

WTO Judicial Politics and EU Trade Policy: Business Associations as Vessels of Special Interest?

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Research Highlights and Abstract

This article:

- Contributes to the literature on interest groups showing how the interplay of domestic and international institutional structures critically affects the character of lobbying.
- Contributes to a better understanding of EU trade politics, highlighting how such processes are systematically affected by changes in global governance structures.
- Traces empirically how important institutional innovations were introduced in EU trade policy making in order to adapt to reform of the WTO dispute settlement mechanism.
- Offers systematic empirical evidence about the evolution of the character of dispute settlement cases initiated by the EU in the WTO.
- Shows empirically how business associations traditionally active in EU trade policy making increasingly act as 'vessels' of narrow and specialized interests.

This article focuses on the effects of the WTO's quasi-judicial system of dispute resolution on the politics of trade policy making in the European Union (EU). We argue that this institutional innovation had a systematic transformative effect on EU trade politics, creating pressures for institutional adaptation and changing the character of organized trade policy lobbying. On the one hand, the new environment of the WTO created pressures for the EU to implement significant institutional innovations to ease access for private parties and generate an influx of information to strengthen offensive market access actions. On the other hand, this reform directly affected firms' incentives to mobilize politically, creating incentives for specialized lobbying. The empirical analysis shows how these two processes ultimately led to a re-organization of trade policy lobbying in the EU and compelled European business associations to become increasingly receptive to the demands of special interests.

Keywords: interest groups; lobbying; European Union; trade

Introduction

Why are some interests more easily mobilized than others? This rather straightforward question has received a great deal of attention within the political science literature (Olson 1965 and 1982; Lowery and Gray 1995; Grossman and Helpman 1996 and 2001; Baumgartner and Leech 2001; Coen 1998). This substantial attention to the politics of collective action is not surprising because the consequences of these processes often directly affect policy outcomes, and has important

consequences for the democratic legitimacy of political systems (see Baumgartner and Leech 1998; Dür 2008; Hojnacki et al. 2012).

Within this literature, one recurrent finding is that specialized, or specific, interests mobilize more easily than more encompassing interests. As already argued by Mancur Olson in the 1960s, the incentive to free-ride is so powerful among the latter groups that mobilization often does not materialize (Olson 1965). In contrast, organizations that represent small and specialized segments of the economy, such as firms in a specialized sector, face considerably fewer obstacles for mobilization compared to interests that cover multiple economic sectors (Olson 1965; Gilligan 1997; Coen 1998; Grossman and Helpman 2001).

A potential consequence of this highly robust finding is that interest group systems run the risk of falling prey to an over-specialized narrowly-focused interest representation system, and consequently become captured by specific interests (Olson 1982; Lowery and Gray 1995). For this reason, many political systems, although to a varying degree, have built in certain safeguards to make sure a broader set of interests are politically organized (Lowery and Gray 1997; Greenwood and Dreger 2013). Depending on the success of these safeguards, interest group systems across the world vary widely in terms of the nature of interest mediation. A well-known distinction is the one between corporatist systems, in which the representation of encompassing interest representation is highly institutionalized, and pluralist systems, in which interest representation is less organized from the top and groups are more engaged in competing for influence with one another (Mahoney 2008; Woll 2012). As a result, corporatist systems are often perceived as more receptive to broad interest representation, while pluralist systems seem more open for specialized kinds of interest mediation.

One crucial assumption underlying this assessment of interest mediation system, however, is that encompassing groups indeed represent a broad set of interests in society. In this article, we challenge this assumption for the field of EU trade policy by showing how the embedding of EU trade policy-making in highly institutionalized structures of global trade governance is systematically changing the nature of the interests these groups represent. The system of interest intermediation in the European Union (EU) has been widely considered a political system that is less dominated by special interest and traditionally ensures the broader societal interests can make their voice heard in the policy-making process (Mahoney 2008; Woll 2012; Greenwood and Dreger 2013). Indeed, many scholars characterize the EU interest system as closely resembling corporatist models of interest intermediation, in which interest groups coordinate their positions and create stable and institutionalized patterns of interaction and cooperation by means of encompassing interest organizations (Broscheid and Coen 2003; Coen 1998; Greenwood 2002; Eising 2004; Woll 2006; Mahoney 2007a, 2007b and 2008; Mahoney and Baumgartner 2008).

Business associations operating in the field of EU trade policy, however, can be observed to increasingly defend the interest of specialized interests as a result of the increased embeddedness of the EU in a strengthened global trade regime. More specifically, we contend that the replacement of the GATT's system of political-diplomatic settlement of disputes with the quasi-judicial system of dispute

resolution of the WTO led to significant changes in the ways the traditional system of interest intermediation in the EU operates. On the one hand, the growing centrality of judicial politics in the WTO governance system created pressures for the EU to implement significant institutional change to ease access for private parties and generate an influx of information to fuel offensive market access action by the EU. On the other hand, such an institutional innovation increased incentives for specialized interests to become politically active and sought to weigh on the trade policy-making process through the traditional organization channels of existing encompassing interest representation. As we show below, these two processes fuelled each other, ultimately leading to substantial changes of the business associations in the EU, which are now increasingly receptive to special interests.

Our findings speak to several debates. First, we complement the interest group politics literature by showing that business associations often act as defenders of special interests. This has important consequence for how we value interest mediation systems that favor these types of interests (Olson 1982; Grossman and Helpman 1996 and 2001; Baumgartner and Leech 2001). The conventional wisdom posits that encompassing organizations will naturally represent a broad set of societal interests. Our analysis challenges this view, and shows that there may be a disjunction between the type of system of interest intermediation and the interests that such systems channel in the policy-making process. To put it more bluntly, we show that corporatist systems do not necessarily ensure greater receptiveness of encompassing interests within society. On the contrary, they may turn out to be just another organization channel through which special and narrow interests make their way into the policy-making process.

