

## PART III

# Activities and Impact

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## CHAPTER 10

# The European Union as a Trade Power

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### ■ Summary

Trade liberalization, internally and externally, has been the essence of European integration since the Treaty of Rome. Successive enlargements, along with the constant deepening of the single market, have turned the European Union (EU) into the world's largest trade power (a fact that might change after Britain's exit from the EU). The EU is responsible for making trade policy through a complex decision-making process, often contested politically, which allows it to speak on behalf of its members in



international trade negotiations. This chapter argues that not only does the EU derive some inherent power from trade, but it also uses trade as the backbone of its normative power. As a result, the EU has quietly become a world power through trade, both as one of the major actors shaping the global trade agenda and as a strategic user of its market access in order to obtain political concessions from its commercial partners. This role has been increasingly challenged, however, by recent changes in the relative power of global trade actors and by institutional and political changes internal to the EU, which have forced Europe to refocus its trade policy towards more traditional commercial objectives. This chapter explores the determinants of the EU's trade power and examines the contribution of trade policy to the power of Europe in the international system, both in the context of international trade agreements and in the broader framework of international relations.

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## Introduction

If there is any area in which the EU has become an uncontested power in the international system, it is in the field of trade policy. No wonder: trade is the EU's *raison d'être*. The objective of the 1957 Treaty of Rome was to create a customs union between the original six members of the European Community (EC) in which there would be no barriers to trade and a common external tariff would be applied to imports from third countries. From its very beginning, then, the Community became a single actor in international trade policy and almost immediately started talking on an equal footing with the USA in commercial negotiations (Elsig 2002; Young 2002; Meunier 2005; Meunier and Nicolaïdis 2006). With its successive enlargements from six to 28 countries, the EU has become a formidable trade power and interlocutor in international trade negotiations.

While the USA and China are almost always presented by the media and politicians as the largest traders in the world, it is actually the EU that has long been, and still remains, the main actor of world trade to this day (counting only extra-EU trade). In 2015, the EU 28 accounted for 16.3 per cent of world trade in goods and services (vs 13.7 per cent for China and 14.8 per cent for the USA), 14.7 per cent of world trade in goods (vs 14.9 per cent for China and 14.4 per cent for the USA), and 22.2 per cent of world trade in services (vs 9.1 per cent for China and 16.4 per cent for the USA) (European Commission 2016). Even if the UK were to leave the EU trade area entirely following the Brexit vote, the EU would still be virtually tied with China and the USA as the world's largest trader (see Table 10.1).

Partly by design, partly by necessity, the EU entertains a very different relationship to power from that of the USA or China. It sees itself above all as a civilian and a

**TABLE 10.1** Global exports and imports of goods and services in 2015  
(in billion euros)

	EU 28	EU 27 (minus UK)	China	USA
Exports of Goods	1791.5	1561.0	2050.4	1356.4
Exports of Services	811.2	622.4	207.6	640.1
Exports of Goods and Services	2602.7	2183.4	2258.0	1996.5
Imports of Goods	1727.1	1465.4	1516.0	2080.2
Imports of Services	660.5	565.0	442.2	396.3
Imports of Goods and Services	2387.6	2030.4	1958.2	2476.5

*Source:* DG Trade Statistical Guide June 2016 (European Commission 2016)

normative power, apt at using non-military tools to achieve its goals in the rest of the world (Duchêne 1973; Hill 1990; Manners 2002; Nicolaïdis and Howse 2002; Orbie 2011; Carbone and Orbie 2014a; Young and Peterson 2014; Damro 2015b). Trade is at the very core of the EU's civilian power. The sheer size of the European single market, which attracts the outside world both for the possibilities it offers and from fear of being excluded, is an essential element of EU power. Yet the power of the EU in trade goes further than its capacity to defend its own interests in international commercial negotiations. It also lies in its capacity to expand its own regulatory practices to the rest of the world and to use trade to promote internationally its own values and policies according to its internal compromises. This role has been challenged, however, by recent changes in the relative power of global trade actors and by institutional and political changes internal to the EU, which have forced it to re-focus its trade policy towards more traditional commercial objectives.

In keeping with the driving themes of this volume, the present chapter explores the determinants of the EU's trade power and examines the contribution of trade policy to the power of Europe in the international system, both in the context of international trade agreements and in the broader framework of international relations. In doing so we argue that it is crucial to distinguish between the inherent power derived from trade and the use of trade as the backbone of normative power. We start by recounting how the EU acquired and expanded competence to represent the member states in trade policy, from Rome to Lisbon. The second section provides an overview of the EU trade policymaking process. The third section explores the exercise of the EU's trade power and analyses whether and how the EU can still shape the global trade agenda in a world where relative economic power has shifted and political contestation of the EU has increased. We conclude by assessing how the EU is resolving the tensions inherent to being a world power in trade and through trade.

## The road to European competence in trade

The Common Commercial Policy (CCP) is the most prominent EU policy to have been under supranational competence from the very beginning of European integration. Whether in bilateral, regional, or multilateral trade negotiations, Europe formally ‘speaks with one voice’ and negotiates through one agent, the European Commission. The very idea that nation states could give up such a key area of their external affairs was, and continues to be, revolutionary. But the granting of competence over trade to the supranational authority has not always been without political controversy (Meunier and Nicolaïdis 1999; Young 2002; Meunier and Nicolaïdis 2006; Woolcock 2012). This section explores how the current institutional framework for trade policy in the EU has resulted from a series of conflicts over the balance between competences exclusive to the EU and those shared with the member states, the European Parliament (EP), and even civil society.

### The Common Commercial Policy in the Treaty of Rome

As the nascent EC’s *raison d’être*, trade policy came under supranational competence in the Treaty of Rome. This revolutionary document not only contained unusually broad injunctions for achieving free trade internally but also granted the new supranational entity an external personality with the authority to elaborate, negotiate, and enforce all aspects of trade relations (but not foreign direct investment, FDI) with the rest of the world.<sup>1</sup> In practice, this was done through the establishment of a common commercial policy based on three principles: a common external tariff, common trade agreements with third countries, and the uniform application of trade instruments across member states.

Until the 1997 Amsterdam summit, the Treaty of Rome’s original wording of Article 113,<sup>2</sup> which granted the Community exclusive competence in ‘trade’ policy (without defining the term), remained almost unchanged (Devuyst 1992). The provisions determining the trade policymaking process delegated authority from the individual states and their parliaments to the assembly of European states, acting collectively through the Council of Ministers. This approach can be understood in classic principal–agent terms: the member states (principals) have delegated their authority to conclude trade agreements to the EC (agent), acting on their behalf. This contrasts with areas of ‘mixed’ competence (such as the negotiation of association agreements), where formal authority remains with the individual member states, in particular through parliamentary ratification. In both cases, the member states represent the ultimate authority, but in the former it is as voting parties in the EU structures, while in the latter it is through their sovereign parliament. The conduct of trade policy in practice reveals a second level of delegation, this time from the Council of Ministers (principals) to the European Commission (agent), which

initiates the participation of the EU in international trade negotiations and negotiates on behalf of the member states.

