

Treaty-led Trade Expansion without Unbalancing Competitive Relationships or Dismantling Producer Sensitivities

EU – Mercosur – Ukraine Agrifood Trade

Christian Häberli

WTI WORKING PAPER SERIES
WTI working paper no. 9/2025

u^b

Abstract

Trade security is a pivotal element in turbulent times. The new megaregional treaty between Mercosur and the EU will set a geopolitical milestone for better trade and global food security in a world of turmoil. Add Ukraine as another major player despite the aggression from Russia, and you get a new “default” food treaty picture looking like a somewhat strange triangle between three food giants. Given the many sensitivities especially in Europe, there can be no free lunch with a full glass of free food trade: all menu recipes – including new and especially powerful agricultural safeguards - are still concocted in Brussels, instead of based on fully reciprocal concessions and global standards. Moreover, only the EU will have treaties with the other two giants, and with countless other countries. Nevertheless, the European Commission rightly calls the treaty with Mercosur a ‘groundbreaking’ partnership agreement for Europe’s economy. It also promises EU farmers more exports and only minimally increasing imports. This Working Paper asks three questions on (i) the recognition of defensive food import interests, (ii) the treatment of specifically European environmental and social concerns, and (iii) Ukraine’s EU market access guarantees under rapidly evolving preferential terms. To heap more problems on this conundrum, WTO compatibility questions and market share expectations of competitive agrifood behemoths enjoying new preferences throw a light on the residual value of EU concessions agreed earlier under WTO and other RTA. Perhaps a WTO silver bullet like the one solving the infamous banana dispute can help finding a legal win-win solution for all food value chain participants?

Relevant Terminology and Acronyms with Explanations

EU	- General	
	ACP	Countries of the African, Caribbean and Pacific Group of States, negotiating in 5 different EPA with the EU and benefitting from different GSP preferences granted by the EU and other countries
	CAP	Common Agricultural Policy
	Due Diligence	Here: part of the EU Green Deal
	EP, EC, Council	(European) Parliament, Commission, Council
	ETS	Emissions Trading System
	European Green Deal	Cf. 'Legislative Train Schedule' Package ¹
	Forced labour	EU regulation proposal ²
	GI	Geographical indications
EU	- Mercosur	
	EMPA	EU-Mercosur Partnership Agreement
	SIA	Sustainability Impact Assessment
	Safeguards	EMPA establishes unprecedented and robust safeguards protecting sensitive European products against any harmful surge in imports from Mercosur. According to the Press Release dated 3 September 2025 the Commission proposes to supplement the agreement with a legal act that operationalises the bilateral safeguards chapter of the EMPA.
EU	- Mexico	
	MGA	EU-Mexico Modernised Global Agreement
EU	- Ukraine	
	AA	Association Agreement
	DFCTA	Deep and Comprehensive Free Trade Area between the EU and Ukraine
	PAP	Priority Action Plan
	ATM	Autonomous Trade Measures
	Solidarity Lanes	Support for Ukrainian Transit and Black Sea Route Exports
	MENA	Middle East and Northern Africa
WTO + UNFCCC +	AoA	Agreement on Agriculture (WTO)
	BCA	Border Carbon Adjustments (e.g. 'cap-and-trade')
	COA (COASS)	WTO Committee on Agriculture (in special session)
	Customs Union	RTA with not only freer internal trade but with a common external tariff (cf. GATT-Art.XXIV)
	MA	Market Access: scheduled opportunities are not import commitments. Main issues below

¹ [EUR-Lex Sources](#) (links as of 15 November 2023):

- 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* (COM/2019/640 final, dated 11 December 2019), at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0640>. The *European Green Deal* is regularly updated at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0640>
- For *Due Diligence* cf. <https://www.europarl.europa.eu/legislative-train/search?keywords=due+diligence>
- For *FF55* and '*Guidelines*' cf. <https://www.europarl.europa.eu/legislative-train/package-fit-for-55>
- ² Cf. : [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2023\)739356](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)739356)

Relevant Terminology and Acronyms with Explanations

	<p>- Current Access / Minimum access</p>	<p>The Uruguay Round undertakings for multilateral commitments pertaining to agricultural products included agreed initial and final ('tariffed') tariff levels and an agreed base line of historically traded volumes. These multilaterally agreed tariffs ensured at least continued market access opportunities during the implementation of the AoA (with tariff reduction commitments scheduled over 6 years starting in 1995, and with tariff quotas reflecting import access opportunities at levels corresponding to those existing during the 1986-88 base period). In addition, 'minimum access' quotas had to be offered for each product with less than 3% import shares – increased to 5% of domestic consumption at the end of those 6 years.</p>
	<p>- TRQ / IQTR / OQTR / Minimum Market Access</p>	<p>Tariff quotas are also called 'tariff-rate quotas' (TRQ). The same product has therefore two scheduled tariff lines: Imports entering under the tariff quota at the agreed In-Quota Tariff Rate (IQTR), and imports entering outside the tariff quota at the Out-of-quota Tariff Rate (OQTR). The MFN IQTR quantity would be based on actual verified ('current') imports in the base period or an agreed ('minimum access') formula. Where such 'current' access had been less than 5 per cent of domestic consumption of the product in question in the base period, an (additional) minimum access opportunity had to be opened on an MFN basis. This was to ensure that in 1995, current and minimum access opportunities combined represented at least 3 per cent of base-period consumption in 1995 and were then progressively expanded to reach 5 per cent of that consumption in the year 2000 (developed country Members) or 2004 (developing country Members), respectively.</p>
	<p>- TRQ allocation methods</p>	<p>A long story, and a permanent agenda item since the first COA session in 1995. Examples: first-come-first-served, licensing (automatic / non-automatic), seasonal quotas, auctions, country quotas, eligible operators, domestic purchase requirements. Many different methods, scheduled or not, WTO compatibility reviewed in TPRB and assessed (<i>ad casum</i>) in some DSB decisions.</p>
	<p>DC, LDC</p>	<p>Developing Countries, Least Developed Countries</p>
	<p>DSU /DSB</p>	<p>WTO Dispute Settlement Understanding / Dispute Settlement Body</p>
	<p>FDI</p>	<p>Foreign Direct Investment</p>
	<p>GHG</p>	<p>Green House Gases³</p>
	<p>IBRD</p>	<p>International Bank for Reconstruction and Development</p>
	<p>MFN (GATT-Art. I)</p>	<p>Most Favoured Nation (identical treatment for all imports from all other WTO Members)</p>
	<p>MRA</p>	<p>Mutual Recognition Agreement</p>
	<p>NDC</p>	<p>Nationally Determined Contributions (UNFCCC)</p>
	<p>NT (GATT-Art. III)</p>	<p>National Treatment (equal treatment of imported and domestic products)</p>
	<p>NTM / NTB</p>	<p>Non-Tariff Trade Measures / Non-Tariff Trade Barriers (no longer allowed under AoA Art.4.2)</p>
	<p>ODA</p>	<p>Official Development Assistance (https://www.oecd.org/)</p>
	<p>PPM</p>	<p>Production and Processing Methods</p>
	<p>Rescheduling (GATT-Art. XXVIII)</p>	<p>Modification of scheduled tariff lines and import requirements e.g. after EU Accessions</p>

³ Cf. Doha amendment to the Kyoto Protocol, December 2012, Article 1, Paragraph B

