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Institutional Architecture of EU–UK Relations Post-Brexit

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Abstract

The research carried out in this thesis examines the institutional architecture that oversees the European Union–United Kingdom relationship following Brexit. It aims on answering the question to what extent the newly established institutional architecture that governs this association reflects the objectives pursued by the UK with Brexit. To do so, the recently adopted EU–UK Trade and Cooperation Agreement was analyzed. Additionally, the EU–Canada Comprehensive Economic and Trade Agreement as well as the EU–Korea Free Trade Agreement were examined. Finally, the findings of all three analyses were compared by using the key concepts and theories that inform this work. Doing so, the hypothesis that the institutional architecture established by the TCA is highly reflective of the UK’s objectives of sovereignty and autonomy was tested. Finally, the research found that each institutional architecture that governs a bilateral relationship reflects the general objectives as stated for this association in the respective agreement. For the EU–UK relationship this means that the absence of supranational authorities, the sovereignty over domestic policies and the autonomy of its legal system as the UK’s objectives are highly reflected by the institutional architecture.

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List of Abbreviations

| | |
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| AA | Association Agreement |
| CETA | Comprehensive Economic and Trade Agreement |
| CJEU | Court of Justice of the European Union |
| DCFTA | Deep and Comprehensive Free Trade Area |
| DSM | Dispute Settlement Mechanism |
| EEA | European Economic Area |
| EU | European Union |
| FA | Framework Agreement |
| FTA | Free Trade Agreement |
| ICSID | International Centre for Settlement of Investment Disputes |
| LI | Liberal Intergovernmentalism |
| MLG | Multi-Level Governance |
| PCA | Partnership and Cooperation Agreement |
| RQ | Research Question |
| SQ | Sub-Question |
| TCA | Trade and Cooperation Agreement |
| TEI | Theories of European Integration |
| TIR | Theories of International Relations |
| UK | United Kingdom |
| WTO | World Trade Organization |

1 Introduction

With the provisional application of the *EU–UK Trade and Cooperation Agreement (TCA)*, a new era in the relationship between the European Union (EU) and the United Kingdom (UK) started. By leaving the EU, the UK left both, the internal market and all the Union's institutions. However, the Brexit finally didn't break all ties with the former partners and a new economic partnership was first negotiated and then agreed on. That leads us to the topic of this thesis, namely the *Institutional architecture of EU-UK Relations Post-Brexit*. The motivation for examining this issue comes from the key argument that motivated the UK's will to leave the European Union. In particular, the United Kingdom criticized the EU's institutional architecture with its supranational powers and decision-making processes that constrain the ruling authority of its member states. Utilizing long lasting skepticism against the EU by parts of the British society, the Brexit campaign was driven by two main claims. First, to be able as a UK to autonomously adopt and implement domestic policies without other actors having a say. This can be characterized as claim for ultimate sovereignty and turning away from supranationalism. (Somai 2021) Second, the Brexit supporters emphasized the will to uphold all advantages for the UK regarding trade and investment (Johnson 2020). This especially means full access to the EU's internal market was promoted. To achieve these objectives, the UK finally agreed on a trade agreement with the EU. According to British prime minister Johnson (2020), the United Kingdom has indeed „taken back control“ with the TCA's implementation. Following this statement, the thesis' purpose is to assess whether the trade agreement meets the British objectives with the Brexit by giving full sovereignty to the UK while remaining comprehensive trade relations and access to the EU's internal market.

To do so, the course of this thesis is two-folded. An analysis part and a comparative part are the structure-giving elements for each Chapter. In the first of those two sections, an evaluation of the TCA's content is carried out to assess the established institutional architecture. Here, institutional architecture describes the institutions, procedures and powers that govern the relationship and the decision-making processes. Subsequently, the same analysis is done with the Comprehensive Economic and Trade Agreement (CETA) and the EU–Korea Free Trade Agreement (FTA), governing the EU–Canada respectively –Korea relationship. With sovereignty and autonomy being the key determinants in the Brexit process, these concepts together with related theories provide the analytical framework for this work. With the second part, each analysis' findings are compared to one another. By doing so, the governance structure of the EU–UK relationship can be compared to institutional architectures that oversee a similar kind of association between the EU and third countries. This finally allows to assess the extent to which the institutional architectures differ and whether the UK attained its Brexit objective of same trade advantages but more sovereignty than usual for this type of agreement and relationship.

Regarding sources for the analysis of the TCA, the existing literature is scarce. Only some works discuss possible institutional settings that govern the EU-UK relationship (Gstöhl & Phinnemore 2021; Wouters 2020). Whereas their findings cannot be used due to the analysis of outdated TCA drafts, the articles offer examples on how to structure research that deals with institutional architectures. Another small sample of literature covers more specific aspects of the institutional architecture of EU-UK relations, of which some can be used as reference.

For instance, Barnard and Leinarte (2020) execute an in-depth analysis of the then-proposed and now adopted "Dispute Settlement Mechanism".

For the CETA and its institutional architecture, the scope of existing literature is limited, too. Instead of the overall governance, research mainly focuses on the negotiation processes of the agreement and the particular investment tribunal as key characteristic of the agreement (more in 4.3). For the EU–Korea FTA, the literature covers more of the respective institutional architecture than it was the case for the other two agreements. Thus, this thesis can orientate on this research and findings. Because of the overall scarcity of literature however, to date no research carries out a comparison of the different institutional architectures and their implications for sovereignty. In light of this limited research on the institutional architecture that governs the EU-UK relationship, this work tries to fill this gap.

1.1 Research Questions and Design

To analyze the topic introduced above, a Research Question (RQ) is formulated that leads the subsequent research. Since this work's main focus is on a comparison, a structure that covers the different objects of comparison is established by also stating Sub-Questions (SQs). Each of them covers a specific aspect that will contribute to an answer on the main research question. In the following, these sub-questions will be introduced together with an explanation of how this respective question will inform the work. In addition, the research design will be presented by portraying the steps that will be done in the course of every SQ.

Research Question

To what extent does the institutional architecture that governs the EU-UK relationship reflect the objectives pursued by the UK with Brexit?

An answer to the stated research question will at the end conclude the findings of the analyses of the institutional architectures. In addition, it allows to assess the extent to which the British objective of regaining sovereignty had an impact on the EU-trade agreement by granting the UK more autonomy than usual for this type of agreement and relationship.

Sub-Question I

What does the EU–UK TCA determine regarding the institutional architecture that governs the relationship between these two Parties?

The purpose of formulating this SQ is two-fold. First, the nature of the institutional architecture can be assessed. This includes a view on the aspect of sovereignty and a preliminary evaluation of the TCA's (dis-)conformity with the Brexit's objectives. To do so, the UK's previous EU membership status is used as comparative framework for this Chapter. Second, this analysis procedure will be used in sub-questions II and III again, therefore serving as systemic model for the following analyses.

Sub-Question II

What does the CETA determine regarding the institutional architecture that governs the European Union–Canada relationship compared to the findings of the TCA's examination?

Sub-Question III

What does the EU-Korea FTA determine regarding the institutional architecture that governs the European Union–South Korea relationship compared to the findings of the TCA's examination?

Sub-questions II and III follow the similar procedure as SQ I. The only difference in methodology is that for both comparative parts, the findings of SQ I provide the framework. To carry out these procedures, the agreements and their institutional architectures are compartmentalized into three key dimensions: *Objectives, Norms, and Principles*; *Formal Bodies*, and *Dispute Settlement Mechanisms*. By the creation of comparative tables that cover the characteristics for each agreements' respective parts, the textual analyses are further facilitated. Additionally, these tables provide the reader with the underlying information that motivate the conclusions drawn in the course of this thesis.

Choosing the CETA and the EU–Korea FTA as objects of comparison for this thesis is motivated by two main reasons. First, both agreements can be identified as one of the most comprehensive agreements from a trade only perspective. More precisely, they cover more trade-related aspects than previously adopted EU trade agreements. Second, the CETA and the FTA are two of the EU's most recent trade agreements. This is why they reflect the current procedures, interests and principles that drive the Union's actions and positions the most. (Bongardt & Torres 2017) In total, the two abovementioned agreements are perceived as being the most similar to the TCA when it comes to the circumstances and relationships in which the agreements were adopted. Therefore, and based on this assumed similarity, it can be hypothesized that if the UK attained its main objectives pursued with Brexit, the established institutional architecture should reflect them by giving more sovereignty and autonomy to the contracting Parties than the CETA or the EU–Korea FTA does respectively.

In its structure, the analysis sections follow a qualitative methodology by examining legal documents. Also, a deductive approach is applied when evaluating the institutional architecture. This is done by the application of key concepts and theories on the agreements' provisions and settings to assess the extent to which they are reflected. With the subsequent comparison of these findings, an answer to the initial RQ can be given. Concepts necessary for the contextual understanding together with the theories included in this work will be presented in the second chapter.

1.2 Social and Scientific Relevance

As mentioned in the introduction, this thesis will provide deeper knowledge for researchers by filling the gap in literature concerning the institutional architecture and governance of trade agreements. Here, especially the consequences of Brexit from an institutional perspective get more attention. In this context, the research on these consequences can help in predicting implications of "Brexit-like" processes on the EU external relations once they happen again. This primarily allows for an answer to the initial RQ with the assessment of the UK's attainment of their Brexit objectives from an institutional perspective. Additionally, the effect of increasing nationalist and protectionist tendencies for international relations and governance frameworks is discussed implicitly and provides a starting point for further research.

In addition, the design chosen here with the TCA, the CETA and the Korean FTA is also beneficial for society at large. This is because it promotes further understanding of these two trade agreements that have a strong economic and social impact considering the frame relations between the European Union and Canada respectively South Korea. More precise, the Brexit showed that uncertainties in politics easily lead to irritations within society and domestic politics. This thesis' outcomes can contribute to a better understanding of international relations structures and the implications for the society, may it be new procedures in trade but also possible constraining elements through transfers of sovereignty.

2 Key Concepts and Theoretical Background

To analyze the different relationships and carry out the subsequent comparison, an analytical framework is needed. Since the aim of this thesis is not to examine policies – e.g., fishing quotas – but to uncover structural aspects, the use of theories and concepts is crucial. With that, we can understand what the institutional architecture is about and what we can infer from it with regard to the likes of sovereignty and autonomy in decision-making processes. This section will therefore present and explain the key concepts and theories that will inform this work. Regarding the latter, hypotheses are stated in order to facilitate the understanding of these theories in context of the thesis' research.

2.1 Key Concepts

To facilitate the understanding of this thesis' framework, the key concepts for this research are presented below. The concept of *Trade Agreements* clarifies the area of EU external relations that is covered in this work. Further, the concept of *Institutional Architecture* clarifies what is assessed specifically in the course of this thesis. Third, the concept of *Sovereignty* is presented to explain what the analyses will focus on.