### **The challenge to exclusive competence during the 1990s**

During the two decades following the Treaty of Rome, the Commission successfully negotiated on behalf of its members two major trade rounds under the General Agreement on Tariffs and Trade (GATT), as well as a host of bilateral trade agreements. Throughout the 1980s and 1990s, however, several developments challenged the clear foundations of the Community's trade competence.

The first of these challenges was the emergence of so-called 'new issues' (such as services and investment) onto the international trade agenda in the mid-1980s. Issues such as aviation and product standards had been discussed already at the close of the Tokyo Round in 1979, but most member states considered these too domestically sensitive to leave entirely to the Commission.<sup>3</sup> The subsequent expansion of the world trade agenda onto policies traditionally not 'at the border' (e.g. tariffs and quotas) but 'inside the state' (e.g. national laws and regulations) forced an explicit internal EU debate on the issue of competence. Several member states, reluctant to give up forever entire new sectors of their trade policy, insisted on being granted their own competences with respect to the 'new issues', arguing that these were not covered under the original Treaty of Rome.

Another challenge was the creation of the new World Trade Organization (WTO), with a broader trade agenda than GATT, which forced the issue of trade authority to the fore (Devuyst 1995). The question of membership constituted an unavoidable legal challenge for the EC, even though the rest of the world left it up to the Europeans to decide how this would be settled. The EC had never formally substituted the member states in GATT, whose creation preceded that of the Community, but for all practical purposes, the EC—represented by the Commission—had been accepted by the other GATT partners as one of them. Moreover, formally replacing the member states by the EC could have a cost, since the individual voting rights of member states in GATT would give way to a single vote.<sup>4</sup>

In order to solve the competence dispute, the Commission asked the European Court of Justice for an 'advisory opinion' on the issue of competence. In November 1994, the European judges confirmed that the Community had sole competence to conclude international agreements on trade in goods.<sup>5</sup> In a controversial move, however, they also held that the member states and the Community shared competence in dealing with trade in the 'new issues'.<sup>6</sup> As we have argued elsewhere, the Court in effect had put the ball back in the politicians' court (Meunier and Nicolaïdis 1999; Nicolaïdis and Meunier 2002). To avoid future competence disputes, they would have to amend the treaty either by following the Court's opinion and enshrining this new sharing of sovereignty in the texts or by explicitly 'expanding' Community trade competence to include new issues.

## **From Amsterdam to Nice: a political solution to the competence dispute**

The resolution of the competence dispute over trade policymaking was tacked onto the broad agenda of the 1996 intergovernmental conference (IGC), which was expected to design an institutional reform that would enable the Union to function with at least 25 members in the next millennium. Yet the member states could not agree to put the competence issue in trade to rest. The IGC culminated with the signing of the Amsterdam Treaty, in which the member states eventually agreed to a simple and short amendment to Article 113 (renumbered 133) allowing for future expansion of exclusive competence to the excluded sectors through a unanimous vote of the Council.<sup>7</sup> In trade policy, the Amsterdam outcome was a statement that extension of Community competence should be the result of case-by-case political decisions rather than some uncontrollable spillover.

Not surprisingly, it quickly became clear that the Amsterdam compromise on trade was not sustainable. Member states felt compelled to review the trade competence issue once more at Nice in December 2000 for three main reasons. First was the significant increase in trade in services which had taken place since 1997. In order to capitalize on such growth, Commission trade officials, with Frenchman Pascal Lamy at the helm since September 1999, insisted that trade in services be transferred under the exclusive competence of the Community for reasons of efficiency.

Second, trade had suddenly become a hot political issue, as globalization gave rise to a new brand of well-organized activists worldwide. The defeat of the Organisation for Economic Co-operation and Development (OECD)-based Multilateral Agreement on Investment in 1998—which aimed to facilitate international investment by ensuring that host governments treat foreign and domestic firms equally favourably—was similarly interpreted by anti-globalization activists as a victory against a text that would have limited the ability of national governments to regulate the protection of their culture, environment, natural resources, and health. Trade was again highly politicized in the summer of 1999 when French sheep farmer José Bové and his companions very publicly destroyed a McDonald's in the French countryside in response to the retaliatory trade sanctions that the WTO had authorized the USA to take against the EU in the beef hormones and bananas cases. This politicization of trade reached its peak in December 1999 when the international trade talks in Seattle, which were supposed to launch a new round of multilateral trade talks, collapsed amidst massive public demonstrations by anti-globalization protesters. All of these episodes were reflections of, and further contributing factors to, the increasingly contentious character of trade, especially on matters of cultural, educational, and social services—issues that had been left open to further transfers of competence by the Amsterdam compromise.<sup>8</sup>

Third, the prospect of the imminent enlargement of the EU to many more countries, all with disparate and even contradictory interests, lent a double sense of urgency to revisiting the trade competence issue. On the one hand, external representation risked increased inefficiency at best, stalemate at worst. An arrangement originally designed

for six members would likely no longer be adequate when the 'single voice' has to represent 28 different countries. On the other hand, the current members may have had an interest in 'locking in' their preferred institutional design before the widening to new members. The prospect of new entrants eager to use their veto power to block trade liberalization in some sectors or, on the contrary, eager to favour liberalization in other areas where existing members would prefer protection may have proven enough of an incentive for the existing members of the EU to settle the institutional question in Nice.

The final agreement reflected the bargaining dynamics of the negotiation. There was a general momentum in Nice to expand qualified majority voting (QMV), and Article 133 was to be no exception. Exclusive competence became the general rule for trade in services (Article 133.5). Exceptions to exclusive competence in order to satisfy residual national sensitivities were kept to a minimum and carved out under a 'positive list' approach. First and foremost, the treaty enshrined the concept of 'mixed competence' developed by the Court in its 1994 jurisprudence as a new legal category. Particularly noteworthy is the explicit inclusion of the 'cultural exception' clause in Community law, with cultural and audiovisual services falling under mixed competence alongside education, social, and human health services. In addition, transport remained under a separate legal basis (Title V and Article 300). Finally, intellectual property was divided into two components: 'commercial aspects of intellectual property', which fall under exclusive competence, and all other aspects of intellectual property, which are shared. But the Council could decide by unanimity that the provisions relevant to exclusive competence can be extended to the latter—a last echo of the defunct Amsterdam compromise. In EU parlance, the 'passerelle clause' had now been circumscribed to one last, sensitive, area of trade negotiations.

