The EU, the WTO and trade in services: power and negotiation in the international political economy

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The EU, the WTO and trade in services: power and negotiation in the International Political Economy

By

Carina Gerlach

Doctoral Thesis
Submitted in partial fulfilment of the requirements for the award of
Doctor of Philosophy of Loughborough University

5 June 2008
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Abstract

For the European Union (EU), the field of trade policy is a main field in which the EU can assert its actorness and build its identity as an international actor. This “superpower” potential arises out of the EU’s extensive resource equipment in trade policy and is driven forward by the EU’s significant economic interests. To what extent, however, the EU has been able to use its resources to shape the rules of the international trade regime according to its own preferences has remained questionable.

This thesis investigates the question of the EU’s impact on and power utilisation in the international trade regime by analysing the EU’s changing involvement in World Trade Organisation (WTO) negotiations. Drawing from the theoretical concepts of the “international regime” and “power”, the thesis proposes an approach centred on the possession, mobilisation and impact of actors’ power in international regimes. In particular, the thesis proposes a framework centred on five key elements: specification of the regime, its qualities and focus; the resources or ‘underlying power’ that actors bring to the regime; the resources derived by actors from the operation of the regime itself, or ‘organisationally dependent capabilities’; the manifestation or deployment of resources and strategies by actors in negotiations; and outcomes defined in terms of actors’ power over the regime itself. After an examination of the broad context of the WTO’s development and the EU’s involvement in the international trade regime, this framework is then explored through a detailed study of the EU’s involvement in the negotiations over trade in services that took place in the WTO between 1995 and 2005, using evidence from a wide range of documentary sources and from interviews.

On the basis of this exploration of trade in services, the thesis finds that despite the EU’s outstanding resources, the WTO negotiations have become too complex for the EU to decisively influence them due to a power shift in the international trade regime. The special nature of the trade in services negotiations makes these particularly unmanageable and they do not seem to present the EU with a setting for achieving its preferences. A lack of cooperation among the WTO members in favour of the negotiations has made progress in the negotiations very hard to realise for the EU. At the same time, the erosion of the EU’s resources by the shifting attitude in civil society towards trade policy, and an apparent lack of business support, has increased the challenge for the EU of managing the international trade regime. Questions are therefore raised about the extent to which the EU has responded to change, mobilised its resources effectively and had a consistent impact on the international trade regime since the mid-1990s.

KEYWORDS: TRADE POLICY, EUROPEAN UNION, WORLD TRADE ORGANISATION, TRADE IN SERVICES, GATS, INTERNATIONAL REGIMES, INTERNATIONAL POLITICAL ECONOMY, DOHA ROUND
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First, I would like to thank my supervisor Mike Smith very much. This work would not have been possible had it not been for his constant support, helpful comments and his firm faith that I could do (and finish!) this project. I have very much valued his input and guidance, and admire the great care and individual concern he gives to each of his PhD students. Apart from my supervisor, there were a whole range of people and organisations, who contributed to the success of this thesis, and I would like to also thank them in these acknowledgments:

My interviewees and contacts from institutions and organisations in Brussels and Geneva, and from WTO member delegations from a range of countries, took time out of their often very busy schedules to meet with me and to give me insights into the fascinating world of trade policy-making and diplomacy. Many thanks to them.

The Department of Politics, International Relations and European Studies at Loughborough University proved an extremely friendly and supportive environment for doing PhD research. My gratitude goes both to the academic and the support staff, for making this place such a nice one! Dave Allen, the Head of Department, made sure I was supported in any way possible during my research. Val Boyle not only gave me a job in the Learning Resources Centre, but also managed to get me involved in a range of freelance jobs. Brian Hocking commented on the thesis at various stages; and my panellists made their ways through half-finished drafts and gave valuable input for the further development of the thesis. At the very final stage, Matt McCullock, Phil Newnham and Michael Mulligan helped me greatly by proof-reading this thesis. A big thank you to you, guys!

During my undergraduate degree at the FH Osnabrück in Germany two people inspired me to embark on a PhD: Prof. Gehmlich and Prof. Dr. Edling. The Faculty of Social Sciences & Humanities at Loughborough University provided me with a studentship, which enabled me to undertake this research. My gratitude also goes to Bart Kerremans (KU Leuven), who hosted me at the Institute for International and European Policy for three months – this thesis benefited enormously from my time there. Dirk Vantyghem and the whole Eurochambres “crew” not only let me have a first-hand insight into Brussels-based trade-policy making, but also a work experience in a very friendly team.

An important aspect during this time of PhD writing was to live and work alongside a range of special people, who apart from being colleagues became friends – my fellow postgraduate researchers. I should especially mention Ajaree, Asimina, Ana, Karolina, Vasilis, Matt, Natee
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I owe special gratitude to Sigrun, my long term best friend and housemate. Our common interests in European Politics proved very fruitful. We’ve truly made it through both good and bad times during these years of study, and she has enormously supported me during some difficult and stressful periods. THANK YOU, GIRL! Thank you also to Anibal, Rebecca and Andi, for your support, and Timon and Samuel, for being such great brothers throughout. Finally, thank you to Phil for making me smile so much during the last year :-).  

This thesis is dedicated to my parents, Klaus and Margrit, whose encouragement, love and wise foresight had such a great impact on who I am today.  

SDG.
## Table of Contents

**ABSTRACT** .............................................................................................................................. I
**ACKNOWLEDGEMENTS** ........................................................................................................ II
**TABLE OF CONTENTS** ......................................................................................................... IV
**LIST OF TABLES, FIGURES AND BOXES** .......................................................................... VII
**LIST OF TERMS AND ABBREVIATIONS** ........................................................................... VIII

### 1 INTRODUCTION .......................................................................................................... 1
  1.1 Research questions and main arguments........................................................................ 5
  1.2 Research methods and sources........................................................................................ 8
  1.3 Structure of the thesis........................................................................................................ 11

### 2 INTERNATIONAL REGIMES AND ACTOR POWER ............................................... 14
  2.1 International regimes.......................................................................................................... 14
    2.1.1 Definitions and classification of “regimes” ........................................................................ 17
    2.1.2 Theoretical perspectives on regimes .................................................................................. 22
  2.2 Power in political theory and IPE ...................................................................................... 41
    2.2.1 Power in political theory ................................................................................................ 42
    2.2.2 Power in IPE .................................................................................................................. 46
    2.2.3 Reviewing Power Concepts ............................................................................................ 49
  2.3 A concept of actor power in international regimes ......................................................... 52
    2.3.1 Resources: an actor’s “underlying capabilities” ............................................................... 56
    2.3.2 The regime as power resource: an actor’s “organisationally-dependent capabilities” ....... 58
    2.3.3 Power exercise in the negotiation process: an actor’s contribution to bargaining .......... 61
    2.3.4 Actors, Power and Outcomes ............................................................................................ 62
    2.3.5 Actor-Centred Power Analysis: Five Propositions ............................................................ 63
  2.4 Interim Conclusion.............................................................................................................. 65

### 3 THE WTO IN THE GLOBAL TRADING SYSTEM ..................................................... 67
  3.1 The international trade regime and the WTO ................................................................. 68
    3.1.1 Evolution ........................................................................................................................ 68
    3.1.2 Current institutional structure ........................................................................................ 85
    3.1.3 Principles, objectives and functions ................................................................................ 94
  3.2 Power in the WTO ............................................................................................................. 99
    3.2.1 Research questions ......................................................................................................... 109
  3.3 The issue area: trade in services ....................................................................................... 110
    3.3.1 Definition of services and services statistics ................................................................. 111
    3.3.2 The political economy of service trade ........................................................................ 113
# Table of Contents

3.3.3 Services in the Uruguay Round ....................................................................................................115
3.3.4 The GATS......................................................................................................................................118
3.4 Interim Conclusion..........................................................................................................................125

4 THE EU IN THE INTERNATIONAL TRADE REGIME .....................................................................127
4.1 The resource basis I – trade policy, institutions, policy-making, trade in services ..................127
4.2 The resource basis II - key relations of the EU with the external world ....................................144
4.3 The resource basis III: regime dependent capabilities ..................................................................151
4.4 Interim Conclusion..........................................................................................................................155

5.1 Overall framework negotiations: the new round idea .................................................................157
5.1.1 The Singapore and Geneva WTO Ministerial Conferences ...................................................159
5.1.2 The Seattle WTO Ministerial Conference ..............................................................................164
5.2 Issue-area framework negotiations: preparing GATS 2000 .....................................................172
5.2.1 Assessment exercise ..................................................................................................................176
5.2.2 Negotiation guidelines and modalities ....................................................................................178
5.2.3 The EU position .......................................................................................................................186
5.2.4 Rallying domestic support – selling GATS to industry .........................................................187
5.2.5 Cooperation in the run up to GATS 2000 ..............................................................................189
5.3 Interim Conclusion..........................................................................................................................192

6.1 The negotiations on financial services .......................................................................................198
6.2 The negotiations on telecommunication services ......................................................................210
6.3 The negotiations on the movement of natural persons (Mode 4) ..............................................214
6.4 The negotiations on maritime services .......................................................................................217
6.5 The negotiations on domestic regulations in the accountancy sector .......................................219
6.6 The negotiations on GATS rules .................................................................................................221
6.7 Interim Conclusion..........................................................................................................................222

7 FROM SEATTLE TO DOHA 2000-2001: LAUNCHING THE TRADE ROUND ..........................227
7.1 Overall framework negotiations: reviving the new round idea .................................................227
7.2 Issue-area framework negotiations: starting GATS 2000 negotiations ....................................241
7.2.1 Negotiation guidelines and modalities ....................................................................................244
7.2.2 Cluster approach .....................................................................................................................250
7.2.3 Assessment .............................................................................................................................251
7.2.4 Credits for autonomous liberalisation ....................................................................................253
7.2.5 Overall developments ..............................................................................................................255
7.3 Interim Conclusion..........................................................................................................................256

8 FROM DOHA TO CANCÚN 2002-2003: STARTING THE DOHA ROUND ...............................261
8.1 Overall framework negotiations: the first stages of the Doha Round .........................261
   8.1.1 The Cancún WTO Ministerial ..............................................................................266
   8.1.2 Progress of the negotiations after Cancún .........................................................272

8.2 Issue-area framework negotiations: making slow progress ....................................275
   8.2.1 Credits for autonomous liberalisation .................................................................276
   8.2.2 Modalities for the special treatment for least-developed countries ......................281
   8.2.3 Assessment of liberalisation of services trade ......................................................283
   8.2.4 Market access negotiations ..................................................................................285
   8.2.5 Preparation of the Cancún Ministerial in the CTS/CTS-SS ....................................298

8.3 Interim Conclusion ..................................................................................................300

9 FROM CANCÚN TO HONG KONG 2004-2005: LOWERING EXPECTATIONS ....305

9.1 Overall framework negotiations: admitting defeat? .............................................305
   9.1.1 Towards the July 2004 framework .....................................................................305
   9.1.2 The run-up to the Hong Kong Ministerial .........................................................310
   9.1.3 The WTO Hong Kong Ministerial .......................................................................316

9.2 Issue-area framework negotiations: much ado about very little? ............................320
   9.2.1 Assessment exercise ..........................................................................................320
   9.2.2 Market access negotiations ...............................................................................321
   9.2.3 The EU and services at the Hong Kong Ministerial ............................................337

9.3 Interim Conclusion ..................................................................................................339

10 CONCLUSION.....................................................................................................347

10.1 Results of the investigation ..................................................................................349
10.2 Revisiting international regimes and actor power ..................................................364
10.3 Revisiting methodology .........................................................................................368
10.4 Outlook ..................................................................................................................370

11 REFERENCES .......................................................................................................372

11.1 Official documents ...............................................................................................372
11.2 Newspapers and specialist press ..........................................................................379
11.3 Articles, reports and books ...................................................................................379

12 APPENDICES .......................................................................................................401

12.1 Annex 1: The three main paradigms in regime theory in comparison .....................401
12.3 Annex 3: EU-25 trade with its main partners in services ........................................404
12.4 Annex 4: Coalitions and cooperation in the services negotiations .......................405
12.5 Annex 5: The position of key WTO members in the services negotiations ..........411
12.6 Annex 6: List of interviews ...................................................................................415
12.7 Annex 7: Sample interview schedules .................................................................417
List of Tables, Figures and Boxes

Table 3.1  The eight trade rounds.........................................................................................................70
Table 3.2  Decision-making in the WTO...............................................................................................89
Table 3.3  Issues mandated for negotiation in GATS .............................................................................122
Table 3.4  Types of negotiations in trade in services...............................................................................124
Table 5.1  Formal and informal papers submitted to the CTS for the sectoral information exchange programme in 1998.................................................................174
Table 5.2  Pre Seattle positions of selected WTO members .....................................................................182
Table 12.1  The three main paradigms in regime theory in comparison ....................................................401
Table 12.2  EU-25 trade with its main partners, total services (in million EUR).........................................404
Table 12.3  Identifying the “demandeurs” in the services negotiations ......................................................406
Table 12.4  Presumed members of the Friends groups.............................................................................409

Figure 2.1  The Keohane and Nye model of regime change in an international organisation..................54
Figure 2.2  Relationship between an actor’s power and the regime...........................................................60
Figure 3.1  The WTO in the global trading system....................................................................................68
Figure 4.1  The EU’s and the US’ share in world merchandise and service exports and imports .................128
Figure 4.2  EU member states’ share in total extra-EU International Trade in Services ............................140
Figure 4.3  Shares in EU-25 International Trade in Services with the rest of the world ..........................141

Box 3.1  GATT side agreements..............................................................................................................93
Box 3.2  A definition of services..............................................................................................................111
Box 3.3  Sectors dealt with under the GATS............................................................................................119
Box 3.4  Modes of supply under GATS..................................................................................................119
Box 4.1  The EU and its member states: perceived impact on trade policy in the WTO .........................135
Box 5.1  The section on services in the Singapore Ministerial Declaration ..............................................161
Box 6.1  Provisions in the Disciplines for the Accountancy Sector...........................................................221
Box 8.1  Defining the post-Cancún EU strategy .......................................................................................274
Box 8.2  Autonomous liberalisation: negotiation result ...........................................................................279
Box 8.3  Content of the EU offer ..............................................................................................................294
Box 9.1  The services industry and the GATS 2000 negotiations – interview results ...............................326
Box 12.1  Article 133 of the EC Treaty....................................................................................................403
Box 12.2  Sample interview schedule for European Commission member ..................................................418
Box 12.3  Sample interview schedule for a non-EU WTO member country.............................................418
**List of Terms and Abbreviations**

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific countries</td>
</tr>
<tr>
<td>African Group</td>
<td>A group of all African countries in the WTO (WTO 2007d)</td>
</tr>
<tr>
<td>AIG</td>
<td>American Insurance Group</td>
</tr>
<tr>
<td>APEC</td>
<td>Asia-Pacific Economic Co-operation</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
</tr>
<tr>
<td>Cairns Group</td>
<td>The Cairns Group is a group of major food exporters.</td>
</tr>
<tr>
<td>CAP</td>
<td>(EU) Common Agricultural Policy</td>
</tr>
<tr>
<td>CARICOM</td>
<td>Caribbean Community and Common Market</td>
</tr>
<tr>
<td>CCP</td>
<td>Common Commercial Policy</td>
</tr>
<tr>
<td>Ch.</td>
<td>Chapter(s)</td>
</tr>
<tr>
<td>CSI</td>
<td>Coalition of Service Industries (US American)</td>
</tr>
<tr>
<td>CTS</td>
<td>Council for Trade in Services</td>
</tr>
<tr>
<td>CTS-SS</td>
<td>Council for Trade in Services – Special Session</td>
</tr>
<tr>
<td>DDA</td>
<td>Doha Development Agenda</td>
</tr>
<tr>
<td>DDA negotiations</td>
<td>WTO negotiations based on the Doha Development Agenda, also referred to as “Doha Round” negotiations</td>
</tr>
<tr>
<td>DG</td>
<td>Directorate General</td>
</tr>
<tr>
<td>DSB</td>
<td>Dispute Settlement System</td>
</tr>
<tr>
<td>DSU</td>
<td>Dispute settlement understanding</td>
</tr>
<tr>
<td>e.g.</td>
<td>for example</td>
</tr>
<tr>
<td>EBA</td>
<td>“Everything but arms” initiative</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>ECDPM</td>
<td>European Centre for Development Policy Management</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>ENT</td>
<td>economic needs test</td>
</tr>
<tr>
<td>ESF</td>
<td>European Services Forum</td>
</tr>
<tr>
<td>ESM</td>
<td>Emergency Safeguard Measure</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EU-25</td>
<td>Refers to the EU’s 25 member states after the 2004 EU enlargement.</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FIPs</td>
<td>“Five interested parties” – a coalition of the EU, US, Australia, Brazil and India.</td>
</tr>
<tr>
<td>FOGS</td>
<td>Function of the GATT System (negotiation group)</td>
</tr>
<tr>
<td>FT</td>
<td>Financial Times</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
</tr>
<tr>
<td>G10</td>
<td>Group of net food importers. Also group of the most influential developing countries in the Uruguay Round services negotiations.</td>
</tr>
<tr>
<td>G15</td>
<td>Group of developing countries, set up as a counterbalance to the G7</td>
</tr>
<tr>
<td>G20</td>
<td>A group of developing countries (also referred to as the G21), mostly</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>G24</td>
<td>A group of developing countries in the services negotiations</td>
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<tr>
<td>G33</td>
<td>A group of roughly 46 countries in the agriculture negotiations, also referred to as the “Friends of Special Products) (WTO 2007d)</td>
</tr>
<tr>
<td>G7</td>
<td>Coalition of Canada, France, Germany, Italy, Japan, United Kingdom.</td>
</tr>
<tr>
<td>G77</td>
<td>Coalition of developing countries set up in 1964 in conjunction with the first UNCTAD. More than 130 members (WTO 2003).</td>
</tr>
<tr>
<td>G8</td>
<td>G7 plus Russia</td>
</tr>
<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GATS 2000</td>
<td>GATS negotiations prescheduled to start in 2000.</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GPE</td>
<td>Global Political Economy</td>
</tr>
<tr>
<td>ICTSD</td>
<td>International Centre for Trade and Sustainable Development</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IPE</td>
<td>International Political Economy</td>
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<tr>
<td>IR</td>
<td>International Relations</td>
</tr>
<tr>
<td>ITC</td>
<td>International Trade Centre</td>
</tr>
<tr>
<td>ITO</td>
<td>International Trade Organisation</td>
</tr>
<tr>
<td>IUST</td>
<td>Inside US Trade (a US based news service for trade policy issues)</td>
</tr>
<tr>
<td>LDC</td>
<td>Least-developed countries</td>
</tr>
<tr>
<td>LMG</td>
<td>Like-minded group</td>
</tr>
<tr>
<td>Mercosur</td>
<td>“Southern Common Market” between Argentina, Brazil, Paraguay, Uruguay and Venezuela</td>
</tr>
<tr>
<td>MFN</td>
<td>Most-Favoured Nation</td>
</tr>
<tr>
<td>MNC</td>
<td>Multinational Corporation</td>
</tr>
<tr>
<td>Mode 3</td>
<td>Mode of cross-border services provision under GATS; services provision by establishment of a “commercial presence in the host country”</td>
</tr>
<tr>
<td>Mode 4</td>
<td>Mode of cross-border services provision under GATS; services provision by the movement of natural persons</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement between Canada, Mexico and the United States</td>
</tr>
<tr>
<td>NAMA</td>
<td>Non-agricultural market access</td>
</tr>
<tr>
<td>new Quad</td>
<td>Coalition of the EU, the US, India and Brazil Also referred to as the G4. Has also met as the “Quint” or G6 with Japan and/or Australia.</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>NT</td>
<td>national treatment</td>
</tr>
<tr>
<td>NTB</td>
<td>Non-Tariff Barrier (to trade)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>Quad</td>
<td>A coalition of the USA, EU, Canada and Japan</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>Quint</td>
<td>See new Quad.</td>
</tr>
<tr>
<td>S&amp;D</td>
<td>Special and differential treatment provisions for developing countries</td>
</tr>
<tr>
<td>TNC</td>
<td>Trade Negotiations Committee</td>
</tr>
<tr>
<td>TPRM</td>
<td>Trade-policy review mechanism</td>
</tr>
<tr>
<td>TRIPs</td>
<td>Trade-Related Intellectual Property Rights</td>
</tr>
<tr>
<td>TWN</td>
<td>Third World Network</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative (refers to both the person and to the White House office he/she is leading)</td>
</tr>
<tr>
<td>WDM</td>
<td>World Development Movement</td>
</tr>
<tr>
<td>WPGR</td>
<td>Working Party on GATS Rules</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
<tr>
<td>WTO DG</td>
<td>WTO Director General</td>
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1 Introduction

In October 2006, the European Commission launched what can be called a new trade policy strategy. This strategy importantly contained plans for a range of new bilateral trade agreements that the European Union (EU) was planning to negotiate with several of its target markets. Compared to the enthusiasm and high expectations the EU displayed for the World Trade Organisation (WTO) in the late 1990s and which it kept up even through the two failed Ministerial Conferences at Seattle in 1999 and Cancún in 2003, this is a significant sea change. This sea change occurred on the back of the meagre result of the 2005 Hong Kong Ministerial and the suspension of the Doha Development Agenda (DDA) negotiations at the end of July 2006. It shows that the EU, which since the end of the Uruguay Round had been the main proponent of a new trade round, is seeking a new forum to achieve its trade policy objectives. It indicates that the European Commission (here also referred to as “Commission”) seems to have started to doubt that the WTO can provide the most efficient framework for the pursuit of trade policy objectives by the EU.

This sea change in the EU’s trade policy hence gives rise to a set of questions concerning the impact that the EU has had – or has thought it had – on the rules of the global trade regime on the multilateral level. In general, it is assumed that the EU has achieved significant actorness in the international trade regime. Although the EU might not be as influential in the realm of classical foreign policy as a nation state, it is thought to be a powerful actor in the global political economy (GPE) more generally. For the EU itself and specifically for its negotiators in the Commission, the field of trade policy is the main field in which the EU can assert its actorness and build its identity as an international actor. This renders the WTO into a “make-or-break” arena; it is a key place in the GPE where the EU has “superpower” potential. This “superpower” potential arises out of the EU’s significant resource equipment in
trade policy and is driven forward by the EU’s massive economic interests in the attempt to shape the regime according to its own preferences. To what extent, however, the EU has been able to use its resources to shape the rules of the trade regime has remained questionable, as raised by Meunier and Nicolaidis:

One of the most interesting questions about European trade policy today is how far the EU will be willing or able to transform its structural power into effective influence (and what will be its goals) in establishing itself as a global power through trade (2005: 266).

This thesis investigates the question of the EU’s power utilization in and impact on the international trade regime by analysing the EU’s changing involvement in the WTO between 1995-2005, focusing especially on the EU’s impact on the trade in services negotiations (General Agreement on Trade in Services (GATS) negotiations). The investigation in this thesis is guided by two main assumptions:

The first assumption is that power matters in international regimes and that a power-based analysis is crucial in understanding the nature of negotiation outcomes under the WTO’s heading. Starting from an International Political Economy (IPE) perspective, the research proposes a concept of actor power in regimes (drawing for example on the work of Krasner 1991 and Keohane and Nye 2001), which guides the empirical investigation. The focus of this thesis is hence on the EU’s power in the WTO, as suggested by the Meunier and Nicolaidis quotation above. The thesis also sheds light on the broader issues around power in multilateral trade negotiations, as raised by Wolfe:

Power is still highly salient for understanding the institutional design of multilateral trade negotiations, but analysts need a subtle conception of its dimensions if we are to understand who has it, how it changes, and how much critical mass is needed for any aspect of the negotiating process (Wolfe 2006: 9).

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1 Although from a legal point of view, trade policy is a European Community (EC) policy, this dissertation follows the everyday use of the term “EU” as a general abbreviation for the European Union and its component parts. “EC” is only used to denote developments before the 1992 Maastricht Treaty on European Union, or where directly used in a quote.

2 In this dissertation, the term “IPE” refers to the body of literature which combines international relations and political economy research. In the literature, IPE is also called “global political economy (GPE)”. However, in this thesis, GPE denotes the globalising world economy and the complex relations between the economic and the political realms within it.
The second assumption, which emerges out of the investigation, is that since its establishment in 1995, there has been a power shift in the WTO. This power shift has changed the “rules of the game” in the WTO, decreased the EU’s effectiveness in the WTO and challenged the EU’s strategy and conduct in the WTO. Whilst there has been debate about the nature and extent of this power shift, the thesis argues that it is a key feature of the international trade regime with which the EU has had to cope since the late 1990s, and thus a key conditioning factor in the EU’s deployment of power.

The main part of this investigation is provided by a case study dealing with the overall framework setting negotiations in the WTO and the services negotiations between 1995-2005.

This time period was chosen for a variety of reasons: The WTO agreements entered into force on 1st January 1995 and the international trade regime started to function with a completely new institutional set-up, the WTO. At the same time, with the inception of the WTO in 1995, agenda-setting for a new round of trade negotiations immediately started. These pre-negotiations were crucial in determining the shape of the Doha Round of trade negotiations, which was launched in 2001. The importance of pre-negotiations in a negotiation process has been pointed out by Winham, who argued for the case of an earlier trade round: “it is clear that the pre-negotiation phase in the Uruguay Round generally resembled the process of negotiation that followed from it” (Winham 1989: 293). Despite the absence of a formal multilateral trade round, the groundwork for the new trade round was laid and the agenda shaped in the 1995-2001 period. These overall framework negotiations hence involved the EU’s attempt at building support for a new trade round after the inception of the WTO in 1995 and the EU’s participation in the trade round after the launch of the DDA in 2001. The cut-off date for the empirical study was chosen to be the end of 2005: In December 2005, the third Ministerial Conference in the framework of the Doha Round had taken place. By the time of the Hong Kong Ministerial, the agenda of the Doha Round had been importantly reshaped and the issues that would be included in a final outcome had become visible to a large extent (see for example Wilkinson 2006b: 138ff). Most importantly, crucial developments in
terms of the EU’s power impact on the WTO had become visible and had become institutionalised.

Apart from the overall framework negotiations such as those central to the DDA, the WTO hosts specific agreements for several issue areas under its umbrella. The rules for these issue areas are not negotiated in the overall negotiations, but in specialised councils and working groups. To gain a more complete picture of the EU’s involvement in the WTO negotiations, the issue area of trade in services has been chosen for investigation. The trade in services negotiations have been selected as an example as the EU has identified further services liberalisation via the GATS framework as one of its core offensive interests and negotiation objectives, and one could hence expect to observe an active attempt of the EU at shaping the GATS negotiations. At the same time, the GATS framework provides an interesting example for observation, as services liberalisation was a “new trade issue” in the 1980s and the GATS framework is still evolving. This means that market access negotiations and rule setting negotiations are taking place in parallel. Due to the regulatory nature of the services negotiations, they also display different negotiation dynamics from the “traditional” GATT (General Agreement on Tariffs and Trade) style tariff negotiations. This distinctive nature of the services negotiations, which implies a certain opaqueness to the outside observer, means that the services negotiations have often evaded the attention especially of IPE or International Relations researchers and therefore are of special interest for the investigation. In the 1995-2005 period chosen for this investigation, a set of services negotiations took place which were highly interesting for an analysis of the EU’s involvement in the WTO negotiations. These were on services liberalisation overall and on sectoral services issues (see below), and thus provided ample opportunity to assess the EU’s power exercise and its impact.

The regime, issue area and time frame chosen for this dissertation thus provided rich material for investigation. The time frame under investigation in this thesis, 1995-2005, allowed the comparison between successive time periods of the EU’s involvement in the negotiations. The combination of overall negotiations and issue area specific negotiations allowed the comparison between different types of
negotiations (highly politicised versus expert-driven) and the observation of issue linkages.

The contribution of this thesis to the literature is fourfold:

- From an IPE theory point of view, the thesis explores the interaction of the concept of “international regimes” and the concept of “actor power”. Regime theory has traditionally been dominated by interest-based approaches, whereas the thesis promotes a power-based regime analysis.
- On the basis of the practical example of the EU’s involvement in the WTO negotiations, the thesis investigates the ways in which a powerful actor uses its resources in the trade regime and how successful its attempts at shaping the regime have been.
- The thesis provides a detailed empirical analysis of the services negotiations and the particular negotiation dynamics in this area, specifically with reference to the EU but also touching on the activities of other actors.
- The thesis evaluates the role of the EU in a recent set of trade negotiations, and raises questions about EU strategies in such negotiations more generally, in addition to those arising from its attempts to shape the negotiations over trade in services.

Apart from the academic interest that the questions in this research raise, the practical relevance of this dissertation is hence to “shed light” on the “inner workings” of the international trade regime and to the question as to what influence the EU’s participation has on the WTO.

1.1 Research questions and main arguments

As noted above, the thesis is aimed at investigating the role of actor power in international regimes, and specifically the power of the EU in relation to the WTO. The first step in the investigation is thus to establish the framework for analysing actor power in international regimes. This is pursued through an evaluation of literature on the two key concepts, “international regimes” and “power”, which in turn gives rise to a framework based on five key elements:
1. Specification of the regime, its qualities and the issue-area(s) it relates to.

2. Assessment of the resources and capacities that an actor brings to the regime, which can be seen as “underlying power”.

3. Assessment of the actor’s “organisationally dependent capabilities” and thus of resources derived from the regime itself.

4. A focus on formal negotiation and bargaining processes in which the actor is involved, so as to bring to light the exercise of power in those contexts, in particular through processes of agenda setting and coalition building.

5. An assessment of outcomes, defined in terms of “power over” the regime and the achievement of stated preferences.

The investigation in this thesis is guided by the following set of research questions, which derive directly from the five analytical elements outlined above:

1. How has the EU recognised and adapted to the power shift in the WTO?

2. What resources for action does the EU bring to the WTO?

3. Which organisationally-dependent capabilities exist for the EU in the framework of the WTO?

4. To what extent is the EU capable or not capable of influencing the processes leading to the WTO’s negotiation agendas? Are there differences between the different types of negotiations in the WTO?

5. To what extent does the EU have the capacity to build and lead coalitions within the WTO (coalition-building) and in which ways does it acquire support for its positions (consensus-building)?

6. Do outcomes of WTO negotiations reflect preferences of the EU? Why or why not?

An evaluation of the WTO and of the EU’s broad role within it suggests that the multilateral trade regime in general had become more attractive to the EU with the inception of the WTO. The expanding membership of the WTO provided the EU with a new channel of access to the newly joining, predominantly developing countries. The WTO as a regime promised greater returns for the EU than other regimes (for
example bilateral agreements) and thus the EU attempted to mould it according to its preferences. On the basis of its resources and its interests, the EU postulated a further trade round and services liberalisation as key objectives in the WTO and thus as ways of demonstrating EU power. This sets the scene for the more detailed examination of a case study – trade in services.

The first part of the case study deals with the EU’s promotion of the new trade round. In parallel, preparations for the pre-scheduled “GATS 2000” negotiations were taking place. After the Uruguay Round, the GATS framework remained incomplete in a number of areas and negotiations on maritime services, telecom services, financial services and the movement of natural persons were scheduled to continue after the Uruguay Round. Additionally, negotiations needed to be conducted on a possible emergency safeguard measure (ESM),

3 government procurement and rules on services subsidies (the so-called “rules negotiations”) as well as on disciplines on the regulation for service providers (i.e. the requirements foreign service providers have to meet in order to enter a foreign market). The second part of the case study follows the EU’s attempts to revive the new round idea after the failed Seattle Ministerial until the launch of the DDA in 2001 and through the parallel start of the GATS 2000 negotiations. The third and fourth parts of the case study cover the time between the start of the DDA in 2001 through the failed Cancún Ministerial to the Hong Kong 2005 Ministerial and the parallel GATS 2000 negotiations.

The Conclusions to the thesis bring together the evidence from the empirical study, evaluate key themes and trends, and relate them both to the specific research questions and to the conceptual framework established at the outset. They also review the methodology deployed in the thesis and identify issues both for policy and for further research in the field.

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3 An ESM could be invoked by WTO members in case of an import surge and would allow them to temporarily suspend their liberalisation commitments under the GATS (South Centre 2005).
1.2 Research methods and sources

This section discusses the research methods that were chosen for this dissertation and the sources upon which it relies. The nature of the research question suggested a longitudinal study which would enable the comparison between different time periods in order to assess whether the EU’s impact on the WTO negotiations has changed over time. Therefore, the case study method was chosen as the main research method.

A “case” is an often employed term, so it warrants some initial definition for the purpose of this thesis. A “case” has been defined as

A unit of human activity embedded in the real world; which can only be understood in context; which exists in the here and now; that merges in with its context so that precise boundaries are difficult to draw (Gillham 2000: 1).

In this dissertation, the “case” is the negotiations in the context of the WTO. Though the human interaction which will be observed in a case is necessarily a one-off interaction, the longitudinal design of the case study in this thesis allows the observation of a range of interactions over various years and across different levels of negotiations (as discussed above), and by the combination of evidence from a range of source materials, which allowed a verification of the information gathered (see below).

A case study is

one which investigates the above [the case] to answer specific research questions […] and which seeks a range of different kinds of evidence which is there in a case setting, and which has to be abstracted and collated to get the best possible answers to the research questions (Gillham 2000: 1ff).

It deals with a specific case which has been deemed particular enough to be subjected to further scrutiny (Stake 1995: xi). As discussed above, the WTO negotiations and the issue area of trade in services warrant more thorough investigation for a range of reasons.

Within the case study, a process-tracing methodology is adopted. Process-tracing is a method to identify the causal chains between an independent variable (here: power input of the EU) and the outcomes of power usage (Checkel 2005: 5). The research
1 Introduction hence assumes an exploratory (what happened?) and evaluative approach (why did it happen and how well are procedures working?) (Denscombe 2002: 27), and relies on qualitative data typical for a process-tracing method (Checkel 2005: 6).

Stake argued that “Case study research is not sampling research. [...] Our first obligation is to understand this one case.” (1995: 4). While it is thus not always possible to generalise unconditionally from studying one case as in this dissertation, the thesis aims to produce a form of middle-range, actor-based power analysis in a regime, which can potentially be generalised to a range of regimes, actors and issues. The investigation will hence raise a number of important questions about the notion of actor power in regimes. The thesis might thus give guidance for the analysis of other cases involving a range of actors and of international regimes.

The theoretical framework of the dissertation is developed from a review of the literature on international regimes, and power in political and IPE theory. A wide range of literature on the WTO in general and on EU trade policy has been consulted and used in order to develop the analytical framework, to derive the research questions and to set the broader context for the case study.

For the case study, less secondary material was available and in large parts, the case study is based on newspaper reports (Financial Times (FT) and others), on material from the US specialist trade news service World Trade Online and its weekly newsletter IUST (“Inside US Trade”) and on the weekly trade newsletter “Bridges”, published by the ICTSD (International Centre for Trade and Sustainable Development), as well as on documents published both by the EU and the WTO. Documents from the EU came primarily from the European Commission and included speeches, strategy and position papers, press releases and communications to the WTO. From the WTO, documents analysed included the texts of the various relevant agreements and treaties, communications from various WTO members, WTO press
releases and other information material published by the WTO such as press briefing packs. The most important source of WTO documentation was, however, the minutes of CTS (Council for Trade in Services) and CTS-SS (Council for Trade in Services – special session) meetings, which have been analysed for the years 1995-2005. For the first part of the case study (chapters 5 and 6), CTS meeting reports have been consulted, as the GATS 2000 negotiations were prepared in this forum. For parts 3-5 (chapters 7-9), CTS-SS documents were used as the GATS 2000 negotiations were shifted into this special formation of the CTS.5

The thesis deals with an area which requires a high level of technical knowledge before a researcher can interact with practitioners, as the political dimension of the trade negotiations, and in particular the services negotiations, is often intermingled with very technical argumentations made on the expert level. To gain an understanding of the negotiation area and of the perceived impact of the EU on the negotiations, it was therefore important to network with experts both formally through interviews and informally in the margin of conferences and workshops. A main part of this networking was conducted during two three months stays in Brussels (04/05-06/05 and 10/05-12/05). The relevant experts for this research were trade negotiators both on the expert or senior level, staff of Directorate General (DG) Trade, industry and representatives from non-governmental organisations (NGOs). At the same time, a lot of “inside information” and perceptions could only be captured by interviews. A total of 36 interviews have therefore been conducted. Interviewees included current and former EU negotiators from DG Trade with expertise in trade in services, two senior staff from DG Trade, services negotiators from several (non-EU) WTO

4 The availability of information about trade policy making has greatly increased with the advent of the weekly Bridges Trade Newsletter in February 1997 (there is also a monthly edition which provides in-depth analysis and views of practitioners), the online publication of WTO meeting documents, and of other relevant WTO and EU documentation. The trade database IUST gave an often very detailed account of the negotiations, but obviously had a tendency to focus more on the US position than on the EU. Overall, EU trade policy making is hence still less publicised than US trade policy making and more difficult to track.

5 In the text, sources from specialist press (Guardian, FT, Economist, Bridges Trade Newsletter, IUST) are referred to by the name of the source and the date of publication and can be accessed via the respective websites of the publishers. Official documentation from the WTO is referred to by its WTO document number and the date of its publication and can be accessed via the WTO Documents online webpage (Links are provided in the References).
members, a representative of an intergovernmental organisation, a member of the WTO Secretariat, business representatives and a NGO representative. Most of these interviews were not taped due to the strict confidentiality that interviewees required. The analysis of the interviews is hence based on the notes taken during the interviews. The semi-structured nature of the interviews meant that interviewees could speak freely and add their own concerns and information about the WTO negotiations, which contributed to the final evaluation in this thesis. The interviews hence allowed the researcher to gain both an enhanced understanding of the functioning of the negotiations, to cross-check material that was already available through other documentation, and they added information which could not have been derived from the primary materials used otherwise for this research.

During the interview phase, it proved relatively easy to arrange interviews with various stakeholders in Brussels, but it was much more difficult to gain access to the trade negotiator and services experts community in Geneva. Experts at the different national delegations in Geneva were open to interviews to varying degrees, ranging from great openness to refusal of interviews or giving only very limited information. However, once a few initial contacts had been made, it was easy to get referrals to their colleagues from further delegations. As most negotiators were based in Geneva only for a certain time, the last two parts of the case study were covered most by interviewees. Five interviewees commented on the earlier parts of the case study and in this way complemented the material available for this period of the negotiations.

### 1.3 Structure of the thesis

Chapter 2 explores the two concepts of “international regimes” and “power” in political and IPE theory. The concept of the international regime is introduced and discussed on the basis of its different theoretical strands. It is argued that a power-based approach to regimes warrants further consideration and expansion, especially for the case at hand, the EU’s impact on the trade regime. Hence, the second part of the chapter reviews power concepts in political theory and in IPE and how they relate

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6 A list of interviews and sample interview schedules are provided in Annex 6 (Sect. 12.6) and Annex 7
to the regime concept. The third part of the chapter introduces the concept of actor power in international regimes that will guide the rest of the investigation. Five propositions (see above, section 2.3) are presented that inform the case study and the more focused research questions which are presented in chapter 3.

In chapter 3, the WTO as the main institution in the international trade regime is introduced. The chapter gives first an introduction to the evolution of the international trade regime and the EU’s involvement in it. The second part discusses the WTO’s institutional structure, its decision-making procedures and its main principles, objectives and functions. The third part of the chapter explores the role of actor power, as identified in the theoretical framework, in the WTO and develops the five propositions set out in chapter 3 into a set of targeted research questions. The fourth part introduces the issue area “trade in services”.

Subsequently, chapter 4 turns towards the EU as an actor in the international trade regime. The chapter analyses the EU’s resources for achieving actorness in the trade regime, which are first of all its competencies in the area of trade policy, its economic weight, its expertise and extensive manpower in the area of trade policy as well as the support (or lack of support) of EU civil society. The EU’s resource basis for the services negotiations is also introduced. Secondly, the chapter evaluates EU’s actorness as based on its vast network of relationships with its trading partners and the chapter hence focuses especially on the EU’s relationships with various country groupings in the WTO. In a third part, the chapter discusses the EU’s resources which emerge from its participation in the WTO (its “organisationally-dependent capabilities”).

Chapters 5-9 are devoted to the analysis of the EU’s involvement in the WTO negotiations overall and the services negotiations specifically. Chapter 5 analyses the EU’s participation in the agenda-setting phase both for the overall negotiations and for the GATS 2000 negotiations 1995-1999. In parallel, a range of sectoral
services negotiations took place, which are dealt with in chapter 6.\textsuperscript{7} The years between the failed Seattle Ministerial Conference and the launch of the DDA in 2001 are covered in chapter 7. While the EU here continued to promote the new trade round, it simultaneously participated in the newly started GATS 2000 negotiations, which are the focus of the second part of the chapter.

Chapter 8 covers the DDA negotiations between their launch in 2001 and the Cancún Ministerial. The chapter follows the negotiations proceeding towards the Cancún Ministerial in 2003, the outcome of which constituted a second failure. In the second part, the chapter provides an insight into the services negotiations as becoming a place of ongoing “skirmishes” between developing and developed countries. In chapter 9, which treats the negotiations between the Cancún Ministerial and the Hong Kong Ministerial, it is established that the European Commission embarked on various initiatives to increase the prominence of the services negotiations in the overall DDA negotiations. The chapter hence follows the overall and services negotiations until the Hong Kong Ministerial. Finally, the Conclusion revisits the theoretical framework with its five propositions on actor power in regimes and the research questions. It then discusses them on the basis of the findings of the case study. On the basis of these findings, it explores future options for EU trade policy making.

\textsuperscript{7} While between 1995-1999, sectoral, “issue-area specific” (see Sect. 3.3.4) negotiations on trade in services with distinct results took place in the WTO, after 1999 mainly framework negotiations were held. Some issue-area specific negotiation items were treated in these framework negotiations as well. The few issue-area specific negotiations that took place in working groups in the WTO were either not documented or remained without significant results. It was therefore decided that an additional chapter on issue-area specific negotiations after 1999 would not be of additional value to this thesis.
2 International regimes and actor power

As noted in the Introduction, the focus of this thesis is on three key areas: first, the notion of international regimes, and particularly the international trade regime; second, the exercise of power within international regimes; and third, the ways in which the European Union can be seen to exercise power within the international trade regime. All three of these areas have been sites for conceptual contestation. The notion of international regimes has attracted attention from a wide range of supporters and critics, whilst the nature of power is one of the most keenly contested conceptual areas not just in International Relations but also more generally in Political Science and other social sciences. The international roles and characteristics of the EU have also given rise to long-standing debates and controversies.

Within this broad intellectual context, this chapter and the two following chapters lay the theoretical groundwork and establish the broad empirical context for the subsequent investigation in this thesis. In the first part of this chapter, the concept of the international regime is introduced and discussed on the basis of its different theoretical strands. It is argued that a power-based approach to regimes warrants further consideration and expansion, especially for the case at hand, the EU’s impact on the trade regime. Hence, the second part of the chapter reviews power concepts in political theory and in IPE and how they relate to the regime concept. The third part of the chapter introduces the concept of actor power in international regimes that will guide the rest of the investigation. Five propositions are presented that inform the case study and the more focused research questions that are presented in chapter 3.

2.1 International regimes

[…] Relationships of interdependence often occur within, and may be affected by, networks of rules, norms, and procedures that regularize behaviour and control its effects. We refer to the sets of governing arrangements that affect relationships of interdependence as international regimes (Keohane and Nye 2001: 17).
Increasing economic interdependence in the global political economy has created a rising number of collective action problems on the supranational level; and a lack of governance has been identified for the international sphere by certain researchers (e.g. Haufler 2000). The increasing institutionalisation of international relations can be seen as one reaction to this lack of governance. The concept “international regime” is one approach to conceptualise the study of international interaction between states (“governance between governments”) and non-state actors, and to analyse the puzzle of institution-building in the international arena. Regime theory is a discourse field, incorporating a range of approaches. This section gives an introduction to regime theory: it introduces the debates surrounding the emergence of regime theory, definitions of an “international regime” and the theoretical approaches underlying it.

The concept of the “international regime” emerged in the 1970s (see for example the work of Ruggie 1975, Young 1980). Regime theory emerged as the result of the perceived inappropriateness of the prevailing realist conception of the international order, which failed to accommodate the increasing interdependence in international relations observed especially since the end of World War II. Regime theory’s main concerns were with why cooperation between states occurred (e.g. Axelrod and Keohane 1986), how regimes (or more generally international institutions) affected the actors involved in them (e.g. Krasner 1983), and what made some regimes stable and others unstable, effective or ineffective (Underdal 1992; Young 1994; Powell 1994; Lipson 1985). The debate about formal international organisations which had figured in the international relations community in the 1960s did not account for this international behaviour that did not necessarily follow formal rules. Regime theory therefore set out to define an object that was not “as broad as international structure, nor as narrow as the study of international organisation” (Haggard and Simmons 1987: 491). One major advantage of regime theory is that it thus aims to describe a “functional whole” (Hasenclever et al. 1996: 191), but describing a “functional whole” has also brought regime theory the critique that it was imprecise (Strange 1983).

Originating in North America in the late 1970s, substantial theoretical debate on regime theory took place in the early 1980s (see e.g. Krasner 1983). Regime theory
has subsequently been adapted mainly by German and Scandinavian political scientists to fit the needs of their different research agendas (Rittberger 1993a: xiii). At the time of its occurrence, regime theory encouraged hopes that it might be the nucleus of a new and robust theory of international cooperation (Rittberger 1993b: 5).

It seems that in the late 1990s the debate about regime theory abated. This could be interpreted as a decline of the theory, but Hasenclever et al. hold that the reduction in fierce academic discourse in the area of regime theory shows that the foundations of the theory now have been laid and form a reasonable basis for future work (2000: 4ff). And indeed, the idea of the “regime” and regime theory continue to inform case studies in International Relations (IR) and IPE (for example Breckinridge 1997; Claes 1999; von Moltke 2003; Hollifield 2004; Beeson 2006; Eid 2007; Harris 2007).

Much of the wider application of regime theory has been qualitative and based on case study research. Regime theory has been applied to the area of security policy (e.g. Müller 1993a). Haas and others adapted it for cases arising in the realm of environmental cooperation (Haas 1993; Wolf 1989; Prittwitz 1989; Schrögl 1990). In the sphere of economic cooperation, a substantial body of literature has been established (Zacher 1987; Kreile 1989; Krasner 1991; Zacher/Sutton 1996). In 1989, Huettig analysed the early signs of a regime in trade in services (1989). Further work was on human rights regimes (Krasner 1993), the food aid regime (Hopkins 1992; Hasenclever et al. 1998) and satellite-based communication (Schrögl 1993).

At the same time, regime theory has always attracted criticism on the grounds of its origins and its links to constellations of power in the world arena. Its North American origin led its critics to argue that it had been developed in order to assure Americans that the liberal international world order would survive after the decline of American hegemony. In this respect, regime theory has been seen as a response to the arguments of the theory of hegemonic stability (Gilpin 2001: 84ff). A strong and famous critical account of regime theory has been given by Strange who argued that the existing economic regimes were an outflow of US-American power and portrayed a built-in preference for American interests (Strange 1982; Strange 1996: 24).

Despite this critique, Mayer et al. have identified three main and continuing tasks for regime theory (1993; 392):
the analysis of regime formation, persistence, and demise (for the latter see Haas 1983);

the categorisation and explanation of regime properties; and

the analysis and conceptualisation of regime consequences and effects (see also Hasenclever et al. 2000: 4; 1993: 392).

This dissertation will touch on all three of these areas by focusing on how an actor (in this case the EU) can or cannot induce change in a regime and how the regime influences this ability of an actor. Such a focus links to important questions about the general establishment and persistence of regimes and most particularly about how change takes place in regimes once they have been established. It also draws upon insights into the properties of regimes, which constitute a shaping force in the generation of actor behaviour and the exercise of influence. And finally, it focuses especially an interest in regime consequences and effects because of its concern with the ways in which actors shape and are shaped by the presence of an international regime. Chapters 3-4 will take further the analysis of the international trade regime, with a particular focus on its properties and its evolution, and will also set the stage for detailed analysis in chapters 5-9 of the EU’s activities within the services negotiations that took place in the WTO between 1995 and 2005. The remainder of this chapter will explore the implications of a focus on actor power in international regimes at the level of concepts and approaches.

2.1.1 Definitions and classification of “regimes”

In order to proceed with the investigation in this thesis, it is important to clarify what a “regime” is and how it relates to the case of the EU’s involvement in the WTO.

Whereas proponents both of realism and of organisation theory have clearly defined “objects of study” – the state and the formal international organisation respectively -, scholars dealing with regime theory have spent huge efforts on defining theirs: the international regime or “international governance without supranational government” (Mayer et al. 1993: 406). The available definitions reach from a very broad one denoting any “patterned behaviour” between nation states to one that is only slightly
different from the definition of a formal international institution. A very broad definition such as

A regime exists in every substantive issue-area in international relations where there is discernible patterned behaviour. Wherever there is regularity in behaviour some kinds of principles, norms or rules must exist to account for it. (Puchala and Hopkins 1983: 63)

risks over-interpreting random “patterned” state behaviour and the extent to which states agree on the normative basis of their interaction. This definition has therefore not had many followers (Haggard and Simmons 1987: 493). A narrower definition sees regimes as multilateral agreements among states. These agreements formally regulate national action in one issue area (for example Young 1982: 20; Aggarwal 1985). This narrower definition suffers from similar shortcomings to those of the formal international organisation or international law literature, which omit a vast range of state behaviour and other intervening factors (Haggard and Simmons 1987: 493-496; Rittberger 1993b: 8-11). Krasner’s much-cited definition seeks a middle ground between a very broad and a very narrow definition, and it includes both formal and informal interaction between regime participants. He defines a regime as

implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice (Krasner 1983: 2).

A regime is hence constituted by principles, norms of behaviour and sets of rules and decision-making procedures. To Krasner, principles and norms constitute the fundamental structural elements of a regime. Thus, “changes in rules and decision-making procedures are changes within regimes, provided that principles and norms are unaltered” (Krasner 1983: 3); and only “changes in principles and norms are changes of the regime itself” (ibid.: 4).

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8 As with a very broad definition, one of the major difficulties that occurs here is how to distinguish implicit principles in an actor’s behaviour from a behaviour that occurs arbitrarily.
Obviously, Krasner’s definition sacrifices simplicity to achieve more accuracy. The definition and differentiation of the various elements contained in the definition has thus caused a range of criticisms, because in practice it proved difficult to distinguish between principles, norms, rules and decision-making procedures in a regime (Ruggie and Kratochwil 1986). Hence, Young criticised the definition as he regarded it as “really only a list of elements that are hard to differentiate conceptually and that often overlap in real world situations” (Young 1986: 106). An equally difficult issue is that of the inclusion of both explicit or implicit aspects of a regime: Focusing on implicit principles, norms, rules and decision-making procedures, and hence implicit regimes, helps to incorporate a vast range of state behaviour into the analysis, but might accidentally include state behaviour that is coincidental rather than rule-governed. Furthermore, the inclusion of implicit regimes might produce inappropriate causal conclusions about the origin of actor’s behaviour, overemphasising the importance of (apparent) regimes over other factors (e.g. economic factors) (Haggard/Simmons 1987: 494ff).

This ambiguousness of the Krasner definition has led some researchers to define regimes in a less comprehensive way:

Regimes are institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations (Keohane 1989c: 4).

Principles, norms and decision-making procedures are here summarised into “rules”, and implicit regimes are no longer considered as relevant. While this obviously simplifies regime analysis, it also subtracts from its richness and comprehensiveness. While Krasner usefully could distinguish between regime change and more superficial changes within a regime, this distinction is lost with Keohane’s definition (Hasenclever et al. 1997: 12ff). For these reasons, despite the criticisms described above, many researchers have chosen to follow Krasner’s definition to delineate their object of study (see for example Kohler-Koch 1989, Zacher 1987, Müller 1993b, Aggarwal 1985, Rittberger 1990), and this thesis will for

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these reasons also broadly adopt Krasner's definition to guide its understanding of a regime.

Further argument has evolved around Krasner's notion of the regime as place “around which actors’ expectations converge in a given area of international relations”. Certain researchers argued that these converging expectations that characterised a regime are best identified by observing states’ behaviour and their compliance or non-compliance with a regime (for example Young 1989a; Wolf and Zürn 1986). Kratochwil and Ruggie direct our attention to cognitive factors, and the establishment of a regime through the establishing of shared understanding and meaning (1986). In a later piece, Keohane criticised both of these approaches: the first one for creating a “circular argument” (using state behaviour as proof that a regime existed and then using the regime to explain state behaviour), the second for creating an approach that does not allow us to determine whether a regime actually existed. Keohane hence advocates a regime approach that focuses on explicit regimes (as he had previously done, see above) (1993a), and as was mentioned above, this approach omits a range of state behaviour that might be informed by the regime, but not be formalised. In common with other approaches to regime theory, it can also be criticised for playing down the influence of domestic factors in preference formation and the shaping of state behaviour, in response to which ‘liberal intergovernmentalists’ such as Andrew Moravcsik have proposed a focus on preference formation and transmission (Moravcsik 1997)

A further critical issue is how the concept of the “regime” relates to other concepts, such as “international cooperation” or “international institutions”. Regimes can be examples of international cooperation, but international cooperation can take place without a regime. Regimes are thus a subsection of international cooperation (Haggard and Simmons 1987: 495) and can be classified as one type of international institutions (Keohane 1989a: 3-5, Young 1986: 107). Keohane categorises international institutions into formal intergovernmental or cross-national
nongovernmental organisations, international regimes and conventions (Keohane 1989a: 3-5).\textsuperscript{10}

Organisations are thus part of international regimes and they help to transform and adapt regimes, but they have often not been the main focus of regime theory. Some regimes will feature strong organisational structures, whilst others will function without these (Haggard and Simmons 1987: 496). In this context, organisations can be defined as

\begin{quote}
    purposive entities, […] capable of monitoring activity and of reacting to it and are deliberately set up and designed by states. They are bureaucratic organisations, with explicit rules and specific assignments of rules to individuals and groups (Keohane 1989a: 4, see also Young 1989a: 25-27).
\end{quote}

For Keohane, the evolution of international organisations results on the one hand from the interests of the participating parties, on the other hand from their own organisational interests. This in turn affects and changes the regime of which the organisation is part (Keohane 1989a: 5, see also Young 1989a: 25-27). At this instance the key point is to notice that Keohane attributes a certain “life of their own” to international organisations: international organisations themselves can develop an impact on the regime and play a role in its evolution.

Regimes are also issue-specific and built to deal with problems that are considered as closely related by the governments establishing the regime: for example, the world trade regime, the world agriculture regime, the maritime affairs regime and many more. Issue areas\textsuperscript{11} are evolving and not static, depending on the state of international affairs and the actors’ perceptions and behaviour. They are

\textsuperscript{10} Conventions, defined as “informal institutions, with implicit rules and understandings that shape the expectations of actors”, are a non-disposable component of any international system. They are less institutionalised than regimes and when regimes are built on the basis of former conventions, this generally includes an extension and further specification of the rules in the issue area. However, Keohane points out later that the distinction between these three categories can be less clear-cut in practice than in theory (1989: 5). Keohane defines international institutions as “persistent and connected sets of rules (formal and informal) that prescribe behavioural rules, constrain activity and shape expectations” (1989: 3).

\textsuperscript{11} It needs to be pointed out here that the delimitation of an issue area is contentious. For a discussion of this issue see for example Efinger and Zuern 1990; Efinger et al. 1988; Zuern et al. 1990.
sets of issues that are in fact dealt with in common negotiations and by the same, or closely coordinated, bureaucracies, as opposed to issues that are dealt with separately and in uncoordinated fashion (Keohane 1984: 61).

As we will see later, the world trade regime can be considered as one issue area. At the same time, it comprises many different areas, such as agriculture trade, intellectual property rights and trade in services. These areas in themselves are issue areas. It is therefore more useful to consider the various sub-areas in the world trade regime (see chapter 2) as issue areas which are contained in the world trade regime with its central organisation, the WTO.

Regimes are constructed for a specific purpose, namely to regulate the behaviour of states in a certain issue area from “self-help behaviour” into a cooperative mode (Hasenclever et al. 2000: 3). Obviously, this raises a set of questions as to why this cooperative behaviour occurs. Different theoretical strands influencing regime theory have developed different answers to this key question in international relations.

2.1.2 Theoretical perspectives on regimes
Regime theory emerged in the liberal rationalist tradition. However, the concept of the “regime” has then been discussed by scholars from a range of International Relations traditions, who have brought different analytical perspectives in to bear on it. This means that case studies have to be seen in the light of the analytical perspective used in them (Kohler-Koch 1989: 21). Hasenclever et al. separate the different regime theory approaches into the three classic strands of international relations theory: power-based realism, interest-based neo-liberalism, and knowledge-
based cognitivism (Hasenclever et al. 1996). This distinction has commonly featured in the regime theory literature and the classification of approaches introduced by Hasenclever et. al. 1996 will be followed in this section.

To put it in very simple terms, realism focuses essentially on power relationships between states (albeit based on a rather limited definition of power), whereas liberalism takes the constellations of interests between international actors as the main variable. Cognitivist theories emphasise the impact of actor’s causal and social knowledge. As not only realist theories consider power as their main variable, as not only liberalism considers interests as its main variable and as not only cognitivism discusses the significance of the variable knowledge, the distinction here will be between the main variable that the different theories consider: interest-based theories, knowledge-based theories and power-based theories. We will consider the

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12 Apart from those analyses which can broadly be subsumed under the headings of the three main strands introduced above, some authors have incorporated additional factors into regime analysis: Zürn proposes that the domestic level as a source for the emergence of or change in international regimes can be integrated into the theoretical framework of regime theory without major conflicts (1993). This would eliminate the problem of an incomplete systemic analysis, which can be seen as a further short-coming of the mainstream regime theory. Arts links regime theory to the agent-structure debate. He does so in order to overcome the dilemma between agent and structure, or in other words between voluntarism and determinism, in regime formation and implementation (Arts 2000: 515). A major shortcoming of regime theory might also be its focus on the interaction between nation states. The state-centrism of regime theory is puzzling given that a range of authors demonstrate the significant impact of non–state actors on international policy-making (Arts 1998; Boulding 1988; Dawkins 1991; Ekins 1992; Ray 1993). According to these authors, these non-state actors possess resources which give them an effect – however extensive or limited – on international cooperation. They have for example knowledge and political support (see also Arts 2000).

13 Annex 1 (Sect. 12.1) gives an overview of the main propositions of the three strands on regime theory. For a slightly different distinction see Arts 2000. This differentiation has not remained uncontested: Steve Smith points out that though being useful due to its parsimony, the distinction needs further elaboration (Smith 1995: 13-21), since the three schools of thought are not necessarily coherent in themselves. Steve Smith’s description of the state of international relations gives a good overview of the benefits and limitations inherent in this distinction (1995).

14 Some argue that debate between these three classical schools of thought has often been neglected, with each pursuing its own research agenda (e.g. Smith 1995: 20). Power-based and interest-based theories share common ground, as they both assume rational actors and constant preferences and they both rely on a positivist understanding of knowledge. The academic debate between them has, however, been fierce. Some authors have escaped the competitive and lengthy arguments and have argued that none of the three schools of thought is self-sufficient. There might thus be room for a synthesis. Whether this is in practice feasible, however, remains questionable. Hasenclever et al. assess this room for a synthesis in two main articles (1996 and 2000).
theories in this order in what follows, since the focus of this thesis is on the development and elaboration of a power-based approach to international regimes.

The key differences between these three broad schools in regime theory lie in their different emphasis on why regimes are established, to what extent regimes matter and why some regimes survive and others fail – in other words, on answers to the questions posed by Mayer et al and quoted earlier in this chapter (Mayer et al 1993; see also Hasenclever et al. 1997: 2). The question of to what extent regimes matter raises in turn the question of regime effectiveness. This is indicated by the degree to which its members comply with a regime and whether a regime attains its objectives (e.g. Underdal 1992). Whether a regime survives or fails is dependent on its “robustness” or “resilience”, i.e. whether it survives in view of changes in its environment (Powell 1994).

