



Department  
for Business  
Innovation & Skills

*Review of the  
Balance of Competences*

**REVIEW OF THE BALANCE OF  
COMPETENCES BETWEEN THE  
UNITED KINGDOM AND THE  
EUROPEAN UNION**

Trade and Investment

MAY 2013

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# CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

Trade and Investment Report

*Closing date: 6<sup>th</sup> August 2013*

## Introduction

1. The Foreign Secretary launched the Balance of Competence Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It will not be tasked with producing specific recommendations and will not prejudge future policy or look at alternative models for Britain's overall relationship with the EU. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges.
2. The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review is led by Government but will also involve non-governmental experts, organisations and other individuals who wish to feed in their views. Foreign governments, including our EU partners and the EU institutions, are also being invited to contribute. The process will be comprehensive, evidence-based and analytical. The progress of the review will be transparent, including in respect of the contributions submitted to it.

## Scope of report

3. This report covers extra-EU trade and investment, i.e. trade between the EU and third countries. The Internal Market: Free Movement of Goods report (running in parallel with this report) considers **intra**-EU trade in goods within the internal market. It also considers a number of operational matters relevant to the implementation of trade and investment policy, in particular the operation of customs at the extra-EU border.

## What is competence?

4. For the purposes of this review, we are using a broad definition of competence. Put simply, competence in this context is about everything deriving from EU law that affects what happens in the UK. That means examining all the areas where the Treaties give the EU competence to act, including the provisions giving the EU institutions the power

to legislate, to adopt non-legislative acts, or to take any other sort of action. But it also means examining areas where the Treaties apply directly to the Member States, without needing any further action by the EU institutions.

5. The EU's competences (i.e. its powers) are set out in the EU Treaties. These provide the basis for any actions the EU institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties. Where the Treaties do not confer competences on the EU, they remain with the Member States.
6. There are different types of competence, notably those known as "exclusive", "shared" or "supporting" competence. Only the EU can act in areas where it has exclusive competence, such as the customs union and common commercial policy. In those areas Member States may not act independently. In areas of shared competence, either the EU or the Member States may act, but once the EU has acted it "occupies the field" and Member States cannot act independently in those areas. This means that the border between EU and national competence can and does move, according to the extent of EU legislation. In areas of supporting competence, such as culture, tourism and education, both the EU and the Member States may act, but action by the EU does not prevent the Member States from taking action of their own.
7. The EU must act in accordance with fundamental rights as set out in the Charter of Fundamental Rights (such as freedom of expression and non-discrimination) and the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member States to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU treaties.

## **A brief history of the EU Treaties**

8. The Treaty on the European Economic Community (EEC) was signed in Rome on 25 March 1957 and entered into force on 1 January 1958. The EEC Treaty had a number of economic objectives, including establishing a European common market. Since 1957 a series of treaties has extended the objectives of what is now the European Union beyond the economic sphere. The amending treaties (with the dates on which they came into force) are: the Single European Act (1 July 1987), which provided for the completion of the Internal Market by 1992; the Treaty on European Union – the Maastricht Treaty (1 November 1993), which covered matters such as justice and home affairs, foreign and security policy, and economic and monetary union; and the Treaty of Amsterdam (1 May 1999), the Treaty of Nice (1 February 2003) and the Treaty of Lisbon (1 December 2009), which made a number of changes to the institutional structure of the EU.
9. Following these changes, there are now two main treaties which together set out the competences of the European Union:
  - The Treaty on European Union (TEU);
  - The Treaty on the Functioning of the European Union (TFEU).

