

# **The EU in trade policy: From regime shaper to status quo power**

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## **1. Introduction**

It is a well-known economic fact that the European Union (EU) is, and has been for decades, one of the world's two largest trading blocs. Accounting for 20 per cent of global trade with only five per cent of the world's population, the EU is the second largest importer and the world's largest exporter of goods and services. Somewhat less well-known and acknowledged is the EU's historical political power and influence in making the rules governing international trade. The Treaty of Rome establishing the EU (then the European Economic Community) not only embodied the creation of a unified European market without obstacles to trade, this decision triggered multilateral trade liberalization. Since its establishment, the EU has projected some principles of European economic integration externally, contributing to the liberalization, constitutionalization, and judicialization of the international trading regime. The EU structural power due to the attractiveness of its internal market enabled it to export some of its key regulatory preferences, as well as to protect policy arrangements from outside challenge.

While the European Economic Community had not yet been founded at the time of the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, the European Steel and Coal Community (ECSC) of 1951 and especially the European Economic Community (EEC) of 1957 turned the EU into a formidable trade power. The creation of the EU's internal market had

important external effects on global trade, triggering the first large liberalization within the GATT during the Kennedy Round of multilateral trade negotiations. Since the EC was created, the US adamantly demanded increased market access, and the EEC found itself in a comfortable bargaining position. As a result, it was able to obtain large market access concessions in return. Having imposed most of its preferences on the US during the Kennedy Round, the EC started to export its own policies to third countries with the US and created rules limiting the policy options of other countries by starting to write the rule book of the global GATT trade regime. At the same time, the EU was instrumental in warding off the challenge of newly decolonized members, deflecting a fundamental recast of the GATT to the creation of a new forum, the United Nations Conference on Trade and Development (UNCTAD) in 1964, granting a GATT waiver for the establishment of the Generalized System of Preferences (GSP) for developing countries in 1971, and autonomously structuring its relations with its ex-colonies in the Lomé Conventions as of 1976.

The EU's policy of decisively co-shaping the rules of the world trade regime continued in the results of the Tokyo Round (1979) with an expansion of regulatory rules disciplining GATT members' discretion in applying trade policy instruments, largely in line with the EU's own policies. This successful export saw its epitome in the form of a constitutional export in the outcomes of the Uruguay Round (1994), ushering in the addition of numerous new areas of multilateral rules and the shaping of stronger institutions for the enforcement of extant rules. By exporting some of its own internal policies and promoting multilateral institutions that solidified its preferred policy outcomes, the EU thus played a crucial part as a shaper of the world trade regime throughout the 1958 – 1995 period.

Shortly afterwards however, the European Union started to become far less successful in exporting its domestic regulatory framework or promoting its preferred external policies, and more recently has embarked on the path of preferential trade agreements (PTAs). Indeed, after many years of refusing to engage in bilateral or regional trade agreements in order to try and force its partners to the WTO negotiation table on its own terms, in the middle of the 2000s, the EU embarked on the path of trying to secure better market access for some of its producers as well as to export some of its regulatory policies under preferential trade agreements. By so doing, the EU joined the other key players of the world trade regime: the United States, Southern Asian and Latin-American countries, and Japan.

Contributing to this book's overall assessment of the EU's capacity to engage in policy export, this chapter first reconstructs the origins of the Union's historical significance in global trade relations – a cross-temporal comparative perspective often neglected in contemporary political science. Second, it offers a near comprehensive overview of the most important elements in EU external economic policies from its beginnings until today. This overview covers European policies within the global trade regime GATT/WTO and European relations with developing countries, while conceiving of trade policy-making in a comprehensive manner by combining the analysis of European trade negotiations (bilateral, regional, and multilateral) with an analysis of administrative, unilateral European trade policies.

When throughout this chapter we probe into the origins of the European Union's capacity to protect, export, or promote its preferred policies, we direct our view towards changes in the EU's sheer economic attractiveness as an export market, as well as its key institutional characteristic of consensus decision-making, which creates a high decision threshold for any deviation from the status quo to be accepted internally.

