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The Common Commercial Policy and global economic governance

Ferdi De Ville

Introduction

Achieving free trade between the founding member states was the raison d’être of the European Union (EU)\(^1\) (Meunier and Nicolaïdis 2005: 248). Moreover, a common trade policy (Common Commercial Policy—CCP) vis-à-vis the rest of the world was introduced from the very beginning of European integration.

In global economic governance, trade policy is one of the most extensively regulated domains. Particularly since the World Trade Organization (WTO) replaced the General Agreement on Tariffs and Trade (GATT) in 1995, a rule-based system has governed international trade. In many ways, a simultaneous and mutually influencing evolution of the multilateral trade system and the regulation of economic relations in the EU can be observed in the past half century.

As the EU has been economically important since its foundation and has, owing to persistent economic growth and successive enlargement rounds, become a true economic giant,\(^2\) it has been and is one of the most important players influencing the world political economy and international relations in general.

The politics of the Common Commercial Policy

The CCP is, together with the common agricultural and competition policies, the oldest supranational policy area in the EU. None the less, conflicts about the precise allocation of competence have always loomed on the horizon throughout the past 50 years.

In the Treaty establishing the European Economic Community (EEC Treaty), signed in 1957 in Rome, trade policy was delegated to the European level. The transfer of trade competence to the supranational level and the decision-making structure of trade policy in the EU was enshrined in Article 113 of the EEC Treaty (the present Article 207 TFEU). A customs union where trade barriers between the (then six) member states were removed was envisaged as an intermediate stage in the process of moving towards a common market (Meunier 2005: 5–7).

A CCP at the European level that sets a common tariff for the whole EEC, negotiates trade liberalization with third countries and applies measures to protect trade was the necessary
external component of this customs union (Meunier and Nicolaïdis 1999: 479; Elsig 2002: 12; Woolcock 2005: 379). Common rules applying to imports from third countries are necessary to avoid trade diversion. Originally the common external tariff (CET) was a weighted average of the tariffs of the six founding member states. In the following decades, common European tariffs and other trade rules were negotiated during multilateral trade rounds.

The competence for external trade policy was thus transferred to the supranational, European level from the very beginning. At this level, a second act of delegation regulates the actual conduct of trade policy. Day-to-day trade policy-making is delegated from the Council of Ministers (Council), which is composed of ministers from the member states, to the European Commission (Commission) (Meunier and Nicolaïdis 1999). The Commission has the authority to initiate trade rules and speaks for the whole EU during multilateral and bilateral trade negotiations. Nevertheless, the member states retain powerful control mechanisms before, during and after (multilateral or bilateral) trade negotiations. The Council has to give the Commission permission to start trade negotiations and usually also provides it with negotiating directives. During the negotiations, the Commission is being closely monitored by a special committee (for more than a decade known as the Article 133 Committee now Trade Policy Committee), which is composed of representatives from the member states. In the event that the Commission manages to conclude trade negotiations successfully, the member states have to ratify the agreement collectively in the Council and in the case of ‘packaged trade agreements’, also individually (Meunier 2005: 38). The Council must also approve trade defence measures initiated by the European Commission.

Both the first and the second acts of delegation of trade authority in the EU have been (and still are) the subject of intense conflict between the member states and the Commission.