## EU competences in trade and investment policy

10. Trade policy has been a core competence of the EU since its inception. EU competence over international trade followed as a logical consequence of the formation of a customs union amongst the Member States. The EU has exercised this competence through its Common Commercial Policy (CCP), under which the EU, as a bloc, defines its bilateral and multilateral trade relations with third countries, including by means of a common customs tariff and common import and export regimes. Successive treaty revisions have broadened the scope of the CCP from a common customs tariff, and a common import and export regime for goods, to include areas such as trade in services, Intellectual Property Rights (IPR), trade defence and investment. Article 3(1) of the TFEU confirms that the EU has exclusive external competence over the CCP, while Article 207 of the TFEU outlines its scope.
11. Under the Treaty of Lisbon, which amended the treaties setting out the competences of the EU (the TEU and TFEU), the CCP covers most areas of international trade and investment policy. This means that only the EU, and not individual Member States, can legislate and conclude international agreements on most trade and investment matters. It is, indeed, illegal under EU law for the UK to enter into its own international agreements on these matters. The EU's competence also allows it to represent the UK and other Member States in most negotiations conducted within the World Trade Organisation (WTO) framework. However, there are still areas typically covered by international trade and investment agreements which the UK believes to fall within Member State competence, considering them either to be areas of shared competence in which the EU has not yet exercised competence, or areas of exclusive Member State competence. These include portfolio investment, criminal sanctions in relation to enforcement of intellectual property rights, and maritime transport. The UK's position on competence in some of these areas is contested by the Commission.
12. Following the entry into force of the Treaty of Lisbon, Mode 4 Services (the temporary movement of services professionals) is now an area of exclusive EU competence. Nonetheless, in the UK's view, Mode 4 provisions within trade agreements fall within the scope of the UK's Justice and Home Affairs (JHA) Opt-in Protocol. This is, firstly, because they concern immigration and as such we consider that such provisions are pursuant to Title V of the TFEU (the JHA chapter). Secondly, in the UK's view Article 207(6) of the TFEU makes it clear that the Union's competence in relation to the CCP "*shall not affect the delimitation of competences between the Union and the Member States*". As the EU only has competence to bind the UK as regards Title V matters where the UK exercises its Title V opt-in, the UK's view is that the effect of Article 207(6) is that the EU cannot bind the UK in an international agreement containing commitments in Mode 4 services unless the UK opts in to those provisions.
13. As well as the changes in the division of competence outlined above, the Treaty of Lisbon brought about some institutional changes which have an impact on the CCP. The most significant of these is the increased role of the European Parliament (EP) in trade and investment policy. Trade and investment legislation and international trade and investment agreements can now only be implemented with the agreement of the EP. The EP does not have a formal role in determining the mandate for negotiations.

See Figure 4 for an outline of the EU's negotiating process for international trade and investment agreements.

## Trade and investment promotion

14. In contrast to trade policy, the promotion of trade, through the direct support for businesses in their export and import activities, and investment, for example by supporting foreign investors who wish to invest in EU Member States, remains a matter of Member State competence. In the UK, this activity is undertaken predominantly by UK Trade and Investment. In trade and investment promotion, unlike in trade and investment policy, Member States are, in effect, in competition with each other to promote their exports in third markets and attract investment from them. However, the Commission has carried out its own trade promotion activities for several years, including through the maintenance of trade facilitation offices in selected countries, and has recently been increasingly keen to initiate further trade promotion activities. This has included Commission-led trade support services for European businesses in non-European markets; and trade missions to third countries under its 'Missions for Growth' initiative<sup>1</sup>.

## The importance of trade and investment

15. Trade and investment are central to both the UK and EU agenda to create sustainable economic growth and jobs. In order to maximise the benefits of trade and investment, the UK promotes free and fair trade and open markets, to enable businesses to be well connected to the main sources and regions of global growth. This agenda is largely delivered through the EU. It is estimated that an ambitious EU trade agenda could lead in the medium term to an overall increase of 2% in growth and to the creation of two million jobs<sup>2</sup>.

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<sup>1</sup> [http://ec.europa.eu/enterprise/initiatives/mission-growth/missions-for-growth/index\\_en.htm](http://ec.europa.eu/enterprise/initiatives/mission-growth/missions-for-growth/index_en.htm)

<sup>2</sup> This takes into account both the direct impact of FTAs and the additional productivity gains which they could generate. Source: European Commission, July 2012  
[http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc\\_149828.pdf](http://trade.ec.europa.eu/doclib/docs/2012/july/tradoc_149828.pdf)

Figure 1: EU and UK trade and investment statistics in 2011

	EU	UK
Total goods and services exports to countries outside the EU	€2,163bn	€309bn
Top three goods exports	<ol style="list-style-type: none"> <li>1. Nuclear reactors, boilers, machinery and mechanical appliances (€285bn)</li> <li>2. Vehicles other than railway or tramway rolling stock (€161bn)</li> <li>3. Electrical machinery (€141bn)</li> </ol>	<ol style="list-style-type: none"> <li>1. Natural or cultured pearls, precious or semi-precious stones and precious metals (€34bn)</li> <li>2. Nuclear reactors, boilers, machinery and mechanical appliances (€29bn)</li> <li>3. Vehicles other than railway or tramway rolling stock (€17bn)</li> </ol>
Total goods and services imports from countries outside the EU	€2,207bn	€313bn
Top three goods imports	<ol style="list-style-type: none"> <li>1. Mineral fuels, mineral oils and products of their distillation (€492bn)</li> <li>2. Electrical machinery (€178bn)</li> <li>3. Nuclear reactors, boilers, machinery and mechanical appliances (€175bn)</li> </ol>	<ol style="list-style-type: none"> <li>1. Mineral fuels, mineral oils and products of their distillation (€51bn)</li> <li>2. Natural or cultured pearls, precious or semi-precious stones and precious metals (€38bn)</li> <li>3. Nuclear reactors, boilers, machinery and mechanical appliances (€31bn)</li> </ol>
Top three trading partners for goods (exports and imports)	<ol style="list-style-type: none"> <li>1. US (€455bn)</li> <li>2. China (€430bn)</li> <li>3. Russia (€308bn)</li> </ol>	<ol style="list-style-type: none"> <li>1. US (€81bn)</li> <li>2. China (€49bn)</li> <li>3. Switzerland (€32bn)</li> </ol>
Stock of outward and inward Foreign Direct Investment in / from countries outside the EU	Outward: €4,983bn Inward: €3,807bn	Outward: €678bn Inward: €480bn