## **2. The Emergence of the EU's Trade Policy**

Before the creation of the European Economic Community, trade policies were determined by national West European governments, interacting – quite unsuccessfully – within the GATT. Whereas the European states insisted on international liberalization within the GATT, the main trading nation in the world at that time, the USA, was entirely uninterested in pursuing liberalization in any meaningful way. Instead, the US concentrated on monetary and financial assistance to post-war Europe, while being unwilling to lower its tariffs on European exports in exchange for increased market access in Europe. European countries being relatively small, they had a far larger interest in re-obtaining foreign market access after the war than did the United States with its large internal market. Contrary to conventional wisdom (Krasner 1976, Keohane 1989), the United States did not use the GATT legal framework to negotiate gradual trade liberalization in rounds of negotiations throughout the late 1940s and the entire 1950s (Dür 2004). Instead, the United States maintained its level of protective tariffs in response to constant lobbying by import-competing industries in the US Congress, while exporters failed to mobilize to push for the reduction of foreign tariff levels (Dür 2010).<sup>1</sup>

Meanwhile, in contrast, European states engaged in what was to become a new nucleus in the world trading regime. The smallest West European states moved first when the Belgian – Luxemburg Economic Union and the Netherlands signed the BENELUX customs union as early as 1944. Subsequently, France took the initiative to integrate newly created West Germany (1949), Italy and the BENELUX countries in the European Steel and Coal Community (ECSC) in 1951 (Rittberger 2009). The landmark Treaty of Paris abolished all barriers to trade in steel and coal products and established external tariffs for both sectors. As the ECSC founding member

countries had committed to the prohibition of preferential arrangements in the GATT 1947 treaty, they were obliged to ask for a waiver for the two sectors of coal and steel from that GATT obligation and were successful in securing such an agreement from the GATT membership. The ECSC agreement contained the first international anti-cartel rules as well as rules to be followed in the event of overproduction. Since cartel dynamics and overproduction had both been perceived as having nurtured heavy arms production in Germany and France in the two world wars, this arrangement was believed to make war near impossible in the future (Eilstrup-Sangiovanni and Verdier 2005). The enforcement of those rules was placed under a supranational High Authority, raising the relevance of the European governance level as early as 1951, at least in those two sectors of industry.

Next to the creation of the ECSC, Western European countries continued to exchange numerous initiatives to create liberalization among themselves throughout the 1950s. Disappointed by the lack of market opening by the US during the GATT Annecy (France 1949) and Torquay (Great Britain 1950-51) rounds, and the fact that Congress refused to delegate significant negotiating authority to the US President in 1955, continental European countries decided that regional trade liberalization among themselves would be the best path to pursue (Dür 2004). Negotiated at the conferences of Messina and Val Duchesse in 1956, six West European states signed the Treaty of the European Economic Community and the Euratom Treaty in Rome in 1957, establishing a customs union, an internal market, and a common external commercial policy.

Over time, the EU developed into the most relevant governance level by far in comparison to the national or the global level in the field of international trade. While initially limited to measures restricting trade in goods, it gradually included trade related regulatory measures covering issues such as technical standards and, later on, even intellectual property rules. The EU's capacity to

project some of its regulatory norms and practices is remarkable because the EU is no state and does not dispose of all conceivable policy instruments that can impact trade policy power, and thus impact an entity's capacity to protect, export, or promote policies. The Union disposes of full authority to levy tariffs and to introduce regulations about market access rights for goods producers and service providers. At the same time, it does not have the exchange rate mechanism at its disposal to promote or restrict trade. By lowering the exchange rate of its currency, a state can temporarily make its exports cheaper, enabling greater foreign market access for its producers while reducing foreign imports to the advantage of its domestic producers. Monetary policy, however, was and remained in purely national hands in 1958, and when the rise of independent central banking in the 1980s and 90s ushered in the creation of the European Central Bank in 1998, its mandate was limited to inflation-targeting price stability to the exclusion of exchange rate policy.

Table 2.1 provides an overview of this historical evolution of the EU in the global trade regime and the importance of the national, EU, and international layers of governance.

TABLE 2.1 NEAR HEAR

### **3. The rise of the EC/EU as co-shaper of the global trade regime: 1958 - 1994**

The creation of the European Customs Union and its external common commercial policy greatly enhanced the EU's presence in global trade and turned it into a major player in multilateral trade negotiations. Together with the US, the EU was able to greatly influence key developments in the international trade regime consistent with its multilateral liberalization agenda. In the period between 1958 and 1994, the EU successfully engaged in both policy

protection and vertical policy export, largely managing to shape the global trade regime to its liking. The reasons for this success lie in its bargaining power vis-a-vis other industrialized countries, such as the US, as well as vis-a-vis developing countries. Moreover, important changes in the global trade system were also triggered as external effects resulting from European economic integration.

