn to populism and economic nationalism and his warnings to withdraw from the NAFTA Agreement stating that it “favoured Mexico at the expense of US workers”[304] were especially important, since they threatened to leave Mexico outside one of the biggest markets in the global economy, given its strong dependency on US

[303] Joint Communiqué, XII Joint Committee European Union-Mexico Mexico City, 10-11 June 2013.
[304] C. Fishwick, “Mexicans on Trump’s election: The power he has over us is terrifying”, The Guardian, Nov 2016, available at: https://www.theguardian.com/us-news/2016/nov/13/mexicans-on-trumps-election-the-power-he-has-over-us-is-terrifying, accessed 23/02/21.

export. One possible consequence of this worries, to which could be added those coming from the establishment of new and innovative agreements between the EU and Canada and other emerging economies as well, could be that Mexico started showing a more active foreign policy as President Peña Nieto strategy was indeed based on the attempt to diversify its market and strengthen Mexican integration model through a push to the modernization of NAFTA and those agreements with Latin America, Europe and Asia, in the attempt to grant access to more comprehensive and recent trade zones, as could be the CPTTP signed in 2018. [305]

Although the situation was not prosperous, the change of government and the increasing bi-regional debate over drug traffic problems gave a new window of hope for an increasing role of the Union in the country, which could really enhance the strategic partnership, mainly over issues as public and international security. Indeed, the new approach of the EU towards the fight against illegal trafficking of human and drugs, which only apparently did not involve the European Union (considering the distance, the border with the US was the preferential access for drug traffic; however, already in 2009 an Italian author, Roberto Saviano, was giving evidences of the correlation between Mexican cartels and European, more specifically Italian, mafia, stating that 'As long as this problem is not solved in the first country there can be no solution in the second'[306]) was clear internally with the approval in 2013 of the Drug Strategy 2013-2020, that constituted the political framework and priorities for the 4-year based Drug Action Plan, in order to *"take a balanced, integrated and evidence-based approach to the drugs phenomenon"*.[307]

However, the major accomplishments came from the sum up of the situation until the moment and the recognition of the necessity of an update of the current state of political and economic links. On the economic and commercial-related side, in fact, there was still the impression that the Global Agreement disappointed the initial expectations, mainly due to the low level of utilization of the FTA from the Mexican side, especially from the agricultural sector, based on the little knowledge businessmen, especially small producers, had of the European market's potential. On the other hand,

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[305] L. M. de la Mora Sánchez, "Perspectives on Mexican Foreign Trade in the Era of Trump", *Revista Comercio Exterior* Bancomext. 7/10/2020.

[306] E. Montaño Garfias, "Se aliaron narcos de México e Italia: Saviano", *La Jornada,* Martes 31 de marzo de 2009, p. 40. Available at: https://www.jornada.com.mx/2009/03/31/index.php?section=sociedad&article=040n1soc, accessed 3/03/21.

[307] Council of the European Union recommendation, *EU Drugs Strategy (2013-20)*, Official Journal of the European Union (2012/C 402/01). The new approach was evident even on the bi-regional level, through the Declaration signed during the first Summit of EU-CELAC that called for stricter control of the arms trade within the UN and, more specifically, with the practical programs that were developed to coordinate the transmission of good practices and observatories. Moreover, it opened a window of opportunity in the light of the increasing importance given in the region, and in regional and international scenes, to Triangular Cooperation, especially in sectors that actually justified the need for a third actor to intervene (as could be, for example, public security issues. Indeed, the XII Joint Committee Declaration contained for the first time an invitation for the European Union to 'explore new schemes for triangular cooperation, specifically on infrastructure and development projects.'

there was already the idea that the administration of such a 'broad' agreement, for the time, could be taken as a model for similar situations with other Latin American countries, especially referring to the institution of the Joint Council and the Joint Committees, that worked well in cooperation related matters (as in the case of the establishment of the Strategic Partnership which brough closer Mexican and EU interests around global-important topics as justice and security). Another point in favour of the GA was the prospect of triangular cooperation EU-Mexico-LAC that could be established thanks to it: more specifically, the cooperation projects created on the framework of such agreement indeed could benefit the integration process of the region, as well as further relations between Mexico and said countries (as in the case of the EU support to the Plan Puebla Panama, the actual Mesoamerica Integration and Development Project, which could look at the improvements done in the communication and transportation sectors through the GA to tackle one of its main pillars).[308]

5. Global Agreement impact assessment

In the occasion of the visit of Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the EC, to Mexico City On 24 May 2016, and her meeting with Claudia Ruiz Massieu, Mexican Secretary for Foreign Affairs, the two parties jointly announced the starting of the negotiations for the modernization of the legal framework at the bases of the Strategic relations between Mexico and the EU, therefore the Global Agreement of 2000 on the one hand and the Strategic Partnership of 2008 on the other.

The decision did not come unexpectedly. Indeed, following the EU-CELAC Summit in Santiago del Chile of January 2013, President Enrique Peña Nieto and the then presidents of the European Council, Herman van Rompuy, and of the European Commission, José Manuel Durão Barroso had agreed on organizing a Working Group to explore options for a broader and more comprehensive modernisation of the trade pillar of the UE-Mexico Agreement.[309] The decision can be understood not only looking at the fact that both Mexico and the European Union had significantly changed during the years, both politically and economically, but also considering the more recent evolutions of issues, such as sustainable development, environmental and investment protection and so on, which had gained in importance and made part of the new and more comprehensive agreements the EU was signing with other countries, as showed in the first chapter. The Working Group report was delivered during the EU-Mexico Summit of 2015 through a Joint Statement report in which the parties committed to

[308] N. Oddone, H. Rodríguez Vázquez, "Relaciones comerciales México-Unión Europea: un balance a 14 años del Acuerdo de Asociación", *Puentes*, Volumen 15, Número 8 - Octubre 2014.
[309] Council of the European Union, Santiago Declaration, Santiago de Chile, 27 January 2013, PRESSE 31.

launch the process of modernization of the Global Agreement and to reinforce the Strategic Partnership that “builds on the existing EU-Mexico Global Agreement and draws on all the Free Trade Agreements with other countries which have been concluded since then, which provide useful benchmarks or a starting point in a number of areas”: the issues taken into consideration for the necessity of its update were indeed the new inclusion of Mexico into the Pacific Alliance and the Trans-Pacific Partnership and the “new generation” agreements of the EU, which go well beyond the GA provisions, so that “Mexico's and the EU's preferential relationship now risks falling behind when compared to respective relationships with other trading partners”.[310]