Trade Agreements

The European Union identifies three main types of trade agreements within their framework: (i) Customs Unions, (ii) Partnership and Cooperation Agreements, and (iii) Association and Free Trade Agreements. All of them have the purpose of developing better trading opportunities but also promoting European values. (European Council 2020) However, differences exist in the extent to which they are linked to the EU's internal market. Its 'four freedoms' – free movement of goods, capital, people and services – are only granted to a very limited number of countries beside the EU's member states. Namely, only Iceland, Norway and Liechtenstein as members of the European Economic Area (EEA) enjoy this privilege. (European Union 1994) *Customs Unions* relate to the market by eliminating customs duties between the contracting parties. In addition, common external tariffs on imports are adopted. (European Commission n.d.) *Partnership and Cooperation Agreements (PCAs)* are mainly concluded with developing countries. They are designed to support the economic, societal and political development of the respective contracting partner. Concerning the internal market, the removal of duties and taxes is a key characteristic. Also, conditions regarding services and capital flows can be set. (EUR-Lex 2020)

Finally, *Association Agreements (AAs)* and *Free Trade Agreements* exist. Primarily, these agreements enable reciprocal market opening together with removing or reducing customs tariffs in bilateral trade. Further, 'non-tariff barriers' like standards on quality and safety became an integral part of these agreements in recent times. Whereas PCAs and FTAs do not lead to integration to the EU's internal market via the application of parts of the EU *acquis*¹, the Deep and Comprehensive Free Trade Area (DCFTA) does so and can therefore be seen as addition to an AA. By granting full integration to the EU's internal market at

¹The EU's *acquis communautaire* describes all the rights and obligations for member states arising from primary and secondary law, court decisions and additional formal actions by the bodies of the EU. (Petrov 2006)

least for certain sectors, DCFTAs they lead to the deepest integration into the EU's single market apart from the EEA. (Van der Loo 2016) In this thesis, *Trade Agreement* describes modern FTAs that cover non-trade areas like working standards, too.

Institutional Architecture

For the concept of *Institutional Architecture*, no clear definition exists. Instead, its meaning depends on the research context. In general, the term describes an established construct of institutions to govern an international relationship. Within this concept, *Institution* marks the key term that can be interpreted differently. Narrowly defined, only formal bodies like agencies and ministries are counted. In contrast, the wider understanding also includes all (institutional) rules to structure and form the behavior of actors. (Bressanelli & Chelotti 2021) This thesis orientates on the wider definition with some limiting remarks. For formal bodies, they need to be either part of decision-making procedures or represent a characteristic of the relationship's nature. For procedures, formal aspects including rights regarding proposals, voting, representation, and vetoes are included. In addition, informal cooperation mechanisms – e.g., consultations or dialogues – are discussed with a view on their reflectiveness of the relationship's nature. Finally, guiding norms, values, and principles are also included in this thesis' understanding of an institution. Regarding this dimension, also implicit principles that can be inferred from the agreement's objectives, sound, and context are examined in this work.

Architecture as the latter term finally describes the construction and arrangement of these institutions into a specific order that finally governs and oversees the bilateral relationships examined here. This architecture is eventually stated in and established through the respective international agreement. However, not all institutions, their importance and role within the architecture are explicitly presented. (Wouters 2020) As a result, the institutional architecture can vary across different international relationships. Lighter and less constraining architectures with fewer governing institutions (both, bodies and rules) can exist but also vice versa. (Crespo 2017)

Sovereignty

This concept is a core part of political theory and generally stands for exclusive power over a territory, including rule-making. Further, no superior authority exists that could order the *sovereign* state how to act. (Baylis et al. 2017) While the Westphalian Peace implies the fact that every state is a sovereign in international relations, the European Union is characterized by the establishment of supranational powers to which nation states transferred parts of their sovereignty. In contrast, the United Kingdom as actor is characterized by a parliamentary sovereignty. According to their constitutional practices, the parliament has the full authority over legislature. (Ewing 2017) By “taking back control”, the UK aims for restoring this full sovereignty and autonomy over legislature that was partly given up to the EU's institutions. In this context, *autonomy* is defined as the absence of a possibility for actors to influence a construct they are not part of, e.g., a legal system.

2.2 Theoretical Background

As already stated in the presentation of the research design, the application of theories to the institutional architecture marks a key element in this thesis. More specific, by examining the trade agreements in light of the theories, we are able to determine what theoretical assumptions are reflected by the institutional architecture. Further, each theory presupposes specific rationales that guide and characterize a relationship's governance. By comparing the characteristics of each theory that is reflected by the respective institutional architecture, we can assess them with regard to sovereignty as main focus. For this part, we will make use of two main theoretical blocs, namely *Theories of European Integration (TEI)* and *Theories of International Relations (TIR)*. As mentioned above, each explanation of a theory is followed by the formulation of an hypothesis to promote a better understanding of the theories' practical meaning in this work's context.

2.2.1 Theories of European Integration

The general purpose of *TEIs* is to help in understanding the process and scope of European integration – which means cooperation between European countries – and with it the emerging structure. (Schimmelfennig & Rittberger 2006) By referring to *neo-functionalism* and *liberal intergovernmentalism* as the two predominant theories in context of European integration, it can be assessed whether and to what extent their underlying assumptions are reflected by every single institutional architecture.

To clarify, *neo-functionalism* sees internally evolving functional individualization based on rational decision-making as main driver for further cooperation. Pivotal for this theory is the concept of 'spill-over'. It implies that integration in one area can lead to unplanned political, functional, or cultural integration in another area and thus facilitates ongoing integration. (Bergmann & Niemann 2015) Thus, institutions as key actors are designed to facilitate these processes by having ambiguous responsibilities and a flexible structure where the form follows the functions. In contrast, the *liberal intergovernmentalism* as developed by Moravcsik in the 1990s stresses the importance of nation states in the process of integration. The theory assumes that the level of integration is not determined by established institutions but instead depends on the states' national interests and bargaining outcomes to ultimately increase gains. Thus, institutions can be characterized as a way to establish credible commitments between the Parties. (Bergmann & Niemann 2015) It can therefore be hypothesized that for the institutional architecture that governs the EU–UK relationship, the theory of liberal intergovernmentalism is mainly reflected due to the British objective of national sovereignty over policies, processes, and developments such as integration. The neo-functionalist approach of defining institutions as key actors would contradict this sovereignty in determining the level of integration.

2.2.2 Theories of International Relations

Also for the *TIRs*, their purpose is to simplify the understanding of world politics. Similarly to the *TEIs*, the theories of *realism* and *neoliberal institutionalism* as presented below have their own assumptions regarding the role of institutions and actors beside nation states and what

this implies for the aspects of sovereignty and autonomy. That's why both theories are used to inform this research the same way the TEIs do.

Following *Realism* in international relations, a state's relative power in an anarchic world without a superior authority is the key aspect that matters. With the increase in relative power as only premise for a state's actions, the realist approach sees cooperation with other nations critical. The only reason for the establishment of institutions is their purpose to consolidate the hegemon's powerful position. (Dunne & Schmidt 2017) Here the *neoliberal institutionalism* differs by seeing institutions as tool to promote cooperation and overcome the problems realists see with regard to relative powers. This becomes possible by the shift away from power maximization towards utility maximization as main objective in international relations. (Sterling-Folker 2010) Thereby, the way institutions promote this cooperation is by enhancing trust between the Parties. Thus, their specific powers and tasks can still differ depending on the relationship. Nonetheless and similar to the theory of realism, the states remain the decisive actors regarding their actions. (Barnett 2017) In sum this means that for both approaches the EU and the UK would remain the key authorities. However, it can be hypothesized that for the institutional architecture that governs the EU–UK relationship, the Parties still agree on the establishment of institutions to enhance trust according to the approach of neoliberal institutionalism. Nonetheless, to ensure the UK's sovereignty and autonomy it can be expected that the institutions have very little to no powers in determining the Parties' actions.

2.2.3 New Approaches and Discussions

Although the theories presented above can be seen as predominant over the last decades, they do not adequately explain current developments in international cooperation. More specific, the rationalist premise of neo-functionalism and LI, that sees interest groups' and economic interests as variables for integration and cooperation, is overcome. As example, from economic perspective the Brexit led to disadvantages. However, the constant struggle for the UK to support the European idea of an ever-closer Union and the Brexit as result show the existence of factors besides economic interests that determine states' actions. Thus, the Brexit proved the purely rationalist assumptions about the actors' objectives partly wrong.

This is where the *constructivist approach* applies by focusing on values, norms, and belief systems that can serve as explanatory factors for external actions. (Costa 2019; Risse-Kappen 1996) Further, with public opinion, identity politics, and belief systems as factors that shape behavior, the "logic of consequences" is replaced by the "logic of appropriateness" within this theoretical approach. (Pollack 2020; Tonra & Christiansen 2018) With this knowledge, an institutional architecture that follows a constructivist approach is mainly shaped by the factors stated above.

The second shift in theorizing international relations and European integration is towards *Multi-Level Governance (MLG) approaches* and *federalism*. The reason for its development is that the theories presented in 2.2.2 cannot properly explain the existence of horizontal and vertical linkages between a diverse set of actors. This is because the common theories are related to the classical neo-functionalist vs. intergovernmentalist debate of either supranational or national authority and states as sole actors in international relations. The MLG approach goes

beyond this viewpoint and says that powers are transferred to a variety of state and non-state actors to shape the so-called "transnational relations". (Risse-Kappen 1996)

Federalist theories use a similar perspective. They assume an institutional architecture where different governing levels own specific ruling authority and final decision-making rights but all related to a common interest. (Pollack 2020) Although the EU is a construct *sui generis*, it partly reflects this approach by having common objectives, the principle of loyal cooperation², supranational bodies like the European Parliament but also 27 sovereign states. (Knodt & Große Hüttmann 2005) An institutional architecture based on the MLG and federalist approach would be characterized by common aims but partly autonomous political and societal actors.

The new approaches presented above emphasize the fact that the stated theories in 2.2.1 and 2.2.2 are not exclusive. They can rather be characterized as the main theoretical streams. Thus, the TEIs and TIR presented previously might not explain specific aspects of an institutional architecture as established by the analyzed trade agreements. Therefore, reference is made to these new approaches in case one of them better explains these certain aspects.

²Where EU objectives exist, the *principle of loyal cooperation* requires the member states to act in a way that does not harm but promotes the attainment of these objectives. By this, it should be ensured that the EU is represented uniformly in the context of international relations. (Casolari 2012)

3 EU–UK Trade and Cooperation Agreement

Following the introduction to the thesis' topic, the trade agreements will be analyzed, contextualized and interpreted in the following. First, the *EU–UK Trade and Cooperation Agreement* is examined. Signed on December 30, 2020, the TCA marks the most recent agreement that governs the EU–UK relationship following Brexit. Thereby, it is designed to establish one single overarching framework for governing and overseeing the relationship. (Fella 2021)

For the subsequent Chapters, the already mentioned compartmentalization of the analyses into *Objectives, Norms, and Principles; Formal Bodies*, and *Dispute Settlement Mechanisms* as the three dimensions of an institutional architecture is used. With the help of existing literature and by orientating on the agreements' table of contents, the characteristics for each of the three parts were worked out. This ultimately allows for an assessment of the institutional architectures in light of the key concepts and theories that inform this work. Finally, the methodological approach enables a comparison of the different international trade agreements and their institutional architectures based on the analysis' findings that were generalized using the theories.