### **3.1. Obtaining Multilateral Trade Liberalization whilst Protecting EC Interests:**

#### **Transatlantic trade relations and the Kennedy Round**

Though an internal EU policy, the establishment of the single market also had a profound external effect on global trade. Triggering a drastic increase of trade between EC member states, the set-up of the single market led to trade diversion causing harm to those exporting firms excluded from it (Dür 2010). Among the most harmed were American exporters, seeing how European companies turned to European foreign suppliers that gradually became cheaper as internal European tariffs were all being phased out between 1958 and 1967. As a result, American exports continued to have to jump over the new European common external tariffs – an average of pre-existing national tariffs – and found themselves confronted with losing market shares or the threat thereof. This triggered American exporters to mobilize far more than they had done throughout the 1950s in order to put pressure on the American Congress and the executive branch of government to negotiate a lowering of European tariffs. Therefore, the USA suddenly found itself on the taking side in its trade policy-making, while the EC could lean back in its negotiating chair until the US side came along with offers of market access that would be attractive to European export industries. The American side was thus surprised to find the newly created entity of the EEC in the role of co-shaper in the GATT world trade regime.

As a result of this intensified US exporter mobilization, the US Congress delegated trade negotiating powers to the president in its Trade Expansion Act of 1962 on the condition that the administration obtain market access for American agricultural exports. However, the US side of the negotiations saw itself obliged to drop this demand as the European side was unwilling to include agricultural trade liberalization in the agenda of the round. Indeed, simultaneously with the Kennedy Round that started in 1963, the six EC Member States were creating the Common Agricultural Policy to modernize, subsidize, and protect European agricultural producers; guaranteeing minimum prices, cementing quotas for imports, and installing export subsidy arrangements in case of European overproduction – a distant hypothetical scenario at the time. The European side thus benefitted from a very comfortable bargaining position, caused by a double advantage. On the one hand, the American side was clearly in the position of the *demandeur*. On the other hand, the European Commission representatives' hands and feet were bound by extremely stringent oversight and effective veto power of every single EC Member State (Putnam 1988; Tsebelis 2002; Dür 2007). The Commission's weakness and lack of negotiating autonomy at the same time amounted to a large bargaining power advantage, as the European side of the negotiations could play on time and refuse to budge to American demands going against European policy preferences.

Thus, the large size of the EU's internal market contributed to the EU becoming an attractive partner for trade liberalization negotiations, in turn enabling the Union to resist demands inconsistent with its domestic preferences. Moreover, the trade diversion caused by the Community's very establishment created incentives for those suffering most from (the threat of) exclusion to move away from their preference for the status quo. As the balance between import-competing sectors advocating the maintenance of existing trade barriers on the one hand, and exporters wanting the restoration or even increase of their market access abroad on the other



hand shifted, the US negotiating side saw its bargaining power weakened. As Congress came under ever more pressure to make offers to the Europeans in order to satisfy the demands of exporters, the US State Department saw its negotiating autonomy rise and its bargaining power diminish. This dynamic resulted in a dramatic reduction in trade barriers across the Atlantic, with the US side ending up lowering its tariffs significantly more than the European side.<sup>2</sup>

The bilateral deal between the EEC and the US from the Kennedy Round produced strong external effects on global trade once more; first, all lowering of EEC tariffs and US tariffs automatically became applicable for all other trading partners of those two entities and were effectively multi-lateralized on a non-discriminatory basis by virtue of the Most Favoured Nation principle (GATT Article 1). The drastically lower levels of tariffs on the products of the greatest importance for the EU and the US became the bound tariff levels that any exporter from other GATT members would have to pay when shipping goods into Europe or America. Second, the Kennedy Round bound tariff commitments between the EU and the US established the Euro-American tandem as the linchpin of the global GATT trade regime, laying the ground for future policy and even constitutional export by both the US and the EU.

The EC's power in trade negotiations was further enhanced by the set-up of its internal decision rules, allowing European Commission negotiators to always benefit from the strategic advantage of the paradox of weakness (Schelling 1960; Meunier 2005). Since Member States endowed Directorate-General (DG) Trade and DG Agriculture of the European Commission with closely monitored mandates and exerted strict control over their agent negotiating liberalization (De Bièvre and Dür 2005), the use of consensus decision-making in the Council of Ministers made EU positions in external trade negotiations very rigid – often to the exasperation of the EC's negotiation partners but to the benefit of EC policy preference attainment. The EC's clout in

international negotiations became apparent in the results of two important negotiation areas in European external trade policy making in the 1960s and 1970s: trade relations with developing countries and the creation of new GATT rules disciplining trade policy discretion of GATT members through the Tokyo Round Codes.

