AN ANALYSIS OF THE ACTORNESS OF THE EU IN THE WORLD TRADE ORGANISATION

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ABSTRACT

AN ANALYSIS OF THE ACTORNESS OF THE EUROPEAN UNION IN WORLD TRADE ORGANISATION (WTO)

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This thesis analyzes the European Union as an international actor in the context of World Trade Organisation. This thesis discusses the interaction between the EU and the WTO from several important dimensions. This thesis also examines different theoretical perspectives about concepts of actors and actorness, the evolution of trade policy of the EU, and the history of world multilateral trade system as well.

Keywords: European Union (EU), World Trade Organisation (WTO), Banana Wars.

ÖZ

AVRUPA BİRLİĞİ'NİN DÜNYA TİCARET ÖRGÜTÜ'NDEKİ
AKTÖRLÜĞÜNÜN BİR ANALİZİ

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Bu çalışma, Avrupa Birliği'ni, Dünya Ticaret Örgütü kontekstinde bir uluslararası aktör olarak incelemektedir. Bu tez, AB ile DTÖ arasındaki etkileşimi birkaç önemli boyutta tartışmaktadır. Bu tez ayrıca, aktör ve aktörlük kavramlarıyla ilgili farklı teorik yaklaşımları, AB'nin ticaret politikasının evrimini ve Dünya çok taraflı ticaret sisteminin tarihini de incelemektedir.

Anahtar Kelimeler: Avrupa Birliği (AB), Dünya ticaret Örgütü (DTÖ), Muz Savaşları.

To My Parents...

And To My Dearest Love Nurhan...

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LIST OF ABBREVIATIONS

AB	Appellate Body
ACP	African, Caribbean and Pacific States
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CEEC	Central and Eastern European Countries
CET	Common External Tariff
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CMO	Common Market Organisation
COREPER	Committee of Permanent Representatives
CP	Contracting Party
DDA	Doha Development Agenda
DG	Directorate General
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAGGF	European Agricultural Guidance and Guarantee Fund
EBA	Everything but Arms
EC	European Community or European Communities
ECJ	European Court of Justice

ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EMU	Economic and Monetary Union
EP	European Parliament
EPA	European Partnership Agreements
EU	European Union
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement of Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
GPA	Government Procurement Agreement
IGC	Inter-Governmental Conference
ICJ	International Court of Justice
IR	International Relations
LDC	Least Developed Countries
MFN	Most Favoured Nation
MTR	Mid-Term Review
NAFTA	North American Free Trade Area
NGO	Non-governmental Organisation
OECD	Organization for Economic cooperation and Development
QMV	Qualified Majority Voting
SADC	Southern African Development Cooperation

SEA	Single European Act
SEM	Single European Market
SMP	Single Market Program
UK	United Kingdom
UR	Uruguay Round
US	United States
USTR	United States Trade Representative
TEU	Treaty on European Union
ToA	Treaty of Amsterdam
TRIPS	Trade Related Intellectual Property Systems
WTO	World Trade Organisation

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CHAPTER 1

Introduction

> *"The European Union is today the leading player in international trade, ahead of the United States and Japan. At a time of strong growth in international trade, it accounts for a fifth of world trade." (http://europa.eu.int, accessed on 10 January 2004)*

The economic weight of EU in world economy is indisputable. This economic weight is the main basis of its presence, a concept which is introduced first by David Allen and Michael Smith, in economic policy, means the ability to exert influence and to shape the perceptions and expectations of others.[1] Paul Kennedy argued that with Japan and North America, the EC is one of the three great centres of economic, technological and political power in an otherwise fractured world.[2] In this vein it is commonly stated that the European Community is one of the three major powers in the WTO along with the United States and Japan.[3] Statistically speaking there is no greater trading entity than the EU.[4] Currently, with a GDP of about $8 trillion and a population of some 370 million people, the EU can only be rivalled by the US.[5] So, despite it's supposedly inadequacy in the political actorness, the European Union is regarded as a strong or "great" actor in the world economy[6] and enjoys an undisputed

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[1] David Allen and Michael Smith, "Western Europe's Presence in the Contemporary International Arena, in *Review of International Studies*, Vol. 16, No. 1, 1990, pp. 19-37.

[2] Paul Kennedy, *Preparing for the 21st Century*, (Random House, New York, 1993), p. 255.

[3] Karen E. Smith, "EU External Relations", in Michelle Cini, (ed.), *European Union Politics*, (Oxford University Press, Oxford, 2003), p. 230.

[4] Total merchandise trade volume of the EU in 2002 was almost $5 trillion according to WTO, *International Trade Statistics*, 2003, p. 20.

[5] Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, (Routledge, London, 1999), p. 45.

[6] It is generally claimed that the EU is an economic giant but a political dwarf, also cf. Kathleen R. McNamara and Sophie Meunier, "Between National Sovereignty and International

equality as an economic actor vis á vis the major economic superpower: the United States. Additionally, in terms of trade policy, this equality was further polished by the fact that the EU follows "a much more defined policy and coherent decision making system"[7] than the US.

The greatness of EU's economy reveals itself in the world trade as well: the EU's share of global exports and imports is around one-fifth of the world's total exports and imports respectively. What is more, intra-EU trade is excluded from this number. According to WTO statistics, in 2002, extra-EU exports accounts for 19 per cent of total world exports constituting a sum of nearly $1000 billion.[8] Around 12 million people in the EU work in jobs directly related with exports to other countries[9]. All these make the EU number-one exporter of the world. For the extra-EU imports, the picture is similar: Following the US, the Union is the second largest importer in the world accounting for some 18 per cent of total imports.[10] With *the* intra-EU trade, the EU's global share of trade seems to be around 40 per cent.[11] This means that the EU buys and sells in enormous quantities.[12] A Union composed of 25 -and then 27- members will definitely enhance its position and influence in international trade issues. "Of the globe's ten trading nations, seven are European" wrote Paul Kennedy in the eve of twenty-first century[13]. Out of ten biggest importing countries, six are European and at the same time they are all members of the European Union:

Power: What External Voice for the Euro?" in *International Affairs*, Vol. 78, No. 4, October 2002, p. 849.

[7] Cited in Bretherton and Vogler, *op. cit*., p. 71.

[8] WTO, *International Trade Statistics*, 2003, p. 22.

[9] *Ibid*.

[10] WTO, *International Trade Statistics*, 2003, p. 22.

[11] Christopher Dent, *The European Economy: The Global Context*, (Routledge, London, 1997), p. 168.

[12] Christopher Piening, *Global Europe*, (Lynne Rienner Publishers, London, 1997), p. 15.

[13] Kennedy, *op. cit.* , p. 260.

Germany, France, the United Kingdom, Italy, the Netherlands and Belgium/Luxembourg.[14]

Charlotte Bretherton and John Vogler argued that, the high dependency of trading partners of the EU on the Union market is a crucial factor in understanding the great and still growing "presence" of the EU in world trade.[15] For instance, around 27 per cent of total US exports and 21 percent of Japan's exports are sold within the EU. [16] More than 19 percent of American imports and 13 per cent of Japanese imports were originated from the EU.[17] And this will definitely be greater after upcoming two enlargements. Also Central and Eastern European Countries' (CEEC) dependency on EU markets is tremendous. While the EU's share in Bulgaria's exports is 55.5 percent; more than 75 per cent of Hungary's, some 69.3 per cent of Poland's, 67.3 per cent of Romania's and 68.4 per cent of Czech Republic's exports go to the EU.[18] The Commonwealth of Independent States' (CIS) trade relationship with the EU demonstrates that the EU is the biggest exporter to and importer from the CIS by far.[19] Likewise, the EU buys 47.4 per cent of Africa's merchandise exports while providing 46 per cent of merchandise imports of the continent.[20] By 2002, the EU is the second exporter to and importer from the rising trade actor, China. While the US is the top destination of Chinese exports, Japan is the biggest exporter to China.[21] The Least Developed Countries' (LDCs) dependency on the EU market is also significant.[22] As for all developing countries the Commission proudly declares that:

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[14] WTO, *International Trade Statistics*, 2003, p. 21.

[15] Bretherton and Vogler, *op. cit*., p. 48.

[16] Statistics from GATT, 1993 cited in Brian T. Hanson, "What Happened to Fortress Europe?: External Trade Policy Liberalization in the European Union", in *International Organization*, Vol. 52, No. 1, Winter 1998, p. 80.

[17] WTO, *International Trade Statistics*, 2003, p. 35.

[18] For details, see WTO, *International Trade Statistics*, 2003, p. 72.

[19] See *ibid.*, pp. 75-76.

[20] See *ibid*., pp. 79 , 81.

[21] See WTO, *International Trade Statistics,* 2003, pp. 90-91.

[22] WTO, *International Trade Statistics*, 2003, p. 101.

"The EU absorbs one fifth of developing country exports. 40% of EU imports originate in developing countries. The EU is also the world largest importer of agricultural products from developing countries, absorbing more than the US, Canada and Japan taken together."[23] Martin Holland, in a recent work, has concluded that "[b]y almost all measures the EU is a dominant presence in world trade"[24] The extensive network of EU trade relations is summarised in Figure 1.

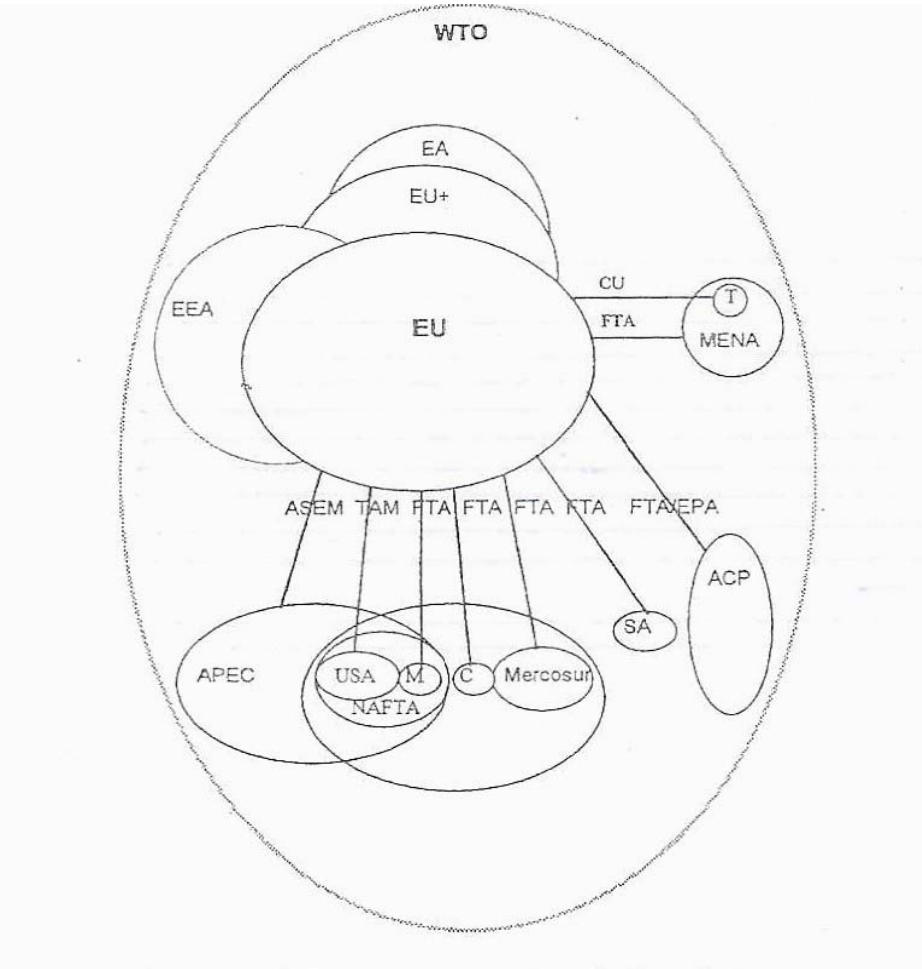

Figure 1: The External Economic Dimension of the EU.

Note: APEC= Asia-Pacific Economic Cooperation; ASEM= Asia-Europe Meeting; C= Chile; EA= Europe Agreements; EEA= European Economic Area; EU+= EU plus next wave of new members; FTA= Free Trade Area; M; Mexico; MENA= Middle East and North

[23] European Commission, 02 February, 2004.

[24] Martin Holland, *The European Union and the Third World*, (Palgrave, Basingstoke, 2002), p. 143.

Africa; NAFTA= North Atlantic Free Trade Agreement; SA= South Africa; T= Turkey; TAM= Transatlantic Market-place; ACP= African, Caribbean and Pacific States,
Source: Pitou Van Dijck and Gerrit Faber, "After the Failure of Seattle: New Challenges to the EU", in *European Foreign Affairs Review*, Vol. 5, 2000, p. 325.

Finally, the successful launch of the common European currency, the Euro, in 1999, has strengthened the EU's trade policy. The creation of the euro was regarded as "the biggest change in global finance since the dollar surpassed sterling to become the world's leading currency in the interwar period."[25] Undoubtedly, "[w]ith the attainment of Economic and Monetary Union (EMU) the EU will enjoy a comprehensive and coherent global economic presence with important consequent changes in its capacity to act"[26]. Another high possibility is that the euro would become a "natural" currency of reserves of the countries surrounding Europe: the greater Middle East, Russian Federation and Central Asia.[27] This will enhance the assertiveness of the EU in those regions.

Whether this strong and multi-dimensional economic presence of the EU is constructed into a capacity to act, i.e. actorness is a matter of discussion. While presence is a prerequisite for actorness, it is not sufficient alone for actorness. Actorness involves a demand for action and action itself, whereas presence conceptualises the relationship with the internal development and capabilities of the EU and external expectations. The relation between the presence and the actorness reveals itself in different external roles offered to the EU.

There are several external roles of the EU, a discussion of which is necessary for a perception of the relationship between the presence and actorness. First, and foremost, especially after the Cold-War, the EU began to actively promote European values such as "the possibility of progress through human endeavour, belief in the

[25] Bergsten, "America and Europe: Clash of the Titans?", in *Foreign Affairs*, Vol. 78, No. 2, March-April 1999, p. 22.

[26] Bretherton and Vogler, *op. cit*., p. 59.

[27] David P. Calleo, "The Strategic Implications of the Euro" in *Survival*, Vol. 41, No. 1, Spring 1999, p. 9.

worth and dignity of the human individual, liberal-democratic political arrangements and the capitalist economic world system."[28] Concerning the North-South relations, the EC provided a framework for decolonisation in Africa. The EC also served as a model for other regional economic integrations and supported the development of such an arrangement in Latin America.[29] The EU became a model as an "island of peace" for unstable regions of East and South in the aftermath of Cold War. The EC's economic presence and its role in world trade system is also one of the most important external activities of the Union.[30] The complex relationship between presence and actorness is also reflected in external roles offered to the EU. Although there are several policy areas available for the EU action, the actorness depends not only on the constraints and opportunities of the environment, but more on the "ability of actors to respond". Hence, the extent of EU's actorness differs across its various roles in accordance with its demand and capacity to act effectively in the issue area at hand. For instance, while the Union fully responds the needs of less developed states in form of international aid, the realisation of its role as a security provider for its adjacent regions is more ambiguous. The unprecedented bloodshed in ex-Yugoslav territories during early 1990s is an example for this. The EU's declaratory aspirations for actorness, nevertheless, are quite evident. As put down in Agenda 2000, "The Union must increase its influence on world affairs, promote values such as peace and security, democracy and human rights, provide aid for the least developed countries, defend its social model and establish its presence on world markets, prevent major damage to the environment and ensure sustainable growth with an optimum use of world resources. Collective action by the EU is an ever-increasing necessity. Europe's partners expect it to carry out fully its responsibilities. (Commission 1997, 27a)[31]

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[28] Bretherton and Vogler, *op. cit*., p. 34.

[29] The Interregional Framework Agreement between the EU and Mercosur supports regional economic integration in Latin America. (Mercosur is the name of a regional organisation in the form of a common market in Latin established by a group of countries including Argentina, Brazil, Paraguay and Uruguay)

[30] Bretherton and Vogler, *op. cit*., p. 35.

[31] Vogler, "In the Absence of the Hegemon: EU Actorness and the Global Climate Change Regime", Paper Presented to the Conference on the European Union in International Affairs, 3-4 July 2002, National Europe Centre Paper, No. 20.

The main difficulty in conceptualising external relations of the European Union is the fact that the EU is not a state in traditional sense. First of all the EU lacks a traditional centralised authority that most of the current states have. In this vein, while states are capable of formulating and carrying out a foreign policy, the international organisations rely on assent of their members on every occasion. The EU is an institution between a state and a highly decentralised international organisation. Unlike most of the states, in which "external competencies rest firmly with the national government"[32], in the case of the EU, the Member States are serious rivals for the EU as actors in the international arena. Discussing the common commercial policy, in which there is EU's exclusive competence, Princen and Knodt stated that "even in that policy area, however, there has been a battle among Member States and between Member States and the European Commission about the extent of European competencies"[33]. With regard to external relations, the decision-making of the EU differs from that of nation-states. For instance, the EU allows for a significant Member States' role in its decision-making. This implies a multi-level decision-making. After decisions are taken at domestic (national) level, the European Union should decide on the issue at stake. This kind of multi-level decision-making is absent in most of the nation-states. Secondly, the multi-pillar structure[34] of the EU makes it distinctive as compared to traditional states. In light of these, it is generally asserted that the EU has unique characteristics that make it distinct in international arena. This *sui generis* character of the EU, i.e. the uniqueness of the EU as an institution, renders difficulties in conceptualising its external policy.

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[32] Sebastiaan Princen and Michéle Knodt (eds.), *Understanding the European Union's External Relations*, (Routledge, London, 2003), p. 196.

[33] *Ibid*.

[34] By the Treaty on European Union (entered into force in 1993), the European Union is organized according to an analogy of Greek temples. Three pillars of the EU is as follows: Pillar 1: This is known as Community Pillar or EC Pillar, and involves economic matters. In this pillar, decisions are taken according to QMV principle. Pillar 2: This is the CFSP Pillar where decisions are taken unanimously, Pillar 3: The third pillar of the EU is related with Justice and Home Affairs. The last two pillars are also called intergovernmental pillars, implying the predominance of member states' influence.

Then, a study of a European Foreign Policy, implying a "state-as-actor" model, is not sufficient to resolve the theoretical problems associated with the EU's distinct feature. Because, the concept of foreign policy is inseparable from the state-centric view of world politics[35], which in turn, seems to be inadequate to capture the external role of the EU in world politics. In this regard, according to Ben Tonra, concepts of presence and actorness "were for deconstructing state centric views of world politics by shifting the analysis away from 'how state-like the EU's foreign policy is' towards 'an analysis of EU's international presence and actorness', and these concepts are then used to link the internal workings of the EU –across functional policy areas- with its overall impact on the external environment."[36] Then, instead of an analysis of the European Foreign Policy in an issue area, this dissertation aims to analyse certain aspects of EU's external trade actorness vis á vis the WTO and EU-WTO relations.

This thesis aims to analyse the extent and nature of EU as an international actor in the context of World Trade Organisation (WTO). Concerning the actorness of the EU, trade policy is most probably the best example of the Union as a consistent actor among its various roles.[37] This is not only because of the sheer size of the trade volume of the EU but also trade politics is the earliest step through which the EU has fully developed its potential of actorness in an interaction with the changes in international trade regime.[38] The competence of the Commission to negotiate tariff levels with third parties as early as with the Treaty of Rome, the realization of Common Commercial Policy (CCP) and the establishment of a customs union in

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[35] Helene Sjursen, "Understanding the Common Foreign and Security Policy: Analytical Building Blocks", in *Arena Working Papers*, (WP 03/9). http://www.arena.uio.no, p. 10.

[36] Cited from Ben Tonra, "The European Union's Global Role", *FORNET Working Paper*, Fornet Working Group 1: Theories and Approaches to the CFSP London School of Economics, 7/8 November 2003, in Taylan Özgür Kaya, *The Common Foreign and Security Policy: The European Union's Quest for being a Coherent and Effective actor in Global Politics*, M. Sc. Thesis submitted to Graduate School of Middle East Technical University, 2004, p. 113.

[37] Bretherton and Vogler, *op. cit.*, p. 46. Also *cf.* Sophie Meunier and Kalypso Nicolaïdis, "EU Trade Policy: The Exclusive versus Shared Competence Debate", in M. G. Cowles and Michael Smith (eds.), *The State of the European Union: Risks, Reform, Resistance and Revive*, (Oxford University Press, Oxford, 2000), p. 327.

[38] *Ibid.*

1968[39] - which to be examined later- all provided good examples of EU's significant and growing role in trade related issues. Therefore, since early 1960s till 1980's the European Commission was not challenged as the EC's single negotiating voice under the General Agreement of Tariffs and Trade (GATT) framework.[40] Although the EC was not directly a signatory to the GATT, informally but effectively it has been accepted as a full member and played a major role in further liberalization efforts. As one of the observers noted "[T]he three major GATT liberalization initiatives- the Kennedy, Tokyo, and Uruguay Rounds- ultimately depended on agreements between Europe and America."[41] Similarly, in the WTO context, the EU has its own membership beside its members' individual seats. In this regard, Michael Smith argues that "the EU performs a number of strategic 'state-functions' in the world political economy"[42] through the use of its commercial policy. Smith lists some of the state-functions of the EU as being a central participant in large-scale sectoral negotiations in the WTO context, concluding inter-regional agreements, being a major participant in bilateral and sectoral trade disputes with other countries, the EU's central role in market access and market regulation issues, and its leverage concerning extra-territorial and sanctions issues.

If the EU has a foreign policy, or aspires to establish one, the analysis of the actorness of the EU in global trade system is still relevant and important as Christopher Piening has argued that trade and economic relations lie at the root of *the* foreign policy. According to Piening, it is this rationale embedded in the EU why the EC has incessantly interested in penetrating foreign markets and played an important role in the liberalization of trade through the successive rounds of GATT. In parallel to this, as Michael Smith has argued the real core of EU's foreign policy could be

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[39] In the official web site of the EU it is stated that "the EU's capacity to play a key role in global negotiations depends more on the effectiveness of its common commercial policy than on its volume of trade.", http://europa.eu.int, accessed on 10 January 2004.)

[40] Werner Weidenfeld and Josef Janning (eds.), *Europe in Global Change: Strategies and Options for Europe*, (Bertelsmann, Gütersloh, 1993), pp. 256-257.

[41] Bergsten, *op. cit.*, p. 25. For a similar treatment on the subject also *cf.* Bretherton and Vogler, *op. cit*., p. 74.

[42] Cited in Michael Smith, 'The European Union's Commercial Policy: Between Coherence and Fragmentation', in *the Journal of European Public Policy*, Vol. 8, No. 5, October 2001, pp. 789, 800.

found in external economic relations and policies of which the EU's interaction with the international trade regime is of utmost importance. For Smith, underestimating the Community Pillar's role in realization of a Common Foreign Policy for the EU is "fundamentally distorting".[43] Here, it is argued that the successful actor capability – so far despite the resistant capabilities-expectations gap- of the EU could –and probably would- be a springboard for an efficient and consistent Common Foreign and Security Policy, though both CFSP involves economic aspects as well as the actorness in global trade management involves some aspects of security. As Carol Cosgrove-Sacks maintained international economic relations underpin international security issues.[44] In other words, although *a* CFSP and external trade relations are somewhat inseparable from each other entirely, the success of the former will definitely contribute to the success of the latter. It is worth noting that predictions of a successful CFSP is unrealistic without a strong EU presence[45] and potentially actorness in economic sphere which to be determined largely by trade relations as Piening concluded "a nation's prosperity, more so today that ever before, depends on being able to sell the goods or commodities it produces".[46] In echoing Piening's argument, Michael Smith has concluded that "the flag *does* follow trade".[47] François Duchêne concluded that in an era of increasing economic interdependence the EC "could play a very important and constructive role" as a "civilian power" despite its lack of military capability.[48] It should be remembered that trade policy essentially

[43] Bretherton and Vogler, *op. cit*., p.76.

[44] Carol Cosgrove-Sacks, "The EU as an International Actor", in Carol Cosgrove-Sacks (ed.), *Europe, Diplomacy and Development: New Issues in EU Relations with Developing Countries*, (Palgrave, Houndmills, 2001), p. 3.

[45] David Allen and Michael Smith have first used the term presence, referring a basis for actorness. For them, presence has two components: 1- The EU exhibits distinctive forms of external behaviour, 2- The EU is perceived to be important by other significant actors, cited in Ben Rosamond, *Theories of European Integration,* (St. Martin's Press, New York, 2000), p. 177. Bretherton and Vogler have defined presence as "the ability to exert influence; to shape the perceptions and expectations of others.", in Bretherton and Vogler, *op. cit*., p. 5.

[46] Christopher Piening, *op. cit.*, p. 14.

[47] Michael Smith, "Does the Flag Follow Trade?: 'politicisation' and the emergence of a European Foreign Policy " , in John Peterson and Helene Sjursen (eds.), *A Common Foreign Policy for Europe?: Competing Visions of CFSP*, (Routledge, London, 1998), p. 94. (emphasis added)

involves "a high proportion of political content, because the EC has no other way (foreign policy or army) to express its political views".[49] In this context, the EU's actorness in the framework of World Trade Organization (WTO), the foremost international institution for global trade matters, will be the main topic of the dissertation.

