THE EU’S COMMON COMMERCIAL POLICY
To Kathleen
The EU’s Common Commercial Policy
Institutions, interests and ideas

MANFRED ELSIG
University of Zurich
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When I began my research project on EU foreign trade policy in 1999, I had a vague idea of the challenges awaiting me. However, I did not expect to encounter such a multitude of interesting facets in a prime facie 'technocratically' dominated policy field. In the years prior to returning to academia, my first visits to the Commission and EFTA headquarters in Brussels was as a young trade diplomat. These were fascinating experiences which sparked a desire to spend more time uncovering the mechanisms and patterns behind this pleasant but chaotic and rather opaque environment. At the time, I did not anticipate that these nagging interests would send me back to University to spend three years seeking answers to my many questions.

This book, which flows out of a PhD project at the University of Zurich, attempts to offer to a broader audience an institutional perspective on the EU's Common Commercial Policy. This is accomplished by providing a framework for analysis, which bundles together approaches from neighbouring disciplines and aims to highlight the paths interests and ideas take in the current EU policy-making environment. The case-studies guide the reader through the current mechanisms in place at the EU level and offer an overview of the challenges the EU is awaiting in light of enlargement.

Numerous people have supported me in my endeavour to whom I would like to express my gratitude. First of all, thanks goes to my family and friends for understanding my physical disappearance for many months, their caring words and their constant encouragement.

Special thanks goes to my interview partners at the European Council, the European Commission, the European Parliament, participants of Art. 133 Committee meetings and members of Brussels-based think tanks and consultancy offices. I very much appreciated the time they took to answer my numerous questions, be it by way of telephone, in their offices, surrounded by piles of EU documents, or in a fancy Hotel bar, where the local beer helped liven the interview. A particular thanks goes to Frans Andriessen, Hans-Friedrich Beseler, Lord Leon Brittan, Kerstin Bollmann, John Clarke, Nicholas Clegg, André Donnadou, Karl Falkenberg, Jorge Nuñez Ferrer, Robert Madelin, Rolf Möhler, João Pacheco, Allan Rosas, Okka-Pekka Salmimies, Rupert Schlegelmilch, Murray Smith, Tom Smith and Carlo Trojan for their time and openness.

Further, I gratefully acknowledge the support of Dieter Ruloff and my colleague at the institute, Sandra Lavenex, who provided an open ear for my periodical doubts on research questions, methodology and the scientific surplus value of my writing.
For comments on earlier drafts and individual sections of the book, I would like to thank Simon Hug and Jörg Monar. Many thanks is also due to the participants in the ECPR Summer school on ‘EU’s External Capability and Influence in International Relations’, Geneva, August 2000; and in the Summer school of the ECPR Standing Group on Analytical Politics and Public Choice in Konstanz, September 2000.

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My greatest debt of gratitude goes to my wife Kathleen Elsig, who spent days and nights engaged in proof reading and patiently put up with me during a particularly stressful and challenging time of my life.

M. Elsig, Konstanz, May 2002
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific countries</td>
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<td>AoA</td>
<td>Agreement on Agriculture</td>
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<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
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<tr>
<td>BSE</td>
<td>bovine spongiform encephalitis</td>
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<tr>
<td>BverfG</td>
<td>Bundesverfassungsgericht</td>
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<tr>
<td>CAP</td>
<td>Common Agricultural Policy</td>
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<td>CBI</td>
<td>Confederation of the British Industry</td>
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<td>CCP</td>
<td>Common Commercial Policy</td>
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<td>CDU</td>
<td>Christian Democratic Union</td>
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<td>CEEC</td>
<td>Central and Eastern European Countries</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>COREPER</td>
<td>Committee of Permanent Representatives</td>
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<td>CSU</td>
<td>Christian Social Union</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>DGB</td>
<td>Deutscher Gewerkschaftsbund</td>
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<td>DSU</td>
<td>Dispute Settlement Understanding</td>
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<td>EC</td>
<td>European Community</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECPR</td>
<td>European Consortium for Political Research</td>
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<td>ECSA</td>
<td>European Community Studies Association</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>EFTA</td>
<td>European Free Trade Area</td>
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<td>EMU</td>
<td>Economic and Monetary Union</td>
</tr>
<tr>
<td>EP</td>
<td>European Parliament</td>
</tr>
<tr>
<td>EPC</td>
<td>European Political Co-operation</td>
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<td>EPU</td>
<td>European Political Union</td>
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<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EURATOM</td>
<td>European Atomic Energy Community</td>
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<tr>
<td>Abbreviation</td>
<td>Definition</td>
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<tr>
<td>FAO</td>
<td>Food and Agricultural Organization</td>
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<td>FDI</td>
<td>foreign direct investment</td>
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<td>FSAP</td>
<td>Financial Services Action Plan</td>
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<td>FSC</td>
<td>Foreign Sales Corporations</td>
</tr>
<tr>
<td>FT</td>
<td>Financial Times</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Area</td>
</tr>
<tr>
<td>FTAA</td>
<td>Free Trade Agreement of the Americas</td>
</tr>
<tr>
<td>GAC</td>
<td>General Affairs Council</td>
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<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement of Tariffs and Trade</td>
</tr>
<tr>
<td>GDP</td>
<td>gross domestic product</td>
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<tr>
<td>GMO</td>
<td>genetically modified organism</td>
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<td>IGC</td>
<td>Intergovernmental Conference</td>
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<td>IGO</td>
<td>Intergovernmental Organization</td>
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<td>IHT</td>
<td>International Herald Tribune</td>
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<td>ILO</td>
<td>International Labor Union</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>IP</td>
<td>Intellectual Property</td>
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<tr>
<td>IPE</td>
<td>International Political Economy</td>
</tr>
<tr>
<td>IR</td>
<td>international relations</td>
</tr>
<tr>
<td>ISPA</td>
<td>Instrument for Structural Policies for Pre-Accession</td>
</tr>
<tr>
<td>JHA</td>
<td>Justice and Home Affairs</td>
</tr>
<tr>
<td>LDC</td>
<td>Least Developed Countries</td>
</tr>
<tr>
<td>LI</td>
<td>liberal intergovernmentalism</td>
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<tr>
<td>M&amp;A</td>
<td>Mergers and Acquisitions</td>
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<tr>
<td>MEA</td>
<td>Multilateral Environmental Agreement</td>
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<td>MEP</td>
<td>Member of the European Parliament</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Area</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organization</td>
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<tr>
<td>NI</td>
<td>new institutionalism</td>
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<tr>
<td>NTB</td>
<td>non-tariff barrier</td>
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<tr>
<td>NZZ</td>
<td>Neue Zürcher Zeitung</td>
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<tr>
<td>OECD</td>
<td>Organisation of Economic Co-operation and Development</td>
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<td>OJ</td>
<td>Official Journal</td>
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</tbody>
</table>
List of Abbreviations

QMV qualified majority voting
R&D research and development
RC rational choice
SAPPARD Special Accession Program for Agriculture and Rural Development
SEA Single European Act
SI supranational institutionalism
SPS sanitary and phytosanitary measures
TBT technical barriers to trade
TEC Revised Treaty of Rome (Treaty of the European Community)
TEU Treaty on European Union
TNC Transnational Corporations
ToA Treaty of Amsterdam
ToN Treaty of Nice
TPA Trade Promotion Authority
TPRM Trade Policy Review Mechanism
TRIPS Trade Related Intellectual Property Rights
TRIMS Trade Related Investment Measures
UK United Kingdom
UNCTAD United Nations Conference on Trade and Development
UNICE Union of Industrial and Employers’ Confederations of Europe
US United States
USTR United States Trade Representative
VAT value added tax
VER Voluntary Export Restraint
WEF World Economic Forum
WEU Western European Union
WTO World Trade Organization
Chapter 1

Introduction

That is to say, that her sacred royal majesty of Great Britain shall, in her own name, and that of her successors, be obliged, for ever hereafter, to admit the wines of the growth of Portugal into Britain; so that at no time, whether there shall be peace or war between the kingdoms of Britain and France, anything more shall be demanded for these wines by the name of custom or duty, or by whatsoever other title (Art. II of the Treaty of Commerce between England and Portugal concluded in 1703).