### **3.2. Policy protection against the challenge of developing countries: UNCTAD, GSP, and Lomé**

The wave of decolonization during the late 1950s and early 1960s created demand for a radical reform of the post-war global economic regime on the part of the newly independent developing countries. However, rather than radically transforming the global trade regime, the EU and western industrialized countries deflected pressures from it and supported the creation of a parallel organization, the United Nations Conference on Trade and Development (UNCTAD) in 1964, and granted a large GATT waiver from reciprocal non-discriminatory liberalization through the establishment of the Generalized System of Preferences (GSP) for developing countries in 1971. In 1976, the EU added the structuring of its relations with its ex-colonies in the Lomé Conventions.

Although appearing to result from development-motivated *largesse* on the part of the EU, the details of the EU's Generalized System of Preferences and Lomé Conventions are testimony to its capacity to keep shaping the global trade regime, and its relations with developing countries, to its advantage and at considerable cost for developing countries. First, it is important to appreciate the crucial role of the EC in the installment of the trade-restricting Multi-Fibre Agreement of 1972. This agreement excluded the textiles sector – of potentially great economic importance to developing countries – from the GATT bound tariffs and the GATT prohibition of quota. The

agreement effectively enticed developing countries into an agreement on preferential, tariff free market access to the EC, while at the same time introducing a disincentive for long-term investment in large scale textile manufacturing. This was so because market access to the EC was contingent on quota ceilings and the imposition of trade restrictions whenever the EC should autonomously decide that its domestic producers were “unable” to cope with import surges (Underhill 1998). Second, the EC also effectively protected its agricultural policy from any exogenous demands, excluding that second economic sector of potential significance for development country exporters. Third, GSP arrangements were an entirely autonomous policy and not subject to any negotiations. The EC could, and did, implement detailed exclusion arrangements for “sensitive” products in which developing countries could have acquired a comparative advantage. Fourth, a similar logic undermined the long-term economic development potential of developing countries, while enabling the EC to export some of its own new domestic arrangements to its ex-colonies embodied in the Lomé agreements.

The Lomé Conventions (trade and aid agreements between the EU and 71 African, Caribbean, and Pacific countries [ACP] signed in 1975 or later) contained the same type of lure for developing countries – preferential access for primary export products such as cocoa, coffee, and tropical fruit, while being equally topped by quantitative restrictions. Although the European Commission had originally proposed a policy that would provide financial assistance to producers of these third world commodities suffering from the vicissitudes of global price volatility or detrimental terms of trade, EC Member States insisted that no measures should be allowed to harm European producers. They consequently transformed the so-called STABEX scheme from sector-specific assistance, into unconditional, direct budgetary aid to the EU’s developing country negotiation partners (Gruhn 1976; Ravenhill 1984). The basic set-up of the Lomé and successor conventions thus eliminated any likely creation of long-term trade, as the EC pursued a policy of

buying off the support of mostly autocratic state elites dependent on captive markets in the north.

At the same time, the EC turned these countries and their agricultural sectors into beneficiaries of the European Common Agriculture Policy and its subsidy programmes, and provided large sums of development aid – turning the policy into a form of collective clientelism (Ravenhill 1985). In this manner, the EC effectively exported one of its key domestic regulatory policies horizontally, relying on its bargaining power vis-à-vis developing countries. Unsurprisingly, most developing countries towards which these policies were targeted remained dramatically trapped in a lack of diversification of domestic production, relying on the export of primary products, failing to invest in processing capacity – the economic activity where the largest value added can be realized – and often retaining a monopolistic or oligopolistic reliance on one or only a few of these primary products. These developments ended up cementing rather than transforming the often authoritarian socio-economic governance structures of these countries. The upside for the EC, of course, was that it turned out to be remarkably successful in shielding two key assailed domestic sectors – agriculture and textiles – from global competition, as it possessed the structural economic power to do so.

### **3.3. Vertical policy export and the expansion of the world trade regime's regulatory reach**

Meanwhile, the EC embarked on its policy to write a more detailed international rule book in the GATT global trade regime. The Tokyo Round of GATT multilateral trade negotiations indeed constituted the first round in which the EC and the US drafted and committed to rules that essentially tried to limit the negative externalities of other GATT members' regulatory policies. These rules concern the limitation of antidumping policy, the disciplining of subsidy wars, the