**Interest-based theories of international regimes**

As mentioned above, regime theory emerged in the “liberal rationalist tradition” and most work on regimes has focused on the realisation of shared interests as their main variable and on the facilitating role of regimes in this process (Hasenclever et al. 1996: 183). This main paradigm in regime theory has been described under various headings, amongst others complex interdependence, liberalism, neo-liberalism, pluralism, globalism and institutionalism. The differences between these categories shall be neglected here and the main common features shall be described under the heading of interest-based theories. As we will see later on (see Sect. 2.2), this preoccupation with interests and consensual cooperation is reflected in the wider field of IR and IPE of the time.

The main assumptions of this paradigm are: first, that states are rational actors; second, there is increasing interdependence between nation states; third, states are only one set of actors in the GPE (besides others such as international organisations, multinational corporations etc.); fourth, there is no hierarchy between issue areas; and fifth, the use of force is no alternative for governments in those areas where complex interdependence prevails (for example Keohane and Nye 2001). These aspects can be found to varying degrees in the different approaches that can be counted under the category “interest-based”. Importantly, these approaches focus on
“absolute gains” from international cooperation. Cooperation to them is a positive sum game in which all participants win (Hasenclever et al. 1996: 183). States cooperate in order to facilitate the achievement of common goals (Keohane 1984: 78). The calculation of gains undertaken by states is based on their preferences, which are assumed to be fairly stable over time. This means that the interaction of states in itself does not change preferences; in other words that there are no learning processes (ibid.). This goes hand in hand with a certain disregard for the “losers” or losses from cooperation.

Within this broad approach, a number of distinct theoretical strands can be identified. The first theory has been labelled “neoliberal institutionalism”. It originated from the work of Keohane. Mutual interests are at the centre of Keohane’s neoliberal institutionalism and are the root cause for international cooperation to occur. Without mutual interests, there are no potential gains, which means there is no incentive for states to cooperate (Keohane 1989a: 2, 1984: 6, 247f). Rational choice models such as the Prisoner’s dilemma, collective action theories and theories of market failure have been used in order to illuminate how and why states as rational egoists start to cooperate (e.g. Keohane 1984: 78; Snidal 1985; Martin 1992, Axelrod and Keohane 1986).15 The Prisoner’s Dilemma demonstrates a situation where the individualist rational interest leads both actors (in a two-person game) to sub-optimal (Pareto-inefficient) outcomes. Had there been cooperation and hence information exchange between the two actors, they could have realized the Pareto optimal outcome. Axelrod shows that the incentive for the two players to cheat can be overcome if the game is iterated and if the uncertainty about the other actor’s behaviour is limited, and that in this way a Pareto optimal outcome can be achieved (Axelrod 1984).

Consequently, neoliberal institutionalism attributes international cooperation and hence regimes an important facilitator function, which allows states to realize Pareto optimal solutions to collective action problems. For Keohane, opaqueness,

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15 In his seminal work “After hegemony”, Keohane seeks to show that an appropriate use of rational choice theory will predict the emergence of international cooperation. He thus reacts to the reproach that certain game theoretic approaches would predict non-cooperation rather than cooperation (Keohane 1984: 69ff). At the time, a special issue of the journal “World Politics” (Vol. 38, October 1985, edited by Kenneth Oye) dealt with international cooperation and game theory.
communicational and informational restraints in the international system impede optimal outcomes. While interests are the central variable of liberal institutionalism, mutual interests alone do not determine the outcome of a negotiation process, but are mediated by the nature of the international system (Keohane 1984: 69). Regimes thus have the purpose of decreasing the level of uncertainty between cooperating states and of increasing transparency (e.g. Axelrod 1984). From this theoretical point of view, one reason for the establishment of regimes is that they can lower the costs of collective action, and thus increase the likelihood of the provision of public goods (Florini 2000: 18). Furthermore, they facilitate cooperation by providing information and by monitoring regime participants, and hence decrease the potential for conflicts among states (Keohane 1984: 97, 245). Because they institutionalise international cooperation, regimes also create opportunities for issue linkages and in the longer run make non-compliance or defection from the regime costly (Keohane 1984: 89; Axelrod and Keohane 1986: 234). This already delivers one reason as to why regimes “survive”: defection can be costly for actors involved in the regime. Keohane finds further reasons. He argues that during the life span of a regime, states can develop an interest in maintaining current regimes even when the circumstances which encouraged their creation have changed. This can occur due to several reasons: for example transgovernmental networks might have evolved, a more viable policy-making tool is not available, or maintaining a regime is less difficult than creating one (Keohane 1984: 98-106).

A simplification of the theory is that it assumes actors’ interests to be fairly stable (Snidal 1986: 43; Powell 1994: 318, Keohane 1989b: 40f), as opposed to knowledge-based theories that would assume changes in interests during cooperation (see below). A challenge in using the theory is also that interests have to be defined and ranked according to their intensity (Haggar and Simmons 1987: 505, see also Jervis 1985).

Keohane’s work shares key assumptions with realist accounts: the predominance of states as actors in IR (as opposed to other work in the area of interest-based...
approaches), the assumption of anarchy in the international system, a focus on the international system while neglecting possible domestic factors and holding state preferences constant. He also attributes a certain degree of importance to the distribution of power in regimes, but this is not the main focus of his analysis (Keohane 1984: 14, 27). Where the two accounts part company will be discussed below.

Taking Keohane’s work on game-theoretical considerations on regimes as a basis, a number of researchers have introduced a differentiation between collaboration and coordination games (Stein 1983, Snidal 1985a, 1986, Oye 1986, Zürn 1992, Martin 1993). Zürn coined the term “situation-structuralism” for this approach (Zürn 1992: 151). A key assertion of these authors is that Keohane’s approach based on game theory is too limited, and that the situation in which states choose to cooperate influences the type of cooperation and thus the type of regime which emerges. Their explanation for the character of a regime can hence be found in the situation in which the regime was established. The reasoning is that there are not only situations of common interests (as in Keohane’s work), but also situations of common aversions. For the case of common aversions, while both/all actors agree on their least preferred outcome, they might hold different preferences for their desired outcome. The dilemma then is how to choose one of the desired outcomes. For the case of common interests, collaboration is required, and the resulting regimes will establish distinct rules in order to prevent cheating. For the case of common aversions, coordination is required. The purpose of regimes dealing with common aversion is to ensure that a certain outcome does not occur. Once this aim of avoiding a certain outcome has been reached, actors are either indifferent to the actual equilibrium outcome that is chosen or they have preferences for different outcomes. Stein describes this kind of regime as essentially self-enforcing: if actors defect, they will

reliance on economic institutional theories (Hasenclever et al. 1996).

17 Axelrod and Keohane also extended the simple game-theoretic model, incorporating structural and situational aspects (Axelrod and Keohane 1986).

18 As an example for a collaboration regime, Stein refers to the SALT agreements on disarmament. Because the actors’ incentive to cheat is very high, disarmament regimes are highly institutionalised and have strong policing and monitoring mechanisms (Stein 1983: 128-129).
be left with their undesired situation and hurt themselves. The regime thus requires relatively low levels of institutionalisation, and does not need enforcement mechanisms (Stein 1983: 125-130).²⁰

A further group of researchers has focused on the impact of the issue area’s nature on outcomes. These researchers were trying to solve the question as to why states cooperated in one area but not in others, and they found different answers from those generated by the situation-structuralists above. They argued that there were cases where neither a focus on the actor nor a focus on international structure provided an answer for regime-emergence or non-emergence. Instead, they searched for the answer in the nature of the issue area (Efinger et al. 1988). Their contribution to the discussion was especially a clearer delineation of the issue area concept, which had underlain other analyses (Efinger and Zürn 1990). They follow the work of Czempiel (1981) in identifying different policy domains. The likelihood of cooperation according to these analysts is dependent on the policy domain and hence the nature of the issue area. They further refine their concept by differentiating between different types of conflicts that can occur within these issue areas (Efinger and Zürn 1990). Hasenclever et al. point out that at this point these researchers allow for states to be at times concerned with relative gains, which signifies a departure from the assumptions underlying other interest-based approaches (Hasenclever et al. 1996: 190).

Young as one of the founding fathers of regime theory has covered a wide array of aspects of the phenomenon, for example on the definition and conceptualization of regimes (1980). Later on, he developed a model of regime formation, which focused on “institutional bargaining”. This model focuses on the bargaining process that leads

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¹⁹ As an example for a coordination regime, Stein mentions traffic conventions, for example the rules of the International Civil Aviation Organization (1983:130-132).

²⁰ Two further, but less prominent regime types are identified by situation-structuralist: assurance and suasion regimes. The assurance situation is similar to a coordination game, but with the variation that distrust exists between the actors and defection occurs, which leads to a pareto sub-optimal outcome. Again, regimes are seen as possible facilitators in this situation. Suasion or “rambo games” mean that the only available outcome is suboptimal for actor A, while satisfying actor B. B then needs to convince A to cooperate. Cooperation in such a situation could for example occur of B is a hegemon (Zürn 1992, Martin 1993).
to regime establishment. Although his theories are rationalist and interest-based, the assumptions concerning the roles of institutions take a step towards cognitivist/knowledge-based theories (see below). This is reflected for example in the way he portrays states as role players rather than utility maximisers (Young 1989a). He incorporates into his analysis the fact that negotiators in international negotiations are working under the condition of imperfect information and factors in the effects of exogenous shocks and crises (Young 1989b). Furthermore, Young outlined the importance of effective leadership, which is based on negotiation skills (1989b). He described leadership based on resources or knowledge, i.e. on power, but his leadership concept is based on individual negotiators rather than states or other potential actors (Young 1991: 288).

Not unexpectedly, interest-based approaches put interests at the centre of the establishment and the maintenance of regimes. Interests might give us an indication as to why states cooperate, and how. Thus Neoliberal approaches focus on interests and the facilitating function of regimes; situation-structuralist approaches focus on the kind of conflict, or of cooperation game, that is played; problem-structuralists focus on the issue area; Young’s institutional bargaining approach focuses on the negotiation process and mainly on cognitive elements (though indicating the routes to a power-based research agenda in his later work) (1991). The interest-based approaches do not, however, show why certain interests prevail in a regime and why others do not. Using interests as a variable does not answer the question as to why a regime has a certain shape or not. For the question of what impact an actor such as the EU has on the trade regime, and whether its interests prevail or not, and to what extent, an interest-based approach hence cannot deliver a viable answer.21

This shortcoming of interest-based theories has been identified in the literature:

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21 A further point of critique on interest based approaches, going into a different direction, was made by Florini. She argues that interests have often been considered as economically rational. She emphasises that the role of ideas, social and moral ideas, should be taken into account. Using the example of the information revolution, where knowledge has been the main driver of change, she shows how these new ideas can create new collective action problems and how they alter the relative capabilities of different types of actors to solve these problems (Florin 2000: 18-20). This consideration leads on to the third main school of thought, the cognitivist or knowledge-based theories.
First, Keohane himself argues that in his view, weak actors in world politics do not have a free choice of entering cooperation or not; they are constrained by their weak economic situation and hence lack the power not to cooperate. The preferences (interests) of the weak actors can be pushed aside by a powerful actor, and the preferences of powerful actors will be attributed more importance in cooperation (Keohane 1984: 71, see also Krasner 1991: 364). Keohane hence sees the interest-based approaches as an addition to rather than a replacement for the “traditional modes of political analysis”, i.e. power-based assessments (1990: 746). Similarly, Barnett and Duvall criticised interest-based approaches: “[…] the choice-theoretic perspective frequently masks relations of imposition, domination, structural determination, or cultural hegemony” (2005: 7).

Second, there is no automatism between demand for a regime and its supply. Mutual interests alone do not suffice to explain why in certain cases where mutual interests exist, a regime is established, but in other cases of mutual interests no regime is established. Again, Keohane himself argues at one point that there are difficulties in “regime-creation in the absence of hegemony” (Keohane 1984: 100). A powerful actor might thus be necessary to create a stable regime. Third, Krasner criticised the preoccupation of interest-based regime theory with market failures, monitoring and information, which implies that “intelligence is more important than the underlying distribution of capabilities”. A basic assumption of regime theory is a Pareto suboptimal situation;\textsuperscript{22} and an interest-based regime theory, concerned with absolute rather than relative gains argues that moves towards the Pareto frontier can be made by cleverness rather than by power. This would mean increasing at least one actor’s utility without decreasing others; relative gains are the relevant gains in this case and not absolute gains (1991: 336). In Krasner’s opinion, however, the point on the Pareto frontier which will be chosen and thus the nature of the regime (or of the regime change) can be better explained by the distribution of power between actors (ibid: 337). The nature of an emerging regime is hence, according to Krasner, due to

\textsuperscript{22} A Pareto optimal situation exists when no one actor can be made better off without making another actor worse off. In a Pareto suboptimal situation, an actor can be made better off without making another actor worse off. The concept derives from neo-classical economics.
the distribution of power between the participating actors rather than to their interests. Krasner argues that although research into power is not inconsistent with the study of regimes, the theory seems to assume that the analysis of power is of minor importance (1991: 361).

Krasner’s arguments are very significant in relation to the central thrust of this thesis. They indicate that although interests can be key to the establishment and functioning of regimes, they do not appear to be a sufficient explanation either of their existence in the first place, or of what happens within them. The implications of a power-based approach will be fully explored later in this chapter, but first it is necessary to explore another important strand of regime thinking: cognitivist or knowledge-based approaches.

Knowledge-based theories of international regimes
A second broad strand of regime theories is knowledge-based theories. Researchers focusing on knowledge-based theories have raised a set of criticisms of interest- and power-based approaches on regimes. They argue first that states cannot be regarded as rational actors that exist prior to the international system; second, that the static approach to IR that interest- and power-based approaches assume is not an adequate model as it ignores learning and historic processes; and third that the “positivist methodology” that these approaches assume obscures the role and functioning of norms at work in IR. The focus of knowledge-based theories is hence on interest and preference formation, and interests as perceived by decision-makers play a central role in their analysis (Hasenclever et al. 1996: 205ff, see also Adler and Haas 1992: 371, Haas 1992, Joensson 1993).

Hasenclever et al. distinguish between “weak” and “strong” cognitivism (1997: 136-139; 154-157). Weak cognitivism emphasises the role “of causal beliefs in regime formation and change”. Knowledge is the initial ingredient for interest formation. Once interests have been identified, states can cooperate and decide to establish regimes (or not) (Adler and Haas 1992: 367; Haas 1992). Knowledge is also important in delineating the issue area that states are intending to deal with (Haas 1992: 29). At the same time, policy-makers are today faced with high levels of uncertainty in many issue areas, which require technical knowledge, and are looking
for reliable, scientific information (Adler and Haas 1992: 369; Goldstein and Keohane 1993a: 16). Uncertainty can be reduced by regime formation, and this is why international cooperation occurs (Young 1989b: 358ff). Keohane and Goldstein argue that rationalist accounts cannot in every case provide a convincing explanation, but that changes in knowledge should be taken into account (1993b; see also Ikenberry 1993; R. Jackson 1993). At the same time, Goldstein and Keohane recognise limitations of a knowledge-based approach: for the activation of these new ideas Goldstein and Keohane state that the new ideas “become politically efficacious only in conjunction with other changes, either in material interests or in power constellations” (Goldstein and Keohane 1993a: 25). Goldstein and Keohane develop a typology of ideas that differentiates between principled beliefs and causal beliefs. Principled beliefs reflect the worldview of an actor and guide an actor’s choice of preference. Causal beliefs indicate an actor’s understanding of cause and effect and will direct its choice of means for achieving its preferences (ibid. 8-11). In the case of a battle game situation with multiple outcomes, Goldstein and Keohane argue that the outcome is importantly influenced by ideas. The nature of a regime is according to Goldstein and Keohane dependent on the ideas of the actors that form it (ibid.: 17-19; see also Garrett and Weingast 1993). If ideas become enshrined in regimes, they will continue to influence policy and changing them becomes more difficult (Goldstein and Keohane 1993: 20-24).

The process by which new ideas enter a state’s belief system is referred to as learning. Learning can change the range of possible outcomes that states recognise in conflict situations, and it can change a state’s interests (see for example Nye 1987, Smith 1987). With regimes locking in ideas, they start to change learning processes and hence actors’ interests and resource allocation (Goldstein and Keohane 1993: 20-22).

For ideas to spread in the international community, Haas points to the importance of “epistemic communities” which are seen as “channels through which new ideas circulate from societies to governments as well as from country to country” (Haas 1993).

23 For a differentiation between different types of learning see Nye 1987 and Haas 1993).
Epistemic communities are defined as “network(s) of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain (ibid. 1992; 1989: 384). These networks turn into a powerful source of information that governments rely on and they facilitate processes of international learning. Learning from epistemic communities will occur especially if uncertainty in the international community is high, when the experts have attained a degree of consensus among themselves and when the epistemic community has achieved a degree of political power and become part of the political system (Haas 1989, 1992, 1993). Having gained this kind of status, epistemic communities can have important influences on the emergence or demise of international regimes, and in shaping those regimes (Haas 1992, Drake and Nikolaidis 1992, Adler 1992, Peterson 1992).

As “strong cognitivists” focus on the normative structures of the international society, their critique of interest- and power-based theories is more far-reaching than that of weak cognitivists. As the starting point for their analysis, they focus on the norms that constitute the international system (Ashley 1984; Wendt 1987; Dessler 1989). The existence of states is dependent on the existence of norms, for example the norm of “sovereignty”. States would not exist without norms, and could also not cooperate without these norms (Behnke 1993). Norms therefore can and have to be analysed in their own right; they are not only tools at the disposal of nation states, they are the necessary constitutive elements of the international society and of actors themselves. Regimes then not only function as constraining state’s behaviour by their norms, but they also constitute and shape the social world in which states are interacting, and hence their perception of reality (see e.g. Ashley 1984; Wendt 1987; Dessler 1989; March/Olsen 1989; Hurrell 1993). When norms exist, states feel compelled to comply with them, and their incentive for defection or cheating decreases (March/Olsen 1989), because non-compliance with norm can create disorder in the international system that states themselves depend upon (Franck 1990; Hurrell 1993). Regimes as part of the international system have thus a significant life of their own and will
survive even if power capabilities or interests change (Kratochwill 1993, 1989; Müller 1994).24

The strong normative character of regime theory means that one danger in applying cognitivist arguments to regime theory is taking arguments originating in linguistics or psychology out of context and applying them potentially wrongly to new and very different contexts (Mayer et al. 1993: 410). Joensson thus underlines the complementary character of cognitivist theory (1993: 221).

The cognitivist concept thus does not deliver a comprehensive answer to the question of actors’ impacts on international regimes. It has been criticised by those taking more rationalist or positivist approaches as marginalizing the most important shaping elements for regimes (specifically, pre-existing preferences and power relations), and thus exploring essentially second-order problems of a social nature (see for example Moravcsik 1997). In its complementary function, however, it seems to provide an interesting angle on the issue of power and preferences in regimes: knowledge seems to be an important part of power, and to play a significant role in shaping and re-shaping preferences, and this is a theme which will be revisited at various instances in later chapters.

Power-based theories of international regimes25

As noted earlier in the chapter, the longest-established power-based theory is realism – an approach which for long periods has occupied a dominant position in IR theory (Vasquez 1999; Morgenthau 2005[1948]). As noted earlier, Realism’s main assumptions are: first, that states are the main, most important and powerful actors in world politics; second, states are rational actors; third, that there is a hierarchy

24 Certain “strong cognitivists” have regarded regimes as part of communicative discourse between states and hence as being constantly renegotiated (for example Neufeld 1993; Kratochwil 1989; Schimmelfennig 1995). Others have focused on that actor’s self conceptions and their conception of others are in a constant process of re-interpretation and reconstitution, and this is why states’ interests cannot be regarded as static, too. The establishment of a shared understanding in a regime will exert a stabilising function among regime members (Wendt 1994; Koslowski and Kratochwil 1994).

25 The differences between realism and neo-realism lie mainly in the latter’s emphasis on the impact of structure and in its pursuit of a greater abstraction of the international system (Linklater 1995: 242-245).
between issue areas with security having the highest priority; fourth, the use of force is an acceptable means of conflict resolution; fifth, international institutions are of minor or no importance; and sixth, preferences of national states are constant, which means they do not change by learning in the negotiations (Keohane and Nye 2001). Thus, classical realists such as Morgenthau see international institutions as reflecting the interplay of power and interests between states, with interest ultimately defined as power (Morgenthau 2005[1948]).

Structural realists or neo-realists in the tradition of Waltz did not find that international institutions have an important effect on international politics (Waltz 1979, see also Mearsheimer 1994/1995). Although they accept that interdependence between states exists, it is of minor importance when compared to the interdependence that exists inside states (among individuals) (Linklater 1995: 245), and this means that the essentially state-centric nature of international politics is not only inevitable but will remain predominant. Of course, this thesis does not follow this approach, as it assumes that regimes do matter in the interaction between states. The WTO as an organisation includes a dispute settlement system and other monitoring mechanisms, and can be assumed to have an impact on the interaction between states (Haggard and Simmons 1987: 497). This means that it is important to explore power-based approaches without necessarily adopting a conventional realist approach, and to relate power to the establishment, nature and evolution of international regimes in the broadest sense. By doing so, we can extend some of the ideas put forward by Krasner and others, outlined earlier in this chapter.

A first power-based theory that has relevance is the theory of hegemonic stability first propounded by Kindleberger (1973, 1981). While the theory only in few instances deals explicitly with the concept of “regimes” as such, it entails important ideas on the effectiveness and robustness of regimes, and on why regimes are established or

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26 This type of realists argues that regimes occur when states calculate that the absolute and relative gains of cooperation are positive. The prevailing operative principle of the international system is anarchy; a movement towards a hierarchical system or any other organising principle is not foreseeable (Linklater 1995: 245). Under anarchy, states are involved in a permanent power struggle for survival and protection of their sovereignty. Realists therefore conclude that cooperation is much harder to achieve than predicted by liberalists/neo-liberalists (Hasenclever et al. 2000: 9).
change (Kindleberger 1981; Hasenclever et al. 1997: 86). Kindleberger’s ideas were taken up by Keohane and Nye (1977) and Keohane (1980), who applied them to the regime concept. The argument is that the establishment of regimes depends on the existence of a hegemonic power, and the willingness of the hegemonic power to enter into international cooperation. Underlying these claims is an assumption of an unequal distribution of power in the issue areas where a regime is established. Keohane and Nye argued that the stronger state in an issue area will set the rules and dominate the weaker actors (1977: 50-51, Kindleberger 1973, 1981). The regime’s robustness depends on the hegemon as well, and consequently, regimes are expected to disappear when the hegemon loses power. Regime change occurs when the power of the hegemon changes (Kindleberger 1973, 1981, Keohane 1980). The regime is thus so dependent on the hegemon’s power that it cannot exist without it. In this way, the hegemonic stability approach differs from “real” or more institutionalist approaches to regimes, which attribute a certain “life of their own” to regimes (see above). The regime in this approach is not an independent variable, but essentially dependent on the hegemon’s resource power. With this view of regimes, the theory does not attribute a facilitator function to the regime as interest-based schools would suggest.27 Several studies also suggested that regimes could be established or could persist without the presence of a hegemon (Keohane 1980, 1984, Young and Osherenko 1993, Rittberger and Zürn 1991).28

Further work on regimes from a realist perspective was undertaken by “post-classical” or “modified structural realists”,29 who incorporated international regimes into their analysis and tried to explain the puzzle of international cooperation. They emphasise that it is crucial to understand the influence of power in international cooperation (for example Gilpin 1981; Krasner 1991). Grieco’s work, for example, has focused attention back on the international structure. To him, neoliberal

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27 For an extensive critique of the theory of hegemonic stability see Snidal 1985b and Young 1989a.
28 The process or means by which hegemonic power is exercised were not a main focus of the work on hegemonic power, although Gilpin promoted the idea of leadership by coercion and through positive and negative sanctions (1981). The work of Kindleberger and others has a more “benign” view of the hegemon, who unilaterally supports the regime and hence provides public goods to other states (see also e.g. Kindleberger 1986).
institutionalist accounts of international cooperation fail to understand the anarchic nature of the international system. They underestimate the fear of being cheated (and hence of relative losses), which states experience in an anarchic international system and hence overestimate the likelihood of international cooperation occurring (Grieco 1988a, 1988b). Even in the absence of immediate conflict and threat to the state’s survival, states want to avoid situations in which fellow states can turn relative capabilities into bargaining power and hence into outcomes further disadvantaging the disadvantaged states (Grieco 1990, 1993a). Grieco incorporates calculations of absolute and relative gains into his work; states might choose to cooperate to realize absolute gains depending on their sensitivity (1990, 1988a). Grieco then suggests several conditions under which cooperation can take place; for example cooperation might occur if states have a common adversary, if the issue area is not related to security or if capabilities gained from the issue area are not likely to be transformed into general capabilities and the balance of capabilities will remain the same (i.e. gains of cooperation are distributed equally), (ibid., 1988b, Lipson 1984). Side-payments can also be used to maintain the balance of capabilities between states (Grieco 1990: 47). Grieco sees institutions as of minor importance for the emergence of international cooperation (Grieco 1988a: 488, 494), but attributes institutions a major role in maintaining cooperation: regimes can provide information that will lower the fear of being cheated, can help mitigate fears about relative concerns (for example by introducing a notion of “reciprocity), can facilitate side-payments so that gains from cooperation are distributed equally (and exit options from regimes can provide a further re-assurance; if gains are distributed too unequally, states can opt out) (Grieco 1990: 233-234, 1988b).

As was mentioned earlier in the chapter, Krasner criticised interest-based approaches for their neglect of which Pareto-optimal outcome would be chosen: “The basic issue in the politics of regime formation is where states will end up on the Pareto frontier, not how to reach the frontier in the first place” (Krasner 1993: 140). Krasner sets out to explain cooperation in regimes with the two variables interest and

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29 For this distinction see Brooks 1997 and Schweller and Priess 1997.
power, but his emphasis is clearly on power, or to be more precise on “relative power capabilities” (1991: 336). For the case of a coordination problem (common aversion), Krasner observes that a regime is established if the power distribution is symmetrical. If the power distribution between actors is asymmetrical, powerful states will unilaterally pursue their preferred policy. The point that Krasner makes focuses on the case of a symmetrical power distribution and a common aversion problem: What would happen if there is not only one, but several Pareto efficient outcomes and actors disagree about their preferred outcome? What would determine who would win this distributional conflict? Krasner argues that the answer to this question is to be found in the distribution of power capabilities (1991: 337). To illustrate his point, Krasner refers to the game “Battle of the Sexes”, illustrated by a couple wanting to go on holiday together: the two actors agree on what they want to avoid (not to go on holiday together), but they differ on their preferred location (mountains or seaside).

To Krasner, the employment of power in a distributional conflict can have the following outcomes (among others) (1991: 340):

- **Inclusion or exclusion of actors**: Powerful actors can determine who is admitted to the “game” in the first place.

- **Setting the rules of the game**: Powerful actors can set the rules of the game, for example, which actor gets the chance to move first.

- **Changing the rewards of the game**: Powerful actors can change the “payoff matrix” of a game. They can use issue linkages to threaten other actors into compliant behaviour.

Consequently, power to Krasner “[…] can be understood as the ability to determine who plays the game, or to define the rules, or to change the values within the payoff matrix” (1991: 342). His focus is hence on power outcomes and how power can be used in the bargaining process, but he also makes statements on the sources of power for his case study on communication regimes:

> “Power has been determined by three considerations: technology and market size, which have influenced the relative opportunity costs of change and therefore the ability to make credible threats; membership in universal international organisations, which has given states the presumptive right to influence policies that are affected by
one-nation-one-vote decision-making procedures; and control over territorial access provided by juridical sovereignty.” (Krasner 1991: 363; see also Krasner 1985).

However, Krasner’s power argument does not stop here. Power changes to him are also responsible for the emergence of conflict between states (in his example of the global communication regime new power was conferred by new technologies which then raised collective action problems) (1991: 337), and regimes change when the power distribution changes (1991: 363). Krasner parts company with “traditional” realists: to him, the regime assumes a stabilizing function and helps to resolve coordination problems. It is the nature of the regime that Krasner tries to explain.

In an earlier work on regimes, Krasner had elaborated on the relationship between regimes and actor power. He argued that changes in the power distribution between regime participants did not immediately transmit into the regime. Whereas a regime initially reflected the power distribution between the participants, this power distribution proved to be much more dynamic than the static properties of the regime. This time lag in the transmission of power changes means that the regime (and hence its norms, rules, principles) can have an influence on an actor’s power and the resulting outcomes of power exercise, or - to phrase this differently – the regime is partially independent of the underlying power distribution (between the regime participants). It may empower or constrain certain actors and potentially run counter to the interests of states, which, if we only looked at the distribution of resources, would be considered the most powerful. Regimes hence have a certain “life of their own” (Krasner 1983: 357). In this way, Krasner departs from scholars such as Gilpin, whose understanding of the international system is that relations of states are immediately changed when power distributions change (1981: 9), and comes close to the positions adopted by some interest-based approaches.

If this is accepted, regimes can then produce the following effects on actors:

“First, regimes can alter actors’ calculations of how to maximize their interests. Second, regimes may alter interests themselves. Third, regimes may become a source of power to which actors can appeal. Fourth, regimes may alter the power capabilities of different actors, including states.” (Krasner 1983: 361).
The first effect emerges from the changes in the incentive structure for actors that the regime causes. Actors develop an interest in maintaining the regime. Increased information between regime participants also changes interests themselves. The principles, norms and decision-making procedures of regimes also might advantage certain actors over others, and hence regimes become a source of power. This might ultimately feed back into the resource basis of actors, strengthening the resource basis of certain actors and weakening others (ibid. 361-367).  

Although Keohane has put forward the most extensive interest-based approach on regimes, which led to significant later work by other researchers, his own work also contains elements concerning the variable “power” in a regime context. Power to him is essential in the establishment of regimes (see Sect. 2.1.2; Keohane 1984). Keohane and Nye’s famous work on complex interdependence also contains notions of a power concept, albeit a limited one (see Sect. 2.3). Likewise, Gilpin concludes that regimes might well be biased towards the most powerful participant and points to a research agenda in regard to “the history of compliance by affected states, particularly in situations when a regime is perceived as being counter to a state’s interests” (2001: 86). If regimes are reflective of the power distribution among their participants, the question can be raised as to what happens when this power distribution changes (see below).

Arts identifies a further power-based stream in IR, which he terms political economy (2000). Proponents of political economy focus on structural power in Strange’s sense as control over production, finance, ideas and knowledge (1994; see below) or, if one assumes a less extensive notion of power, in Cox’s sense of control over the production system (1981). While Krasner’s understanding of power also entails notions of structural power, the main emphasis in political economy is on structural power. Political economy also incorporates a broader range of actors; not just states, but all those actors who could be the holders of power are taken as units of analysis. Power and hegemony can thus result from domination of politics, economics and

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30 Schrogl confirms this empowering aspect of regimes in his study on international cooperation in the area of satellite-based communications (1993). For a study on “battle games” with multiple outcomes see Garrett’s account on the completion of the EC’s internal market (1993).
knowledge in a certain area, but also from the possession of certain ideas and values (Strange 1994; Guzzini 1993; Lipschutz and Conca 1993). Political economists have partially criticised regime theory as being preoccupied with surface phenomena, as the important changes to them are changes in the distribution of power in the structure of the international system (Lipschutz and Conca 1993). This power definition and explanation of regime change is too far-reaching for the purpose of the actor-based power analysis in this thesis, which will focus on power exercise in one specific regime. However, it helps to remember that changes observed in one specific regime might be part of broader, structural changes.

There is thus a strong basis for incorporating arguments about power into a consideration of how regimes arise, evolve and produce effects. Although this thesis will take up the basic realist demand for a consideration of power in regime analysis, it will follow the work of for example Krasner in assuming that regimes matter, and that power in regimes matters. It will hence adopt a power definition broader than the realist one, which is based mainly on military power. A broader and redefined power concept needs to be found in order to proceed with the analysis (as will be discussed in Sect. 2.2 and 2.3). Not only this, but power in the context of this thesis needs to be considered in relation to specific actors or groups of actors operating within a specific issue area. So the need is for an actor-based conception of power that can be applied within the context of international regimes. This is the focus of the remainder of this chapter.

2.2 Power in political theory and IPE

As discussed above, regime theory and with it the broad gist of IR theory of the 1980s and 1990s have not focused on power as their main variable, but on interest-based approaches. The question about the influence of power in regimes has not received as much attention in IR and IPE (Guzzini 2000: 53; Gehring 2004). One reason for this, as noted above, is that the interest-based school assumed symmetry between actors and hence eliminated power considerations from its research agenda. Another reason is that the empirical assessment of power can be a challenge. Guzzini argues that an assessment of power always includes
“counterfactual reasoning”; the researcher “compares” the state of affairs with an imagined situation where power is non-existent (1993: 446).

Nonetheless, questions concerning the choice of the regulatory model in the GPE (“who governs”), the distribution of gains in cooperation (“who wins and how much”) and whether regimes are tools of the most powerful countries to preserve their interests are crucial in the discussion surrounding the expansion of international regimes (and in the context of this thesis, of the trade regime). “Power” of actors in the solution of distributional conflicts is hence a significant variable for understanding the functioning of the GPE. Florini, for example, argued on the basis of collective action theories that

“with a little translation into the appropriate theoretical terms, the debate over the form of the emergent world order boils down to disagreements over which collectivities will provide which collective goods to whom” (2000: 15).

Similarly, Barnett and Duvall extensively criticise the pre-occupation of IR with interests and norms, and argue for a power-based analysis of global governance:

“By using the optics of power, we transform the image of global governance. No longer is it solely concerned with the creation and maintenance of institutional arrangements through consensual relations and voluntary choice. It now becomes a question of how global life is organized, structured, and regulated.” (Barnett and Duvall 2005).

To understand the power of actors in international regimes, we need to understand what the notion of power entails, what the sources of power are, what factors shape power and what effects power has. How have political theory and IPE analysts up to now dealt with power? What power concepts have they employed? How do these concepts relate to the concept of “regimes”?

### 2.2.1 Power in political theory

While power might be a contentious concept, it nonetheless is a key concept in political sciences (Lukes 1974, 2005; Connolly 1983), and power theories in political theory are a far-reaching field. The issue of “power” has also attracted the attention of many different sub-disciplines of political science (for example postmodernism, international relations, feminist approaches) (Morriss 2002: xii), and the literature
dealing with power is respectively wide. Core aspects of the understanding of power in political theory will be briefly discussed here to give an impression of the debate in political sciences and to provide basic considerations for the power concept in this thesis. To illustrate the different power concepts, I will talk about two actors, the powerful actor A and the less powerful actor B.

**The relational power concept**

Part of the power research community defines power in terms of its outcome and in a relational way. Weber described power as the opportunity to enforce one’s own interest in a social relationship even if the other party has different interests (1956/1980). The outcome of power exercise is here an enforcement of one’s interests in the setting of a social relationship. Power is power over someone. A similar concept of power was put forward by Dahl, who defined power in this way: “A has power over B to the extent that he can get B to do something that B would not otherwise do.” (1957: pp. 202-203). In line with his definition, Dahl assessed power in analysing which party succeeded in the decision-making process in an American city. His results were published in the famous study *Who governs? The City of New Haven* (1961). Another supporter of this view of power was Polsby (1970). The common feature of these power definitions is their focus on actual negotiation processes, power outcomes and the relationship between the two actors A and B. Additionally, this power definition assumes “intentionality” between the two actors, and it presupposes a conflict of interest (Barnett and Duvall 2005: 13).

These basic definitions of power, often referred to as the “pluralist” definition of power, lead to an extensive debate (Lukes 2005). There are two key critiques that shall be mentioned here: first, the critique of researchers emphasising systemic, structural aspects of power and second, the critique of researchers defining power as a capacity (power-to) rather than in terms of process and outcomes.

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31 As this thesis deals with actor power in an international regime, it does not survey all the different strands of power theory. The interested reader is referred to Lukes 2005, Section “Guide to Further Reading” for further literature on the power debate.
Structural power
Important critics of Dahl’s definition of power were Bachrach and Baratz (1962) and Lukes (1974). Bachrach and Baratz added a second dimension of power to the definition advanced by Dahl, describing a sort of power that A was exerting indirectly by setting the structures and agendas in a way that certain interests of B would never actually enter the agenda and be dealt with (1962; 1970). This dimension of power hence focuses on ‘non-decision making’. The problem for Bachrach and Baratz then was how to investigate this invisible power dimension: How could the researcher know that there was a hidden conflict behind the apparent agreement between the different parties? How could the researchers know that B had interests that he could not bring to the agenda because A was preventing him from doing so? Finally, this problem made Bachrach and Baratz acknowledge that their second dimension of power was only observable if an overt conflict occurred (Lukes 2005: 7). It is important to keep in mind though that power can be expressed in non-decision making and when issues are dropped from agendas.

While Lukes considered the two-dimensional view as a substantive advance over the one-dimensional view of power, Lukes took the idea of Bachrach and Baratz further and added a third dimension to the power debate. This third dimension not only assumed that issues would be prevented from being brought to the agenda in the first place, but it assumed that certain issues, certain interests would be prevented from even being recognised as relevant by the weaker actor (Lukes 1974: 23). This power dimension describes a structural power, which shapes the system, and hence the ideas and the knowledge, in which the actors interact.32

Power from resources
In the following years, Lukes’ concept was criticised by several authors (see for example Barry 1975; Clegg 1975; Layder 1985; Digeser 1992; Hay 1999, 2002). Lukes then revised his three-dimensional power concept, and in 2005, identified the following problems of his 1970s concept:

32 Similarly, Barry asked for a differentiation between the outcomes of power exercise and “luck” in negotiations, where structures are such that actors win their desired outcome without having to act (1989).
“The definition of the ‘underlying concept of power’ offered in PRV [... is entirely unsatisfactory in several respects: Following others in the ‘power debate’, it focuses on the exercise of power. Power is a dispositional concept, identifying an ability or capacity, which may or may not be exercised. Secondly, it focuses entirely on the exercise of ‘power over’ [...]. Thirdly, it equates such dependency-inducing power with domination, assuming that ‘A affects B in a manner contrary to B’s interests’, thereby neglecting what we have seen to be the manifold ways in which power over others can be productive, transformative, authoritative and compatible with dignity. Fourthly, assuming that power, thus defined, affects the interests of those subject to it adversely, it offers no more than the most perfunctory and questionable account of what such interests are, and [...] it treats an actor’s interests as unitary, failing to consider differences, interactions and conflicts among one’s interests. [...] it operates with a reductive and simplistic picture of binary power relations between A and B (2005: 109).

Important from Lukes´ critique of the three dimensional power concept is especially that power is not only visible when it is exercised and when it visibly becomes a “power over” somebody, but that power is also a capacity. In his 2005 book, Lukes thus describes power as “a potentiality, not an actuality – indeed a potentiality that might never be actualized.” (2005: 69). This is an important turn from his initial understanding of power as a process and as expressed in outcomes. A different strand of power researchers had argued this point earlier, following the power definition offered by Hobbes that power is a “present means, to obtain some future apparent good” (1985[1641]; see also Pitkin 1972, Morris 2002). Similarly, Arendt argued that power resulted from the cooperation of individuals (1970). Pitkin points to the relationship of the word “power” to the Latin word “potere” – to be able to. She goes on to argue

“That suggests, in turn, that power is a something — anything — which makes or renders somebody able to do, capable of doing something. Power is capacity, potential, ability, or wherewithal” (1972: 276).

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33 A second key point from Lukes’ critique of his 1970s concept is that he rejects a normative interpretation of power as domination and suppression. Again, this point can already be found in Arendt’s work of 1970, in which she argued for a distinction between power, strength, force, authority, and violence. Power to her could not be equated to force or violence or imposition (as in the “power over” understanding), and hence should not be seen as negative or as producing negative outcomes as such (Arendt 1970).
In the literature, these two different understandings of power (power over versus power to) have been reflected to different degrees. Some authors discuss both, but come to differing conclusions about them: Although Connolly argues that both power concepts are important, he then goes on to establish a concept focusing on “power-over” (1993). Morriss, on the other hand, considers both aspects, but focuses on “power-to” (2002). For the further analysis in this thesis, it is important to keep in mind the differentiation between power over (process, outcomes, relationship between actors), power to (capacity) and structural power.

### 2.2.2 Power in IPE

Having considered key aspects of power concepts in political theory, this section moves a step further to consider power approaches in IR and IPE. As mentioned above, the focus of IR theory on interests and norms has led to a neglect and one-sided criticism of power-based approaches. However, before the turn to interest-based and cognitive approaches, power had been the focus of realist works on IR from the beginnings of the discipline (see for example Donnelly 2000, Vasquez 1998).

Hans Morgenthau, as one of the founding fathers of International Relations, made power the central variable of relations between states:

“The main signpost that helps political realism find its way through the landscape of international politics is the concept of interest defined in terms of power.” (2005[1948]: 5).

Morgenthau argued that “moral ideas” did not lead to an adequate understanding of international relations. At the same time, he held that international institutions and the equal status they attribute to their members did not reflect the “reality” of international relations, which was dominated by unequal power distribution between different actors (2005[1948]: 5ff). Morgenthau’s power concept takes into account a relational aspect of power and differentiates between military and political power (2005[1948]: 28-29). One can thus say that Morgenthau’s power concept included “power over” and “power to” aspects.

Other than the process oriented “power-over”, and similar to the idea of the “power-to”, approaches discussed above, realists have emphasised the importance of
resources to establish which actor is powerful (e.g. Waltz 1979: 191). Mearsheimer gives central importance to material capabilities, as he thinks outcomes are unreliable indicators of the power distribution between actors (Mearsheimer 2001: 57-61). For Mearsheimer, the most important resource for power is military power, while other forms of power, such as economic power and size of the population, are of secondary importance (2001: 56). In another example, Gilpin defines power as military, economic and technical capabilities, consciously leaving aside other power aspects which he regards as “immeasurable” (1981: 13). Realist theory also makes a strong connection between power and interests: in other words, as noted above, power for Realists has meaning not only in relation to the power of others within the international arena, but also in relation to the range and scope of interests pursued by states and other actors. For Realists, one of the central problems of international relations is the balancing of power resources not only in light of the distribution of power in the international arena, but also in light of the demands posed by different – sometimes conflicting – interests.

This basic realist concept of power has been criticised by many researchers. Two main critiques were first that the realist understanding of the resource basis for power was too limited and second that the realist concept of power itself was too limited.

Keohane and Nye extensively argue that the resource basis considered as relevant by “traditionalists” is too narrow, and that under the conditions of “complex interdependence” different resources are relevant: “The conventional notion of power lacks definition. In particular, different power resources may be needed to deal with different issues.” (2001: 7). Keohane and Nye name political, economic and military resources (2001: 10).

Apart from the hard, material aspect of power, Nye’s concept of soft power describes a power that an actor disposes of because of the attraction its culture, ideas and economic power: “the ability of a country to structure a situation so that other countries develop preferences or define their interest in ways consistent with its own” (Nye 1990: 153). Nye hence points our attention to resources such as economic and ideational factors, and to a passive kind of power that an actor is exerting simply by “being there”, in other words by its presence. In his 2002 book on the limitations of
US power, Nye uses the argument that the resource base for world power has shifted and expanded (including to NGOs), and is hence distributed unevenly among nations and other actors, to argue in turn for a multilateral engagement of the US (Nye 2002).

There has also been strong criticism of the focus by structural realists or Neo-Realists on the prevailing distribution of power in the international arena, and on the ways in which this seems to reduce agency among states who are assumed all to respond in essentially the same ways to shifts in power structures. Guzzini suggests a “dyad of concepts” to assess power structures: “power” to Guzzini is “an agent concept”. The structural aspects of power are in his concept described by the word “governance”. His “dyad of concepts” includes both power and governance, and hence attempts to combine agent power and structural power (1993; see also Guzzini 2000). Such an approach is clearly relevant to the concerns of this thesis with actor power in international regimes.

Baldwin also points attention to the structure in which the exercise of power takes place. He argues that an assessment of an actor’s power requires an initial assessment of the (economic, political and social) structure of the issue area. He holds that power does not have fungibility – if an actor has power in issue area A he cannot necessarily be sure this power can be transferred into issue area B. The lack of fungibility leads Baldwin to describe power as multidimensional and to underline the importance of an issue-area specific situational analysis (Baldwin 1989, 1992). This demand for an issue-area specific consideration (as opposed to the consideration of the overall power balance found in traditional realists writings) was also made by Keohane and Nye (1977, 2001). Baldwin also describes the dependence of power on the value system the actors that are interacting. Power only exists if the negotiation partner accepts the respective “currency” of power and values possession of it (Baldwin 1989, 1992). In the context of international regimes, the relevance of these propositions is readily apparent.

34 An extensive discussion about various concepts of structural power can be found in Guzzini 1993.
35 Baldwin demonstrated this with the example of a person threatening another one with a gun and shouting “your money or your life”. The threat is only powerful if the threatened person values his life (i.e. the “currency” of this exchange)
A focus on the structural aspects of power can also be found in Strange's work.\textsuperscript{36} To Strange, structural power\textsuperscript{37} is a far-reaching force:

\begin{quote}
Structural power [...] is the power to shape and determine the structures of the global political economy within which other states, their political institutions, their economic enterprises and (not least) their scientists and other professional people have to operate (Strange 1994: 24ff).
\end{quote}

Strange defines this type of power as more substantial than agenda-setting or rule-designing power (i.e. Dahl's and Bachrach/Baratz' power concepts), as it includes the power to set the framework in which agendas and rules would be determined (ibid: 25). In her seminal work “States and Markets”, four sources of structural power\textsuperscript{38} are identified by Strange: control over the security structure, the production structure, the financial structure and the knowledge structure (Strange 1994).\textsuperscript{39} Structural power may hence give an actor disproportional power as the system is shaped beneficially for him. Guzzini argues accordingly that one meaning of structural power is “indirect institutional power” – controlling outcomes not by “direct confrontation” but changing the institutional circumstances (1993: 451-456). This insight will be taken further in later parts of the chapter.

\subsection*{2.2.3 Reviewing Power Concepts}

The discussion above gives ground for a wide-ranging reappraisal of power concepts in IR and the IPE, in order to reflect the development of more complex notions of the relationship between actor power, interests and international structures. One way of developing such a reappraisal can be found in a comprehensive and recent work on power in international relations edited by Duvall and Barnett (2005). While Duvall and Barnett argue for a power-based research agenda in IR, they aim to expand the

\textsuperscript{36} Strange’s model can be seen as an extension or even an opposition to a Marxist/Neo-Marxist or Gramscian view of structural power as deriving before all from control over the production structure (ibid: 26, Cox 1987).

\textsuperscript{37} An extensive discussion about various concepts of structural power can be found in Guzzini 1993.

\textsuperscript{38} This means that in Strange’s model also non-state actors (international organisations, multinational companies, non-governmental organisations, epistemic communities) can have structural power.
traditional definition of power in their work: They argue that “much of the discipline has tended to treat power as the ability of one state to use material resources to get another state to do what it otherwise would not do” (2005: 2). Apart from the reference to material resources, this definition reflects the first dimension of power introduced above – ‘power over’. Not surprisingly, Duvall and Barnett then go on to critique this direct, relational concept along lines that very much resemble the work of Bachratz and Baratz (1962), and Lukes (1974). Although Duvall and Barnett are not the first ones to attempt such an extension of the power definition (see above; especially Guzzini 1993), their categorisation will be introduced here to bring together the discussion in this chapter.

Barnett and Duvall establish four different categories of power, which are helpful in order to understand the character of power in IR. Their first category is compulsory power, defined as direct control over another (2005: 13). This first power dimension follows the definitions of Weber and Dahl identified above, but it does not presuppose intentionality of actor A. It includes unintended power effects that A might be producing by simply being there. The use of compulsory power is apparent, it is visible in the interaction of states (but not only states) and it is based on material resources (see also Gilpin 2002). Barnett and Duvall’s concept of compulsory power is not only based on material, but also on symbolic and normative resources (2005: 15).

Barnett and Duvall’s second category of power is institutional power, defined as actors’ control over socially distant others. This second power dimension describes control between A and B in an indirect way. The emphasis of this dimension is on the

> “formal and informal institutions that mediate between A and B, as A, working through the rules and procedures that define those institutions, guides, steers, and constrains the actions (or non-actions) and conditions of existence of others, sometimes even unknowingly.” (Barnett/Duvall 2005: 15).

Barnett and Duvall compare compulsory and institutional power: compulsory power is based on an actor’s resources, while institutional power is indirect and it works to A’s

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39 Strange’s model can be seen as an extension or even an opposition to a Marxist/Neo-Marxist or Gramscian view of structural power as deriving before all from control over the production structure (ibid: 26, Cox 1987).
favour because of the institutional arrangements (decision making rules, norms, etc.). Barnett and Duvall assume that institutions are biased towards certain actors; that is to say, institutions further the interests of certain actors more than of other actors. These considerations obviously link to the work of Krasner and Keohane and Nye on the impact of regimes on the relations between countries. They also touch on the systematically built-in bias brought up by Bachrach and Baratz in their second dimension of power.

Duvall and Barnett’s third category is that of structural power, defined in terms of direct and mutual constitution of the capacities of actors. Barnett and Duvall’s concept of structural power defines it as “the structures […] that define what kind of social beings actors are” (2005: 18). While in the concept of institutional power, institutions and structures are regarded as fixed and unchanging, the structural power concept focuses on structures and how they produce the very actors that interact in their realm:

“The kind of social beings that are mutually constituted are directly or internally related; that is, the social relational capacities, subjectivities, and interests of actors are directly shaped by the social positions that they occupy.” (ibid.).

Structures hence shape resources, capacities and ideology of actors (Gill and Law 189). This concept is related to Luke’s third dimension of power (see above), and also to the ideas of cognitivist theorists on the mutual constitution of actors and interests.

Barnett and Duvall’s final power category is that of productive power, defined as the production of subjects through diffuse social relations (2005: 20). This concept is closely related to the concept of structural power. The key difference between structural and productive power is that the latter is more diffuse:

“Productive power, by contrast, is the constitution of all social subjects with various social powers through systems of knowledge and discursive practices of broad and general social scope.” (2005: 20).

40 Other scholars that have focused structural power in their analysis are Rupert and Smith 2002, Murphy 1994, Cox 1992, Latham 1999.
The focus of productive power is hence on discourse, the social processes and the systems of knowledge through which meaning is produced (Macdonnell 1986).

The four-fold categorisation of power advanced by Barnett and Duvall brings together many of the arguments dealt with in earlier parts of the chapter. In particular, it provides important ways of relating actor power to institutions and structures, and thus of potentially providing a strong basis for the study of actor power in international regimes. This is the subject of the final part of this chapter.

2.3 A concept of actor power in international regimes

The previous section has reviewed a range of different power approaches. They differed in terms of where they located power: Is it visible in the resources of an actor, in the process or in the outcomes of negotiation processes? Should it be observed with regard to an individual actor or rather in terms of structure? While all of the approaches highlight different aspects of the phenomenon “power”, which one is the most suitable for the case at hand? The proposal here is to establish a framework and propositions based specifically on the direct, observable exercise of power by actors within international regimes, and drawing specifically on the categories of compulsory power and institutional power proposed by Barnett and Duvall (2005).41

This approach and framework should be especially suited to cases fulfilling the following criteria, similarly suggested by Barnett and Duvall (2005: 13-21). First, the approach is suited to interactions such as negotiations within international regimes where the contributions of specific actors are observable, where their interests can be discerned (and are often openly professed) and thus where we should be able to observe interest-seeking behaviour. Second, the approach can accommodate open conflicts of interests between actors within a regime, over such issues as agendas, negotiation processes and outcomes. Third, regimes provide evidence for the exertion of control over negotiations by specific parties and of the effects of principles, norms, rules and decision-making procedures. Fourth, a focus on

41 In a short paper, Wolfe uses these two types of power to analyse change in the WTO agriculture negotiations (2006; see also Wolfe 2007b).
negotiation processes avoids an over-concentration on background structures and on broader processes of social construction, and directs our attention towards the application of resources by actors in a specified context. Finally, such a focus enables analysis to capture the extent to which actors might attempt to use the regime in which they are involved for their own benefit.

As discussed above, compulsory power follows the basic definitions of power by Dahl. The focus of this relational power concept is on processes and power outcomes. Other authors have pointed to the importance of power as a capacity or the importance of resources. These different elements have been integrated in the definition of power by sociologist Philip Habeeb, who regards power as:

the way in which actor A uses its resources in a process with actor B so as to bring about changes that cause preferred outcomes in its relationship with B (Habeeb 1988: 15)

Keohane and Nye’s concept of power in their seminal work “Power and Interdependence” (1977, 2001) takes a similar view on power as based on resources and visible in process and outcomes. While they argue that an assessment of an actor’s resources is crucial in an assessment of actor power, they emphasise that there is no direct link between resources and outcomes, but that resources are “translated” through the bargaining process into outcomes (2001: 16ff; 196ff). To assess power comprehensively in this thesis, we hence need to take the following elements into account: resources, processes and outcomes.

In the definitions of power by Keohane and Nye and Habeeb, power is dynamic and observable. Power is part of a process in which various actors interact on the basis of resources. In the case that will be investigated in this thesis, this interaction and
negotiation takes place within the trade regime. Keohane and Nye hence enrich their power concept by considerations on how regimes affect power exercise (2001).  

Keohane and Nye’s model applies to situations characterised by what they define as “complex interdependence”. The key assumptions of complex interdependence (and

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42 Prior to introducing their model of regime change under complex interdependence, Keohane and Nye discuss three other models which can explain regime change based on power changes. They discuss (1) an economic process model of regime change, which attributes change to shifts in economic interdependence and technology, but fails to grasp political factors (e.g. military, security or autonomy); (2) the traditional realist explanation, which states that changes in the distribution of politico-military power between states (and, in an extended model, changes in the perception of the threat of military aggression, in relative economic strength of the actors and in hierarchical patterns) are the trigger for regime change, but fails to take into account the implications of different power patterns in different issue areas, the implications of increasing interdependence and the domestic dimension; and (3) the issue structure model, which assumes that power cannot be transferred from one issue area into another and that the strongest state in one issue area is responsible for regime change, but fails to assess that sometimes power can be transferred (Keohane/Nye 2001: 33-47). In their work, Keohane and Nye find that all models can explain regime change under certain circumstances. Their analysis is hence marked by significant complexity. For the case of the EU’s involvement in the WTO, it suffices to use the model of regime change in an international organisation, because the conditions set out by Keohane and Nye are met in this case, and because
related approaches) have been introduced earlier (see Sect. 2.1.2). As we will see later, multiple channels of interaction exist between members of many international regimes (see chapter 3, 4). The agenda for any given regime (and especially those where formal negotiations are a central feature) is likely to contain a multitude of interrelated issues and very different distributions of interest are likely to exist in those different issue areas. Military force is not used on the issues under negotiation between the members of international regimes. We can hence say that the situation within which the members of many regimes negotiate is characterised by “complex interdependence”.

In Keohane and Nye’s framework, what has been called “regime” in this chapter so far is represented by “existing norms and networks” (see also the Keohane and Nye definition of regimes in Sect. 2.1). An actor’s resources are referred to as “underlying capabilities” in the model. However, these are not the only capabilities that an actor can dispose of: Keohane and Nye call the resources that emerge from the interplay of a specific actor’s resources with the regime “organisationally dependent capabilities”. This second aspect of power relates to the “institutional power” category of Barnett and Duvall. To identify an actors’ power in a specific regime, an assessment of the regime is hence necessary. The actor’s resources are then translated in the bargaining process to produce an outcome (which in the Keohane and Nye model then causes changes in the regime, which then changes the organisationally dependent capabilities of actors, the bargaining process and outcomes etc.).

In the work of Baldwin introduced above, he argued that resources were not completely “fungible”, i.e. transferable between different issue areas (Baldwin 1989, 1992). This understanding of power was taken up by Keohane and Nye (2001). Apart from an assessment of the regime and the actor’s position in it, attention therefore needs to be given to the characteristics of the issue area and the actor’s status in it.

our main focus is not only on resources and distribution of capabilities in general, but also on actual negotiation processes.
This section has identified the key aspects that need to be dealt with in the analysis of actor’s power within international regimes, and has related it to Barnett and Duvall’s categories of ‘compulsory’ and ‘institutional’ power. It has also used Keohane and Nye’s analysis of change in international regimes to develop a more nuanced appreciation of what ‘actor power’ might mean. An assessment of power following the model of Keohane and Nye hence needs to start with an assessment of the regime and the issue area under consideration. We then need to look at the actor’s resources (underlying capabilities in the issue area and overall), the actor’s organisationally dependent capabilities, the negotiation process (bargaining) and outcomes. The following sections deal with these in more detail.

2.3.1 Resources: an actor’s “underlying capabilities”

Both Habeeb’s and Keohane and Nye’s definitions (see above) take resources as the initial “ingredients” for power. As mentioned in Sect. 2.1.2, whereas the realist tradition in International Relations considered military resources, population and territory as the most relevant resources (although not the only relevant ones!) (e.g. Gulick 1967), IPE proponents have extensively argued that in an increasingly interdependent world the power base has extended. Keohane and Nye name the increasing importance of political and economic resources (for example Keohane and Nye 2001: 10/196-197).

Though Strange is making a structural argument, she still identifies “power bases” – resources which are the origin of power. To Strange, an actor is empowered by control over the security structure, the production structure, the financial structure and the knowledge structure (Strange 1994).\textsuperscript{43} In her work, Strange hence identifies not only material, but also immaterial resources: knowledge (1994: 19), ideas and moral authority (1994: 23), social cohesion and a strong civil society (1994: 38). Knowledge and ideas can be used to constrain actors and can hence be regarded as resources (Adler and Bernstein 2005); knowledgeable actors can promote ideas that further their own interests (e.g. Sell and Prakash 2004). Related to the resource
“knowledge” are factors named by Hurrell, such as the ability to adapt to changes in the GPE and influence over norms (Hurrell 2005: 50). Moral authority and rhetorics have been used by civil society to “convince” states of certain norms (Keck/Sikkink 1998; Price 1998). Similarly, Nye’s work on “soft power” points our attention to non-material power factors such as the attractiveness of an actor’s governance system (Nye 1990).

Resources for power can also be found in the relationships between actors. Keohane and Nye introduce a measurement of dependence between countries. They differentiate between “sensitivity”, which measures the rate at which a country is affected by changes in a second country, and how great and costly the effects are, and “vulnerability”, which measures the availability and costs of policy alternatives. We can assume that a country that is less “sensitive” to changes in other countries has greater independence for action and is hence more powerful in the relationship. Alternatively, if a country is relatively sensitive to changes in other countries, but has viable alternative policy options, it again disposes of greater power in the relationship than if it was sensitive and vulnerable (Keohane and Nye 2001: 10ff; on policy alternatives see also Hurrell 2005, Steinberg 2002 and the “go-it-alone” power concept by Gruber 2000). The degree of dependence between countries can hence be a resource for an actor.

Similarly, as Baldwin has argued, resources are only viable in the exercise of power if the respective actor recognises the “currency” of power and values possession of it (Baldwin 1985, 1989). Relationships to other actors in a given regime hence can constitute further potential resource for an actor.

Summing up, resource power consists of

- Those material and immaterial power resources directly attributable to an actor (economic resources; political resources; security resources; control over production, financial and security structures; strong civil society (e.g. support for non-violent demands)

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43 Strange’s model can be seen as an extension or even an opposition to a Marxist/Neo-Marxist or Gramscian view of structural power as deriving before all from control over the production structure (ibid: 26, Cox 1987).
by business or civil society); legitimacy for action in the GPE; domestic support (for example by business or civil society), status in the GPE, control over ideas and knowledge; experience.

- Those power resources resulting from the actor’s relationships of dependence or independence with other actors in the system (including policy alternatives).\(^{44}\)

As discussed above, we need to distinguish between overall and issue area power when analysing power, and hence also when analysing resources.

### 2.3.2 The regime as power resource: an actor’s “organisationally-dependent capabilities”

In Keohane and Nye’s model, the interplay between the regime’s characteristics (i.e. its implicit or explicit principles, norms, rules and decision-making procedures) and an actors’ resources give rise to a third type of resource for an actor: organisationally-dependent capabilities. In order to assess how an actor’s power works within a regime, it is hence necessary to consider how regimes affect the power of actors in them.