The European Commission underwent an impact assessment to determine the extent of benefits coming from the modernization of the trade pillar, as well as commissioned ECORYS to have an external evaluation (all the subsequent data are taken from both the assessments, while from the Mexican side the main evaluation project was carried out by BBVA in 2015). The Joint Parliamentary Committee as well, in the view of the development during the 15 years of implementation of the agreement and specifically addressing issues not contained in the GA like the NTMs and specific trade sectors, such as telecommunications, energy or transportation, concluded for the necessity of “profound modifications to the GA in order to promote its optimization and the potential of the Strategic Partnership for the benefit of both parties”[311] and, interestingly, underlined the necessity of developing the optimization negotiations in parallel of those of the EU-USA treaty, to avoid massive distortions in trade relations between Mexico and the EU. The Parliament expressed its support once more with a resolution of 2016 *‘on a new forward-looking and innovative future strategy for trade and investment’*, in which, in highlighting the key role played by the negotiations of an EU-US agreement, stressed the importance of having a ‘tailor-made’ regional strategy with Latin America (among others) in which the modernization of the agreement with Mexico had a focus role.[312] At the end of these studies, and in accordance with the Mexican Government, on 23 May 2016, the Council approved a mandate for the Commission to negotiate the modernisation of the Global Agreement.[313]

Notwithstanding the fact that the general evolution of bilateral trade has been defined as successful by both the BBVA and the ECORYS studies (trade barriers have been dismantled according to the provisions of the agreement, with some exceptions in small fields more related to political issues

[310] VII EU-Mexico Summit Brussels, 12 June 2015 Joint Statement. See also: European Commission, *Modernisation of The Trade Pillar of the EU-Mexico Global Agreement Roadmap*, DG-Trade C3, June 2015.
[311] Comisión Parlamentaria Mixta México – Unión Europea, XV Reunión de la Comisión Parlamentaria Mixta México-Unión Europea 2-4 de mayo de 2013, México, D.F.
[312] *European Parliament resolution of on a new forward-looking and innovative future strategy for trade and investment*, Strasbourg 5 July 2016
[313] G. Grieger, “Modernisation of the trade pillar of the EU-Mexico Global Agreement”, *EPRS, European Parliamentary Research Service* Briefing, October 2020.

between the parties while, since the FTA objectives did not provide for an outcome expectation, it indeed increased the parties' exports slightly), one of the problems identified on the trade and commercial side came from the lack of diversification in terms of target markets, since the 96% of commercial flows from Mexico focused on only seven EU countries, while more than 80% of the overall amount of European investment reach only six of the 30 Mexican federal entities.[314] Moreover, the necessity of following the transformed focus of global economy from tariff barriers to non-tariff obstacles created the opportunity for establishing new regulatory and policy framework that would increase competitiveness of both Mexico and the EU. Considering specifically the results to 2013 of the bilateral trade, data from the OECD in the ECORYS study showed that, whereas Mexican tariffs had reduced significantly, there was still opportunities for further liberalization, which would allow the country's integration into global value chains and deepening services trade. Important studies have been done over the extent in which the Free Trade Agreement played a role in the positive development of trade flows between Mexico and the European Union (it generally increased but being still far behind the level of those among NAFTA partners) or was it only part of the overall increasing exchanges with the world in general. Data from ECORYS, which used a Computable General Equilibrium model (CGE), that simulates what-if possibilities by considering economic effects under different contexts to estimate the impact of the FTA on the two economies, and BBVA which used gravity method instead, show that the change in GDP thanks to the FTA are larger in Mexico than in the Union (respectively, a margin of 0,34% and 0,01% increase), probably due to the larger size of European GDP compared to the Mexican one. For the same reason, the increase in Mexico trade import and export thanks to bilateral trade liberalization is way higher than that of the EU (1.5-1.7% compared to 0.05%); such gains are showed by an increase in workers' wages according to the change in demand for workers in specific sectors, and that once more was higher in Mexico than in the Union, by 0.24-0.45% (the difference is among low skilled and medium skilled workers). [315] Effects seen on the environmental side were marginal, mainly coming from the increase water and air transports according to the geographical distance between the two territories, which way of being tackled could become an example for improving logistics and infrastructures between the Union and other Latin American countries as well. Finally, the peculiarity of the revision clauses contained in the Trade Pillar, which made the agreement such unique at the time, was that it indeed allowed the starting of further negotiations when specific measures had to be taken; however,

[314] European Parliament, *The Modernisation of The European Union- Mexico 'Global Agreement'*, DG for External Policies of The Union, Policy department Study, January 2015.
[315] European Commission, *Ex-post evaluation of the implementation of the EU-Mexico Free Trade Agreement,* 2017; C. Serrano, A. Martínez, A. Rodríguez, S. Salazar, "Evaluation of the effects of the Free Trade Agreement between the European Union and Mexico on bilateral trade and investment", *BBVA Research Working Paper* n°14/15, Mexico, 2015.

it did not become the actual framework for such negotiations to be started, and the cause could be both political and due to the impossibility at the moment to agree to the beginning of deeper dialogues on the topics: this was an important base for the starting of negotiations of the GA upgrade.[316]

In regard to the cooperation and political pillars of the GA and their impact over bilateral trade as well, it is useful to have a look at the social effects and those on human rights to understand what needed to be tackled in the future, in the light of the fact that the Global Agreement cooperation provisions intended to reinforce those included in the trade pillar in different sectors and levels (for example, for SMEs participation in the market, investment promotion, among others). The EU-Mexico FTA had as a major challenge to bring 'jobs and growth' in the two territories, a hope particularly marked in Mexico since the employment rate by 1995 accounted for only the 55.3% of the overall population. Trade liberalization brought a boom in jobs ever since the signing of NAFTA, especially in manufacturing sectors (the Maquiladora industry especially hired women for textile production), while, due to imports of agricultural products from the USA, employment in such sector declined; the EU-Mexico FTA, on the other hand, had more limited impact of such jobs displacement, and on workers' rights, since it did not include proper measures to promote labour standards, neither in such sectors for which exports to the EU significantly increased.[317] The social effects of the FTA are, moreover, hard to differentiate against other influences on both the parties, as it is mainly the NAFTA on Mexico.[318] However, from the Mexican side studies show that although the country has made important economic progresses, social and regional inequality remain one of the major challenge, which involve the possibility for committing to protection of human rights as well.[319] One question regards such rights indeed, since the FTA did not specifically include cooperation in such a field, but the GA refers to them as the foundation above which to constitute the deepening of the relations between Mexico and the EU and contains a clause to provide for suspension of trade relations in case of human rights violations, which was particularly innovative for the time and one of the first cases in which the EU implemented such a measure in trade agreements. However, studies note that the FTA and the GA in general lacked for practical measures that could have led to the respect of human rights, and that the clause has never been used in its negative sense (thus, for giving

