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European Union policy towards Free Trade Agreements

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ABSTRACT

The European Union has recently shifted to a trade policy that envisages a greater use of Free Trade Agreements (FTAs). In particular the EU is working on a number of new FTA initiatives. Policy statements also reiterate the EU's commitment to multilateralism in trade and to the completion of the stalled Doha Development Agenda. This paper considers the background to the shift towards a more active use of FTAs, the motivations and forces that have brought about the shift in policy, and the likely EU objectives with regard to the content of the FTAs. Unlike the US the EU has no 'model FTA' to form the basis of negotiations with all partners. In assessing the outlines of the EU negotiating mandates for these new FTAs it is, however, possible to also draw on recent policy statements and the studies and reports produced on each possible new FTA. Finally, the paper discusses whether the EU can reconcile this greater emphasis on bilateral FTAs with its commitment to multilateralism in trade.

Keywords: Trade Policy, Free Trade Agreements, International Political Economy

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INTRODUCTION *

The European Union has recently shifted to a trade policy that envisages a greater use of FTAs.[1] In particular the EU is working on a number of new FTA initiatives. At the Vienna EU-Latin America summit in May 2006 a decision was reached to negotiate an EU – Central American FTA, something that has been under consideration for some time. The EU has also agreed to negotiate an FTA with ASEAN and with India and is exploring an FTA with South Korea.[2] The EU has, of course, made considerable use of FTAs and RTAs for some time. Policy statements also reiterate the EU's commitment to multilateralism in trade and to the completion of the stalled Doha Development Agenda.[3] This paper considers the background to the shift towards a more active use of FTAs, the motivations and forces that have brought about the shift in policy, and the likely EU objectives with regard to the content of the FTAs. Unlike the US the EU has no 'model FTA' to form the basis of negotiations with all partners. In assessing the outlines of the EU negotiating mandates for these new FTAs it is, however, possible to also draw on recent policy statements and the studies and reports produced on each possible new FTA.[4] Finally, the paper discusses whether the EU can reconcile this greater emphasis on bilateral FTAs with its commitment to multilateralism in trade.

BACKGROUND

The EU has been a significant user of FTAs and region-to-region negotiations. These fall into a number of categories. There are the Association Agreements with the states in south eastern Europe/western Balkans and the Euro-Med partners that have been largely motivated by a desire to promote economic development and political stability in EU's near neighbourhood. There are the Economic Partnership Agreements (EPAs) with the Africa Caribbean and Pacific (ACP) states that are largely motivated by development policy objectives. Finally, there have been the bilateral FTAs concluded with South Africa, Mexico, and Chile and the region-to-region negotiation underway with MERCOSUR that have been more commercially motivated. In addition to these full-fledged FTAs there are a range of other co-operation agreements, including efforts to promote regulatory co-operation with the United States. See table I for a list of existing agreements and for agreements currently being negotiated or envisaged.

From 1999 until the recent policy shift the EU exercised a *de facto* moratorium on new FTA negotiations. This was not a formal policy, but was based on a consensus of the Member States and the Commission during the preparations for what was then to be called the Millennium Round of the WTO. Under the direction of the then EU Trade Commissioner Pascal Lamy, the priority was on a comprehensive multilateral round. This remained the policy of the EU despite the difficulties in launching a new round.

After the Cancun WTO Ministerial at which the EU effectively allowed three of the 'Singapore issues' (investment, competition, and transparency in government procurement) to be dropped from the Doha Development Agenda (DDA), the EU continued to favour multilateral negotiations. In a policy statement in November 2003, the Commission articulated the view that the DDA remained the priority, but FTAs would not be ruled out in principle, if they offered clear economic benefits and, in cases of region-to-region agreements, the EU's partners showed evidence of progress towards regional integration. Only as the prospects of an ambitious comprehensive round have

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diminished has the pressure for FTAs with Asian states grown. During the Prodi Commission, the DG Trade Commission held to the moratorium because new bilateral negotiations would have weakened the EU's position in pushing for a comprehensive multilateral round.[5]

Before discussing the factors that brought about the shift in EU policy the following section discusses the various policy aims that have motivated EU FTAs to date.

MIXED MOTIVES

In the case of EU FTAs, as with all FTAs, there have been a number of factors motivating each EU initiative. But some FTAs have been shaped more by foreign/security policy and others more by commercial considerations.[6]

The more political motivations

Foreign policy and security interests have predominated in the agreements with the EU's eastern and southern neighbours. For example, the Europe Agreements negotiated with the central and east European countries from 1990 were motivated by a desire to create a stable post Cold War European economic and political order. The Euro-Med Association Agreements negotiated with the EU's southern neighbours were also largely motivated by a desire to promote economic and thus political stability in the Mediterranean. By assisting economic development the Euro-Med process was intended to check large-scale outward migration from the region and provide the economic basis for political stability, thus tackling the potential causes of fundamentalism and instability in the region. European security is also the major motivating factor behind the Stability and Association Agreements that are being negotiated with the states in the western Balkan. Together with the accession of Romania and Bulgaria, these are intended to promote economic development and integration in the region with a view to reducing and ultimately eliminating the risk of renewed political tensions and war.