attempt to forestall protectionist and/or discriminatory abuse of health and safety rules, etc. Cast in the terms of international relations theory, these agreements are typical cases of institutional solutions to cooperation problems among states. If all states engage in levying high so-called antidumping duties, they might collectively end up undermining their mutually beneficial adherence to the non-discrimination principle. If all states, however, agree to the same, somewhat restricting conditions under which each is allowed to impose antidumping duties, they are able to reach an equilibrium, limiting an antidumping duty arms race. And if, on top of that, there is monitoring and enforcement in the form of the GATT dispute settlement system to discourage free riding, then the occurrence of suboptimal aggregate outcomes is diminished. Although institutional solutions to cooperation problems may well be beneficial to all, their exact form and content are not necessarily neutral (Gruber 2000). The Tokyo antidumping code largely formalized and effectively exported the broad lines of US and EC antidumping policy to the other GATT members. The negotiations on the Tokyo antidumping code indeed coincided with the drafting of the EC's own nascent antidumping policy.<sup>3</sup> The EC and the US thus used their first mover advantage by setting limits to others' antidumping policy that would be permissible under the GATT. While those members already engaging in antidumping policy would have to stay within the disciplines imposed by the code, the rules would limit the margin of maneuver for others wanting to draft and implement their own antidumping policy in the future – something that many countries did in subsequent decades (Zanardi 2004).

Of the same kind were a whole range of pluri-lateral regulatory codes dating from the end of the Tokyo Round in 1979 that fed into multi-lateral regulatory agreements at the end of the Uruguay Round in 1994. These concern the Tokyo Standards Code, which was later transformed into the more detailed WTO Agreement on Technical Standards and Trade, the code on import licensing

procedures, the government procurement code, the customs valuation code, the agreement on trade in civil aircraft, the bovine meat arrangement, and the international dairy arrangement.

These agreements and the coverage of these agreements were of importance to the main GATT negotiating parties: the “Quad” of the EC, the US, Canada, and Japan. They constituted the basic building blocks for the further regulation of world trade in terms of content, scope, and procedures that were to be negotiated and made binding for all WTO members as of 1995.

During the Uruguay Round – the most significant round since the Kennedy Round – the EU shaped both substantial policy outcomes (liberalization in sectors and areas dear to its own) and most importantly, subscribed or actively promoted agreements that required little or no domestic regulatory changes in the EU, yet created large adaptation costs for other members. The EU and the US jointly managed to have developing countries accept their preference for an expansion of the trade regime’s regulatory reach by threatening other GATT members with exclusion from market access benefits already acquired in the GATT. Indeed, rights acquired under the GATT were made conditional upon accession to the to-be-founded new organization, the WTO.

Moreover, accession to the WTO meant the acceptance of a host of new regulatory agreements that were placed under its umbrella. In other words, the EU and the US were able to force a large package deal on all issues on the negotiation table (Steinberg 2002). This take-it-or-leave-it option was called the “Single Undertaking” of the Uruguay Round. Thanks to this formula, for the first and arguably last time, the EU and the US could use the threat of exclusion from existing GATT market access commitments to force recalcitrant GATT members into accepting liberalization and regulatory commitments in services, intellectual property rules, public procurement, technical barriers to trade, rules of origin, food health and safety standards, and trade-related investment measures. The EC – in tandem with, or hiding behind, the US – thus secured the vertical export

of policies dear to its own while ensuring that the new international governance level embodied the institutionalization of those policy preferences.

### **3.4. Vertical policy export and global institutions for trade rules enforcement**

As the EU – US bilateral relationship generated the bulk of global trade regulation, these actors acquired an increasing and overarching stake in cementing these rules and procedures more firmly in institutions that would lend them more stability and predictability. Several reasons can explain the strengthening of enforcement of GATT obligations during the Uruguay Round. The first incentive to strengthen dispute settlement at the end of the Uruguay Round was the aggressive US economic foreign policy throughout the 1980s. The creation of automatic, binding, and sanctions-backed enforcement of all WTO commitments was certainly a byproduct of the United States' push for harsher sanctions in cases of non-compliance. Throughout the course of the 1980s, the US had repeatedly pressured the EC, Japan, and others to honor their existing GATT commitments (or other “obligations” in the eyes of the American administration) by imposing retaliatory sanctions against other products (Bello and Holmer 1994). In reaction, the EC developed the negotiation position that retaliatory sanctions in cases of non-compliance with GATT law would only be permissible after a GATT panel had established the non-compliance, and after a panel had authorized such retaliatory “withdrawal of concessions” (Hudec 2000).