Second, we add to the literature on EU trade policy-making. Lobbying concerning EU trade policy has traditionally been carried out by European-wide associations representing the interests of entire sectors of industry or of several sectors simultaneously (Dür 2008). Our findings illustrate that trade policy-making in the EU, and the role interest groups play within it, cannot be understood without considering how increasingly institutionalized structures of global trade governance systematically affect these processes. Of course, the rise of judicial politics in the WTO exerts systematic effects on all members of the trade regime, not only on the EU (Goldstein and Martin 2000; De Bièvre and Poletti 2015). Yet, it is particularly interesting to investigate how these international institutional effects play out in traditional corporatist systems such as the EU precisely because international pressure towards specialization encroach on domestic institutional incentives pushing in the opposite direction, thus creating the conditions for the apparent paradox of broad encompassing organizational structures that transform themselves into 'vessels' of special interests.

The article proceeds as follows. We start by presenting our argument on the effects of the judicialized international trade regime of the WTO on EU trade governance. We describe the numerous changes to the institutional framework of EU trade policy-making and trace how these resulted from the need to adapt to the reformed dispute settlement mechanism of the WTO. We go on to show that these internal institutional changes triggered a significant increase of specialized WTO dispute settlement cases. In the final section, we show how these developments have had

broader implications for the landscape of European associations, who have had to adapt to this new institutional environment by acting more as agents of powerful and often specialized members than as representatives of entire economic sectors. We conclude with a number of further implications of these developments.

WTO Judicialization and EU Trade Politics

The EU is probably the most notable example of a consensual political system (Scharpf 1988; Lijphart 1999; Hix and Goetz 2000; Heisenberg 2005; Mahoney 2008). In such democratic political systems, power is both shared and dispersed among multiple actors, and decisions are not adopted through simple majority voting, but through a process in which all major actors have a decisive say in the decision outcome. The EU takes most of its decisions by consensus among its member states under the shadow of qualified majority voting in the Council of Ministers. Even when supranational institutions have formal policy authority, a wide range of informal mechanisms exists to ensure that member states retain control over policy outputs (Woll 2012, 208).

Scholars have widely documented how the particular institutional set-up of the European Union affects processes of interest intermediation, contrasting it with the pluralist model of interest intermediation whereby individual groups compete for political influence such as in the US. EU lobbying practices seem to closely resemble corporatist models of interest intermediation, in which interest groups coordinate their positions and create stable and institutionalized patterns of interaction and cooperation. As a result, they formulate their demands in terms of pan-European goals and principles and endeavor to channel these demands efficiently to policymakers in the complex multi-level institutional structure of the EU. They do so through EU-wide organizations that help them coordinate and aggregate the different interests within and across entire industry sectors, as well as across national boundaries (Broscheid and Coen 2003; Coen 1998; Greenwood 2002; Eising 2004; Woll 2006; Mahoney 2007b and 2008; Mahoney and Baumgartner 2008). On the one hand, since failure to reach EU-wide consensus can easily lead to blockage, firms, industries and producers at large have to take a constructive approach and coordinate and aggregate their demands if they want to weigh in the EU trade policy-making process (Broscheid and Coen 2003). On the other hand, lobbyists need to adopt a multi-level approach to press for their causes as multilevel representation is necessary on virtually all policy issues dealt with by EU institutions (Eising 2004). As a consequence, peak associations have a much more central standing in the EU's political system than in the American one (Mahoney 2007a; Woll 2012).

The EU *trade* policy-making process has been no exception with respect to this general observation. Indeed, decision making rules in EU trade policy, more in particular the rules for defining the position of the EU in trade negotiations, remain based on a *de facto* consensus procedure despite various institutional changes throughout time. Although the Amsterdam, Nice and Lisbon treaties streamlined rules governing EU trade policies, extending the scope of EU exclusive competences (Woolcock 2010; Poletti and De Bièvre 2014), unanimity still applies to politically sensitive sectors (i.e. cultural, audio-visual, social, educational and health services),

the consent of the European Parliament is required for the adoption of trade agreements, and any trade agreement that has been approved at the negotiation stage, can still be vetoed by a member state at the ratification stage. Because in EU trade policy, decisions are also adopted through super-majorities and mostly by consensus, incentives for broad peak association-based interest aggregation rather than for specialized and direct representation-type of lobbying have also traditionally shaped the politics of EU trade policy-making (Dür 2008; Poletti 2012). In line with this, the share of European organizations representing sector or cross-sector interests out of the total population of organizations lobbying during WTO Ministerial Conferences is much greater in the EU case than for instance in the US case (Hanegraaff et al. 2011).

When analyzing dynamics of interest representation in EU trade policy however, one needs to consider how the international trade regime has been transformed over time and how such transformations have affected the dynamics of lobbying in EU trade policy-making. What happens when a domestic policy-making system, that tends to favor broad and sectoral interest aggregation, becomes embedded into a wider political system that pushes in the opposite direction? How are domestic policy-making processes and systems of interest representation likely to adapt to these pressures? The case of EU trade policy and its embeddedness in the WTO governance system is an obvious example of this tension. Indeed, the current international trade regime no longer consists only of reciprocal liberalization negotiations and agreements, but also of a highly institutionalized dispute settlement mechanism to enforce rules agreed upon in those negotiations. In 1995, WTO members moved from the consensual, diplomatic GATT dispute resolution, which had reserved veto powers to complainants and defendants, to a quasi-judicial system, consisting of automatic, independent and binding third party adjudication backed by the possibility of multilaterally authorized trade sanctions (WTO 1995).¹ These changes transformed the loose GATT procedures into a highly judicialized policy-making process (Stone Sweet 1999; Zangl 2008; De Bièvre et al. 2014).