3.1 Objectives, Norms and Principles

In the preamble and Part One of the TCA, the *General Objectives* for the bilateral relationship between both Parties are established. Thereby, the agreement emphasizes two main aspects as appendix A.1 shows. First, maintaining a high level of trade protection and autonomy from political influence while removing trade barriers is pointed out as key objective. Second, the TCA underlines the full sovereignty and autonomy of the UK several times. Consequently, the full autonomy of each Party's legal system and the UK's independence from the EU is highlighted several times throughout the preamble and Part One of the agreement. In doing so, the TCA reflects a characteristic that is uncommon in international agreements. Whilst other trade agreements are typically designed to promote some form of integration, the TCA is set up to ensure independence and autonomy of the Parties while still establishing a bilateral partnership.

Against the background of these general objectives, the *Norms and Principles* that guide and shape the interpretation and application of the TCA can now be analyzed. Besides explicitly mentioned principles, also the sound and accentuations of the agreement are included. For the principles as well, the TCA formulates their meaning very detailed to avoid misinterpretation and -understanding. Appendix A.1 shows this degree of preciseness in comparison to the subsequently analyzed agreements. For the principle of *mutual respect and good faith*, this means that it is explicitly defined as "taking appropriate measures that ensure the fulfillment of obligations arising from the agreement." At the same time, no action shall be taken by the Parties that "could jeopardize the attainment of the objectives", which ultimately includes the respect for the UK's sovereignty and autonomy as general objective. (Article COMPROV.3 TCA) The finding regarding very clear definitions for principles and objectives is further expressed in Part Six of the TCA. Whereas the five principles (i) democracy, (ii) rule of law, (iii) human rights, (iv) fight against climate change, and (iv) countering proliferation of weapons of mass destruction are

common objectives in European relations and common understanding of these terms exist, their importance is especially emphasized by declaring them as "essential elements" which means:

"If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in Article COMPROV.12 [Essential elements], it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part." (Article INST.35.1 Part Six Title III TCA)

The emphasis on the sovereignty and autonomy of the UK together with the precise definition of each principle once more indicate a Party's aim to avoid misunderstanding that could widen the agreement's scope. This stands in strong contrast to the EU's handling with principles and objectives. More precisely, the ambiguity of EU law led to complaints (especially by the UK) about the power of the Court of Justice of the European Union (CJEU) to misinterpret provisions and thereby favoring further integration. (de Waele 2010) Thus, it seems that the UK wanted to prevent any actor from widening the scope of the agreement and its provisions by pointing out the respect for its autonomous status outside the EU. Therefore, it is not surprising that the TCA remains silent about general objectives to promote further cooperation and principles that could favor the deepening of cooperation. Finally, also the formal tone and emphasis on the correct application of the agreement underline the disunited relationship between the EU and the UK.

3.2 Formal Bodies

On the basis of the abovementioned dimension of objectives, norms and principles, the TCA's institutional architecture contains a *Formal Bodies* structure as second dimension. This includes bodies formally established by the agreement and having a direct impact on the decision-making processes. However, also bodies without ruling powers – for example dialogues and fora – are included since their existence is also reflective of the broader institutional architecture established by the agreement. In the following, the institutions' roles within the governance framework and its implications for the EU–UK relationship are presented with appendix A.2 providing more detailed information on the characteristics of each body discussed.

The central body established by the TCA is the *Partnership Council (the 'Council')*, which is co-chaired by an EU Commissioner and a UK minister. The Council's superior position in relation to the other bodies is expressed by being the only institution that is allowed to amend the agreement in case of errors. This can be done with immediate effect by a single decision. Further, it has the power to change tasks, establish or dissolve any committee existent under the TCA, too. Finally, the Council also has the power to adopt decisions and recommendations regarding the implementation or application of any provision of the agreement. (See appendix A.2) In the context of the TCA, *decision* and *recommendation* is defined as following and always requires mutual consent by the Parties to be adopted:

"The decisions adopted by the Partnership Council, or [...] by a Committee, shall be binding on the Parties and on all the bodies set up under this Agreement and under

any supplementing agreement [...]. Recommendations shall have no binding force."
(Article INST.4.1 Part One Title III TCA)

Following this definition, the bodies established under this agreement can be identified as law-making bodies that are autonomous and independent from domestic actors regarding matters covered by the TCA. Further rules of procedure for the Council or any committee under the agreement are stated in ANNEX INST [Rules of Procedure of the Partnership Council and Committees] of the TCA. This includes rules regarding proposals, possible dissent and time frames. Possible exceptions from these procedures are stated in the next section covering Dispute Settlement Mechanisms.

Besides the Partnership Council, the TCA established a sharply defined structure of the committees presented in appendix A.2. Within this, trade-related bodies are supervised by the *Trade Partnership Committee*. This is co-chaired by senior officials of both Parties. Its main task is to supervise subordinate committees and establish, dissolve or change tasks of them. These subordinates, the *Trade Specialized Committees*, also consist of both Parties' representatives. Each of these trade-related committees is responsible for a specific policy area – for example, the Trade Specialized Committee on Intellectual Property covers the field of intellectual property. For these respective responsibilities, each committee has to monitor the implementation of the TCA's related provisions.

For non-trade matters, the TCA established *Specialized Committees* which are supervised by the Council directly. This highlights the existence of different streams within the institutional architecture of formal bodies established by the TCA. Similarly to the Trade Specialized Committees, each Specialized Committee has the power to adopt decisions and recommendations for the policy area of their responsibility. This clear-cut distinction of responsibility however suggests a very strict and rigid structure. In line with the findings regarding the TCA's objectives and principles, it suggests that not the facilitation and promotion of the agreement's procedures and objectives is from main importance but instead the adherence to the formally agreed structure. This also implies that the formal bodies dimension of the institutional architecture as established by the TCA does not leave any space for parties to shift tasks and possible related obligations without consent by the EU and the UK.

In addition to the Partnership Council and the different committees, appendix A.2 names two more types of formal bodies as established by the TCA. First, the *Parliamentary Partnership Assembly (the 'Assembly')* can be established and composed by members of the European and the British Parliament. Its possibilities to influence any decision-making process are limited to the right of making recommendations to the Council. Even further, with the establishment of the Assembly being just optional, the formal bodies' autonomy from domestic actors regarding law-making for matters under the TCA is underlined again. Second, a *Civil Society Forum* is established. Its purpose is to "conduct a dialogue on the implementation of Part Two [Trade]" of the TCA with actors and organizations from independent civil society. The limit to discuss matters related to trade only again shows the Parties' clear perception of the TCA as being, above all, a trade agreement instead of a cooperation agreement.

Based on the findings presented above, the TCA's *formal bodies* dimension expresses some major changes in the EU–UK relationship regarding the UK's shift from EU membership to a third country-status to the EU. First, the very detailed rules of procedure stated in ANNEX INST [Rules of Procedure of the Partnership Council and Committees] stand in contrast to the informal working procedures used by the institutions of the European Union. In line, the fact that the TCA does not establish any dialogues and other informal opportunities to discuss matters but instead keeps all contact within the framework of formally established bodies shows the revocation of common EU practice. Second, the agreement emphasizes the requirement of mutual consent and the ruling autonomy of the bodies established under the agreement. By this, it is ensured that no obligation can be imposed to a party or the scope of provisions can be extended without consent of both parties. With this, the formal bodies dimension of the TCA's institutional architecture is designed to ensure the respect of the agreement's general objectives, especially the respect for full sovereignty and autonomy of the UK regarding their policies and legal system.

3.3 Dispute Settlement Mechanisms

Finally, the dimension covering the *Dispute Settlement Mechanisms (DSMs)* was identified. In the course of this subsection, the ordinary DSM of the TCA is explained first. Second, existing exceptions are discussed and explained. With it, the role within and implications for the broader governance of the EU–UK relationship is assessed. Also, striking differences compared to the European Union's internal procedures are presented. A detailed overview on every step and the exceptions together with a reference to the TCA's text are provided in appendix A.5. Additionally, the table compares the DSMs of all three agreements analyzed in the course of this thesis.

To begin with, all DSMs have the purpose to ensure the correct interpretation and application of the agreement's provisions and obligations for the Parties. In case one Party has the opinion that his counterpart breached an obligation arising from the TCA, the mechanisms give chance for the Parties to bring up a claim against the other Party for the specific matter. The ordinary DSM consists of four steps and starts with *consultations*:

"If a Party ("the complaining Party") considers that the other Party ("the respondent Party") has breached an obligation under this Agreement [...], the Parties shall endeavor to resolve the matter by entering into consultations [...]." (Article INST.13 Part Six Title I TCA)

Following a detailed complaint, consultations have to be held within the forum of either the responsible Specialized Committee or the Partnership Council. The consultation's aim is to find a mutually agreed solution that ends the conflict. If that is not possible, the second step of the DSM is activated.

The subsequent stage is the establishment of an *arbitration tribunal (the 'tribunal')*. On request of the complaining Party three arbitrators are appointed by the Parties from pre-established lists – one by the EU, one by the UK and the chairperson – being a third national – by mutual consent of both Parties. If either one Party fails to appoint a person or there is no mutual consent

on the third one, the lot is used. The overall function of the arbitration tribunal is to "make an objective assessment of the matter" the dispute is about. More specifically, the body should assess the applicability and conformity of the matter with a specific provision of the TCA. During the procedure, the tribunal must stay in contact with the parties, inform them, prepare a preliminary report and finally come to a decision. This third step, the *ruling of the arbitration tribunal*, has a binding character to the European Union and the United Kingdom. The final decision is based on majority vote of the three arbitrators. The effect of the tribunal's decisions is further defined in Article INST.29 [Arbitration tribunal decisions and rulings] of Part Six Title I TCA:

(2.) "The decisions and rulings of the arbitration tribunal shall be binding on the Union and on the United Kingdom. [...]"

(3.) "Decisions and rulings of the arbitration tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement or under any supplementing agreement."

The final stage of the ordinary DSM is about the *compliance* to obligations as a consequence of the tribunal's ruling. If the arbitrators decide that an obligation is breached by the respondent Party, immediate measures have to be taken by this party to ensure compliance. If that is not possible immediately, it has to be agreed on a "reasonable period of time" that allows the implementation of such measures. The length of this period is either defined by mutual consent of the EU and UK or otherwise by the tribunal. In addition to this point, temporary remedies are possible if the respondent party cannot comply with the provisions, specified notification deadlines expire or the tribunal finds no suitable measure that ensures compliance. However, "Temporary remedies" are only allowed to the extent that nullification of the damage incurred is ensured. Also here, the initial arbitration tribunal decides on whether the temporary remedies exceed the level of nullification or not.