Similarly, Krasner argued in one of his early essays on regimes that changes in the power distribution between regime participants did not immediately transmit into the regime (see Sect. 2.1.2). The time lag in the transmission of power changes means that the regime (and hence its norms, rules, principles) can have an influence on an actor’s power and the resulting outcomes of a power exercise. The regime is partially independent of the underlying power distribution, and hence may empower or constrain certain actors. As we have noted already, therefore, regimes can thus have

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\(^{44}\) An actor who has at its disposal viable exit options (alternative forums for achieving its goals) will be more powerful than an actor who is relying entirely on the regime.
a certain “life of their own” (Krasner 1983: 357, see also Abbot and Snidal 1998, Barnett and Finnemore 2004). It is important, however, to note that although regimes might formally attribute equal status to each participating country, actors in the regime will not have equal status in practice – the difference results from the difference in resource equipment between the different actors and from the empowerment or the loss of power resulting from the regime itself (for example Gruber 2000; Murphy 1984), and from the bias (or constraints to the agenda) built into the regime by its founding fathers, who in Gruber’s view are the dominant powers of the time (Gruber 2005). For Krasner, the regime is a static background, on the basis of which power relations are played out. Regimes are not seen as “being continually reshaped by the historically constituted and intersubjectively reproduced societal biases” (Guzzini 1993: 475). This simplification allows us to regard regimes as a resource for power. As this thesis focuses on actor power, it follows this static interpretation of regime; in consequence, for the purposes of analysis, regimes will be taken as static background on the basis of which bargaining is conducted.

Regimes can hence be seen as a source of power in themselves, as they can change the balance of power between actors (Krasner 1983: 358-361, 364ff; Guzzini 1993: 451). Figure 2.2 shows the relationship between an actor’s power and the regime within which it is exercised:

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45 In his later work on power in regimes, Krasner starts earlier though, with the establishment of a regime (see above). He bases his hypothesis on cases of international regulation/rule-establishment in various sub-sectors of global communications. The existence of a collective action problem was the obvious starting point for cooperation. In his case studies, if power was distributed very asymmetrically and interests diverged, the most powerful states would pursue their preferred policies unilaterally. This could either mean that the predominant power chooses to provide the collective good by itself or that the predominant power refuses to cooperate if non-cooperation is its favourite outcome. If the distribution of power was rather symmetrical and there was a mutual interest, regimes tended to be established. The nature of the regime depended on the distribution of power between actors. Changes in established regimes followed from changes in the underlying capabilities of actors, for example from technological development (Krasner 1991: 336ff). The question could thus be why a certain point on the Pareto frontier, and thus a specific regime, has been reached. The relevant variable to explain this variation in outcome is power (ibid: 361).

46 Additionally, regimes can shape the preferences of actors. Anticipations about the status of an actor hence influences its actual power in the regime
Figure 2.2 *Relationship between an actor's power and the regime*

Figure 2.2 integrates the considerations of resource power and of organisationally dependent capabilities. An actor’s power emerges from its resources and can be used by that actor to establish or change a regime. Power is here postulated as the central, independent variable. In a regime, power can be used to change the existing rules, expand the regime or demolish it. Importantly, in turn the regime shapes and constrains an actors’ power. As has been discussed above, this shows again that there is not necessarily a causal link between an actor’s resource endowment and control over outcomes and governance.

The regime as a resource for power differs from the resources above in that it is not a “possession” of the actor (Barnett and Duvall 2005: 16). Thus as we shall see later, the EU does not own the world trade regime, and might not even significantly dominate it, but the principles, norms, rules and decision-making procedures of the world trade regime might support the EU’s interests – or work against them. In the analysis in this dissertation, the effect of the regime on the EU’s organisationally-dependent capabilities thus needs to be assessed as well as resource power.
2.3.3 Power exercise in the negotiation process: an actor’s contribution to bargaining

The next step in Keohane and Nye’s model is bargaining – or the negotiation process. An actor with resource power and in the right institutional setting has the potential to exert power. These possibilities for action can be operationalised during the negotiation process – depending on the actor’s strategic priorities and interests. The actor also might choose not to fully use its possibilities due to tactical reasons or normative considerations. An actor’s preferences might thus influence its “exerted power” in different issue areas. At the same time, the “activation” of resources does not automatically lead to analogous outcomes, as Keohane and Nye describe in several instances (2001). For example, an actor’s behaviour in a negotiation is importantly shaped by the perception of the opponent’s preferences (e.g. Odell 2003: 9, 2000). This means that the way an actor exerts its power in a negotiation is influenced by imperfect information, and thus a certain speculation and anticipation.\(^{47}\)

In view of these “hindrances” that can occur at the bargaining stage, observing the bargaining process can thus deliver answers as to why a powerful actor might or might not succeed to translate its resources into its desired outcomes.

At the bargaining stage, actors will first of all attempt to shape agendas according to their own interests (Keohane and Nye 2001: 27-29). This means promoting certain issues, but also trying to prevent other issues from being added to the agenda (Bachrach/Baratz 1962). Successful agenda-setting depends on adequate timing, influencing the discourse in networks and it can also be influenced by external events, which can create “windows of opportunities” for new issues. Agenda-setting in regimes will follow certain formal rules, but as we will see in subsequent chapters, the WTO heavily relies on informal agenda-setting (e.g. Mansbach and Vasquez 1981, Kingdon 1984, Pollack 1997).

Second, actors will attempt to generate support for their ideas and interests. This can be via rhetorical tools, publication and/or floating of research and hence the shaping

\(^{47}\) Such an admission calls for the incorporation of cognitivist factors in the analysis, as it can be assumed that actors’ perception of the negotiation changes with iterated negotiations; this means the actors undergo processes of learning. However, this is not the focus of this dissertation.
of ideas (see above). Actors also choose to establish formal or informal coalitions to promote certain issues. As we will see later, coalitions in the WTO can be issue-specific or dealing with multiple issues (e.g. Narlikar 2003, 2005). However, if we take into account the aspect of non-decision making, an actor might also try to prevent a coalition from being established or from pursuing its interests. Support for interests can also be attained by issue linkages. Issue linkages can hence be an important tool in this bargaining process. These linkages can occur between issue areas or even between different regimes (Keohane and Nye 2001: 26ff, Odell 2000, Axelrod and Keohane 1986).

As was evident from Krasner’s definition of regimes, the interaction in regimes and hence the bargaining in regimes does not only occur formally, but also informally. Bargaining in many regimes takes place not only in the actual, formal negotiations, but also informally or in other fora - for example through bilateral negotiations. Bargaining can thus be understood to not only include formal negotiations, but to have an informal component (Keohane and Nye 2001: 26).

As argued by Keohane and Nye, the bargaining process entails an operationalisation of power. This operationalisation can occur in the setting or breaking of agendas, in the generation or destruction of support for an actor’s interests, for example by building or destroying coalitions, and by the strategic use of issue linkages. Observing the bargaining process can thus provide clues as to why a powerful actor might or might not succeed to translate its resources into its desired outcomes.

### 2.3.4 Actors, Power and Outcomes

The final part of the analysis focuses on the outcomes of power exercise. In Keohane and Nye’s framework, this outcome is “regime change”. We should, however, keep in mind that for actors a desirable outcome of a negotiation process can also be non-agreement or impasse (Odell 2000: 39). In Dahl’s early work on power exercise, the main focus was on the analysis of outcomes of bargaining processes (1962).
Keohane and Nye criticised this one-sided focus on outcomes, because of the intervening factors such as the regime and the bargaining process as above, and hence outcomes are here only one element in a comprehensive assessment of power. Still, to assess an actor’s impact on a given regime, it is crucial to also analyse how far the actor manages to translate its resources into actual outcomes.

It is important to differentiate between different power outcomes: First, there are the effects of “structural power”, which as noted above are not the focus of this thesis. These effects would include the setting of frameworks, and establishing and moulding the regime and the interests and capacities of the actors within them (Barnett and Duvall 2005: 18). Second, there are the power outcomes which result from the exercise of compulsory and institutional power. Outcomes of compulsory power include changes in the behaviour of B, or to put it in different words, control over B’s behaviour. Institutional power achieves this control, as discussed above, in an indirect way (Barnett and Duvall 15-17). The results of power exercise in the bargaining process can be regarded as “interim outcomes” in which we can determine the impact of an actor: agenda-setting or –breaking, generation or destruction of support (including coalition-building or destruction, issue-linkages). Finally, there are formal outcomes and decisions or impasse and failure of the negotiations. However, even if we look at formal outcomes, and formal agreements, we need to differentiate as to how far the interests of an actor are represented in an apparent negotiation success. The prevalence of an actor’s preferences in the agreement is an important indicator of its success in power exercise (Odell 2000: 38).

### 2.3.5 Actor-Centred Power Analysis: Five Propositions

The argument put forward in this section, based on the review of power approaches both generally and in the more specific context of international regimes, can be summed up in five propositions:

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• First, that analysis of actor power in international regimes depends initially on specification of the international regimes, its qualities and the issue-area(s) it relates to.

• Second, that analysis of actor power in international regimes depends on an assessment of the resources and capacities that the actor brings to the regime (in other words, of ‘power to’ existing independent of the regime – in Keohane and Nye’s terms, ‘underlying power’).

• Third, that analysis of actor power in international regimes must take account of the actor’s ‘organisationally dependent capabilities’ and thus of resources derived from involvement in the regime itself (what might be defined as ‘power from’ the regime – in Barnett and Duvall’s terms, ‘institutional power’)

• Fourth, that analysis of actor power in international regimes can profit from a focus on formal negotiation and bargaining processes in which the actor is involved (and thus on what might be termed ‘power in’ negotiations as analysed by Keohane and Nye)

• Finally, that analysis of actor power in international regimes must include an assessment of outcomes (and thus what can be seen as ‘power over’ in the regime setting – in Barnett and Duvall’s terms ‘compulsory power’)

It must be emphasized that this is not a comprehensive framework, in the sense that – as argued earlier – it sees issues of structural power and global power distribution as relatively secondary to the exercise of power in a specific regime, at a specific time and in relation to specific issues. The aim is thus to produce a form of middle-range analysis, which can potentially be generalised to a range of regimes, actors and issues, not to produce a general theory of power in regimes or in the international arena more generally. Despite these limitations, the investigation raises a number of important questions about how the notion of actor power is to be operationalised or measured, and in particular estimating the way things would have been without the exercise of power; as Guzzini notes, ‘the judgement of significance of a given set of abilities (power) presupposes an implicit statement about the unaffected state of affairs’ (1993: 446). It is argued in the context of this thesis that an evaluation of actor power incorporating both actor-specific and regime-dependent capabilities (Ward 1987), and relating this to specific negotiation processes, can...
minimise the problems emerging from this problem of operationalisation. In the same way, holding the broad characteristics of the regime as a constant, so that attention is focused on what is going on within the regime framework, is intended to reduce the problems that might emerge from broader global processes of change or crisis.

2.4 Interim Conclusion

This chapter has identified the reasons for the emergence of new governance systems on the international level, and specifically the role of international regimes as reflecting processes of ‘governance without government’ through international cooperation. It has conceptualised cooperation on the international level on the basis of regime theory and argued for the relevance of an approach focused on actor power in regimes. It then turned to consider different aspects of power, and to develop a set of propositions relating to actor power in regimes as the basis for further analysis.

The previous discussion has shown that a comprehensive analysis of power requires the incorporation of a range of variables. Some have only briefly been touched upon. For example, to define and analyse resources (or “resource power”) comprehensively is a major undertaking. The choice of any power analysis is thus between parsimony and clarity on the one hand and complexity and analytical depth on the other hand.

Overall, the chapter has shown that the power debate features a range of dimensions along which the researcher can proceed. On one side, there is the broad macro level understanding of power as it figures in the Realist power analysis, and similarly if one speaks about “structural power” in Strange’s sense. On the other side of the spectrum there is a micro level understanding of power, which involves analysis of specific negotiation situations with two or more actors. As indicated above, the middle-range analysis of power in relation to regimes has not received much attention.

The power analysis which will be attempted in this thesis will be broadly based on the regime change model of Keohane and Nye as outlined above, in combination with the various aspects of power discussed in this chapter, and in particular the five propositions about actor power in international regimes advanced in section 2.3.
These five propositions will be the background against which more specific research questions about the EU and the international trade regime will be developed. As discussed above, to proceed with this analysis, a first step will be to assess the regime, in this case the world trade regime as reflected in the WTO and its norms, principles and rules. The second step will be to analyse the EU’s resource power in relation to its engagement with the WTO, including its issue-area dependent capabilities and power from its relations with its negotiation partners, and its organisationally-dependent capabilities. The third step – and the most detailed in the context of the empirical investigation - will be to analyse the negotiation process and outcomes with specific reference to trade in services, which will give indications of how effectively the EU has used its power in the WTO.

The subsequent Chapter 3 will attempt the first step in assessing the world trade regime and specifically the WTO. Together with the theoretical groundwork laid out in this chapter, the chapter will also develop a set of more specific research questions about the impact of the EU in the world trade regime.
3 The WTO in the Global Trading System

The discussion in chapter 2 has established that the first step in the analysis of an actor’s power in a regime needs to be the analysis of the regime itself. As argued earlier a given regime will give rise to a “filter process” through which a single actor’s power is transformed as the result of the structure, focuses and operating practices of the regime. In this thesis, the regime under investigation is the international trade regime. The WTO is the major international organisation in this regime, incorporating a host of norms, rules, principles and decision-making procedures. This chapter describes first the evolution of the international trade regime with its organisation GATT until the establishment of the WTO in 1995, paying particular attention to the EU’s (or its predecessor’s) contribution to this evolution. The second part of the chapter assesses the institutional structure of the WTO. Based on the findings of these two first sections and the theoretical propositions set out in Ch. 2, the third section assesses power in the WTO and develops a set of specific research questions that will guide the further investigation in this thesis. In the wider GPE, the international trade regime is not the only regime though. It borders and at times overlaps with other regimes, some of which are nascent, for example the world environmental regime. The international trade regime itself covers a variety of issues areas, such as agriculture, trade in services and intellectual property rights, which in themselves display specific characteristics (see Figure 3.1). As discussed in the previous chapter, an issue area might give rise to different power relations than can be found overall in the regime. This is why one specific issue area is introduced in the fourth part of this chapter: trade in services.
3.1 The international trade regime and the WTO

3.1.1 Evolution
Since the Second World War the international trade regime, was importantly shaped by the GATT. The history of the GATT can be traced back to the Atlantic Charter of 1941, with which the Allies sought to set up the economic and political order of the post-World War II area. After the negative experiences of the inter-war period, where the closed international economy could be identified as a reason for the extent of the Depression and as a cause for the increasing inclination to start another war, the Allies intended to delimit protectionist tendencies from their roots and to lock liberal principles into an institutionalist framework. Special responsibility for the construction of this system was assumed by the USA, but the UK also contributed to the shape of the new trading system (Curzon 1965: 20-31; Gardner 1956: 101-104, 348-380; Dam 1970: 10-16; Kock 1969; Ikenberry 1992). This system was intended to balance the aim of liberal trade and the social aims of the “New Deal”. In 1944, the two “Bretton-Woods Sisters”, the IMF (International Monetary Fund) and the World Bank, were thus set up. The “Havana Charter for an International Trade Organization (ITO)” of

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49 Ikenberry emphasises the role of ideas (resulting from Keynesianism and evolving in an international community of British and American experts) in the shaping and establishment of the GATT regime, which legitimised the exercise of US power and made consensual agreement between the early GATT signatories possible (1992).
1948\textsuperscript{50} was supposed to create a third complementary institution (Hauser and Schanz 1995: 7-9; Wolfe 1999: 208). The Charter not only dealt with the reduction of tariff barriers to trade, but also with competition policy and foreign direct investment (FDI) (Hauser and Schanz 1995: 7-9; Senti 2000: 14ff), hence already envisaging an institution more comprehensive than today’s WTO. The ITO also sought to balance the two objectives of free trade and full employment. Negotiations on the ITO charter took place from October 1946 to August 1947. At an early stage, conflict arose between different positions as to how these at times contending objectives should be attained. The resulting compromise, the ITO charter, was never ratified. This was due especially to conflicts between the USA and the UK, and the US failure to ratify the charter (Curzon 1965: 30; Senti 2000: 20; Diebold 1952; Gardner 1956: 104-109, 348-380; Kock 1969: 35-61).

However, part of the Havana Charter had been negotiated separately after the Conference of London in 1946. While the US had initially intended to conclude a range of bilateral treaties, it quickly realized the advantage of multilateralising its model of commercial treaties and it proposed the “GATT”. In the end, the GATT became the only part of the ITO charter that survived and entered into force. With 23 signatory parties, it entered into force on 1 January 1948 and contained regulations regarding tariff and non-tariff barriers to trade. Compared to the initial ITO concept, the GATT\textsuperscript{51} was much less institutionalised and formal. It consisted of three parts: Part 1 obliged contracting parties to grant “most-favoured nation” (MFN) treatment to each other and it installed the principle of non-discrimination (exceptions from this principle were granted for existing preferential trade systems). Part 2 contained trade rules, which dealt for example with transit trade, antidumping duties, customs valuation and quantitative restrictions (and it identified the exceptions under which quantitative restrictions were allowed to be used, such as balance of payment

\textsuperscript{50} The GATT was founded by Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom and the United States. China, Lebanon and Syria withdrew from the agreement afterwards (Hoekman and Kostecki 2001: 38).

\textsuperscript{51} A detailed discussion of the GATT agreement can be found in Curzon 1965.
difficulties). Part 3 contained provisions for future trade negotiations (Senti 2000: 20; Curzon 1965: 31-32; Gardner 1956: 379-385; Gorter 1954; Curzon and Curzon 1974; Kock 1969: 62-65). In her comparison of the GATT and the ITO charter, Kock concludes that “those parts of the Havana Charter which in American opinion had been most debatable or which would have required approval by the Congress, were not included in the General Agreement” (1969: 69). As the ITO could not be established, the GATT became the framework in which multilateral trade policy questions were dealt with for the following nearly 50 years.

In the following decades, the GATT was shaped on the one hand by the expansion of membership, including the integration of numerous emerging and developing economies. On the other hand, structural changes in the world economy and in national trade policies (such as the increasing use of non-tariff barriers) demanded adaptation and extension of the treaty (Senti 2000: 24ff). Changes and amendments to the GATT treaty were negotiated during eight trade rounds (Table 3.1).

Table 3.1  The eight trade rounds

<table>
<thead>
<tr>
<th>Name (Place), Time</th>
<th>Number of participating countries</th>
<th>Key results</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Geneva (ibid), 1947</td>
<td>23</td>
<td>Average tariff reduction 19%</td>
</tr>
<tr>
<td>2. Annecy, France (ibid), 1949</td>
<td>23</td>
<td>Average tariff reduction 2%, 10 new GATT signatories</td>
</tr>
<tr>
<td>3. Torquay, UK (ibid), 1950-51</td>
<td>38</td>
<td>Average tariff reduction 3 %, UK defends trade preferences for the Commonwealth countries</td>
</tr>
<tr>
<td>4. Geneva (ibid), 1955-56</td>
<td>26</td>
<td>Average tariff reduction 2%, Japan joins GATT, European Coal and Steel Community (ECSC) as observer</td>
</tr>
<tr>
<td>5. Dillon (Geneva), 1961-62</td>
<td>26</td>
<td>Average tariff reduction 7%, Negotiation seen as direct consequence of the emergence of the European Economic Community (EEC)</td>
</tr>
<tr>
<td>6. Kennedy (Geneva), 1964-67</td>
<td>62</td>
<td>Average tariff reduction 35%, Part IV GATT on development, first anti-dumping codex</td>
</tr>
</tbody>
</table>

52 Senti (2000), Curzon (1965) and Gardner (1956) describe extensively the negotiations surrounding the Havana Charter and the evolution of the GATT. For a detailed discussion of the content of the GATT agreement see Dam 1970 and Hoda 2001.
<table>
<thead>
<tr>
<th>Country</th>
<th>Round Start</th>
<th>Average Tariff Reduction</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tokyo, Geneva</td>
<td>1973-79</td>
<td>34%</td>
<td>First agreements on the reduction of non-tariff barriers to trade (NTBs), “enabling clause” to exempt preferences for developing countries from MFN</td>
</tr>
<tr>
<td>Uruguay, Geneva</td>
<td>1986-93</td>
<td>40%</td>
<td>Significant extension and deepening of the GATT, addition of new areas: trade in services, TRIPs, TRIMs, establishment of the WTO</td>
</tr>
</tbody>
</table>

Sources: Hauser and Schanz (1995: 42); Senti (1994: 15-17)

The first two rounds, in Geneva and Annecy, were still part of the establishment process of the GATT. The 1950-1951 Round in Torquay was the first litmus test of whether the GATT would work as a tool for reducing tariffs. The negotiation technique in these early rounds was essentially bilateral: negotiators exchanged “request lists” and then “offer lists”. While the Geneva Round still produced rather substantial results, the subsequent negotiation rounds fell short of expectations (Curzon 1965: 87-88; Evans 1971: 10ff). The GATT started to encounter new problems. These had to do with the bilateral negotiation technique employed in the early GATT tariff negotiations, which limited the reach of concessions, and with negotiation principles. The principle of reciprocity (see Sect. 3.1.3) was already part of GATT; and European countries with low tariffs (Belgium, Netherlands, Scandinavian countries) recognized a first drawback of the system in the early 1950s: With their low rate tariff regimes, they had little left to offer to their negotiation partners to encourage these to lower their high tariffs. They hence asked for GATT to aim for more equal tariff levels (“tariff harmonisation”), especially in Europe (Curzon 1965: 87-88; Evans 1971: 22; Kock 1969: 72).

Already at this stage, the predominance of the European-American “axis” in GATT is visible, as for example developing countries could not support such an idea due to their vulnerable economic situation. However, disputes arose between those who wanted to deal with European tariff issues within the OEEC (Organisation for European Economic Cooperation) and those which thought that this issue should be dealt with in the GATT. The latter proposition was supported for example by the UK (Curzon 1965: 87-88). These attempts at an early GATT “reform” failed, and the Geneva Round of 1955-1956 started in a climate of heightened tensions and uncertainty among GATT members. The US, though held back by domestic pressures, made substantial commitments in the negotiations, but the overall
negotiation result was unsatisfactory for most parties, especially for continental European countries (the UK still prioritised Commonwealth trade over trade with continental Europe). This was the final incentive for continental European countries to envisage trade policy coordination among themselves. Ideas on European trade policy discussed for several years within the GATT framework now directly fed into the establishment of the EEC trade policy. GATT thus had a major impact on the evolution of EEC trade policy, and GATT conformity was an aim of EEC trade policy from its inception (Curzon 1965: 94-97; Evans 1971: 13).

At the same time, the US and the UK were clearly opposed to these plans for a new preference zone (although the US supported European integration for political reasons), and fears were abundant that GATT would not survive. However, the creation of the European regionalist projects gave an incentive to the rest of GATT signatories to increase their efforts of cooperation so that they would not be disadvantaged by the European solo attempt. The UK reverted to its EFTA project, but the US had to rely on GATT to achieve its trade policy goals with regard to the new European economic “bloc”, and it used the GATT framework to achieve substantial tariff reduction by the EEC for GATT signatories. The Dillon Round hence had the purpose of dealing with the establishment of the European common customs tariff and lowering its impact for GATT signatories, and the GATT proved a useful framework in which even the strong EEC countries could be encouraged to conform (Curzon 1965: 97-99; Curzon and Curzon 1976: 168-171; Evans 1971: 13).

The other objective of the Dillon Round was reciprocal reduction of tariffs among all negotiating parties. However, the Dillon Round was still plagued by the negotiation methods of the early GATT years, which already in the 1950s had been regarded as not sufficiently taking into account disparities in tariffs levels. Additionally, the US was limited by a narrow negotiation mandate. Again, negotiation results thus were not satisfactory to GATT signatories (Curzon 1965: 99-100; Curzon and Curzon 1976: 171-175; Evans 1971: 14, 16).

With the European Common Market taking shape at an unexpected speed and the US economy going through a slack period, fears of a European rivalry and of a challenge to the US’ predominant status in the world economy quickly emerged in the
US after the Dillon Round. The new US government launched a campaign for a new trade policy negotiation mandate, whose primary aim was to provide the US with improved market access to the EEC. The passage of the “Trade Expansion Act of 1962” created the domestic legal basis for a new approach to GATT negotiations. The approach foresaw linear tariff reductions based on a formula approach (rather than only reciprocal tariff reduction on a product-by-product basis) and gave key importance to cooperation with the EEC (Curzon 1965: 102-104; Curzon and Curzon 1976: 178-81; Evans 1971: 134-159; Preeg 1970: 39-56).

The US then started to promote its idea of a new trade round, including its new approach to GATT negotiations, internationally. Certain industrialised and certain less developed countries were unsure that fair burden sharing could be achieved with a linear approach to tariff reduction. During this US campaign, the EEC position was marked by hesitation and influenced by its internal project of establishing its Common Agricultural Policy. The US’ idea of a partnership with the EEC on trade issues was furthermore complicated by a range of transatlantic disputes and disagreements, such as the rejection of a British EEC accession by France (Curzon 1965: 102-104; Evans 1971: 160-180). Further conflicts arose when it came to translating the basic US idea of linear, formula-based tariff reductions into actual operational negotiation rules, and sectoral solutions had to be found. On industrial tariffs, for example, there was not only to be a linear approach at tariff reduction but also an elimination of tariff peaks, but how this was supposed to work was in the end left to the actual negotiations as no solution could be found in the preparatory committee (Evans 1971:183-202; Preeg 1970: 39-56). Major disagreement also existed on the issue of agriculture policy: major agricultural exporters such as the US, Canada, Australia and New Zealand promoted an ambitious proposal for agricultural liberalisation. Others, such as the EEC, the UK and Japan, did not want to see agriculture included in linear tariff reductions. The EEC’s position additionally was plagued by internal disagreement, and it remained uncertain whether France would agree to any tariff

53 The US’ support for a British accession to the EEC in the early 1960s can be explained by the US’ hope that the British would promote a more liberal approach to trade policy within the EEC (Evans 1971: 137).
cuts on agricultural products. A range of unresolved issues in conjunction with the establishment of the CAP and other political disagreements between France and Germany about the future of the EEC in general provided a shaky ground for the negotiations on agriculture and even resulted in a short period in which the negotiations proceeded without the EEC. In agriculture as well, the establishment of negotiation rules was finally integrated into the actual negotiations (Evans 1971: 201-215; Preeg 1970: 72-77; Warley 1976: 377-395). As no general negotiation rules had been agreed upon, negotiations on tariff reductions proceeded with the help of lists which established possible concessions between trading partners on a bilateral basis, with the later addition of a process of multilateral "appraisal" (comparison and consolidation) of offers (Evans 1971: 221-236; Preeg 1970: 81-95). Apart from these two big issues at stake in the Kennedy Round, several side issues were discussed. These included the issue of the participation of developing countries (whose role was rather minor in the negotiations and in terms of commitments), countries searching special treatment because of their economic and trade structures, and non-tariff barriers (Evans 1971: 243-264; Preeg 1970: 70-72).

During the whole of the prenegotiation stage and the Kennedy Round, the EEC played a very active role and hence re-affirmed its commitment to the multilateral trade regime. The Commission’s position as the agent of the EEC members meant it tried to broker compromises between its members and the GATT negotiators (see e.g. Evans 1971: 208). At the same time, the Commission was dependent on unanimous approval by the Council of Ministers on all the negotiation items. This caused problems and delays at several instances (see above). The EEC’s position was also rather defensive in key areas of the negotiations, with the US shaping the agenda much more proactively (Evans 1971: 265, 278; Preeg 1970: 111-121).

While the negotiations lingered on till 1967, the looming expiry of the US government’s negotiation mandate exerted considerable force on the negotiations and the negotiations were concluded in June 1967. The main results of the Kennedy Round were tariff reductions on a more substantial level and on a wider range of products and than in previous rounds. Exemptions were granted to countries with a “special trade structure”. Other achievements were several sectoral arrangements
and the establishment of an Antidumping Code to frame national dumping legislation. The result of the agriculture negotiations was rather meagre though, reflecting the irreconcilable differences between GATT signatories. While a step to a multilateralisation of the GATT negotiations had been undertaken with new negotiation techniques and the attempt to achieve a linear tariff reduction formula, this step was not yet complete and had been severely compromised over the course of the negotiations (Evans 1971: 295, 280-296; Preeg 159-177, 204-255).

Quickly after the end of the Kennedy Round, its results were challenged. A sharp rise in world trade and instability in the international financial system created insecurity in the international trade regime. Protectionist tendencies in the US led to the call for counter-measures against increasing imports; the British economy experienced serious pressure; and French domestic economic problems meant the introduction of protectionist measures. Countermeasures taken by the UK and France against their balance of payment problems (and similar issues) led to a belief in the US that since the Kennedy Round the use of NTBs had been massively expanded outside the USA (Evans 1971: 299-300; Winham 1986: 70-71). Additionally, the US' own economic problems led to the collapse of the post-war Bretton Wood monetary regime. This exacerbated the fear of increased protectionism in the international trade regime, and governments decided to conduct a further round of multilateral trade negotiations to contravene this perceived rise in protectionism (Winham 1986: 71).

However, the relative decline in economic hegemony of the US in the 1970s also made the US more sensitive to the restrictive trading practices of its negotiation partners and to seeking its own advantage from trade liberalisation (Krasner 1979). Curzon and Curzon state in their analysis of the early post-war trading system:

That postwar trade liberalization has been a beneficial exercise for America’s trade partners, and that if any country could be said to have ‘lost’ within our given time-horizon it was the United States itself” (1976: 200).

This gave the US an incentive to be more insistent on its own position in trade negotiations (Winham 1986: 95). Hence, although the US' hegemonic power might have declined in the early 1970s, the USA still assumed a pivotal role in agenda-
setting for the new trade round (Krasner 1979, see also for example Winham 1986: 101-104). Krasner goes as far as to state that

“Basically the United States, which wanted to change nontariff practices that were impeding its trade, and the LDCs, which wanted special and differential treatment, were the demandeurs in the negotiations.” (1979: 509)

As before, the progress in EEC integration in various areas gave the US a strong incentive to actively shape the GATT negotiations, for example on standards (e.g. Winham 1986: 101-104), although the EEC also pursued active interests in certain sub areas of the negotiations, for example on standards and customs valuation (Winham 1986: 101-109).

Compared to the Kennedy Round, the EEC’s position had changed because the UK had acceded to the EEC. This meant that the Tokyo Round negotiations were even more dominated by just two actors, the US and the EEC, than the Kennedy Round (Winham 1986: 76; 84). However, the positions of these two key actors often were diametrically opposed to each other and the Tokyo Round clearly was a US project. When the US was already promoting its idea of a multilateral trade round, the EEC was still taken up by internal projects, such as further agreements on the CAP, monetary cooperation between its member states, accession negotiations with the UK, Norway, Denmark and Ireland54 and the establishment of preferential trade agreements with various former colonies of its members (see Ch. 3). The EEC agreed to the Tokyo Round idea because of US pressure and the rising pressures in the world economy in the early 1970s (Winham 1986: 78). The EEC officially emphasised its commitment to liberal trade, but its position was clearly protectionist and sought to defend the EEC against a range of US proposals (such as the linear reduction of tariffs, elimination of tariffs, and liberalisation of agricultural trade). At the same time, the EEC thought to appease the US and hence to maintain stability in the international trade regime (Krasner 1979: 509; Winham 1986: 80-84, 95).

The conflicting positions of the negotiating parties, especially of the EEC and the US, were incorporated into the Tokyo Declaration of 1973 and would shape the

54 The UK, Denmark and Ireland joined the EEC in 1973. Norway decided against accession.
negotiations for the following six years (Winham 1986: 92-100). At a first stage of the negotiations, GATT signatories were mostly occupied with collecting and analysing data, especially on NTBs. This stage started shortly after the end of the Kennedy Round and lasted till after the Tokyo Round had officially been started with the Tokyo Declaration (Winham 1986: 59-60, 84-90, 100-127). However, negotiations then hardly proceeded in the three years from 1974-1977. One reason for this was the US’ domestic position. The US’ negotiation mandate was not agreed upon and ratified until January 1975. Further delays were caused by the US 1976 election, so that the US was only fully equipped for the negotiations in 1977 (Winham 1986: 129-137). At the same time, a dispute between the EEC and the US about the agriculture negotiations prevented movement until 1977 (Winham 1986: 146-158). Two new issues entered the agenda at that time: government procurement, which provided for further disagreement between the US and the EEC (Winham 1986: 138-141), and the proposal to change the GATT framework to take into account the special situation of developing countries (Winham 1986: 141-146).

As in the Kennedy Round, the central issue of concern in the tariff negotiations was the formula with which tariffs should be reduced. The US presented an ambitious proposal based on a linear formula. The EEC’s proposal again aimed at tariff harmonisation (elimination of tariff peaks), which would have especially hurt the US (the EEC’s tariff structure had already been harmonised when the common external tariff was established) (Krasner 1979: 510; Winham 1986: 156-164). In the end, a Swiss proposal was accepted, which combined both linear tariff reduction and a degree of tariff harmonisation. However, because disagreements between the negotiating parties were so significant that they could not agree on the details of the Swiss formula, actual tariff reduction in the end differed from country to country (Krasner 1979: 510).

The agriculture negotiations were particularly contentious in the Tokyo Round, with the US as main demandeur for increased market access, especially from the EEC and Japan. However, by now the EEC’s CAP had developed into a powerful domestic instrument of subsidising agricultural production, and domestic interest in maintaining the status quo of the CAP was respectively high and manifested. With
the accession of Greece, Spain and Portugal scheduled, which each had distinct interests in maintaining the CAP, the EEC’s position did not allow much space for concessions. After the agriculture question had been one of the factors that blocked progress in the Tokyo Round in the 1974-1977 period, the US in July 1977 hence dropped its request that agriculture should be negotiated alongside industrial tariffs. This decoupling of agriculture and industrial tariffs made progress in the Tokyo Round possible. As could be expected from this point onward, the result of the agriculture negotiations was rather minor and limited to certain product groups (Krasner 1979: 518-521, Winham 1986: 146-154, 164-167, 247-255).

A highly intensive period of negotiations followed the 1977 US concession in the agriculture negotiations. Most negotiation areas made important progress, except for agriculture (Winham 1986: 168-211). The Tokyo Round entered its final decision-making stage, in which a disagreement between the EEC and the USA on a sub-issue in the negotiations, subsidies and countervailing duties, nearly lead the negotiations to break down. It was overcome by fine manoeuvring by both the EEC and the USA, and the negotiations were concluded by 1979 (Winham 1986: 212-305). Overall, the Tokyo Round constituted a qualitative expansion of the GATT, and its results were at the time regarded as the most far-reaching since the establishment of the GATT. The results of the Tokyo Round were tariff reductions and revisions of the GATT with regard to dispute settlement, differential treatment for LDCs, and trade restrictions for balance of payment reasons. The Tokyo Round expanded the GATT significantly into regulatory, rule-making areas that before were regarded as domestic policies: Six sectoral codes on NTBs were also agreed upon. These were dealing for example with the reduction of technical barriers to trade (TBTs), antidumping, subsidies and countervailing measures and government procurement. The Tokyo Round was hence the first round to systematically treat NTBs. Despite these steps in the direction of further trade liberalisation, sectoral exemptions and other exceptions were further institutionalised in the international trade regime. Special and differential treatment (S&D) for developing economies was introduced and the separate treatment of agriculture was further institutionalised (Krasner 1979: 492, 508, 510-525; Hoekman and Kostecki 2001: 104; Winham 1986: 256-305). Krasner hence argues that the Tokyo Round agreements hence showed increasing fragmentation
and differential treatment in the international trade regime (Krasner 1979: 492, 499-508), but at the same time, the Tokyo Round also brought with it an increased legalisation of the GATT system with its entry into the area of rule-making (Ostry 1997: 99).

Following on from the Tokyo Round, protectionist pressures on GATT members resurfaced in the wake of the 2nd oil crises, decreasing exports and imports and growing trade and budget deficits. The US continued to suffer from an unprecedented trade deficit, which made US congress increasingly inclined to pursue protectionist measures (Croome 1995: 7; Senti 2000: 64-66; Winham 1989: 285; Finger 1991; Bhagwati 1991: 14-22). The significant structural changes in the world economy in the 1980s with the sharp increase in the volume of international trade in goods and trade in services, the emerging wave of FDI as well as the progress in technology and information technology, coupled with the possible protectionist shift in US congress led the Reagan administration in the USA to consider a new multilateral trade round and a broadening of the GATT’s agenda. The Uruguay Round was hence, as had been the rounds before, a US initiative. Preparatory work for the new round started in 1981. The US proposed a broad trade round that would include trade in goods, trade in agriculture and as new areas trade in services, trade-related intellectual property rights (TRIPs) and trade-related investment measures (TRIMs). The special position of developing countries should receive particular attention. The US’ idea for a trade in services agreement was refuted by developing countries and the EC (European Community). Alledgedly, this lack of enthusiasm on the side of the EC and the developing countries led the USA to subsequently conclude a range of far-reaching bilateral agreements (Baldwin 1993; Senti 2000: 68; Croome 1995: 11, 12-20; Winham 1989; Bhagwati 1991: 16-22, 71-74). However, the USA continued to lobby heavily for its idea of the extended trade round and gradually convinced the EC and other GATT signatories. A group of developing countries, led by Brazil and

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56 The 1980s also saw a rise in US unilateral action in trade policy (see for example Bhagwati 1991 and Ostry 1997).
India, strongly resisted the move towards new negotiations, but gradually lost support over the course of four years, so that in 1985 preparations for the Uruguay Round entered their decisive phase. Subsequently, the Uruguay Round was launched in 1986 with the Ministerial Declaration of Punta del Este (Croome 1995: 28-36; Senti 2000: 71-72; Winham 1989). It became the longest and most arduous negotiation round so far, with a range of negotiation deadlocks and near break-downs.

As the USA had intended, the Uruguay Round’s agenda was an expanded one. It consisted of 15 working groups which dealt with market access, measures to strengthen the GATT as an institution, reform of GATT rules and new issues. The new issues were trade-related intellectual property, trade-related investment measures and services (Winham 1990: 800-801). The US’ interests were hence rather wide in this new trade round. As core interests of the US in the Uruguay Round can count “agricultural reforms, new disciplines on subsidies and antidumping policies, and more-open [sic] public procurement practices. In the new issues, agreements on services, intellectual property, and investments […]” (Schott 1990: 39ff). The EC’s demands were less extensive. Despite its initial hesitation with regard to an agreement on trade in services, it started to support the negotiations, but promoted an agreement less extensive than the US’ approach would have foreseen. Other than that, the EC’s main interests lay in the areas of

new rules on […] intellectual property rights; acceptance of the principle of selective application of safeguards measures; progress on institutional issues, including dispute settlement reforms […]. The EC objectives focus mainly on rulemaking rather than liberalization, and suggest a willingness to weaken the rules as necessary to encourage broad-based support for agreements in new areas (Schott 1990: 40).

The EC’s position in the Uruguay Round was hence, as in previous rounds, a more cautious and hesitant one than the US’. And as in the previous rounds of negotiations, agriculture emerged as the most contentious area in the market access negotiations. The EC’s unchanged preoccupation with protecting its CAP again was at odds with the demands of the USA and other agricultural exporters united in the

57 For a detailed discussion of the Punta del Este meeting in September 1986 see Winham 1989.
58 For an extensive discussion of the Uruguay Round negotiations see Croome 1995.
"Cairns Group". A further area of distinct conflict was that of textile trade, where the interests of developed countries as main importers of textiles were at odds with those of developing countries that exported textiles (Winham 1990: 800-801). Particularly contentious were also the new areas, which in general were opposed by developing countries. Due to the special nature of services (see Sect. 3.3), services proved especially difficult to negotiate (Winham 1990: 802).

The first two years of the negotiations were mainly devoted to the organisation of the negotiations and the analysis of the issues at hand. A mid-term review of the negotiations was held at Montreal in 1988, but despite of heightened expectations, a majority of the contentious issues in the agriculture and textile negotiations remained undecided. Agriculture had once again become a major stumbling block in the negotiations. Further contentious areas were textiles and intellectual property rights, where developed countries opposed developing countries (Winham 1990: 807; Senti 2000: 79; Rayner et al. 1993: 1517). However, the Montreal meeting brought progress in the services area, despite of a highly convoluted text that had been prepared for the meeting, and on the revision of the GATT dispute settlement. A solution to the other questions, and particularly on the agriculture disputes dominated by the EC and the USA, was further postponed (Winham 1990: 807; Senti 2000: 81).

A short while after the Montreal meeting, interim agreements on intellectual property rights and on textile trade were reached, and it became evident that despite the clearly divergent interests of developed and developing countries, these two areas would be integrated into the GATT system (Winham 1990: 807; Senti 2000: 81). However, a wide variety of areas still needed to be tackled and the Trade Negotiations Committee set a deadline to conclude the round by the end of 1990.\footnote{Discussions continued, among others, in the areas of tariff reductions, NTBs, tropical products, raw materials, textile trade, agriculture, GATT provisions, subsidies and countervailing duties, dispute settlement, trade-related aspects of intellectual property rights, trade-related investment measures, functioning of the GATT system and services. These will not be discussed in detail here.}

The US’ proposal on tariff reductions on goods prevailed over that of the EC and others, and a proposal on tariff reduction was ready by the end of 1990 (Senti 2000: 83). However, other areas had not moved fast enough. The agriculture negotiations
experienced a renewed crises only a few months after the Montreal meeting. The EC was accused of defending the status quo only. Various different proposals on the future of agriculture debate were debated, ranging from proposals to incorporate more strongly the criteria of self-sufficiency to proposals on special treatment for developing countries. None of the proposals constituted a substantial basis for further negotiations and negotiations grinded to a halt (Croome 1995: 233-235, 238-241; Senti 2000: 86-89). Similarly, the negotiation groups on services and TRIPs could only submit a draft with many open questions to the next interim conference in Brussels in December 1990 (Croome 1995: 242-251, 251-256; Senti 2000: 98-100).

Faced with a wide variety of half-finished work, Ministers at the Brussels Conference had to postpone the conclusion of the Round and temporarily suspend the negotiations (Croome 1995: 276-286). After a further year of consultation, Arthur Dunkel, the GATT General Director, presented interim results in a “Draft Final Act”. The draft was welcomed by many GATT members, but not by the USA and the EC. The USA demanded more far-reaching commitments on agriculture, but the EC regarded even the Draft Final Act as too compromising for its CAP (Senti 2000: 101; Rayner et al. 1993). The 1992 CAP reform and further beneficial circumstances in EC-USA relations made the Blair-House-Agreement of 1992 possible, which opened the way to the conclusion of the Uruguay Round (Senti 2000: 102-103; Rayner et al. 1993: 1520). That a CAP reform made the Blair-House-Agreement possible showed the ambivalence in the EC’s position on agriculture: while it tried to maintain the status quo of its CAP, it also seems to have recognised that it could not isolate itself in agriculture trade forever (see e.g. Rayner et al. 1993: 1518).

With the Uruguay Round agenda, a further broadening of the GATT system was intended. At the same time, the GATT system suffered from a range of shortcomings. It had evolved into a complex system of over 200 treaties and its Secretariat worked on a “shaky” basis as the GATT 1947 had not even foreseen the establishment of a Secretariat. Its membership had expanded significantly and negotiations had become increasingly complex. At the time, Jackson wrote that the provisional nature of the GATT was still confusing both members of the public and of governments as to the status of the GATT treaty. Other deficiencies lay in “the problem of amendments, the
relationship of the GATT to domestic law, the dispute settlement procedure, questions of membership and problems of rulemaking and the powers of the contracting parties” (Jackson 1990a: 18-35, 45-47; Jackson 1990b: 207, 207-209, 218-222; see also Winham 1989: 285; Finger 1991; Jackson 1993). Jackson hence put forward the proposal for a new “World Trade Organisation”. This new institution would function as an institutional head for the GATT and the new agreements negotiated in the Uruguay Round; it would clarify the institutional and administrative shape of the trade regime and incorporate a strengthened dispute settlement system (Jackson 1990a: 91-103; for an alternative proposal see Bhagwati 1991). Discussion on GATT reform and strengthening had been taken place in the so-called FOGS (Function of the GATT System) negotiation group, which was dominated by middle powers as the issue was of lesser importance to the EC and the USA. So far, FOGS had pursued a much more modest agenda than establishing a new organisation, and hence the discussion on the possibility of establishing a “World Trade Organisation” only took shape in 1990 (Ostry 1997: 193; Jackson 1990b: 205). Whether Jackson’s idea directly influenced the debate in FOGS is contentious in the literature (Schott 1990: 37; Bhagwati 1991: 97; Croome 1995: 273), but subsequently a Canadian and then an EC proposal for the establishment of a WTO were submitted to FOGS, and FOGS began to work around these ideas. The EC had by now realised that the WTO idea could be a useful tool to constrain US unilateralism (Ostry 1997: 193). With the conclusion of the Uruguay Round in 1993, GATT members hence also agreed to set up the WTO.

The Uruguay Round hence led to an unprecedented deepening and widening of the GATT and to an important reform of the international trade regime. The agreements concluded at the end of the Uruguay Round significantly altered the shape of the international trade regime, and were therefore sometimes referred to as the “New World Trade Order”. The WTO Agreement institutionalised the GATT and created a formal international organisation (Hauser and Schanz 1995: 56; Klein et al. 1998;
Martin and Winters 1995). In contrast to the GATT, the WTO is thus a legal person according to international law (e.g. Blackhurst 1998). Furthermore, the renewed GATT, the so-called GATT 1994, provided for a further facilitation of market access through the reduction of barriers to trade, both tariff barriers and NTBs. For the first time, the Agreement on Agriculture (AoA) submitted the contentious issue of agricultural trade to the disciplines of the multilateral system. The integration of textile trade was the second particularly crucial area which previously had been excluded from the multilateral negotiations and was assessed seriously for the first time, leading to the conclusion of the Agreement on Textiles and Clothing (ATC). A range of further “side” agreements such as the Trade-Related Investment-Agreement and the Agreement on Subsidies and Countervailing Measures complemented the GATT 1994. The GATS was added to the GATT as the second major agreement, aiming for the first time at the liberalisation of service trade. The TRIPs Agreement functioned as the third “pillar” of the WTO (Hoekman and Kostecki 2001: 226-231; Frenkel and Radeck 1996: 15; see also Kuyper 1995; McKinney 1994). A new dispute settlement system was installed in order to improve implementation and adherence to the rules of the world trade regime (for example Meng 1998: 59-65).

The trade regime had thus undergone a significant deepening and broadening. Decision-making structures had to adapt and keep up to this quantitative and qualitative expansion of the regime. Importantly, the key principles or features of the regime as developed in the 1940s and afterwards are still present in the regime today. Together with the subsequent additions to and changes in the regime, they shape the current negotiations under the heading of the WTO (Narlikar and Wilkinson 2004; Wilkinson 2000). One can also assume that the regime, as discussed in the previous chapter, initially reflected the power distribution among its founders. This is reflected in the fact that during GATT times the major trade powers not only dominated the agenda, but also struck the major deals with the developing countries’ participation being rather marginal. Clearly though, many changes in this power

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60 For a quantitative analysis of the potential effects on world trade of the Uruguay Round agreements see for example Will and Martins 1995. For a discussion of the results of the Uruguay Round see for example Klein et al. 1998 and Ostry 1997.
distribution have occurred over the last decades and might influence the way actors can today impact on the trade regime. First of all, though, the next section describes the current institutional structure of the WTO system.

3.1.2 Current institutional structure

It is important to note that the WTO is an organisation with a rather meagre “organisational head”: the WTO Secretariat. The other “organs” of the WTO are membership-driven, reflecting the WTO’s function as negotiation forum and as intergovernmental institution (Drahos 2003). The WTO is headed by the Ministerial Conference, which convenes at least every two years. Compared to the GATT, the frequency of ministerial meetings has been increased. This was done in order to improve the political leadership of the WTO (Hoekman and Kostecki 2001: 50). It has been argued that this modus operandi caused the Ministerial Conferences to develop a certain momentum of their own: as Ministers convene, there is an underlying urge to come to an agreement and thus to have a “successful” meeting, even if preparatory negotiations in the various committees and councils (see below) have not yet produced an agreement (interview 10; see also Wolfe 2004b). This can then mean that reaching an agreement rather than considerations regarding contents or efficiency become the driving forces during the Ministerial Conferences, especially as since the inception of the WTO in 1995 public attention to the Ministerial Conferences has increased significantly (e.g. Narlikar 2004). The Ministerial Declarations, which usually constitute the result of the Ministerial Conferences, are the centrepieces for the negotiations during the Ministerial Conferences. These texts can be the result of preparatory work of the various WTO committees and councils. At times, they have been prepared completely or in part by the WTO Director General (WTO DG) or by parts of or coalitions of the WTO membership, which shows that while the negotiations in the WTO are organised multilaterally overall, influence on outcomes is importantly dependent on providing input to the negotiation process and on influencing and building coalitions (see Ch. 5-9; see also for example Winham 1986: 205-206; Odell 2007).

In the times between Ministerial Meetings, the General Council guides the organisation. The General Council is attended by Ambassadors (or representatives
of equal status) of WTO members. Three further councils are directly subordinated to
the General Council: the Council for Trade in Goods, the Council for Trade-Related
Aspects of Intellectual Property Rights and the CTS. These would be attended by
expert negotiators. Below the Council level, a range of expert committees and
working groups work on the vast range of issues on the WTO’s agenda. This expert
level with its specialised Councils and sub-ordinated working groups is the most
technical and least politicised in the WTO system. Although a lot of public and
research attention is generally given to those negotiations taking place during the
Ministerial Conferences, to assess the ways an actor influences the decisions (and
non-decisions) taken in the regime the expert level of negotiation needs to be
analysed as well. For example, it is generally accepted that there is a large inequality
in the extent of participation of different WTO members especially on this expert
level. In general, every WTO member can send representatives to any meeting, but
in practice only the major trade powers have the manpower to send delegates to all
the meetings (Blackhurst 1998: 33-35; Hoekman and Kostecki 2001: 53). As the
diverse working groups prepare the input for the Ministerial Conferences (on the
basis of mandates attributed to them beforehand), influence at this stage of the
process is crucial in shaping the regime.

Negotiations in the WTO hence take place on different levels and pursue different
purposes.\textsuperscript{61} We can identify three broad types of negotiations in the WTO:

\textbf{Overall framework-setting: “negotiations about negotiations”}
This is the level of Ministerial meetings and the General Council, who discuss the
broad direction or even the construction and reconstruction of the regime. The
decisions taken at this level change the norms, rules and principles of the regime or
significantly alter its scope (such as adding the GATS to the WTO system). The
decisions hence affect the functions and functioning of the regime as a whole. As
mentioned above, this level is the most politicised, and has gained in predominance
over the last years in the WTO (Wolfe 2004a). It shapes the issue-area negotiations
taking place within the WTO and hence constitutes “negotiations about negotiations”.

\textsuperscript{61} For a classification and discussion of decision-making in the GATT see Curzon and Curzon 1974.
Issue-area framework setting: negotiations about negotiations in specific issue areas
This level includes all those decisions aiming to shape the negotiations in a specific issue area (for example services, intellectual property rights, agriculture). Decisions can be taken by a Ministerial meeting or the General Council (if an issue has got politicised), but most of the decisions on this level are made by the specialist Councils (for example Council for Trade in Services) involving expert negotiators (see for example Narlikar 2004). The politicisation of this type of negotiation is dependent on the issue area.

Issue-area specific negotiations: negotiations about substance
This is the level of the expert committees and working groups. This type of negotiation deals with the substance of the negotiations, often in great detail. Decisions of this kind are taken in the specialist Councils, specific working groups and other sub-committees. Politicisation is again dependent on the issue area.

Coalitions, such as the Quad and the Cairns Group, have an important influence in the WTO. According to Winham, coalitions started to be of importance in the Tokyo Round (Winham 1990: 815), but one can argue that the EEC emerged as a negotiation coalition already in the Kennedy Round, and that even prior to this, cooperation between countries was important, for example between the UK and the USA in the early GATT times. During the later GATT times, the Quad with its members EU, USA, Canada and Japan had an important influence (Wolfe 2004a). Often, decisions were prepared bilaterally between the EU and the US and then promoted to the wider membership. In the Uruguay Round for example, once the EU and the USA had agreed upon an extension of the GATT regime to include intellectual property rights and services, and then had gained support from Japan and Canada, other countries could no longer stop the initiative, although they opposed the idea (Winham 1986: 169-189; Drahos 2003, Braithwaite and Drahos

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62 Arguably, this is due to the increasing number of WTO members. The early GATT negotiations provided a nearly “private” atmosphere in which signatories could negotiate (Finger 1991). With the expansion of the WTO membership (and greater public attention), the nature of decision-making has inevitably changed, and coalitions have gained in importance as mechanisms for informal decision-making (see e.g. Hoekman 1993).
2000). Only after agreement among the Quad had been reached, developing countries were included in the discussion. Developing countries were either not signatories of the GATT or lacked the resources to substantially contribute to the negotiations. Hoekman and Kostecki therefore comment that these Ministerials often were a futile exercise for developing countries representatives (Hoekman and Kostecki 2001: 50ff; Winham 1986: 169-189, 210-211). In the Doha Round and with the increasing number of members, the number of coalitions grew strongly (Wolfe 2007a). For example, in 2003 the G20 emerged. The coalitions are informal or formal groups, and they pursue one or several issues. Some coalitions exist for a long time, others form on an ad hoc basis and disappear quickly afterwards. They have a range of functions:

Clubs provide their members with an opportunity to learn about issues with like-minded colleagues; to co-ordinate positions for WTO meetings; and to debrief on past meetings. Clubs often speak as a group, allowing members to expand support for each other’s preferred issues. Clubs also engage in analytic burden-sharing in the preparation of common proposals (Wolfe 2007a).

Narlikar suggests that the new developing country coalitions have a different quality from older developing country coalitions (2003), which will be taken up in the case study.

**Decision-making** in the WTO is importantly shaped by the informal consensus rule and by the mechanism of the “single undertaking” introduced in the Uruguay Round, by which all agreements automatically apply to all WTO members (except for agreements explicitly exempted from this rule) (Wolfe 2007b). Decision-making in the WTO involves the three stages bargaining, consultation and consensus. Large parts of this process are informal. These informal processes of consensus-building are why for example coalitions play such a great role in consensus-building.

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63 The G20 is a group of developing countries, mainly active in the agriculture negotiations (see chapter 9). The question of developing country coalitions in the GATT and WTO since 1982 has been extensively discussed by Narlikar (2003). For an overview of coalitions in the WTO see Wolfe 2007.

64 Hoekman and Kostecki point to the fact that consensus does not mean unanimity. It rather means that “no delegation physically present in the Council has a fundamental objection on an issue. Those that are not present or abstain do not count.” (2001: 57).
Inside the WTO, informal meetings of Heads of Delegations, Ambassadors, Ministers or expert negotiators are part of the consensus-building process. The “Green Room” is one such meeting which has become well-known. It emerged in the GATT as a consultation between the Director General and representatives of selected GATT members, and continued to figure in the WTO. Political meetings held within the WTO system, referred to as “Mini-Ministerials”, have also been used for information exchange and consensus-building among Ministers from sub-sets of the WTO membership. Meetings of representatives of WTO member states in other organisations, such as the OECD (Organisation for Economic Cooperation and Development) or APEC (Asia-Pacific Economic Co-operation), have been instrumentalised for the same purposes, although their main objectives were different ones (Wolfe 2004a). Committees and councils on the expert level meet formally, but also for them most work is done in “informal mode” (Wolfe 2006: 3). In a recent work, Odell points to the significance of the chairs of this multitude of meetings, who can play a role in facilitating the consensus-building process (2007).

Votes in the WTO can theoretically be held if unanimity cannot be reached and in a range of issues a two-thirds majority or three-quarters majority is required. The WTO voting system does not rely on weighted voting, but attributes one vote to each of its members (Hoekman and Kostecki 2001: 56ff).

<table>
<thead>
<tr>
<th>Decision-making rule</th>
<th>Type of issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unanimity</td>
<td>Amendments concerning general principles such as non-discrimination</td>
</tr>
<tr>
<td>Three-quarters majority</td>
<td>Interpretations of the provisions of the WTO and waivers of WTO disciplines for members</td>
</tr>
<tr>
<td>Two-thirds majority</td>
<td>Amendments to the WTO relating to issues other than general principles; accession</td>
</tr>
<tr>
<td>Consensus</td>
<td>Where not otherwise specified</td>
</tr>
</tbody>
</table>

Source: Hoekman and Kostecki 2001: 57

The fact that the WTO voting system attributes one vote to every single country in practice means that, in theory, the USA, Brazil or China have the same voting power.

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65 For an analysis of the role of Mini-Ministerial in the evolution of the WTO see Wolfe 2004a.
as Honduras or Trinidad and Tobago. Although some might argue that this system is “more democratic” than a representation by economic weight (but certainly not more democratic than a representation by population), it has the (questionable) effect of potentially empowering countries in issue areas where they are neither interested nor dispose of expertise. This of course was perceived as a threat to the big trading powers already in GATT times and it thus comes as no surprise that formal votes were not taken in the GATT. In GATT times, abstention of smaller countries was accepted – what counted were the voices of the major trading powers, and GATT rules applied only to those countries that accepted the specific agreements and amendments anyway. This tradition of avoiding formal votes has persisted in the WTO (Evans 1968: 96ff; Curzon and Curzon 1974; Hoekman and Kostecki 2001: 57, see also Narlikar 2004). In the WTO, despite the formal option of majority voting, in practice votes still rarely occur: consensus decisions have remained the usual practice. Clearly, the consensus practice is preferred by the economically powerful states (the EU, USA, Japan and others), as they otherwise fear they might be outvoted by the many economically weaker members of the WTO. And as the WTO agreements through the “single undertaking” now automatically apply to all WTO members, the consensus practice is also of interest to economically weaker states (Senti 2001: 19; Wolfe 2005: 638, 2007b). Others have argued though that the GATT’s veto power for the EU and the USA has remained in place: though negotiations can progress if one of the smaller powers objects, they will stall if one of the major trading powers disagrees. In any case, an agreement that would be concluded without the consent of one of the major powers would hardly be implemented by the latter and would thus risk being a void agreement. The consensus rule in the WTO is hence not an actual one, but one that benefits importantly those countries that are powerful actors in the system (Hoekman and Kostecki 2001: 58ff; Jackson 1990a: 23).66

66 Jackson’s proposal had foreseen a steering committee for the WTO to provide for greater flexibility and ease in the decision-making process (1990a). However, FOGS failed to agree upon this (Ostry 1997: 195). For a recent discussion on the decision-making process and possible ways of reform see Wolfe 2005.
The General Council convenes not only in its original formation, but also in two further forms: as the **Trade Policy Review Mechanism** (TPRM) and the **Dispute Settlement Body** (DSB). The TPRM regularly assesses the trade policies of all the Member countries in order to increase transparency and to subordinate them to multilateral scrutiny (Hauser and Schanz 1995: 234). As it reviews the OECD countries more frequently than the developing countries, Francois has argued that it “shifts the balance of power in this game, ever so slightly, in favour of the developing countries” (Francois 1999: 6). It can be questioned, however, to what extent this impact is relevant, as the TPRM does not have an enforcement mechanism.\(^{67}\) Apparently, the impact of the TPRM lies more in the exposure to other WTO members.

The DSB has been a significant innovation compared to the GATT, unifying the fragmented dispute settlement processes of the GATT.\(^{68}\) Members who find another member in breach of a WTO agreement can submit a case to the DSB, under the condition that they have attempted to resolve their dispute bilaterally. A panel with three to five experts, chosen according to their expertise and independence, will be set up to deal with the case. Within six months, they have to submit their judgement, which is voted upon by the DSB. The two parties can raise objections within 60 days. The objections are also subject to the approval of the DSB (Meng 1998; Ostry 1997: 196-200; Senti 2000: 138-152). If the plaintiff wins his case, the DSB can then grant him the right to retaliate. This means that the WTO system is backed up by a multilaterally legitimised enforcement system, which should substantially strengthen the regime (Jackson 1998). However, in the “right to retaliate” lies a power problem. The DSB itself has no authority to impose a penalty; it can only attribute the right for retaliation to the plaintiff. These unilaterally imposed retaliatory measures are an effective instrument for the powerful trade nations. Sanctions by smaller states might often have a negligible effect and the DSB might be inefficient for economically

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\(^{67}\) The TPRM is only one of a range of transparency-enhancing regulations in the WTO. For a more extensive discussion of these regulations see Hoekman and Kostecki (2001: 61-65).