[316] Ibidem.
[317] Ibidem.
[318] However, data regarding unemployment in Mexico and how the FTA had an impact on it could not be properly defined due to the lack of an unemployment insurance at national level, and this regard gender gap as well.
[319] Look at the ex-post evaluation of the implementation of the EU-Mexico FTA from the European Commission, the Sustainability Impact Assessment (SIA) of the London School of Economics, and the Ex-Post Impact Assessment of the Effects of Human Rights Clause, among other evidence.

real sanctions) but only in a 'positive' way, resulting in broad discussions over the nature of its accountability from both Mexican and European civil societies.[320]

In discussing the possibility of a modernization of the Agreement on its cooperation pillar, the necessity focused on consolidating the progresses reached until the moment and to expand them to bi-regional level, taking into account the difficulties coming from the changing international environment. Specifically, the Mexican part showed its worries towards the new differentiation characteristic of EU development cooperation, which left out the country since it is now classified as 'upper middle-income', notwithstanding the lack of social cohesion and equality, thus reiterating the need to focus on a comprehensive review of the possibilities of better tackling these issues, even thanks to the new *Agencia Mexicana de Cooperación Internacional para el Desarrollo*. This came as fundamental to tackle in the event of the updated Trade and Foreign Policies of the EU and of the potential agreements the Union was negotiating with big competitors, as Canada and the USA, which include chapters, such as sustainable development, that are an integral part of the new generation agreements negotiated by the EU and that could decrease Mexican competition in the market. Finally, deepening the political and parliamentarian dialogue was seen as fundamental instrument to expand relations in the three pillars, "given the important role that parliamentary dialogue plays in the creation of more effective policies in various sectors."[321]Cooperation and Political concerns reveal not only a bilateral interest, but a need to strengthen such a relation in order to solve the decreasing relations with the whole Latin American region, and to tackle the worries coming from the 2016 US Presidential elections that led major uncertainties regarding the future relations with the Northern American neighbour.

Political dialogue in the framework of the Global Agreement evolved from being just a debate on democracy to an establishment of good practices thanks to the creation of specific mechanisms (Meetings, Summits and so on), to hold discussions in priority areas to coordinate positions both at bilateral and international level, even thanks to the creation of the JPC in 2005, particularly important not only for its role in assessing the implementation of the Agreement, but also for considering the external challenges both parties were facing internally, bilaterally, and bi-regionally. JPC Meetings agendas contained matters (which mostly concerned human rights and democracy, social issues,

[320] A. Rabiela Beretta, "El Acuerdo Global entre la Unión Europea Y México, Documento de soporte informativo sobre la situación de los derechos humanos en México y el Acuerdo de asociación económica, concertación política y cooperación entre la Unión Europea y México", *FDCL*, Berlin, Agosto 2015; I., Isabelle, "The effects of human rights clauses in the EU-Mexico global agreement and EU-Chile association agreement – Ex-post assessment", *Directorate-General for Parliamentary Research Services*, European Parliament, November 2017; European Commission, *Ex-post evaluation of the implementation of the EU-Mexico Free Trade Agreement,* 2017.
[321] Comisión Parlamentaria Mixta México – Unión Europea, XV Reunión de la Comisión Parlamentaria Mixta México-Unión Europea 2-4 de mayo de 2013, México, D.F., estado de Morelos.

environment and natural resources, training and education and trade issues especially regarding SMEs and competitiveness) linked to internal situations of Mexico or the EU, which, at times, showed to be essential to tackle specific issues even at a more practical way (as was the case of the border management discussion during the seventh meeting of the JCP in 2008, that allowed the Union to take actions directly): the possibility of exchanging good practices by means of inter-parliamentarian discussions should be further leveraged not only between Mexico and the EU, but also at bi-regional level. During the last years before the modernization process began, the JPC made various requests to be included as observer in executive meetings of the Joint Council first, expanding to the participation in general consultation mechanisms of both the GA and the Strategic Partnership and the Civil Society Dialogues later and, finally, to the possibility of having the chairs of the two delegation to participate in EU-Mexico Summit, Joint Council and Committees.[322] This issue, based on the idea of making the GA more accessible to citizens, thus furthering the dialogue between civil society and the governments, was included in the modernization talks, since often the executives and JPC opinions did not coincide over the role the JPC should have, as well as over the consideration to give to its joint declarations, leading it to be mostly excluded from having a close cooperation with the Joint Council and the Joint Committee, notwithstanding its role in cooperation sector at bilateral level, and the commitments relating to bi-regional and multilateral issues as well.[323] The negotiations talks thus focused on creating a legal binding framework to directly include the JPC into the GA executives talks, in this way properly defining its tasks and its scope of action. Inside the EP ex-post assessment of the Global Agreement of 2017, some suggestion have been made for implementing its role and the way this body could positively function vis-à-vis the Joint Council and the Joint Committee, in which the modernization of the framework was taken as a possibility for the bodies' members to work more closely in order to increase transparency, therefore trust on citizens' side, even during the negotiation process (a question that was particularly important in the period of the talks regarding CETA and the TTIP). One of the suggested options was to strengthen the relation between the JPC and the European Parliament on one side, which showed to be important in enhancing bilateral relations in those cases in which it issued resolutions directly to the Mexican

[322] JPC information are taken from: European Parliament, *The Modernisation of The European Union- Mexico 'Global Agreement'*, Directorate-General for External Policies of The Union Directorate B Policy department, Study January 2015.

[323] The JPC recommendations, contained in an imprecise way inside the various declarations, are not legally binding, even due to the fact that they're not directly linked to the GA, and could allow, in the way they are drafted, ambiguous and subjective interpretations, even when they have been specifically addressed to the Joint Council. In this way, the executive institutions have had large space for considering them, while the Mexican government and the EEAS have prioritized them based on the positive impact these recommendations could have on bringing EU-Mexican relations on a deeper level.

counterpart, and with the Mexican Congress on the other, through an exchange of information during a more permanent diplomatic meetings co-chaired by the JPC.[324]

To sum up, during the years the GA became broader and more comprehensive thanks to external 'acquisitions' in form of, for example, the Strategic Partnership, which helped adapting the relations to the external political and economic circumstances and added to its horizontal perspective composed by the three pillars a vertical one, over bilateral, regional and multilateral issues. These areas are enchained showing the importance of this type of agreement in coordinating the economy with political and cooperation issues not only among the two parties, but on a broader perspective. The necessity of a modernized GA, especially its trade pillar in the light of the new Agreements the EU was signing, was, therefore, to tackle this multidimensionality, which was effective in purpose but less effective in practice, and better coordinating its institutional framework.

