
2 Trade policy: Is there a way back to global governance? A European view

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The EU's trade policy has been multilateral for most of the post-WWII period. Its very existence had to be justified in terms of General Agreement on Tariffs and Trade (GATT) compatibility, notably with regard to GATT Art. XXIV. The EU was a driving force behind the creation of the WTO in 1995, against considerable US scepticism. The WTO at no point aimed at free trade. Its concept was based on transparency, progressive liberalisation, non-discrimination, and individual countries' rights to set their respective border measures. Successive rounds of negotiation secured substantive reductions and bindings of import tariffs. With the creation of the WTO, these principles were extended to trade in services and to the protection of intellectual property rights.

Since the early 1960s, the multilateral system has included the concept of differentiation between developed and developing countries. It allowed the creation of preferential tariffs for the imports from developing countries, on a non-discriminatory basis. From the outset, however, the notion of developing country was never clarified and with the emergence of competitive developing country exports this question became a growing bone of contention, leading ultimately to the breakdown of the latest multilateral round of trade negotiations, the Doha Round.

In parallel, the EU has been a user of bilateral trade policies, for basic geopolitical and development policies. Under GATT Art. XXIV deeper trade liberalisation is authorised under free trade agreements (FTAs) or customs unions. Even here, the requirement was to liberalise substantially all trade, not total free trade. The EU used this derogation to the non-discrimination requirement for the creation of its own customs union, and for free trade agreements with its direct neighbours, who opted against participation

¹ The views expressed in this chapter are strictly personal and do not represent positions held by or engaging the Commission of the European Union.

in the customs union, and Mediterranean partner countries. Under development policy considerations, the EU also used Art. XXIV provisions to extend contractual preferential access to its markets for the exports of its African, Caribbean and Pacific (ACP) partners. While the Generalised System of Preferences (GSP) schemes of developed countries contributed substantially to economic growth and industrialisation of a number of emerging economies, the same cannot be said about the successive EU–ACP agreements despite the better market access conditions offered. Environmental considerations played limited roles, essentially being addressed through human health as well as sanitary and phytosanitary (SPS) requirements, to be defined by individual import markets. Global environmental concerns only started to come up in the WTO in the 1990s, and comprehensive answers were never developed.

The shift towards bilateralism

The turn of the century marked a substantial reorientation of the EU's trade policy, away from the pursuit of multilateral solutions towards a more selfish EU export interest – to be present with preferential access in rapidly growing and/or important third-country markets. This goal should be achieved through deep market liberalisation, going well beyond classical tariff negotiations. Broader public interest in the EU for trade policy led to more focus on environmental and social concerns, both human and labour rights, but equally on the role and rights of foreign investors.

The shift towards bilateralism in the EU's trade policy started with the opening of free trade negotiations with Central and Latin America at the turn of the century. While partly motivated by cultural links, these negotiations contained an element of competition between the EU and the US for market access into a sizeable emerging regional market. This competition was most directly felt by Europe in the implementation of the North American Free Trade Agreement (NAFTA), which started in 1994. In the first years of NAFTA implementation, the EU lost about a third of its exports to Mexico to US and Canadian competitors. The EU started its own FTA negotiation, concluded in December 1997, basically seeking to establish NAFTA parity in market access. By the turn of the century, the EU had largely regained its lost market share in the Mexican market. So, bilateral trade negotiations do matter. They matter mainly with regard to partner countries with relatively high most-favoured nation (MFN) tariff protection. The EU lost almost no market share in the other two NAFTA markets – the US and Canada.