Relevant Terminology and Acronyms with Explanations

RTA / FTA / EPA / TSD / DCFTA / REC (cf. GATT-Art.XXIV for MFN exception conditions)	Regional Trade Agreements / Free Trade Agreements / Economic Partnership Agreements (in recent EU treaties with Trade and Sustainable Development Chapters: TSD) / Deep and Comprehensive FTAs (EU) / Regional Economic Agreements
SDG	Sustainable Development Goals (https://sdgs.un.org/)
SDT / GSP	Special & Differential Treatment / (unilateral) Trade Preferences
SIA	Sustainability Impact Assessments
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
Special safeguards (Art. 5 AoA)	For products whose non-tariff restrictions have been converted to tariffs, governments are allowed to take special emergency actions ("special safeguards") in order to prevent rapidly falling prices or surges in imports from hurting their farmers. Rarely used, unlike other safeguards e.g. GATT-Art. XIX.
TBT	Agreement on Technical Barriers to Trade
TPRM (TPRB)	WTO Trade Policy Review Mechanism (Body)
UNFCCC	United Nations Framework Convention on Climate Change ⁴
VPA / VSS	Voluntary Partnership Agreement (also available e.g. for deforestation monitoring with the EU) / Voluntary Sustainability Agreement
WTO	World Trade Organization

Source: WTO Secretariat and author

⁴ More precisely, the UNFCCC comprises the Bali Action Plan (2007), the Copenhagen Accord (2009), the Cancún agreements (2010), and the Durban Platform for Enhanced Action (2012).

1. Treaty-led Trade Expansion without Unbalancing Competitive Relationships or Dismantling Producer Sensitivities

On 6 December 2024, EC President Ursula von der Leyen travelled to Buenos Aires to finalise the negotiations for the EU-Mercosur Agreement (EMPA), together with the Presidents of Argentina, Brazil, Paraguay and Uruguay.

This new mega-regional agreement sent shockwaves through many competitors fearing being bypassed in their EU market access. European producers rejoiced or protested.

On 17 January 2025, the EU concluded negotiations on a modernised Global Agreement with Mexico, with carefully negotiated agrifood trade preferences (MGA).¹ Canada, New Zealand and the Andean countries had to reassess the market value of their guaranteed preferential market access in the EU. Several EPA members in the Caribbean wondered how their duty-free exports to the EU could compete with the Mercosur giants. Australia, South Africa and other big food suppliers without a trade agreement looked at Mercosur preferences as a new tunnel under the high MFN tariff wall turning the EU into a fortress. How could they compete with Mercosur suppliers enjoying duty-free access and new MRA for their phytosanitary standards? Only in Washington the mega-deal went largely unnoticed, because a new ('Trump II') Administration was busy preparing for the White House take-over – and many US farmers were still reeling from 'Trump I' agrifood export losses.²

¹ Mexico is the second biggest importer of EU agri-food products in Latin America (€2.3 bn in 2024).

² US Farm Policy and Treaties were always on a bumpy road. The evolution in the early 2020s cannot be addressed here. Even earlier, WTO and RTA rights and rules gave rise to many disputes on all big US export markets. So did US import restrictions, including with Mercosur countries (cotton, foot-and-mouth disease prevention, quota management, logging certification), the EU (beef hormones, bananas, biotech), South Africa (trade remedies), China (post-accession market access) and the two neighbours Canada and Mexico (e.g. biotech, country of origin labelling, lowering levies on potash, investor protections and investor-state disputes, and other NAFTA/USMCA Chapters 19 and 20 dispute settlement mechanisms). For recent summaries see (i) David A. Gantz, *The United States-Mexico-Canada Agreement: Settlement of Disputes* (2 May 2019). Available at Rice University's Baker Institute for Public Policy (<https://www.bakerinstitute.org/research/united-states-mexico-canada-agreement-settlement-disputes>), and (ii) Manuel Sanchez Miranda (Partner, International Trade at de minimis law), *How Mexico and Canada can address U.S. 25% tariffs under USMCA & WTO rules*. (4 February 2025). Available at

Perhaps the biggest shock, however, was registered in Kyiv: Since the new Russian invasion on 24 February 2022, Ukraine's economy depends not only on preferential market access to the EU but also on open transit to Atlantic and Black Sea seaports. In 2024, Ukraine's food exports (\$24.6 billion) accounted for 59% of its total exports (\$41.6 billion).

For farm trade, this is not a little ball game. Agriculture matters for all three food giants albeit in different ways. Mercosur is among the largest producers and exporters. The EU 27 is shipping more processed food abroad than any other trader. Ukraine enjoys a largely free MA to the EU, and it also exports its agrifood commodities and phosphate fertilisers to non-EU countries, or in transit to Western European seaports. Yet, some of Ukraine's EU neighbours protect their often-small farmers and deny unlimited access to their own food processors.

RTA negotiations have become a complex undertaking going way beyond tariffs and mandatory or voluntary production standards. The EU negotiators tried to take all market-impacting elements and sensitivities on board. In addition, sustainable development chapters accompany all market access provisions. Despite these challenges, the EU-Mercosur Agreement turned out to be not a beauty model for free traders but a complex puzzle containing, in my opinion, all the elements of a progressive sustainable trade expansion.

Indeed, the handling of different non-trade concerns matters, mostly in Europe, where sometimes vociferous arguments by potential opponents to all or part of a treaty could endanger ratification. Where to get support in that important debate? On the one hand, exporters benefitting from new concessions loath resource management measures applied by importing nations to their plantations and energy supplies. But the Amazon is burning. As of 2026 the EU prohibits food and log imports from all deforested areas and taxes all maritime, air, rail and road transports for merchandise imports. Meanwhile, Ukraine lost substantial areas, infrastructure and seaports to Russian forces. This threatens its traditional grains and sunflower oil exports to Northern Africa and the Middle East and might open doors for distant and unmonitored competitors from the Mercosur countries.

On the other hand, the whole 'Green Deal' may also further increase domestic farmgate prices – and thus producer sensitivities against freer trade and unfettered competition.

Last not least, many EU member states with large agricultural

<https://www.deminimislaw.com/blog/posts/how-mexico-and-canada-can-address-us-tariffs-under-usmca-and-wto-rules#:~:text=>

production and lobbies / interests were less enthusiastic than most European manufacturers and service providers looking forward to a wave of new trading opportunities with South America's largest Customs Union.

Preferences based on common standards reflecting commitments under the Climate Agreement may also need protection against 'eco-dumping', for instance by higher import barriers for substandard 'like' products. This would arguably include regulations promoting agriculture-related GHG emission reductions. Unfortunately, binding multilateral production standards are missing, left to negotiations and subject to disagreements in respect of WTO NT and MFN provisions for 'like products.'

All treaty partners expect more exports of goods and services, and more investments. Their (inherently discriminatory) 'preferential' agreement may be based on SIAs. Nonetheless, given the dynamic competitive relationship including third parties and the different types of new 'preferences', a scientific quantification of the preferential market access value of what the WTO calls a 'Regional Trade Agreement' (RTA) will always be difficult. Even the best empirical economic studies fail to measure the direct or the relative market access condition changes resulting from preferential tariff rate quotas.³ This is even more difficult for agriculture where new RTA concessions and commitments for sensitive products often come in two tariff lines (IQTR/OQTR). As detailed in Section 2, the beef quotas finally agreed in the EU-Mercosur treaty underscore the challenges preventing fully liberalised food trade.