Adam Smith (1776)

The 2000 intergovernmental conference (IGC) provided the EU with an opportunity to find an institutional solution to the approaching challenges of the new millennium. The negotiations, which cumulated in the Treaty of Nice (ToN), focused largely on the weighting of national votes and the size and composition of the Commission. Against the background of these highly publicized matters, the decision to move to qualified majority voting (QMV) in numerous fields remained largely unnoticed. Further, the Common Commercial Policy (CCP) underwent substantial modifications on the French Riviera, which account for the most extensive changes in CCP since the original Rome Treaties in 1957. In Nice the institutional debate centered on the partition of competence in the field of CCP between the Community and the member states. This debate would, however, not be of a comparable importance had the external role of the European Union (EU) not gained in importance since the fall of the Berlin wall.

The way in which the new provisions will strengthen the Commission’s negotiation flexibility or the member states’ control in day-to-day policy-making is still controversially debated. Further, numerous questions arising from comparisons between the outcomes of the Treaty of Nice and the Treaty of Amsterdam (ToA) must be clarified. For example, what accounts for the sudden turn on the part of the member states to grant the Commission greater flexibility in negotiations on WTO provisions, especially given the numerous attempts by the Commission to drop the unanimity condition in particularly sensitive areas in the pre-Nice period? Had the negotiator already forgotten that not even the European Court of Justice (ECJ) showed willingness in the early 1990s to support the Commission in its quest for greater competency in international trade negotiations (Opinion 1/94)? Without entering the debate at this stage, it must be pointed out that changes in CCP can only be explained by a more in-depth analysis of the main actors’ positions and the institutional environment they are embedded in, as well as
by examining opposing focal points around which actors' preferences converge. A comparison between the results of the IGCs of Amsterdam and Nice will be carried out in this book.

This introductory chapter outlines the emerging role of the Community in world politics in general and trade diplomacy in particular. The rationale of analysis used throughout this book can only be understood when the Union's foreign trade policy is seen in relation to ongoing debates on the EU's role in the world community, its challenges ahead (known as widening) and the internal structure of policy-making (known as deepening). Thus, chapter one sets out the external and internal dimensions of EU foreign trade policy.

I have chosen to focus on several overlapping debates in order to view the EU's external role from both an internal and an external perspective and prepare the reader for the theoretical arguments presented in this book. The external dimension examines the evolving role the Community plays and the challenges attached to the status of an emerging superpower. The closer examination of the internal dimension concentrates on decision-making modes and on institutional debates, which have characterized EU foreign trade policy since its beginnings. The chapter ends with a presentation of the research interest and the corresponding research question, as well as the path the author plans to lead the reader down.

The external dimension

Europe's role in international politics has evolved substantially over the past two decades (see Bretherton and Vogler, 1999; Cameron, 1998; Jupille, 1999; Rhodes, 1998). The latest developments towards a common European foreign and security policy (CFSP) are an unequivocal sign of an ever-closer union (Dinan, 1999). Former US Secretary of State Kissinger's well-known question 'who to call in Europe?' might receive a slightly different answer today than two decades ago, as the names of representatives of EU institutions appear more frequently and higher up on the list of the main interlocutors. These changes aside, in 1996 a prominent representative of the Clinton era of US foreign policy accused European leaders not to have picked up the phone when urgent common action was necessary during the Bosnian war. During the IGC leading to the ToA, the heads of government and state tried to counter increasing criticism regarding the efficiency of the EU's foreign policy by creating a coordinator position in the second pillar (CFSP). This would allow the channelling of the many diverging views of the 15 foreign ministries through one common platform, presenting a more coherent EU position towards the outside world. Former NATO Secretary-General Javier Solana filled this new post. Optimistically speaking, the High Representative for the CFSP and his Brussels offices could eventually evolve into the primary spokesperson for the EU's foreign security policy, thereby merging à la longue the simultaneous voices of Downing Street, l'Elysée and the new Kanzleramt into one. In reality, however, a pessimistic view still dominates. This view sees the newly created coordinator of the member states' foreign policy solely as a response to the criticism directed at
the lack of coherence in the member states' foreign policy, and predicts no substantial changes regarding the making and origins of foreign policy.9

From a political dwarf to a superpower?

The European Union has gained substantial weight in world politics over the past few decades. The gradual evolution of a common foreign policy in the EU was preceded by the establishment of a common foreign trade approach. Foreign trade policy has been a stronghold of the Community since the early days of integration. It developed out of a functional necessity to unify foreign trade relations in the prospect of a single European market in the late 1950s. The EC's external trade relations have been coordinated in Brussels with a strong role attributed to the Community in general and the Commission in particular.10 Security concerns played a role in the founding of the integration project, however, security policy remained in the exclusive sphere of competence of member governments during this time.

In reaction to overly realist work, Duchêne (1972) introduced the notion of the EC as a 'civilian power'. This idealist-normative response highlighted the economic and legal leadership and thus indirectly the persuasiveness of economic growth and the promotion of cultural and civic achievements, such as human rights. The trade agreements with African, Caribbean and Pacific (ACP) states (Yaoundé and Lomé Conventions) were often alluded to as an example of representing a new global approach to trade and democratic developments in the North-South relationship. The realist-type reaction to picturing the EC's external capacities in such a positive light pointed to the need for military strength to play a significant role and be able to shape the international agenda (Bull, 1983). He called the EC a 'strange superpower' and attacked the notion of 'civilian power' as contradictory, as any power needs military force to credibly pursue its interests. The Community's foreign policy instruments were biased towards economic issues by default. The 'political dwarf' – as many realist scholars derogatorily viewed the EC in the 1980s – nevertheless began to play a more prominent role in world politics as economic issues increasingly challenged the primacy of security issues on a global scale. Thus, what realists failed to foresee was that national interests could be largely promoted by scoring well on the global market. Economic growth was a prerequisite – not only in East-West relations – to hegemonic dominance. Thus, the IR discourse began to more broadly accommodate economic interdependence in the 1980s (Keohane, 1984).

The EC's role on the world stage was consolidated as a result of two important developments: a qualitative leap in world trade regulation as a result of the Uruguay Round and movements within the EC towards an ever closer union due to the Single European Act (SEA) and the Treaty on European Union (TEU). The role of a 'joint supervisor of the world economy' has been emphasized when describing Europe's international presence (Hill, 1993, p.314). In other areas, such as CFSP, a gap between expectations and capabilities to act was periodically highlighted (Hill, 1993; Ginsberg, 1999). High expectations of CFSP are increasingly raised as it is
widely accepted that the US, as the sole remaining superpower from the Cold War era, can not solve international conflicts alone. This debate, however, hides the fact that in the financial and economic sector the EU has become more than just a junior partner.

