

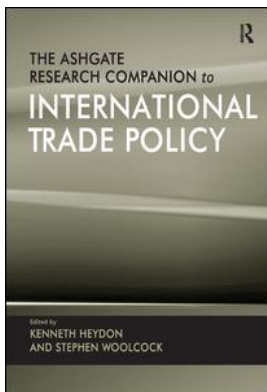
This article was downloaded by: 10.2.97.136

On: 26 Mar 2023

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



The Ashgate Research Companion To International Trade Policy

Kenneth Heydon, Stephen Woolcock

The Functioning of the European Union's Trade Policy

Publication details

<https://test.routledgehandbooks.com/doi/10.4324/9781315613086.ch24>

Joakim Reiter

Published online on: 19 Jul 2012

How to cite :- Joakim Reiter. 19 Jul 2012, *The Functioning of the European Union's Trade Policy* from: *The Ashgate Research Companion To International Trade Policy* Routledge

Accessed on: 26 Mar 2023

<https://test.routledgehandbooks.com/doi/10.4324/9781315613086.ch24>

PLEASE SCROLL DOWN FOR DOCUMENT

Full terms and conditions of use: <https://test.routledgehandbooks.com/legal-notices/terms>

This Document PDF may be used for research, teaching and private study purposes. Any substantial or systematic reproductions, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The publisher shall not be liable for an loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

The Functioning of the European Union's Trade Policy

Joakim Reiter

Introduction

The European Union (EU) is the world's biggest exporter, importer and investor. Yet, for many outside observers, the functioning of the union's trade policy remains opaque. Similarly, for many inside the union, there is often a sense that EU trade policy punches below its economic weight.

A key reason for this, it has been suggested, is that EU trade policymaking is constantly undermined by the difficult process of reconciling the conflicting positions of EU Member States. Another suggested reason is that the EU trade policy process remains predominantly technocratic, led by the unelected European Commission. Of course, there are numerous stories of trading partners waiting sometimes literally in the corridors of the WTO building for the EU to return with newly coordinated positions in negotiations. And there are examples when Member States have openly undercut the official EU position.

Nonetheless, such explanations exaggerate the uniqueness of EU trade policymaking. Many countries tend to treat trade policy as a technical matter and find themselves in difficult domestic discussions over trade policy choices. Rather, it is argued here that the sense of perplexity with which some observers view the EU trade policy process derives partly from the continuously evolving nature of EU powers (competence) and policy processes in trade, partly from the distinct institutional features and structure of EU trade policymaking and partly from the different political setting that prevails at the EU level compared to that of Member States or indeed many other countries. In this chapter, each of these aspects will be discussed.

The chapter begins by describing the evolution of EU trade powers and policymaking and then against this backdrop, examines the two key questions regarding the way EU trade policy works. First, 'who does what and why?', which is assessed in light of the recent Lisbon Treaty (or the Treaty of the Functioning of the European Union, TFEU). Second, 'who wants what and why?', where EU

trade politics is discussed in terms of the competing interests of protectionism versus liberalism, as well as traditionalism versus modernity and the more recent tensions between trade and other policy areas. Finally, the chapter summarizes some challenges facing EU trade policymaking in the years to come.

The Evolution of EU Trade Policy Process, Powers and Politics

The evolution of EU trade policy can be described in terms of three interlinked trends: the steady path of internal and external economic integration that has created a need for an ever-increasing number of issues to be dealt with at the EU level; the increased powers of the EU, and in particular the Commission, in the formulation of trade policy so as to ensure that this happens; and the growing number of actors involved that has also increased tensions over, and the politicization of, trade policymaking in the EU.

The Expansion of the Scope of EU Trade Policymaking

The expansion of the scope of EU trade policy has tended to mirror both endogenous factors related to the EU's own path of increased integration and exogenous factors related to the evolution in trade negotiations globally.

In terms of the endogenous factors, already with the Treaty of Rome, the creation of a customs union placed tariffs and other commercial policies in the hands of the European Economic Community (EEC). Over time, as EU integration has deepened and widened, more policy matters have followed this pattern. A qualitative leap in the scope of EU trade policymaking came with the Single European Act in 1986. The substantial increase in policy approximation and/or harmonization related to the internal market from the second half of the 1980s onwards, provided the foundation for an equivalent expansion of the scope of EU trade policymaking (Holmes 2006; Jones 2006; Young and Peterson 2006).

Among the exogenous factors influencing the scope of EU trade policy are the evolution in trade negotiations and the development of the GATT and WTO. Until the early 1970s, GATT negotiations were almost exclusively oriented towards reducing (industrial) tariffs. With the Uruguay Round in 1986–94, which also led to the establishment of the WTO, the scope of global trade negotiations expanded further to include *inter alia* services, intellectual property rights and trade-related investment measures.

Post-Uruguay Round, there have been discussions in the WTO on an ever wider range of topics, such as environment, labour standards, competition policy, investments, trade facilitation and e-commerce. Though many of these trade-related issues have subsequently been dropped from the Doha Development

Agenda, WTO discussions influenced and helped crystallize the EU's positions on such matters which are now fully incorporated in the union's negotiating position for bilateral and regional trade agreements (Falke 2005).

The EU's latest trade agreements, for example the free trade agreement (FTA) with Korea, thus consolidate the shift in EU trade policy towards the pursuit of deep integration agreements. As such, they also sharply contrast with the EU's past preference for narrow trade deals mainly preoccupied with industrial tariffs, as illustrated by the EU's first set of trade agreements with its Mediterranean neighbours in the 1990s.

The Expansion of the EU's Trade Policy Powers

The expansion of the scope of EU trade policy prodded the European Commission and Member States into sometimes difficult and protracted debates over the issue of EU powers or competence (Dür and Zimmermann 2007). Competence reflects who has the right to regulate in the EU and hence determines both who negotiates on the Union's behalf and how decisions are adopted internally. In trade, there are two basic options:

- 'exclusive EU competence' in which the Commission negotiates on behalf of the Union and the Council takes its decisions on the basis of qualified majority voting (QMV); or
- shared competence, or indeed Member States retaining competence, in which the Commission may still be authorized to negotiate, including on behalf of Member States, but any Council decisions are taken by unanimity.

