

[Stephen Woolcock](#)

European Union trade policy: domestic institutions and systemic factors

Book section

Original citation:

Woolcock, Stephen (2005) European Union trade policy: domestic institutions and systemic factors. In: Kelly, D. and Grant, W., (eds.) The politics of international trade in the twenty-first century: actors, issues and regional dynamics. International political economy series. [Palgrave](#), Basingstoke, UK, pp. 234-252.

© 2005 [Palgrave](#)

This version available at: <http://eprints.lse.ac.uk/9784/>

Available in LSE Research Online: April 2011

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's submitted version of the book section. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

EU trade policy

Stephen Woolcock

Introduction

EU trade policy faces a number of challenges. It must define and prosecute a common policy for all 27 Member States (MS). It must seek to balance offensive, market opening objectives in manufactures and services against defensive interests in agriculture and some industrial and service sectors. In addition to these market access issues it must seek to define and promote European norms in international negotiations on trade-related rulemaking on such topics as investment and the links between trade and the environment. EU policy must also decide when and how to use the leverage of trade to pursue other objectives, such as foreign or security policy. All this must be done while retaining a balance between efficiency, defined here as the ability to reach and pursue common positions in negotiations with third parties, and democratic control or accountability. (Meunier and Nicolaides, 2006)

The EU's response to these challenges has evolved over the past 50 years. Initially trade policy served the primary aim of building Europe in the sense of defending the tariff preference for EU Member States created by the customs union and the Common Agricultural Policy (CAP) against US efforts during the Kennedy Round (1962-69) of the General Agreement on Tariffs and Trade (GATT) to reduce most favoured nation (MFN) tariffs and liberalise agriculture.¹ During the Tokyo Round of the GATT (1973-79) EU trade policy had to defend the policy space sought by Member States that retained mixed economies. Until the 1980s there were still considerable differences between the offensive (market opening) and defensive

(protectionist) interests of Member States, which meant that EU trade policy was still largely the sum of national policies. During the 1980s the creation of a single European market and the associated strengthening on the *acquis communautaire* resulted in more genuine common policies. This stronger *acquis* then constituted the starting point for EU trade policies. This broader 'domestic (.i.e. EU) base of common EU policies, went hand-in-hand with a shift towards a more proactive and liberal EU trade policy that was also more supportive of a rules-based multilateral trading system. During the Uruguay Round (1986-94) the EU shared a duopoly of leadership of the GATT with the US that helped bring about considerable progress in creating the rules-based, multilateral system of the World Trade Organisation (WTO).

By the mid 1990s the EU was seeking to initiate a new multilateral trade round. But the EU's views on a comprehensive agenda were not fully shared by the US and developing countries. With the rise of China, the growing economic strength of India and a more cohesive coalition of developing countries led by Brazil and India the trading system had become multi-polar by the late 1990s. (Young and Peterson. 2006)

Without active support from the USA the EU has not been very successful in shaping the WTO Doha Development Agenda (DDA) negotiations (2001 -). From 2006 the EU has therefore followed the trend, initiated by the US and other major countries, towards the more active use of bilateral free trade agreements (FTAs) to pursue its trade policy objectives.²

The different dimensions to EU trade policy

<p>There are different dimensions to EU trade policy, as in the case of all countries. The importance and objectives pursued on each dimension or level will vary over time. Although EU trade policy is influenced by liberal arguments favouring <i>unilateral</i> liberalisation, this level is really limited to unilaterally offering preferential market</p>
--

access or zero tariffs for least developed countries under the WTO General System of Preferences (GSP) scheme or the EU's own Everything But Arms (EBA) policy.

EU *bilateral* trade policy takes the form of Association Agreements or free trade agreements with third countries. Trade and trade-related topics also form the core of the currently 'in vogue,' but not especially effective *region-to-region* agreements negotiated with other regions that are intended to serve the dual aim of market opening for EU exporters and the promotion of integration within the partner region.

Plurilateral agreements, such as the Agreement on Government Procurement (GPA) or Agreement on Trade in Civil Aircraft under the aegis of the WTO, or various agreements on investment under the aegis of the OECD (Organisation for Economic Cooperation and Development) are negotiated by the EU (or its Member States) with like-minded or similarly developed countries on specialist topics.

The *multilateral* dimension of EU trade policy centres on the WTO and takes the form of multilateral rounds of negotiation such as the Doha Development Agenda. But it is important not to forget work in a range of WTO committees concerned with implementation, the review of WTO Members trade policies (Trade Policy Review Mechanism), including the review of preferential trade agreements in the WTO's Committee on Regional Trade Agreements, and dispute settlement. Each bilateral or region-to-region agreement also involves ongoing work on implementation and the settlement of disputes.

Finally, EU trade policy includes the application of so-called *commercial instruments*, such as anti-dumping (under Art VI of the GATT 1994 when exporters 'dump' products on the EU market, i.e. sell at prices below the cost of production); safeguards (under Art XIX of the GATT 1994 and special safeguard measures in bilateral trade agreements) to limit 'injury' to industries as a result of unforeseen import surges) and other measures aimed at addressing cases of 'unfair trade' such the Trade Barriers Regulation (TBR) (Council Regulation (EC) No. 3286/94).

Towards a comprehensive EU trade policy

Trade policy is an area in which the EU, as opposed to the Member States, has considerable influence on the international scene thanks to the EU³ exclusive competence for trade⁴ and the size and depth of the single European market. But it has taken many years to establish a comprehensive policy. This section considers how treaty changes and domestic policy developments as well as external factors have played a role in the creation of such a comprehensive, common EU trade policy.

The treaty provisions

The treaty of Rome, as amended, provides for exclusive EU competence for ‘common commercial policy’ in Article 133 (TEC) (ex Art 113) and sets out the decision-making processes,⁵ which start with a Commission proposal on the agenda and negotiating aims. This is discussed in the 133 Committee and if necessary the General Affairs and External Relations Council (GAERC), before the Council authorises the Commission to negotiate ‘in consultation with the Member States (MSs).’ This ‘mandate’ is not time-limited, but can be adjusted by the Council as negotiations proceed. The results of the negotiation are adopted by the Council and must in certain case (see below under policy process) have the assent of the European Parliament (EP). Ratification at MS level is required for mixed or national competence issues. There are slightly different treaty provisions for bilateral or preferential agreements, such as association agreements. Here adoption of an agreement requires unanimity (Article 310 TEC) (ex Art 238) in the Council and assent by the European Parliament in all cases.