16. The EU is the largest single market in the world, and is the world's largest importer and exporter of both manufactured goods and services. In 2011 EU trade accounted for almost 17% of world trade in goods and services (excluding intra-EU trade), significantly greater than the US (13.5%) or China (11.5%)<sup>3</sup>. The EU is the top trading partner for 80 countries worldwide. The EU also has the largest stocks of foreign direct investment (FDI) abroad and is the world's largest host of FDI.

<sup>3</sup> BIS estimate based on WTO data.

# The EU as an actor in trade and investment policy

17. The EU's size and open-market approach to trade have allowed it to be a leading actor in pushing forward trade and investment liberalisation, both in multilateral fora and its bilateral relations. Below are set out some of the key areas where the EU acts on trade and investment policy.

## Trade negotiations and the WTO

18. The cornerstone of the EU's approach to trade policy is the negotiation and conclusion of trade agreements. These agreements can be negotiated both bilaterally (with individual countries or regional organisations) and multilaterally (with all WTO members). More rarely, they can also be negotiated plurilaterally (with a group of WTO members). The EU and its Member States are all WTO members in their own right but, in practice, within the WTO the European Commission speaks on behalf of both the EU and Member States because the matters with which the WTO deals principally fall under Article 207 of the TFEU.

19. Trade agreements provide a legal framework which aims to support trade between countries. Most fundamentally, signatories agree to reduce or eliminate customs duties on goods traded between them, making trade cheaper. Trade agreements can also make trade easier and faster, for example by facilitating goods' transit through customs by agreeing common rules between the partners, such as by agreeing common technical or safety standards for goods which avoid the need for double testing. More widely, trade agreements can also address issues related to the wider trade and investment policy environment in the partner countries, for example areas which affect trade and investment such as intellectual property rights and competition rules.

20. The EU has concluded, is negotiating, or is planning to negotiate several different types of bilateral trade agreements with a range of international partners:

- (i) Free Trade Agreements (FTAs) are ambitious agreements tackling tariffs and wider non-tariff barriers to trade and investment;
- (ii) Economic Partnership Agreements (EPAs) are development-friendly trade agreements between the EU and African, Caribbean and Pacific (ACP) countries;
- (iii) Association Agreements or Partnership and Cooperation Agreements are wider political agreements which may contain preferential or non-preferential trade and investment elements.



