

Options to Incorporate Circular Economy Provisions in Regional Trade Agreements

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Executive Summary

The circular economy (CE) is gaining traction. This economic system designs out waste and toxicity and uses new business models and services to prolong and retain the economic value of materials from cradle to cradle. The CE helps address the triple crises of climate change, nature and biodiversity loss, and the unsustainable use of natural resources.

Many countries and economic blocs are beginning to embark on transforming their economies into a circular model. In today's globally connected economy, which is organized around highly integrated value chains connecting goods, technologies, services, and data, the CE can only work when integrated into all its facets.

Based on international comparative advantages and scale effects, trade can help enable a global CE transition. Cross-border exchange of relevant goods and services already occurs at all stages of the value chain, including upstream services related to circular design, goods for refurbishment and remanufacturing, and trade in waste and secondary materials. Companies that provide circular digital solutions, such as predictive maintenance, sharing platforms, or product-service systems, are expanding globally.

International trade cooperation and coherent policy approaches across jurisdictions are important. Governments can use a range of trade-related policy measures, including tariff and non-tariff measures, to encourage the transition away from the take–make–waste economic model. While global cooperation at the World Trade Organization (WTO) is the best option, CE cooperation under regional trade agreements (RTAs) can help build a new system and pilot CE–trade cooperation.

Currently, some trading blocs have started including CE in their RTAs—with the European Union taking the lead. CE provisions are most often situated within the trade and sustainable development (TSD) chapters and in the newest RTAs, some of which are still under negotiation. In one case so far, CE principles are included in an Annex on Energy and Natural Resources. Technical annexes in RTAs have been used before to promote politically important goals, such as renewable energy.

Already, **preambular language** in RTAs recognizes the mutually supportive relationship between trade and sustainable development, which could be interpreted as covering CE. The right to regulate in the public interest and commitments not to lower standards in order to attract trade and investment are included in **TSD and environment chapters**. These could both implicitly and explicitly apply to CE. The gist of the TSD chapters relates to cooperation. At the end of the day, commitments to cooperate will be as effective or ineffective as their actual implementation, and inclusive and supportive structures are needed in this regard.

Tariff liberalization forms the core of RTAs and can facilitate the diffusion of circular solutions and technologies that promote the more efficient use of finite resources. Tariff elimination can be front-loaded and export restrictions removed for goods related to the CE. Some key issues will have to be resolved, such as how to agree on what circular goods to include for tariff removal and classification issues related to secondary goods and materials that could go on to a second life after export. Overall, the **Harmonized System (HS)** used



to identify goods in trade agreements has its limitations and would need to be updated to account for the development of the CE while also distinguishing between hazardous and non-hazardous goods and materials.

A focus on goods trade alone is not enough to advance the CE and may not be where the best opportunities for new and transformational growth and change lie. **Services liberalization**—both in terms of rules and market access—is an area where RTAs can go deeper and further than what is possible at the WTO. Traditional environmental services areas, such as water and waste treatment, remain relevant to CE activities. Supportive services, such as design, engineering, research and development, and digital services, are just as important. Horizontal services liberalization in and of itself is important to advance CE. Liberalizing circular goods and services together is important, as is the free flow of data for digitally driven CE solutions.

Technical barriers to trade (TBTs) include standards, regulations, and conformity assessment procedures. In practice, CE will be driven by new circular product policies and regulations. Differences in the design and implementation of standards and regulations across jurisdictions would send diverging signals to producers and reduce incentives to adopt consistent circular solutions along the value chain. Regulatory heterogeneity could also impose additional costs for exporters and act as non-tariff barriers to trade. Cooperation on CE standards and regulations should be developed from the onset between trade partners in order to enhance transparency and facilitate trade and market access. TBT chapters and their implementing committees provide such a forum for cooperation between closely aligned trade partners.

Going a step further, deep integration RTAs focus on **good regulatory practice and cooperation**. In practice, more advanced forms of cooperation are often easier on new regulatory issues like the CE, as agencies are less entrenched in their existing practice. Such cooperation does require a high level of economic integration and trust among regulators.

A shift toward more circularity and resource efficiency will require massive investments in new business models, technologies, and practices supported by effective regulations. **Investment provisions** in RTAs could focus on preserving regulatory flexibilities on CE matters and promoting investments in the CE, as well as ensuring that investments comply with CE standards and regulations.

A successful CE transition will depend on supportive economic incentive structures. RTAs can support this goal by including provisions on **subsidy disciplines** aimed at increasing transparency, reducing harmful forms of support, or providing a safe harbour for beneficial subsidies and ensuring a level playing field between parties.

Government procurement makes up a large portion of countries' economies and is increasingly being harnessed to promote circularity goals. Through RTAs, countries often open up their public procurement sector. At a minimum, RTAs can confirm the right to discriminate on the basis of environmental criteria, which could include CE standards. Going further, countries could commit to procurement processes and best practices in support of a CE.



In RTAs, specific annexes could be developed in order to promote CE, either as a stand-alone or as annexes to TBT or other sectoral chapters. Given the wide-ranging effects of the CE transition, enabling provisions could also be horizontally integrated across the full range of an FTA, including in TSD chapters, trade in goods, services, subsidies, investment, and public procurement chapters.

Ultimately, the legal nature of CE-related provisions and their potential implications will mainly depend on how they are drafted and not so much on where they are located in an RTA. A dedicated chapter on the CE would nonetheless send a strong political signal from the parties that they are committed to cooperating on this matter. The risk, on the other hand, is presenting the CE as an add-on or afterthought as opposed to an integral part of the different components of an RTA.



Table of Contents

1.0 Introduction	1
2.0 Options to Incorporate CE-Related Provisions in RTAs	3
2.1 Preamble and General Exceptions.....	3
2.2 Environmental/Sustainable Development Chapters	4
2.3 Liberalizing Trade in Goods Related to the CE	5
2.3.1 Product Definition and Classification.....	5
2.3.2 Front-Loading the Elimination of Tariff Barriers on Goods Related to the CE.....	7
2.3.3 Conditioning Market Access Concessions on the Fulfillment of CE Requirements	8
2.3.4 Toward More Flexible Rules of Origin.....	8
2.3.5 Removing Export Restrictions	8
2.4 Services Rules and Market Access.....	9
2.5 Removing Unnecessary TBTs.....	10
2.6 Promoting Good Regulatory Practice and International Regulatory Cooperation	12
2.7 Fostering Investment in the CE	14
2.8 Reforming Incentives Provided by Subsidies	15
2.9 Government Procurement.....	16
3.0 Conclusion	18
References	20
List of Regional Trade Agreements	23
Appendix 1. Summary of possible CE provisions in RTAs.....	25



Abbreviations and Acronyms

CE	circular economy
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EFTA	European Free Trade Association
EU	European Union
EV	electric vehicle
FTA	Free Trade Agreement
GDP	gross domestic product
GPA	Government Procurement Agreement
GRP	good regulatory practice
HS	Harmonized System
OECD	Organisation for Economic Co-operation and Development
RTA	regional trade agreement
TBT	technical barriers to trade
TRQ	tariff rate quota
TSD	trade and sustainable development
USMCA	United States–Mexico–Canada Free Trade Agreement
WTO	World Trade Organization



1.0 Introduction

The transition to a circular economy (CE) entails a deep paradigm shift set to address the triple crises of climate change, nature and biodiversity loss, and the unsustainable use of natural resources. The fundamental logic of the linear take-make-discard economy will have to be replaced with one based on a new approach to product regulation that encourages safe, durable, repairable, and recyclable products only—as well as replacing product ownership with service models that include product-as-a-service-systems, leasing, and sharing (Sitra, 2020).