The Treaty of Rome established exclusive competence for the EEC in the area of trade policy (or the Common Commercial Policy, CCP). But there were (at least) two problems. The first was political. Member States were uneasy about being overridden by a qualified majority on matters of national interest. Irrespective of the Treaty therefore, from the mid-1960s onwards, decisions by unanimity became established practice. This problem was broadly overcome when, as part of the Single European Act of 1986, the spirit and letter of the original Treaty was not only restored, but the Treaty was also amended to extend qualified majority voting to a large number of issues (Gillingham 2003: 231). At the same time, the *modus operandi* of the Council's deliberations on trade continued to be – and remains – consensual on more sensitive and political issues.

The second problem was that the Treaty contained no exhaustive definition of the CCP (Woolcock 2002). Without a clear definition of its scope, there was a risk that any new trade-related issues would fall outside exclusive competence – thereby undermining the Commission's role as negotiator and bringing unanimity in through the backdoor.

This is exactly what occurred at the end of the Uruguay Round. Until then, the Commission and Member States had managed to work out pragmatic solutions. But

with the inclusion of services and intellectual property rights in the final outcome of the Uruguay Round, the conflicting views on the competence issue came to the fore. The matter was referred to the European Court of Justice in 1994. In its opinion 1/94, the Court ruled against the Commission: while confirming that the Commission had sole competence to conclude international agreements on trade in goods, the Court found that competence was shared with Member States on services (excluding cross-border services) and commercial aspects of intellectual property. Ever since, the Commission has sought, with support of some Member States, to expand the scope of exclusive competence over trade policy in subsequent Treaty revisions.

The Lisbon Treaty, which entered into force on 1 December 2009, has resolved many of these longstanding competence disputes by pushing the boundary of EU competence for CCP well beyond what had been readily accepted in the past. It substantially expands the scope of the CCP by *inter alia*: (1) ending the traditional distinction between trade in goods and trade in services as well as commercial aspects of intellectual property; (2) adding, on an equal footing, foreign direct investment (FDI); (3) limiting unanimity decisions by Member States to only a couple of specific situations; and (4) allowing the EU to negotiate trade agreements even on matters that have not yet been regulated internally, whilst confirming that the EU cannot use external negotiations to force harmonization in areas where the Treaty excludes such harmonization (Dimopoulos 2008).

But the Lisbon Treaty is no panacea for all competence-related disputes, nor does it dispense with the political need for a consensual approach to important trade deals. For the most deep and comprehensive trade agreements, such as the recent Korea FTA, unanimity is still the 'rule'. This is because the expansion of EU competence with the Lisbon Treaty still falls short of the even greater expansion of the scope of trade negotiations.

The Increasing Complexity of EU Trade Policy

In part as a consequence of the expansion of the EU trade policy scope and powers, the actors involved have changed and multiplied, leading to greater complexity in policymaking.

The Commission has evolved from a very slim bureaucracy to an organization with substantially expanded responsibilities, funding and staff. In addition, trade negotiations are not – and have never been – solely a matter for the Trade Commissioner and his service, DG TRADE. As the scope of trade policy has expanded, other commissioners and their services have also become more involved – directly or indirectly – in trade negotiations, or even pursue negotiations of their own which touch upon trade-related aspects, such as fisheries, geographical indications, energy and aviation. In consequence, internal coordination and coherence can, at times, be a challenge.

In the Council there are now 27 Member States and successive enlargements have influenced, to a varying degree, EU trade policy and its formulation. As the

constituent Member States have changed and the structure of their economies been transformed, the delicate balance of interests in the Council has altered. It has also become increasingly difficult to have detailed exchanges of views involving all or even most Member States, and individual Member States find it harder to ensure that their specific interests and concerns are taken into account. This change in the character of Council deliberations has in turn forced Member States to develop alternative routes – be they informal contacts, alliance-building or occasionally more politically visible ways – for exerting influence on EU trade policy (Elsig 2008).

The most dramatic and recent change in trade actors, however, concerns the European Parliament. While the Parliament was given substantially extended powers from the 1980s onwards, it was until recently more or less excluded from EU trade policymaking. The Lisbon Treaty has fundamentally changed this situation. Today, the European Parliament needs to give its consent to all EU trade agreements and acts as co-legislature for any regulation implementing the CCP. Given that the Parliament's deliberations are always political in nature, this has changed the character of, and raised the temperatures in, the debates over trade policy.

With growing concerns and intensified debate over globalization, various non-governmental organizations (NGOs) have also become increasingly involved. Traditionally, EU trade policy was mainly influenced by interest groups representing industrial and agricultural producers (Dür 2007, 2008b; Gerlach 2006). Such groups still dominate in many respects the lobbying on trade and, not least within the framework of the EU's trade instruments, tend to have rather privileged access to decision makers (De Bièvre and Eckhardt 2010 and 2011; Evenett and Vermulst 2005; Shaffer 2006).¹ Today, however, apart from broader representation by the private sector (for example, the services sector), NGOs focusing on developmental issues, environment and labour rights are now engaged in lobbying on many trade topics. Although these NGOs' influence has been questioned (Dür and De Bièvre 2007), both the Commission and Member States have responded by increasing transparency, engaging in public discussions and establishing more formalized frameworks for stakeholder dialogues. This has fuelled a more open debate on EU trade policy and, also with the involvement of the Parliament, increased attention to the relationship between trade and non-trade issues, such as in the union's relations with developing countries. Trade policy has become increasingly accessible.

¹ In part, this is due to the exclusive insights and knowledge of trade barriers that the private sector can offer. Such information is needed for the successful negotiation, legal challenges or application of trade measures. But it is also due to the fact that some instruments of the EU specifically build upon the collaboration between the private sector and trade officials, either in the Commission, in Member States or both, such as the Trade Defence Instruments (including anti-dumping), the Market Access Advisory Committees and the Trade Barrier Reports.