In legal theory, tariff preferences applying to 'substantially all the trade' are protected against discrimination claims. The legal base is GATT-Article XXIV paragraph 8 (a)(i) and paragraph 8 (b).⁴ The WTO compatibility of this RTA and the potential discrimination claims by third parties will be discussed in Sections 4 and 5. The lack of multilateral standards for, say, 'high quality' or 'Hilton beef', deprives Article XXIV exceptions as a clear legal basis for treating such

³ Cf. Fugazza, Marco & Nicita, Alessandro. (2010). The value of preferential market access. UNCTAD - Division of International Trade and Commodities. Geneva, June 2010.

⁴ GATT-Article XXIV, paragraphs 8 (a)(i) and paragraph 8 (b):

(a) A *customs union* [...] (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are **eliminated with respect to substantially all the trade** between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, [...]

(b) A *free-trade area* shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are **eliminated on substantially all the trade** between the constituent territories in products originating in such territories. (emphasis added)

products differently according to different production methods.

This WORKING PAPER focuses on the expected impact of both EU treaties on EU and Ukrainian producers. It starts with a lay-out of the (future) legal relationship between three food behemoths. (Section 2) I will not further discuss non-agricultural policy and the geopolitical context and other reasons for concluding the present and future agreements. The (largely political) research question here is how far concessions *can* go without hurting vital producer interests and how far they *must* go to secure ratification by governments and parliaments. The (largely legal) hypothesis is that solutions can be found with the help of WTO provisions, such as product quotas governing scheduled market access concessions for the most sensitive products. (Section 3) My conclusions are tentative: the difficult part, and my focus here, is on the process before signature and conclusion. (Section 4) Dynamics and timing matter enormously, not least for Ukraine, especially when looking at related WTO issues and third countries' rights. (Section 5) This is where a 'Silver Bullet' might help. (Section 6) My conclusions will nevertheless remain tentative. (Section 7)

2. Treaties between EU, Mercosur and Ukraine

What does the Mercosur agreement mean for EU agrifood imports and exports? And what does that mean for the emerging relationship between the three food giants and the present preferential market access value of Ukrainian food exports?

2.1 EU-Mercosur

Current trade relations between the EU and Mercosur are based on an [inter-regional Framework Cooperation Agreement](#), which entered into force in 1999. Its purpose, in addition to bilateral framework cooperation agreements, is a 'regular dialogue on trade and economic matters [...] designed to prepare for a gradual and reciprocal liberalisation of trade.'

Previously, the EC had concluded and implemented RTAs with the Andean countries and Chile, as well as EPAs with Central American and Caribbean nations, and FTAs with Mexico (MGA) and Canada (CETA).

The EU-Mercosur negotiations started in 2000 and over the years have experienced different phases. During this period, the EC conducted several SIA and published Negotiation Round Reports from 2009 - 2019. In 2016 the EU and Mercosur relaunched the negotiation process, exchanged new market access offers, and intensified the pace of

negotiations by holding negotiation rounds and meetings at regular intervals and senior negotiator levels. However, the negotiations on the new mega-regional EU-Mercosur agreement were only finalised on 6 December 2024.

How does the EC view this achievement?

Greater access to the largest South American Customs Union, together with all other RTA concluded with most other American countries outside the USA will ensure European exporters a first mover advantage unseen in any other regional trade agreement. Today, the EU clearly positions itself as the most advantageous and legally secure trading partner, and for years to come.

2.2 EU-Ukraine

The [Association Agreement](#) (AA) between the EU and Ukraine, including a Deep and Comprehensive Free Trade Area (DCFTA) entered into force on 1 September 2017. On 30 June 2025, the EU and Ukraine [reached an agreement in principle](#) on the review of the DCFTA under Article 29 of the AA, and within the broader context of Ukraine's EU accession process. A [Priority Action Plan](#) (PAP) for enhanced implementation of the DCFTA in 2025-2026 lays down a set of concrete actions to monitor the full implementation of the DCFTA and to provide Ukraine with further access to the EU Single Market.

The AA is the main tool for bringing Ukraine and the EU closer to accession. After Russia's war of aggression on Ukraine, the EU has granted Ukraine additional unilateral trade preferences and exceptional instruments offering a high level of liberalisation on a yearly basis in the form of Autonomous Trade Measures (ATMs). In addition, the Priority Action Plan (PAP) for enhanced implementation of the EU-Ukraine DCFTA in 2023-2024 lays down a set of concrete actions to accelerate and monitor the full implementation of the DCFTA, providing Ukraine with further access to the EU Single Market. In addition, market access guarantees and alternative export routes via 'Solidarity Lanes' (including for Ukraine's grain exports) are critical for Ukraine's export-oriented economy – with agriculture remaining a main pillar after the Russian invasion – as its capabilities to export have been significantly hampered by Russia's blockade of Ukraine's seaports, as well as land and grain grabbing, and large-scale infrastructure destruction. Together with the Solidarity Lanes, the ATMs were adopted in the context of the major disruptions caused by the war and against the general trend of a decrease of Ukraine's trade overall. The ATMs were in force since 4 June 2022, and twice renewed until their expiration on 5 June 2025, after which transitional measures came into effect.

It should be noted that while the EU is Ukraine's first food export

destination in value terms, bulk shipping namely of maize, barley and sunflower oils are a top priority component for Ukrainian agricultural trade, and a big contributor to regional food security especially on MENA markets. The Russian occupation of parts of Ukraine, the destruction of important infrastructure for transport and storage and of seaports like Odessa and Mariupol, together with the temporary blockade of the Black Sea all the way to the Dardanelles massively impaired Ukrainian exports and led to substantial staple food price increases in Egypt and other big markets. The opening of this vital sea route in 2023 dispensed operators from looking for train and bus freight and small Danube River barges. But border procedures, exports to the EU and transit routes to Western European seaports remain difficult. Asian countries all the way to Indonesia failed to receive Ukrainian phosphate fertilisers. Ramadan 2022 with tripled sunflower oil prices remains in painful memory for fasting revellers in Egypt.

The Black Sea blockage was finally lifted in August 2023, and trade has regained pre-war levels. Yet, transaction and food insecurity remain. Several EU member states still express deep concerns against a full liberalisation for Ukraine's agrifood exports. Some had operated or threatened to impose blockades by way of unilateral measures reducing ATM facilitation against imports of certain feed and other staples. To get Council approval, the Commission had to find a compromise to support Ukraine's exports without such measures. A far cry from the EU-MERCOSUR treaty after its implementation! (But watch out for the small print with possible NTB.)

2.3 MERCOSUR – Ukraine: NO RTA!?

According to the Ministry of Economy of Ukraine's website, the development of Ukraine's trade relations with Argentina and Brazil was initiated after the Russian invasion. The priority was on the issue of restoration of international security, and on cooperation, among others, in the field of labour relations.

On 20 May 2024, a governmental delegation began its first working visit to Latin America with talks in Argentina on the revitalisation of the Joint Intergovernmental Ukrainian-Argentine Commission on Trade and Economic Cooperation, which had held its last meeting almost 18 years before.⁵ Expressions of interest confirmed the official view that this visit was "reaching a qualitatively new level."