In the following chapters the nature and extent of EU's actorness in the context of WTO will be analysed. First of all, different theoretical conceptualisations of EU as an international actor will be presented. In this regard, not only theories of IR but also the EU's status from the perspective of international law will be visited. In the third chapter, the historical evolution of GATT and its transformation into the WTO will be given. In order to analyse the evolution of trade policy capabilities of the EU it is vitally important to perceive the growing scope of multilateral trade framework. Because as the extent of multilateral trade widened, so did the EC's trade policy-except few adverse moves. Following the chapter on the history of multilateral trade framework in the contexts of GATT and then the WTO, the history of development of EU's trade policy will be discussed. In this chapter, it is argued that, in parallel to widening scope of multilateral trade system, the EU adapted its commercial policy through several changes in Treaties. Furthermore, apart from the Treaty changes, the power of the EC to conduct common commercial policy is extended also by other means such as the extensive interpretations of the ECJ. The fourth chapter will analyse the interaction of the EU and the WTO from several perspectives. In this chapter, beginning with the historical overview of EEC/EC-GATT relations, the impact of WTO, with stronger institutional structure than the GATT, on the EU will follow. Then the influence of the EU on WTO across various issues will be mentioned. Next, a debate on multilateralism and regionalism will be presented. In the final part of the chapter, challenges for the EU-WTO relations will be discussed.

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[48] Quoted in Bretherton and Vogler, *op. cit.*, p. 36, quoted from François Duchêne, "Europe's Role in World Peace", in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, (Fontana, London, 1972), pp. 43-44.

[49] Quoted from Patrick Messerlin, "Measuring the Cost of Protection in Europe", (International Institute for Economics, Washington, DC, 2001), p. 1, in Adrian Van Den Hoven, "Assuming Leadership in Multilateral Economic Institutions: The EU's 'Development Round' Discourse and Strategy" in *West European Politics*, Vol. 27, No. 2, March 2004, p. 258.

The example of "banana dispute" in assessing the nature and limits of the EU as an actor in the WTO will be the topic of the sixth chapter. In this chapter it is argued that, the WTO's impact upon the EU becomes more visible particularly when the EU does not comply with the WTO's dispute settlement mechanism's findings. No matter there are internal impediments for EU's actor capability, banana case exemplified that, great economic presence of the EU is transformed into actorness from perspective of third parties. Hence, in the banana case, though turned out to be unsuccessful in the end, the EU actorness is taken for granted by other international actors. No country affected by the dispute tried to cut a deal with a single or a group of EU Member State(s). The EU is regarded as the ultimate and sole (unified) power to solve the issue at stake. The dissertation ends with a final chapter expressing the conclusions of the dissertation.

CHAPTER 2

A Debate on EU's Actorness: A Theoretical Perspective

The question of "how do we recognise an actor in international politics?" is at the heart of actorness debate concerning International Relations (IR) theories. The answer would lead to another question of being equally important at least: "what kind of an international actor is the EU? For a better understanding of the role of the EU in the GATT and then the WTO, it is essential to draw a general picture of different perceptions on EU's place in international arena. This picture may provide an insight by which a promising evaluation of EU's actorness in global trade system could be made. In this part of the dissertation, a debate on EU's actorness will be presented. In doing so, firstly the concept of actorness from the perspective of international law will be examined. Then, through an analysis of main theoretical approaches within the IR discipline, different perceptions of international "actor" and of "actorness" will be examined. This is mainly because; an analysis of the actorness of the EU requires a wider debate about IR theories.[50] Following mainstream IR perspectives, behavioural criteria for actorness will be presented. The definition of "state" is also of utmost importance for the conceptualisation of the EU according to different theories. From this review, in following chapters, an assessment of EU's actorness in global trade management, particularly within the WTO system will follow. Here, one of the vital questions is "what kind of an actor is the EU in case of the WTO?" Another is that "what makes the role of the EU in the WTO distinct -or different than its various roles, if it is so?"

2.1. Actors and Actorness in Public International Law

A subject of international law should be "capable of possessing and exercising rights and duties under international law."[51] Public international law takes the sovereign nation-state as its main subject. The concept of actorness is developed upon the notion of "legal personality". The achievement of legal personality requires the

[50] Bretherton and Vogler, *op.cit.*, p. 15.

[51] Martin Dixon Ma, *Textbook on International Law*, (Blackstone, London, 1996), 3rd edn., p. 97.

ability to make claims before international (and national) tribunals, to be subject to some or all of the obligations imposed by international law, to have the power to make valid international agreements binding in international law, and to enjoy some or all of the immunities from the jurisdiction of the domestic courts of other states.[52] That said, according to public international law, "only states could make treaties, join international organisations and be held to account by other states"[53] to the fullest degree.

However, this central argument became under challenge beginning from the mid-twentieth century. In 1948, the International Court of Justice (ICJ) decided that the United Nations had an international legal status. The Court rules that personality was essential if the UN was to discharge its functions. Through this view the EC also enjoys legal personality -though it is only entitled to act in areas of legally established competence[54]- in order to achieve its purposes.[55]

Nevertheless, it should be noted that the achievement of legal personality does not correspond with the behavioural notion of actorness: "weak states may have full legal status but are insignificant as actors, while bodies such as the European Union can fulfil important functions without possessing legal personality."[56]

2.2. Actors and Actorness in International Relations

Developed by writings of Hans Morgenthau and Edward Hallett Carr, for the last fifty years, one of the mainstream theories of IR is Realism. After the Second World War realism emerged as the central theory of IR. The outbreak of such a devastating war showed that, unless "realist" thinking is accepted, wars can not be avoided by wishful thinking of utopianism. For realists, states must prepare to war through armament. Only this way wars or aggressors could be deterred. The Cold War

[52] *Ibid*., p. 98.

[53] Bretherton and Vogler, *op. cit.,* p. 16.

[54] *Ibid*., p. 17.

[55] Ma, *op. cit*., pp. 107-108.

[56] Bretherton and Vogler, *op. cit*., p. 18.

context reinforced the pessimistic tone of realism. It was bipolarity and power struggle dominated world politics throughout 1950's and 1960's. According to realist thinkers, power is simply the ability to change behaviour of other(s). The distinction between "high politics" and "low politics" is important in realist thought. High politics involve foreign policy, diplomacy and war, whereas low politics involve economics, environmental issues, etc. For realists, the former is more important than the latter. For the realist approach, states (generally nation-states) are primary actors in international scene. They are unified entities, and they follow their national interests -defined in terms of power and survival- in an anarchical international arena. Therefore, realist scholars, with a great emphasis on nation states as supreme actors, commented that the EU does not constitute a consequential actor in international system as it is not equipped with the means to use aggregated power, i.e. military power.[57] Hedley Bull has contended that the European Community "is not an actor in international affairs, and does not seem likely to become one".[58] For Bull, the EC could be regarded as "states in waiting". Therefore, even if the EC may gain an identity of their own, the fundamental rules and logic of IR – the primacy of states- would not be changed.

Beginning from early 1970s, realist state centrism appeared to be insufficient to theorise about world politics with the decline of "high politics"[59] and the rise of non-state actors such as international organisations, transnational companies, non-governmental organisations (NGOs). Keohane and Nye developed a scheme mentioning not only governmental but also intergovernmental and non-governmental actors. They divided these broader categories of actors into six types of actors according to the "level of central control".[60]

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[57] Richard G. Whitman, *From Civilian Power to Superpower?: The International Identity of the European Union*, (Palgrave, Basingstoke, 1998), p. 6.

[58] Quoted in Bretherton and Vogler, op. cit., p. 21, in Hedley Bull, "Civilian Power Europe: a contradiction in terms?" , in R. Tsoukalis (ed.), *The European Community: Past, Present and Future*, (Blackwell, London, 1983), p. 151.

[59] Security, more accurately "hard" security, i.e. military security is the cornerstone of high politics concept of realists. Economic relations play only a secondary role.

[60] Robert O. Keohane and Joseph S. Nye(eds.), *Transnational Relations and World Politics*, (Harvard University Press, Cambridge MA, 1973), p. 380.

Some important structural developments in international scene were important in development of a different view other than realism: pluralism. The collapse of the Bretton Woods system in 1971[61] and the oil crisis of 1973[62] not only underlined the growing importance of economics but also demonstrated that states could be vulnerable to outside impacts even if their borders are protected and defended by their military power. In this regard, for pluralists, military power began to be more ineffective and would no longer be an indicator of how powerful a state is in world politics.[63] The rise of international organisations such as the EC, the increasing importance of multinational corporations, non-governmental organisations and pressure groups clearly showed that states were no longer the only significant actors in international politics. Thus, the pluralist view incorporated a range of actors being not subordinated to states. In this respect it welcomes non-state actors. These various actors have -great or limited- influence over the state. In this regard, for pluralists state is not a unitary actor as supposed by realists. This claim has also some degree of relevance in the case of EU as the decision-making in the EU generally involves a multi-level bargaining system. For pluralists, then, the EU could be a fragmented, non-unitary actor. This is one of the limitations for pluralism as the EU cannot be simply named as a non-unitary actor. The Union seeks to become a unitary actor, and in some issue areas such as external trade policy, the EU is regarded as a unitary actor. A second relevance of pluralist perspective for the accommodation of the EU in the international system is the assumption that "there are other sources of order than the balance of power".[64]

Several structural and constructivist accounts offered system-oriented perspectives for the actorness of the EU. For these approaches, actors in the international system

[61] The Bretton Woods system was established at Bretton Woods, in US, in 1944 to promote economic growth, and trade by providing a stabilised framework for international economy. The most important element of the system was the US dollar in relation to which other world currencies were fixed.

[62] In 1973, Organisation of Petrol Exporting Countries (OPEC) decided to raise the price of oil by four times which caused oil shortages and panic across the world.

[63] Jill Steans and Lloyd Pettiford, *International Relations: Perspectives and Themes,* (Pearson Education, Edinburgh, 2001), p. 59.

[64] Whitman, *op.cit*., p. 7.

are subordinated to "the operating rules and embedded practices"[65] of the system. Yet, there are significant differences among these conceptions to be mentioned.

Kenneth Waltz is regarded as the outstanding figure of neo-realism. His book called "Theory of International Politics" (1979) is the most significant neorealist work. Waltz tried to preserve realism in the face of pluralist challenge. To this end, he restricted the scope of realism as a theory. His aim was to produce a theory of international system and not a general account of all aspects of international relations. According to Waltz, it is only through systemic theories the international system could be understood. For Waltz, states are not necessarily self-aggrandising, but their common aim is to preserve themselves. The outcome of this priority is the balance of power. Therefore, the balance of power *is* the theory of international system.[66] To sum, for neo-realism, the international political system is the main determinant of the behaviours of states. Behaviours of states are predictable, because they are determined according to their place in international power structure. Neo-realism, with its emphasis on the political and military power fell short of conceptualising the external economic role of the EU.

Neo-marxist account focuses on the structure of capitalist economy. Thus, different from neo-realists, for neo-marxists power is to be understood as economic power. In this regard, another relevance of neo-marxists is that, a discussion about the actorness of the EU in the framework of WTO must prioritise economic matters over politico-military ones.

Structural accounts are relevant to the debate about actorness of the EU in WTO context especially because they offer systemic analysis. In the case of EU and WTO, EU is the actor being affected by the WTO (the structure) as the ultimate constraint and environment with its more or less precise rules and principles. However, this assumption falls short of explaining behaviours of actors when they contradict with

[65] Bretherton and Vogler, *op. cit*., p. 23.

[66] Chris Brown, *Understanding International Relations*, (St. Martin's Press, New York, 1997), pp. 45-47.

dictates of the system.[67] Thus, for White, "macro" analysis provided by structuralists must be complemented by "micro" analysis.[68]

Critical Theory began to be influential in IR beginning from mid-1980s. Critical Theory has its roots from Marx and from a number of writers in the Frankfurt School, such as Antonio Gramsci and Jürgen Habermas. Robert W. Cox is one of the most significant writers in Critical approach. According to him the Critical Theory entails some basic elements as follows:

a) It stands apart from the prevailing order of the world and asks how that order came about; it is a reflective appraisal of the framework that problem solving tales as given
b) It contemplates the social and political complex as a whole and seeks to understand the process of change within both the whole and its parts.
c) It entails a theory of history, understanding history as a process of continuous change and transformation.
d) It questions the origins and legitimacy of social and political institutions and how and whether they are changing; it seeks to determine what elements are universal to world order and what elements are historically contingent.
e) It contains problem-solving theory and has a concern with both technical and practical cognitive knowledge interests and constantly adjusts its concepts in light of the changing subject it seeks to understand.
f) It contains a normative, utopian element in favor of a social and political order different from the prevailing order but also recognizing the constraints placed on possible alternative world order by historical process: the potential for transformation exists within the prevailing order but it is also constrained by the historical forces that created that order.
g) It is a guide for strategic action, for bringing about an alternative order.[69]

Apart from these broad principles, the relevance of critical theory for the study of the EU as an international actor lies at its conception of state. In this respect, for critical theory,

> it makes no sense to treat the state as the basic unit of analysis in international relations. In the first place, the state is only one form of political organisation to exist among human beings. From a critical perspective, understanding the historical nature of the state and the state-system is crucial, but this historical understanding is lost if we adopt a 'state as actor' approach to international relations.[70]

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[67] Brian White, *Understanding European Foreign Policy*, (Palgrave, Houndmills, 2001) p. 31.

[68] *Ibid*., p. 32.

[69] Cited in Mark Hoffman, "Critical Theory and the Inter-Paradigm Debate", in *Millennium*, Vol. 16, No. 2, p. 232.

[70] Steans and Pettiford, *op. cit.*, p. 112.

This openness to other type of actors other than states is the main element of critical theory regarding its relevance to the study of actorness of the EU. Another significance of critical theory is related with its criticism of state. In this respect, critical theory opposes the general tendency to associate community with the state or nation. From a critical perspective, the state, as a 'limited moral community', promotes "a form of particularism which generates insecurity and intersocietal estrangement by imposing, as Linklater says, rigid boundaries between insiders and outsiders, 'us' and 'them' ".[71] Therefore, the critical theory deals with the question of "how non-exclusionary forms of community can be achieved, or in other words, how to reconstruct world politics so as to extend to the entire species a rational, just and democratic organization of politics."[72] According to critical perspective, then, the EU might be a step further than the state in the sense that the particularism associated with the EU is much more less than a nation-state, for it included more than two dozens of nation-states inside, and is likely to expand more in the medium-term. To sum, the critical theory opens up a horizon in which the European Union could have a significant place as an international actor.

Beginning from the early 1990's constructivism became one of the main contemporary theories of IR. As it connects IR to some other strands of social theorizing, there are many constructivisms. However, regarding the contemporary IR, most constructivists agree that the structures of world politics are *social* rather than material.[73] This results in the fact that, structural features such as anarchy are not fixed and external to the interaction of states. In other words, structural properties are social constructs that are inter-subjectively understood by states and are reproduced through their interactions. As Knutsen summarised

> The structures of international politics are outcomes of social interactions, that states are not static subjects, but dynamic agents, that state identities are not given, but (re)constituted through complex, historical overlapping (often contradictory) practices- and therefore variable, unstable, constantly changing;

[71] Scott Burchill and Andrew Linklater (eds.), *Theories of International Relations*, (St. Martin's Press, New York, 1996), p. 168.

[72] *Ibid*., p. 169.

[73] Rosamond, *op. cit*., pp. 171-172.

> that the distinction between domestic politics and international relations are tenuous.[74]

This understanding about agency and structure is elaborated by "structionists". For structionists, agents are bound by structures, but are also capable of changing the structural environment in which they operate. It is the mechanism of social interaction that reproduces structures. For constructivists, interests as well as identities are socially constructed. According to Risse-Kappen, constructivism is significant in the sense that it "would shift the research agenda of EU studies into the analysis of the role of ideas, the impact of shared beliefs, the effects of dominant discourses and the processes of communicative action."[75]

Another important element of constructivism is its openness to other international actors other than nation-state. For Wendt, the substantial re-evaluation of state centred concepts is the major success of constructivism.[76] In this regard, Christiansen and Jørgensen argued that, conventional "actor-centred" models only focus on exogenously derived interests of actors. However, for Christiansen and Jørgensen, the actors during processes of treaty negotiations and Intergovernmental Conferences (IGCs) within the EU are not "personified states", instead, "civil servants, Commission officials, MEP's, national ministers and Prime Ministers". With these features, constructivism appears to be the most appropriate theoretical framework in analysing the actorness of the EU in the WTO context.

2.3. A Behavioural Perspective on EU's Actorness

Behavioural assumptions give rise to the concept of "autonomy" which is central to the discussion of EU actorness.[77] In 1970 Cosgrove and Twitchett wrote that "the

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[74] Quoted from T. L. Knutsen, *A History of International Relations Theory*, (Manchester University Press, Manchester, 1997), 2nd edn., pp. 281-282, in *ibid*., p. 172.

[75] Cited in *ibid*, p. 173, from T. Risse-Kappen, "Explaining the Nature of the Beast: International Relations and Comparative Policy Analysis Meet the EU", in *Journal of Common Market Studies*, Vol. 34, No. 1, 1996.

[76] Cited in *ibid*, p. 174, from Alexander Wendt, "Anarchy is What States Make of it: the Social Construction of Power Politics", in *International Organisation*, Vol. 46, No. 2, 1992, also cited from Alexander Wendt, "Collective Identity Formation and the International State", in *American Political Science Review*, Vol. 88, No. 2, 1994.

degree of autonomous decision-making power embodied in its central institutions" is the first criteria through which an organisation is termed as an international actor.[78] An international actor also "performs significant and continuing functions having an impact on inter-state relations". The last criterion is "the significance attached to it in the formation of the foreign policies of states, particularly those of its members."[79] For Cosgrove and Twitchett, even in mid-1960s the EEC was "a viable actor" as all three criteria was met "in some degree for most of the time"[80] Gunnar Sjostedt argued that the EC could be defined as an international actor as it was "delimited from its environment and from others", and it possessed a "minimal degree of cohesion". Sjöstedt listed five general requirements for actorness:

> 1) Shared commitments to a set of overarching values and principles.
> 2) The ability to identify policy priorities and to formulate coherent policies
> 3) The ability effectively to negotiate with other actors in the international system
> 4) The availability of, and capacity to utilize, policy instruments.
> 5) Domestic legitimation of decision processes, and priorities, relation to external policy.[81]

According to Bretherton and Vogler, the fragmentation in the Commission, exacerbated by the lack of mechanism(s) for resolution of disputes between Commissioners is an impediment for the coherence –the only problematic requisite out of those listed by Sjöstedt- even in areas where there is exclusive community competence. Furthermore, Member States' individual efforts to develop trade relations with third countries imperil the coherence of the EU trade policy.[82] Echoing behavioural emphasis of Sjöstedt, Bretherton and Vogler put forward five fundamental conditions for actorness in international politics: "commitment to shared values and principles; the ability to formulate coherent policies; the capacity to

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[77] Bretherton and Vogler, *op. cit*., pp. 20-22.
[78] Carol Cosgrove and Kenneth J. Twitchett, *The New International Actors: The UN and the EEC*, (Macmillan, London, 1970), pp. 12.13.

[79] *Ibid*., p. 12.

[80] *Ibid.*, also see Bretherton and Vogler, *op. cit*., p. 22.

[81] Cited in *ibid.*, p. 38. For detailed analysis of Sjöstedt, see Gunnar Sjostedt, *The External Role of the European Community*, (Saxon House, Farnborough, 1977).

[82] Bretherton and Vogler, *op. cit.*, pp. 38-39.

undertake international negotiation; access to policy instruments and the legitimacy of policy processes."[83]

The test of actorness for conceptualising the international role of the EU is also employed by Christopher Hill. According to Hill, there are three requirements for actorness: 1- the delimitation of one unit from others, 2- the autonomy of a unit to make its own laws and 3- the possession of various structural prerequisites for action at the international level (such prerequisites can be a legal personality, a set of diplomatic agents and the capability to conduct negotiations with third parties).[84]

However, conceptualisation about a multi-faceted institution and a *sui generis* entity like the EU is not easy enough for a single theoretical framework to capture and explain to full extent. Among different theories analysing the EU's actorness in WTO context, constructivism promises a more coherent perspective. In the final analysis, however, though almost all accounts on EU actorness have something applicable for the case of EU and the WTO, it is still the case that "there is no commonly agreed theoretical perspective within which to consider the international role of the Union."[85]

[83] *Ibid.*, p. 9.

[84] Christopher Hill, "The Capability-expectations Gap, or Conceptualizing Europe's International Role", in S. Bulmer and A. Scott (eds.), *Economic and Political Integration in Europe: Internal Dynamics and Global Context* (Blackwell, Oxford, 1994), p. 107.

[85] Whitman, *op. cit.*, p. 5.

CHAPTER 3

The History of Multilateral Trade Framework: From GATT to WTO

In order to examine the interaction between the EU and the WTO, it is essential to grasp the philosophy of multilateralism in the governance of world trade during the last six decades. In this sense, this part of the dissertation aims to analyse the multilateral frameworks of GATT and then the WTO which shaped the world trade to a great extent, as well as other actors involved in trade policy-making, such as the EU. In doing so, firstly the foundation of GATT will be introduced. Following a general overview about the GATT, its history, scope and principles, the transition from GATT to WTO will be presented. In this part, institutional weaknesses of the GATT, the changing nature of world trade and some other challenges the GATT was facing will be mentioned. In the final part of the chapter, following the establishment of the WTO and its main differences from the GATT system, scenarios about the future of the WTO will be analysed.

3.1. Foundation of the GATT

Because of "greater protectionism and trade discrimination", the period between the two world wars was simply a "disaster", according to Douglas A. Irvin. National economic failures were accompanied by international economic failures as well.[86] As the US economy moved into depression following the 1929 stock market crisis, the American Congress adopted the Smoot-Hawley Tariff Act, which led to an increase in average US tariffs from 38 to 52 per cent. In turn, this caused trading partners of the US to impose retaliatory trade restrictions and engage in rounds of competitive devaluations. As trade flows were diverted to unprotected markets an forced down prices, a domino effect occurred.[87] Following the Second World War, mainly due to American initiatives, the General Agreement on Tariffs and Trade (GATT) was signed in Geneva, Switzerland on 30 October 1947 by 23 contracting parties (CPs). It

[86] Douglas A. Irvin, "The GATT in Historical Perspective", in *The American Economic Review*, 85/2, May 1995, p. 324.

[87] Bernard M. Hoekman and Michael M. Kostecki, *The Political Economy of World Trading System: From GATT to WTO*, (Oxford University Press, Oxford, 1995), p. 3.

was essentially designed "to avoid the 'zero-sum-game' protectionism that had characterised inter-war international trade relations."[88] The GATT was not a permanent organisation, instead a treaty based framework for the management of multilateral trade. The GATT provided a framework in which further liberalization and development of world trade took place through subsequent "rounds" of negotiations. Eight rounds have taken place so far the last two of which contributed to GATT most.[89] 1- Geneva Round (1947) 2- Annecy Round (1949) 3- Torquay Round (1950-1) 4- Geneva Round (1955-6) 5- Dillon Round (1960-1) 6- Kennedy Round (1963-1967) 7- Tokyo Round (1973-9) and 8 - Uruguay Round (1986-94). Some of the rounds were named after the initiator (Dillon, Kennedy) and others were named after the place where negotiations have taken place. While first five rounds dealt exclusively with tariff reductions, following rounds were busy especially with non-tariff restrictions to trade and trade in agricultural goods. Changes in international trade agenda were highlighted in GATT and then WTO Rounds. (See Table 1.) Apart from the agenda change, another visible trend is the rise of trade volumes and levels of openness to foreign competition of developing countries. This is partly because of the fact that the GATT supported globalisation through trade liberalisation, non-discrimination, and transparency of trade policies. Developing countries are those of countries that have been affected from this at large.

[88] Cited in Dent, *op. cit.*, p. 189.

[89] Richard Senti and Patricia Conlan, *WTO: Regulation of World Trade After the Uruguay Round*, (Schulthess Polygraphischer Verlag, Zurich, 1998), p. 18.

Table 1: The Changing International Trade Agenda

Year	Name of the Round	——————Subject——————-		
1947	Geneva	Tariffs		
1960-61	Dillon Round	Tariffs		
1964-67	Kennedy Round	Tariffs	Anti-dumping	
1973-79	Tokyo Round	Tariffs	Technical barriers to trade	'Framework' agreements
1986-94	Uruguay Round	Tariffs, intellectual property rights	Technical barriers to trade, Government procurement	Services, Agriculture, Textiles
1999-	'Millennium' Round[a]	Tariffs, intellectual property rights, investment	Technical barriers to trade, Competition, Environment	Services, Agriculture, Government Procurement

Note: [a]The subjects listed for the 'Millennium Round' are those on the EU's agenda.
Source: Young, "The Adaptation of…", 2000, p. 99.

3.2. The Early Rounds

During the first round of multilateral trade negotiations, the Geneva Round of 1947, some 45000 tariff concessions covering about half of world trade were exchanged. This round also led to the creation of the GATT. Until the Dillon Round, three rounds of multilateral trade, namely the Annecy (France) Round of 1949, the Torquay (UK) Round of 1950-51, the Geneva Round of 1955-56 did not contribute much on the reduction of average tariffs as the 1947 Geneva Round achieved.[90]

[90] Hoekman and Kostecki, *op. cit.*, p. 17.