A second key reason for the EU's support for strengthened enforcement was that the regulatory agreements of the Uruguay Round would be severely devalued if they were not enforceable in a credible way. The extension of depth and scope of the global trade regime into matters of regulation was thus intricately linked to the increased bindingness of those rules, due to strengthened enforcement of those rules. Regulatory agreements are more difficult to enforce

than simple exchanges of market access concessions (De Bièvre 2006). On the one hand, tariff agreements can be enforced by threatening to withdraw tariff concessions in response to defection from previous agreements, making reciprocal trade liberalization in goods generally quite stable and easy to enforce. The equilibrium can be maintained through simple tit-for-tat, whether cooperative or retaliatory. And of course, large reductions in bound tariff levels, like those concluded in the Uruguay Round, are valuable exactly because their enforcement is easy and credible. On the other hand, the Uruguay Round package contained many regulatory agreements – agreements that entail higher transaction costs regarding policing, measurement, and especially enforcement (Majone 1996). Furthermore, regulatory agreements might entail little implementation costs for some – like for the EC with regard to the URAA on services on intellectual property, etc. – but large implementation costs for others – like developing countries when they have to establish an entire domestic intellectual property protection regime. For this reason, it is crucial to appreciate the significance of an agreement that GATT countries concluded in 1989 on making jurisdiction automatic whenever a GATT country deems another country to be violating or annihilating the benefits of an agreement (GATT 1990). This agreement codified an emerging practice and made crystal clear that vetoing or threatening to veto the progress of judicial proceedings would no longer be considered legitimate in Geneva. Moreover, the agreement took immediate effect, independent of what would happen further down the road during the ongoing Round, and thus constitutes the only, yet very important exception to the negotiating rule of the Single Undertaking. The 1989 agreement on strengthened dispute settlement created the very preconditions for far-reaching regulatory agreements to be worth concluding, as it short-circuited the bedeviling “no future enforcement / no bargain” problem in international cooperation (Fearon 1998).



During the Uruguay Round negotiations on the reform of the GATT dispute settlement system, the EU successfully opposed the unilateral sanctions and retaliation policy of the US, which had frequently bypassed, yet not breached, the GATT. Loath to merely undergo the negative externalities of unilateral American policies, the EC successfully insisted – together with other large GATT members such as Canada and Japan – that these American policies be put under multilateral surveillance, as the EC supported the creation of a permanent appeals court, the so-called WTO Appellate Body. The Canadian delegation to the Uruguay Round brokered a deal between the two elephants in the room, the EU and the US, leading to the major institutional innovation of the Round: The formal installment of automatic jurisdiction (reiterating the elimination of the defendant's veto contained in the 1989 agreement), the creation of the Appellate Body at the request of the EC, and the multilateral authorization of sanctions in cases of enduring non-compliance at the request of the US (Croome 1999; Hudec 2000).

At the end of 1994, the EU had thus eliminated a source of unpredictability in the transatlantic trading environment by putting an end to unilateral American trade sanctions policy, secured a deal on regulatory issues much in line with its own preferences, and contributed significantly to the creation of a multilateral organization with independent adjudication authority and enforcement capacity. The EU's contribution to the constitutionalization and judicialization of the world trading system therefore resembled its own form of institutionally locking-in economic integration to some extent.

## **4. Status quo and relative decline of EU regime shaping capacity: 1995 - 2012**

This pinnacle of EU relevance in the global trade regime would soon dwindle in the subsequent period. In the second half of the 1990s, the EU was still largely influential in two multilateral agreements in the framework of the WTO that were concluded outside of any Round. As the WTO member with large stakes in the international telecommunications and financial services sectors, the EU was an important contributor for the successful conclusion of these negotiations in 1997. Yet several developments soon started to undermine the EU's prominence in the global trading system. First, the option of threatening to exclude others from the benefits of liberalization commitments was no longer available, as threatening to leave the WTO was obviously not a feasible card for the EU to play. Second, Article 20 of the Uruguay Round Agreement on Agriculture (URAA) mandated WTO members to start a new round of negotiations on agriculture by the end of 1999. This seemingly minor Uruguay Round concession of playing on time forced the EU to start negotiations from a defensive position. Third, the rise of China (admitted to the WTO in 2003), Brazil, and India in the global trading system significantly curtailed the EU's ability to shape policy outcomes in the WTO to its liking.

While still a hugely important importer, the EU could no longer co-dictate the agenda of WTO trade rounds. Whereas so far the EU had been the courted actor, for the first time in its existence the EU was the one demanding a new Round, what the European Commissioner for Trade at that time, Leon Brittan, intended to be a "Millennium Round." Decision makers in the EU consistently made clear that extending the scope of negotiations beyond agriculture was a key priority, however (Poletti 2012). When WTO members started to seriously discuss among themselves how to proceed with the built-in agenda on agriculture, the EU made its support for an ambitious agenda on agriculture contingent upon the acceptance by other members of broad-

based negotiations, including services, further Intellectual Property Rights (IPR) commitments, trade-and-environment, and the so-called Singapore issues. The Singapore issues refer to the four subject matters for which permanent WTO working groups had been set up at the instigation of the EU, Japan, and Korea at the first WTO Ministerial Conference held in 1996 in Singapore: Transparency in government procurement, trade facilitation (customs valuation), trade and investment rules, and trade and competition policy.