**The EU and the US in comparison**

The architecture of the world financial and trade order is highly dependent upon close cooperation between the two economic superpowers. Trade disputes, which have emerged anew over the past few years, seem not to endanger the increasing intertwining of the transatlantic markets (see Peterson, 2000). Bergsten (1999) has gone as far as to announce the age of the so-called G2 regime. Whereas realists still see Europe as a 'military protectorate of the United States (Brzezinski, 2000, p.18)', they acknowledge that the junior partner is on the verge of becoming a true partner in global public policy. Table 1.1 illustrates the economic leverage of the EU in regards to trade in goods and in services. Besides the shares in world trade, the origins and destinations of Foreign Direct Investment (FDI) indicate the increasing role the EU plays in world trade and financial affairs.

**Table 1.1 Import/Export: merchandise and services**

<table>
<thead>
<tr>
<th></th>
<th>Percentage share of world trade in</th>
<th>Merchandise in USS billion (in % of world trade in merchandise)</th>
<th>Services in USS billion (in % of world trade in services)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exports</td>
<td>Imports</td>
<td>Exports</td>
</tr>
<tr>
<td>EUc</td>
<td>49.3</td>
<td>47.9</td>
<td>2 180</td>
</tr>
<tr>
<td></td>
<td>(51.4)</td>
<td>(49.7)</td>
<td>(18.8)</td>
</tr>
<tr>
<td>EUd</td>
<td>n/a</td>
<td>n/a</td>
<td>796 (18.8)</td>
</tr>
<tr>
<td>US</td>
<td>17</td>
<td>21.2</td>
<td>695 (16.4)</td>
</tr>
<tr>
<td>Japan</td>
<td>8.6</td>
<td>7.3</td>
<td>419 (9.9)</td>
</tr>
</tbody>
</table>

**Notes:**
- a: in 1999
- b: world total includes EU's intra-trade flows
- c: includes intra-trade
- d: intra-trade flows deducted
- n/a: not available

**Source:** WTO international trade statistics 2000, own calculations.
Figures 1.1 and 1.2 show FDI inflows and outflows in the second half of the 1990s.

**Figure 1.1** FDI inflows (in billions of US$)


Outward flows of FDI from EU countries rose significantly in 1999 and were more than three times higher than US outflows. Inflows developed at about the same speed. The UK became the largest outward investor in the world, reaching US$ 199 billion in foreign investments in 1999, driven mainly by cross-border acquisitions. The US attracted the largest inflows of FDI. Whereas Japan attracted the largest annual inflow of FDI in its history in 1999, in a cross-country
comparison it placed 14th in that year. Japan's outflow, due to M&A deals, is traditionally much higher (9th), but declined in 1999 due to the Asian crises (UNCTAD, 2000).

![Figure 1.3 Cross-border M&A (in billions of US$)]


**Figure 1.3 Cross-border M&A (in billions of US$)**

The development of FDI is largely dependent upon mergers and acquisitions, which fluctuate highly in number and scale. Therefore the ranking of the countries in terms of FDI outflows undergoes substantial annual variations. Figure 1.3 shows the development of cross-border M&As in the 1990s. From 1997 on TNCs based in the EU have taken the global lead in M&A activities.

Table 1.1 and Figures 1.1-1.3 have indicated that the EU has become far more than a junior trade partner of the US, however, substantial areas remain in which the EU lags behind its main competitor, such as in research and development expenditures (R&D). Table 1.2 compares additional data from the US, the European Union and Japan.

US private business invests some 80 per cent more in R&D development than EU member states together. The US further leads the race for most Nobel prizes in the areas of natural sciences and economics. In regards to stock market capitalization, a vast gap exists between the US and its main trading partners. Military expenditures in 2000 were far lower than at the beginning of the 1990s for most developed countries. The US still accounts for the largest expenditures in this area among the three main commercial powers. Within the EU, the four largest countries (FR, UK, DE, IT) account for 77 per cent of all EU military expenditures.
Japan still spends relatively little of its budget on military affairs. Regarding foreign aid, the EU and Japan have long been leaders in terms of amount spent in relation to GDP.\textsuperscript{12}

**Table 1.2 The Big Three compared**

<table>
<thead>
<tr>
<th></th>
<th>US</th>
<th>EU</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock Market Capitalization (1999 in US$ billion)</td>
<td>16 635.1</td>
<td>9 091.2</td>
<td>4 546.9</td>
</tr>
<tr>
<td>Total expenditure on R&amp;D (1999 in US$ billion)</td>
<td>243.5</td>
<td>159.8\textsuperscript{a}</td>
<td>141.7</td>
</tr>
<tr>
<td>From Business (in %)</td>
<td>184.4</td>
<td>101.9</td>
<td>94.8</td>
</tr>
<tr>
<td></td>
<td>(75.7)</td>
<td>(63.8)\textsuperscript{a}</td>
<td>(66.9)</td>
</tr>
<tr>
<td>Nobel Prizes since 1950 (2000)\textsuperscript{b}</td>
<td>197</td>
<td>116</td>
<td>5</td>
</tr>
<tr>
<td>Official Development Assistance (1999 in US$ billion) (ODA in % of GDP)</td>
<td>9.1</td>
<td>26.4</td>
<td>15.3</td>
</tr>
<tr>
<td></td>
<td>(0.10)</td>
<td>(0.31)</td>
<td>(0.35)</td>
</tr>
<tr>
<td>Military expenditures (2000 in US$ billion)\textsuperscript{c}</td>
<td>296.4</td>
<td>173.3</td>
<td>37.8</td>
</tr>
</tbody>
</table>

**Notes:**
\[\text{a: without Luxembourg} \]
\[\text{b: awarded in physics, chemistry, physiology or medicine and economics} \]
\[\text{c: at 1998 prices and exchange rates} \]


As external expectations of the EU’s foreign policy grow and increasingly gain the attention of the European public, the intra-European discourse on the scope and influence of European politics on the outside world intensifies (Hill, 1993; Strange, 1998; Hanson, 1998). This phenomenon has in turn led to growing scholarly interest in the mechanisms of EU decision-making in external relations. However, it would be logical to first study the real impact of EU decisions on third countries before engaging into lengthy research projects on internal EU decision-making mechanisms.\textsuperscript{13} In other words, ‘actorness’ or the act of taking part in international politics is easily assumed. The real ‘presence’ and impact of an actor’s decision on an international scale is, however, more difficult to trace and assess. Besides the literature on ‘Europeanization’ (see chapter three), research is increasingly turning to the phenomenon of the ‘extraterritoriality’ of EU legislation. Its impact can be observed on a global scale, such as in competition policy, or on a regional scale, such as immigration policy due to ‘fuzzy borders’ (Christiansen et al., 2000). Thus, every examination of the EU’s external impact should be preceded by a study on the perception of the Union’s presence by third countries.\textsuperscript{14} Further, the perceptions...
of external observers regarding decision-making procedures within the EU help scholars move toward posing important research questions and making fruitful contributions, as institutional modes and their impact on the policy outcome are merged.\(^1\)

**Eastern Enlargement – rhetoric and action**

The Union's role in world politics in general and international trade diplomacy in particular will continue to increase in the 21st century largely due to the impact of Eastern Enlargement. The number of market participants will jump from around 380 million today to over 450 million after a first intake of new entrants from Central and Eastern Europe (see Table 1.3). A look at GDP levels shows that the EU is moving closer to the US.

