Executive Summary

The deep free trade agreements of the EU extend significantly the substantive scope of trade liberalisation. As a result of the widening, but also deepening, of the international cooperation, the processes and procedures that these agreements set forth would grow in use. So is their relevance and, even use, for a trade recovery when the temporary measures addressing the COVID-19 change or end up.

The comprehensive substantive and procedural scope of the deep FTAs concluded by the EU forms a trade governance model, which is founded on a strategic pursuit of cooperation and collaboration among the competent authorities of the Contracting parties, and with the involvement of other stakeholders.

The COVID-19 pandemic occurred at a time when the trade facilitation agenda had its momentum for customs, with a degree of regulatory convergence across the globe. This trend coincided with an intense modernisation of customs administration, a response to the challenges of the e-commerce trade, digitalisation and a growing use of data analytics. Customs and trade endeavour to take measures that strengthen the resilience of both governmental agencies and international supply chains.

COVID-19 responses may thus become long-term trends notwithstanding their temporary nature. They may trigger a lasting process of risk governance to become embedded in the framework of FTAs. The EU regulatory response to animal health crises offers a case-study to explore this trend.

This paper argues that:

- risk governance serves too balance trade facilitation and resilience, and
- the trade governance under the deep free trade agreements of the EU sets a framework to embed risk governance in their customs provisions.

That means to pursue:

- a strategic approach for a risk governance balancing resilience and trade facilitation, and
- an institutional and decision-making set up for a collaborative crisis management which will allow for its enforcement.

---

1 The European Commission is not liable for any consequence stemming from the reuse of this publication. The views expressed in this publication are the sole responsibility of the author and do not necessarily reflect the views of the European Commission.
Introduction

The COVID-19 pandemic announced by the World Health Organisation (WHO) on 11 March 2020 may have a lasting impact on the legal framework for the international trade. The closure of borders that intercepted the flow of goods, caused disruptions in the international logistics and exposed existing supply chain vulnerabilities. The EU, the World Bank, WCO and WTO issued recommendations and measures within their respective scope of competence. For the most part of them, these measures are designed for the short-term. They seek to limit the pandemic impact, but also to support trade recovery. Despite their temporary and conditional nature, these measures coincide with ongoing trends that benefit trade facilitation as well as resilience of trade processes. Being in pursuit of the same objectives, COVID-19 related measures are therefore, likely to remain also for the long term.

This paper reflects on the suitability of deep FTAs of the EU to pursue such goals. It looks into the prospect of deepening the use of the FTAs to embed risk governance in the general framework of trade governance. The focus is on the role of customs.

It starts with an outline of key trade facilitation measures for customs and traces their place into the latest generation of FTAs concluded by the EU. Then it continues with an analysis and typology of the internationally recognised anti-pandemic measures as they emerge from the guidance and recommendations of the EU, WCO, the World Bank, WTO and OECD. The next part is about the role of risk governance in the EU internal policy-making, followed by a conclusion on its place under the FTAs.

1. Customs and trade facilitation

The trade facilitation agreement of the WTO (TFA)² was negotiated in 2013 and entered into force in February 2017 following a ratification of two-thirds of the members of the WTO.

It contains customs provisions, which aim to streamline and simplify import and export processes and procedures. They also aim to reduce the administrative burden and compliance efforts for importers, exporters and other key stakeholders in international trade.

Customs processes and procedures play a central role on the world trade facilitation agenda. Customs is a key border agency with a significant control and enforcement powers. With the rise of security threats, trans-border crime, the increased volumes of cross-border low-value e-commerce trade, the emerging transboundary threats, the challenge of BREXIT and the COVID-19 pandemic, the pressure on customs authorities has never been more intense.

Customs processes and procedures are data intensive. In a data-driven economy it is more important than ever to sustain cooperation and collaboration:

- among border agencies, domestically, cross-border, and globally, as well as with
- with the private sector.