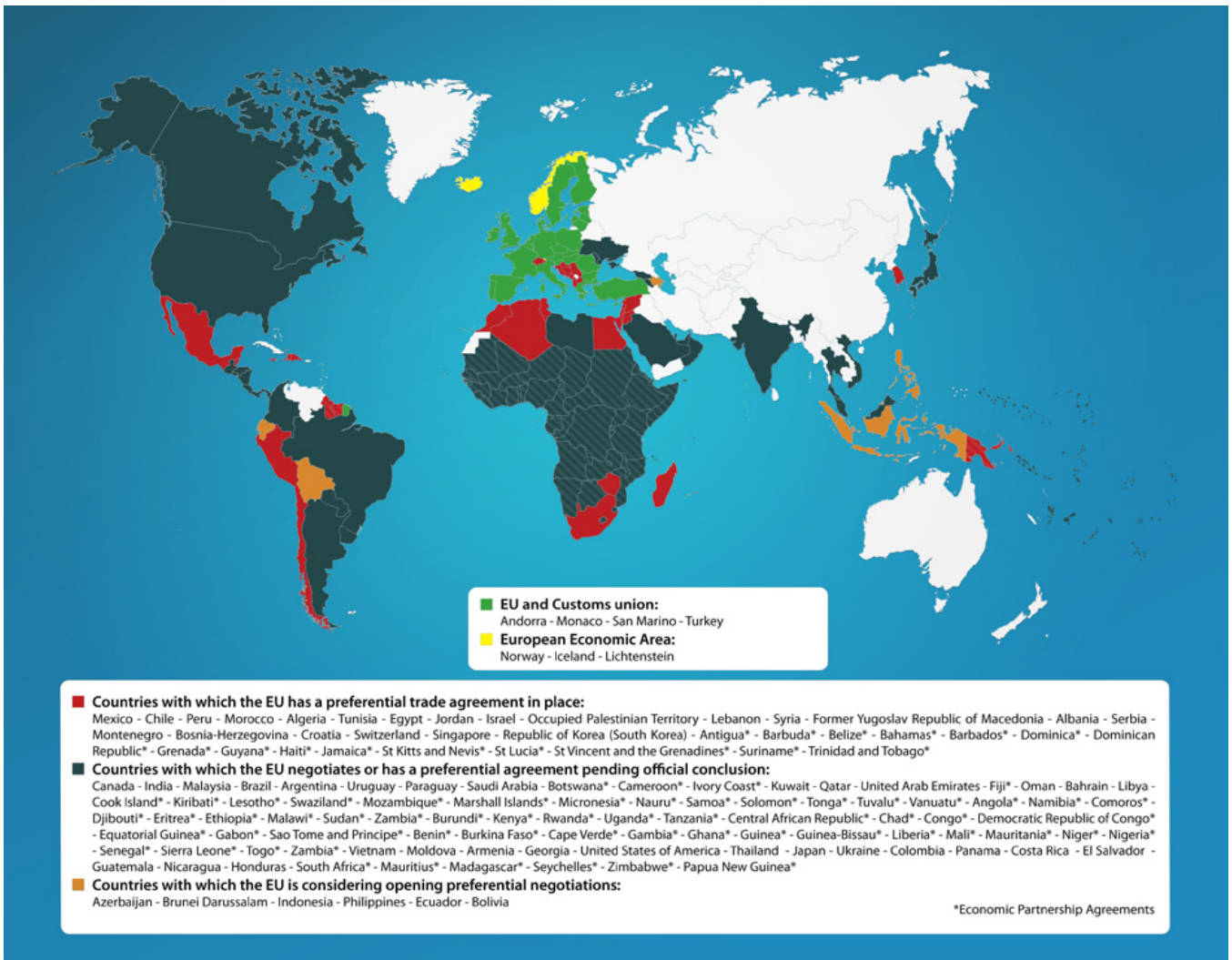


Figure 2: EU trade agreements<sup>4</sup>

21. Trade agreements negotiated by the EU tend to be ambitious and comprehensive. The most comprehensive cover a wider range of trade-related issues, typically including:

- maximum possible tariff elimination for goods
- increased market access, which can include addressing non-tariff and behind-the-border barriers, regulations and standards
- development, labour, sustainability and environment issues
- customs and trade facilitation
- commercial aspects of Intellectual Property Rights
- removing barriers to trade in trade in services (in all services sectors and modes of supply)

Figure 3 summarises the content of the most ambitious EU FTA currently in force: the EU-South Korea FTA.

<sup>4</sup> Source: DG Trade, European Commission  
[http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\\_150129.pdf](http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf)

*Figure 3: an example of a recent EU FTA – the EU-South Korea FTA*

The **EU-South Korea FTA** entered into force in July 2011. It is the most comprehensive EU FTA to date. The below is a summary of its contents.

**Chapter 1 on Objectives and General Definitions** defines the objectives of the agreement and provides definitions to be used throughout the text.

**Chapter 2 on National Treatment and Market Access for Goods** establishes the objective of removing both customs duties and regulatory obstacles called Non-Tariff Barriers (NTBs) on trade in goods. The provisions allow for a transitional period to help domestic producers adapt.

**Chapter 3 on Trade Remedies** deals with the use of trade defence instruments (see paragraphs 34-35 below), reaffirming the rights and obligations set out in the WTO, but stressing the need to limit the use of these instruments to when it is necessary.

**Chapter 4 on Technical Barriers to Trade** aims to reduce obstacles to trade arising from technical regulations, standards, conformity assessment procedures and similar requirements.

**Chapter 5 on Sanitary and Phytosanitary Measures** aims to facilitate trade in animals, plants and animal and plant products, while maintaining a high level of human, animal and plant health.

**Chapter 6 on Customs and Trade Facilitation** addresses cooperation in customs, for example by pursuing harmonisation of documentation and data requirements.

**Chapter 7 on Trade in Services, Establishment and E-Commerce** commits the parties to the agreement to liberalise service supply, including investment in services sectors (e.g. legal services, financial services, telecommunications and construction services), and investment in non-services sectors (e.g. manufacturing), making it easier for EU suppliers and investors to supply services and invest in South Korea and their South Korean counterparts to do likewise in the EU.

