

Cefic views on the EU's Free Trade Agenda

In an increasingly volatile and ambiguous world, marked by several crises, the competitiveness of Europe's industrial base and of the European chemical sector is at risk. High energy prices, dependencies on the supply of critical raw materials and feedstock, an ageing society and declining market shares: these are just some of the challenges that the European chemical industry is currently facing.

And when the chemical sector is weakened, then the whole economy is destabilised. The chemical sector feeds most of the value chains, including food, healthcare, construction and transport. Companies of all sizes manufacture the chemical molecules that make up Europe's industrial backbone, which helps the EU to achieve its goal of an open strategic autonomy both today and tomorrow.

In this challenging landscape, free, fair and sustainable trade is key for our industry to leverage its strengths. And Free Trade Agreements (FTAs) are an essential tool to unlock this potential. Through FTAs, Europe can reduce its structural disadvantages via diversification of supply, while securing access to global growth markets for Europe's world class products.

To fully support the competitiveness of the European chemical sector, Cefic has identified 5 key recommendations for an effective trade policy:

Top 5 recommendations

1. **Conclude and ratify FTAs with key trading partners**, notably, the USA, Mercosur, India, ASEAN and Africa, and pursue further market opening with China
2. **Strong focus on reducing non-tariff barriers:** while tariff barriers have decreased, non-tariff barriers create severe disadvantages for European companies in FTAs partners' markets and beyond. Reducing non-tariff barriers is key for European companies' access these markets.
3. Add in all FTAs a **dedicated annex for regulatory cooperation on chemicals**
4. **Make the Trade and Sustainable development chapter more business conducive** and include the implementation of UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in the scope
5. **Add in all FTAs a dedicated Energy and Raw Material chapter** aiming to grant the EU preferential access to key raw materials and energy carriers (e.g. hydrogen).

Introduction:

The European chemical industry¹ is a strong supporter of free, fair and sustainable trade. Our position is rooted in our industry's strong position in the global chemical market. Our industry has generated on average a trade surplus of more than €40 billion p. a. between 2011 and 2021. However, the current poly-crisis, especially the ongoing energy crisis, is highlighting the vulnerability of the European chemical industry's competitiveness resulting in a significant reduction of EU exports in 2022. Against this backdrop, it is ever more important for our industry to rely on free international trade underpinned by a global rules-based trading system to maintain and expand the competitive advantage of our sector. Comprehensive FTAs are an important policy instrument to mitigate and de-risk Europe's comparative disadvantage in supply of inter alia raw materials, energy, feedstock while securing access to global growth markets for Europe's world class products. The benefits brought by FTAs also create the enabling conditions for the European chemical industry to successfully master the double twin transition by 2050 as also highlighted by the Chemical Transition Pathway². To this end, we fully support the European Commission's agenda to conclude new trade agreements as highlighted in their 2021 trade policy strategy³, the Green Deal Industrial Plan⁴ and the European Economic Security Strategy⁵.

To make new trade agreements as effective as possible, Cefic has developed a set of recommendations for European policy-makers to consider incorporating in EU trade policy.

1. FTAs need to support the WTO not replace it:

Cefic supports multilateralism and the rules-based international order embodied especially by the World Trade Organisation (WTO). Despite its difficulties, this international system has proven to be the most effective way to advance trade liberalisation. The WTO is the guardian of the global rules based trading system and Cefic fully supports the efforts of the European Commission to modernise the trade body and strengthened its functions. Such efforts should include among others:

- A dispute settlement mechanism,
- transparency obligations,
- competition rules,
- Non-Tariff Barriers,
- and intellectual property.

Against this backdrop, we strongly believe that FTAs should not replace the WTO, but reinforce it. Experience has shown that FTAs play an important role to advance global cooperation by helping to overcome the stagnation of the WTO process. FTAs help the EU to make progress in areas that

¹ The EU Chemical sector is of strategic importance to the European economy. The EU27 is the second largest chemicals producer in the world with €594 billion of sales in 2021. It provides 1.2 million direct highly skilled jobs, and it creates an estimated 3.6 million indirect jobs in addition to supporting around 19 million jobs across all value supply chains. The EU27 chemical industry generates a trade surplus of €36,1 billion (2021) and is the second largest R&I investor in the world with €9.9 billion.