This outcome proved quite satisfactory for most member states: for France (adamant about cultural exception); for the UK (which cared more about the linkage with taxation); for Germany (which was happy about the result for air transport, and whose *Länder* were content with shared competence on culture); and for the pro-integration countries, which could claim that the original spirit of the Treaty of Rome had been, at least to some extent, restored.

## Trade policy after the Lisbon Treaty

The debate over competence and representation in trade policy was not closed with the Nice Treaty. When a Convention on the Future of Europe was convened in the spring of 2002 to draft a constitution, many voices demanded a greater role for the EP in trade. Indeed, these demands arose as trade policy increasingly encroached on politically sensitive issues that used to be the exclusive domain of domestic regulation, such as food safety and culture. The Commission supported this push for a greater role for the parliament in trade policy, on the implicit grounds that the parliament's right to veto bilateral and multilateral trade deals could provide the EU with greater leverage in international trade negotiations. In the end, the Lisbon Treaty

introduced several changes to trade policymaking, seemingly bringing the 50-year march to total EU control over trade to its logical conclusion.

First, the Lisbon Treaty simplified trade policymaking. It entrenched the principle of exclusive Community competence in trade. It also further extended the scope of trade policy, which now applies to goods, services, and, for the first time, FDI. The only exception remains transport. The use of QMV was broadened correspondingly. According to Article 207 of the Lisbon Treaty, the only exceptions to the use of QMV are trade in cultural and audiovisual services when such agreements could jeopardize the cultural and linguistic diversity of the EU (the so-called ‘cultural exception’), as well as in the field of trade in social, education, and health services.

Second, the Lisbon reform opened up greater avenues for parliamentary control. According to Article 207, the ‘framework for implementing the common commercial policy’ now has to be adopted jointly by the Council and the Parliament ‘in accordance with the ordinary legislative procedure’, meaning that the Parliament shares powers with the Council when it comes to a whole variety of trade-related measures, from anti-dumping to the Generalized System of Preferences (GSP). Moreover, the Parliament must be kept informed of the progress of trade negotiations. Finally, according to Article 218, the Parliament needs to give its consent for the ratification of trade agreements, whether multilateral or bilateral. In the end, only the launching of new trade negotiations remains outside its remit (Woolcock 2012; Van den Putte, De Ville, and Orbie 2015).

It is still too early to determine whether EU trade policy will function more effectively as a result of these changes, but Article 207 appears to represent a relatively stable equilibrium after more than a decade of haggling over the precise delineation of powers between the EU and the member states. One exception is the inclusion of FDI under the CCP, which was not debated prior to the Lisbon Treaty and has given rise to judicial and political challenges as the first international agreements negotiated by the EU since Lisbon are making their way through the ratification process. It may take many more years before the question of competence over FDI is settled (Meunier forthcoming 2017). The formal involvement of the EP in trade policymaking will likely lead to greater emphasis on issues related to human and labour rights—e.g. ‘trade and ...’ issues, or those related to consumer protection and safety, such as the EU ban on aircraft engine hush-kits to meet noise standards, or data privacy protection, or broadcast and motion-picture quotas. Lobbies and other non-governmental organizations might also find greater access to trade policymaking through the Parliament, an issue we now turn to.

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## The EU trade policymaking process

How does the EU make its policy decisions in commercial policy? The key to this question is the relationship between the Commission and the member states, which can be stylized as a principal–agent relation (Egan 1998; Nicolaïdis 2000; Da

Conceição 2010; Dür and Elsig 2011). We shall outline the precise steps and specify the actors involved during each of these steps.

We first need to distinguish between four stages in the negotiation of international agreements: 1) the design of a negotiation mandate; 2) the representation of the parties during the negotiations; 3) the ratification of the agreement once negotiated; and 4) the implementation and enforcement of the agreement once it is brought into force. Whether the Community is perceived to speak with 'one voice' is most relevant during the negotiations but is also affected by shared expectations about the ratification stage.

In theory, the core difference between exclusive and mixed competence comes at the ratification stage. Mixed competence in trade simply means that delegation of authority on the part of the member states is granted on an ad hoc basis for negotiation purposes rather than systematically. Individual member states retain a veto both through unanimous voting in the Council and through ratification by their own national parliament. In practice, the difference is more blurred. On the one hand, exclusive competence does not guarantee a single voice: member states might fail to find a majority behind a given policy and if so, their external front may crumble. More to the point, powerful member states still exercise an informal veto at both the mandate and the ratification stages, to the extent that the Luxembourg compromise extends to the trade area. Conversely, member states have managed to speak with one voice in areas of mixed competence or common foreign policy (coordination of EU voting has risen from 86% in 1991–2 to 97% in 1998–9 and has remained at this level). The principle of unity of representation through the Commission is valid under both configurations, even if in both cases individual member states usually seek to reduce Commission autonomy to the extent tolerated by their partners. Nevertheless, the expression of dissent is dampened, the incentives for seeking compromise increased, and the role of the Commission enhanced in areas of exclusive competence.

## **The negotiating mandate**

The European Commission has the power to propose legislation, act as the guardian of EU treaties, and ensure that EU legislation is implemented by all members. The Commission's role in the EU institutional edifice is to act in support of the collective goals and needs, independently of instructions from national governments. Therefore it is up to the Commission to elaborate proposals for the initiation and content of international trade negotiations (Johnson 1998; Meunier and Nicolaïdis 1999; Woolcock 2000; Elsig 2002; Meunier 2005). The initial proposals are made by staffers in the Trade Directorate (DG Trade), based like the rest of the Commission in Brussels. DG Trade assists, and answers to, the EU Trade Commissioner, nominated by the member states for a 5-year term (Pascal Lamy 1999–2004; Peter Mandelson 2004–8; Catherine Ashton 2008–9; Karel de Gucht 2010–14; Cecilia Malmström 2014–). DG Trade also oversees the use of trade policy instruments (see Box 10.1).



**BOX 10.1 EU trade policy instruments****Trade policy instruments**

The EU Commission, through DG Trade, also oversees the use of trade policy instruments, which are of the defensive and the proactive types:

- *Defensive instruments:* trade defence instruments may be used to counter unfair trade practices by other countries, in accordance with WTO agreements. They consist of:
  - Anti-dumping measures: used to counter dumping, which occurs when manufacturers from a non-EU country sell goods in the EU below the sales price in their domestic market or below the cost of production—this is the most frequent trade-distorting practice.
  - Anti-subsidy measures: used to combat subsidies, which help to reduce production costs from abroad or cut the price of EU exports, with the consequence of distorting trade.
  - Safeguards: the WTO allows a country to temporarily restrict imports of a product if its domestic industry is seriously injured by a surge in imports.
- *Proactive instruments:* The Trade Barriers Regulation enables companies to lodge a complaint with the EU Commission when they feel they encounter trade barriers that restrict their access to third-country markets.