Economic growth must be decoupled from material input to remain within planetary boundaries. The extraction and processing of natural resources is responsible for 90% of biodiversity loss (Oberle et al., 2109), while the CE represents 45% of the solution for reaching net-zero carbon dioxide emissions by 2050 (Ellen MacArthur Foundation, 2019). As a model of sustainable growth, the CE provides concrete tools for companies to create value by preventing waste and pollution in the first place through more careful design and new business models. Beyond helping get more from less, it also represents a more resilient economic model and is set to create new, decent jobs if the transition is well managed (International Institute for Sustainable Development & Sitra, 2020).

In today's global economy, which is organized around highly integrated value chains connecting goods, technologies, services, and data, international trade is likely to play a critical role in enabling a global CE transition. Cross-border exchanges of goods and services related to the CE already occur at all stages of the value chain. These range from upstream services related to circular design, to technologies that promote resource efficiency and predictive maintenance, to trade in second-hand goods and goods for refurbishment and remanufacturing, as well as trade in waste and secondary materials. Increasingly, companies are also expanding globally in areas such as digital solutions for sharing platforms or product-as-a-service systems.

With appropriate safeguards and regulations, trade can facilitate the diffusion of circular solutions by exploiting international comparative advantages and scale effects. As governments seek to encourage companies to move away from the traditional take-make-waste model, they may have recourse to a range of trade-related policy measures, including tariff and non-tariff barriers. Analysis from the World Trade Organization (WTO) Secretariat shows, for example, that between 2009 and 2017, some 370 CE-related trade measures were notified to the global trade body in areas such as subsidies, technical regulations, or quantitative restrictions, to list just a few (Steinfatt, 2020).

These developments point to the need for international cooperation and coherent policy approaches across jurisdictions to harness the role of trade in scaling up the diffusion and uptake of circular solutions. Regional trade agreements (RTAs), among other mechanisms, can be a vehicle for cooperation on the trade and CE interface between specific trading partners. The European Union (EU) Circular Economy Action Plan, for example, envisages mainstream CE objectives in all of its free trade agreements as of 2020 (European Commission, 2020a).



So far, however, specific CE references in RTAs remain at best embryonic (Yamaguchi, 2021). For example, the modernized EU–Mexico Global Agreement recognizes the importance of promoting inclusive green growth and the circular economy.¹ Similarly, proposed drafts of the EU–New Zealand Free Trade Agreement (FTA) and the EU–Australia FTA include references to cooperation aimed at promoting a CE. So does the EU–United Kingdom Trade and Cooperation Agreement, which has been provisionally applied since the beginning of 2021. As a contribution to this emerging debate, this policy brief explores ways in which trade policy can further support a transition to a more circular economy using RTAs as a vehicle. In doing so, it suggests possible options to incorporate CE-related provisions in future RTAs, building on precedents with similar objectives in agreements currently in force or under negotiation.

¹ See the Trade and Sustainable Development Chapter, Article 13.



2.0 Options to Incorporate CE-Related Provisions in RTAs

From a practical perspective, CE-related provisions may be integrated into horizontal chapters (e.g., on environment or sustainable development, trade in goods, services, subsidies, investment, or government procurement) by making specific references to circularity. Parties may also decide to use targeted annexes attached to chapters on technical barriers to trade (TBT)² or sectoral annexes.³ Another option is negotiating a separate chapter dealing exclusively and holistically with the different aspects of the CE. The EU–Singapore and EU–Vietnam agreements, for example, contain chapters on facilitating trade in renewable energy that lay the groundwork for close cooperation, with a focus on local content requirements, standards, regulations, and mutual recognition of conformity assessment procedures. More directly related to the CE, the EU March 2020 Circular Economy Action Plan calls for coherent trade policy, and the European Commission highlights the potential to use energy and natural resource chapters to incorporate CE-related provisions into its RTAs (European Commission, 2020c). The revised EU–Mexico agreement, completed in 2018, contains a chapter on energy and natural resources in which parties agree to promote the efficient use of resources (i.e., improving production processes as well as durability, reparability, design for disassembly, ease of reuse and recycling of goods).⁴

Ultimately, the legal nature of CE-related provisions and their potential implications will mainly depend on how they are drafted and not so much on where they are located in a future RTA.⁵ A dedicated chapter on the CE would nonetheless send a strong political signal from the parties that they are committed to cooperating on this matter. The risk, on the other hand, is to present the CE as an add-on or afterthought as opposed to an integral part of the different components of an RTA. Keeping these considerations in mind, the following sections review possible areas of trade policy where CE-related provisions could be envisaged.

2.1 Preamble and General Exceptions

The mutually supportive relationship between trade and sustainable development, including the environment, is recognized under the WTO agreements, and the same basic principles are often referred to in RTAs, mostly in the form of preambular language or general exceptions similar to the General Agreement on Tariffs and Trade (GATT) Article XX. In fact, these two

² See for example Annex 8-G to the TBT chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) dealing with organic products.

³ See for example the Sectoral Annex on Energy Performance Standards of the United States–Mexico–Canada Agreement (USMCA).

⁴ It should be noted, however, that the main focus of this chapter is to facilitate access, trade, and investment in energy and raw materials. If such chapters are used to house detailed commitments on the CE and resource efficiency in future agreements, this would require a strong shift in the overall chapter objectives and focus.

⁵ From an enforcement perspective, some FTAs—such as the EU’s—exclude the Trade and Sustainable Development chapters from the general dispute settlement procedure the rest of the chapters are subject to.



types of provisions are currently the most frequent environmental provisions in RTAs.⁶ They can already be interpreted as applying to CE measures, for example, to exceptions allowing for quantitative restrictions on exports or imports of certain goods to promote circularity (e.g., single-use plastics, hazardous waste).⁷ For more certainty, parties may, however, want to make explicit reference to CE in those provisions.

2.2 Environmental/Sustainable Development Chapters

THE RIGHT TO REGULATE ON CE AND NON-REGRESSION CLAUSES

Many FTAs include specific chapters on environmental and sustainable development. These typically include clauses on the right to regulate, which refers to the parties' sovereign right to regulate in the public interest, reaffirming policy space for the future. They also include non-regression clauses, under which parties commit not to lowering environmental standards in order to attract trade and investment. The non-regression clauses seek to ensure a level playing field between trade partners; neither should gain a competitive advantage over the other by driving down labour and environmental standards. As such, existing clauses would likely cover emerging regulations on the CE.

COMMITMENT TO COOPERATE ON CE ISSUES

The environment or sustainable development chapters in FTAs tend to emphasize cooperation on the implementation of a set of multilateral environmental agreements and topics relevant to the CE. The Basel Convention, which imposes improved controls on the transboundary movements of hazardous waste, provides one example, as does the Paris Agreement. Other areas relevant to the CE are sustainable production and consumption, trade and investment in environmental goods and services, energy and resource efficiency, waste management, eco-labelling, and the exchange of information and best practices.