² <https://ec.europa.eu/docsroom/documents/53754/attachments/1/translations/en/renditions/native>

³ https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf

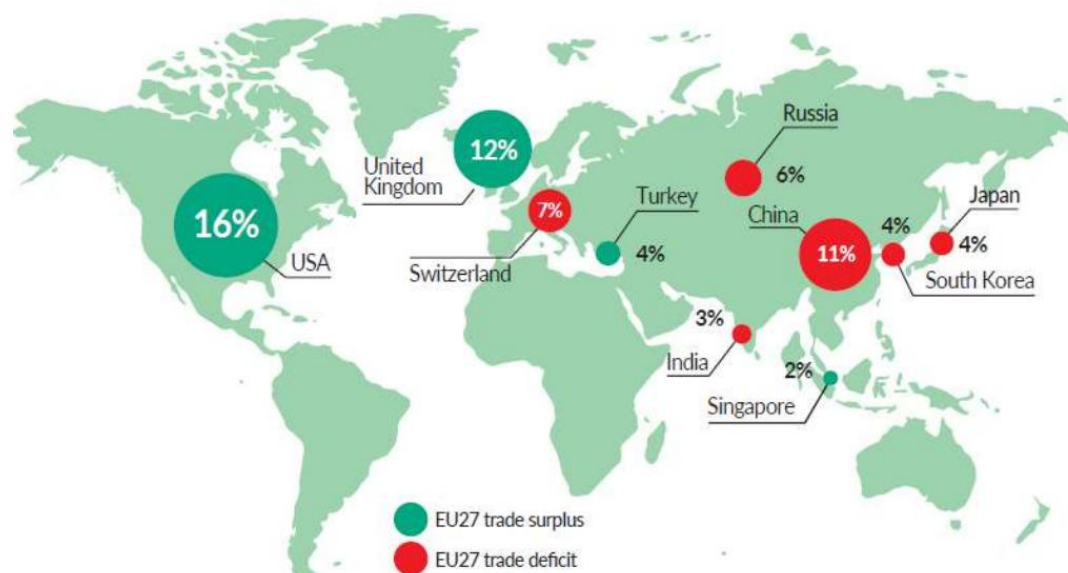
⁴ COM_2023_62_2_EN_ACT_A_Green_Deal_Industrial_Plan_for_the_Net-Zero_Age.pdf (europa.eu)

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0020>

are currently not sufficiently covered by existing WTO agreements like climate change, export restrictions, investments or domestic policies linked to national security considerations.

In light of the ongoing WTO crisis, European policy-makers should therefore fully embrace FTAs as a powerful policy instrument to enhance the EU's open strategic autonomy. This will help to deepen economic and political relations in an increasingly fragmented and volatile geopolitical environment. We applaud the EU for its efforts especially after the breakdown of the WTO Doha round to tie a vast network of modern and comprehensive FTAs. Cefic asks European policy-makers to continue these efforts by deepening existing agreements and concluding new FTAs with all of the European chemical industry's key trading partners of today (i.e. USA) and tomorrow (i.e. India, ASEAN, Africa). Furthermore, concluded FTAs like EU-Mercosur or CETA need to be fully ratified to allow European companies to reap their benefits. Regarding China, efforts should be made to pursue further market opening such as joining the WTO Procurement Agreement.

EU27 chemicals trade* flows with top 10 partners (2021)



2023 Cefic Facts & Figures⁶

While we understand the EU's intent to expand its geo-economic toolbox via initiatives like Trade and Technology Council (TTC), Digital Partnerships, Green Alliances and Partnerships, Raw Materials Partnerships, and the Raw Materials Club, we are concerned that the increasing proliferation of such 'mini-deals' could risk the progress to negotiate and implement modern and comprehensive FTAs. We therefore ask European policy-makers to avoid as much as possible quick and shallow deals and continue working towards modern and comprehensive FTAs.