3.3. The Dillon Round

According to GATT principle, i.e. Article XXIV, any customs union or free trade area must ensure that firstly, trade barriers after integration do not rise on average, secondly, agreements should eliminate all tariffs and other trade restrictions on 'substantially all' intra-regional exchanges of goods within a 'reasonable' length of time, and thirdly the integration should be notified to GATT which may decide to establish a Working Party to determine if these conditions are met.[91]

Furthermore, in principle, non-member countries that are negatively affected from the newly emerged integration have the right to compensation. The creation of EEC was notified to GATT and the Treaty of Rome was examined by a Working Party according to the criteria set out in Article XXIV. At the end of the day, the EEC is reported to satisfy all the requirements of the Article XXIV. For some analysts, this decision is –to some extent- political in nature because of the fact that, a Working Party decision stating that the EEC violated Article XXIV requirements could result in withdrawal of six EEC member countries from GATT.[92] After creation of the EEC in 1957, a series of negotiations concerning tariffs were held under GATT auspices. These bilateral negotiations with the EEC were to be complemented by a multilateral round. Thus, the Dillon Round, which named after the US Under-Secretary of State, began in 1960. Some 4400 tariff concessions were exchanged during the course of the Round. Together with agriculture, many other sensitive products were left untouched, despite the expected rise in trade barriers concerning these due to the formation of the EEC.[93]

3.4. The Kennedy Round

The Kennedy Round took its name from the President of US John F. Kennedy. Some forty-six members participated in this Round. At the end of the Round, however, the membership of the GATT has reached seventy-four. Kennedy Round was the first

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[91] *Ibid*., p. 218.

[92] Cited in *Ibid*., p. 219. Also see, R. Snape, "History of Economics of GATT's Article XXIV", in K. Anderson and R. Blackhurst (eds.), *Regional Integration and the Global Trading System*, (Harvester-Wheatsheaf, London, 1993).

[93] *Ibid*., p. 18.

multilateral round of trade liberalisation which went beyond tariffs and dealt with non-tariff barriers. One of the features of the Kennedy Round is that it formally included preferential treatment in favour of the developing countries.

3.5. The Tokyo Round

This Round of multilateral trade negotiations was launched in Tokyo in 1973. Some ninety-nine countries were participated in the Tokyo Round. Tariffs on thousands of industrial and agricultural products were decreased. The Tokyo Round led to the adoption of a range of specific arrangements such as the arrangement concerning the legalisation of preferential tariff and non-tariff treatment in favour of developing countries and among developing countries. Thus, the trend of widening negotiating agenda was continued in the Tokyo Round.

3.6. The Uruguay Round

This Round is after the country that hosted the GATT Ministerial Meeting in 1986. Not only is the issue of trade in goods but also measures affecting investment, trade in services and intellectual property incorporated into the agenda. The Round was also significant in the sense that it "led to a further liberalisation of international trade, including not only tariff reductions but also the elimination of tariffs for certain product groups, the reintegration of agricultural trade and textiles and clothing into the GATT, and the expansion of GATT disciplines"[94] The average tariff on manufactured goods of industrial countries fell from 6.4 per cent to 4 per cent. As the biggest outcome of the Round, the WTO was established in order to oversee the functioning of the GATT, the GATS, and the Agreement on TRIPS.

Although the GATT was not an international organization, it evolved into a *de facto* world trade organization in time.[95] Since its inception the GATT system played a major role in trade liberalization, in establishing a complex network of rights and obligations regulating international trade relations and in the overall increase in trade volume worldwide. The volume of trade negotiated has also increased not only due

[94] *Ibid*., p. 19.

[95] *Ibid.*, p. 15.

to the rise in number of CPs but also due to the widening scope of the agenda.[96] Furthermore, the territorial scope of the GATT has also widened. Starting with only 23 contracting parties, GATT developed into a quasi-universal institution with 128 signatories by early 1995.[97] Finally, the GATT has also achieved cutting down the tariffs for industrial goods from 40 percent in 1947 to 4 percent average by 1993.[98] In Hoekman's and Kostecki's words, "the GATT proved very successful as an instrument to induce countries to lower and bind tariffs over time."[99] The main philosophical base of the GATT was so called "embedded liberalism". Embedded liberalism simply meant to strike a balance between reinforcing liberalisation of trade internationally, while allowing making necessary adjustments at national level to satisfy the needs of the public.

3.7. From GATT to WTO

As stated above the GATT was successful in general.[100] The second half of the twentieth century witnessed an increase in global trade more than the global production. However,

> GATT's success in reducing tariffs to such a low level, combined with a series of economic recessions in the 1970s and early 1980s, drove governments to devise other forms of protection for sectors facing increased foreign competition. High rates of unemployment and constant factory closures led governments in Western Europe and North America to seek bilateral market-sharing arrangements with competitors and to embark on a subsidies race to maintain their holds on agricultural trade. Both these changes undermined GATT's credibility and effectiveness.[101]

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[96] Dent, *op. cit.,* p. 190.

[97] Hoekman and Kostecki, *op. cit.*, p. 20.

[98] Dent, *op. cit.* , also see Kyle Bagwell and Robet W. Staiger, "An Economic Theory of GATT", in *The American Economic Review*, Vol. 89, No. 1, March 1999, p. 215.

[99] Hoekman and Kostecki, *op. cit*., p. 32.

[100] Irvin, *op. cit.*, p. 326.

[101] Cited in http://www.wto.org, accessed on 24 April, 2004. For the weaknesses of GATT, also see M. Sait Akman, Political Economy of Protectionism and the World Trade Organization: A "Public Choice" Approach to Trade Policies of the EU and the US, Ph.D. Thesis submitted submitted to the Institute of European Community, Department of Economics of European Union, Marmara University, 2000, pp. 168-176.

Moreover, the dispute-settlement[102] mechanism and transparency were partly problematic. Thus, although the GATT was successful in providing a negotiating forum, through which the reduction of barriers of trade was facilitated, it was inadequate in arbitration of trade disputes.

Finally, to create a single institutional framework which would cover not only the GATT but also agreements on services (GATS), on intellectual property (TRIPs) and all other agreements reached during the Uruguay negotiations was decided. Also a strengthened dispute-settlement understanding and more transparency were envisaged. So, to satisfy the needs of evolving global economy[103], to re-precipitate trade liberalization and to extend the scope of general rules in different sectors, and to provide GATT an institutional skeleton or "to put the GATT on a more secure organizational footing"[104], the World Trade Organization (WTO) was established on 1 January 1995 by the Marrakech (in Morocco) Agreements as a "jewel in the crown" of the Uruguay Round.

A different approach to the transformation of GATT into the WTO is related with a change of "regime" in the course of Uruguay Round. According to this view, during the late 1980s, the logic of the GATT system began to be discredited as many -originally protectionist- developing countries started to advocate a multilateral trade system with stronger legalism over "traditional power politics" represented by major industrialised countries.[105] In other words, developing countries preferred a rule-based system with a stronger institutional setting to a system of world trade which was run mainly in the hands of powerful states. This was one of the main cornerstones of the success of the Uruguay Round.

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[102] A single Contracting Party (generally defendant country) could simply block any decision to be taken under the dispute settlement mechanism of GATT. This was seen as one of the major limitations of the GATT system.

[103] This should include increased concerns on environment, the rise of transnational economics and more priority for developing and least developed countries.

[104] Hoekman and Kostecki, *op. cit*., p. 36.

[105] For a account on the issue, see Jane Ford, "A Social Theory of Trade Regime Change: GATT to WTO", in *International Studies Review*, Vol. 4, No. 3, fall 2002, pp. 115-138.

The WTO can not be seen as a mere continuation of the original GATT system. However, there are some similarities between the two. For instance, in decision making process, as experienced in the GATT, unanimity- if it is possible to achieve- is the rule in WTO as well.[106] Also, in the Article VII of the Agreement Establishing the World Trade Organization it is stated that "The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947." Finally, as a general principle it is accepted that "except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947."[107]

3.8. Differences of WTO from GATT

As compared to GATT, the WTO differs in structure, common objectives of the institution, and in dispute settlement mechanism to a great extent. By those aspects the WTO enjoys a legal status greater than the original GATT.

First of all, although the GATT was not an international organization *ab initio*[108], though it evolved into one in time unofficially, the WTO –as it name explains- is designed as a multilateral organization with a different institutional setting. In this respect, while the GATT had "contracting parties", the WTO has "members".

Secondly, with respect to common objectives of the two, the GATT was aiming the full use of the resources of the world, whereas the new WTO's objective is the "optimal use of the world's resources".[109] The Preamble of the Agreement

[106] In the Article IX of Agreement Establishing the World Trade Organization, it is stated that The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. Also see, Senti and Conlan, *op. cit.*, p. 28.

[107] Par. 1. Art. XVI of the Agreement Establishing the World Trade Organization.

[108] "Ab initio" is a latin phrase meaning "from the beginning".

[109] Senti and Conlan, *op. cit.*, p. 37.

Establishing the World Trade Organization states that "while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development" In the atmosphere the WTO had established rising concerns about the environment going hand in hand with the term "sustainable development was at its peak. Also, for the needs of the non-industrial countries the Agreement states "there is need for positive efforts designed to ensure that developing countries and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".[110]

Thirdly, under the new WTO, the management of world trade system has been set up by three pillars. As set out in the Final Report of the Uruguay Round, the WTO extended the structure of original GATT by adding two agreements namely Agreement on Trade in Services and Agreement on Trade-Related Aspects of Intellectual Property Rights.[111] By the WTO, world trading system began to be administered under those three pillars. The first pillar is the GATT which is also extended by several agreements on agriculture, textiles, subsidies etc. The second pillar is the Agreement on Trade in Services (GATS) and the third pillar is the Agreement on the Protection of Intellectual Property Rights (TRIPS).[112]

As the fourth main difference, unlike the GATT, the Ministerial Conference is designed to perform as the supreme organ of the WTO meeting at least every two years at the level of ministers. There are also some other organs responsible from the proper functioning of the WTO such as the General Council being responsible from carrying out the tasks between two Ministerial Conferences, the Director-General heading up the Secretariat, the Secretariat which is located in Geneva being

[110] See *the Preamble of the Agreement Establishing the World Trade Organization*, paragraphs I and II., the text could be found in the WTO's web site, http://www.wto.org, accessed on 10 January 2004.

[111] *Ibid*., p. 24.

[112] For details, see Senti and Conlan, *op. cit*., p. 7.

responsible from performing out negotiations between the WTO members and from assisting them, and Committees specialised on different subject matters and Councils for Trade in Goods, for Trade in Services and for TRIPS.

Finally, in the dispute settlement procedure, the WTO extended the agenda concerned by bringing services, protection of intellectual property rights, civil aircraft and government procurement into the dispute settlement mechanism. Furthermore, unlike the GATT system a permanent Dispute Settlement Body (DSB) consisting of all WTO members and an Appellate Body have been established. It is the responsibility of the DSB to settle disputes. Thus, it has the sole authority to create "panels" and to accept or reject panel's decisions or the outcome of an appeal.[113] In the WTO system, it is impossible for a single member to block the adoption of the ruling, which occurred frequently in the old system of dispute settlement. A Panel decision could only be blocked by unanimous agreement by all members of the WTO. By proscribing unilateral retaliation, the new dispute settlement mechanism of the WTO enhanced the position of developing countries. Evidently, the usage of dispute settlement mechanism of the WTO by developing countries has increased by more than 28 per cent.[114] Yet it should be born in mind that, the WTO rulings are not "binding" in traditional sense, rather it *flexibly* accommodates the demands of sovereign members by allowing them to choose one of three options (these options are 1- coming into compliance, 2- making no change to offending law or measure but employing compensatory measures, and 3- making no change to its challenged law or measure and refusing to provide compensation) in case of a violation of (a) WTO rule(s)[115] This flexibility granted to members is one of the main aspects that makes the WTO dispute settlement mechanism effective in encouraging international economic cooperation.[116] The introduction of fixed

[113] World Trade Organization, *Understanding the WTO*, (2003, 3rd edn.), p. 58.

[114] Jane Ford, *op. cit.,* p. 133.

[115] Judith Hippler Bello, The WTO Dispute Settlement Understanding: Less is More, in *the American Journal of International Law*, Vol. 90, No. 3, July 1996, pp. 416-417.

[116] *Ibid*., p. 418.

timetables for each and every stage of the dispute settlement procedure is another significant novelty.

3.9. From Uruguay to Doha

Many Uruguay Round agreements included timetables for future negotiations, which to be known as "built-in agenda". While some items in the built-in agenda negotiations were concluded soon after the Uruguay agreement, some parts of the agenda became focus of the new round of trade liberalisation.[117]

In November 2001, at the Fourth WTO Ministerial Conference in Doha, Qatar, members of the organisation agreed to start a new round of trade liberalisation negotiations. This new round is known as Doha Development Agenda (DDA). It is scheduled to be finished by the beginning of 2005. All negotiations take place in the Trade Negotiations Committee according to a standard procedure. The Fifth Ministerial Conference in Cancún, Mexico which was held on 10-14 September 2003 was ended without a consensus mainly due to deep divergent opinions among members of the WTO over several issues including so called "Singapore issues"[118] and agriculture [119].

The WTO's 147 member governments approved on 31 July 2004 a package of framework and other agreements, which Director-General Supachai Panitchpakdi said will greatly enhance members' chances for successfully completing the important Doha negotiations.[120] However, it is to be seen throughout WTO negotiations in Hong Kong in 2005.

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[117] For details, see World Trade Organization, *op. cit*., p. 21.

[118] There are four "Singapore issues" which was determined in Singapore Ministerial Conference in 1996: 1- trade and investment, 2- trade and competition policy, 3- transparency in government procurement and 4- trade facilitation.

[119] Shinzo Kobori has commented that agriculture is the most important part of the DDA, which would ultimately determine the fate of the Agenda, see Shinzo Kobori, "Post-Doha Challenges for the WTO", in *Asia-Pacific Review*, Vol. 10, No. 1, 2003, p. 74.

[120] http://www.wto.org/english/news_e/news_e.htm, accessed on 2 August 2004.

CHAPTER 4

The Historical Evolution of the EU's Trade Policy

4.1. Introduction

Trade has always been an important aspect of European economy. More than five centuries ago, the expansion of Europe through geographic discoveries was resulted in the European supremacy in world economy as well, with trade being the main component. Thus, beginning from mid-15th century, the continent of Europe became the centre of the world trade. Then, scientific revolutions, the enlightenment and the industrial revolution of the early 19th century enhanced the Eurocentricism in world economy. In today's Europe, trade is still regarded as the main source of the wealth and the "lifeblood of the European economy."[121]

The evolutionary history of the EU's trade policy is essentially important for understanding the EU-WTO interaction as the most part of the EU's actorness in the WTO system is constructed upon its trade policy. External trade policy is one of the first and foremost indicators of actorness of the EU in global trade management. In the case of WTO, the Common Commercial Policy is the main instrument for the EU to defend its arguments and to assert its identity. Despite minor rollbacks, the trade policy of the EU steadily developed in both scope and applicability. In line with the developments in global economy, the EU has had to adapt its CCP. In this part of the dissertation, the evolutionary character of EU' trade policy will be examined through the mentioning of several vital issues which contribute to or constrain the actor capability of the EU.

External Trade Policy is one the foremost indicators of actorness of the EU in global trade management. Thus, the analysis of the external trade policy of the EU is essential to perceive of its international trade actorness. In analysing the EU as a global trade actor through its external trade policy, several fundamental issues became of utmost significance. In other words, global trade actorness of the EU is

[121] European Commission, *The European Union and World Trade*, 1995, p. 5.

determined largely by the interaction of those forces which will be explained below. Although each of these issues will be discussed in detail in the following sections it is still better to present an overall picture about the nature and extent of the actorness of the EU in global trade matters through those issues at work.

First of all, the question of unitariness is one of the most important dimensions in EU's role as a global trade actor. From the very beginning, the EC sought to be a unitary actor to gain more from multilateral trade liberalisation talks by enjoying the leverage of combined interests. The Common Commercial Policy and Common Agricultural Policy are two good examples through which the unitariness of the EU as an international economic actor are evidenced. Other international actors should treat the EU as a unified bloc with regard to these integrated policies. Also, to be unitary actor, the EU benefited much from the evolution from customs union to the single market. One of the main achievements of the Single Market Program is the increased economic convergence among EU Member States, as well as EU regions which in turn resulted in the growing outside actors' perceptions of the EU as a unitary actor. Finally the launch of a common European currency, the Euro (€) could be considered as a step in enhancement of EU's status in international arena as a unitary actor.

With regard to the Union's relations with the WTO, it could be asserted that the EU is a unitary actor. It enjoys the exclusive competence in initiating trade proposals, and externally representing both the Union and Member States no matter the existence of seats of Member States individually. In WTO talks, only the Commission could conduct talks. The Member States should remain silent, unless issues under discussion do not fall into exclusive national competence. However, the unitariness of the EU is limited with some significant exceptions. Most notably, Member States are free to conduct negotiations and conclude agreements regarding the matters which are not covered neither the exclusive Community competence, not the mixed competence.

The term competence is of key importance in understanding the nature of EU's trade policy actorness. Competence literally means power. In EU terminology, competence means the EU's responsibilities and authorities. There are three types of competences concerning the powers of the EU: 1- The EU has exclusive competence (for example multilateral negotiations regarding the trade in goods). 2- Both the EU and its Member States are jointly competent (for example multilareal negotiations regarding trade in services). 3- Member States have exclusive competence. In other words, Member States enjoy national competence to full extent. Although competences of the EU set out in the treaties, in some cases the EU competence is uncertain or ambiguous (for example external economic relations), and in some cases the EU competence is "mixed", i.e. both the EU and Member States are jointly competent. Thus, mixed competence is also called "joint" or "shared" competence. There was no explicit distinction in the Treaty of Rome in legal terms between exclusive and nonexclusive competence.

However, a supranational EU institution, the European Court of Justice has tended to take the view that the EU enjoys full competence in the pursuit of the aims set out in the Rome Treaty. Therefore, assessing the EU as a global trade actor the role of ECJ is also vital. Through its "doctrine of implied powers" the ECJ contributed much to the strengthening of the EC competence. According to this doctrine of implied powers, the EU has the right to enter into international commitments if it is necessary for the attainment of specific objectives set out in the law of EU, even in the case of an absence of internal rules or express provisions.

Apart from ECJ, other supranational organs of the EU, most notably the European Commission has played an important role in enhancing the actorness of the EU. The European Commission is not an executive or legislature; instead it combines elements of both. The Commission is unelected and only accountable to the European Parliament. It consists of the college of Commissioners and mostly a career civil service. The Commission is centrally important in EU policy processes due to its wide ranging formal roles: initiator of legislation, guardian of the treaties, and manager of the budget and executive of Community activities. Aspirations of

Commission for enhancement of Community competence have gone unabated, so far. For instance, Trade Commissioner Pascal Lamy has suggested "I believe that the Commission ought to have competence, as in trade policy, to negotiate on all matters pertaining to the management of globalization, including the environment, transport, energy, negotiations within commodity organizations, the OECD, and Food and Agricultural Organization, etc."[122] The Commission's role is also significant with regard to the external representation of the EU. In acquiring unitary actorness, the unitary external representation plays a crucial role. As well as most of the countries many international organisations have diplomatic ties with the EU and the Commission maintains more than one hundred diplomatic delegations across the globe. As it will be elaborated later, the European Commission accepted as "the single voice" of the Union regarding external trade. Only the Community can negotiate and conclude trade agreements. With the same token, "[f]rom its very creation, the European Community had spoken in international trade negotiations with a single external voice."[123] This single European voice –represented by the Commission- is one of the main reasons giving the EU a great leverage in international trade issues.[124]

Another important question is related with the discussion about whether the EU as a coherent and consistent actor. Not only the EU's coherence regarding its set of policies are at stake but also the coherence among its own organs is crucial. The former is called the "horizontal coherence" while the latter is called the "vertical coherence". The EU's consistency and compliance with respect to the WTO is of utmost importance and will be analysed in a separate chapter. Furthermore, the EU, in its relations with the WTO is affected from problems related with vertical coherence inside the EU.

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[122] Pascal Lamy, "Europe and the Future of Economic Governance", in *Journal of Common Market Studies*, Vol. 42, No. 1, pp. 16-17.

[123] *Ibid*., p. 325.

[124] See, http://www.europa.eu.int/comm/external_relations/index.htm, accessed on 10 January 2004.

Ideological differences among Member States are effective, too, in the extent and limits of the EU's global trade actorness. There are different elements dividing Member States of the EU in their positions regarding the issue at hand. As Meunier and Nicolaïdis argued the debate over trade authority has been a reflection and a test of a larger ideological battle over European integration. In other words, diversified ideological preferences of Member States regarding sovereignty transfer are crucial in trade policy actorness of the EU. In this regard, for instance, while some of Member States of the EU incessantly support for further integration (pro-integrationists) for instance Benelux countries and Italy, others are suspect of further integration and thus extending the exclusive Community competence (sovereignty camp).[125] France is the most notable example for the sovereignty camp. Another ideological difference between EU Member States is related with the trend of EU external economic policy. In this division of Member States, while some members primarily focus on relations with the ACP countries, others prefer a more balanced and a global approach. The former is called "traditionalist" group while the latter is called "globalist, or "revisionist", or "modernist".[126] While France is the champion of the traditionalist camp, Scandinavian countries along with Germany are located in the globalist camp. To sum up, ideological differences among EU member's have tremendous implications on EU as a trade policy actor. Relative strengths of opposing camps is an important determinant regarding the EU policy action, as the Council is the ultimate platform in decision-making which operates according to the QMV principle with respect to trade issues. The banana issue is a case in point which will be elaborated in the sixth chapter.

4.2. The Role of the ECJ in Extending the Community Competence

So far, according to Alasdair R. Young, treaty reforms generally served as a limited factor in extending the EU's economic competence. However, there is an apparent improvement of the Community competence mainly due to a series of ECJ

[125] Meunier and Nicolaïdis, "Who Speaks For Europe?, the Delegation of Trade Authority in the EU", in *Journal of Common Market Studies*, Vol. 37, No. 3, September 1999, pp. *485-487.*

[126] Jan Orbie, "Everything but Arms: A Civilian Power Europe at Work?" , a paper submitted to European Consortium for Political Research (EPCR) Joint Sessions of Workshops, Uppsala 13-18 April 2004, Workshop No. 7: New Roles for the EU in International Politics?

judgments which eventually contributed more to the Community competence by two ways, firstly by directly extending the scope of common commercial policy and secondly by establishing "the doctrine of implied powers" through numerous cases[127] In essence the role of the ECJ is tremendous with regard to giving meaning to and defining the scope of the Community competence as Treaties say nothing about the extent and limits of Community competence.

According the so-called "doctrine of implied powers", the EU has right to enter into international commitments if it is necessary for attainment of specific objectives set out in the law of EU, even in the case of an absence of internal rules or express provisions.[128] As early as 1964 the ECJ ruled that "the Member States had permanently transferred some of their powers to the Community"[129] For Young, although the implementation of this principle has a more significant impact upon enhancement of the Community competence than the ECJ's rulings directly extending the scope of CCP, it is also the case that "the doctrine of implied powers" suffers from the fact that "its precise contours are still open to interpretation and are often disputed."[130] Nonetheless, trade negotiations are among several fields which the ECJ "has reinforced the role of the EU as an international actor."[131]

[127] Alasdair R. Young, "The Adaptation of European Foreign Economic Policy: From Rome to Seattle", in *Journal of Common Market Studies*, Vol. 38, No. 1, 2000, p. 102.

[128] *Ibid*.

[129] Cosgrove-Sacks, *op. cit*., p. 9, also see Case 6/64.

[130] *Young*, *op. cit.,* p. 104.

[131] Cosgrove-Sacks, *op. cit*., p. 10.

Table 2: ECJ Judgments Extending the Scope of the Common Commercial Policy

Case	*Key Aspect of Ruling*	*Submissions in Line with Ruling*	*Submissions Contrary to Ruling*	*Reference*
Opinion 1/75* (Local cost standard)	EU has exclusive competence under the common commercial policy Common commercial policy content same as in national context			ECR [1975] 1355
Opinion 1/78 (International Rubber Agreement)	Common commercial policy not restricted to the use of instruments intended to affect only traditional aspects of trade	Commission	Council France UK	ECR [1979] 2871
Opinion 1/94 (Uruguay Round)	Only cross-border provision of services falls within common commercial policy (other modes do not)	Council** Denmark** France** Germany** Netherlands Portugal Spain UK**	Commission	ECR [1994] I-5267
	Transport services donot fall within common commercial policy	Denmark Germany Netherlands UK	Commission	

Notes: * The Council and the governments of Ireland, Italy, Netherlands and the UK made submissions, but they are not reported in the judgment.
** The Council and these member governments argued for the exclusion of the cross-border supply of services.

Source: Young, "The Adaptation of…", 2000, p. 103.