Based on the explanations above, the ordinary DSM represents a purely diplomatic party-to-party mechanism that excludes any third actor from the procedure. Therefore, the parties that enact control over the implementation of the TCA via the DSM are solely the EU and the UK. The most striking difference to the European Union's jurisdictional processes however is the legal effect of rulings under this agreement. Whereas the CJEU's decisions can also be binding to domestic courts of member states, no rulings made within the TCA's framework have any effect on the parties' respective courts or legal systems:

"[...] No finding made by the arbitration tribunal when ruling on a dispute between the Parties shall bind the domestic courts or tribunals of either Party as to the meaning to be given to the domestic law of that Party." (Article INST.29.4 Part Six Title I TCA)

By this, the general objective to respect the autonomy of the Parties' legal systems is guaranteed.

Appendix A.5 also states the exceptions from the ordinary DSM presented above. On the one hand, this includes parts of the TCA for which no mechanism exists to settle conflicts.

This counts for areas characterized as clearly typical national competence such as taxation. However, and in contrast to the EU's legal system, competition policies and enforcement of competition laws is not covered by any DSM under the TCA. This circumstance reflects an increased autonomy for the UK regarding their dealing with domestic enterprises.

On the other hand, also modified DSMs for specific policy areas exist. For the field of Subsidy control (Chapter 3 of Title XI Heading One Part Two TCA) – defined as a state's financial assistance to enterprises – reviewing governmental subsidy decisions is not subject to the domestic courts only. Just for the question whether temporary remedies go beyond the equivalent of nullification of damages arose through the initially granted subsidies or not, the arbitration tribunal has ruling authority. These temporary remedies can be put in place by the complaining party once they perceive subsidy decisions of their contracting partner to have a negative impact on trade between the EU and the UK. A similar difference to the ordinary DSM is applicable to "Rebalancing measures" in context of Chapters 6-9 Title XI of Heading One Part Two TCA. For policies on labor and social, environmental or climate protection, the arbitration tribunal is replaced by a *Panel of Experts* whose findings on a matter are not binding to the Parties at all. However, rebalancing measures can be exerted by one party once they perceive new policies of their counterpart in these areas to have a negative impact on their future trade or investment relations. In this case, an arbitration tribunal established under this agreement is authorized to judge on the proportionality (means "not to exceed nullification") of the rebalancing measure but not on the initial policy of either party as it is the case for the abovementioned trade remedies as well.

These modifications reflect the shift from a comprehensive and powerful court and arbitration system within the EU framework towards DSMs with a very limited scope as established by the TCA. With neither an arbitration tribunal nor the Council or any committee having the ruling authority over a parties' policies regarding domestic subsidies and competition, the ruling autonomy for EU respectively the UK in these areas is further increased. Whereas the Union's member states are still subject to the EU legal framework, especially the British government's actions regarding these areas cannot be prohibited by any external actor anymore. Furthermore, the TCA excludes any possibility for individuals to bring up a claim in front of a supranational and independent tribunal, thus missing another key characteristic of the EU's legal system. (Barnard & Leinarte 2020) Therefore, the institutional architecture represents an increased sovereignty for the UK over the interpretation and application of the agreement in domestic contexts.

3.4 Preliminary Conclusion

To be able to answer SQ1, *what does the EU–UK TCA determine regarding the institutional architecture that governs the relationship between these two Parties (?)*, the findings and their implications as explained in the course of this chapter are put together. Referring to the theoretical background of this thesis, the key characteristics of the institutional architecture are highlighted, pointing out the differences to the EU membership status and what can be inferred regarding the UK's sovereignty and autonomy as key Brexit objective.

First, the post-Brexit EU–UK relationship is clearly and solely based on intergovernmental cooperation between the Parties. This is underlined by the universal requirement for mutual consent in decision-making processes and the purely diplomatic DSMs. With the limited legal effect of decisions made by any tribunal under the TCA, the autonomy of the UK’s domestic legal system as key Brexit objective is reflected. In turn, this marks a major change compared to the EU’s legal system. Because of the restricted powers, the DSMs established under the TCA can be characterized as the attempt to establish a credible commitment between the Parties according to the LI-approach rather than being meaningful enforcement and control mechanisms. With the TCA’s general objectives as stated above being in line with the UK’s objectives with the Brexit, also the norms and principles represented in the TCA reflect the nature of EU–UK relations post-Brexit. While the formal bodies dimension of the institutional architecture already ensures the avoidance of misinterpretation and informal re-integration into the EU’s framework, the principles and norms do the same. With the narrow and detailed definitions of principles and the silences of the TCA especially about further cooperation, the agreement emphasizes the UK’s highest possible independence from the EU as external actor in the context of trade relations.

To sum up and answer the sub-question, the TCA determines the established institutional architecture as opposing the EU’s understanding of cooperation. The agreement defines the governance framework as being restrictively tasked to the administration of the policy areas expressly mentioned. By this, it is ensured that the institutional architecture does not serve any other purpose than the strict application of the agreement. It therefore also protects the autonomy and independence of the UK’s legal system. To determine whether this circumstance is due to the UK’s strong reliance on its Brexit objectives during negotiations or if the institutional architecture is just typical for EU–third country trade relations, the CETA as well as the EU–Korea FTA is examined in the following.

4 EU–Canada Compr. Economic and Trade Agreement

For this Chapter's examination of the *Comprehensive Economic and Trade Agreement* between the EU, its member states and Canada, the same methodological approach as for the TCA is used. Thus, a subsection is devoted to each of the three dimensions of the institutional architecture as established by the CETA. Further, the comparison of the findings for the EU–UK institutional architecture and the CETA's analysis will be carried out. By this, it can be determined to what extent the institutional architectures differ, focusing mainly on the Parties' sovereignty over and autonomy in decision-making processes by using the theories and concepts that inform this thesis. This ultimately allows for an answer on SQ2.

4.1 Objectives, Norms and Principles

Different to the TCA's preamble and Part One with the general aims of the agreement, the CETA's *general objectives* are named less explicitly as appendix A.1 shows. Instead of reflecting separation by emphasizing the sovereignties and autonomy of each Party, the agreement highlights the will to further develop the economic relationship and encourage deeper cooperation across different policy fields. Besides this and similarly to the TCA, the CETA names the rule of law, democracy and the fight against proliferation of weapons of mass destruction as key principles to respect. However, they are not defined as "essential elements" which would imply the need to emphasize their importance explicitly. Further, also the principle of *good faith* is named but remains unspecified throughout the agreement. With less focus on the clarification of the abovementioned principles as well as the fact that Canada is an equally independent and sovereign state as the UK, the CETA's contracting Parties not automatically assign less importance than in the TCA to these aspects. Instead, the absence of the principles' further definitions rather indicates that trust, shared values and common understanding is much higher for EU–Canada relations than for EU–UK relations.

As CETA's key objective however, *further cooperation* can be identified. Although it is not explicitly and formally recognized as such, appendix A.1 highlights the Parties' willingness to promote deeper cooperation by having the CETA continuously emphasizing the aspect of enhanced cooperation. For instance, dialogues on issues beyond CETA's coverage and the promotion of multilateralism regarding global investments exemplify the different objective and focus of the CETA compared to the TCA. It also reflects the different directions both bilateral relationships come from. While the EU–Canada association is still in the process of developing, the EU–UK relationship follows a "divorce". It can be argued that by leaving the EU as highly cooperative construct, the UK also denied the underlying idea of an "ever closer Union" with increasing cooperation (Auer 2017). Thus, facilitating cooperation beyond the TCA's framework would contradict the Brexit objectives to increase independence and autonomy from other international actors. Besides the different levels of trust, that is why the objectives and principles stated in the CETA clearly differ from the TCA's ones.

4.2 Formal Bodies

Regarding the *Formal Bodies*, the *CETA Joint Committee* (the '*Joint Committee*') marks the agreement's key body. As for all formal bodies established under the CETA and presented in appendix A.3, it needs mutual consent by the Parties to adopt decisions. Different to the TCA however, the legal effect of these decisions on the EU–Canada relations is broader:

"The decisions [...] shall be binding on the Parties, subject to the completion of any necessary internal requirements and procedures, and the Parties shall implement them. [...]" (Article 26.3 CETA)

What is emphasized by this definition is also the effect of decisions on domestic procedures and the possible necessity to adjust national politics to the CETA's objectives. In contrast to the TCA where the autonomy of the domestic legal systems and policies is emphasized, the abovementioned definition, at least rhetorically, widens the legal impact of decisions adopted under the CETA.

Besides that, appendix A.3 also suggests a different formation of formal institutions as established by the CETA compared to appendix A.2 which represents the EU–UK relationship. This is because each of these formations reflect the underlying general objectives of the agreements. The TCA provides for clear-cut responsibilities and a rigid, hierarchical structure of formal bodies. This promotes the UK's objective to avoid creeping re-integration to the EU's practices, rules and competences. In contrast, the CETA promotes its general objective of enhancing cooperation by focusing not on unequivocally power distribution but on the facilitation of cooperation between the EU and Canada. As example, addressing an issue that is part of another body's area of responsibility is right "if this facilitates the resolution of a matter". (Article 26.2.1(a) CETA) This also promotes "spill-overs" that could further integration through interplay of the different bodies established under the CETA. With this, the institutional architecture set by the agreement comes closer to the EU's understanding of a governance framework. This is because the Union's internal politics and powers are mainly widened through economic and political spill-overs that only happen to promote common objectives by its members. (D'Erman 2016)

Last in this regard, also the powers of *specialized committees* are not as clear as in the TCA. Still, each committee is mainly responsible for a specific policy area. Nonetheless, some committees like the "Committee on Trade in Goods" supervise other specialized committees that belong to their policy field (here, trade in goods). However, this is primarily designed to facilitate coordination rather than remaining a rigid hierarchical structure like established by the TCA. To support this argument, the supervised specialized committees are still able to interact with the Joint Committee directly without including the Committee on Trade in Goods or committees with equal tasks as the additional information in appendix A.3 show.

Finally, Chapter 25 [Bilateral dialogues and cooperation] of the CETA shows the fact that the established institutional design reflects the agreement's objectives. Whereas the TCA remains silent about ways to further cooperate also beyond the agreement's current framework, the CETA emphasizes the objective to widen the scope of cooperation under the agreement.

In line, also the other formal bodies shall promote deeper association by "encouraging co-operation" (Trade Committee) or "review potential for cooperation" (Regulatory Cooperation Forum). To sum up, the CETA's formal bodies dimension orientates on the agreement's general objectives and therefore clearly differs compared to the TCA and its established institutional architecture.