⁵ Source: <https://me.gov.ua/News/Detail/0a70a65c-af30-4510-b0d6-a3613a8f714e?lang=en-GB&title=UkraineAndArgentinaToHoldAMeetingOfTheJointIntergovernmentalCommissionOnTradeAndEconomicCooperationForTheFirstTimeIn18-Years>

With Brazil, the intention to increase economic cooperation and trade was confirmed during a conference call on 26 April 2024 and a video meeting on 16 May 2024. “Sustained economic growth, even against the backdrop of the war against the Russian federation, as well as Ukraine’s status as an EU candidate country, opens up good prospects for foreign investors to enter European markets.”⁶

No news for Ukraine’s trade relations with Paraguay and Uruguay.

In the absence of a RTA, this means that Ukraine’s trade relations with all Mercosur countries are fully governed by the MFN/NT rules and tariffs of the WTO.

2.4 Other Players?

This is a dining table with an increasing food offer but not with proportionally increasing numbers of consumers.

While the partners to the EU Mercosur treaty must have done their homework to assess the legal implications for their agrifood industries, Ukraine and other third countries will have to see how market access rights will look from their side of the dining table. This WORKING PAPER has only fragments of such developments and possible changes in market shares. Just one country stands out here which is the EU’s biggest food export market in Latin America and which updated its Global Agreement with the EU just one month after the megaregional breakthrough in Buenos Aires: Mexico, the second biggest importer of EU agri-food products in Latin America (€2.3 bn in 2024).

The not innocuous question here is how the global dining table looks for all market participants: did anyone have, and take the time, to compare EU concessions to Mercosur and, for instance, to Mexico, before signing up to beef or ham or sugar or poultry TRQs?⁷ Everyone a winner?

⁶ Source: <https://me.gov.ua/News/Detail/fc249cc5-7ce0-4038-8c96-8f5ef9f7fd6f?lang=en-GB&title=UkraineAndBrazilPlanToCooperateToIncreaseTradeTurnoverBetweenTheCountries-YuliiaSvyrydenko>

⁷ EU agrifood concessions to Mexico for many sensitive products were limited by TRQs and progressive tariff reduction schedules. They included a Beef TRQ of 5’000 MT– Carcass Weight Equivalent after 5 years. More TRQs were established for Pork Hams, Poultry, Specialty Sugars, Other Sugars, Eggs, Honey, Maize starch, Tuna Preparations and Loins. This WP cannot measure up the impact of the concessions envisaged under the new MGA in January 2025.

3. EU Import Sensitivities and Export Gains

For the EC, both the new FTA with Mercosur and the present MA conditions for Ukrainian agrifood are the result of long and complex but successful negotiations. Both treaties enhance EU export opportunities. Concessions with a sizeable food import impact have been made only for products where EU production is insufficient to meet domestic consumption. The new competitors will improve European food security and not endanger EU farming. In case of unexpected necessities, safeguard measures remain possible. No CAP adjustments are required. EU sustainability standards enshrined in the treaties or resulting from Green Deal regulations (Deforestation, CBAM) will also apply to imports as and when domestic production is concerned.

This Section summarises the negotiation results as seen by the EC. How to face freer trade between food giants? Which reciprocal commitments on competition policy ensure Fair pricing practices and Consumer benefits? Here, we only look at the EU-Mercosur treaty (Exports, EU advantages - 3.1) and Ukraine (EU market share developments before and after Mercosur preferences - 3.2). Section 4 will then look at Third Party expectations, concerns, rights and obligations under WTO or RTA provisions.

On 3 September 2025, the EC proposed put forward its proposals to the Council for the signature and conclusion of the EMPA and the MGA. The Press Release outlines the different steps required for adoption of these treaties.⁸

Intra-EU debates (Council, Parliament, Member states) will not be addressed in this WORKING PAPER before the EC decides whether and how consultations and approvals are needed for a provisional

⁸ Press Release dated 3 September 2025: “The EMPA and the MGA require separate approval by the European Parliament and Member States before they each can enter into force. The Commission proposals for conclusion and signature include two parallel legal instruments for each agreement: the EU-Mercosur Partnership Agreement (EMPA) and the the EU-Mexico Modernised Global Agreement (MGA), subject to separate ratification by all Member States; and two Interim Trade Agreements (iTA), one for Mercosur and one for Mexico, covering only those parts of the EMPA and MGA that are of exclusive EU competence, to be adopted through the EU-only ratification process – that is, involving the European Parliament and the Council of the EU. The iTAs will expire when the EMPA and the MGA enter into force.” (available @ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1644)

implementation – in the same way as the EU-Canada FTA was handled (CETA). US President Trump’s ‘tariff day’ measures applied as of 1 August 2025, namely against the EU and Brazil, might increase the attractiveness of new RTAs but I refrain from any such speculations at this stage.

3.1 Mercosur – a huge EU supplier but also an interesting client

For many agrifood products, Mercosur is and will remain a dominant EU supplier, with market shares increasing at the expense of non-preferential competitors – rather than at the expense of domestic production.

Brazil remains the first agrifood import source for the EU. In 2022, 12% of total EU imports came from Brazil (EUR 20.2 billion).⁹ This represented an increase of 49% compared to 2021. The biggest increase in value terms was recorded for coffee, tea, coca and spices (+EUR 1.5 billion), cereals (+EUR 1.6 billion) and oilseeds and protein crops (+EUR 1.6 billion). While this was largely driven by the increase in global prices throughout 2022, trade has also been dynamic in volume terms. Most prominent was the increase in imported volumes of cereals (+144% year-to-year, mostly maize), vegetable oils (+87%) and sugar and iso-glucose (+78%).

Moreover, EU 2023 imports from Mercosur of cereals almost doubled to EUR 12.7 billion (4th agri-food category, after oilseeds and protein crops, fruits and nuts, and coffee and tea). However, in 2024 they decreased by EUR 388 million compared to 2023 (-3%) mainly due to reduced oilseeds prices and cereals volumes. Nevertheless, Brazil remained the first origin of EU imports, with EUR 14.4 billion between January and October 2024 (10% of EU imports), largely in soy and coffee. Cumulative imports of cereals had the largest reduction, with a decrease of EUR 1.8 billion compared to 2023 (-18%). This is primarily explained by reduced prices (-16%), while imported volumes decreased by 3%.

3.1.1 Future Mercosur exports to EU? “no big deal” (EC dixit)¹⁰

EU agrifood exports to Mercosur countries are expected to increase with the implementation of the treaty with Mercosur. This especially goes for

⁹ The UK ranked second, with 9% of EU imports in 2022. Ukraine has taken over the US in 2022 as the third import source of EU agri-food imports.

¹⁰ Main source: Directorate-General for Trade and Economic Security (2025 ???) Factsheet: EU-Mercosur partnership agreement - Opening opportunities for European farmers. On 15 July 2025 available at <https://policy.trade.ec.europa.eu/eu-trade->

processed food and specialties, especially for those protected by a geographical indication (GI). (3.1.2)

A careful reading of the agreed version of all market access concessions will be necessary to reach a solid scientific, economic and sustainability impact assessment of the new trading conditions between a large part of South America and Europe. Various licensing agreements, specific import regulations, and quota handling remain unpublished. Here, I must rely on the EC's pledge to protect European farmers under this agreement.