Table 3: ECJ Judgments Developing the Doctrine of Implied Powers

Case	*Key Aspect of Ruling*	*Submissions in Line with Ruling*	*Submissions Contrary to Ruling*	*Reference*
Commission v. *Council* (*ERTA*)	When common rules are adopted to achieve a treaty objective, Member States lose the right, individually or collectively, to undertake obligations with third countries that affect those rules	Commission	Council	ECR [1971] 263
Kramer and others (Fisheries)	EU authority to enter into international commitments may flow implicitly from other provisions of the treaty and from measures adopted internally	Commission	Council Denmark Netherlands UK	ECR [1976] 1279
Opinion 1/76 (Rhine Navigation)	When EU given internal powers in order to attain a specific objective, it has the authority to enter into international commitments necessary to attain that objective in the absence of an express provision	Commission	Council	ECR [1979] 2871
Opinion 2/91 (ILO)	Exclusive competence is conferred even if internal rules are not within the context of a common policy	Commission Greece	Germany Ireland Spain UK	ECR [1993] I-1064
	Exclusive competence is not conferred on the EU if internal rules set only minimum standards	Council Belgium Denmark France Netherlands UK	Commission Greece	

Source: Young, "The Adaptation of…", 2000, p. 105.

As well as the role of ECJ, treaty reforms were important in the evolution of EU's trade policy. Here, main treaties of the EU will be reviewed with from the perspective of the external trade policy of the EU.

4.3. The Treaty of Rome

According to the Treaty of Rome (25 March 1957), which established the European Economic Community, the completion of a customs union -in which a common external tariff to be established- and then a common market in which there would be no barriers to trade was to be realized. It is necessary here to clarify the terms of "customs union" and of "common market". Whereas a customs union is a free trade area with common external trade policies, a common market is a customs union that also allows for the free movement of factors of production, i.e. capital, labour, etc. In this regard, in regional integration formations, common market is one step further than the achievement of a customs union.

The Common Commercial Policy of the EU is embodied in Articles 110-116 of the Treaty of Rome. Article 110 calls for the creation of a customs union, Article 112 calls for uniform commercial practices with non-member states, Article 113 gives responsibility for the conduct of the CCP, both internally and externally, to the Commission and the Council of Ministers; and Article 115 requires Member States to honour restrictions on imports from outside the Community maintained by other member states and gives the Commission authority to mandate protective measures. Articles 111, 114, and 116 have since been repealed.[132] (See Appendix A) It should be noted that the Common Commercial Policy originally was about only merchandise trade. In other words, in the beginning, issues beyond merchandise trade such as services, and intellectual property rights are not covered by the CCP.

The Treaty of Rome laid down a strict implementation schedule for the development of the CCP to avoid foot dragging by member states.[133] The transition period to zero tariffs and quotas and the creation of the CET was set at three steps of four years each. A unanimous vote was necessary to move to the stage 2. Transitions to later stages were to be done with QMV. Finally, all quotas –except on agricultural goods- reduced to zero by January 1962, and all tariffs reduced to zero by July 1967. Thus, the customs union entered into effect in 1968.

Also, in 1968, the Common External Tariff (CET) was effectively introduced. In the beginning, the CET was simply the "arithmetic mean" of the applied tariff of the six members. In other words, it was "based on a straight unweighted arithmetical average of the previous national tariffs."[134] Involving the application of common customs duties to products imported from third countries and irrespective of the destination in the EU, the CET is regarded as one of the essential instruments of the European customs union.

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[132] Desmon Dinan (ed.), *Encyclopedia of the European Union*, (Macmillan, Houndmills, 2000), updated edn., p. 77.

[133] *Ibid*., p. 78.

[134] *Ibid*., p. 81.

Meanwhile, the Merger Treaty of 8 April 1965 brought Euratom, the ECSC, and the EEC together under the same Commission and Council of Ministers.[135] The Merger Treaty not only enhanced the overall position of EEC but also it delivered a greater credibility and prestige for the Commission. By 1967, the role of the High Authority of the ECSC was handed over to the Commission.

The Treaty of Rome grants the EEC "exclusive" competence in commercial policy which includes external trade negotiations. In this respect, "[T]rade policy came under supranational competence from the very beginning of the European Community..."[136] According to one analysis, the Treaty of Rome was a revolutionary text as it granted the right of elaboration, negotiation and enforcement of trade relations to a supranational body.[137] Only two institutions of the EC, the Commission and the Council can negotiate and conclude international agreements. However, the Commission could use its negotiating mandate over external trade matters "in conjunction with a special committee appointed by the Council"[138] , known as the Article 133 Committee[139]. Article 113 Committee which is composed of member state civil servants meets regularly with Commission officials to approve the Commission's negotiating strategy and proposals. For instance, during the Uruguay

[135] The Commissioners sit independently of their national governments. In this regard, the Commission is considered as a supranational body. The Council of Ministers represents the Member States. Ministerial representatives give voice to their own national preferences on the particular issue discussed. The Council thus operates as an intergovernmental institution. The Merger Treaty not only brought various institutions together but also intended to advance the move to greater supranationality by expanding the authority of the Commission. Furthermore, a larger number of issues were to be decided by qualified majority voting rather than consensus. In other words, member states would not be able to unilaterally block certain policy outcomes.

[136] Meunier and Nicolaïdis, "EU Trade Policy: The Exclusive versus Shared Competence Debate", in M. G. Cowles and Michael Smith (eds.), *op. cit.*, p. 332.

[137]Excerpt from Article 113 of the Treaty Establishing the European Community, as amended by the Article G (28) of the Treaty on European Union.

[138] Article 133 committee was previously known as Article 113 committee. After the Treaty of Amsterdam came into effect, the name changed to Article 133 committee, or "Committee 133".

[139] See Meunier and Nicolaïdis, "Who Speaks For Europe?...", *op. cit.,* p. 479.

Round, the Article 113 Committee met with Commission officials on a weekly basis in Brussels and sent observers along to the negotiating sessions in Geneva. It should be noted that, Article 113 Committee members could not participate in the negotiations themselves.

Article 113 of the Treaty Establishing the European Community states

> 1) The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.
>
> 2) The Commission shall submit proposals to the Council for implementing the common commercial policy.
>
> 3) Where agreements with one or more States or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.
>
> The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.
>
> The relevant provisions of Article 228 shall apply.
>
> 4) In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.[140]

In this way member states are to be able to exercise "a great amount of control over the Commission".[141] The implementation of QMV in the Council of Ministers is designed for easier decision making. This is a major indicator of supranationality of the CCP and thus, related with the EC's ability to speak with one voice in international trade issues. It was intended to avoid foot dragging of Member States and to give the EC a single voice to speak in international trade matters. However, in practice, as to be repeated below, wherever seems possible, consensus is tried to be reached and generally member states are successful enough to reach consensus. It should also be noted that until 1966, i.e. the end of the transitory period for the

[140] Article 113 of the Treaty Establishing the European Community, as amended by the Article G(28) of the Treaty on European Union.

[141] Meunier and Nicolaïdis, "EU Trade Policy...", *op. cit.*

common market, trade policy decisions were to be taken on a consensual basis. In this respect, during the first two GATT Rounds that the EC took part in, the rule for decision making in trade was unanimity.[142]

The very basic procedure of the EC for negotiating and concluding a trade agreement can be summarized as follows: First of all, the Commission has sole authority to elaborate proposals for the initiation and the content of international trade negotiations. Article 133 committee examines and if necessary amends the Commission proposals by consensus. Following the authorization given by the General Affairs and External Relations Council[143] by qualified majority voting (QMV), the Commission negotiates the agreement according to its mandate and in an interaction with the Article 133 Committee.

Before the proposal is taken to the council of Ministers, the Committee of Permanent Representatives (COREPER) analyzes the document one more time. The COREPER, which named after according to its French acronym, is a key institution of the EU. It should be noted that, there are two COREPERs: COREPER II, made up of permanent representatives of member states; and COREPER I, made up of their deputies. The COREPER was referred first in the Merger Treaty of 1965. In that Treaty, the COREPER was held responsible for preparing the work of the Council of Ministers and for carrying out particular tasks assigned to it. Until the Treaty on European Union (TEU), the COREPER's role was limited only by the role of the special Committee for Agriculture and the Monetary Committee, with its sectoral concerns, and by the Article 113 Committee, with its vital role in preparing external trade issues. The TEU extended the responsibilities of the COREPER beyond the EC framework to involve official responsibility for issues falling under the second and third pillars, i.e. the CFSP matters, and matters concerning the Justice and Home Affairs. The COREPER serves as a meeting point for the technical and political

[142] *Ibid*., p. 332.

[143] Note that there is no separate Council of Trade Ministers at that time.

aspects of each proposal. It is now responsible for the large majority of all Community decisions.[144]

Finally, the Council takes decision about the agreement by qualified majority voting, in principle. However, in practice, decisions are generally taken on the basis of consensus. In other words, while a group of members, though without having a possibility to create a blocking minority, were opposing the proposal, the proposal is most likely to be amended or those members' vital interests are to be compensated through different means.[145]

Throughout the whole process trade policy-making the role of the European Parliament (EP) is limited. The EP is not one of the main actors of the CCP. The exclusion of Article 133 agreements from the rule stated by the Article 300 EC Treaty that the EP must be consulted on international agreements and give its assent to Association agreements and other important agreements limits direct involvement of the EP to a great extent.[146] On the basis of a Commission initiative, the EP's assent could be sought. Otherwise, the EP is only informally informed.[147]

Different from the formal procedure above, the EU decision-making on trade issues in practice generally constitutes a more complex process. Stephen Woolcock analyzes the EU decision-making in trade in three interdependent phases. The first phase is setting of objectives for negotiations, second is the conduct of negotiations and third is the adoption of the results, i.e. legislative measures.[148] In the first phase, as Woolcock maintained, after a great deal of preparatory work in several

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[144] Dinan, *op. cit*., pp. 68-70.

[145] As also written below, the banana case is an exception to this.

[146] Peter Bender, "The European Parliament and the WTO: Positions and Initiatives", in *European Foreign Affairs Review*, Vol. 7, 2002, p. 195.

[147] *Ibid*., also cf. Smith, "EU External Relations", in Cini, (ed.), *op. cit.*, p. 231.

[148] See Stephen Woolcock, "European Trade Policy: Global Pressures and Domestic Constraints", in Helen Wallace and William Wallace (eds.), *Policy-Making in the European Union*, (Oxford University Press, Oxford, 2000), pp. 373-399.

committees as Article 133 committee and sub-committees, and having been influenced by numerous interest groups and NGOs, at the end, it is generally the Council that officially determines the "mandate" for the Commission. For Woolcock, the vital question about the phase of conduct of negotiations is related with the "flexibility" of the Commission. Since the more flexible the Commission is, the more limited member states control would be. On the other hand, the Commission simply could not negotiate with too little flexibility. The EU decision making in trade policy is being criticised on grounds that the Commission is so unwilling to negotiate without a mandate from the Council and unable to negotiate once it has a mandate due to the fact that mandates are generally so tightly drafted. However, in practice, the mandates are usually tight only on sensitive issues. In this matter, it has been suggested that the EU should adopt a way of decision-making similar to the "fast-track" procedure of the US. According to US Constitution, it is the Congress to negotiate on international commercial policy, while the executive branch can negotiate only when it is granted an explicit authority to negotiate. Recently, so called a "fast-track" procedure is adopted in which the Congress can accept or reject, but not amend, the results of an international agreement negotiated by the US Trade Representative (USTR). During this process, an ongoing consultation between the USTR and Congress is to be ensured as USTR negotiators are well aware of the fact that whatever they negotiate must be approved by a majority in the US House of Representatives and as well as the Senate.[149]

The debate about "competence" is crucial in understanding the trade policy-making in the EU. It is also important for its actorness as "[t]he extent to which the EU is convincing as an international actor depends on whether it has the competence to conclude international legal agreements."[150]It can also reflect a greater ideological confrontation among member states and between member states and institutions of European integration, particularly the Commission.[151] Bretherton and Vogler simply

[149] *Ibid*., p. 381.

[150] Cosgrove-Sacks, *op. cit*., pp. 8-9.

[151] See Meunier and Nicolaïdis, "Who Speaks For Europe?...", *op. cit.,* p. 479.

defined competence as the EC term of 'powers'.[152] The assignment of powers in policy-making between the EC/EU and member states is at the heart of the competence debate in the EU. Whereas the trade in goods is under the EC competence exclusively, member states *are* competent on the issue of investment.[153] There is another type of competence making the issue more complex, called "shared", "mixed" or "joint" competence in which both the EC and Member states are competent together. It should be noted that, the EC competence means the EC is competent as a collective entity, not solely the Commission.[154]

On the competence debate, Meunier and Nicolaïdis employed the 'principal- agent theory' to provide an analysis about the way and extent of member state(s') control over the Commission. According to this theory, tasks are delegated to *agents*- in this case the Commission- by the ultimate decision-makers or *principals*- in this case, member states individually or collectively- if they are too complex or time consuming to negotiate. Meunier and Nicolaïdis have argued in the first stage of trade negotiations, i.e. 'initial mandate', the General Affairs Council controls the Commission by adopting a more or less flexible mandate. In this stage, whereas on issues concerning exclusive competence, the Council decides according to QMV, about issues regarding mixed competence, the Council and Member States are to reach a consensus During 'ongoing representation' stage, member states try to increase or decrease the autonomy of the Commission generally through informal means. On issues concerning mixed competence, some member state involvement is also visible. During the 'ratification' stage, the Council of Ministers decreases the authority of the Commission and decides on the agreement by QMV. Regarding the issues of mixed competence, however, not only a unanimous vote in the Council, but also ratification in each and every Member State Parliament is required. (See Table 2) Concerning the enforcement, while the Commission enjoys exclusive authority with regard to issues of exclusive competence, it shares power with delegated authority through consultation with regard to matters of mixed competence.

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[152] Bretherton and Vogler, *op. cit.*, p. 17.

[153] Woolcock, *op. cit.,* p. 375.

[154] *Ibid*.

Table 4: *The Four Stages of Delegation*

	Authorization (flexibility of the machine	Representation (autonomy)	Ratification (authority)	Enforcement
Exclusive competence (Art. 113/133 and 235, EC Association Agreement)	113/133 Committee→ Council (qualified majority)	Commission e.g. 'unity of representation' (ongoing informal consultation)	Council (formal: qualified majority);informal: veto at least by big states	Commission (exclusive)
Mixed competence (Art. 113/133 EC in the WTO Arts. 113 and 235)	113 Committee → Council (unanimity) and member states	Commission (ongoing informal consultation) Some member state involvement	Council (unanimity)and parliamentary ratification in each member state	Commission with delegated authority (in consultation)

Source: Meunier and Nicolaïdis, 1999.

There was only incremental change in treaty provisions of the 1987 Single European Act (SEA) and of the Maastricht Treaty of 1991 (Treaty on European Union, or TEU). The SEA did not formally amend the CCP, though it authorised the EU to negotiate international agreements concerning the environment. It could be asserted, however, "by greatly expanding the breadth and depth of internal rules" the single European market program- which was launched by the SEA- contributed to strengthening of the EU exclusive competence.[155] By the end of 1992, the EC had adopted about 95 per cent of the measures envisaged under the single market program. Controls on physical movements of goods at EU internal borders have been removed, and capital movements have been fully liberalised. Additionally, the principle of a single operating licence for financial services has been introduced. The Single Market Program (SMP) was a milestone in the history of European

[155] Young, *op. cit.,* p. 104.

integration, and it was clearly a success. One of the most important outcomes of the Program was the intensification of intra-EU trade. This having said, the SMP triggered the fears across the world, particularly in US, about a "Fortress Europe". According to this widespread view, the EC would become more protectionist, inward-looking and that the Commission was unresponsive to its trading partner's concerns, some analysts commented that the SMP would transform Europe into an economic fortress. The successful launch of SMP was one of the major underpinnings of the Uruguay Round. Fearful of increased protectionism in the EC, the US initiated the multilateral trade liberalisation negotiations which started in Punta del Este, Uruguay, in 1986. Partly due to a quite loaded agenda; the TEU's changes were far from substantially affecting the scope of CCP. As the transitional period ended, the TEU deleted the first part of the first sentence of the first paragraph. With respect to the third paragraph, the growing importance of international organisations is taken into account. (See Box 1)

Box 1: Amendments to the Scope of the Common Commercial Policy by the TEU(Article 113, now 133.)

1. ~~After the transitional period has ended, t~~ The common commercial policy shall be based upon uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

...

3. Where agreements with ~~third countries~~ <u>one or more states or international organisations</u> need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

Notes: Struck through and underlined text represent, respectively, deletions and additions made by the TEU.

Source: Young, "The Adaptation..." , p. 100.

4.4. International Impetus on Competence Debate

On the matter of competence, it should be noted that the international trade rounds in the framework of GATT pushed the EU several times to redefine the EC competence in trade.[156] Until Tokyo Round, there was no substantial impact on the EC regarding trade competence debate. During the Tokyo Round (1973-9) the issues of subsidies, government procurement and technical barriers to trade were part of a debate on whether EC competence or mixed competence would prevail. The solution to the problem was pragmatic: To preserve the single-voice status of the EC, the Commission would negotiate on all issues. However, both the EC and member state governments would ratify the final agreement.[157] In a similar fashion, issues of aviation and product standards are thought to be "too domestically sensitive to leave entirely to the Commission" and both member states and the Community ratified the related agreements.[158]

Until mid-eighties the Commission faced no serious challenges on the matter of negotiation of trade agreements. However, new economic issues such as intellectual property rights, investment measures and trade in services brought the questions about "competence" to the forefront. By early 1990's the sector of services accounted for some twenty per-cent of global trade.[159] Trade in goods –only which was the EC competence is undisputable- was steadily decreasing, on the other hand. Thus, as well as the exclusion of so called "new issues" from the original GATT, the EC competence on those issues was not certain enough too.

4.4.1. The Uruguay Round and the Competence Debate in the EC/EU

The creation of the Single Market stimulated American concerns about "fortress Europe" and became one of the driving forces of the Uruguay Round (UR), along with the widening of the Community through accessions of Spain and Portugal in

[156] Woolcock, *op. cit.,* p. 376.

[157] *Ibid*.

[158] Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit*., p. 483.

[159] European Commission, *The European Union and World Trade*, 1995, p. 8.

1986.[160] The UR was planned essentially to negotiate and determine the rules about new issues such as trade in services, investment measures and intellectual property rights. It was also handling some 'old' issues such as the agriculture. The Round, which was started in September 1986, in Punta del Este, Uruguay, proved to be an opportunity for the Commission to raise its demands about the expansion of Community competence over new issues related with trade. Although the Commission was the sole negotiator on behalf of the Community as well as member states, there was an apparent uncertainty whether all the issues discussed during the Round were under EC competence. This uncertainty continued until the final phase of UR. Unlike the Council and Member States, which decided on 7-8 March 1994 that the Final Act and the Agreement Establishing the WTO would be signed on behalf of both the EC and Member States, the Commission suggested that all issues covered by the WTO would be under the exclusive competence of the EC. For the Commission, since the UR was dealt with as a single package, the EU should also adopt it as that. On 15 April 1994, the External Trade Commissioner and the President of the Council of Ministers signed the Final Act and WTO Agreement on behalf of the EC, and Member States' representatives signed on behalf of their governments. However, the issue of membership in the WTO was far from having been resolved. The Commission wanted to preserve the unitary representation -as happened during negotiations- in the WTO; at the same time it acknowledged rights of Member states to become members of the WTO as sovereign entities. To this end, the Commission also demanded a unanimous vote in the Council for the ratification of the WTO Agreement and a formal approval by the EP.

Along with several other parties, both the EU and the US were not happy with the progress achieved during UR concerning some issues of GATS, especially the basic telecommunications. Thus, they decided to maintain the pace of talks on these matters and continue to negotiate despite the formal end of the Round.[161] However, as the ECJ Opinion- which will be elaborated below- was still pending, both the

[160] Cited from Dinan, "Ever Closer Union", (London, Macmillan, 1994), in Brian White, *op. cit.*, p. 62.

[161] Young, *op. cit.*, p. 106.

Commission and member governments tried to find a practical compromise for EC's participation in continuing GATS talks. Consequently, at General Affairs Council in May 1994, the Commission, the Council and member governments agreed for a non-binding code of conduct enabling the Commission to continue negotiations on behalf of the EU and its Member States, yet without effectively settling the dispute about competence.[162]

4.5. The Advisory Opinion of ECJ 1/94

Finally, considering obtaining a legal and permanent answer to question of competence over mandate and ratification, the Commission brought the issue about competence debate as a legal case, according to the procedure envisaged by Article 228 of the Treaty, before the European Court of Justice (ECJ), in April 1994. The Commission wanted, from the ECJ, at best a confirmation of the exclusive competence of the EC to conclude the WTO Agreement. For one of the EU officials, the Advisory Opinion of the Court would likely to satisfy the needs of the Commission, at least it would affirm the existing practice[163]. Also supported by the EP, the Council and eight Member states[164] confronted the Commission in its request from the ECJ. There was also a "pro-integrationist" camp composed of Italy, Belgium and Ireland supporting the Commission.[165]

On 15 November 1994, the ECJ ruled in its Advisory Opinion that:

(1) The Community has sole competence, pursuant to Article 113 of the EC Treaty (ECT), to conclude the multilateral agreements on trade in goods.
(2) The Community and its Member States are jointly competent to conclude GATS.
(3) The Community and its Member States are jointly competent to conclude TRIPS.[166]

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[162] *Ibid*. Also see, Carmel Ní Chatháin, "The European Community and the Member States in the Dispute Settlement Understanding of the WTO: United or Divided?", in *European Law Journal*, Vol. 5, No. 4, December 1999, pp. 468-469.

[163] Cited from an EU official in Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit*., pp. 484-485.

[164] These countries were Denmark, France, Germany, Greece, the Netherlands, Portugal, Spain and the UK.

[165] Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit*., p. 487.

The Opinion of the ECJ was not like the one that the Commission had expected. However, it was also clear that, the Opinion was far from satisfying the largest Member States' demands for control of the extension of Community competence.[167] The ECJ decided that the Community did not have an exclusive competence to conclude the WTO Agreement as a whole. The Court adopted a narrow understanding of exclusive competence for the EC, yet leaving an open door for evolutionary nature of trade by using a quite imprecise wording[168] as well as refraining from drawing a definite demarcation line between the EC and Member States.[169] Meunier and Nicolaïdis commented that having taken into account sovereignty concerns of some Member States, the Court did not want to (re)establish an exclusive Community competence for 'new' issues. According to Meunier and Nicolaïdis, although this 'rollback of supranational authority' was symbolic, the Court reflected the fact that the political climate had changed in favour of Member States' claims of sovereignty beginning from the loss of trust to the Commission during Blair House negotiations.[170] Although the Court's Opinion seemed to tend more toward sovereignty camp, it also sought an overall balance between the integrationist forces and some Member States emphasizing the "requirement of unity in the international representation of the Community"[171] and calling for a "close cooperation in the processes of negotiation, conclusion and fulfilment of any commitments within the WTO."[172]

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[166] Court of Justice of the European Communities, Opinion 1/94, 15 November 1994.

[167] Young, *op. cit.,* p. 102.

[168] Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit*., p. 493.

[169] Meinhard Hilf, "The ECJ's Opinion 1/94 on the WTO – No Surprise, but Wise?", in *European Journal of International Law*, 1995, p. 250.

[170] For a detailed assessment of the issue, see Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit.*, pp. 477-501.

[171] Opinion 1/94, no. 108, cited in Meinhard Hilf, *op. cit.*

[172] *Ibid*, p. 255. The consequences of this requirement the extent of which remains vague, regarding the settlement of disputes in the context of WTO, see Chatháin, *op. cit*., pp. 465-466. Chatháin also argues that despite the ambiguity of Opinion 1/94, there are legal basis for the cooperation between Member States and the Community, see Chatháin, *op. cit*., pp. 467-468.

For the Commission, one of the best elements in the Opinion is that, the Court concluded the trade in all goods- including agricultural goods- falls under exclusive competence of the EC.[173] However, Woolcock has maintained that, the exclusive Community competence for trade in goods could be undermined by the absence of an exclusive competence for trade in services as joint or national competences of services sector could "infect" exclusive competence of Community for trade in goods. This is mainly because of the fact that trade in goods and trade in services - could not be separated from each other easily.[174]

Considering the evolutionary character of EU's trade policy, the Court left an open door ruling that trade in services cannot be automatically excluded from Article 113's scope. Thus, for the issue of trade in services, the Court ruled that only the first mode of services, i.e. cross-border supplies as determined by the GATS Article I(2)[175] falls under exclusive EC competence. In reality, cross-border supplies account for only a small portion of international trade in services. Furthermore, the ECJ decided that the Community trade competence cannot cover international agreements on transport as they were "the subject of a separate Title of the EC Treaty, Title IV".[176] Thus, the judgment of the Court did not follow the approach of Commission and limited the scope EC competence in international services sector.[177] Also, for the TRIPS, the Court ruled that the Community is only partially competent.

4.6. The Amsterdam Compromise

The Inter-Governmental Conference (IGC) of 1996, which eventually led to the Treaty of Amsterdam (ToA) in June 1997, was another platform for the Commission - though this time cautiously- to claim exclusive competence over trade in services

[173] *Ibid*, p. 251.

[174] For an account of the issue, see Woolcock, *op. cit.*, p. 377.

[175] (1) Cross-border supply, (2) consumption abroad, (3) commercial presence, and (4) the presence of natural persons from a WTO member country.