Our argument is that these institutional changes have had important implications for the dynamics of interest representation in EU trade policy, enhancing incentives for EU policy makers to adapt their institutions to this new development at the international level, as well as for firms to exploit the opportunities brought about by it. These international institutional incentives ultimately strengthened the grip of specialized interest over those organizations generally conceived as the safeguards of broad industry representation: the sector peak associations. As a result, there is an increasing disjunction between the organizational form of interest representation in the EU trade policy-making process and the types of interests that actually get to be represented within it. Sector peak associations remain central in the EU trade policy-making process, and yet they increasingly serve the function of channeling the demands of specialized and narrow interests within it.

Before we turn to the empirical evidence for this development, we first provide a more detailed overview of the changes in EU trade governance since the creation of the WTO.

Institutional Adaptation

The creation of the WTO dispute settlement mechanism (DSM) created pressures for institutional adaptation in the EU's trade policy-making system. WTO members file trade complaints on the basis of information from those economic actors with an incentive to mobilize and signal non-compliance with WTO market access commitments. These actors are exporters that seek access to foreign markets and see such access denied or limited because of the existence of trade barriers incompatible with WTO law. Whenever these trade barriers entail substantial and concentrated costs for foreign producers, they may generate sufficient incentives for these groups to push their governments to seek their removal through the WTO's DSM. For these demands to be efficiently channeled however, domestic trade policy-making institutions need to be organized in such a way as to ease access for private parties and generate an influx of information to fuel offensive market access investigations (Molyneux 1999; Shaffer 2001 and 2003). At the same time, public officials need to make sure domestic institutions allow for prompt, informed and efficient defense in case other WTO partners initiate a dispute against them. In short, the strengthening of WTO dispute settlement created incentives for member states to organize capacity for market access investigations. Trade policy through such quasi-judicial channels thus takes the form of the administrative processing of complaints about the lack of foreign market access from exporters up to a legal complaint in the Dispute Settlement Body of the WTO, as well as taking up the defense in cases where another WTO member alleges a breach of WTO-commitments. As a result, these newly formed institutions particularly seek information of a specific nature, rather than of an encompassing nature.

Direct Incentives for Collective Action

The institutional reform of enforcement mechanisms of the WTO also directly impinges on the character and nature of firm lobbying. Incentives for lobbying through such quasi-judicial channels is different from lobbying in order to try and weigh on the outcomes of multilateral trade negotiations, like those in WTO Rounds. Rather than binding different issues under negotiation into one package, the WTO dispute settlement de-links issues (Davis 2012). In multilateral negotiations, interactions among WTO members are based on concessions on one or more issues in exchange for another's concession on one or more other issues. By contrast, when states are engaged in a formal WTO dispute, their interactions are focused on the specific issue of the dispute without the need or the possibility to resort to issue-linkage. There are a number of reasons for this. First, public officials acting in such procedures are generally not granted the authority to make commitments on issues other than the one under dispute. Second, although WTO panels and the WTO Appellate Body sometimes refer to precedents, their reports are not formally binding in the sense of the common law doctrine of precedent (Eckersley 2004, 37). And third, there is a traditional reluctance in global trade diplomacy to compensate in the form of transfer payments beyond the subject matter of the dispute (Guzmann and Simmons 2002). The lack of issue linkages has important implications for the dynamics of political mobilization of firms. Because the removal or the maintenance of trade barriers entails direct effects on the

economic success of only specific exporting firms seeking trade benefits, these face compelling incentives to lobby only on the issues of importance to them, independently from other producers or sectors.

In addition, while it is true that the Most Favored Nation (MFN) clause in the WTO formally implies that firms active in all WTO members could potentially enjoy the benefits stemming from the elimination and/or reduction of a trade barrier following a WTO DS ruling, in practice this is largely not the case. The ability of multiple firms to enjoy the benefits of DSB rulings is limited by the fact that most WTO disputes end early settlement agreements during the consultation phase, the results of which are not public and remain private information to the litigants (Busch and Reinhardt 2003). This may preclude firms active in this product category in third countries, and even those within the complainant that did not contribute to the collective lobbying effort, to enjoy the benefits from a WTO ruling.

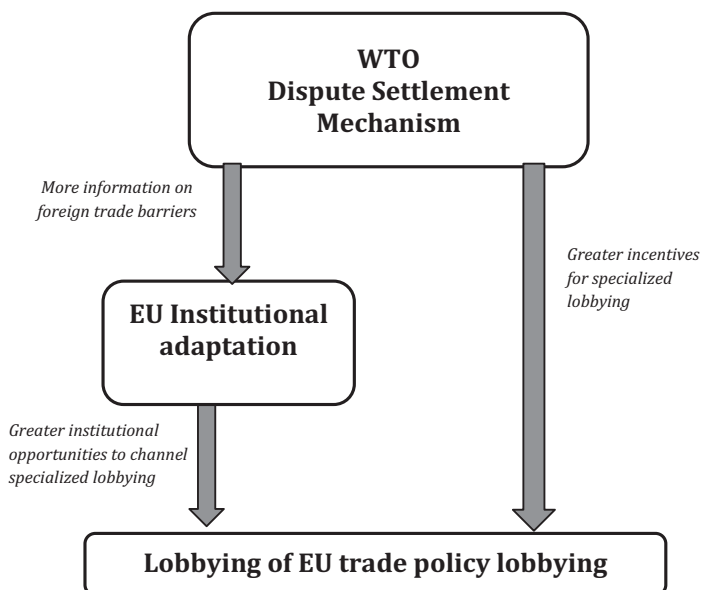
This type of specialized, product-specific lobbying among business associations thus increasingly resembles lobbying patterns in defensive trade policy instruments, especially antidumping lobbying. In the context of antidumping policy, groups of firms file complaints alleging dumping of a specific product, upon which public authorities have to act by carrying out an investigation and/or imposing antidumping duties on that product (Finger 1991; De Bièvre and Eckhardt 2011).