*Source:* <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/>

Once DG Trade has elaborated proposals for trade negotiations, the key policy discussions take place in a special advisory committee, called the Trade Policy Committee (TPC, previously named the 113 Committee and then the 133 Committee after the articles in the Treaty of Rome and Treaty of Amsterdam respectively that set out trade policy principles). It plays a key role in helping member states influence EU trade policy, even though its role is formally consultative only. The agenda of the TPC is set by the Commission, in collaboration with the rotating Presidency of the EU. The TPC meets weekly at either the senior level or at the level of deputies. The senior members (*titulaires*), senior civil servants from the member states' national ministries, as well as the director-general of DG Trade meet once a month in Brussels. In addition they meet in Geneva whenever there are WTO plenary sessions. These senior members serve on the committee for extended periods of time and have a good sense of what actions are politically acceptable within their state of origin. They deal only with the politically sensitive problems. The TPC meets once a month in its full members configuration. It also meets three Fridays a month at the level of deputies, who are drawn from the member states' permanent representations in Brussels, sometimes from the national ministries, in addition to the director of the

WTO unit within DG Trade, and special experts. The deputies deal with the more technical issues. Additionally, there are also subcommittees of a sectoral nature, which prepare the work for the TPC. Matters are typically discussed until a consensus emerges, and no formal votes are recorded.

The Commission almost always follows the advice of the TPC, since its members reflect the wishes of the ministers who ultimately can refuse to conclude the agreement negotiated by the Commission. Once the Committee has amended Commission proposals, they are transmitted to the Committee of Permanent Representatives (Coreper)—a key group based in Brussels and composed of the member state officials who are national ambassadors to the EU, their deputies and staff. Coreper then transmits the negotiating proposal to the Council of Ministers, which has the power to establish objectives for trade negotiations (known as the ‘negotiating mandate’). Composed of ministers from each government, the Council represents the national interests of the member states. The composition of the Council varies, depending on the subject matter under discussion. With respect to trade policy, the issues are often tackled by the General Affairs and External Relations Council, where the member states are in principle represented by foreign ministers, although sometimes it is composed exclusively of trade ministers.

The Council then agrees on a negotiating mandate to hand out to the Commission. The form of the actual mandate varies depending on the negotiation: in some cases the mandate takes the form of one or several directives, while in other cases the mandate is only a very vague document. ‘Negotiating directives’ are not legally constraining: the negotiator can depart from these directives, but then takes the risk of having to sell the negotiating package to the Council at the end of the negotiation. Court jurisprudence and treaty articles spell out the cases in which policy decisions are made according to majority or unanimity. According to the 1957 Treaty of Rome, unanimity should have been used for external trade only until January 1966, the end of the transitional period. Majority voting would have been automatically instituted after this date had France’s De Gaulle not paralysed the functioning of Community institutions with the ‘empty chair’ crisis during the Kennedy Round. The crisis resulted in the ‘Luxembourg compromise’, a gentleman’s agreement according to which an individual member state could veto a decision otherwise taken according to qualified majority if it deemed that vital national interests were at stake. The subsequent addition of new member states increased the divergence of interests within the EC and rendered even more difficult the task of reaching a common bargaining position for international trade negotiations. The 1985 Single European Act (SEA) attempted to establish the primacy of majority voting. With the exception of sensitive areas such as taxes, employee rights, and the free movement of persons, the member states agreed to use majority voting to legislate on all economic matters. Since then, at least on paper, the Council agrees on a common external bargaining position for international trade negotiations according to a ‘qualified majority’ system. This is a procedure under which member states are assigned different voting weights, based approximately on the

size of their population, and by which roughly two-thirds of the votes are needed in order for a proposal to be accepted. Nevertheless, in reaching a common bargaining position for international trade negotiations, as in reaching most other policy decisions in the Community, member states have most often attempted to find a general consensus around a given issue without resorting to a formal vote. Almost none of the cases in which Council decisions have been contested to the level at which a formal vote was needed have involved trade issues, reflecting both the more general difference in EU policymaking between QMV as a legally ordained procedure and the reality, and the perceived importance of achieving unity on external policy matters.

The competence over external trade negotiations has therefore long been fairly centralized at the Commission and Council levels. Until the entry into force of the Lisbon Treaty, the EP had no formal say in the process. Prior treaty modifications, such as the 1986 SEA, the 1991 Maastricht Treaty, the 1997 Amsterdam Treaty, and the 2000 Nice Treaty, had not increased the role of the Parliament in the trade policymaking process. In practice, informal procedures existed for informing and consulting the Parliament. They have now been institutionalized and the EP's Committee on International Trade has become an involved player in the process.

## The negotiations

Following the adoption of the negotiating mandate by the Council, the actual conduct of international trade negotiations for the EU is carried out by members of the Commission, acting under the authority of the Trade Commissioner. The situation during the negotiations may seem somewhat surrealistic: member states are allowed to observe but not speak in WTO plenary sessions. In principle, as long as they remain within the limits set by the mandate, Commission negotiators are free to conduct bargaining with third countries as they wish. In practice the negotiators' latitude and flexibility vary case by case, depending on the member states' willingness to give up control over the issue being negotiated. While they remain silent in plenary, member states' ambassadors usually do not shy away from informal corridor negotiations with EU counterparts. Moreover, the TPC often meets in Geneva during the negotiations to ascertain whether the Commission remains within its mandate and to agree on changes in negotiating position. Thus if the EU Commissioner is envisaging a significant move, she needs to either call the capitals or call a meeting on the premise of the negotiations. This oversight often makes moves and concessions harder for the EU than for other trade partners, but it also gives it significant bargaining power (Meunier 2000b; Meunier 2005). From the member states' viewpoint, it is this oversight that makes it acceptable to issue vague mandates containing little indication of the actual positions to be taken in negotiation.

## Ratification

At the conclusion of the negotiations, the trade agreement must be ratified. In the past, for agreements falling entirely under EU competence (such as on textiles and steel), the Council approved or rejected the final text according to QMV—with the exception of some services and intellectual property negotiations where unanimity is the rule. In most cases, however, the ratification process was complicated by the ‘mixed’ nature of many of the big ‘packaged’ trade agreements, which must be approved both by the EU as a whole and by the individual member states. EU ratification occurred through adoption in the Council. As for member states, they ratified the trade agreement according to their own internal procedures, such as a vote in parliament. Under the rules of the Lisbon Treaty, the agreements are now ratified, at least *de jure*, by the Council with the assent of the EP. There should be no room for big surprises at the ratification stage of the negotiation, since member states and the Parliament will have had ample time to manifest their reservations during the course of the international negotiations. De facto, however, given the contentious political climate in the EU, the first international agreements negotiated by the EU since the Lisbon Treaty, such as the EU–Canada Comprehensive Economic and Trade Agreement (CETA), might still be treated as mixed agreements, which require ratification by all member states individually according to their own procedures.