The agreements negotiated with the ACP states such as the Lome, Cotonou, and the envisaged Economic Partnership Agreements currently under negotiation, are motivated by development aims. In the current EPA negotiations the EU has been criticized for placing too much emphasis on reciprocity and not enough on development aims, but all 78 ACP states account for only 3 % of EU exports (and 4 % of EU imports). Few of the ACP states constitute very large markets, so in comparison with large emerging markets such as China and India, they are not large enough to justify FTAs, were it not for the EU's existing commitments to these developing countries.

Commercially motivated FTAs

One can identify three broad commercial motivations for FTAs; neutralizing potential trade diversion resulting from FTAs between third countries; forging strategic links with countries or regions experiencing rapid economic growth; and enforcement of international trade rules.

The EU-Mexico FTA is a classic case of neutralizing trade diversion. Following the conclusion of NAFTA, EU trade with Mexico experienced a dramatic decline. The EU–Mexico agreement was therefore motivated by a desire to neutralize such trade diversion and was, as a result, negotiated with the objective of gaining NAFTA equivalent access to the Mexican market.[7] The EU negotiations with Mercosur (and Chile) were initiated as a region-to-region agreement in order to promote EU relations with Latin America and support the process of regional integration within Mercosur. Negotiations were initiated with Chile because of Chile's aim of becoming an associate member of Mercosur. But the importance placed on EU Mercosur and EU–Chile has been influenced by the prospects of the FTAA (Free Trade Agreement for the Americas). The FTAA was intended to form a free trade area from Alaska to Chile (excluding only a few countries such as Cuba

on the way). In other words the EU–Mercosur and EU–Chile negotiations were in part motivated by a desire to neutralize the potential trade diversion in favour of the US in Latin America. As the prospects of the FTAA faded so did the impetus behind EU–Mercosur. When the US concluded an FTA with Chile, however, the EU pressed for a bilateral that ensured equivalent access for EU exporters and service providers.

Other EU FTA initiatives, such as the EU–Central America FTA negotiations, EU–ASEAN and EU–South Korea, have also followed FTAs negotiated or envisaged with the US (CAFTA, US–Singapore, US–Thailand and US–Malaysia, and US–Korea) and to a lesser extent Japan.

Strengthening strategic links with important emerging markets also appears to be a key motivating factor behind EU FTAs with Mercosur (which experienced rapid growth when the regional agreement was initiated), but more especially South East Asia and India. Here the aim is simply to strengthen trade and investment links with markets that will be important in the future.

Finally, FTAs are seen as a means of strengthening the implementation of existing international trade rules, such as intellectual property rights. This aim is given some prominence in the recent European Commission paper on the EU in global competition, that provided the vehicle for setting out the current approach to FTA policy.[8] As a general rule the EU FTA policy requires that there be a clear economic case for any FTA, which can generally be interpreted as meaning some real increase in market access in addition to that achieved at the multilateral level in the WTO.

Promoting the European model of integration

As will be illustrated below in the discussion of the content of EU FTAs, the EU has not used a model FTA. All agreements appear to be negotiated flexibly to suit the EU and its partners in each specific case. Nor does the EU make offensive use of the *acquis communautaire*. Clearly the *acquis* shapes the EU's negotiating position, just as domestic policies shape a single country's position in any negotiation, but the EU has not (to date) been very aggressive in pushing for harmonization *à la acquis communautaire*. The EU has however, been explicit about its desire to promote regional integration in other regions of the world. In this sense it has sought to export the idea of regional integration more than the specific *acquis communautaire*. The EU has a policy of promoting region-to-region agreements in which the EU links an FTA or Association Agreement to progress towards integration in the partner region, as a means of encouraging regional integration in the partner region. This is reflected in the negotiations with Mercosur. The EPAs are also being negotiated with regional groupings of ACP states such as ECOWAS (West Africa), COMESA (East Africa and Egypt), CARICOM (Caribbean) and SADC (Southern Africa but excluding South Africa). The EU also envisages a regional-to-regional negotiations with Central America and the CAN (Andean Community) as well as ASEAN.

The EU does this because regional integration is seen as a means of promoting economic and political stability following the European experience. Needless to say, this is something that the European Commission favours and the EU Member States can scarcely oppose. In practice, however, region-to-region agreements have been difficult and slow to negotiate, in no small measure because the EU's partner region is often unable to make much progress towards integration. Mercosur and most of the ACP regions are struggling to make progress with their integration. Region-to-region negotiations with ASEAN also look problematic given the diverse levels of economic development of the ASEAN members and political difficulties with certain countries (human rights in Burma).

Although the EU does not make aggressive use the *acquis communautaire* as a model for FTAs, it is motivated by a desire to achieve in FTAs what it has failed to achieve in multilateral negotiations. This goes for market access as well as aspects of trade and investment rules, such as the inclusion of the Singapore issues (trade facilitation, transparency in government procurement, investment and competition) in one form or another in FTAs.

WHAT HAS LED TO THE SHIFT IN EU POLICY ON FTAS?

The move from a *de facto* moratorium on new FTA negotiations has been brought about by a number of factors.

First, there have been the difficulties in multilateral negotiations within the WTO's Doha Development Agenda and the EU's failure to achieve its aim of a comprehensive WTO agenda. The EU persevered with the effort to promote a comprehensive agenda in the WTO, but its interest in the round was diminished when it had to give up transparency in public procurement, investment and competition, at or shortly after the Cancun Ministerial in 2003. Failure to make progress on services and non-agricultural market access (NAMA) suggested that the ambition of the DDA was limited, even in established WTO policy areas.