[176] Cited from A. Arnull, "The Scope of the Common Commercial Policy: A Coda Opinion 1/94", in N. Emiliou and D. O'Keefe, The European Union and World Trade Law, (Chichester, Wiley, 1996), in Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit.*, p. 488.

[177] Woolcock, *op. cit.*, p. 327.

and intellectual property. The Member States could not have agreed on a substantial change in the extent of Community competence in trade due to partly low profile of Commission –which seemed ready to accept the *status quo* and partly to the lack of an operational alliance among pro-integrationist Member States.[178] The outcome of Amsterdam IGC in June 1997 was a small amendment to Article 113, which also renumbered as Article 133. A fifth paragraph has been added to the Article 133 stating "The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs." This clause makes the extension of Community competence to new issues possible without a need for an official amendment to the Treaty.[179] The case-by-case, or *ad hoc* formula adopted in the Treaty of Amsterdam for the extension of Community competence also enables the Council to use extended Community competence for a limited period of time, for instance, during the course of a WTO Round.[180]

4.7. The Treaty of Nice and CCP

Considering the need for full participation of EC in a new WTO Round, Feira European Council on 19-20 June 2000 has decided to bring external trade policy on the agenda of Nice intergovernmental conference. Thus, the intergovernmental conference of Nice which resulted in the Treaty of Nice, signed on 26 February 2001, was the next step in development of the EU's trade policy.[181] By the Treaty of Nice, through several amendments and additions, the Article 133 became a long and complex text. Paragraph three and five were changed and two paragraphs were added

[178] Meunier and Nicolaïdis, "Who Speaks for Europe?", *op. cit.* , p. 496.

[179] *Ibid*., also for an analysis regarding the Commission's stance and political atmosphere during 1996 IGC, see Andrew Moravcsik and Kalypso Nicolaïdis, "Explaining the Treaty of Amsterdam: Interests, Influence, Institutions", in *Journal of Common Market Studies*, Vol. 37, No. 1, March 1999, pp. 59-85.

[180] Woolcock, *op. cit*., p. 378.

[181] For a useful account on changes to CCP brought by Nice Treaty, see Horst Günter Krenzler and Christian Pitschas, "Progress or Stagnation?: The Common Commercial Policy after Nice", in *European Foreign Affairs Review,* Vol. 6, 2001, pp. 291-313.

to Article 133. Here, the changes made to Article 133 will be dealt paragraph by paragraph.

4.7.1. Paragraph Three

In paragraph three, the amendments are made concerning the subparagraphs one and two. Whereas the change in subparagraph is material, the change in second subparagraph is procedural in nature. Also, a "conformity requirement" is added to the former and an obligation for the Commission to report to the Council is added to subparagraph two. In the following section, these will be elaborated.

4.7.1.1. Conformity Requirement

The first subparagraph has the following amendment in its second sentence: "The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules." This requirement of conformity is related with the concept of vertical coherence. Because, it deals with "a uniform design of all measures taken in the foreign policy context, in a wide sense, by the EU and Member States". In other words, in Article 133 (3) subparagraph 1, a consistency between different EU institutions is envisaged and required.

4.7.1.2. Reporting to the Council

According to the second sentence of the second subparagraph of the third paragraph of Article 133 "the Commission shall report regularly to the special committee on the progress of negotiations." This requirement simply confirms the existing legal duty as stipulated by the first sentence of the second paragraph. According to this, the Commission conducts negotiations on the conclusion of a new foreign trade agreement in consultation with the special committee appointed by the Council. Thus, the obligation of the Commission to report to the Council is not a new requirement, and was a reconfirmation of an existing legal duty.

4.7.2. Paragraph Five

Paragraph five is completely rewritten. The new paragraph five is as follows:

> Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.
>
> By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.
>
> The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.
>
> This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.

According to Paragraph five, subparagraph one, the provision of services in the form of provision of services abroad, commercial presence and the presence of natural persons, as well as the trade related aspects of intellectual property other than protection against counterfeit goods at the external borders of the Community will not require unanimity in the Council. Also, a ratification of such agreements by the Member states is no longer required. Such agreements, therefore, begins to fall under Community competence. The fourth subparagraph concerns the agreements of the Member States with third countries or international organisations. According to this subparagraph Member States could conclude international trade agreements with regards to trade in services or the commercial aspects of intellectual property.

4.7.3. Paragraph Six

Paragraph six is one of the newly added paragraphs of Article 133. The paragraph six reads as follows:

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

> In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.
>
> The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

4.7.4. Paragraph Seven

Paragraph seven is the second newly added paragraph to the Article 133 and reads as follows:

> Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

4.7.5. General Assessment Concerning the New Article 133 of Nice Treaty

Analysing the Nice Treaty provisions concerning CCP and the Community competence, Krenzler and Pitschas have concluded that, in the new Article 133 many negative elements of the Opinion 1/94 of the ECJ had been codified.[182] Furthermore, the new version of Article 133 has created a "very complex text, which does not meet the increasing demands for greater transparency and simplicity."[183] Also, the aspirations of Commission for the involvement of foreign direct investment, and trade and environment within the scope of Article 133 were not realized. Furthermore, "the idea the Council would have a greater say in the negotiations along with the Commission, (which had already came up at the Amsterdam summit), has not been supported."[184] Nevertheless, as Krenzler and Pitschas have commented "the new Article 133 EC enables the EC to conclude agreements on trade in services

[182] On this matter Krenzler and Pitschas have commented as follows as an example " The negotiation and conclusion of significant agreements-be they of a bilateral or multilateral character-are subject to a unanimous decision within the Council and ratification by the Member States", in *ibid*., p. 312.

[183] *Ibid*., p. 310.

[184] *Ibid*., p. 311.

and trade-related intellectual property rights by qualified majority voting and without ratification by the Member States"[185]

4.8. The Constitution and the CCP

The Draft Treaty Establishing a Constitution for Europe which was adopted by consensus by the European Convention in July 2003 tried to make an explanatory definition of categories of competence under a separate Title (Title III) called "Union Competences".

> TITLE III
> UNION COMPETENCES
>
> Article 11
>
> Categories of competence
>
> 1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts adopted by the Union.
>
> 2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.
>
> 3. The Union shall have competence to promote and coordinate the economic and employment policies of the Member States.
>
> 4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
>
> 5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.
>
> 6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part III.
>
> Article 12

[185] *Ibid*., p. 310.

Exclusive competence

1. The Union shall have exclusive competence to establish the competition rules necessary for the functioning of the internal market, and in the following areas:
- monetary policy, for the Member States which have adopted the euro,
- common commercial policy,
- customs union,
- the conservation of marine biological resources under the common fisheries policy.

2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable it to exercise its internal competence, or affects an internal Union act.

Article 13

Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 12 and 16.

2. Shared competence applies in the following principal areas:
- internal market,
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport and trans-European networks,
- energy,
- social policy, for aspects defined in Part III,
- economic, social and territorial cohesion,
- environment,
- consumer protection,
- common safety concerns in public health matters.

In Chapter III of the Draft Constitution the CCP of the EU is defined similar to the wording of Nice Treaty:

Chapter III
COMMON COMMERCIAL POLICY

Article III-216

By establishing a customs union between the Member States, the Union aims to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article III-217

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. European laws or framework laws shall establish the measures required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the relevant provisions of Article III-227 shall apply. The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council of Ministers and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council of Ministers to assist the Commission in this task and within the framework of such directives as the Council of Ministers may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council of Ministers shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity.

The negotiation and conclusion of international agreements in the field of transport shall be subject to the provisions of Section 7 of Chapter III of Title III and Article III-227.

5. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

For the Commission, the EU's general interest could only be addressed by the supranational body of European Commission. In this sense, demands of the

Commission to extend the scope of Community competence have gone unabated so far. European Trade Commissioner Pascal Lamy suggested that

> The Union needs to speak at a global level not just with a single voice, but also with a single mouth. I believe that the Commission ought to have competence, as in trade policy, to negotiate on all matters pertaining to the management of globalization, including the environment, transport, energy, negotiations within commodity organizations, the OECD, and Food and Agricultural Organization, etc.[186]

This chapter analysed the trade policy evolution of the EU through historical perspective. Despite their limitations treaty reforms proved to be one of the factors in extending the Community competence as well as the EU actorness. Along with treaty reforms, the role of the ECJ was vital in enhancing the actor capability of the EU. In this vein, the Advisory Opinion of ECJ was of utmost importance. The opinion of the ECJ in 1994 was crucial in the sense that although it seemed to favour pro-sovereignty camp, it indeed strongly supported the external unitary representation of the EC by the Commission. In the near future it will be likely that the CCP of the EU would be around somewhere between coherence -which tried to be increased by the everlasting attempts of Commission- and fragmentation that has been characterised by resistance to extend Community competence and even sometimes led to –though temporary- rollbacks. In the upcoming chapter, the relations between the EU and WTO will be analysed in several aspects.

[186] Pascal Lamy, "Europe and the Future of Economic Governance", in *Journal of Common Market Studies*, Vol. 42, No. 1, pp. 16-17.

CHAPTER 5

The WTO and the EU

> *"The European Union and the World Trade Organization are two major actors in global trade policy. Both are important international institutions referring to a long and generally successful history of transnational economic cooperation and regulation. Their interaction is a cornerstone of the international economic order and thus decisive for the wealth and well-being of millions of people around the world."(Peter Bender, op. cit, p. 193.)*

> *"We wouldn't have a WTO if European Union did not have a common commercial policy and did not negotiate with one voice." (Peter Sutherland, GATT Director General, quoted in Bretherton and Vogler, op. cit, p. 78.)*

Outcomes of the interaction between the GATT/WTO and the EU are significant for both of the institutions, so far. The EU's role in the foundation of the WTO is indisputable. Now, the European Communities is one of the most important members of the WTO and regarded as an indispensable actor for further trade liberalization. This is also because of the gigantic presence of EU in world trade as elaborated above. Lester Thurow wrote that "due to Europe's position in the world of economics and trade, it will have the advantage of being responsible for writing the world trading regulations in the twenty-first century."[187] Thus, a WTO without the EU is almost unthinkable. On the other hand, the very presence of the WTO is one of the essential inputs of the policy-making in the EU. The EU tries to take decisions in conformity with the rules originating from the WTO. In this respect, there is an

[187] Cited from Lester Thurow, "The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000", (Random House, New York, 1987), p. 257, in Cosgrove-Sacks, *op. cit*., p. 4.

apparent "mutual influence" between the EC and the WTO even for some legal analysts leading to "a degree of convergence"[188]

In this chapter of the dissertation, the relationship between the WTO and the EU is to be analysed. The Chapter has five sections. In the first section, a debate about multilateralism versus regionalism will be presented. Secondly, the historical relationship between the Community and the GATT will be visited. As the third section, the multi-dimensional impact of WTO on the EU will be analysed. Then, finally, the extent of the EU's influence on the contemporary WTO and its functioning will be presented.[189]

5.1. A Debate on Regionalism versus Multilateralism

Following the Second World War, multilateral trade liberalisation and emergence of regional trading blocs appeared to go hand in hand. However, despite the revival of multilateralism first with the Uruguay Round and then with the establishment of WTO and successful launch of the Doha Round, during 1990s there has been a predominant increase in creation of regional integration movements resulting in serious concerns over their impacts upon multilateral trade. By 2020, if the Asia-Pacific Economic Cooperation (APEC) realizes its objective of achieving free trade, all WTO members will be parties to at least one trading bloc.[190] By May 2003, over 265 regional trade agreements had been notified to the GATT and the WTO.[191] Beside the rising number of regional trade blocs, their economic weight is also in a tremendous increase.[192] It has been concluded that "one of the most significant developments in the world economy since the Bretton Woods Conference in 1944

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[188] See Gráinne de Búrca, and Joanne Scott , "The Impact of the WTO on EU Decision-making", in *Jean Monnet Working Paper 6/00* (Cambridge, MA: Harvard Law School), available at http://www.jeanmonnetprogram.org/papers/00/000601.html, accessed on 15 May 2004.

[189] This division is for the sake of simplicity as it is almost impossible to separate the issues discussed according to precise categories.

[190] Wieslaw Michalak and Richard Gibb, "Trading Blocs and Multilateralism in the World Economy", in *Annals of the Association of American Geographers*, Vol. 87, No. 2, p. 266.

[191] WTO, *International Trade Statistics,* 2003, p. 65.

[192] See, *ibid*.

has been the emergence of continental trading blocs"[193] It became one of the most asked questions, then, whether those regional blocs compete with or complement the multilateral trading system administered by the WTO.[194] It is useful to begin with definitions of the terms under discussion.

Regionalism, or the process of regionalization, refers to the appearance and consolidation of various economic arrangements among groups of geographically approximate countries.[195] Some examples of regionalist formations are the European Union (EU), North American Free Trade Agreement (NAFTA), Mercosur in Latin America, Asia-Pacific Economic Cooperation (APEC), and Southern African Development Cooperation (SADC). Among those the EU is a unique type of regionalism with its outspoken liberal philosophy. In this regard, the EU remains fairly open to non-members, despite the growing network of preferential trade agreements with third countries. The EU is the most integrated, most institutionalized and advanced regionalist formation, too. On the eve of the third millennium the EU achieved most important parts of the monetary integration and achieved the creation of its common market.

Multilateralism is an international relations concept that refers to multiple countries working in concert. Most international organizations are multilateral in nature such as the United Nations and the World Trade Organization. The main proponents of multilateralism have traditionally been the middle powers[196]

Globalisation, on the other hand, means "the process of increasing interconnectedness between societies such that events in one part of the world more

[193] Michalak and Gibb, *op. cit.,* p. 264.

[194] Gary P. Sampson, "Compatibility of Regional and Multilateral Trading Agreements: Reforming the WTO Process", in *The American Economic Review*, Vol. 86, No. 2, Papers and Proceedings of the Hundredth and Eighth Annual Meeting of the American Economic Association San Francisco, CA, p. 88.

[195] Rosamond, *op. cit*., p. 179.

[196] http://encyclopedia.thefreedictionary.com/multilateralism, accessed on 10 July 2004.

and more have effects on peoples and societies far away".[197] Putting it in another way, societies are affected more and more extensively and more and more deeply by events of other societies.[198] Thus, globalization is not as the same as multilateralism. Here, the issue is the struggle between multilateralism and regionalism.

In this context, the EU's compatibility with the multilateral trade framework is also in question. One of the most developed regional integrationist movements, the EU is regarded as the champion of regionalism. Holland states that the WTO philosophy conflicts and in some ways incompatible with that of the EU because "the WTO wants to promote uniform global free trade, whereas the EU is busy trying to create region-to-region free trade areas."[199] The EU officially claims to be fully committed to multilateralism. For the EU Trade Commissioner Pascal Lamy, bilateral agreements could not be seen as an alternative to multilateral liberalisation. Then for the EU, the real reason for developing regional trade arrangements with developing countries is to gain their support in the WTO.[200] EU's declaratory orientation toward multilateralism faced strong criticism: "only in discrimination can the EU claim to be the world leader."[201] The discussion of the compatibility of the EU in the WTO context necessitates a wider debate about regionalism versus multilateralism.

A Canadian economist, Jacob Viner provided an analysis of the regional trading blocs. In a trading bloc, according to Viner, "trade creation" occurs when imported cheaper products replace with expensive domestic production. On the other hand, there is a possibility of "trade diversion" when more expensive goods and services from member countries replace cheaper goods and services from non-member countries. In short, unless a regional trading bloc promotes trade diversion, it will be

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[197] John Baylis and Steve Smith (eds.), *The Globalization of World Politics: An Introduction to International Relations*, (Oxford University Press, Oxford, 1997), p. 7.

[198] *Ibid*.

[199] Holland, *op. cit*., pp. 143.

[200] See Hoven, *op. cit.*, pp. 260-261.

[201] Martin Wolf, "Cooperation or Conflict? The European Union in a Liberal Economy", in *International Affairs*, Vol. 71, No. 2, 1995, p. 334.

beneficial global trade liberalisation.[202] This analysis became a ground for neo-classical economists considering trading blocs as a "second-best alternative" to multilateralism.

With the Uruguay Round negotiations, as the agenda of multilateral trade liberalisation expanded, so did the arguments about regionalism and multilateralism.[203] For Jackson, trading blocs can promote free trade globally if the MFN principle was applied. According to Krugman, Summers and Hufbauer, there is an existing practice of "natural partners", i.e. geographically proximate countries, and regional trading blocs just formalize this. Some economic historians advocated that much of nineteenth-century trade liberalisation was realised through bilateral agreements. For them, historical evidence for multilateralism is less clear.[204]

The rapid increase in both the scope and number of regional trading arrangements caused many others to warn that regionalism would undermine the global rules-based system.[205] According to Bhagwati, "in principle, a preferential reduction of barriers can increase total protection in the world, in an economically meaningful way, because of trade diversion."[206] For him, trading blocs do increase the possibility of unilateral actions.[207] Sampson argued that regional agreements, in some cases, led to adoption of rules that are not compatible with the multilateral system or that may make it difficult to agree on multilateral rules in the future.[208]

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[202] Michalak and Gibb, *op. cit*., p. 268.

[203] *Ibid*.

[204] *Ibid*., pp. 268-269.

[205] Quoted from Sylvia Ostry, "The Post-Cold War Trading System: Who's on First" (University of Chicago, Chicago, 1997), p. 205, in Gilbert R. Winham, "Regionalism and the Evolving Global Trade System", in Donald Barry and Ronald C. Keith (eds.), *Regionalism, Multilateralism, and the Politics of Global Trade*, (UBS Press, Vancouver, 1999), p. 55.

[206] Quoted from Jagdish Bhagwati, "Fast Track to Nowhere", in Economist, 18 October 1997, p. 22, in Barry and Keith (eds.), *op. cit.*

[207] Cited from Jagdish N. Bhagwati, "Regionalism and Multilateralism: An Overview" in J. De Melo and A. Panagariya (eds.), New Dimensions in Regional Integration, (Cambridge University Press, Cambridge, 1993), pp. 22-51 in Michalak and Gibb, *op. cit*., p. 269.

The first Director General of the WTO, Renato Ruggiero, pointed out the risk stemming from the spread of regionalism

> [R]egional agreements are becoming more and more important in terms of trade rules, and for the political weight they represent in international negotiations. These are elements which could break up the parallelism between regional and multilateral progress; there is a risk that antagonism between regional groups could make progress in the multilateral system more difficult.[209]

Despite this alarming tone of first Director General of the organisation, the WTO adopted the view that regional arrangements have not damaged the multilateral trading system so far, and even in some cases they have helped the system by lowering trade barriers faster.[210] For the WTO, a regional integration is permissible if it is in compliance with the Article XXIV of GATT. According to the Article XXIV "if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed on substantially all sectors of trade in the group. Non-members should not find trade with the group any more restrictive than before the group was set up."[211]

On 6 February 1996, the Regional Trade Agreements Committee was established by the General Council of the WTO. Its main function, according to WTO, is "to examine regional groups and to assess whether they are consistent with WTO rules."[212]

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[208] See Sampson, *op. cit*., p. 89. Sampson gives the example of rules of origin regulations of the EU. For him, as the EU has fourteen different sets of preferential rules of origin, it is very difficult for the EU to follow a coherent policy for multilateral trade regime.

[209] Quoted from Renato Ruggiero, "Growing Complexity in International Economic Relation: Demands Broadening and Deepening of Multilateral Trading System", WTO Director General, press release 25, 16 October 1995, in Michalak and Gibb, *op. cit.*, p. 274.

[210] Philip Evans and James Walsh, "The Economic Intelligence Unit Guide to World Trade under the WTO", EIU Research Report, London, 1995, p. x. They give the example of the EU which remained fairly open to non-members.

[211] WTO, "Understanding...", *op. cit.*, p. 65. For an analysis of the lack of clarity in the wording of Article 24, see Sampson, *op. cit*., p. 90.

[212] *Ibid*., p. 66. Also, the Committee would create procedures to improve the process of examination, receive the reports on existing agreements biennially, and consider the systemic implications of regional trade agreements and initiatives on the multilateral trading system. See Sampson, *op. cit*., p. 91.

To sum up, there is no clear cut answer to the question concerning the impact of regionalism over multilateral trading system.[213] It is better to focus rather on specific regional agreements than making generalised conclusions. Nevertheless, there is a more or less strong argument that sought a balance between two poles of regionalism and multilateralism. According to this view, regionalism could be contained and neutralised by multilateralism, and if this can be achieved, there will be no risk of damage for multilateral trade liberalisation. For the EU, as both the most integrated regional cooperation and an ever evolving one, there is not much to matter about as long as it stays in compliance with WTO principles. WTO based system is the ultimate framework for external economic relations of the EU. In turn, having perceived the necessity of a standardised trade system worldwide, the EU is strongly committed to trade liberalisation under the WTO. Currently, 100 per cent of tariffs of the EU are "bound". Furthermore, contrary to popular expectations about a "fortress Europe", EU's trade barriers were reduced in the first half of 1990s.[214] Another reason for the EU's need of WTO is essentially economic in nature. As the share of intra-EU trade in total EU trade declined in the period of 1990-98 substantially, the EU has become more dependent on the rest of the world.[215] A WTO-led system would be advantageous to the EU more than ever. Therefore, in the foreseeable future, it is likely that the existing convergence between the EU and the WTO will survive, if not develop.

5.2. EEC/EC-GATT

The creation of ECSC as a preferential trading arrangement necessitated an exemption from the 'Most Favoured Nation' (MFN) treatment, i.e. Article I of the GATT. The principle of 'Most-Favoured-Nation' is also valid under the WTO

[213] *Ibid.*

[214] Pitou Van Dijck and Gerritt Faber, "After the Failure of Seattle: New Challenges for the EU", in *European Foreign Affairs Review*, Vol. 5, 2000, p. 328.

[215] *Ibid.*, p. 319.

agreements. According to this principle, countries cannot normally discriminate between their trading partners. If a country approves the benefits that it gives to one trading partner, it has to give the same "best" treatment to all the other WTO members. Not only in GATT, but also in GATS (Article II) and TRIPS (Article IV) the MFN is a priority. However, regarding the MFN principle, there are some exceptions allowed. For instance, countries can establish free trade agreement that applies only to goods traded within the group thus discriminating against goods of third parties. Also, countries can grant developing countries special access to their markets. Another exemption is that a country can raise barriers against products that are considered to be traded unfairly from specific countries. In services, also, under limited circumstances, countries are allowed to discriminate. Nevertheless, in general, the MFN principle is the rule and means that "every time a country lowers a trade barrier opens up a market; it has to do so for the same goods or services from all its trading partners- whether rich or poor, weak or strong."[216] In November 1952, the GATT granted this exemption and it also enabled both the Member states and the High Authority of the ECSC to have rights of representation in the GATT.[217] Between 1956 and 1967, until the implementation of the Merger Treaty, the High Authority negotiated on behalf of the Member States. By the Merger Treaty, powers of the High Authority were replaced by the European Commission.

Beginning from the creation of CCP in 1961, the EC became soon involved in developing its role as a trade actor. Dillon Round was the first scene where EC's stature as an interlocutor was recognised.[218] Indeed, the Dillon Round of 1960-61 was a response to challenges posed by the establishment of the EEC as a regional bloc. Since then, the EEC/EC became one of the most important negotiators throughout successive GATT Rounds. Even during the early stages of EEC, substantial impact of the CCP created concerns among other significant actors of world trade such as the US. For instance, Kennedy Round of 1964-67 was initiated by Americans to negotiate tariff levels with the EEC which finally resulted in the

[216] WTO, "Understanding...", *op. cit.*, p. 10.

[217] White, *op. cit.*, pp. 59-60.

[218] Dent, *op .cit.*, p. 179.

most successful tariff reductions concerning the industrial trade in the post-Second World War period.[219] Kennedy Round was a milestone in the evolution of the role of the Commission in external affairs of the EC. In 1966, the establishment of a Common External Tariff (CET) on paper made the position of Commission stronger in multilateral trade talks. The CET authorized the Commission and Council of Ministers to replace Member States as the key actors in the Community foreign economic policy process. In this respect, Kennedy Round was the first occasion in the GATT when the EEC Commission would have authority to negotiate on behalf of six members. Although these strengthened positions of Council and especially the Commission were theoretical to great extent, i.e. Member States were still powerful in this early stage of European integration to directly involve in negotiations. The Kennedy Round was a cornerstone in evolving external capabilities and credibility of the Commission. In the following GATT Rounds, the Commission's role as the single negotiating voice of the EC has not been challenged.

Similarly, the incentive for Uruguay Round was US' concerns about a widening and deepening EC. With the Single Market Program the EC entered a more improved stage of market integration. Accessions of Spain and Portugal seemed to strengthen the overall position of the EC worldwide.[220] The UR appeared to be unique in terms of the number of participants, the extensive agenda and in terms of the dynamic international context within which it was negotiated.[221] The UR also provided a test for EC's actor capability.[222] As if the Round seemed a multilateral bargain, it soon became clear that for a successful end to the Round a bilateral agreement between the EC and the US was of utmost importance.[223]

Two important developments within the EC paved the way for compromise regarding the Final UR agreement from the EC perspective. Belgian Presidency

[219] Irvin, *op. cit.*, p. 326.

[220] White, *op. cit.,* p. 62.

[221] Quoted from Dinan, "Ever Closer Union", *op. cit.,* pp. 439-441, in *ibid.*, p. 60.