**Chapter 8 on Payments and Capital Movements** includes provisions to ensure the free movement of capital, which also allow the parties to apply measures to protect the stability of their financial systems.

**Chapter 9 on Government Procurement** commits the parties to open up procurement opportunities beyond their WTO 'Government Procurement Agreement' commitments, in areas where EU contractors would have a particular interest, such as works concessions and public-private partnership contracts.

**Chapter 10 on Intellectual Property** sets out rules on the protection and enforcement of intellectual property rights, including copyright, designs, and geographical indications. These rules complement and update WTO commitments.

**Chapter 11 on Competition** commits the parties to prohibit and sanction certain practices, for example some sorts of subsidies, which distort competition and trade.

**Chapter 12 on Transparency** sets out certain commitments intended to ensure efficient and predictable regulatory environments.

**Chapter 13 on Trade and Sustainable Development** establishes shared commitments, including on labour and environmental standards, and a framework for cooperation in this area.

**Chapter 14 on Dispute Settlement** sets out the process for resolving disputes between the parties relating to the implementation of the FTA.

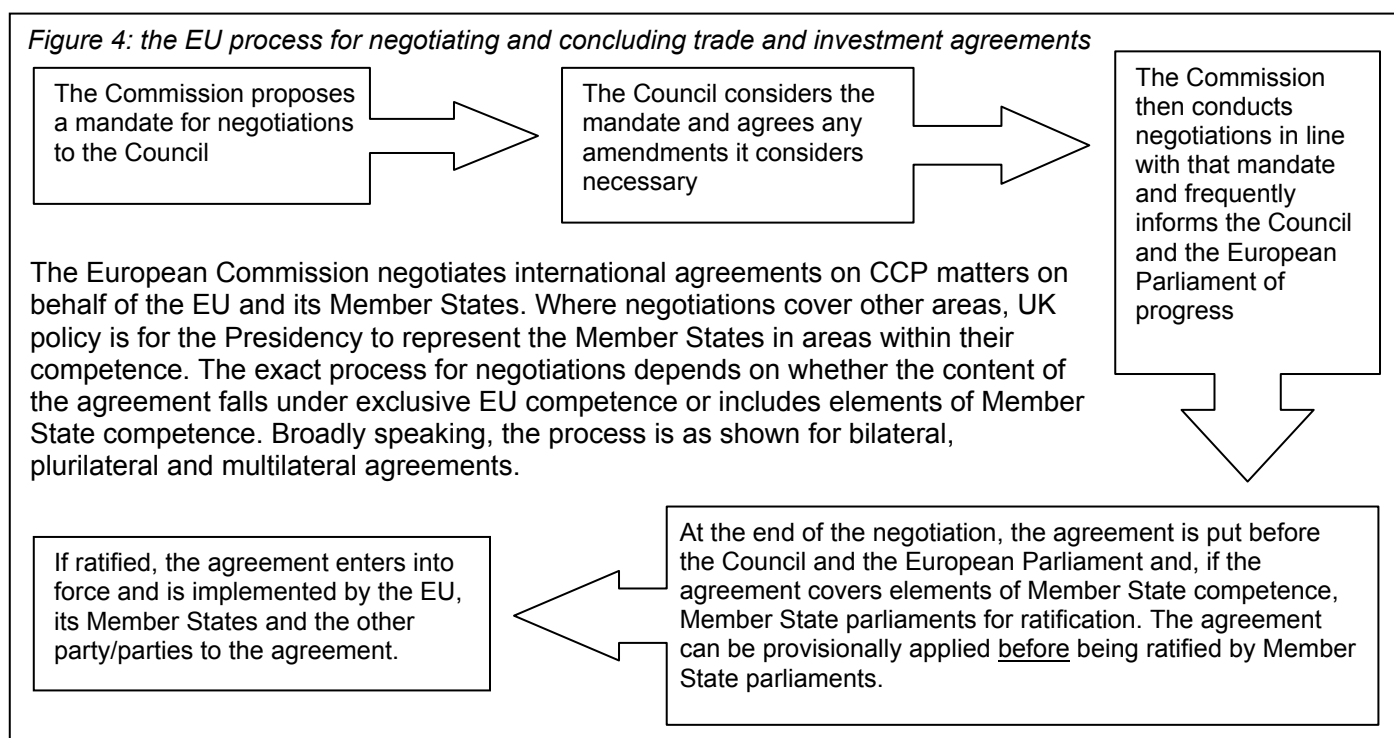
**Chapter 15 on Institutional, General and Final Provisions** establishes certain committees and working groups to monitor the implementation of the FTA.

The FTA also includes three **Protocols** on: 'Rules of Origin' (i.e. the definition of the 'economic nationality' of products); 'Mutual Administrative Assistance in Customs Matters'; and 'Cultural Cooperation'.