The Treaty of Rome did not provide an exhaustive definition of ‘common commercial policy.’ In 1958 trade policy was essentially limited to tariffs, so these are mentioned as were agriculture and anti-dumping. But otherwise competence (whether European Community or Member State) has been at issue whenever new topics appeared on the trade agenda. The decision to create a customs union did, however, require the original member states jointly to set tariffs and to develop a collective trade policy as they did in the Kennedy Round. As the trade agenda expanded the EU was called upon to negotiate an ever wider range of topics, such technical barriers to trade (TBTs), subsidies and countervailing duties (SCVs), and public procurement (Government Procurement Agreement) during the Tokyo Round and services

(General Agreement on Trade in Services or GATS), investment (Trade Related Investment Measures or TRIMs) and intellectual property (Trade-Related Intellectual Property Rights or TRIPs) in the Uruguay Round (1986-94). (Woolcock and Hodges 1996). In response to what was in effect an external and largely US-driven trade agenda member state governments pragmatically accepted that the Commission should act as the negotiator for the EU as a whole and were willing to leave aside the issue of legal competence until the ratification stage of negotiations.

Trade competence has featured in all recent Intergovernmental Conferences (IGCs). In the Maastricht IGC the Commission pressed for increased EC competence to include services, investment and intellectual property rights on the grounds that these were part of the package of issues being negotiated in the Uruguay Round, but this was resisted by MS concerns about loss of sovereignty. The MSs also went out of their way to keep trade policy within the control of the technocratic policy elite of senior national and Commission trade officials and the EP at arms-length. In the Amsterdam IGC renewed Commission pressure for increased competence led to a modest compromise in the shape of the Art 133(5) (TEC) enabling clause. This enables the Council, acting unanimously, to add a specific issue, such as services, to EC competence without having to go through a formal treaty change. This provision has, to date, never been used. The 2001 Treaty of Nice (ToN) added some service activities to EC competence, but excluded sensitive services sectors such as audio visual. The Treaty of Lisbon (ToL) if ratified would confirm the existing provisions and procedures of Art 133 (TEC)(in Art 207 ToL), but would make all trade policy exclusive EU⁶ competence, dispensing with mixed (EC and MS) competence and thus the requirement for mixed agreements to be ratified by MS parliaments.⁷

The formal treaty provisions governing EU trade policy have therefore evolved over half a century and have been mostly concerned with competence issues rather than how trade policy is made. However, the Treaty of Lisbon if ratified would also affect a change in the latter by granting the EP greater powers. (see the section on policy process below) Simply considering treaty changes as a result of intergovernmental negotiations would however, afford only a limited understanding of the evolution towards a comprehensive EU trade policy. Developments in the 'domestic' EU policies, including how domestic policies have responded to external factors, have been more important.

*The impact of the *acquis communautaire* on EU trade policy*

Apart from a common external tariff (CET) and CAP, there were in the 1960s and 70s large areas of trade and trade-related policies on which there was no common EU policy. It was not until the late 1960s that the EU introduced common commercial instruments such as anti-dumping and safeguard provisions. With the rise of new protectionism in the early 1970s the individual MS made use of the scope under Art 115 (EEC) to maintain national import quotas for textiles and clothing from low cost developing countries and national 'voluntary' export restraint agreements (VERs) outside of any formal trade rules to limit imports from the Japan and the Newly Industrialising Countries (NICs) of such products as cars, consumer electronics and machine tools.

Throughout the 1970s MS also pursued national champion policies to bolster the competitiveness of national companies through the use of subsidies, preferential

government procurement, technical regulations and standards and the (non-)application of competition policy. As a result the Commission was obliged to defend the 'policy space' of the MS in the face of US pressure to impose multilateral discipline on such policies. Only in the case of the iron and steel, where the EU had greater powers under the European Coal and Steel Community (ECSC) Treaty was there a more common EU policy. (Woolcock, 1982)

During the 1980s the picture changed considerably due to the realisation of a genuine Single European Market (SEM). Agricultural reform, in the shape of the 1991 proposals put forward by the Commissioner for Agriculture, McSharry, to reduce the more trade distorting price support mechanisms of the CAP, came rather too late to help in the Uruguay Round (Hodges and Woolcock, 1996), but in many other fields the SEM reforms facilitated the emergence of a more comprehensive, more rules-based and liberal EU policy. For example, the elimination of frontier controls with the SEM made the continuation of national quotas and VERs impossible and loosened the grip of defensive interests enough to facilitate EU support for a ban of such measures. (Hanson, 1998) Stricter enforcement of the existing EU rules on national subsidies provided the model for the subsidy rules of WTO Agreement on Subsidies and Countervailing Duties. In the field of government procurement, where the EU had previously blocked US attempts to open the EU power and telecommunications markets, the adoption of a full panoply of EU Directives brought virtually all public procurement under EU rules and facilitated a more positive EU position in the plurilateral negotiations on a revised Government Purchasing Agreement in the WTO. (Woolcock, 2008) In services the SEM liberalised a first group of more market-

related sectors, such as telecommunications and financial services, which again facilitated a more proactive EU stance in the GATS negotiations.

Generally speaking, moves towards a more liberal, rules-based regime in the Uruguay Round came as a result of US and EU cooperation. Where the support of either was lacking, there was less progress, such as in agriculture due to limited EU support, or technical barriers to trade (TBT) due to US antipathy to rules that followed the EU model and went beyond the basic GATT principle of non-discrimination or national treatment. In services the EU overtook⁸ the US as the main driver of the GATS with the US holding back conclusion of an agreement because it sought more commitments from emerging markets. (Hoekman and Sauve, 1994)

The SEM and the development of the *acquis* had a threefold effect on the EU policy process in trade. The SEM liberalised and thus gave the Commission negotiators more flexibility to seek ambitious reciprocal trade agreements. At the same time the deepening and widening⁹ of the EU market enhanced the economic power the EU. In GATT trade negotiations on tariffs and to a less extent services, the ability to withhold market access is a reasonable measure of power. Finally, the adoption of common policies in the shape of the *acquis* gave EU negotiators an agreed basis for negotiating international rules and norms in the WTO or bilaterally.