[222] Bretherton and Vogler, *op. cit.*, pp. 74.

[223] *Ibid.*, p. 74-75

which established the principle that the UR package was to be approved with consensus followed a successful cohesion-building strategy. To this end, the "Jumbo Council"[224] of 20 September 1993 secured an agreement between more-protectionist and free-trade oriented Member States. Secondly, new Trade Commissioner of the EC, Sir Leon Brittan, who argued that the Commission is committed to Blair House agreement, secured a firm ground for negotiations.[225] In these respects, final stages of the UR highlighted the importance of policy process actors within the EC[226] which in turn increased the actor capability of the EC.

Intra-EC disputes over agriculture, along with textiles, however, should not hinder the role that the EC played as an effective and coherent negotiating actor over a wide range of issues of greater significance during the UR. In this matter, it is essentially useful to visit the conceptualisation of Woolcock and Hodges concerning different modes for control of policy, i.e. "technocratic" and "political". The EC operated in political mode only when a few high profile issues were at stake. The political mode is the type of procedure for decision-making where both legislatures (national or European) and interest groups (business and other lobbies) are able to participate in negotiations. In overwhelming majority of issues, the EC's negotiating mode was technocratic. In the technocratic mode, tasks were negotiated at expert level yet involving Commission officials and Member State representatives pursuant to Article 113 of ECT. The role for General Affairs Council in this mode was limited, no more than "rubber-stamping" the outcomes.[227]

5.3. The Impact of WTO on the EU

The impact of the global trading system on the EU beginning from the GATT has always been significant. As to be repeated later in detail, successive rounds of GATT were direct impulses for the EC/EU to revise its external trade regime. In this respect, first the GATT and then the WTO became two of the most important inputs

[224] Comprised of foreign, agriculture and trade ministers.

[225] White, *op. cit.,* p. 67.

[226] *Ibid*., p. 70.

[227] Bretherton and Vogler, *op. cit*., p. 77.

in the EU's history of external trade policy evolution. The WTO, stronger than the GATT institutionally, began to exert more influence on the EU which needs to be elaborated. The EU decision making is being affected by the WTO in several ways. Firstly, the exact status and effect of WTO norms within the European legal order is a frequently debated issue. Secondly, there are "sector-specific" questions regarding the compatibility of EU policies with those of WTO's. Thirdly, "the extent to which and the way in which the EU institutions" integrate WTO obligations into their political structure. Finally, the impact of "general principles and due process norms being developed by the dispute settlement bodies" on the ECJ and EC law.[228] The first two matters are mentioned in the "banana" chapter. Although, how the WTO obligations are to be given effect is a matter of debate, the EU accepts that those obligations contained in WTO agreements are legally binding upon itself.[229] However, the impact is not generally direct and clear-cut, rather the EU organs "add their own gloss or dimension to the rules within that interpretative process". Principles and procedural norms being developed by WTO dispute settlement institutions are "increasingly" affecting the EU policy making including.[230]

5.3.1. DSU and the EU

One important aspect of the WTO's effect on the EU is related with its Dispute Settlement Understanding (DSU). The EU has been one of the most active users of the DSU.[231] Also, the unique division of competences between Member States and the Community to conclude international trade agreements makes the EU-DSU relationship more difficult. In other words, problems related with the DSU originate from the internal debate of the EU concerning competence. Because, neither the DSU nor the Agreement Establishing the WTO formally recognizes the internal division of competence in the EU external trade policy-making.[232] This means that there is nothing in WTO documents that can forgive the complex division of

[228] Búrca and Scott, *op. cit*., p. 1.

[229] *Ibid.*, p. 3.

[230] *Ibid*., p. 20.

[231] Chatháin, *op. cit.*, p. 462.

[232] *Ibid*.

competence between EU institutions as well as with Member States. Hence, the EU cannot put forward its unique case of external competence sharing regarding the WTO.

The EU is the only member of the WTO, as of September 2003, which has had sanctions imposed on due to failure to comply with WTO judgments.[233] Thus, it is apparent that the EU has an inherent problem of getting into compliance with WTO rules. One of the reasons behind this is the dual character of the EU both as an international organisation and an international actor.[234] Another is the highly legalistic regulatory process[235] within the EU which requires substantial number of policy actors to agree on change in certain policy measures under international pressure.

DSU of the WTO brought many novelties which could create a number of risks for the EU.[236] For instance, if the Community seeks to get involved in those cases concerning joint competence, the number of cases that the Community should deal with will increase tremendously. Another challenge for the EU is the time limits. Both the Community and Member States will be under time pressure to cooperate, and make a single statement in cases which they are jointly competent. A further problem is related with the right of "cross-retaliation". Even when a single Member State is found in breach of GATS or TRIPS, the whole Community will be subject to retaliation. In case of a Member State victory is also problematic; because only the Community has the right of retaliation in goods, and the use of this right on behalf of a Member State is likely to be rejected by the DSB on the grounds that it would be very disproportionate. According to Chatháin, for both the Community and Member States, it is necessary to defend their rights and implement the rulings 'jointly' in

[233] Young, "The Incidental Fortress: The Single European Market and World Trade", in *Journal of Common Market Studies*, Vol. 42, No. 2, 2004, p. 404.

[234] *Ibid*., p. 410.

[235] According to Young, as the EU's regulations are based in laws rather than in administrative decisions, it is harder to change these more codified rules. In other words, to change an EU regulation a majority of Member States is required. See *ibid*., p. 407.

[236] Following risks are mentioned in detail in Chatháin*., op. cit.,* pp. 463-465.

WTO dispute settlement procedures,[237] as they achieved to do so until now.[238] The optimal solution for the problem is to adopt a binding code of conduct regulating the Community and Member States cooperation.[239]

5.3.2. EU-South Relations under the GATT and the WTO

EU's aid and trade relations with developing countries are also being affected by the structure set out by the WTO. From 1975 to 2000, Lomé Conventions had been the main framework governing aid and trade relations between the EU and a group of African, Caribbean and Pacific states (ACP). Beginning from 2000 Lomé Conventions are replaced by the Cotonou Agreement which transformed the non-reciprocal nature of EU-South trade relations into a reciprocal one.

5.3.2.1. Lomé Conventions

Lomé agreements became a subject of EU-WTO interaction particularly because of two reasons. Firstly, Lomé Conventions only included former colonies of EC/EU members, but other developing countries were ignored. Secondly, one of the main principles of Lomé Conventions was their non-reciprocal nature, meaning that ACP countries would export to EC/EU duty free at the same time they would continue to protect their markets and industries against European exports through tariffs.[240] The Preamble of GATT mentions non-discrimination and reciprocity as the two indispensable principles for governing international trade –both of which were violated by successive Lomé Conventions.[241] Lomé Conventions were also in violation of the "Enabling Clause" of 1979 allowing WTO members granting of special trade preferences for developing countries if and only if *all* developing countries can access and benefit from those preferences. However, Lomé agreements

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[237] *Ibid.*, p. 471.

[238] *Ibid.*, p. 477.

[239] *Ibid.*

[240] Richard Gibb, "Post-Lomé: The European Union and the South", in *Third World Quarterly*, Vol. 21, No. 3, 2000, p. 457.

[241] *Ibid.*, p. 467.

provided special preferences only to a limited number of developing countries at the expense of others.

Despite the fact that the last Lomé Convention covering 1995-2000 (Lomé IV) had been granted a waiver[242] concerning the compliance with the WTO Article IX(Most-favoured-nation clause), proposing a new convention which would likely to be in need of a WTO waiver did not seem the best option for the EU. This was mainly because of the fact that, under the WTO system, for an Article IX waiver to be adopted, a 75 per cent majority was required. However, in the GATT framework a 66 per cent majority was sufficient. Besides, there are other reasons that necessitated a radical change in the Lomé Conventions. To begin from within, the EU itself began to see Lomé Conventions as unsustainable. For the EU, "multilateralism, driven by globalisation and policed by multilateral agencies like the World Trade Organization (WTO), has served to undermine Lomé".[243] The change in priorities of the EU had also been influential in this new understanding. With the collapse of the Soviet Union accompanied by fall of communist regimes of the eastern bloc in 1989-1990, the EU had felt to establish a different kind of relationship with Central and Eastern European countries (CEEC), its new 'backyard'. Consequently, financial assistance to CEECs had substantially increased during 1990's, however, at the expense of ACP countries.[244] Last, but not the least, the visible economic outcomes of Lomé Conventions was highly disappointing for the EU. According to World Bank, by 2000, 40 out of 63 ACP states were in the category of Least Developed Countries (LDCs).[245] Furthermore, the vast majority of ACP countries were not able to maintain their market shares in Europe.[246] According to Stephen Hurt, the EU used the WTO as the primary justification for a need of new convention strategically to

[242] A waiver is a legal instrument enabling a party or parties to an agreement to be exempted from a rule or several rules of the agreement in a particular situation.

[243] *Ibid*.

[244] Olufemi Babarinde and Gerrit Faber, "From Lomé to Cotonou: Business as Usual?", in *European Foreign Affairs Review*, Vol. 9, 2004, p. 31.

[245] Cited in *ibid*., p. 34.

[246] Gibb, *op. cit*., p. 463.

"externalise responsibility for its own policy."[247] In other words, the EU wanted to change its strategy towards the South, and used WTO as a factor of legitimisation.

5.3.2.2. From Lomé to Cotonou

As early as in November 1996, more than three years before the expiry of Lomé IV, the European Commission had proposed a Green Paper to start up a discussion on future EU-ACP trade regime. The Cotonou Agreement, the successor to the Lomé Conventions was only signed after 18 months of negotiations, in February 2000. The failed Seattle ministerial meeting of the WTO in December 1999 was also significant in conclusion of the post-Lomé EU-ACP agreement.[248] Although some scholars had suggested that the Cotonou agreement was to be seen as a new version of Lomé Conventions[249], nevertheless there are significant changes concerning the WTO compatibility which to be underlined.

First of all, non-reciprocity, one of the main tenets of Lomé Conventions is to be phased out after 2007. During 2000-2007 period, i.e. the preparatory period, the EU would negotiate free trade areas or European Partnership Agreements (EPAs) with groups of ACP countries. These agreements, according to which the EU should liberalize its trade reciprocally in a period of 10 to 12 years, have to enter into force by the beginning of 2008. Thus, establishment of free trade areas with the EU and groupings of ACP states would comply with the Article XXIV GATT.[250] EPA's are a

[247] Stephen Hurt, "Co-operation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention", in *Third World Quarterly*, Vol. 24, No. 1, p. 174.

[248] Genevra Forwood, "The Road to Cotonou: Negotiating a Successor to Lomé", in *the Journal of Common Market Studies*, Vol. 39, No. 3, September 2001, p. 437.

[249] For an account of such see, *ibid*., pp. 423-442.

[250] Article 24 GATT rules in 5(a) that "with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be;..." and in 8 (b) that A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII,

kind of free trade areas which includes advantages for beneficiaries more than the GSP but less than a customs union. (See Figure 2) For the period of 2000-2007, non-reciprocal system of Lomé would continue with a new WTO waiver.

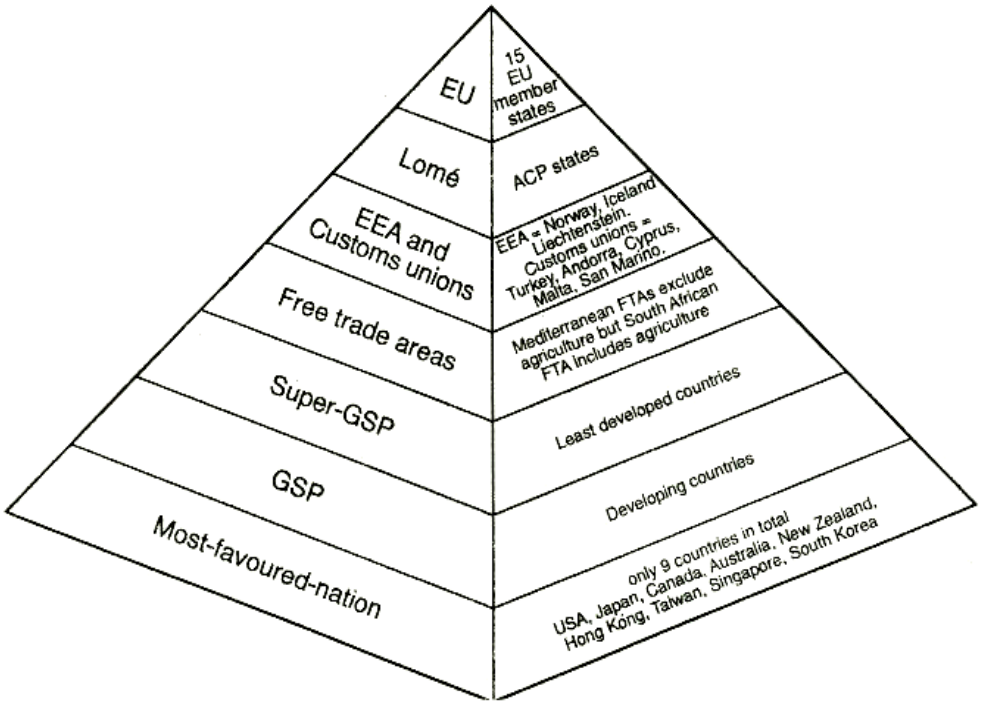

Figure 2: The European Community's pyramid of trading privileges.
Source: Richard Gibb, Post Lomé: the European Union and the South, in *Third World Quarterly,* Vol. 21, No. 3, 2000, p. 470.

ACP States are divided into two according to WTO criteria: less- developed countries and developing countries. Groups of ACP states can negotiate reciprocal EPAs with the EU. For non-LDC ACP countries that are not in a situation to negotiate and conclude EPAs with the EU, can opt to export under the Generalized System of Preferences (GSP) of the EU, beginning by the year 2008.[251] The GSP was designed to allow industrialized countries to grant non-reciprocal tariff reductions to developing countries. The main idea was to help the developing world. When the

XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

[251] Babarinde and Faber, *op. cit*., p. 38.

GSP was introduced in 1971, an exception had to be granted under the GATT rules to the principle of Most-Favored-Nation (MFN) treatment. In other words, the GSP constitutes one of the major exceptions to the MFN principle. Thus, a waiver was granted in 1971 from Article 1 of the GATT, which prohibits discrimination, to authorise developed countries to establish individual "Generalised Schemes of Tariff Preferences". The European Community was the first to implement a GSP scheme in 1971.

All LDCs, whether they are ACP countries or not, will be able to export almost all products to the EU duty free beginning from 2005 at the latest.[252] The only permanent exception to this was arms. In this respect, the system was called "Everything but Arms" (EBA).[253] EBA has some important implications for EU's trade policy actorness. First of all, EBA, through the elimination of trade barriers against exports of LDC's, provided a clear illustration of the Common External Tariff (CET) of the EU as one of the most powerful instruments of the Union's external policy. Secondly, EBA is symbolically crucial as an initiative within the context of a globalist-neoliberal ideology which became to characterize the Union's external economic agenda in the 1990s. The external economic policy agenda of the EU has been steadily widening in scope throughout the 1980s and 1990s. The globalist direction of the Union's external economic policy became evident with improved trade relations with Asian and Latin American countries. In other words, ACP countries ceased to be the exclusive focus of the EU. Non-ACP countries and regions began to be increasingly important for the EU. Globalist trend of EU's external trade policy also implies giving more emphasis to multilateral trade regime administered by GATT and then the WTO. In this respect, it is asserted that, the main underpinning of the EBA initiative from the perspective of the EU is to gain support of LDC's in the Doha trade talks of the WTO. Furthermore, EBA is seen a realisation of EU's commitment to development, and consequently to LDCs issue. In short, EBA is an example of the direction of the EU's external trade policy toward a

[252] Jürgen Huber, "The Past, Present and Future ACP-EC Trade Regime and the WTO", in *European Journal of International Law*, Vol. 11, No. 2, p. 433.

[253] For an evaluation of the effectiveness of the EBA, see Sheila Page and Adrian Hewitt, "The New European Trade Preferences: Does 'Everything but Arms' (EBA) Help the Poor?", in *Development Policy Review*, Vol. 20, No. 1, 2002, pp. 91-102.

globalist agenda. Thirdly, the initiative of EBA exemplifies the role of the EU as an "active player". This character of EBA is also related with the globalist-neoliberal ideology of the EU with regard to its external trade regime. From the point of view of Orbie, the hegemony of neoliberalism in the international political economy is reflected in EBA. The EU, together with the US, is the most powerful trade actor in the world. Orbie claims that this is why the EU tries to build a globalist-neoliberal trade regime. In the process of intra-EU assessment of the EBA, the desirability of the neoliberal hegemonic ideology became undisputed. Putting it in another way, the neoliberal ideology became the common ground for the common sense evaluation of EBA. Neoliberalism also "implies a focus on the principles of free trade and away from interventionist trade policy". In this vein, as the EBA opens up EU markets to LDC's substantially, it reflects neoliberalist principle of free trade.

5.3.3. Common Agricultural Policy in the Context of GATT/WTO

Agriculture was the most contentious issue for the whole course of the Uruguay Round. It was also the "Achilles heel" of the EC due to deep differences among Member States.[254] It should be remembered that Agricultural products do not fall under the scope of CCP as there is another policy system called Common Agricultural Policy (CAP) which operates under the exclusive Community competence from the beginning.[255] The demand of the US and Cairns Group[256] from the EC to cut internal farm subsidies by 75 per cent and export subsidies by 90 per cent required a reform of the CAP. It was clear that there could be no breakthrough in the UR without a CAP reform.

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[254] Bretherton and Vogler, *op. cit.*, p. 76.

[255] This will be elaborated below.

[256] The Cairns Group is a coalition of 17 agricultural exporting countries who account for one-third of the world's agricultural exports. Since it formed in 1986, the Cairns Group has succeeded in putting agriculture on the multilateral trade agenda and keeping it there. It was largely as a result of the Group's efforts that a framework for reform in agricultural trade was established in the Uruguay Round and agriculture was for the first time subject to trade liberalising rules, which are set out in the WTO Agreement on Agriculture. Members of the Group are: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay.

Finally, in May 1992, it was agreed to substitute price support system with a direct income support system. Set-aside and early retirement schemes were incorporated into the reform package. The proactive Council presidency during 1991-92 and readiness of Germany to make agricultural concessions were important in agreement for the so called Mac Sharry Reforms. On 20 November of the same year, a (pre)agreement was reached at Blair House, Washington D.C., US, between the EC and the US. According to the Blair House accord, the export subsidy quantity reduction was scaled back to 21 per cent and the AMS[257] commitment on domestic support was modified to apply to an aggregate of all commodities. Also, direct payments programmes for cereals would be placed in a 'blue box'. A 'peace clause' was agreed, to give some extent of protection from GATT challenges to policies that were consistent with the aims of the Accord, and a gentlemen's agreement was reached to reconsider the issues of non-grain feeds if imports into the EC were to rise too sharply. Finally, the Blair House accord included a solution to the oil-seeds conflict. According to this, the US could claim that it had limited the expansion of oil-seed production in Europe by agreeing to a maximum hectarage under oil crops, and the EC could claim that it had achieved recognition of the legitimacy of the CAP reform programme.[258]

The Commission negotiated the Blair House agreement in secrecy which then resulted in a crisis of trust between the Commission and some Member States. The Blair House (pre)agreement caused oppositions from some Member States also on the grounds that there was no formal mandate from the Council for the Commission to negotiate on such a critical issue. The Blair House negotiation was significant in the sense that it drew limits of the autonomy of the Commission particularly when it tried to negotiate lacking a consensual authority from the Council.[259] It also

[257] AMS means the aggregate measure of support and defined by the AoA as "the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non product specific aggregate measurements of support and all equivalent measurements of support for agricultural products".

[258] Timothy E. Josling, Stefan Tangermann, Thorald K. Warley, "*Agriculture in the GATT*", (St. Martin's Press, Houndmills, 1996), p. 161.

[259] Cited from Stephen Woolcock and M. Hodges, "EU Policy in the Uruguay Round", in Wallace and Wallace (eds.) *op. cit*., p. 315, in White, *op. cit*., p. 66.

symbolised the significance of coherence among EU institutions and between EU institutions and the Member States. This type of coherence is known as "vertical coherence". It is one of the factors without which the actorness of the EU regarding external trade is sharply constrained.

Agriculture is not only one of the most developed policies of the EU but also a cause of continual friction in the WTO context, as well.[260] The Agreement on Agriculture (AoA) which was an integral part of GATT 1994 became one of the major reasons for a radical change in the CAP. Recently, developing countries began to exert more influence on EU particularly concerning the agriculture. This is mainly because of the growth of the volume of trade of developing countries. Also, some important agricultural economies pooled their powers through the establishment of groupings. The Cairns group is a notable example. Furthermore, the eastern enlargement of the EU which resulted in accessions of ten CEEC's made the matter more complex with regard to latest trade liberalisation round. Agriculture is generally most important sector of the new EU members.[261] The accessions of CEECs are interpreted as a potential cause for renewed protectionism in the EU. Yet, enlargement could be seen as an opportunity for further reform in the CAP.[262] Enlargement has a potential for protectionism since agriculture is a vital sector for the acceding countries and they naturally expect to become beneficiaries from the CAP. So, in response to those demands of new members, the EU could slow down its efforts of trade liberalisation. Enlargement could also be an opportunity for reform in the CAP. This is mainly because of the fact that, enlargement makes the cost of CAP unbearable. Thus, the EU could opt for further reform of the CAP to manage the issue of rising cost. In

[260] Maria O'Neill, "The Winds of Change Blow Again: the World Trade Organisation's Impact on the European Community's Common Agricultural Policy", in *Liverpool Law Review*, Vol. 24, 2002, p. 181.

[261] For an account concerning the issue of enlargement and CAP, see, for instance, Carsten Daugbjerg and Alan Swinbank, "The CAP and EU Enlargement: Prospects for an Alternative Strategy to Avoid the Lock-in of CAP Support, in *Journal of Common Market Studies*, Vol. 42, No. 1, 2004, pp. 99-119.

[262] Jacob Kol and L. Alan Winters, "The EU after Cancun: Can the Leopard Change its Spots?", in *European Foreign Affairs Review*, Vol. 9, p. 16.

these circumstances, the CAP, as experienced on the road to Uruguay Round agreements, became one of the most important keys of the success of Doha Round.

Remembering post-1945 food shortages across Europe accompanied by security concerns of the Cold War it was one of the basic goals of founders of the EC to reach sustainable self-sufficiency in foodstuffs.[263] The CAP was the first redistributive policy of the EC and was one of the only four common policies that had its own Title in the Treaty of Rome.[264] Article 39 of the Treaty listed the objectives of the CAP as follows:

> 1- To increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour.
> 2- To ensure a fair standard for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.
> 3- To stabilize markets.
> 4- To assure the availability of supplies.
> 5- To ensure that supplies reach consumers at reasonable prices.[265]

In order to realise these objectives three principles were to be used: market unity, community preference and financial solidarity.[266] Market unity was to be achieved by establishing a common price system which in essence required a "price support system"[267]. The second principle required a system of tariff barriers which to be used to protect European farming industry against international competition and instability. For the third principle a central fund, the European Agricultural Guidance and Guarantee Fund (EAGGF) was created.

In early stages the CAP was successful regarding its main objective, self-sufficiency. However, beginning from early 1970s over production became a serious threat for

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[263] Eve Fouilleux, "The Common Agricultural Policy", in Cini, *op. cit.*, p. 247

[264] Stephen George and Ian Bache, *Politics in the European Union*, (Oxford University Press, Oxford, 2001), p. 307. Other policies were the free movement of goods; the free movement of persons, services and capital; and transport.

[265] Fouilleux, "The Common Agricultural Policy", in Cini, *op. cit.,* p. 247

[266] These principles were agreed in at Stresa Conference, in Italy, 1958.

[267] Instead of leaving market forces free to set prices, there would be "target prices" artificially set centrally by Community to sustain a high level of income for farmers.

the overall CAP. Agricultural surpluses meant that the policy was becoming more and more costly to maintain. Beside internal deficiency of the policy, beginning from mid 1980s there was substantial external pressure[268].

The impact of GATT negotiations was probably the most important external stimulus for a CAP reform. The Uruguay Round was unique with respect to agriculture because agriculture became an integral part of negotiations without which an agreement seemed impossible. The US which then supported by Cairns Group of fourteen states made the phasing out of agricultural subsidies their central argument. 1988 Reform of the CAP which, however, was ineffective to eliminate the growing cost of the CAP was an outcome of these pressures. As the EC did not able to respond sufficiently to the needs of the US led bloc, GATT negotiations turned into an impasse.

It was only when the EC accepted a -relatively- radical shift in its agricultural policy, in 1992; the deadlock in GATT negotiations was broken. So called Mac Sharry[269] reforms package proposed a reduction of intervention prices and introduced direct payments. However, Uruguay round negotiations did not put an end calls for further reform in the CAP.

The WTO Agreement on Agriculture (AoA) which concluded in 1994 covered mainly four areas: internal support, export subsidies, market access and food security. Internal support is the ground which most of the time used to criticise CAP of the EU. The AoA included a concept of Aggregate Measure of Support (AMS) which defined "as the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non product specific aggregate measurements of support and all equivalent measurements of support for agricultural products"[270]

[268] According to George and Bache, external pressures proved the most formidable incentive for change in the CAP, in *op. cit*., p. 316.