Moreover, the convergence in the global response to the COVID-19 pandemic shows the importance of collaboration among international organisations as well.

² WTO TFA
1.1. Customs measures under the TFA

TFA contains a set of customs rules that:

- promote facilitation,
- foster cooperation,
- provide support to boost the capabilities of national customs authorities.

Article 7 of the TFA contains a comprehensive set of rules that enable an expedited release of goods while keeping up a consistency with the customs control and enforcement measures. These rules cover:

- pre-arrival processing for an expediting clearance of goods (Section 3.1),
- pre-arrival submission of supporting documents in electronic way (Section 3.2),
- electronic payment of duties, fees and charges (Section 3.3),
- separation of release of goods and payments of duties, accompanied by suitable rules on guarantees to enable release (Section 3.4),
- use of post-clearance audit (Section 5), as well as
- risk management for customs controls (Section 4).

The TFA in its Article 7, Section 7 further promotes the distinction among flows of goods managed by types of traders. Subject to an authorisation, traders that demonstrate compliance with specific requirements, are considered reliable and granted with simplifications for customs procedures. These simplifications cover reduced data requirements, lower rate of administrative and physical inspections for fiscal and security controls, deferred payments of duties, fees and taxes. In addition, authorised traders are given the possibilities to present goods to customs at their premises. That allows for further flexibility to organise logistics and controls in accordance with the specific business models.

Section 8 of Article 7 of the FTA further provides for reliable alignment of traders’ infrastructure and logistics with customs rules to guarantee expedited clearance of goods. It also suggests the adoption of de minimis rules to exempt low value shipments from certain customs formalities.

These provisions aim to:

- balance the facilitation efforts for legitimate trade with the needs for effective customs control and supervision, and
- to adapt customs compliance to the logistic and infrastructure arrangements of business actors, which enables the smooth flow of goods and associated data.

Article 8 of the TFA is about border cooperation both among authorities sharing a common border and among members. Provisions on border cooperation go beyond sharing information and facilities and include also alignment of procedures and formalities as well as joint controls involving several customs authorities. This provision is about collaboration of border authorities. It also benefit trade, which in the light of the rules on expedited release of goods could plan its operations and logistics. Article 12 of the TFA is on customs cooperation to support further and encourage exchange of information and practices on voluntary compliance by traders and exporters.
In terms of process TFA recognises in its Preamble the need for cooperation among members on trade facilitation as well as on customs compliance. The exchange of best practices is given its institutional arrangement – a trade facilitation committee (Article 23 TFA) which coordinates its work with the World Customs Organisation (WCO).

Capacity building and technical assistance are made available to developing and least developed countries.

The substantive rules on trade facilitation are supported be a framework that supports collaboration and flexibility in support of ad hoc solutions that help boost resilience and ensure the continuity of the trade flows.

1.2. WCO and trade facilitation

WCO adopted a number of trade facilitation measures in the context of implementation of the WTO TFA. They include single window, risk management and post-clearance controls and support for a programme for authorised operators who use facilities for clearance of goods at their premises, less controls and adjustment of clearance to their logistic infrastructure and business processes.

WCO has further adopted specific instruments on trade facilitation through customs processes and procedures:

- the Revised Kyoto Convention on simplification of customs procedures,
- Framework of Standards – SAFE Framework of Standards to Secure and Facilitate Global Trade, the Framework of Standards on Cross-Border E-Commerce, the WCO Single Window Compendium, and the WCO Data Model,
- WCO customs data model, and
- the Unique Consignment Reference.

The process of drafting the Revised Kyoto Convention is a modernisation effort, which aims to provide binding frameworks for modernised customs procedures based on electronic data submission, embedded data analytics, use of blockchain, artificial intelligence and data pipeline. A developed mechanism for implementation is further supported by capacity building and technical assistance.

In the implementation of its mission, WCO works together with and guides its members towards simplification of customs procedures, automation and modernisation of Customs.