A second factor has been developments in US trade policy. During the 1990s US policy was to see FTAs as fulfilling a 'pathfinder role.' In other words CUSFTA, NAFTA and APEC were seen as a means of showing other countries how to carry the trade agenda forward. As such US trade policy saw FTAs as a bilateral means to the end of multilateral liberalization and rule making. From about 2000 the US interpretation of 'competitive liberalization' has been rather one that saw FTAs more as an alternative to multilateral liberalization.[9] The US also pressed ahead with an active agenda of FTAs ranging from CAFTA to US - South Korea. This US activism has made it harder and harder for the EU not to respond, especially when major markets such as Korea are involved.

A third factor behind the shift in EU policy has been the burgeoning of economic growth in Asia and the conclusion of a range of FTAs that has accompanied this growth. With no full-fledged agreements with Asian partners, apart from the TREATI regulatory co-operation agreement with ASEAN and ASEM, which is only a forum for consultation, there was growing pressure from EU exporters and investors in the region for the EU to strengthen its presence. In terms of economic importance, the envisaged FTAs with ASEAN, India and South Korea are more important for the EU than the EPAs, or the Central American or the Andean Community FTA proposals.[10]

A final factor shaping EU FTA policy has been domestic changes within the EU. For example, the moratorium on new FTAs was closely associated with Pascal Lamy, the EU's Commissioner for Trade during the Prodi Commission from 2000 to 2005. The new trade Commissioner Mandelson has been more willing to consider FTAs. Changes in staff within DG Trade have also taken proponents of the moratorium into other directorates.

THE CONTENT OF EUROPEAN FTAS VARIES FROM CASE TO CASE

Unlike the United States that uses the NAFTA as a model for all its FTAs, the content of EU agreements varies considerably from case to case. EU–Chile is seen as something of a model as it represents the most recent and advanced FTA, but it is only likely to be a model when the EU negotiates with countries at a similar level of development.

Border measures and rules of origin

In its FTAs the EU has sought tariff free trade for 90 % of the trade with preferential partners. The Commission sees this as necessary if challenges under Art XXIV of the GATT 1994 are to be avoided. The definition of substantially all trade in the GATS Art V is probably tighter (requiring that no service sector is excluded from coverage). The 90 % threshold is, however, not a fixed reference, and in the current discussions on the interpretation of GATT Art XXIV in the WTO's Committee on Regional Trade Agreements the EU is showing some flexibility towards possibly accepting a higher threshold. The EU is also likely to interpret substantially all trade as covering the sum of

trade, so that in negotiations with developing countries seeking a lower threshold, the EU might accept less than 90 % coverage for the developing country partners. Even a definition of substantially all trade that exceeded 90% coverage would still leave scope for excluding sensitive sectors in agricultural, and a limited number of sensitive industrial, sectors or sub-sectors. The EU's schedule in Trade Development and Co-operation Agreement (TDCA) with South Africa, for example, excluded over 280 agricultural tariff lines, but the EU was still able to keep within the 90 % ceiling. Given there is no agreed definition of substantially all trade under GATT Article XXIV, there is unlikely to be a significant external constraint on 'exclusions' in the agricultural sector. The EU is, of course, not ready to contemplate inclusion of agricultural subsidies in any FTA.[11]

Provisions on sanitary and phytosanitary (SPS) measures in EU FTAs will also affect market access in agricultural and food products. Shifts in European consumer preferences in favour of higher food safety and environmental standards have resulted in the EU seeking to use the precautionary principle in the regulation of risk. This implies an approach that views science-based risk assessment as an important but not the only criterion. The EU provides for an application of the precautionary principle in which regulators must err in favour of caution and prohibit imports or the release of genetically modified crops into the environment when there is uncertainty.[12] This arguably leaves more discretion in the hands of regulatory authorities that might be abused to restrict trade. The EU's approach to precaution in its FTAs is at odds with the approach favoured by the US and other exporters of GM products that favour the narrower 'science-based' approach in their FTAs. In negotiating FTAs however, the EU must recognize that its partners will reciprocate on SPS rules. This will hit EU exports.

Rules of origin can be equivalent to a 4 % tariff and incompatible RoO in different FTAs are the antithesis of trade facilitation.[13] The EU is applying the PanEuro system of rules of origin to its

RULES OF ORIGIN

In order to benefit from zero of reduced tariffs in a preferential agreement such as an FTA or EU Association Agreement, goods must be either (1) be manufactured from the raw materials or components of the beneficiary country or (2) undergo a specified amount of working or processing as set out in "the list rules" in order to have "originating" status. In the case of the EU a change of tariff heading (using the harmonized system HS) is used to define origin in about 60 % of all products. But the EU combines this approach with value content or value added (a specific percentage of value must be added in the beneficiary country) and technical requirements (a particular process must be carried out in the beneficiary country). Harmonization in the form of the PanEuro system therefore means that the same combination of criteria is used for all EU Association Agreements.

