
6 A personal history of EU trade policy

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This chapter reflects on my experiences in the area of EU external policy, and in particular in the management of the EU's external trade policy and negotiation of trade agreements. In the writing process, it has also become a brief review of how EU external policies developed from its beginnings in the Treaty of Rome to the global instrument it now is. I focus on the period 1970 to 1995, when I had direct experience of the EU's involvement in major multilateral negotiations in General Agreement on Tariffs and Trade (GATT); and to set that period in its historical perspective as well as to add some reflections on later developments after the WTO was established.

One caveat to the reader. The process of developing an external policy in any country is usually a gradual one, to some extent dictated by events. In the EU a network of relationships and policies towards third countries and the global community had to be developed in tandem with the creation of its internal structures; and it was shaped largely over a relatively short period of about 30 years, in parallel with its emergence as a major player on the international trade scene. To an extent, this was working at breakneck speed.

European Economic Community external policies

Any study of the European Economic Community (EEC) external policy has to begin with the provisions of the Treaty of Rome itself. This is appropriate since trade and development play a central role in the Treaty, both as a key element in the internal construction of the Community and in its relations with third countries. In its preamble there are already references to removing barriers to international trade and, given existing links between Europe and overseas countries, to its desire to ensure their development and prosperity. In context this meant the former colonial possessions in Africa of the six founding member states, but the seed of attitudes towards 'less-developed countries' in general was already planted.

Articles 2 and 3 spell out the tasks and policies of the Community which are heavily focused on internal and external trade. Policies are specifically established for a common customs tariff and for a common commercial approach to be applied to trade with third countries; and common policies for agriculture (regulating both production and external trade) and for transport (by air, by sea and by rail) were also established.¹ Development policy was equally an important external activity, stemming from Part Four of the Treaty. The initial focus, maintaining good relations with its former colonies, was broadened to include association agreements with Mediterranean countries and generalised policy support for developing countries through the United Nations Conference on Trade and Development (UNCTAD) and the provision of bilateral aid.

In consequence, external policy developed rapidly in two directions: external relations with wider relationships with other countries, and external trade policy driven by the need to interact with main trade partners. Commercial policy was at the centre of developments as the Community moved from bilateral relations with its neighbours towards major trade relationships with the US and Japan, and also to participation in multilateral negotiations under the aegis of the GATT.

Trade agreements

It was natural that the first area of the European Economic Community (EEC) external activity was an opening to the external world through the trade agreements with Greece and Turkey, neighbouring countries, in the early 1960s. In parallel, it engaged with GATT members as the Treaty of Rome came under scrutiny in Geneva, and the Community participated in multilateral negotiations in the Dillon and Kennedy rounds. The reason for this is easy enough to see: the EEC from the start was defining itself as a customs union that was compliant with the provisions of GATT. In consequence, its approach to international trade and its decision-making structure for trade matters became the first plank in its external policy. Through its participation in negotiations at the international level, the Community rapidly became a key player in trade matters and created a strong external policy position in international bodies.²

A second, more structural reason why trade became the central feature of the early external policy was that the common policies on trade and measures taken in this sector promoted the construction of the Community. Other policies for agriculture – focused

1 Treaty of Rome, Article 3 (b) (d) and (e) on original common policies, and Articles 110 – 116 on commercial policy. Development Policy is found in Part Four.

2 Article XXIV in GATT 1947. The strategy was later described as follows: “The introduction of the Common External Tariff would allow the EEC to be identified as a single customs entity vis-à-vis the rest of the world, [and designed] so as not to infringe GATT rules”. Cited from the official Commission History.

first on production, not trade – and for transport were implemented more slowly, while policies on internal matters such as competition and industrial development were developed later still. Years later, a senior Community official of the 1960s expressed his opinion: “I do not believe the authors of the Treaty foresaw the scale of the Community’s role in the world [at the time the commercial policy articles were drafted]”. In fact, by the time of the Kennedy Round (1964) and the first enlargement (1973) the EEC already accounted for 40% of world trade.³

Development policy

Another key component of the EEC external policy, equally mentioned in the preamble to the Treaty, was ‘overseas development’. This was implemented through Part Four, which sets out the provisions applicable to the French and Belgian colonial territories in Africa, and was closely linked to the debate about post-colonial responsibilities being developed by the United Nations. The legal basis for the policy was later consolidated by international treaties, such as the Yaoundé and Lomé Conventions, and its geographical scope was broadened in the 1970s, first by extension to the African, Caribbean and Pacific (ACP) former British colonies, then by Association agreements with Mediterranean countries.