The CE, as a relatively new concept, has yet to be broadly addressed in cooperation provisions, but some examples exist. The EU, as one of its main proponents, has included the CE⁸ as an area of cooperation in its newest draft trade agreements under negotiation with Mexico, Australia, New Zealand, Mercosur, Chile, and the United Kingdom. For example, the EU–Mexico agreement includes a provision on promoting “inclusive green growth and circular economy” to foster sustainable development, while the agreements with Australia and New Zealand include provisions to increase cooperation to promote “sustainable production and consumption, circular economy, green growth and pollution abatement.” Another option may consist of collaborating to address illegal activities, such as illegal waste trade that undermines legitimate trade by economic actors. Finally, more specific and action-oriented commitments to cooperate on the CE could focus on, for example, the development of standards for circular products and services as discussed under the TBT section below.

⁶ See for example Monteiro, 2016.

⁷ Such restrictions have already been used, as in the landmark 2017 China import ban on plastics waste.

⁸ See European Commission, 2020c.



Clearly, commitments to cooperate will be as effective or ineffective as their actual implementation (George & Yamaguchi, 2018). As the CE is a new component of trade policy, much will be learned from experiences in implementation. The EU, for example, has set up specific structures for this purpose (Blot & Kettunen, 2021). Domestic Advisory Groups made up of members of civil society and the European Economic and Social Committee can take up and prioritize issues for implementation, which could include CE. Non-state actors are also involved through Civil Society Dialogues. Based on these discussions, the EU Commission prepares country fiches prioritizing trade and sustainable development (TSD) issues in FTA partner countries, and the CE has come up several times in these. The EU has also organized Circular Economy Missions to FTA partner countries, which has mobilized companies in this area and created new connections.⁹

When negotiating FTAs, parties often conduct environmental or sustainability impact assessments, both before and after the agreements enter into force. These could include a focus on circularity and resource efficiency in all parties (Kettunen et al., 2019). For example, the possible impacts of trade liberalization on resource use and efficiency as well as waste management are already common indicators in the sustainability impact assessments published by the EU since 2016. The CE is also explicitly mentioned in three ex-ante reports on the Trans-Atlantic Trade and Investment Partnership (TTIP) (2017) and the EU–Philippines and EU–Malaysia agreements (2018).

Finally, environment and sustainable development chapters seek to address non-compliance through, for example, a dispute settlement mechanism or process. In U.S. RTAs, for example, environmental provisions tend to be binding and can lead to sanctions under the dispute settlement mechanism. The EU usually adopts a softer and more collaborative approach privileging dialogue and consultations between the parties. In other cases, environmental provisions are purely best-endeavour or non-binding in nature. These differences have implications for the enforceability of provisions on the CE and may guide parties in decisions on where in RTAs they want to locate CE commitments.

2.3 Liberalizing Trade in Goods Related to the CE

As highlighted above, trade liberalization can facilitate the diffusion of circular solutions and promote the more efficient use of finite resources. From this perspective, RTAs can serve as a vehicle to selectively liberalize goods related to the CE, for example, by front-loading tariff elimination or removing export restrictions.

2.3.1 Product Definition and Classification

Selectively liberalizing goods related to the CE raises definitional and classification issues. A first practical challenge is the lack of an internationally agreed definition of what constitutes goods related to the CE. In the absence of a clear definition, one option is for RTA parties

⁹ See, for example, presentations on its Circular Economy Mission to Malaysia: https://ec.europa.eu/environment/international_issues/cem_presentations_singapore_and_malaysia.htm



to establish their own list.¹⁰ Several products have already been identified in the literature (Steinfatt, 2020);¹¹ others can be extracted from the 300+ goods compiled under the plurilateral Environmental Goods Agreement negotiations. As with similar endeavours, however, some products may have multiple end uses, and establishing an unambiguous link to the CE may be challenging. Given the rapid evolution in technologies in a number of areas (e.g., electric vehicle battery recycling), such lists may also need to be updated on a regular basis.

A related challenge arises from the classification of end-of-life products, including waste, scrap, and secondary materials, which can differ significantly from country to country. For example, secondary raw materials or goods for refurbishment and remanufacturing can be considered as waste in some jurisdictions and not allowed for re-shipment. The nomenclature of the Harmonized System (HS) used in trade agreements also has its limitations. In particular, the codes covering waste and scrap under the HS make no distinction between hazardous and non-hazardous wastes, whereas such a distinction is essential under the Basel Convention, which imposes improved controls on the transboundary movements of hazardous waste.¹² Similarly, the six-digit-level HS codes harmonized internationally do not always allow the differentiation of secondary raw materials from waste and scrap or to distinguish second-hand goods and goods for refurbishment and remanufacturing from new products or waste (Steinfatt, 2020). Recognizing those distinctions under an RTA (e.g., by identifying relevant 8- or 10-digit HS ex-outs or agreeing on specific certification procedures) would constitute a first step in facilitating trade in end-of-life products based on their end use. It would also pave the way for a most-needed international reform of the HS system.

¹⁰ For example, in 2012 Asia-Pacific Economic Cooperation economies identified a list of 54 environmental goods for tariff reduction.

¹¹ Proposed goods include, for example, machines and their parts for waste management, remanufacturing and recycling, drip-irrigation systems and their components, recycled paper, sacks and bags made of natural fibres, or inputs to produce bioplastics.

¹² Since January 2021, non-hazardous plastics have also become subject to Basel controls, except for easy-to-recycle plastics destined for recycling. The current HS classifications do, however, not yet distinguish between hard- and easy-to-recycle plastic wastes.



Box 1. Waste or value? A rapidly evolving landscape

There are important questions regarding where to draw the line between hazardous waste, waste, and secondary raw materials. While scrap metal, steel, and copper have a flourishing global market, many other materials used in large quantities in today's linear economies—such as plastics—are difficult to recycle, are of low value, or impose a cost burden for disposal.

However, this is a rapidly changing landscape as new technologies develop, and materials and products will be increasingly designed for recyclability based on new policy development. Waste streams that are worthless today may become valuable tomorrow. For example, chemical recycling of plastics may soon provide valuable secondary polymers. Previously worthless waste fats and oils are now globally traded and turned into biofuels.¹³ This evolution will be accelerated by new regulations requiring minimum recycled content (for instance, by 2025, all polyethylene terephthalate bottles sold in the EU will have to contain at least 25% recycled plastics).

Textile waste, which has grown exponentially following the expansion of the linear fast fashion industry, has caused enormous problems and spurred import bans in African countries. These waste streams may also soon see new, commercially viable, high-quality recycling options.¹⁴

E-waste is currently challenging to recycle, and potential reverse value chains are not yet well functioning. The Basel Convention regulates trade in hazardous waste—some of which potentially could become secondary raw materials. In the e-waste sector, strict measures may hinder the development of viable reverse value chains and effective recycling schemes (World Economic Forum, 2020).