2. Market access:

⁶ <https://cefic.org/a-pillar-of-the-european-economy/facts-and-figures-of-the-european-chemical-industry/>

For Cefic the main objective of FTAs is to pursue the liberalisation of trade and investments by reducing as much as possible tariffs and Non-Tariff Barriers (NTBs). As tariff barriers have overall significantly declined⁷, FTAs should increasingly focus on NTBs that create severe disadvantages for European companies in FTA partners' markets. We are mindful that NTB related issues are often complex and that every country should have the right to regulate in line with its societal preferences as long as it is avoiding unfair discrimination. To this end, Cefic believes that one of the preconditions for the conclusion of FTAs should be the significant reduction of NTBs. This is key to ensure that EU companies can benefit from the market access as agreed in FTA. This should also encompass safeguard provisions guaranteeing that previously abolished tariffs and NTBs are not reintroduced via taxes or other provisions. Moreover, we further support the establishment of a mechanism that prevents non-trade related aspects from being used as disguised restrictions for bilateral trade.

Furthermore, we are concerned that the increasing inclusion of so called 'non-trade' issues risk adding complexity to FTAs. Such complexity threatens to slow down the speedy conclusion and ratification of new trade agreements. We therefore call on European policy-makers to explore new avenues to address this issue. Cefic supports to study the idea proposing to employ a modular step-by-step implementation process for FTAs. Such an approach would give the involved parties sufficient time to update their regulatory regimes and commitments while avoiding standstill. In our view this approach would not negatively affect the overall negotiating position of the EU as additional market access concessions would be linked to the adherence of i.e. new standards.

3. Rules of Origin:

The ongoing globalisation of supply chains is significantly changing production patterns. To better equip companies with easy to use provisions to manage these changes Cefic is advocating for simple and flexible Rules of Origin (RoO). Flexible RoO allow companies to choose from a catalogue of possible alternatives for determining origin. This is crucial for our industry with its complex value chains to make full use of preferential treatment provided by FTAs. Easy to use RoO are particularly important for SMEs so that they can fully benefit from the agreed liberalisations. As chemical manufacturing consists in the majority of the cases of a broad range of origin conferring production steps including chemical and/or biotechnological production processes, mixtures and blends, purification, change in particle size as well as isomer separations and the production of standard materials a 'menu style' approach to RoO classification is needed.

With regards to accounting segregation, a comparative study from the World Customs Organisation (WCO) highlights that EU FTAs generally do not allow for the use of accounting segregation for finished products (with two exceptions, ethylene and sugar)^{8 9}. This is however possible in FTAs from other trade partners which is creating a relative disadvantage for EU based chemical companies.

⁷ According to calculations by the WTO between 1996 and 2021, the trade-weighted average of effective applied tariffs — based on the assumption of full utilization of preferential tariffs — dropped overall from 6.8 per cent to 2.5 per cent. For chemicals it declined from 6.2 per cent to 2.3 per cent. [WTO Blogs | Data Blog - A blog by the WTO Secretariat -](#)

⁸ The EU-UK Cooperation Agreement is the only EU FTA that allows the use of accounting segregation for storage of finished chemical products.

⁹ Comparative Study on Preferential Rules of Origin (2017): [170130-b comparative-study-on-pref_roo_master-file_final-20_06_2017.pdf \(wcoomd.org\)](#). The comparison on accounting segregation is on page 93.

Moreover, we support that older FTAs including RoO with outdated rules are renegotiated to improve their utility for business. Cefic also asks the European policy-makers to ensure that RoO are designed in a way that they do not create unnecessary bureaucratic hurdles. Besides, it should be possible that the proof of origin is provided by both the exporter and the importer. Intellectual Property Rights provisions should not be undermined by the verification of origin. The verification of origin should only be performed by the responsible authority of the exporting FTA partner.

4. Advancing regulatory cooperation for the trade in chemicals

To address the growing global fragmentation of regulatory regimes especially in the area of chemicals, Cefic strongly supports the inclusion of a meaningful regulatory cooperation chapter as a key pillar of 21st century trade agreements. As also mentioned by the European Commission's [Transition Pathway for the Chemical Industry](#)¹⁰ the high levels of regulatory standards applying to the chemical industry make it necessary that FTAs are supplemented by a dedicated annex on chemicals and a commitment for a strong stakeholder engagement. The EU-UK TCA is a good example in this regard as it features the Annex 13 'Chemicals'¹¹. We therefore call on EU policy-makers to use this annex as a template for all FTAs taking into consideration the third country's specific circumstances. In particular, it is important that the 'chemicals annex' addresses the following key areas:

- Improved and aligned regulatory data- and information sharing with the goal of reducing the need for duplicate tests and data submission while ensuring adequate handling of Confidential Business Information (CBI).
- Increased alignment on data submission tools and data formatting can further reduce the administrative burden for both companies and regulators.
- Increased alignment regarding the classification and labelling of chemicals, including the creation of a stakeholder-inclusive committee to review and advise on concerned lists and related regulations.
- Cooperation in prioritising chemicals for assessment and assessment methodologies aligned with promoting implementation of key international systems, especially the [UN Globally Harmonized System of Classification and Labelling of Chemicals \(GHS\)](#) (for all sectors) but also the OECD Good Laboratory Practices and Mutual Acceptance of Data should be promoted.