To the norms codified in the *acquis*, one must add a number of more general EU normative values shaping its trade policy. First, the belief, based on the European experience, that market integration cannot stop with national treatment and the removal of border measures, but requires positive integration or at least agreement on

a range of trade-related topics. This is reflected in the EU's search for a comprehensive trade agenda in the WTO and - for the most part - in the preferential agreements it negotiates. Second, the belief - again based on the EU experience - that regional economic integration has considerable economic and political benefits. This is why the EU favours region-to-region agreements to promote regional integration in other regions and why the EU has become the 'patron saint of inter-regionalism in international relations.' (Aggarwal and Fogarty, 2005). Third, the *acquis* codifies an approach in which liberalisation takes place, but within a framework of agreed rules that protect competition, the environment and other legitimate social policy objectives. This has also shaped the EU desire for a comprehensive agenda to include trade-related topics for reasons of governance as well as to enhance market access. (Baldwin, 2006; Lamy 2004)

Enlargement has had less of an impact than one might have expected given the more than doubling of MS. The Nordic enlargement of 1995 brought in liberal-minded Sweden and Finland, and Sweden soon established itself as one of the leading proponents of liberal trade and investment in the Council and 133 Committee, thus consolidating the liberal trend established during the second half of the 1980s and first half of the 1990s.¹⁰

The eastern enlargement on 2004 is generally considered to have been neutral in terms of the balance of protectionist and liberal Member States, with the more protectionist Poland with concerns about agricultural being balanced by the generally far more liberal smaller MS. Estonia was, for example, obliged to make its trade

policy more protectionist in order to bring it in line with the *acquis*. The new members were in any case obliged to accept the existing EU trade regime.

External factors have also driven EU trade policy towards greater comprehensiveness.

From the origins of the GATT in the late 1940s until well into the 1980s the international trade agenda, if not always the outcome of negotiations, was shaped by the US. In the 1960s this took the form of pressure for tariff reductions and negotiations on agriculture to limit the impact of the CET and the CAP on US exporting interests. In the 1970s it took the form adding trade-related topics, such as subsidies and government procurement, to the agenda in an effort to extend GATT discipline the 'unfair' competition resulting from the use of such instruments by Europe and Japan. In the 1980s it took the form of getting services, intellectual property and investment on the GATT agenda, because these topics reflected the US competitive advantage in financial services, communications, high technology/research-based products and the media.

As discussed above, until the 1980s the EU response to these US initiatives was defensive. Faced with the 'challenge' of the US, EU Member States responded pragmatically and agreed that negotiating with one voice through the Commission was in the EU's best interest. The Commission was thus given the role of negotiating on a range of topics, but without prejudice to the formal *de jure* competence question. Once agreements had been negotiated it was then necessary to resolve the legal competence question in order to know how the agreements were to be adopted and implemented. At the end of the Tokyo Round a political agreement was reached on joint signature by the EC and the Member States. (Bourgeoise, 1982) At the end of

the Uruguay Round the General Affairs Council first decided, in March 1994, that the Council Presidency, Commission and MS should all sign the Marrakesh Agreement that concluded the Uruguay Round. The German presidency along with France and Britain then suggested a code of conduct for dealing with issues of mixed competence. But The Commission supported by Belgium was concerned that this would set an intergovernmental precedent and prejudice the forthcoming (Amsterdam) IGC in which the Commission was seeking increased EU competence. So the Commission referred the issue to the European Court of Justice, which in its 1/94 decision lent rather more towards the MS than the Commission position. (Devuyst, 1995)

The fact that the Commission was given the job of negotiating meant it built negotiating capacity, expertise and institutional memory that helped it to progressively establish *de facto* competence for the wider, comprehensive trade agenda. The Commission and the EU as a whole thus became recognised more and more as the focus of trade policy by the major actors. In this way external factors contributed to the emergence of a progressively more comprehensive EU trade policy.

The policy process

The EU's response to the challenges mentioned in the introduction depends on process, or how decisions are made, as well as substantive policy issues and interests at stake within the EU and internationally. The Commission has established itself as the agent for the EU in international trade negotiations and the MS governments have, at least to date, served as the main principals, but what is the nature of the relationship

between them and how, if at all, has the EU responded to the greater pressure for accountability in trade policy decision making?

The Council decides on the EU objectives

In multilateral negotiations, notably within the WTO, the Commission produces a draft mandate, drawing on the positions of the member governments and the views of business, civil society and resolutions or reports from the European or national parliaments.¹¹ The Commission rarely works from a blank sheet. In addition to the domestic *acquis*, trade negotiations often form part of an iterative process, so that positions adopted in previous rounds will inform current EU positions. Continuity is ensured by a strong institutional memory stored within the Commission and national trade administrations. The Commission's draft mandate is discussed in the Article 133 Committee, which consists of senior trade officials from each member government, and is chaired by the rotating Council presidency. The formal mandate is then adopted by the General Affairs and External Relations Council (GAERC). See figure x.1. The European Parliament has no formal role in mandating or authorizing negotiations. It has only the possibility of shaping opinion by debating the topics and passing resolutions or adopting reports on specific trade topics.¹² The adoption of the Lisbon Treaty would not change this as Art 218(2) ToL clearly states that it is the Council that would retain the right to authorise negotiations and determine the mandate.¹³ The mandate is not time-limited. For example, the EU negotiated the DDA on a formal mandate adopted in 1999 before the Seattle WTO Ministerial meeting. But the mandate can be and is adjusted as negotiations proceed.

The Commission negotiates

The Commission negotiates on behalf of the EU in consultation with the member governments, mostly through the regular meetings of the Article 133 Committee. (Johnson, 1998) In negotiations with the EU's trading partners the Commission is the only member of the EU delegation to speak, although national officials from member governments are present in formal negotiations. This is the case for topics on which the EU has competence, as well as in trade negotiations in which there is mixed or national competence. The Commission is expected to report to the MS on important informal contacts with the EU's trading partners, for example, to exchange information. There is a grey area here in the sense that there is no clear dividing line between exchanging information and negotiations. If the negotiations are in Geneva, where the WTO has its headquarters, MS are represented by officials drawn from the national delegations to the WTO or experts from national capitals. At key junctures in negotiations or at WTO Ministerial Meetings, member governments are represented at ministerial level.

Figure x.1 EU decision-making processes for multilateral trade negotiations

The Council can direct the Commission on any issue during negotiations, but in most cases new initiatives or changes result from Commission proposals which are then discussed in the Article 133 Committee. If the position proposed by the Commission does not have sufficient support, the chair will refer the matter back to the Commission. Although QMV is provided for in the treaty, the Article 133 Committee hardly ever takes a formal vote but favours consensus. The prospect of a vote based on a QMV means however, that MS go to considerable lengths to avoid being so isolated and thus faced with being outvoted.