**Table 1.3 Impact of Eastern Enlargement\(^1\)**

<table>
<thead>
<tr>
<th></th>
<th>US</th>
<th>EU</th>
<th>EU+</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population (in million)</td>
<td>275.6</td>
<td>377.8</td>
<td>451.6</td>
<td>126.5</td>
</tr>
<tr>
<td>GDP (at PPP/US$ billion)</td>
<td>9 225</td>
<td>8 025</td>
<td>8 604</td>
<td>2 950</td>
</tr>
<tr>
<td>GDP per capita (at PPP/US$)</td>
<td>33 586</td>
<td>21 241</td>
<td>19 050</td>
<td>23 311</td>
</tr>
</tbody>
</table>

Source: CIA the World Factbook 2000, own calculations.

The prospect of an enlarged Union had some impact on the outcome of the last two IGCs, as the internal decision-making processes came under increased scrutiny. 'Enlargement will prompt further institutional changes beyond the purely mechanical and thus the institutional status quo is almost certainly not an option or a probable outcome' (Wallace, 1996b, p.38). In the debates leading to the Amsterdam Treaty, the Enlargement project was often referred to. The Council applied flawed and overly generalized rhetoric at the outset of the IGC, drawing attention to the need to examine 'improvements which will have to be made to the Treaties to bring the Union into line with today's realities and tomorrow's requirements' (Edwards and Pijpers, 1997, p.5). The results, however, did not match the high expectations in light of a future Europe of 25-30 countries. In Nice, only the most urgent institutional challenges of enlargement were taken into consideration in the final outcome. The amendments to common policies, such as agricultural policy, decision-mechanisms in trade policy and reforms of the structural and cohesion funds have been far from convincing. The fact that in the
Introduction

academic world scholarly progress on explaining the impact of enlargement has been rather slow does not help to pressure decision-makers for change (see Ginsberg, 1998). The past has shown that the various waves of enlargement have not substantially altered decision-making mechanisms created for a Union of six member states. As the challenges for the EU in the next millennium will not decrease, I will look briefly at this internal dimension of the debate.

The internal dimension

From the early days of European integration, the internal decision-making process has often been characterized publicly as a trade-off between 'accountability' and 'efficiency'. Pro-integration leaps, such as the TEU, have been immediately accompanied by member state calls to limit the Community's newly received competencies. The pendulum (Wallace, 1996a) has been swinging at times rapidly between the Community method and intergovernmentalism. In the final hours of the Nice summit leading to the ToN, various member countries insisted on placing the issue of competence partition among the different levels of the Union (Community, central governments, regions) as well as amongst the EC institutions (Council, Commission, Court of Justice, Court of Auditors) on the agenda of the next IGC to be convened in 2004. This early agenda setting was mainly due to increasing pressure from member states that competence transfer to the Community level be ex post limited through the introduction of permanent control mechanisms by the nation states. In this section I will briefly summarize the ongoing debate on the concept of 'accountability' and 'efficiency' and the dominating decision-making procedures in place. In a second part, I will undertake a first look at developments in the field of foreign trade policy as regards internal competence and decision-making modes.

On accountability, efficiency and decision-making modes

The 'accountability argument' has often been pushed by member states in order to circumvent arguments regarding the slow and barely transparent process of intergovernmental bargaining (Elsig, 2000). Member states used this argument extensively in order to legitimize their attempts to gain control over Community institutions whenever the pendulum began swinging dangerously towards supranationalism. Further, strange bedfellows have taken recourse to the argument that decisions within the EU lack sufficient democratic legitimacy. Euro-federalists stand on one side of the debate; critical of both the course integration has taken as well as the preponderance of intergovernmentalism. On the other side of the debate stand the Euro-skeptics, who fear the loss of sovereignty through the creation of a European 'superstate'. As Moravcsik rightly observes, 'the lack of consensus as to the concrete implications of the "democratic deficit" should immediately alert us as to the lack of precision in many such criticisms' (2000b, p.17). Scholarly work has taken up the task of more systematically analyzing the input and output legitimacy
of EU decisions (see Scharpf, 1999b) but, due to the underlying ideological barriers, the progress made by researchers has been rather slow.

The ‘efficiency argument’, which is mainly pushed by the Commission, has always played second fiddle. Empirical observation supports the view that not only the lack of democratic control but also the lack of efficiency represents a considerable threat to losing public support for the integration project. Not surprisingly, proposals to enhance efficiency are largely dependent upon one’s ideological standpoint (see Schmitter, 2000; Majone, 2000; Moravcsik, 2000a). Schmitter, an erstwhile die-hard neofunctionalist, writes:

if only one could rekindle within the process of Euro-democratization that same logic of indirection and gradualism based on an underlying structure of functional interdependence and an emerging system of collective problem-solving, the process of European integration might be given the relancement that it has so frequently sought and so badly needs (Schmitter, 2000, p.3, italics in original).

Further, the debate on accountability and efficiency can be traced along the decision-making modes established over time in a variety of policy fields. Institutional paths have limited the pendulum’s ability to swing overwhelmingly towards opposing decision-making procedures, producing a mix of ‘procedural rules and standards operating procedures, embedded in successive revisions of the treaties’ (Wallace, 2000c, p.524). Many actors adapt their expectations as the institutions they deal with on a daily basis influence their interests.

Analyzing decision-making has thus become more complicated, as former descriptive concepts, such as the ‘Monnet method of partnership’ and the ‘De Gaulle method of negotiations’ fail to grasp the heterogeneous picture of the state of the art in decision-making in Europe (Wallace, 1996b, p.37). Proponents of the Monnet method have admitted limits in their line of argumentation, as the dynamics and complexities of policy-making have increased sharply over the past decades. ‘My hunch is that the “Monnet method” of exploiting the spill-overs between functionally related issue arenas to advance the level and scope of integrative institutions has exhausted its potentials – precisely because of increased citizen awareness and further politicization’ (Schmitter, 2000, p.3). Thus, neofunctionalists, guided by empirical evidence critical to their predictions, have given up holding onto nostalgic constructs characterizing the decision-making of the founding six. The so-called ‘old way’ isn’t working anymore (Bomberg and Peterson, 2000, p.1; Begg and Peterson, 1999). The Community method dominating first pillar policy fields could not be extended to new policy areas, ‘both because the process of European integration itself became subject to new resistance and because EU governments faced pressures to converge policies in new and politically sensitive sectors, such as monetary and immigration policy’ (Bomberg and Peterson, 2000, p.4; see also Devuyst, 1999). Policy modes have multiplied, influenced by the institutional settings in which they are embedded. In the 1980s, due to the Single European Act, a new regulatory model emerged in areas related to the regulation of the single market, such as the removal of internal barriers as well as competition policy. This functionalist-type of decision-mode
was fostered by 'the strength of the European legal process, the machinery of promoting technical cooperation, and the distance from parliamentary interference' (Wallace, 2000b, p.29). In other areas, such as regional policy (structural funds), social policy and environmental policy a multi-level governance system surfaced, which was characterized through the 'opening for more direct contacts between the European and the intranational levels of government' (Wallace, 2000b, p.31). This in turn strengthened the regionalism of the European Union and further legitimized the integration project.