The scope of the exclusive competence of the EU for trade policy has always been disputed, but discord became particularly harsh in the 1990s. The heightened controversy can largely be ascribed to the changed nature and content of international trade negotiations. Before the Uruguay Round (1986–94), trade negotiations in GATT revolved mainly around reciprocal tariff reductions. Since then a multitude of issues has become the subject of international trade negotiations, such as services, investment, government procurement, intellectual property rights, and the relation of trade and the environment, development and labour rights (Young 2003: 61). Some member states have been very hesitant to broaden the scope of the CCP to these new issues (Meunier and Nicolaïdis 1999: 483). This conflict could not be resolved by referring to the treaties, since these contain no exhaustive list of commercial policy issues that fall under the CCP. For the conduct of trade negotiations during the Uruguay Round, where many new issues were on the agenda for the first time, the member states and the Commission reached an informal compromise that stipulated that the EU would negotiate as a single entity while postponing the question on formal competence. However, the competence conflict reached an apex during the Round. This dispute paradoxically was not about the competence for the new issues but arose when the Commission negotiated the ‘Blair House Agreement’ on agriculture with the USA (Meunier and Nicolaïdis 1999: 483–84). France was furious about this agreement and blamed the Commission for exceeding its mandate. Eventually, a renegotiated agreement could be reached that was acceptable both for the USA and for France. When an agreement on all issues of the Uruguay Round was reached in 1994 and had to be signed, the conflict resurfaced. This time the quarrel was about the membership of the newly created WTO and the representation of the EU in this organization. As a compromise could not be found politically, the Commission took the long-standing but escalating conflict about trade authority to the European Court of Justice (ECJ). Unexpectedly, the ECJ in its infamous Opinion 1/94 ruled in favour of the reluctant member states. It decided that while the EU had exclusive competence
on trade in goods, the member states and the EU shared competence on the new issues that had penetrated international trade negotiations. Actually, as this opinion only confirmed the contemporary unsatisfactory situation, ‘the Court sent the ball back to the politicians’ (Meunier 2005: 27). To bring to a halt the uncertainty over the competence for new trade issues, the member states would have to decide whether or not to expand the exclusive competence to such issues and enshrine their decision in the treaties.

The first treaty revision after the ECJ opinion 1/94 did not bring about any significant change (Meunier and Nicolaïdis 1999). In the Treaty of Amsterdam (1997), a ‘passerelle clause’ that stated that the Council could decide unanimously to extend exclusive competence to the new trade issues was introduced in the article governing trade policy, then renumbered 133. The Treaty of Nice (2001) altered the CCP significantly for the first time since the Treaty of Rome. Trade-related intellectual property rights and trade in services were added to the exclusive competences of the EU, except for cultural and audiovisual, educational, social and human health services, for which the authority remained shared. After the Treaty of Lisbon eventually has come into force, the scope of the CCP have been further extended. It includes foreign direct investment and the above mentioned services, for which, however, unanimity in the Council remains required (Article 207 TFEU). Also for the first time, the European Parliament will gain some genuine influence over the EU’s trade policy.

The second act of delegation, whereby the authority to conduct trade negotiations and introduce trade measures is transferred to the Commission, is also often contentious. The Council has to authorize the Commission to start trade negotiations and mostly provides it with less or more detailed negotiating directives (often called ‘the mandate’). During trade negotiations, the Article 133 Committee assists and monitors the Commission. The Commission tends to go along with sensitive opinions of the member states voiced through the Article 133 Committee, since in the end they will have to ratify a reached agreement. Notwithstanding the formal rules often prescribe only qualified majority voting, in practice member states in the Council always decide unanimously on trade agreements, giving every member state a de facto veto. The Council also has to decide on definitive trade defence measures. As a deep division within the EU exists about the use of such instruments, it is a difficult task for the Commission to find a balance when initiating such measures.

The policy of the Common Commercial Policy

After explaining that trade policy is an exclusive but contested competence of the EU and sketching how decision-making on the CCP takes place in practice, we will now take a look at the actual results of the EU’s trade policy throughout the past half century. Furthermore, the ways in which the EU uses its trade policy power to exert broader influence internationally will be discussed.

The CCP can analytically be divided into three pillars: multilateral and bilateral trade relations and unilateral trade measures. These will be discussed separately.