\(^{68}\) However, some of the side agreements (for example those concerning anti-dumping and the textile sector) still have separate provisions concerning dispute settlement.
weaker and/or economically less diversified WTO members. Additionally, Shaffer argues extensively that the case law in the WTO is importantly shaped by those actors that use it the most and provide most of the expertise – the EU and the US (Shaffer 2005). Power in the dispute settlement system can thus be assumed to be unequally distributed in favour of economically powerful WTO members.

The main administrative unit of the WTO is the **Secretariat**. The tasks of the Secretariat are of an organisational and technical nature in support of the various committees, the dispute settlement body as well as in part for developing country members. Trade analysis is a further task (WTO 2004a). As the GATT Secretariat, the WTO Secretariat, and hence the WTO as an international organisation, is rather “slim”: as of 2006, the Secretariat had 594 employees. Compared to other international organisations, its budget was also rather limited (Curzon and Curzon 1974: 302ff; Blackhurst 1998; WTO 2006). This reflects that the Secretariat, the supranational head of the WTO, does not have any direct power. The only way the Secretariat can influence decisions is through the expertise and experience of its employees. Official decision- and proposal-making power resides with the member states of the WTO. The WTO can thus be considered as a mostly intergovernmental organisation. Hoekman and Kostecki call it a “network organisation”, referring to the tight cooperation between the WTO Secretariat, national delegates and ministries in the WTO member countries (2001: 54ff; see also Blackhurst 1998). The WTO Secretariat is led by the **Director General (WTO DG)**. In the history of the GATT, the personality of the WTO DG has been vital for the evolution of the organisation. Since the end of the Uruguay Round a politicisation of the post of WTO DG has taken place, proportionally to the organisation’s growing public importance (Hoekman and Kostecki 2001: 55), but the competencies given to the WTO DG by the WTO treaties

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69 In recent years, it was discussed that additionally to the right to retaliate there should be a compensation mechanism to alleviate this problem (see for example Davies 2006). For a further discussion of the effects of the DSB for the balance between WTO members see Smith 2004.

70 Further improvements in the DSB compared to the GATT are the time limitation for settlements and the fact that it permits cross-sector retaliation (ibid). Overall, the impact of the DSB is still a field of research.

71 As a contrast, the World Bank has a staff of roughly 10,000 and the IMF 2,716 (World Bank and IMF websites).
is rather limited. Still, it can be argued that the Secretariat and the WTO DG can exert influence on the negotiation process by for example publications, research on negotiation topics and public speeches (Blackhurst 1998).

The **WTO agreement** itself mainly deals with institutional issues, but the following agreements are also administered by the WTO:

- the GATT with twelve further side agreements which are compulsory for all WTO members (see Box 3.1)
- the GATS
- the TRIPs Agreement
- the Dispute Settlement Understanding
- the Trade Policy Review Mechanism
- two plurilateral agreements: the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement
- the Information Technology Agreement (ITA)

**Box 3.1 GATT side agreements**

| Agreement on Agriculture |
| Agreement on Sanitary and Phytosanitary Measures |
| Agreement on Textiles and Clothing |
| Agreement on Technical Barriers to Trade |
| Agreement on Trade-Related Investment Measures |
| Agreement on Implementation of Article VI (Anti-dumping) |
| Agreement on Implementation of Article VII (Customs Valuation) |
| Agreement on Preshipment Inspection |
| Agreement on Rules of Origin |
| Agreement on Import Licensing Procedures |
| Agreement on Subsidies and Countervailing Measures |
| Agreement on Safeguards |

72 Two further plurilateral agreements, the International Dairy Agreement and the International Bovine Meat Agreement, were abolished in 1997 and the respective sectors are now dealt with under the Agreement on Agriculture (AoA) and the Sanitary and Phytosanitary Measures Agreement (SPS).
In general, the agreements start with broad principles, setting out the objectives to be attained. They then outline extra agreements and annexes concerning specific sectoral issues. As a third part, the agreements (except for the TRIPs Agreement) contain schedules or lists of commitments which have been undertaken by the WTO members (WTO 2004b; Wolfe 1999: 212). Actors can thus try to influence the shape of the regime at very different levels: for example, they can influence the broad principles, but also create exceptions for specific sectors or modify their individual commitments. The vastness of the issue areas covered under the WTO heading creates opportunities for issue-linkages, but the very different nature of the issue areas also adds to the complexity of the negotiations.

3.1.3 Principles, objectives and functions
A unifying feature with regard to all these different agreements is that the WTO system is based on a set of principles and objectives that have been – to various degrees and with certain adaptations – incorporated into all the WTO agreements:

The formal **objectives** of the WTO are expressed in the preamble of the Marrakech Agreement:

> raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

It is commonly argued that the philosophy underlying the WTO system is that of free trade, inspired by the American influence on the GATT system in its beginnings. Mearsheimer identifies as the dominant idea in Western policy-making the spreading of democracy and capitalism, as the prevailing hypothesis states that prosperous nations do not have an inclination to go to war (Mearsheimer 1994/1995: 5). However, with the many exceptions incorporated into the WTO system today, “free trade” is certainly more of a “paper objective” than a reality. For free traders, these exceptions certainly were severe concessions to the “reality of political life” (Rode 1999/2000: 49). Wolfe describes the WTO system as a “continuing compromise
between the open international markets and the development of the domestic welfare state, a compromise that reflected the differing visions of how to organize a capitalist economy" (Wolfe 1999: 209; see also Moon 1999). Rather than liberalising trade, the WTO can thus be regarded as reconciling diverging national interests and policies. This indicates that analysing the WTO means analysing a political, rather than an economic process and that rather than causing economic change, the WTO serves as a facilitator to accommodate economic change in domestic policies (Wolfe 1999: 210).

The WTO’s agreements are built upon a set of principles. The most important ones are introduced here.

The principle of non-discrimination has two components. The first is MFN. MFN means that any concession that a WTO member makes to another WTO member will be extended “immediately and unconditionally” to every other WTO member. “Unconditionally” means that the conceding country cannot expect anything in return; “immediately” denotes that all WTO members have to obtain the concessions at the same point of time. MFN is not only applied to tariffs, but also to other rules in conjunction with imports and exports, or more generally NTBs (Senti 1994: 42ff; Evans 1971: 36-39; Finlayson and Zacher 1981: 566ff).

The MFN norm has been abandoned on a number of occasions: for example, there are exceptions for regional trade agreements or free trade areas (for example the EU or the North American Free Trade Agreement (NAFTA)), for certain products (“waivers”) and for developing countries (the so-called “enabling clause”). Specific exceptions can also be found in the GATS and the TRIPs Agreement (Senti 2000: 168; Finlayson and Zacher 1981: 566ff).

The second component of the non-discrimination norm is “national treatment (NT)”. It forbids discrimination between domestic and foreign producers, products or services. Discrimination in the sense of the “national treatment” principle can occur for

73 Apart from the principles discussed here, in the respective literature, various other norms are listed and/or grouped differently (see for example Senti 1994: 40-66; 145; Hauser and Schanz 1995: 41; Frenkel and Radeck 1996: 17; Finlayson and Zacher 1981). However, a more extensive analysis of these basic principles does not seem necessary for the purpose of this dissertation.
example in the form of national product standards, discriminatory taxes or subsidisation of national producers. The “national treatment” principle thus initially aims at NTBs (Hauser and Schanz 1995: 14-17). Originally, the principle in the GATT only referred to so-called “like products”, but in practice this caused a vast number of definitional problems (for example should roasted and unroasted coffee be regarded as “like products”?). The “national treatment” principle has hence subsequently been extended to include substitutes (Sentí 1994: 48ff). Exceptions can be found especially in the area of trade in services and public procurement.

The principle of reciprocity aims to equalise the concessions between different WTO members: on the one hand, concessions should not mean a higher burden on one country than on a second; on the other hand, free-riding should be minimised. Emerging out of the American trade policy tradition, the original GATT of 1947 took this norm very serious and did not differentiate between for example the different economic state of its members. Exceptions were introduced later on at the demand of developing countries (Evans 1968; Finlayson and Zacher 1981: 574-578). The GATT, and now the WTO agreements, do not contain exact definition of what reciprocity means and this has caused ample discussion, but it also gives negotiators in the WTO important flexibility to classify concessions as “reciprocal” (Sentí 1994: 51-54; Evans 1971: 21-33):

> When a negotiator invokes his right to reciprocity, he is speaking a language that both he and his fellow negotiator understand. Yet his meaning cannot be expressed with mathematical precision (Evans 1971: 23).

The effect of the principle of reciprocity is that it gives special power to those countries that are economically powerful and in a position to offer important concessions. It can also mean that countries withhold a potential unilateral liberalisation measure in order to have bargaining chips in a later negotiation (Finlayson and Zacher 1981: 576ff).

In order to enforce the commitments made in the multilateral trading system, WTO members are obliged to adhere to the principle of transparency and for example publish any legislation relevant to their trade regime.
Continuous liberalisation of trade has always been the main principle of the GATT and WTO system (Senti 1994: 59-61; Finlayson and Zacher 1981: 570-574). Over the history of the GATT and the WTO, this principle has been applied in different ways: for example, via the reduction of tariff barriers to trade (these include tariff and tariff-like charges) and non-tariff barriers to trade. As seen above (see Sect. 3.1.1), this principle has often been contravened by other national interests and has hence been applied unequally throughout the different GATT negotiations (see for example Finlayson and Zacher 1981: 570-574).

Exception from the MFN and NT principle are made for preferential trade agreements (Art XXIV GATT) and for developing countries (VIII GATT). Exception from the MFN and NT principle are made for preferential trade agreements (Art XXIV GATT) and for developing countries (VIII GATT). The fact that these contradictory principles (such as the MFN or the “national treatment” principles on the one hand, and S&D for developing countries and the allowance for the creation of regional trade agreements on the other hand) coexist in the framework of the WTO illustrates the compromise between diverging philosophies and ideas that is sought under the roof of the WTO (as pointed out on p. 95). Further exceptions from the general WTO rules are foreseen for the case of economic hardship: WTO members can fall back on a range of safeguard provisions, for example in the case of balance of payments difficulties or dumping. Finlayson and Zacher in their analysis of the GATT go so far as to speak of a “safeguard norm” to characterise the trade regime’s in-built exceptions, which constitute a right not to comply (1981: 580ff; see also Finger 1995). Apart from these rules at times potentially being economically sensible, these institutionalised exceptions have allowed for the WTO system (and prior to it the GATT) and for trade liberalisation through it to be widely acceptable (Finger 1995), although naturally these exceptions create potential coherence problems and were obviously not the intention of the founding fathers of the GATT.

The functions of the WTO are summarised in Art. III of the Marrakech Agreement, namely to administer the agreements under its heading, to provide a forum for

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74 For a discussion of the exception for regional integration projects see Evans 1971: 39-60. Kock points to the fact that the original ITO dealt with developmental issues in a separate section, whereas the GATT 1947 did not pay special attention to it (1969: 67)
negotiations under its member countries, to administer the DSB and the TPRM and to achieve increasing coherence in relation to the IMF and the World Bank.  

For the countries participating in the WTO, market access to other countries is an important function of the WTO. This was already a motivation of the early GATT signatories (Gorter 1954:2-3). It has also been assumed from the insertion of GATT that a multilateral system would circumvent the creation of further bilateral agreements, which were regarded as detrimental to world trade, and that GATT would function as a negotiation forum to lower trade barriers, set the rules to govern world trade and mediate differences between its signatories (Gorter 1954: 5-11; Gardner 1964).

The functions of the WTO have also been discussed from various theoretical perspectives: the WTO has been described as “a […] forum for the management of the global trading system” and it is “a structure of rules and […] a container for a set of commitments that reflect the specific application of these rules.” (Wolfe 1999: 208, 210). Wolfe from a cognitivist’s point of view points to the shared knowledge that is inherent in the WTO and the expectations of countries that have shaped it. He furthermore enumerates that the WTO functions as a forum for the legitimisation of norms and principles, a source of information and a place to negotiate rules, make decisions and settle disputes (Wolfe 1999: 210). Later on, he argued that the WTO’s function was the solution of collective action problems: “Multilateral trade reform requires the supply of two collective goods, new rules and more open markets. No state can supply either of these goods alone […]” (2006: 6).

From a neo-liberalist point of view, other authors have argued that the WTO facilitates the management of increasing interdependence and facilitates cooperation (Hoekman and Kostecki 2001: 34ff ; see also Haggard and Simmons 1987: 495; Finlayson and Zacher 1981). It does so by reducing uncertainty and providing information for the regime participants. Furthermore, it increases transparency

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75 For a discussion of these exceptions in the GATT see Dam 1970: 99-107; and for a brief discussion of agreements on the safeguard provisions in the Uruguay Round see Finger 1995.

76 Compared to the GATT, only the last two functions are new (Blackhurst 1998: 46).
(Hoekman and Kostecki 2001: 34ff, see also Gorter 1954, Finlayson and Zacher 1981). The WTO was seen by them as an essential facilitator in the global trade regime.

However, with the many loopholes in the WTO framework (see above), it is certainly questionable to what extent this theoretical function of the WTO is relevant in practice. Additionally, the facilitating and information provision function of the WTO have been challenged by the significant increases in WTO membership (Odell 2007).

Of course, one should not forget that the WTO functions not only as a forum for communication, but also for the exchange of trade liberalisation commitments. The rationale for this is that far-reaching commitments are best undertaken in a multilateral and reciprocal way, as this maximises the gains. In turn, this renders trade liberalisation politically more acceptable at the domestic level. From an agent-structure point of view, the WTO also facilitates domestic policy-making, providing a way to circumvent pressure groups seeking protective policies (Hoekman and Kostecki 2001: 25-27).

The assessment of the evolution and current organisational structure of the international trade regime have already indicated that different GATT signatories, and now WTO members, have varying degrees of influence in the various negotiation processes occurring in the trade regime. We will hence now investigate the question of actor power in the WTO closer.

### 3.2 Power in the WTO

The first proposition set out in Ch. 2 for an actor-based power analysis in a regime was that “analysis of actor power in international regimes depends initially on specification of the international regimes, its qualities and the issue-area(s) it relates to”. Actor power is indeed central to the functioning of the WTO negotiations: “It would, however, be naïve to argue that all countries exert the same power in WTO negotiations” (Sampson 2000: 1100; see also Wilkinson 2000: 6). As discussed in ch. 2, from the perspective of hegemonic leadership international regimes are an essential tool of the hegemon to preserve its power. The GATT has thus frequently been seen as a power tool of the USA. As we have seen in section 3.1, the GATT

was initially indeed dominated by the US, with the UK initially wielding some power as well. The emergence of the EEC then meant that a second key actor had to be taken into account (Curzon and Curzon 1974: 322ff). Winham and Ostry describe the Tokyo Round as the point in time when the international trade regime developed from a unilateral US-led system into a bilateral EU-US led system (Winham 1986; Ostry 1997: 94). Curzon and Curzon see this transition in the 1960s already (1974: 328), and speak of a “senior and junior school” in the GATT:

The seniors at the end of the sixties were the developed countries of North America, Western Europe, and Japan. The juniors were the less-developed countries. There were also some intermediates […] in the process of moving from the junior to the senior school. Influence in GATT is clearly situated in the senior school, where there are two heads and a number of prefects (1974: 325).

The predominance and power of developed countries was such that the developing country majority for example accepted that no formal votes were ever held. Evans argued already in 1968 that the developing countries realised that the big trade powers would not implement decisions that they had not freely agreed to (Evans 1968: 96-97). If it was not to achieve own interests, the appeal to participate in the GATT for countries other than the USA might have been the prospect of US market opening (Gorter 1954: 2-3). In the early 1970s, Curzon and Curzon describe the EEC-US leadership and dominance of the GATT, and see only a defensive kind of influence of the developing countries at this stage:

[D]eveloping countries in GATT enjoy a certain amount of strength through weakness, and their demands for waivers and other derogations from the general agreement are always treated with indulgence (1974: 323).

Proponents of dependency theories have hence for their part stressed the importance of the WTO as a tool of the industrialised countries in general, who use the WTO in order to impose their standards and values on the developing world and to increase the dependency of the latter on the industrialised countries (Keohane 1993: 29; see also Wade 2003). Wade argued this in particular for the cases of the TRIPs, TRIMs and GATS (2003).

However, the WTO is not just a given tool of the developed countries, but as discussed above a negotiation forum which is shaped by negotiation among its
members and which incorporates a host of inherently contradictory objectives and principles. In fact, the term “negotiation forum” might be a rather “tame” description of the conflicts that we observed in the GATT (Sect. 3.1.1) and that can be observed within the WTO today. In the GATT, conflicts could on the one hand be observed between the EC and the USA (with many prominent cases), but since the Uruguay Round key conflicts have been observed to occur between what can broadly be categorised as the “developed” and the “developing” countries. This today prominent line of conflict is hence not new to the trade regime (Drahos 2003), and has become increasingly prevalent within the last 25-30 years. After following import substitution strategies rather than integration into the world economic system and failing to achieve a “New International Economic Order (NIEO)” in the 1970s, the 1980s and 1990s witnessed not only a sea-change in development theories but also in policy approaches in developing countries. Consequently, an increasing number of developing countries acceded to the GATT, making its membership more numerous and diverse (Bergsten 2005; Hurrell and Narlikar 2006; Evans 1968). At the same time, changes in the wider GPE such as shifts in the distribution of economic gains and economic growth, trade patterns and the increasing economic preponderance of “new” or “newer” players such as Brazil, India and China shifted the power distribution underlying the international trade regime. Some spoke about the emergence of a “multipolar” order in the GPE (for example Ostry 1997). As we would have expected from the discussion of the impact of power changes in regimes in chapter 2, these power shifts in the GPE started to affect the GATT as well. Inside the GATT, disillusionment of the developing countries with the GATT negotiation process was visible already in the 1960s and 1970s (for example Winham 1986: 210ff; Evans 1968), and in the Uruguay Round a range of issues were tabled that did

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77 The conflict between the “developed” and the “developing” countries most of the times includes subgroups of these two broad categories. Although the lines between these two groups are blurred in many ways and the term “developing” is contentious in itself, this simplification shall be employed here as it grasps a wide range of the relevant issues in this case.

78 Whether this latter change was imposed or due to verifiable scientific evidence and who gained or lost from this change shall here be left open for discussion.

79 For an account of the developing countries' impact on the original GATT text and in the early GATT years see Evans 1968.
not feature the EU-US line of conflict, but a developed-developing country line of conflict (Winham 1990: 813-815; Minhorst 1998; see also Watal 2000; Wolfe 2007). Additionally, the Uruguay (and Doha Round’s) way of bundling all negotiation areas together into a “single undertaking” further increased the bargaining power of developing countries (Mattoo and Subramanian 2004).

However, the Uruguay Round has not seen the full effects of this rise of the group of developing countries. Mattoo and Subramanian argue that the Uruguay Round managed the initial incorporation of some newly emerging powers into the trading regime, but that the large group of developing countries sought their place in the WTO post-1995 (2004). The WTO membership has grown further since the inception of the WTO, and it became even more diverse (Wilkinson 2000: 58). The shifts in the GPE and the subsequent integration of developing countries into the GATT and the WTO have hence started to pose a challenge to established power patterns in the international trade regime. Several commentators hence diagnose a shift of power between industrialised and developing countries after the 1995 inception of the WTO, because “developing countries now demand to be heard during trade negotiations” (Van den Hoven 2004: 260; see also Mattoo and Subramanian 2004). A similar point of view can be found in the work of Narlikar (2003), Narlikar and Tussie (2004), Bello (2002), Odell (2006) and Wolfe (2006), and although not all commentators have followed this line of argument in interpreting the changes in the WTO (see the different explanations for the course of the Ministerial Conferences presented in Chapters 5-9), this thesis follows the above named authors in assuming that a power change has taken place in the WTO.

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80 In fact even prior to this, the developing countries tried to install their own alternative to the GATT: the United Nations Conference on Trade and Development was set up in 1964 and was meant to especially take account of the needs of developing countries (Gardner 1964).

81 At the end of 1994, GATT membership had risen to 128 countries. By 1999, the WTO had 135 members (Wilkinson 2000: 58), and by 2007, it had 151 members (WTO 2008).

82 However, distributional conflicts and power struggles have not only been visible in the international trading regime since the 1980s, but before this, Odell and Eichengreen argue in an article that the failure of the ITO in the 1940s/1950s was, among other reasons, due to the “stronger” position of the USA or, to be more precise, due to its stronger “exit options” (Odell and Eichengreen 1998).
The power shift has arguably had a number of different effects. A key effect is that it started to change the role of the EU and the US in the trade regime:

It is also now a part of the new reality that the EU and the US are no more able to dominate the WTO than they are able to dominate the global economy. They are essential players, but they cannot set the rules alone. They must involve other large economic powers, now including China, India, and Brazil as well as Japan. (Wolfe 2004a: 59ff)

Similarly, Odell argued that in a multilateral organization, the provision of the public good of institutional change in a multilateral regime is still dependent on the powerful actors (i.e. the EU and the USA), but that at the same time

[t]oday poor small traders such as those in the African Group are better organized and prepared than earlier, and many are drawing support from non-governmental organizations. Developing countries are showing greater willingness to stand firm and block the whole in order to defend against losses and claim greater gains. (2007: 428)

Similarly, Hurrell and Narlikar have argued that the power shift emerged from learning by the developing countries, which enabled them to assume a more effective role in the WTO negotiations (2006). Apart from the rising economic power of the newly powerful actors in the WTO, knowledge as a resource hence plays a role in the power shift.

Additional to the changing role of the EU and the USA, the power shift has had effects on the functioning of the regime:

The WTO during its formative first decade experienced an unanticipated clash of two diplomatic cultures. Trade diplomats with experience in the GATT naturally expected to continue the special informal decision-making practices of their experience. But the membership expanded dramatically, by the formal accession of non-members and also effectively, as developing and transition GATT Members that had been largely passive became much more active in negotiations. (Odell 2007: 446)

Wolfe argued that informal consensus-building in the WTO would proliferate even further:

I conclude for now that the emergence of new players and more complex issues means that the proliferation of informal ministerial conversations is likely to continue in some form (2004a: 29)
The power shift was also perceived by policy-makers: Former WTO Director Ruggiero wrote in 1999 about the challenge that the empowered developing pose to established decision-making procedures in the WTO and about the need for a broader international leadership (1999). In 2005, former GATT and WTO Director General Sutherland argued that while international economic power had shifted, the EU-US alliance was still called upon. He hence also perceived that the old bipolar system as such had come under challenge and thus welcomed the emergence of the G4 (2005). Importantly, the EU itself perceived a power shift in the WTO, which will become evident in the empirical chapters 5-9, and the EU hence started to react and adapt to the new power distribution.

This suggests that the period of observation chosen for this dissertation is one of a change of the power distribution in the regime. A key defining feature of the regime during the period of observation is hence a power shift. The power distribution underlying the regime, as suggested by Krasner, has not been static, but dynamic (see Ch. 2). This raises the question as to how actors, and more specifically in our case the EU, has recognised and reacted to the power shift in the WTO. Therefore, the first research question to be pursued is how the EU has recognised and reacted to the power shift in the WTO.

The second proposition put forward in Ch. 2 was that “that analysis of actor power in international regimes depends on an assessment of the resources and capacities that the actor brings to the regime”. In the discussion of the WTO structure we have seen that the WTO consists of different levels of negotiations: Ministerial Conferences, General Council, specialised councils and committees. Power can hence be exercised in different levels, or to express it differently, within the WTO there are negotiations of a different nature which provide different opportunities and challenges for the power exercise of actors and which require different kinds of resources. It is therefore important here to outline the potential implications of this structural variety:

The types of resource power an actor needs to influence decisions in these different types of negotiations have already been briefly mentioned in chapter 2. Hoekman and Kostecki point out that a country’s share in world trade, its trade dependence or
openness (ratio of exports and imports to GDP) and the absolute size of its market (GDP) are important indicators of its influence in the WTO. In the WTO negotiations, these countries dispose of far greater bargaining chips than economically weaker or less diversified WTO members (2001: 58; Sampson 2000). While economic and political resources are evident conditions, the impact of institutional resources should not be underestimated: Jawara and Kwa demonstrate in their account of the preparations for the Doha Ministerial Conference the importance of having sufficient numbers of highly skilled staff. As the WTO system consists of a high number of working groups and committees, simply to attend all of these meetings requires significant staff numbers - and an active participation would require even more staff and specialised expertise. In long and arduous negotiations it is crucial to have enough support and backup staff, as “wearing down the adversary” can be an important negotiation technique. To maintain informal channels to build coalitions (for example by setting up informal “mini ministerials”) requires financial and personnel resources as much as functioning networks (Jawara and Kwa 2004: 65, 107; Blackhurst 1998: 36ff; Wolfe 2004a, 2004b). Information and expertise are further crucial resources for exerting power in the WTO, especially in the expert level of the negotiations (Sampson 2000: 1100).

Part of these power resources in the WTO are an actor’s level of dependence from other WTO members and its “exit options” – those WTO members which have viable exit options out of the multilateral system will be more powerful in negotiations than others (see also Odell 2000 on the issue of an actor’s “best alternative to negotiated agreement” (BATNA) point). In the case of the trade regime, actors which have the capacity to sustain a bilateral network might choose to circumvent the multilateral system if it does not deliver the public goods they are seeking. These actors can use their “exit options” as tools to threaten other actors into compliance with their

83 Jawara and Kwa go so far as to mention the issue of language resources: the lack of negotiators that speak English well can be a significant obstacle, especially for some developing countries (Jawara and Kwa 2004: 65, 107). Narlikar mentions that resource-poor delegations have greater problems in maintaining links between their Geneva delegation and domestic institutions (2004: 424).
proposals. They might choose to use their exit option and revert to regional or bilateral initiatives – either openly or tacitly.

In the specific issue areas, the overall status of a country in the WTO does matter. However, as we have seen in Ch. 2, overall power can only account for part of the power analysis. An actor’s power in a specific issue area will hence depend on its resources in that specific issue area. Relevant factors are hence the country’s share in trade, market size, relative openness to trade, political resources, institutional resources, information, expertise and relevant exit options in the specific issue area. **Overall, the second proposition leads us to a second research question, namely what resources for action the EU has in the WTO overall and in the specific issue area chosen for this investigation.**

The third proposition set out in Ch. 2 was that “analysis of actor power in international regimes must take account of the actor’s ‘organisationally dependent capabilities’ and thus of resources derived from involvement in the regime itself”. The WTO’s institutional framework influences the capabilities member actors have, and thus their opportunities for action. In consequence, the WTO alters both the power distribution between its members (for example Keohane 1993: 29). As discussed above, the WTO has been regarded as tilted towards those countries that initiated the regime, who shaped its norms and principles and hence the kind of liberalisation that took place inside the WTO. Wilkinson argued that these asymmetries are an essential part of the trade regime and cannot easily be overcome as

meaningful alterations to the asymmetries in the WTO’s legal framework have not been forthcoming precisely because they require the giving of concessions for those received. [...] As the balance of the exchange has always resided with the institution’s most dominant members, this has, in turn, contributed at least to the perpetuation of asymmetry, and at most to its amplification (Wilkinson 2006b: 4).
However, we have also seen that in certain instances the regime empowers less powerful actors.\textsuperscript{84} Even informal rules, such as the consensus rule combined with the single undertaking, have given even economically weak states a certain bargaining power in WTO negotiations, which they would not have outside the WTO (Wolfe 2007b; Gehring 2004). Features of the regime that stand out as having an enabling or disabling function for actors in the WTO are

- the decision-making procedures, including the consensus rule and the single undertaking, which allows for issue-linkages across issue areas and negotiation levels (see Sect. 3.1.2);
- the institutional set up of the WTO, including the TPRM, the DSB and the influence of the Secretariat and the WTO DG (see 3.1.2);
- the norms and principles of the regime, including the principle of reciprocity and the “safeguard norm” (see Sect. 3.1.3).

The third proposition thus leads us to ask as a third research question which organisationally-dependent capabilities exist for the EU in the framework of the WTO.

The fourth proposition put forward in Ch. 2 was “that analysis of actor power in international regimes can profitably focus on formal negotiation and bargaining processes in which the actor is involved”. It was argued that agenda setting, coalition and support building are preparations for decisions and analysing them will help to understand whose preferences the decisions reflect (see also Gering 2004: 2). Agenda-setting or –breaking is an important way of exerting power in the bargaining

\textsuperscript{84} Nonetheless, in much of the literature (esp. publications by NGOs, newspapers) an underlying assumption is that the WTO should comply with “democratic principles” (often leaving open how these should look like) and an ideal model of “democratic equality” and that it should redistribute wealth. The questions one needs to consider in these cases are whether those with an underproportionate share in trade should be powerful in the WTO and what should be the crucial power resource in the WTO, if it was not the share in world trade. Should one expect those to shape the rules who do not “use” them (i.e. do not trade that much)? In terms of organisationally-dependent capabilities, diffuse factors might have an influence on outcomes in the WTO as well: if actors place their agents in strategic positions in the organisation (for example chairmen), one might expect an increase in their influence on decisions. Jawara and Kwa even claim that the nationality and ideology of the WTO Secretariat has an influence on the proposals made and thus decisions taken (Jawara and Kwa 2004). It is, however, hard to determine the influence of these diffuse factors on outcomes.
process. The WTO’s agenda is only partially set in a formal way (for example after the Uruguay Round certain revisions of WTO agreements were incorporated in the texts of the agreements), but mostly in an informal process involving the different negotiation levels in the WTO. Ministerial Conferences often function as road marks in this process. To assess the way the EU exercises power in the WTO negotiation process, we hence need to ask as a fourth research question to what extent the EU is capable or not capable of influencing the processes leading to the WTO’s negotiation agendas, and whether there are differences between the different types of negotiations.

As discussed above, consensus-building in the WTO functions via a multitude of formal and informal meetings. Coalitions have assumed a key part in this process. Actors involve in coalition-building and maintenance processes as part of the consensus-building process. In this way they attempt to build support for their position. The informal part of decision-making might also involve “buying support” (“carrot”) by issue-linkages (or even forcing compliance (“stick”)) (Sect. 2.3; see also Wolfe 2004a; Narlikar 2005). The following tools have, according to Jawara and Kwa, been used by the EU and the USA prior to the Doha and Cancún Ministerials\textsuperscript{85} to convince developing countries of their agendas:

- issue-linkages: influence on other international agencies (IMF, World Bank, and other agencies which provide funding and financial aid, debt relief, technical assistance) (2004: 149), granting preferential market access or threatening to withdraw preferences (2004: 152-155) and granting financial aid, debt relief, technical assistance or threatening to withdraw it;\textsuperscript{86}

\textsuperscript{85} The Jawara and Kwa text does not satisfy academic criteria. It is formulated as a narrative with sources not being made explicit in many cases and claims left without verifiable evidence. However, it is one of the few texts which deals with the informal side of the current negotiations in the WTO. The material used here can give indications of potential power instruments in the WTO – the usage of these would have to be confirmed separately for each case.

\textsuperscript{86} Van den Hoven points out that the EU in fact funds some of the poorest African, Caribbean and Pacific (ACP) countries for their participation in the trade negotiations (2004: 262).
- lobbying: influencing national governments\textsuperscript{87} and influencing the media (2004: 112).

Narlikar discusses similar informal ways of building consensus, which to her are detrimental for developing countries (2004: 422). A further technique is to introduce research and other informational material into the consensus-building process. \textbf{As a fifth research question, it can therefore be asked to what extent the EU has the capacity to build and lead coalitions within the WTO and in which ways it acquires support for its positions.}

The fifth proposition set out in Ch. 2 was “that analysis of actor power in international regimes must include an assessment of outcomes”. It is important to remember here that decisions in the WTO are not only the formal decisions taken, but also decisions to drop issues that have been used as bargaining chips or which run counter to an actor’s preferences. As set out in Sect. 2.2, informal decisions are hence important to be considered. \textbf{It can hence be asked as a sixth and final research question whether outcomes reflect the EU’s preferences, and why or why not.}

\subsection*{3.2.1 Research questions}

The previous section revisited the five propositions set out in Ch. 2 and discussed them in relation to actor power in the WTO. The discussion led to the establishment of six research questions. It is evident that these can be divided into three groups. The first question follows the work of Krasner on shifts of power in regime change, as presented in chapter 2:

1. \textit{How has the EU recognised and reacted to the power shift in the WTO?}

This question arose from the discussion of the changes in the WTO regime in the last years. It concerns the overall, structural evolution of the trade regime and will be taken up again in the end of the thesis.

The second group of questions concerns the resource power of the actor EU within the regime. This follows the two first steps in the Keohane and Nye model:

\begin{itemize}
    \item[	extsuperscript{87}] Jawara and Kwa find several cases where oppositional developing country staff had allegedly even been removed due to US pressure (2004: 151).
\end{itemize}
2. What resources for action does the EU have in the WTO?

3. Which organisationally-dependent capabilities exist for the EU in the framework of the WTO?

The next chapter will take up these two questions and discuss them in relation to the EU’s participation in the WTO.

The third group of questions concerns the effects of power in negotiations or the way power is used in order to achieve certain outcomes:

4. To what extent is the EU capable or not capable of influencing the processes leading to the WTO’s negotiation agendas? Are there differences between the different negotiation levels?

5. To what extent does the EU have the capacity to build and lead coalitions within the WTO and in which ways do they acquire support for their positions?

6. Do outcomes reflect the EU’s preferences? Why or why not?

These questions will be studied in the case study on the basis of the EU’s involvement in the WTO between 1995-2005 and in relation to the negotiations in a specific issue area. As has been mentioned several times, specific issue areas under the heading of the WTO might display distinct characteristics. The negotiations in major sectors also take place outside of the Ministerial/General council level, which will add to the richness of the observations. The issue area chosen for this case study is trade in services.

3.3 The issue area: trade in services

As has been mentioned above, the GATS was added to the WTO system as an agreement separate from the GATT. Trade in services is in its nature different from trade in goods, and services have a different character than goods. Hence, first of all, a definition for services has to be found.
3.3.1 Definition of services and services statistics

Box 3.2 A definition of services

<table>
<thead>
<tr>
<th>UN System of National Accounts’ (SNA) classification of services</th>
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<tbody>
<tr>
<td>6.8. Services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. Services are heterogeneous outputs produced to order and typically consist of changes in the conditions of the consuming units realized by the activities of producers at the demand of the consumers. By the time their production is completed they must have been provided to the consumers.</td>
</tr>
<tr>
<td>6.9. The production of services must be confined to activities that are capable of being carried out by one unit for the benefit of another. Otherwise, service industries could not develop and there could be no markets for services. It is also possible for a unit to produce a service for its own consumption provided that the type of activity is such that it could have been carried out by another unit.</td>
</tr>
<tr>
<td>6.13 There is a group of industries generally classified as service industries that produce outputs that have many of the characteristics of goods, i.e., those industries concerned with the provision, storage, communication and dissemination of information, advice and entertainment in the broadest sense of those terms - the production of general or specialized information, news, consultancy reports, computer programs, movies, music, etc. The outputs of these industries, over which ownership rights may be established, are often stored on physical objects - paper, tapes, disks, etc. - that can be traded like ordinary goods. Whether characterized as goods or services, these products possess the essential common characteristic that they can be produced by one unit and supplied to another, thus making possible division of labour and the emergence of markets.</td>
</tr>
</tbody>
</table>

UN 2001: Services Industries

Examples of service activities are wholesale, retail, certain kinds of repair, hotel, catering, transport, postal, telecommunication, financial, insurance, real estate, property rental, computer-related, research, professional, marketing and other business support, government, education, health, social, sanitation, community, audiovisual, recreational, cultural, personal, and domestic services.

Source: UN SNA 1993, Sect. 6, B.1.6., UN et al. 2001

Any negotiation on services trade is first and foremost challenged to define what its object of negotiation is. The definition outlined in Box 3.2 shows why: services are immaterial, production and consumption occur mostly simultaneously and the classification and definition of services can be contentious due to diverging interests of the negotiating parties (see also Hindley 1990a: 131ff; Hoekman and Stern 1993; Snape 1990).

In national accounting, services are classified according to the IMF Balance of Payments Manual. An initiative of the United Nations, the European Commission, the IMF, OECD, UNCTAD and the WTO in 1994 started to push forward the development of internationally coherent concepts, definitions and classification and to improve the availability of internationally comparable trade in services data (UN
2001: vii). The resulting manual provides countries with a framework to classify service trade, incorporating attempts to gather the services provided locally by foreign affiliates. It seems, however, that this comprehensive manual has so far only been implemented by a few OECD countries.

While estimates assume that services constitute about one fifth of world trade in balance of payments terms (UN 2001: 9), the actual impact of services in world trade can be assumed to be much larger than that, because data on trade in services is still only incompletely available. This is, amongst other reasons, due to the fact that a large part of services trade is dependent on FDI (see for example Sauvant 1990). This means that after an initial investment there are no reported flows of services across the border; production by the foreign supplier and consumption by the domestic consumer take place domestically. While data on foreign affiliates' trade in services is not internationally available, the manual by the UN et al. states that for the US in 1998, services delivered to foreign markets by foreign affiliates of United States companies, and to United States markets by United States affiliates of foreign companies, exceeded the respective values of the exports and imports of services recorded in the United States balance of payments (UN 2001: 9).

For service provision by people moving across borders (classified as “GATS Mode 4” (Movement of natural persons)), statistics are also hardly existent; there is a multitude of classification and definitional issues which remain to be determined. A further aspect leading to trade in services statistics only being incompletely available is that a large part of service trade is subsumed under trade in goods as they concern transport services, distribution services and export financing.

Crucially, to render statistics on trade in services more comprehensive and reliable does involve major costs (as it involves much more than a numerical compilation on the border). It also depends on cooperation of services companies, and on their

88 For an earlier account of this problem see for example Hoekman and Stern 1993.
89 “The Manual reflects the emerging international consensus that statistics on such services should be developed for firms in which a foreign investor has a majority interest. They should be classified as a first priority on an activity basis (i.e., by industry of the producer rather than by type of service produced).” (UN 2001: 4)
willingness to reveal their internal company statistics (as services trade often involves intra-company transactions).

Overall, and while taking into account the statistical difficulties experienced in measuring trade in services, figures on trade in services show a general increase in trade in services – while according to a 2004 WTO report the share of services in world trade overall has not changed significantly in the 1990s (WTO 2004c; see also Hoekman and Stern 1993). In the public debate, there is a general assumption that trade in services has increased and that its impact has become more important. Given the technological change experienced in the 1990s and technological innovation such as the arrival of the internet, trade in services can be expected to gain further in importance.

3.3.2 The political economy of service trade

Service trade is subject to “domestically legally defined non-price barriers” (Langhammer 2005: 313). The quantification of these barriers is virtually impossible (ibid). This has important implications for attempts to liberalise services trade via multilateral negotiations: liberalisation of service trade does not mean reducing or abolishing barriers “at the border”; but it means transforming national legislation and regulation (Hindley 1990a: 133; Eiteljörge 1998; Snape 1990). This means that in the WTO, negotiations of a very different kind, tariff reduction and regulatory, are held in conjunction, which can obviously cause frictions, especially when these very different negotiations are supposed to comply with similar deadlines. Regulatory negotiations require negotiating parties to have in-depth knowledge of the legal and governance systems of their own and of negotiation partners to identify what constitute barriers to trade (see for example Jackson 1993; Eiteljörge 1998). This can be assumed to be a further challenge, in particular to the resource-poor developing countries.

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90 Lawrence and Litan distinguish between “shallow” (at the border measures to reduce discrimination among trading partners) and “deep” integration (beyond the border measures to harmonise regulation) (1990). Of course, this problem has been encountered in the GATT negotiations when NTBs were negotiated. However, due to the special nature of services the barriers to services are even harder to define than in the case of NTBs for goods (Hindley 1990: 133).
Multilateral liberalisation in service trade can entail reducing the policy scope for national rule-setters. At the same time, services industries can be private, public or mixed private and public industries. Public industries can have non-profit objectives (for example the Belgian post employs workforce which would not be competitive in the private labour market), which can make them uncompetitive on an international level. Which industries are public depends on national characteristics and history, and these are a major factor impacting on the negotiation process and shaping the interests of the WTO members. Domestic regulatory agencies therefore also have an interest in the negotiations. Services are not only subject to trade ministries, but are dealt with in various ministries under various responsibilities, which can create coordination problems on the national level and hence impact on the multilateral negotiations (Hoekman and Kostecki 2001: 246-248; Hindley 1990a; Jackson 1993).91

“Reciprocity” in services negotiations is even less quantifiable than it is in trade in goods due to the non-numerical nature of barriers to trade in services (see for example Wolfe 2005: 636).92 Still, one can find in the respective publications that an “equal level of liberalisation” is aspired to by the negotiators in the WTO. Interviewees explained that negotiators act with a “spirit of reciprocity” (interview 3, 30). However, for the respective government agents their gains from the negotiations are less visible and therefore less easy to exploit for their personal benefit and more difficult to “sell” to the domestic public.

The effects from services liberalisation are either unknown or far from clear-cut, which means that in the public (in the EU), an extensive debate about the effects of services liberalisation has taken place over recent years. This debate has taken place both publicly in the media, between the different levels of negotiations at the WTO and inside of the actual services negotiations, which take place between technocrats in special working groups. The debate concerns the effects of services liberalisation.

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91 As in other areas, international agreements on services might be useful for governments to enforce reform despite domestic resistance (Hoekman and Kostecki 2001: 246-248).
liberalisation. Those that argue that services liberalisation has overwhelmingly positive effects, hold that countries which liberalise first might have an advantage and incentives for further reform – hence every country should strive to liberalise as much as possible. With the actual effects of services liberalisation not being evident, control of knowledge about service trade (this includes the interpretation of the available data and control about the prevailing academic theories) might therefore be an important factor in the services negotiations.

While the GATS was the first multilateral agreement to liberalise trade in services, services liberalisation is now covered by most regional and bilateral agreements (to varying degrees) and by the OECD. Thus while the GATS remains at the core of the international regime for trade in services, the regime itself has spread and become more diverse.

3.3.3 Services in the Uruguay Round

Services entered the GATT negotiation agenda at the end of the Tokyo Round as an initiative of the USA, and met the strong opposition of developing countries which feared a detrimental effect of services liberalisation for the development of their economies. Developing countries were hesitant to include service trade in the negotiation agenda for the Uruguay Round (and maintained this position during the Uruguay Round negotiations). They argued that they were not sufficiently equipped to negotiate an area as complex as services and feared that developed countries might lose interest in the trade in goods negotiations. Additionally, they were weary that the GATS might provide a “back door” for developed countries to introduce investment liberalisation.

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92 This does not imply that “perfect reciprocity” can be achieved in trade in goods negotiations. Various loopholes exist here, for example the difference between bound and unbound tariffs and the (systematic) use of NTBs.

93 For a more extensive discussion of the services negotiations in the Uruguay Round see Messerlin and Sauvant 1990, Eiteljörge 1998 and Hoekman 1993.

94 It argued that the substantial market access concessions it had made in trade in goods had led to the economic rise of its trading partners, especially in South East Asia. However, the USA claimed it had suffered competitive disadvantages from this liberalisation and hence wanted to gain market access in areas where it had competitive advantage (Eiteljörge 1998).
After they failed to exclude services from the agenda, the “G10”, consisting of the most influential developing countries together and led by India and Brazil, tried to limit the negotiations on services as much as possible (Hoekman and Kostecki 2001: 249; Winham 1990: 803; Winham 1989: 286; Eiteljörge 1998: 153; Sauvé 2000). A concern of several GATT signatories was also the potential loss of sovereignty through a services agreement (Eiteljörge 1998). In view of this resistance against the GATS, one can regard it already as a success of the USA and the EC that an agreement was concluded at all (interview 30).

At Punta del Este, the interim solution to these concerns was to negotiate the GATS separately from GATT. The Punta del Este declaration left great scope for the negotiators to determine the shape of the GATS. GATT procedures and principles were to apply, but it was not specified how (Eiteljörge 1998: 154; Marconini 1990: 20). It is hence often mentioned that after the inclusion of services in the Uruguay Round agenda the understanding of what service liberalisation would have to include and the understanding of service trade continued to evolve. Thinking about the trade in services liberalisation thus evolved significantly during the Uruguay Round, which led to a delimiting of the initially ambitious liberalisation approaches of the industrialised countries (Barth 1999: 9; Marconini 1990; Sauvé 2000). The GATS was thus importantly shaped by the evolution of ideas while under negotiation.

The negotiations were dominated by rule-making. Liberalisation negotiations and commitments were of secondary importance in the Uruguay Round (WTO 2000/2001: 103; European Commission 2005b; Winham 1990: 803-804). In the GATS, countries therefore bound current levels of openness or even levels below the current market access (Hoekman 1995: 327; see also Martins and Will 1995). The reluctance of the negotiating parties to make far-reaching commitments under GATS in the Uruguay Round was also reflected in their choice of negotiation method. They chose to exchange concession via a “positive list” approach, in which only those

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95 The G10 included for example Argentina, Brazil, Egypt, India, Nigeria and Yugoslavia.
sectors are listed in which a liberalisation commitment is offered. This is opposed to a “negative list” approach, where all sectors are liberalised except for those specifically listed. The “positive list” approach employed in the GATS negotiations meant that not only the commitments were rather limited, but also that the negotiation process suffered from intransparency. In particular, no information about those sectors not committed to liberalisation was provided (Hoekman 1995).

In an analysis of the draft GATS, Hoekman found that while the draft GATS contained elements of the different proposals which had been tabled at the beginnings of the negotiations in 1987/1988, the influence of the OECD countries on the shape and content of the agreement was predominant (1993: 2). Still, interests of developing countries were reflected: for example a group of very sceptical developing countries argued initially that there should not have been any agreement on services. Although they did not manage to achieve this goal, they did manage to de-link the services negotiations from the trade in goods negotiations and the GATS was established as a separate agreement. They also managed to have “economic development and growth” inserted as one objective of the negotiations (Hoekman 1993: 3).

As mentioned above, the EC was initially hesitant to include services in the Uruguay Round, but changed its positions when it realised that services liberalisation could further the EC’s competitive advantage in world trade and could delimit the US’ tendency for unilateral measures. The EC’s then demanded an agreement that granted “effective market access” to a wide membership and for a wide-ranging array of sectors. The EC supported the idea of a “regulation committee”, which would supervise whether regulations in service trade are “appropriate”. The goal of the agreement was to create “comparable” market access for all participating countries, although the EC wanted commitments to apply on a sector-specific level and not to be binding overall. The US asked for “national treatment” and MFN to be applied to

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96 Issues under discussion included the definition of services, statistics, concepts for the new agreement and sectoral coverage, relation to other international or sectoral agreements and institutions, measures and practices contributing to or limiting the expansion of trade in services (Marconini 1990).
all members of the agreement without exception. The US proposal also included provisions on FDI and other similarly far-reaching demands, which altogether meant that many developing countries considered the US proposal as going beyond the negotiation mandate (Hoekman 1993: 4; Hindley 1990: 136-143; Sauvé 2000). The EC’s proposal of a “softer” GATS, which was supported by a range of developing countries, prevailed, for example with regard to the extent that the “national treatment” principle is applied, although the US achieved MFN to be a general obligation (Hoekman 1993: 11ff).

Chadha et al. point out that systematic asymmetries were visible on the GATS negotiations as “very little, if anything, was done to enhance developing country service export opportunities (e.g., through the movement of natural persons)” (2000). Similarly, Mattoo questions that there was a balanced outcome in the services negotiations of the Uruguay Round: “The much-troubled trade off between modes of delivery simply did not take place”, which he attributed not only to the unwillingness of the industrialised countries to commit under Mode 4 (see below), but also to the unwillingness of developing countries to open their domestic markets (Mattoo 2000). These conflicts visible in the Uruguay Round are the background for the current negotiations on services in the WTO.

3.3.4 The GATS
Despite the difficulties encountered during the negotiations, the GATS was denoted as a remarkable achievement after the Uruguay Round, as it constitutes the first legally binding international agreement on trade in services (UN 2001: 10; Hoekman 1995). However, as discussed above, the liberalisation actually achieved after the Uruguay Round was not very far-reaching and in many cases countries bound themselves below their current levels of openness. The GATS hence rather sets a framework to undertake future liberalisation than already incorporating it (Barth 1999: 40; WTO 1994; Hoekman 1995; Eiteljörge 1998).

The GATS does not define “services” as such, but it includes all tradable services with the exception of air transport services and services supplied under government authority (Barth 1999: 40; WTO 1994). However, due to the positive list approach
that has been chosen, this does not mean that these sectors have actually been liberalised.

The WTO Secretariat’s list of services sectoral classifications covers the following sectors. The list is not exhaustive and legally binding, but used by most WTO countries:

**Box 3.3 Sectors dealt with under the GATS**

<table>
<thead>
<tr>
<th>Business services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication services</td>
</tr>
<tr>
<td>Construction and related engineering services</td>
</tr>
<tr>
<td>Distribution services</td>
</tr>
<tr>
<td>Educational services</td>
</tr>
<tr>
<td>Environmental services</td>
</tr>
<tr>
<td>Financial services</td>
</tr>
<tr>
<td>Health and related services</td>
</tr>
<tr>
<td>Tourism and travel related services</td>
</tr>
<tr>
<td>Recreational, cultural and sporting services</td>
</tr>
<tr>
<td>Transport services</td>
</tr>
<tr>
<td>Other services</td>
</tr>
</tbody>
</table>

*Source: WTO MTN.GNS/W/120 10.07.1991*

Liberalisation in the GATS is scheduled according to sectors and mode of supply. The GATS identifies four modes of supply:

**Box 3.4 Modes of supply under GATS**

For the purposes of this Agreement, trade in services is defined as the supply of a service:

- from the territory of one Member into the territory of any other Member (Mode 1);
- in the territory of one Member to the service consumer of any other Member (Mode 2);
- by a service supplier of one Member, through commercial presence in the territory of any other Member (Mode 3);
- by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (Mode 4).

*Source: WTO 1994*

While trade in services under Mode 1 and Mode 2 resembles trade in goods, as the services actually cross a physical border, Mode 3 and 4 involve the movement of the service provider across the border. Mode 3 hence raises a host of issues related to foreign direct investments, such as the right of establishment. Mode 4 raises issues
of work permissions and migration (Hindley 1990b). Evidently, these issues have proven rather contentious and complex in the GATS negotiations.97

The GATS contains a number of general rules and obligations, and specific commitments (which can be found in country-specific schedules). This positive list approach indicates the compromise that had to be reached in the Uruguay Round between those arguing for a far-reaching liberalisation and those who did not want to place a limitation on their national sovereignty (Barth 1999: 41). The following are the core principles of the GATS:

While MFN is a general obligation under the GATS, the GATS also lists a set of exceptions to the principle: these are general exceptions such as those for regional integration agreements (such as the EU), or for preferences for trade in border regions. The second type of exceptions is country-specific and can be asked for by every WTO member for up to 10 years. They are reviewed every five years. Still, exemptions other than those notified initially can only be granted via requesting a waiver from the Ministerial Conference. Developed countries were the main users of these exemptions and sectors most widely exempted from MFN were sensitive sectors such as audiovisual services, financial services and transportation services. Overall, MFN is less encompassing in GATS than in GATT (Hoekman and Kostecki 2001: 252; Barth 1999: 41ff; Hoekman 1995: 333-336).

“National treatment” under the GATS is granted via a positive list approach, which as explained above means that only those sectors that are listed are committed to liberalisation. This makes liberalisation more prudent, but probably also slows down the liberalisation process (Hoekman and Kostecki 2001: 253; Hoekman 1995: 334). The GATS furthermore contains a new principle: a market access obligation. If a country has liberalised a sector under GATS, six specific market access restrictions are clearly prohibited by GATS (Hoekman and Kostecki 2001: 253; Hoekman: 334). Additionally, the GATS provides for the establishment of mutual recognition of qualifications between members (GATS Art. VII) and acknowledges the need to

97 Some have argued that an exclusion of Mode 3 and Mode 4 from the GATS would make the agreement more efficient and it would be easier to achieve further liberalisation (for example Snape 1998).
ensure non-competitive practices and monopolies are regulated (Hoekman and Kostecki 2001: 253). The GATS also includes obligations for transparency of service regulations and for the continued liberalisation of service trade. In fact, negotiations are scheduled for every five years and entail the bilateral exchange of concessions between negotiation parties. A new round of negotiations was thus scheduled for 2000. The GATS requires governments to ensure that regulations in services sectors are administered in “a reasonable, objective and impartial manner”. To do so the Council for Trade in Services was mandated to establish disciplines, where deemed necessary (GATS Art. VI). Liberalisation commitments are scheduled in national schedules and are of a highly individualistic character.

Exceptions from the GATS principles exist for a number of reasons similar to those in GATT, for example for balance-of-payment reasons (GATS Art. XII).

A main problem of the GATS principles is that they only apply to those sectors actually committed, and hence their reach is rather restricted (Hoekman 1995; Eiteljörge 1998). Hence, Hoekman criticises the GATS for being intransparent; for the individualistic and incoherent style with which commitment have been listed by WTO members; for the mostly sectoral approach which does not further coherent application of MFN and coherent liberalisation and which makes governments more prone to lobbying by interests group; for the scheduling commitments by mode of supply, which creates an incentive for countries to focus only on particular modes of supply; and for combining specific commitments and the positive list approach, so that countries could be incited to create restrictive policies only to have bargaining chips in the next negotiations (Hoekman 1995: 346-348). The GATS thus remains a flexible but complex and incomplete agreement, where actual liberalisation levels are hard to determine.

As mentioned before, each issue area under the WTO displays different interest and power constellations, and this is clearly the case for the trade in services issue with its very specific nature. This is a further reason why the services negotiations have been chosen for study in this dissertation.

After the Uruguay Round, the GATS framework remained incomplete in a number of issue areas. Negotiations on maritime services, telecom services, financial services,
on disciplines for domestic regulation and the movement of natural persons (Mode 4) were scheduled to continue directly after the Uruguay Round. Apart from this, the so-called “rules negotiations” (negotiations on an ESM, services subsidies and government procurement) were to be held.

Furthermore, the GATS agreement itself mandates a range of negotiations and review processes, which are summarised in Table 3.3.

### Table 3.3  Issues mandated for negotiation in GATS

<table>
<thead>
<tr>
<th>Art GATS</th>
<th>Issue</th>
<th>Treated in this thesis?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. IV</td>
<td>Increasing participation of developing countries: negotiation of specific commitments to enhance their capacity for services trade, their participation in networks, liberalisation of sectors of interest to developing countries</td>
<td>Yes.</td>
</tr>
<tr>
<td>Art. VI</td>
<td>Disciplines on domestic regulation: “With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines.”</td>
<td>Yes.</td>
</tr>
<tr>
<td>Art. X</td>
<td>Multilateral negotiations on the question of an ESM: result is to enter into force three years after coming into force of WTO agreement</td>
<td>Yes.</td>
</tr>
<tr>
<td>Art. XIII</td>
<td>Government procurement: negotiations on government procurement in services within two years from the date of entry into force of the WTO Agreement</td>
<td>Yes.</td>
</tr>
<tr>
<td>Art. XV</td>
<td>Subsidies: developing the necessary multilateral disciplines to avoid trade-distortive effects of subsidies.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Art XIX-XXI</td>
<td>Progressive liberalisation</td>
<td></td>
</tr>
<tr>
<td>Art. XIX</td>
<td>Negotiation of Specific Commitments: “Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization”. “For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV”.</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
This so-called “built-in” agenda of the GATS scheduled negotiations to increase the current levels of liberalisation to start 5 years after the entry of force of the WTO agreement (i.e. in 2000) (Art. XIX GATS). For these negotiations to proceed, negotiation guidelines and procedures would have to be established, and an overall and sectoral assessment of trade in services would have to be conducted. Autonomous liberalisation (liberalisation undertaken unilaterally) and the special situation of the least-developed countries (LDC) would have to be taken into account. These negotiations scheduled in the WTO to start after the Uruguay Round will be observed in the next chapters.

In Sect. 3.2, it was explained that different types of negotiations take place in the WTO. To structure the case study in the next chapters, this general outline of the negotiations shall here be specified for the case of the trade in services negotiations. “Overall framework-setting” concerns the broad strategic direction of the WTO and treats services as one issue at par with agriculture, NAMA and others. For services, issue-area framework setting takes place mostly in the CTS (and in informal meetings), which also has to decide on the negotiation modalities required in the GATS agreement. Issue-area specific negotiations can take place in the CTS as well, or in various sub-committees and working groups. The different types of negotiations, where they take place, coalitions (presumably) at work in them and how they are documented are set out in Table 3.4.
### Table 3.4 Types of negotiations in trade in services

<table>
<thead>
<tr>
<th>Type of negotiation</th>
<th>Issues</th>
<th>Places of negotiation</th>
<th>Coalitions (see Ch. 5-9)</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall framework-setting</td>
<td>“Negotiations about negotiations”. Services here at par with other issue areas such as agriculture etc.</td>
<td>General Council Ministerial level meetings (formal and informal)</td>
<td>Quad, new Quad, G6, ACP (African, Caribbean and Pacific countries)</td>
<td>EU press releases, strategic papers General Council Documents Press coverage: IUST, Bridges, FT</td>
</tr>
<tr>
<td>Issue-area framework setting</td>
<td>“Negotiations about how to negotiate an issue.” Services: strategic direction within the issue area e.g. where should certain issues be dealt with, how are negotiations structured etc. autonomous liberalisation, modalities for LDC; assessment of services trade, modalities</td>
<td>CTS Informal meetings (plurilat., bilateral)</td>
<td>Quad, very good Friends of services, ACP, US-India chaired informal group (inactive?)</td>
<td>EU service-specific papers and press releases. CTS documentation Press coverage: IUST, Bridges</td>
</tr>
<tr>
<td>Issue-area specific negotiations</td>
<td>“Negotiations about substance”. Sub-units of the services negotiations All sectors: financial, telecoms, transport, postal, energy, environment, audiovisual, tourism, professional services etc. All horizontal issues: Mode 4, ESM, procurement, rules on service subsidies</td>
<td>Various working groups on specific services sub-issues, specialised committees. Informal and formal bilateral negotiations. Since March 2006: plurilateral negotiations.</td>
<td>Depending on sector/issue area: Friends groups in nearly all sectors, Quad??, ACP??</td>
<td>EU specific papers mostly not available. Documentations from working groups. But not from informal meetings or from bilaterals. Press coverage: for some of the issues available.</td>
</tr>
</tbody>
</table>

*Source: Author*
3.4 Interim Conclusion

Chapter 2 established that the first step in the analysis of an actor’s power in a regime needs to be the analysis of the regime itself. This chapter analysed the global trade regime in three parts: first of all, the WTO and its norms, principles and rules as the main organisation in the international trade regime was introduced. Second, a link was set up between considerations regarding the WTO and an actor’s power. Third, the issue area chosen for the case study was introduced.

Importantly, the way the regime has evolved during the last 60 years still impacts on the negotiations today. The WTO is mostly a membership-driven organisation and functions as negotiation forum, and thus its institutional head might only have a minor influence on negotiation outcomes. The WTO’s principles are partially contradictory, reflecting the diverging national interests that need to be accommodated in the WTO. They provide scope for actors to use them according to their own preferences. The plurality of issues under the roof of the WTO creates opportunities for issue-linkage, but they also make the negotiations rather complex. There is hence ample scope to use resources as power tools in the regime.

It can also be assumed that the regime initially reflected the power distribution among its initial members, which is in line with Krasner’s work. It was evident that economically powerful actors with institutional resources would have advantages in the international trade regime, and that influence on the regime can be exerted at different stages of the negotiation process.

However, it also seems that for the time period under consideration in this dissertation, a power shift has occurred. As Krasner suggested, the power distribution underlying the regime seems to have proved more dynamic than the regime itself.

The chapter also introduced the issue area that will be researched in the case study. The services negotiations are of a regulatory nature and hence very different from the traditional tariff reduction negotiations under the GATT. Therefore, they entail a specific set of issues, for example with regard to national sovereignty, and interests, which means they require specific resource power. After the Uruguay Round, the
GATS framework remained incomplete in a number of issue areas and these negotiations will be followed in the next chapters.