Further information: [http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc\\_145203.pdf](http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf).

The full FTA: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:FULL:EN:PDF>.

22. EU trade agreements have the potential to become even more comprehensive, particularly in the context of the failure to deliver a multilateral deal at the WTO in 2011, and with the subsequent increased interest in bilateral agreements from international partners. Internal developments in the EU may also impact on its FTAs, with any further harmonisation within the internal market likely to increase the scope of what the EU can offer in negotiations.
23. Multilateral trade negotiations are conducted at the WTO, which has 159 member countries. The EU's trade competence covers most matters dealt with at the WTO, so the Commission generally negotiates on behalf of the EU. As well as being a forum for multilateral trade negotiations, the WTO also deals with dispute settlement, under which members bring claims if they believe that another WTO member is in breach of the WTO's rules, and monitors its members' trade policies. The EU has competence to act in both of these aspects of the WTO's work.
24. The process for the EU's international trade and investment negotiations, involving the Commission, the Council (i.e. the governments of the Member States) and the European Parliament, is set out in Figure 4 below. The UK Government has the opportunity to influence negotiations through its membership of the Council, which agrees the content of the EU's negotiating mandate, is consulted by the Commission during negotiations, and decides whether an agreement should be signed and concluded.



## Trade and development

25. The EU uses its competence over trade policy to pursue development objectives. It does this through several different preferential trade schemes, which allow exporters from developing countries to pay lower duties on some or all of their exports to the EU.

26. The Generalised System of Preferences (GSP)<sup>5</sup> is offered to developing countries and gives them duty-free quota-free access for the vast majority of their exports to the EU. "GSP+" provides additional market access to particularly vulnerable developing countries that have implemented a number of core international conventions on human rights, labour rights, good governance and environmental protection. The "Everything but Arms" (EBA) initiative<sup>6</sup> eliminates all duties and quotas for all products (save arms) originating in Least Developed Countries.
27. As well as the fixed sets of preferences offered by the GSP, GSP+ and EBA schemes, the EU is also negotiating bilateral, development-friendly EPAs, which aim to create trade and development partnerships backed up by development support. They provide for gradual and controlled liberalisation of trade in goods. EPAs have their origins in the trade chapter of the Cotonou Agreement (2000)<sup>7</sup> – a broad agreement between the EU and African, Caribbean and Pacific countries which provides a framework for political dialogue, development support, and economic and trade cooperation.
28. In addition, the EU uses its supporting competence over development cooperation to provide trade-related development assistance ("Aid for Trade") to developing countries. This aims to help countries develop their capacity to trade. The EU is the largest provider of Aid for Trade in the world. Since Aid for Trade falls in an area of supporting competence, both the EU and the Member States can act and action by the EU does not prevent Member States from having their own policies. Aid for Trade is covered separately under the Development Cooperation and Humanitarian Aid report.

## Investment

29. As the EU has gradually gained exclusive competence over different aspects of investment policy, this has enabled it to expand its international role in this area and to include provisions on investment in its international agreements. Since the entry into force of the Treaty of Lisbon, the EU has had exclusive competence over market access for foreign direct investment (FDI) in all sectors apart from transport services. The Treaty of Lisbon also gave the EU at least some level of competence to conclude agreements which set standards for how investments should be treated once they have been made. The extent of this competence over 'investment protection' is disputed.
30. The EU's competence over investment stems principally from the inclusion of "foreign direct investment" in Article 207 of the TFEU. Despite disagreements over elements of this competence, it is accepted that the EU can negotiate agreements which deal with at least some aspects of:
- the liberalisation of market access for foreign direct investments, making it easier for EU investors to make such investments abroad and foreign investors to make direct investments in the EU, and

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<sup>5</sup> <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/>

<sup>6</sup> <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/>

<sup>7</sup> <http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/>

- investment protection – how investments should be treated once they have been made.

31. Provisions on market access for investment are or will be included in many EU trade agreements. Investment protection chapters are currently being negotiated as part of proposed FTAs with Canada, Singapore and India and will probably form part of most future EU FTAs. The EU may, in the future, also seek to negotiate stand-alone investment protection agreements. Before the Treaty of Lisbon transferred competence over FDI to the EU, Member States could conclude their own, bilateral investment protection treaties (known as BITs) with other countries. These BITs, numbering around 1200 (of which the UK is a party to 94), will gradually be replaced by EU agreements, as and when the latter enter into force. However, under a recently agreed regulation, Member States can still negotiate their own BITs, subject to Commission authorisation.
32. As stated above, the exact division of competence over investment protection is disputed. The main subject of disagreement is the extent of EU competence over foreign indirect investment (often known as ‘portfolio investment’). The Commission argues that all forms of investment fall under exclusive EU competence but several Member States, including the UK, disagree. The Commission’s arguments on portfolio investment are based on other parts of the TFEU, principally Articles 63 and 64. Member States generally do not accept that these Articles confer exclusive competence on the EU. Another area of disagreement is the extent to which EU competence over FDI (and, if the Commission’s arguments are accepted, portfolio investment) allows the EU to sign agreements which may limit Member States’ capacity to pursue policies that affect investments but fall within Member State competence, such as taxation.
33. Aside from its role in negotiating and concluding international agreements on investment, the EU’s competence also gives the Commission a role in the representation of the EU on investment issues internationally. The extent of this role is disputed.