The central dynamic of EU trade policy lies in the interaction between the Commission and the Council/Article 133 Committee. The principal – agent model in which the Member State governments are the principals and the Commission the agent seems to capture what happens better than the executive/legislative model of the US, because the Council does not really behave like a legislature, authorizing the executive Commission to negotiate. The member governments do not only set the objectives and ratify the results, but also take a close interest in the progress of negotiations. This is slightly different from the US system of Trade Promotion Authority (TPA), formerly ‘fast track’, in which Congress delegates constitutional powers to negotiate commercial policy to the executive and must therefore accept or reject, but cannot amend what is negotiated. Although the United States Trade Representative (USTR) has to be very sensitive to Congressional opinion, because it must have majority support for the final package, it probably has more negotiating flexibility or ‘agency slack’ than the Commission *vis-à-vis* member governments. This is because the latter intervene directly over negotiating tactics and the composition of the final package deal. The fact that consensus is the norm for adopting the results of negotiations in the EU also reduces agency slack. The EU system works well when communication between the Commission and the member governments is effective and when the Commission is seen as a credible, trusted negotiator by its principals, the member governments. The degree of agent slack will however, vary from topic to topic. Generally speaking the Commission will be granted more flexibility (agent slack) on technical issues than for politically sensitive issues. The Commission will therefore generally wish to deal with issues by means of technical discussions on details in the 133 Committee. Any Member State(s) not

Deleted: want to have a say in every nuance of negotiations

happy with how the Commission deals with the issue in the 133 Committee will therefore seek to 'politicise' the issue and threaten to initiate a discussion on the issue in the Council. The normal practice would be for most trade issues to be approved by the Council but without discussion.¹⁴

Deleted: ¶

As the key principals, the ideological stance of MS on trade is a factor. But some caution is called for when categorizing member governments as liberal or protectionist. Positions are also significantly shaped by sector interests, domestic political factors, such as which government is in power, not to mention economic and electoral cycles. For example, Ireland is liberal on trade in manufacturing, investment, and services, but protectionist on agriculture. France is protectionist on agriculture, but liberal on services, except audio-visual services. Germany is generally liberal on trade in goods, but less so on the liberalization of agriculture or services. Generally speaking, Sweden has tended to occupy the liberal end of the spectrum and France is at the other protectionist end. The UK, the Netherlands, Denmark, Finland, and Germany tend to adopt liberal positions, whereas Italy, Spain, and Portugal are more protectionist, with the other member states in swing positions. France also tends to see itself as providing the backbone for the EU trade policy in the sense of holding out against pressure from other countries, especially the US.

Successive enlargements EU have influenced this pattern. UK accession meant that EU policy would in future be shaped by a state that has deep liberal trade traditions. Portuguese and Spanish accession tipped the balance towards protectionism, especially in sectors such as steel and textiles, whereas Nordic enlargement in 1994 shifted the centre of gravity towards a more liberal position. The 2004 enlargement to

include central and east European countries as well as Cyprus and Malta has on balance proved to be relatively neutral. Whilst Poland and Slovakia have sectors they will wish to protect, there are liberal countervailing forces in Estonia, the Czech Republic, Slovenia, and Hungary. There is also not much evidence of enlargement bringing about changes, or making decision making harder. The 133 Committee (and Council) have become much larger, which has made dialogue harder. At the same time a larger Committee appears to have strengthened the hand of the Commission as initiator and drafter of policy positions. (Elsig, 2008) The smaller MS tend to be relatively inactive except on a few key issues. As they do not have strong views on many issues these smaller MS also tend to support the Commission proposal. This has the added benefit of preserving the limited political capital they have for those things that are really of central national importance on which they want Commission support.

The Commission and Council consult the EP, and this has become more formal with the establishment of the International Trade Committee (INTA) in 2004. There is a growing acceptance among policy makers that 'trade can no longer operate in a hermetically sealed box', but must be more open to scrutiny and debate. (Baldwin, 2006, pg 941) Although, the adoption of provisions equivalent to those in the Lisbon Treaty would formalise this and require the Commission to *report* regularly to the INTA on the progress of negotiations (Art 207(3) LT), the Art 133 Committee would remain more important and continue with its existing role of *assisting* the Commission in negotiations.

No real formal channels for NGO stakeholders

The EU policy process like all trade policy is shaped by sector or interest groups, but there is no formal channel for representation on a par with, for example, The US Trade Advisory Committees. The EU Economic and Social Committee (and Committee of the Regions) are consulted but, rightly or wrongly, are not taken very seriously by the policy makers or stakeholders. Over the past 50 years there has been considerable spill-over with business and, since the late 1990s, civil society NGOs, making more and more representations at the EU level.

The Commission is happy to hear the views of business. Indeed, the need for private sector input in order to define the EU's offensive and defensive objectives has, on occasion, led the Commission to encourage the creation of new EU level business representation where it did not previously exist, such as the creation of ESF (The European Services Forum) in the late 1980s. The Commission favours EU level representation at both the sector and confederation level, and can easily fend off lobbying from sector interests in one or only a couple of Member States on the grounds that this is not representative of the EU-wide interest. (Woll, 2007) The need for representation to take place at the EU level necessitates common positions among national sector interests and thus makes for a more institutionalized lobbying through EU level sector bodies, which generally requires compromise and thus dilutes preferences. This may be one of the reasons for the relatively less assertive nature of European business lobbying compared, for example, to the US. (Woll, 2007) This does not of course preclude independent lobbying by major firms, which may in any case have a presence across the EU.

An increased sensitivity to civil society after the Seattle WTO Ministerial in 1999, among other things, led to the establishment of a semi-formal Consultative Forum with non-government organizations, including business, sector organizations as well as a wide range of civil society NGOs. The diverse views in such a Consultative Forum mean that while it enhances policy transparency it leaves the existing technocratic policy making machinery of Commission, Art 133 and Council largely untouched. Civil society NGO advocacy does however, have an indirect impact on EU trade policy by shaping public opinion that has begun to translate into greater parliamentary scrutiny. The EP is also more open to civil society lobbying so that a greater role for the EP looks likely to translate into a larger role for NGOs.