Bilateral and plurilateral relations were also strengthened by the Community’s and member states’ provision of development aid. It is frequently said that the EU is the leading donor, or even the largest donor, of such aid in the world, and analysis of the OECD data on aid as a proportion of gross national income supports that view. While the absolute figures are high, it is also true that there are duplications between EU and member state programmes which reduce the effectiveness of the aid. Thus, in its formative years the Community was clearly driven by economic and trade factors which were at the heart of its need to establish its place in the international world. Commercial policy and trade arrangements were the principal areas of construction, with the development of industrial and social policies taking a second place.

Trade negotiations

A major purpose of this chapter is to uncover and put on record the mechanics of trade negotiations – the political/legislative process by which they are initiated, how they are prepared by sorting out preliminary problems, and how they are conducted in bilateral and multilateral contexts.

3 Edmond Wellentein, the first Director General for Trade, from 1958-1972, cited in the same history.

It is obvious that negotiations in different fora, on different subject matter and in different policy contexts will vary considerably. Multilateral negotiations in GATT for example would have involved 50-60 countries in the 1960s/1970s and would include both detailed bilateral and general exchanges on tariffs as well as broader discussion of rules. In the development context some policy elements depended on unilateral decisions – the Generalised System of Preferences (GSP), for example – although they were applied within a multilateral framework of agreed principles. The OECD discussions on development assistance (aid) followed a similar path.

What this implies is that there is no ‘one size fits all’ approach which provides guidance across the board on how to initiate, prepare, and conduct a negotiation. A case-by-case approach is inevitable. Furthermore, the domestic statutory requirements for embarking on negotiations with another country will usually be quite different, as they are today in Europe and the US. Let us see what happens.

Initiating a deal

Historically, the negotiation of a trade agreement starts from a move to seek a closer relationship with neighbouring countries, whether to deepen a political linkage or to gain some economic advantage. No doubt, often both. This was the genesis of early EEC contacts with Switzerland -almost surrounded by the Community – and of the EU agreements with Greece and with Turkey; and with the European Free Trade Association (EFTA) group (formed in 1962) and with a number of Mediterranean countries. The economic objective would be to build on the existing trade flows and on the fact that the two parties have an interest in trading with each other.

These agreements date from 50 years ago, and it is immediately obvious that the process of preparation, domestically or with the partner, was in those days less intensive than it is now. Stakeholders and civil society groups were not yet visible; and even the industrial and agriculture trade lobbies were less demanding. In a world where high tariffs and many restrictions were still common, liberalisation was a shared general objective. Much of the lobbying activity was done at the national level rather than the European level. In agriculture, where agreements included mechanisms for support and market creation as well as border protection, things were livelier. In actual practice, the feedback from a consultation process came mostly from the member states that were sitting at the table.

Domestic consultations which would confer democratic legitimacy to the negotiation were relatively rare. In theory a process between government and parliament leading to a political decision would be required to ensure passage of legislation. However, in the

EEC context in 1973, there were nine governments in one Council and no Parliament; legitimacy and political decision was a simpler affair. Ministers were representative of their country and were expected to have secured an agreement domestically by whatever customary process existed. The Commission, after consulting members, would seek a mandate from the Council of Ministers with no further democratic underpinning – leading to criticisms that there was a ‘democratic deficit’ – which at that stage there was.⁴

My first experience of this system was when the Commission was seeking a mandate for the Tokyo Round in 1973. The original mandate was short, no more than a page or so; and it did not commit anyone to any specific result, it was more a green light to participate on the basis of a fairly vague agenda, such as “a substantial reduction in tariffs and other barriers” or to secure a “Free Trade Agreement on goods, in accordance with GATT rules” if a bilateral agreement was envisaged.

These broad objectives were written up into a longer statement of intent in the trade ‘113 Committee’ where member states’ role was “to assist the Commission” in the negotiations. In 1973, rather surprisingly, this longer version was then written into the record of the GATT Preparatory Committee which was preparing the Ministerial Conference to launch the Round. Thereafter the Commission was expected to get prior agreement before making specific proposals, and to report back to members regularly on progress made.

