



The External Face of Europe

By any measure, the European Union (EU) is a global economic superpower. With a membership of 27 states, the EU has over 492 million citizens and an aggregate GDP of \$16,574.443 billion at current prices, which is expected to rise to \$17,607.657 in 2008. Of its aggregate GDP, 21% goes on investments. The EU is the world's single largest trader, accounting for almost a fifth of the global trade in both goods and services. A concerted political effort in the 1980s to unify the European internal market has paid off, giving EU negotiators tremendous leverage through offering potential trade partners access to the world's largest single economic market.

The US and EU are highly interdependent economically. To give but one example, at the end of 2005, Europeans held foreign direct investment (FDI) position in the US valued \$1,143.6 (69.9% of total FDI positions in the US). Vice versa, the accumulated book value of US direct investment in the EU was \$1,059.4 billions (51.2% of total US investment abroad). Thus, as a starting point it has to be said that in international trade policy the US and the EU are equals as well as indispensable partners.

Europe's Trade Architecture

Who speaks for Europe in international trade negotiations? The EU's trade policy is governed by the so-called Common Commercial Policy (CCP). The CCP was established in 1957 by Article 113 (now Article 133) of the EC's founding Treaty of Rome, giving the European Commission the exclusive right to negotiate on behalf of its Member States in all negotiations on trade in goods. Through article 188c of the EU Lisbon Treaty (expected to come into force in 2009) CCP will also apply to services, the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalization, export policy and to measures to protect trade such as those to be taken in the event of dumping or subsidies. The Commission has a special Trade Directorate headed by a powerful Trade Commissioner with overall political responsibility for the EU's external trade policy. The current Trade Commissioner is a Peter Mandelson, a former trade minister in the British government.

The Commission is not all-powerful, however; it must work together with the Member States in the Council. The Council gives Member States substantial influence over trade policy. The Council has the authority to approve the Commission's negotiating mandate, which gives them considerable control over the Community's position. Beyond this

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strategic power, the Member States have created a special oversight committee of national representatives called the “133 Committee”; this 133 Committee brings together trade specialists from each Member State to oversee the implementation of trade policy as well as assess the progress of international trade negotiations. Changes to negotiating mandates in response to developments in the negotiations are approved by this Committee or can be sent up to the Council of European Foreign Ministers.

The Council’s ultimate power is that of ratification: international trade agreements are concluded at the Community level by the Council. Although the rules allowed for approval by qualified majority voting, in practice trade agreements were concluded unanimously, which gave Member States the possibility to veto the conclusion of an agreement with which it disagreed. While no vetoes were ever actually used, veto threats and strongly held national positions have often been used to bend the Community’s negotiating position to suit the needs of protectionist political coalitions. Although this system limited the EC’s reputation as a liberalizing power, in reality its complicated negotiating positions were similar to those of the United States, where sensitive political concerns also led to the adoption of protectionist negotiating positions.

Through the Lisbon Treaty the European Parliament has been granted the right to consent to international trade agreements; this is a relatively weak legislative power, but it would alter the political calculus of trade negotiations as the Parliament is historically more allied with “civil society” groups and other actors suspicious of the WTO and trade liberalization. This could also have a considerable impact on the workload of the Parliament’s International Trade Committee.

Current Institutional Difficulties

The system currently in use worked particularly well through the late 1970s, which coincided with several rounds of international trade negotiations. At the end of the 1980s, though, the Uruguay Round negotiations began to address additional issues, including trade in services (leading to the General Agreement on Trade in Services, or GATS) and Trade Related Intellectual Property Measures (known as TRIPs). Member States were uneasy with allowing the Community the exclusive right to negotiate in these areas. This dispute reached the European Court of Justice, whose Opinion 1/94, *on the Agreement establishing the WTO*, established a new system of “mixed” competence to conclude agreements in trade in services and trade in intellectual property.