On the basis of the considerations of the WTO in combination with the five propositions set out in Ch. 2, six research questions have been drawn up, which will guide the investigation in the thesis:

1. How has the EU recognised and reacted to the power shift in the WTO?
2. What resources for action does the EU have in the WTO?
3. Which organisationally-dependent capabilities exist for the EU in the framework of the WTO?
4. To what extent is the EU capable or not capable of influencing the processes leading to the WTO’s negotiation agendas? Are there differences between the different negotiation levels?
5. To what extent does the EU have the capacity to build and lead coalitions within the WTO and in which ways does it acquire support for its positions?
6. Do outcomes reflect preferences of the EU? Why or why not?

The next chapter will take up the second and the third research questions and discuss the EU’s resources in the international trade regime and which organisationally-dependent capabilities it has at its disposal within the WTO and within the issue area services.
4 The EU in the international trade regime

“Whatever the EU’s deficiencies in political coherence, cultural identity, and military organization may be, it does not lack economic power.” (Cameron 1998: 21)

This chapter conceptualises the EU as an actor in the international trade regime. Cameron’s statement indicates a common assessment of the EU’s actorness in the GPE: Although the EU might not be influential in the realm of classical foreign policy and although it is not a state, it is presumed to be a powerful actor in the GPE, and in particular in the international trade regime.

In the first part of the chapter, it will be argued that for the EU itself and specifically its negotiators in the Commission, the field of trade policy is the main field in which the EU can assert its actorness and build its identity as an international actor. The EU can do so on the basis of a set of resources that it has at its disposal, which will be introduced in this chapter. These are the EU’s economic and institutional resources and its relationships with the “rest of the world”. A special emphasis is on the EU’s resources in the area of trade in services.

The second section of the chapter looks at those organisationally-dependent capabilities in the WTO which (potentially) enable the EU to play an active role in the regime.

4.1 The resource basis I – trade policy, institutions, policy-making, trade in services

The focus in this section is on what has enabled the European Union to establish a presence in the GPE. More specifically, it describes those resources which condition the EU’s impact in the WTO.

98 It here has the most distinguishable identity and actorness. Arguably, the EU is the most powerful in this area. As van den Hoven put it “The WTO is probably the only international organisation in which the EU acts like a superpower and shares equal status with the United States.” (van den Hoven 2004: 258).
Economic weight
The most significant resource of the EU for action in the GPE is its economic clout. As we have seen in chapter 3, since the emergence of the EEC in the 1950s, the EU has firmly established itself as a partner and rival of the once unchallenged hegemon, the USA (Meunier 2005). Looking at it from a purely quantitative point of view, the EU is the dominant trade block in the world both in trade in goods and in trade in services.99

Figure 4.1 The EU’s and the US’ share (in %) in world merchandise and service exports and imports (excl. Intra-EU trade)

Source: WTO 2005a

The EU’s position regarding FDI is equally strong: in recent years, it has been both the strongest source economy and recipient of FDI, with the 2004 enlargement expanding the EU’s advance. The UNCTAD’s (United Nations Conference on Trade and Development) 2006 ranking of the 25 biggest Multinational Corporations (MNCs) shows that 15 originate from EU member states (ranked by foreign assets).100 Of the 100 biggest MNCs, a total of 85 are from the TRIAD (EU, US, Japan) (UNCTAD 2006).

99 The EU and the US shared the first or second place in all the statistics used for Figure 4.1.
Looking at it from a qualitative point of view, the single market programme, the Economic and Monetary Union (EMU) and the various round of enlargements have not only been milestones for the European integration process, but they also significantly altered the EU’s resource basis for action in the GPE and accordingly shifted its influence in the WTO. The effects of these changes inside the EU are too diverse to simply say that they in all cases increased the EU’s capacity for action in the GPE, but they increased the attractiveness of the single market to foreign exporters and investors. This makes the EU an indispensable trading partner for most countries. Many countries hence seek access to the EU market via trade agreements and try to adapt to EU standards (Meunier and Nicolaïdis 2006). This economic clout and attractiveness is the source of the EU’s power in the GPE.

Trade policy
As has been outlined in the previous chapters, institutional resources form a further crucial basis for the EU’s power in the WTO. Compared to other EU policy areas, the EU’s competencies in the realm of external economic policies can certainly be regarded as the most far-reaching. The EU’s Common Commercial Policy (CCP) gives the EU extensive competencies in trade in goods. This well established policy area has contributed a crucial part to the EU’s emergence as a recognised international actor (Tsoukalas 1997: 231).

100 MNCs are parent companies and their foreign subsidiaries, which are subject to the control of the parent company (UNCTAD 2000: 267). The number counted here excludes Daimler-Chrysler, which is listed as originating in the US and Germany.

101 The EU’s competencies in external economic policies are based on the Common Custom’s Tariff (Art. 23,26 and 27 Treaty of Amsterdam (TOA)), the CCP (Art. 131-134 TOA) and the EU’s competencies to conclude international treaties (Art. 300, 301 and 308 TOA). For the main provisions on the CCP see Art. 133 TOA in Annex 2 (Sect. 12.2).
The EU’s actual trade-policy emerges in a complex process of negotiation between the Commission DGs, the Council and its various sub-committees, national ministries and various extra-EU influences. The stages of trade policy-making are:

- design of a negotiation mandate,
- representation of the parties during the negotiations,
- ratification of the agreement once negotiated,
- implementation and enforcement of the agreement once it is brought into force.

However, the EU treaties do not give the European Commission a “blank cheque” for trade policy, especially not in areas going beyond trade in goods. Although with the expansion of the international trading agenda into the field of new trade issues in the 1980s and 1990s, the CCP has in part been extended (for example in the field of trade in services), in a range of areas where the EU member states were reluctant to extend the EU’s and thus the European Commission’s competencies. The competence struggles during the Uruguay Round led the member states and the European Commission to seek the clarifying opinion of the European Court of Justice (ECJ). In Opinion 1/94, the European Court of Justice laid out that the EU only had

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102 Services negotiations are dealt with by the DG Trade’s Services Unit, with 15-20 people. 2005 the services unit has merged with the smaller investment unit. In practical terms, the services unit’s staff deals with one or more sectors and one or more countries per person (interview 3). In the Council, services is discussed between the Commission and a specialised formation of the 133 Committee called the “Ad hoc Article 133 Committee (Services)”, which due to its specialised nature can deal with technical issues (rather than the more political discussions taking place in the higher level formations of the 133 Committee). The Committee consists of services experts from EU member states’ Ministries. The Commission meets the Committee for 1-2 days every 2 weeks, as opinion 1/94 and the Nice treaty established mixed competencies in the services area. With this frequency of meetings, the Council is monitoring the Commission very closely and is keeping the Commission’s hands tied on sensitive issues such as audiovisual, water, education, Mode 4. For example, the Commission was under pressure by its trading partners and EU industry to move forward with regard to mutual recognition agreements. The Council blocked the Commission’s attempts and only gave it agreement to move forward on one sector (architects) as a pilot. An interviewee described the way that services knowledge is spread as a “web”: starting from the experts in the national permanent representations, then there are experts in national ministries of trade/economy and in other ministries, depending on the sector (transport, telecommunication, industry, finance, tourism, etc.) (interview 31).

103 The details of the trade policy-making process in the EU is described in more detail in Meunier and Nicolaidis 2006.
competence in trade in goods, but that there were shared competencies in other new areas. Under the Treaty of Amsterdam in 1997, the EU member states decided that community competence could be extended to certain new issues (trade in services and trade-related aspects of intellectual property rights) on a case-by-case basis by unanimous voting (Meunier and Nicolaidis 2005: 5). This formal possibility to extend community competence had not been used until the re-negotiation of the CCP leading to the Nice Treaty (Krenzler and Pitschas 2001: 443).

The Nice Treaty further institutionalised the outcome of Opinion 1/94 and its mixed competence provisions. Though exclusive community competence was extended to trade in services, a ‘positive list approach’ provided for the remaining national sensitivities. In the other contentious area, intellectual property rights, a complex division was created between those intellectual property issues which related to the commercial aspects of intellectual property rights and which thus fell under community competence as opposed to those unrelated to commercial aspects, which were kept as mixed competencies. The latter could be subsumed under Community competence by a unanimous decision of the Council. According to Smith, this leads to a set of potential difficulties for the EU: the ability to “speak with one voice” in foreign economic policy has been regarded as the main advantage and resource of the EU in the past. If this ability increasingly depends on a political decision (by the Council), this raises questions about authority and legitimacy in EU trade policy-making and it also raises questions about the impact of the EU on the multilateral system (Smith 2001: 792). It certainly denotes a shift from a technocratic understanding of trade policy to an increasing politicisation.\(^{104}\)

\(^{104}\) This politicisation has been observed for the WTO as a whole and should be seen in conjunction with the increasing public attention to issues related to trade policy. With trade policy extending into further new and sensitive areas, the competence issue re-emerged in the European Convention on the Future of Europe. The Constitution extended the “legislative procedure” (formerly: co-decision procedure) to the CCP, notably strengthening the role of the European Parliament in the CCP. If the Convention (or versions of it) did enter into force, it would bring about remarkable changes to the division of competencies between the EU and the member states: trade in services (albeit with a safeguard mechanism for cultural and audiovisual services), intellectual property rights and FDI would fall under exclusive EC competence (Meunier and Nicolaidis 2005: 6ff; European Commission 2004n).
For those areas where mixed competencies existed in the past, this has resulted in tensions between the EU and the EU member states, between the Commission and the Council. Nonetheless, if the EU member states have a common interest, the European Commission often negotiates on behalf of them even without formal legal competencies on the ground of a common position agreed by the EU member states. This has happened quite successfully in various areas, as shown by Young who refers to this new mode of co-operation as “soft institutions” (2002). In a more recent work, Young identifies “pragmatism” as a major principle of the EU participation in the WTO’s dispute settlement system: on the one hand, the member states cooperate outside the areas foreseen in the treaties. On the other hand, they tend to challenge each other’s positions only if they have strongly diverging interests (Young 2006: 189).

Nonetheless, one can identify rifts and competition around the EU’s trade policy position in various arenas: first of all, there are the domestic arenas in each EU member state, which in themselves have to combine a variety of different positions prevalent in the respective domestic economy. The differing and at times opposing positions of the EU member states (ideological, material preferences) remain key variables in the determination of the trade policy positions of the EU. Second, there is the inter-institutional arena in the EU, and more specifically the European Commission and the Council of Ministers and, to a lesser degree, the European Parliament. Third, there is the intra-Commission arena, in which rifts are especially visible between DG Trade and DG Agriculture (but one should expect rifts also between DG Trade and DG Environment/DG Development). Fourth, there is the European level, in which various stakeholders such as industry and NGOs interact with the EU institutions.

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105 It could be argued that it is a resource of the EU for action in the WTO that its nearly complete external trade policy is not part of a coherent foreign policy. The EU can in the WTO concentrate on purely economic considerations without having to give too much attention to issues such as human rights (Eglin 1997: 497).

106 In one of his speeches, EU Trade Commissioner Lamy actually identified a trend towards more unity in trade issues inside the EU, which in his eyes made possible a more active stance and pursuit of the EU’s goals regarding a new trade round (2002).
What does this mean for the EU’s power in the GPE? Both legal competencies and the institutions – here especially the European Commission – can be regarded as important resources of the EU in the GPE. The EU is unique in that the EU member states have pooled sovereignty on the European level in the CCP, and that the Council of Ministers formally or informally delegates most trade policy negotiations to the European Commission (Meunier and Nicolaidis 2006).

Furthermore, the EU’s institutions have special experience and expertise: one argument is that the EU’s institutions are more adjusted than national institutions to cope with a multi-level-governance environment and with large scale negotiations trying to accommodate diverging national preferences. This has been seen as giving them a competitive advantage in the WTO (for example Lamy 2002), but it also indicates a further research agenda. The fact that the EU does have a highly trained and experienced trade policy workforce (and can potentially additionally draw on the expertise of national trade ministries in the EU member states) can increase its potential for successful action in the GPE and in the WTO.

This point was supported by interviewees, who identified the EU’s economic weight and its technical expertise as the EU’s crucial resources, because they allow the EU to provide substantial technical input into the negotiation process (for example interview 32). An EU official explained that trade policy expertise was located mostly in DG Trade and in the USTR (United States Trade Representative), and to a much lesser extent in the Japanese and Canadian trade ministries (interview 1). ¹⁰⁷ Non-EU services negotiators appreciated in particular the EU’s skilled negotiators (interview 14, 16, 21, 23).

“[The EU’s resources] show itself in the way the EU delegates interact with other delegations, the studies they produce to back up their argumentation, the contribution they make to discussions.”

(interview 23).

¹⁰⁷ According to the interviewee, DG Trade seems to even have an advantage over the USTR, as the USTR is more thinly staffed; people there had to work excessive hours and were much less well paid, so that there was a greater fluctuation of staff. In DG Trade, staff specialised on trade policy for their whole career. This means that a large part of the worldwide trade policy memory is located in DG Trade (and also in the WTO Secretariat) (interview 1). The EU also seemed to be investing more heavily into the negotiations than for example the US; for example it installed seminars to promote ideas about competition policy (interview 14).
According to interviewees, the EU also stands out because of its institutional memory. An interviewee commented that due to its resources, the EU could importantly shape discussions (interview 24).\(^{108}\)

The scale of the asymmetry between the EU and its WTO counterparts is also evident if one compares the EU’s staff numbers with that of the majority of its negotiation partners: an EU business representative explained that the EU had much more staff than the USTR (800 in DG Trade versus 200 in the USTR), which gives it a large base of expertise (interview 30). Additionally, the EU allegedly has an advantage of distance – it can fly in experts easier and quicker to Geneva than most WTO members (interview 17).\(^{109}\)

As a trade “superpower”, the EU automatically receives special treatment in the negotiations: the EU will get attention and if it disagrees, special allowances are made (for example these would not be made even if China disagreed) (interview 16). The EU also seems to be the only counterbalancing force for the US in the services negotiations (interview 16). However, this special attention also means that when the EU negotiators make mistakes or unpopular moves, this is noticed throughout the WTO.\(^{110}\)

\(^{108}\) He explained that this ability is used when an actor has offensive interests, but that defensive actors would let others “do the work”. The EU stood out because “They can refer to documents from five years ago”. EU negotiators do not depend on written statements, but can speak freely in meetings, as they know their sectors so well (interview 24).

\(^{109}\) A NGO representative indicated that an important resource of the EU was its handling of the media, which was not only directed at the domestic level but also towards the wider WTO system (interview 35).

\(^{110}\) Other WTO members also seem to pay particular attention to who is sent to meetings, whether it is higher ranking officials or sectoral experts (interview 21). In bilaterals, the resourcefulness of the Commission can create a situation which is perceived as “awkward” by some interviewees. They described their experience in bilaterals with the Commission: the Commission would usually come with around 5 representatives plus the EU member states’ representatives. An interviewee described how a while ago the Commission had started to send 20 Commission representatives plus EU member state representatives, which the interviewee then faced on his own as the domestic ministry had not sent any experts for the meeting (interview 15, similarly in 17). Negotiators from some countries seem to feel intimidated by this kind of EU tactic (interview 19). However, some seem to use the “manpower”-game tactically: an interviewee described that his country would send only one negotiator at those times when the EU refused to move forward in agriculture (interview 19). It also seems that the bigger players, as for example Brazil, are well able to counter the EU in a bilateral.
The EU’s internal arrangements as described above pose a challenge to coherence and consistency of the EU’s trade policy approach. Meunier and Nicolaidis call it a “conflicted trade power”, because it has to accommodate not only one level of interests (as in a nation state), but both the EU member states and the European level (Meunier and Nicolaidis 2006). Tsoukalis argued similarly that in areas where the interests (protectionist versus liberal/"North-South divide”/small versus big) of the EU member states diverge, the EU’s economic policies and the EU member states’ (for example development) policies towards third countries have not always been coherent and complementary. In his view, the EU’s political system with its only partial transfer of foreign policy competencies to the EU level and its unclear division of competencies predetermines a foreign economic policy approach that can never be as aggressive as that of the USA: it can never use all the instruments that are available to an actor which pursues a “full-blown” foreign policy (Tsoukalis 1997: 234). The institutional set-up of the EU hence constitutes an ambiguous basis for its representation to the outside world. According to the respective issue-area and due to its changing membership, the EU can be regarded as a constantly changing actor. The question is therefore what type of action the EU produces on the basis of its changing resources. A first indication of this is presented in Box 4.1, which describes how interviewees view this issue:

Box 4.1 The EU and its member states: perceived impact on trade policy in the WTO

| To what extent does the EU’s special internal structure impact on the use of its power in the WTO? Several interviewees assumed that the EU would be restrained in the negotiations due to its internal coordination mechanisms. EU officials observe the same kind of “frictions” that occur in other negotiation areas. An EU official indicated that the EU’s internal negotiation machinery takes up energy of the negotiators and makes the EU a slower moving actor, who sometimes misses opportunities at the international level. This is the case for example during Ministerial Conferences, when EU negotiators are bound up in meeting the EU member states rather than other country representatives (interview 10). According to a former EU official, other WTO members also at times use the EU’s inability to move its position for their own benefit (interview 11). |

111 This would lead on research asking whether the usage of the EU’s power in the WTO is thus predetermined by its internal structure and whether the EU’s policies are thus by default “different” from the USA’s. This will, however, not be discussed here.
On services, an EU official reported about a large degree of consensus and harmony between the Commission and the 133 Committee (other than for example in agriculture). However, the EU member states would point out to the Commission where there is member state competence or where Commission proposals could not be implemented, as they conflicted with EU member state legislation (interview 3). A 133 Committee member saw this differently and reported a continuous “battle” between the Commission and the EU member states for information (interview 13). He also criticised the top-down approach that was prevalent in the relation between the Commission and the EU member states, with the 133 Committee not being involved in discussion about the Commission’s future strategy and with discussion on policy ideas being limited (interview 13).

The Commission perceives that the EU member states have a clear idea of their own interests (interview 3). According to their interests, in the different sectors, different EU member states take the leadership role: financial services: UK; telecoms: for example Germany, France, Spain, Italy; maritime services: Denmark, Greece, Germany, sometimes UK. Conflicts can arise when offensive interests differ between EU member states (interview 3). At times, the Commission tries to circumvent the EU member states, which they then sometimes noticed and it would create a crisis (interview 11).

For (non-EU) WTO members, the EU displays a rather harmonious picture when it comes to its position in the services negotiations (interview 15, 16, 19, 20, 23, 25). This seems to be based on all EU member states being generally interested in the services negotiations, and the differences lying mostly in the intensity of their interest. Divergences are visible in the areas where some EU member states have defensive interests, for example in audiovisual/cultural services (interview 20). An interviewee named, however, the fact that the non-harmonised single market resulted in a 400 page services schedule of the EU (interview 15). This undermined the EU’s otherwise well-coordinated approach in the negotiations (interview 16). However, the EU does not use EU member state delegations in other WTO member states for lobbying purposes (interview 16). A 133 committee member speculated that the Commission did not use this resource because its message could be transposed incoherently (interview 13). On the other hand, several interviewees from (non-EU) WTO members reported that they had personal connections with services representatives from EU member states, who contacted them for updates on the negotiations, especially during the benchmark discussion. Though there are no formal contacts between (non-EU) WTO members and EU member states, informal contacts are frequent (interview 13, 17, 19, 21, 26). It seems that especially the bigger EU member states, for example the UK, France, Germany, feel a need to “triangulate” the information the Commission passes on to them, whereas smaller EU member states rely on the Commission’s briefings (interview 13).

Hence, an interviewee from a (non-EU) WTO member suggested that there was a lack of transparency and confidence between the EU and the EU member states (interview 26). Another interviewee told the anecdote of an EU country calling him to make sure that the position of the respective EU member state was taken into consideration. The interviewee suggested, however:

“I would do the same. If my [capital] colleagues asked me to do something really stupid, then I couldn’t do anything, I would have to stick to my instructions […], but I would talk to my colleagues at WTO informally and ask them to pursue what I really think is right.” (interview 21).112

Source: Interviews

Whether this potential lack in coherence and consistency necessarily translates into a loss of power for the EU has been contested by others. As the EU’s nearly complete external trade policy is not part of a “complete” foreign policy, it permits the EU to mainly concentrate on economic considerations – advantageous for example when dealing with China (Eglin 1997: 497). In the 1990s, the EU with its action

112 Especially the representatives from the new EU member states seemed to be concerned with leaving the European Commission conduct the negotiations for them (interview 21, 23).
entirely (or nearly entirely) in the sphere of “soft power” was assumed to hold the key to a privileged role in the international sphere due to this unique resource equipment (for example Smith 2000: 337). On the one hand, it has been argued that the EU’s internal constraints might actually empower the EU in the negotiations: European Commission negotiators can refer to the difficulties of having to renegotiate a negotiation stance internally and hence have more leverage to make their negotiation partners agree to a compromise (Meunier and Nicolaidis 2006). On the other hand, Meunier points out that the EU’s institutional set-up can only be an advantage when the EU is on the defensive (Meunier 1998). Does it also provide an advantage when the EU is in the offensive (as in the case study in this dissertation)? The EU’s specific structure hence creates both opportunities and constraints for action for the EU.

At the same time, the increasing EU membership is a double-edged sword: while it increased the EU’s economic weight in the GPE and might increase its attractiveness as a market, it might increase the EU’s immobility as well as aggravate existing conflicts in the WTO, for example in agricultural policy (if the EU’s position becomes more protectionist) (van den Hoven 2002). Hence, the latest EU enlargements in 2004 and in 2007 raise questions as to how the nature of the EU’s trade policy will change with the arrival of 12 new cultures and interests and should give new impetus to the debate between the “free-traders” and “protectionists”. It also encourages the emergence of a new balance of power between the various EU institutions (Meunier and Nicolaidis 2005: 12, van den Hoven 2002).

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113 An EU official confirmed this: he indicated that the EU “felt” internally it had a more refined position due to its former internal bargaining (interview 10).
Business and civil society as stakeholder in EU trade policy

An arena that might warrant further consideration in the case of the EU’s involvement in the WTO negotiations, and in particular in the trade in services negotiations, is the EU’s relationship with EU business and civil society in general. DG Trade has established various frameworks within which it takes in the point of view of EU business and civil society (for example the “Civil Society Dialogue”). European businesses and civil society influence EU trade policy-making via formal channels such as industry associations, but a lot of channels of influence are of an informal character for example in the form of epistemic communities.

In comparison to American business, the influence of European business on trade-policy making seems to be less institutionalised and pronounced. Furthermore, the influence of European business can be found at different levels: interest representation takes place not only towards the EU, but has traditionally been focused towards national capitals. EU industries also display a high level of heterogeneity (compared to US industries) with diverging interests and preferences. Taube therefore suggests that European industries have difficulties in achieving an equally powerful stance. He goes so far as to suggest that free-riding on the position of influential US industries might at times be the only option for European industries (2002: 34). For the EU, support of European business can importantly increase the leverage of the EU in the WTO. However, the effects of business support or opposition for the EU’s trade policy are not clear-cut: during the Doha negotiations on the medicines required for health crises, the EU has on the contrary been more able

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114 In the services negotiations, the enlargement of the EU created a special problem: after the 1995 and 2004 enlargements, the EU had to unify its schedule with those of the acceding countries. At times, countries had to renounce commitments, as they were more liberal as those of the EU. The way the EU handled this meant that it is now unclear to non-EU countries which part of the apparently new concessions in the EU schedule are genuinely new or which ones are due to the enlargement. This has created lots of confusion and decreased the EU’s credibility. A few countries, normally allies of the EU, have since then “been less eager to be allies”. Apparently 17 countries negotiate with the EU because of the recent enlargement, but of course this issue is known across the WTO membership (interview 19, 21). At times, the Commission made the meetings with other WTO members “exploratory” so that it did not have to bring the EU member states along (interview 23). A similar situation had occurred already after the 1995 enlargement. It was expected that the EU would withdraw commitments in audiovisual services for example. WTO members had the opportunity to negotiate a compensation. The EU was criticised especially because it did not clearly indicate in which areas commitments were withdrawn (IUST 18.07.2003, 10.10.2003).
to offer concessions as business interests have not been as pronounced as in the US (van den Hoven 2002: 265).

Representatives from diverse NGOs as (albeit self-appointed) agents of civil society have in general complained about not having comparable access to the EU institutions as European industries. Their expertise and opinion constitute a further resource for the EU, but their opposition can have negative consequences for the EU’s participation in the WTO negotiations.

The EU’s services market

For 2005, Eurostat figures place the share of services in EU-25\textsuperscript{115} gross value added at 71.9\%, and at 67.6\% of employment. This makes the services industry the most important employer in the EU-25, ahead of both industry and construction. At the same time, the importance of services in the EU economy has increased steadily over the last decades (Eurostat 2007a, b), while the EU’s industrial sector has felt the pressures of a more globalised competition. This growing importance and strength of EU services industries can be seen as one cause for an increased political and economic interest in services trade (Eurostat 2006a).

As has been mentioned above, the EU is the biggest player in services trade extra-EU: “In 2005, the EU-25’s international trade in services recorded a surplus of €56.9 billion, compared to 47.6bn in 2004 and 38.5bn in 2003.” (Eurostat 2007a). It is also important to note by what large margin the EU’s and the US’ external services trade dominate the world economy:

In 2005, the European Union remained the world's largest exporter and importer of services. The EU-25 accounted for 28.3\% of global exports and 24.7\% of imports. It was followed by the USA (19.0\%) and, at some considerable distance, by Japan (6.7\%), China (4.4\%) and Canada (3.3\%) (Eurostat 2007a).

Overall, the EU has a definite surplus in trade in services. It increased from EUR 47.6bn in 2004 to EUR 56.9bn in 2005. Eurostat names the USA, Switzerland, Turkey and Norway as other countries with persistent surpluses, whereas Japan,

\textsuperscript{115} EU-25 refers to the EU’s 25 member states after the 2004 EU enlargement.
Russia, South Korea, Canada, China, Thailand and Mexico recorded significant deficits (Eurostat 2007a).

Annex 3 (Sect. 12.3) shows clearly the importance of the USA as a trading partner of the EU in trade in services. Eurostat calculates that 30.2% of EU total exports and 33.2% of EU total imports were with the USA. Annex 3 is ranked according the size of the balance between exports and imports. Other trading partners that were important for the EU in terms of volume were Switzerland, Japan and Norway. China also showed a growing volume of services trade with the EU. The highest deficits were with Morocco, Thailand, Croatia, Egypt and Turkey. Eurostat attributes this to travel services (Eurostat 2007a).

Not all EU member states contribute equally to the EU’s share in international services trade. According to Eurostat, in 2005 the UK exported most services outside the EU, followed by Germany and France. In terms of imports, Germany came first, followed by the UK and France (Eurostat 2007a). As can be seen from Figure 4.2, the UK had the biggest trade in services surplus in 2005, while Ireland and Germany had the biggest deficits.

Figure 4.2  EU member states’ share in total extra-EU International Trade in Services transactions (in %), net (in bn Euro), 2005

Source: Eurostat 2007a
Figure 4.3 gives an impression of the sectoral distribution of EU trade in services. Evidently, most of the EU’s services exports and imports concentrate in transportation services, travel services and other business services, followed by financial services and royalties and license fees.

As has been discussed in the section on trade policy competencies, trade in services competencies have not been entirely conferred to the Community level. This reflects the state of the internal market on services, which, although aimed for in the EU treaties, still remains incomplete. This is particularly striking giving that most of the services trade overall (incl. intra-EU services trade) occurs between EU member states (Eurostat 2007a). The OECD identifies the following obstacles as impediments to trade in services in the EU: monopolies, quantitative restrictions, territorial restrictions, residence requirements, rules designed to ensure independence and autonomy, regulations governing professional qualifications, different company tax regimes, price regulations, difficulties in opening a bank account in a different EU member state, differing accounting rules, payment and reimbursement of VAT,
favourable tax treatment for local providers, difficulties in the context of debt collection, difficulties with the reimbursement of medical costs (OECD 2005b: 15).

As the EU had identified a less obstructed services market as a key to achieving the goals of the Lisbon agenda in 2000, the Commission drafted a first strategy paper ("An Internal Market Strategy for Services") at the end of 2000. This strategy paper was the first in a range of communications, which reaffirmed the EU’s commitment to advancing – somehow – the integration of trade in services on the EU level. This finally led to the Commission’s presentation of the draft “Directive on Services in the Internal Market” (popularly known as the "Services Directive" or “Bolkestein Directive”) (COM(2004) 2 final/3) on 13 January 2004.

The services directive followed from the rights established in EC Treaty Articles 43, 48 and 49 (concerning “freedom of establishment” and “freedom to provide services within the Community”). It sought to establish legislation which would provide a more global solution to the challenges faced by EU service providers than the case law building up through the European Court of Justice was able to provide.

The services directive did not cover financial services, transport, and telecommunications, which fall under different EU instruments. In the area of financial services, EU activity is guided by the “Financial Services Action Plan”. On transport, the Commission published a White Paper in 2001: “European transport policy for 2010: Time to decide”. On telecommunications, the Commission developed a new regulatory framework, which came into force in 2003. The service directive also sought to exclude what could be classified as non-profit public services, because of concerns in the EU public with regard to the privatisation of public services. The

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OECD reckoned that the services directive would have covered around 50% of economic activity in the EU (OECD 2005b: 16, 21-24). In 2004 and 2005, the services directive gained significant attention in the public debate in the EU, which led to a set of revisions. The directive was finally adopted in December 2006 and EU member states have three years to implement it.

For the EU's participation in the services negotiations in the WTO, this means that on the one hand, the EU is the gatekeeper of an attractive and growing market for services. On the other hand, in terms of legislation, this market is fragmented, which creates uncertainties about the EU's actual negotiation position (as it is hard to know which legislation applies in which case). These uncertainties could have both a positive or a negative effect on the EU's bargaining power in the WTO negotiations.

The attempts at further integration of the services market, visible since the early 2000s, might be enhanced by a participation of the EU in the WTO services negotiations. Langhammer argues that the WTO negotiations could bring about further harmonisation of the internal services market, as had happened for the goods markets in the course of the Dillon and Kennedy rounds (Langhammer 2005: 323). In this way, the WTO might provide the legitimacy for further EU internal integration.

The EU's distinct position as services exporter in world trade in services, with a distinct trade surplus, underlines the strength of the offensive interests one can expect the EU to have in the services negotiations. The EU should be very interested in market access and market conditions favourable to its services exporters (incl. service provision through FDI). Services constitute a key offensive interest for the EU – and have been postulated as such in official documentation (speeches, press releases). This led to the EU's active participation in the Uruguay Round and also to its proactive attitude in the sectoral negotiations in the 1990s. At the same time, the EU postulated services as the area where it could outweigh “losses” in the agricultural negotiations.

The EU as a (or the) major source of FDI and the GATS with its Mode 3 provides an interesting tool for the liberalisation of FDI in the services area – there are provisions
here that the EU could not achieve in the separate framework of the MAI (multilateral agreement on investment) and the MFI (multilateral framework for investment).\footnote{In the 1990s, there were attempts to establish a Multilateral Agreement on Investment (MAI) in the OECD. These attempts failed. Subsequently, the EU promoted the inclusion of a Multilateral Framework of Investment (MFI) in the WTO, which the EU also had to abandon (see case study).} This gives the EU a strong incentive to push for greater market access and more transparency.

The EU’s main offensive interests are usually identified as the financial services negotiations and telecommunication services, but also encompass environmental services, construction services, distribution services and others. The EU has defensive interests with respect to audiovisual services and with respect to Mode 4. That it has such broad interests is a double-edged sword for the EU: on the one hand it gives it an important role, on the other hand it means that it has stakes in every area (interview 33). Overall, this means that the EU (like the USA and others) has a definite interest in opening up the markets of other countries for their highly successful service industries. Services should hence be an area where the EU could be expected to actively use its power to shape the negotiations in the WTO.

### 4.2 The resource basis II - key relations of the EU with the external world

This second section of this chapter looks at a second key area constituting power resources for the EU’s action in the WTO. It has already been mentioned above that the attractiveness of the EU’s internal market renders the EU into an indispensable trading partner for most countries. The EU has often been described as the centre of a network of relationships and preferential trade relationships exist between the EU and wider parts of the WTO membership. These relationships exist at different levels: the EU is engaged in multilateral negotiations in various regimes and frameworks. At the same time, the EU has established and is establishing relationships towards a range of regional groupings (for example with Mercosur,\footnote{Mercosur is a common market agreement between Argentina, Brazil, Paraguay, Uruguay and Venezuela.} the Gulf Cooperation Council, the Association of South East Asian Nations (ASEAN)). Bilateral cooperation...
forms the third level of cooperation the EU is involved in. In all these areas, the EU is dealing both with market access and regulatory issues as much as dispute settlement (Smith 2001).

A common way of conceptualising the EU’s relationships with the external world is to speak about the EU’s “pyramid of preferences” (for example Bretherton and Vogler 1999: 62), resulting from the level of preferences that the EU grants its respective trading partners. The European Free Trade Association (EFTA) countries with their tight relationship with the EU can be placed at the top of this pyramid, followed by EU candidate countries. The African, Caribbean and Pacific Countries (ACP) occupy a higher place in the pyramid than those countries falling under the EU’s “General System of Preferences (GSP)” system. The relationship the EU has with its trading partners and the preferences the EU grants can be regarded as a further potential resource for the EU’s action in the WTO, because the EU can achieve support for its proposals in the WTO via its extra-WTO relationships. As the action of other WTO members constitute intervening factors, coalition building or achieving of support by deals across regimes and issue areas could be a way for the EU to build consensus in the trade regime.

As we have seen in Ch. 3, the EU’s position in the WTO is shaped importantly by its relationship with the USA. This is not only due to their economic strength, but also due to the fact that the two are both economically and politically highly interdependent—they share about 40% of world trade between them. As discussed in chapter 3, since its inception in the 1950s, the EC has arguably acted on increasingly equal footing with the USA in the GATT and the WTO on the basis of its far-reaching competencies in the CCP (Meunier and Nicolaidis 2005). Cooperation of the EU and the US was hence a key shaping factor of the trade regime (Dahos 2003; McDonald 2000). However, in the realm of the WTO, one cannot only find cooperation, but also competition and overt confrontation between the EU and the USA. These occur both in actual trade negotiations and in the day-to-day working of the world trading regime. Cooperation emerges on the basis of shared interests and the strongly institutionalised transatlantic relationship (epistemic communities etc.). Competition exists between different regulatory models, which both the EU and the USA try to
export into the WTO system. This often attributes the role of counter-model to the EU. Having co-existed in the GATT for nearly four decades, competition between the EU and the USA has in recent years included and includes competition for a leadership and an agenda setter position in the WTO, as we will see later (Van den Hoven 2002, 2004). Confrontation takes place in the realm of the DSB, where the EU and the USA have been key adversaries (roughly 20% of all DSB cases take place between the EU and the USA) (WTO 2005a).

Among the other OECD members, the accession countries who acceded in 2004 and 2007 constituted a de-facto extension of the EU’s sphere of influence, as in the expectation of EU accession they aligned their WTO policy to the EU’s position.¹²⁰ Among the remaining OECD members (Australia, Canada, Iceland, Japan, Republic of Korea, Mexico, New Zealand, Norway, Switzerland, Turkey), a range of them (Iceland, Norway, Switzerland, Turkey) can be identified as EU policy-takers, as their economies and economic policies are closely intertwined with the EU’s.

Within the WTO, the Quad (EU, US, Canada, Japan) has played a central role in the coordination of negotiations. One would hence expect the EU-Canada and the EU-Japan relationship to be further crucial relationships in the WTO.¹²¹ The European Commission already established a dialogue on WTO issues with Japan in 1998 (European Commission 2007a). Together with Canada, the EU “commit[ed] […] to working towards an ambitious outcome to the Doha Development Agenda” (European Commission 2004o). However, the importance of the Quad might be decreasing in line with the growing importance of various developing countries in the WTO (see chapter 3 and Annex 4 (Sect. 12.4).

This should come as no surprise, given that developing countries now represent around 80% of the membership of the WTO. Their support or disapproval is hence crucial to the outcome of the EU’s policies in the WTO. The EU’s relationships with developing countries are shaped by power, interests, historical ties, and arguably

¹²⁰ Currently not all EU member states are OECD members. Slovakia, Slovenia and the three Baltic states Lithuania, Latvia and Estonia have not acceded to the OECD (OECD 2005a).

¹²¹ There is hardly any literature available on these relationships, especially within the context of WTO negotiations.
Although the distribution of power is apparently tilted towards the EU in these relationships, a range of shifts can increase or decrease the bargaining power of the respective countries towards the EU (for example shifts in the EU’s economic, security or political interests).

The centrality of economic interests for the EU’s relationships in the trade regime is obvious. For example, the EU has been a key promoter of the Chinese entry to the WTO with a range of economic, political and institutional reasons behind this. It seems that the EU acted as China’s patron rather than as driven by moral considerations, putting aside political concerns such as human rights, presumably in order not to interfere with its economic interests (see for example Algieri 2002).

The EU’s relationships with developing countries have both a formal and an informal dimension. On the formal side, there are a multitude of trade and cooperation agreements that the EU has entered into and which institutionalise the EU’s relationships with its trading partners. These agreements cover a vast range of issue areas, similar to what the WTO agreements are covering and partially going beyond the scope of the WTO agreements. The EU has concluded agreements with, for example, the Mediterranean countries (various agreements since 1995), Mexico (1997) and Chile (2002). Since the 1990s, the EU has also established interregional relations with ASEAN through the framework of various partnership initiatives. The EU is currently, among others, negotiating with Mercosur (since 1999) and has in October 2006 announced a new generation of bilateral trade agreements (European Commission 2006b). This new generation of trade agreements will focus especially on emerging economies, with some of which free trade agreements (FTAs) had not yet been established. The announcement of a possible EU-India FTA fits into the picture (European Commission 2006c).

With regard to services, all the trade agreements the EU concluded after 1995 contain provisions on service trade and are all based on the provisions set out in the

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122 The prime example for this is the Mediterranean region. In the future, the Caucasus region might receive increasing attention as well.

123 For an overview, see for example European Commission 2006a.
GATS. In this way, the EU’s approach differs from that of the US, which with the 1994 NAFTA and other agreements had followed an approach to services trade liberalisation different from the GATS (see for example Stephenson 2000).

One set of agreements the EU negotiated since 1995 were the Euro-Mediterranean agreements. They are limited in scope with regard to both liberalisation of services and co-operation in matters related to services trade. The exceptions here are the agreements with Jordan and Algeria, which contain commitments going further than the other Euro-Mediterranean agreements. All the agreements are based on GATS provisions. It is significant here that Algeria is not yet a WTO member, and thus in fact is implementing WTO legislation even prior to its accession. While the ECDPM assesses the services provisions in the Euro-Mediterranean agreements as “relatively shallow”, it also points to the space for further liberalisation, which is incorporated in the agreements, and their focus on far-reaching co-operation in the services sector.

Compared to the Euro-Mediterranean agreements, the EU and South Africa “Trade, Development and Co-operation Agreement” is less ambitious with regard to services trade, but it also leaves scope for far-reaching future liberalisation in all four modes of supply. The agreement also explicitly refers to the area of maritime services, which due to domestic concerns in the US has so far not been integrated into the WTO. Emphasis in this agreement is on economic co-operation.

In contrast to this, the “Economic Partnership, Political Co-ordination and Co-operation Agreement” (signed 8 December 1997 and entered into force on 1 October

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124 The following considerations and observations are based on an “InBrief” by the ECDPM (European Centre for Development Policy Management), which compared the services sections of ten free trade agreements concluded by the EU. For a more detailed discussion of the services provisions in the EU free trade agreements, the reader is referred to this analysis (ECDPM 2004/2005).


126 Algeria has been an observer to the GATT and the WTO since 1987. The “Working Party for the accession of Algeria” met for the first time in 1998. Algeria submitted revised offers on trade in goods and services in January 2005 (WTO 2005b).

127 The agreement between the EU and South Africa has been signed on 11 October 1999 and has been in force, provisionally and partially, since January 2000.
2000) between the EU and Mexico makes much further reaching provision for a later liberalisation of service trade: it includes a “standstill” provision in force since 2001 and provides for a second phase of negotiations which are supposed to take part after the end of the services negotiations in the WTO.

The last FTA the EU has concluded is the EU-Chile Association Agreement (signed in November 2002, provisionally in effect since 1 February 2003). It is the most extensive agreement with regard to its provisions in services trade. It contains a commitment to the liberalisation of the movement of natural persons, which might become interesting in the future (although the language remains vague). The ECDPM brief concludes its analysis of the EU-Chile Agreement as following:

> While building on many elements of previous agreements, the Association Agreement between the EU and Chile is the most complex of the FTAs examined in this brief. [...] It differs from the earlier FTAs in that [a review to facilitate progress toward further liberalisation] is an ongoing process within the Association Committee.

The ECDPM brief finds a trend towards greater institutionalisation of the services provisions and a move from potential to actual liberalisation, especially in the agreements with Mexico and Chile.

For the argument in this thesis it is important to see that while all these agreements contain more or less far-reaching options for further liberalisation of service trade between the parties, the agreements are based on GATS provisions and rely on GATS levels of liberalisation. Progress with regard to liberalisation thus remains dependent on the results of the WTO negotiations, although the agreements do open the door for further, independent approaches. If one assumes that the EU has a distinct interest in deepening liberalisation in several areas in services trade, a liberalisation strategy distinct from the GATS (although not independent and not yet yielding results) is only visible in the last two agreements with Mexico and Chile – and there only partially. This seems to indicate that the EU has given a clear preference to the multilateral agreement to pursue services negotiations.

However, relying on a multilateral framework, which is unfinished in many respects, also creates the possibility for an actor to pursue policies bilaterally that it cannot
pursue multilaterally. This was referred to as an actor’s “exit options” earlier (Sect.3.2). GATS provisions have shaped the regional/bilateral agreements and have even shaped the agreement with non-WTO member Algeria. Is there evidence for the EU’s regional/bilateral strategy shaping the multilateral regime? Abugattas argues that issues which have been left open for interpretation in the GATS framework are being defined by the main users of the provisions in regional agreements (Abugattas Majluf 2004: 17-20). At the same time, and this is visible across all the agreements analysed by the ECDPM, the EU’s “exceptions” (for example audiovisual services) are replicated on a regional/bilateral level as much as special attention is given to those areas where the EU has special interests (financial services, telecommunications).

Historical ties are the key factor in the EU’s relationship with the ACP. The ACP group consists of 78 developing countries, 41 of which can actually be classified as LDC. The relationship of the EU with the ACP can be seen as a direct result of British and French colonialism. Institutionalised subsequently with the Yaoundé, the Lomé and today the Cotonou Convention, the EU-ACP relationship has undergone significant transformations in the last three decades, reflecting shifts in economic and development ideologies. Though being classified as developing or least developed countries, the ACP is a very diverse group of countries with widely diverging levels of economic development, economic structure and interests. A small group of countries

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128 (1) GATS Art. V requires Regional Trade Agreements to comply with a set of provisions. Several regional trade agreements have attempted to define these provisions clearer – the EC Association Agreement with Jordan being one of them. (2) One of the main, complex provisions of Art. V is the requirement for “substantial sectoral coverage”. With no commonly agreed classification system for service sectors in place and multilateral interpretation of what constitutes “substantial coverage”, this has been interpreted differently by WTO members: most Regional Trade Agreements have in practice come into force excluding whole sectors (and not just parts of sectors) or modes of supply – for example Mode 4 in agreements modelled after NAFTA. Abugattas explicitly refers to the problem that countries participating in regional integration agreements start to interpret the rules set out on the multilateral level: “The problem is that, instead of being determined on the basis of GATS Art. V, sectoral coverage is being defined pragmatically on the basis of the specific interests of the parties.” (2004: 19). This includes the EU.

129 Similarly, when Latvia negotiated the conditions for its WTO entry with the US, the EU managed to prevent Latvia from committing in the area of audiovisual services, as this would have been problematic when Latvia eventually would enter the EU and its trade policy would be integrated into the EU’s.

130 Other developing countries fall under the EU’s General System of Preferences (GSP).
(mainly South Africa) dominates the EU-ACP trade relationship. Overall, the EU-ACP relationship reflects a high degree of asymmetry: while the ACP heavily depend on the EU as their export market, their importance for the EU has declined as the EU has increasingly focused on its near abroad. This has increased the EU’s leverage in the relationship.

While the EU has created this variety of formal, institutionalised relationships with its trading partners, these formal channels of interaction also have an informal side. On the basis of the formal interaction between the EU and its trading partners, informal relationships could form. International epistemic communities of experts can evolve, which can influence the evolution of ideas in international governance issues (see Sect. 2.1.2). In the case of the EU, one should also not forget that the formal and informal relationships that EU member states have with other countries potentially provide a further access channel for the EU.

The bilateral and interregional relationships the EU has with its trading partners thus provide it with a place for policy experiments: bilateral and interregional agreements can be more far-reaching than multilateral agreements, because signing a bilateral agreements is less of a commitment than signing one at the WTO level. On the bilateral/interregional level of governance, the EU can aim to shape the ideas its trading partners have about the issues on today’s trade agenda; and it can potentially promote or even insert the EU’s own regulatory model in its bilateral trade agreements. This level of governance can function as a preparatory level for further multilateral policies. Furthermore, the bilateral and interregional relationships can be a place for consensus-building and trade-offs. The EU could offer concessions on the bilateral level in order to achieve a consensus on the multilateral level. In this sense, the EU’s relationships with its trading partners constitute resources for the EU, which might in principle be deployed in the WTO.

4.3 The resource basis III: regime dependent capabilities or “the fit between the EU and the WTO”

In chapter 2 it has been elaborated that an actor’s power is shaped by the regime. In chapter 3, it was then discussed what characteristics or resources would enable an
actor to be powerful in the WTO. In this section, these considerations will be brought together with the discussion of the EU as a trade policy actor: what are the organisationally-dependent capabilities that the EU has for action in the WTO, which render the WTO into an important forum for EU trade policy-making?

Its economic clout alone renders the EU into a major power in the WTO, and the WTO regime is essentially dependent on the contributions of the major economic powers (Rode 1999/2000: 50, 62). As discussed before, the EU’s power and impact is dependent on its power in the respective issue area, as influence on the WTO’s provisions is also dependent on how important the stance of the member is in the respective issue area. For the EU, the multitude of issue areas dealt with under the heading of the WTO combined with the “single undertaking” carries the significant advantage of issue linkages: the EU might for example ask for concessions in the field of telecommunications in exchange for a slight opening of its agricultural markets. It can thus use issue linkage to achieve reciprocity (Hoekman and Kostecki 2001: 115).

Besides its influence resulting from its economic resources, the EU enjoys a special status in the WTO. When the European Economic Community was founded in 1957 with the Treaties of Rome, it was constructed according to Art. 24 of the GATT agreement which allowed for the establishment of free trade areas and customs unions between the GATT signatories. Whether the EC and later the EU and its network of preferential agreements with third countries actually complied with the GATT rules as it has been and is claimed by the EC/EU, is questionable (Woolcock 1993: 543; Preeg 1970: 26-30). An examination has never been undertaken as it could have meant that the EC members could have withdrawn from the GATT, which would have rendered the latter into a void agreement (Rode 1999/2000: 49). The existence and legitimacy of the WTO is therefore inextricably linked to the

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131 This means that for example Argentina has a substantial influence on WTO agricultural issues as it is a main grain exporter (Hoekman and Kostecki 2001: 58).

132 These preferential trade areas were and are interpreted as intermediate stages for a world-wide trade liberalisation. Several criteria have to be fulfilled by the founding countries to make the preferential trade areas “GATT/WTO-compatible”.

membership of the EU. In many ways, the EU is thus an indispensable factor in the regime, without which the regime would lose its significance.

Whereas the EC represented its member states during the GATT years without being a formal member and thus on a legally uncertain basis, the WTO agreements explicitly foresee its membership. Membership for other regional trade blocks does not seem to be intended (Mauderer 2001: 67). This is why Bretherton and Vogler can conclude that:

"... EC agency was constructed in terms of the disciplines and institutional setting of the GATT regime, but equally the regime itself was moulded to the requirements of one of its most powerful participants." (Bretherton and Vogler 1999: 55).

Other than in international organisations such as the United Nations, where the EU only has observer status, and the IMF, where it is represented only via its member states, the WTO is one of the few organisations where it has the same rights and responsibilities as other members, and hence taking on the same role as other nation states in the WTO (MacLeod et al. 1996: 170, 179ff, 189ff). This means that on the basis of its long-term involvement in the regime the EU has acquired both a formalisation of its involvement in the regime and it has acquired legitimacy for action. It has constructed its image and is thus shaping expectations.

However, although the EU is a member of the WTO, the EU member states are equally members of the WTO. This is due to the unclear division of competence between the EU and its member states and the extension of the WTO’s agenda into areas which are not subject to community competence. From a legal point of view, this creates uncertainties: regardless of the internal division of competence, the EU is bound under international law to implement and comply with all WTO agreements.

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133 Some authors even argue that the WTO would not have come into being without the EU’s initiative (for example Tsoukalis 1997: 240; Bretherton and Vogler 1999: 78).
Arguably, these legal uncertainties and “double” memberships render the EU into such a particular actor in the WTO and pose a particular challenge to the other WTO members. However, some have argued that exactly this opaqueness and the “difficult” institutional structure of the EU increases its bargaining power in the WTO: as the position of the EU is the result of an often lengthy and complicated bargaining process, negotiators of the adversary party know they cannot demand too many concessions from the EU. If they did, they would risk that the European Commission would have to consult with its member states again, which would delay the conclusion of the agreement. The EU can thus use its internal divisions strategically in the WTO (for example Meunier 1998).

The EU also has a disproportionate influence on decision-making in the WTO, both on a formal level and informally. In terms of the formal decision-making in the WTO, as both the EU and each of its member states are members of the WTO, the EU can cast 15 (since 01.05.2004: 25; since 01.01.2007: 27) voices in a vote. If both the EU and the member states voted in a decision, their votes would be restricted to a maximum of 15/25/27 (Denza 1999: 14). As discussed in Sect. 3.1.2, the consensus-rule of the GATT has de facto stayed in place in the WTO and the positions of the major trade powers are always taken into special consideration in decision-making in the WTO. The EU alone thus already has more influence on decisions in the WTO than a single nation state, and it can enhance its influence by using its influence on its neighbours (the “policy-takers” mentioned earlier) and by using its network of

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134 A thorough analysis of the legal implications deriving from the EU’s participation in international organisations or in international relations in general has been undertaken by MacLeod et al. 1996 and Emiliou and O’Keefe 1996. MacLeod et al. describe membership and observer status of the EC/EU in international organisations: “[T]he status of member allows participation of the fullest kind, placing the Community on the same footing as States which are members of the organization in question, with the right to vote, to propose motions in its own right, to speak as of right, and so on. Observer status usually implies a more limited right to participate, usually without a right to vote.” (1996: 170).

135 The legal uncertainties surrounding the EU CCP and the specific structure of the EU can be used by other WTO members to play out the various EU entities against each other. For example, Algieri demonstrates how China has known well during the last years to play out single EU member states against each other and against the EU in total (Algieri 2002: 67ff).
preferential trading arrangements (Farrell 1999: 7ff). The EU thus disposes of special capabilities to influence the WTO regulations due to the particularities of the decision-making system of the WTO.

A similar point can be made regarding the DSB. As has been noted in Sect. 3.1.2, the DSB is a step into a more rule-oriented approach to the solution of trade disputes. However, the EU clearly has an advantage when it comes to the implementation of DSB decisions. It can on the one hand afford not to implement decisions, at least for a certain time. On the other hand, its economic power gives it the potential for massive retaliations and thus power in the DSB (though these can of course hurt the EU economy as well) (Hoekman and Kostecki 2001: 83, 96-98). The DSB does not rely on an established body of law, but builds up a certain “case law” during the course of its existence. This means that those litigants that use the system extensively shape the emerging body of law – and the EU with its massive economic resources and its expertise is one of the most frequent users of the DSB (Farrell 1999: 11).

From this section it is hence obvious that there are many ways in which the international trading regime with its institution WTO provides the EU with organisationally-dependent capabilities. The key issue for further analysis is the ways in which these resources are deployed and translated into power over both the negotiation process and outcomes.

### 4.4 Interim Conclusion

This chapter has given special consideration to the second and the third research questions outlined in chapter 3, namely which resources and which organisationally-dependent capabilities the EU has at its disposal for action in the international trade regime. It has argued that in the context of the international trade regime, the EU’s position as a key actor can be assumed on the basis of its resources and other power components which were identified. Overall, as expected, the EU’s resource

\[136\text{ Other WTO members can and do also form groupings to promote their position, but the EU is the only firmly institutionalised one.}\]
equipment is unique and extensive. Its power in the WTO is founded on its economic resources and the attractiveness of its internal market. Its political power relies on extensive and extending competencies of the EU in trade policy. However, the distribution of competencies between the EU and the EU member states is not clear-cut in the area of the “new trade issues”, which carries the potential of frictional losses. In practice the effect of this division of competencies is neither a clear advantage nor a disadvantage, but carries the potential for both. It is also not clear what role EU business and civil society could play in the EU’s impact on the WTO. This will have to be considered specifically for each issue area and will therefore be a question to be carried forward into the case study.

The EU’s vast network of formal and informal relations with its trading partners provides the EU with further resources for its impact on WTO negotiations. Within the WTO itself, the EU benefits from its long established actorness and from a special legal status. Its structure enables it to have a disproportionate influence on decision-making and on the DSB. These organisationally-conferrered capabilities make the WTO an advantageous place for power exercise for the EU. The WTO hence provides the EU with unique opportunities to build up an independent identity and to prove and assert its actorness in the GPE. It is the regime where the EU not only has long established actorness, but also has achieved formal status. Theoretically, the EU should be able to establish leadership and live up to its “superpower image”. Given the leading role of the EU in services trade, it might thus be assumed that it would have a predominant influence in the WTO negotiation process, and over the outcomes produced in this sector.

This begs the question, however: to what extent is the EU’s potential weight transposed into tangible influence over the negotiation process and over policy outcomes, specifically with reference to services? The next step is therefore to consider the way the EU has exerted power in the WTO negotiations overall and specifically in the services negotiations, and what the outcomes of this power usage were. These questions, following research questions 4-6 set out in chapter 3, will be considered in the subsequent case study chapters.
5 WTO negotiations 1995-1999: agenda-setting

The case study starts at the end of the Uruguay Round. The WTO agreement, including the GATS, had just come into force. The institutional framework of the WTO foresaw no stop to the negotiations though: Ministerial Conferences were prescheduled to be held every 18 months and they needed to be filled with content by WTO members. Various negotiations, including those on services and agriculture, were scheduled by the regime to continue in 2000. Within the frame of these basic institutional cornerstones, the WTO agenda was ready to be shaped further. This framing of the WTO agenda took place both overall and in the services issue area. This chapter traces the progress of these negotiations over the first four years of the existence of the WTO and looks at how the EU tried to impact on the regime in these two different areas: how would the EU use its power in the newly created WTO?

In parallel to the framework negotiations, a set of issue-area specific negotiations on trade in services, which had been prescheduled by the Uruguay Round, took place in the WTO. These will be dealt with in detail in chapter 6. There were linkages between the different levels of negotiation, which are indicated throughout the two chapters.

5.1 Overall framework negotiations: the new round idea

As early as in 1995, only shortly after the coming into force of the Uruguay Agreements and the establishment of the WTO, EU Trade Commissioner Brittan started to promote his idea of a broadened WTO agenda (see for example European Commission 1995b). In the European Commission, there had been a tiredness after the protracted Uruguay Round negotiations, and plurilateral and bilateral negotiations were seen as the way forward. Soon, however, Brittan realised that these kind of negotiations would always put the EU into a defensive situation due to the position of the EU on agricultural liberalisation. He hence started to promote the idea of a renewed comprehensive trade round, following the model of the Uruguay Round. Personal reasons have also been named as the reason for this move by Brittan, an attempt to create a legacy (interview I). In early 1996, the Commission launched a
new strategy for its trade policy (European Commission 1996d). In a speech to French business representatives, Brittan in early 1996 outlined this strategy and called for a “less defensive approach to trade”. This move by Brittan can be seen as one in a chain of events, starting in the 1980s, which led to an overall less hesitant and more offensive position of the EU on trade policy (Woolcock 2005). In a speech in 1996, Brittan mentions the importance of EU resources in trade policy:

We will use our considerable powers to the maximum in order to ensure that our trading partners respect their WTO and other market-opening commitments (European Commission 1996f).

Equally, Brittan is quoted in the accompanying press release:

It is time for Europe to abandon its defensiveness about liberalisation and focus fully on opening those markets that remain closed to our products and investment (European Commission 1996d).

The Commission proposed a new market access strategy, and wanted to establish a market access database. The EU also set out to push for a completion of the ongoing services negotiations.

In April 1996, Brittan noted that the phase of consultation and gathering of new ideas on EU trade policy had not yet been completed. He described bilateral approaches as of secondary relevance for Europe and emphasised the central role of the WTO. As the Marrakesh agreements contained commitments to further trade liberalisation, Brittan used this to argue that the regime compelled WTO members to launch new negotiations before the end of the century. He mentioned as negotiation issues agriculture, NAMA and government procurement, but not services. Importantly, a range of new issues were proposed to be added to the WTO: investment, competition, labour and environment (European Commission 1996g). In this very first phase, we can hence see first of all a definition of the potential new WTO agenda on the EU level and the initial promotion of this agenda among WTO members. The EU wanted to substantially broaden the scope of the WTO agreements, arguably on the basis on its resources which Brittan had considered as substantial.

On the EU level, discussion continued in the run up to the Singapore Ministerial, which was scheduled for December 1996. For example, shortly before the Singapore
Ministerial, Brittan tried to win the support of Dutch business representatives: “Europe is increasingly in tune with your needs, but needs your continuing support.” (European Commission 1996h). At this early stage already, he assessed his approach at “selling” the now so-called “Millennium Round” idea as successful:

I am nonetheless very pleased that the working hypothesis in everyone’s mind now seems clearly to be that what could properly be called a Millennium Round will be needed (ibid).

This suggests that Brittan (and with him the European Commission) was at this stage building consensus both on the domestic and on the international level, which to them seemed to have been proceeding smoothly. Additionally, the talks on financial and telecommunication services were used as a litmus test for the ability of the WTO to move forward and hence for the EU’s ability to achieve its long-term goals in the WTO: “If we fail on these short-term objectives, the longer term strategy will be blown off course” (ibid).

5.1.1 The Singapore and Geneva WTO Ministerial Conferences
Wilkinson interprets the First WTO Ministerial Conference in Singapore in December 1996 as different from a GATT Ministerial, in that it evoked considerable discussions and negotiations in and around the conference, rather than a simple stock-taking which seemed to have been prevalent in GATT Ministerials. Wilkinson also notes a changed public awareness, which he attributes to a growing expectation and attention to the WTO procedures (for example Wilkinson 2001: 413). This changed awareness certainly also had to do with the fact that already in this first Ministerial after the end of the Uruguay Round, discussion centred around the question whether a new trade round should be launched at the end of the century. The Ministerial was hence much more than a pure stock-taking exercise, but involved active agenda-setting discussions.

During the Singapore Ministerial, Brittan (re-)introduced his vision of the new Millennium Round, which would incorporate a range of new negotiation areas into the WTO framework. He mentioned competition and investment, the attempted new deal on telecommunication services and information technology. To calm the existing opposition, he explained that a work programme did not mean a decision on further
negotiations (European Commission 1996e), although it is clear that the establishment of a work programme is an act of agenda setting, which makes a later turning away from it much more difficult. In a position paper targeted at journalists, the European Commission set out its vision for the future of the WTO. While the paper acknowledged the prescheduled negotiations in agriculture, services and various other areas, due to start in 2000 for the two earlier issues and later for some of the others, the paper also presented the vision of the Millennium Round and included the trade and labour issue as well as a section on trade and environment (European Commission 1996a). It is clear that for the EU the greatest target and challenge was at this stage to convince other WTO members of the necessity of a bigger trade round and that the WTO agenda for the future negotiations should be extended beyond services and agriculture.