Further preparation

The mandate process described is part of the political preparation, but at another level the preparations involved the collection and analysis of trade flows with other participants, on the basis of whatever detailed trade statistics could be found. Data were required for each individual product (5,000 items) and for each main sector (99 chapters), and average duties were calculated weighted by the trade where possible. This was always laborious, in the days before a single tariff nomenclature had been agreed, and before the Harmonised System of 6-digit or 8-digit identification of products was established. I can recall large sheets of graph paper with rows and columns and numbers written in in pencil – with subsequent revisions. Computer programmes for statistical purposes were being developed on an ad hoc basis according to many different policy priorities. We had to fight our corner for external trade against all other customers. We did what we could.

⁴ Even in later years when there was an elected parliament, it did not have a direct role in matters related to trade negotiation until the Lisbon Treaty in 2009.

Conduct of negotiation

Within the EEC the role of the Commission had been established during the GATT examination of the Treaty of Rome and in later tariff negotiations. It had the sole right to launch a negotiation proposal and was sole negotiator with third parties. This was designed for multilateral purposes, but the process was adapted for a bilateral agreement. In my time, the EEC-EFTA agreements had been signed and sealed, negotiated largely by the Commission officials responsible for the bilateral relationships. The agreements then had to be examined and defended in Geneva, which was my role; and data had to be available to prove that “substantially all the trade” was indeed covered by the deal, as requested by GATT Article XXIV.

The changing nature of trade

My observations so far draw from my experience of the EU some 50 years ago, and it is clear that much has changed in the trade agreement world since then. We know that the global economy has seen massive changes, with the advent of the internet supplying instant communication and universal access to information; and we know that globalisation has impacted on financial and economic relationships. International trade has not been immune to these effects, but I believe they have been compounded by other specific developments.

One change that has occurred was the result of the extension of the WTO rules from goods trade to trade in services, following the adoption of the General Agreement on Trade in Services (GATS) at the end of the Uruguay Round in 1994. The primary effect of this was to bring a wide range of service activities within the international rulebook, in many cases activities that primarily supply a service in the domestic economy, but which have more recently been developed to provide cross-border services into another country. These activities were then subject to different control mechanisms since physical checks at the border would no longer be possible.

Another change has been the alteration in the pattern of international trade due to globalisation and the advent of value chains. Previously, a nation’s trade was organised as a function of its production and involved bilateral linkages and exchanges from one market to another. In the *new order*, trade flows include inputs and intermediate products into the production process, with flows entering and then transiting the country on the way to another market. This raises new issues related to the origin of goods and services and their compliance with different sets of national standards.

These shifts in the composition and patterns of trade began to affect the public perception of trade policy and their expectations in relation to the content of trade agreements. The changes in the focus and context of trade began to be perceived by consumers as trade-related, and policy areas such as health and education or environment and climate change, previously seen as matters of domestic concern, were now thought to be part of core trade policy.

A much wider range of regulatory controls followed with a focus on transparency and on techniques such as impact assessments, aimed at checking the consistency of policy against a new set of parameters. This in turn created a situation where new stakeholders emerged – consumer lobbies and civil society began to influence the way that trade agreements were prepared and the process that conferred a degree of democratic legitimacy.

In my own experience, this shift in the process of managing a trade negotiation first became evident early on during the Transatlantic Trade and Investment Partnership (TTIP) negotiations in 2014-2017 between the EU and the US. Since 1995 the EU had begun to adapt its free trade agreements to include provisions on services. The Americans also adapted the North American Free Trade Agreement (NAFTA) to the services context, but elsewhere the changes due to GATS and their implications seemed to move more slowly.

A major exponent of this shift and its implications for trade has been Pascal Lamy, the former Director General of WTO, who has described it as a moment of transition from the ‘old trade world’ to a new trade order where changes will bring a radical 180-degree turn around from producers to consumers, and from protection to promotion. Producers hitherto had been concerned to secure new benefits from trade agreements either to increase their exports or to protect themselves against low-cost competition by imported goods.

In future, consumers and civil society groups would set aside such concerns and look to promote policy change on global issues by incorporating new obligations in trade agreements. The pressures created on their own government (or the EU) would provide new leverage to press a trade partner to accept their own norms as a condition of continued market access or to agree in the reverse direction to allow their norms to be adapted.

References

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