2.3.2 Front-Loading the Elimination of Tariff Barriers on Goods Related to the CE

At the broadest level, identifying products of relevance to the CE or agreeing on methods to distinguish them based on their end use may not be needed if an RTA ultimately removes tariff barriers on all goods, as is often the case. Parties may still want to go through this exercise, at least partially, to be able to front-load liberalization on certain products related to the CE. This accelerated liberalization approach is already applied in a number of RTAs¹⁵

¹³ See, for example, biodiesel produced by Neste: <https://www.neste.com/products/all-products/renewable-road-transport/neste-my-renewable-diesel>

¹⁴ See, for example, the company Infinited Fiber (www.infinitedfiber.com), which has developed a technology that can turn waste textiles into new premium textile fibers and is working with major players in the fashion industry to scale.

¹⁵ For example, Chapter 17 of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation identifies a list of 132 environmental goods to be liberalized immediately upon entry into force of the agreement.



and can have important impacts depending on the initial level of protection.¹⁶ It also sends a strong joint political signal that trade liberalization can contribute to the achievement of environmental objectives—a move that would arguably help gather domestic support for the agreement.

2.3.3 Conditioning Market Access Concessions on the Fulfillment of CE Requirements

Another approach may consist of conditioning market access concessions in the form of tariff rate quotas (TRQ) or reduced tariffs to goods complying with specific sustainability requirements. This approach is not widely implemented in existing RTAs, but examples exist. Under the Comprehensive Economic Partnership Agreement between the European Free Trade Association (EFTA) States and Indonesia, for example, Switzerland granted a limited TRQ for palm oil from Indonesia, provided that the importer can provide valid proof of sustainable and traceable palm oil production. A similar approach may be envisaged for goods meeting certain circularity requirements (e.g., in terms of design, recyclability, or reparability).

2.3.4 Toward More Flexible Rules of Origin

Identifying products of relevance to the CE may also be needed for the purpose of establishing specific rules of origin as a way to foster trade in certain CE products. Rules of origin affect sourcing decisions by defining the amount of originating material an exporter will have to show to benefit from the preferential tariff granted under the RTA. Flexible rules of origin tend to allow larger amounts of inputs originating from non-parties and therefore provide more and potentially cheaper sourcing options. There are hardly any such precedents in RTAs, but parties could nonetheless explore the potential to use rules of origin to facilitate preferential trade in products related to the CE. Under the EU–Mexico Agreement, for example, a limit of 45% in third-country material acts as a real trade barrier in exports of electric vehicles (EVs), as batteries—often sourced in third countries—make up to 30% or even 50% of the total EV value (Kommerskollegium, 2020).

2.3.5 Removing Export Restrictions

Export restrictions ranging from outright export bans, quotas, and taxes to non-automatic export licensing continue to affect mostly metals, such as copper, aluminum, or iron and steel. They are particularly prevalent for waste, scrap, and secondary raw material, representing roughly a third of total export restrictions affecting raw materials (Yamaguchi, 2018). De Sa and Korinek (2021) show that export restrictions affect as much as 40% of traded copper waste and scrap, 30% of aluminum, and 20% of iron and steel waste and scrap. Such prevalence may reflect concerns that exports of waste and scrap can end up in countries with insufficient management capacity, with potential negative impacts on the environment and human health. On the other hand, restricting exports makes it more difficult to exploit comparative advantages and economies of scale sometimes required to make the production

¹⁶ Analysis in Steinfatt (2020) shows that, on average, most-favoured-nation tariffs applied on goods related to the CE range from 0% to almost 20%, with peaks going up to 50%.



of secondary raw material economically viable. From this perspective, restrictions can discourage the substitution of primary raw material by secondary raw materials and slow down the transition to a more circular economy. Therefore, to the extent that parties to an RTA are confident that they have sufficient capacity to process and recover waste and scrap in an environmentally sound manner, countries could agree to remove export restrictions among themselves for materials being recycled while maintaining them for hazardous waste. Precedents exist in numerous RTAs where export taxes and/or quantitative restrictions are eliminated on certain products only (Korinek & Bartos, 2012). As with front-loading, this presupposes that parties distinguish between end-of-life products based on their end use.

2.4 Services Rules and Market Access

Trade and value from trade are increasingly characterized by servicification and digitalization (WTO, 2019). This trend is likely to strengthen further after COVID-19. The CE is at the helm of this curve. Circular innovation focuses strongly on new business models fully or partially based on services and digitalization. In other words, a focus on goods trade alone is not enough in advancing the CE and may not be where the best opportunities for new and transformational growth and change lie. Services liberalization—both in terms of rules and market access—is an area in which RTAs tend to go deeper and further than what is possible at the WTO. Those disciplines set the conditions on how to establish companies, how to provide services across borders digitally, and whether and how company staff and experts can visit and reside in the country. As such, services rules and market access commitments in RTAs can play critical roles in paving the way for the international spread of new CE business models.

Traditional environmental services areas, such as water and waste treatment, remain relevant to CE activities. However, supportive services, such as design, engineering, research and development, and digital services, are just as important, if not even more so. A recent study identified “services related to the circular economy” as a range of service activities included in circular business models starting from upstream activities (e.g., research and development, product design, and supply of renewable materials) all the way to downstream activities (e.g., sharing platforms and collection of material to recycling) (Tamminen et al., 2020). More traditional services, such as installation, assembly, testing, or maintenance and management, were also seen as indispensable to the sales of goods—usually commercialized as a (services) package. Generally, the paper highlighted that CE services trade not only occurs through mode 3 (commercial presence) but also involves mode 1 (cross-border) and mode 4 (presence of natural persons).

In order to support trade in the CE, horizontal services liberalization in and of itself is important. For example, facilitating the establishment of subsidiaries abroad and the mobility of people—staff and experts—would be helpful for circular services companies, just as it is for companies in other services sectors. Circular services companies often rely strongly on digital solutions and digital trade. Under RTAs, CE-related services trade would benefit from commitments parties consider appropriate regarding data flows and localization requirements. Parties could also make commitments in services sectors that are relevant to the CE but are not currently covered in the Service Sectoral Classification W/120 (e.g., waste recycling).



Liberalization of and cooperation on waste services could also help if parties aim to remove export restrictions on waste.

The fact that environmental goods and services are highly interlinked is well-known (Kommerskollegium, 2014). Given the nature of CE companies, goods and services in this newer area also need to be liberalized together, and RTAs are well-placed for this. Parties could explore practical steps in this regard. They could seek to adopt an integrated approach to the removal of trade barriers affecting the CE by identifying clusters of goods and services that are particularly relevant to the different CE business models for future liberalization. Later, these learnings could be taken to the plurilateral or even multilateral level. If discussions on an Environmental Goods Agreement were taken up again, as certain WTO members have proposed within the recently launched Trade and Environment Sustainability Structured Discussions (TESSD),¹⁷ examples of how goods and services commitments could be combined could prove useful as inspiration for multilateral negotiators.

Finally, since many CE companies are small start-ups or small and medium-sized enterprises, commitments in FTAs that support small and medium-sized enterprises tend to be helpful for them.