2. Facilitation of trade under the EU deep free trade agreements

2.1 What does “deep free trade agreements” mean?

The role of the FTAs grew significantly after the adoption of the Communication of the European Commission “Global Europe: Competing in the World in 2006. In it part 4.2 ii) dedicated to the FTAs the Communication outlines a renewed policy for concluding FTAs.

---

3 WCO keeps updated factsheets of these measures.
4 WCO provides an updated information on the process and scope of the process of revision of the Kyoto Convention.
5 Communication (2006) 567 final, p 7-9
The use of these agreements is aimed to tackle issues that are not ripe for a multilateral solutions. This new generation of FTAs further serve to potentially deepen regulatory cooperation with international partners with which the EU has established a closer cooperation, such as the countries of the European neighbourhood.

These agreements are called “deep free trade agreements” (Wang, 2019), because in substantive terms, they contain more rules that favour the trade liberalisation agenda, such as:

- classic trade management instruments, such as tariff and non-tariff measures and export regulations;
- trade liberalisation rules, with the objective to reach the highest level of liberalisation, including in investments and services;
- extended scope for trade liberalisation provisions which cover new areas such as sustainable development and labour standards.

The 2006 Communication specifically refers to trade facilitation under the new generation of FTAs which are aimed to “tackle non-tariff barriers through regulatory convergence wherever possible and contain strong trade facilitation provisions.”

The new generation of FTAs are not only more extensive in their substantive scope but also refer to governance measures and mechanism to monitor their implementation.

2.2 Customs provisions in the deep free trade agreements

The new generation of deep FTAs of the EU contain dedicated chapters on customs and trade facilitation. They also provide customs simplifications. This paper looks, more specifically, into three FTAs:

- EU – South Korea FTA, which entered into force in 2015,
- EU – Singapore FTA of 2018, and
- the most recent FTA between EU and Vietnam that entered into force in 2020.

Each of these agreements have provisions to promote trade facilitation while ensuring effective customs controls. Expedited customs clearance, reduction of compliance costs, use of technology and adoption of best international practices are among their main principles. These are trade facilitation measures and instruments, which are in line with the standards and instruments adopted by the WCO.6

Cooperation with the business community and the use of customs risk management are also main principles of the customs rules of the free trade areas under these deep FTAs.7

The agreements now discussed envisage further stepping-up customs cooperation and boosting the administrative capacity of customs administrations to support this objective (Articles 6.1 and 6.13 EUSKFTA, EUSFTA; Article 4.2 EUVFTA).

They envisages further mutual recognition of simplifications and standards for customs procedures (for instance, Article 6.3 EUSFTA). The FTA between EU and Vietnam moves further in the direction of implementing collaboration with the private practice in the spirit of the TFA (as discussed in detail by Grainger, 2014). It provides for enhanced cooperation with

---

6 As spelt out in Article 6.2 (a) and (b) of the EUSKFTA
7 As spelt out in Article 6.2 (d) and (e) of the EUSKFTA
business community and for stronger cooperation in the framework of WTO and WCO (Article 4.2 EUVFTA). Article 4.3 of this most recent FTA of the type of deep free trade agreements provides for the implementation of international customs standards into the customs legislation and procedures of its contracting parties.

Trade facilitation measures, in line with the simplifications and standards adopted by the WCO (Article 6.2 EUSFTA, Article 6.3 EUSKFTA), include:

- simplified customs procedures aimed to reduce the compliance costs, based on a single customs declaration, use of information technology to facilitate the electronic exchange of information as well as using risk management and post-clearance audit to facilitate the clearance of goods upon entry into the customs territory of a Contracting party (Article 6.6 EUSFTA; Articles 6.2 (b), 6.4; Articles 4.5 and 4.7 EUVFTA);
- minimum clearance times to ensure expedited customs release (Article 6.7 (1) EUSFTA, Article 6.2 (2) EUSKFTA; Article 4.4 EUVFTA);
- pre-arrival data analysis and data processing of declaration data (Article 6.2 (2) EUSKFTA; Articles 6.2 (2), 6.3 and 6.7 (2) EUSFTA; Article 4.4 EUFTA), pre-shipment inspections (Article 6.10 EUSFTA; Article 4.13 EUVFTA) and splitting the payment of duties from the declaration process (Article 6.7 (3) EUSFTA, Article 6.2 EUSKFTA) to facilitate movement of goods across the border, as well as
- single window (Article 6.13 EUSFTA) and instruments to exchange information among customs and other border authorities and also among customs and economic operators (Article 4.5 (4) EUVFTA).