The Council adopts the results but the role of the EP is growing

The Council adopts the eventual results of each negotiation. National ministers are normally present at key stages of a major negotiation to provide final instructions and to endorse last minute agreements and compromises. Formal adoption then follows in the GAERC under the QMV rule on issues within EU competence, although in practice the Council operates by consensus, at least as far as major issues affecting major member governments are concerned. Smaller member states may be bought-off with side payments. Unanimity is required for the adoption of provisions that fall within national or mixed competence, which are then subject to ratification at MS level including by national parliaments.¹⁵ Clearly a formal requirement of unanimity strengthens the negotiating position of a MS or a minority of MSs opposed to any given EU policy option, even though all decisions are ultimately taken by consensus.

Under existing treaty provisions the EP must give its assent, by a simple majority, if a trade agreement; (a) requires changes in EU internal legislation adopted by co-decision making; (b) establishes specific institutional obligations (such as a joint parliamentary body or committee); or (c) has budgetary implications. Unless a multilateral trade agreement is very limited it is likely to require EP assent under one or other of these conditions. For political reasons it would also be difficult for the Council not to seek EP assent.¹⁶

As noted above bilateral association agreements under Art 310 TEC, the type of agreement used for all major bilateral agreements to date, require unanimity within the Council and the assent of the EP.¹⁷ This can clearly affect the policy process by strengthening the position of a MS that wishes to block an agreement and making it more important for the Commission and Council to keep the EP 'on board'. At present the EP has no real credible veto power over multilateral agreements. If all 154 members of the WTO and all the 27 EU Member States have agreed on the outcome of, for example, the DDA, it is difficult to see how the EP could vote such an agreement down. Nor has the political composition been such that any agreement

negotiated by the Commission and approved by the MS could not get a majority. The rejection of a bilateral agreement, such as an EPA between the EU and an ACP state or region, is both legally and politically more likely.¹⁸ The EP has shown considerable interest in aspects of bilateral agreements, such as human rights conditions in the EU trading partners. But there must still be some doubt that the EP will decline to give its assent or consent to a bilateral agreement that has been negotiated, accepted by all 27 Member States and adopted by a democratic body in the trading partner.

Deleted: he other hand

Deleted: possible

Deleted: more

Deleted: feasible

Deleted: In the future it is to be expected that it will also show a growing interest in the substance of trade and trade-related provisions.

Figure x 2 EU decision-making for bilateral association agreements

Commercial instruments

Anti-dumping has been by far the most important commercial instrument used by the EU. GATT Article VI lays down rules that are implemented in EU regulations. These regulations are currently adopted by the Council following a proposal by the Commission, in other words not by co-decision making. An anti-dumping complaint is triggered by a claim from the EU sector concerned that imports are dumped and causing - or threaten to cause - 'serious injury.' The complaint office in DG Trade of the Commission receives such petitions for relief and considers the general validity of the complaint. At this stage there may well be informal communications between the industry or lawyers representing the industry and the Commission on the strength of the case. If the Commission is persuaded there is sufficient evidence it seeks approval from the Anti-Dumping Committee to begin an investigation. The Anti-Dumping Committee is chaired by the Commission and includes generally representatives from the permanent representations in Brussels and national capitals. Approval to investigate requires a simple majority of MS voting.

The Commission is then fully responsible for establishing; (a) if dumping has occurred, (b) whether there is serious injury as a result, (c) causality, in other words injury must be result from dumping and (c) where the 'Community interest' lies. GATT Art IV is not tightly drawn and the Commission has a good measure of discretion on dumping and injury and even more on Community interest, which requires an assessment of the costs to consumers and other user industries- and

benefits - for the injured industry - of imposing anti-dumping duties. In cases of dumping the Commission may propose preliminary duties, which require a simple majority of the MS in the Anti-dumping Committee, but COREPER/the Council must approve the definitive duties, which can run for up to five years. Broader policy issues relating to the use of anti-dumping or other forms of contingent protection, such as the use of restraint in the use of commercial instruments during the international economic downturn following the 2008 financial crisis, may also be discussed in the Commercial Questions Group of COREPER. But the Commission has had some success in limiting the role of this Presidency chaired committee.

In recent years the EU procedures have been changed to make it easier to have a definitive duty adopted thus increasing the 'effectiveness' of using commercial instruments for the purpose of contingent protection. In 1994 the threshold for adopting a definitive duty was lowered from QMV to a simple majority of MS.¹⁹ When the 2004 enlargement promised to make it harder to get a simple majority in favour of action due to abstentions,²⁰ a further change was made to the effect that a Commission proposal for a definitive duty now stands unless there is a simple majority of MS *against* it.²¹ The Commission's responsibility for implementing anti-dumping policy therefore gives it considerable discretionary power. In the past this has been criticized as providing scope to use anti-dumping duties as a form of contingent protection. In 2008 DG Trade was however, accused by industry of using its discretion to hinder the process of adopting anti-dumping measures. Finally, it is perhaps worth stressing that unlike most other decisions on trade when it comes to the use of commercial instruments, such as anti-dumping duties, it is common practice to

take votes. This can lead to active lobbying of small MS without a direct interest in the case by the larger MS with important sector interests at stake.

Figure x.3 EU decision-making for anti-dumping measures

On final aspect of EU trade policy concerns the day-to-day implementation of bilateral and multilateral agreements. This involves work in the various WTO committees and bilateral joint committees or councils, as well as the use of formal dispute settlement procedures. Most disputes are resolved in consultations between the Commission for the EU and the relevant trading partner. However, there is a greater use of adjudication in dispute settlement, especially in the WTO. The EU has won several important WTO cases including the US safeguard actions on steel, and the US Foreign Sales Corporation Tax (FSC), but it also lost some, such as the bananas, genetically modified organisms (GMO) and beef hormones cases. In cases where the EU is accused of non-compliance it is the Commission that submits the EU case and represents the EU in any hearings. Decisions on whether to bring a case in the WTO are generally taken by the Commission, but with the backing of the Article 133 Committee. Challenging another WTO member under the Dispute Settlement Understanding (DSU) can be seen as an aggressive step, especially when losing the case carries major costs or requires changes in policy or legislation, such as in the FSC case; in these instances decisions are taken by the Council (Petersmann and Pollack, 2003).