The Power Over EU Trade Policy: Decision Making Post-Lisbon Treaty

As discussed above, the Lisbon Treaty has consolidated EU-level decision making in trade policy by expanding the scope of the EU's exclusive competence, restricting the use of unanimity and more fully including the European Parliament on all aspects of trade (Woolcock 2008, 2010a, 2010b). Broadly speaking, the internal division of labour between the Commission, Council and the Parliament is that the Commission is the 'executive' whereas the Council and the Parliament approve all trade agreements and adopt relevant trade legislations. But this does not provide the full picture: both the operation and the distribution of power in the EU's trade policymaking need closer scrutiny.

Internal Procedures Relating to Trade Negotiations and Agreements

The EU decision making process related to trade negotiations and agreements is divided into three stages: (1) the approval of mandates and establishment of negotiating directives; (2) the conduct of the negotiations and the internal consultations on EU positions; and (3) the adoption of trade agreements. During each of these stages, the respective roles and relative powers of the Commission, the Council and the Parliament differ substantially.

The Commission is responsible for proposing a decision to open negotiations and directives on the objectives to be achieved (mandate), for negotiating trade deals usually as sole representative of the EU and for tabling the proposal to adopt the final agreement once negotiations have concluded. But despite its executive role, the Commission has no power to single-handedly decide on the launch of negotiations or to adopt trade deals – no matter how small or limited these may be. Informally, however, the Commission is usually able to exert considerable influence throughout the entire process (Elsig 2007; Meunier 2007). Through its proposal for mandate, the Commission can try to predetermine the form of instructions in subsequent negotiations (Elgström 2009). The fact that the Commission is, on practically all trade matters, conducting the negotiations also gives it a substantial information and knowledge advantage over the Parliament and, albeit to a lesser degree, the Council (see for example Dür 2006; Dür and Zimmermann 2007). This creates necessary room for manoeuvre for the Commission in its negotiating strategy. Considering the competing interests of 27 diverging Member States, this leeway also substantially helps the Commission find outcomes acceptable to the Council and the Parliament. The Commission tends – usually rather successfully – to frame the discussions in the approval process *inter alia* through presenting detailed summaries of the content of the deal negotiated and its benefits.

The Council is solely responsible for authorizing and setting the objectives for the negotiations. For the most part, however, the Council tends to make only limited changes to the Commission's proposed mandates. One reason for this is that

the mandate is usually preceded by a lengthy and symbiotic process of reflection between the Commission and the Council, including through feasibility studies and 'scoping exercises' with prospective trading partners. Another reason is that a Commission objection to any amendment to its proposal can only be overridden by a unanimous Council. On the other hand, for mandates covering areas of shared competence, any single Member State can block authorization. In the face of such potential deadlocks between the Commission and the Council, the tendency has been to keep mandates general on the EU's offensive interests in line with the Commission's original proposal, while making certain amendments to cater for specific Member States' defensive concerns.

Equally important is, however, that the Council can effectively supervise the Commission even after the mandate has been adopted. According to the Treaty, the Council shall assist the Commission during trade negotiations. This is done by the so-called Trade Policy Committee (TPC, former 133 or 113 Committee). In principle, any formal positions and proposals of the EU have to be discussed in the TPC before being submitted to negotiating partners. The Committee exists in various formations² and meets at least on a weekly basis. In addition, once a month, its meetings involve capital-based Director Generals or Senior Officials. These features ensure not only that the Council's views are properly taken into account by the Commission, but also prevent any undue influence on trade policy of other parts of the Council, such as groups working on foreign policy. Informally, the Council's control in the negotiating phase is further enhanced by the fact that Member States can limit the 'information advantage' of the Commission. Many Member States are members of the international organizations or arrangements where negotiations take place (such as G8, G20, WTO, WIPO and OECD) as well as having their own diplomatic channels with relevant negotiating partners. In addition, the Council and the Commission have agreed on a number of informal arrangements that secure Member States' participation in some restrictive meetings, although these have been called into question with the advent of the Lisbon Treaty (on the role of the Council more generally, and its relation to the Commission, see Damro 2007; De Bièvre and Dür 2005; Kerremans 2006; Meunier 2000, 2005, 2007).

Finally, the Council adopts any final trade agreement. In practice, the Council generally refrains from blocking any final deals at that stage. This is largely due to the Member States' general sense of ownership of the negotiations derived from both their decision on the mandate and their close association with the negotiations through the TPC. Also important is the fact that the Council, due to Member States' own relations with third countries, tends to be wary of the effects of any negative decisions on the EU's international standing and credibility.

² The different formations are, on a horizontal level, the Trade Policy Committee (TPC) – Full Members/Titulaires, as well as TPC deputies. In addition, there are three subgroups: TPC–services and investments, TPC–Steel, Textiles and Other Industrial Sectors (STIS) and TPC–Mutual Recognition Agreements. Besides the TPC, there is also a Council working group in charge of trade defence instruments and internal regulations, the so-called Working Party for Trade Questions (WPTQ).

The European Parliament, like the Council, needs to give its consent to all trade deals before they can enter into force. Contrary to the Council, however, it has no formal role in the authorization to launch negotiations. Similarly, the Parliament's role during the negotiating phase is limited to one of information – it has no specific role, as in the case of the TPC, in assisting the Commission – though it can and does debate negotiations in order to send political signals.

Informally, however, the Parliament can exert political influence, especially on the Commission, both with regard to the negotiating directives and in the negotiation phase, by exploiting the fact that its consent is needed for any final deal. Also, the mere fact that the Parliament's statements are public (as opposed to Council negotiating directives) makes it more difficult to disregard them at the negotiating phase. At the same time, however, the Parliament's influence tends to be more occasional and limited to issues which it considers politically significant, given its extensive legislative agenda and its limited expert knowledge on trade matters, which makes it more dependent on the information provided by the Commission.