More generally, the regulatory cooperation chapter should aim to facilitate and increase transparency and mutual understanding to improve regulatory predictability for business. This should also include early notification and a commitment to consult with stakeholders. Dedicated working groups including stakeholders should be set up with the aim to improve mutual understanding on the implementation of legislation and international conventions.

5. Trade and Sustainable Development chapter:

¹⁰ "Stakeholders suggest that FTAs should be ratified and ideally include a dedicated section on cooperation in the regulation of chemicals, for example in an annex.", Transition pathway for the Chemical industry, p. 9, [DocsRoom - European Commission \(europa.eu\)](#)

¹¹ [L_2021149EN.01001001.xml \(europa.eu\)](#)

Cefic believes that FTAs are an important tool to promote and improve labour and environment conditions. We therefore support the use of Trade and Sustainable Development (TSD) chapters to reinforce a partnership-based approach to advance sustainable development. To make them more business conducive, we ask to include the implementation of the [GHS](#) in the TSD chapter. This should be underpinned by commitments for targeted capacity building and technical assistance to improve the effectiveness of the relevant provisions.

Cefic believes that FTAs should be an important tool to improve international coordination in the area of circularity- and sustainability-related policies. The goal should be to increase policy coherence, transparency and effectiveness while simultaneously ensuring a level playing field. Areas for cooperation should include the alignment of key principles guiding policy-making (e.g. lifecycle approach, considering effects on other objectives), definitions, measurements (e.g. mass balance approach), labels and international standards. It should also help to find common approaches regarding the definition and classification of end-of-life products and end-of-waste aiming to facilitate the global uptake of circularity. FTAs should also include provisions to enable value chain transparency to improve environmental and labour conditions. To this end, the rollout of digital platforms like EU's digital product passport initiative should be further explored ensuring close alignment and interoperability with like-minded international partners.

6. Environmental Goods and Services:

In general, Cefic prefers broad tariff eliminations to more targeted schemes as they often fail to sufficiently incorporate the full value chain of the final products. In case such provisions were to be included they should avoid discriminating against or within the chemical sector and clearly contribute to environmental targets. Any classification of goods and services as “environmental” should be based on clear, objective, transparent and non-discriminatory criteria safeguarding technology-neutrality. The focus should be especially on goods in which the EU has offensive export interests. This should also include enabling products from the upper part of the value chain. To fully support commercial deployment, a targeted short list of identified goods and services should be established. This list should be accompanied by a joint process with the FTA negotiating partners to identify and remediate respective trade barriers for both trade and investment. This should include tariffs but also regulatory treatment, standards, export/import bans and other restrictions.

7. Energy and Raw Material chapters:

Cefic strongly supports the inclusion of dedicated Energy and Raw Material (ERM) chapters due to the EU's limited natural resources. They should help to provide the EU with preferential access to raw materials and energy carriers and significantly reduce prevailing NTBs. Where necessary, this should be done in strategic coordination with major supply chain partners. It should include a common understanding that defines when exemptions to WTO rules (e.g. on national security grounds) are legitimate to prevent misuse of those clauses and increase transparency and predictability. ERM chapters should also include provisions aiming at the liberalisation of investment and service provisions in related sectors:

- Raw material exploitation,
- manufacturing,
- processing and

- transportation, production and processing of (renewable) energy and energy carriers, energy services and refining.

For hydrogen and its derivatives, the alignment of measurements and the certification for clean hydrogen, e.g. combining mass based allocation with the energy source, remains key. Furthermore, negotiations on the access to raw materials need to include also bio-based materials (bioethanol, sugar, molasses and starch). The EU's tariff and non-tariff barriers in this area represent a sizable obstacle to an increased shift to the use of renewable feedstock.