2.5 Removing Unnecessary TBTs

TBTs usually include standards, regulations, and conformity assessment procedures. By laying down product characteristics or their related production or disposal methods, they play a critical role in fostering a transition to a more circular economy. In practice, TBT measures can target both upstream value chain standards (e.g., eco-design, sustainable production, recyclability, or reparability) and downstream value chains for end-of-life products (e.g., quality standards for secondary raw material, refurbished or remanufactured goods) (Yamaguchi, 2021). However, differences in the design and implementation of standards and regulations across jurisdictions may send diverging signals to producers and reduce incentives to adopt consistent circular solutions along the value chain. Regulatory heterogeneity may also impose additional costs for exporters and act as non-tariff barriers to trade in second-hand goods, recyclable, or secondary raw materials. This reality highlights the importance of enhanced coherence and inter-operability across jurisdictions as a way to both reduce trade costs and scale up circular solutions.

RTAs can serve as a vehicle to enhance transparency but also equivalences, mutual recognition, or the harmonization of standards, regulations, and conformity assessment related to the CE.¹⁸ In addition to the usual horizontal provisions under TBT chapters, this can be fostered

¹⁷ See Communication on Trade and Environmental Sustainability (WT/CTE/W/249), dated November 17, 2020, as well as communications by Canada (INF/TE/SSD/W/3) (<https://web.wtocommerce.org.tw/DownFile.aspx?pid=351883&fileNo=0>), the EU (INF/TE/SSD/W/7) (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TESSD/W7.pdf&Open=True>), Iceland (INF/TE/SSD/W/5) (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TESSD/W5.pdf&Open=True>), New Zealand (INF/TE/SSD/W/1) (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TESSD/W1.pdf&Open=True>), and Switzerland (INF/TE/SSD/W/4) (<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/TESSD/W4.pdf&Open=True>).

¹⁸ This section builds on Bellmann & van der Ven, 2020.



through dedicated chapters on the CE following the models of the EU–Vietnam or the EU–Singapore chapters on “Non-tariff Barriers to Trade and Investment in Renewable Energy Generation” or through a dedicated annex like the US-Mexico-Canada FTA (USMCA) Sectoral Annex on Energy Performance Standards.

Possible provisions to be included in RTAs could range from general commitments to exchange information and improve respective understanding¹⁹ to cooperating in the service of a particular objective. Anticipating developments in international CE standards, parties could, for example, include language in their RTA to encourage regional and national standardizing bodies to participate in the preparation of international standards and use them as a basis for the development of national standards.²⁰ A party rejecting an international standard may also have to explain why it considers the international standard to be ineffective or inappropriate.²¹ Where no international standard exists—which is often the case for the CE—an RTA may require the parties to consider whether a standard developed by a standardizing body domiciled in one of the parties’ countries could fulfill the legitimate objective.²²

More ambitiously, parties may agree on provisions promoting harmonization or equivalence of specific upstream or downstream CE standards or regulations. For instance, the USMCA Sectoral Annex on Energy Efficiency Performance Standards calls on the parties to harmonize energy performance standards within nine years after the entry into force of the agreement. In practice, however, harmonizing regulations presupposes a high level of economic integration and trust among regulators. It also requires the existence of relatively similar regulations to build upon. A more frequent approach consists of establishing a mutual recognition agreement of conformity assessment procedures to eliminate duplicative testing and certification or inspection procedures. For example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) contains a Protocol on Mutual Acceptance of Conformity Results for specific products typically required to comply with energy-efficiency requirements like electrical and electronic equipment.

Finally, RTAs could be used to promote cooperation on voluntary labelling schemes (e.g., on product’s durability, reparability, or recyclability). In this area, parties could use similar language to the USMCA Sectoral Annex on Energy Performance Standards, which recognizes that voluntary programs and voluntary mechanisms that promote energy efficiency should be open and transparent, maximize consumer benefits, and avoid creating unnecessary barriers to trade.

Overall, the type of provisions to be reflected in an RTA depends on the objectives to be achieved, the complexity of the issue at hand, or its novelty. In practice, more advanced forms of cooperation are often easier on new regulatory issues like the CE, as agencies are less entrenched in their existing practice. More ambitious forms of harmonization, equivalence, or mutual recognition are also easier between trusted regulatory agencies or where countries already have similar approaches to regulation.

¹⁹ See, for example, the USMCA Sectoral Annex, Art. 12.A.5 on Chemical Substances.

²⁰ See, for example, the EU-Japan EPA, Chapter 7, Technical Barriers to Trade, Arts. 7.6.4; 7.6.2(b).

²¹ See for example the EU-Japan EPA, Chapter 7 on Technical Barriers to Trade, Art. 7.6.3(b).

²² See for example the USMCA, Chapter 11 on Technical Barriers to Trade, Art. 11.5.4.



Box 2. Batteries: Standard-setting key to trade, international markets, and scaling sustainable and circular solutions

Batteries, particularly in the mobility (EVs) sector, are at the forefront of reducing greenhouse gas emissions in line with the Paris Agreement. Demand for batteries as well as their components and materials—such as lithium, nickel, and cobalt—is foreseen to rise significantly in the upcoming years, with global demand set to increase as much as 14-fold by 2030 compared to 2018 levels. At the same time, measures to extend battery sustainability, resource efficiency, use-life (including second-life), and recyclability are being developed, and circular principles are being adopted at the design phase (European Commission, 2020b). In the future, product-service systems are likely to emerge, meaning battery or car producers may retain ownership and lease out batteries. After their use in EVs, they can still be used in stationary energy storage systems or integrated into electricity grids to stabilize flows from renewable sources.

Across their life cycle, batteries may be subject to requirements related to content (e.g., recycled materials); emissions in production; sustainability and safety; performance and durability; labelling and information, for example, on recycled or hazardous material content or recyclability; and end-of-life management, for example, recyclability and materials recovery. These requirements, including new and strengthened circularity requirements (such as responsibly sourced materials, minimum content of recycled materials, and carbon footprint), are codified through standards and labelling requirements. A number of actors are involved in the standard-setting process, including standard-setting and governmental bodies, testing facilities, battery producers, device integrators, car manufacturers, and recyclers.

As EV batteries are a rapidly growing product segment produced and traded across global value chains, cooperation from the outset is key when it comes to standard-setting and requirements for circularity and resource efficiency. Without coordination, a plethora of different standards and procedures will lead to non-tariff barriers and trade friction in the future. Requirements for traceability across the battery life cycle are also emerging, including optimizing first- and second-life use as well as eventual recycling back into reverse value chains. In this context, digital battery passports would significantly facilitate global trade at all phases of the battery value chain (World Economic Forum, 2019).

2.6 Promoting Good Regulatory Practice and International Regulatory Cooperation²³

TBT provisions in RTAs usually refer to existing standards, encourage adoption of international ones, or focus on mutual recognition agreements. However, in an area like the CE, where regulations are still in the making and where international standards remain embryonic, trading partners may also want to promote early coordination in the design, development, enforcement, or assessment of their nascent regulations. This can be achieved

²³ This section builds on Bellmann & van der Ven, 2020.



by following good regulatory practices (GRPs), such as regulatory impact assessments or stakeholder engagement, as ways to enhance predictability and confidence among regulators. It may also require active international regulatory cooperation among regulators in different forums.