The EU was so keen to submerge agricultural negotiations into a comprehensive package that in February 2001, it unilaterally decided to grant duty and quota free access to imports from least developed countries through the “Everything But Arms” initiative with the aim of gaining support for its strategy among a group of recalcitrant developing countries (Ahnliid 2005). The EU thus started a trade round from the position of the *demandeur*, the one that would have to offer something first in order to achieve its policy objectives.

Several other reasons contributed to this change in structure and initiative in the global trade regime. The prospect of having to play on the defensive in agricultural trade negotiations was certainly a key factor. In order to minimize concessions in this sensitive field, the EU sought to widen the negotiating package as much as possible to increase the potential for trade-off deals (Poletti 2010). Secondly, and differently from the past, the EU found itself incapable of shaping negotiating dynamics in line with its preferences. While continuing to be one of the key hubs for large-scale intercontinental trade in basic goods, processed, and finished manufactures as well as a key provider of services, the European Union had become a mature and saturated market for many goods and services with low to no growth rates. This contrasts starkly with emerging economies such as South-East Asia and Latin America where demand was and is growing. The

sheer economic attractiveness of the EU's internal market has thus dwindled relative to other markets.

Furthermore, the very bindingness of WTO commitments through the increased judicialization of the world trade regime caused the EU, just like any other WTO member, to be vulnerable to legal challenges. The EU found that its WTO partners were able to force substantial concessions in agricultural negotiations by threatening to resort to WTO dispute settlement against the EU's domestic support schemes incompatible with its WTO commitments, in the case the EU would not concede – a strategy used especially by Brazil. This, in addition to the impossibility to threaten recalcitrant countries with exclusion, made it easier for developing countries to resist requests for further harmonization of regulatory issues with high adjustment costs for them. Indeed, throughout the Doha Round, developing countries consistently and successfully refused to succumb to EU attempts at policy export, such as new commitments on IPRs, services, and the Singapore issues, just like the US had been fatally unsuccessful at including minimum labor standards in the agenda at the Seattle Ministerial Conference.

Even in its relations with other industrialized trading partners, the EU's attempts at regulatory export were no longer crowned with success, for example in the case of geographical indications (GI) of origin. During the Uruguay Round, the EU had secured the insertion of the global protection of GIs in the WTO Agreement on Trade-related Aspects of Intellectual Property (TRIPS). Section 3 spelled out the conditions under which the names of agricultural products coming from a particular place and with particular characteristics can acquire special protection. GIs in the TRIPS treaty had never received unanimous support among the GATT membership, yet were included through the single package formula. It had been clear to most negotiation participants that Europe stood to gain most from such a form of protection, as Europe is home

to household names like champagne, Parma ham, or Roquefort (Goldberg 2001; Raustiala and Munzer 2007). During the Doha Round, the EU has tried to go beyond the TRIPs agreement by demanding a multilateral register for wines and spirits and a higher level of protection for other agricultural products. The EU proposal calls for some “generic,” household names to be especially protected, an arrangement that would turn the agricultural producers from particular areas of production into *de facto* global monopolists. In 2011, the EU proposed a programme to facilitate geographical indications in ACP countries that showed how these countries were home to several agricultural products that would benefit from global protection of their name (Intellectual Property Watch 2011). So far, the EU has managed to enlist a range of developing countries in its camp, now counting 52 WTO members. Yet many other members find existing levels of GI protection sufficient, while the US has not really contemplated going beyond its own domestic system of GI protection through trademarks.

In addition, the negotiation assertiveness of middle-income developing countries such as Brazil, India, and to a lesser extent China, further reduced the room for the EU to export its preferred policies in the WTO framework. Immediately after the launch of the Doha Round in 2001, an aggregation process of previously diverging negotiating approaches of a number of developing countries took place (Bjornskov and Lind 2005). This process culminated in the failure of the Cancun WTO Ministerial Conference in 2003, when the so-called G20 group of countries opposed a deal on agriculture jointly proposed by the EU and the US and forced the EU to drop the Singapore issues from the negotiating agenda. The negotiating process leading to Cancun made clear that an EU-US agreement no longer sufficed to provide a breakthrough in negotiations, that middle-income developing countries were ready to exert negotiating power, and, therefore, that their positions were to be fully considered as part of the equation for any future deal in the multilateral trade arena.