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## Power through size: accession and exit

The EU acquired ten new countries in May 2004, two additional countries in 2007, and one more country in 2013. This did not trigger any immediate disruption of trade, since the transition had been prepared for a decade. Indeed, on the eve of the big 2014 enlargement, over 95 per cent of the trade of the EU15 with the new entrants was already free.

Structurally, enlargement made the EU stronger in relation to its trade negotiating partners, because a larger single market is both a more attractive prize to outside economic players and a more costly opportunity loss when a threat of being cut out is carried through. Enlargement increased the size of the single market (accounting for 18 per cent of world trade and contributing to 25 per cent of the world’s gross domestic product, GDP), augmented the geographical size of the EU by 34 per cent, and boosted the total population by 105 million to a total of 450 million.

By joining the EU, however, the new entrants brought in a wealth of different histories and cultures, which also means different interests, priorities, and sensibilities that had to be amalgamated in the definition of a common EU trade interest. Pessimists argued that such diversity could incapacitate the EU and bog down multilateral trade liberalization while increasing EU protectionism through the mere logic of agreement over the lowest common denominator.

A decade's experience of enlargement reveals that these predictions have for the most part not come true. To be sure, EU negotiations have become more complex in the trade realm as they have elsewhere, especially with the inclusion of FDI under the CCP. But decision-making efficiency has, so far, not decreased in trade policy. And enlargement generally seems to have strengthened the liberalization camp, including through an automatic drop in adjusted customs duties, with some notable exceptions in agriculture, especially for products such as wheat, beef, and dairy products, which are all important in the EU trade policy at the WTO. The further concentration of trade policymaking power in the hands of the Commission may have also helped in this regard. Unsurprisingly, the new entrants have been slightly more prone than other member states to cater to American demands, although here again their material interests pull them back to the mean, in their support for anti-dumping measures for basic industrial goods such as steel, chemicals, and textiles. On the whole, the interests of the new entrants have not diverged significantly from the status quo ante, mapping onto existing cleavages and internal bargaining dynamics.

Until 2016, the story of the EU's size had been one of constant growth. But that changed when a majority cast a vote in a UK referendum to leave the EU. To be sure, there had been two prior withdrawals from the EU: Algeria left in 1962, as a result of its independence from France, and its membership has been erased from all official memory since (Nicolaïdis 2015); and Greenland, which is part of the Danish Realm and voted to leave the European Economic Community in 1985. But Brexit, as it is usually referred to, is of different import altogether. While at the time of writing the contours of any potential agreement defining the future relations between the UK and the EU are still unknown, and while complete withdrawal or withdrawal from some areas of EU activity may not happen for several years, at least two types of consequences for the EU as a trade power will unfold in the coming years. First, the EU's external bargaining power will automatically decrease with the removal of the UK's share of 17 per cent of EU GDP (in 2015). Second, the UK will need to conclude its own trade deals with the rest of the world, which not only will change the trade deals that the European Economic Area already has with its current trading partners but also compete for the time and personnel resources of the partners currently negotiating new trade and investment agreements with the EU.

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## The exercise of the EU's trade power

How does the EU exercise its formidable power in trade policy? The EU has long asserted its central role in the multilateral trade system, less to uphold the value of multilateralism as a public good, we argue, than to promote the EU's own interest in this system. The EU has presented itself as a champion of multilateralism, claiming

that its single market was a building block for multilateralism, using its trade power to attempt to manage globalization in its image, and often positing itself as champion of international law (by contrast to the USA, for instance). Over the past decade, however, it has redirected its trade policy focus towards bilateral, regional, and preferential arrangements in response to several major challenges. As a result, the linkage between trade and political interests has more clearly come to the fore in recent years as the EU has increasingly subordinated conditionality and long-term normative goals to more immediate commercial objectives. The EU is still a trade power today but has become less of a power through trade than it used to be a decade ago.

### **The European single market and world trade liberalization**

From its inception, the EU has played a central role in multilateral trade negotiations (Woolcock 1993; Young 2000, 2002; M. Smith 2001; Meunier 2005). In the 1960s the EC introduced a new radical tariff-cutting formula that greatly reduced the transaction costs of negotiations. In spite of the rising trend of 'new protectionism' in the 1970s, Europeans led the way in attacking so-called non-tariff barriers. As the EU accelerated the pace of completion of its single market in the run-up to 1992, issues became more complicated. Quite logically, it required that firms wishing to export goods and services into the EU conform to its standards and regulations as well as to its conformity assessment procedures (Mattli and Buthe 2003). Since such requirements had not been consistently enforced before, the move initially spurred cries of 'fortress Europe'—indeed the external dimension of the single market had been dealt with a bit as an afterthought. But the EU Commission quickly sought to ensure that foreign firms be given a fair chance of access through opportunities to demonstrate their conformity to standards (Nicolaidis and Egan 2001).

As the programme to complete the single market agreed to under the SEA (1987–92) coincided with the Uruguay Round (1986–93) of GATT, the EU progressively developed a strategy to export its approach to trade liberalization to the global level, especially in dealing with trade in services, the core new area in both settings (Drake and Nicolaidis 1992). Along with the USA, it promoted the inclusion of 'new issues' (services, intellectual property rights, and trade-related investment measures) under the WTO, which was created at the end of the Uruguay Round. Agriculture, however, has remained the glaring counter-example of liberalization. By the end of the Uruguay Round in 1993, the EU did not look so good as a trade liberalizer, as the trade distortions engendered by the Common Agricultural Policy led the USA to build a coalition of GATT members against the European agricultural policy (Davis 2003).

The issue is not only how much liberalization, however, but also what kind of liberalization and for whose benefit. During the 1990s, the developing world progressively came to question the 'grand bargain' agreed to during the Uruguay Round—namely, accepting to open up their markets to services and to enforce

patents in exchange for greater access for their industrial products. The cost of the former turned out to be higher than many had foreseen, while increased access for Third World exports often failed to materialize. Initially both the USA and the EU resisted their attempt to revisit this bargain, while at the same time pushing for a continued expansion of the multilateral agenda to include issues such as linkage between trade access and labour and environmental standards. The tension between OECD countries—including the EU—and the developing world culminated in Seattle in 1999. But in the early years of the Doha Development Round, launched in November 2001, the EU managed to establish, at least partly, a new reputation as a champion of multilateralism. It promoted the adoption of a path-breaking declaration on trade and public health, which opened the way for legalizing broad exemptions from intellectual property constraints by importing generic drugs to treat diseases like AIDS (a final agreement was finally accepted by the USA in August 2003). Moreover, the EU sought to take the lead in making good on market access by launching in the run-up to the Doha Round the ‘everything but arms’ initiative, designed to offer preferential market access to the exports of the 48 least developed countries in the world. This initiative enabled the EU to change its image in the WTO by holding the high moral ground, even though it was not able then to have its approach adopted by the entire WTO membership.