7. The Agreement in Principle and the inclusion of new elements

The modernization of the Global Agreement is based mostly on the update of its Trade Pillar that, as seen, is the spinal cord of the overall text and sustains the relations between Mexico and the EU, since the political and cooperation framework are mostly related to the Strategic Partnership. This is even based on the fact that EU Trade Policy is one of the pillars of the Union's external action to promote not just trade flows, but also sustainable development, labour standards among other things. Indeed, in modernizing their commercial relations, the two parties committed to deepen the political dialogue deriving from having stronger economic links on global and regional common interests as well, has have been until the moment topic such security, international drug trade and the fight against organised crime. The need make this step forward was answering as well to the necessity of a proper institutionalization of the inclusion of the Civil Society as an instrument to monitor the real implementation of the agreement and to reach a higher level of transparency, based on the idea that human rights protection should be implemented on the trade pillar as well and not being regarded as only a general value sustaining the Agreement, as it was evident in the case of the treaty signed in 2000.[325]

[324] European Parliament, "Modernisation of the trade pillar of the EU-Mexico Global Agreement", 2017.

[325] European Commission, "Bridging civil society in Europe and Mexico: a new step in EU/Mexican relations", *First Forum EU — Mexico Civil Society Dialogue*, Luxembourg: Office for Official Publications of the European Communities, 2004. See also: A. Rabiela Beretta, "El Acuerdo Global entre la Unión Europea Y México, Documento de soporte informativo sobre la situación de los derechos humanos en México y el Acuerdo de asociación económica, concertación política y cooperación entre la Unión Europea y México", *FDCL*, Berlin, Agosto 2015; I., Isabelle, "The effects of human rights clauses in the EU-Mexico global agreement and EU-Chile association agreement – Ex-post assessment", *Directorate-General for Parliamentary Research Services*, European Parliament, November 2017

The new provisions included in the FTA should thus have effects in the ability of the parties, with a specific attention to the Mexican government, to increase human and labour rights protection under domestic and international law, since the lack of a legal framework inside the old Agreement prevented the possibility to translate the good intentions in practice. Therefore, such a modernization should benefit not only economic and commercial relations between the two entities, but will have geopolitical consequences as well, since it will reflect the changes occurred internally in both the parties, the evolution of their external policies and trade strategies and in the global economic arena. This was additionally stressed by the EP resolution of September 2017 over political relations with Latin America, in which the GA was seen as important even considering broader relations between the EU and LAC "in order to achieve the most modern and progressive outcome", even considering the key role of the country inside the Pacific Alliance, in which the EU desired to participate as an observer.[326]

Negotiations were launched in May 2016 and were carried out through 9 rounds between 2016 and 2019. The report of each round was published by the Commission alongside a number of text proposals, in line with the commitment to transparency and inclusion of civil society. They were concluded in April 2018 with the publishing of the *"Agreement in principle"* while discussions definitely finished on April 2020; the document now has to be translated into all the EU languages before being signed.

One of the first update that the new agreement will bring regards the full liberalization of trade of goods, especially on the agricultural sectors where more than 85% of the remaining custom duties will be fully liberalized, with only a restricted number of sensitive products being excluded (sugar, dairy, meat) and an increased market access for the remaining goods for both parties.[327] In line with the new generation agreements signed by the EU, and in general with the evolution of trade flows, an important addition regards the non-tariff barriers, since it bans export duties and contains new generation provisions, especially on Agriculture, with a chapter that commits to cooperation in international fora when it comes to the development of measures like export restrictions that could prevent the normal availability of products in international market. The Rule of Origin chapter is interestingly modelled over the EU-Japan and EU-South Korea FTAs, both of new generation, mainly regarding sectors like automotive and chemical production. To this, the new agreement adds in the IPR part a Geography Indicator section, that protects up to 340 EU names for food, wines and beers.

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[326] European Parliament, *Resolution of 13 September 2017 on EU political relations with Latin America*, Wednesday, 13 September 2017 – Strasbourg.
[327] European Commission, *New EU-Mexico agreement - The agreement in principle,* Brussels, 23 April 2018. All data from the new Agreement are taken from the same paper.

An ambitious chapter is the Custom and Trade Facilitation, since it has been developed over the legal framework provided by the WTO, which main aim is to facilitate trade flows between the two entities through the exchange of good practices and enhancement of rules of good governance to make the import and export process simpler and more accessible to both traders and the public.[328]

Other provisions that have been deeply modernized are the one regarding Sanitary and Phytosanitary matters (SPS), which now is considered in a whole chapter that provides many specific trade facilitation measures in addition to an increased transparency and exchange of information, and that shows the peculiarity of having the EU being treated as a single entity while exporting products; the addition of a Chapter on Animal Welfare, which we have seen to be added only recently inside EU FTAs with Asian partners, is considered as not directly linked with trade but more on the cooperation part, and could be important since it is taken into consideration after the growing importance of the topic in the global agenda. The Chapter on Energy and Raw Material could be better understood in light of the Peña Nieto Administration strategy to open oil reserves, thus however keeping full sovereignty over their natural reserves both parties ensure an easier market access and an increased transparency and fairness during authorisation processes, which will eventually benefit the EU in diversifying its energy resources (based on the impact assessments from both the EC and the SIA paper from an independent consultancy), avoid export restrictions and ban monopolies.[329] Trade of services, apart for being more comprehensive in the nature of liberalization included and including advanced provisions on the movement of people for business purposes, present a part dedicated to 'digital trade', in line with the innovations of the market, which applies horizontally to all trade made electronically and that contains a review clause to address the free flows of data, an issue particularly important even in the light of the EU GDPR.

The modernized EU-Mexico FTA is the first with a Latin American country to include an Investment protection chapter that goes beyond the BITs established with the (then) 17 Member States.[330] This was one of the major problems during the negotiation and still is a concern for many civil society organizations and NGOs, which are asking for a review of the whole agreement taking into consideration not only trade and investment liberalization, but more importantly the promotion of human rights in all horizontal sectors and the protection of governments' rights to determine

[328] See: *Sustainability Impact Assessment (SIA) in support of the negotiations for the modernisation of the trade part of the Global Agreement with Mexico,* Draft Final Report, The London School of Economics and Political Science, March 2019.
[329] Ibidem.
[330] European Commission, *New EU-Mexico agreement - The agreement in principle,* Brussels, 23 April 2018. See also: European Parliament, "Modernisation of the trade pillar of the EU-Mexico Global Agreement", 2017.

economic development models.[331] It actually covers ambitious disciplines over the basic services and non-services sectors: it is based on precise standards according to the guarantee that governments will respect the non-discrimination treatment and other fair and equitable treatment of the foreign investor. The Agreement adds, in line with the evolution of EU approach to investment protection, the new Investment Court System (ICS) instead of the old ISDS system. Worries came indeed for the investor-state dispute settlement and in the way it could have the consequence on giving to many rights to investors while assuring no real obligations and only guidelines when it comes to preserving human rights for corporations.