The practical result of this decision was potentially disastrous. The Community and the Member States each have authority over parts (called “modes”) of trade in services issues; however, trade negotiations are never mode-based, so any negotiation would necessarily involve both Member State and Community competence. A similar problem exists with intellectual property measures. This means that any international trade agreement must be concluded under “mixed” competence, involving not only approval by the Member States in the Council, but also by each individual Member State according to

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its own national procedures, often requiring legislative approval. The risk is obvious: any one of these actors can kill an agreement that has taken years to negotiate. Even worse is the latitude it gives to protectionist political coalitions – the multiple “veto points” make threats to defeat ratification very real and therefore give tremendous leverage to strong national interests. This has happened: in order to protect its cultural policies, the French government nearly derailed the conclusion of the Uruguay Round and vetoed the preparations for the Seattle WTO Ministerial meeting in 1999.

This particular institutional balance has grown increasingly fragile. A boom in services after 1997 put pressure on the Community to deal with the bizarre delineation of competence announced by the Court of Justice; similarly, there were fears that the Community would not be able to function effectively in the upcoming round of world trade negotiations. The system risked policy paralysis or even internal stalemate. The Commission disliked this “collective weakness” and insisted that it was an “absolute necessity” that the Community speak with one voice rather than many.

The Lisbon Treaty will resolve several of these problems by giving exclusive negotiating competence to the Community, eliminating much of the institutional complications arising from the Court of Justice’s system of mixity¹. There have also been efforts to fix the CCP during the 1990s, but the major obstacle to resolving the issue of mixed competence was the status of cultural policy in the CCP. In short, the French government was afraid of losing the right to implement its distinctive cultural policies and therefore blocked all attempts to rationalize the decision-making structure of the CCP. In the long war of attrition that followed, most Member States softened their objections to this “cultural exception” and this emerging consensus acted as a palliative for French fears. Therefore, even though the Lisbon Treaty resolves several major institutional problems, it has been bought at the price of creating a political consensus that upholds a cultural policy model that has often frustrated the United States in international trade negotiations.

In the shadow of current systemic complications, the Community has been able to work together on individual sectoral issues. This cooperation was possible when there were very low levels of friction between Member States in a given policy area. For example, one of the driving forces of the Single Market program was the need for an integrated financial services sector, which led to the creation of the single market in financial services. Consequently, the Community played a leading role in the successful conclusion of the WTO’s Financial Services Agreements of 1995 and 1997. Similarly, telecommunications and transport policy also indicate that as the Member States begin to

¹ Mixity refers to mixed negotiating competencies. The European Community has negotiating competence over most aspects of international trade, but the member states retain some competence as well – not just in trade, but in other areas. The boundaries between European and national competencies are unclear and have had to be elaborated in European case law by the European Court of Justice. The Draft Constitution is meant to clarify this by specifying exclusive (national or European) and shared competencies. However, many believe that the clarification is only partly successful, leaving the language of the Treaty subject to multiple interpretations.

establish common programs at the European level, this internal policy cooperation engenders a much higher chance for establishing useful external cooperation.

Current Transatlantic Trade Relations

Transatlantic economic relations have always been at the heart of the international trade regime. From the foundation of the GATT in 1947, the United States has sought to use binding international trade agreements to offset the potential effects of enlargement of the European Community and consequent fears of a “fortress Europe” closed to American goods and services. The success of these negotiations reflects the strong, productive US-EU relationship in trade policy, and has led observers to describe a “G-2” partnership that acts as the engine of the international trade regime.

However, evidence is mounting that in the aftermath of the creation of the WTO, this transatlantic engine is being undermined by both internal and external factors. One area of conflict takes place in the Dispute Settlement Body (DSB) of the WTO, often erroneously labeled the world’s “international trade court”. The EC and the US have often faced each other in the DSB. Many of the disputes are relatively minor and are resolved with little animosity; however, there have been several high-profile cases in which both the US and the EU have challenged aspects of each other’s trade policy that are politically sensitive: examples include US challenges to the EU’s banana import regime and European challenges to US trade remedy laws as well as the dispute on Boeing-Airbus-support. These disputes have festered as the DSB has been unable to craft a solution that will satisfy both parties as well as maintain the WTO’s principle of a rules-based trade regime. This litigation war has put great strain on the WTO and the DSB.