Cumulation of rules of origin within a preferential trading area can facilitate trade. Cumulation is the term used to describe a system that allows products originating in country C to be further processed or combined with products in country B (the beneficiary country in a preferential agreement) so that the combined product then qualifies as a product originating in country B and thus benefits from preferential access to country A. Bilateral or diagonal cumulation requires that the products processed in country B originate from countries that have signed bilateral or regional FTAs with the EU (e g the PanEuroMed system). Diagonal cumulation using the PanEuroMed system would therefore mean that a product from any other Euro-Med partner would have originating status. Full cumulation dispenses with this requirement so that all goods, including those that originate outside the preferential area can be included, provided all work or processing required to confer origin status is carried out in the country with the preference. Examples of full cumulation can be found in the EEA and EU agreements with the ACP and Maghreb.

preferential agreements. This was initiated in 1993 in order to replace the various incompatible rules of origin in the European Agreements with the EU's Central and East European partners, and it is now applied to Turkey. In 2003 the EU and its Mediterranean partners agreed to extend the PanEuro system to the whole Euro-Med region. The EU argues for the adoption of PanEuro RoO in its FTAs if it is to accept diagonal or full cumulation among its preferential partners. Cumulation is needed if intra regional trade is to increase in the EU's partner regions. The problem with this approach is that the EU RoO are still fairly complex and differ from the other dominant model for preferential rules of origin, namely NAFTA.[14] The rules of origin used by developing countries, including those in Africa and Asia, are typically based on simpler value content of between 40 and 60 %. The EU is considering simplifying rules of origin for less developed preferential trading partners, such as the adoption of value added as criteria for rules of origin from developing countries and setting a level of the added value that would match the developing country partner's production capability. The 2005 proposals also envisage increased technical assistance for developing countries to help them develop more capacity in certifying origin.[15]

Contingent protection

All trade agreements include safeguards in one form or another, and the EU FTAs are no exception. There are three forms of safeguards. Permanent safeguards that take the form of a reaffirmation of the EU's rights under the WTO. In other words the EU retains the right to bring a case under the Art XIX provisions of the GATT as redefined in the Safeguards agreement in the Uruguay Round. Transition safeguards are those that grant the EU (and its preferential partners) rights to impose import controls should the FTA lead to an unexpected rapid increase in imports during its implementation. The requirements here are similar to those in the WTO (non-discrimination, substantial injury and causality between imports and injury), but the EU has greater discretion in how it interprets these provisions in transitional safeguards. Finally, there are special safeguard measures that the EU uses for sensitive sectors such as agriculture, and offers as special and differential treatment for developing countries. For example, the Euro-Med agreements grant the EU's southern partners the right to introduce customs duties of up to 20 % as part of a development or import substitution policy.

The EU, like the US, retains the right to use anti-dumping duties against exports from FTA partners. The only exception to this is within the European Economic Area (EEA), where a common competition policy is seen to have dispensed with the need for anti-dumping duties against predatory practices. Outside the EU only the Canada–Chile and the Australia–New Zealand Closer Economic Relations Trade Agreement (CER) preclude anti-dumping against FTA partners.[16]

Technical barriers to trade and public procurement

For manufacturing technical barriers to trade (TBTs) and public procurement (PP) are important for market access. In developed economies TBTs constitute important barriers to market access and PP can amount to anything up to 7 % of GDP. They are less important in terms of EU export interests in developing economies, at least for the time being. Public procurement is however, important for EU exporters in emerging market especially in sectors such as construction, power, telecommunications, water, transport etc. In the future TBTs may also become important barriers to trade in emerging markets as the latter begin to develop more sophisticated regulatory norms and voluntary standards.

The EU does not have significant provisions on TBTs in its FTAs. In the case of the EU's near neighbours (i e Euro-Med partners and the Balkans) the expectation is that these countries will progressively adopt European standards. The EPAs are likely to include equivalent general aspirations. Association Agreements also tend to include technical assistance to help the partner countries develop standards and conformance testing capacities rather than specific binding obligations. Such

technical assistance can of course encourage the use of European, or more likely, agreed international standards.

In FTAs with partners such as Chile and South Africa there is reference to mutual recognition (of conformance assessment) as an ultimate aim. But as the existing EU bilateral mutual recognition agreements have shown the EU will expect conformance assessment in the partner countries that is on a par with EU laboratories and accreditation standards. This has created considerable difficulties and appears to have contributed to the lack of any real conviction in EU efforts to include mutual recognition in its FTAs. In future the EU is likely to emphasize the use of agreed international standards as much as mutual recognition in FTAs.

Transparency in public procurement was one of the so-called 'Singapore issues' the EU had on its comprehensive agenda for trade. The inclusion of procurement in FTAs therefore raises the issue whether the EU can achieve bilaterally what it failed to achieve in multilateral negotiations. The answer is a qualified yes. The provisions on government procurement in existing EU FTAs vary. In FTAs with developing countries and Euro-Med partners there are only very general non-binding and non-specific provisions urging mutual opening of procurement markets. The TDCA with South Africa goes a little further, but would still require decisions of the Association Council before it had any teeth. EU–Chile FTA is different in that requires Chile to offer the same transparency and market access as it would if it were a signatory to the WTO's plurilateral 1994 Government Procurement Agreement (GPA). This is interesting because Chile was one of the main opponents of extending and strengthening the GPA in 1994. If the EU uses EU–Chile as a model for future negotiations it can be expected to seek GPA equivalent measures for the bigger emerging markets, which is something the US has also done in all its FTAs, even those with developing countries such as Morocco.