A special Customs Committee is established (Article 6.17 EUSFTA, Article 6.13 EUSKFTA, Article 4.16 EUFTA) to agree on specific implementation measures related to individual customs issues.

The FTA between the EU and Vietnam for the first time introduces elaborated provisions on the relations between Customs and the business community (Article 4.15).

The deep free trade agreements introduce further the use of self-certification of exporters for the purposes of determining the origin of goods (as discussed in detail by Diaz Gavier, Verhaege, 2012).

In addition to the extended substantive scope of areas of trade liberalisation, these deep FTAs concluded by the EU, further provide for:

- an extended set of trade facilitation measures,
- a more developed framework for institutional cooperation to implement the customs provisions of the FTAs.

The procedural rules and the promotion of collaboration and cooperation in the implementation of the provisions of the FTAs allow for flexibility through *ad hoc* solutions, which could build in resilience. Based on the scope for risk management customs rules, one risk regulation and risk governance are possible directions to achieve this aim.
2.3 Beyond Customs: further steps towards mutual recognition of standards

The EU – South Korea FTA is the first agreement of this type, which contains a chapter on tariff-barriers to trade, in particular prohibition of import and export restrictions. Specific annexes for sectoral products, such as consumer electronics and pharmaceuticals allow EU exporters to conduct safety testing in Europe. Other provisions allow further for mutual recognition of conformity standards that are in line with international standards. That saves significant regulatory and compliance costs (Horing, 2012, p. 313). This approach has further been developed under the FTA between the EU and Singapore, and most recently between under the FTA between the EU and Vietnam.

The extension of the scope of trade measures and mutual recognition of standards promote exchange of best practices and converge of regulatory standards.

3. COVID-19 customs related measures

The COVID-19 pandemic brought up a significant fall in the volume of international trade. According to the datasets by Eurostat, the Statistical Office of the European Commission, the import and export of the EU to the rest of the world shrank over 20 % in May 2020 in comparison to the same period in 2019.8

This trend is not consistent across all sectors of production and trade. For instance, data from the European Commission9 indicates that the agri-food sector showed a resilience during the COVID-19 pandemic and managed to overcome logistics bottlenecks, with the exception of some certification requirements imposed by certain countries to secure security from COVID-19 for certain food products.

At the same time, however, short-term business statistics indicators by Eurostat10 point out at a decrease of the industrial production in the EU of over 18 % for the months of February, March and April 2020. An economic analysis published by the European Commission in April 2020 indicates a shrinkage in the trade of manufacture products over 10%.11 The recovery of international trade flows require measures that allow growth in the productions of goods considered as “non-essential” in pandemic times as well. Trade facilitation could play a role in this respect.

The sustainment of the international flow of goods was further due to the measures taken by governments and the relevant guidance issued by international organisations, in particular WTO, OECD, the World Bank, the UN and its agencies12 and also by the EU13 and WCO.14

These measures could be set put under several areas:

Transparency
- sharing information among members about measures that individual governments;

---

8 EUROSTAT press release
9 European Commission, Directorate-General TRADE, newsletter June 2020
10 Impact of COVID-19 on industrial production, Eurostat
11 Chief Economist Team of DG TRADE of the European Commission, Impact of the COVID-19 pandemic on global and EU trade, 17 April 2020
12 As summarised in the Compendium of this Hackathon.
13 European Commission, Guidance on Customs issues related to the COVID-19 emergency
14 WCO Secretariat Note What Customs Can Do to Mitigate the COVID-19 pandemic
Exceptions and adjustments