Public Procurement chapter consists in provision that would ensure reciprocal access for EU and Mexican firms to the EU and to the Mexican (not only at federal but also, for the first time, at sub federal level) public procurement markets. In addition, the agreement will include a new generation of disciplines according to the WTO's Government Procurement Agreement (GPA), of which Mexico is not part. The more outstanding and new chapters are those regarding Trade and Sustainable Development (TSD), Transparency, SMEs and Anti-corruption, since not only they actually take into consideration some of the most pressing civil society demands, but they show the importance of furthering cooperation projects in order to tackle trade and economic issues. The TDS chapter is particularly important for including binding commitments to the protection of environmental and labour standards and to effectively implement obligations coming from the international system (the ILO standards and Paris Agreement for climate change, among others). It is based on the idea of the necessity to a close cooperation between the Parties to reach the common goals given their international importance, that can only happen by committing to an internal reform process, the regular involvement of civil society and sharing information and collaboration in multilateral and regional fora.[332] Transparency provisions are ambitious in the extent in which they open to the publication of the agreement and agree to the possibility of reviewing and challenging the measures contained (this is a clear statement, to answer to the growing claims by Mexican civil society especially of not being able to access negotiation information, which prevents the possibility of having an active role in it notwithstanding the declaration of intent by President Peña Nieto to increase transparency in administrative processes[333]). The chapter of SMEs is one of the very first included in

[331] For example: C. Olivet, M. Perez-Rocha, "Unmasked: Corporate rights in the renewed Mexico-EU FTA", Report TNI and Institute for Policy Study, 2016.
[332] European Commission, *New EU-Mexico agreement - The agreement in principle,* Brussels, 23 April 2018. See also: European Parliament, "Modernisation of the trade pillar of the EU-Mexico Global Agreement", 2017.
[333] See: R. Villanueva Ulfgard, A. Alejo Jaime, "El diálogo entre México y la UE: un análisis desde el nuevo multilateralismo", *Revista CIDOB d'Afers Internacionals* n.101, p. 107-128, Abril 2013; L. Becerra Pozos, N. Castañeda Bustamante, "Las Relaciones México- Unión Europea En el marco del Acuerdo Global y la Asociación Estratégica: Un balance desde la sociedad civil mexicana", 2013.

EU FTAs and could result in an interesting model to follow with other middle-income countries. This is true in the light of the fact that in Mexico, as well as in most Latin American countries, most of the companies are of small and medium size, thus incentives to access EU market, and international market in general, is fundamental when trying to increase competitiveness and enhancing economic growth. Major problems usually come from the resources accessible to those companies as well as information of the target market, thus the chapter includes provision to identify specific needs of the SMEs and the creation of a website to provide a more fluid exchange of knowledge. Finally, the new agreement includes, for the first time, a chapter dedicated to Anti-Corruption provisions, due to its weight in preventing market access opportunities and in working as a non-tariff barrier. The measures undertaken by the two parties would prevent trade and investment corruption by enhancing internal controls, promote integrity in private and public sectors, besides reiterating the commitment to international conventions on the fight against corruption. Even in this case, an active participation of civil society has been important for reaching the inclusion of these provision, and will be important for the prevention of corruption, as well as for creating a precedent in order to implement the measures included and established by the EU-Mexico FTA even inside future new generation agreements.[334]

This *Agreement in Principle*, which considers the evolution of EU FTAs and of both Mexico and the Union internal changes, specifically takes into account the new approach followed since 2018 by the EU on the negotiations of free trade agreements, to have the possibility of concluding them as EU-only and separate the investment provision (a way used in the cases of treaties with Japan, Australia and New Zealand), or having mixed agreements as in the case of those with Mexico, Chile and Mercosur, based on the respect of EU values and standards to take into account citizens' expectations and preserve governments' rights to regulate in public interests. It is the result not only of long negotiations between the two parties, but of the consideration and recommendations of external actors as well, especially the stakeholder's opinions over trade and economic matters that helped shaping the Commission position.[335] Except from them, the commitment to increased transparency allowed NGOs and Political and Social institutes of both sides to take part in the discussions, especially those regarding the inclusion of environmental standards and the linking of trade and investment agenda to equitable and sustainable development. However, for the purpose of this research it was evident that most of the studies available, undertaken on the evaluation of the agreement, are from the European side, with only a small part of documents coming from Mexican independent consultancy and/or think tanks.

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[334]European Commission, *New EU-Mexico agreement - The agreement in principle,* Brussels, 23 April 2018.
[335] Ibidem.

Major worries came from the fact that the Democratic Clause contained in the first version of the agreement has not been used for condemning human rights violations even in those occasions in which the EP issued personal resolutions headed towards the Mexican Government and, on the contrary, that European transnational corporation were involved in such transgressions. However, even though effective strong positions have not been taken from the EU side, its approach could be described as more 'constructive' towards the implementation of democratic principles, since the cooperation framework and the strategic partnership gave the opportunity to express a mutual monitoring and gave mutual recommendation not only bilaterally, but even concerning relations with third countries: the improved acknowledgment is a way to concentrate efforts on common areas and could be used as a leverage to strengthen bilateral trade relations as well, assuming that even on the economic side more and more challenges regard the protection of workers' rights and the promotion of labour and environmental standards.[336]

For this purpose, the link and new focus between social and economic apparatus is evident since most of the recommendations were headed to the new investment chapter and foreign investor protection, with civil society strongly advising against modelling the EU-Mexico FTA on the base of the provisions inside more recent EU agreements (CETA and EU-Vietnam namely, of which we have studied the main objections), and especially against the Investor-state dispute mechanism in all its forms, since it would prevent foreign investors to actual have political tools to use against governments' public interests.[337] Besides, particular pressions have been made for including human rights assessment of the implementation, ex-ante and ex-post evaluation of the agreement in accordance with the Human Rights Council. In involving Civil Society in most of the chapters, the modernized agreement is trying to give an answer to the structural problem that probably prevented it to have substantial impact in the past, that is how to coincide economic aims to political dialogue: the new approach is based not only in the attempt to diversify the market, but mostly on taking advantage of internal political and economic conditions to try to increase sustainable development and competitiveness from both the parties.