EU trade strategy in the post Uruguay Round period

This section considers the more substantive question of how the EU has responded to the lack of progress in the multilateral Doha Development Agenda by reemphasizing bilateral and (at least rhetorically) region-to-region agreements. In 1999 the EU adopted what was a *de facto* moratorium on new preferential trade agreements (PTAs) in order not to undermine the credibility of its push for a comprehensive multilateral round. (Lamy, 2004) The EU pursued its aim of a comprehensive multilateral agenda and WTO Working Groups on competition, investment public procurement and trade facilitation were established at the 1996 Singapore Ministerial. In 1998 the Clinton Administration agreed, rather reluctantly, to support the EU-led proposal for a millennium round, but the attempt to launch one in Seattle in December 1999 failed due to developing country and civil society NGO opposition, but most importantly a lack of agreement between the EU and US on the negotiating aims. At the WTO Ministerial in Doha in 2001 a new round was launched thanks to the use of the time-honoured GATT device of constructive ambiguity in the agenda, a more supportive US position in the post 9/11 period and EU work on the Doha Declaration on TRIPs and essential medicines, adoption of which was a key condition for developing country support. (European Commission, 2004)

Movement in the EU position on agriculture compared to the 1980s was reflected in the fact that a joint EU – US paper on agriculture could be agreed in the run up to the 2003 Cancun WTO Ministerial meeting. (Woolcock, 2005) But this joint paper provoked developing countries, led by India and Brazil, to form the G20 coalition in order to counter what they saw as an attempt to extend the US-EU duopoly of the trading system. With India and other G20 members opposing a comprehensive round and seeking more on agriculture than either the EU or US was ready to offer, the

Cancun Ministerial collapsed even though the EU had taken its key 'Singapore' issues off the agenda as part of an effort to save the negotiations. This was a major setback for the EU. The EU retained a preference for multilateralism, but there was a growing debate within the Commission and among the MS on the option of negotiating new preferential agreements, not least because the EU's major trading partners/competitors were engaging in active FTA strategies. In a policy statement in November 2003, the Commission articulated the view that the DDA remained the priority and but FTAs would not be ruled out, if they offered clear economic benefits and, in cases of region-to-region agreements, the EU's partners showed evidence of progress towards regional integration. (European Commission, 2003, pg 16) By March and April 2006 a broad consensus in favour of a more active FTA policy emerged, more as a result of the ongoing dialogue in the 133 Committee in response to developments in international trade negotiations, than of pressure from any specific sector or lobby. (Elsig, 2007) The formal EU policy statement formed part of the Global Europe strategy paper of October 2006. (European Commission, 2006).

There were three main reasons this shift in policy. First, there was the lack of progress in the DDA, both in comprehensiveness and ambition on mainstream topics such as Non-Agricultural Market Access (NAMA) (i.e. tariff) negotiations and services.

Second, there was the policy shift in other major WTO members towards more active FTA strategies. In 2000 China's approached ASEAN with a view to negotiating preferential agreements. There were also the ASEAN plus 3 talks including China, South Korea and Japan.²² Japan began negotiating New Era Economic Partnership

Agreements and perhaps most important of all the US pursued an active ‘competitive liberalisation’ policy once the Bush Administration obtained Trade Promotion Authority in 2001. The US was soon negotiating FTAs with Central America, Thailand, Korea, the Southern Africa Customs Union (SACU), as well as seeking to conclude the FTAA. (Evenett, 2007) These FTAs offered better access to some major markets for the EU’s competitors and therefore led to pressure from European industry and particularly the service sector for the EU to negotiate equivalent access via FTAs if the DDA was not going to deliver. Many FTAs, in particular those negotiated by the United States also included such trade-related topics as comprehensive investment provisions, government procurement, a wide range of service sectors, TRIPs – plus intellectual property rights as well as elements of labour and environmental policy.

A third, related reason for the shift was that many EU preferential agreements were more foreign policy or development than commercially driven. For example, the Stability and Adjustment Agreements (SAAs) with the Balkan states were primarily motivated by a desire to promote economic and political stability in the region. Similarly the EuroMed Association agreements were aimed at promoting economic growth to counter the political instability and the rise of fundamentalism in that region. The Economic Partnership Agreements (EPAs) with the ACP states, which together accounted for only 4% of EU exports, were motivated, for the most part, by development aims. Only the FTAs with Mexico and Chile, both of which were negotiated to counter the trade diversionary effects of US FTAs, and perhaps the Trade Development and Cooperation Agreement with South Africa, could be said to have been with emerging markets.

Conclusions

Until well into the mid 1990s EU trade policy decision making could be with confidence characterized as technocratic and rather opaque, with Commission and Member State trade officials in the Art 133 Committee doing much of the work and Ministers in the GAERC making key political decisions and providing democratic legitimacy. This facilitated efficiency by keeping trade policy at arms length from political and protectionist forces. National and EU policy interests were based on largely informal contacts with the private sector interests.

Over time the EU's trade policy stance shifted from a largely defensive response to a US- led trade agenda to a more proactive and liberal policy that embraced the rules-based multilateral system. This shift came about largely as a result of 'domestic' changes within the EU in the form of the creation of the single European market.

Since the latter half of the 1990s EU trade policy has had to face a number of challenges. Globalisation has led to a broader, more intrusive agenda that has provoked a much greater public debate on trade agenda. This has in turn led to pressure for more transparent and accountable trade policy decision-making. Enlargement has taken EU membership from 12 during the Uruguay Round to 27. This has brought with it the challenge of accommodating a wider range of interests in the EU's common commercial policy. Finally, there have been systemic changes. Despite the success of the Uruguay Round and the creation and increase in membership of the WTO to the point that is it now effectively a global organization,

the trading system has become multi-polar in nature. There is no longer US leadership of a multilateral agenda, or even a shared US-EU duopoly.

In terms of EU decision-making the response to these challenges has been a consolidation of the 'Brussels-based' decision-making process. This has come about for a number of reasons. First, the development of the *acquis* with more common policies means that EU trade policy is based more and more on genuine common positions, rather than the sum of national offensive and defensive interests. This has had the effect of reducing, to some extent, the necessity for national trade administrations to be fully active across all sectors and topics. National trade policy can focus more on a set of priorities rather than work through every last detail of each trade topic. As a consequence the Commission has gained *de facto* competence ~~because as negotiator it~~ must master all topics in great detail. The Commission has also maintained a greater institutional memory than many national trade administrations as national governments have tended to reduce the human resources devoted to trade policy.