As for the approval process, the Council and the Parliament are – at first glance – equals. But there are important differences in the Council's and Parliament's respective roles which influence their relative weight. First, the process is sequential. Only if and when the Council has authorized the signature of the agreement will the Parliament be asked to give its consent. Also, whereas the Parliament's consent is provided by simple majority vote, the decision by the Council is taken by QMV only for deals covering matters of EU exclusive competence, while unanimity is required for all other trade deals (even if the elements of shared or Member States' competence constitute a small part of the total deal). And if an agreement goes beyond exclusive competence, each Member State will also have to finalize their domestic ratification process (normally by national parliaments) after the Parliament's consent and before the agreement can enter into full force. Finally, on all matters in a trade deal falling under EU exclusive competence, the Council could decide that these elements are to be provisionally applied even before the Parliament's consent, although the normal route is likely to be that provisional application will follow after the Parliament's views have been heard. Therefore, in the approval process, the Council usually carries more weight. But the Parliament can still block trade deals and, certainly on more politically sensitive issues, its consent may prove more difficult to obtain than that of the Council.

The Legislative Process for Trade Acts

Following the Lisbon Treaty, the process for trade acts is the same as for other internal legislation, the so-called ordinary legislative procedure (OLP). Only the Commission has the power to propose trade legislation, while the Council and the Parliament are co-legislatures.

The procedure has three steps. First, once the Commission has tabled its legislative proposal, the Committee on International Trade (INTA) prepares the

Parliament's position (by simple majority), including possible amendments to the proposal. Second, following discussions in relevant Council groups, the highest ranking preparatory body of the Council, the Permanent Representatives Committee or COREPER approves (by QMV) an agreed position on both the Commission proposal and the Parliament's amendments. Thereafter, negotiations are held between all three institutions where the Commission is represented by the relevant service, the Council by the rotating presidency and the Parliament by the 'rapporteur' (the MEP in charge of preparing the Parliament's position). The procedure is geared towards compromise. But whereas in the past it took a few months to adopt a trade act, OLP may require lengthy negotiations, sometimes extending over one or even a couple of years.

Council and the Parliament are formally equals in the OLP, but experience suggests the Parliament tends to be relatively more influential (Hix 1999: 91–8, although this has been disputed by some theoretical modelling). This is partly because the Parliament is first to present amendments to the draft trade act, but more importantly, because the Parliament is less constrained by the whole-of-government view of Member States and can exploit the collective action problem to secure concessions from both the Council and the Commission. Specifically, the Parliament has tended to have greater impact the longer the legislative process. To date, however, there have been no really lengthy OLPs related to trade acts.

Of course, not all EU trade acts or trade measures are subject to the OLP. This concerns in particular the various implementing acts adopted within the framework of existing trade regulations, such as decisions on anti-dumping duties, countervailing duties, safeguard measures, etc. While such trade decisions were in the past adopted by the Council, following the Lisbon Treaty they are nowadays subject to the general rules of the so-called comitology, whereby the Commission is able to adopt such implementing acts, provided it consults with and secures sufficient support by Member States (or, rather, it does not face overwhelming opposition by Member States). Neither the Council nor the Parliament has any role under this procedure.

Other Factors Influencing EU Trade Policymaking

Beyond the procedural features of EU trade policymaking, the characteristics of each EU institution influence its scope to exercise any formal power in the policymaking process (Dür 2006).

The Commission remains a predominantly technocratic body where its Commissioners lack any direct links to EU constituents. In contrast, the Parliament lacks technical expertise on most trade issues, but carries substantial political weight, especially over the Commission by its control over the Commission's budget. The Council is a hybrid – on the one hand, many Member States tend to have considerable expertise on trade matters and, on the other hand, the elected governments of Member States (especially the larger Member States and the rotating presidency) can – if mobilized – exert considerable political influence at

EU-level. Thereby, both the Parliament and the Council can increase their influence by raising the political stakes on a subject matter. Conversely, the Commission and sometimes Member States can make use of their knowledge advantages, especially compared to the Parliament, in all phases of policymaking. And through its formal detachment from national interests, the Commission can often act as an honest broker between the Council and the Parliament.

Similarly, the degree of internal cohesion or divisions influences the EU institutions' relative power. In the case of the Commission, the sheer number of Commissioners and Commission services involved in trade negotiations increases the risk of divisions. In addition, not least via the Commissioners, Member States can occasionally exert influence directly into internal Commission decision making, especially on politically sensitive issues. When the Commission is faced with such internal divisions and political pressure, its position is weakened (Damro 2007). However, in the case of the Council, Member States rarely see eye to eye on trade policy. On trade matters that do not require unanimity, these divisions usually play into the hands of the Commission (and those Member States allied with the Commission) whereas unanimity – provided there are Member States willing to exploit it – tends to allow the Council to exert relatively more influence (Elgström and Frennhoff Larsén 2010; Meunier and Nicholaïdis 1999). Also, in the Parliament internal divisions are the rule, not the exception. The Parliament is organized into 20 Committees, seven different parliamentary groups and has 736 Members from 27 Member States. The obvious collective action problems arising in such a large legislative body can be used as a tool in negotiations with the Commission and the Council in OLP. But it can equally work to the disadvantage of the Parliament when faced with strong political pressure, especially from Member States. In many instances, the national affiliation of parliamentarians remains stronger than their party affiliation. On important issues, therefore, Member States can substantially influence the positions of their respective parliamentarians and reduce the independent impact of the Parliament over policymaking.

In sum, the nature of the matters at stake, the level of political involvement and the degree of internal divisions in each EU institution – to name but a few factors – can substantially blur the more formal distribution of powers in trade policymaking. Specifically, the more technocratic and narrow a trade decision is the more power the Commission tends to have. In such circumstances, only Member States will have meaningful possibility of controlling and influencing the Commission. Conversely, the Council and the Parliament tend to gain in power the more political and comprehensive a trade decision becomes, even if the Commission can still usefully act as an honest broker. In these cases, relatively speaking, the Council tends to be more influential over trade agreements and the Parliament over trade legislations. In the rare instances when a trade matter is discussed at the highest political level in the G8 or G20, it is the Council and especially large Member States that play a predominant role.