We can inherit that, once again, it is not only a Free Trade Agreement: the trade part is not only limited to tariff reduction but involve a broader economic cooperation in order to take advantage of

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[336] Isabelle, "The effects of human rights clauses in the EU-Mexico global agreement and EU-Chile association agreement – Ex-post assessment", *Directorate-General for Parliamentary Research Services*, European Parliament, November 2017

[337] The ECORYS study contains important ideas coming from consultations with both Mexican and European stakeholders and civil society organizations over issues that go from the use of the democratic clause to the investor-state dispute system. See also: "Mexico and European civil society concerns and proposals about "modernisation" of the EU-Mexico global agreement", *S2B network*, June 2017, available at: http://s2bnetwork.org/eu-mexico-civil-society/, accessed 18/03/21.

each other markets (and this is particularly evident in the case of EU-Mexico relations which trade flows did not have the major boost assumed, but still need to work on enhancing cooperation at deeper level, for example through better including SMEs) and increasing competitiveness. The performance gap which is still evident after 20 years of the GA showed the importance of taking into consideration the political and social environment to avoid them becoming an obstacle for an effective implementation of policies that would strengthen bilateral trade relations. The two parties would need a better understanding of one another's interests in order to achieve common goals, and the inclusion of civil society and political dialogue throughout the implementation of the agreement would indeed have its utility if we take into consideration the way it has helped to reinforce bilateral cooperation of particular topics of bilateral and international interests, as is the case of public security and climate change.

EU evaluation over the effects of human rights clauses in EU-Mexican Free Trade Agreement, starting from the idea that it is difficult to draw a causal link between a trade agreement and the establishment of internal legislations of this kind, showed that despite the last two Mexican governments (without taking into consideration President Andrés Manuel López Obrador from 2018) commitment to legislative reforms in favour of creating a more inclusive society with equal rights and opportunities, Mexico still demonstrate an ineffective control over the judicial system and the fight against corruption; however, during the Peña Nieto administration, it is evident that a closer approach of the two sides, even thanks to the possibilities coming from having a Strategic Partnership linked to the Global Agreement, to tackle cartel violence and organized crime actually led to positive decreasing in their numbers.[338] Violence coming from organized crime and drug wars strongly impact business and economy, thus the inclusion of an anti-corruption chapter inside the new agreement could be a clear statement of the intention of changing approach from a simple political dialogue over the issue, to stronger commitment to real provisions and obligations. Moreover, this could indeed serve as a model to follow within bi-lateral EU-CELAC relations, based on the assumption that most LAC countries showed the same kind problems, of historical origins, of the Mexican institutions when trying to enhance a stronger social and economic national development.

The rationale behind the modernization of the Global Agreement does not only answer to the necessity of being up to date with the more recent evolutions of the geopolitical and economic environment, or of the 2015 "*Trade for All*" Commission Strategy to update old FTAs to new standards that would further tackle European competitiveness and role as a global power. It is part of

[338]L. Ruano, "From Mexico's Moment to negotiating under pressure: Mexico-Europe Relations during the six-year term in office of Enrique Peña Nieto, 2012-2018", *Foro Internacional* núm. 3-4, cuad. 2,2019.

a larger geopolitical model which takes into consideration Mexico as, indeed, a bridge between the North and the South America, two territories with which the Union has shown the intention to have closer relations, on the one side through assuring the negotiations of CETA and TTIP, and on the other, given the rise of Asian powers and the vulnerability of Latin American countries to the changes in US policies, through trying to incentive the integration process while negotiating and modernizing bilateral agreements that would endure its share in the market. [339] Thus, the importance of having such an agreement, of new generation according to the level of liberalization provided and on the inclusion of new and comprehensive chapters, like the TSD and the Anti-Corruption ones especially, that show a clear commitment to the involvement of civil society mechanisms used as a way to actually legitimize it (a process that has begun within most of the new EU FTAs signed with Asian powers, but which shows still difficulties given the political gap between the two parties) can be understood in the view that having a good political-economic environment is fundamental to take fully advantage of the benefits coming from an innovative FTA and that must be accompanied by complementary policies that keep a focus on the new EU's value agenda, since all provisions throughout a trade agreement can have labour, social and environmental implications. The new elements contained in such a modernized agreement are important if contextualized with the general evolutions of international relations, especially trade and trade-related ones, and in particular with the evolution of EU approach towards its partners, Latin American countries, and on the light of Mexico changing relations with its Norther American neighbours (based on the renewed NAFTA) and, even more importantly, with the Pacific, since the signature of the CPTTP in 2018.

Indeed, as trade policy is today always more used to achieve geopolitical goals and to promote European interests abroad, the EU new strategy appears to be focused on increasing its openness and being more integrated in emerging markets. The EU-Latin America relations have shown a difficult dynamic over the last years, and the recent Brexit only added more worries over the future evolutions of bi-regional ties. They have always been shaped at multilateral, interregional and intergovernmental level through linking trade and economy with the political side, that consider the different action of governments, civil society and NGOs to manage them, but sometimes could confuse and forget the heterogenic reality of the Latin America region, which is both a potential and a risk. The strengthening of the business and commercial component could be a way to enhance bi-regional political dialogue in the region through creating an environment in which issues like improving competitiveness by means of increasing information available to SMEs, deepening e-commerce and the role of mobility

[339] G Grieger, "EU trade with Latin America and the Caribbean – Overview and figures", *EPRS, European Parliamentary Research Service*, December 2019.

are a way of increase convergence of EU-LAC interests.[340] The region is important not only for being a source of diversification for European supplies, especially oil, but mostly for its active role in multilateral stage: from expecting a stronger coordination in the G20 for promoting greater trade openness to contrast increasing protectionism, to the exchange of good governance practices and increase the region connectivity thus helping deepening bi-regional trade, to having a stronger presence in topics of international security that would help foster such practices and tackle the issue even internally, given the transnational characteristic of organized crime. And Mexico could be one of the driving forces for bringing good practices model to the region.[341]

For these reasons and based on the impacts studies mentioned above, the modernization of the EU-Mexico Agreement and the inclusion of new provisions that could benefit not only the two parties, but the bi-regional and multilateral environment could even be the result of a broader geopolitical commitment by the EU to try to actually assure a role in the increasing important Indo-Pacific Area, while answering to Mexican worries coming from the instable situation with the North American partners and the needs to re-establish strong links with Latin American countries. The perceived stronger importance of mega-regional agreements compared to EU-Mexico relations could be even assessed looking at the first pages of newspapers and online editorials as *The Guardian, EURACTIV, El País,* among others, which share of news about the modernization of the Global Agreement appear to be small in comparison to those about the RCEP, TTP and USMCA, besides being often considered as an “answer to Trump protectionism”.[342]