4.3 Dispute Settlement Mechanisms

As last dimension of the institutional architecture established by the CETA, the *Dispute Settlement Mechanisms* are examined. The comparative table in appendix A.5 shows that the CETA established an ordinary DSM similar to the TCA, consisting of the four stages *Consultation, the establishment of an arbitration tribunal, the ruling, and compliance*. With the *mediation*, only one step was added. This procedure can be initiated with the agreement of both Parties at any stage of a dispute. Its purpose is to consult an independent mediator on the issue at stake and with the task to mediate between the parties to find a mutually agreed solution. If the mediation procedure does not lead to a satisfactory solution, the DSM is continued with the subsequent steps as mentioned above. The additional step to solve amicably their disputes suggests a different nature of the EU–Canada relations compared to the EU–UK relationship. This can be said because a stronger will by both Parties to come to a solution without formal rulings is perceived. This implies that different to EU–UK relations, the contracting parties under the present agreement are willing to include external actors in their relationship.

The exceptions from and modifications to the ordinary DSM as retrieved from the CETA's chapters are stated in appendix A.5 as well. Similarly to the TCA's provisions, this includes disputes regarding competition policy (Chapter 17 CETA), which are not subject to any form of settlement mechanism under the agreement. In contrast to the EU–UK relationship however, the CETA leaves more autonomy to the states in the areas of Trade Remedies (Chapter 3) and Subsidies (Chapter 7). While under the TCA, an arbitration tribunal was authorized to judge on the adequacy of "remedial measures", this is not part of any tribunal's jurisdiction under the CETA. Further, the powers of an arbitration tribunal are also diminished for the policy areas of Trade and Labor respectively Environment (Chapter 23 & 24 CETA). Also in this last respect, the arbitration tribunal has no ruling authority. Instead, a *Panel of Experts* is established subsequent to consultations:

"For any matter that is not satisfactorily addressed through consultations [...], a Party may [...] request that a Panel of Experts be convened to examine that matter [...]." (Article 23.10.1 CETA)

The panel's task is to determine whether a Party has breached obligations arising from the CETA. However, its ruling powers are limited to making recommendations to the Parties to promote compliance. The abovementioned trimming of a tribunal's ruling powers that leads to more autonomy for the Parties stands in contrast to the findings made so far. However, it can be supposed that the share of enterprises that relocate depending on possible advantages regarding subsidies, labor or environment policies is low. This could be because of the practical difference between the EU's single market area and the Canadian internal market.

Finally, the CETA established a DSM for disputes between investors and the agreement's Parties. Thus, and in contrast to the TCA, individuals have access to a court – at least for issues related to Investment (Chapter 8 of the CETA). While state vs. state conflicts under this chapter make use of the ordinary settlement mechanism, the investor-directed DSM is presented in the following. First, *consultations* can be requested by a directly affected investor. Any measure adopted by either Canada, the European Union, or any member state of the EU that is related to non-discriminatory treatment in investment and investment protection can be subject to this procedure. If consultations lead to no mutually agreed solution, a tribunal (here referred to as 'investment tribunal') becomes part of the process.

This standing *investment tribunal* consists of 15 members with five being appointed by Canada, five by the EU and five third nationals consensually by the CETA Joint Committee. The investment tribunal can either decline or agree to the investor's complaint and decide on compensation for either monetary damages or restitution of property, but not punitive damages. Different to all DSMs presented previously, appeals to this decision by either the investor or the accused party are possible. For this, an *appellate tribunal* is established. It consists of three third nationals that are appointed by the Joint Committee from a pre-established list. In case of appeals, the appellate tribunal has the following rights:

"The Appellate Tribunal may uphold, modify or reverse the Tribunal's award based on: (a) errors in the application or interpretation of applicable law; (b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law; (c) the grounds set out in Article 52(1) (a) through (e) of the ICSID Convention[...]" (Article 8.28.2 CETA)

A remarkable difference to the EU–UK governance is that the presented procedure provides not only a diplomatic DSM but also a mechanism that enables the Parties to be prosecuted on the behalf of an investor as external actor. From this fact and together with the objective to establish a multilateral investment tribunal (Article 8.29 CETA), it can be inferred that both Parties are receptive to multilateralism but also supranational authorities as such tribunal is one. (Sardinha 2017)

Only where the danger of misinterpreting a CETA's provision exists, the EU and Canada can intervene by adopting a joint determination on the meaning of a specific provision. By this, the investment as well as the appellate tribunal have to stick to the interpretation adopted by the EU and Canada unanimously:

"[...] An interpretation adopted by the CETA Joint Committee shall be binding on the Tribunal established under this Section. The CETA Joint Committee may decide that an interpretation shall have binding effect from a specific date." (Article 8.31.3 CETA)

Thus, the CETA's Parties give up parts of their sovereignty over the application of the agreement by enabling external actors to have access to parts of the legal system that oversees the CETA's implementation. By this renunciation from purely diplomatic Party-to-Party DSMs,

the present agreement strongly differs from the TCA. Instead, and still only limited to investment matters, the CETA orientates more on the EU's legal system which allows comprehensive individual access to its courts.

4.4 Preliminary Conclusion

Following the CETA's analysis and contextualization in this Chapter, an answer to SQ2 – "What does the CETA determine regarding the institutional architecture that governs the EU–Canada relationship compared to the findings of the TCA's examination?" – can be given. After summing up the findings of this Chapter, the similarities and differences of aspects of the institutional architecture in comparison of the CETA and the TCA are pointed out by using the key concepts and theories that inform this thesis.

Like the TCA, the CETA reflects intergovernmental decision-making. However, having different aims and an institutional architecture that orientates on these general objectives, the two agreements differ. The weaker emphasis on the Parties' autonomy and sovereignty in the CETA is underlined by the more neo-functionalist characteristic of permeability and facilitation of spill-overs. The less detailed and constraining institutional framework for the EU–Canada relationship is also reflected by the more ambiguous formulation of the principles and procedures by the CETA. This implies greater trust and common understanding between the Parties due to more interpretative freedom when applying the agreement's provisions. (Henckels 2016) Besides these aspects, also the practical sovereignty of both Parties regarding the agreement's implementation is harmed due to the establishment of an investment tribunal. For domestic actions in this policy area, Canada has not the same independence and autonomy compared to the UK with the TCA.

To sum up and answer SQ2, the CETA's institutional architecture reflects its general objectives as it is the case for the TCA with its respective objectives. More precisely, this means that although the intergovernmental nature is clearly reflected, the CETA's institutional architecture contains also neo-functionalist characteristics which the TCA does not. This suggests less autonomy and sovereignty for the Parties. Thus, the CETA's institutional architecture does not reflect sovereignty and independence as Brexit objectives but instead its own objectives, especially the development of further cooperation.

5 EU–Korea Free Trade Agreement

As the last object of comparison, the *Free Trade Agreement between the European Union and the Republic of Korea (the 'FTA')* is examined, using the same methodological approach as in Chapter 3 and 4. Provisionally applied from July 2011, it marks the oldest agreement that is observed in the course of this thesis. Besides the FTA, the *Framework Agreement (FA)* is part of the agreements that govern the relationship between both Parties. This is because the EU and Korea established a Strategic Partnership³ which is supported by several smaller agreements. Therefore, this Chapter makes reference to the FA, too, if the analysis requires it for the likes of clarification. Ultimately, the examination of the EU–Korea relationship and its subsequent comparison to the findings of the TCA's assessment should lead to an answer on SQ3.

5.1 Objectives, Norms and Principles

For the *general objectives*, the FTA is identical to the CETA in emphasizing the will of further strengthen their economic relationship. Besides this, the agreement remains quite silent about further aims. Nonetheless, the objectives that guide the EU–Korea relationship and are stated in the comparative table of appendix A.1 are discussed more extensively in the FA. There, the participation in overarching programs and aim to further develop the social, political and economic cooperation is highlighted, thus contradicting the TCA's objectives.

As it was the case for the previously analyzed agreements as well, the *norms and principles* that guide the EU–Korea relationship orientate on the objectives that were set. Similar to the CETA, the FTA and FA do not explicitly mention the principle to respect each Party's autonomy. Further, also the already explained principles including respect for human rights, the rule of law and *good faith* are only stated but not explained. Thus, the comparative table of appendix A.1 suggests a more similar nature of the EU–Korea relationship compared to the CETA than compared to the TCA. This allows to infer the same as for the EU–Canada relationship, namely the higher trust and common understanding between the Parties that make a comprehensive clarification of the principles obsolete. Besides this, the FTA and FA mirror the CETA with regard to the objective of increasing cooperation as mentioned above. In line with this, the present agreement's tone is more friendly and emphasizes the replacement of comprehensive formal structures by the mutual aim to increase harmonization and integration of both Parties' policies. In summary, the objectives and related principles that guide the EU–Korea relationship stand in clear contrast to the TCA's focus on separation and protection of autonomy.

5.2 Formal Bodies

Within the dimension of *Formal Bodies*, the FTA established the *Trade Committee* as main governing body that supervises all other bodies under the agreement. It is co-chaired by the Trade Minister of Korea and the responsible EU Commissioner. Further, its powers as presented in

³The EU established *Strategic Partnerships* with ten countries that were identified as key actors regarding future economic and political developments in international relations. The Partnership primarily focuses on promotion of trade, multilateralism and cooperation in security matters. (Cihelková et al. 2020; Harrison 2013)

appendix A.4 are similar compared to the ones of the TCA's Partnership Council and the CETA Joint Committee as analyzed in Sections 3.2 and 4.2 respectively. Additionally, the Trade Committee under the FTA should also "consider ways for further cooperation between the Parties" (Article 15.1.3(d) FTA). As it is the case for the two previously analyzed agreements, this task highlights the fact that the formal bodies dimension clearly reflects the general objectives and principles that are stated in the respective agreement. In turn, it also means that the overall institutional architecture as established by the FTA differs from the framework that governs the EU–UK relations due to opposing objectives.

Another aspect where this becomes clear are the working procedures of the formal bodies. Similarly to the CETA and in contrast to the TCA, formulations of provisions under the FTA remain vague and leave space for interpretation. As example, this also counts for the definition of a decision under the present agreement:

"The Trade Committee shall draw up its decisions and recommendations by agreement between the Parties." (Article 15.4.3 FTA)

As mentioned in the previous Chapters, this possibility to interpret provisions differently stands in contrast to the UK's Brexit objectives by not preventing a Party from widening the legal scope of the agreement. This also makes spill-overs more likely as explained in Section 4.2. Thus, the institutional architecture that governs the EU–Korea relations is more similar to the one established by the CETA compared to the one based on the TCA.

Apart from the Trade Committee, the institutional architecture established by the FTA also contains *Specialized Committees* and *Working Groups*. While the former are mainly designed to supervise and oversee the implementation of the provisions regarding their specific policy area, the latter are responsible for discussions about technical work and opportunities to enhance cooperation between the EU and Korea. However, the powers of each body are not defined as sharply as in the TCA. A more detailed overview on the FTA's formal bodies as provided with appendix A.4 underlines these blurred responsibilities. This leads to the same implications as for the formal bodies dimension under the CETA. In particular, the loosely defined and sometimes overlapping responsibilities facilitate spill-overs and thereby promoting further cooperation and integration. In sum, this resembles the CETA's and the EU's approach to associations as well as the FTA's and FA's general objectives while the nature of the institutional architecture that governs the EU–UK relationship is opposed.