8. Digital Trade:

Cefic supports the inclusion of digital trade chapters in all FTAs. The provisions should ensure the free flow of process data, preventing localisation requirements, and ensuring the protection of algorithms and source codes. Furthermore, they should help to deepen cooperation on the following areas:

- Cybersecurity standards,
- data flows for AI training;
- data ownership rules across the value chain,
- data formatting,
- protection of CBI and
- encryption as well as quality standards and interoperability for blockchain.

The chapter should also provide for enabling rules and guidelines for electronic signatures and smart contracts.

9. Investment protection:

Cefic calls on European policy-makers to increase their efforts to design investment chapters that provide European investors with equally fair access to new markets by establishing a level playing field. The objective of this chapter should be to eliminate barriers to both new and expanded investments, promote transparent and fair rules, provide greater predictability and stability to the investor and investments, while limiting risks.

10. Intellectual Property:

Cefic believes that the protection of intellectual property (IP) is paramount to the competitiveness of the European chemical industry as it is key to the protect our industry's innovative capacity. FTAs should promote a harmonised international framework ensuring that classified business information are adequately safeguarded. To this end, Cefic advocates that all FTA partners must join the WTO Procurement Agreement to ensure an adequate level trading field. Moreover, the respective chapters should include provisions to allow for adequate IP protection via a dedicated approval procedure and a coordinated enforcement of IP rights. However, it is equally important that IP provisions are not undermined by the verification of origin provisions. Moreover, stakeholders need to be involved in identifying country-specific IP priorities in the negotiation phase. In case, it is not possible to ensure sufficient IP protection via FTAs, efforts should be made to pursue protection via stand-alone agreements.

11. Public Procurement:

Cefic believes that dedicated chapters on public procurement should aim at liberalising mutual access to public tenders and guaranteeing EU suppliers to be treated in an open, transparent and non-discriminatory manner.

12. Fair competition, anti-coercion and Dispute Settlement:

Cefic supports open and fair competition as a bedrock for a functioning FTA. Dedicated FTA chapters should be designed to improve free and undistorted competition between economic operators irrespective of their nationality and/or ownership structure. Therefore, specific provisions on state-owned enterprises, overcapacities and subsidies should be foreseen.

To address economic coercion, the European Commission should reflect on a case-by-case basis together with Member States and stakeholders which is the most effective instrument. The anti-coercion instrument should be considered as one of the options next to the use of respective FTA chapters, multilateral fora and bilateral dialogue to resolve the issue. However, in case of economic coercion exerted by FTA partners, the dispute settlement mechanism should be the initial option of choice to address the issue. To this end, Cefic supports the inclusion of enforceable dispute settlement mechanisms with sufficient transparency and independence of arbitrators to make a decision, e.g. in the form of an Investor Court System.

13. Enforcement and Customs:

Proper enforcement of rules and smooth custom procedures are key for the successful implementation of FTAs. We therefore ask that FTAs include commitments to increase the efficiency of customs through digitalisation (e.g. acceptance of digital documents, modernising and increasing interoperability of customs IT tools and the creation of interoperable single windows). Further commitments should provide customs authorities with adequate capacity, authority and priority-setting to enforce key legislations including chemical regulations. The effective implementation of the WTO Trade Facilitation Agreement and other related conventions should be promoted. This should be underpinned by capacity building in FTA partner countries to integrate and align customs and regulatory requirements including impact of new and emerging regulations. Customs authorities should also commit to clear notice procedures and help to identify transition measures and grace periods.

Moreover, Cefic asks policy-makers to increase the effectiveness and enforcement of FTAs by including the following ideas:

- Establishing stakeholder-inclusive joint customs and enforcement working groups,
- exchanging data between law enforcement authorities and stakeholders,
- creating administrative arrangements allowing joint investigations and
- aligning rules and clarifying responsibilities in the area of online trade and improving respective policy coherence.
- Supporting capacity building to ensure clear and consistent application including across multiple port of entry locations with FTA partners.
- Creating administrative arrangements to simplify the return of goods
- Foreseeing guidelines for application of cumulation of RoO and accounting segregation
- Having a "one-stop-shop" for addressing questions and issues

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.2 million jobs and account for 15% of world chemicals production.