[269] Commissioner of Agriculture, who prepared reform proposal in 1991.

[270] Article 1(h) of Agreement on Agriculture.

Accordingly, the WTO required from its Member States to reduce their AMS by specific amounts on specific products.[271] The EU, for instance, must reduce its AMS by 20 per cent by the year 2001. Another novelty of the AoA is the distinction between support measures. According to this distinction, there are three different categories of support programmes. In the "amber box", there are domestic measures which distort trade. They should be reduced. "Green box" subsidies are considered not to distort trade and can be used without limits. The third category is the "blue box" including payments distorting production which may not need to be cut unless they do not comply with certain criteria.

With respect to the EU, AoA did not impose so much pressure as the blue box payments could be preserved until the year 2003. However, the UR Agreements envisaged that further negotiations of trade liberalisation including agriculture were to begin by 1999. Additionally, the EU was in the eve of an enlargement. Therefore, in order to enhance its negotiating position in new multilateral trade round as well as to prepare its agriculture for upcoming enlargement, the Commission proposed a reform of the CAP incorporated into the document called "Agenda 2000: For a Stronger and Wider Union" in 1997.

The chapter of agriculture of Agenda 2000, which officially adopted by the Berlin European Council on 26 March 1999, proposed a reduction of support prices which were to be compensated by increased direct payments. Agenda 2000 is also significant with its emphasis on environment and on sustainability and the introduction of the concept of "multifunctionality".[272] According to the concept of multifunctionality, agriculture is also related with non-production aspects such as environment, jobs, culture, and landscape, which to be publicly supported.

[271] O'Neill, *op. cit*., p. 197.

[272] Fouilleux, "The Common Agricultural Policy", in Cini, *op. cit*., p. 257. For more on sustainability and multifunctionality, also see Maria O'Neill, "Agriculture, the EC and the WTO: A Legal Analysis of the Concepts of Sustainability and Multifunctionality", in *Environmental Law Review*, Vol. 4, 2002, pp. 144-155.

Agricultural Commissioner, Franz Fischler was reported to have argued that the Agenda 2000 reforms would be the ultimate negotiation position of the EU in the upcoming multilateral trade liberalisation round. However, for Swinbank, Agenda 2000 reforms were a "very timid step in the long process of radical reform", and it was likely that a new round of trade liberalisation would pressurise the EU to make further reform in the CAP.[273] Despite the changing rhetoric of CAP towards an environment-friendly and multifunctional agriculture, it is stated that there is a gap between discourse and reality especially in international arena.[274] Beside other factors, a subsequent reform was designed to deal with this problem, in particular.

The next reform project concerning the CAP, the Mid-Term Review (MTR), which was signed on 26 June 2003, in Luxembourg, was an attempt to reduce the gap between discourse and practice. Apart from several motives, the context of Doha Round was also used by the Commission to propose MTR.[275] In Commissioner Fischler's words, the reform package was–along with internal necessities- related with EU's commitments in the WTO:

> In addition to the benefits that our proposals offer on these internal questions, they would also help us further promote our view on sustainability in an international context… We have obliged ourselves in the WTO to cut trade distorting support, and we will have to stick to this promise. Furthermore, unlike in the Uruguay-Round, the EU would be in a position to actively shape the negotiations on the WTO agriculture chapter under the 'Doha Development Round', with a strong negotiating hand and enjoying a level of credibility forfeited by the USA with its recent Farm Bill.[276]

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[273] Swinbank, "CAP Reform and the WTO: Compatibility and Developments", in *European Review of Agricultural Economics*, Vol. 26, No. 3, 1999, p. 393.

[274] Fouilleux, "CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency", in *West European Politics*, Vol. 27, No. 2, March 2004, pp. 247-248.

[275] *Ibid*., p. 250. Fouilleux pointed out four main arguments which were mobilised by the Commission: 1- to "actively respond to the concerns EU citizens express about the effectiveness of the CAP" as well as to include the wider society's contributions to the debate. 2- to make agricultural policy accepted by the whole society, including conservative lobbies. 3- the increased use of expertise by DGAGRI which was used as source of legitimacy. 4- the context od Doha Round.

[276] Quoted from Franz Fischler, "Agra Europe Mid-Term Review Conference", Brussels, 28 October 2002, in *ibid*.

The MTR appeared not to be a radical shift in philosophy of the CAP and did not able to solve neither the issue of sustainability and nor the elimination of the gap between the discourse and practice concerning multifunctionality.[277] The basic underpinnings of CAP are still being implemented. Most importantly, the main instrument of the CAP is still the price support system which in turn hurts developing countries[278] without which the Doha Round could not be successful. As Tutwiler concluded "it will be impossible for the United States and the EU to cut a backroom deal in the Doha Round that does not address the needs of the developing countries"[279] The extent of flexibility of EU to make "concessions" concerning its agricultural policy will have considerable impact upon the success of the recent multilateral round of trade liberalisation. In this atmosphere, it is apparent that the history of CAP reforms is not over.

5.3.4. Government Procurement and the EU

From 1980 onwards public procurement is part of the GATT agenda. The public procurement regime, as the most longstanding and most developed one, has a considerable impact on development of WTO Agreement on Government Procurement (GPA).[280] In this context, main objectives of GPA of the WTO are quite similar to those of the EU's. The supreme goal of both regimes is to open up public procurement to international competition. It should be noted, however, that principles of WTO Procurement regime are more flexible than those of EU's.[281]

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[277] *Ibid*., p. 252.

[278] Kol and Winters, *op. cit*., p. 13.

[279] M. Ann Tutwiler, "Challenges Facing the WTO Negotiations on Agriculture", in *American Journal of Agricultural Economics*, Vol. 85, No. 3, August 2003, p. 685.

[280] Harvey Gordon, Shane Rimmer and Sue Arrowsmith, "The Economic Impact of the European Union Regime on Public Procurement: Lessons for the WTO", in *The World Economy*, Vol. 21, No. 2, March 1998, p. 160.

[281] *Ibid*., p. 180.

5.4. The Enlargement of the European Union and EU-WTO Relations

By 2004, the EU enlarged for the fifth time.[282] This enlargement was unlike any other in terms of the number of acceding countries. Ten countries entered the Union in 2004. These were Cyprus, Estonia, Hungary Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic and Slovenia. The 2004 enlargement raised some important issues regarding the EU-WTO interaction.

5.4.1. General Considerations

Marise Cremona provided a useful analysis on the issue. As the EC is an economic integration, it is required to comply with Article XXIV of GATT which sets out criteria for regional economic integrations. For Cremona, "[i]n aligning its customs tariffs to the existing common external tariff, a new member may need to increase (at least some of) its bound rates; accession may also affect the new member's trade policy in relation to tariff quotas." According to Cremona, thus, the enlarged Union must also satisfy Article XXIV conditions of the GATT.

The overall effect of enlargement on the EU's external trade is directly related with Article XXIV requirement. A WTO Appellate Body Report stated that

> [a]ccording to paragraph 4 [of Article XXIV], the purpose of a customs union is 'to facilitate trade' between the constituent members and 'not to raise barriers to the trade' with third countries. This objective demands that a balance be struck by the constituent members of a customs union. A customs union should facilitate trade within the customs union, but it should not do so in a way that raises barriers to trade with third countries.

Thus, the main question about the enlargement becomes the duality of "trade creation" and "trade diversion". In this light, the enlargement of the EU should not create a "trade diversion", rather result in a "trade creation" in order to meet the requirement of the Article XXIV of GATT.

The EU institutions concluded that enlargement will have a positive, i.e. trade creating effect through lowering of tariffs (this will occur through the adoption of

[282] Previous enlargements were in 1973 (Denmark, Ireland, the United Kingdom), in 1981 (Greece), in 1986 (Spain and Portugal), and in 1995 (Austria, Finland, Sweden).

CET of the EU by acceding countries), through creation of a wider integrated market and the economic development envisaged for the acceding countries as a result of EU membership. The Commission, for instance argued that "the EU bloc will be bigger, more powerful, and more able to promote its own policy agenda"[283] It should be noted that the opening up of the new members' markets to imports from third countries with which the EU has preferential trading agreements will also contribute to degree of trade liberalisation.

However, concerning the impact of enlargement of the EU, there are some reservations put forward by the WTO, most important of which is related with the discussion about trade creation and trade diversion. In this respect, there is a potential trade diversion in favour of fellow EU Member States. In a Trade Policy Review of Hungary in July 1998, the WO maintained that

> Questions were raised on possible trade diversion stemming from preferences, and there was a considerable debate on this issue and its systemic implications. In response, the representative of Hungary stresses that WTO rules and commitments had been, and would be, thoroughly observed during the whole process of integration into the European Union. He rejected allegations that European integration had diverted trade to the disadvantage of third countries; on the one hand, trade flows had moved in favour of western markets, following the collapse of the CMEA, and before the introduction of EU preferences; on the other, imports from non-European trade partners, both in North America and in the Pacific region, had grown faster than those from EU sources.[284]

As Cremona put it, besides a general evaluation about the impact of enlargement to EU-WTO interaction it is necessary to focus on specific policy sectors. In this part, firstly, the sector of agriculture will be analysed. Secondly, an assessment regarding "the compensatory adjustment" will be given. Thirdly, "trade defence measures" will be discussed from the EU-WTO relations perspective. Finally, the issues of "transparency" and "homogeneity" will be visited.

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[283] Marise Cremona (ed.), *The Enlargement of the European Union*, (Oxford University Press, Oxford, 2003), p.188.

[284] WTO Trade Policy Review of Hungary, July 1998, Chairperson's Conclusions.

5.4.2. Agriculture

Agriculture continues be one of the hotly debated issues after the enlargement as well. It was clear for some time that the CAP would be a major problem in the enlargement process.[285] The new Member States' dependence on agriculture was high, implying that if the CAP was to be fully implemented in new members, it would increase the budgetary cost of CAP substantially. This could lead to the fact that the EU could become more inward-looking and hence protectionist in the ongoing WTO talks. At the Copenhagen summit in 2002, it was decided that the direct payments are to be gradually phased in over a ten-year transitional period, beginning with 25 per cent of the payment level in EU. According to the Commission, most of the direct payments that would be given to new members qualify as blue box payments on which no reduction commitments currently apply[286]. However this argument could face a challenge from the WTO as the Peace Clause only provides protection to blue box payments if and only if such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year. In other words, it could be claimed that the level of support for farmers in new Member States exceeds that of 1992, and consequently the Peace Clause could not apply to payments made in the new members.[287] The WTO Report on Poland in June 2000 summarizes the problem of agricultural support with regard to the biggest new member: "the impact on net trade creation of Poland's possible EU accession is not completely clear. While Polish most-favoured-nation (MFN) tariffs would fall on average by almost two-thirds (based on 1999 levels) following the adoption of EU's Common External Tariff, agricultural assistance is likely to increase substantially."[288]

[285] Daugbjerg and Swinbank, *op. cit.*, p. 100.

[286] According to the provision covering the so-called blue box payments, i.e. Article 6(5) of AoA, blue box includes "direct payments under production-limiting programmes" based on "fixed area and yield" and for the livestock "a fixed number of head".

[287] Daugbjerg and Swinbank, *op. cit.*, p. 108.

[288] Quoted in Cremona, *op. cit.*, p. 192.

5.4.3. Transparency and Homogeneity

According to the Commission, enlargement would increase the transparency of trade relations and lowering of trade barriers themselves. Commission has pointed out that this will be beneficial to the neighbouring states within the Stabilization and Association Process for the Western Balkans, the Barcelona process for the Mediterranean region, and the Partnership and Cooperation framework for Russia, the Ukraine and the other CIS states. Also for the European Parliament, the enlargement will encourage foreign investment in new Member States as the resulting trade liberalisation will contribute to a more homogenous European market. According to Cremona, however, the EU will be less homogenous in the medium term due to the diversity of interests among 20 or 25 Member States. Furthermore, for Cremona "[t]he effects of becoming an even bigger bloc within the WTO and other negotiations may be offset by the increased difficulty in reaching consensus." This prediction did not become concrete in recent WTO negotiations, nevertheless. Up to the 30 July agreement reached by 147 WTO members, the EU did not fell victim of more diversified interests among its Members and was able to reach an internal consensus about EU's negotiation position.

5.4.4. Compensatory Adjustment

In Article XXIV (6) of GATT 1994 there is a provision made for "compensatory adjustment" where the entry into force (in this case enlargement) of a customs union requires a WTO member to modify its scheduled commitments by increasing a bound rate of duty. In other words, if a country enters into a customs union and increases its rates of bound duties, then it should provide a "compensatory adjustment" to the other WTO members which have been affected by. An agreement for compensatory adjustment does not create a legal barrier for the customs union, as the affected third countries are "free to withdraw substantially equivalent concessions in accordance with Article XXVIII"[289] The compensatory adjustment will be satisfactory if it has been agreed by the parties. There is time to see the impact of the recent enlargement with regard to the issue of compensatory adjustment.

[289] Understanding on the Interpretation of Art. XXIV of GATT 1994, para. 5, quoted in Cremona, *op. cit.*, p. 193.

5.4.5. Trade Defence Measures

In the EU, individual safeguard measures are permitted. Only at the EC level safeguard measures could be imposed. Yet, there is a possibility that the EC could adopt such measures in respect of a specific region of the Community[290]. In principle, then, existing national safeguard measures disappeared with the accession of new members. With the enlargement, the EC safeguard measures are to be imposed by new members as well. However, the extension of EC safeguard measure to acceding countries is problematic due to the fact that WTO Agreement on Safeguards rules that where a customs union applies safeguard measures as a single unit then "all the requirements for the determination of serious injury or threat thereof ... shall be based on the conditions existing in the customs union as a whole"[291] Thus, in the absence of any evidence of serious injury to the industry of a new EU member, it will be difficult to simply extension of the customs union.

5.5. General Considerations

Addressing the role of the EU as an economic actor within the WTO from the perspective of the other WTO Members, Richard Senti has reached four conclusions. As the first conclusion, Senti has commented that "the EU has increased its strength as a trading bloc- initially during the lifetime of the GATT and continuing in the now WTO". Secondly, Senti has argued "the EU has become not just a more important trading partner but also a more difficult one- in the course of the last few decades." Thirdly, Senti has maintained "in the light of EU enlargement eastwards, it is highly likely that the EU will reject further liberalisation of agriculture." As the final argument, Senti has claimed "the increasing regulation in recent years of the economy in the EU and the Member States will possibly lead to the EU, as a WTO Member, being increasingly sceptical vis-à-vis a liberal world trade regime."[292] First two of these conclusions are important in the sense that they demonstrate the growing capacity to act of the EU. Third conclusion could imply that the EU will be

[290] Cremona, *op. cit.*, pp.194-195.

[291] WTO Agreement on Safeguards, Art. 2 (1), footnote 1.

[292] Richard Senti, "The Role of the EU as an Economic Actor within the WTO", in *European Foreign Affairs Review*, Vol. 7, 2002, pp. 111-117.

stronger as a negotiator following the enlargement and will possibly advocate its position -particularly concerning the CAP- more firmly.

The actorness of the EU in WTO is many times justified since the inception of the organisation. For instance, the EU "succeeded in getting its own candidate Renato Ruggiero, appointed as the first Secretary General of the WTO." [293] It is the most coherent supporter of the millennium round which to be turned into Doha Development Round.

[293] Peterson and Sjürsen, *op. cit*., pp. 35-36.

CHAPTER 6

The Banana Dispute in the Context of EU-WTO Interaction

Banana case was chosen as a case study in this dissertation not only for its relevance of EU's trade policy actorness but also for its significance with regard to EU-South and EU-US relations. Especially in 1990's, the banana trade became an issue of continuous friction between the EU and many developing countries and between the EU and the United States, the latter of which is the champion of advocate of banana multinationals. Banana case is a good example in which the US' perceptions of the EU as a strong economic actor were visible. Another reason for the choice of banana issue is the usefulness of the case concerning agriculture. It highlights the extent actor capability of the EU in a product which the Union does not have its own production that could provide self-sufficiency.

6.1. The Importance of Banana Case

"On April 11, 2001, the US and the European Union announced their agreement to resolve their long-standing dispute over the EU banana regime"[294] This agreement effectively ended a conflict that had lasted for nearly a decade not only between the EU and the US but also between the EU and Latin American countries whose banana exports are vital for their economies. Soon after the agreement between the EU and the US, other parties to the dispute followed suit.[295] What is interesting about the dispute is that "[t]he whole banana issue generated a surprising amount of bitterness and heat considering that it concerned a product which was grown in neither the EU nor the United States."[296] The conflict about bananas became a saga in the framework of WTO too as Olivier Cadot and Douglas Webber emphasized: "[N]or has any other issue been contested so frequently and over such a long time in-nor

[294] *International Law Update*, Vol. 7, April 2001, p. 62.

[295] For details see, Olivier Cadot and Douglas Webber, "Banana Splits: Policy Process, Particularistic Interests, Political Capture, and Money in Transatlantic Trade Politics", in *Business and Politics*, Vol. 4, No. 1, 2002, p. 6.

[296] George and Bache, *op. cit.*, p. 394.

placed such an enervating strain on- the WTO dispute settlement process."[297] Cadot and Webber wrote that between 1995 and mid-2001, some 236 complaints were taken to the WTO dispute settlement mechanism, only one-fifth of which resulted in the creation of panels for adjudication.[298] The dispute over bananas is also called as "the trade case of the decade."[299] Within the EU, the issue of bananas caused some 34 legal cases.[300] The EU's common banana regime was also a severe test for the CAP itself as Agriculture Commissioner Franz Fischler concluded that "no other market regime in the history of the CAP had been the subject of such controversy."[301] In its peak, the dispute threatened the principle of supremacy of the EU law over those of member states and several experts had even thought the entire edifice of the EU could have 'slipped over bananas'.[302] This was because some member governments -particularly Germany- objected the banana regulation on the ground that it was better off before the Common Market Organization (CMO) for bananas was established, i.e. under its own national system of banana trade. This strong German attitude- which will be elaborated below- shook the principle of supremacy of EU laws over those of member states.

The importance of the EU's banana regime also lies in the great size of the European banana market and exacerbated by the relatively lower level of EU's self-sufficiency in banana sector. Following the US, the EU is the second biggest banana market in the world, with a share of some 23 per cent.[303]

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[297] Cadot and Webber, *op. cit.*

[298] Cited in *ibid.*

[299] Mauricio Salas and John H. Jackson, Procedural Overview of the WTO EC- Banana Dispute, in *Journal of International Economic Law*, Vol. 3, No. 1, 2000, p. 145.

[300] Cited in *ibid.*, p. 163.

[301] Cited in Stefan Tangermann, "European Interests in the Banana Market", in Timothy E. Josling and Timothy G. Taylor (eds.), *Banana Wars: The Anatomy of a Trade Dispute*, (CABI Publishing, Wallingford, 2002), p. 18.

[302] Cited in Cadot and Webber, *op. cit.*

[303] Herald Badinger, Fritz Breuss and Bernhard Mahlberg, "Welfare Effects of the EU's Common Organization of the Market in Bananas for EU Member States", in *the Journal of Common Market Studies*, Vol. 40, No. 5, 2002, p. 515. Also see, Mechel Paggi and Tom Spreen, "Overview of the World Banana Market", in Josling and Taylor (eds.), *op. cit.*, p. 11.

Table 5: Chronology of the Banana Case

Date	Report or event	Reference
3 June 1993	First Banana Panel (not adopted)	DS32/R
11 February	Second Banana Panel (not adopted)	DS38/R
28 September 1995	Request for consultation by Guatemala, Honduras, Mexico and the US	WT/DS16
5 February 1996	Request for consultation joined by Ecuador	WT/DS27/1
11 April 1996	Request for panel	WT/DS27/6
8 May 1996	Panel established	WT/DS27/7
22 May 1997	Panel report issued	WT/DS27/R
9 September	Appellate Body report issued	WT/DS27/AB/R
25 September 1997	DSB adopts panel and AB reports	WT/DS27
16 October 1997	EU agrees to conform, requests 'reasonable' time to comply	WT/DSB/M/38
17 November 1997	Request of Arbitration on 'reasonable' time	WT/DSB/13
1 December	Arbitrator appointed	WT/DS27/14
23 December	Arbitrator's Award on time period	WT/DS27/15
18 August 1998	Request for consultation on new EU regime	WT/DS27/18
13 November 1998	Request for further consultation by Ecuador	WT/DS27/30 and Add. 1
14 December 1998	EU requests panel under DSU (Art. 21.5)	WT/DS27/40
18 December 1998	Request for recall of original panel by Ecuador (Art. 21.5)	WT/DS27/41
12 January 1999	Panels established for Ecuador and	WT/DS27/45
14 January 1999	Request for retaliation by US	WT/DS27/43

Table 5 continued

20 January 1999	Complaint about new EU regime	WT/DS158/1
29 January 1999	Arbitration panel appointed to	WT/DSB/M/54
9 April 1999	Arbitrator's report	WT/DS27/ARB
12 April 1999	Panel report (Ecuador)	WT/DS27/RW/ECU
12 April 1999	Panel report (EU)	WT/DS27/RW/EEC
8 November	EU status report	WT/DS27/51 Add. 1
9 November 1999	Ecuador requests retaliation	WT/DS27/52
19 November	EU requests arbitration	WT/DS27/53
24 March 2000	Arbitrator's report on Ecuador and	WT/DS27/ARB/ECU
8 May 2000	Ecuador announces retaliation list	WT/DS27/54
13 October 2000	EU outlines FCFS scheme	WT/DS27/51 Add. 12
11 April 2001	EU and US agree on new EU scheme	
20 April 2001	Ecuador requests consultation	WT/DS27/55
4 May 2001	EU details new banana import regime	WT/DS27/51/Add.18
2 July 2001	US announces suspension of retaliation	WT/DS27/59
14 November 2001	Waiver granted for transitional banana Regime	G/C/W/269/Rev.1

Source: Tim Josling, "Bananas and the WTO: Testing the New Dispute Settlement Process", 2000, p. 173.

6.2. Banana Dispute before the Common Market Organization for Bananas (CMO)

Although the problem of bananas seems to begin particularly with the implementation of common market rules with a disputed regulation, a limited version of banana war had existed even before. Prior to the import regime of 1993, there was

a "patchwork of national banana import regimes" throughout the EU. Germany, without banana production at home and any ex-colonies to matter about, has allowed dollar bananas from Latin America to enter the country duty-free. Belgium, Denmark, Greece, Ireland, Luxembourg and the Netherlands were applying an *ad valorem*[304] tariff of twenty per cent against bananas coming from Latin America. On the other hand, France, the UK and Italy applied quantitative restrictions as well as a twenty per-cent *ad valorem* tariff on dollar bananas to protect ACP countries. In 1992, a group of Latin American banana growing countries requested the establishment of a GATT panel following the failure of talks with the EC concerning different banana import regimes in the EC.[305] These countries complained that quota restrictions and ACP preferences of different import regimes in the EC were in breach of several GATT provisions.[306]

The GATT Panel held that the various EC Member States' banana import regimes were not in conformity with several rules of GATT such as Article XI's "prohibition of quantitative restrictions" and Article I's "most-favoured-nation" (MFN) clause.[307] However, this panel report was blocked by both EC Member States and ACP countries.

6.3. The CMO and Escalation of the Conflict

The greater conflict about bananas started on 1 July 1993 when the EU established the CMO for bananas and introduced a new regulation through which restrictive tariffs and quotas implemented on Latin American banana exporters accompanied with a limited import licences and export certificates system, while allowing duty-free and open access for bananas coming from African, Caribbean and Pacific (ACP)

[304] "A tax, duty, or fee which varies based on the value of the products, services, or property on which it is levied", quoted from http://www.thefreedictionary.com/ad%20valorem%20tax, accessed on 12 March 2004.

[305] These countries were Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela.

[306] For details of the case, see Zsolt K. Bessko, "Going Bananas over EEC Preferences?: A Look at the Banana Trade War and the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes", in *Case Western Reserve Journal of International Law*, Vol. 28, No. 2, Spring 1996, pp. 265-313.

[307] For details of the Panel's findings, see *ibid*.

countries.[308] By doing so, the EU opted for a semi-protectionist, discriminatory, costly[309], controversial[310] and politically problematic preferential treatment policy, based on Protocol 5 of the Lomé Agreement[311] of 1989[312], however, adversely affecting Latin American banana growers in the entire EU banana market.

While the establishment of the Single European Market (SEM) necessitated a harmonized banana import regime, the reasoning behind the adopted version of regulation is to be clarified. In essence, the main reason why the EU agreed to such an economically ill banana regulation is political. The official aim of the new banana regime as declared by the European Commission is "to provide support (aid) to EU territorial producers and those banana exporters of the Lomé ACP countries, while ensuring consumers are adequately supplied with good quality bananas."[313] Hugo Paemen, the Commission's head of delegation in US, concluded that the contested banana regime was rather a humanitarian issue related with development policy of the EU. According to Paemen, the substance of the problem was that the EU tried to give an answer to the problem of poorest countries in the world, which only have nothing but bananas to sell.[314] As Tangermann suggests, Article 1 of the Banana Protocol in the Lomé IV is significant in understanding the legal commitment of the EU: "In respect of its banana exports to the Community markets, no ACP state shall

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[308] See, Brent Borrell, "Policy-making in the EU: The Bananarama Story, the WTO and Policy Transparency", in *The Australian Journal of Agricultural and Resource Economics*, Vol. 41, No. 2, p. 268. Also see, EC Council of Ministers Regulation 404/93 of 13 February 1993 on the Common Organization of the Market in Bananas.