During the Singapore Ministerial, discussion centred on what the WTO’s future should be. The developed countries’ requests for discussions regarding the new issue areas were refused by many developing countries, which insisted that before further issue areas could be added to the WTO, all of the Uruguay Round agreements would have to be fully implemented, especially in the area of textiles and agriculture. The question of Uruguay Round implementation was to become one of the constantly disputed issues between developed and developing countries. Equally disputed was the move to include labour rights into the WTO (Wilkinson 2006b). In Langhammer’s view, the hesitant attitude and the lack of implementation in sensitive sectors by the developed countries created already at the Singapore Ministerial a “disillusioning” for the developing countries after the success of the Uruguay-Round. Apparently, the Ministerial Declaration was mainly negotiated between the major trade powers, as it had often happened in GATT negotiations. This led to frustration among developing countries. ICTSD quotes a developing country member who described the meeting as “expanded bilateral”. However, this criticism and frustration did not lead to a disruption of the Ministerial process and all WTO members agreed

137 Apparently the strongest proponents of this were the US and Norway (ICTSD 1996); Hoekman and Kostecki report it was the US, France and Canada (2001: 452).
to the compromise. The compromise that emerged was hence celebrated as a success by politicians, but many negotiators and trade experts felt that the disagreements had only been postponed to future negotiations in the Councils and Committees in Geneva (ICTSD 1996; Langhammer 2000: 2; Pedersen 2006).

The Ministerial had the following key results: the draft proposal for the Information Technology Agreement, put forward by APEC (Asia-Pacific Economic Co-operation) countries and the EU, was adopted. A range of new working groups was established and mandated by the conference in order to discuss government procurement, trade and investment as well as trade and competition. The Committee on Trade and Environment was created as another permanent institution inside the WTO and the WTO’s relations to the IMF were institutionalised by a new cooperation agreement (ICTSD 1996; Hoekman and Kostecki 2001: 105; Langhammer 2000: 2). The Singapore Ministerial Declaration also included commitments to implementation and the WTO as an institution, the latter of which can usually be found in all WTO Ministerial Declarations. On services, the Singapore Ministerial reconfirmed the commitment of WTO members to the various negotiations that were still taking place and set a range of deadlines for them (see Box 5.1). The declaration outlined the broad aims of these negotiations: improved market access and flexibility for developing countries. It provided a framework for subsequent negotiations in Geneva by setting and reaffirming deadlines. Remarkably, in the professional services area, WTO members envisaged a further extension of disciplines beyond the accountancy sector.

Box 5.1 The section on services in the Singapore Ministerial Declaration

<table>
<thead>
<tr>
<th>Services Negotiations</th>
</tr>
</thead>
<tbody>
<tr>
<td>17. The fulfilment of the objectives agreed at Marrakesh for negotiations on the improvement of market access in services - in financial services, movement of natural persons, maritime transport services and basic telecommunications - has proved to be difficult. The results have been below expectations. In three areas, it has been necessary to prolong negotiations beyond the original deadlines. We are determined to obtain a progressively higher level of liberalization in services on a mutually advantageous basis with appropriate flexibility for individual developing country Members, as envisaged in the Agreement, in the continuing negotiations and those scheduled to begin no later than.</td>
</tr>
</tbody>
</table>

Pedersen explained this agreement despite the underlying procedural critique with a lack of resources and expertise: many developing countries representatives had never participated in a GATT/WTO meeting, or were ill-prepared (2006).
1 January 2000. In this context, we look forward to full MFN agreements based on improved market access commitments and national treatment. Accordingly, we will:

• achieve a successful conclusion to the negotiations on basic telecommunications in February 1997; and

• resume financial services negotiations in April 1997 with the aim of achieving significantly improved market access commitments with a broader level of participation in the agreed time frame.

With the same broad objectives in mind, we also look forward to a successful conclusion of the negotiations on Maritime Transport Services in the next round of negotiations on services liberalization.

In professional services, we shall aim at completing the work on the accountancy sector by the end of 1997, and will continue to develop multilateral disciplines and guidelines. In this connection, we encourage the successful completion of international standards in the accountancy sector by IFAC [International Federation of Accountants], IASC [Inter-agency standard committee], and IOSCO [International Organisation of Securities Commissions]. With respect to GATS rules, we shall undertake the necessary work with a view to completing the negotiations on safeguards by the end of 1997. We also note that more analytical work will be needed on emergency safeguards measures, government procurement in services and subsidies.

Source: WTO 1996b

Brittan evaluated the Singapore Ministerial as a success for the EU's strategy:

The Commission's call to chart a course towards a Millennium Round has received wide support from developed and developing countries. [….] A clear objective for WTO has been set this week. We have a well-defined road map for continuing liberalisation of trade and a broadening work programme to keep the WTO up to date with a fast-changing world economy (European Commission 1996b).

The Commissioner also pointed out that Ministers had confirmed their support for agreements on financial services, accountancy services and that an additional group of countries would submit offers to the telecommunication services negotiations (Barbados, Egypt, Jamaica, South Africa, Indonesia, Australia, Canada, Hong Kong (China), Korea, Poland, Switzerland, Singapore and the Slovak Republic) (European Commission 1996b). This obviously played into the hands of the EU.

Eighteen months later (May 1998), Ministers reconvened for the Geneva Ministerial. This conference remained without major results due to the continuously divergent position of the WTO members (Wilkinson 2006b), but foresaw the launch of a work programme for future trade negotiations to provide input for the next Ministerial

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139 Document S/C/3 (Report from the CTS to the General Council of November 1996) additionally mandated the CTS to conduct an “information exchange” between WTO members in preparation of the GATS 2000 negotiations and to start work on negotiation guidelines and modalities as required by Art. XIX GATS.
Cofnerence. Brittan, allegedly the one who had first called for the round, seems to have succeeded in establishing the idea for the new trade round (Rode 1999/2000: 60). Accordingly, Brittan welcomed the move of the US towards supporting a comprehensive trade round:

Even the US, who had previously favoured continued sectoral negotiations, appeared more open at the Geneva Ministerial to considering a Round as one option for further liberalisation (European Commission 1998a).

This implies that the EU assumed at this stage that it had been able to at least partially warm the US to its idea for the Millennium Round. It appears that at this stage, the EU had considerable influence and capacity to shape discussions in the WTO, as it was leading and pushing forward its agenda, regardless of the rather hesitant position of the US.

This was well recognised by Brittan and arguably the European Commission, who were additionally reassured by the progress in the issue-area specific negotiations on trade in services (see chapter 6). Brittan emphasised this new position of the EU in speeches in 1997 and 1998:

Looking at our record in the Uruguay Round, in working for the ITA [Information Technology Agreement], in reaching an international agreement on liberalizing telecoms and now in working for a similar agreement to liberalize financial services, I have no hesitation in claiming that the EU is now at the forefront of the process of liberalizing world trade (Brittan 1997).

I do not think I can be accused of hubris when I say that the European Union has emerged as a guiding, if not leading, force in the international trading system (European Commission 1998a).

The EU was hence definitely turning from a rather defensive position in the 1980s to one of leadership and a more offensive position in the 1990s. At the same time, it can be argued that the EU perceived increased opportunities for power usage of the EU in the WTO, which led it to position itself as a new leader in the WTO.

The idea that the EU was now a leader (or the decisive leader) in the WTO can be attributed directly to Brittan. It might have served more than just to frame the discussion in the international forum WTO though: a former EU official explained that it was regarded as a good way to convince the EU’s domestic constituency of the
need for a broad negotiation round, especially in order to overcome the French resistance towards further movement on agriculture (interview 1). Apparently there was an awareness in the European Commission that pinning agriculture against services alone would not overcome the defensive stance the EU had in agriculture, although for example Brittan tried to play up and emphasise the French interest in services liberalisation (European Commission 1996f).

5.1.2 The Seattle WTO Ministerial Conference

In July 1999, the European Commission presented its proposed agenda for the Seattle talks, which included the extension of WTO talks beyond agriculture and services to include competition policy, investment, consumer health, development, environment, government procurement and industrial tariffs. On agriculture, it was obvious that the paper outlined a defensive position (FT 09.07.1999; European Commission 1999a; see also Paemen 2000), but the appointment of the French Pascal Lamy seemed to have been a good strategic move to get the French on board (for example FT 13.07.1999). It can be interpreted as a move to enhance the EU’s capacity to act.

However, while the EU might have managed to increase domestic support for its proposals by this move, the circumstances in the WTO developed for the worse for the EU. Several months were taken up by a battle around the question as to who should be the next WTO DG: Michael Moore (New Zealand) or Supachai Panitchpakdi (for example FT 03.05.1999). Once this conflict was resolved with a compromise to divide the term in office between Moore and Supachai, only little time remained for the preparation of the Ministerial Conference and among the leading countries, let alone the broader WTO community, there was still no agreement as to which negotiation issues should be included in the Seattle agenda.

In October 1999, a first draft for the Seattle Ministerial was hence rejected by the US. It had been a text which had left a vast range of options open and was thus no real step forward to an agreement (Odell 2007). A second draft of the text included weakened versions regarding anti-dumping (AD) regulations, and the proposed investment rules and competition policy. Developing country flexibility was cut out.
These changes were seen as a direct result of US opposition to the first draft, and the EU, Japan and other countries accused the US of “obstructionism” (FT 11.10.1999). This means there was a clear lack of cooperation between the EU and the US which made the WTO process lurch. The EU criticised the weak US support for the new trade round launch (FT 18.10.1999). Closer to the Ministerial, high level meetings took place between US President Clinton and European Commission President Prodi to coordinate between the EU and the US positions (FT 28.10.1999). This open criticism and the high level meetings can be seen as attempts by the EU to make the US move ahead, but it might have come too late for the Seattle Ministerial.

To a certain extent, the EU’s negotiation position was weakened by the reappearance of divisions among EU member states in the direct run-up to the Seattle Ministerial. While the EU had presented a common agenda for the WTO talks in the summer, in fact internal rifts had remained and became clearly visible in the run up to the Seattle Ministerial. The first contentious area was the one on trade and labour. EU member states were divided on these questions (FT 17.10.1999). The second was the French demand for an exemption of audiovisual services from the negotiations (FT 14.10.1999). The EU’s internal difficulties in regard to a reform of the Common Agricultural Policy (CAP) reform further limited the EU’s negotiation margin in this crucial area (Langhammer 2000: 3).

The trade and labour issue proved highly contentious in the WTO itself: four weeks before the Seattle Ministerial, a renewed push by the EU for the inclusion of labour issues onto the WTO agenda seems to have only deepened the rift between WTO members (FT 09.11.1999). Similarly, agriculture turned into another major stumbling block (or maybe the key stumbling block) in the run-up to the Ministerial (FT 26.10.1999). A third revised version of the draft text for the Ministerial consequently showed the extent of disagreement between the different groups in the WTO, displaying large parts of bracketed text throughout (FT 22.10.1999).

140 Denmark, Sweden and Austria supported a working group on labour rights at the WTO. Other EU member states were only for a looser commitment.
At the same time, there seems to have been a sense that negotiation dynamics in the WTO had started to change. In October 1999, Pascal Lamy in Washington commented on changes in the way the WTO functions:

\[
\text{In the old days, getting a new Round launched and indeed agreed was simply a question of aligning EU and US objectives, sidestepping the odd row about agriculture, signing up the rest of the world, and catching the next plane home. Those days are gone. Developing countries must become, and are becoming, key players within the WTO in order for it to function as a truly global institution (European Commission 1999b).}
\]

This would indicate that in the European Commission there was a recognition that a change in the power structure in the WTO was taking place. A similar analysis of the changing situation at the WTO is visible in Lamy’s speech at the opening of the Seattle Conference (European Commission 1999d).

This development inside the WTO was, however, not the only change in the international trade regime that the European Commission observed. Lamy commented also on a newly emerging presence of NGOs (European Commission 1999d, 1999c). These two changes, mentioned by Lamy at this stage prior to the Seattle conference, culminated in the Seattle Ministerial, where the newly emerging presence of NGOs made itself felt: the conference was accompanied by an unprecedented level of protests by anti-globalisation demonstrators, managing to disrupt the conference progress at times (see for example Bleyer 2000), and ended in a debacle for the EU: while the European Commission had for a long time envisaged the Seattle Ministerial as the starting point of the new trade round, the conference failed.

What did this mean for the WTO? The failure of Seattle gave rise to a substantial discussion both among practitioners and academics. An analyst ascribed special importance to this failure:

\[
The failure of the Seattle ministerial to launch a new round was unique in the history of the postwar global trading system. Never before had countries come together to start a negotiation and failed to do so. Prior rounds were replete with instances of missed deadlines and “time-outs” before talks were completed […], but ministers had never before failed to agree to start talking about trade problems and their possible remedies when they had all convened to do so (Schott 2000: 5).
\]
Although the protesters on the streets of Seattle celebrated the conference failure as their victory (see for example Clarke 2000; Bleyer 2000; Gould 2000), most of the literature identified other reasons and found different explanations:

A first set of explanations for the failure of Seattle points to the substance of the agenda, which had led to irreconcilable differences between WTO members. As discussed, before the conference differences between industrialised and developing countries increased rather than diminished. The positions of the EU, the USA and Japan were polarised as well (for example Das 2000: 186; WTA 01.03.1999; Schott 2000). Following this line of argument, Bergsten hence recommends that what is needed to launch the new trade round (which he saw as being of key interest to the US) is mainly US initiative. The US needed to overcome its internal stalemate and to also build a common agenda with other WTO members (Bergsten 2000).

A second set of explanations for the failure relates to conference management. Preparation and negotiations in the run up to the conference started too late. This was in part due to the fight over the next WTO DG, which could only be ended in July 1999 (Odell 2003: 13-14; Das 2000: 193ff; Narlikar 2004). Mediation between the different interests was weaker than in the two previous conferences and several severe faux-pas happened in the political management of the conference (Odell 2003: 13ff, 18-21; see also Odell 2007).

A third set of explanations relates to the relation the WTO has with civil society. The protests at the side of the Seattle Ministerial hence were taken to indicate the

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141 See for example the interview with a representative of the group “Global Citizen” in Foreign Policy, No. 118, Spring 2000, pp. 29-55.

142 This polarization had various reasons: The US still suffered from its now “chronic” trade deficit (Langhammer 2000: 2) and US congress was hence reluctant to grant the Clinton administration trade negotiation authority. Or, the contending views of the EU and the USA on the future of the global trade order might have contributed to their failure to reconcile their views (for example Wahl 2000; Schott 2000). The EU and the US had failed to develop a common vision of the agenda; and even during the conference the US still circulated its own proposal for the narrow round on agriculture, services and labour standards (Guardian 01.12.1999; Das 2000: 193).
changing attitude in civil society to the WTO (McMichael 2000 Esty 2002; see also Sampson 2000; Wade 2003; Clarke 2000; Graz 2000; Gould 2000). Importantly, in this way the options for using policy tools to encourage development were said to become increasingly limited (Wade 2003). This set of explanations for the failure of Seattle gave rise to a wider debate on the legitimacy and accountability of the WTO (Esty 2002; Henderson 2002).

A fourth set of explanations relates to the ideas inspiring trade-policy making. Similar to his analysis of the trade system in the early 1990s (Bhagwati 1991), Bhagwati interpreted the failure of Seattle as a result of the rise of the protectionist idea of “fair

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143 The organisational changes due to the arrival of the new WTO DG meant that pre-conference negotiations only got under way eight weeks before the conference. The draft Ministerial Declaration, which had to be taken as the basis for negotiation during the Ministerial, was a contended and very extensive text with an endless amount of bracketed text options and had not been brought to a manageable format and length when the conference started (Odell 2003: 13-14; Das 2000: 193ff; Narlikar 2004).

144 The new attention to the WTO that had been observed at the Singapore Ministerial already was seen as part of a new criticism brought forward towards the WTO, namely that it was not representative of civil society or denied access to it. As part of the broad debate on globalization taking part in the late 1990s, it was also feared that the WTO could severely overwrite and delimit the political space of national states in favour of a global “rule of the market”, or even as part of a kind of world government for trade: “The notion of a global, collective state managing capital’s affairs is foreshadowed in the organizational structure and operation of the WTO” (McMichael 2000: 467; Esty 2001).

145 The debate is exemplified by two articles by Esty (2002) and Henderson (2002). Esty argued that the WTO suffered from a legitimacy crises, which was indicated by the continuing protests by civil society accompanying the meetings of international economic institutions and which was due to the WTO being out of pace with “modern norms” (2002; see also Sutherland et al. 2001). He recommended to the WTO that it re-built its legitimacy by increasing its links to civil society and by proving its efficacy in not just serving economic objectives, but by furthering broader societal objectives such as human rights issues, poverty alleviation and environmental protection. Additionally, the WTO needed to introduce more direct accountability and transparency (Esty 2001). Esty’s idea of a shaping of the international trade regime was refuted by Henderson (2002), who argued that an international organisation’s legitimacy, and hence the WTO’s legitimacy, derived from its member governments. He argued that national states remained the main actors in the GPE and in the WTO. They also incorporated wider societal concerns in their negotiations in the WTO already, and there was hence no need nor use in expanding the WTO beyond trade issues. Hence, Henderson did not see a necessity to involve NGOs in the WTO decision-making process, nor did he think that these organisations would have legitimacy to become involved. With this he does not mean the increased provision of information, which as we have seen, had been introduced with relatively little controversy in the WTO. Henderson refuted an involvement that gives NGOs a function beyond observer status (2002). While Henderson acknowledges there has been change in the role of the WTO, he locates the change inside the organisation (new rules, new issues, new members), while Esty locates it outside in the changing international system.
trade” (or “managed trade”)\textsuperscript{146} in developed countries, which led to demands for the inclusion of a wide range of standards (among others on environmental protection and on labour rights) in the WTO. This in turn alienated the developing countries, who regarded these measures as detrimental for their economic development and as tools of the developed countries.\textsuperscript{147} Bhagwati hence proposed to refocus the WTO on trade liberalisation (Bhagwati 2001). Contrary to Bhagwati, others argued that the WTO system was influenced too much by the idea of “free trade”, and hence were adamant that policy space of national states needed to be maintained and economic development should be achieved through managed protectionism. The international trade regime was to be reconstructed to further these objectives (Wade 2003; McMichael 2003; Clarke 2000).

A fifth set of explanations places the Seattle failure in the wider development of the post-war trade regime, which meant that certain interests (labour, developing countries’ interests) had been systematically sidelined and where now causing disruptions in the negotiation process (Wilkinson 2001; see also Wilkinson 2000).\textsuperscript{148}

\textsuperscript{146} In his 1991 analysis, he referred to “managed trade” rather than to fair trade, but the concepts are similar.

\textsuperscript{147} Although he describes the idea of managed trade as on the decline in the academic sphere (Bhagwati 2001: 18ff), it had been taken on board by a range of civil society actors. The rise of this idea hence had inspired the civil society opposition against the WTO, and civil society now feared that trade threatened national cultures, human and labour rights. According to Bhagwati, this had led to demands for the inclusion of a wide range of standards, for example on trade and environment and trade and labour. Bhagwati hence recommended “lightening up” the WTO by turning back to the original purposes of the GATT/WTO, namely trade liberalisation, increasing fairness in the DSB and attempting to reshape ideas in civil society, for example by institutionalising dialogue between the WTO and civil society (Bhagwati 2001).

\textsuperscript{148} Arguing from a historic institutionalist point of view, Wilkinson argues that because the broader institution ITO failed, trade regulation and hence labour and social interests had been systematically side-lined in the international trade regime. The same had happened to developing countries’ interests; and the later addition of special and differential treatment to the GATT was not sufficient to redress this imbalance of interests, which in the Uruguay Round was even acerbated by the addition of further areas to the GATT contrary to developing countries. Wilkinson argued that these systematically sidelined interests led to the collapse of Seattle. Wilkinson hence argued for a departure from these “traditions” in the world trade regime. He argued that developing countries interests had to be addressed before new areas would be incorporated into the WTO. Similarly, the relationship between the WTO and civil society as well as organised labour needed to be taken into account (Wilkinson 2001; see also Wilkinson 2000). In later work, Wilkinson dealt with the fact that despite of the systematically sidelined interests, change in the trade regime had not been forthcoming and he attributes this to the shared belief in the superior benefits deriving from multilateral trade liberalisation through the WTO and a nearly unchanged global power distribution (Wilkinson 2006b).
Finally, a sixth set of explanations attributes the failure of Seattle to the new role developing countries played in the run up and during the Seattle conference. Developing countries for the first time endeavoured to participate actively in a WTO Ministerial, with preparatory sessions set up to train their officials (Odell 2003: 8) and an active participation of developing countries in the pre-Ministerial negotiation process (Watal 2000; see also Mattoo and Subramanian 2004; Pedersen 2006). Obviously, the broad group of developing countries pursued a range of different issues, but they also managed to coordinate among themselves to a certain extent. (Watal 2000; Pedersen 2006).\(^\text{149}\) This meant that additional voices had to be incorporated into the negotiation process, while at the same time new coalitions and thus new divisions were building up (Langhammer 2000).\(^\text{150}\) Pressure developed inside the organisation challenging the way it had functioned up to now. The failure of the Seattle Conference thus brought to the light of the day a whole host of systemic issues which had "smouldered" under the surface for a while. An interviewee put it in this way: “Seattle was a “wake-up” call for the EU: the game had started to change” (interview 32).\(^\text{151}\)

\(^\text{149}\) For example, the new coalition of the like-minded group (LMG) emerged prior to Doha. The like-minded group were Cuba, Dominican Republic, Egypt, Honduras, Indonesia, India, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, Zimbabwe and Jamaica. Watal criticises developing countries though for their focus on special and differential treatment and other defensive ideas and recommends to them to focus on their offensive interests in trade liberalisation (2000).

\(^\text{150}\) The expansion of membership and the fact that due to the Single Undertaking free-riding on negotiated agreements had been minimised explain this new interest of developing countries in the negotiations (Schott and Watal 2000). Hence, the “green room process”, a legacy of the GATT, failed to work this time, as it was apparently employed to keep out many developing countries (Das 2000: 191, 194ff; Schott 2000; see also Ricupero 2000). Pedersen reports active denouncement of the “green room process” by the developing countries, which they had not dared (or did not manage to) at the Singapore Ministerial (2006).

\(^\text{151}\) A proposal after the conference was hence to set up steering committee that would replace the “green room process” and transform consensus building into a much more transparent and inclusive procedure in the WTO (Schott 2000; see also Schott and Watal 2000). The Secretary General of UNCTAD, Rubens Ricupero, went further than Schott: He called for a general redressing of the substantial imbalances and biases in trade rules detrimental to the developing countries, which had been institutionalised and legitimised by the GATT and then the WTO. He identified a set of "double standards" and exceptions, that to developing countries gave the trade regime little trustworthiness (2000). For further proposals on WTO reform post-Seattle see Schott 2000.
Negotiations after Seattle
The year after the Seattle breakdown seemed to be marked by standstill rather than by a search for a new compromise; several initiatives did not provide significant new momentum as mistrust between the negotiators prevailed. Meanwhile, negotiators were awaiting results from the US elections in 2000. Although preparations for negotiations on agriculture and services trade had moved forward as foreseen in the so-called “built-in agenda” of the Uruguay Round, they were not incorporated in a broader framework now, which hindered progress. The business community expressed impatience with the sluggish process towards a new trade round (Das 2000: 199ff).

Clearly, in this phase services as an issue area played a completely subordinate role in the negotiations on the general framework of the WTO. Agriculture, implementation issues and the proposed extensive expansion of the WTO agenda were taking up the attention of WTO members. Several reasons can be suggested for this low-key role of services:

- Agenda-setting had already taken place for services and the review institutionalised in the regime.
- The services issue was not considered as a contentious area. This was argued by a former EU official who stated that in the 1990s, the services negotiations were considered as a “clean” area or a “clean” industry. Services liberalisation was an uncontested issue (interview 11).
- There could have been a lack of understanding in these more general negotiations about what the services negotiations would entail.
- After the successes of the telecommunication and financial services negotiations, there might have been an expectation that the services negotiations might go ahead without high level, politicised fights.
- There might also have been a lack of interest in the services negotiations.

However, while services played a low key role in these negotiations on the general framework of the WTO, discussions about the GATS 2000 negotiations took place in the CTS. The next section deals with these discussions.
5.2 Issue-area framework negotiations: preparing GATS 2000\textsuperscript{152}

The CTS’ agenda was performed by the provisions for future negotiations as foreseen in the GATS agreement (see Sect. 3.3.4). Art. XIX GATS required WTO members to prepare for the next round of negotiations by conducting an assessment of services trade. Obviously, the GATS agreement left open how such an assessment would be conducted.

A first milestone for WTO members in the preparation of the GATS 2000 negotiations and an opportunity to refine the broad provisions of the GATS was the Singapore Ministerial. Prior to the Singapore Ministerial, the CTS hence discussed expectations for the Singapore Ministerial. One of the key points was whether an information exchange as part of the requested wider assessment of service trade and liberalisation would be desirable and when it should take place. Discussion was based on papers by Australia and Chile (s. discussion in documents S/C/M/13; S/C/M/12; S/C/3; S/C/M/14). This information exchange was set up by a document to the General Council as a preparation for the GATS 2000 negotiations (WTO S/C/3 06.11.1996).\textsuperscript{153}

In 1998, the information exchange scheduled by the Singapore Ministerial started. The discussion about the approach towards the GATS 2000 negotiations gained pace. Members engaged in the exchange, guided by initially four, then five questions:

- What are the regulatory authorities, governmental and/or non-governmental?;

- Are there any special or common problems encountered as regards transparency or the application of the most favoured national principle?;

- What are the most prevalent types of restriction on market access or national treatment?;

\textsuperscript{152} The CTS in 1995 also dealt with the enlargement of the EU, establishment of working groups, observer status for other international organisations, NAFTA etc.. This will not be dealt with here as this section only deals with the prenegotiations for the GATS 2000 negotiations.

\textsuperscript{153} The results of the Singapore Ministerial with respect to services liberalisation were already discussed above (see Sect. 5.1.1).
Are there other types of regulation - for example in the areas of licensing, technical standards or qualification requirements - which commonly restrict trade in the sector?

What are the main barriers exports face in the market of other Members? (WTO S/C/M/29.24.08.1998)

The exchange on the basis of these questions was intended to "facilitate the access of all Members, in particular developing country Members, to information regarding laws, regulations and administrative guidelines and policies affecting trade in services." (WTO S/C/M/28 20.07.1998) The CTS met and consulted on a multitude of sectors in June 1998 and the Secretariat published a set of "background notes" on the following sectors: distribution, courier, audio/visual, construction and engineering, and postal services. In July 1998, members discussed legal, advertising services, architecture and engineering services, computer and related services, environmental services (WTO S/C/M/29 24.08.1998). By August, several delegations had submitted discussion papers to the CTS, but not the EU. In October, WTO members dealt with energy services, health and social services, education, air transportation and tourism related services (WTO S/C/M/30 12.11.1998). The Chairman framed the discussions as open-ended and encouraged "spontaneous exchange". Meetings were supposed to be held mostly in informal mode to facilitate this (WTO S/C/M/28 20.07.1998). This first phase of the prenegotiations to GATS 2000 was hence mostly a phase of information gathering and exchange among the negotiators.

Due to the informal character of the negotiations, the reports from the CTS only provide summaries and the contributions of single countries cannot be determined. Most papers submitted to the CTS were also informal. However, if one takes the submissions of informal and formal papers as an indication of who shaped the discussions in the CTS (Table 5.1), it is interesting to mark first of all the complete absence of discussion papers by developing countries. In a paper on agriculture and services, Egypt attributes this absence to the lack of capacity and resources by developing countries (WTO WT/GC/W/135 26.01.1999). If developing countries did not manage to provide input at this stage of the discussion, the build-up of knowledge can be seen as mainly developed country led and discussion would focus on developed country issues. The lack of input from developing countries was
intensified, for example, by the fact that the Secretariat’s “background notes”, although not intending to be a comprehensive sectoral analysis due to the pure scope and diversity of the service sectors in different countries, were mainly based on OECD country examples and statistics. A reason for this is that statistics from other countries were simply not available.

A second observation is that the EU only submitted one formal and one informal paper, although the other Quad members were very active. In a contribution to the discussion, Australia expressed its disappointment with a lack of contribution by a range of members to the information exchange programme (WTO WT/GC/W/116 20.11.1998); this could mean that the information exchange exercise was at this stage a rather one-sided discussion in terms of participation, potentially even without significant contribution of the EU.

Table 5.1  Formal and informal papers submitted to the CTS for the sectoral information exchange programme in 1998

<table>
<thead>
<tr>
<th>Service Sector</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transport services</td>
<td>(a) Transport Services (general): Japan, and Poland; (b) Air Transport Services: Australia, New Zealand and Turkey; (c) Land Transport Services: Australia and New Zealand; (d) Maritime Transport Services: Australia, New Zealand, Norway and Turkey. The United States submitted a formal paper on Transportation Services (S/C/W/71), EU (informal paper)</td>
</tr>
<tr>
<td>Legal services</td>
<td>Australia, Canada, Japan and the United States (plus paper from International Bar Association)</td>
</tr>
<tr>
<td>Advertising services</td>
<td>Australia, Japan and the United States</td>
</tr>
<tr>
<td>Architectural services</td>
<td>Australia, Canada, Japan and the United States</td>
</tr>
<tr>
<td>Engineering services</td>
<td>Canada</td>
</tr>
<tr>
<td>Computer and related services</td>
<td>Australia, Canada and the United States</td>
</tr>
<tr>
<td>Environmental services</td>
<td>Australia, Canada, and Japan (United States also circulated a submission made to the Committee on Trade and Environment on Liberalization of Trade in Services and the Environment, WT/CTE/W/70)</td>
</tr>
<tr>
<td>Courier and postal services</td>
<td>Canada, Poland, Norway, EU</td>
</tr>
<tr>
<td>Construction</td>
<td>Canada</td>
</tr>
<tr>
<td>Education services</td>
<td>Australia, Hong Kong (China), Japan, New Zealand, Norway, and Poland, US (formal paper S/C/W/55)</td>
</tr>
<tr>
<td>Health and social services</td>
<td>Australia, Japan, and Norway, US (formal paper S/C/W/56), Czech Republic, Poland</td>
</tr>
<tr>
<td>Tourism services</td>
<td>Australia, Canada, Japan, New Zealand and Norway, US (formal paper S/C/W/57)</td>
</tr>
<tr>
<td>Energy services</td>
<td>Australia, Japan, New Zealand, and Norway, US (formal paper S/C/W/58)</td>
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</table>
In late 1998, discussion in the CTS turned towards how to continue the preparatory work. The Chairman argued that he sensed the information exchange exercise had nearly been completed. The next step for WTO Members was to conduct an assessment of the state of service trade and the regulatory developments that had taken place since the coming into force of the GATS. (Some) Members initially thought that this task could be accomplished in the next two CTS meetings. While the Council seemed to have agreed that they needed background information for the assessment exercise from the WTO Secretariat, the US questioned whether a further assessment exercise was needed after the information exchange of 1998, while Egypt asked for an assessment of the effects of services liberalisation on developing countries (WTO S/C/M/32 14.01.1999). Whether an assessment still had to be conducted or not was to become one of the central disputes between developed and developing countries.

Following the argumentation of the US, Switzerland in May 1999 submitted a proposal suggesting that the CTS should move from the information exchange and assessment stage to establishing negotiation guidelines and modalities, which was the next step in the preparation for the GATS 2000 negotiations as mandated in Art. XIX GATS. Switzerland called for negotiations on the modalities and guidelines “as concretely as possible”, and offered a definition of what would have to be included in these negotiations:

(a) issues/topics for the negotiation; (b) the objectives of the negotiation; (c) a method or principles for the negotiation; (d) an approximate time-frame; (e) and practical arrangements regarding the organisation of work
However, not all delegations shared the Swiss vision of the services negotiations. The Indians, in a submission to the General Council, expressed dismay that the review provisions in several WTO agreements were interpreted by some delegations as intended to lead to new commitments for services liberalisation. The Indian delegation saw them as provisions to ensure an assessment of the effects of the existing agreements and rejected the approach put forward by “some delegations” to use the review process for further commitments. They also rejected the idea of “one major delegation” (presumably referring to the EU or USA), who was eager to get agreement for a new trade round and hence wanted to decide upon all the reviews at the Seattle Ministerial (WTO WT/GC/W/151 08.03.1999). The conflict between those wanting to move forward to market access negotiations and those that were not really interested in market access was hence evolving even before the GATS 2000 negotiations started.

5.2.1 Assessment exercise
The assessment exercise could thus not be dismissed from the agenda as quickly as some developed countries had intended. The difficulties the WTO members were facing in the assessment exercise were, however, not only of a tactical and political nature. The assessment exercise suffered from various technical difficulties, which were summarised by the Chairman in the subsequent CTS meeting on 26.04.1999 (WTO S/C/M/35 17.05.1999):

> However, such an assessment is rendered difficult by the paucity of statistics, particularly acute for developing countries, by the lack of information on whether GATS commitments had actually improved on trade regimes, and by the fact that various liberalization initiatives, as in basic telecommunications and financial services, had been negotiated too recently for any economic consequences to be observable (WTO S/C/M/35 17.05.1999).

Discussion about how to proceed with the assessment exercise hence continued to take up room in the CTS meetings. Subsequently, a set of WTO members, including Uruguay, Egypt, Switzerland, Hong Kong (China), Brazil, India and Cuba, encouraged the WTO Secretariat to continue its cooperation on the assessment of service trade with UNCTAD. The EU representative disagreed with this, because like the US and Switzerland, the EU considered the assessment undertaken so far (with
the information exchange and the 1998 WTO Secretariat papers) as sufficient and wanted to move on to discuss negotiation guidelines and modalities. A new idea was floated by the EU, Hong Kong (China) and Switzerland - that the assessment of service trade should be conducted continuously in parallel to the negotiations (WTO S/C/M/35 17.05.1999).

Interestingly, an informal paper by the Secretariat suggested that developing countries would gain especially from liberalisation in tourism, health, construction, maritime, software development and implementation and Mode 4. This in a sense delivered the right arguments for those WTO members promoting a move towards greater market access. The Secretariat had therefore provided support for a certain group of WTO members.

In the next meeting, the supporters of contact with UNCTAD had expanded (now Uruguay, Brazil, Cuba, the Dominican Republic, Guatemala, Indonesia (speaking on behalf of ASEAN), Mexico, and Egypt spoke out in support), but Switzerland changed position and now supported the adversaries of a constant UNCTAD involvement (EU, Switzerland, the United States and Japan). Developing countries emphasised that an involvement of UNCTAD could add a developing country perspective to the discussion in the CTS. It could help their preparation for the GATS 2000 negotiations, given their lack of capacity for assessment of service trade. However, developed countries encouraged them to undertake their own national assessment of services liberalisation. This would have taken the pressure of conducting the assessment exercise off the CTS. In their opinion, UNCTAD’s work had sufficiently been considered already in previous Secretariat’s studies (WTO S/C/M/36 15.06.1999).

Again, the arguments brought forward by the developed countries were not only political or strategical. There were also technical arguments, for example the diversity of services sectors, which would have justified a national assessment. Technical and political/strategic motivations were hence constantly intermingled.

In the subsequent CTS meeting, UNCTAD gave a presentation on the assessment of services trade in developing countries (WTO S/C/M/38 13.09.1999). The EU delegate commented that the problems faced by developing countries were the same as in developed countries, and that the differences between them were merely a
question of “degrees”. This raises the question whether there was really an understanding in the European Commission of the difference between the service sectors in developed versus developing countries. At this stage, the EU delegate therefore emphasised the importance of capacity-building and technical assistance, because he considered it crucial to increase the participation of developing countries in service trade. The developing countries did not agree with this point of view: the Indian and other developing country delegates pointed to various developing country specific issues. Contrary to what had been suggested by WTO Secretariat studies (see for example above) and the statements of developed countries in the CTS, some developing countries outlined that the case for service liberalisation was for them more negative than positive. Towards the end of 1999, consensus was now widespread in the CTS that the assessment exercise should be an ongoing process (WTO S/C/M/39 15.10.1999). The assessment exercise hence became an institutionalised part of the negotiations.

5.2.2 Negotiation guidelines and modalities
While the discussion on the assessment continued in the CTS, in parallel a discussion started on the possible content of the negotiation guidelines and modalities (both will here be referred to as “guidelines”). This discussion was intermingled with the development of positions by various delegations (at times preliminary positions were represented informally) and a first discussion about what the aims of the various groups would be in the future GATS negotiations. The EU’s objective for the modalities and guidelines was for them to be general and open-ended. The US representative explained that for the US, the guidelines and modalities were only a means to an end (towards greater market access in services) and that the US would like to discuss alternatives to the request-offer approach, for example using a different scheduling method (WTO S/C/M/35 17.05.1999).

In the first meeting that considered the guidelines, WTO members started to argue whether the CTS was in fact mandated to determine the negotiation guidelines, given the preparatory work under way in the General Council. Uruguay, Brazil, Hungary and Mexico argued that instead of the CTS, the General Council should be responsible. This could have been a delaying tactic, because movement in the
General Council would inevitably be slower, or because links to other negotiation areas might have been easier in the General Council. Canada, Egypt, Hong Kong (China), Switzerland and the US emphasised that the CTS was mandated to establish the modalities and guidelines. The subsequent discussion dealt with the content of possible future negotiations on services. Despite this thematic move of the discussion, the Dominican Republic indicated that they did not yet consider the information exchange to be finished (WTO S/C/M/35 17.05.1999; WTO S/C/M/35/Corr.1 03.06.1999). The way to a discussion about the substance of the guidelines was hence “thorny” and interrupted by those WTO members, who did not support the way in which the discussion was evolving.

The EU submitted an informal paper in the next CTS meeting, Norway a formal one (S/C/W/109). The EU’s delegate presented the EU’s position on the guidelines, which indicated that the EU did not want to see a change in the structure and principles of the GATS and that the preparation for the round should be open-ended. The EU wanted to see “comprehensive coverage of sectors and modes of supply”. It asked for the guidelines to include the revision of the Annex on Air Transport, MFN exemptions, domestic regulation, GATS rules, and should take into account the needs of developing countries (see also Table 5.2 and Sect. 5.2.3). However, Brazil, Cuba, Mexico, Uruguay, Hungary and India again contested the assumption that the CTS should deal with the development of the guidelines or that it was appropriate to start the discussion on this at that point. The US argued that the work of the General Council and the CTS were complementary. An idea was also to ask the Secretariat to compile a draft list with issues for the modalities, but no agreement was reached on this (WTO S/C/M/36 15.06.1999).

At the same time, the Indians submitted a further paper to the General Council, which set out the Indian position for the GATS 2000 negotiations (for details see Table 5.2). The Indians felt that a thorough assessment of service trade and the effects of services liberalisation was an indispensable requisite for them before further negotiations could take place. For the later negotiations, they emphasised the importance of ensuring implementation of current commitments, including operationalisation of Art. IV, significantly higher commitments under Mode 4 and the
establishment of autonomous liberalisation modalities (WTO WT/GC/W/224 02.07.1999). This position was supported by other developing countries, for example Venezuela. In subsequent CTS meetings, the discussion shifted to the actual content of the potential modalities/guidelines, and there was a certain convergence around a set of topics:

- first, objectives, scope and principles of the negotiations, including the concerns of developing countries; second, liberalization of commitments, including Members' schedules and MFN exemptions; third, rule-making activities, on domestic regulation, subsidies, government procurement and safeguards, and including also the clarification of certain GATS provisions (WTO S/C/M/38 13.09.1999).

Switzerland subsequently submitted draft modalities (WTO S/C/W/123 17.09.1999). Norway, Korea and Hong Kong (China) submitted a detailed proposal for the modalities as well, which outlined their position as proponents of the services negotiations. However, not every delegation was content with the items on the agenda so far: for example, El Salvador, the Dominican Republic and Honduras proposed a tourism annex for the GATS, so that the special nature of the sector would be accounted for more appropriately (WTO S/C/W/127 14.10.1999). The discussion in the CTS in 1999 ended at this stage.

Table 5.2 presents the positions of a set of delegations as they were presented in position papers and in the CTS in 1999. For the issue of market access, the table shows the different importance attributed by the proponents of the services negotiations, often also called the “demandeurs”, on the one hand and the rather defensive countries: the EU, US, Japan, Switzerland and Australia prioritise market access and transparency, whereas Egypt and India prioritise the implementation of existing agreements and the operationalisation of Art. IV (incl. S&D). The demandeurs seem ready to expand or experiment with the negotiation approaches in GATS, whereas Egypt and India ask for assessment and implementation prior to
market access negotiations. In terms of modes of services trade, Mode 4 is mentioned by Egypt and India as a priority, whereas the other countries do not prioritise any mode (except for Australia). It seems that all delegations are more or less interested in continuing the rules negotiations. Government procurement is named only by the EU, US and Australia. "Development" as a negotiation principle and objective has become a central point for all delegations (although one might suspect some might be interested more out of strategy consideration than substantial ones). Domestic regulation seems important to the demandeurs, but not to the defensive countries.

\[154\] Not all delegations submitted position papers or presented their position in the CTS. Due to space constraints, it would also not have been possible to present more positions in this thesis. For more information on the positions of different delegations in the GATS 2000 prenegotiations see: WT/GC/W/115 (USA); WT/GC/W/116 (Australia); S/C/W/109 (Norway); WT/GC/W/272 (Turkey); WT/GC/W/281 (Venezuela); S/C/W/125 (Hong Kong (China); Korea and Norway); S/C/W/127 (Dominican Republic, El Salvador and Honduras); S/C/W/120 (Indonesia and Singapore); WT/GC/W/379 (Cuba).
Table 5.2  Pre Seattle positions of selected WTO members

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<th>Issue</th>
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<tr>
<td>Market access</td>
<td>Deeper and broader commitments from all members. Close the gap between commitments and applied levels of liberalisation. Review of MFN exemptions.</td>
<td>Extend effective market access, esp. from countries that have not yet taken part in GATS. Review of MFN exemptions. Improve services classification system. Implementation is important, but not as unmanageable to stand in the way of a new work programme.</td>
<td>Deeper and broader commitments. Reduce MFN exemptions. Consider further S&amp;D. Elaborate rules to guarantee transparency and legal security.</td>
<td>Negotiation of specific commitments should be priority.</td>
<td>Expand coverage of commitments. Increase transparency. Update services classification list.</td>
<td>Deal first with capacity building, implementation issues, S&amp;D and assessment (incl. autonomous liberalisation credits). Secretariat should study participation of developing countries in services trade pre and post GATS.</td>
<td>Establish autonomous liberalisation credit mechanism. Operationalise Art IV and monitor its implementation.</td>
</tr>
<tr>
<td>Sectoral coverage</td>
<td>All sectors without prejudice (esp. maritime services); reassessment of the Annex on Air Transport Services. Exemption for audiovisual</td>
<td>New and improved liberalisation commitments in sectors such as finance, telecommunications, distribution, audiovisual, construction, education, health, travel and tourism, and professional services. Distribution, express</td>
<td>No limitation in sectors. Make maritime services a priority.</td>
<td>All sectors should be included, but prioritise those with little commitment as of yet: air transport, environment services, distribution services, energy services, maritime services</td>
<td>All sectors. Particular interest in sectors with limited coverage (maritime, air transport), sectors with fast commercial change (telecom,</td>
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### Issue

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<td>services due to cultural reasons.</td>
<td>delivery services, private education are possible candidates for applying a sectoral approach. Review annex on Air Transport Services. Extend number of members signed up to the Financial Services Agreement and Basic Telecommunication Agreement.</td>
<td>and those sectors where recent technical/market development permits easier liberalisation – audiovisual and air transport.</td>
<td>financial, professional), sectors of special comparative adv. for Austr. (environm., educational, distrib.)</td>
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### Negotiation approach

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<tr>
<td>Horizontal formula. Streamline the functioning of GATS. Do not alter GATS framework or principles.</td>
<td>Adjust services negotiations to those in goods. Incl. using a zero-for-zero approach and a formula approach(^{155}) to fasten up services liberalisation. Use all available negotiation approaches, request-offer, horizontal, sectoral. Discuss autonomous liberalisation credits, but usually starting point should be current market access.</td>
<td>Liberalisation formula should be developed, incl. standardisation of definition of service products, minimum liberalisation threshold, exclusion of certain restrictions across the board. Consider consistency of the GATS framework and classification of services, in</td>
<td>Would consider all new options without prejudice.</td>
<td></td>
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\(^{155}\) In the services negotiations, this could involve a decision to eliminate all barriers to trade in a certain service sector, or agreeing to a formula under which these barriers are reduced (IUST 20.08.1999).
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<th>Issue</th>
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<td>Modes</td>
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<td>particular new services and scheduling issues.</td>
<td>Especially interested in Mode 3.</td>
<td>Increase commitments under Mode 4.</td>
<td>Make substantially higher commitments on Mode 4 (e.g. transparency, no regulatory barriers on Mode 4 movement etc.; at least in sectors of interest to developing countries no economic needs tests (ENTs), easing of VISA requirements. Establish new classification of professions.</td>
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156 An ENT was introduced by GATS Art. XVI as a means to control access of natural persons to domestic markets under Mode 4.
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<th>Issue</th>
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<tr>
<td>Development</td>
<td>procurement: yes</td>
<td>Access to services is key for consumers. Guidelines should include modalities for special treatment for least-developed country Members under Article IV:3.</td>
<td>Including participating in discussions based on hypothetical questions*.</td>
<td>Developing countries would esp. benefit from comprehensive negotiations. They should have benefit from increased transparency.</td>
<td>Flexibility for developing countries is important. They should use the new negotiations to gain market access from other WTO members and review their own market access and regulatory systems.</td>
<td>Central concern. Incl. e.g. capacity building, implementation issues and S&amp;D.</td>
<td>Central concern. Operationalise Art IV.</td>
</tr>
<tr>
<td>Domestic Regulation (Art. 6 GATS)</td>
<td>Strengthen GATS regulatory rules. Promotion of pro-competitive regulatory principles.</td>
<td>Creating regulatory principles for services (on the basis of industry proposals). Regulation should be transparent and not trade-distortive. Promotion of pro-competitive regulatory principles.</td>
<td>Yes, develop horizontal disciplines. Sectoral approach possibly later. On pro-competitive principles: slow approach, study effects.</td>
<td>Develop further disciplines pertaining to GATS Article VI; clarify Art. VI; more stringent; further disciplines on sectoral regulation.</td>
<td>More focus on regulatory barriers; high priority for regulation for professional services, horizontal approach across professions.</td>
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5.2.3 The EU position

This section will consider more closely the position of the EU in the services negotiations. From the material on the CTS negotiations, it seems the EU did not take a very prominent position in the services negotiations\textsuperscript{157} and it hardly contributed to the information exchange exercise. An EU statement to the CTS on 24 September 1998 only asked for a higher level of liberalisation and did not give further detailed ideas of what the EU would be looking for in the GATS 2000 negotiations (IUST 25.09.1998).

Despite the lack of submissions to the CTS in 1998, it seems that the EU had started to develop its position with regard to the GATS 2000 negotiations in 1998 on the domestic level. In August 1998, Brittan spoke to the US CSI (Coalition of Service Industries) and outlined the objectives of the EU for the GATS 2000 negotiations (see also Table 5.2):

- Market access: removal of restrictions and full “national treatment”, quantitative and qualitative improvement of market access; this means the EU was looking for real and effective market access.

- Sectors: all service sectors with no a priori exclusions, “new” service sectors such as business and courier services, environmental services, and education and health services should be considered. Maritime services and air transport services also should be included.

- Attention needs to be given to “regulatory regimes”, they should not be “more burdensome than necessary” and “licensing requirements” need to be “transparent and reasonable”

- The round should demonstrate that services liberalisation is good for economies (European Commission 1998b, 1998c).

\textsuperscript{157} The same happened in the discussion on services in the cooperation with the USA, which took place in parallel: the EU’s outline for the bilateral negotiations with the US did not contain any detailed ideas about the services negotiations.
Brittan also commented on the ongoing consultation process on services in Geneva, which in his point of view

has confirmed the growing importance of trade in services for the economy in general; the need to remove further obstacles to trade in services, in particular on establishment conditions and movement of skilled service suppliers; and the existence of extensive regulations, bureaucracy and lack of transparency (European Commission 1998b).

The statements of Brittan on market access clearly show that the EU was looking for an ambitious negotiation result in GATS 2000. The EU’s position on services was, however, not only offensive: in the run up to the Seattle Ministerial, the EU’s very defensive attitude on audiovisual services was clearly visible (FT 14.10.1999). From the discussion above it is also clearly visible that the services negotiations would be one area with which the EU would try to counterbalance its defensive position in agriculture.

5.2.4 Rallying domestic support – selling GATS to industry

Already shortly after the entry into force of the GATS in 1995, the Commission seems to have realised the need to promote the GATS among industry in the EU. Consequently, in November 1995, they published a guide to the GATS. The accompanying press release lauded the benefits of service liberalisation:

The European Commission has published a comprehensive guide to the General Agreement on Trade in Services (GATS) in order to make the benefits of the Uruguay Round more accessible to European exporters of tourism, telecoms, distribution, finance, construction, transport and other services. Newly opened markets in services will affect the lives of everyone, for we are all dependent on them.

Brittan was quoted:

We can all breathe more freely when military weapons are disarmed by agreement. The same applies to the liberalisation of services through the WTO. This causes trade wars to recede, curbing

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158 This was also visible in negotiations with the US about Latvia’s audiovisual services commitments: the US had asked Latvia in its WTO entry process to make commitments on audiovisual services. The EU argued against this as this would not be compatible with an EU accession of Latvia, given that the EU had not committed on audiovisual services in the WTO (IUST 25.09.1998).
protectionism and reducing the likelihood of unilateral retaliation. Greater competition spurs the search for better products at lower prices, stimulating research and technology in the process.

Already at this early stage, he indicated that further support by the services industry would be necessary:

The vast new world markets for services can only be opened up effectively through the definition of clear, aggressive, long-term objectives on the part of our services firms. The WTO should be the stimulus for a new approach to this (all European Commission 1995a).

At this stage, there thus seems to have been a widespread belief that the GATS was promoting and delivering market access in services, even though this had not been the case in the Uruguay Round. Similarly, Brittan called for business support for the WTO in general:

This is not because there is any lack of ideas in Europe as to what needs to be done [in the WTO] […], but it must be a response to the needs of businessmen for trade and investment liberalisation worldwide. […] We need from our businessmen a strong signal that they want continued improvements in market access worldwide and clear views as to where those improvements are needed.

He also identified the interest of business as: “In Europe, the rallying cry from business is for greater market access” (European Commission 1995b).

In 1996, shortly before a negotiation deadline on telecommunications, Brittan met with a newly established European Services Coalition (European Commission 1996g). The new trade policy/market access strategy of the European Commission also asked for closer cooperation between the Commission and industry (European Commission 1996d).

The setting up of the group of financial services leaders and the subsequent success in the financial services negotiations (see Sect. 6.1) apparently led Brittan to ask for further organisation of the services industry. It seems Brittan had also been impressed by the US sectoral organisations. In June 1998, the Commission hence convened a substantial conference on GATS 2000 in Brussels with 600-700 participants (interview 31, 35, European Commission 1998b).

Within the EU we are now considering private sector involvement in the process of building up our priorities. The example of the EU-
USA Financial Leaders Group, involving a Group of business leaders to provide high level momentum to the negotiations, has been a model for the creation of a new mechanism for Europe. It will be able to interact with counterparts in other countries, including the CSI itself (European Commission 1998b).

In a side meeting to the conference, Brittan invited chairmen of major trade associations (and/or CEOs of companies), representing the breadth of the European services industry. He asked them to organise themselves better to provide him with input for the upcoming GATS 2000 negotiations. From autumn 1998, industry started to set up the European Services Forum (ESF) (interview 31, European Commission 2000i). Apparently, the Commission held extensive consultations with the industry well prior to the start of the GATS negotiations and collected information about trade barriers both via industry representations in Brussels and through EU member states (interview 35). An important development on the domestic level in the EU was thus the Commission’s initiative to build up a domestic network that could provide it with information for the upcoming GATS 2000 negotiations. In this way, the Commission was increasing its power resources on the domestic level.

5.2.5 Cooperation in the run up to GATS 2000
The first set of cooperative activity that was reported with regard to services seems to have taken place with the US, which suggests that the EU and the US were laying the foundation for the future negotiations. USTR Barshefsky and Brittan met several times in the autumn of 1998 to discuss their idea for a Transatlantic Economic Partnership. This included ideas regarding “regulatory cooperation, liberalizing services trade, and reaching mutual recognition agreements in several areas” (IUST 25.09.1998). With regard to services, the meetings seemed to have served two purposes: first, Brittan explained that cooperation with the US through the Transatlantic Economic Partnership should further the advancement of liberalisation in the new GATS negotiations (European Commission 1998b). Second, at the same time, the Transatlantic Economic Partnership was meant to move forward areas
where the EU and the US deemed the GATS as insufficient. This latter aim was soon over-shadowed by differences between the EU’s and the US’ interpretation of whether their mutual commitments could be exempted from MFN (to prevent free-riding by other WTO members). Some commentators suggested that the EU was using the free-riding issue as a way to circumvent far-reaching liberalisation of services trade in the Transatlantic Economic Partnership, in a reflection of certain member states’, notably France’s, unwillingness to liberalise services (IUST 24.07.1998).

Barshefsky, like Brittan, interpreted the bilateral discussions with regard to trade in services as a preparation for the GATS 2000 negotiations (equal statements were made later with regard to the FTAA (Free Trade Area of the Americas)). She identified several steps the US would have to undertake before it could participate successfully in the negotiations (such as identifying regulatory obstacles in other countries) and emphasised the need to ensure that the negotiations were not limited due to fears by developing countries about new commitments and the need to consider whether pro-competitive regulatory disciplines would be needed (as in the telecommunication negotiations) to further liberalisation. According to Barshefsky, the US was not yet sure whether to approach the services negotiations on a sectoral basis, via horizontal issues or with a formula approach. The US did propose two alternatives to the request-offer process: sectoral and horizontal approaches (while request-offer could be used in combination with these) (IUST 25.09.1998; IUST 20.08.1999).

The cooperation between the EU and the US was not constrained to political relations. The European Commission used its links to US industry as well: to provide input to the General Council, which was supposed to prepare recommendations for the Seattle Ministerial, the European Commission sent out questionnaires to American and European businesses and industry associations (IUST 11.06.1999).

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159 The ESF would quickly develop into the most active service industry association in Brussels (interview 3). The ESF focuses entirely on international trade and is not concerned with internal market issues. The ESF’s members are other sectoral organisations and some companies (interview 31).
A second area of cooperation in which the EU was involved took place within the Quad. The Quad met on 4 June 1999 - this was one meeting in a series of meetings in 1999 - to co-ordinate their positions on the services talks. They were discussing a move away from the request-offer approach (IUST 04.06.1999). The Quad also discussed how to schedule progress in the services talks (IUST 11.06.1999). The Quad in July agreed “to explore” a different approach to the services negotiations. With this approach commitments would be taken horizontally (in an approach closer to a “negative list” where exceptions to liberalisation would have to be specified, thus expanding the level of commitments under GATS). A full negative list approach was deemed infeasible. The Quad also discussed rules on service subsidies, government procurement and the ESM. While the US questioned the technical feasibility of an ESM in the GATS, the EU signalled its willingness to agree on an ESM in the new round of negotiations, but they also talked about a potential linkage between the quality of offers in the GATS 2000 negotiations and an ESM. The US stated that nobody had made a clear case for disciplines on subsidies in service trade up to now and that government procurement in services should not be treated under the GATS but as part of overall government procurement negotiations (IUST 24.07.1998). Incoming Trade Commissioner Lamy indicated the EU should support the inclusion of maritime services under the GATS despite US resistance, while maintaining that there had to be a balance between maintaining cultural diversity and liberalisation (referring to the EU MFN exemption in audiovisual services) (IUST 03.09.1999).

The final draft by the Quad which would be submitted to the Seattle Ministerial Conference did not provide decisions on most of the crucial issues (without which a successful conclusion of the services talks would not be possible): conflict remained as to which negotiation approach would be taken, breadth, timing, venue and target dates of the negotiations and the extent to which domestic regulation should be part of the negotiations. It seemed that the Quad were divided among themselves with regard to these issues: though they all wanted to change the negotiation approach, they did not agree as to what would constitute an appropriate mix of the alternative negotiation approaches. They failed to reach agreement on these issues at their informal meeting on 29-30 September in Tokyo. While the US pushed for an approach which would not a priori exclude any sectors, EU negotiators were sure the
US wanted to limit the negotiations to certain of its favourite sectors. The EU, while apparently fighting an internal battle about its MFN exemption for audiovisual services with France, favoured a global approach. The Japanese specifically favoured negotiations on maritime services.\textsuperscript{160} Besides this question, the Quad also disagreed as to how to schedule the services talks: the US in a first phase wanted to deal with horizontal issues and then proceed to the request-offer process. The EU aimed to start with the request-offer process. They also debated whether to hold the negotiations in the CTS or to establish a separate negotiation council (IUST 29.10.1999).

The Quad also seems to have been involved in “outreach activities” to other WTO members, which is reported in one instance: “informed sources” reported to IUST that “informal discussions on services involving roughly twenty countries have been proceeding in Geneva”. The next step of these consultations would be a meeting in Bangkok, organised jointly by the Thai government and the EU on June 17-18. Apart from the Quad, Argentina, Brazil, Hungary, India, Pakistan and South Africa were invited to the meeting. An exchange of views between senior officials was one aim of the meeting (IUST 11.06.1999).

5.3 Interim Conclusion

This chapter has assessed the EU’s impact on the WTO negotiations overall and with regard to the trade in services negotiations in the CTS between the inception of the WTO in 1995 and the Seattle Ministerial Conference in 1999. Little time passed between the end of the Uruguay Round and new, intense negotiation activity in the WTO. Shortly after the end of the Uruguay Round, the European Commission developed its new idea for the trade round and started to promote its idea both internationally and domestically. It was the main proponent behind the idea (see also Paemen 2000). The Commission’s idea involved significantly extending the range of issue areas covered under the WTO’s heading. It appears that at this stage, the EU had considerable influence and capacity to shape discussions in the WTO, as it was

\textsuperscript{160} The US has problems taking part in the maritime services negotiations as the “Jones Act” limits the
leading and pushing forward its agenda, regardless (or even because?) of the rather hesitant position of the US. The EU was hence definitely turning from a rather defensive position in the 1980s to one of leadership and a more offensive position in the 1990s. At the same time, it can be argued that the EU perceived increased opportunities for power usage of the EU in the WTO, which led it to postulate itself as a new leader in the WTO.\textsuperscript{161} The Singapore and Geneva Ministerials seemed to positively confirm the EU’s perception of a successful leadership strategy.

In some ways, the regime played into the hands of the EU (research question 3). The services negotiations favoured by the EU were already pre-scheduled by the regime and this did not require much attention of the EU in the overall framework negotiations. The regime, however, also pre-scheduled agriculture negotiations, which presented a threat to at least parts of the domestic constituency of the EU. The proposed expansion of the WTO can hence be seen as constituting a way for the EU to safeguard its rather defensive position on agriculture by adding more areas of offensive interests for later cross-deals.

The phase of relative success and of apparent leadership for the EU, however, was short-lived: already before the Seattle Ministerial, conflicts arose to an extent that the EU struggled to exert control over them. The EU’s capacity to lead and to use its power became severely contested, especially as the content of the negotiations had moved from mere information exchange to formal agenda setting.

Research questions 4 and 5 postulate agenda-setting and coalition-building in order to arrive at a consensus as typical power outcomes. Measuring the EU’s success in terms of these two outcomes, the EU seems to have failed rather than succeeded. The EU was not able to shape the agenda as much as it wanted to. While it shaped the debates significantly, other actors managed to permanently install other issues, for example the implementation issue, on the agenda contrary to the EU’s interests.

\textsuperscript{161} It can be speculated that this perception of new power opportunities might have been due to: a) the new opportunities the EU found for itself in the new WTO (organisationally-dependent capabilities); b) a decline in US power or interest in the international trade regime; and/or c) increases in the domestic resources of the EU (extension of competencies, increasing economic integration, enlargement in 1995).
and despite its initial strong start, the EU’s idea for the new trade round failed at the Seattle Ministerial. On coalitions and building consensus, the EU had not managed to create successful cooperation, neither with the US, nor within the Quad or the wider WTO membership.