Indeed, the protectionists measures applied by previous US President Trump, evident in his abandonment of the TPP and disregard of Latin America are countered by the always greater involvement of China and the Asian Powers in the region, showed by the 2018 China-CELAC Summit and the signature of the CPTPP (of which Mexico is part). Moreover, although at the beginning of his administration the Mexican President López Obrador approach seemed to be sceptical and less willing to “submit” to US dependency, it appears to have changed its mind though accepting the new modernized USMCA, which possible repercussions both on Mexican domestic level and on the extent of European shares of Mexican market are yet to be determined. Besides, the change in administration from January 2021 left Mexican relations with the US even more uncertain

[340] Ibidem.
[341] C. Malamud (coord.), “¿Por qué importa América Latina?”, *Real Instituto Elcano*, Informe 22- Madrid – España, Diciembre 2017.
[342] See for example: C. Pérez, I. Fariza, “México y la UE aceleran su diálogo comercial en respuesta al proteccionismo de Trump”, *El País*, Febrero 2017. Available at: https://elpais.com/economia/2017/02/01/actualidad/1485968608_810020.html, accessed 3/03/21; “Trump’s ‘America First’ catalyses renewed EU-Mexico trade interest”, *EURACTIV*, 2017. Available at: https://www.euractiv.com/section/trade-society/news/eu-mexico-renew-interest-in-free-trade-talks/, accessed 4/03/21.

after the election of Joe Biden, who seems to be much more willing to make their relation not just about trade.[343] Except from the always important presence of the United States to counter EU presence in Mexico, the shift of gravitational centre towards Asian markets has led the Union to sign comprehensive agreements with countries in the region and in general with the Pacific Rim, thus assuring a broad agreement with Mexico, which contains provisions to promote European values and standards on human and environmental protection as well as data flows and intellectual property that are of international consideration, only appear to be logic as a way to contrasting the fear and possibility of being relegated as an economic power of second importance.[344]

[343] More about AMLO foreign policy at L Schwartz, "AMLO's Aversion to Engaging in Foreign Policy Is Hurting Mexico at Home", *World Politics Review*, Sept. 11, 2019 available at https://www.worldpoliticsreview.com/articles/28180/amlo-s-aversion-to-engaging-in-foreign-policy-is-hurting-mexico-at-home; R. Watts, "NAFTA in the time of AMLO", *CEPR* April 219, available at https://cepr.net/nafta-in-the-time-of-amlo/.

[344] Based on: A. García-López Loaeza, M. Valdivia Correa, "Del fin de la guerra a una paz sostenible: el papel de México en Centroamérica (1983-2018)", *Revista Mexicana de Política Exterior*, núm. 114, septiembre-diciembre de 2018, pp. 211-219; D. Nolte, "China Is Challenging but (Still) Not Displacing Europe in Latin America", *GIGA Focus, Latin America*, Number, February 2018.

Conclusion

Following the changes in both the European Union and Mexican commercial policies alongside the evolution of their external strategies made it possible to understand the motivations at the base of the decision to establish the Economic Partnership, Political Coordination and Cooperation Agreement in 2000 (Global Agreement) and of its modernization from 2016 while assessing its importance in having been the formalization of EU-Mexico relationship, and the extent in which it could be the framework for a real commitment to its strengthening after years of attempts in this direction.

In the 1990s, the two entities showed different approaches and objectives for the conclusion of the Global Agreement. Mexico still benefited from the EU GSP, which implied unilateral concessions; however, the always more FTAs the EU was signing with third countries, and the international arena appeared to be focused in, the more the benefits Mexico could inherit from such a system decreased, thus leading the country to be interested in concluding the Trade part of the Agreement rapidly. Therefore, the GA was the way through which reaching its commitment to further liberalize its economy, according to the country agenda based on unilateral liberalizations, commitment to the GATT and free trade agreements with other countries or regional blocks, that had already led to the conclusion of the North America Free Trade Agreement (NAFTA) with the United States and Canada in 1994, on the one hand, and to increase access to the European market in order to diversify its trade flows on the other.

Indeed, since the signing of NAFTA, the neoliberal agenda has been driven by almost all Mexican Administration (Salinas, Zedillo, Fox, Calderón, Peña Nieto), while the election of Andrés Manuel López Obrador recalled the discourse of the old populist regimes, apparently rejecting the neoliberal economic model. Whether the neoliberal system consequences have been negative or positive in the case of Mexico is beyond the purpose of this thesis, but the strategies undertaken throughout the years by each president have been useful to assess the extent of the impact of the Global Agreement both internally and on the country’s international ties. Significantly, with the turning of the century and the increasing openness of Mexican foreign policy, the relations with other countries improved and became more consistent, as was the case of the European Union, probably thanks to the 2000 elections that brought Vicente Fox, representative of the PAN political party, as new President of Mexico for the next 6 years thus putting an end to a 70 years-long political hegemony of the PRI and giving a new impression of “democracy” in the country. Although the new democratic course did not bring a real change neither in the political nor in the economic field neither with the successors of Fox, the idea that national development had to be balanced and linked to the strengthening of the multilateral diplomacy was still strong, as the main national issues such as drug trafficking, migration, the environment and poor human rights had become global.

For the European Union, the decision could be seen as a natural answer to the strengthening of the interconnection on the North American region that could have had negative consequences in form of leaving outside European industries of a large side of the international market, and as an attempt to enhance more intra-regional cooperation and actions of the same size, an assumption that is reinforced by an interesting theory regarding the deepening of regionalism and its relation with Preferential Trade Agreements, called of 'domino effect', which states that one single action of regionalism, as could be in this case the conclusion of the NAFTA agreement in 1994, would trigger third parties actions to eliminate tariff barriers and finally end enlarging and spreading more regionalism or inter-regionalism.[345]

The importance of the Global Agreement come from the fact that it was an actual attempt to further EU-Mexican political relations and cooperation dialogue in a period in which the two parties' external policies did not seem to be focused on each other. It showed a key characteristic that differentiate it from NAFTA, for example, and in general from the main trade agreements concluded with middle-income countries in the 1990s: it gave importance to the trade pillar, which was at the beginning the driver factor for its conclusion, but it went beyond that, encompassing both political and cooperation dialogue. However, the coming into force of the Agreement did not sign the beginning of a completely new stage in the two entities bilateral ties: the interactions between Mexico and the Union have been throughout the years governed by internal policies and practices, for which, thanks to the institutionalization of bilateral dialogue and bi-regional discussions, both the parties at times managed to find a common ground.