In the first decades after its foundation, the EU has successfully participated in multilateral trade rounds in the GATT (Woolcock 2005: 380–83). The Dillon Round (1960–61) and the Kennedy Round (1964–69) of GATT negotiations, which dealt exclusively with at-the-border barriers (mainly tariffs), were successfully concluded by the EU, which was still becoming a customs union itself. As the then six member states were preoccupied with adapting to enhanced competition among themselves due to the formation of the customs union, the EU adopted a rather defensive outward position in these GATT rounds. At the time of the Tokyo Round (1973–79), launched by the USA with the aim of seeking multilateral rules on agriculture,
technical barriers to trade, government procurement and subsidies, in the EU the member states individually were still extensively using such instruments against each others’ exports and against the rest of the world. Thus, the EU was again on the defensive. Two evolutions sparked EU pro-activeness. First, when it was finally on the track of concluding its internal market programme (commonly known as ‘Europe 1992’), it was as a result becoming more liberally orientated, not only at home but also abroad. Second, EU multilateral leadership was a reaction to US unilateralsm and regionalism starting simultaneously in the second half of the 1980s (respectively the US Omnibus Trade and Competitiveness Act and the North American Free Trade Agreement—NAFTA). At the end of the Uruguay Round in the mid-1990s the EU was (with the important exception of agriculture) as liberal as the USA. After four decades, for the first time, the USA no longer dominated negotiations in the GATT across the board and the EU became an important ally and challenger. In the second half of the 1990s the EU became even more pro-active on the international trade scene. In part by necessity, in part capitalizing on US passivity, but arguably also because of a true belief in multilateralism, it was the main advocate for a new trade round. The EU was thereby placing a host of new issues on the agenda: competition, investment, government procurement, trade facilitation (the so-called ‘Singapore issues’) and the relation between trade and the environment and labour standards. To win the support of developing countries, the EU pleaded that for the first time a multilateral trade round would have as its main objective furthering the interests of developing countries. It set the example to others by introducing its Everything But Arms (EBA) regime in 2001, granting quota and tariff free access to its market to all least developed countries (LDCs), except for arms and ammunition. After failure in Seattle in 1999, a new trade round was eventually launched in Doha in 2001 under the leadership of the EU and dubbed the Doha Development Agenda (DDA) (Van den Hoven 2004).

Next to multilateral trade agreements in the GATT and the WTO, the EU has also concluded many bilateral and regional trade agreements (Woolcock 2005: 382–83). These agreements often had political rather than commercial objectives. First and foremost are the trade agreements of the EU with former colonies of some of the member states (the African, Caribbean and Pacific—ACP—countries). Starting in 1963, successively the Yaoundé, Lomé and Cotonou agreements between the EU and ACP countries governed their trade relations with the objectives of development and good post-colonial relations. Through the agreements the ACP countries are offered non-reciprocal preferential access to the EU market. Recently, these non-reciprocal trade agreements, which were in conflict with WTO rules, had to be replaced by reciprocal agreements. However, the negotiations towards so-called Economic Partnerships Agreement (EPA) have been far from success stories so far. Most ACP countries and development non-governmental organizations (NGOs) oppose EPAs because they perceive them as imposing liberalization, regionalization and domestic reforms on them too quickly and excessively. Currently, a patchwork of regional and individual, full and ‘light’ EPAs are in force.

The EU also negotiated preferential trade agreements with acceding countries (Europe Agreements) and with its other neighbours, securing safety and prosperity at its borders. Only recently, the agreements of the EU with Mexico (2000) and Chile (2002) had pure commercial motives. The EU sought these agreements in order to regain market access lost to the USA as a result of NAFTA and the US-Chile Agreement. After a moratorium on new free trade negotiations under the former Trade Commissioner Pascal Lamy (1999–2004), the EU has since 2007 started commercially motivated negotiations with the Republic of Korea (South Korea), India, the Association of Southeast Asian Nations (ASEAN) and, recently, Canada. It is also involved in long-standing negotiations with regional groupings in Latin America and the Gulf region. The motivations for this resurgence of bilateralism are: to provide an alternative for the
deadlocked DDA; to build upon existing multilateral rules, extend beyond present agreements and build towards future multilateral negotiations (WTO+ agreements); and to get a commercial and diplomatic foot on the ground in areas (Latin America and East Asia) where the EU until recently was largely absent (M. Smith 2004b: 299).

The EU also disposes of some autonomous trade policy instruments. Anti-dumping and anti-subsidy measures are used to protect the EU against unfair trade practices by other countries while safeguards are intended to protect European producers against injury caused by a (fair) surge in imports. The Trade Barriers Regulation is an offensive trade policy instrument that provides EU companies with the chance to lodge a complaint with the Commission against what they perceive as illegal trade barriers in other countries. The Commission will then take the necessary steps to remove such barriers, from consultations with the relevant trading partners to filing a case at the Dispute Settlement Body (DSB) of the WTO. Lastly, the EU offers non-reciprocal market access to developing countries and territories, in the form of reduced tariffs for their goods when entering the EU market. This Generalised System of Preferences (GSP) covers three regimes: the standard GSP; GSP+ for vulnerable developing countries that ratify and implement international conventions in the areas of sustainable development and good governance; and the aforementioned EBA.