The Politics of the EU Trade Policy: Old and New Tensions

As the scope, power and process of EU trade policy has evolved, so has its politics. Besides the traditional tensions between openness and protectionism, EU trade policy has increasingly been subject to contentious debates over its relationship with the broader objectives of the EU's external relations, as well as other domestic priorities (Baldwin 2006; Young 2007; Young and Peterson 2006).

Liberalism versus Protectionism

The underlying principle of EU trade policy, as set out in the Treaty, is liberal. Compared with many of its trading partners, the EU market is also relatively open for both trade and investment and the EU has, in recent years, increasingly aspired to assume a leadership role in international negotiations (Bretherton and Vogler 2006; Dür 2008a; Ladefoged Mortensen 2009; Van den Hoven 2006).

At the same time, a number of specific elements of the union's trade policy clearly reflect a more protectionist and inward-looking premise. Besides the often-quoted example of agricultural trade, the EU has also traditionally pursued a mainly defensive trade policy in a number of specific sectors, such as fisheries, steel, textiles, clothing and footwear, consumer electronics as well as – albeit perhaps less so – automobiles. Naturally, therefore, some of the more difficult trade policy discussions have been in these areas. This remains the case today, as illustrated by the heated discussions on the EU's agricultural offers in the DDA and in the negotiations with MERCOSUR, on the automotive concessions in the Korea FTA, as well as on the EU's use of trade defence instruments (on TDIs, see Davis 2009; Erixon 2007).

Such tensions between liberalism and protectionism arise both between and within each of the different EU institutions. On balance, the Commission tends to be relatively liberal, the Council more middle-ground, and the Parliament more protectionist. These differences can partly be explained by the Commission's and the Council's direct links with trading partners; partly the Commission's relative insulation from constituents; and partly the Parliament's accessibility to lobbying without, as in the case of Member States or the Commission, the balance provided by in-house technical expertise and the necessity to take a whole-of-government view (see Kerremans and Gistelinck 2009, on comparison between Council and US Congress).

Nevertheless, the divisions are, in many instances, more profound within each of the EU institutions than between them. This is not least the case of the Council. Member States are usually divided between the 'Northern Liberals' that seek a more open trade position, and the 'Club Med' that is particularly preoccupied by foreign competition in specific sectors. The former group consists of the United Kingdom, Netherlands, Sweden, Denmark, Estonia and the Czech Republic, as well as – depending on the issue – Germany, Finland, Ireland, Austria, Slovenia and Latvia. The latter group is represented at its core by France, Italy, Greece,

Portugal and, even if it has become more liberally inclined, Spain. Other Member States that tend to have similar, or even coordinated, positions with Club Med are Poland, Lithuania, Romania, Bulgaria and Hungary, whereas Slovakia, Malta, Cyprus, Belgium and Luxembourg usually take the middle ground. The exact composition of the Council alliances will vary with the matter at stake: Ireland, for example, follows the Club Med line on agriculture. But these divisions among Member States are still broadly valid (Evenett and Vermulst 2005).

In the Commission, divisions and alliances can reflect those of the Council, in particular at the level of Commissioners and on more sensitive issues. However, the more common tensions over liberalism versus protectionism within the Commission arise in the relations between the trade and external services and the services in charge of agriculture, fisheries and industry (Damro 2007). In the Parliament, while alliances are normally meant to be built around party lines, divisions are also commonplace following national lines, as in the case of the Council, or following thematic lines (between different Parliamentary Committees), as in the case of the Commission.

In recent years, the tensions between liberalism and protectionism in EU policymaking have also evolved. Particularly with the growth of advanced developing countries, the focus of the debate in the EU has broadly shifted to the issue of reciprocity or a 'level playing field'. Many Member States and their MEPs, especially from the Club Med and some of the recently acceded Member States, are increasingly calling for concrete actions to address the situation, as they see it, that the EU is far more open than key trading partners.

This newer version of the traditional tension – now in the form of openness versus reciprocity – was one of the key aspects that the Commission tried to address, first in the trade strategy 'Global Europe' from 2006 as well as, more recently, in its communication on the future of EU trade policy in November 2010 and its communication on trade, growth and development in January 2012. The underlying political tradeoff presented here is between continued openness at home that is necessary to support EU growth and prosperity, and increased EU assertiveness abroad, especially against emerging economic powers, that is necessary to sustain public acceptance of open trade. This basic tradeoff has so far enjoyed considerable support in the EU. But it is politically unstable. After all, the delivery of the more assertive ambitions takes time and, to the extent it requires negotiations, the EU cannot guarantee equal access to third markets. Faced with what is portrayed as a persistent absence of fair and equitable trade, there is already a growing willingness in certain quarters of all EU institutions to favour a selective reduction in EU openness. The last years' financial and economic crisis has arguably only heightened these tensions.

Traditionalism versus Modernity

The trade policy of the EU today, like that of many other countries, touches upon areas that are at the heart of how states organize themselves and the instruments

they have at their disposal for fulfilling different societal needs – nationally as well as globally. In the last two decades therefore, stimulated by the debate over globalization, new political tensions over the EU trade policy have arisen, often linked to social, environmental and developmental policies, as well as the EU's external relations more generally. Among the issues that have received much public attention are the accessibility and affordability of medicines, the temporary access of foreign workers, health and water services, national or indigenous rights in the extraction of natural resources, protection of the environment and biodiversity, the multifunctionality of European agriculture, and matters of personal integrity or internet freedom. In the broadest sense, these tensions are between the traditional core focus of trade policy and a modern or more comprehensive approach to trade.