Services and investment

Services is an area of comparative advantage for many EU Member States and so one in which the EU will also have offensive interests. To meet the policy aim set out in 2003 that FTAs must have economic benefits service commitments of the EU's FTA partners will have to go beyond their existing GATS (General Agreement on Trade in Services) obligations. Again the EU is likely to distinguish between least developed and developing countries that it is unlikely to push very hard, and the more important emerging markets where the EU service sector is looking for progress. The FTAs envisaged with ASEAN, Korea and India therefore offer a means of going beyond the GATS. The EU is likely to be influenced by the success of the US FTAs in services. These have gone substantially further than the GATS coverage and well beyond even offers made in the course of the current DDA.[17]

The EU approach to services in FTAs to date has been the same as in the GATS in that all four modes of supply have been included in one services chapter. US FTAs have separate chapters for cross border supply of services and investment, which comes in a separate chapter covering investment in both manufacturing and services.

Inclusion of a general investment provision in EU FTAs has been hindered if not precluded by the fact that competence for investment still resides with the EU Member States rather than the European Community.[18] Member States have negotiated investment in the OECD and in the Multilateral Investment Agreement negotiations. However, the EU–Chile FTA included more ambitious provisions on investment, and the EU is currently debating a 'minimum platform' on investment to be included in future EU FTAs, so the upcoming negotiations with ASEAN, South Korea and even India may well see more ambition in the EU negotiating position. Greater ambition in EU investment provisions may help it to match the US, which includes comprehensive investment rules in all its FTAs including extensive liberalization provisions (prohibition of a wide range of performance

requirements and pre-establishment national treatment) as well as investment protection (including *de facto* expropriation or regulatory taking) as well as investor–state dispute settlement. There is, however, unlikely to be sufficient domestic political support in the EU for efforts to include *de facto* expropriation or investor dispute settlement. Sector coverage in the US FTAs is also based on the more liberal negative listing, compared to the EU approach, which uses the GATS approach of a combination of positive and negative listing. In terms of the EU's FTA partners, the GATS approach is likely to be more palatable as it provides for more flexibility.

Competition and intellectual property rights

One Singapore issue, on which the EU has been more aggressive, has been competition. Domestically the EU has always made a point of developing European competition policy in order to ensure that private restraints do not replace public restraints as the EU creates an integrated market. The EU has applied the same philosophy internationally and argued that international competition policy is needed as trade and investment liberalization takes place. But the competition provisions it has included in FTAs have (to date) been fairly modest. The Euro-Med agreements envisage the progressive adoption of the whole *acquis* in European competition policy by the EU's Mediterranean partners. But this is clearly something that will take a long time. There is, however, a more immediate impact in terms of the rules on state subsidies (part of European competition policy) that contain an explicit prohibition, although the EU's Euro-Med partners are given broad exemptions.

There are more extensive competition rules in the TDCA and the EU–Chile FTA. The TDCA with South Africa prohibits subsidies and restrictive business practices, but once again there are broad exemptions for South Africa from the ban on state subsidies. In restrictive business practices the TDCA and EU–Chile FTA both provide for positive comity in cooperation between the European and South Africana and Chilean competition authorities.[19] The EU is likely to look for this kind of co-operation in all its FTAs and region-to-region agreements possibly linked to the provision of technical and financial assistance to FTA partners that undertake to strengthen their competition authorities.

Finally, past practice suggests that the EU will seek compliance with existing IPR standards such as in TRIPs and the Bern, Paris and Rome Conventions on industrial and other property rights, rather than pressing for the inclusion of specific obligations in the FTAs it negotiates. In other words the EU approach does not go beyond TRIPs and other agreed standards of intellectual property right protection. In this it appears to be less aggressive than the TRIPs-plus policy pursued by the US.[20] Having said this, the EU may well try to use FTAs to make progress on geographic indicators (GIs)[21], a policy area in which it has faced considerable opposition in multilateral negotiations.

Institutional structures

To date EU FTAs have generally taken the form of an Association Agreement that includes co-operation in pillars two and three as well as one, in other words foreign policy and justice and home affairs (migration, police co-operation, anti-terrorism etc) as well as the main free trade agreement. The adoption of such agreements requires unanimity in the Council and the assent of the European Parliament by means of a simple majority. This means the Commission has a shorter leash in FTA negotiations than in the WTO, where decision-making is at least *de jure* by qualified majority voting on issues of exclusive Community competence. An Association Council consisting of the EU and other signatory governments is then responsible for the implementation of the agreement and may adopt subsequent implementing provisions. Dispute settlement in EU FTAs is usually through conciliation in the Association Councils.

There are, however, indications that the agreements proposed with ASEAN, South Korea and India may be straight FTA agreements and will not include political and other areas of co-operation

that have to some degree already been covered by more general co-operation agreements. If so this could mean that the Commission would be more in control of the negotiations and the European Parliament would have less of a role.

THE PROSPECTS OF SUCCESS

What are the prospects of success in the negotiations that are already under way? In 2000 the Cotonou Agreement with the ACP states set the objective of negotiating Economic Partnership Agreements (EPAs) with the ACP states by 2008. The EU is also negotiating with Mercosur (Brazil, Argentina, Uruguay and Paraguay), the Golf Co-operation Council (GCC) (Bahrain, Oman, Saudi Arabia, Qatar, Kuwait and the United Arab Emirates) as well as states in the western Balkans (Stability and Association Agreements) and some Euro-Med Agreements with partners in North Africa and the Middle East.