In fact, it appears that the EU will grant almost no additional and preferential access to its agri-food imports from Mercosur. The main protection tools are tariffs, quotas and safeguards:

- For sensitive products like beef, poultry or sugar, in particular, access to the EU market will be permanently limited through gradually implemented TRQs.
- A bilateral safeguard clause can be applied in case increased imports from Mercosur cause - or threaten to cause - serious injury to the relevant EU sectors. For the first time, this safeguard clause also covers IQTR imports.

Sensitive products cannot and will not enjoy unlimited duty-free access to Europe. Look at what always was called the 'eleventh hour concession ("where is the beef?"):

- **Beef:** Original Mercosur demands were for a TRQ of 400'000 tons. Now the agreement will allow 99'000 tonnes of Mercosur beef to enter the EU market with a preferential 7.5% duty, applicable to all four countries. 55% of the quota will consist of fresh or chilled meat and 45% of lower-value frozen meat. Moreover, the Commission points out that
 - o The overall volume represents only 1.6% of total European beef production and is less than half of the current imports from Mercosur (196'000 tonnes in 2023).
 - o Overall, the EU is a net exporter of beef, with €4.6 billion of total exports in 2023: almost double of total EU imports.
 - o No significant increase in Mercosur beef production is expected. Exports to the EU represent a tiny fraction of Mercosur's beef production. Total Mercosur production in 2023 was 15.5 million tonnes (of which: Brazil 11.2, Argentina 3.3, Uruguay 0.6,

Paraguay 0.5) The Mercosur agreement quota represents about 0.6% of Mercosur production.¹¹

- Poultry: The agreed poultry duty-free quota of 180,000 tonnes is just enough to cover for increasing EU consumption. This is lower than current imports from Mercosur (294,000 tonnes in 2023). This represents 1.4% of total EU consumption. The quota will be phased-in over five years. It is largely compensated by EU global exports, which are at 2.0 million tonnes (2023). EU poultry consumption is projected to increase every year by a similar amount as the new preferential quota.
- Sugar/Ethanol/Honey:
 - o The negotiated preferential sugar quota is lower than current imports from Mercosur. No new sugar quota will be created for Brazil which had been using a tariff quota allocated under the EU's WTO schedule (with an in-quota duty for its sugar exports to the EU). With the new agreement 180'000 tonnes of raw cane sugar for refining will be allowed into the EU duty-free under this existing quota. A new duty-free quota of 10'000 tonnes was agreed upon for Paraguay only. Speciality sugars are excluded from the agreement. The agreed amounts cover a volume accounting for 1.2% of EU sugar consumption (around 16 million tonnes).
 - o The ethanol duty reduction is to support EU job creation. Two quotas have been agreed. A duty-free quota of 450'000 tonnes will be opened for ethanol, to be used by the chemical industry. A quota of 200'000 tonnes, with an in-quota rate of one third of the full duty, will be opened for all other uses. This can be used for the fuel segment of the market, which represents by far the biggest chunk of EU ethanol consumption. Both ethanol quotas are to be phased in gradually over five years. Of the 6 million tonnes of ethanol consumed every year in Europe, 4 million are used for fuel.
 - o The honey quota to cover less than 10% of total EU consumption. The agreement will open a honey quota of 45'000 tonnes duty-free, phased-in over five years. Current EU imports from Mercosur are at 24'000 tonnes (2023). This fulfils EU demand for honey and ensures diversification of imports into the EU. The quota for Mercosur is roughly 10% of total EU consumption. The EU is a net importer of honey with a self-sufficiency rate of about 60%.

¹¹ The main export market for MERCOSUR beef exports is the US. SPS measures e.g. on foot-and-mouth disease regularly disrupt regional trade, sometimes with surprising solutions such as a side-deal in *US-Cotton*). Apparently unnoticed by EU negotiators, South Brazilian beef producers and US importers seem to handle consumer beef origin concerns with import regulations and innovative public-private verification of real origins and relationships along the FVC, including between breeders and slaughterhouse owners.

- Rice: The EU's rice self-sufficiency rate in 2023/24 was less than 50%. The agreement will allow 60'000 tonnes of Mercosur rice to enter the EU duty-free. This volume will be phased in over five years. This is less than the existing Mercosur imports of 211'000 tonnes (2023/24). It amounts to only 1.4% of EU rice consumption of 2.9 million tonnes (2023/24). In other words, the main rice exporters will hardly face increased competition from Mercosur and thus find little cause to complain at the WTO.
- Maize and sorghum will enjoy a duty-free quota of 1 million tonnes, phased-in over 6 years in equal instalments of 166'667 t.

3.1.2. High Hopes for EU Agri-food exports to Mercosur

A substantial number of concessions benefitting EU exports include intellectual property protection, sanitary and phytosanitary provisions and social and environmental standards. Here is only a summary description:

- Intellectual property (GI): The EU-Mercosur agreement will protect the EU's finest food and drink products from imitation. It is the biggest EU agreement ever regarding the protection of traditional EU food and drink products registered as geographical indications. It will protect some 350 EU food and drink products from imitation in Mercosur countries. Such protection helps make these products more distinct, which allows producers to strengthen their market positions in the Mercosur countries and to sell them for a premium price. Examples are Tiroler Speck (Austria), Fromage de Herve (Belgium), Münchener Bier (Germany), Comté (France), Prosciutto di Parma (Italy), Polska Wódka (Poland), Queijo S. Jorge (Portugal), Tokaji (Hungary), and Jabugo (Spain).
- SPS: The EU has very stringent sanitary and phytosanitary standards to protect human, animal and plant health. Any product sold in the EU must comply with standards for consumer protection, which do not change at all with this agreement: products imported from Mercosur under the agreement will have to respect them, too. It appears that there are no equivalence agreements dispensing Mercosur products certified safe in their countries from undergoing a second control for exports to Europe. With very few exceptions for specific products, for instance with New Zealand, the USA and Canada, general phytosanitary mutual recognition agreements (MRA) have only been concluded by the EC with Norway or Switzerland. Needless to say, that on-site inspections of slaughterhouses or cheese factories are costly and time-consuming.
- Social, environmental and human rights: Unsurprisingly, EU negotiators could not ignore the burning Amazon. But resource management and forced labour clauses in a trade agreement are

highly sensitive issue for Mercosur countries. Hence this agreement only refers to the EU's Deforestation Regulation applying to 7 products imported from the whole world. As of the end of 2025 only deforestation-free products will be allowed to enter the EU market, including Mercosur commodities such as soya beans, beef, palm oil, wood, cocoa, coffee, and rubber. This regulation should ensure that these preferential imports have not contributed to deforestation in Mercosur countries.

Now what about the impact on Ukraine? The EC argues that accession candidates have to respect EU standards and will thus not be disadvantaged by agrifood imports from Mercosur respecting these NTM and protections. My advice to Ukrainian exporters: don't wait and see – but ask for details and implementation procedures.

3.2 Ukraine – more or less exports to EU?

The AA and the ATMs opened EU doors to both Ukrainian commodities and certain specialities. Moreover, partly EU-subsidised agricultural investments in the Ukrainian maize and meat sector from Denmark or Germany provided a sizeable export push, considering the still incomplete land reform away from the former kolkhoz-style farm operation and sizes. This was perhaps an additional factor leading to the import sensitivities in small-sized Poland farms, feed producers in Hungary, and French and German farmers looking at the huge and fertile areas of Ukrainian farmlands. These concerns forced the European Commission to apply temporary and quantitative safeguards to certain Ukrainian imports – against a majority view of the European Council.