Besides the above outlined supranational-oriented decision-making mechanisms, intergovernmental forms were well present in many fields and seemed to dominate the proceedings in the 1990s. The member states and the European Council dominate this decision-making mode, which determines the overall direction of EU politics (agenda). Community institutions are largely excluded or marginalized in setting and influencing the course of EU policies. Examples for this can be found in the second and third pillar, such as the security cooperation in the WEU and NATO. The European Monetary Union (EMU) serves as another prime example, where the Commission, the EP and the ECI play a subordinate role to the member states. A new policy style of transnational coordination has developed, whereby member states circumscribe EC institutions by setting policy objectives and requesting the Commission to evaluate the member countries progress according to a 'benchmark approach'. 'The Commission is mandated (...) to evaluate national policies, offer praise and criticism, and usually to assemble league tables ranking the performance of Member States in particular sectors' (Bomberg and Peterson, 2000, p.5). European politics is increasingly played out in areas where the Community is shut out and modes of intergovernmental cooperation prevail. The so-called 'policy transfer' will 'become a (perhaps the) preferred method for extending European cooperation under new and different political conditions that have given rise to intensive transgovernmentalism' (Bomberg and Peterson, 2000, p.4).

Reasons for the emergence of new intergovernmental modes of decision-making are manifold. Bomberg and Peterson single out the turn towards intergovernmentalism during the 1990s, culminating in the Treaty of Amsterdam. As member state interests converged towards 'sovereignty', every decision-making mode 'worshipping' national control mechanisms under the guise of subsidiarity was found to produce relative gains in relation to the traditional methods. The determination of member states 'to starve the Commission of resources and enforce zero growth in its budget and personnel leaves it with very little capacity to take the lead in identifying paths towards delivering new "shared public goods"' (2000, p.7; see also Metcalfe, 2000). Empirical evidence illustrating that these new policy modes can produce high standard and democratically legitimate collective public goods superior to the Community approach is, however, missing at this point.

The institutional path decision-making followed in the first pillar in general and in foreign trade policy in particular tells a different story, although a turn towards intergovernmentalism can be observed as well. The Community has remained in the driver's seat, despite attempts by the member states to curtail the Commission's
power of negotiation. The Commission has continued to foster its (perceived) role as a responsible and important negotiator on a global level representing a common European view in trade policy. Returning a moment to the symbolic pendulum of Wallace (1996a), which swings between two poles, one representing policies influenced by national the other magnetic pole by transnational governance, one can ask, where the outcomes of current trade policy should be situated.

_The Common Commercial Policy: can the pendulum’s position be assessed?_

The actor’s interests, be they domestic or supranational, are being transformed into policies through the EU institutions. These institutions do not just serve as a transmission belt for interests, which have built up outside the EU system, an argument pushed by the neorealists camp. Institutions matter! The question is when do they matter and how do they impact on the course of policy-making? In other words, how do institutions mitigate supranational and intergovernmental influences and what kind of outcomes do they produce? Thus, it is not the teleological question of where the EU is heading which is addressed. Rather, a closer look is given to the subtle mechanisms shaping EU policies in a multi-level governance system, as propagated by Jachtenfuchs and Kohler-Koch (1996) as well as Marks et al. (1996).

The area of commercial policy provides a wealth of fruitful analytical material to help trace the eternal rivalry between supranational and intergovernmental policy-making inside the EU. The Rome Treaties foresaw a common foreign trade policy as a necessary complement to the establishment of a single market within a custom union. Thus, the founders attributed an important role in commercial policy to the Community, setting the stage for one of the first policy areas in which the Community approach could unfold. Further, increasing challenges in international trade regulations have influenced the Commission’s stance over the years. The Community’s _porte-feuille_ was extended as a result of successive international trade rounds covering continuously new issues, such as non-tariff barriers to trade, services and investment. Further, a qualitative and quantitative enlargement of the common market brought with it a greater Community involvement in regulating standards and operational procedures. Not surprisingly, the Community’s emerging role as a big player in world trade diplomacy has been accompanied by steady efforts from member states to control a possible drifting away of the Commission from core nation state interests. Member states have been eager to keep a firm grasp on their influence over foreign trade issues by using or threatening to use oversight mechanisms at their disposal.22 These so-called monitoring mechanisms by the member states were introduced in the founding Treaties. Trade diplomacy was seen to be too important to be left exclusively to the Community (i.e. the Commission). The powerful and well-known Art. 113 Committee (after Amsterdam new Art. 133), composed of national trade officials, has always attempted to tie the Commission’s hand in international negotiations (see Meunier, 2000b; Meunier and Nicolaides, 1999). The lengthy Uruguay Round created a WTO armored with a more effective dispute settlement mechanism.23 This development has made the member countries of the EU even more skeptical
towards a further delegation of negotiating power to the Commission. Member countries continue to take a cautious approach to the new areas of services, intellectual property, as well as investment. Services have become among the most salient issues in trade negotiations, as trade in services is the fastest growing component of international trade. Today, services account for some 25 per cent of total world trade. The EU’s share (including intra-trade) surpasses 40 per cent of the total in export as well as import of services (see Table 1.1). Until Nice, trade in services was largely covered by ‘shared competence’ of the Community and the member states. This often led to uncertainty as to ‘who was to negotiate on behalf of the Community’. The Treaty of Nice finally granted the Community sole or ‘exclusive competence’ over a substantial number of services formerly under ‘shared competence’ of the Community and the member states. In the areas of intellectual property and investment, however, the member states have managed to preserve the opaque construct of ‘shared competence’ (see chapter five).

The field of trade diplomacy has grown over the past two decades to include a multitude of new issues. Against this background, a struggle has been developing between the member states and the Commission regarding the issue of competence to negotiate these new trade issues. This enhanced competition for ‘trade authority’ has caused the Commission to take a defensive stance. The Council has tried to recover the driver’s seat in order to overlook the process through the growing use of its oversight mechanisms (i.e. the advisory Art. 133 Committee), the existing privilege to pass the mandate for bilateral and multilateral trade negotiations and finally through its prerogative to approve the outcome of trade negotiations. The threat of ratification usually reduces the Commission’s room to maneuver in negotiations with third countries. The so-called integrationist institutions, often labeled natural ‘allies’ of the Commission (i.e. the European Parliament and ECJ), have been playing rather ambiguous roles to enhance their own sphere of influence. The Court’s ruling against granting the Commission sole competence to negotiate new trade issues was a blow for the Commission (Opinion 1194) and weakened the informal pact between these two Community institutions. The Commission’s drive for greater legitimacy in conducting negotiations on the so-called new trade issues was momentarily halted (Young, 2000). Chapter five will analyze this milestone judgement by the European Court of Justice and the effect this judgement had on the actors’ perceptions of unsolved institutional questions. The European Parliament has, for its part, increasingly expressed a desire to obtain greater influence in foreign trade relations. In the past, it was possible for the European Parliament to enlarge its influence without noticeable negative consequences to the Commission. This is no longer the case as the institutional competition for trade authority increasingly resembles a typical zero-sum game.