The EU also used the early years of the Doha Round as an opportunity to attempt to ‘manage globalization’, according to the doctrine laid out by then Trade Commissioner Pascal Lamy (Jacoby and Meunier 2010). Promoting multilateralism was at the heart of the managed globalization agenda, based on the premise that the more members that participate in the international trading regime, the greater share of trade is subjected to rules and therefore to a less anarchic system. The EU gave a clear priority to multilateralism, going so far as establishing an informal moratorium on new bilateral agreements, in contrast to the policy of ‘competitive liberalization’ pursued by the USA at that time.

Meanwhile, voices questioned the genuineness of the EU’s proclaimed commitment to putting multilateralism at the service of development. Agriculture finally came centre stage in the Doha Round, with developed countries being asked to reduce (if not eliminate) their trade-distorting farm subsidies and drastically decrease their tariffs, quotas, and non-tariff barriers. While the EU and the USA had reached a common proposal on reform of the protection of their agriculture, this was not enough. The collapse of the WTO Cancun meeting in September 2003 was due to a great extent to differences over agricultural reform, especially over the issue of cotton, between the USA, the EU, and a group of developing countries led by Brazil and India (called the G22). Perhaps more fundamentally, the meeting exposed a clash between an EU philosophy of trade liberalization based on the design and enforcement of new multilateral rules reproducing the EU’s own approach (the so-called ‘Singapore issues’—investment, competition policy, government procurement, and trade facilitation) and the approach of most of the rest of the world, which continues to view trade rounds as fora for the exchange of reciprocal conditions.

The Doha Development Round was never able to overcome these differences. Negotiations continued for years, alternating between failed meetings and relaunching of new talks. Clashes of interests between developed and developing economies and between the EU and the USA proved too difficult to overcome. At the 2013 meeting in Bali, WTO members could only agree to the less controversial aspects of trade facilitation—in effect a reduction of bureaucratic measures slowing down trade. The Doha negotiations were abandoned in all aspects but name in December 2015, when the 164 members agreed to ban export farm subsidies and liberalize trade in IT products. As discussed, the EU, like its main trading partners, was free to redirect its trade power efforts away from the multilateral and towards the bilateral, regional, and preferential realms.

### **Settling disputes in the World Trade Organization**

The WTO differs from its predecessor, the GATT, not only because it is a bona fide organization rather than a mere ‘agreement’ with a broader scope, but also and perhaps most importantly due to its significantly strengthened dispute-settlement mechanism, in which the EU has been an active participant. As of February 2016, the EU was involved in 46 active WTO disputes as both a plaintiff (24 cases) and a defendant (22 cases) with 11 of its trading partners (Argentina, Brazil, Canada, China, India, Indonesia, Pakistan, Philippines, Russia, Thailand, and the USA).<sup>9</sup> In the majority of these cases, the EU was paired against the USA, but the number of cases pairing the EU and China has been increasing.

Such a high level of involvement has strengthened overall the power of the EU in trade. On one hand, some of the EU’s trade partners have exercised their rights to demand change in EU trade practices (such as on hormone-treated beef and bananas), which has resulted either in compliance or in the willingness by the EU to incur retaliatory sanctions. On the other hand, participation in the WTO has enabled the EU to confront other trade partners, in particular the USA, on a variety of unilateral actions. The following examples of historical and recent transatlantic trade disputes are evidence of the power of the EU in the multilateral trade arena.

#### ***Steel***

In the spring of 2002, the Bush Administration in the USA unilaterally raised steel tariffs for a 3-year period by 30 per cent in order to protect the US domestic steel industry from the problem of global overcapacity during a time of restructuring. The EU (and seven other countries)<sup>10</sup> launched a lawsuit at the WTO, which ruled that the tariffs were in violation of international trade rules. The WTO confirmed in November 2003 in its final ruling that the US tariffs are indeed illegal under international trade rules. Faced with the threat that Europe would impose 100 per cent duties on \$2.2 billion worth of US imports, ranging from Harley-Davidsons to underwear to citrus juices from Florida—products chosen mainly because of coming



from swing states crucial for the 2004 US presidential election—Washington dropped the tariffs in December 2003.

### ***Tax breaks***

In 2000 the EU asked the WTO to adjudicate on the so-called Foreign Sales Corporation (FSC) dispute, because this American law was believed to confer illegal export subsidies on many US companies by taxing exports more favourably than production abroad. In subsequent rulings, the WTO confirmed that the FSC constituted an illegal export subsidy and gave the US administration until November 2000 to withdraw its scheme. The USA replaced the FSC law, but because the new law did not substantially modify the export subsidy scheme, the EU challenged it again in the WTO. In 2002 the WTO ruled again that these breaks were indeed an illegal subsidy and authorized the EU to impose \$4 billion in retaliatory sanctions if the US law was not brought into compliance with WTO obligations. The Europeans, fearful of what the sanctions would do to their own economies given the size of the potential disruption to transatlantic trade (more than ten times larger than the beef and bananas sanctions combined), opted for patience and instead gave the USA ample time to change its tax laws. In March 2004 the EU began to gradually implement some retaliatory sanctions on US exports. The law repealing the FSC was finally passed in October 2004 and was to be implemented as of 2005 (with a transition period). The EU agreed to lift the sanctions when the implementation of the new US law proved satisfactory.

### ***Anti-dumping***

In 2000 the WTO condemned the US 1916 Anti-Dumping Act for allowing sanctions against dumping not permitted under WTO agreements and gave the USA one year to repeal the Act. In February 2004, given the non-compliance of the USA, the WTO allowed the EU to retaliate by implementing a mirror regulation that would be applicable only to US products.

### ***Genetically modified organisms***

Since 1998, the EU has observed a moratorium on the approval of genetically modified products, and some member states banned the import and cultivation of some crops that had been approved prior to that date. The EU made this decision in response to popular concern about the long-term impact of genetically modified organisms (GMOs) on human health and the environment, although there was little scientific evidence to support these concerns but no evidence either that GMOs are harmless. This measure led to the suspension of exports of genetically modified corn from the USA. Successive American administrations were hesitant at first to challenge at the WTO the issue of whether such public health concerns could legitimize protectionism. In May 2003, however, the Bush Administration decided to finally file suit against the EU at the WTO when it was learned that the EU had warned Zambia to refuse US donations of genetically modified corn and that many poor African

nations had refused to experiment with GMO crops for fear that they could not sell them in Europe. Such a lawsuit, however, was politically risky. It risked a backlash from European consumers, already quite nervous over food safety in the wake of the mad cow and foot-and-mouth diseases, and perhaps some consumer resistance in the USA as well.