To summarize the trade policy of the EU, the EU can be portrayed as a liberal actor on the international trade front, with the notable exceptions of agriculture and textiles and clothing (Heron 2007). These anomalies clash with the self-perception and self-proclamation of the EU as a champion of multilateralism and an actor who puts the international trading system ‘at the service of development’ (Meunier and Nicolaïdis 2005: 260–61). In contrast with the rest of the world, the EU does not only want negative integration (the removal of trade barriers), but also positive integration (the development of rules on competition, government procurement, investment and the relation between trade and the environment and labour standards) agreed on the global level, namely at the WTO. However, due to straight opposition from developing countries against and only half-hearted support from other industrialized countries towards such positive integration, this ‘post-modern’ trade agenda (Dymond and Hart 2000) of the EU has, for the time being, largely failed.

Future challenges for the Common Commercial Policy

After this historical account of the origins of the CCP, the competence battles between the Commission and the member states, and the evolution of the position of the EU in the international trade system, we will now take a look at the most important future challenges for EU trade policy. This list of challenges does not pretend to be exhaustive.

A first important challenge for the EU, which will stay on the negotiating table of the WTO and dominate discussions during free trade negotiations, are the trade effects of the EU’s Common Agricultural Policy (CAP). Via market access barriers and subsidies the EU distorts the global market for agricultural products fundamentally. Since this subject appeared on the agenda of multilateral trade negotiations in the Uruguay Round, major agricultural exporters as well as developing countries have coined reform of the CAP as *sine qua non* for a new multilateral trade agreement. This is obviously closely related to discussions within the EU on the future of the CAP, where fundamental differences between member states persist. In the present DDA negotiations the EU has made far-reaching concessions on agriculture to the dissatisfaction of some member states, notably France. As the DDA has been brought to a standstill over conflict between the USA and India on an agricultural safeguard mechanism for developing countries, it still remains unclear if these EU agricultural concessions will be enough to satisfy
other countries on the one hand and will be acceptable for hesitant EU member states on the other.

A second challenge for the CCP is the EU’s intention to shift the focus of multilateral trade negotiations from negative integration to positive integration. As explained, the EU wants the introduction of rules at the WTO (on competition policy, investment, government procurement, the environment and labour standards) to ‘harness globalization’ (Meunier 2007). The EU is thus seeking to transform the traditional trade agenda into a more comprehensive framework for global economic governance (Jones 2006). However, as the fate of the Singapore issues demonstrate,4 the EU is isolated in this aspiration. Particularly developing countries perceive this ‘deep trade agenda’ of the EU (Young and Peterson 2006) as simply a new burden that will affect them disproportionately.

This brings us to the third challenge: the rise of new trading powers (notably Brazil, Russia, India and the People’s Republic of China—better known by the acronym BRIC) and the coming into being of alliances of developing countries as the G20, G33 or G90 in the international trading system. This has led to a transformation of the bipolar trading system to a multipolar one. This transformation will arguably complicate multilateral trade negotiations in the future, as is already apparent in the current DDA negotiations. The new multipolar trading system will force the EU and its negotiators to rethink its role in the international trading system as well as its negotiating strategies.

A fourth and final challenge, which has become particularly pressing since NGOs have become much more interested in and vocal about EU trade policy, is the legitimacy of the CCP (Meunier 2003). This refers mainly to the decision-making system of the CCP. As explained, the CCP is conducted by the Commission in collaboration (or sometimes confrontation) with member states, who voice their opinions in the Council or the Article 133 Committee. This decision-making system is extremely secretive. Records of discussions in the Article 133 Committee or the Council are not available for the general public, except for some general summary. This reduces the capacity for parliamentarians and civil society to control and influence the trade policy of the EU. During international trade negotiations, the details of proposals and positions of the Commission are often, even for (some of) the member states, a mystery. Also in this context, an often-heard criticism by NGOs is that EU trade policy is captured by large industry.

Core academic debates on the Common Commercial Policy

It is strange to find that while the CCP is the oldest fully integrated policy of the EU, and the EU is a global power in trade negotiations and pursues broader foreign policy goals by way of its trade policy, the literature on the trade policy of the EU is rather thin, especially in comparison with the comprehensive literature on US trade policy (Dür and Zimmerman 2007: 772–73). Case studies about single negotiations or sectors dominate the literature on EU trade policy. Only the last decade has witnessed the elaboration of theoretically informed and empirically rich studies on the CCP. This evolution can largely be ascribed to the deepening of the international trade agenda, the more prominent role of the EU in international trade negotiations and the growing attention of the European public on trade policy as a result of these evolutions.