Despite being confronted with such difficulties in exporting and even protecting its domestic policies at the multilateral level, for a long time the EU held the official line that it was entirely dedicated to multilateralism and would maintain its moratorium on negotiating preferential trade agreements. In the middle of the 2000s however, the EU finally admitted defeat and radically reversed course by engaging in the horizontal route. EU policy makers arguably realized that their multilateral bargaining power had waned and that the deadlock of the Doha Round was unlikely to be resolved any time soon. Moreover, many other prominent WTO members were concluding preferential trade agreements (PTAs) – a process that might well lead the EU to find itself left behind with less market access opportunities than the others. Consequently, the EU initiated so-called free-trade agreement (FTA) negotiations with important partners such as South Korea, Japan, Canada, and the United States, as well as with a large host of smaller countries. Many of the regulatory issues that the EU had sought in vain to include into a Doha package thus became subject of bilateral or regional agreements. Yet most of these regulatory exports in FTAs are quite inconsequential, written in legal inflation language with no rights and obligations specified, while enforceability of EU preferences is weak or mostly entirely absent (Horn et al. 2009).

Clearly, the EU is no longer one of the chief regime shapers at the global level and its capacity for policy export as well as policy protection has been significantly curtailed during the first decade of the new millennium. During this period, the EU was successful only in engaging in horizontal policy export mirroring its own regulatory framework in bilateral and regional agreements. While a detailed treatment of these horizontal regulatory exports is beyond the scope of this chapter, it suffices to mention three types of such agreements. First, the EU succeeded to export much of its *acquis communautaire*, of course also on trade matters, to future EC members and European Neighbourhood Policy countries in its Association agreements (Schimmelfennig and Lavenex

2009). Second, the EU managed to conclude some Economic Partnership Agreements, including exactly the regulatory trade agenda it had for so long sought to advance at the multilateral WTO level with some of its former ACP developing country partners. Finally, the jury is still out on the exact balance between regulatory policy exports and imports in the EU FTA with South Korea, as well as in such possible future agreements with Canada, Japan, and the United States.

## **5. Conclusion**

In this chapter, we have shown the early rise of the EU's capacity to shape the global trade regime and its relative decline into a status quo actor. While Western European states were unable to get real liberalization negotiations off the ground after the start of the GATT in 1947, the EC level of governance was able to enhance its role in global trade politics with the establishment of its unified market and the common commercial policy in 1957. The EC's ability to decisively shape the global trade regime was owed to the external effects of European economic integration giving the EC enhanced bargaining power as a major trade bloc and allowing it to engage in multilateral trade negotiations on an equal footing with the US. Owing to the rising attractiveness of its domestic market and the relatively constant rigidity of its trade policy-making decision rules, the EC successfully engaged in both policy protection and policy export throughout this period. On the one hand, the EC managed to resist demands for far-reaching liberalization in agriculture brought forward by other industrialized countries, such as the US, and was able to deflect developing countries' pressures for a radical reform of the global trade regime, especially in the sectors of textiles and clothing and tropical agriculture. On the other hand, the European Union, in tandem with the US, successfully engaged in the introduction of global regulation that affected the very nature of the trade regime in terms of both content and process. Indeed, parallel to transforming the trade regime into a forum for global regulatory harmonization, the EU and the US also managed to push through the key

institutional changes of the regime's system for trade rules enforcement and the *modus operandi* in multilateral trade negotiations.

In the final section we bear witness to how changes in the relative power within the international economic system and the resulting assertiveness of developing countries within the trade regime have led to a gradual decline in the EU's capacity to shape global trade developments. The EU's inability to have developing countries accept further expansions of the WTO's regulatory reach and its decision to cede to the competitive pressures of other international trade actors to engage in preferential instead of multilateral trade and investment agreements show how the EU has lost its prominence as co-shaper of the global trade regime. Since the middle of the first decade of the new millennium, the EU has turned into a status quo actor, unable to engage in vertical policy export to the global level, forced instead to turn to seeking enhanced foreign market access, horizontal regulatory export, and the defense of some of its internal arrangement in the context of bilateral and regional agreements.

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## Notes:

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<sup>1</sup> In 1955, the US even asked other GATT members for and obtained a waiver from its GATT obligations for its agricultural sector.

<sup>2</sup> US tariffs on manufactures were cut by 38%, EC tariffs by only 32%; US tariffs on chemicals by 50%, EC ones only by 20%, and US tariffs on machinery and equipment by 47%, the EC ones only by 40% (UNCTAD 1968, as quoted in Dür 2010: 127).

<sup>3</sup> Until 1992, import-competing industries in the EC had the option of filing complaints to their national administration under Article 115 of the EC Treaty. As these national barriers to trade from outside the EC were gradually placed under Commission surveillance, demand for EC external anti-dumping policy among import-competing industries increased (see also Hanson 1998 and Schuknecht 1992).