3.2.1 Ukraine's export growth worldwide

According to the IBRD's *World Integrated Trade Solution* (WITS), in 2022 Ukraine's food product exports totalled 2.5 billion USD, with over 16% going to Poland, approximately 14% to China, about 5% each to Romania, Moldova and Lithuania, and 54% to 144 other countries.¹² This widespread commodity export destination shows how important the multilateral and regional frameworks are for a good growth potential assessment.

Ukraine's export growth potential, regardless of future negotiated trade deals, is contingent on the outcome of the Russian aggression. Other factors are increasing world market prices, intra-EU developments like drought and climate change (especially for maize).

¹² Cf.

https://wits.worldbank.org/CountryProfile/en/Country/UKR/Year/2022/TradeFlow/Export/Partner/by-region/Product/16-24_FoodProd

However, the extent of the future Mercosur preferences in the EU remains unclear. A big question in this initial study is the impact on Ukraine’s agrifood exports during the phase-in of EU agreements with MERCOSUR, and its ATM and other agreements with UA. Here, too many imponderables prevent a sound estimate. However, when looking at individual products, we can assume that progressive tariff preferences ‘ahead of MERCOSUR’ as well as strict and independently monitored sustainability/NTM compliance by all Mercosur exporters would considerably facilitate UKRAINIAN exports – as long as EU/CAP and national sensitivities allow for gradual market access improvements.

Based on *Monitoring EU agri-food trade*, we can look, for example, at the EU’s maize and poultry imports:¹³

- In 2022, the EU imported 15 million t of cereals more than in 2021. This increase was led by maize imports to compensate the EU domestic drop in production. The increase came mostly from Ukraine (+107% in value terms, +4.6 million t) and Brazil (+245% in value terms, +4.5 million t).
- The most important increase for animal products was for poultry meat imports. All poultry meat preparations taken together increased from 146 thousand t in 2021 to 194 thousand t in 2022. This was an increase of EUR 341 million (+68% year-to-year). Imports of frozen meat also increased significantly (+43%) and reached EUR 450 million (+101%). Poultry salted meat also increased both in value and volume terms by 73% and 12%, respectively. Imports of frozen poultry meat increased mainly from Ukraine (+37 thousand t year-to-year, +111%). Frozen poultry meat imports also increased from Brazil.

Despite these uncertainties, in my view, and taking 2022 EU imports as a benchmark, Ukraine’s export growth potential - at present market access conditions and despite variations in WMP and trade volumes - remains tremendous, provided Mercosur is not given a ‘free pass’ in the guise of better MA and unenforced production standards. Caveat emptor!

3.2.2 Ukraine’s food exports before and after a Mercosur “freepass”

While Ukraine is queuing up for EU accession, it already imposes few restrictions on EU imports including post-kolchose FDI (mainly from Denmark, the Netherlands and Germany, sometimes with EC subsidies). Under AA-Article 29 the EC always aimed at ensuring a seamless transition

¹³ Source: EC (2024), *Monitoring EU agri-food trade*. EC, DG Agriculture and Rural Development, Brussels, June 2025. Website: https://agriculture.ec.europa.eu/international/agricultural-trade/trade-and-international-policy-analysis_en

to a new framework in which all trade arrangements are integrated into the renewed DCFTA regime. Thus, the various agreements and autonomous EU measures (DCFTA, AA) and the Solidarity Lanes, opened many markets on both sides without even a transition period or ready-to-use safeguards. This rather sudden (quasi) free trade regime may have jeopardised certain unprotected and unsubsidised infant industries such as Ukraine's pharmaceutical producers. Ukraine's agriculture, however, benefitted from secured MA conditions as long as no ATM or unilateral MS safeguards constrained its exports.

Ukraine's main food exports to the EU by value are cereals (21.9% of total exports), animal or vegetable fats and oils (9.2%), ores, slag and ash (8.3%), oil seeds (8.2%), and iron and steel (7.9%).

Ukraine was the EU's third-biggest source of agrifood imports by value in 2023. In October 2024, Ukraine exports had a value of EUR 10.9 billion (8% of EU imports), mostly in cereals, oilseeds and vegetable oils. In 2024, imports from Ukraine rose by EUR 1.3 billion compared (+13%), mainly due to higher vegetable oils and oilseeds imports.

Export restrictions allegedly for environmental management have a hard life in EU treaties. The Ukrainian export ban of all unprocessed wood was found incompatible with the AA. In this first ever EU trade dispute under a bilateral agreement the complainant had argued that this export ban was a protectionist trade restriction without legitimate policy objectives. According to the ruling, the export ban was nevertheless upheld under plant life protection exceptions but limited to only ten specific wood species.¹⁴

Is this different for food? Has Ukraine turned into a model food producer and trader as defined in Brussels?

And – most importantly: will Mercosur exporters get a better deal during and after full implementation of the treaty, for those products where Ukraine is constrained by EU Member states?

4. A well-balanced trade agreement?

4.1 EU farmer security and practice

EU agri-food companies exporting to Mercosur will benefit from faster, simpler, and more predictable export procedures. The same requirements will apply to all EU Member States in all Mercosur countries, with clear and transparent inspection and audit rules, and fewer restrictions due to

¹⁴ Cf. *Restrictions applied by Ukraine on exports of certain wood products to the European Union*. Final Report of the Arbitration Panel. Lugano (Switzerland), 11 December 2020

animal health issues. In the past, all EU exports could be banned in cases of diseases in certain European regions. The agreement will allow non-affected EU zones to export despite a disease present in some areas within the EU ('regionalisation' as in Article 6 of the SPS-Agreement).

Finally, a series of 'unfinished business' was laid on the table on 3 September 2025 when the EC proposed EMPA and MGA for adoption by Council. The Press Release added three main comments to the EC's earlier self-assessment of these treaties:

- The deal provides full and comprehensive protection for all EU sensitivities in the agricultural sector. First, it limits preferential agri-food imports from Mercosur to a fraction of EU production (for example, 1.5% for beef and 1.3% for poultry). Second, it establishes robust safeguards protecting sensitive European products against any harmful surge in imports from Mercosur. In this sense, the Commission proposes to supplement the agreement with a legal act that operationalises the bilateral safeguards chapter of the EMPA. This act, to be adopted by the European Parliament and the Council, aims in particular at protecting EU's crucial and most sensitive agricultural sectors, recognising the concerns of European farmers. The Commission will address the issue with Mercosur countries with a view to ensuring smooth implementation of the Agreement.
- The Commission will move forward with a number of accompanying initiatives, including steps towards potential alignment of production standards on pesticides and animal welfare applicable to imported products. In line with the *Vision for Agriculture and Food*, the Commission will soon launch impact assessments on these issues.
- The EMPA does not modify any EU sanitary and phytosanitary (SPS) import requirements. Our food health and safety standards will continue to apply to all products on the EU market – whether produced here or imported. In line with the ambition set out in the *Vision for Agriculture and Food*, the Commission is also stepping up SPS import controls by increasing the number of audits and checks in third countries, and by strengthening controls on the ground.¹⁵

An immediate this time positive reaction came from France. Sophie Primas, the Government's Spokesperson, noted the 'legal act' promised by the EC, allowing individual member states to temporarily activate safeguard clauses.¹⁶

¹⁵ Source: Presse Release dated 3 September 2025. (available @ https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1644) (emphasis added)

¹⁶ Cf. Les clauses de sauvegarde « analysées » par Paris. *in* 'Accord avec le Mercosur : la Commission européenne valide le texte, encore soumis à l'approbation des Vingt-Sept' (Le Monde with AFP dated 3 September 2025)

4.2 Can Ukrainian producers keep up with EU and MERCOSUR?

Through the lens of an outside observer, the history of both negotiations shows no traces of impact studies taking into account the phase-in implementation of trade and investment preferences. For instance, the type of safeguard clauses potentially protecting EU farmers in each agreement is not very clear. Moreover, Ukraine's market access guarantees and investment incentives may be impaired by what used to be called 'voluntary export restraints' – not to mention the problems created by the Russian invasion for the 'from farm to fork' policy. The arrival of a real mega-competitor on the EU market represents a big problem for Ukraine's agricultural development – and a possible market foreclosure in case the phase-in of the EU concessions to MERCOSUR are more advantageous at some point in time.