In practice, however, domestic regulators may not have the mandate, the incentives, nor the time to engage with their foreign counterparts. RTAs can provide the institutional framework, the resources, or the political impetus to engage in regulatory cooperation. They can also provide a forum for regulators to learn about each other's systems or discuss proposed regulations. Several recent deep integration RTAs integrate horizontal provisions on GRP (e.g., on ex-post and ex-ante regulatory assessment or stakeholder engagement) and provide a platform for international regulatory cooperation.²⁴ For example, the Regulatory Cooperation Forum created under CETA provides a space to discuss regulatory policy issues, review regulatory initiatives, and facilitate cooperation between the EU and Canada.

These horizontal provisions are likely to benefit the CE by encouraging regulatory coherence and the inter-operability of systems or by removing unnecessary barriers to trade. Critics raise concerns, however, that as the primary objective of RTA disciplines is to facilitate trade among parties, not to improve the level of environmental protection, this leads to a trade facilitation bias (Meyer-Ohlendorf et al., 2016). In the case of the CE, the bias could result in CE regulations converging on the lowest common denominator or being captured by vested interests at the expense of circularity. To avoid this risk, horizontal GRP/international regulatory cooperation provisions in RTAs could be complemented with specific references to the CE, either in the general provisions themselves or as part of a dedicated chapter on the CE. Possible options include provisions that would list circularity as one of the objectives or a priority area of regulatory cooperation.²⁵ Another option would consist of explicitly mentioning the notion of circularity in ex-ante and ex-post regulatory assessments.²⁶ Finally, a third avenue could consist of emulating existing non-regression clauses already present in many environmental or sustainable development chapters by stating that the outcome of regulatory cooperation should not result in lower levels of circularity.²⁷

²⁴ See for example the EU–Canada CETA, the CPTPP, the USMCA, the Pacific Alliance or the EU–Japan Economic Partnership Agreement.

²⁵ Precedents include, for example, the USMCA's Sectoral Annex. Art. 12.A.4 on Chemical Substances, which recognizes that the “principal objective of regulating chemical substances and chemical mixtures is the protection of human health and the environment.”

²⁶ Similar references exist under the EU–Japan economic partnership agreement, which provides that parties will take into consideration “potential social, economic and environmental impact” in regulatory impact assessments.

²⁷ Precedents exist under the USMCA Sectoral Annex 12 on Energy-Efficiency Performance Standards, where footnote 9 states that “successful efforts at harmonization should not diminish consumer welfare, consumer protection, or energy efficiency objectives.”



2.7 Fostering Investment in the CE

A shift toward more circularity and resource efficiency will require massive investments in new business models, technologies, and practices (e.g., in resource efficiency, renewables, low-carbon technologies, waste management, etc.) supported by effective regulations. Investment provisions in RTAs could focus on both preserving regulatory flexibilities on CE matters and promoting investments in the CE. As with other disciplines, specific provisions could be either incorporated in horizontal rules in the main investment chapter or in a dedicated chapter dealing with the CE.²⁸

In recent years, investor protection provisions in RTAs or bilateral investment agreements, combined with mechanisms for investor–state disputes, have been criticized for exerting a chilling effect on environmental regulations when those regulations can be subject to investor challenges in international arbitration forums (Gaukrodger, 2017). In areas related to the CE, for example, governments have been confronted with investors’ claims questioning the conformity of environmental regulatory measures in sectors such as mining, renewable energy, or waste management.²⁹ In recent agreements, efforts aimed at striking the right balance between investor protection and the right to regulate have resulted in the introduction of specific provisions. Generally, this balance is introduced through the careful drafting of investor protection provisions, such as fair and equitable treatment, indirect expropriation, and full protection and security provisions (Yamaguchi, 2020). Other provisions include non-regression clauses discouraging the loosening of environmental regulations from attracting investment and reaffirming the right to regulate,³⁰ as well as specific provisions clarifying that non-discriminatory measures for environmental regulation do not constitute indirect expropriation,³¹ rules allowing performance requirements for environmental purposes,³² or provisions excluding environmental measures from investor–state dispute settlement.³³ Similar approaches could be used as inspiration to craft disciplines designed to preserve the right to establish non-discriminatory regulations aimed at fostering a CE transition.

RTAs can also serve as a vehicle to encourage needed investment in the CE. This can be achieved, for example, by introducing specific commitments for host countries to facilitate and promote investments in the CE as envisaged for climate change under the EU-China Comprehensive Agreement on Investment.³⁴ Such provisions could be complemented with

²⁸ For example, the EU–China Comprehensive Agreement on Investment has a section IV specifically dedicated to investment and sustainable development, including an article on climate change and investment.

²⁹ For a description of investor–state disputes related to the environment under RTAs, see Yamaguchi, 2020.

³⁰ See, for example, the EU-China Comprehensive Agreement on Investment, Section IV Investment and Sustainable Development, Sub-section 2 Investment and Environment, Article 1 and 2.

³¹ See, for example, the Korea–New Zealand Free Trade Agreement Chapter 10 Investment Annex 10-B.

³² See, for example, the Korea–Australia Free Trade Agreement Chapter 11 Investment Article 11.9.

³³ See, for example, the China–Australia FTA (2015), Chapter 9 Investment, Article 9.11(4).

³⁴ See the EU-China Comprehensive Agreement on Investment, Section IV Investment and Sustainable Development, Sub-section 2 Investment and Environment, Article 6(b), which states that parties shall “promote and facilitate investment of relevance for climate change mitigation and adaptation; including investment concerning climate friendly goods and services, such as renewable energy, low-carbon technologies and energy efficient products and services, and by adopting policy frameworks conducive to deployment of climate-friendly technologies.”



technical assistance, exchange of information, or cooperation among investment facilitation and promotion agencies. Alternatively, RTAs may incorporate specific obligations for investors, for example, to comply with domestic extended producer responsibility schemes or emerging international organizational and management standards providing practical guidance for organizations to implement CE or assisting them to incorporate CE objectives in their projects and activities (e.g., ISO/TC 323). Similarly, investors may be required to undertake circularity impact assessments as a part of their pre-establishment or post-establishment obligations.

2.8 Reforming Incentives Provided by Subsidies

While multilateral negotiations are traditionally seen as the most appropriate forum to craft international disciplines on subsidies, RTAs are increasingly incorporating provisions in this area, partly as a result of slow progress in WTO talks.³⁵ More specifically, RTAs may be used as a venue to incorporate subsidy disciplines aimed at increasing transparency, reducing harmful forms of support, or providing a safe harbour for beneficial subsidies.

A first step may be increasing transparency for a set of specific subsidies affecting the CE (e.g., fossil fuel subsidies or subsidies to primary plastic production) through enhanced notification obligations. In order to avoid duplication, this could be done through established reporting mechanisms at the WTO, the OECD, or under the Sustainable Development Goal monitoring process (Yamaguchi, 2020). This approach could be particularly helpful in areas where only limited information is available (e.g., subsidies to services³⁶) and usefully complement existing efforts to increase transparency. Understanding the scope and scale of these subsidies would be a first useful step in understanding their impacts and identifying any reform that might be helpful in supporting CE activities.