Finally, the Seattle WTO Ministerial Conference confirmed the ‘wisdom’ that when the number of institutional actors involved in trade policy increases, questions regarding ‘who is speaking for Europe’ and in ‘what function’ is difficult to answer. The number of actors from the Parliament, the member countries and the Commission attending the summit was impressive. At the same time, observers, who followed the negotiating processes in the ‘Starbucks-city’ closely, couldn’t help but conclude that the institutional balance – the construct of ‘mixed
The EU’s Common Commercial Policy

competence’ between member states and the Community in a wide range of issues – proved inefficient in order to bargain actively and with sufficient leverage (Ruloff and Elsig, 2000). The question thus arises, what influence does the institutional setting of the EU have on the efficiency of the EU Commission to act as the main negotiator? Chapter seven provides an analysis of the link between the institutional setting and the outcome efficiency.

The central research interest and research questions

This book takes a closer look at the institutional balance within the EU in general and in particular at the role of the Commission as the main negotiator for the Community in the area of trade diplomacy. The Commission’s role is rather uncontested in matters concerning the functioning of the single market. Here, the Commission’s overall importance as the guardian of the treaties, its strong position in the single-market project and in the implementation of the competition policy (mergers and acquisitions, anti-trust, anti-dumping, etc.) merits mention. The degree to which liberal intergovernmentalism (LI) can explain the institutional design and policy processes over time in these areas can be contested (Moravcsik, 1998). While LI’s ‘explanatory power’ performs well in the treaty-changing environment (intergovernmental negotiations), it fails to provide a steadfast explanation for the policy outcomes in day-to-day politics over a lengthy period of time. Supranational institutionalism (SI) is the primary opponent of LI in the field of ‘middle range theories’. SI represents a new form of neofunctionalist thinking, drawing mainly on supranational actors and the international environment to explain policy outcomes. In doing so, SI overestimates the role of supranational actors (Sandholtz and Stone Sweet, 1998). The nation states are still largely in command of the integration process. This phenomenon does not, however, necessarily mean that policy outcomes always reflect the preferences of the most important national actors. Hypotheses from both LI and SI can be used as a starting point to explain policy patterns, but should be complemented with other theoretical approaches highlighting the interaction and negotiation processes of the various actors involved in EU politics over time. Therefore new explanations for developments in EU policy-making must be incorporated into a study on CCP. Fruitful contributions to the question of the Commission’s influence stem from approaches related to new institutionalist thinking (Hall and Taylor, 1996; Pierson, 1996; Bulmer, 1994; Steunenberg, 1994; Crombez, 1996; Moser, 1997). The rational choice variant of new institutionalism concentrates in particular on the legislative and constitutional politics, as preferences of the actors during a shorter time span can be modelled as fix. Other scholars of this variant, such as Pollack (1997), use principal-agent models to explain outcomes, which are better suited for examining developments over a longer period of time. A further new institutionalist approach, historical institutionalism, fares better for analyzing long-term developments when the variable ‘time’ becomes a relevant explanatory factor. Historical institutionalism is a broad category and also encompasses rationalist and constructivist ways of thinking. Emerging sub-schools vary in relation to the
degree an actor’s preferences are shaped by institutions (Schneider and Aspinwall, 2001; Thelen and Steinmo, 1992; Bulmer, 1998). Finally, sociological institutionalism contributes to the understanding of how actors use institutionally shaped constructs to develop preferences and thus strategies in day-to-day politics (see Checkel, 2000).

The research interest underpinning this book is threefold: first, it attempts to present to the reader the dynamics and challenges of European foreign trade policy through the lenses presented in the first part of this chapter. This is largely done via a selection of case studies. These empirical observations encompass different forums of European policy-making, which, at first sight, seem biased towards standard theoretical explanations, be it intergovernmentalism or supranational institutionalism.27 However, every sub-policy field has its own rules and procedures and must therefore be analyzed separately in order to obtain the most adequate view of the driving forces behind everyday policy-making. Wallace rightly observes that ‘it was imprudent to assume that behaviour developed in one policy arena would necessarily be replicated in another’ (Wallace, 1996b, p.39). The broad case-selection underpinning the methodological approach calls rightly into question the one-size-fits-all theories of European integration.

Second, this book applies research tools of the so-called new institutionalist school. In doing so, trade politics are tackled with the analytical armory of institutionalist tradition, an area marginalized by scholars of new institutionalism until recently (see Schneider and Aspinwall, 2001).

Third, anomalies not explained by the standard theoretical strands are highlighted.28 By addressing these theoretical puzzles with the help of new institutionalism, this part of the work attempts to engage in bridge building between the different variants of new institutionalism. It therefore strives to combine institutionalist approaches in order to expose patterns of descriptive and causal inference. Rationalist institutionalists view interests as exogenous from the institutions, whereas historical (and sociological) institutionalists tend to treat actors’ preferences as endogenous variables, which are influenced by the institution’s mode of operation and culture per se. Thus, this task will not be easy.

The research questions

The research questions attempt to tackle the various aspects of European trade diplomacy with the goal of providing a fuller picture of CCP. Whereas the first research question is descriptive, the remaining two are puzzle-driven and strive for causal explanations:

- How has the balance among EU institutions developed over time in external trade policy?

- Which theoretical model or framework best accounts for policy outcomes in CCP? and
How does the institutional design influence the efficiency of EU negotiators at the international trade negotiation table?

The case-study selection is largely dominated by WTO affairs and questions of 'competence', as these pre-occupations account for the most important part in the evolving CCP agenda (Smith, 1994). The greatest challenges for the CCP, besides the development of the multilateral trade regime, lie in the management of the transatlantic regime (EU-US). Other challenges, which I call second order challenges, are not explicitly covered by the analysis. Here we find \textit{inter alia} bilateral free trade agreements with third countries (i.e. China, South Africa, Mexico and Switzerland), the unilateral use of anti-dumping measures and countervailing duties and the further development of the Lomé Conventions.

\textbf{Methodology: case selection, process tracing and causal inference}

In the following I outline the selection of cases and the application of methodological tools inspired by institutional research. The section ends with preliminary thoughts on the rationale of causal inference.

As illustrated above, a variety of approaches attempt to explain particular phenomena in European integration. This book engages in combining institutionalist approaches (see also Hooghe, 2001) in an effort to provide a broader picture of the story. In choosing a specific policy field (Common Commercial Policy) the meta-theoretical questions are relegated to the backbench. Rationalist approaches are tested against the empirical record and the emerging puzzles tackled with new institutionalist tools. Chapter one introduces the cases under scrutiny: In this section, I deliver the arguments for case selection.

Various policy forums in CCP are addressed in order to draw an accurate picture of the policy field under observation:

First, the Court's opinion in 1/94 will be analyzed. Neofunctionalist or supranationalist logic fail to explain the outcome. This case is paradoxical in light of the renaissance of applying neofunctionalism to ECJ decisions. I argue that rationalist approaches explain this phenomenon more accurately than their counterparts. Most of the story can be told by drawing on a principal-agent model. It is worthy of analysis in a single case-study approach, as this ruling represents a 'turning point' by limiting the ECJ's extensive interpretation of the exclusive Community competence in trade matters.