It should never be forgotten that bilateralism leads to very direct discrimination. The EU experienced the consequences of NAFTA, but other countries are having similar experiences. Argentinian wine pays substantially higher import duties in the EU than its Chilean competitors simply because the EU–Chile negotiations were successfully

concluded, while EU–Mercosur negotiations had been going on for some 20 years before their recent conclusion. When the EU negotiated an FTA with Korea, it became almost impossible not to offer a similar trade regime to Japan, because both countries compete for the same, relatively protected sectors in the EU market. Or how does one justify accepting to negotiate with Mexico and Canada, but not with the third NAFTA member? And so the slippery slope away from multilateralism shows its effects. Serious collateral damage of this policy shift is felt in developing countries. Where they had benefitted from preferential market access conditions into the industrialised markets, their preferences were eroded by every new FTA. They now have no better market access than many of the most competitive export countries.

Bilateralism also creates its own, sometimes weird logic. What economic motivation can there be for the EU or the US to negotiate an FTA with a small open trading hub like Singapore? The two largest markets in the world, respectively 500 million and 320 million people, still protected even if by relatively low tariffs, and an open port city of 5 million people, which thrives as a trading platform with no access restrictions whatsoever. It is difficult to come up with an explanation other than simply concluding a negotiation, just any trade negotiation, to produce a short media hype.

Trade agreements and nontrade objectives

Are bilateral trade agreements better for the environment? At first sight, one may have this impression, because these FTAs do contain references to environmental protection. But they remain largely nominal and do not contain effective border enforcement measures, despite the growing public concern over environmental dumping. How can the EU seriously discuss the need for border protection when concluding an FTA with Canada, one of the worst performing countries with regard to greenhouse gas emissions per head, in breach of Kyoto Protocol commitments? Or concluding FTA negotiations with Mercosur, when the incoming president reduces forest protection to allow more soya and meat production at the expense of climate change and biodiversity? Or opening FTA negotiations with Australia and New Zealand, knowing the heavy reliance of both countries on exports of basic commodities produced with very limited attention to greenhouse gas emissions, water management or biodiversity?

Are these agreements more focused on social impacts? Both in the importing and exporting countries? References exist to labour rights and human rights, but again without real enforcement means. Trade has lifted millions of people out of poverty, in China, Brazil, and other emerging economies, but this has essentially been on the basis of the multilateral trading system. Under prevailing neo-liberal ideologies, employment is not a relevant criteria. The reasoning is essentially price-based and

takes a consumer perspective. The result of these policies can be seen in the US, where large parts of labour-intensive processes have been outsourced over time. It can also be seen in Germany, with the largest low-wage sector in Europe; or in the UK with the recent Brexit referendum. These policies fuel social unrest, even with substantive price reductions for large parts of consumer goods.

The worst result of this turn towards bilateralism, away from non-discrimination, is what the world is experiencing at present with the latest US president. He is taking bilateralism to its weirdest, by seeking to secure balanced bilateral trade relations. You buy as many cars from me as you export to me! A total reversal of global supply chains that have developed with the implementation of an open, reliable multilateral trading system! And all we see as a reaction are heads of government flying into Washington to either make bilateral deals under US rules or argue for temporary individual exemptions. And CEOs that would have taken legal recourse against actions by previous presidents now promise more local investment inside the US to comply with this president's tweets. That is what some may call *realpolitik*, but it greatly undermines good governance.

The EU could or should have remembered its own development – building a larger domestic market by fully integrating member states' domestic markets, defining common external border policies that were progressively liberalised over time, but sufficiently high to continue to encourage inward foreign direct investment. For 40 years this model has served the EU's economic model fairly well, establishing and maintaining its status as the largest single trading entity in the world. This model was for a long time seen as 'the third way', before it also shifted towards more standard neoliberal policies at the turn of century.

Towards greater sustainability

The EU has tried to draw on this experience in its trade relations with ACP countries during the negotiation of the Economic Partnership Agreements (EPAs). Building on regional integration systems existing in the three regions – Africa, the Caribbean and Pacific – the EU sought to negotiate trade deals that would support the strengthening of regional markets behind common borders to be gradually reduced over an extended period of time. The approach would meet WTO reciprocity requirements aiming at covering substantially all trade, while providing sufficient time to strengthen the domestic production capability for goods and services, creating domestic employment opportunities under decent work conditions. Obviously, good domestic governance and respect for rule of law are preconditions for such economic transition to be successful.