### **New challenges and the EU's retreat from multilateralism**

A series of external and internal challenges over the past decade have transformed the characteristics of the exercise of trade power by the EU and contributed to a move away from multilateralism. First, the growth of emerging economies has provided the EU with new markets but also enhanced competition. As a result, the relative trade power of the EU has diminished as others' has risen. Moreover, as the USA moved away from multilateralism and embarked on an ambitious agenda of 'competitive liberalization' to conclude bilateral and regional agreements with as many countries as possible, it became impossible for the EU to continue the promotion of multilateralism on its own, which not only diluted EU power and increased the power of countries with contrary interests, but also failed to provide momentum to the Doha Round. Moreover, the advent of the euro crisis, political change inside EU member states, and the 2016 Brexit vote have accelerated the rise of populism and call for protectionism, leading the EU to refocus its commercial policy towards more purely economic objectives—namely jobs and growth.

### **Preferential trade agreements**

In parallel to its multilateral engagement, the EU has built a complex web of preferential trade agreements designed for development and political objectives. For several decades, the EU negotiated trade agreements including unilateral concessions granted to its immediate neighbours and the former colonies with which it shared historical ties, mainly through the successive Lomé (later Cotonou) conventions. Progressively, the EU trade web was extended to other individual countries and regional groupings—thus calling into question their 'preferential' nature.

The EU's core set of preferential agreements remains with its neighbours and its former colonies. In 1995, the EU stepped up its cooperation in the Mediterranean region through the 1995 Euro–Mediterranean partnership (also referred to as the 'Barcelona process'). These agreements are a means for the EU to promote its norms and values, so they include respect for human rights and democratic principles as essential conditions for trade concessions—with clauses added after 9/11 on fighting terrorism and on non-proliferation of weapons of mass destruction. In July 2008, the Barcelona process was revamped under the short-lived label of the Union for the Mediterranean. This was a controversial development spearheaded by France under its Presidency of the Union, which involved greater emphasis on project-based cooperation and an

attempt to share governance with southern partners more equitably. At the same time, the EU has developed the overarching European Neighbourhood Policy since 2004, which encompasses both southern and eastern partners—the latter under their own ‘Eastern Partnership’ since 2009. The real challenge both in the east and in the south is whether it will be possible to move beyond the logic of associating more convergence with more access—above all trade access, using the trade liberalization momentum to engage in deeper polity building (Bechev and Nicolaidis 2010).

The second front of core EU preferential agreements has been with African, Caribbean, and Pacific Group of States countries since 1963. A WTO injunction to introduce greater reciprocity or else simply to apply the GSP to these countries has led to the negotiations of Economic Partnership Agreements (EPAs) since 2003. These negotiations have been premised on the consolidation or creation of seven regions in Africa and the Caribbean, which were supposed to negotiate with the EU as a whole. As part of the process, the GSP scheme was revised in 2012 focusing on 90 developing countries which get preferential access to the EU market unilaterally. Since 2014, a smaller group of countries called the GSP+ get additional support and deeper tariff cuts, if they can prove their seriousness in implementing human rights, labour rights, and environmental and governance conditions. Both these preferential schemes and the EPAs as a whole have come under heavy criticism for not taking sufficiently into account the actual value chains characterizing economic integration in Africa and for sometimes imposing regional integration schemes without due regards to local preferences (Collier and Nicolaidis 2008; Jones and Marti 2009). While all the different regions-to-EU agreements were closed in 2014 or 2015, the decade-long negotiations were fraught with controversy, encountered much resistance across Africa, and delivered final results less ambitious than EU officials had originally planned (Jones and Weinhardt 2015).

## Bilateral and regional agreements

In response to the competitive liberalization strategy exercised by the USA since the early 2000s, the EU has also engaged in the negotiation of regional and bilateral agreements over the past decade in order to further open markets abroad (see Box 10.2). The EU remains a very open market with few trade obstacles, whereas many of its trade partners employ trade-distorting subsidies, public procurement limitations, and behind-the-border technical restrictions. Now that the Doha Development Round has been left for dead, European trade policy efforts are concentrating on blanketing the planet with trade and investment deals to further these offensive trade goals. Indeed, DG Trade claims that bilateral free trade negotiations are now at the core of its work (European Commission 2015c).

Some of these agreements are region-to-region, starting with an all-encompassing agreement with the Common Market of the Southern Cone customs union, Mercosur (Argentina, Brazil, Paraguay, and Uruguay), aiming at the creation of a free trade

**BOX 10.2****Free trade and investment agreements negotiated by the EU since the 2009 Lisbon Treaty (status as of the time of writing)**

(FTA = Free trade agreement)

EU–ANDEAN Community: FTA negotiations completed with Colombia and Peru in 2012 and Ecuador in 2014

EU–Canada: negotiations for the CETA launched in 2009, concluded in 2014, revised in 2016, not ratified at time of writing

EU–Singapore: FTA negotiations launched in 2010, completed in 2014, not ratified at time of writing

EU–Malaysia: FTA negotiations launched in 2010

EU–Vietnam: FTA negotiations launched in 2012, completed in 2015, not ratified at time of writing

EU–Japan: FTA negotiations launched in 2012

EU–Thailand: FTA negotiations launched in 2013

EU–Myanmar: FTA negotiations launched in 2014

EU–Philippines: FTA negotiations launched in 2015

EU–USA: Transatlantic Trade and Investment Partnership (TTIP) negotiations launched in 2013

EU–China: Bilateral Investment Treaty negotiations launched in 2013

area. Ongoing for almost two decades now, the negotiations have been stalled by a range of issues, from agriculture to standards, but were relaunched in 2010. If the parties were to agree, however, this would be the first agreement between two customs unions. In this realm, as in others, the EU's capacity to resist using its trade stick to promote its own model is being tested.

The EU has been negotiating bilateral trade agreements with a variety of other countries, from South Africa in 2000 to Latin America, where the EU has signed 'global agreements' (including free trade) with Mexico in 2000 and Chile in 2002. After the end of the informal moratorium on new bilateral agreements in 2006, the EU has pursued bilateralism with a vengeance, negotiating trade agreements with many countries including India, South Korea, Singapore, Canada, Columbia, Peru, Ukraine, Vietnam, and the USA. It is also currently negotiating its first standalone Bilateral Investment Treaty with China. To some extent a forced reaction to American bilateralism starting with the North American Free Trade Agreement, it can be argued that the new policy is increasing EU power by attempting to restore a level playing field for European companies competing in the lucrative Asian and Latin American markets.