Second, a closer look at constitutional processes is undertaken. For this I will discuss the modifications of the constitutional rules regarding CCP. The outcomes of Amsterdam and Nice tell a different story than mainstream approaches would predict. The changes of Art. 133 in ToA can not be explained by applying LI. Moravcsik and Nicolaidis were puzzled by the finding that:

in the area of commercial policy, France and the UK opposed exclusive community competence over trade in services liberalization negotiated under the World Trade
Introduction

Organization (WTO) umbrella, though on purely substantive terms both countries ought to have favoured such a move, given their sectoral competitiveness (1999, p.65).

The limitations of LI in explaining a rather important issue – to which also the Commission attached importance during the run-up to Amsterdam – cast doubt upon the concept of ‘asymmetrical interdependence’. This case is of critical importance for LI and therefore lends itself to be analyzed in a single case study approach (Yin, 1984, p.40, see also King et al., 1994, p.209). Moravcsik and Nicolaïdis explain this anomaly by referring to member states’ distrust towards the Commission. But they fail to engage in a discussion when distrust prevails over economic interest.

The different reforms decided upon at the two IGCs regarding Art. 133 can not be understood without looking closely at time-induced changes in the preference structure of the main actors. The negotiation process itself is a source for preference change. Additional explanatory factors can be derived from developments in the international environment (linkages), the infiltration of new ideas via public debates on the necessity of reform (framing) as well as path dependent constructions of agenda points. This leads to greater uncertainty during IGCs than LI assumes.

<table>
<thead>
<tr>
<th>Constitutional</th>
<th>Maastricht</th>
<th>Amsterdam</th>
<th>Nice</th>
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<tr>
<td>Legalistic, interpretative</td>
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<td>1/94</td>
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<td>Executive</td>
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Figure 1.4  The cases over time

Third, a case from the area of executive politics is analyzed. I will illuminate the Community institutions’ role at international negotiations while following Puchala’s invitation to combine the explanation of policy outcomes and efficiency (1999). For this purpose a case study on the third WTO Ministerial Conference will be conducted. At the same time this contribution seeks to avoid falling into the trap of irrelevance, as King et al. critically notice: ‘Focusing too much on making a
contribution to a scholarly literature without some attention to topics that have real world importance runs the risk of descending to politically insignificant questions’ (1994, p.17). Figure 1.4 provides an overview of the different forums the cases are embedded in.

A descriptive inference via a case-study approach shall be attained. ‘Inference, whether descriptive or causal, qualitative or quantitative, is the ultimate goal of all social science’ (King et al., 1994, p.34). In opposition to King et al., I also support the view of Little (1998), that ‘(...) there is substantial causal diversity in the mechanisms and properties that social scientists discern. It is therefore methodologically defensible to be eclectic in one’s causal hypothesizing’ (in Bennett, 1999, p.4). This view subsequently leads to criticism of so-called traditional positivist accounts and a sole reliance on covering laws and hypothetico-deductive methods.31

The search for puzzles provides guidance in formulating scholarly provocative research questions, which stand in some opposition to the ‘theory-driven’ approach. But as Risse (1999) argues, good problem-driven research should actually lead to theory testing, which keeps the feet of scholars on the ground and prevents them from engaging in fruitless meta-theoretical controversies.32

By focusing on puzzles, however, a selection bias can not be ruled out. Selection bias is inherent in qualitative case-study approaches, but can be minimized (see Geddes, 1990). By selecting crucial events in the various forums outlined above, the natural selection bias is to some degree tackled.33 As outlined above, the case-study method is chosen to explain anomalies in existing approaches and to identify plausible causal variables. It is not intended here to develop new theories. Therefore, I will try to avoid participating in what Scharpf calls an ‘endless cycle of generalizations and falsifications’ (1999a, p.6). Rather, by focusing on the dynamics and procedures in the policy field (policy tracing), I further attempt to put into question an excessive reliance on the ‘as if assumption’ (see Checkel, 2000).34 In the words of Bennett, the question is how we look at causal mechanisms in relation to causal effects.35 Bennett places ‘equal weight on both as components of scientific explanation and sources of causal inferences (1999, p.7)’. But he differs from King et al. in regards to the function of the methodology applied in a chosen context. Bennett gives priority to statistical methods in addressing questions such as causal effects and covariation. ‘Case study methods are superior at process tracing and identifying causal mechanisms, identifying omitted variables, and measuring qualitative variables, and they also have advantages in the genetic explanation of individual cases and of path-dependent processes’ (1999, p.3).

By not taking causal mechanisms sufficiently into account, the danger of neglecting institutions as intervening variables arises. Thus, the constructed model might apply the strict rules of parsimony, but would score rather poorly in terms of explanatory power. By placing causal effects over causal mechanism a bias towards neglecting the dynamics of bargaining in institutional settings is advocated. King et al.’s ‘definition of causality is logically prior to the identification of causal mechanisms’ (1994, p.86).36
Further, by using the instrument of process-tracing possible clusters of interaction will become apparent. These will produce explanation of plausibility as a stimulus for future research. 'Case study methods provide opportunities for inductively identifying complex interaction effects' (Bennett, 1999, p.8).

The itinerary

Following the introductory chapter, the development of CCP and its operation in day-to-day policy-making since its inception in the late 1950s is reviewed. Chapter two further traces the institutional debate and the influence of different actors over time. Pressure emanating from the international trade arena and the main multilateral regulatory achievements are highlighted as are the constitutional and jurisdictional milestones set during this period.

Chapter three presents an overview of competing approaches in theorizing European politics. Special emphasis is placed on the new institutionalist turn, which has to a large degree de-blocked the old debate between scholars of intergovernmentalism and newer variants of neofunctionalism. Ontological and methodological concerns will also be addressed. Moreover, a short discussion of the so-called number=1 problem completes this chapter.

Chapter four sketches a new institutionalist framework in an attempt to explain policy outcomes in different forums. A rationalist inspired principal-agent model is used as a starting point, before historical and sociological institutionalist explanations complete the model into a broad framework of analysis. This is necessary to account for anomalies, which arise due to an overly static view of policy processes based on a rationalist worldview.

Chapter five attempts to contribute to the theoretical understanding of the role of the ECJ and its jurisdictional activities. In this task, I question the attribute of the ECJ being a ‘Master of the Treaty’ and attempt to show the limits of overly optimistic neofunctionalist contributions. In doing so, an exemplary judicial opinion regarding the question of competence in WTO matters is analyzed with the help of the new institutionalist framework presented in the preceding chapter.

After a short summary of the theoretical approaches predicting the outcome of intergovernmental conferences, chapter six applies the framework outlined in chapter four. This is done by drawing on empirical observation regarding the processes and outcome of the Treaty of Amsterdam. I concentrate primarily on the constitutional efforts to reform CCP, embedded in its broader constitutional environment. The chapter ends with a comparison on the results of the ToA and ToN. A first explanation to account for the substantial differences in the outcome is presented.

Finally, chapter seven looks at bureaucratic politics by analyzing the third WTO Ministerial Conference in Seattle. In a process-tracing exercise, the negotiations are examined in order to gain a better understanding of the institutional dynamics and path dependence in decision-making. By drawing on work by Meunier (2000b), who showed that the institutional setting has a considerable impact on the Commission’s negotiations, the project will assess the
outcome as a function of member states' control mechanisms. Further a new avenue of analyzing international negotiations is pointed out, by combining new institutionalism with classical negotiation analysis (Schelling, 1960; Putnam, 1988).

The concluding chapter summarizes the main findings, discusses the limits combining new institutionalist approaches and hints at future avenues of research.