In the EU, all institutions have adopted this more or less comprehensive outlook on trade policy. For many years already, the Commission and the Council have responded to the need to modernize trade policy by explicitly recognizing that EU trade deals – besides furthering trade openness – can and should also help manage globalization, extend EU values and promote mutually sustainable development (De Bièvre 2006; Falke 2005; Farrell 2007; Grynberg and Qalo 2006; Heydon and Woolcock 2009; Holmes 2006; Jacoby and Meunier 2010; Jones 2006; Meunier 2007; Woolcock 2007). On that basis, for example, the regulatory objectives of the EU are now an integral part of its trade policy, not least in bilateral negotiations. The EU has also granted special and differential treatment to developing countries and included environmental and labour provisions in its agreements. In addition, the EU has pursued association agreements that incorporate trade as well as development cooperation (technical assistance) and political cooperation as, for example, with its neighbouring countries, the ACP countries and Central America (on EU position with ACP, see Elgström 2009). Since the mid-1990s, the EU has also required that all EU preferential trade agreements either include or are linked to political clauses, such as on human rights, democracy and – more recently – weapons of mass destruction, as well as provide for the suspension of trade benefits in the case of noncompliance with these political clauses (Szymanski and Smith 2005 illustrate this in the EU–Mexico FTA).

The Lisbon Treaty also explicitly recognizes that EU trade policy shall be guided by the objectives and principles of the Union's foreign actions. But the Lisbon Treaty remains silent on how this should be achieved. In consequence, there are growing and important differences between and within the EU institutions on what are legitimate societal interests and how best to promote them through trade policy, especially in relation to developing countries.

For the Commission and the Council at large, a modern and comprehensive approach has never equalled the subordination of trade policy to other policy objectives – rather these should be mutually supportive (Zimmermann 2007, 2008). In the Parliament, however, calls have been made for the Lisbon Treaty to require something different and new from the EU's trade policy. There is also much more widespread scepticism of the possibility of a mutually reinforcing relationship between trade liberalization, on the one hand, and the promotion of *inter alia* poverty-reduction, environment or labour standards, on the other hand. Similarly,

it has been suggested that trade rules are too intrusive on developing countries' policy space or indeed on the freedom of citizens in Europe. This scepticism is shared by a number of European NGOs, as illustrated not least by the debate over the EU's Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries and the Anti-Counterfeiting Trade Agreement (ACTA), as concerns enforcement of intellectual property (on EPAs, see Flint 2008; Koné 2010; Meyn 2006; Oxfam International 2006; Stevens 2008; Thallinger 2007, and for a more positive account, Curran et al. 2008; Farrell 2007; Sauvé and Ward 2009). In addition, many Parliamentarians (and NGOs) tend to be equally sceptical of, or indeed directly opposed to, the conclusion of trade agreements with countries that have poor human rights records or otherwise are considered politically inappropriate.

New tensions surrounding the EU's comprehensive trade policy objectives have also arisen in other – and partly conflicting – ways. Not least some newer Member States and their MEPs have increasingly questioned the continuation of the generous treatment that the EU offers imports from developing countries (Meyn 2008). It has been pointed out that the EU provides preferences to countries that have higher GDP per capita than some EU Member States. Combined with the growing calls for reciprocity, this constitutes a considerable challenge to the future development of the EU's various unilateral preference schemes, but also potentially its position in trade negotiations more generally.

Clear Conscience Protectionism?

A much less noticed development in the politics of trade has occurred entirely outside the realm of EU trade policymakers. This concerns the growing readiness of the EU to use the access to its internal market as a lever to force changes in third countries through the extraterritorial application of domestic regulations and requirements (Falke 2005).

In recent years, the EU has developed a number of internal regulations that ban or restrict what are deemed inappropriate economic activities – irrespective of where these activities occur. In some instances, the driving force has been public morality, like the ban in 2009 on the sale, import and transit of seal products. In other cases, the objective has been to use selected trade obstacles to force companies to avoid certain practices or production methods on a global scale, such as the ban on the sale of illegally logged wood products, sustainability criteria for bioethanol and palm oil, the ban on fish products derived from illegal, unregulated or unregistered fishing, as well as the proposed ban on cloned animals and their offspring.

Of course, there is nothing new about the imposition of domestic regulations which may be considered trade irritants by third countries. However, the novelty lies in fact that regulatory initiatives are increasingly justified by the effects that they should have on economic activities outside the borders of the EU – not by their effects on EU consumers.

One obvious reason for this development is the compelling nature of the matters at hand. After all, the problems of illegal logging or illegal fishing are global challenges that require immediate and decisive actions.

Another reason, however, is the strength of the alliances inside the EU between those caring acutely about the need to address a global challenge or to export European 'values' and those finding the proposed regulations convenient to protect defensive interests. For example, the ban on illegal fish imports was agreed without any additional measures to reform the EU fisheries agreements with developing countries or to curtail the overfishing by the heavily subsidized EU fishing fleet. Similarly, the ban on illegal logging was adopted without either any parallel steps to improve the preservation policies of Member States or any serious upscaling of the EU's support to developing countries' forestry agencies.

The Parliament in particular has been driving this novel development, although alliances with specific Member States in the Council, combined with the lobbying of a few powerful NGOs, have been instrumental in pushing through the regulations. Interestingly, the private sector has been unable to exert any meaningful influence and the developmental NGOs have, to date, stayed clear of the debate despite the impact on developing country exports. Among Member States, paradoxically, some of the main champions of this development can be found among the Northern Liberals, albeit with support from the Club Med countries.

On domestic regulations, there is thus arguably an increasing trend in the EU towards 'clear conscience protectionism'. The irony is that the EU appears to be increasingly replicating the extraterritorial approach of the US Congress – of which the EU has in the past been among the strongest critics.

Future Challenges for EU Trade Policy

While the Lisbon Treaty is likely to have far less effect on the Commission and the Council than is sometimes claimed, the inclusion of the Parliament in all aspects of trade policymaking represents a fundamental departure from past practice. Although it is too early to assess the full implications of this change, there are reasons to expect that its effects will be significant, also for the Union's trading partners.