A more ambitious approach would consist of phasing out or simply reducing certain forms of support based on their anticipated harmful effects on circularity. Fossil fuel subsidies would constitute a logical starting point, but provisions could also cover other forms of support, such as subsidies to primary plastic production to be agreed upon among parties. Similarly, subsidies to the metal sector can be significant and tend to be disproportionately allocated to the primary sector, providing disincentives to use secondary raw materials (McCarthy & Börkey, 2018). Precedents for RTA disciplines to reduce subsidies include rules on fisheries in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership or the USMCA. The EU–Singapore Free Trade Agreements also calls for the reduction of fossil fuel subsidies with the view to limiting greenhouse gas emissions.³⁷ Similar disciplines are under negotiation in the Agreement on Climate Change, Trade and Sustainability.

Parties to an RTA can also agree to prevent remedial action against a set of well-defined and clearly circumscribed non-actionable subsidies, whose objective is to promote a more

³⁵ Recent examples include binding fisheries subsidy rules under the CPTPP or the USMCA.

³⁶ The EU–China Comprehensive Agreement on Investment, for example, introduces for the first time transparency provisions for subsidies to services. See Annex to Section III Subsection II Article 8 Transparency of Subsidies.

³⁷ See Article 12.11 of the Trade and Sustainable Development Chapter of the EU–Singapore FTA.



circular economy (e.g., subsidies to secondary raw material or for recycling³⁸). Here, the objective is to encourage the reallocation of public resources toward more circular solutions to correct market failures and offset existing distortions. An example of such an approach is found in Article 111 (1) of the Caribbean Community and Common Market for environmental subsidies, which mirrors the language of the now lapsed Article 8 of the WTO Agreement on Subsidies and Countervailing Measures (Yamaguchi, 2020). Such an agreement would, however, only bind the parties to the RTA and would not change the rights and obligations of other WTO members. A possible risk here is to be over-inclusive and carve out support to sectors that, in the long run, may be outcompeted by more efficient or more circular competitors.

Some have also floated the idea that the failure of a government to adopt, maintain, implement, or effectively enforce environmental laws and regulations should be considered as an actionable subsidy and be subject to countervailing duties.³⁹ This proposal nonetheless raises a number of conceptual issues; for example, at what point does a lack of regulations become a subsidy? What would be an acceptable level of environmental protection, particularly in areas like the CE, where international standards are largely non-existent? Should it be based on international commitments, etc.?⁴⁰

Overall, these examples would require defining ex-ante which forms of support should be prohibited or encouraged based on objective thresholds and criteria, distinguishing goods based on their method of production or end-of-life use as described in Section 2.3.

2.9 Government Procurement

Government procurement refers to the process by which public authorities, such as government departments, regional and local authorities, or bodies purchase works, goods, or services from companies. Procurement makes up a major part of countries' economies, at an average of 12.77% of GDP in OECD countries in 2017 (OECD, 2017). In the EU, the public purchase of goods and services was estimated to be worth around EUR 2 trillion or around 14% of GDP.⁴¹ A clear trend is that countries are beginning to steer public procurement priorities away from lowest price toward greatest value, providing ample space for strategic sustainable procurement, including procurement in support of a CE. Authorities can make their purchases in ways that contribute to closed energy and material loops within supply chains and minimize or avoid negative environmental impacts and waste creation across their whole life cycle.

The EU, for example, emphasizes all three pillars of sustainable development—including green public procurement—in its Public Procurement Directive from 2014, which is set to

³⁸ See also the EU–UK TCA, Title XI, Art. 3.1.2(c), 3.2.(a) and 3.4.

³⁹ See a proposal tabled by the United States on December 17, 2020 (WT/GC/W/814) for a draft WTO Ministerial Decision on Advancing Sustainability Goals Through Trade Rules to Level the Playing Field.

⁴⁰ See, for example, proposals by many countries and stakeholder groups in the EU to condition trade concessions under RTAs to compliance with the Paris Agreement and its binding commitments as an additional essential element.

⁴¹ See https://ec.europa.eu/growth/single-market/public-procurement_en



strengthen under the European Green Deal (Pouikli, 2021). Finland has recently proposed a strategic plan for promoting the CE, which includes reference to circular public procurement. Many countries, regions, and cities have been developing their own CE strategies, and public purchasing is often emphasized as an essential tool for encouraging the transition to a CE. A range of approaches to circularity can be used in public procurement, imposed at the systems level, the supplier level, or the product level, encouraging different types of circular practices and solutions (European Commission, 2017).

At the plurilateral level, the WTO's Government Procurement Agreement (GPA) provides parties increased access to each other's internal procurement processes and sets out rules to ensure that the procurement procedures are 1) transparent, 2) subject to due process, and 3) do not discriminate against foreign goods and services. Countries and procuring agencies retain the right to set their own standards and requirements, subject to certain general guidelines. The agreement encourages the use of performance-based or functional specifications, which can be useful when it comes to sustainability. The agreement allows for specifications related to the promotion of conservation or protection of natural resources or to protect the environment. The GPA also encourages specifications to be based on international standards where they exist or on national technical regulations, standards or building codes. However, these shall not be adopted as an "unnecessary obstacle" trade. The GPA applies only to contracts worth more than specified threshold values.

In RTAs, countries often make market access commitments in public procurement. These are included in a procurement chapter, which contains detailed annexes with the thresholds (for goods, services, and construction) and items and entities that are subject to the substantive rules of the agreement. Regarding sustainability, as a minimum, RTAs can confirm the right to discriminate on the basis of environmental criteria, which could include CE standards. For example, before signing the CETA, the EU and Canada adopted a Joint Interpretative Instrument. The instrument clarifies that environmental, social, and labour-related criteria can be used in public procurement without violating the non-discrimination provision (EU, 2016). Going further, countries could commit to procurement processes and best practices in support of a CE.



3.0 Conclusion

The previous sections have identified a range of possible trade-related provisions in support of the CE and ways to incorporate them in RTAs (e.g., through dedicated CE chapters or under existing horizontal disciplines in different areas). As highlighted above, the choice of instruments often depends on the objectives to be achieved, the complexity of the subject matter, the level of ambitions of trading partners, or the extent to which parties have similar levels of development or approaches to regulatory issues. In practice, however, more advanced forms of cooperation tend to be easier on new regulatory issues like the CE, as parties are less entrenched in their existing practice.

The provisions suggested here can be broadly organized in four main categories based on the type of incentives they provide (i.e., either promoting circular solutions or discouraging non-circular approaches) and the level of intervention they target (i.e., either affecting policies at the domestic level or specific trade flows). These distinctions are briefly described in the matrix below. For illustrative purposes, Appendix 1 then organizes these possible provisions under four interlinked categories.⁴²

Table 1. Policy incentives and levels of intervention of possible CE-related provisions

	Domestic/behind the border policies	Policies targeting specific trade and investment flows
Incentivizing a CE transition	Provide policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency.	Reduce trade and investment barriers affecting goods and services related to the CE.
Discouraging non-circular solutions	Remove incentives perpetuating non-circular approaches and resource inefficiency.	Allow specific restrictive trade and investment measures targeting non-circular approaches and resource inefficiency.