The most significant change visible in Seattle is, however, the rise of certain developing countries (notably Brazil, India, South Africa, but also Mexico, Thailand, Indonesia and Malaysia and after its accession in 2001 China), a definite sign of the power shift mentioned in Sect. 3.2. These actors had by now started to improve their strategies of participation in the WTO and of cooperation (see for example Narlikar and Tussie 2004). This had crucial effects on the informal decision-making mechanisms in the WTO: the complexity of consensus-building had started to increase and the mechanisms of decision-making had become more difficult to manage. This power shift was apparently already realised by the Commission prior to the Seattle Conference. The failure of the Seattle Conference thus brought to into the open a whole host of systemic issues which had “smouldered” under the surface for a while. In the argument of this thesis, this means that amidst the overt conflicts over the substance of the WTO agenda, the power structure underlying the regime was changing and this started to impact on the functioning of the regime. In other words, the “rules of the game” the EU was playing were altered while it was at the game table. This inevitably raises the question as to how this power shift would impact on the EU’s capacity to use its resources in the WTO. With regard to research question 1, the EU had so far attempted to use the new power opportunities for its own good, but at Seattle, it became aware of the changing game in the WTO.

At the same time, first signs of a changing public awareness of the WTO process were visible, which culminated in the unprecedented protests in the Seattle Ministerial Conference. The European Commission was hence faced with not just one, but two major changes in the international trade regime.\footnote{In terms of EU internal issues, there was some division visible in the run-up to Seattle, but compared to the changes happening in the international arena, these do not seem to have had too much impact.}
The services negotiations were hardly relevant in the broad framework-setting negotiations, as they were pre-scheduled by the regime. A set of reasons as to why services was so uncontroversial has been proposed in this chapter (p. 171). In the CTS, however, activity gained in pace towards the Seattle Ministerial and the start of the GATS 2000 negotiations. Preparations seemed to proceed largely unaffected by the events in the WTO overall. Four key developments can be identified:

First, in 1998, WTO members started an “information exchange exercise” in preparation of the GATS 2000 negotiations. In the first phase of this exercise, the EU was remarkably absent from the discussion, while other Quad members submitted many papers to the CTS. The EU was not shaping the agenda too actively. Developing countries also hardly contributed to the discussion (research question 4). In various instances, though, the work of the Secretariat directly played into the hands of the EU (for example assessment that services trade liberalisation is positive for developing countries). This raises the question whether the Secretariat really is as neutral as would have been expected from its role description (research question 3).

In early 1999, developed country members argued that the CTS could move towards establishing negotiation modalities and guidelines, which met resistance by developing countries. This means that developed countries wanted to move closer to “negotiations about substance”, whereas developing countries wanted to continue the “negotiations about negotiations”. WTO members agreed to make the assessment exercise an ongoing issue on the CTS agenda (also for technical reasons of course!), which means that “negotiations about negotiations” became institutionalised in the regime, giving a permanent channel for those opposed to “negotiations about substance”.

Second, in 1999, WTO members started to develop the negotiation modalities and guidelines (moving towards “negotiations about substance”). However, the unresolved question whether market access negotiations could start before the assessment exercise was concluded continued to linger in the negotiations. Developing countries also doubted that the CTS was the right place for discussion on the modalities – again procedural issues were raised in order to obstruct movement to “negotiations about substance”.

The third point is on EU strategy. In 1998/1999, the European Commission started to develop the EU position on the GATS 2000 negotiations and presented an ambitious agenda. The European Commission initiated the organisation of the European services industry after it had experienced the positive influence of the industry on the financial services negotiations, telecom services negotiations, and accountancy sector disciplines. The Commission wanted the European services industry to support the Commission prior and during the services negotiations. One can say it tried to mobilise or increase its resources (research question 2). Was the EU preoccupied with the domestic level and hence did not contribute too actively to the CTS?

In services, the story of the negotiations was hence markedly different from that in the general negotiations. While the broad agenda was pre-set by the regime, the EU did initially not seem to contribute too much to the finer details for the negotiation framework. Of course, the later announcements of its negotiation objective showed the ambition it did have for the negotiations and were an attempt to set the pace in the negotiations (research question 4). With regard to cooperation, again there was no common agenda between the EU and the USA, and among the Quad, despite attempts to build one (research question 5). In the services negotiations, there were clearly diverging agendas of the broad group of developed countries versus developing countries, although there was no direct change in the negotiations visible that could be attributed to the power shift (research question 1). Interestingly, the changes on the EU’s domestic level (business participation, NGOs) seem to change the EU’s resource equipment in the services negotiations, re-opening the issue of the EU’s resources raised by research question 2, which had been dealt with in chapter 3.

Overall, from a time of short-lived success for the EU in the WTO, the EU’s fortune seems to have turned and the opportunities to successfully use its power in the WTO seem to have become more limited. This reminds of research question 1: how has the EU recognised and adapted to the power shift in the WTO? This question will be
revisited during the next chapters. Before that, though, the next chapter will now assess the EU’s impact on the issue-specific negotiations on trade in services in the WTO from the years 1995-1999 to follow the research questions in these.

163 The Friends groups, which according to interviewees had already existed at that stage, are not mentioned in the available material. Again, internal divisions in the EU did not matter too much.
6 Sectoral services negotiations 1995-1999: celebrating WTO successes?

In parallel to the framework negotiations discussed in the previous chapter, the issue-area specific negotiations on trade in services (in Table 3.4 also referred to as “negotiations about substance”) took place as prescheduled at the end of the Uruguay Round. As introduced in Ch. 3, these negotiations happen on the level of specialist councils, expert committees and working groups, and focus on the substance of the negotiations in all detail. The politicisation of these negotiations varies heavily, and expertise and information should be crucial resources at this level.

Negotiations in the following areas took place and are introduced in this chapter: financial services, telecommunications services, movement of natural persons, maritime services, the accountancy disciplines and a short section on the rules negotiations. As we will see in this chapter, the EU had offensive interests in several of these areas and the successful financial services and telecommunication services negotiations seemed to in turn have inspired the EU to follow a more proactive stance overall in the WTO. There was hence a link between the different types of negotiations taking place in the WTO. The chapter traces the course of the issue-area specific negotiations on services and analyses the EU’s involvement in them.

6.1 The negotiations on financial services

At the time of the negotiations, the financial services negotiations were portrayed as the first point where the WTO could prove the importance of its existence, the effectiveness of its procedures and the commitment of its members (European Commission 1996h). For the EU, the plurilateral approach was a sea-change after the long and arduous negotiations in the Uruguay Round, which had worn down the negotiators in DG Trade. Plurilateral sectoral agreements were seen as the way to move forward in the WTO (interview 1).
The Economist suggests that during the Uruguay Round, a deal on financial services failed because of a) the demands of the EU and the USA and b) the reluctance of Japan and “some other Asian and Latin American countries”. Negotiations were hence scheduled to continue beyond the end of the Uruguay Round (The Economist 14.01.1995). In the beginning of 1995 an agreement between the USA and Japan had been reached and was at the time regarded as breaking the deadlock that had existed, as the US was especially discontented with the Japanese reluctance to open its financial services market in the Uruguay Round. Other players, the Philippines and South Korea showed signs of movement. Trade sources point out the unequal interest situation in these negotiations:

The Americans, with the European Union in support, will now turn their attention to the financial markets of fast-growing emerging economies, which offer rich picking for the rich world's sophisticated financial firms (The Economist 14.01.1995).

The US in this situation used a protectionist argument to align countries behind its position: it threatened to protect its own industry. The Economist pointed out that this on the one hand contravened the efforts of the US during the Uruguay Round to convince the developing countries that protectionism damages their own economies. On the other hand, for the developing countries market access to the US financial market was an uninteresting offer (The Economist 14.01.1995).

The next months saw only slow progress in the financial services negotiations: only the US, EU, Japan and Canada submitted offers. The US showed signs of disappointment (FT 29.03.1995) and it threatened not to grant equal access to its market for WTO members and to “go bilateral”. The EU promised it would not activate a controversial clause in its banking directive if a multilateral agreement could be reached (FT 29.03.1995). In order to reach compliance with their plans, the EU and the US were hence resorting to a “sticks and carrots” method, threatening penalties and offering incentives for participation in the negotiations. The US showed itself especially dissatisfied with the positions of Brazil, Chile, India, Indonesia, South Korea, Malaysia, Pakistan, the Philippines, Singapore, Thailand and Venezuela. As negotiations only proceeded very slowly in May, financial industries expressed their concern and the International Chamber of Commerce appealed to governments,
while EU member states accused the US of making unrealistic demands (FT 19.05.1995). This is another encounter with the EU-US divergence of positions as in chapter 5.

One reason why the negotiations were slowed down was the link to the negotiations on Mode 4, which were scheduled to end at the same date (30 June 1995) (see Sect. 6.3). India and the Philippines seemed to have been major actors here, because both were important “temporary labour exporters”, and they seemed to have used their leverage to stall the financial services negotiations in order to gain greater concessions with regard to Mode 4. An EU negotiator stated (quoted by the FT): “The trouble is that India is not offering anything on financial services to make us give more on the movement of people. […] India’s offer on the movement of people is not so very different from ours.” (FT 25.05.1995). India seemed to have given in two days later, tabling a new proposal, which was judged as a modest advance (FT 27.05.1995).

The US seems to have driven forward the negotiations, taking on a “pushier” stance, with the EU in tow: “That would enable the US to limit foreign institutions’ access to its financial markets. If Washington took such a step, the EU would be likely to follow suit.” (FT 09.06.1995). This raises the question as to why the US took this tougher stance and why the EU was simply following. However, shortly afterwards, Brittan used the FT to warn that it was “five to twelve” in the financial services liberalisation negotiations”. He warned of a potential apathy in the move towards liberalisation and linked the negotiations to the question of whether “the world has the courage to unclog the financial arteries of the global market”. Failure in his opinion would mean that offers would be withdrawn, and the telecommunication negotiations would be endangered (FT 19.06.1995). As there does not seem to have been much disagreement among EU member states with regard to the financial services negotiations, this message by Brittan was clearly directed at non-EU WTO members.

As at the end of the Uruguay Round, the EU was ready to conclude the agreement but it was the US which was blocking progress and finally withdrew from the
negotiations, removing a large part of its offer (FT 26.06.1995).\textsuperscript{164} The US withdrawal came as a surprise as the US delegates had unofficially indicated that an agreement was within reach. The US’ withdrawal was attributed mainly to Asian countries, including India and Indonesia, who refused further market opening. A major stumbling block was seen in Malaysia’s refusal to remove its domestic law limiting foreign ownership in insurance firms to 49 percent (FT 01.07.1995).

The EU, fearing the loss of all commitments made so far, came up with an initiative to save existing offers and commitments. The negotiation deadline was extended by one month until 28 July 1995, and the EU planned for market opening between the negotiating countries on a MFN basis. One EU official said: “It is the WTO minus the US. It gives a signal to Washington that the rest of the world wants to follow the multilateral route.” (FT 01.07.1995; FT 03.07.1995). The US did not block the extension of the deadline (FT 03.07.1995). How did this move of the EU come about? A former EU official recalled that there had been no particular internal reasoning for the EU’s move, but mentioned that it had to do with the interest of industry, a personal dislike between Brittan and Barshefsky, and a certain role-sharing between the EU and the US, with the US exerting pressure for better offers by its withdrawal (interview 11). A representative of the EU services industry described the EU’s move as a “shock” for the US, as the EU managed to convince Malaysia, Mexico and others to follow its approach (interview 31).

The EU’s approach was welcomed by the press as a sign of EU leadership in the WTO: “As well as demonstrating commendable leadership, the EU has turned the tables on US obstructionism.” (FT 03.07.1995). The EU managed to keep more than 30 countries at the negotiation table. Brittan lobbied ambassadors from Japan, South Korea, Thailand and India. While trying to keep all WTO members on board, Commission officials were concerned that divergences between the EU member

\textsuperscript{164} There was a small conflict surrounding the US offer even before this: although the EU had been reassured that its existing subsidiaries would continue to receive the same treatment as before from the US, EU member states were wary of this. They were apparently considering to put pressure on the EU to retain the right to retaliate unilaterally, should the negotiations fail (FT 26.06.1995). When the US withdrew from the negotiations, it pledged to give national treatment to existing companies, but it refused to make any commitments with regard to new entrants. It removed the whole banking sector part of its offer, which went further than it had previously indicated (FT 01.07.1995).
states could undermine the EU negotiation position. The EU pressurised WTO DG Ruggiero to support its initiative to reach an agreement by July 21, when the GATS Council was supposed to meet (FT 08.07.1995). Brittan visited the US on July 24th but failed to persuade Robert Rubin, America’s treasury secretary, to continue the financial services negotiations (The Economist 29.07.1995).

On 26.07.1995, Ruggiero announced that a deal had been reached, even though the US did not fully consent to it:

’This is the first time a global trade agreement has been reached without the US and the first time the US has negotiated a deal and then walked away from it.’ One senior trade official said yesterday. ‘It shows the US doesn’t make the world.’ (FT 27.07.1995)

Traditionally, it [the US] has taken the lead in multilateral negotiations, especially in services; by turning its back on a WTO deal, it has forfeited much of the authority that leadership brings (The Economist 29.07.1995)

The EU was praised for taking over leadership from the US:

It [also] marks an important declaration of support by WTO members for the principle of multilateralism and the wresting of international trade leadership away from the US to the EU (FT 27.07.1995)

This interim agreement would be in place until the end of 1997, when terms should be renegotiated (Economist 29.07.1995). The interim agreement was said to mainly enshrine existing commitments, but apparently liberalisation was achieved in some areas. The offers judged most significant were tabled by some Asian countries, for example, Japan and South Korea, which offered to improve access to their insurance and securities markets while Thailand improved its offer in banking licences. The US did not submit any improved offer and asked for broad MFN exemptions.

Renegotiation of the interim agreement
In 1996, there were indications that the EU and US financial industry were starting to co-ordinate their strategy with regard to financial services:

The goal is to develop a consensus [between the U.S. and European industries] on what would constitute an acceptable agreement,” a U.S. industry source said. ”If the two sides can send a single message to developing nations, it will help the negotiations tremendously.
A U.S. industry source emphasized that developing countries "have had the luxury of watching the U.S. and the EU beat up on each other" regarding the level of commitments that would constitute an acceptable overall deal (IUST 07.06.1996).

This new cooperation was confirmed by a representative of the EU services industry: “Then during the interim period US and EU industry created the financial leaders group” (interview 31).

This happened because the European Commission and the US treasury had realised that industries across the Atlantic did not seem to cooperate and had therefore lobbied the EU and the US governments for different approaches in the financial services negotiations. In the new financial leaders group it was apparently soon discovered that priorities and target markets broadly coincided (interview 30, 31).

Negotiations in financial services restarted in April 1997 and Bridges indicated that the US’ tactic might have played out in forcing developing countries to reconsider their offers (Bridges 24.03.1997). In May 1997, APEC ministers pointed out their commitment to the financial services negotiations, although it was clear that some Latin American countries and less developed countries in APEC were reluctant about financial services liberalisation (Bridges 19.05.1997). Shortly afterwards, the Pacific Basin Economic Council (PBEC) of international business executives and chief executive officers held its 30th annual meeting in Manila. The group was unable to reach a common position on the financial services agreement, but in order to rally support for the financial services negotiations, WTO DG Ruggiero gave a speech describing the possible benefits of financial services liberalisation for the Asian economies (Bridges 26.03.1997). The WTO Secretariat was hence supporting the proponents of a financial services agreement.

The EU was the first to table an offer to restart the financial services negotiations in 1997. According to EU officials, this was part of an EU strategy to give momentum to the negotiations. The EU claimed it already provided good market access with regard to financial services, but that the offer expanded market access even further. US industry considered this move as “welcome, but not critical”. The offer aimed to remove twelve existing restrictions in the banking, insurance, and securities sector, and to reduce the scope of nine other restrictions the EU retains (IUST 04.07.1997).
Brittan outlined the EU goals for the negotiations in a speech given on 24 June 1997 in Geneva. These included

- “real” market access and “national treatment” for foreign financial institutions,
- standstill commitments securing existing practices (so that these are not restricted if they are more liberal than negotiated obligations), and
- a “grandfather” clause to preserve preferential market access for companies which have pioneered into a foreign market (IUST 04.07.1997; European Commission 1997c).

Commissioner Monti in July 1997 suggested that the EU would be ready to walk away from a financial services deal if offers were not substantial enough. At the same time a European Commission study pointed out the huge need of developing countries for external funds for infrastructure projects – logically, the financial services agreement would hence be fostering development by providing access to greater financial resources. The Commission also emphasised that the financial services agreement would be a win-win situation and used Mexico as an example: financial services liberalisation had been speeded up after the peso crisis (European Commission 1997a).

The Quad countries met their objective to demonstrate leadership in the talks by submitting offers by their self-imposed deadline of 15 July 1997. Twenty-one countries had tabled offers before a 17 July 1997 meeting, among them the US, EU, Canada, Japan, Switzerland, Norway, Hong Kong (China), Bahrain, Hungary, Turkey, Australia and the Slovak Republic. While a set of countries promised to submit offers until the next meeting of the negotiators in September (Egypt, Israel, Czech Republic, Macao, New Zealand, Peru, Poland and Korea), offers from many Latin American, African and Asian countries were not yet in sight. Korea and Thailand promised improved offers, despite Thailand’s financial crisis. The EU and the US outlined the importance of improved offers from Latin America and Asia:

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165 In the 1995-1999 Commission, Monti was Commissioner for internal market, financial services and financial integration, customs and taxation.
The EU last week pointed a finger at Malaysia, saying recent moves toward forcing foreign firms in its financial services market to disinvest are "exactly the opposite of what we are trying to do ... This could be a serious problem if other countries follow suit, and there are signs that Malaysia is unfortunately not alone ... that Indonesia, and perhaps others, may also be going in that direction (Bridges 21.07.1997).

The US’ offer of market access to its market was conditional on a financial services agreement being concluded in 1997 (Bridges 21.07.1997). In August, US Treasury Secretary Robert Rubin wrote a letter to WTO director General Ruggiero showing the eagerness of the US to conclude the financial services agreement and pointing out that developing countries should improve their offers. He offered variations in implementation periods and phase-in provisions to smooth market opening. US officials lobbied in Korea for an improved offer (Bridges 25.08.1997). Some observers noted a softening of EU and US rhetoric (for example they offered safeguard measures) (Bridges 23.09.1997).

On 15 September 1997, Brittan gave a speech directed to Asian leaders, stating the EU’s hope for its ambitious, “substantially improved” offer to be reciprocated by equally ambitious offers by Asian countries. He stated that potential benefits of such an agreement could be huge and that

Recent turbulence on Asian markets is not a reason for hesitancy. Such events are not the result of liberalisation. On the contrary, the opening of domestic markets, in conjunction with other measures to achieve internal and external liberalisation, are part of the solution to problems in financial markets (European Commission 1997d).

He made similar statements in a speech given to the Association of British Insurers in London early in October, specifically asking Asian countries to make commitments and asserting that the “WTO financial services liberalisation package is too important to fail”. He outlined that

There is no reason why liberalisation should not be accompanied by enhanced prudential supervision. That is the right way forward for the countries of S.E. Asia. It will affect more investments and strengthen their economies. I hope this will help us pursue a deal which will benefit both themselves and the rest of the world (European Commission 1997d).
In a similar vein, the WTO Secretariat published a study outlining the benefits of financial services liberalisation on 23.09.1997: “Opening Markets in Financial Services and the Role of the GATS” (IUST 03.10.1997).

Developed countries within APEC are said to have put pressure on their developing country counterparts to submit financial services offers (Bridges 08.09.1997). In view of the financial crisis impacting on Thailand, Malaysia and Indonesia, one negotiator asked the EU and the US to lower their expectations, as Asian countries had grown more cautious about liberalising their markets (Bridges 23.09.1997). Developing countries were using the Asian financial crisis as a way to justify lower commitments or even not joining the financial services agreement:

Perhaps the most dramatic example of developing nations’ resistance to Western-led liberalization of their financial markets came from the much publicized comments by Malaysia's Prime Minister Mahathir bin Mohamad: the Prime Minister called currency trading "immoral," and blamed recent difficulties in financial markets on western speculators. Malaysian Deputy Prime Minister Anwar Ibrahim [...] did note that Malaysia would not join the WTO financial services agreement unless it provided for protection from "unscrupulous speculators" (Bridges 29.09.1997).

Malaysian Ministry of Finance secretary-general Clifford Herbert said last week that "We [Malaysia] told the WTO that 'look, we will continue to liberalize, but I think we'll have to bend this more carefully, to make really sure that there are safeguard mechanisms in place' (Bridges 27.10.1997).

During an ASEAN Ministerial Meeting in Kuala Lumpur in October, fears were expressed about the negative effects of opening markets too quickly, but nonetheless Ministers signalled their intention to submit offers to the WTO soon. It was assumed that Latin American and Asian countries were following a delaying strategy so that it would not be possible to put them under too much pressure before the 12 December 1997 deadline for the financial services negotiations (Bridges 20.10.1997).
Ruggiero travelled to a Kuala Lumpur meeting of the G15 leaders\textsuperscript{166} to promote the financial services agreement: "Liberalization of financial services can be positive." (Bridges 03.11.1997). However, others had a different take on this:

Other G15 members said investment rules being pushed by the North are an attempt to gain unlimited market access to developing nations at the expense of their sovereignty, or what Malaysian Prime Minister Mohamad called the "new imperialism" (Bridges 03.11.1997).

The meeting revealed the huge differences that existed between developing countries with regard to financial services liberalisation and regulation. Nevertheless, countries set out to draft rules to restrict currency trading in December 1997, while pointing out that developed countries should live up to their responsibility towards poorer countries to assure their participation in the global economy and that they resisted the “the conditions and restrictions the North is looking to impose as part of trade liberalization and globalisation” (Bridges 10.11.1997).

Discussions and meetings about the financial services negotiations also took place in the margins of the annual World Bank – IMF meeting. While major Latin American players published a general statement about the importance of free capital flow, IUST noted that “[they] gave US officials few indications of what offers they would make in WTO negotiations” (IUST 03.10.1997).

In early November 1997, Commissioner Monti told a “number of leading participants in current World Trade Organisation (WTO) financial services negotiations” that "Attracting foreign capital through improved market access is essential to tackling financial turbulence in emerging market countries". He repeated his threat that the EU would not salvage another financial services deal, while stating that the EU’s domestic financial services market was “the most open in the world”. The European Commission’s case was backed up by a reference to recent World Bank studies, which had provided new evidence that growth and financial stability resulted from competition and liberalisation of the financial services sector. The EU document also offered policy solutions to the potential disadvantages of financial services

\textsuperscript{166} The G15 were countries from developing Latin American, African, Asian and Caribbean nations: Malaysia, Egypt, India, Indonesia, Algeria, Argentina, Brazil, Chile, Jamaica, Mexico, Nigeria, Peru, Senegal, Venezuela, Zimbabwe and Kenya. The group was set up as a counterbalance to the G7.
On 17 November 1997, Bridges reported that 31 countries (incl. the EU) had tabled offers. While the US remained rather pessimistic about the outcome of the talks, pressing for further and improved commitments, Malaysia seemed to be ready for a compromise and to allow 51% foreign ownership of insurance firms (Bridges 17.11.1997). USTR Barshefsky urged for countries to submit substantial offers before the deadline of 12 December, but admitted that the US might have to limit its demands as a consequence of the Asian crisis. For example, Brazil and India were among the countries which according to the EU and the US had not made commitments reaching further than their 1995 commitments (IUST 28.11.1997).

The US was expected to exert pressure especially on Thailand, Malaysia and Indonesia during an APEC meeting. Observers warned the US not to ask for too far-reaching commitments in the view of the Asian financial crisis, because it would risk unravelling the financial services talks altogether (Bridges 24.11.1997). After the meeting the common assessment was that the December 12 deadline for the financial services negotiations would not be met, with US negotiators insisting on improved offers despite the financial crisis (Bridges 01.12.1997). One week before the deadline “only 53 of the 97 countries involved in these negotiations have made offers; major players such as Malaysia, Thailand, and Brazil are still negotiating.” The US did not have much space for compromises as it was constrained by domestic regulation (Bridges 08.12.1997). WTO DG Ruggiero emphasised again that the financial services deal was a “win-win situation” and would open up much needed sources of finance for developing countries (Bridges 15.12.1997).

A deal was brokered finally in the “early hours of 13 December”. Bridges noted that

The negotiations were marked by a range of responses and offers from developing countries in the face of global pressure to reduce barriers to foreign financial services (Bridges 15.12.1997).

Apparently the deal with Malaysia was done at the last minute on 13 December:

It was only last minute, at 3 am in the morning […], when Hank Greenberg [CEO of the American Insurance Group (AIG)] persuaded
the USTR [...] to call the Prime Minister of Malaysia to say “listen, you really have to give this (interview 30).

In this way, AIG managed to protect its current investment in Malaysia. A similar “deal” seems to have occurred with Japan (interview 30).

However, Malaysia did not budge completely. It created an exception for AIG, but otherwise it stuck to its offer of 51% of ownership for foreign insurance firms. This meant that the Malaysian law forcing foreign insurance companies to divest their existing holdings remained partially in place and the US in turn refused to open its own market to Malaysian insurance firms or those from any other country where divesture is enforced. As no Malaysian company was interested in entering the US market, the Malaysians were satisfied with the deal, while US representatives claimed the MFN exemption would allow them to retaliate against Malaysian companies in other sectors as well. Despite the concessions the US had to make, the US viewed this improved agreement as a result of its tough negotiation strategy and subsequent withdrawal in 1995 (Japan, for example, did multilateralise commitments undertaken on the bilateral level). Similar to US officials, Brittan was also hoping for improved offers during the ratification process (as had happened in the telecommunication negotiations) (Bridges 15.12.1997; IUST 15.12.1997).

The negotiations for the Financial Services Agreement (FSA) had apparently benefited from intense industry pressure: In the final week of the negotiations, representatives of the financial services industry had gathered in Geneva. Communication between negotiators and CEOs took place and this significant impact the industry had on the negotiations apparently was one factor leading Brittan to call for greater unification of the European services industry (see Sect. 5.2.4) (interview 31). The agreement was widely welcomed by the financial services industry, although it was assessed as less far reaching in banking and insurance services than in asset management and financial information (IUST 15.12.1997; 26.12.1997). Overall, what is striking is that the financial services negotiations were held under the conditions of a very unbalanced distribution of interests. The EU and the US clearly were the main driving forces behind the agreement, with developing countries apparently not seeing much to gain in the negotiations, but still participating in the negotiations.
6.2 The negotiations on telecommunication services

While the GATS negotiated in the Uruguay Round contained commitments on so-called “value-added telecommunication services” (for example voice mail and electronic mail), it lacked commitments on basic telecommunications (for example basic voice and data transmission, mobile telephony or satellite services) (Niemann 2004: 390). Further negotiations on these issues were hence scheduled. A key feature of these negotiations was that they took place while significant technological developments in telecommunications took place.

“Negotiations on trade in basic telecommunications” started at the end of the Uruguay Round, with 34 countries participating. The negotiations were mandated to end by April 1996 (The Economist 1995 29.03.1995). In July 1995, optimism prevailed in the meeting of the negotiating group on basic telecommunications services, as apparently enough countries would be ready to table proposals. Still, the US, Canada, the EU, Japan, Korea, Australia and New Zealand were the few countries which promoted these talks (FT 21.07.1995). The US, Japan and 7-8 other countries submitted offers in time for a first deadline in September. The EU missed the deadline because of internal difficulties (FT 20.09.1995). When it submitted its offer in October, the offer was seen as disappointing for among others the US, but the EU itself considered its offer as ambitious (FT 04.10.1995).

Inside the EU, the Commission, the UK, Denmark, the Netherlands and partially Germany were in support of extensive liberalisation through the WTO, and they were joined by Sweden and Finland. Spain, Portugal and Greece after the 1995 EU enlargement. To a certain extent France, Belgium, Ireland and Luxembourg were opponents of an extensive liberalisation. Italy and Austria occupied an intermediate position (Enser 1998). Niemann analyses that in the initial offer of the EU the liberal group within the EU had achieved large parts of their demands, because they argued that technological change in telecommunications would inevitably trigger liberalisation (Niemann 2004: 396).

Coordination again happened across different fora (G8, Quad) (Canadian Department of Foreign Affairs and International Trade 1995). US, Japan and EU industries pressed for further commitments in the telecom negotiations (IUST
19.01.1996), but only 33 countries had submitted offers by February (IUST 02.02.1996). The EU and the US showed disappointment. Negotiations continued to deal with a host of issues: for example, the EU continued to pursue – apparently on its own – a proposal which would mean an annex to the GATS. This annex would bind all countries to ensure that liberalised markets are not dominated by former monopoly suppliers. The whole area of competitive safeguards\(^{167}\) remained unclear (IUST 02.02.1996). In December 1995, Japan submitted a proposal on regulatory principles after informal consultations, which shaped the ensuing discussions (IUST 16.02.1996).

On 15.03.1996, US Trade Representative Mickey Kantor urged countries to improve their offers in telecommunications (IUST 15.03.1996). The EU’s delay in submitting an offer held up the negotiations as the EU had problems in arriving at a consensus between its member states. Additionally, EU officials warned that if progress in Geneva was too sluggish EU member states might not be able to agree on further concessions. Other countries waited for the EU’s offer, but the EU claimed it was itself waiting for other countries to move first. Several industrial countries had not yet tabled new offers and the US threatened to withdraw from the negotiations (IUST 22.03.1996). WTO DG Ruggiero intervened and pushed for an agreement (IUST 29.03.1996).

Even though some offers were submitted, by the end of April the negotiations seemed “close to breakdown”. Brittan pointed out that the EU did not envisage a similar rescue attempt as in financial services, due to the different nature of the sector involved. The EU Foreign Affairs Council agreed on additional flexibility in the proposal of the EU. The EU stated it did not share entirely the pessimistic outlook of the US, but it would only be able to make further concessions if the US changed its position in two areas and if it agreed to abandon its restriction on laying underwater cables. One of the disputed issues was whether satellite services would be subject to the agreement, the other one was “what special treatment to apply to international

\(^{167}\) “In that area, the draft would require countries to prevent monopoly suppliers in one sector from subsidizing operations in a liberalized sector and to prevent suppliers of essential services from misusing information gathered from competitors, for example” (IUST 02.02.1996).
The US did not want to make further concessions as it considered other offers as inferior to its own (IUST 30.04.1996).

The negotiations broke off with no result, at least partially due to the withdrawal of the US, but negotiation partners agreed to review the situation early in 1997. Ruggiero’s proposal to keep the current negotiation results was accepted by WTO members (WTO 2007b). The April negotiation deadline was hence missed and the negotiations were extended by 9 ½ months (IUST 03.05.1996). Numerous plurilateral and bilateral meetings were held over the course of the next months (IUST 16.08.1996).

At the beginning of November 1996, the EU promised to table a new offer by the middle of the month to re-start the negotiations. Key players resisted EU pressure to give up foreign ownership restrictions and phase-in of liberalisation measures (IUST 01.11.1996). A week later already, the EU had to again renege on its commitment to submit a new offer due to internal differences, and it was forced to revert to its previous offer. Nonetheless, the US urged for improvements in the EU offer (IUST 08.11.1996), which the EU responded to with a new offer in mid-November. The US also tabled a new offer and proposed a solution to the accountancy rate dispute to move the negotiations forward. Over the course of the next weeks, the EU and the US found a set of compromises for their many disputes. Despite these compromises though, USTR Barshefsky still saw big difficulties in the EU’s offer, and the European Commission had to convince its member states to liberalise further (IUST 06.12.1996; IUST 15.11.1996).

The Singapore Ministerial was used to ask for further concessions from key countries (EU, Japan, Canada and key Asian countries). Informal Quad meetings during the Singapore Ministerial were meant to either plan a strategy to get better offers from other WTO members or to solve pertaining issues between the Quad (IUST 06.12.1996). These meetings indeed seem to have brought some momentum to the negotiations, with South Africa, Ghana, Jamaica, Bulgaria, Barbados, and Egypt promising to submit their first offers (although only South Africa’s offer would be significant). A set of other countries announced improvements to their current offers (Australia, Canada, Israel, Korea, Hong Kong (China), Poland, Switzerland and Singapore). During the Ministerial, the EU tried to gather support for a declaration
stating that substantial progress had been made in the negotiations, but the proposal was blocked by the US among others (IUST 20.12.1996). The next conflict between the EU and the US was also not far off: it concerned the EU’s attempt to exclude video services from the agreement (the underlying issue was that the EU wanted to exclude broadcasting from the agreement) (IUST 20.12.1996). Thus, in January 1997, the US proposal on accountancy rates and the EU’s attempt to exclude all video services were the two main issues dealt with (IUST 10.01.1997). The US threatened a few days before the 15 February 1997 deadline to take back concessions if others did not extend their offers. This tactic was judged as a “classical negotiation tactic” by others (especially Canada, Mexico, Japan and Korea), hence they did not seem to believe in it too much (IUST 07.02.1997). A solution to the issue of inclusion of video services in the EU offer was found: a distinction between the transmission of data and the commercial exploitation of these was introduced (IUST 14.02.1997). The “Basic Telecommunication Agreement” was reached in time with the deadline on 15 February 1997. 71 offers had been tabled, these were from all developed and 40 developing countries (the markets of these countries covered 91% of all telecommunication revenues worldwide).

In contrast to the financial services negotiations, the telecommunication negotiations showed no distinct leadership of the EU and very pronounced conflicts among the EU member states, arguably limiting the EU’s capacity to lead the negotiations in the WTO. In various instances, the EU was prevented from moving forward by internal conflicts. Additionally, conflicts between the EU and the US were very pronounced and took up substantial negotiation capacities, shifting EU and US attention away from getting commitments from the wider WTO membership. At the same time, as in the financial services negotiations, the US strategy was again more polarising than the EU’s. This reminds us of Tsoukalas hypothesis that the EU’s trade policy can never be as aggressive as the US’ because of the EU’s internal structure (chapter 3 above, Tsoukalas 1997: 234). The extent to which industry was involved in these negotiations is not clear: a former EU official described the domestic situation in the

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168 Another contentious issue was the status of the international treaty organisations Intelsat and Inmarsat (IUST 17.01.1997).
EU: the telecommunication monopolies in several EU countries were about to be privatised, and they were hence seeking new markets outside of Europe (interview 11). However, Niemann doubts that industry was the driving force behind the agreement, as industry remained largely uninvolved (Niemann 2004: 396).

6.3 The negotiations on the movement of natural persons (Mode 4)
The third issue up for negotiation after the Uruguay Round was Mode 4. The “Negotiating Group on Movement of Natural Persons” was established by the Ministers at Marrakesh at the end of the Uruguay Round. The group was meant to extend commitments under Mode 4, as these had been mainly limited to only two categories:

- intra-company transferees regarded as “essential personnel”, such as managers and technical staff linked with a commercial presence in the host country; and second, business visitors, who are short-term visitors not in general gainfully employed in the host country (Decision on Negotiations on Movement of Natural Persons; WTO 2007a).

The Negotiating Group on Movement of Natural Persons met for the first time on 04.05.1994 and its work was mandated until 30.06.1995. The first meeting consisted mainly of stock-taking and a discussion about the agenda of the negotiation group. The negotiations under the Group’s heading were mainly held on a bilateral basis, although a few items were discussed inside the Group as a whole (WTO TS/NGNP/1 10.06.1994; WTO S/L/10 24.07.1995). The negotiation group’s second meeting was held in September 1994, when it was noted that no bilateral negotiations had taken place since the Marrakesh meeting despite the group’s work officially starting in May 1994. The Secretariat had prepared an analysis of Mode 4 commitments in member schedules and developing countries criticised that in developed country schedules Mode 4 was linked to Mode 3 (Commercial Presence). They also complained that the criteria for ENTs were too untransparent, while conditions attached to the commitments were so unattainable that an actual liberalisation of Mode 4 services trade hardly took place (WTO S/NGNP/2 25.10.1994).

Subsequently, a set of “exploratory” bilateral meetings was held until November 1994 (WTO S/NGNP/3 22.11.1994). Both in the November 1994 and February 1995
meetings, (unnamed) delegations stressed the links of the negotiations on the Movement of Natural Persons to those in other areas, notably financial services (WTO S/NGNP/4 13.03.1995). In the April 1995 meeting of the negotiation group, India expressed its disappointment about the lack of progress in its bilateral negotiations and especially with one (unnamed) delegation which had made no commitments at all. India outlined that the developed countries should abide to the spirit of the GATS which foresaw efforts for greater involvement of developing countries into services trade. It threatened it would have to withdraw its financial services offer should there not be more progress (see p.200). As an answer to the point made by some delegations in the Committee on Trade in Financial Services that failure of the financial services negotiations would put into question the credibility of the WTO, India used a similar argument for the negotiations on the Movement of Natural Persons. Similar points were raised by Egypt, Pakistan and the Philippines. The US emphasised that a linkage to the financial services negotiations was inappropriate to make as there had been very little progress in financial services. With respect to the critique that had been voiced by the Philippines in regard to the US’ inability to make further “national treatment” commitments, the US explained that “national treatment” was not important in this mode of service supply. The chair suggested informal consultations as she still did not have a clear idea of what could be achieved before the end of June (WTO S/NGNP/5 08.03.1995).

During the following meetings, discussions centred around new offers or the lack thereof: Canada presented its offer for market access in Mode 4, which entailed commitments independent of Mode 3 (commercial presence). Importantly, Canada made its offer conditional on improved offers in the financial services negotiations. Australia, Switzerland and Norway also submitted improved conditional offers, and after a period of (strategic?) hesitation the EU submitted its improved offer as well. The US referred to its “very substantive offer in December 1993”, whose improvement was dependent on “the broader negotiation”, but finally did not submit an improved offer (WTO S/NGNP/6 13.06.1995; WTO S/NGNP/7 12.07.1995).169

169 The meeting reports of the meetings on 26, 29 and 30 June give only little information.
India proposed to establish a “Committee on Movement of Persons” to monitor the implementation of commitments under Mode 4, but the group only agreed to ask the CTS to establish a “Committee on Specific Commitments”, which would not only monitor Mode 4 commitments, but would have a broader review and monitoring capacity (WTO S/NGNP/8 28.07.1995e). The final meeting on 28.06.1995 agreed to take the six revised schedules (by Australia, Canada, the EU, India, Norway and Switzerland) as the “positive outcome” of the negotiations (WTO S/NGNP/9 04.08.1995). Most of the commitments were on additional categories of service suppliers (for example “independent foreign professionals”) (WTO 2007a).

The negotiations on the Movement of Natural Persons were negotiations that mostly interested and were driven by developing countries. Argentina, India and Brazil acted as the main “demandeurs” in the negotiations, and the EU was a key target market. The issue linkages mentioned above between the financial services negotiations and the telecommunication negotiations were made in this sense. (interview 11). Both the EU and the US took a reactive stance, waiting until very late to table new offers (and in the end, the US did not table an offer at all). One can speculate that this was related to the failure of the financial services negotiations, but it might also be linked to domestic reasons. For the EU, the same suggestions can be made: on the one hand, the negotiations were concluded around the time when the EU was trying to “rescue” the financial services agreement. This suggests that the EU tabled its revised offer to gain support for its plan in the financial services negotiations. However, a former EU official offered a different explanation for the EU’s low key role in the Mode 4 negotiations:

He recalled that the European Commission had tried to make a better offer on Mode 4. The European Commission had compiled all the restrictions that existed on Mode 4. As Mode 4 was a EU member state competence, the EU had 15 different schedules, which amounted to around 60 pages. The Commission tried to convince the EU member states that they could not negotiate financial services and telecommunication services, if there was such a multitude of restrictions on Mode 4 and if the EU’s offer on Mode 4 could not be improved. However, the EU member states did not allow for an improved offer. In the opinion of the former EU official, this
did in fact lead to lower commitments in the telecommunication and financial services negotiations. The US, in the opinion of the official, had not been such a target for Mode 4 demands due to its different immigration regime, but it might also have been that the US was benefiting from the EU having “pulled the plug”. The EU hence had to take the blame for the meagre negotiation result (interview 11).

There was little reporting on these negotiations, which suggest that they were either seen as of little relevance to any industry in particular or to the public and that Mode 4 was rather uncontroversial at that point of time. The outcome of the negotiations has given rise to little analysis as well, suggesting that there was little substance in it. A representative of the EU services industry suggested that India had put itself into such a defensive situation overall that it could not make substantial demands on Mode 4. Mode 4 was also not a very prominent issue at this stage, and the EU and the US apparently saw Mode 4 mostly in conjunction with Mode 3 (interview 30).

6.4 The negotiations on maritime services

32 countries had made commitments with regard to maritime services in the Uruguay Round and five additional countries did so later on, but a number of (unnamed) key players did not. Of particular importance with regard to the maritime services negotiations is the US: already in the Uruguay Round, the US faced domestic pressure not to liberalise its port and auxiliary services to foreign competition. With the offer the US made on maritime services, the EU clearly was not satisfied (IUST 11.06.1993; WTO 1996a: 127). Consequently, negotiations were scheduled to continue after the end of the Uruguay Round on the basis of a mandate given in the “Ministerial Decision on Negotiations on Maritime Transport Services” and the “Annex on Negotiations on Maritime Transport Services”, which established the so-called “Negotiating Group on Maritime Transport Services”. The aim of the negotiations was to improve commitments in international shipping, auxiliary services and access and use of port facilities. The group held 16 meetings from April 1994 to June 1996. 42 WTO members took part in the negotiations (when they were suspended; counting the EU as one) and 16 participated as observers. In 1995, negotiators mostly
exchanged their views on the issue, while the bilateral request-offer process in 1996 saw 24 offers being tabled (WTO 1996a: 127).

The negotiations were supposed to be concluded at the end of June 1996. At the beginning of 1996 concerns were already rising among negotiators that if the US would not table an offer soon, the talks would have to be prolonged for another year. Some indicated that a lack of progress in the maritime services negotiations could negatively influence the negotiations in telecommunications. Obviously, this was meant to entice the US with its substantial interest in the telecommunication negotiations to participate actively in the maritime services negotiations. However, US companies continued to urge the US government not to include maritime services in the GATS, arguing that the US’ gains in market access would not outweigh the losses of the US industry. The US formally remained at the negotiation table, but was asking for substantial improvements in the offers of other WTO members in order to even reconsider its position. It did not even have a negotiation mandate and had not submitted any requests to other countries.

One argument of the US industry was that a maritime services agreement would limit the US’ right to unilateral sanctions in the area of maritime services. The EU and the US disagreed as to the scope of the current GATS:

EU officials have claimed that the U.S. would not be able to use unilateral sanctions regardless of the outcome of the maritime negotiations because the GATS commitment includes all services unless a service is explicitly exempted, like landing rights for aviation (IUST 16.02.1996).

However, the attempts of other WTO members, including as seen above the EU, to convince the US to commit on these areas did not bear fruit. Without the contribution of the US, the negotiations were bound to falter. On 28 June 1996 the negotiations on maritime services were suspended with the “Decision on Maritime Transport Services”. Renewed negotiations were scheduled to take place in parallel to the GATS 2000 negotiations (WTO 1996b: 127).

The US had never tabled an offer, which led to a withdrawal of most offers that had been tabled so far – only Iceland and Norway decided to unilaterally implement their
offers. The European Commission pointed out that important restrictions remained in place in the US on

the use of foreign built vessels in the US coastwise trade and in relation to access to certain international cargoes from which non-US vessels are excluded (European Commission 1997b).

Brittan assessed the US’ position in the following way:

Our failure to achieve any market opening in the field of maritime transport was a great disappointment to European negotiators, and I am sure to others. That negotiation failed to overcome some deeply entrenched traditions which set even the most open and developed countries at odds with the WTO principles of non-discrimination. In the absence of a deal, maritime transport stands as a reminder of the need for comprehensive WTO coverage of services activities. Without comprehensive coverage, discrimination will be the norm and trade friction will increase as a result (Brittan 1997a).

Brittan here again links the issue-area specific negotiations to the overall WTO framework, using the failure of the negotiations to urge for greater commitments on services overall. However, an interviewee for the European services industry also questioned to what extent the negotiations on maritime services were even relevant to industry. He explained that the maritime service sector is already very open (interview 34). This might mean that WTO commitment was not a key priority for the EU and other countries and their industries, which might explain the lower profile of the negotiations compared to telecommunications and financial services.

6.5 The negotiations on domestic regulations in the accountancy sector

During the Singapore Ministerial, WTO members agreed to establish disciplines on domestic regulation for professional services by the end of 1997 (WTO 1996b). When this deadline had passed, efforts were concentrated on the accountancy sector, apparently in an effort to make progress at least in one sector. The Secretariat put forward an amended draft for the disciplines on 13 January 1998. In reaction to this, the CSI in the US asked the USTR to reject the current proposal as this would not create effective disciplines for the accountancy sector and have negative effects on attempts in other sectors where attempts were made to create such disciplines (IUST 06.02.1998).
Little is known about the actual process of the negotiations. While meeting reports from the WPPS are available, most of the discussion was in fact held in informal mode, which is not recorded. Interview partners were, due to the time space between the negotiations and the writing of this thesis, not available. From the material that is available, we can see that during the course of the negotiations, the negotiation subject became substantially reduced (to one sector only) as negotiators became more aware of the difficulties involved in setting up disciplines for different sectors.

In 1998, the CTS agreed on the “Disciplines on Domestic Regulation in the Accountancy Sector”, on the basis of the work undertaken by the Working Party on Professional Services. Box 6.1 gives an overview of the content of the disciplines. The disciplines affected all those WTO members which had previously undertaken commitments with regard to accountancy services under the GATS. The agreement was seen as the “first step in the development of GATS Disciplines on the domestic regulation of services” (WTO 1998). The disciplines were meant to come into force with other potential disciplines (which were supposed to be elaborated in the Working Party) by the end of the GATS 2000 negotiations. The disciplines stayed non-binding on the insistence of the USA, which wanted to see them improved later on (in potentially horizontal negotiations) (IUST 09.01.1999; interview 30). While the agreement was called a “breakthrough” by the US and the EU, the agreement left open several areas for future improvement. Its impact on actual services trade was also unclear (IUST 09.01.1999). The demand for disciplines in further sectors was carried forward into the Doha Round. In this sense these negotiations constituted only the start of a broader working programme. For the EU, the disciplines meant only a partial achievement of its negotiation objective to have disciplines across different sectors of professional services. A representative of the EU services industry speculated that the negotiations could not move forward further as the launch of the next negotiation round was expected imminently. Additionally, WTO members disagreed as to whether one set of disciplines could be set up for all sectors or whether each sector had to be treated individually (interview 31).
Box 6.1  Provisions in the Disciplines for the Accountancy Sector

Provisions on the administration of licensing requirements, qualification requirements and procedures, and technical standard for the accountancy profession.

A key provision is the general requirement that measures taken for these purposes should not be more trade-restrictive than is necessary to fulfil a legitimate objective.

Examples of legitimate objectives specified in the Disciplines are the protection of consumers (including all users of accounting services and the public generally), ensuring the quality of the service, ensuring professional competence, and ensuring the integrity of the profession.

The disciplines relate to measures taken by governments and to those taken by non-governmental authorities exercising delegated powers: in many countries the accountancy profession is regulated by professional associations operating under delegated powers.

Transparency requirements and other general provisions.

Source: adapted from WTO 1998

6.6 The negotiations on GATS rules

The Working Party on GATS Rules (WPGR) was set up by the CTS. It works on the basis of GATS Art. X and conducts negotiations on non-discriminatory ESMs for services, which were initially supposed to take effect on 01 January 1998. It also conducts the negotiations on government procurement, envisaged in GATS Art. XIII (with unspecified implementation date). Art. XV requires members to negotiate multilateral disciplines on subsidies for services and "the appropriateness of countervailing measures."

In June 1996, the Quad and developing countries argued whether emergency safeguard provisions (to restrain temporarily access to service markets) should be put into place and under which conditions. Thailand, on behalf of the ASEAN countries, argued in favour of an ESM, and was joined by Egypt, India and Pakistan. Pressure from the group does not seem to have been extensive (IUST 28.06.1996). This little episode is exemplary for the positioning of countries in this dispute. In 1997, IUST reported that the working group had spent "roughly 80%" of its meeting time trying to determine how to move on in the ESM question. The Quad continued to question whether such an ESM would be "feasible and desirable", while a group of developing countries pressed for an ESM.

Due to this preoccupation of the working group with the ESM, the other two areas the group was mandated for received only limited attention. 21 countries (incl. the EU) submitted questionnaires on the question of "government procurement in services",...
on which “structured consideration of possible negotiations in this area” would be based. Little had been happening with regard to subsidies in services (IUST 26.12.1997). In the early preparations for the GATS 2000 negotiations, the Quad discussed the issue of the ESM again and both the US and the EU indicated their flexibility to discuss the feasibility of such a mechanism. The EU already then indicated that the issue might be carried over to the next round of services negotiations and that a trade-off between market access commitments and the ESM could occur. From the US’ point of view, nobody in the WTO had actually ever spoken out in favour of rules on service subsidies (IUST 24.07.1998).

The negotiation deadline for all these areas was extended several times and the negotiations finally integrated into the Doha Round (see subsequent chapters). While the EU and other mostly developed countries were not interested in the rules negotiations (except for on government procurement), these issues had entered the agenda and could therefore not easily be removed again.

6.7 Interim Conclusion

This chapter has traced the progress of the six different issue-area specific negotiations on trade in services that were held directly after the conclusion of the Uruguay Round. The outcomes of these different negotiations were diverse: two negotiations apparently succeeded (financial and telecommunication services), two succeeded partially or with a minor result (Mode 4 and the negotiations on disciplines on domestic regulation in accountancy services), one negotiation failed (maritime services) and one was prolonged to continue in parallel to the new negotiation round (rules negotiations).

The first set of observations in this conclusion is on the way in which the EU was able to exert power in the six different negotiations and on the outcomes of the negotiations. This takes up research question 4 and 6, on the way an actor can shape negotiation agendas and whether outcomes reflect an actors’ preferences.

The financial services negotiations provided a first test of the EU’s ability to use the newly created WTO to shape the regime further, which the EU seemed to have passed rather well. The EU received extensive acknowledgement for its move to
rescue the negotiations from failure and there was speculation whether the EU would from now on become the leader in the WTO. The US’ failure to lead here could have been a first indication of the power shift in the regime, with the US no longer being an uncontested leader.

Both the financial services negotiations and the telecommunication negotiations were mostly in the interest of developed countries. One question could be why, if there was relatively little to gain and no apparent cross-deals to make, the developing countries remained at the negotiation table, especially as these negotiations were plurilateral and not a part of the “single undertaking”. In Krasner’s model, this asymmetrical distribution of interests would not even have led to an establishment of a regime. An interviewee explained that the developing countries did not leave the negotiations formally, but they “left” in the sense that their commitments were very meagre.\(^{170}\) The agreements hardly created any new commercially viable market access. In the interviewee’s opinion, this caused a sea change in the Commission, which subsequently was interested in a broader round again (interview 11). It certainly showed the limitations of EU power even in these rather successful negotiations. The “plurilateral recipe” had hence not worked out as planned for the EU, which might have enticed the EU to look for a more comprehensive trade round again.

On the outside, however, the conclusions of both the financial and telecommunication agreements were a clear success for the EU (and the US). Both negotiations were driven by these two players and had been concluded despite them being on a sectoral basis (rather than being linked to other negotiations) and despite interests being largely one-sided. These “para-successes” were used extensively by the EU to argue for further services liberalisation and for a new trade round, and to sustain the “EU as world trade leader” hypothesis, which was nurtured during Brittan’s time as Trade Commissioner (interview 32). While the issue-specific negotiations reviewed in this chapter due to their timing and substance proceeded

\(^{170}\) The interviewee (a former EU official) talked about month long negotiations with developing countries in which they were not ready to commit to liberalisation as the EU was in no position to offer anything in return (interview 11).
largely unaffected by the changes starting to occur in the WTO Ministerials (see chapter 5 above), the linkage between the negotiations was thus a bottom-up linkage: the negotiations on the expert level strengthened the EU’s position and motivation in the WTO overall.

Overall, the financial services negotiations were clearly dominated by the EU and the US, with the EU taking a leadership position. In telecommunications, there was less leadership by the EU, which can be attributed to the internal difficulties the EU experienced during the negotiations. This limited the EU’s resources significantly for the negotiations and it hence could not exert power as efficiently as in the financial services negotiations (research question 2). Additionally, the pronounced conflicts between the EU and the US arguably occupied the negotiation capacity of both actors, diverting their attention from the broader WTO membership.

The failed maritime services negotiations did not provide an example for EU leadership and again showed the limitation of the EU’s power in the WTO. While the EU might have been successful to rescue the negotiations in financial services, it is clear from the maritime services negotiations that it cannot “go it alone” in every case, as the US market is too important for other trading partners. The EU-US dimension is hence emerging as a crucial one in the WTO services negotiations. At the same time, the maritime services case gives an indication of the importance of interest distribution inside of the services negotiations: with regard to the question of maritime services liberalisation the US has been, and continues to be, equally defensive as the EU is in respect to the liberalisation of audiovisual services. This shows that within the services area itself, all players have differing offensive and defensive interests, and each sector therefore displays a different power and interest constellation.

The negotiations on disciplines on domestic regulation on professional services were riddled by the complexity of the tasks at hand, so that they were reduced to only one sector, accountancy. The nature of the issue area hence made it impossible to achieve a greater negotiation result, and the expected new trade round presented a good opportunity to postpone the negotiations. The negotiation result so far -
disciplines on regulation in the accountancy sector - can be counted as a further developed country success though.

The negotiations which were favoured mostly by the developing countries had no or only minor outcomes. The outcome on Mode 4 was, as discussed above, meagre. Although the EU and the US did not prevent issues like the ESM, rules on service subsidies or Mode 4 to emerge on the agenda in the Uruguay Round, they prevented decisions that would have been unfavourable for them, displaying what might be termed the power to prevent outcomes, or “power of non-decision making”. On Mode 4, the EU and the US might have encountered favourable circumstances though: while these negotiations were superficially of major interest to the developing countries, apparently both developed and developing countries were reluctant to open their own domestic markets to foreign workers (interview 4).

The second set of observations relates to the way in which the EU tried to achieve movement in the negotiations (research question 5):

Techniques that were used in the negotiations included exerting obvious pressure on countries which refused to comply. Negotiators were also trying to shape the scientific (or “pseudo-scientific”) discussions around the negotiations (“liberalisation is good/bad”) and using the media to promote their message (for example the Asian financial crisis was used extensively). Controlling knowledge and the respective (scientific or pseudo-scientific) dialogues was an important negotiation strategy, and having the resources can be crucial for actors. The first three negotiations also show degrees of brinkmanship, avoiding the break-down of the negotiations only narrowly at several instances. This might have been a strategy to get commitments from other actors, which, however, only worked partially.

While the WTO secretariat is supposed to be a neutral body, it intervened several times in favour of agreements and hence supported the proponents’ case. Again, the EU thus benefited from the regime framework in a special way in the negotiations (research question 3).

The role of industry as a resource for actors was ambiguous (research question 2): in the financial services there were definite commercial interests behind the agreement.
In telecommunication, the information was not unambiguous, but one can expect some sort of business involvement to have taken place. In maritime services, there might rather have been a lack of business interest. This raises the question as to how important business interest really is as a resource for EU’s success in negotiations.

In the negotiations itself, issue linkages were attempted, but did not always work out (research question 5). While apparently the link between the financial services negotiations and/or telecommunication negotiations and Mode 4 led to less commitments than would have been possible from the point of view of developed countries, for developing countries using this link to get better offers on Mode 4 did not work out. At the same time, the link between the maritime services and the telecommunication negotiations, intended to make the US make an offer on maritime services, did not work. Issue linkage was hence a double-edged sword for WTO members.

In terms of coalitions (also research question 5), the EU-US relationship emerged as crucial in these negotiations, but again was not always a successful one. In terms of cooperation, the former EU official also confirmed that the Quad had been the clear leaders in the WTO financial and telecommunication negotiations (interview 11). Apart from the developed-developing country division as in the previous chapter, no other coalitions were visible.

The next chapter will now follow the course of the services negotiations between the Seattle Ministerial up to the Doha Ministerial (1999-2001).
7 From Seattle to Doha 2000-2001: Launching the new trade round

The last two chapters showed that with the Seattle Ministerial the EU’s leadership aspirations and ideas for the new trade round had been seriously put into question. The EU also had only had partial success in the services negotiations and encountered resistance to its plans from developing countries. How would the EU adapt its strategy? How would it impact the further development of the WTO agenda? Would the EU have to conduct the built-in negotiations on agriculture and services on their own? This chapter follows the EU’s attempts at reviving the new round idea throughout 2000 and 2001 (first part of the chapter), and it looks at the EU’s contribution to the GATS 2000 negotiations (second part of the chapter).

7.1 Overall framework negotiations: reviving the new round idea

The Seattle Ministerial had challenged the EU’s previous ideas about the WTO’s functioning. If the EU wanted to stick to its idea of a broader trade round, it needed to convince especially the broad group of developing countries of the benefits of this new round. Lamy hence envisaged a first stage of confidence-building measures, which would be followed by the launch of the new trade round in 2000 or in 2001. Potential institutional reform, which could theoretically have emerged at this stage as the key task of the WTO, was envisaged by the EU as an activity to be conducted in parallel with the next round (European Commission 2000a). Conveniently for the EU, discussion in the WTO seems to have gone in a similar direction: during discussions regarding transparency of the WTO decision-making process, WTO members agreed that the failure of Seattle was due to substance rather than to process. Radical reform, as it had emerged in proposals after the failure of Seattle (see Sect. 5.1.2),
was not deemed necessary. WTO members also decided to stick to the consensus approach in decision-making (Bridges 04.04.2000; Pedersen 2006: 112-115).\textsuperscript{171}

In the meantime, the outcome of the Seattle Ministerial encouraged developing countries, among them Brazil, South Africa, South East Asian countries and India, to start to further improve cooperation among themselves, with the clear intention to shape the WTO agenda to the needs of developing countries (Bridges 01.02.2000). Similarly, the ACP decided to set up a representation in Geneva to enhance their presence in the negotiations (Bridges 14.03.2000).

Reflecting on this changing nature of the world trade regime, Pascal Lamy mentioned in several speeches in 1999 and 2000 that the times of EU-US leadership in the WTO were ending and that developing countries were seeking a new role in the WTO (European Commission 1999b, 2000b, 2000c). This is further evidence that there was thus an awareness in the EU of a power shift occurring in the WTO. However, while Lamy acknowledged this change in the WTO, the demands the EU had for the new round did not change in substance\textsuperscript{172}, although discussion happened in the EU as to where the EU should show more flexibility with regard to the agenda (Bridges 21.03.2000). Going even further than simply keeping the original idea of a broad trade round, Lamy now identified the broader trade agenda as the desirable response to the two challenges the world trade regime was facing: globalisation and development (European Commission 2000b).

The EU therefore continued to lobby for a broader round throughout 2000 (for example European Commission 2000d, f, g, j, k). A first part of the EU’s lobbying activities in 2000 was Pascal Lamy’s high-level talks with ministers from a variety of countries, which were conducted throughout the year. Lamy attributed India a key position in these visits and made it the first country he visited outside of the Quad as

\textsuperscript{171} The issue of transparency and WTO decision-making did incite further discussion in the following years though (see Pedersen 2006).

\textsuperscript{172} For the EU’s (unchanged) agenda see for example European Commission 2000d. Flexibility might have been envisaged in particular with regard to the labour and the environment issues, which an interviewee mentioned: the EU dropped the labour issue and the environment issue, but the EU could not change its position substantially as the EU's internal decision-making process does not allow quick and easy changes (interview 10).
early as in March 2000.\textsuperscript{173} In his various speeches throughout 2000, Lamy considered it essential not only to convince the developing countries of the new round, but also to assure them that their place in the global economy would be central in a new trade round (European Commission 2000d, e, f, j).

The EU’s consensus-building and lobbying activities could, however, not only focus on the newly emerging powers in the WTO. Disunity among the Quad and the other proponents of the round had importantly stalled progress with regard to the new trade round. The European Commission actively sought to build a common agenda with the US, who kept on promoting an agenda less extensive than the EU, but more extended than the existing negotiations. Consultations also took place within the Quad (Bridges 15.02.2000, 14.03.2000). The Commission maintained its alliance with the “Friends of the Round”, and Lamy indicated that intensive discussions had been taking place within this group, although the “new trade issues” had remained contentious in the group (European Commission 2000d, e, f, j).