Section 5 tries to sum up these problems, before detailing the relevant WTO rules in Section 6. The conclusions in Section 7 provide a partial answer to the question whether and how to ensure 'equal opportunities' and 'adequate protection' at all times and for all.

5. Any problems? Complaints? WTO issues

According to the European Commission, the new treaty with MERCOSUR is a full success story for European farmers benefitting from important new export opportunities. Important concessions were only made for products like chicken meat and rice, where domestic production is insufficient.

My own assessment shares this somewhat self-congratulatory appraisal. The result of a decades-old negotiation is a carefully crafted FTA. For sensitive products like beef, it goes very little beyond the current market access commitments and quantities. For Intellectual Property/GI issues, the EC seems to have followed the CETA template by adding different national qualifiers for sensitivities such as ham.

Many European farm interests disagree with the EC. Their impact will matter for the ratification process, before or after the kick-off, but they cannot be discussed here.

At any rate, in a very dynamic field even relatively small preferences can draw the attention of competitors big and small, and of certain food value chain participants including vested interests in Europe. WTO membership allows raising concerns in respect of notified treaties, in different committees, and in cooperation with other suppliers enjoying 'substantial' or 'initial' negotiating rights dating back to GATT times.

Countries having signed an RTA with the EU thus need to re-evaluate the market value of their preferential MA to the EU. In the American region this is especially the case for all Andean countries, but also for Canada (CETA), and for Mexico's recently updated Global Agreement (MGA). Even the Caribbean countries may want to look at a relative loss of their duty-free MA rights under their EPA with the EU. All countries without RTAs face the same dilemma for their EU MFN exports having to compete with new concessions granted to Mercosur.

In this Working Paper I focus on the EU quotas offered to Mercosur possibly attracting criticism from third parties fearing a preference erosion or a loss of their present import shares on the huge EU market. Ukraine, for the reasons outlined above, stands out here. But potentially all third countries are concerned as well. For reasons of coherence, even EU concessions granted to third countries might actually require a review – by Mercosur.¹⁷

The new treaty partners are thus well-advised to bear the relevant provisions in mind for the (re-)negotiation of the small print in their treaties.

6. A Silver Bullet?

In this section I look at the possibility of MA impairments conflicting with the two most important WTO commitments: MFN and/or NT. The question here is not only whether the GATT 1994 exceptions allow EU concessions in the Mercosur treaty. As usual, small print matters both for TRQ and for their management by the EU and by Mercosur.

The interest of third countries, generally speaking, will depend on their present relation with the EU. Given the size of the new preferential trading partners, all economic interests will require a re-evaluation.

Trade agreements providing preferential treatment, be it with low or zero tariffs, are first of all an exception to the MFN rule laid down in GATT-Article I, and thus subject to tight WTO scrutiny. Special attention will be paid to the increasing number of preferential quotas reserved for RTA partners. At first sight only, these discriminatory provisions escape the MFN obligation, provided they cover 'substantially all the trade' (GATT-Article XXIV).

Moreover, looking at a new world of tariffs will not provide a clear answer to these economic questions. New RTA tackle (some) NTB with different

¹⁷ MERCOSUR countries had complained against certain sectorial preferences granted by the EU to the Caricom countries under the EU-Central America Association Agreement, arguing a violation of the MFN clause not covered by GATT-Article XXIV. This is not a place for SUCH details. At any rate, there was no formal WTO complaint at the time.

WTO rules. Preferential treaties also imply discriminatory treatment of 'like' products and thus violate the most basic National Treatment obligation (NT) laid down in GATT-Article III. Again, these discriminatory provisions may escape the NT obligation under the 'substantially all the trade' condition in GATT-Article XXIV.

Will this escape route also work for the EU-Mercosur treaty? Keeping in mind that a bunch of different EU preferences for just one yellow fruit and for only the ACP and a few other suppliers broke the rule of 'substantially all the trade'?

Before looking at the concessions in the future EU-Mercosur treaty, a quick recall of relevant WTO rules might thus be in order.

6.1 GATT-Article XIII...¹⁸

6.1.1 ...for bananas...¹⁹

Bananas marred RTAs before WTO rules kicked in. But at the 4th Ministerial Conference in Doha (2001) the EU negotiated a 'waiver'

¹⁸ GATT-Article XIII: Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, **unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.**

2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product **approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions**, and to this end shall observe the following provisions:

(a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;

(b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;

(c) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;

(d) In cases in which a quota is allocated among supplying countries, the contracting party applying the restrictions may seek agreement with respect to the **allocation of shares in the quota with all other contracting parties** having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a **substantial interest** in supplying the product shares based upon the proportions, supplied by such contracting parties **during a previous representative period, of the total quantity or value of imports of the product**, due account being taken of any special factors which may have affected or may be affecting the trade in the product. **No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value** which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3. (a) In cases in which import licences are issued in connection with import restrictions, the

contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, **all relevant information** concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; Provided that there shall be no obligation to supply information as to the names of importing or supplying enterprises. [...]

(c) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall **promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated**, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of Article XI, the selection of a **representative period** for any

dispensing it from the ‘substantially all the trade’ rule for 5 years. This freedom to allocate import quotas did not deter Ecuador and 4 other complainants to launch a broad attack against the EU’s ‘banana regime’ consisting of over 1’000 different measures.

Going through a long story straight to the interesting point, the panel in *EC -Bananas III* found ‘that the European Communities’ current banana import regime, including its preferential ACP tariff quota, is also inconsistent with Article XIII:2(d) of the GATT 1994.’

The appeal ruling confirmed this decision and added that ‘Article XIII:2(d) provides specific rules for the allocation of tariff quotas among supplying countries, but these rules pertain only to the allocation of tariff quota shares to Members “having a substantial interest in supplying the product concerned”. Article XIII:2(d) does not provide any specific rules for the allocation of tariff quota shares to Members not having a substantial interest. Nevertheless, allocation to Members not having a substantial interest must be subject to the basic principle of non-discrimination. When this principle of non-discrimination is applied to the allocation of tariff quota shares to Members not having a substantial interest, it is clear that a Member cannot, whether by agreement or by assignment, allocate tariff quota shares to some Members not having a substantial interest while not allocating shares to other Members who likewise do not have a substantial interest. To do so is clearly inconsistent with the requirement in Article XIII:1 that a Member cannot restrict the importation of any product from another Member unless the importation of the like product from all third countries is “similarly” restricted.’

6.1.2 ...for EU producers...