Notes

1 Literal translation by Adam Smith (1776) in his famous work 'An Inquiry into the Nature and Causes of the Wealth of Nations', book IV, chapter VI.

2 For a discussion on the results in reforming CCP in Nice, see chapter five.

3 Throughout this book I will use the notion of European Union (EU) when referring to the Community after the IGC leading to the Treaty of Maastricht (also known as the Treaty on European Union (TEU)). The notion European Community (EC) is used when referring explicitly to the Community in the pre-Maastricht period.

4 The ratification process of the ToN has suffered a setback as Ireland declined to ratify the Treaty. Thus, there is currently widespread doubt about the entering into force of the provisions decided in Nice.

5 On the concept of focal points, see chapter three.

6 As a large number of Central and Eastern European countries (CEEC) have applied for EU membership, the term Europe is increasingly used to characterize the European Union. Thus, the geographical term is more and more applied interchangeably with the political term. European but non-EU countries, such as the remaining EFTA countries and some former Soviet Republics (Belarus, Ukraine), are marginalized.

7 During the war in Bosnia, US diplomat Richard Holbrooke accused the Europeans of having 'slept through the crisis'.

8 The TEU signed in Maastricht created the three-pillar structure of the European Union. The 1st pillar or Community pillar encompasses the communitarized policy fields. The 2nd and 3rd pillars consist of the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA), both representing the intergovernmental policy-making mode of the Union.

9 Not only questions regarding the legal competence to act between the member states and the special coordinator arise. The past years have also seen a competence struggle between the Commissioner for External Affairs Chris Patten and 'Monsieur CFSP', as competence in certain areas are still shared between member states and the Community. However, 'Mr Solana leads the race to become the public face of EU foreign policy' (The Economist, 18 August 2001). Further, other Commissioners rival Mr. Patten as they are in charge of important dossiers in the Community's foreign policy, such as Pascal Lamy (Commissioner for Trade), Günter Verheugen (Commissioner for Enlargement) and Poul Nielson (Commissioner for Development).
Chapter two summarizes the institutional development of the Common Commercial Policy.

In 1999 the EU announced the Financial Services Action Plan (FSAP) in an effort to create an integrated European financial market by 2005. Through the abolition of trade-restrictive national regulatory regimes, the EU strives for more competitive retail and wholesale markets.

The partition between tied and non tied aid is not considered in this statistic.

This critique mainly applies to CFSP. Thanks to David Allen and Geoffrey Edwards for this important point (ECPR-Geneva Summer School, August 2000).

For a study on the enlarging boundaries of EU legislation see the study on the EC directive on tax savings (Bonte, 2000) for the Europeanization of Swiss Politics, see Church (2000).

Senti shows in his analysis of the bilateral agreements between Switzerland and the EU concluded in 1999 that informal negotiation paths are more important than formal ones, thereby highlighting parallel negotiations single member countries lead in first pillar issues (Senti, 2000, pp.210-11). Further, negotiations are slowed down due to the unique decision-making process and the many veto points to overcome. In the case at hand, the smaller party suffered from late concessions to single European veto actors.

This calculation is based upon the following entrants: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, Slovenia. Not counted are Bulgaria, Cyprus, Malta, Romania, and Turkey. Whereas Malta's joining with the first states is quite probable, the prospects for other countries are less optimistic as far as the joining with the first group of countries is concerned.

Scholarly work has began to focus on the question of how to explain Eastern Enlargement. Constructivist influence has gained momentum (Schimmelfennig, 1999; O'Brennan, 2000).

For a discussion on future challenges for EU's trade policy, see Smith and Woolcock, 1999; Mortensen, 1998; Smith, 1998.

The German Länder, under the lead of the Bavarian Prime Minister Stoiber, pushed hard for a separation of competence among the Union's levels (Community, governments and regions). German Foreign Minister Fischer answered in a debate in the German Bundesrat that not the separation but the partition of competence was to be discussed during the next IGC, countering early demands for a re-nationalization of community fields, see NZZ, 22 December 2000.

The Community-method usually describing first pillar decision-making has come under greater pressure through an increased intergovernmental movement following the Maastricht Treaty and the ToA (Wiener and Neunreither, 2000).

‘Policy transfer’ could be compared to a voluntary bench-marking approach outside the formal community structure. ‘Policy transfer in its broadest sense refers to a process whereby knowledge about policies, administrative arrangement, institutions, ideas, and so on are used across time and/or space in the development of policies, institutions, and so on elsewhere’ (Bomberg and Peterson, 2000, p.4).

On the different types of oversight mechanisms, see chapter three.
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23 For opposing views, see Weiler, 2001; Busch and Reinhardt, 2001.

24 Moreover, the WTO Agreement on Trade in Services (GATS) also covers services provided by subsidiaries and affiliates of foreign firms (mode 3: commercial presence), which do not fall under this statistic based on mainly cross-border services (Kostecki, 1999).

25 The European Parliament has increased its codecision powers under the Treaty on European Union and the Amsterdam Treaty (for the TEU, see Maresceau, 1993).

26 Member states often attack the Commission for its regulatory role in the single market project. This is a sign of how powerful the Commission's role in this area has become. A current example is the attack of several German federal states on the Commission's standpoint regarding subsidies on state-owned banks (see NZZ, 26 May 2000). The German Bundesrat even threatened not to ratify the institutional reform package to be negotiated at the Nice intergovernmental conference.

27 Cases from constitutional (Amsterdam and Nice), legalistic (Opinion 1/94) and executive politics (the Seattle summit) are chosen to create a broad picture.

28 For example, explanations within grasp from the fields of intergovernmentalism, neofunctionalism or neorealism, seem incapable of accounting for the variance in outcome in the last two IGCs. Li can not explain the positions of Britain and France and thus fails to predict the outcome of the Amsterdam Treaty regarding the modification of Art. 133 (Moravcsik and Nicolaïdis, 1999).

29 The analysis is largely puzzle-driven, which is in some opposition to the theory-driven based approach (Risse, 1999), see chapter three.

30 During the Nice IGC, the reluctance of countries, such as France, to grant the Commission greater competence in questions of intellectual property can not be explained by solely drawing on 'asymmetrical interdependence'. In protecting French luxury products (perfume, clothes, wine, etc.), the French government should have great interest in strengthening the Union's position towards negotiating more specific obligations under the TRIPS Agreement.

31 'One of the main problems with this view of theories as law-like statements of regularity between events is that it cannot distinguish between causal and non-causal arguments' (Bennett, 1999, p.4).

32 Risse holds that puzzles do not just fall from heaven. They are defined by previous empirical commitments. This will in turn decide the interest of an empirical question. In other words, meta theories dominate the process of finding puzzles through shaping the search process.

33 Qualitative interviews have confirmed early in the project the importance of the cases under scrutiny.

34 The 'as if' assumption put forward by many rational choice (RC) scholars regarding the actor's behaviour is put in question by process-tracing. The 'as if' assumptions indicates that the actor behaves as if he were rational, even if the outcome may not be perceived to result from a rational action.

35 In order to trace 'causal mechanism' one should primarily analyze processes as the causal entities and not events. Processes should be treated as the 'means by which
structure and order are propagated or transmitted from one space-time region of the universe to other times and places' (Wesley, 1984 cited in Bennett, 1999, p.5).

36 On multiple causality, see King et al. (1994, p.87).


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