- adjusting existing instruments to respond to the crisis by adopting temporary exceptions or adapted licensing requirements, and
- exceptions from current rules, in particular duty suspensions;

E-commerce:

- facilitation and streamlining of customs procedures and formalities for use of e-commerce, such as the adoption of digital payment solutions and use of e-invoicing;
- stepping monitoring and compliance by use of adapted, technology-based solutions for clearance, control and supervision, and
- fight against smuggling, illicit goods, counterfeit, which particularly proliferate in e-commerce trade;

Trade facilitation:

- simplifications to reduce formalities and optimise planning and administration of revenues;
- streamlining and adjusting customs procedures to reduce border bottlenecks and the cost of moving goods across borders;
- adoption of customs solutions to expedite movement, release and clearance of certain goods, including goods in transit;

Risk management:

- boost data analytics;
- develop capacity building for risk management;
- develop contingency planning to boost risk resilience and preparedness;
- boost business continuity;

Counterfeit, illicit goods, customs infringements:

- improve customs supervision and customs controls, including; through use of technology;
- implement enforcement measures and penalties;
- step up cooperation with other border agencies, with other customs authorities;
- improved cooperation with EUROPOL; and
- step up co-ordinated border management;

Digitalisation

- support digital infrastructure; and
- develop and improve e-services;

Enabling optimisation and specific customs services:

- develop “fast lanes” when they could be designated in the infrastructure or integrate other logistic solutions to expedite and streamline clearance on the one hand, and adapt protect health of customs officers and transport operators, on the other hand; and
- develop specific services of customs, veterinary and other inspection offices.
Staff shortages:

- adopt temporary flexible solutions to deal with insufficient availability of staff; and
- endorse collaborative solutions between Customs and the private sector to deal with staff unavailability, in particular when needed to apply the authorised operator facilitations;

Social Distancing for Customs and other border officials and trade:

- use automation, electronic data processing and e-payments, replacing any paper processes and thus avoiding physical contact during the clearance process;
- develop protocols to reduce the need for close contact between traders, transporters and border officials so as to protect stakeholders and limit the spread of the virus, while maintaining essential assessments to ensure revenue, health and security;

Trade recovery strategies

- in consultation with all stakeholders, develop such strategies, such as payment facilities, fiscal stimuli and other measures.

The recommendations by WCO, EU, OECD and the World Bank underline that these COVID-19 related measures, with relevance to customs, are to be targeted, proportionate, transparent, and temporary.

At the same time, these recommendations may become permanent measures when they:

- coincide, support or strengthen trade facilitation rules,
- address existing vulnerabilities of global supply chain and/or customs processes and procedures;
- strengthen the resilience of trade rules.

That means that COVID-19 customs related trade measures may make trade facilitation rules more resilient to emerging and new risks. One of the ways to tackle such risks is risk governance and risk regulation.

4. Risk governance and risk-based regulatory solutions

4.1 Addressing emerging risks

The COVID-19 pandemic illustrates an emerging risk which is fast in its spread, as vast its economic consequences are.

While some risks, such as those related to fraud and under-declaration of the value of goods, could be considered predictable because of the recurrence of known patterns, there are risks which are not well known. Such risks are sometimes referred as “emerging risks”. The health risks are one of them because they are related to a diverse group of threats. Their occurrence is further largely influenced by the climate change and the damage caused to the environment.

Knowledge about types and nature of risks helps to improve risk anticipation and risk management. Risks anticipation is recognised in research and policy-making as a pre-condition for an adequate response in a diversified and more targeted manner. Thus, in its
report of 2015, the International Risk Governance Council, identified the elements of risk governance for emerging risks, which could be summarised as follows:

- definitions and typology of risks based on the analysis of the present to anticipate the future;
- proactively developing scenarios based on current models and narratives;
- generate risk management options and designing a strategy;
- strategic planning and foresight;
- assessing the scope for failure and assessing reactions;
- implementation;
- monitoring the strategy success.