Under the Cotonou agreement of 2000 the EPAs are to replace the EU preferences for the ACP states under Lome. The ACP do not touch on significant economic interests within the EU outside of a few sensitive sectors in agriculture. The ACP states were excluded from the MFA protection in textiles. Sugar, bananas and rice were important sectors under Lome with EU protection and support programmes being effectively extended to the ACP states, so that the reform of the EU regimes also erodes the ACP preferences and support programme. EU financial compensation for the ACP producers has however been less generous than that for EU growers (e g sugar). As noted above the EU is working on a 90 % aggregate for coverage of tariff elimination, which leaves some scope for the ACP states to retain import tariffs in sectors it wishes to protect for development purposes and/or tariff revenue reasons. But the detailed tariff schedules are still the subject of negotiation as is how the EU will help ACP states that suffer loss of tariff revenue.

The EPA negotiations have been held up because of a lack of progress towards integration in the ACP regions. Region-to-region agreements between the EU and COMESA, CEMEC, ECOWAS, EAC or CARICOM are intended to promote integration within these regions and thus facilitate economic growth. This implies the ACP states in each region can agree, for example, on a common list of sensitive sectors to be excluded from liberalization, and this has been a slow process. The EPAs will no doubt be completed in some form, but the 2008 deadline may not be achieved, and they seem certain to be more complicated than a set of clean region-to-region agreements.

In the Mediterranean the EU has negotiated a series of Association Agreements (with Tunisia, Algeria, Egypt, Jordan, Syria (not yet implemented), Lebanon and Morocco) under the Barcelona Process started in 1995 as a means of achieving a tariff free zone across the Mediterranean by 2010. But trade continues to be hub-and-spoke (between the EU and each of the Euro-Med partners), rather than intra regional. Indeed, intra regional trade within the Magreb and Mashreq is only 5 and 7 % respectively, despite the Agadir agreement of 2004 (a free trade agreement between Egypt, Jordan, Tunisia and Morocco) and the Arab Free Trade Area of 1997 (aimed a creating a free trade area for all Arab states in 10 years), which were both intended to promote trade between the EU's Mediterranean partners. The Euro-Med agreements, like the Stability and Association Process (with the western Balkans) have as noted above, been motivated by security interests in the region, but if they are to succeed, the agreements will have to bring more economic benefits than they have to date.[22]

The European Commission concluded the European Mercosur Interregional Framework Co-operation Agreement as long ago as 1994, out of a desire to foster regional integration in South America, but differences between EU Member States on the regionalism versus multilateralism issue in the late 1990s held back negotiations, as did differences between EU offensive interests in manufacturing and defensive interests in agriculture. The pace of negotiations has also been slowed by economic difficulties within Mercosur.[23] The current deadlock in the Free Trade for the Americas

(FTAA) negotiations has removed some of the pressure from EU exporters to match US access to Latin America.

The EU Central America negotiations equally follow the ratification of the Central American Free Trade Agreement (CAFTA) by the US Congress. So there will be an incentive on the part of EU interests to match the US preference in the region. These negotiations should be relatively straightforward given the limited size of the markets concerned and the fact that the EU will have the CAFTA commitments as an indicative target.

The EU–ASEAN negotiations build on existing co-operation between the EU and ASEAN in trade regulation and investment.[24] Studies undertaken for the Commission argue that there would be gains for ASEAN in manufactures and for the EU in services.[25] But ASEAN exhibits some of the same characteristics as the EU FTA negotiations with Mercosur. ASEAN includes countries at different levels of development and is experiencing difficulties with its regional integration, so the EU faces similar difficulties pursuing a region-to-region approach to ASEAN. One possible approach would be to negotiate a framework agreement with ASEAN as a whole and then a set of bilateral agreements with specific ASEAN members on market access issues. This would also help to get around the political problem of Myanmar (Burma).[26] The pace and urgency of EU negotiations with ASEAN and South Korea will be influenced by the pace of US negotiations with Thailand, Korea and Malaysia. If the US fails to complete these before Trade Promotion Authority runs out in June 2007, some of the urgency behind the EU initiatives is likely to be lost.

CAN THE EU FTAS BE MADE COMPATIBLE WITH MULTILATERALISM?

The EU is committed to multilateralism in its policy statements, but is this consistent with negotiating a new set of FTAs? Much depends on one's assumptions about the nature of the international trading system. If one assumes that the trade and investment regime has always been made up of negotiations and agreements at different levels, then the key question is not free trade agreements or the WTO, but how to ensure that the two are broadly compatible.[27] Compatibility in this context means more than formal compliance with the WTO rules, because the scope for different interpretations of Article XXIV GATT is such that there is no effective WTO discipline. There has been some progress in the WTO. In July 2006 an agreement was reached on improved transparency for FTAs. But there is still no agreement on what constitutes substantially all trade in terms of tariffs, or for that matter how to apply Art XXIV to deeper integration.[28]

If the EU wishes to ensure the compatibility of its FTA policy with multilateralism it should define substantially all trade as being at least 95 % of trade (not 95 % of tariff lines, which is a lower threshold) and avoid a concentration of excluded sensitive products in specific sectors (i e agriculture). The PanEuro rules of origin system remains too complex, so the envisaged reform simplifying EU preferential rules of origin should be carried through. GATS-plus coverage of services would constitute a preference, but if the EU broadly matches commitments in services made in US-FTAs there would be scope for these to then be rolled into multilateral commitment in the GATS. The deeper integration proposed by the EU in its FTAs should result in improvements in regulation and competition. In particular bilateral measures that promote enhanced transparency and regulatory best practices are consistent with multilateralism. When it comes to specific regulatory norms or standards however, the EU should ensure that its FTAs seek enhanced compliance with existing international norms or standards rather than introduce specific new standards in the bilateral agreements.