Feedback Effect

So far, we have argued that judicialization at the level of the WTO affects EU policy makers by creating pressures for institutional adaptation, while also increasing incentives for product-specific and specialized lobbying. While it is important to analytically distinguish these two causal pathways brought about by the EU's embeddedness in the WTO, the twin dynamics engendered by the judicialization of the WTO feed into each other, reinforcing the tendency towards greater specialization in EU trade policy lobbying, ultimately leading to broad, peak associations acting as channels of demands of specialized and narrow interests.

The creation of domestic institutions that ease the flow of information between decision makers and private parties for multilateral trade dispute settlement strengthens firms' incentives to mobilize on an issue-specific basis, creating even more pressures for specialized lobbying. Indeed, the domestic institutional mechanisms devoted to channeling demands of individual or small groups of firms seeking the removal of WTO incompatible trade barriers are also characterized by the absence of issue-linkages and by an exclusive focus on single issues. In addition, by providing an additional access point through which demands by societal groups can be channeled, the creation of administrative channels for market access investigations increases the potential for these groups to attain their desired trade policy outcomes (Ehrlich 2007). This has led business associations to focus even further on a few and highly specialized members.

These processes ultimately lead to fundamental changes in the system of interest representation in the EU trade policy-making process. In this context, firms need to be able to work through organizations that are equipped with the necessary organizational features to avoid lengthy sector-wide or cross-sector policy

Figure 1: WTO Dispute Settlement and EU Trade Policy Making

coordination order to maximize the effectiveness of their lobbying efforts. The specialization of trade policy lobbying need not entail the demise of broad organizations of interest representation. In fact, peak associations remain potentially important for these specialized and narrow interests. Within the EU business associations are often the first contact point for policymakers, and they are also more active than firms when it comes to lobbying (Berkhout et al. 2014). Moreover, the relations between business associations and EU policymakers tend to be well established and based on mutual trust (Greenwood 2002). For these reasons, special interests may have a stake in using the existing organizational channels of peak business associations when seeking access to any of the EU institutions, rather than acting outside existing structures of interest representation. In this context however, these organizations need to adjust to remain relevant. The combination of processes of institutional adaptation and changes in the dynamics of collective action of interest groups brought about the increasing embeddedness of the EU trade policy-making in the WTO governance structures decreases incentives for sector-wide or cross-sector trade associations to lobby for an entire economic sector, and rather, stimulates business associations to adjust in order to be able to better defend the interests of special interest members (Figure 1).

Empirical Evidence

In the next sections, we show how these developments have contributed towards transforming the internal structure of EU business associations in the European Union. First, we show that the EU Directorate-General for Trade adjusted to the

WTO DSM through the creation of three institutional components: the Market Access Unit, the Trade Barriers Regulation Unit, and the WTO Division. All three new administrative units were explicitly organized to ease access for special interests, enhance capacity to act on their behalf, and generate an influx of information to fuel offensive market access investigations by the EU and file WTO complaints, as well as react to other WTO members challenging the EU in WTO dispute settlement. Second, we show how these changes provided direct incentives for increased specialized lobbying in EU trade policy. Finally, we show how both developments have forced peak business association in three key European industry sectors to increasingly become receptive to the demands of their more specialized members.

Institutional Adaptation in EU Trade Policy

The judicialization of the world trade regime prompted the creation of performant information gathering and market access investigation procedures to process private industry complaints about foreign trade barriers, easing the path to the filing of WTO dispute settlement complaints.

The European Commission had put a 'New Commercial Policy Instrument' (NCPI) in place in 1984 (Tassy 1997), somewhat similar to the US Section 301 procedure that directed the process of complaints about alleged 'unfair trade' to the desks of the US Trade Representative (Bayard and Elliott 1994). The NCPI however, was nearly never used by exporters, because it lacked juridical teeth and did not provide for an administrative structure to collect and centralize systematic data on export possibilities to third countries or on the lack of conformity with bilateral or multi-lateral trade agreements (Mavroidis et al. 1998).

In the beginning of the 1990s however, when the major trading partners reached an agreement to reform the GATT dispute settlement system during the Uruguay Round and create the WTO (Hudec 2000), the European Commission faced compelling incentives to engineer a significant reform of its own trade policy-making institutions. This reform process started in 1994 and led to the adoption of the so-called Market Access Strategy (European Commission 1996), which introduced three mutually complementary institutional components.

The first component of this institutional reform within DG Trade was the creation of the *Trade Barriers Regulation* (TBR) Unit (Council of Ministers Regulation 3286/94), which became operational in the course of 1996. The TBR created a formal complaint procedure for industry associations, single enterprises and member states to inform the Commission of foreign trade barriers not in conformity with EC or GATT/WTO rules (Bronckers and McNelis 2001). The TBR streamlined the procedures and functioning of European market access investigations in two important ways. First, the TBR allowed single firms as well as associations to file complaints, whereas the NCPI had only allowed complaints representing a major proportion of the relevant Community industry (Rydelski and Zonnekeyn 1997). Second, the TBR procedure lowered the decision threshold for an industry complaint to be acceptable to a mere qualified minority of member states in a specially created TBR committee in the Council, since the European Commission from now on *had* to

investigate an industry TBR complaint, unless overturned by a qualified majority vote in the TBR committee. This for the first time permitted industry to avoid the more political route of the EU Trade Policy Committee (TPC; formerly called Art. 133 Committee), the Council of Ministers standing Committee on external trade matters. Until the creation of the TBR, firms or associations had to stimulate the support of a qualified majority in the TPC for the Commission to start an NCPI investigation or to file a GATT/WTO complaint.² As of 1996, an association or firm only needs to convince a qualified *minority* of member states to support a TBR market access investigation (interview R. M. Petriccione, Head of Unit, DG Trade).