So what would be a sustainable trade policy? It would have to assess economic, social and environmental impacts simultaneously and with equal weight. For this, the UN agreed Sustainable Development Goals (SDGs) provide interesting criteria and measurable indicators. The ‘leave no one behind’ objective alone argues for multilateral rather than bilateral approaches. The global environmental impacts and the growing stream of immigrants/refugees are other serious reminders of the need for global solutions. But trade policy alone will not be capable of resolving all the issues. We need coherent, holistic policies. Without proper fiscal policies, the distributive effects of trade among nations will not be passed on to their citizens. Without closing the fiscal loopholes allowing profits to be taxed not where they accrue, but in tax havens to which they have been shifted, the budgetary capabilities of nations to address fundamental social and infrastructural needs will continue to be undermined. We are talking big money here: in the EU alone, some €150 billion lost every year.

We need to implement proper competition laws. The subsidy cases against individual tax deals for large firms brought by the European Commission are a good first step, but they need to be strengthened in the merger and acquisition policy by introducing employment considerations alongside price effects. We need to define enforcement mechanisms for truly multilaterally agreed labour rights and environmental agreements as well as fundamental human rights. We need to treat foreign investors like normal citizens, with all the commonly accessible legal recourses against national legislation and administrative decisions, but without an additional parallel recourse open to them alone. Foreign investment cannot be above generally applicable domestic social or environmental legislation. Domestic policies will need to be aligned with regard to energy production, raw material use, food production, transport policies, and international finance, to name but a few. Trade alone will not be the answer. Domestic policies are going to be equally important. As the example of Korea has shown, the transition towards democracy, labour rights, and rule of law has to be fought on the home front. But there should be support from and opportunity within a global system. Our planet needs comprehensive sustainability policies in all areas of governance. The planet needs those new policies rapidly if we are to avoid the worst negative consequences that science-based models are identifying with ever increasing probabilities.

How do we get there? Well, there is not going to be a reversal of the bilateral deals that have been struck. The only way to eliminate the growing discrimination in international trade, the increasing complexities for economic operators, to name but the rules of origin, would be to multilateralise access conditions on an MFN basis under the WTO. This remains a big challenge for all sides. I do not think that there would be political support in Europe for multilateralising the EU–Canada agreement to China, India, Brazil or Russia, even if these countries were to fully reciprocate. I do not see a willingness of the

major emerging nations to offer such important market access conditions on an MFN basis either. I wonder whether the US would be prepared to envisage such a solution, even if only least developed countries were not to fully reciprocate.

This approach will have to be tested in Geneva, by returning to the negotiating table in earnest, rebuilding confidence in a multilateral system that all actors will seek to effectively implement, and accepting serious multilateral enforcement of rules agreed via credible binding litigation procedures. I do not think there is the slightest chance for such an approach as long as the race towards bilateralism is on. But the world needs a better trading system! Basically, we all know that multilateralism is the better solution, so why would anyone want to stubbornly continue further down the slippery slope of bilateralism?

About the author

Karl Falkenberg enjoyed a long career as an EU Commission official. He joined the Commission in 1977 as a textile negotiator. He experienced both multilateral negotiations in the WTO and bilateral trade negotiations with a wide range of developed and developing countries. In 1990 he joined the Jacques Delors as Advisor on German Unification and External Relations. He negotiated the WTO Protocols on Telecommunications, Financial Services, Maritime Transport and Audiovisual Services. From 2009 to 2015 he was Director General for Environment, covering domestic and international issues. He developed circular economy concepts for Europe, starting with better implementation of the major separately collected waste streams. He was the lead negotiator for the EU in the UN process leading towards the SDGs. In 2016, he presented a report on European implementation of SDGs to the Commission, called 'Sustainability Now'. Karl retired from the Commission in July 2017, and works since then as an independent consultant and lecturer on sustainability issues.