## Trade defence

34. The EU also has competence over trade defence. Trade defence involves taking actions against low-priced or unexpectedly high volumes of imported products which cause damage to domestic production in the EU. Trade defence action takes three forms: anti-dumping duties when the exporter’s home market price is higher than the export market price; anti-subsidy measures when an exporter is benefiting from trade distorting subsidies; and safeguard action in response to unforeseen surges in imports that cause, or threaten to cause, injury to domestic producers. Trade defence actions usually take the form of increased duties on products imported to the EU from a specific country or countries.
35. The European Commission’s role includes investigating the evidence in cases of concern, recommending any necessary measures, and implementing them if agreed by the Council of Ministers. At the end of 2012 the EU had 112 trade defence measures in place. Anti-dumping cases are the most common, accounting for over 80% of all cases between 2007 and 2012.



## Export control

36. Strategic export controls relate primarily to military goods and technology, to 'dual-use' items, to goods controlled for human rights reasons, and to restrictions on trade resulting from UN or EU sanctions and embargoes. Many of these controls derive from the UK's international obligations or commitments, such as binding resolutions of the United Nations Security Council or from international export control regimes. They are then implemented through a mixture of EU and national law.
37. Strategic controls on **military goods** are primarily a Member State competence. As a result, Member States themselves negotiate multilateral or bilateral agreements on the strategic aspects of trade in defence goods (such as the Arms Trade Treaty or UK-US Defence Trade Treaty). The EU has however adopted a common set of policies that Member States should apply when deciding whether or not to grant an export licence and a common list of military items that should be subject to control.
38. Controls on goods **other than military goods**, such as dual-use items, fall within the Common Commercial Policy. They are therefore exclusive EU competence and are implemented through directly applicable EU Regulations, which generally contain lists of items subject to control and set out the rules that Member States must apply to trade in those items. They typically contain export prohibitions or, where goods are licensable, provisions specifying when licenses can be granted, the types of licence that may be granted, and requirements for consultation and information exchange between the relevant authorities of the Member States. Much of the detailed implementation of these Regulations is left to the Member States. Most importantly, decisions on whether to grant any particular licence are left to the discretion of Member States.
39. Member States may also adopt additional controls on a national basis, for example on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

## Export credits

40. An "export credit" allows a foreign buyer of exported goods or services to defer payment over a period of time. "Official export credits" are provided by government-backed Export Credit Agencies (ECAs).
41. Member States have their own ECAs to support national exporters. There is no EU-wide ECA. Guidelines governing the activities of ECAs are agreed at the Organisation for Economic Co-operation and Development (OECD). Under the Common Commercial Policy, the EU has competence to regulate financial aspects of export credits (given their direct impact on trade), and has integrated one set of OECD guidelines on these matters into EU law. EU competence in this area also means that the Commission represents the EU at the OECD in negotiations on these elements of

export credits policy. OECD members also negotiate agreements on the non-financial aspects of export credits (for example, issues relating to bribery and corruption), which do not fall within the scope of the Common Commercial Policy and are not integrated into EU law.

42. The EU has also regulated Member States' ECAs through its competence over competition policy, banning them from providing short-term export credit insurance to markets where private sector insurers are active. Issues relating to competition policy will not be dealt with in this report, but in the Competition report, in Semester 3 of the Review.

## Import controls

43. Import controls are an EU competence. However, the UK can take national action in some exceptional circumstances, for example on public health or security grounds. There are essentially two types of import control that are used:

- prohibitions - where the import of a product is banned, and
- import licensing - where the import of a product is allowed but monitored (surveillance licensing) or physically limited (quotas).

44. The EU currently has prohibitions on a range of products from Iran and Syria under its sanctions regime. It also imposes import controls on a small number of industrial products from specific countries. Currently, these controls only apply to certain textiles and clothing products manufactured in Belarus and North Korea, and certain steel products from Kazakhstan.

45. The UK has few national import licensing controls. For example, BIS issues import licences for firearms to support UK domestic controls on gun ownership.