The TBR Unit was created with the explicit aim of allowing exporting firms confronted with a trade barrier to concentrate their energies on establishing their rights under existing WTO rules and file a case with the EU Trade Barriers Regulation Unit, which investigates without having to enter into tit-for-tat, reciprocal negotiations with the partner country (interview P. Sourmelis, Trade Barriers Unit, DG Trade and N.A. Zäimis, Trade Barriers Unit, DG Trade).

In order to take advantage of the strengthened multilateral architecture of the WTO dispute settlement system, the European Commission also introduced a second key institutional reform by installing its *Market Access Unit* in 1996. The Unit was entrusted with the task of systematically gathering and processing information about foreign trade barriers in order to co-ordinate all efforts to 'go on the offensive' and use the EU trade powers 'forcefully but legitimately to open new markets around the world' WTO Director (Commission General Press conference, as quoted in Shaffer 2001). As a result, an extensive system was put in place to ease the flow of information between exporters and the Commission services, with the goal of encouraging private industry to provide information on trade barriers, especially on non-compliance with WTO rules (interview J-P. De Laet and C. Keijzer, Market Access Unit, DG Trade). The Unit thus functions as the *antichambre* for formal proceedings, like bilateral consultations between the EU and a third country, a TBR complaint, or a request for WTO dispute settlement on the matter. By far the most important responsibility of the Market Access Unit is the management of the so-called Market Access Database (MADB), an online-available computer database on export formalities, WTO bound tariff levels, and existing barriers to trade. Since its creation, the MADB builds the informational backbone of the EU's litigation strategies in the WTO, establishing a systematic and centralized source of information on market access difficulties encountered by EU industry, until then dispersed in the different services of the Commission (Shaffer 2003).

The last component of the EU Market Access Strategy launched in the wake of the creation of the WTO DSM, is *DG Trade's WTO Division*. In charge of all WTO matters, the Division takes care of the EU's position among the standing WTO committees. The division was created to prepare the files for ongoing negotiations or an upcoming Round and, more importantly to handle all WTO dispute settlement cases in which the EU is involved as a complainant or as a defendant (interviews B. van Barlingen and A. Bensch, WTO Division, DG Trade). Once the decision to file a trade complaint in Geneva is taken, the information gathered by the Market Access Unit and/or the TBR Unit, with the assistance of the EU Trade Policy Committee, ends up on the desks of the WTO Division (European Commission 1996).

Furthermore, the WTO Division is responsible for the follow-up of all other WTO dispute settlement cases where the EU is involved as a defendant, or as an observing third party.

In short, the replacement of the GATT's system of political-diplomatic settlement of disputes with the quasi-judicial system of dispute resolution of the WTO led to substantial changes in the institutional set-up of the EU. These developments increased incentives for specialized types of interests to become politically active and had important implications for the major sector business associations.

DSM Cases and Special Interest Mobilization

Before illustrating the effects of these developments on the increased incentives for specialized lobbying and the effects for large business associations, we show that the product coverage of GATT/WTO dispute settlement cases lodged by the EU between 1947 and 2012 became increasingly specialized over time. As such, the DSM became more attractive for special interests, stimulating their propensity to get politically organized.

To measure the product scope of EU disputes within the GATT and the WTO period, we coded all EU disputes according to the International Standard Industrial Classification (ISIC) system, in which we interpreted ISIC levels 1 and 2 as sector wide mobilization and ISIC levels 3 and 4 as product mobilization.³ Disputes on agriculture (ISIC 1) or the manufacturing of food products (ISIC 2) were thus coded as sector-wide disputes, whereas disputes regarding issues like animal production (ISIC 3) or the manufacturing of wines (ISIC 4) were coded as product level disputes.⁴ In addition, in Figure 3, we control for an important potential source of variation in patterns of trade policy lobbying in the EU by contrasting combining evidence on the evolution of the product coverage of WTO disputes data on the evolution of intra-industry trade (IIT) of the EU.⁵

When comparing the product scope of cases filed in the GATT period (1947–1994) with the scope of cases filed in the WTO period (1995–2012), the percentage of specialized cases is significantly higher compared to the percentage of broad dispute cases. As Figure 2 shows, the average number of product-specific EU-initiated complaints is substantially higher in the WTO period than in the GATT period, during which cases with sector-wide or even cross-sector product coverage predominated. More specifically, product-specific dispute settlement cases numbered an average of 56 per cent in the 1957–1994 period, compared to an average of 82 per cent in the 1995–2012 period ($G = 0.56$; $P = .002$), while also attracting a larger number of lobbying actions against foreign trade barriers. These findings show that indeed the judicialization of the WTO and the ensuing internal institutional reform within DG Trade of the European Commission has led to more incentives for product-specific lobbying.