A special mention should be made of the most ambitious bilateral trade negotiation yet, the TTIP which the EU has been negotiating with the USA since 2013. In spite of

the many USA–EU trade disputes adjudicated through the WTO, the transatlantic trade partnership is characterized by a much greater degree of cooperation than conflict, owing to the unprecedented level of interdependence between the two sides of the Atlantic. The EU and the USA are still each other's main trading partner (goods and services combined) and main investor. Trade flows across the Atlantic amount to \$1.9 billion every day. While transatlantic economic cooperation is not new, the post-Cold War era has been characterized by a much greater emphasis on economic and regulatory cooperation than ever before and the growing recognition by the USA of the importance of the EU as an interlocutor over and above the member states.

One of the most innovative aspects of the new transatlantic cooperation was the signing in 1997 of a series of Mutual Recognition Agreements (MRAs), from pharmaceuticals to telecoms. These agreements were certainly less ambitious than their inspirations—the mutual recognition directives enforced to complete the internal market of the EU—in that they only covered the recognition of conformity assessments rather than recognition of the standards themselves (Nicolaïdis and Egan 2001). But they were nevertheless difficult to close. US agencies like the Food and Drug Administration had to undergo a great deal of pressure before agreeing to transfer part of their regulatory authority to their EU counterparts. And accommodating the complex array of conformity assessment bodies operating in the USA for electrical standards and the like to the more coordinated system prevailing in the EU was no small feat. In fact, it has proven impossible to extend the MRA approach beyond the original six to other products or to services where the USA is notoriously plagued by regulatory fragmentation due to its federal structure. Instead, the EU and the USA are now negotiating a comprehensive agreement covering market access and cooperation in trade and investment (see Chapter 17). If concluded, this would liberalize further one-third of world trade and enable the EU and the USA to set the terms of standards and regulations for the rest of the world. The anti-trade political rhetoric that has gained ground in both the USA and the EU since the launch of the negotiation, however, suggests an uphill battle for the passage of an ambitious agreement.

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## Conclusion

Despite the multiple crises it is facing internally and the relative growth of its partners and competitors externally, the EU is still a formidable power *in* trade. If it is considered as one single economic unit, it has become the biggest trading bloc in the world, notwithstanding the likely impact of Brexit, as discussed. As a result, the EU's hegemonic economic power, based on the capacity to grant or withhold access to its internal market, is still strong. Moreover, its more than 50 years of experience negotiating international trade agreements on behalf of its members have made the EU an essential player and a powerful bargainer when it comes to negotiating trade and investment agreements.

The EU has tried to leverage its power *in* trade to also become a power *through* trade. Throughout the 2000s, it has attempted to use access to the ever-expanding EU market as a bargaining chip to promote changes in the domestic arena of its trading partners, from labour and environmental standards to development policies. European policymakers have sought to ‘harness globalization’ and spread the ‘European model’ to the rest of the world through trade agreements. For many of its partners around the world such an aim smacks of neocolonialism, a kind of European hubris that is not always welcome, especially in light of the EU’s simultaneous crises—ranging from the realms of finance to the rule of law and culminating in its inability to deal with the refugees knocking at its door and the (presumed) departure of one of its largest members.

It has been argued that the EU could become an important foreign policy actor through the back door, by using trade instead of more traditional diplomatic or military means. And indeed, for the first time, the Lisbon Treaty bundled trade policy under the general rubric of the EU’s external action, thereby suggesting strongly that commercial policy was indeed an integral component of the EU’s nascent foreign policy. But this prospect is inherently unstable as the balance between commercial and normative interests inevitably tilts back towards using trade policy for trade objectives in challenging economic and political times. Before the EU can effectively exercise power *through* trade it will need to address the conflicts and tensions between its avowed principles, between in particular its professed commitment to multilateralism and its practice of liberalism and interregionalism, between its commitment to non-discrimination and the proliferation of preferential agreements, between in the end a professed belief in free trade as an end in itself and the use of trade as a weapon to pursue unrelated goals. The EU may be a trade power but it is a conflicted trade power, between its member states, between its principles, and ultimately between visions of itself.



## NOTES

- 1 The 1952 European Coal and Steel Community (ECSC) did not have external powers.
- 2 Article 113 was renamed Article 133 at Amsterdam.
- 3 At that point, they found a compromise solution whereby the Community concluded all the agreements of the round, while the ECSC tariff protocol, the standards code, and the civil aircraft code were concluded jointly by the Community and the member states.
- 4 Since GATT operated by consensus, this had more symbolic than practical significance.
- 5 Including agricultural products and products covered by the ECSC and European Atomic Energy Community (Euratom) treaties.
- 6 Court of Justice of the European Communities, Opinion 1/94, 15 November 1994, I-123:
  1. The Community has sole competence, pursuant to Article 113 of the EC Treaty, to conclude the multilateral agreements on trade in goods.
  2. The Community and its member states are jointly competent to conclude GATS [General Agreement on Trade in Services].

3. The Community and its member states are jointly competent to conclude TRIPS [Trade-Related Aspects of Intellectual Property Rights].

7 The new Article 113(5) as finally adopted reads as follows: 'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraph 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs.'

8 Article 133, para. 6:

An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonization of the laws or regulations of the member states in an area for which this treaty rules out such harmonization.

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its member states. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the member states.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

9 EU Commission, 'General overview of active WTO dispute settlement cases involving the EC as complainant or defendant', Brussels, January 2016, <http://trade.ec.europa.eu/doclib/html/154243.htm>.

10 Japan, South Korea, Norway, Switzerland, China, New Zealand, and Brazil.



## FURTHER READING

The following is a selection of the very substantial literature about the EU's trade policies, which reflects both the legal and the policy analysis aspects of the topic. Some historical background is provided by Devuyst (1995), Johnson (1998), Woolcock (1993), Young (2000, 2002), and Elsig (2002). The specific issues of competence and of the trade policy process (including WTO negotiations) are dealt with by Meunier (2000, 2005), Meunier and Nicolaïdis (1999, 2006), Nicolaïdis and Meunier (2002), M. Smith (2001), and Woolcock (2000). M. Smith (2001), Young (2002), and Young and Peterson (2014) provide analysis of the ways in which the changing nature of world trade has been reflected in EU trade policies.

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## WEB LINKS

The first port of call for all matters of EU trade policy is the website of the EU Commission, DG Trade: <http://ec.europa.eu/trade/>. Much useful information about the context for and the impact of EU trade policies can be obtained from the WTO and OECD websites: WTO: <http://www.wto.org/>; OECD: <https://www.oecd.org>. Good websites providing information and analysis about trade policies and the global political economy are that of the Peterson Institute for International Economics: <http://www.piie.com/> and the World Trade Institute: [www.wti.org/](http://www.wti.org/).