The process of risk governance allows to integrate risks in the activities of an organisation. Accordingly, prevention and preparedness could better be integrated into the business processes and functions as well as into the internal control systems.

4.2 Implementation of risk governance

The implementation of a risk governance model and strategy is not merely a technocratic exercise. It covers necessarily the instruments known to the classic risk management theory and practice, such as:

- classification of risks, on the basis of their relevance for the public;
- threat assessment;
- contingency planning and preparedness;
- audit;
- alert and early warning mechanisms;
- risk management;
- legislation;
- guidelines for implementation.

A governance approach requires further:

- a strategy;
- an architecture of bodies, rules and the business processes;
- collaboration;
- bodies to advise on strategy and its implementation;
- stakeholders mapping and stakeholder analysis;
- cooperation with the scientific community;
- developing a body of internationally recognised standards and best practices;
- convergence towards the implementation of best practices, and
- technical assistance and capacity building to promote the achievement of the highest level of protection among the widest possible number of regions and countries.

15 Available at : https://irgc.org/
4.3 The Animal Health Law of the EU as an example of risk governance

Animal Health Law is the name of a legislative act that governs the fundamentals for the veterinary rules for the livestock and agri-food production and trade sector, including risk management, veterinary controls and supervision and the related internal and external border controls in the EU.\(^{16}\)

This regulation implements a modernised strategic approach towards prevention of animal diseases. It supports the sustainability, competitiveness and productivity of the EU livestock and agri-food trade. It also codifies and simplifies EU legislation adopted in the course of more than 40 years to govern various aspects of the veterinary activities and trade in animals and related products. Then it shape it by adding the principles and objectives of a new strategy and allows for a varied set of instruments for their implementation.

The Animal Health Law is an innovative piece of risk regulation. It combines binding legal rules with soft regulatory approaches to support biosecurity and disease prevention and focuses on preventing animal disease spreads and tackling disease.

The prevention strategy an approach is at the heart of the risk management and risk governance of the new animal health legal framework. It includes:

- *prevention is better than cure* – a new strategic approach that aims to reduce the adverse effects of diseases on animal and human health and the environment (recital 8 of the Animal Health Law);

- *proportionality of intervention* – use of adequate surveillance, control and eradication methods when a disease is confirmed in order to limit the negative consequences (Part III of the Animal Health Law);

- *disease prevention and preparation for cases of eventual disease outbreaks* – setting requirements for planning and preparation of contingency measures, adoption of biosecurity measures, use of diagnostic tools, vaccination and medical treatments;

- *integrated approach*, which takes into account the links between animal health and public health, the protection of the environment, food and feed safety, animal welfare, food security, economic, social and cultural aspects (recital 10 of the Animal Health Law);

- *role of scientific advice* following the standards of international organisations, in particular the International Organisation on Animal Health;

- *requirements for the identification, registration and traceability* of animals;

- *certification and tracing* of consignments of animal products and products of animal origin (Part IV: Articles 84 to 228; and Part VI: Articles 244 to 248 and 252 to 256 of the Animal Health Law);

- *approval and registration of transporters* (Part IV: Articles 84 to 228; and Part VI: Articles 244 to 248 and 252 to 256 of the Animal Health Law);

- requirements for the control of the entry of animals, animal products and products of animal origin into the EU and their intra-EU movement as well as upon export of animals and such products outside the EU (Part V: Articles 229 to 243; and Part VI: Articles 244 to 246 and 252 to 256 of the Animal Health Law);

- responsibilities of main stakeholders (Part I: Articles 1 to 17 of the Animal Health Law) – a clear and systematic regulation of distinct categories of farmers and other stakeholders, such as central and local veterinary officials;