Regarding the content of EU trade policy, the involvement of the Parliament is likely to pave the way for increased (albeit probably selective) protectionism and reciprocity, especially for traditionally sensitive sectors, as well as for greater emphasis on the relationship between trade and other policy areas, not least social issues, environmental concerns and respect for human rights.

Regarding the formulation of trade policy, the inclusion of the Parliament has increased the accessibility of EU trade policymaking. Trade policy is likely to become more transparent, also providing better opportunity for EU-level public debates and scrutiny of the Union's trade policy actions, although possibly at the expense of national debates and the scrutiny of national parliaments. The other

side of this coin is, of course, that trade policymaking is also likely to become more burdensome, complex, politically contentious and, ultimately, inefficient.

From this perspective, EU trade policy is at a critical juncture: efficiency risks being sacrificed at the altar of representational legitimacy.

The key future challenge is what could be done to restore efficiency, also taking into account that the EU still derives much of its public approval from the benefits that citizens derive from its decisions, rather than the method by which the decisions were taken. Merely continuing on the path of expanding EU competence is unlikely to do the trick. Instead, real and effective solutions may require establishing genuine executive powers for the Commission to conclude certain trade deals, as well as formalizing more expedite procedures for the Council's and the Parliament's adoption of trade legislations. But such solutions would be controversial. The question, therefore, is whether the EU needs to go through a period, at least for the coming years, of internal divisions and possible deadlocks before EU trade policy can become more forward-looking, efficient and legitimate.

References

- Baldwin, M. 2006. EU trade politics – heaven or hell? *Journal of European Public Policy*, 13(6): 926–42.
- Bretherton, C. and Vogler, J. 2006. The EU as an economic power and trade actor, in *The European Union as a Global Actor*. 2nd Edition. London: Routledge: Chapter 3.
- Curran, L., Nilsson, L. and Brew, D. 2008. The economic partnership agreements: rationale, misperceptions and non-trade aspects. *Development Policy Review*, 26(5): 529–53.
- Damro, C. 2007. EU delegation and agency in international trade negotiations: a cautionary comparison. *Journal of Common Market Studies*, 45(4): 883–903.
- Davis, L. 2009. Ten years of antidumping in the EU: economic and political targeting. *ECIPE Working Paper 2/2009*. Brussels: ECIPE.
- De Bièvre, D. 2006. The EU regulatory trade agenda and the quest for WTO enforcement. *Journal of European Public Policy*, 13(6): 851–66.
- De Bièvre, D. and Dür, A. 2005. Constituency interests and delegation in European and American trade policy. *Comparative Political Studies*, 38(10): 1271–96.
- De Bièvre, D. and Eckhardt, J. 2010. The political economy of EU anti-dumping reform. *ECIPE Working Paper 03/2010*. Brussels: ECIPE.
- De Bièvre, D. and Eckhardt, J. 2011. Interest groups and the failure of EU anti-dumping reform. *Journal of European Public Policy*, 18(3). [Online] Available at: www.ua.ac.be/main.aspx?c=dirk.debievre [accessed: 24 January 2011].
- Dimopoulos, A. 2008. The Common Commercial Policy after Lisbon: establishing parallelism between internal and external economic policy? *Croatian Yearbook of European Law and Policy*, 4: 102–31.
- Dür, A. 2006. Assessing the EU's role in international trade negotiations. *European Political Science*, 5: 362–75.

- Dür, A. 2007. EU trade policy as protection for exporters: the agreements with Mexico and Chile. *Journal of Common Market Studies*, 45(4): 833–55.
- Dür, A. 2008a. Bargaining power and trade liberalization: European external trade policies in the 1960s. *European Journal of International Relations*, 14(4): 645–69.
- Dür, A. 2008b. Bringing economic interests back into the study of EU trade policy-making. *British Journal of Politics and International Relations*, 10(1): 27–45.
- Dür, A. and De Bièvre, D. 2007. Inclusion without influence? NGOs in European trade policy. *Journal of Public Policy*, 27(1): 79–101.
- Dür, A. and Zimmermann, H. (eds). 2007. Introduction: the EU in international trade negotiations. *Journal of Common Market Studies*, 45(4): 771–87.
- Elgström, O. 2009. Trade and aid? The negotiated construction of EU policy on economic partnership agreements. *International Politics*, 46(4): 451–68.
- Elgström, O. and Frennhoff Larsén, M. 2010. Free to trade? Commission autonomy in the economic partnership agreement negotiations. *Journal of European Public Policy*, 17(2): 205–23.
- Elsig, M. 2007. The EU's choice of regulatory venues for trade negotiations: A tale of agency power? *Journal of Common Market Studies*, 45(4): 927–48.
- Elsig, M. 2008. EU trade policy after enlargement: does the expanded trade power have new clothes? Paper for the APSA Annual Conference, Boston, 28–31 August.
- Erixon, F. 2007. Anti-dumping in the European Union, in *Anti-Dumping: Global Abuse of a Trade Policy Instrument*, edited by B. Debroy and D. Chakraborty. New Delhi: Academic Foundation: 119–32.
- Evenett, S. and Vermulst, E. 2005. The politicisation of EC anti-dumping policy: Member States, their votes and the European Commission. *The World Economy*, 28(5): 701–17.
- Falke, A. 2005. EU–USA trade relations in the Doha Development Round: market access versus a post-modern trade policy agenda. *European Foreign Affairs Review*, 10(3): 339–57.
- Farrell, M. 2007. From EU model to external policy? Promoting regional integration in the rest of the world, in *Making History: European Integration and Institutional Change at Fifty*, edited by S. Meunier and K. McNamara. Oxford: Oxford University Press: 299–315.
- Flint, A. 2008. *Trade, Poverty and the Environment: The EU, Cotonou and the African–Caribbean–Pacific Bloc*. New York: Palgrave Macmillan.
- Gerlach, C. 2006. Does business really run EU trade policy? Observations about EU trade policy lobbying. *Politics*, 26(3): 176–83.
- Gillingham, J. 2003. *European Integration 1950–2003: Superstate or New Market Economy?* New York: Cambridge University Press.
- Grynberg, R. and Qalo V. 2006. Labour standards in US and EU preferential trading arrangements. *Journal of World Trade*, 40(4): 619–53.
- Heydon, K. and Woolcock, S. 2009. Key findings and looking ahead, in *The Rise of Bilateralism: Comparing American, European and Asian Approaches to Preferential Trade Agreements*. Tokyo: United Nations University Press: 231–66.
- Hix, S. 1999. *The Political System of the European Union*. London: Macmillan Press.