One of the reasons that these disputes have not been resolved is an ironic byproduct of close transatlantic economic integration. With such open trade and investment linkages, current trade disputes cover issues of regulatory policy traditionally considered to be well inside the sphere of domestic politics, including e-commerce, environmental regulations, bio-safety rules, pharmaceuticals, and copyright rules. The US and EU have fundamentally different approaches to these issues and therefore some trade disputes – both in the DSB and in trade negotiations – have verged on one trying to foist its regulatory system on the other.

A step forward has been taken in April 2007 when under Germany’s EU Presidency a transatlantic economic framework was signed aimed at harmonizing conflicting regulatory systems. In order to do so, a Transatlantic Economic Council (TEC) has been established. The TEC met for the first time in November 2007 and aims at overseeing efforts outlined in the framework, facilitating closer EU-US cooperation, intensifying sector-by-sector regulatory cooperation, and hosting a serious dialogue on investment rules. A detailed work program is being designed to tackle important non-tariff barriers in EU-US trade. The five priority areas for harmonizing regulations that have been spelled out in the framework are: intellectual property rights, investment, secure trade,

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financial markets and innovation. The aim is to resolve regulatory conflicts in these areas before the end of 2008.

Challenges to the Traditional Role of the “G2”

It has to be mentioned that in the last several years, there have been changes in the politics of international trade. Starting with the collapse of the 1999 WTO Ministerial meeting in Seattle, civil society groups and non-governmental organizations highly opposed to or critical of the WTO system have raised the visibility of trade policy. Once the preserve of a relatively closed elite of experts, trade policy has been upended by calls for greater accountability and transparency. While both the US and the EU support greater openness, the nature of these changes makes it more difficult for the transatlantic partners to agree behind closed doors and impose their solution on the rest of the WTO members.

Two external factors have also challenged the traditional role of the US and EU in the international trade regime. First of all, there has recently been a tendency towards regionalism by both the US and EU. Regionalism is not new: Europe’s trade interests have always gone beyond just the United States. Given its unique historic colonial relationship with Africa, Asia, and Latin America, the EU has long been at the center of a system of preferential trading rules with the so-called ACP (Africa-Caribbean-Pacific) countries through the Lomé Convention. Nevertheless, American creation of the NAFTA (1994) and the EU’s recent enlargement and focus on agreements with other regional trading blocs such as ASEAN threatens to replace a truly international trade regime with a series of regional agreements. This outcome is unlikely, but transatlantic difficulties as well as the increasing economic strength of other world regions, make regionalism somewhat more attractive in some quarters.

Secondly, developing countries have strongly resisted transatlantic attempts to impose a solution on trade in agriculture as well as European calls for progress on the so-called “Singapore issues” (investment, competition, transparency in government procurement, and trade facilitation). Since they have managed to group their interests and work together as a cohesive bloc, the outspoken “G21” and “G90” of developing countries have gained leverage vis-à-vis the old “G2”. Their emergence does not threaten the WTO *per se*, but whittles away ever more at the previous room for maneuver enjoyed by the US and EU, making the ongoing Doha round more sclerotic than previous negotiations.

Summary

The rigidity of the Community’s trade policy architecture seems inadequate to meet the challenges of the current round of trade negotiations. The rise of new actors and new demands requires a nimbleness and adaptability that the current decision-making structures are ill-suited to provide. The Lisbon Treaty is to resolve many of these

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problems, but will not be in force before 2009. Europe has sometimes used its inflexibility and obstruction as an effective negotiating tool, but the troubled history of the Doha Round so far makes such brinkmanship potentially disastrous for the WTO system as a whole. The failure to reach a meaningful agreement, especially if one of the trade superpowers is to blame, could set off a return to more regional and bilateral trade initiatives at the expense of a fully functioning global system.