TABLE 1 EUROPEAN UNION FREE TRADE AND ASSOCIATION AGREEMENTS

TRADING PARTNER	TYPE OF AGREEMENT	STATUS
EUROPE		
EEA	Effective application of EU acquis communautaire	In force since 1996
Switzerland	Sector Free Trade Agreements	Various dates
Turkey	Customs Union	31/12/1995
Croatia	Stabilisation and Association Agreement (SAA)	Entered into force 01/01/05
Macedonia	SAA	Entered into force 01/05/05
Bosnia and Herzegovina	SAA	Negotiations ongoing
Albania	SAA	Enters into force in early 2007
Montenegro	SAA	Negotiations ongoing
Serbia	SAA	Negotiations on hold
Russia	Enhanced (cooperation) Agreement	Negotiations ongoing Council Negotiating Mandate of 13/11/06
Ukraine	Enhanced (co-operation) Agreement	Council still to agree to open negotiations
Moldova	Partnership and Cooperation Agreement	July 1998
NORTH AFRICA AND MIDDLE EAST		
Algeria	Euro-Med Agreement	01/09/2005
Egypt	Euro-Med Agreement	31/12/2003
Israel	Euro-Med Agreement	01/06/2000
Jordan	Euro-Med Agreement	01/05/2002
Lebanon	Interim Euro-Med Agreement	01/03/2002
Morocco	Euro-Med Agreement	01/03/2000
Palestinian Authority	Interim Euro-Med Agreement	01/07/1997
Syria	Euro-Med Agreement	Negotiations concluded in 2004 but not signed
Tunisia	Euro-Med Agreement	01/03/1998
Gulf Cooperation Council	Free Trade Agreement	Negotiations ongoing
Iran	Cooperation Agreement	Negotiations ongoing since 2002
Iraq	Cooperation Agreement	Negotiations ongoing since November 2006
AFRICA		
ACP regions	Economic Partnership Agreements	Second phase of negotiations began in October 2003 scheduled for completion in 2008
South Africa	Trade Development and Co-operation Agreement	01/01/2000
THE AMERICAS		
Mexico	Economic Partnership Agreement	01/02/2000
Chile	Association Agreement	01/02/2003
Mercosur	Association Agreement	Negotiations ongoing since 1999
CAN (Andean Community)	Free Trade Agreement	Negotiations complicated by Venezuela's position in CAN
CAFTA (Central America)	Free Trade Agreement	EU preparing negotiating mandate
Canada	Trade and Investment Enhancement Agreement	Proposal under discussion in the Council
Asian		
ASEAN	Free Trade Agreement to enhance existing cooperation	Proposed
South Korea	Free Trade Agreement	Proposed
India	Free Trade Agreement	Proposed

REFERENCES

Aggarwal, Vinod & Fogerty, Edward (2004), 'Explaining trends in EU interregionalism,' in Aggarwal & Fogerty, *EU trade strategies : regionalism and globalism*. London: Palgrave Macmillan

ASEAN-EU Vision Group (2006), *Transregional partnership for shared and sustainable prosperity*. Ha Noi, May 10, <www.europe.org.sg/en/images/AEVG%20Report--Final--10May06.pdf>.

Bergsten C Fred (1996), Competitive liberalization and global free trade : a vision for the early 21st century. Washington, DC: Peter G Peterson Institute for International Economics (Working Paper No 96-15).

Bhagwati, Jagdish (1995), 'U S trade policy : the infatuation with free trade agreements', in Jagdish Bhagwati & Anne O Krueger, *The dangerous drift to preferential trade agreements.* Washington, DC: AEI Press.

European Commission (2005), 'The rules of origin in preferential trade arrangements : orientations for the future.' Brussels: The European Commition (Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM/2005/ 100 final), 16 March, <www.eurocommerce.be/content.aspx?PageId=40188>.

European Commission (2006), *Global Europe : competing in the World : a contribution to the EU's growth and jobs strategy*. Brussels: European Commission (Commission Staff Working Document/Annex to The Communication from the Commission to the Council, the European Parliament, the European Economics and Social Committee and the Committee of the Regions/SEC 2006 1230), 4 October, <http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf>.

Feinberg, Richard (2003), 'The political economy of United States' free trade arrangements.' *The World Economy,* vol 26, issue no 7, pp 1019-1040.

Grant, Isaac (2006), 'The interaction between levels of rulemaking in international trade and investment : the case of sanitary and phytosanitary measures', in Woolcock, Stephen (ed), *Trade and investment rule-making : the role of regional and bilateral agreements.* Tokyo: UN University Press.