This brings us back to the preferential TRQs offered to Mercosur: in case of a complaint, these could be found WTO compliant only for ‘current access’ quantities (and subject to the same duties). Moreover, TRQ handling must be ‘similar’ to that of concessions granted MFN or to other countries based on an RTA or with a unilateral GSP.

product and the appraisal of any special factors* affecting the trade in the product shall be made initially by the contracting party applying the restriction; [...]

5. The provisions of this Article shall apply to **any tariff quota instituted or maintained by any contracting party**, and, in so far as applicable, the principles of this Article shall also extend to export restrictions. (emphasis added)

¹⁹ *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27

Article XIII could turn out to be a convenient argument for TRQ limitations benefitting both preferential competitors like Ukraine and EU producers.

6.1.3 ...for third countries...

Non-preferential competitors for products benefitting from the EU-Mercosur treaty will want to ensure that their current access rights negotiated in the UR are not impaired. Again: homework needed, and lenses for details like MFN vs preferential quota allocation methods.

Interestingly, the 'current access' concessions do cover beef, but not poultry and (probably) maize. Does this harm Thailand's interests for frozen chicken, or those of the USA and Canada for feed maize?

6.1.4 ...and for Ukraine

And what about Ukraine's effective MA to the EU, for all concessions generously offered to Mercosur? Difficult to say across the board. Homework needed! Especially since all relevant trade regulations must be looked at in detail to discover possible discriminatory treatment, including NTM concessions such as MRA for standards, and SPS provisions in the new treaty!

6.2 Procedures²⁰

Article XIII GATT provides useful guidelines for TRQ concessions. It can also be seen as protecting more or less competitive domestic food producers against overly generous concessions made by Trade Ministers eager to conclude agreements ensuring more exports of, say, cars and pharmaceutical products.

But we also need to look at the NTM side of RTA being traded between countries with different standards. As already made clear in *EC -Bananas III*, the proof of the pudding is often called Procedures! And eager history students might find interesting the fact that, for banana shipping services, this case loved by many trade experts also issued the first ever GATS ruling (GATS-Article XXVIII(f)).

²⁰ Section 6 focuses on GATT-Article XIII. Another important WTO agreement is the Agreement on Import Licensing Procedures. Somewhat surprisingly underused in consultations, disputes, and TPR Reports. But in an increasingly procedural world of a variety of TRQ management possibilities available to importers, the distinction between *automatic licenses* ("sans frais ni délais") and the principles applying to all other licenses retains a useful value for reviews, queries and complaints.

Here, for brevity's sake, just a few pointers of possible interest for third country competitors – actually including GSP beneficiaries – claiming MA impairments resulting from RTAs:

- What about MRAs, for instance reducing slaughterhouse inspections or recognising organic production standards as being 'equivalent'?
- The same goes for special provisions like specific production standards or rules of origin, mutual recognition agreements or licensing and monitoring procedures which third countries perceive as discriminatory.

Silver bullets against discriminatory NTMs are not easy to find. Nonetheless, GATT Article III does not only prohibit tariff-based discrimination of all imports. RTA-provided preferences limited to certain origins may also be seen as incentives for preferential imports, thereby circumventing the prohibition of 'internal taxes or other internal charges' and of 'laws, regulations and requirements' under Articles III:2 and III:4. Such trade facilitation measures would then have to be examined like those listed in At.III:1 in the field of 'internal sale, offering for sale, purchase, transportation, distribution or use of products.' As for NTM and NTB provisions laid down in RTAs, it is worth noting that SPS and TBT Agreements do not provide the same route for negotiating MRAs.

At the commemoration of the 100th meeting of the Committee on Agriculture (15-16 March 2022) most former chairpersons vividly remembered the contribution made by COA to a proper reading of the legal conditions underlying TRQ allocations. While disputes in the DSB provided a few *ad casum* rulings, my own COA participation as a Swiss delegate and as a COA Chair allows me to confirm the capital importance of this issue basically throughout the COA's deliberations.

More details cannot be provided in this Working Paper. The same goes for a legal assessment of the 'non-trade concerns' in those two agreements.

7. Conclusions

Trade and investment liberalisation in the WTO has come to a standstill – or is in reverse gear – without the security hitherto offered by enforceable trade dispute rulings. Despite its existential crisis, the WTO still represents a valid guideline against protectionism, and the only legal basis ensuring equal levels of competition for competitive suppliers without RTA for their trade relations. New regional trade agreements (RTA) with "Realpolitik" agricultural safeguard clauses and provisions shielding, say, industrial

policies, government procurement or 'buy local' exemptions, or responding to climate or social concerns fill the multilateral gap - partly. Pragmatic economists rejoice. Merits or demerits of such RTA rules are not analysed here. Nor is WTO compatibility. WTO rights remain untouched and are likely to prevail in case of disputes impairing market access rights of third countries.

This working paper focuses on the tariff-rate quotas (TRQ) agreed in this and increasingly used in many other RTA.

For geopolitical reasons the megaregional EU-Mercosur Treaty is likely to crash the doors of trade sceptics. It promises equal treatment of imports with progressively increasing production requirements in Europe. The new RTA grants more EU export opportunities for industrial goods and services in a huge but hitherto difficult Latin American market. For agrifood trade, this promise is combined with initially modest import quotas at low or zero tariffs, not substantially exceeding or even lower than 'current access' imports. Pragmatic farmers will agree, hoping for some more exports, and a better protection of their worldwide known specialities.

Limited imports from Mercosur (by TRQ or unilateral EU safeguards) will also benefit the rapidly evolving Ukrainian food imports arriving on the EU market secured by different treaties and unilateral preferences (DCFTA, AT, PAP). But, during the long EU accession process, these preferences are limited in time and scope, and by the Russian aggression – and by the possibility of renewed EU trade restrictive measures benefitting EU competitors.

Could Mercosur preferences bypass Ukrainian market access rights at any point in time?

Will EU producers have to face competition increases in a "race to the bottom" of freer trade?

Could limited TRQs be a silver bullet solving this conundrum – protected by GATT-Article XXIV from third party discrimination complaints?

TRQ quantities exceeding effective imports over a representative ('current access') period may face complaints by third parties. The same goes for preferential NTM, MRA, and other provisions protecting Mercosur exporters. Even procedural facilities and fast track import guarantees can become objects of queries in various WTO bodies, RTAs and other international organisations – or conflict with promises made in EPA and

under the GSP regulations. The 'Silver bullet' designed in this Working Paper follows GATT-Article XIII which protects current access preferences. For non-tariff preferences other WTO provisions may preserve autonomous policy space even when laid down in a RTA. The still prevalent non-discrimination mantra laid down in GATT-Article III limits policy freedom signed away in a megaregional RTA for 'like products.' But who knows? A time may yet come when product 'likeness' will be redefined for higher societal concerns like climate change mitigation. Hopefully, before the Amazon burns down while orthodox trade lawyers fiddle 'mutual supportiveness' on the roofs in Geneva and in the megaregional capitals.

As for Ukraine – and this will be my last word for now – a lot of homework is required for both negotiators, regulators and operators. Goodwill missions to Brasilia and Buenos Aires are not enough. The bottom line suggested here is to reach agreement with the EC that these food giants should not impair in any way Ukraine's MA rights ability to trade– as long as the war with Russia distorts fair competition. Ukraine's EU accession must not be impaired by trade ouvertures to overseas competitors.