The main academic debates revolve principally around issues that have been discussed above. The questions that guide most studies on the EU’s trade policy are: who is in charge of the CCP?; what is the position and power of the EU in international trade negotiations?; and why and how does the EU use trade policy as an instrument for broader foreign policy goals?
In describing and analysing EU trade policy, most academics make use of the principal-agent or two-level game metaphors, or a combination of the two (e.g. Van den Hoven 2004: 270–74; Meunier and Nicolaïdis 2005: 249–50; and Woolcock 2005: 389).

A double principal-agent (PA) model is indeed appropriate to describe the decision-making in the EU on trade policy. As has been described earlier, in the treaties the member states (the principals) have delegated the authority to elaborate, negotiate and enforce all aspects of trade policy to the supranational EU (agent). At the European level, the day-to-day trade policy-making, mainly through international trade negotiations, is delegated a second time: from the Council (principal) to the European Commission (agent). The principal-agent metaphor indeed performs well to describe trade policy-making in the EU and also generates some hypotheses about the relative autonomy of the Commission vis-à-vis the member states. However, PA is less appropriate to explain or predict the position or negotiating tactics of the EU in international trade negotiations.

The two-level game metaphor (Putnam 1988), while still primarily a heuristic device, performs better in generating hypotheses about the relation between the Commission and the member states and the position and negotiating tactics of the EU in international trade negotiations. ‘The central point of the metaphor is that an international negotiation is the interaction between the preferences of the negotiating governments, which in turn reflect the aggregation of their domestic interests’ (Young 2000: 96–97). According to this approach, to reach an agreement the outcome must be acceptable both to all governments in the international negotiations and to domestic constituents that will have to ratify the agreement in the end. The negotiator, as the only actor sitting both at the international and the domestic table, disposes of some opportunities for selective information flow from one level to another. In the EU the European Commission is the sole negotiator for the EU in international trade negotiations, a position that it can exploit both within the EU and during international negotiations.

A. Who steers the wheel?

As explained before, the Commission and the member states have clashed often about the division of competence on trade policy, as well as about the EU position during international trade negotiations. This inter-institutional conflict and the question of who steers the trade policy-making wheel in the EU has received wide scholarly attention. Although most scholars make use of the same principal-agent or two-level game metaphors to analyse this relationship, observers disagree on the question of who dominates the CCP.

Some argue that the member states through the Council possess many and powerful control mechanisms that allow them to stay in command of trade policy-making in the EU. Meunier (2005) argues that due to the decision-making structure of the CCP, often the most protectionist member state captures the EU position in international trade negotiations.

Others stress that, on the contrary, the Commission has assets at its disposal that allow it to steer an autonomous course during trade negotiations. It disposes of significant information and expertise advantages due to its role as the sole negotiator of the EU in international trade negotiations, it has the sole right of initiative and it can capitalize on divisions between member states in the Council. Van den Hoven (2004) uses a two-level game perspective to demonstrate the ability of the European Commissioner for trade policy to manipulate the EU position during international trade negotiations. He argues that the European Commission in the run-up to the Ministerial Conference in Doha in 2001 made strategic use of a development discourse to gain the support of developing countries for a new comprehensive trade round at the international level and of reluctant Directorates-General and member states on the domestic level.
B. Fortress vs. free trade Europe

Above we described the EU’s trade policy as generally liberal with some important exceptions. However, the position of the EU in global trade governance is differently assessed by observers. While some authors regard the EU as a champion and genuine promoter of free trade and wonder why ‘the dog failed to bark’ (Wolf 1996), i.e. why the EU is not more protectionist, others perceive the Union as a ‘fortress Europe’.

Hanson (1998) argues that, contrary to widespread expectations, European external trade policy was liberalized extensively in the 1990s, owing to the changed institutional context following the completion of the single market and consecutive treaty reforms, which created an unintended systematic bias towards liberalization.