Pugatch, Meir (2004) 'The international regulation of IPRs in a TRIPs and TRIPs *plus* worlds' in Stephen Woolcock Stephen (ed), *Trade and investment rule-making : the role of regional and bilateral agreements*. New York: UN University Press.

Reiter, Joakim (2003), 'The EU-Mexico Agreement', in Sampson, Gary & Woolcock, Stephen (eds), *Regionalism, multilateralism and economic integration : the recent experience.* New York: UN University Press.

Trade Group to the EU-India Summit (2006), "Report of the EU-India high level trade group to the EU-India summit." Brussels: European Community, 13 October, <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130306.pdf>.

Woolcock, Stephen, ed (2006), *Trade and investment rule-making : the role of regional and bilateral agreements.* Tokyo: UN University Press.

WTO (2006a), *Services liberalization in the new generation of preferential trade agreements (PTAs) : how much further than the GATS?* Washington, DC: World Trade Organization, Economic Research and Statistics Division (Staff Working Paper ERSD 2006:07), <www.wto.org/english/res_e/reser_e/ersd200607_e.pdf>.

WTO (2006b), 'Transparency mechanism for regional trade agreements.' Washington, DC: World Trade Organization, Negotiating Group on Rules (Job(06)/59/Rev 5), <http://66.102.9.104/search?q=cache:ydHBkDAMcr8J:www.wto.org/english/news_e/news06_e/job06_59rev5_e.doc+Transparency+mechanism+for+regional+trade+agreements&hl=sv&ct=clnk&cd=2&gl=se>.

ENDNOTES

1. The policy shift on FTAs that has been under discussion within the Commission and among the Member States for some time has been hung on 'the peg' of the broader policy position on Europe in the World. See European Commission (2006).
2. See Speech by Peter Mandelson at the London School of Economics, London, 9 October 2006. Russia is also mentioned as a possible partner. Previously the EU conditioned talks on an FTA with Russia on Russian accession to the WTO. Following the recent US-Russian agreement on Russian accession to the WTO this impediment to EU–Russian negotiations looks like being removed at some stage.
3. European Commission (2006), page 3.
4. See ASEAN-EU Vision Group (2006); and Trade Group to the EU India Summit (2006).
5. Note that the US began to pursue its activist FTA policy based on competitive liberalization once the first G W Bush Administration had obtained Trade Promotion Authority in 2001.
6. A distinction between phases of negotiations is also needed. Many FTAs that are initiated for foreign policy or broader strategic reasons, are nevertheless influenced by sectoral interests once the negotiations are underway.
7. Reiter (2003).
8. European Commission (2006).
9. Bergsten (1996); and Feinberg (2003).
10. Central America had sought an FTA with the EU for some time, and during the moratorium on new FTAs the EU undertook to negotiate first with Central America should it end its moratorium.
11. Commitments to reduce agricultural subsidies in an FTA agreement would result in all non-signatories to the agreement benefiting. So far only the Canada–Chile and the 'Early harvest' provisions of the Thailand–China agreements have included rules on agricultural subsidies.
12. See Grant (2006).
13. See Bhagwati (1995) who correctly identifies different preferential rules of origin as a potential 'spaghetti bowl' of rules. Jagdish and Ann Krueger (1995) *The dangerous drift to preferential trade agreements American Enterprise Institute*, Washington D.C.
14. Whilst a rationalization around two major 'poles' of RoOs may be better than the proverbial spaghetti bowl, there would still be significant costs for exporters from having to comply with the different systems.
15. European Commission (2005).
16. A vain aim of Canada's in both the Canada-US FTA and NAFTA was to control US anti-dumping practices. So the provisions prohibiting dumping in the Canada–Chile agreement can be seen as a means of trying (in vane, no doubt) to shape the wider agenda within the western hemisphere.
17. WTO (2006).
18. The Constitutional Treaty would have moved competence for foreign direct investment to the European Community. This raises the question of whether Germany will include this when it considers what of the constitutional treaty might be saved during it's presidency of the EU in the first half of 2007.
19. Positive comity means that the competition authorities in one signatory can request those in the other signatory to act against anti-competitive practices (e g a cartel) within its jurisdiction that results in restrictions in competition in the market of the first signatory.
20. Pugatch (2004).
21. Geographic indicators protect the specialist regional suppliers of certain products, such as certain wines and food products by prohibiting foreign suppliers selling similar products that do not originate in the region concerned.
22. Croatia and the Former Yugoslav Republic of Macedonia have applied for EU membership, the other western Balkan states are still to apply.

23. See Aggarwal & Fogerty (2004).
24. The Transregional Europe Asean Trade Initiative (TREATI) which encompasses both a Trade Facilitation Action Plan (TFAP) and an Investment Promotion Action Plan (IPAP).
25. The Report of the Vision Group draws on studies undertaken for the Commission to argue that there would be gains of 2 % of ASEAN's GDP while the EU would benefit from liberalization in services, although there are no quantitative measures, given the gains from services.
26. EU Association agreements include political and co-operation issues as well as trade and must be ratified by the European Parliament. While the EP does not get directly involved in the details of trade, it does have something to say on human rights, so getting EP ratification of anything with Burma.
27. For a discussion of these issues see Woolcock Stephen (ed) Trade and Investment Rule-making: the role of regional and bilateral agreements, UN University Press, 2006.
28. WTO (2006b).