## Call for evidence: what we are asking for

46. We are requesting input from anyone with relevant knowledge, expertise or experience. We would welcome contributions from individuals, companies, civil society organisations including think-tanks, and governments and governmental bodies. We welcome input from those within the UK or beyond our borders.

47. Your evidence should be information and judgements about the impact or effect of the trade and investment policy in your area of expertise. Where your evidence is relevant to other balance of competences reports, we will pass your evidence over to the relevant report teams.

48. Please base your response on answers to the questions set out below. In responding, it would be helpful if you could indicate whether you are responding as an individual, a business, a trade union, a civil society organisation or a research institution.

49. You do not have to answer all of the questions. Please feel free to answer as many or as few as you like. Some of the questions are particularly broad in scope. You may find it useful to consider your evidence with regards to the following sorts of issues:

**Political** (for example, the extent to which the UK is able to have greater or less influence as result of the EU's competence in trade and investment);

**Economic** (for example, the economic impacts of the EU's competence in trade and investment policy);

**Social** (for example, the extent to which the UK's social policy agenda is impacted by the EU's trade and investment policy);

**Technological** (for example, the extent to which technological advances such as the internet are affecting EU competence in trade and investment); and

**Proportionate** (for example, the extent to which there is a need to act at EU or any other level, whether the action taken is proportionate to this need, and whether the measure is effective in practice).

50. We will expect to publish your response and the name of your organisation unless you ask us not to (but please note that even if you ask us to keep your contribution confidential we might have to release it in response to a request under the Freedom of Information Act). We will not publish your own name unless you wish it to be included.
51. Please send your evidence to [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk) by 6 August 2013. You can also submit your evidence online at <https://www.surveymonkey.com/s/tradeinvestment>.

## **Discussion events**

52. As part of the Call for Evidence process we will be holding a number of discussion events, to which you are invited.
53. The events will take place on 28 June, 5 July and 12 July in the BIS Conference Centre, 1 Victoria Street, London SW1H 0ET.
54. Attendance at these events is free and places will be limited (we may need to restrict representation to one attendee per organisation to ensure a breadth of participation). To register your interest in attending one of these discussions, please email [balanceofcompetences@bis.gsi.gov.uk](mailto:balanceofcompetences@bis.gsi.gov.uk) with details of which event you wish to attend **before Friday 21 June**.



## Call for evidence questions

Please base your response on answers to any of the questions set out below that you feel able to answer or contribute to.

1. *What are the advantages and disadvantages of the EU's competence over trade and investment, particularly in relation to international trade and investment negotiations? When answering this question you may wish to consider:*
  - *the impact of acting as part of a bloc on the UK's global influence;*
  - *the EU's capacity to deliver trade and investment policy effectively (e.g. its effectiveness in trade negotiations, including whether this varies across different regions);*
  - *the resource implications of having competence at the EU level;*
  - *the extent to which EU trade and investment policy offers benefits to the UK that go beyond those offered by WTO membership;*
  - *the EU's priorities for trade and investment negotiations, for example in terms of negotiating partners and offensive and defensive interests (e.g. in market access), and the extent to which these align with UK priorities;*
  - *the extent to which the UK's approach to trade policy is amplified or reduced by working through the EU (e.g. whether the UK, as a free trade advocate, succeeds in making EU trade and investment policy less protectionist);*
  - *the extent to which EU trade policy has a trade facilitating or trade diverting effect for the UK.*
2. *What are the advantages and disadvantages of having trade and investment promotion largely at the national level? How well has this delivered on UK objectives?*
3. *What are the advantages and disadvantages of the current division of competence over export and import controls and export credits?*
4. *What are the likely advantages and disadvantages of moving from national to EU competence in relation to investment protection?*
5. *How well are UK objectives met and interests taken into account through a) EU trade defence investigations, and b) the EU representing the UK in trade defence cases against the EU and more generally in trade disputes with other WTO members?*
6. *What future challenges/opportunities might we face on trade and investment policy and what impact might these have on the UK national interest? When answering this question you may wish to consider the impact of:*
  - *the institutional changes introduced by the Treaty of Lisbon (e.g. the increased role for the European Parliament and the creation of the European External Action Service) on EU trade and investment policy;*
  - *any further internal developments in the EU (e.g. potential further integration of the Eurozone) on trade and investment policy;*
  - *the increasing ambition of EU trade policies, and the implications that this might have for the UK's offensive and defensive interests;*
  - *any further developments in EU law, including for example any effect of the EU's exercise of internal competence on its external competence and vice-versa.*
7. *Are there any general points you wish to make which are not captured above? We would welcome any specific examples and quantitative evidence where possible.*

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