- diversified and improved tools for trade and veterinary authorities to prevent and fight potentially devastating transmissible diseases, such as modern, technology based tools for their surveillance and diagnosis;

- developed system for early warning and better cooperation with customs and other border agencies;

- collaboration – encouraging collaboration between industry, the veterinarian authorities and animal health professionals for an optimal animal health management (recital 51 of the Animal Health Law) in order to support farmers to develop more tailor-made solutions, contingency measures and early reactions to diseases when they occur; encouraging collaboration between bordering member states whenever “feasible and appropriate” in the context of simulation exercises for disease preparedness (Part III, Article 45 (2) of the Animal Health Law);

- simplification of formalities for international trade in certain live animals and animal products (Part V of the Animal Health Law);

- rules on disease control and eradication (Part III, Title II of the Animal Health Law), including emergency measures such as restrictions on the movement of animals, setting up surveillance programmes (Article 28 of the Animal Health Law) or eradication programmes (Part II, Title II, Chapter 3 of the Animal Health Law);

- flexible instruments that combine prescriptive rules, self-regulation and voluntary compliance rules to allow adjustment rules to specific circumstances, which concern economics but also new risks;

- trade facilitation measures such as declaring risk free areas, zones and compartments (recital 74 of the Animal Health Law), for instance granting an exemptions for record-keeping for low-risk establishments (Part IV, Article 102 (2) and Article 105(2) Animal Health Law) or could demonstrate its compliance level by having a computerised database with automatic data entry (Part IV, Article 102 (4) Animal Health Law).

The Animal health law follows a risk-based approach based on the following principles and rules:

- disease awareness and preparedness through contingency planning and simulation exercises (Part III, Title I, Chapter 1 of the Animal Health Law);

- the precautionary principle that allows for measures in case of a significant risk and on the basis of pertinent information;
- *risk assessment*, which requires the application of measures on the basis of scientific evidence and which are then applied in a transparent and objective manner, with various degrees of intervention depending on the type and spread of a disease and taking into account the scientific knowledge (Part II: Articles 18 to 42 of the Animal Health Law);

- *preventive practices* such as the possibility to use vaccination, biosecurity and best other best veterinary practices;

- *risk assessments* by official bodies.

The measures under the Animal Health Law implement a risk governance approach into a comprehensive framework that boost crisis preparedness through scientifically-based rules, trade facilitations, cooperation among official authorities and flexibility. These rules are accompanied by institutional framework of committees and advisory bodies that allow for a rapid reaction.

The regulation recognises the importance of the international standards and the cooperation with other organisations and external stakeholders. Its institutional framework provides a scope for searching and applying best practices and scientific advice is consistently used.

These measures embed resilience is this fundamental act for the livestock, agri-food and veterinary sector in the EU.

5. **FTAs as an instrument for crisis management?**

5.1 **FTAs and crisis preparedness**

The deep free trade agreements of the EU have not been conceived as an instrument of crisis management. Their role is to deepen trade liberalisation across a wider span of sectors. They seek to facilitate trade and implement international standards.

At the same time, as the analysis above shows the expansion of the substantive scope of the agreements bring together institutionalised collaboration and cooperation. This framework facilitates flexibility and creates the basis for *ad hoc* resilience-oriented solutions, such as guidance and recommendations adopted during the COVID-19 pandemic.

FTAs contain provisions on protection of health of animal and humans and make references to the WTO Agreement on Sanitary and Phytosanitary measures. That means that they FTAs endorse a risk regulation as long as it is in line with the internal EU internal legal framework.

Similarity and consistency in the facilitation of animal health and customs measures for trade could further be a basis to develop risk regulation, risk governance and preparedness in the context of deep FTAs.