5.3 Dispute Settlement Mechanisms

For the *Dispute Settlement Mechanisms*, the FTA can be placed between the TCA and CETA. This is because on the one hand and similarly to the CETA, it provides a *mediation* procedure as stated in appendix A.5 that reflects the Parties stronger trust in each other's good faith. On the other hand, it equals the TCA by not establishing any mechanism that allows individuals to have access to any court. Apart from these aspects, the agreement also uses the diplomatic four-step model with *consultations*, *establishment of an arbitration tribunal*, *the ruling* and finally *compliance*. To note, the additional mediation procedure is also more limited compared to the

CETA's one by being available only for disputes regarding non-tariff measures related to market access in goods, but excluding agricultural matters.

As for the two previously analyzed relationships as well, the FTA excludes parts of the agreement from any established DSM. These exceptions stated in appendix A.5 include Sanitary and Phytosanitary Measures (Chapter 5 FTA), Global Safeguard Measures (Chapter 3 [Trade Remedies] Section C), and Anti-Dumping/Countervailing Measures (Chapter 3 [Trade Remedies] Section D). However, for issues that are covered by the World Trade Organization (WTO) the Parties still have recourse to the DSMs stated there. That circumstance also counts for uncovered disputes under the TCA and CETA respectively.

Besides these two exclusions from DSMs under the FTA, modifications to the ordinary mechanism exist for Section A of Chapter 11 [Competition Policy] and Chapter 13 [Trade and Sustainable Development]. As appendix A.5 already indicated for the CETA and the TCA, also the Parties under the FTA only have recourse to consultations for matters regarding competition rules and their enforcement. For domestic state subsidies however, a distinction is made. Different to the previous agreements under observation, the FTA enables the parties to use the ordinary DSM for any subsidy-related dispute that is not about fishery products and matters that are covered by an additional *Agreement on Agriculture*. Including at least some of these subsidies in the ordinary DSM marks a key difference compared to the institutional architecture and governance of EU–UK relations. It generally implies more openness by the EU and Korea to give up autonomy over specific policy fields compared to the UK's position.

Finally, for matters related to Trade and Sustainable Development (Chapter 13), the FTA states a DSM similar to the one established under CETA:

"Unless the Parties otherwise agree, a Party may [...] request that a Panel of Experts be convened to examine the matter that has not been satisfactorily addressed through government consultations. [...]" (Article 13.15.1 FTA)

With this article quoted above, the FTA is similar to the TCA and CETA with regard to the establishment of a panel of experts. However and in contrast to the EU–UK relations, the present agreement does not allow any tribunal under the FTA to judge on possible rebalancing measures as consequence of disputes in policies related to Chapter 13. By this, Korea has more autonomy regarding domestic policies than the UK in each respective relationship with the EU. Nonetheless, it can be argued again that the distance between the EU's internal market and Korea's domestic market makes it unlikely to experience negative effects for any Party in case of different guidelines.

5.4 Preliminary Conclusion

Summing up the findings of this Chapter, an answer to sub-question 3 as formulated in the Introduction can be given: *What does the EU–South Korean FTA determine regarding the institutional architecture that governs the European Union–South Korea relationship compared to the findings of the TCA's examination?* Again, the key concepts and theories that inform this thesis are used for a coherent interpretation and comparison.

As for the two previously analyzed agreements, the FTA expresses clearly intergovernmental characteristics. Another similarity to the TCA and the CETA is the fact, that the institutional architecture is designed to reflect the general objectives of each relationship. For the FTA this means that flexible responsibilities of formal bodies favor spill-overs and encourage for further cooperation. With this, the EU–Korea relationship has the same neo-functionalistic approach to cooperation as the EU–Canada relations, thereby opposing the institutional architecture that governs the EU–UK relationship. For the aspect of autonomy, it can be inferred that although the current differences are minor, the TCA explicitly ensures the Parties’ sovereignty over state actions and laws also for future developments regarding the relationship. In contrast, the institutional architecture examined in the course of this Chapter provides for future harmonization and assimilation for both Parties’ policies. Thus, the FTA increases the chance of developing superior authorities with the EU and Korea giving up parts of their sovereignty. Apart from that, the formulation of norms and principles also suggests more trust due to greater space for interpretation and less emphasis on sovereignty, autonomy and independence.

To put it in a nutshell and answer SQ3, the FTA characterizes the institutional architecture as being mainly intergovernmental. Nonetheless, it differs from the architecture that governs the EU–UK relationship by facilitating spill-overs, further integration and opportunities to widen the scope of the agreement’s provisions.

6 Conclusion

After the examination of all three agreements and their respective institutional architectures they established, an answer to the research question *to what extent does the institutional architecture that governs the EU–UK relationship reflect the objectives pursued by the UK with Brexit (?)* can be given.

First, the Brexit implied a turning away from supranational institutions for the UK. As a consequence, the British established a bilateral relationship with the EU. With a trade agreement as foundation, a similar kind of association also exists between the European Union and Canada respectively Korea. However, the institutional architectures that are established by the three agreements TCA, CETA and FTA are not automatically identical to each other. The analyses showed that for the EU–UK relationship, the British objectives of national sovereignty, autonomy of its legal system and independence from the influence of external authorities were extensively highlighted throughout the TCA. In contrast, the CETA and the FTA for their respective relationship emphasize the promotion further cooperation, thus also some form of integration as key objective.

This opposition in the dimension of objectives and principles is also reflected in the other parts of the institutional architectures as established to govern each relationship. More precisely, the TCA replaced the EU's legal system with a purely diplomatic Party-to-Party DSM that ensures the autonomy of its own domestic legal system. Further, the institutional architecture for the EU–UK relationship was also designed to ensure the UK's future sovereignty over any form of integration in the future. This was done by the establishment of a rigid structure of formal bodies that prevents from internally evolving developments towards further integration like the occurrence of spill-over effects. Additionally, the punctiliously definitions and formulations of the norms and principles in the TCA reflect the UK's aim to avoid the widening of the agreement's scope due to ambiguous formulations.

As already mentioned, differences in the agreements' objectives result in different characteristics for the overall institutional architecture since their purpose is to promote these key objectives. For the CETA and the FTA this means that they establish governance frameworks that are more shaped by a neo-functionalist approach to further develop cooperation and integration. This is especially reflected by the more flexible formal bodies structure and ambiguous definitions of principles as pointed out in Chapters 4 and 5 already. Further, the lower focus on the Parties' sovereignties compared to the EU–UK relationship is highlighted by the fact that the CETA and the FTA allow for more participation of external actors and authorities. This is especially exemplified by the investment tribunal under the CETA, which allows individuals to have access to parts of the institutional architecture's legal system. With this, the Parties' autonomy in law-making and enforcement is restricted by supranational institutions that follow the objective to facilitate and develop common trade through further cooperation and integration.

Based on these findings, it can be pointed out that the governance frameworks established by the TCA, the CETA and the FTA are intentionally designed to respect the respective agreement's objectives. As an answer to the initial research question it can therefore be said that the institutional architecture that governs the EU–UK relationship is highly reflective of the

British objectives with the Brexit. This implies that enhanced economic cooperation is impeded since it requires the restriction of each Parties' autonomy for the purpose of integration, which contradicts the British objectives. However, the architecture's rigidity is unlikely to make the application of the TCA more difficult because of its design that is exactly customized to ensure the agreement's implementation but nothing beyond.

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Agreements

Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (TCA) [2020] OJ L 444.

Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part [2017] OJ L 11.

Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (FTA) [2011] OJ L 127.

Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part (FA) [2013] OJ L 20.

Appendices

A.1 Comparative Table: General Objectives and Principles

| | TCA | CETA | Korean FTA and FA |
|----------------------------------|--|--|--|
| Preamble | <ul style="list-style-type: none"> - “[...] Establish [...] rules that fully respect the autonomy of the respective legal orders of the Union and of the United Kingdom, as well as the United Kingdom’s status as a country outside the European Union.” - “NOTING that, the United Kingdom withdrew from the European Union and that with effect from 1 January 2021, the United Kingdom is an independent coastal State [...]” | <ul style="list-style-type: none"> - “FURTHER strengthen their close economic relationship [...]” - “RECOGNISING the strong link between innovation and trade, and the importance of innovation to future economic growth, and affirming their commitment to encourage the expansion of cooperation in the area of innovation” | <ul style="list-style-type: none"> - “DESIRING to further strengthen their close economic relationship [...]” (FTA) - “RESOLVED to contribute to the harmonious development and expansion of world trade [...]” (FTA) - “EXPRESSING their common will to elevate their relations into a strengthened partnership including in the political, economic, social and cultural fields.” (FA) - “DETERMINED to strengthen cooperation in sectors of mutual interest [...]” (FA) |
| Additional Key Objectives | <ul style="list-style-type: none"> - “[...] Broad relationship, [...] respectful of the Parties’ autonomy and sovereignty.” (Art. COMPROV.1) - “[...] Nothing in this Agreement [...] shall be construed as [...] permitting this Agreement or any supplementing agreement to be directly invoked in the domestic legal systems of the Parties.” (Art. COMPROV.17.1) | | <ul style="list-style-type: none"> - “to liberalise and facilitate trade in goods between the Parties“ (Art. 1.1.2a) FTA) - “With a view to enhancing their cooperation, the Parties undertake to intensify their political dialogue and to boost further their economic relations.” (Art. 2.1 FA) |
| Good Faith Principle | <ul style="list-style-type: none"> - “The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks.” (Art. COMPROV.3.1.) - “They shall take all appropriate measures [...] to ensure the fulfilment of the obligations arising from this Agreement [...] and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement or any supplementing agreement.” (Art. COMPROV.3.2.) | <ul style="list-style-type: none"> - Only mentioned throughout agreement, eg. Art. 8.17: “with the equitable and good faith application of its laws.” | <ul style="list-style-type: none"> - Only mentioned throughout the agreement, eg. Annex 2-E.3.: “The Parties agree to discuss in good faith any problems [...]” |
| Additional Key Principles | <ul style="list-style-type: none"> - Uphold principles and values of democracy, the rule of law, respect for human rights - Fight against human-caused climate change - Countering of proliferation of weapons of mass destruction → all these stated in Part Six Title II; all constitute “essential elements”: “If [...] serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements [...] it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part. (Art. INST.35.1 Title III Part Six) | <ul style="list-style-type: none"> - Fight against proliferation of weapons of mass destruction, recognizing importance of democracy, human rights and rule of law (Preamble) | <ul style="list-style-type: none"> - Parties’ strong attachment to democratic principles and human rights, fight against proliferation of weapons of mass destruction (Preamble FA) |