The increasing occurrence of specialized dispute settlement cases in the WTO could also be plausibly attributed to the increase of intra-industry trade over the last decades, since IIT creates incentives for specialization in trade lobbying (Gilligan 1997). That is, intra-industry trade, i.e. trade of different varieties of the same product between countries with similar factor endowments, could also explain the

Figure 2: Comparing Sector and Product Level Cases Filed During GATT and WTO Period

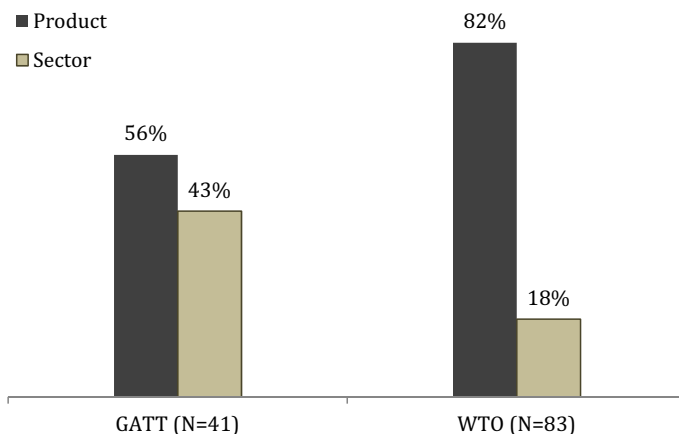
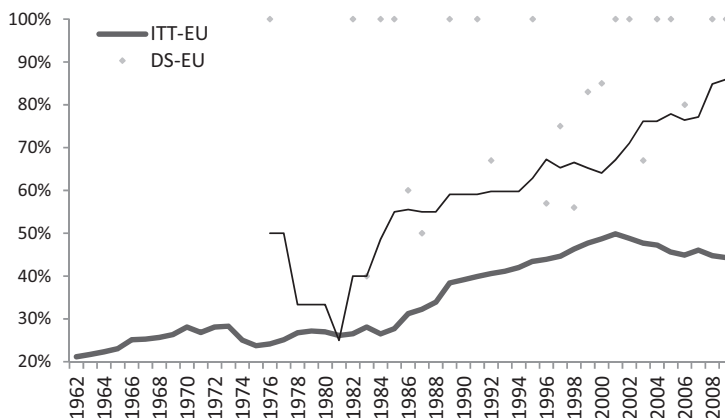


Figure 3: Development of Specialized Cases (as % of Total Cases) Filed and IIT (as % of Total Trade) During 1962–2012



increase of product-specific lobbying in EU trade policy-making. However, the more specific scope of EU-filed WTO complaints did not move in line with the increase in IIT (Figure 3). The plotted lines show that while the number of specialized DS cases grew in line with intra-industry trade during the 1975–1995 period, there is disjoint in growth trend in the subsequent period. This provides further support for our claim that the WTO DSM provides more incentives for specialized interest group mobilization, irrespective of the structure of the European economy.

In short, the creation of the DSM, combined with the institutional changes in the EU trade landscape, led to a different type of context more favorable to special interests, an environment to which EU sector business associations needed to adapt.

Case Studies: The Transformation of European Trade Interest Representation

In this third and final empirical section, we provide a set of case studies that show how the organizational format of key sector-wide trade associations was deeply affected by the judicialization of the WTO DSM and the ensuing institutional reform within DG Trade.

The institutional changes in EU trade policy in the wake of the judicialization of the WTO, and the ensuing increase in product specific lobbying indeed has not remained without consequences for the internal organization of European sector-wide peak associations. In the last two decades, some key sector-wide associations in Europe have reshuffled their membership in order to accommodate the interests of their constituent, predominantly product-related, members. To be sure, sector-wide organizations have not gone out of business. These organizations have maintained encompassing representation and political clout in order to decisively influence international trade negotiations. Yet, these organizations have reorganized their internal membership structure to give more weight and leeway to product-specific interests in the wake of WTO judicialization and the enhancement of EU market access investigation channels. We focus on three sectors of European industry: chemicals, pharmaceuticals, and steel. This selection allows for greater depth, while at the same time keeping constant a couple of important characteristics that otherwise would make these cases difficult to compare. All three sectors are highly trade dependent, have equally high levels of international competitiveness (although in some of its sub-segments, somewhat less so for the steel sector), and have all had high levels of intra-industry trade with non-EU trading partners. More importantly, all three sectors have for a long time been characterized by a very high degree of consolidation, meaning that they consist of a relatively low number of firms and/or are dominated by a small set of very large firms. This is important as we can thus exclude the possibility that industry consolidation was the prime cause of lobbying specialization during the period under investigation, rather than changes to the institutional environment within which these actors operate.

The European Chemical Industry Council. The European chemical industry is arguably one of the best-organized sectors of industry in Europe. Its peak association, the European Chemical Industry Council (CEFIC), is a large ‘carrier’ of collective action with several decades of experience in lobbying European institutions in several fields of public policy.

One of the most important activities carried out by CEFIC as a sector-wide trade association was, and still is, to provide the Commission with input to conduct reciprocal trade negotiations with third countries. In the course of its history, CEFIC has been a key partner for the Commission to assess whether it is obtaining enough market access concessions from trading partners without ‘giving away’ too much protection for the domestic chemical industry in return for concessions in other

sectors of industry. CEFIC indeed played a key coordinating role in the framework of international trade negotiations in the GATT/WTO rounds and more recent free trade agreements.

At the same time, the judicialization of the WTO and the ensuing institutional adaptation in the EU administrative apparatus created incentives to reshuffle and adapt its organizational format in order to allow for political mobilization at a more specialized level. Founded in 1972, CEFIC had been a traditional Euro-Confederation of national chemical industry federations. Throughout the 1990s, however, CEFIC reorganized its membership structure twice. In 1990, 39 large companies became direct members of CEFIC, transforming the organization into a two-fold structure including national federations and company members. This membership change took place in the light of the creation of the EC internal market, with its expansion of EU regulatory competences, as well as the concurrent development on the world stage, namely the conclusion of the Uruguay Round, which sanctioned the move to a more binding system of international trade rules (Interviews with R. van Sloten, CEFIC, Brussels).