More specifically, despite the initial positive approach to the agreement and the faith put into it being one of the 'more comprehensive' ever signed for the time, its potential, especially over trade and trade-related issues, remained mostly unused, in so far as Mexican trade flows are still mainly focused on its northern neighbours, relations with the United States are still of major importance and account for the 80% of the overall commercial flows happen inside the North American region, while it still takes a small part of the EU overall exchanges. This could be explained considering the simple trade liberalization included in the text, thus it is of no surprise that such an Agreement did not introduce major changes in the commercial flow between the two parties. Nevertheless, the Global Agreement has been an incentive for deepening bilateral relations and to achieve specific goals such those of

[345] E. Baldwin, Richard, "A Domino Theory of Regionalism", *NBER Working Paper No. 4465*, Cambridge, 1993.

harmonizing positions over those topics of international matters, and it did propose a counterbalance of what could have been the consequences of leaving the market connected only with the United States and Canada, as well as a preceding for establishing political and commercial networks of the same kind in the Latin American region.

The negotiations for the new and modernized agreement have started in 2016 with the purpose of enlarging the text to cover new areas, taking into consideration that trade policies have changed, becoming always less about 'trade', and more about global leadership, coming to involve topics such as technologies, human rights, environment, climate change and investments, turning to foreign policy to manage them. They tackle the main obstacles to trade, which are traditionally tariffs, subsidies and regulations of services, protecting producers from foreign competition, but have come to protect consumers, too, from risks that can derive from health, environment, standards, data, privacy and so on. In this context, the decision to update the Global Agreement with Mexico can be assessed from two sides: the economic and political.

From the economic point of view, which at the same time is its driving force, looking at the increasing significance of Mexico in the international arena, not only amongst emerging economies. Indeed, in the light of the changes in the international economic structure where the gap between liberal and protectionist models is increasing and the global economy is undergoing a 'restructuring' in the form of emerging powers leading the scene while the western hemisphere is at the verge of losing its monopoly to the benefit of new actors, Mexican position as a "production and exporting powerhouse not only to the United States, but also to Central and South America"[346], its potential to become a provider of renewable energies and, more specifically, its increasing value chain integration could be a further incentive for European investments in the country. Moreover, the Union key focus since the coming into force of the Treaty of Lisbon and the evidence that the multilateral system had failed to attain its expectations has been to build up its presence as a Global economic Player, a strategy strongly underlined at first by the 2006 *Global Union* communication, and later further enlarged and deepened by subsequent measures alongside the consolidation and enhancement of political dialogue on social issues, evident in the Mexican case with the long negotiations of the most discussed Democratic Clause. This strategy has been used to strengthen the ties with key partners in various regions, namely Canada in North America, South Korea, Japan and Australia in the Asia-Pacific region, at times establishing Strategic Partnerships with peculiar countries with whom the expectations for stronger commitment at bilateral level were probably higher, thus having the

[346] A. O. Monkiewicz. "Evolution of EU-Mexico relations: time for real partnership?", 2017.

possibility to ensure its presence while those emerging powers were becoming always more important in the global scene.

From the Mexican point of view, the decision could come from the need to counterweight those mega regional and transatlantic agreements negotiated nowadays by the country's North American partners and the uncertain relations with the USA ever since the President Trump administration decided to re-negotiate the NAFTA Agreement (now USMCA) and to keep its country out of more political issues such as the poor rule of law, high homicide rates and organized crime, to which the European Union could form an alternative. Besides, even the TTIP was seen as a threat to Mexican presence in the international market, especially in that of the US and EU, although studies say that the new USMCA Agreement could actually rise interdependence between the partners, at the expense of the expansion of other powers in the region, as well as being a crucial opportunity for Mexico to improve bilateral confidence, but could also signify its turning, once again, on having ties mostly with the Northern neighbours.

On the other hand, with the election of Joe Biden at the end of 2020 and the controversial position of Mexican President López Obrador regarding the (lack of) acknowledgment of the new US President, the new diplomatic agenda with the USA will probably lead Mexico to increasingly face challenges over how to position itself between both North America and Latin America, on the extent in which relations between the United States and the region have been on the verge of collapse throughout the Trump Administration. As a consequence, deepening economic relations with the European Union could be seen as an attempt to diversify its international ties entirely in line with precedent national development strategies for which foreign policy had to be a mean through which to reach this purpose and not an additional problem, while trade and diplomatic policies were necessary to improve the living standards of Mexicans and to prevent a possible marginalization.

From the political point of view, strengthening relations with the EU could be seen as important within Mexico domestic policies to create a model of good practices to follow among those issues that still constitutes major problems in the country as justice, security, social equality and in general human rights and environmental protection, as well as for further enhance its image internationally and inter-regionally, since its global ambition could be supported by having a strategic and political alliance with the Union in key areas such as climate change, energy, education, technology, innovation, digital agenda and culture, among others. On the other hand, it could be seen as an answer to the overall EU strategy to strengthen its position in Latin America based on the need to contrast the gradual loss of preference since the stricter relations of those countries in the region with China and the US, especially in a period in which European economy appear to be losing competitiveness and its international relations are devaluating, as well as for their pivotal role inside international bodies and treaties, as could be WTO and the Paris Agreement. Indeed, as stated by Executive Vice-President and Commissioner for Trade Valdis Dombrovskis, *"at a time when the European economy is in crisis, international trade is more essential than ever"*[347] and could signify the means through which to efficiently use trade-related measures to attain political and social commitments.

For this purpose, one important aspect of the evolution of the agreement throughout the years, is that it later assumed the framework of the institutionalization of a dialogue between the governments and civil society which is fundamental in order to influence both political and economic cooperation, to prevent future negative impacts and worries during the negotiations (as in the case of those of broader agreements like CETA and TTIP) and to better exploit opportunities that such a pact could enhance. This is one of the reasons for which Civil Society committed to the inclusion of stronger provisions regarding the protection of human rights during the period of the modernization discussions, not only inside the political and cooperation pillars, but also, and maybe more importantly given the influence economy has on social status, on the trade chapter.

To conclude, the efforts to modernize the Global Agreement to be in line with the more recent EU agreements of new generations are based mostly on the growing importance of Mexico in the international scene, always more determined by emerging economies' influence to the global system, that would in this way benefit from a broader access to the European market and especially to increasing investment opportunities, and the still strong economic position of the EU, that, however, is expanding its pool of contacts with other region, namely Asia and the Pacific. The possibility to balance the expansion of Asian economies in the Latin American region and to contrast the rising power of mega regional agreement on the one hand, as well as to avoid losing the benefits of having a strong political partner internationally are at the base of the introduction of innovative measures within the new text, as could be the Anti-Corruption ones and the broader commitment to human rights protection, thanks to the institutionalization of panels of discussions on the topic with civil society and international organization and to the responsibility taken by both the parties to attain a higher level of transparency. The hope is that this new, more delicate, environment and the stronger provisions included will push both Mexico and the European Union to actually achieve their objectives, since the consequences of a stronger relation could indeed give the advantage to gain a more stable position domestically and internationally.

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