Deleted: as it as

The challenge of enlargement has not led to reduced 'efficiency' in terms of an ability to arrive at common trade policy positions or a weakening of the role of the Brussels decision-making machinery. The new Member States have in accepting the *acquis* largely fallen into line with the prevailing EU trade policies as well. The larger Art 133 Committee has also not weakened and may possibly have strengthened the position of the Commission. The smaller new Member States tend to focus on the few sectors or policies of direct interest to them in trade policy and for the rest provide broad support for the Commission. In this way they can hope to acquire the

Formatted: Font: Not Italic

political capital they need to get Commission support on those limited issues that are important to them. The size of the Art 133 Committee with 27 participants inevitably means less time for MS to thrash out differences and tends to place more emphasis on the Commission to work out balanced positions that the MS can support. As dialogue between the Member States has become more difficult in the larger 133, the dialogue has shifted to one between the Commission and the Member States. When it comes to the application of commercial instruments, such as anti-dumping, the Commission has always had a good deal of discretion on the application of such instruments, which it has been able to use to control policy. This does not mean, of course, that dialogue does not influence policy or that lobbying and coalition building within the various committees and Councils does not occur. On some issues there remain sharp differences between MS.

Deleted: retained

The response to the pressures for greater transparency and accountability for trade policy has not led to a renationalization of trade policy. The Commission has responded by creating the Consultative Forum for civil society, which has gone some way towards addressing the criticism of the civil society about the opaque nature of EU policy-making but without ceding any control. There has also been a progressive but still limited enhancement of the role of the European Parliament in scrutinizing trade policy. This has taken the form of a strengthening of the EPs capacity, such as through the creation of a specialist trade committee and by an increased willingness of the Commission and Council to consult with the EP. The INTA gets broadly the same information the Art 133 Committee does. The EP does not have a *de facto* or credible veto power over multilateral trade agreements. It has little say in setting the policy aims and is very unlikely to vote down an agreement accepted by all 27 EU Member

States, not to mention all 154 WTO Members. ~~The EP veto power may be more~~ credible for bilateral FTAs or region-to-region agreements, ~~but here also it is difficult to see how the EP would not grant its assent to agreements accepted by all 27 Member States and the EU's trading partners. The Commission (and Council) do however, take the EP more seriously than they did in the past.~~ The EP is also ~~more accessible~~ for ~~non-state actors, whether of EU or third country origin.~~ The net effect of this has been a slow, but steady shift towards the EP as the body to provide democratic scrutiny of EU trade policy. This shift would be much greater and much quicker if the Lisbon Treaty ~~were to be~~ ratified because this grants more powers to the EP and places all trade policy within EU competence, thus doing away with mixed competence and dispensing with the need for national parliaments to ratify parts of trade agreements.

Deleted: But t

Deleted: is

Deleted: It is therefore no accident that t

Deleted: take it seriously when it comes to the negotiation of the EPAs for example.

Deleted: far

Deleted: NGO lobbies.

Deleted: is

In terms of the systemic shift towards a multi-polar trading system the EU has moved to adopt a multi-level trade policy, much as other WTO Members have, once the limited ability of the EU to shape the multilateral agenda alone became apparent. EU trade strategy in this context is dependent on developments elsewhere. If its major trading partners deemphasized FTAs or do not ratify agreements, the pressure on the EU to conclude FTAs will be less. Progress at the multilateral level will also help to restore EU interest in the WTO, but the expectation must be that bilateral trade agreements will remain a central feature of the trading system for some time to come.

23

It remains to be seen whether the EU will be successful in its bilateral and region-to-region negotiations. The litmus test here will be the EU – ASEAN and EU- India negotiations. If the EU can persuade these FTA partners to accept WTO-plus market

access and trade-related provisions on investment, competition and transparency in government procurement or cooperation in other trade related topics such as technical barriers to trade, then it will have a real impact on the evolution of trade rules. Whilst the policy of negotiating region-to-region agreements makes sense from a normative point of view, using access to the EU market to promote greater regional integration in other regions has proved to be of little success to date because it is hostage to progress towards integration in the partner region.

Bibliography

Aggarwal, V. K. and Foggerty, E.A. (2005) 'The Limits of Interregionalism: the EU and North America' *European Integration* Vol 27, Nr 3 pp 327-346.

Baldwin, M. (2006) 'EU trade politics heaven or hell?' *Journal of European Public Policy*, 13:6 September, pp 926-942.

Bourgeois, J. (1982) 'The Tokyo Round Agreements on Technical Barriers and Government Procurement in International and EEC Perspective', *Common Market Law Review*, 19/1, 5-33.

Damro, C. EU Delegation and Agency in International Trade Negotiations: a cautionary comparison' *Journal of Common Market Studies* Vol 45 Nr 4.

Devuyst, Y. (1995) 'The EC and the conclusion of the Uruguay Round' in Rhodes, C. and Mazey, S. *The State of the European Union*, Volume 3.

Duerr A (2008) 'Bargaining Power and Trade Liberalization: European External Trade Policies in the 1960s' (forthcoming?) *European Journal of International Relations* available at http://www.ucd.ie/politics/text%20files/Duer_EUTrade_revised.pdf

Elsig, M. (2008) EU Trade Policy After Enlargement: does the expanded trade power have new clothes', Paper for the APSA Annual Conference, Boston August 2008.

European Commission (2003) Communication from the Commission to the Council, to the European Parliament and to the Economic and Social Committee, *Reviving the DDA Negotiation – the EU Perspective*, Brussels 26 November 2003.

European Commission (2006) *Global Europe: competing in the world. A contribution to the EU's Growth and Jobs Strategy* Communication from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions COM (2006) 567 final 4th October 2006.

Evenett, S. (2007) and Meier, M. 'An Interim Assessment of US Trade policy of 'Competitive Liberalisation' University of St Gallen, Economic Discussion Paper Nr 18, February 2007.

Hoekman, B. and Sauve, P. (1994) 'Regional and multilateral liberalisation of service markets: complements or substitutes' *Journal of Common Market Studies* 32 (3) 283-318.

Johnson, M. (1998) *European Community Trade Policy and the Article 113 Committee*, Royal Institute of International Affairs, London.

Lamy, P. (2004) *Trade Policy in the Prodi Commission, 1999-2004*, Available at www.acp-eu-trade.org/library/library_detail.php?library_detail_id=1827&doc_language

Meunier, S. and Nicolaidis, K. (2006) The European Union as a conflicted trade power, *Journal of European Public Policy*, 13:6 pp 906-925

Niemann, A. (2005) 'Conceptualising Common Commercial Policy Treaty Revision: explaining dynamics and inertia from the Amsterdam IGC to the Constitutional Treaty' Paper Presented at the Biannual European Studies Association conference, Austin Texas.