As of 1995, firms active in particular product niches faced with trade barriers outside the EU, realized very well that the liberalization commitments entered into by WTO member states could now be more credibly enforced by the activation (or the threat) of the WTO DSM. In 1998, these product families, comprising a total of 108 affiliated product specific trade associations, were included as full members (Interviews with R. van Sloten, CEFIC, Brussels, and Reinhard Quick, German Verband der Chemischen Industrie, member of CEFIC; Paul Launoye, Federation of the Belgian Chemical Industry). Of course, the rise of the product families within CEFIC to membership was also triggered by firm-level changes, such as the creation of business units within chemical companies, yet these product-related branches were especially interested in becoming well-anchored in the Brussels sector-wide interest representation body to pursue offensive, market access strategies outside of the EU (Paul Launoye, Federation of the Belgian Chemical Industry). Their now prominent status within the organization made them fit to follow up the day-to-day trade policy making, not only in the area of anti-dumping (as before), but now also with regard to EU foreign market access investigations and WTO dispute settlement (CEFIC 1999; Interview with R. van Sloten, CEFIC, Brussels). This was no trivial matter for the organization, as they realized full well that the eased access for private industry to DG Trade in the form of the TBR had made it possible for their member firms to by-pass CEFIC. Indeed, in 1998 Cerestar and Federchimica had filed a TBR complaint on Brazilian import restrictions on sorbitol and CMC products, leading to a EU-initiated WTO complaint in October 1999 (DG Trade and WTO websites).

As the WTO DSM increased incentives and EU institutional reforms eased access to EU market access investigations, CEFIC adapted its internal structure to be geared towards a more product-specific manner of engaging in trade policy lobbying. Hence, the CEFIC shifted from representing the majority of their member organizations to increasingly being a channel through which special and narrow interest make their way into the policy-making process.

The European Federation of Pharmaceutical Industries and Associations.

A similar shift towards product-specific membership and organization took place in the pharmaceutical industry. During its first 20 years of existence, the European Federation of Pharmaceutical Industries and Associations (EFPIA) founded in 1978 had been a typical European confederation, with a membership composed exclusively of national pharmaceutical federations. The organization proved rather successful on a number of issues of interest to the internal EC market, i.e. the harmonization of marketing authorizations in the EC and the defense of the industry's monopoly on information about medicines, while linking its external activities predominantly to international trade negotiations during the GATT Rounds, assuring the co-ordination of national associations' positions on tariff levels and the rules of the international trading system.

In 1998, just after the creation of the WTO, the introduction of a fully operational DSM, and the coming into operation of the EU market access strategy, 40 large individual pharmaceutical producers in Europe wished that EFPIA change its organizational format to take advantage of the new opportunities to enforce market access and intellectual property commitments under the new WTO agreements. The companies became direct members of the association, allowing them to bypass their own national federations (interview François Bouvy, manager economic and social affairs, EFPIA, Brussels).

These large companies thus joined the peak association under the explicit condition that the association would develop a new case-by-base mechanism to monitor foreign compliance and assure the enforcement of international trading rules in non-EU countries, especially the rules on the protection of intellectual property rights contained in the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPs) (interview Eric Noehrenberg, director intellectual property and trade issues, International Federation of Pharmaceutical Manufacturers Associations IFPMA, Genève; interview François Bouvy, manager economic and social affairs, EFPIA, Brussels). From then on, in addition to the traditional tasks of monitoring and coordinating positions in international trade negotiations, one of the tasks of EFPIA was to monitor third-country markets, to lodge TBR complaints, feed the Market Access Database, or ask for a WTO complaint with the European Commission, and to manage an 'early warning' system on market access problems (interview François Bouvy, manager economic and social affairs, EFPIA, Brussels; EFPIA 2001). EFPIA indeed lobbied DG Trade to file a WTO complaint against Canada's intellectual property law in 1997, and filed two TBR complaints against Turkish and Korean barriers to trade in pharmaceuticals in 1999 and 2003 (WTO and DG Trade websites). Three years after the fully-fledged institutionalization of the WTO DSM, the association thus re-organized with the explicit aim to be able to channel issue- and product-specific information about barriers to trade in pharmaceutical products and gather the economic and legal information needed for a WTO case. As such, the replacement of the GATT's system of political-diplomatic settlement of disputes with the quasi-judicial system of dispute resolution of the WTO ultimately led the EFPIA to become increasingly receptive towards a selective set of influential members, rather than to the industry as a whole.

The European Confederation of Iron and Steel Industries. Founded as a state-sponsored cartel in 1977, the European Confederation of Iron and Steel Industries (EUROFER) had for long functioned as a traditional Euro-confederation of national steel federations. Activities carried out by EUROFER in this period consisted of a mix of domestic and external trade measures. On the domestic side they were state subsidies, outright nationalizations, and imposed production quota. On the foreign trade side they consisted of concerted anti-dumping investigations and duties and the negotiations of large sector-wide exceptions to the principles of non-discriminatory trade of GATT (Mény and Wright 1987).