[309] According to Brent Borrell, the cost of EU's banana regime for consumers is some $1,6 billion annually. For details, see Borrell, *op. cit*., p. 263.

[310] See, Rikke Thagesen and Alan Matthews, "The EU's Common Banana Regime: An Initial Evaluation", in *the Journal of Common Market Studies*, Vol. 35, No. 4, 1997, p. 616.

[311] Beginning from 1975, aid and trade relations with the EC/EU and African, Caribbean, and Pacific States- many of which being former colonies of EU members- are regulated by the Lomé Agreements. In 2000, Cotonou Agreement was designed to replace the Lomé Conventions.

[312] Joel P. Trachtman, "Bananas, Direct Effect and Compliance", in *European Journal of International Law*, Vol. 10, No. 4, p. 661.

[313] Cited in *ibid*., p. 270. Also see, Trachtman, *op. cit.*

[314] For details of Hugo Paemen's opinion about banana issue, see *Europe Magazine*, May 1999, pp. 14-15.

be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present"[315]

Apart from the impact of Agreement Lomé IV, it is also necessary to analyse the domestic political atmosphere within the EU in which "historical coincidences"[316] had played some significant role as well. It is important to note that decision over bananas was taken with QMV whereas just one country's vote against the regulation was sufficient to establish a blocking-minority. Considering this, Stephen Tangermann has put emphasis on the role of Denmark, which was holding the presidency of the EC Council of Ministers at the time of adoption of the new regulation (succeeded the UK in January 1993). This country was a part of free-trade oriented Hanseatic coalition of north European countries. Denmark had voted against the regulation in the December 1992 Agricultural Council. However, in the second vote in Agricultural Council in February 1993, regarding the domestic implementation, Denmark changed the sides and voted for the regulation.[317] For Tangermann, not only the "European responsibility" but also pressures from France and the UK -though about different issues- caused Danish decision to vote in favour of the new regulation.[318] Analysing the process of EU's adoption of the 1993 regulation Cadot and Webber argued that three features of EU policy-making in agricultural trade prepared the ground for the regulation. One of those reasons is the division of labour in EU policymaking in trade. According to Cadot and Webber, the DG Agriculture and the Agricultural Council, which are the lead DG and Council respectively, are generally more protectionist than other DG's and Councils. This, in turn, resulted in the protectionist agricultural trade policies which caused frequent trade disputes between the EU and other international actors. For Cadot and Webber, the second important reason for the adoption of 1993 banana regulation is the "high degree of sectoral segmentation of EU policymaking." In the case of bananas, the

[315] Cited in Stefan Tangermann, *op. cit.*, p. 31.

[316] Stefan Tangermann, "Banana Policy: A European Perspective", in *The Australian Journal of Agricultural and Resource Economics*, Vol. 41, No. 2, 1997, p. 279.

[317] For details of EU Council vote distribution on the banana trade regime, see Tangermann, "European Interests...", *op. cit.*, p. 35.

[318] *Ibid.*

absence of an intercouncil coordination mechanism or say a "cabinet", caused the disagreement among the involved DGs to continue and at the final stage the DG Agriculture's proposal was adopted. As the third reason, Cadot and Webber mention the abuse of "package-deal" policy-making. In December 1992, the proposal about bananas was attached to a large package of proposals involving some 17 agricultural issues.[319] According to Cadot and Webber, this "winner-takes-all" character in banana proposal is also against the general tendency in the EU toward compromise.

In the early 1990s, enjoying duty-free entrance of "dollar bananas", Germany had the biggest banana market share in the EU.[320] The American multinational Chiquita was holding 90 per cent share of the German market. The market share of Chiquita in the entire EU was around 25 per cent in 1991. With the 1993 regulation establishing the Common Market Organisation (CMO) for bananas, Chiquita's share in the EU began to fall dramatically.

Chiquita's troubled position was one of the major causes[321] that eventually led to the American involvement which internationalised and escaladed the conflict.[322] Having been sure that "it would never get its way in Europe" Chiquita began to push the US administration to launch a Section 301[323] investigation and prepare a file before the WTO.[324]

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[319] Cited in *ibid*., p. 34.

[320] According to Cadot and Webber, *op. cit*., p. 9 , Germany alone accounts for 1/3 of total EU banana consumption.

[321] Cadot and Webber listed other reasons for American involvement to the banana conflict as follows: 1- Renewed Congress trade policy activism, 2- Enactment and strengthening of legislation institutionalizing firms access to the US trade policy bureaucracy, 3- The growing volume of corporate donations to congressional and presidential election campaign funds. For details, see *ibid*., pp. 19-23.

[322] *Ibid*., p. 21.

[323] According to Section 301 of the US Trade Act of 1974, a company or a group of companies can request from the United States Trade Representative to intervene if it can be proven that any discriminatory trade practices harmed any company or companies. A Section 301 investigation is opened to determine whether a country has imposed unfair trade regulations. If the investigation finds damages caused primarily by those unfair trade practices, the USTR may withdraw trade concessions in an amount equivalent to the estimated damage.

[324] *Ibid*., p. 22.

In 1993, Colombia, Costa Rica, Guatemala, Venezuela filed a case before the WTO complaining about the incompatibility of new EU banana regime with multilateral trade rules under the GATT system.

On 11 February 1993, the Panel issued its report holding that a) the specific tariff rates the EC imposed in its new banana import regime are not consistent with Article II GATT (schedule of concessions) b) the tariff preferences granted to ACP bananas are not consistent with Article I (MFN clause) c) allocations of import licences under the tariff quota is not consistent with both Article I and Article III (concerning national treatment).[325]

Although the adoption of the Panel report was blocked by the EC and ACP countries, its findings was a signal about the ruling of subsequent Panel report, for it was the first Panel to decide on the new banana import regime of the EU.[326]

6.4. Framework Agreement and the Response of Germany

After the Panel's decision, the EU tried to mute some Latin American banana exporting countries by satisfying their demands, in order to contain the banana dispute. To this end, the EU negotiated with a group of non-ACP states[327] and on 29 March 1994 the Framework Agreement on Bananas was concluded. By the Agreement, the EU granted country-specific quota allocations, and the right to issue export licences to banana growers and exporters in these countries.

Contrary to the intention of the EU, the Framework Agreement, which entered into force by 1 January 1995, created so much opposition not only from other Latin American banana growers and the US, but also from within the Community. This is

[325] Bessko, *op. cit,* pp. 5-6.

[326] Timothy E. Josling, "Bananas and the WTO: Testing the New Dispute Settlement Process, in Josling and Taylor (eds.), *op. cit.*, p. 174.

[327] These countries were Colombia, Costa Rica, Nicaragua and Venezuela.

mainly because the Agreement only satisfied a group of countries affected from the new import system of the EU.

Germany, then supported by the governments of the Netherlands and Belgium, filed a complaint against the Council of the European Union on 23 May 1993 arguing that the new banana regulation not only violate several rules of the EC but it was also in breach of some GATT provisions.[328]

On 5 October 1994, the ECJ issued its judgment, dismissing the application of Germany and upholding the regulation.[329] Among other findings, the Court adopted that Germany could not invoke GATT provisions to challenge EC's banana regulation. In this issue the Court detailed its argumentation as follows:

> 103 The Federal Republic of Germany submits that compliance with GATT rules is a condition of the lawfulness of Community acts, regardless of any question as to the direct effect of GATT, and that the Regulation infringes certain basic provisions of GATT.
> 104 The Council, supported in particular by the Commission, argues that in view of its particular nature, GATT cannot be relied on to challenge the lawfulness of a Community act, except in the special case where the Community provisions were adopted to implement obligations entered into within the framework of GATT.
> 105 In deciding whether the applicant can rely on certain provisions of GATT to challenge the lawfulness of the Regulation, it should be noted that the Court has held that the provisions of GATT have the effect of binding the Community. However, it has also held that in assessing the scope of GATT in the Community legal system, the spirit, the general scheme and the terms of GATT must be considered.

In this light, the Court ruled that

> 110 The special features noted above show that the GATT rules are not unconditional and that an obligation to recognize them as rules of international law which are directly applicable in the domestic legal systems of the contracting parties cannot be based on the spirit, general scheme or terms of GATT.
> 111 In the absence of such an obligation following from GATT itself, it is only if the Community intended to implement a particular obligation entered into within the framework of GATT, or if the Community act expressly refers to

[328] For Germany's arguments, see Tangermann, "European Interests...", *op. cit.*, pp. 41-42.

[329] See, Case C-280/93, Federal Republic of Germany vs. Council of the European Union in http://www.europa.eu.int.

> specific provisions of GATT, that the Court can review the lawfulness of the Community act in question from the point of view of the GATT rules (see Case 70/87 Fediol v Commission [1989] ECR 1781 and Case C-69/89 Nakajima v Council [1991] ECR I-2069).
> 112 Accordingly, the Federal Republic of Germany cannot invoke the provisions of GATT to challenge the lawfulness of certain provisions of the Regulation.[330]

Nonetheless, the EU achieved in integrating the Framework Agreement into the Final Act of WTO. For the Commission this was an ideal step to solve the banana issue in the GATT/WTO system as well as to overcome German opposition since all member states of the EU would vote for the overall outcome of the Uruguay Round.[331] Meanwhile, at the GATT meeting in December 1994, upon the request of EC and ACP countries, a five-year waiver for the trade provisions under Lomé IV from Article I's MFN clause was granted.

6.5. Decision of 1997 WTO Panel and EU's Compliance Problem

However, complaints concerning the 1993 banana regulation of the EC continued in the context of WTO dispute settlement procedure. After the failure of consultations with the EC, on 11 April 1996, Ecuador, Guatemala, Honduras, Mexico and the US requested for a WTO Panel to be established. The Panel was created on 8 May 1996.

The Panel issued its report after a period of more than one year, on 22 May 1997. The Panel found that the licence allocation system was inconsistent with several rules of the WTO and was not protected by the so called Lomé Waiver. The EU appealed the Panel's ruling. On 9 September 1997 the Appellate Body (AB) issued is report confirming much of the Panel's findings and arguments.[332] The EU was asked to bring its banana import regime in conformity with WTO rules until 1 January 1999. Meanwhile with 1995 enlargement Austria, Finland and Sweden acceded in the EU resulting in the strengthening of the Hanseatic coalition. However, together

[330] Case C-280/93, Federal Republic of Germany vs. Council of the European Union

[331] Tangermann, "European Interests...", *op. cit.,* in *ibid*., p. 48.

[332] Josling, *op. cit*., pp. 183-184.

with Germany's low profile this time protectionist bloc was large enough to limit the reform of banana import regime.[333]

6.6. 1999-2000: Peak of the Conflict

Soon after the adoption of the so called "mini" reform Ecuador, Guatemala, Honduras, Panama and the US declared their doubtful concerns about the new version of the banana regulation with regard to WTO compatibility. In March 1999, pursuant to a bill initiated in the US Congress in January same year, however, before the assessment of the WTO about the revisions to the Regulation 404/93, the US began to impose sanctions 100 per cent duties on variety of EU exports worth some $570 million[334]

On 12 April 1999, the WTO Panel, which had been established upon the request of Ecuador held that the reformed version of the EU's banana import regime was still inconsistent with WTO rules especially concerning Article XIII and the national treatment clause of the GATS.[335] The Panel also listed three options through which the EU could bring its banana import regime in compliance with WTO rules.[336] For Stefan Tangermann this judgment made it clear that the EU could not maintain a banana regime inconsistent with the WTO for a long time onwards.

Meanwhile, in March 2000, a WTO Panel, created upon the request of EU found US' sanctions on various EU exports illegal due to the fact that their imposition began before the Panel issued its ruling about the reformed banana regulation. Despite the Commission's proposal for a new banana import system in late 1999 (see below), the conflict over bananas seemed to remain as a deadlock in the first half of the year 2000.

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[333] Cadot and Webber, *op. cit*., p. 30.

[334] *Ibid*., p. 32.

[335] Josling, *op. cit*., p. 189.

[336] Ibid., p. 190.

6.7. The Solution of the Banana Dispute

In November 1999, the Commission proposed a "tariff-only" system for the import of bananas to the EU following a six year period of transition. Initially the protectionist bloc –mainly Mediterranean countries of the EU- opposed the new system. But, the leadership of the Commission accompanied by reluctance in the Council to continue and probably escalate banana war with the US and the ultimate need to comply with WTO rules enabled the adoption of transition to tariff-only system. In 2000, the Commission offered a licence allocation system based on the principle of "first-come, first-served" instead of "historic references". When diverged reactions appeared against the Commission proposal, the bilateral EU-US agreement according to which the EU would employ a licence allocation system on the basis of "historic references" for the transitory period came as a surprise on 11 April 2001. The EU-US agreement was finally accepted by all parties to the dispute after some initial resistance from Ecuador. On 14 November 2001, a WTO waiver was granted for transitional banana import regime of the EU.

However, although the proposed system seems to be in compliance with the WTO norms from the outlook, the tariff rate that the EU will impose would likely to be a matter of controversy. Therefore, it could still be early to claim that banana wars are over. Nevertheless, the banana disputes have showed that the EU could no longer risk neither its cross-sectoral trade relations nor its global credibility over an issue in which it entered into confrontation with every other party but ACP countries.

The role of the Commission in solution of the banana dispute was vital. The Commission took the leadership role by proposing the tariff-only regime and negotiating with the US bilaterally. In was, in the final analysis, the Commission prepared the ground for the resolution of the dispute. Beside EU's own decision to introduce a tariff-only regime, two important developments paved the way for the settlement of the banana issue. The first is the change of administration in the US. More committed to multilateral trade system, Bush administration came to office in

2001. Second development was the Chiquita's position. Chiquita preferred a rapid solution as it was in a deep financial crisis.[337]

Timothy Josling offered a summary of the importance of banana wars for the international trade system and raised some open ended questions which should be dealt with seriously not only by scholars but also by lawyers and politicians:

> There is little doubt that its interpretation of trade rules will be used as a precedent for other cases that go to dispute settlement panels. But, in addition, it addresses some fundamental issues of the type of trade system that has been created in the WTO. Its subject matter, preferential access for an export crop from former colonies, is clearly rooted in the older post-war problem reconciling modulated decolonization with non-discriminatory multilateralism. But the case is also being interpreted as a test of the ability to manage the impacts of globalism are the rules agreed in the WTO to be interpreted as a legal system that has to be enforced, even if it can have unfortunate effects on certain countries or groups? Or are these rules political statements of intention that can be moderated by circumstance and from which the powerless states need occasional relief? And if the rules are treated as a legal obligation, how does this impinge on the ability of national governments to respond to constituency pressures?[338]

The course of banana wars has exemplified that the WTO has a great influence on EU's trade policies. With a stronger institutional setting particularly in dispute settlement mechanism the WTO is able to enforce its rules over its one of the most powerful members: the EC. This feature of the WTO, i.e. strong dispute settlement framework passed the severe test of bananas and seems to survive for years to come. Thus, the WTO did not "slip over bananas". The banana saga also demonstrated that the EU's actorness -whatever the nature and extent of this actorness can be- is undisputable in the case of WTO at least from the perspective of parties affected by EU's policies. Contrary to the fact that trade of bananas only accounts for a marginal portion of overall trade of the EU, it is vitally important for those countries dependent on banana exports to the EU. Thus, the EU's objective presence in almost every sector of global trade is transformed into a subjective actorness by third parties' attributions. There is no visible gap between capabilities of the EU and of

[337] Cadot and Webber, *op. cit*., p. 34.

[338] Josling, "Bananas and the WTO: Testing the New Dispute Settlement Process, in Josling and Taylor (eds.), *op. cit*., p. 170.

expectations of the third parties in case of EU's trade policy actorness. Furthermore, banana issue showed that ideological differences among Member States are central to EU's decision-making, hence affecting its actorness. In the decision-making process of 1993 banana regulation, free-trade oriented bloc could not hinder the regulation to be adopted due to their inadequacy in terms of number of seats in the Council.

CHAPTER 7

Conclusion

The relationship between the EU and the WTO has rather been a difficult one so far. It was complicated by pressures of globalism exemplified by ever increasing demands of developing countries from industrialised ones as well as the continual resistance from developed countries or regional blocs -such as the EU- to advocate their priorities which are often in clash with vital interests of the less developed states. However, a potential of a "mutual convergence" between the two institutions is not out of sight.

One of the most visible fundamentals of the interaction of two actors is the existence of "interdependence". This reciprocal relationship, on the one hand contributes the EU's capacity to act on a global scale by legitimizing its decisions or policies worldwide. Through the very mechanism of the WTO, external trade policy of the EU is brought into compliance with global principles of trade. The legitimisation of trade actions of the EU by the only and ultimate universal trade organisation grants a significant leverage to the EU. Thus, the very existence of the WTO is an invaluable opportunity for the EU in its endless aspirations for the transformation of its well-established presence in trade politics into an externally coherent actorness. An EU trade policy compatible with the WTO would not face a serious challenge which in turn increases the effectiveness of the policy to be followed. On the other hand, the impact of WTO on the EU could be in negative direction from the perspective of the EU.

This story above is a reality unless trade measures of the EU openly contradicts with principles set out by the WTO. Therefore, if the EU fails to comply with the norms and procedures of the WTO, it has always potential to become a major setback for the EU's outside image, if not the actorness, as the banana wars had well demonstrated. Thus, one of the most important limits of EU's actorness in the case of

WTO is the problem of "compliance". Yet, there is a room for optimism even in this scenario. Because, the EU is one of the most influential "policy shapers" in the WTO. The EU is – to a considerable extent- able to set the agenda within and derive certain favourable outcomes from the WTO. Even the membership status of EU Member States in WTO, in institutional sense, could not be considered as a real impediment for actorness of the EU as almost under every circumstances covered by Community competence, Member States remain silent. It is even possible to assume that the existences seats for every Member State is an indirect message which makes other members of the WTO think about the greatness of the bloc they are dealing with. Another limit for the EU's actorness in WTO context is coherence, particularly vertical coherence. As Bretherton and Vogler commented, the fragmentation in the Commission, exacerbated by the lack of mechanism(s) for the resolution of disputes between Commissioners is a grave impediment for the coherence –the only problematic requisite out of those listed by Sjöstedt- even in areas where there is exclusive community competence. Also, Member States' individual efforts to develop trade relations with third countries imperil the coherence of the EU trade policy.

Constructivism appears to be the most appropriate theoretical framework to capture the nature and extent of the actorness of the EU in the context of WTO. According to constructivism, with respect to the EU-WTO interaction, the EU could be analysed as an agent and the WTO as the structure. The EU is bound by the WTO. Put it another way, the compliance of the EU with the WTO norms is one of the principal issues concerning the EU-WTO relationship. In the final analysis, however, as constructivism contends they are the EU's own dynamics that construct the identity and shape the priorities of the EU vis a vis the WTO. The history of EU's trade policy evolution exemplifies that, the EU's internal determination was the real cause of change, despite the very existence of strong external pressures. Structures are socially constructed and subject to change through the interaction of social forces. Hence, the EU is able to change the WTO's norms and procedures as being one of the most significant agenda setters and policy shapers in the Organisation. Another important element in constructivism is that it welcomes international actors other

than states. Instead of focusing on exogenously derived interests of actors, as states-as-actor models do, constructivists try to understand the *construction* of those interests by analysing sub-state social interactions. The Commission President's role in EU trade policy, for instance, could only be analysed through this type of analysis.

To sum it can be argued that the EU is a coherent and powerful actor in the WTO framework despite the existence of typically minor and temporary limitations. In the WTO, the European Communities has its own seat and negotiates exclusively on behalf of Member States on issues where the competence handed over to the Community. In other words, the EU is a unitary actor in the WTO. Although there is a remarkable list of issues which fall under mixed competence or national competence, it is likely that the Community competence will include more issues than today as Member States already saw that it is in their advantage to pool their powers and sovereignties under the Community umbrella. It is doubtful that whether greater powers in the EU such as Germany, France or the UK could become formidable actors in the WTO context individually. Not to mention smaller ones like Luxembourg, Slovenia or Estonia. But, the concerted action of major European countries gave birth to a giant that only could be rivalled – on some grounds- by the US. Along with the US, the EU is today regarded as one of the two main actors for setting the agenda for world trade management. With this token it is highly probable that the Community competence over trade matters will grow further. Within the EU, there is an established culture with regard to the Community competence over a period of nearly fifty years which make it difficult to overturn the general political background which eventually leads (and will lead) to further enhancement of Community competence. In this matter, the role of the Commission is worth of recapitulating. Through its extensive informative network, the Commission is not only the motor of the EU, but also is the locomotive for Community competence. Beginning from its inception by the Treaty of Rome it energetically sought for the strengthening of the Community competence. Also, some Member States' reactions to this process, i.e. an intergovernmental backlash should not overshadow this dominant tendency.

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APPENDICES

APPENDIX A

Treaty of Paris (1951)

Title III Economic and social provisions

CHAPTER 10

COMMERCIAL POLICY

Article 71

The powers of the governments of Member States in matters of commercial policy shall not be affected by this Treaty, save as otherwise provided therein.

The powers conferred on the Community by this Treaty in matters of commercial policy towards third countries may not exceed those accorded to Member States under international agreements to which they are parties, subject to the provisions of Article 75.

The governments of Member States shall afford each other such mutual assistance as is necessary to implement measures recognized by the Commission as being in accordance with this Treaty and with existing international agreements. The Commission is empowered to propose to the Member States concerned the methods by which this mutual assistance may be provided.

Article 72

Minimum rates below which Member States undertake not to lower their customs duties on coal and steel as against third countries, and maximum rates above which they undertake not to raise them, may be fixed by decision of the Council, acting unanimously on a proposal from the Commission made on the latter's own initiative or at the request of a Member State.

Within the limits so fixed, each government shall determine its tariffs according to its own national procedure. The Commission may, on itsown initiative or at the request of a Member State, deliver an opinion suggesting amendment of the tariffs of the State.

Article 73

The administration of import and export licences for trade with third countries shall be a matter for the government in whose territory the place of destination for imports or the place of origin for exports is situated.

The Commission is empowered to supervise the administration and verification of these licences with respect to coal and steel. Where necessary it shall, after consulting the Council, make recommendations to Member States to ensure that the arrangements in this connection are not more restrictive than the circumstances governing their adoption or retention require, and to secure the coordination of measures taken under the third paragraph of Article 71 or under Article 74.

Article 74

In the cases set out below, the Commission is empowered to take any measures which are in accordance with this Treaty, and in particular with the objectives set out in Article 3, and to make to governments any recommendation which is in accordance with the second paragraph of Article 71:

1. if it is found that countries not members of the Community or undertakings situated in such countries are engaging in dumping or other practices condemned by the Havana Charter;
2. if a difference between quotations by undertakings outside and by undertakings within the jurisdiction of the Community is due solely to the fact that those of the former are based on conditions of competition contrary to this Treaty;
3. if one of the products referred to in Article 81 of this Treaty is imported into the territory of one or more Member States in relatively increased quantities and under such conditions that these imports cause or threaten to cause serious injury to production within the common market of like or directly competing products.

However, recommendations for the introduction of quantitative restrictions under subparagraph 2 may be made only with the assent of the Council, and under subparagraph 3 only under the conditions laid down in Article 58.

Article 75

The Member States undertake to keep the Commission informed of proposed commercial agreements or arrangements having similar effect where these relate to coal and steel or to the importation of other raw materials and specialized equipment needed for the production of coal and steel in Member States.

If a proposed agreement or arrangement contains clauses which would hinder the implementation of this Treaty, the Commission shall make the necessary recommendations to the State concerned within 10 days of receiving notification of the communication addressed to it; in any other case it may deliver opinions.

APPENDIX B

Common commercial policy

Article 110

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Article 111

(Repealed)

Article 112

1. Without prejudice to obligations undertaken by them within the framework of other international organizations, Member States shall, before the end of the transitional period, progressively harmonize the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting unani mously until the end of the second stage and by a qualified majority thereafter, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

Article 113 (*)

(*) As amended by Article G(28) TEU.

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1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

The relevant provisions of Article 228 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

Article 114

(Repealed)

Article 115 (*)

(*) As amended by Article G(30) TEU.

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorize Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorization to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

Article 116

(Repealed)

APPENDIX C

General Agreement on Tariffs and Trade (1947)

PART III

Article XXIV

Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(*c*) any interim agreement referred to in subparagraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of subparagraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of subparagraph (*a*), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or

put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(*c*) Any substantial change in the plan or schedule referred to in paragraph 5 (*c*) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (*a*)(i) and paragraph 8 (*b*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact

that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

APPENDIX D

General Agreement on Tariffs and Trade (1947)

PART I

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

(*a*) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

(*b*) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;

(*c*) Preferences in force exclusively between the United States of America and the Republic of Cuba;

(*d*) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5[339], of Article XXV which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

[339] The authentic text erroneously reads "subparagraph 5 (a)".

4. The margin of preference* on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

(*a*) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;

(*b*) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in subparagraph (*a*) and (*b*) of this paragraph shall be replaced by the respective dates set forth in that Annex.