- Holmes, P. 2006. Trade and domestic policies: the European mix. *Journal of European Public Policy*, 13(6): 815–31.
- Jacoby, W. and Meunier, S. 2010. Europe and the management of globalization. *Journal of European Public Policy*, 17(3): 299–317.
- Jones, E. 2006. Europe's market liberalization is a bad model for a global trade agenda. *Journal of European Public Policy*, 13(6): 943–57.
- Kerremans, B. 2006. Proactive policy entrepreneur or risk minimizer? A principal-agent interpretation of the EU's role in the WTO, in *The European Union's Roles in International Politics*, edited by O. Elgström and M. Smith. Oxford: Routledge: 172–88.
- Kerremans, B. and Gistelinck, M.M. 2009. Interest aggregation, political parties, labour standards and trade: differences in the US and EU approaches to the inclusion of labour standards in international trade agreements. *European Foreign Affairs Review*, 14: 683–701.
- Koné, S. 2010. Economic partnership agreement between West Africa and the European Union in the context of the World Trade Organization (WTO) and the regional integration process. *Journal of Economic Integration*, 25(1): 104–28.
- Ladefoged Mortensen, J. 2009. The World Trade Organization and the European Union, in *The European Union and International Organisations*, edited by K.E. Jørgensen. London: Routledge: 156–99.
- Meunier, S. 2000. What single voice? European institutions and EU–US trade negotiations. *International Organization*, 54(1): 103–35.
- Meunier, S. 2005. *Trading Voices: The European Union in International Commercial Negotiation*. Princeton: Princeton University Press.
- Meunier, S. 2007. Managing globalization? The EU in international trade negotiations. *Journal of Common Market Studies*, 45(4): 905–26.
- Meunier, S. and Nicholaïdis, K. 1999. Who speaks for Europe? The delegation of trade authority in the EU. *Journal of Common Market Studies*, 37(3): 477–501.
- Meyn, M. 2006. *The Impact of EU Free Trade Agreements on Economic Development and Regional Integration in Southern Africa: The Example of EU–SACU Trade Relations*. Bremen: Peter Lang.
- Meyn, M. 2008. EPAs: A 'historic step' towards a 'partnership for equals'? *Development Policy Review*, 26(5): 515–28.
- Oxfam International. 2006. Slamming the door on development: analysis of the EU's response to the Pacific's EPA negotiating proposals. *Oxfam Background Paper*, December 2006.
- Sauvé, P. and Ward, N. 2009. The EC–CARIFORUM economic partnership agreement: assessing the outcome on services and investment. *ECIPE Paper*, January 2009. Brussels: ECIPE.
- Shaffer, G. 2006. What's new in EU trade dispute settlement? Judicialization, public–private networks and the WTO legal order. *Journal of European Public Policy*, 13(6): 832–50.
- Stevens, C. 2008. Economic partnership agreements: what can we learn? *New Political Economy*, 13(2): 211–23.

- Szymanski, M. and Smith, M.E. 2005. Coherence and conditionality in European foreign policy: negotiating the EU–Mexico global agreement. *Journal of Common Market Studies*, 43(1): 171–92.
- Thallinger, G. 2007. From apology to utopia: EU–ACP economic partnership agreements oscillating between WTO conformity and sustainability. *European Foreign Affairs Review*, 12(4): 499–516.
- Van den Hoven, A. 2006. European Union regulatory capitalism and multilateral trade negotiations, in *Values and Principles in European Union Foreign Policy*, edited by S. Lucarelli and I. Manners. London: Routledge: 185–200.
- Woolcock, S. 2002. Utvecklingen av EU's handelspolitik, in *Handelspolitik i förändring: Organisation och förhandling i Sverige, EU och WTO*, edited by J. Reiter and C. Jönsson, Stockholm: SNS Förlag: 73–92.
- Woolcock, S. 2007. European Union policy towards free trade agreements. *ECIPE Working Paper No. 03/2007*. Brussels: ECIPE
- Woolcock, S. 2008. The potential impact of the Lisbon Treaty on European Union external trade policy. *SIEPS 2008:8epa*. Stockholm: Swedish Institute for European Policy Studies.
- Woolcock, S. 2010a. The Treaty of Lisbon and the European Union as an actor in international trade. *ECIPE Working Paper No. 1/2010*. Brussels: ECIPE.
- Woolcock, S. 2010b. Trade policy: a further shift towards Brussels, in *Policy Making in the European Union*, 6th Edition, edited by M. Pollack, A.R. Young and H. Wallace. Oxford: Oxford University Press: 381–99.
- Young, A.R. 2007. Trade politics ain't what it used to be: the European Union in the Doha Round. *Journal of Common Market Studies*, 45(4): 789–811.
- Young, A.R. and Peterson, J. 2006. The EU and the new trade politics. *Journal of European Public Policy*, 13(6): 795–814.
- Zimmermann, H. 2007. Realist power Europe? The EU in the negotiations about China's and Russia's WTO accession. *Journal of Common Market Studies*, 45(4): 813–32.
- Zimmermann, H. 2008. How the EU negotiates trade and democracy: the cases of China's accession to the WTO and the Doha Round. *European Foreign Affairs Review*, 13(2): 255–80.

This page has been left blank intentionally