5.2 **Towards trade governance?**

It was illustrated that FTAs of the new generation of deep free trade agreements implement in further detail the main elements of the WTO Trade Facilitation Agreement.
The TFA contains a number of commitments for its parties, which consistently promote convergence of standards for trade facilitation based on best practices, transparency and exchange of information. The evolution of best practices is supported by exchange of information and encouragement to adapt national rules to changing circumstances. The establishment of a committee which works together with national trade facilitation committees, but also in coordination with WCO, sets up a framework for trade governance. Trade governance for trade facilitation contributes towards three main objectives:

- **coherent convergence** of trade facilitation standards and measures at the domestic and at the international scene;

- **cross-border collaboration** among customs authorities, in alignment with practices and logistic arrangements and in cooperation with the private sector;

- **collaborative implementation** of trade facilitations which combine binding commitments as well as supportive measures for less developed countries, including capacity building and technical assistance.

The trade governance trend could be seen in the generation of EU deep free trade agreements. This approach serves the need for flexibility in implementing trade liberalisation in areas where competence is shared between the EU and the Member States.\(^\text{17}\)

### 5.3 Risk Governance

As the analysis in preceding chapters shows, in the area of animal health the EU has developed a legal instrument for a risk governance. The Animal Health Law is an example of embedding a resilience into a risk governance framework while ensuring smooth movement of goods in trade. Facilitations are inherently used to achieve the objectives of this regulation.

The type of measures to tackle COVID-19 pandemic shows a convergence based on analysis of risks, risk preparedness and strategy to balance resilience and trade facilitation in order to maintain the international flow of goods. The implementation of these measures need an institutional set up that ensures continuity in their application but also the observance of their temporary nature and conditions associated to it. The FTAs procedural and institutional provisions may serve such a framework.

That being so tackling COVID-19 pandemic may serve to develop the a risk governance approach in customs measures in the FTAs

### Conclusion

The new generation of deep FTAs implement a trade governance system based on strategic approach, substantive scope and a procedural set-up for cooperation and collaboration.

The COVID-19 pandemic occurred in a time when the trade facilitation agenda was gaining a momentum and a convergence towards best practices was taking place. At the same time

---

\(^\text{17}\) See Opinion 2/15 of the Court of Justice of the European Union concerning the allocation of competences between the EU and its Member States under the EU-Singapore Free Trade Agreement.
there were vulnerabilities in the global supply chain, which were only made visible with the outbreak of the pandemic. In this way, the resilience of global supply chains moved forward in the global trade agenda.

The trade facilitation measures for customs are a suitable place to build up resilience through risk governance. The risk governance in the rules on animal health are a case-study which could bring useful insights for improving resilience while managing customs in challenging times.

Embedding resilience in a trade facilitation framework should rest on two pillars:

- **strategic approach** for a risk governance and trade facilitation, and
- **institutional and decision-making** set up for a collaborative crisis management.

The substantive, procedural and institutional set up under the deep FTAs concluded by the EU provide a framework to embed risk governance in their existing trade governance system.

**REFERENCES**

*International organisations:*

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Global Europe: Competing in the World, COM(2006) 567 final of 4 October 2006

WTO TFA: [https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm)

**LITERATURE:**

Bell, Sandra “Meeting the Challenges of Customs Compliance in a Post TFTEA and Reinvigorated Trade Enforcement Environment”, (2017) *Global Trade and Customs Journal, volume 12, issue 5*, 190 - 195


Horng, Der-Chin “Reshaping the EU’s FTA Policy in a Globalising Economy: The case of the EU Korea FTA”, *Journal of World Trade* 46, no. 2 (2012): 301–326


**REPORTS:**


International Risk Governance Council, 2015, *Improving Risk Regulation*

**ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUSFTA</td>
<td>EU-Singapore Free Trade Agreement</td>
</tr>
<tr>
<td>EUSKFTA</td>
<td>EU-South Korea Free Trade Agreement</td>
</tr>
<tr>
<td>EUVFTA</td>
<td>EU-Vietnam Free Trade Agreement</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Agreements, meaning the generation of deep free trade agreements</td>
</tr>
<tr>
<td>TFA</td>
<td>Trade Facilitation Agreement of the World Trade Organisation</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organisation</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>