Other authors still perceive the EU as an inward-oriented, protectionist trade bloc (Heron 2007: 208). They highlight the hypocrisy of the EU’s trade policy, rhetorically promoting free trade and development while protecting some of its sectors that are uncompetitive on the global market from imports of mainly developing country origin.

Most scholars take the middle ground (e.g. Winters 2001), arguing that although the EU’s trade policy is generally fairly liberal, it is an ‘incidental fortress’ with protectionist peaks in some cases (Young 2004).

C. The power of the EU in international trade negotiations

There is a general consensus in the literature that the EU is a great power in the international trading system. However, disagreement exists on the determinants and the extent of this power.

The EU above all derives its strength in international trade negotiations from its structural power (Meunier and Nicolaïdis 2006). The EU market is, depending on the criteria used, the biggest or the second biggest (after the USA) market in the world (see note 2). Consequently, it exercises a magnetic force on other countries. Both the fear of being excluded from as well as the prospect of (enhanced) access to this lucrative market spurs other countries to give in to EU demands, both in trade negotiations and elsewhere.

Meunier (2005) applies the two-level game metaphor to demonstrate that in some contexts the EU derives power from its complicated decision-making structure. According to this approach, the EU is most powerful in a negotiating context where it has defensive interests and when unanimity rules apply internally. Then the European Commission as the EU’s negotiator can claim that its hands are tied and that it is unable to move away from its position because the most reluctant member states will veto any other agreement.

D. Trade policy as the main foreign policy instrument

Some observers consider the EU not only a ‘power in trade’ but also a ‘power through trade’ (Meunier and Nicolaïdis 2006). They argue that the EU does not simply employ its market power to gain concessions in trade negotiations, but that it also ‘uses market access to obtain changes in the domestic arena of its trading partners, from labour standards to development policies, and in the international arena, from global governance to foreign policy’ (Meunier and Nicolaïdis 2006: 906). Access to the EU, possibly the biggest market in the world, underpins the Union’s normative power (Manners 2002). With this asset, the EU shapes global regulatory rules and exports broader norms and values internationally. Notwithstanding its weakness on the military and other traditional foreign policy fronts, the EU is thus becoming a ‘foreign policy actor through the back door’ (Meunier and Nicolaïdis 2005: 266). While few analysts...
will deny the fact that the EU uses its trade policy as a foreign policy instrument, disagreement exists on the power in international relations derived from the economic strength of the EU. Still other authors believe the EU should refrain from using trade policy as a foreign policy instrument (Messerlin 2001).

Conclusion

The CCP is the backbone of EU involvement in global governance and international relations in general. The EU is a superpower in international trade negotiations owing to the size of its market, but also uses access to this market as a foreign policy tool to induce domestic changes in other countries and to affect global governance. However, the EU is a Janus-faced or ‘conflicted trade power’ (Meunier and Nicolaïdis 2006), where disagreement between institutions and between the member states implies that European trade negotiators often spend more time discussing within the EU than with their foreign counterparts during international negotiations (Paemen and Bensch 1995). Furthermore, it is the greatest champion of multilateralism while being engaged in a spaghetti bowl (Bhagwati 1995) of bilateral trade agreements. It advocates the use of trade agreements for the economic development of developing countries while holding on to its protectionist and harmful agricultural policy. Moreover, it is internally divided on many issues that occupy centre stage in international trade negotiations. As a result, neither the future power nor the course of the EU in global economic governance is easily predictable.

Notes

1 For reasons of clarity ‘European Union’ or ‘EU’ will be used throughout this chapter also when strictly legally or historically it should be referred to as ‘European Economic Community’ (‘EEC’) or ‘European Community’ (‘EC’).
2 The EU is the world’s largest exporter of goods, the second largest importer of goods (after the USA), the first trading power in services and the major source and host of foreign direct investments.
3 In the agreements reached in the Uruguay Round it was stipulated that at the latest in 2000 new negotiations on agriculture and services trade had to be started. As the EU had only defensive interests in agriculture, it wanted a new all-encompassing trade round, allowing it to trade concessions in agriculture for gains in other sectors (mainly manufacturing and services) and making agricultural liberalization politically more acceptable within the EU.
4 The Singapore issues, except for trade facilitation, were removed from the negotiation agenda of the DDA after the Ministerial Conference of Cancun in 2003.