After the conclusion of the Uruguay Round Agreements and the installment of the WTO, EUROFER had to adapt to a world in which the EC-internal and external negotiation of sector-wide production quota and import quotas were no longer the order of the day, but instead included the provision of detailed, legalistically justified and often product-specific information for antidumping (like in the past), but now ever more on TBR market access investigations, the Market Access Database, or WTO dispute settlement (interview with Christian Mari, EUROFER, Brussels; interview M. Alois, former Director General of European Independent Steelworks Association). In response to this totally changed process and content of trade policy-making, at the end of 1997, the organization was transformed to include direct company members (interview Robert Joos, former Director General of Groupement de la Sidérurgie/Staalindustrie Verbond, Belgium). The organization now comprises both national federations and large company members (interview Paul Verstraeten, former secretary general of SIDMAR, ARBED-Group (now part of ArcelorMittal)).

In the field of trade policy, EUROFER initiated several TBR investigations and provides DG Trade with input to initiate WTO complaints. At the request of firms exporting steel products to the US that were suffering from a particular way of imposing US antidumping duties, the association filed a TBR complaint against US antidumping legislation in 1997, which led DG Trade to file a WTO complaint on the matter in 1998. Similarly, firms exporting stainless steel to Brazil had EUROFER file a TBR complaint on this matter, leading Brazil to remove the disputed trade barrier incompatible with its WTO commitments. Furthermore, EUROFER provided key information to DG Trade with regard to numerous WTO disputes settlement cases contesting the legality of countervailing and antidumping duties and safeguards imposed by the US, Argentina, and China.

The WTO DSM and the EU's institutional adaptation to it thus profoundly co-shaped the change of organizational format of EUROFER from a confederation of national steel associations into a sector association with direct company membership and transformed the way in which the association catered to the specialized producers constituting its membership.

Conclusion

In this article, we have argued that the judicialization of the world trade regime has profoundly affected the structure and nature of EU trade politics. Especially three

developments stand out as particularly important. First, since the introduction of the WTO DSM, important institutional innovations were introduced in EU trade policy-making in order to ease the access of private parties to fuel offensive market access action by the EU. Second, the product-specific dispute settlement cases initiated by the EU dramatically increased concomitantly with institutional changes at the WTO and EU level. Third, these developments have changed the representative nature of encompassing business associations in three important sectors of European industry. These associations act increasingly as agents of particular product niches and thus in effect more in the service of a set of important members, rather than as representatives of an entire sector.

Further research should subject our findings to a wider set of cases to see the magnitude of these findings for the entire trade policy field. For instance, one might look into whether trade associations in other economic sectors also underwent similar processes of specialization, or consider other potential sources of observed patterns of lobbying specialization, most importantly factors located at the level of economic sectors. However, while we acknowledge the limitations of our study in this regard, we are confident that our findings have broader implications. That is, in our empirical analyses we focused on least-likely cases for special interest lobbying. Indeed, the wide presence of business associations in the EU has often been seen as evidence of the consensual nature of the EU political system (Eising 2004; Mahoney 2008; Woll 2012). The fact that we find that these organizations are now increasingly serving as vessels of special interests, leads us to suspect that this is an indication of a broader trend towards more specialized lobbying in the field of EU trade policy.

The implications of our analysis are not limited to the area of EU trade politics however. Our argument suggests that the increasing integration of the EU into a wide array of global governance structures may change some of the fundamental characteristics of the ways in which interests are aggregated and are represented in the EU beyond the realm of trade policy-making. The WTO is not the only international organization that has equipped itself with quasi-judicial mechanisms for the enforcement of rules. Judicialization is on the rise in international politics at large (Alter 2012). Our analysis shows that in the area of trade policy-making, the EU's system of interest representation is undergoing systematic changes, leading to the apparently paradoxical situation in which broad, encompassing organizations need to adapt and serve specialized and narrow interests to remain relevant. Should the integration of the EU into a wider set of global governance systems continue at the current pace, it is quite plausible to expect fundamental changes in the nature of the interest representation in the EU in other fundamental areas of policy-making.

Notes

1. Moreover, members decided to add a standing tribunal to hear appeals against legal aspects of panel rulings, the so-called WTO Appellate Body.
2. Both the administrative apparatus and the functioning of the TBR were reformed in the course of 2010–2013. This institutional change followed an internal Commission review, and the entry into force of the Lisbon Treaty.
3. For GATT disputes we rely on Hudec 1992; for WTO disputes, on Horn and Mavroidis (2011). We recoded the latter from the Harmonized System to ISIC codes. We construct our evidence by considering the following questions: Are the contested measures concerned with an entire sector of

the economy or a specific branch of industry? By characterizing each and every such dispute settlement case along these lines we aim to obtain a reliable estimate of who benefits when the targeted trade barrier is removed and ultimately which interest groups have had a reason to become politically active.

4. In line with the existing legal literature, we consider four EU-initiated WTO cases as GATT cases, as they were left-overs or outflows of ongoing disputes from the GATT era (Davey 2005). This concerns the following disputes: Cuban Liberty and Democratic Solidarity Act of 1996, the application of the customs provisions of the NAFTA, the special tax treatment for 'Foreign Sales Corporations', and the Sections 306 and 305 of the US Trade Act of 1974.
5. We calculate the total proportion of intra-industry trade (IIT) using the index proposed by Grubel and Lloyd (1975). For a given country, a , trading commodities from N different industries, with B different partners, the year's total proportion of intra-industry trade is expressed as:

$$IIT_a = \sum_{b=1}^B \left[1 - \frac{\sum_{i=1}^N |X_{ab,i} - M_{ab,i}|}{\sum_{i=1}^N (X_{ab,i} + M_{ab,i})} \right]$$

where $X_{ab,i}$ represents a 's exports to trading partner b in industry i , and $M_{ab,i}$ represents a 's imports from b in industry i . To calculate intra-industry trade for the EU, we aggregate across all EU member states, excluding intra-EU trade.

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