A.2 Formal Bodies: EU–UK TCA

| | Tasks and Powers | Position within IA |
|---|---|--|
| Partnership Council Co-chaired by EU Commissioner and UK minister <i>Art. INST.1.4. Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Oversees attainment of agreement's objectives - Supervision & facilitation of provision's implementation and application - Adopt decisions for all matters where agreement provides so - Recommendations to Parties regarding provisions' implementation and application - Adopt amendments where agreement provides so - Discuss any matters related to the agreement - Delegate powers to any committee - Establish, dissolve, change tasks of any committee and working group - Amend rules of procedure for Partnership Council | <ul style="list-style-type: none"> - Superior to all other formal bodies established under the agreement - Highest ranked representatives |
| Trade Partnership Committee Co-chaired by Senior Representatives of EU and UK <i>Art. INST.2.2. Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Assist Partnership Council - Supervise implementation of the agreement - Supervise work of Trade Specialized Committees - Prevent/solve issues/problems regarding the provisions' implementation or application apart from DSM - Establish, dissolve, change tasks of Trade Specialized Committees and working groups | <ul style="list-style-type: none"> - Established under the Partnership Council - Responsible only for trade matters - Superior to all Trade Specialized Committees and related Working Groups - Second highest ranked representatives - Not part of any DSM |
| Trade Specialized Committees Representatives of EU and UK <i>Art. INST.2.3. Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Assist Trade Partnership Committee - Monitor/review/ensure functioning of the agreement - Do technical preparation to support work of Partnership Council and Trade Partnership Committee - Adopt decisions where agreement provides so - Discuss technical issues apart from DSM - Provide forum for the Parties to exchange information and best practices | <ul style="list-style-type: none"> - Established under the Trade Partnership Committee - Responsible only for trade matters - Superior to all related Working Groups - Not part of any DSM |
| Specialized Committees Representatives of EU and UK <i>Art. INST.2.4. Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Assist Partnership Council - Monitor/review/ensure functioning of the agreement - Adopt decisions, recommendations and amendments where the agreement provides so - Establish, dissolve, change tasks of working groups - Discuss technical issues - Provide forum for the Parties to exchange information and best practices - Provide forum for consultations as part of DSMs | <ul style="list-style-type: none"> - Established directly under the Partnership Council - Independent from any committee related to trade (Trade Partnership Committee and trade Specialized Committees) - Superior to related Working Groups |
| Working Groups Representatives of EU and UK <i>Art. INST.3 Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Assist the committees - Prepare technical work for the committees - Carry out tasks assigned to it by the committees or the Partnership Council - Adopt own rules of procedure | <ul style="list-style-type: none"> - Established under (Trade) Specialized Committees - Not part of any decision-making process |
| Parliamentary Partnership Assembly Members of the European and UK Parliament <i>Art. INST.5 Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Request relevant information from the Partnership Council regarding the agreement's implementation - Get informed about any decision and recommendation by the Partnership Council - Make recommendations to the Partnership Council | <ul style="list-style-type: none"> - Only body with representatives of parliaments - Established directly under Partnership Council - Independent from any committee |
| Civil Society Forum Representatives of independent civil society organizations <i>Art. INST.8 Part One</i> <i>Title III TCA</i> | <ul style="list-style-type: none"> - Conduct dialogue on implementation on agreement's Part Two [Trade] | <ul style="list-style-type: none"> - Least powerful body for agreement's trade policy field - Not part of any decision-making process |

A.3 Formal Bodies: EU–Canada CETA

| | Tasks and Powers | Position within IA |
|--|---|--|
| <p>CETA Joint Committee Co-chaired by EU Commissioner and Canadian minister</p> <p><i>Art. 26.1 CETA</i></p> | <ul style="list-style-type: none"> - Responsible for all questions regarding trade and investment between the Parties - Supervision of provision's implementation and application - Supervise work of Specialized Committees - Adopt decisions for all matters where agreement provides so - Recommendations to Parties regarding provisions' implementation and application - Adopt amendments where agreement provides so - Adopt interpretations related to provisions of agreement's Chapter 8 [Investment] that are binding to the tribunals - Delegate powers to any committee - Establish, dissolve, change tasks of any committee and working group - Amend rules of procedure for CETA Joint Committee | <ul style="list-style-type: none"> - Superior to all other formal bodies established under the agreement - Highest ranked representatives |
| <p>Specialized Committee on Trade in Goods Co-chaired by Senior Representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Promoting trade in goods between the Parties - Addressing matters related to movement of goods - Manage and review implementation of agreement's Chapter 4 [Technical barriers to trade] - Report implementation of Chapter 4 to CETA Joint Committee - Present draft decisions to CETA Joint Committee regarding elimination/acceleration of customs duties on goods - Recommending to CETA Joint Committee a modification/addition to any provision related to harmonized systems - Supervise the Committee on Agriculture, Committee on Wine and Spirits, and the Joint Sectoral Group on Pharmaceuticals | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Second highest ranked representatives - Superior to related working groups and the Specialized Committees under supervision |
| <p>Specialized Committee on Services and Investment Representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Manage and review implementation of agreement's Chapter 8 [Investment] - Recommendations to CETA Joint Committee - Adopt rules for mediation regarding Chapter 8 DSM - Review functioning of Appellate tribunal - Adopt code of conduct for members of Appellate tribunal - Adopt interpretations related to provisions of agreement's Chapter 8 [Investment] that are binding to the tribunals - Provide forum for discussions between the Parties on agreement's Chapter 8 [Investment] - Address matters in "financial services" and "government procurement" if it facilitates work | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Superior to all bodies (except CETA Joint Committee) related to agreement's Chapter 8 [Investment] - Key body in investor-state DSM - Superior to related Working Groups |
| <p>Joint Customs Cooperation Committee Representatives of Parties' competent authorities</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Ensure functioning of agreement's Chapter 6 [Customs and trade facilitation], the Protocol on Rules of origin and agreement's Article 2.8 [Temporary suspension of preferential tariff treatment] and Article 20.43[Scope of border measures] - Formulate resolutions, recommendations and opinions - Present draft decisions to CETA Joint Committee that are necessary to attain the functioning of abovementioned parts of agreement - Set priorities for agreement's Chapter 20 Section D [Border Measures] | <ul style="list-style-type: none"> - Established under "Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters" - Acts under the CETA Joint Committee - Superior to all bodies (except CETA Joint Committee) related to customs duties |

| | | |
|---|---|--|
| <p>Specialized Committee on Trade and Sustainable Development High-level representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Oversee implementation of agreement's Chapters 22-24 [Trade and sustainable development, Trade and labour, Trade and environment] - Present all updates to Civil Society Forum - Include the public in all matters - Recommend modifications to CETA Joint Committee - Monitor the final report of DSM related to agreement's Chapter 22-24 | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Key body for all matters related to trade and sustainability - Key body in DSM for agreement's Chapter 22-24 - Superior to all bodies (except CETA Joint Committee) related to trade and sustainable development - Third highest ranked representatives |
| <p>Regulatory Cooperation Forum Senior representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Facilitate and promote regulatory cooperation between the Parties - Review regulatory initiatives - Report to CETA Joint Committee on implementation of Chapter agreement's Chapter 21 [Regulatory cooperation] - Provide forum for discussions between the Parties | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Key body for all matters related to regulation between the Parties - Second highest level representatives |
| <p>Joint Management Committee Representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Monitor implementation of agreement's Chapter 5 [Sanitary and phytosanitary measures (SPS)] and all matters regarding SPS - Provide direction for issues related to SPS issues - Amend agreement's Chapter 5 with consent of both Parties - Establish expert working groups - Report to CETA Joint Committee on any issue related to SPS - Provide forum for discussions between the Parties | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Superior to related Working Groups |
| <p>All other Specialized Committees Representatives of the EU and Canada</p> <p><i>Art. 26.2 CETA and in respective CETA Chapters dedicated to the policy areas of responsibility</i></p> | <ul style="list-style-type: none"> - Oversee implementation of provisions related to the respective specialized policy field - Provide forum for discussions for both Parties - Make recommendations to CETA Joint Committee | <ul style="list-style-type: none"> - Established under the CETA Joint Committee - Supervised by both, the CETA Joint Committee and a superior Specialized Committee |
| <p>Working Groups Representatives of the EU and Canada</p> | <ul style="list-style-type: none"> - Assist the committees - Prepare technical work for the committees - Carry out tasks assigned to it by the committees | <ul style="list-style-type: none"> - Established under (Trade) Specialized Committees - Not part of any decision-making process |
| <p>Civil Society Forum Representatives of independent civil society organizations</p> <p><i>Art. 22.5 CETA</i></p> | <ul style="list-style-type: none"> - Conduct dialogue on issues related to sustainable development - Submit observations and opinions to Committee on Trade and Sustainable Development | <ul style="list-style-type: none"> - Least powerful body for agreement's policy field "Trade and Sustainable Development" - No powers in any decision-making process |

A.4 Formal Bodies: EU–Korea FTA

| | Tasks and Powers | Position within IA |
|--|---|--|
| Joint Committee Highest-level representatives of the EU Commission, the EU Council and Korea <i>Art. 44 FA</i> | <ul style="list-style-type: none"> - Facilitating implementation and further the general aims of the Framework Agreement (FA) - Monitor the Parties' comprehensive relationship - Set priorities regarding the aims of the FA | <ul style="list-style-type: none"> - Established under the FA - Superior body in EU–Korea relations - No direct influence on FTA's procedures - Highest ranked representatives |
| Trade Committee Co-chaired by EU Commissioner and Korean minister <i>Art. 15.1 FTA</i> | <ul style="list-style-type: none"> - Ensure that the agreement (FTA) operates properly - Supervise and facilitate the agreement's implementation and application - Furthering the agreement's general aims - Consider ways to further enhance trade relations between the Parties - Supervise all other bodies established under the agreement - Establish, dissolve, change tasks of any body under this agreement - Adopt decisions and recommendations where agreement provides so - Adopt amendments where agreement provides so - Report to the Joint Committee any activity by any body under this agreement | <ul style="list-style-type: none"> - Superior to all other formal bodies established under the agreement (FTA) - Highest ranked representatives |
| Specialized Committee on Trade and Sustainable Development Senior representatives of the EU and Korea <i>Art. 15.2. & 13.12 FTA</i> | <ul style="list-style-type: none"> - Oversee implementation of agreement's Chapter 13 [Trade and Sustainable Development] - Consultations on matters related to agreement's Chapter 13 [Trade and Sustainable Development] - Monitor the implementations of the recommendations made by the Panel of Experts as part of the specific DSM | <ul style="list-style-type: none"> - Established under the Trade Committee - Second highest ranked representatives - Key body for all matters related to trade and sustainability - Key body in DSM for agreement's Chapter 13 [Trade and Sustainable Development] |
| All other Specialized Committees Representatives of the EU and Korea <i>Art. 15.2 FTA</i> | <ul style="list-style-type: none"> - Report to the Trade Committee on any activity that is carried out - Oversee implementation of specific agreement's Chapter unless a Working Group exists for this policy area - Facilitating implementation of agreement's provisions - Adopt resolutions, recommendations, opinions and decisions where agreement provides so - Provide forum for discussions between the Parties | <ul style="list-style-type: none"> - Established under the Trade Committee - Not superior to Working Groups |
| Working Groups Representatives of the EU and Korea <i>Art. 15.3 FTA</i> | <ul style="list-style-type: none"> - Report to the Trade Committee on any activity that is carried out - Oversee implementation of specific agreement's Chapter - Facilitating implementation of agreement's provisions - Adopt recommendations and decisions where agreement provides so - Provide forum for discussions between the Parties | <ul style="list-style-type: none"> - Established under the Trade Committee - Not established under or superior to Specialized Committees |
| Civil Society Forum Representatives of independent civil society organizations | <ul style="list-style-type: none"> - Conduct dialogue encompassing sustainable development aspects of trade relations between the Parties - Submit views, opinions and findings about implementation of Chapter 13 [Trade and Sustainable Development] to the Parties | <ul style="list-style-type: none"> - Least powerful body for agreement's policy field "Trade and Sustainable Development" - No powers in any decision-making process |