Provisions aimed at incentivizing a CE economy transition can take several forms. Parties can agree to allow certain policies to support CE, which would otherwise be prohibited. They can also reaffirm existing policy space to support the CE in certain ways. Finally, they can agree to provide specific positive incentives. Examples of such provisions include reaffirming the right to regulate to achieve high levels of circularity or resource efficiency, identifying a list of non-actionable subsidies to foster circular solutions, excluding non-discriminatory CE regulations from investor–state dispute settlement, or committing to government procurement processes in support of a CE. Other provisions aim more directly at reducing trade and investment barriers affecting specific goods and services related to the CE. For example, efforts at front-

⁴² It should be noted that the distinction between the different categories is not always clear cut, as reflected in Table 1. For example, ex-ante and ex-post assessments of the impact of a particular regulation on the CE and resource efficiency can arguably contribute to different types of interventions.



loading the elimination of tariff barriers on CE products, undertaking specific liberalization commitments in CE-related services, concluding a mutual recognition agreement of conformity assessment procedures for CE standards, or facilitating investment in the CE.

RTA provisions can also discourage non-circular solutions or resource inefficiency, for instance, removing perverse incentives such as fossil fuel subsidies or through non-regression clauses prohibiting the lowering of CE standards to promote trade and investment. Finally, RTA provisions can identify and recognize legitimate trade and investment barriers aimed at discouraging non-circular practices or inefficient resource use. These could include general exceptions allowing import bans of hazardous wastes or non-recyclable materials; cooperating on eradicating illegal waste trade; imposing specific obligations related to the CE on foreign investors; or discriminating against goods based on environmental criteria, including CE standards in government procurement procedures.



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List of Regional Trade Agreements

Agreement on Climate Change, Trade and Sustainability (ACCTS)

Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation. https://www.treaties.mfat.govt.nz/search/details/t/3795/c_1#:~:text=The%20Agreement%20between%20New%20Zealand,investment%20between%20the%20two%20markets

Caribbean Community and Common Market. https://caricom.org/documents/4906-revised_treaty-text.pdf

China–Australia Free Trade Agreement. <https://www.dfat.gov.au/trade/agreements/in-force/chafta/official-documents/Pages/official-documents>

Comprehensive and Progressive Agreement for Trans–Pacific Partnership (CPTPP). <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents/Pages/official-documents>

Comprehensive Economic Partnership Agreement between the European Free Trade Association (EFTA) States and Indonesia. <https://www.efta.int/free-trade/Free-Trade-Agreement/Indonesia>

EU–Australia Free Trade Agreement, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1865>

EU–Canada Comprehensive Economic and Trade Agreement (CETA). <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

EU–Chile Association Agreement. <https://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>

EU–China Comprehensive Agreement on Investment. <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2237>

EU–Japan Economic Partnership Agreement. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1684>

EU–Mexico Economic Partnership, Political Coordination and Cooperation Agreement.

EU–New Zealand Free Trade Agreement. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1867>

EU–Mercosur trade agreement. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2048>

EU–Malaysia trade negotiations. <https://ec.europa.eu/trade/policy/countries-and-regions/countries/malaysia/>

EU–Philippines trade negotiations. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1637>

EU–Singapore trade and investment agreements. <https://trade.ec.europa.eu/doclib/press/index.cfm?id=961>



EU–United Kingdom Trade and Cooperation Agreement. https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en

EU–Vietnam trade and investment agreements. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>

Korea–Australia Free Trade Agreement. <https://www.dfat.gov.au/trade/agreements/in-force/kafta/official-documents/Pages/full-text-of-kafta>

Trans-Atlantic Trade and Investment Partnership (TTIP). <https://ec.europa.eu/trade/policy/in-focus/ttip/>

United States–Mexico–Canada Agreement (USMCA). <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>



Appendix 1. Summary of possible CE provisions in RTAs

Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Preamble and general exceptions				
Preambular language highlighting mutual supportiveness of CE and trade	✓	✓	✓	✓
General exception to promote circularity				✓
Environmental/sustainable development chapter				
Reaffirmation of right to regulate to support a CE transition	✓			
Non-regression clauses			✓	
Reference to the Basel Convention/ relevant multilateral environment agreements provisions imposing controls on trade in hazardous waste				✓
Commitment to cooperate on CE issues	✓			
Promote ongoing dialogue and expert inputs	✓	✓	✓	✓



Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Include CE and resource efficiency in ex-ante and ex-post sustainability impact assessments (SIAs)	✓	✓	✓	✓
Tariffs barriers and export taxes				
Identify ex-outs at the 8- or 10-digit level within HS codes or specific certification for CE products		✓		
Front-load the elimination of tariff barriers on CE products		✓		
Condition market access concessions to CE requirements		✓		
Apply more flexible rules of origin to CE-related goods		✓		
Remove export restrictions for non-hazardous recyclable waste		✓		
Services				
Liberalize services ancillary to the CE		✓		



Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Undertake commitments in CE-related services not covered in W/120 (e.g., waste recycling)		✓		
Identify clusters of goods and services relevant to CE business models for liberalization		✓		
Technical barriers to trade (TBTs)				
Commit to exchanging information on TBT related to the CE		✓		
Encourage regional and national standardizing bodies to participate in the preparation of international standards related to CE	✓	✓		
Use international standards related to CE as a basis for the development of national standards	✓	✓		
Require parties to consider whether a standard developed by another party could fulfill the legitimate objective		✓		



Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Promote harmonization or equivalence of specific upstream or downstream CE standards or regulations	✓	✓		
Establish a mutual recognition agreement of conformity assessment procedures of particular CE standards or regulations		✓		
Promote cooperation on voluntary labelling schemes (e.g. on product durability, reparability, or recyclability)	✓	✓		
Regulatory cooperation and good regulatory practices				
List circularity as one of the objectives of regulatory cooperation	✓			
Explicitly mention the notion of circularity in ex-ante and ex-post regulatory assessments	✓	✓	✓	✓
Introduce non-regression clauses that the outcome of regulatory cooperation should not result in lower levels of circularity			✓	
Investment				



Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Preserve the right to establish non-discriminatory regulations aimed at fostering a CE transition under investment provisions	✓			
Clarify that non-discriminatory measures promoting circularity do not constitute indirect expropriation	✓			
Allow performance requirements to advance circularity objectives	✓			
Exclude non-discriminatory CE regulations from investor–state dispute settlement mechanisms	✓			
Commit to promoting investment in the CE supported by assistance measures and cooperation among investment facilitation agencies		✓		
Incorporate specific obligations for investors (e.g., to comply with extended producer responsibility or international standards, undertake circularity impact assessment)				✓



Possible trade policy measures	Contribution to the CE			
	Policy incentives to promote the uptake and scaling up of circular solutions and resource efficiency	Reduce trade barriers affecting goods and services related to the CE	Remove incentives perpetuating non-circular approaches and resource inefficiency	Allow specific trade- and investment-restrictive measures targeting non-circular approaches and resource inefficiency
Subsidies and trade remedies				
Increase transparency and notification of subsidies affecting the CE	✓		✓	
Phase out or reduce harmful subsidies (e.g., fossil fuel, metal or plastic production)			✓	
Exclude remedial action against beneficial subsidies (e.g., to secondary raw material, recycling, etc.)	✓			
Consider the failure to adopt, implement, or enforce CE laws and regulations as an actionable subsidy subject to countervailing duties			✓	✓
Government procurement				
Confirm the right to discriminate on the basis of environmental criteria, including CE standards				✓
Commit to procurement processes and best practices in support of a CE	✓			

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