Niemann, A. (2006) 'Beyond Problem-Solving and Bargaining; Genuine Debate in EU External Trade Negotiations' *International Negotiation* (11) 467-497

Petersman, J. and Pollack, M. (2003) (eds) *Transatlantic economic disputes : the EU, the US, and the WTO*, Oxford University Press.

Woll, C. (2007?) 'Trade Policy Lobbying in the European Union: Who Captures Whom,' in Coen, D. and Richardson, J. (eds) *Lobbying in the European Union: Institutions, Actors and Issues*, Oxford University Press.

Woolcock, S. and Hodges, M. (1996)

Woolcock, S. (2005) 'Trade policy' in Wallace, H.S. and Wallace, W. (eds) *Policy Making in the European Union*, 4th edition

Woolcock, S. (2008) 'The potential impact of the Lisbon Treaty on European Union External Trade Policy' *Policy Papers*, Swedish Institute of European Policy, Stockholm.

Young, A. and Peterson, J (2006) 'The EU and the new trade politics' *Journal of European Public Policy* 13:6 pp 795-814.

Young, A. (2007) Trade Politics: Ain't What it Used to be: the European Union in the Doha Round' *Journal of Common Market Studies*, Vol 45, No 4 pp 789-811

24

¹ Most favoured nation tariff means what it says. If a country negotiates a lower tariff with one country than any other that country becomes its most favoured nation. Under Article 1 of the GATT this tariff must then be offered to all other countries. Thus lower MFN tariffs would mean a lower preference for other EU Member States. When the Treaty of Rome was signed the preference for other Member States was seen as central to building Europe.

² The EU has made extensive use preferential agreements, but these have served (soft) security (Europe Agreements with central and eastern European states in the 1990s and the Stability and Adjustment Agreements with the Balken states in the 2000s) and development (Lome, Cotonou and Economic Partnership Agreements with the

African, Caribbean and Pacific states) aims rather than the commercial aim of increased access to emerging markets.

³ Formally it is the European Community (EC) according to TEC that is competent for external trade, but this chapter uses EU because of the increasing use of EU.

⁴ The treaties actually refer to common commercial policy, which is a rather more fitting title than trade given that ‘trade’ today includes a range of trade-related topics such as investment, but ‘trade’ is used here because this is the more common usage.

⁵ The reference here is to formal or de jure competence according to which community competence means that the provisions governing the respective roles of the Member States and the European Commission and other EU institutions comes into play. Community competence does not mean the European Commission decides. In practice the Commission has however, acquired more and more de facto competence in negotiating trade agreements.

⁶ The Treaty of Lisbon would formally replace European Community competence with European Union competence.

⁷ MSs concerned about sensitive sectors such as audio visual, health and educational services inserted safeguards according to which unanimity would be required should trade negotiations threaten cultural and linguistic diversity or the effective provision of national health, education and social policies. (Woolcock, 2008)

⁸ For a discussion of how the EU position on trade in telecommunications services developed through dialogue within the Council, see Niemann (2006)

⁹ Although the Nordic and eastern enlargements came after the Uruguay Round states seeking accession to the EU were more or less obliged to bring their trade policies in line with EU policies before accession.

¹⁰ Generalisations concerning how liberal or mercantilist/protectionist Member States are must be treated with some care. However, Sweden has shown itself to be on the liberal end of the EU spectrum on almost all issues.

¹¹ As noted above the existing treaty provisions differentiate between multilateral and bilateral negotiations. When it comes to the policy process the differences are not very great, but this section nevertheless distinguishes between multilateral and bilateral negotiations.

¹² Although trade policy generally conforms to the 'Community method' of policy making there are a few imperfections. First, the MS do sometimes place issues on the agenda of the 133 Committee or Council meetings (Johnson, 1998, pg 27) and second, the role of the EP should arguably be greater for a true Community method. (Bretherton and Vogler, 2006)

¹³ In its opinion of the Lisbon Treaty the European Parliament's International Trade Committee (INTA) argued for some means of setting 'preconditions' for the ultimate EP consent for any negotiated trade agreement and suggested that the Framework Agreement on cooperation between the Commission and Parliament could be the

vehicle for such an input from the EP. European Parliament 2008/2063(INI) 27th May 2008

¹⁴ The Art 133 Committee at the level of 'titulaire' (i.e. chief trade official level) is a senior level body. Whilst COREPER can consider trade issues, most EU Ambassadors of the Member States prefer to leave the trade issues to their trade colleagues in the 133.

Formatted: Line spacing: 1.5 lines

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

¹⁵ The ToL in doing away with mixed competence would remove the formal unanimity requirement as well as the need for ratification by MS parliaments. Whilst this appears a radical departure, in practice ratification by the MS has generally been a rubber-stamping exercise. Rather than represent a veto power over trade policy it has allowed MS to use the delay of the implementation of important trade agreements as leverage in intra-EU bargaining on other issues.

¹⁶ The adoption of the Lisbon Treaty would further strengthen the powers of the EP to give its 'consent' of the EP for all trade agreements (Art 218(6)(a) LT)

¹⁷ Bilateral trade agreements that fall entirely under EU competence would not, under the current treaty provisions, require the EP to grant its assent, although again the Commission and Council are likely to consider such assent as politically necessary for major agreements.

¹⁸ Art 218(6)(a) ToL that would introduce a common procedure for all international negotiations undertaken by the EU would confirm the powers of the EP to grant its 'consent' (formerly 'assent') for all trade agreements.

¹⁹ (Council Regulation 522/94).

²⁰ Smaller new MS tend to abstain unless they are directly affected. (Molyneux, 1999).

²¹ The adoption of the ToL would give the EP joint power with the Council to define the ‘framework for implementing external trade policy’ including the EU’s rules on commercial instruments such as anti-dumping, TBR, rules of origin etc. as well as unilateral trade instruments such as the GSP schemes. (Art 207(2) ToL) This power would relate to the regulations only not the application of the regulations to specific cases.

²² It has been argued that this was indeed more talk than substance, but Japan and even India began to conclude comprehensive economic cooperation agreements that went beyond tariffs. (Heydon and Woolcock, 2009)

²³ See Heydon and Woolcock 2009 who argue, for example, that the US will continue to pursue a competitive liberalization strategy, despite the change of administration in 2009.