A.5 Comparative Table: Dispute Settlement Mechanisms

| | TCA Part Six Title I [Dispute Settlement and Horizontal Provisions] | CETA Chapter 29 [Dispute Settlement] | Korean FTA Chapter 14 [Dispute Settlement] |
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| Consultations | <ul style="list-style-type: none"> - Within 30 days after delivery of request by one party - Forum either Specialized Committee or Partnership Council | <ul style="list-style-type: none"> - Within 45 days after delivery of request by one party - Forum either Specialized Committee or CETA Joint Committee | <ul style="list-style-type: none"> - Within 30 days after delivery of request by one party - Forum not specified |
| Mediation | <ul style="list-style-type: none"> - Not existent | <ul style="list-style-type: none"> - Only for measures that affect trade or investment between the Parties - Mutual consent to start procedure - Can be initiated at any stage during the conflict (also before consultations) - Citizen of third nationality acts as mediator - Mediator can propose solution to the Parties - Termination of procedure either by finding a solution or if one Party/the mediator cancels it | <ul style="list-style-type: none"> - Only for non-tariff measures about matters related to non-agricultural market access in goods - Mutual consent to start procedure - Can be initiated at any stage during the conflict (also before consultations) - Citizen of third nationality acts as mediator - Mediator can propose solution and opinions to the Parties - Mediator does not: check if measure at stake is consistent with agreement; question legitimacy of any measure - Termination of procedure either by finding a solution or if one Party/the mediator cancels it |
| Establishment of Arbitration tribunal | <ul style="list-style-type: none"> - On request of the complaining party if consultations result in no solution - Three arbitrators from pre-established list: one chosen by each party, one by mutual consent; otherwise by lot | <ul style="list-style-type: none"> - On request of the complaining party if consultations result in no solution - Three arbitrators from pre-established list - Selection of the arbitrators by mutual consent, otherwise lot | <ul style="list-style-type: none"> - On request of the complaining party if consultations result in no solution - Three arbitrators from pre-established list - Selection of the arbitrators by mutual consent, otherwise lot |
| Ruling of Arbitration tribunal | <ul style="list-style-type: none"> - No later than 130 days after establishment of arbitration tribunal - Majority vote - Binding to the EU and the UK - Not binding to any domestic court or law; natural or legal person | <ul style="list-style-type: none"> - No later than 180 days after establishment of arbitration tribunal - Majority vote - Binding to the EU, its member states and Canada - Cannot add or diminish any rights/obligations provided for in this agreement | <ul style="list-style-type: none"> - No later than 150 days after establishment of arbitration tribunal - Majority vote - Binding to the EU, its member states and Canada - Cannot add or diminish any rights/obligations provided for in this agreement - Not creating any rights/obligations for natural or legal persons |
| Compliance | <ul style="list-style-type: none"> - Party has to take immediate measures to comply with obligations | <ul style="list-style-type: none"> - Party has to take immediate measures to comply with obligations | <ul style="list-style-type: none"> - Party has to take immediate measures to comply with obligations |

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| (if a party breached obligation from the agreement) | <ul style="list-style-type: none"> - Within 30 days after ruling or “reasonable period of time” (decided by consent or tribunal) - Temporary remedies by complaining party possible if no measure to comply exists/deadline to comply expires - Suspension of obligations of the agreement by complaining party also possible in some cases | <ul style="list-style-type: none"> - Within 20 days after ruling or “reasonable period of time” (decided by consent or tribunal) - Temporary remedies by complaining party possible if no measure to comply exists/deadline to comply expires - Temporary remedies can be suspension of obligations or monetary compensation - If conflict about “measure ensures compliance” or “remedy equivalent”, arbitration tribunal decides | <ul style="list-style-type: none"> - Party has to inform other Party within 30 days on how much time is needed for compliance - If dissent about “reasonable period of time” to comply, arbitration tribunal decides - Temporary remedies by complaining party possible if no measure to comply exists/deadline to comply expires - Temporary remedy first means monetary compensation by failing Party to complaining Party - If no agreement about monetary compensation, suspension of obligations possible - If conflict about “measure ensures compliance” or “remedy equivalent”, arbitration tribunal decides |
| Exceptions | <p>Chapter 3 [Subsidy Control] Title XI of Heading One Part Two</p> <ul style="list-style-type: none"> - Not applicable to subsidies in agricultural and fisheries sector - Consultations within 60 days after written request - After these 60 days, remedial measures by requesting party possible - In case of remedial measures, respondent party may request establishment of arbitration tribunal - Arbitration tribunal is only allowed to rule on whether the remedial measure is appropriate (= equivalent to nullification of damage because of measure at stake) - If not, complaining party has to modify remedial measure | <p>Chapter 7 [Subsidies]</p> <ul style="list-style-type: none"> - Only consultations possible if one Party considers a subsidy granted by the other party to (probably) adversely affect trade | <p>Chapter 11 Section A [Competition]</p> <ul style="list-style-type: none"> - Only consultations or recourse to DSMs stated in <i>EU-Korea Agreement for anti-competitive activities (signed 2009)</i> |
| | <p>Article 1.1(3) of Chapter 1 [General Provisions] Title XI [Level Playing Field for Open and Fair Competition and Sustainable Development] of Heading One of Part Two; Chapter 6 [Labour and Social standards], Chapter 7 [Environment and Climate], Chapter 8 [Other instruments for Trade and Sustainable Development] Title XI of Heading One of Part Two</p> <ul style="list-style-type: none"> - Consultations between the Parties within 90 days after written request - “Panel of Experts” instead of “Arbitration tribunal” | <p>Chapter 8 [Investment] Section F [Resolution of investment disputes between investors and states]</p> <ul style="list-style-type: none"> - Consultations between the investor and either Canada, the EU or one of its member states - Only investor can submit request for consultations; latest three years after measure at stake was adopted - Mediation procedure possible, same as in ordinary DSM | <p>Chapter 13 [Trade and Sustainable Development]</p> <ul style="list-style-type: none"> - Consultations between the Parties - “Panel of Experts” instead of “Arbitration tribunal” - Three experts from pre-established list: one chosen by each party, the third is chosen by these two; otherwise lot - Panel gives advice/recommendations on implementation of Chapter 13 |

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| | <ul style="list-style-type: none"> - Three experts from pre-established list chosen - Panel gives advice/recommendations - Final report by Panel within 195 days after establishment - No binding rulings possible - Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development guides final report's follow-up - Other procedural rules of "Panel of Experts" are identical to the ones for the arbitration tribunal - Rebalancing measures by one Party possible if it considers negative effect on trade and investment between Parties - Opposite Party can request establishment of arbitration tribunal - Arbitration tribunal is only allowed to rule on whether the rebalancing measure is appropriate (= equivalent to nullification of damage because of measure at stake) - If not, complaining party has to modify remedial measure | <ul style="list-style-type: none"> - "investment tribunal" established on request of investor only - Tribunal is standing; 15 members; 5 appointed by EU, 5 appointed by Canada, 5 third nationals by consent; five-year terms - For each claim, 3 randomly drawn members of investment tribunal responsible - Tribunal can award investor for monetary damages or restitution of property - ICSID acts as secretariat for tribunal - Both conflicting Parties can make an appeal - Members of appellate tribunal appointed by CETA Joint Committee - Appellate tribunal can uphold/modify/reverse award granted by the investment tribunal | <ul style="list-style-type: none"> - No binding rulings possible - Specialized Committee on Trade and Sustainable Development guides the possible implementation of the Panel's recommendations - Other procedural rules of "Panel of Experts" are identical to the ones for the arbitration tribunal |
| | <p>Part Three [Law enforcement and judicial cooperation in criminal matters]</p> <ul style="list-style-type: none"> - Consultations between the Parties; terminated max. three months after request - If no mutually agreed solution or withdraw of request within these three months, complaining party can suspend Titles of Part Three (that are discussed) - If Titles suspended, other Party may suspend remaining Titles of Part Three - For suspension, notification three months prior to final suspension necessary | <p>Chapter 13 [Financial services]</p> <ul style="list-style-type: none"> - For state-vs-state disputes, ordinary DSM used but with different pre-established list of arbitrators - For investor-vs-state disputes, same procedure as for Chapter 8 Section F with one key difference: If CETA Joint Committee or Financial Services Committee adopt joint determination that the measure at stake was necessary for prudential reasons (Article 13.16.1 CETA), the investor's claim has to be withdrawn - Joint determination binding to all tribunals established under the agreement | |
| | | <p>Chapter 23 [Trade and labour] & Chapter 24 [Trade and environment]</p> <ul style="list-style-type: none"> - Consultations between the Parties - "Panel of Experts" instead of "Arbitration tribunal" - Three experts from pre-established lists: chosen by mutual consent between Parties; otherwise lot - Panel gives advice/recommendations on implementation of Chapter 23/24 | |

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| | | <ul style="list-style-type: none"> - No binding rulings possible - Specialized Committee on Trade and Sustainable Development guides the possible implementation of the Panel's recommendations - Other procedural rules of "Panel of Experts" are identical to the ones for the arbitration tribunal | |
| No DSM | <ul style="list-style-type: none"> - §§ 1-6 of Article GOODS.17 [Trade remedies] and Article GOODS.21 [Cultural property] of Title I of Heading One Part Two - Annex TBT-X [Medicinal products] - Title VII [Small and medium sized enterprises] of Heading one of Part Two - Title X [Good regulatory practices and regulatory cooperation] of Heading One of Part Two - Part Four [Thematic cooperation] - Article FINPROV.10A [Interim provision for transmission of personal data to the United Kingdom] of Part Seven - Chapter 1 [General Provisions] Title XI [Level Playing Field for Open and Fair Competition and Sustainable Development] of Heading One of Part Two, except Articles 1.1(3) and 1.2(2) - Chapter 5 [Taxation] Title XI of Heading One Part Two - Chapter 2 [Competition Policy] Title XI of Heading One Part Two | <ul style="list-style-type: none"> - Chapter 3 [Trade Remedies] - Chapter 17 [Competition Policy] | <ul style="list-style-type: none"> - Section C [Global safeguard measures] and Section D [Anti-dumping and countervailing duties] of Chapter 3 [Trade Remedies] → covered by WTO |