Additionally to the consensus-building among themselves, the EU and the US started to discuss common measures to re-build the trust of the developing countries. These were intended to include assistance for the implementation of the Uruguay Round agreements and the extension of duty-free market access to LDC (Bridges 22.02.2000). In February 2000, proposals were made as to how to increase participation of LDC in the trade regime and about market opening for LDC. Immediately, there were expectations that there would be trade-offs between these new initiatives and the ongoing agriculture and services negotiations (Bridges 29.02.2000).

The Quad soon encountered problems with their new initiative for LDC market opening, because they could not agree which LDC products to give duty-free market access to. While the US struggled with including textiles in the proposal, the EU refused to include certain agricultural products (bananas, beef, rice, sugar) (Bridges 11.04.2000). In April 2000, the Quad offered a first package to increase trade

\textsuperscript{173} While the Indians rejected the idea of negotiations on investment, competition, labour and environment, Lamy was confident that the EU would be able to exploit some of the nuances he had discovered in the Indian position.
participation for LDC, but the LDC rejected the proposal. The proposal also received negative comments from WTO DG Mike Moore (Bridges 11.04.2000). The Quad “paddled back” and explained that this package was “more of an opening bid” (Bridges 18.04.2000). However, the general idea received increasing support in the WTO: several countries, among them Korea, Chile and Eastern European countries, wanted to join the Quad’s initiative (Bridges 02.05.2000), later on joined by Iceland, Norway, New Zealand and Switzerland (Bridges 19.09.2000).

An early May General Council session was lauded for having made progress on the two main pending issues in the relationship between developed and developing countries: implementation and the LDC market access package. However, it remained unclear what the substance of the agreement on implementation would be (Bridges 09.05.2000). Accordingly, the EU and other developed countries emphasised in subsequent meetings that substantial movement on the implementation issue could only be made in the framework of a trade round (Bridges 04.07.2000).

The EU took a crucial step forward with regard to the market access initiatives in October 2000, when it launched the EBA (“Everything but arms”) initiative which extended market access to all products from LDC (currently 49 countries), except for arms and munitions (Bridges 03.10.2000; European Commission 2000g). Mattoo and Subramanian interpret the EBA initiative as a sign for the new power and prominence that developing countries had attained in the trade regime (2004). Bridges commented that many trade analysts saw this as a “meaningful effort to garner support for a new round of multilateral trade negotiations”. Bridges also reported speculations that this move by the EU might break solidarity among the developing countries who had jointly opposed calls for a new trade round (Bridges 03.10.2000; European Commission 2000g). With this initiative the EU had created for itself a powerful “bargaining chip” with which not only to “woo” the LDC but also to exert pressure on its developed country trading partners. The EU had manoeuvred itself into the – arguably comfortable - position of a “benefactor”.

As to the second major change in the international trade regime, the politicisation of WTO negotiations with increased media and NGO attention, the EU tried to improve
its relations to civil society both inside the EU and in the broader, international realm. Internally, the EU established four “issue groups” for a dialogue with civil society. The groups were on trade and health issues, services, agriculture, and environment (including sustainable development) (Bridges 06.06.2000). The EU also had started to conduct a “sustainability impact assessment”, which constituted an innovation in terms of trade policy assessment and aimed to assess the social and economic effects of new trade policy legislation (Bridges 07.03.2000). In the WTO, the EU submitted proposals for more transparency of the WTO and supported the idea of the annual public symposium with NGOs and the accreditation of NGOs. Lamy argued for WTO reform, increasing transparency and decision-making procedures (European Commission 2000b). In October 2000, an EU paper on WTO transparency made proposals for an improved decision-making mechanism and information flow (Bridges 17.10.2000). Furthermore, Lamy indicated that the high level of mobilisation of civil society might have “scared away” the traditional supporter of trade negotiations, the business community. Lamy’s assessment was that business due to this mobilisation was hesitant to show its support for a new trade round and remained on the sidelines (European Commission 2000k).

As before, the trade round idea was discussed in various international economic forums outside the WTO. Thus, OECD members renewed their call for a new trade round (Bridges 04.07.2000). The G8 also issued such a call, but Lamy commented that it was no longer the appropriate forum, as the leadership of the Quad in the WTO was waning (Bridges 25.07.2000). The new trade round was discussed in APEC, the United Nations Millennium Summit and an ASEAN meeting (Bridges 13.06.2000, 12.09.2000, 10.10.2000).

In parallel to the activities in the overall framework negotiations, the mandated negotiations on agriculture and services started in 2000. For the EU, two reasons for its participation in the negotiations can be identified: first, stabilisation of the WTO regime and second, a pragmatism which assumes that “any negotiation is better than none”. However, this strategy certainly carried risks for the EU, especially as the EU was faced internally with ongoing division with regard to agriculture (Bridges 15.02.2000). Sergio Marchi, Canadian head of the Services Council, interpreted the
relevance of the current talks: he was convinced of the importance of the negotiations as a forerunner for the launch of a broader round and as a possibility for the WTO to regain legitimacy and trust (Bridges 28.03.2000). The speed of the issue-specific level negotiations seems to have been informed by the overall negotiations though: despite ongoing discussions and meetings of the services negotiators, WTO DG Moore in September declared that it was difficult to progress in services without a broader round, as there was a lack of interest of developing countries, although there had been a little movement in both agriculture and services (Bridges 19.09.2000).

For the year 2000, Lamy estimated overall that there had not been much movement with regard to the new round, but that “modest progress” had been made with regard to implementation related issues and an ‘illusion of progress on procedural issues’ in the built-in agenda issues (European Commission 2000h). At the end of 2000, it seemed, however, that the EU had “re-“created a valid basis for the promotion of its new round idea. 2001 would show whether the EU’s efforts had been sufficient and whether its decision to maintain the broad trade agenda would pay off in the end.

The run-up in 2001 to the Doha Ministerial Conference in November 2001 was in many ways a continuation of the activities the EU had entered into in 2000. This is reflected in a January 2001 strategy paper, in which the Commission laid out its plan for the launch of the new trade round. The Commission emphasised that the failure of Seattle was significantly due to the failure to balance interests in the Seattle draft. Hence, the Commission would only be able to achieve its goal of launching the new trade round and deepening WTO regulation if the WTO agenda reflected the concerns of developing countries. The Commission therefore wanted to use 2001 to further rebuild developing countries’ support for its version of the new trade round, which the Commission describes as still “perceived as […] excessively ambitious.” by some developing countries (European Commission 2001a).

However, in January 2001 the European Commission received an initial blow to its new strategy, when an EU internal study revealed that the EBA initiative might have more impact than anticipated on EU farm trade. The European Commission was faced with fierce resistance from certain EU agricultural sectors against the EBA initiative and had to revise it. This revision included an extension of transitional
periods for duty- and quota-free access for bananas, rice and sugar (Bridges 16.01.2001), and clearly decreased the appeal and value of the EBA initiative to the LDC. It is unclear whether the subsequent move of the EU member states to restrain the Commission to its pre-Seattle position was linked to the EU internal fight over the EBA initiative. In any case, it seems that in early 2001 the EU member states tightened the Commission’s space of movement, so that it could only deviate from the pre-Seattle position after consultation with the EU member states (Bridges 30.01.2001).174

In the WTO, different visions for the agenda of the potential new trade round persisted. Many developing countries favoured launching a trade round with a more limited agenda, so for this group the Commission saw it as a first key task to promote the investment, competition and environment negotiations. The Commission considered two approaches: first, to accept negotiations on a limited agenda leaving a decision on investment and competition to be taken later on (which in the end was the result in the DDA) and a plurilateral approach to investment/competition. It considered the plurilateral approach as more beneficial, as it would send the desired signal to developed countries and could enhance US support for the approach (European Commission 2001a175). Odell identifies this as a key change from prior positions of the EU (and also the USA). During the whole year 2001, EU (and US’) initiatives showed increasing flexibility and attempts to especially accommodate developing countries’ interests, thus showing a move towards more integrative or mixed negotiation strategies (Odell 2003: 9, 21-23; see also Pedersen 2006).

The new flexibility in the EU strategy seems to have had positive effects. Again, the EU focused its consensus building initiatives especially on developing countries. Lamy was mandated to conduct talks with further developing countries about the changed EU negotiation proposal. He for example visited Mercosur countries

174 One can speculate that this might have had to do with the Nice Treaty negotiations; the EU member states’ might have been re-affirming their authority and control over the European Commission.
(Bridges 27.02.2001, 17.07.2001). Bridges explicitly reports that ASEAN countries were positively surprised by the new flexibility that the EU showed towards their problems with implementation of WTO agreements (Bridges 18.09.2001).

The second key task for the Commission was to deal with the group of countries that continued to emphasise the priority of the implementation question. This position, held mainly by India, was supported by many LDC and African countries (Bridges 23.01.2001; European Commission 2001a). These countries argued that they would not be able to agree to a new trade round if the implementation question had not been dealt with adequately. Their strategy was also to keep the implementation question on the agenda of the services and agriculture negotiations. In heads of delegations meetings, Brazil, Pakistan and Egypt were reported to having pushed the issue. A similar argument was made by the Like-Minded Group (LMG), including Pakistan, India, Egypt and Malaysia, in March 2001. However, major concessions were not expected from the negotiations (Bridges 06.02.2001, 22.05.2001, 20.03.2001). In fact, the Quad issued papers both in July and September 2001, which were intended to overcome developing countries resistance (Bridges 25.09.2001) and developed countries indicated that they would be ready to involve themselves more substantially in the implementation question. However, the seriousness of the developed countries’ initiatives can be doubted, as USTR Zoellick indicated the US’ reluctance to concede too much on the implementation issue (Bridges 01.05.2001, 22.05.2001).

Two further issues proved crucial for the European Commission in the run-up to Doha, which were the third and fourth key task for the Commission: the third key task for the Commission was the renewal of the ACP waiver. As the waiver question could not finally be resolved prior to the conference, the question of the ACP waiver proved a major stumbling block between the EU/ACP and Latin American countries/Philippines/Thailand during the Doha Ministerial. It was assumed that the

175 More detailed information on the Commission’s adapted strategy can be found in European Commission 2001a. For the trade and labour issue the Commission also showed flexibility and suggested to take the issue out of the envisaged Single Undertaking and into a broader framework of social development and a multi-institutional setting.
issue was brought up in Doha as a pay-off for the ACP’s support of the new trade round (Bridges 13.11.2001; Bello 2002; Wolfe 2004b).

As a fourth task or challenge, the relationship between the TRIPs Agreement and public health developed into one of the most difficult issues on the agenda. Developing countries wanted this relationship to be clarified in a separate declaration to ensure that the TRIPs Agreement would not prevent them from using for example compulsory licensing if needed to protect public health (FT 25.10.2001). Developing countries here worked in conjunction with North American and European NGOs. A declaration on the issue, celebrated as a victory for developing countries, was reached at the Doha Ministerial. This meant a main obstacle on the way to a negotiation success had been cleared away (FT 27.10.2001; Odell 2003: 29ff; Wolfe 2004b).

In terms of coalition-building, for the EU it was crucial in 2001 to clarify the US’ position on the new round. While the EU and Japan were both working to ensure the launch of the new round, the US’ position remained unclear until the start of 2001, especially as “fast track” trade negotiation authority had not yet been granted to President Bush (Bridges 30.01.2001\textsuperscript{176}). Even when in the course of 2001, it finally became clearer that the US would support the launch of a new round (Bridges 22.05.2001, 23.10.2001), the EU and the US remained divided on the concrete negotiation issues. Among the contentious issues were trade and environment as much as trade and investment (Bridges 06.06.2001). However, there seems to have been a rapprochement (Bridges 26.06.2001, 24.07.2001; WTA 15.10.2001; FT 27.10.2001), which was essential to launch the trade round.

The development towards better cooperation between the developing countries can be observed in 2001 as well. The like-minded group organised an unprecedented meeting in July 2001 to exchange their views with the media and NGOs (Bridges 10.07.2001). The LMG in September 2001 developed a proposal for a new WTO agenda, which called for negotiations on special and differential treatment, trade and

\textsuperscript{176} For example, Zoellick tried to rally domestic support, when showing his dismissal of the current leadership of EU and Japan, and indicated that the US should assume its role of advocating the new round (Bridges 30.01.2001).
From Seattle to Doha 2000-2001: Launching the new trade round

From Seattle to Doha 2000-2001: Launching the new trade round 236
debt, trade and technology transfer and trade and finance. Similarly, LDC formed a
c vocal opposition to the launch of a new trade round, but their position seems to have
left room for manoeuvre (Bridges 31.07.2001, 18.09.2001). In October 2001, the LDC
published the Zanzibar Declaration (WT/L/409), outlining LDC’ priorities for the
Ministerial Conference. This was followed by a common position of the G77\(^{177}\) plus
China (Bridges 30.10.2001).

Clearly, the EU’s strategy on its own (and even in conjunction with its Quad partners)
could not be sufficient to overcome the differences between WTO members. The
EU’s agenda was indirectly aided by the much improved conference preparation and
management by the WTO staff. The run-up to the conference was importantly
shaped by WTO DG Moore and General Council Chair Harbinson. WTO DG Michael
Moore was well established and experienced in his job, which meant he could devote
considerable time to confidence-building and compromise-seeking initiatives. Special
attention was given to spread information widely among WTO members and to keep
the pre-Conference process transparent (Odell 2003: 24-28; Pedersen 2006: 116-
118; Wolfe 2004b). After a variety of different consultation processes to prepare the
conference agenda,\(^{178}\) Harbinson in cooperation with WTO DG Mike Moore then took
a decisive step in the preparation of the conference and distributed a draft
Declaration and a text on the implementation issue on 26 September 2001.\(^{179}\)
Compared to the Seattle draft Ministerial texts, which failed to achieve progress in
the negotiations, this text was much shorter and indicated space for compromise
much more clearly. As was to be expected, at this stage the Draft declaration

\(^{177}\) The G77 are a coalition of developing countries set up in 1964 in conjunction with the first
UNCTAD. It has now more than 130 members (WTO 2003).

\(^{178}\) The preparation by General Council Chair Harbinson started already in March (Bridges 06.03.2001)
and by May 2001, Harbinson had managed to get a broad agreement that an agenda would have to
be set up until July 2001 (Bridges 08.05.2001). Harbinson then set out to hold meetings on the most
contentious issues. These included competition, investment and environment (Bridges 12.06.2001).
However, positions had not moved substantially until July 2001 (Bridges 17.07.2001), which led
Harbinson to call for movement by the Quad in particular. Following this call, the Quad continued
working towards a compromise that could take developing countries on board (Bridges 18.09.2001).
In September 2001, Harbinson started a process of plurilateral and bilateral consultations (Bridges 11.09.2001).

\(^{179}\) A draft text on special and differential treatment was submitted by Committee on Trade and
Development (CTD) Chair Ambassador Irumba of Uganda shortly afterwards (Bridges 09.10.2001).
received a mixed reception. The EU criticised especially the vague text on trade and environment and trade and investment (Bridges 02.10.2001; Odell 2007). Others saw this initiative by Harbison as an undue attempt at agenda-setting, which further marginalised less developed countries (Narlikar 2004), but it arguably was a key step to facilitating agreement (Odell 2007).

Harbison’s initiative bore fruit though. Progress was made in a Mini-Ministerial in Singapore, in which 22 WTO Ministers participated, when the notion of the “new trade round” was dropped and changed into a “new development agenda”, arguably to indicate a new “era” and new priorities (Bridges 16.10.2001). In the immediate run-up to the conference, the EU’s position was challenged especially with regard to its intention to clarify and implement environmental rules in the new trade round (Bridges 23.10.2001), but it seems that for the EU itself agriculture turned out to be the most critical area of the draft declaration. Harbison’s second draft declaration was equally contested as the first, but furthermore narrowed down the gaps between the WTO members. As the EU had intended, the Singapore issues all were part of the Harbison draft (Bridges 30.10.2001; WTA 15.10.2001; FT 27.10.2001), although it can be argued that they had been “watered down” significantly.

Two exogenous events seem to have played in to the hands of the EU in this run-up to the conference: the failure of the Seattle talks can be seen as an important impetus for the trade negotiators not to fail again and with this to decrease the credibility and legitimacy of the WTO even further. It hence gave rise to a range of confidence and consensus-building initiatives, as seen in the EU’s strategy prior to Doha, which finally made compromise possible. The terrorist attacks on the USA on 11 September 2001 can be regarded as an exogenous event that increased the willingness to compromise. In Odell’s words, these two events raised the cost of a renewed failure for the negotiators (2003: 8ff, 34ff; see also Narlikar 2004; Bello 2002; Pedersen 2006; Wilkinson 2006b). Furthermore, the actual process of

\[180\] Arguably, the EU’s promises to compromise in the area of agriculture seemed rather shallow and did not incite much credibility (WTA 17.09.2001).
conference management during the Doha Ministerial had changed compared to Seattle. With Doha providing a relatively isolated conference setting, globalisation protests could not hinder the progress of the negotiations and the chairs this time did not push forward their own national interests, but took on mediating roles. All this worked to facilitate an agreement, which was the EU’s desired outcome. Still, developing countries were able to push through their interests in some areas (Odell 2003: 28-33), and although critics argued that this was too limited (Bello 2002), the Conference launched a new trade round with the “Doha Development Agenda” (DDA).\footnote{As not all WTO members could agree on opening a whole new round of trade negotiations, the declaration spoke about the “Doha Development Agenda” rather than about the “Doha Round”.
}

The DDA launched negotiations on the implementation issue, non-agricultural market access (NAMA), certain aspects of the TRIPs agreement, WTO rules, the Dispute Settlement Understanding (DSU, governing the DSB) and trade and environment. It integrated the ongoing negotiations on agriculture and services into the single undertaking. A decision on the “Singapore issues” would be taken during the 5th Ministerial conference and working groups would deal with the issues until then. Further issues, such as for example e-commerce, trade, finance and debt, trade and technology transfer would be further “examined”. As could have been expected, the DDA also emphasised the importance of developing countries interests (WTO 2001).

This Ministerial Declaration was at least in part a convoluted text, still showing the attempts to bridge strongly diverging attitudes of WTO members as had been visible already in the Harbinson drafts. The DDA did, however, contain some remarkable concessions; for example the EU – in a sense – was now committed to phasing out export subsidies, albeit without exact time frame and leaving certain loopholes. Reference was also made to the possibility for any WTO member to call off the negotiations during the next Ministerial Conference (WTA 26.11.2001; Odell 2003: 31-33; Wolfe 2004b; Kerr 2002).

\footnote{The Singapore issues were opposed particularly by the LMG. A further “battle ground” was about the Declaration on “TRIPs and Health” (see above). For a more detailed account of the pre-Doha positions and the draft for the Ministerial Conference see WTA 15.10.2001.}
The EU had after five years of intensive efforts apparently achieved its goal of launching a new, broad trade round. It managed to get the ACP waiver and both the issue of trade and environment and the Singapore issues moved onto the WTO agenda, although in a less precise form than the EU had sought (Bridges 15.11.2001). In a briefing paper by Fischler and Lamy to the Commission, the Commission acknowledged the DDA as a success for the EU, although of course there was awareness that not all EU demands had been met in their entirety (European Commission 2001b). An industry representative described Doha as “para-success”; the European Commission apparently presented Doha as a “genuine” start of negotiations on the Singapore issues. The industry representative recalled the industry’s questioning of the formula on the paper, but the Commission was adamant it had achieved a negotiation success (interview 32).183

Despite the changes in the preparatory and conference process, which especially sought to accommodate developing countries (Pedersen 2006; Kerr 2002), critics argued that developing countries had been put under substantial pressure to sign up to the DDA. Narlikar criticised that during the Doha Ministerial the style of negotiation was set up to systematically disadvantage developing countries; for example contrary to customs in previous conferences, ambassadors were banned from speaking during the conference. Only ministers could speak for their countries, which created a further disadvantage for many already resource-poor developing countries. Narlikar also mentioned pressure and blackmailing tactics by Quad members (2004: 422, see also Bello 2002; Wolfe 2004b). “Success” at Doha might have been “bought” by this pressure but it remained questionable whether there was genuine consensus on the new negotiation agenda. Whether the DDA sufficiently took into account the interests of developing countries was hence contested. Bello regarded Doha as a failure for developing countries, as their main issues such as implementation had got sidelined. However, despite this failure, he acknowledged a different quality in the cooperation between developing countries in the negotiations (2002; see also Wolfe

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183 A representative from an EU member state commented that the DDA was valued as a success by the EU, because it could not consider it as a failure simply because it was a contentious agenda (interview 12).
2004b). Mattoo and Subramanian’s analysis of the Doha outcome was more positive though: they interpreted the EBA initiative, the ACP waiver and the Declaration on TRIPS and Public Health as results of the power of developing countries in the trade regime (2004). With these results, it was, according to Kerr, hence obvious that the developed countries “no longer control the agenda-making and the negotiation process will be broad based” (2002).

For most of the rest of 2001, delegations further refined their own positions and engaged in exploratory talks (Bridges 28.11.2001). Indication of the conflicts left open by the DDA was however already visible shortly after the conference, when disputes broke out concerning the four Singapore issues and some developing countries expressed their concern that they had been “trapped” into negotiating these issues (BT 2001).

Again, in these overall framework negotiations, services do not seem to have played a significant role in the 2000/2001 run-up to the Doha Ministerial. In the January 2001 strategy paper, the EU’s new approach foresaw greater attention to sectors and modes of export interests to developing countries, in line with the “developmentalisation” of the EU’s agenda for the Doha Round (European Commission 2001a). In the run-up to the Doha Ministerial, there was some discussion in the General Council as to what to include into the Doha Declaration on the services issue: it was suggested that it should reiterate WTO members’ commitment to the services negotiation guidelines and unlike in the agriculture negotiations, most members agreed to this. The EU argued for the inclusion of a standstill provision and benchmark dates. Developing countries asked for flexibility in all aspects of the services negotiations and for due consideration of autonomous liberalisation. Some members also pointed out that the negotiations on GATS rules should be completed before further market access negotiations. For the ESM, some members recalled the importance of the 15 March 2002 deadline (Bridges 19.06.2001). In the end, the DDA only contained a recognition of progress that had been made so far on services (WTO 2001), but the Commission indicated its satisfaction with the dates set for the market access negotiations (European Commission 2001b). This negotiation result at
Doha was, of course, preceded by two years of negotiation in the CTS/CTS-SS. These and the EU’s impact on them, will be traced in the next section.

7.2 Issue-area framework negotiations: starting GATS 2000 negotiations

In 2000 and 2001, WTO members agreed on the guidelines for the services negotiations in the CTS-SS. Other topics were assessment of services trade, credits for autonomous liberalisation and the stock-taking exercise. The reason that the CTS-SS was discussing all these issues was that while WTO members failed to launch a new trade round in Seattle, they were still formally obliged to conduct the built-in negotiations of the Uruguay Round. The EU had tried to prevent this from happening: having negotiations only in services and agriculture, and while it continued to underline the importance of the more extended round, it now agreed to support the sectoral negotiations. With respect to services, there was discussion about whether to proceed with the built-in negotiations on a sectoral basis or not. The US, consistently with the position it had taken before, pushed for sectoral negotiations. Falkenberg, head of the European Commission's Trade Negotiations Unit, underlined the necessity for a broader round to secure trade-offs between the different sectors:

    [...] with the agenda being limited to the agriculture and services sectors, there is no room for any give and take which is so crucial in these negotiations (Bridges 18.01.2000).

The Japanese delegation argued for a discussion on WTO reform before moving on with any sectoral negotiation. It seemed very uncertain whether WTO members would be able to continue with the prescheduled built-in negotiations. This was expressed by Mike Moore in several press statements (Bridges 25.01.2000). An EU official pointed out that there was a clear understanding that the negotiations could not proceed without insertion into a broader round, and that the EU’s idea of a Millennium Round had therefore not been defeated (interview 9). Given the very real opposition that there was with regard to the trade round, the Commission might have been rather optimistic about its ability to achieve its goal (which in itself might have even provoked further resistance).
When the WTO General Council met on 7-8 February to decide how to proceed with the built-in negotiations, it agreed to start the mandated negotiations and reviews as planned. In fact, the decision seems to have been rather uncontroversial (WTO WT/GC/M/53 15.03.2000). This can both be interpreted as a general support of WTO members for the trade regime and as an indicator that the WTO regime’s inbuilt norms compelled WTO members to comply with the required negotiations.

The services negotiations were scheduled to start on 21 February with a meeting of the CTS. The negotiations themselves would be conducted in special sessions of the CTS (“CTS-SS”), scheduled alongside the regular meetings of the CTS to facilitate participation of non-Geneva based experts. An immediate link to the agriculture negotiations was created, as the services negotiations would be aligned to those in agriculture. Cross-deals were expected. Whereas the decision to start the negotiations was heralded as “back to business” by WTO DG Mike Moore, others were not sure that negotiations would actually start in 2000 – rather there would be a framing of negotiations in the two areas of services and agriculture (Bridges 29.02.2000). This means that in the end a proposal prevailed that the US had envisaged earlier: sectoral negotiations and a first phase of framing the negotiations. For the EU, starting these negotiations clearly was “better than nothing” and at least was a way in which the EU (and other WTO members) could express continued support for the WTO.

When the negotiations started, it was decided that in a first phase, negotiations would focus on rule-making, with market access commitments following later. Meetings would be held every 5-6 weeks and all issues directly related to the negotiations were moved to the CTS-SS agenda. Mercosur members called for the services negotiations to be linked to those in agriculture and to make progress in both areas dependent on each other. Other developing countries outlined that they would make progress in the services negotiations dependent on progress in implementation issues and they raised the difficulties of negotiating on the basis of the incomplete

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184 The discussions on the GATS 2000 negotiations in this and the following chapters are therefore dealing with the discussions taking place in the special sessions of the CTS (CTS-SS) rather than those in the CTS meetings.
trade in services data (Bridges 29.02.2000; WTO Press/167 07.02.2000). The EU representative expressed the EU’s interest in an immediate start of the sectoral negotiations and argued that rule making discussion should be held in parallel to the sectoral negotiations (WTO S/CSS/M/1 12.04.2000). Strikingly, Mercosur members submitted a proposal to the CTS outlining a schedule for the negotiations (WTO S/CSS/W/2 14.04.2000). It seems that at this early stage of the negotiations even the players that were deemed rather defensive played a constructive role in the discussion, but naturally their priority was not market access, but shaping the guidelines according to their own priorities.

The preparation of the negotiations continued with the CTS-SS agreeing in April on its agenda and working plan for 2000. Four so-called “services weeks” would structure the negotiations. A deadline for the submission of proposals about the modalities and structure for the negotiations was “more or less” agreed upon (expected to be finalised in May 2000) (WTO S/CSS/M/2 09.05.2000). The CTS-SS would discuss the following issues in 2000/2001:

- Modalities
- Assessment exercise
- Autonomous liberalisation
- Sectoral issues: tourism annex, maritime services, financial services, environmental services etc.; work of the Committee on Specific Commitments (CSC)
- Horizontal issues: Mode 4, WPDR, WPGR

In an apparently minor disagreement, certain delegations, among them the Philippines, Indonesia, Malaysia, Thailand and Pakistan, rejected taking the Seattle text as a basis for the negotiations and also refused to start negotiations on market access before modalities had been established as foreseen in GATS Art. XIX (WTO S/CSS/M/2 09.05.2000). A solution was found shortly afterwards: after various informal meetings with delegations, the WTO Secretariat had produced a third draft version for the negotiation schedule and at the special session on 26 May, WTO members agreed on a “roadmap” for services. The roadmap included provisions with
regard to the process of the negotiations. Negotiation modalities would be developed by March 2001. It was emphasised by developing countries in particular during the discussion that the roadmap could not replace negotiation modalities (WTO S/CSS/M/3 26/06/2000). The (small) controversies that appeared at this stage were raised mainly by the developing countries and all aimed at postponing the launch of the market access negotiations.

7.2.1 Negotiation guidelines and modalities

Discussions on the modalities continued in June 2000. Proposals for modalities were supposed to be submitted by December 2000/March 2001. The EU asked that the Seattle text should be taken as a basis, which was rejected by some (developing) countries. New proposals were expected from members, while the Secretariat had been mandated to compile possible negotiation procedures and guidelines (WTO S/CSS/M/3 26/06/2000; Bridges 30.05.2000).

The US made a strong attempt at shaping the discussion by submitting a paper arguing for fast progress in the negotiations until the end of 2002. The proposal introduced elements for the guidelines and indicated the US’ priorities for the negotiations. It argued for a mechanism which would have set standards as to which level to liberalise different sectors to and contained the US’ ideas about deadlines for the services negotiations, but no agreement was reached on these as groups of countries argued for a connection to the agriculture talks or thought the plans were too ambitious (Bridges 10.10.2000; WTO S/CSS/M/5 01/12/2000; WTO S/CSS/M/5 01/12/2000; WTO S/CSS/W/4 13/07/2000). The US’ ambitious proposal was welcomed enthusiastically by US industry. However, an EU representative reminded WTO members that progress in the services negotiations was dependent on the launch of a broad round. Other WTO members expressed surprise with the US’ idea of a deadline in the end of 2002, as this might create tensions with regard to

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185 As the US’ negotiation objectives, the paper mentioned: increased market access, scheduling transparency, broader sectoral coverage, national treatment, MFN treatment, bindings by mode, transparent domestic regulation, and progressive implementation according to each country’s individual circumstances. The proposal emphasised the need for further liberalisation, the expansion of existing commitments and sectoral coverage as much as a new service classification system; and it called for an assessment of the “needs of developing countries” and S&D for developing countries.
launching the round (Bridges 18.07.2000; WTO S/CSS/W/4 13/07/2000). The US’ ambivalence with regard to the round was thus reflected in its approach to the services negotiations.

While the discussion reportedly led to greater understanding on some issues, the session brought to the forefront diverging attitudes with regard to the treatment and definition of autonomous liberalisation and ESMs. Developing countries also opposed proposals by developed countries which assumed their status-quo of market access as the base level for liberalisation during the current GATS negotiations (Bridges 18.07.2000). In July 2001, the EU submitted an informal paper on “Negotiating guidelines: Drafting elements”. In the CTS-SS meeting, the EU representative explained that the paper was based on the discussion that had taken place in the CTS in 1999 and on the May-“roadmap”, and it was meant to represent a “collective sense” (WTO S/CSS/M/4 18.09.2000). This seems as if the EU was trying to keep all interests on board and to broker a compromise.

In the third services week, the WTO Secretariat had prepared a draft, which incorporated both the EU’s proposal and comments made during the discussions of the second services week. Both the African Group (S/CSS/W/7) and Hong Kong (China), (S/CSS/W/6), had submitted further negotiation proposals. While the Hong Kong (China) proposal followed broadly the lines of the Seattle text and the May “roadmap”, the African Group proposal raised issues related to development concerns. In the ensuing discussion, Brazil criticised several points of the EU proposal, including the EU’s request for a balancing of commitments during the negotiations. Instead, Brazil considered “progressive liberalisation” as key objective of the negotiations. Furthermore, the Brazilian representative criticised that the EU’s paper indicated that the negotiations should “close the gap between current commitments and actual market practices”, which according to Brazil was not foreseen in the GATS. To sum up, the Brazilian proposal aimed to weaken the EU’s

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186 Developing countries continued to argue for ESMs, while industrialised countries still remained undecided about the necessity or feasibility of ESMs.

187 Informal papers are not available to the public.

188 The African group is a group of all the African WTO members (WTO 2007d).
more ambitious stance. Additionally, Brazil reminded other delegates of the link to the agriculture negotiations and to the link between the GATS rules negotiations and the market access negotiations (WTO S/CSS/M/5 01.12.2000).

During the fourth services week in 2000, 23 developing countries submitted a communication on the guideline issue (S/CSS/W/13\textsuperscript{189}). The proposal underlined, among other issues, appropriate flexibility for developing countries, progressive liberalisation, increasing participation of developing countries and commitments in sectors of interest to developing countries as core elements of negotiations. The EU representative welcomed the elements in the proposal (and in the one by Korea) and asked for “promotion of regulatory disciplines, pro-competitive principles and that liberalization be supportive of policy objectives, including sustainable development”. Discussion among members broadly dealt with the question of how much flexibility should be incorporated in the guidelines for developing countries and to what degree liberalisation should be “prescribed” by the guidelines\textsuperscript{190} (WTO S/CSS/W/13 24.11.2000).

In January 2001, the WTO secretariat distributed a first set of draft guidelines, which were close to the proposal made by the 24 developing countries in 2000 (and placing greater emphasis on the concerns raised by developing countries than the Seattle text; see footnote 189). However, the text did not go far beyond the GATS text, which raised doubts as to whether the guidelines would actually be able to give more guidance to the negotiations than the original GATS text. There was also still disagreement about the preferred mode of services negotiations: while developing countries preferred the request-offer approach, the US argued for different methods. Again, concerns were voiced that the service negotiations were affected by the

\textsuperscript{189} The countries were Argentina, Brazil, Cuba, the Dominican Republic, El Salvador, Honduras, India, Indonesia, Malaysia, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Philippines, Sri Lanka, Thailand, Uruguay, and the Members of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela). Guatemala joined the statement later on.

\textsuperscript{190} The Indian negotiator assessed convergence in many areas, but that disagreement still existed “in the negotiations being comprehensive as opposed to there being no a priori exclusion; pro-competitive disciplines; standstill; sustainable development, social policy and coherence; technical review, where he suggested that a list of issues for review might possibly be drawn up; negotiating modalities, where there was a consensus that request-offer be the main approach but differences existed with respect to supplementary methods and on whether they required a consensus”.

overall strategy of developing countries to ask for progress with regard to the implementation of existing agreements and by its link to the agriculture negotiations (Bridges 30.01.2001; IUST 26.01.2001).

Developed countries, and particularly the US, found that the draft guidelines proposal was catering “too much” to the demands for flexibility by developing countries (Bridges 13.02.2001). A second draft of the guidelines was issued, but rejected by the group of the 24 developing countries, as they saw “fundamental problems” with the formulations in the draft: in the new draft, the “development dimension” had according to the group become sidelined (for example the notion of flexibility for developing countries and special treatment for least-developed countries). The group opposed that ‘developed country text’ had been left unchanged or had been added. However, the draft followed the group’s proposal in certain aspects, for example as it stated that negotiations could start from bound commitments. The position of the 24 developing countries was supported by the African Group and CARICOM (Caribbean Community and Common Market), whilst India acted as a spokesperson of the coalition. Some, though, considered this oppositional move as “tactics” to bridge the time until the Doha Ministerial (Bridges 20.02.2001; IUST 02.03.2001).

Quad members met in March to work out a strategy to overcome the opposition of the developing countries, and especially of the group of the 24 developing countries. The Quad meeting, however, did not deliver the desired outcome, as Quad members could neither agree on how to deal with the developing countries’ demands for S&D nor on the broader issue of implementation (IUST 23.03.2001). It was also contested how the services negotiations would move forward in 2001: the EU and Japan favoured a slower moving approach, in which subsidiary negotiation groups to the CTS (which would discuss technical questions and identify market access barriers) would only be formed after the Doha Ministerial. This might have reflected a concern by the EU and Japan that the resistance of developing countries against the guidelines was symbolic of developing countries resistance to the services negotiations overall and that actual movement in services could only be achieved after the launch of a trade round at the Doha Ministerial. The US did, however, support a faster moving approach and had already in 2000 called for the
establishment of subsidiary negotiation groups. However, even if negotiations could move to a sectoral basis in 2001, a IUST source reported that the challenge for WTO members would be to keep momentum in the negotiations at all during the next months, because in fact little technical work was needed (except for in energy services) (Bridges 06.03.2001; IUST 02.03.2001). IUST commented:

It has been clear for a long time that neither the services nor the on-going agriculture talks can move towards negotiations in the absence of a larger negotiation (IUST 02.03.2001).

In the meantime, developing countries organised several meetings among themselves to consult about the guidelines. Additionally, Marchi, the Canadian ambassador who was now Chair of the CTS, called consultations with 20 delegations to seek a compromise. One idea was to restart discussions on the basis of both the first and the second draft, but the group of 24 developing countries indicated that they would like to submit proposals on the basis of which the chairman could draw up a completely new draft or negotiate on the basis of the first draft (Bridges 13.03.2001).

After this temporary stalling of the negotiations and the consultation process undertaken by Marchi, a new draft for the GATS negotiation modalities was distributed on 15 March by the WTO Secretariat, attempting a compromise:

The new draft reintroduces certain references to development issues present in the first draft, such as the objective of increased participation of developing countries in trade in services and of providing appropriate flexibility for individual developing country Members. The new guidelines also contain some bracketed elements (i.e., elements on which further guidance from the Council on Trade in Services was considered necessary) concerning issues such as flexibility for developing countries in relation to negotiations on MFN (Most Favoured Nation) exemptions (Bridges 20.03.2001).

After an informal meeting of the CTS-SS, a fourth draft was compiled by the Secretariat. It seemed that members nearly found a consensus on this fourth draft, which was welcomed by developing countries as even closer to their concerns than the initial first draft. Developing countries’ requests were catered for in the draft as it contained provisions to provide flexibility to individual developing country members and the objective of increasing the participation of developing countries in the services industry. The “standstill provision” was dropped as developing countries had
requested, as there was no such provision in agriculture. Furthermore, the provision on technical review and a reference to the annex on air transport, advocated by developed countries, were dropped (Bridges 27.03.2001).\textsuperscript{191}

After small further amendments, the negotiation guidelines were agreed upon at the end of March 2001, one day after the adoption of the guidelines for the agriculture negotiations. The guidelines refer mostly to existing provisions of the GATS. Development concerns had been inserted in some sections, for example a reference to the size of economies and to small and medium service suppliers.\textsuperscript{192}

Reception of the guidelines was mixed:

\begin{quote}
While trade sources last week privately acknowledged the services guidelines to be of minor substantive significance, they said the agreement provided an important signal that WTO Members are ready and willing to move ahead in the mandated negotiations even in the absence of a new round. WTO Services Division Director David Hartridge qualified the agreement on the guidelines as "good news," and added "it is seen by everybody as opening the next phase of negotiations." [...]However, some delegations privately expressed dismay at the predominance of developed country proposals presented so far, and questioned the ability of developing countries to effectively advance areas of interest to them in the current process (Bridges 03.04.2001).
\end{quote}

From the EU side, there was little reaction to the guidelines at the time. In an interview, an EU official explained that the EU had aimed for a different negotiation approach (different from the request-offer approach), but that they had very little support for this and that the Quad themselves could not agree on it (see also previous chapter). This led to the guidelines being mainly a repetition of the GATS provisions (interview 9). The EU and the US also regretted the absence of a "standstill provision", which had been rejected by developing countries because they feared it would impede their right to regulate their services sectors. Equally, requests would not be based on the status quo of market access but on current WTO commitments (usually market access is more liberal than WTO commitments). The EU (and US') favoured cluster approach (see below) also was not taken up by the

\textsuperscript{191} Bridges 27.03.2001 can be consulted for more detail on the contents of the fourth proposal.
guidelines. However, the guidelines left it open to WTO members to agree on further “bilateral, plurilateral or multilateral negotiations” methods (IUST 30.03.2001). One can therefore argue that for the EU, the negotiations on the guidelines brought little success.

The guidelines provided the background for sectoral, technical discussions which were expected to last about one year. A first session of sectoral discussions was expected in May 2001, among others on the wide sectoral proposals the EU and the US had made (IUST 30.03.2001).

7.2.2 Cluster approach

In 2000, the CTS-SS also discussed for several months the so-called “cluster approach”. The approach was promoted by the EU and Australia, who submitted proposals for a “cluster approach” in the first services week in 2000 (S/CSS/W/3; Job No. 3194). The cluster approach was meant to make commitments more coherent and transparent

a cluster was a group of sectors or sub-sectors which were related and for which negotiators would agree to seek a harmonized and coherent set of commitments (WTO S/CSS/M/3 26.06.2000).

This was hence a further attempt of the EU (and Australia) to ensure a far-reaching result in the services negotiations. Discussion on the cluster approach continued in the second services week. The EU representative underlined that the cluster approach was independent of the ongoing discussion on classification (which had been suggested by other delegations) and that the cluster approach did not alter the way members would make commitments or the flexibility of GATS (which was feared by some other members). It was meant to be a tool to facilitate negotiations. He proposed to “experiment” with clusters, which should be followed by a subsequent assessment of the results. ASEAN countries and others asked for further clarification of the cluster approach (WTO S/CSS/M/4 18.09.2000). However, the cluster approach was rejected by developing countries because it might have increased

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complexity of the negotiations and might have introduced further services sectors into the negotiations (IUST 26.01.2001). The EU’s cluster approach stimulated further debate during the third services week, but the US’ paper entitled "Framework for negotiations" (S/CSS/W/4) was the centre of the discussion (see above) (Bridges 10.10.2000; WTO S/CSS/M/5 01.12.2000). In the fourth services week, no further discussion on the cluster approach took place (WTO S/CSS/M/7 02.03.2001). Discussion abated and the proposal seems to have been discarded. This could be an example of learning in the negotiations, of failure of an EU proposal or both.

7.2.3 Assessment

As explained in Sect. 5.2.1, the question of an assessment of service trade was transformed into a standing item on the CTS-SS agenda. Developing countries continued to emphasise that new market access commitments were extremely difficult or even dangerous to undertake without reliable trade in services data (WTO S/CSS/M/1 12.04.2000). Discussions on the assessment issue in 2000 initially centred on how to improve the quality of trade in services data. It was proposed that the ESF could provide further statistics, which they did via the EU in the next meeting (WTO S/CSS/M/3 26.06.2000). Discussion on services assessment in the second services week seems to have been brief. Several developing countries, among them Pakistan and India, pointed out that a WTO Secretariat paper had identified significant barriers to services trade that developing countries faced, especially in Mode 4. Canada, the US and the EU offered to organise a seminar on trade in services data (WTO S/CSS/M/4 18.09.2000). This proposal received widespread support and the seminar was held in October 2000. In the subsequent third services week, India emphasised that the seminar had shown that developing countries especially suffered from a lack of Mode 4 commitments. Other members shared their experiences of assessment of services trade, but again the discussion seems to have been short (WTO S/CSS/M/5 01.12.2000). Discussion continued in the fourth services week (WTO S/CSS/M/7 02.03.2001), but significant conclusions were not

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193 A further submission was by Hong Kong (China) (S/CSS/W/6).
reached. The US indicated that it felt the assessment exercise had achieved its objective and those delegations wanting to discuss further should submit papers as soon as possible (WTO S/CSS/W/4 13.07.2000). The assessment exercise hence was kept as item on the CTS-SS agenda due to developing countries’ interest in the assessment, but it seemed unclear what aim the debate was heading to.

As assessment was a standing agenda item, the discussion continued in 2001. In the first services week, the discussion on assessment was based on two papers by Eastern European countries and by Argentina. Developing countries argued that the available statistics (in the papers) showed an imbalance in services trade, and the EU and the US pointed to the different ways in which the statistics could be read. Pakistan indicated that the objectives of the discussion needed to be clarified (WTO S/CSS/M/8 14.05.2001). In the next services week, Norway presented a research paper entitled "Diffusion of Information Technology, SADC [Southern African Development Community] and International Production" (JOB(01)/71), which analysed the impact of services trade liberalisation on developing countries. Pakistan explained that services assessment should have both a quantitative and a qualitative dimension, which was supported by the EU. However, apart from these contributions, discussion was short and brought no substantially new issues (WTO S/CSS/M/9 22.06.2001). In subsequent meetings, developing countries continued to underline the importance of the assessment exercise as much as the fact that the benefits of services trade for developing countries were unclear. Pakistan pointed out that in the Uruguay Round, developing countries had conceded to negotiating services despite the lack of statistic, and that still now the assessment of the effects of GATS remained stalemated. The Secretariat was mandated to sum up statements and submissions on services assessment (JOB(01)/160). The EU expressed its support for the developing countries’ concerns. However, the US insisted that a sufficient assessment exercise had been conducted and was an on-going item on the CTS-SS.

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194 The assessment exercise was moved to the CTS-SS agenda, alongside with all other issues related to the negotiations (WTO S/CSS/M/1 12.04.2000)

195 S/CSS/W/18 and Corrigendum 1 by Slovenia, Bulgaria, the Czech Republic, Poland and the Slovak Republic; S/CSS/W/44 by Argentina.
The EU supported a case study approach to the assessment, which was supported by the US and Norway (WTO S/CSS/M/10 21.09.2001; WTO S/CSS/M/12 28.11.2001).

In a subsequent meeting, Cuba, Senegal, Tanzania, Uganda, Zimbabwe and Zambia submitted an extensive paper on the possible negative consequences of services liberalisation experienced by developing countries (S/CSS/W/132; earlier paper: S/CSS/W/114). The debate focused mainly on the latter paper, which was criticised by several countries, especially Switzerland, as incoherent. The EU, the US and Switzerland set out to critique a statement in the paper that the GATS had negative impacts on developing countries – if an assessment of the effects of the GATS was still urgently needed as argued so often in the CTS-SS, the effects of the GATS could not assumed to be negative from the start. In a reaction seen as too strong by some developing countries, developed countries also criticised the from their point of view outdated information in the paper (Bridges 04.12.2001; Bridges 12.12.2001). The EU furthermore emphasised that the argument that developing countries had been marginalised in services trade was not unambiguous. The representative argued that domestic policies needed to be adequate to make use of the opportunities created by GATS. There was an ongoing “bickering” between the EU, US (and other demandeurs) and the developing countries about whether the assessment had started and whether market access negotiations could commence before the assessment was concluded (WTO S/CSS/M/13 26.02.2002). This was a disagreement that the EU/US in a sense had already “won” by making the assessment ongoing. However, despite the guidelines, developing countries kept on raising this point. While in 2001 several papers were presented that entailed case studies or statistical evidence, a large part of the discussion was taken up by this “political” dimension of the negotiations. This was a clear sign of the divergence of interests within the services negotiations and arguably of the “power of non-decision making”.

7.2.4 Credits for autonomous liberalisation

Discussions on the establishment of a system of credits for autonomous liberalisation were mandated by GATS Art. XIX and started in 2001. Members discussed whether
there should be a general or formula based approach to autonomous liberalisation and whether autonomous liberalisation credits should be dealt with only bilaterally or also multilaterally. The EU delegate suggested that issues to be discussed included transparency, credit and the possibility of a review mechanism (WTO S/CSS/M/8 14.05.2001). CTS Chair Celso Amorim reported afterwards that members thought that autonomous liberalisation was not discussed enough (Bridges 22.05.2001). Discussion continued on the basis of a Secretariat paper in May (Job (01)/65; JOB(01)/141). Contributions by delegations ranged from technical contributions by the EU to more general contributions such as Pakistan’s, which reminded negotiators that flexibility was essential for developing countries (WTO S/CSS/M/9 22.06.2001). The Secretariat’s summary of the discussion (JOB(01)/141) was criticised as incomprehensive by several delegations and discussion continued on definitional issues (WTO S/CSS/M/12 28.11.2001).

A further strand of the discussion seems to have been parsimony versus complexity, and secondly whether autonomous liberalisation credits should be just for developing countries or for the broader WTO membership (WTO S/CSS/M/13 26.02.2002). Brazil, Mexico and Uruguay asked for autonomous liberalisation credits to be given only to developing countries, because the dominance of the industrialised countries in service trade made a “global” autonomous liberalisation credit clause “unfair” (Bridges 17.07.2001). However, the question could not be solved easily and disagreement continued into autumn 2001. Developing countries argued that autonomous liberalisation credits could be a mechanism to operationalise Art. IV (increasing participation of developing countries in services trade). Multilateral criteria for the treatment of autonomous liberalisation remained to be found though (Bridges 02.10.2001, 09.10.2001, 16.10.2001). A group mainly consisting of Latin American and Asian Members submitted a new paper (S/CSS/W/130) and members requested the Secretariat to draft a new report on autonomous liberalisation credits (WTO S/CSS/M/13 26.02.2002). Discussion would be continued in 2002.
7.2.5 Overall developments

Overall, the negotiations in 2000 were accompanied by growing concern in civil society about liberalisation of services usually provided by public authorities (education, health). Bridges points out that services provided by public authorities are exempted from liberalisation under the GATS (Art. I GATS), but that the public feared that the GATS would lead to increased privatisation of such sectors. The director of the WTO’s Trade in Services Division publicly dismissed these claims and pointed out that these services "will not be negotiated, they will not be the subject of market access commitments, and they will not be subject to subsidy disciplines". (Bridges 10.10.2000). Equally, Lamy dismissed the claim that public services were dealt with under GATS (European Commission 2000b). As a reaction to increased campaigning against the services negotiations, the WTO Secretariat published in early 2001 a guide called “GATS – facts and fiction” (Bridges 20.03.01).

It can be argued that in 2000, a significant change in the public perception of services liberalisation became visible. While services was regarded as a “clean industry” before, services liberalisation became increasingly a target of NGO campaigning amidst fears of uncontrollable liberalisation. This development was reflected on the EU level, with first signs of NGO protest against the GATS. At a meeting organized by the ESF, Lamy consequently clarified that the EU was not looking to promote privatisation or deregulation. A development dimension was inserted in the EU objectives for the GATS negotiations.

Significant in the argumentation of the EU in 2000 is its turn to “sustainable” development. This is visible in the proposals in the CTS, for example on tourism services. In a speech, Lamy emphasised

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196 A further item discussed in the CTS-SS was a stock taking exercise. Paragraph 2(g) of the May 2000 road-map instructs WTO members that "the second phase of these negotiations would begin with a stock-taking exercise by the Special Session in March 2001, to consider progress made and how to move forward". In the first services week, comments were invited evaluating progress made so far and scheduling future work. Most countries assessed progress so far as positive and suggested that in the subsequent meetings in 2001, sectoral proposals should be discussed. This was also broadly the EU’s standpoint. While countries differed in their emphasis on the different areas in the negotiations, due to their diverging interests, the discussion was in general very harmonious (WTO S/CSS/M/8 14.05.2001), but no further action was taken. This hence needs not to be taken up in more detail here.
Trade, environment and social policies must play a mutually supportive role in favour of sustainable development (European Commission 2000b).

However, the notion of “sustainable development” or “sustainability” was rejected mostly by developing countries, who feared the loss of national sovereignty and protectionism under this disguise.

In terms of business involvement, Lamy acknowledged the ESF’s contribution to the EU’s policy on the services negotiations:

You have united the European service sector, and played an active role in shaping our strategy in the service negotiations (European Commission 2000b).

Apart from these issues, services did not figure on the EU’s agenda for the general framework negotiations in the WTO, much less than agriculture had with its prominence in the pre-Doha discussion, apart from the Commission arguing its case that services negotiations alone could not succeed. For 2000, Lamy judged that the services negotiations had for that reason been very slow (European Commission 2000b, i).

7.3 Interim Conclusion

This chapter traced the EU’s attempts at reviving the new trade round idea after the failure of the Seattle Ministerial to the successful Doha Round Ministerial, where the DDA was launched. This second period in the negotiations was characterised by high activity with regard to the overall negotiation framework. In the GATS 2000 negotiations, the pace of activity was lower, with first attempts at setting negotiation guidelines, but with the negotiations having “starting problems” as many delegations were waiting for the launch of a broader trade round. The EU had tried to prevent this from happening: having negotiations only in services and agriculture, and while it continued to underline the importance of the more extended round, it now agreed to support the sectoral negotiations. For the EU, two reasons for its participation in the GATS 2000 negotiations can be identified: first, stabilisation of the WTO regime and
second, a pragmatism which assumes that “any negotiation is better than none”. However, this strategy certainly carried risks for the EU, especially as the EU was faced internally with ongoing divisions with regard to agriculture.

The previous chapters have already indicated a certain recognition of the power shift by the European Commission (research question 1). Still, the EU’s agenda for the new round remained mainly the same, with only slight changes and some increased flexibility in the EU position. However, the Commission’s realisation led to some strategic changes (increasing attention towards developing countries, cooperation with the US). At this stage, it can hence be said that with regard to research question 1, the EU chose to make changes in its strategy rather than in the substance of its demands.

The power shift, as observed in previous chapters, caused further effects in the WTO: the outcome of the Seattle Ministerial encouraged various developing countries, among them Brazil, South Africa, South East Asian countries and India, to further improve cooperation among themselves, with the clear intention to shape the WTO agenda to the needs of developing countries. The EU would hence have to adapt to further changes in the way the negotiations functioned in the WTO.

The increasing politicisation of the WTO negotiations, as observed in chapter 5 above, was now affecting the services negotiations directly. There was growing concern in civil society about the impact of GATS negotiations on public services and “uncontrollable liberalisation”. It can be argued that in 2000, a significant change in the public perception of services liberalisation became visible. Similarly to the first major change in the trade regime, the increasing prominence of developing countries in the WTO, this second factor of the power shift was slowly revealing its full effects after the Seattle Ministerial. The EU reacted with attempts to improve its relations to civil society both inside the EU and in the broader, international realm.

In terms of research questions 4 and 5, the chapter has shown plenty of attempts of the EU to shape the agenda, to build coalitions and to raise support for its ideas for

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197 Internally, the Nice Treaty was yet another attempt of the Commission to move from unanimity to qualified majority voting (QMV) on services (European Commission 2000b).
the WTO agenda: after the failure of the Seattle Ministerial, the EU needed to convince especially the broad group of developing countries of the benefits of this new round, if it still wanted to see its idea of a broader trade round succeed. Lamy hence envisaged a first stage of confidence-building measures.

The EU hence continued its lobbying for the new, broad trade round. The EU’s lobbying efforts concentrated especially on the developing countries: (1) After discussions within the Quad, the EU launched the EBA initiative. This might be interpreted as the EU trying to break up developing countries’ solidarity. At the same time, this means that the EU was moving itself into the position of “benefactor”, using the power factor “market access”. With this initiative the EU had created for itself a powerful “bargaining chip” with which not only to “woo” the LDC but also to exert pressure on its developed country trading partners. (2) “Developmentalisation” of the EU’s WTO agenda; and the Commission heavily used the new concept of “sustainability” to argue for its trade policy. Closer to the Doha Ministerial, it managed to achieve the renewal of the ACP waiver and helped towards a declaration on the TRIPs Agreement and public health. These initiatives made an agreement on the DDA possible (see also Wolfe 2004b). While its substantive demands did not change much, the EU did show some flexibility on the implementation issue, which seemed to have had positive effects. This strategy of the EU to raise the importance of development issues in the early stages of a trade round has been observed already in previous trade rounds (Drahos 2003).

Division between the EU and the US had previously made agreement impossible. The European Commission reacted to this by actively building a common agenda with the US, as the idea of the new round could only progress after the US had clarified its own position and had started to support the round. These attempts arguably were fruitful. Consultations also took place within the Quad, but results were not that obvious.

On negotiation guidelines and modalities, it seems that the EU was trying to keep all interests on board and reach for a compromise, but otherwise was mostly concerned that the services negotiations would still be integrated in a broader round. Not only
the EU tried to use issue linkage though, for example Mercosur members called for the services negotiations to be linked to those in agriculture.

The EU’s agenda was indirectly aided by the much improved conference preparation and management by the WTO staff, arguably increasing its organisationally-dependent capabilities (research question 3). In terms of the EU’s resource power (research question 2), the biggest change in this period was the increasing opposition to the EU’s plans for services liberalisation expressed by NGOs inside the EU, which might have diminished the EU’s resource power. At one stage, the European Commission was also challenged over its EBA initiative by the EU member states, which arguably also reduced the EU’s resource power.

Did the EU succeed with its strategy and achieve desirable outcomes (research question 6)? At the end of 2000, it seemed that the EU had “re-“created a valid basis for the promotion of its new round idea and with the Doha Ministerial in 2001, the EU had after six years of intensive efforts apparently achieved its goal of launching a new, broad trade round. In this way, the outcome of this negotiation phase strongly reflected the EU’s preferences. However, much of the agenda had been watered down for the sake of finding a compromise and the success had been “bought” at least partially by exerting intense bilateral pressure on various developing countries and not by arriving at a real consensus (Narlikar 2004). It was hence not clear whether the EU’s success at this stage would lead to a longer lasting new shape of the regime or not. “Negotiations about negotiations” would have to continue in the WTO to arrive at a clearer direction for the DDA.

In the services negotiations, the negotiation modalities were agreed upon, but in effect had little substantive significance and were hence of much more limited scope than the EU had desired. One can therefore argue that for the EU, the negotiations on the guidelines were of little success, which again was partially due to the divergent preferences of the Quad (research question 5, 6). Another EU (and Australian) approach was the cluster approach, which disappeared slowly from the negotiation agenda. This could have been an example of learning in the negotiations, of a failure of an EU proposal or both. The negotiations on “autonomous liberalisation credits” constituted another “negotiation about negotiations”, in which countries tried
to shape the regime in a way that they would have to make as little commitments as possible. The (small) controversies that appeared at this stage were raised mainly by the developing countries and all aimed to postpone the launch of the market access negotiations. With the modalities agreed upon before the launch of the Doha Round, it remained difficult to retain movement in the negotiations.\footnote{The CTS-SS held some discussion on technical issues to “bridge” this time. Only little technical work was needed though.}

In the more general framework negotiations, the services negotiations were of minor importance in this phase. The negotiations seemed to run more or less smoothly and no particular political attention was devoted to the topic. Arguably, however, the GATS 2000 discussions constituted negotiations around a lot of “hot air”, as the substantial negotiations on market access had not yet started and WTO members needed to bridge time until the Doha Ministerial. However, even if these discussions were secondary “theatres of war”, they nonetheless show the distributional fight and the diverging interests underlying the WTO services negotiations and were used frequently to install issue linkages across negotiation levels.

The Doha Ministerial Conference in 2001 hence did not resolve the internal tensions that had emerged inside the WTO, which would become evident soon after the launch of the Doha Round. How would the EU deal with this and try to shape the DDA negotiations? This will be discussed in the next two chapters. The next chapter will take up the period after the Doha Ministerial until the Cancún Ministerial (2002-2003)
8 From Doha to Cancún 2002-2003: starting the Doha Round

As described in the previous chapter, the launch of the Doha Round meant that the EU's plan for the WTO's agenda had succeeded. This, of course, was only the first step for the EU to achieve. Now the EU would have to shape the actual negotiations in a way that would be conducive towards achieving the EU's goals of market access and also of protecting its defensive interests. The conflicts inside the WTO that would shape the negotiations were already visible and could be expected to shape this phase of negotiations as well. The first section in this chapter hence deals with the first two years of the Doha Round negotiations and with the failed Cancún Ministerial in 2003. The second section, as in the previous chapter, follows the GATS 2000 negotiations through the years 2001-2003, in which the framework negotiations for GATS 2000 continued and in which market access negotiations started.

8.1 Overall framework negotiations: the first stages of the Doha Round

In terms of the overall framework negotiations, 2002 was rather “unexciting”, as with the start of the Doha Round the main tasks left were structuring the negotiations and other preparatory processes. At the Doha Ministerial, WTO members had decided that a “Trade Negotiations Committee” (TNC) would oversee the negotiations. WTO members hence started a range of consultations in early 2002 in the TNC about how to operationalise the Doha mandate, which led to disagreements between developed and developing countries. For example, developing countries and LDC were afraid of the Quad enforcing its favoured negotiation approach, because this might have given the Quad an advantage over the substance of the negotiations as well. The Quad objected to this argument and argued that developing countries were simply trying to
stall the negotiations (Bridges 16.01.2002). However, these smaller disagreements did not seem to have hindered the negotiation progress substantially and WTO members agreed on the structure of the DDA negotiations, establishing seven negotiating bodies. These would deal with agriculture, services, non-agricultural market access, rules, trade and environment, a multilateral register for geographical indications for wines and spirits, and reform of the Dispute Settlement Understanding (WTO 2003: 5). Across the first half of 2002, the work in these various sub-committees of the TNC consisted of negotiations on procedural issues and modalities. Substantial negotiations slowly started afterwards.

With the start of negotiations on specific issues, the conflicts visible prior to the establishment of the Doha Agenda re-emerged in the discussion in the WTO: developing countries warned that the negotiations would not move forward substantially if their concerns regarding S&D and implementation of Uruguay Round agreements were not taken on board. A further contentious area was the extension of the geographical indication register beyond its current range of wines and spirits (Bridges 24.07.2002; TERI 2003: 5ff). In autumn 2002, two further main issues of controversy emerged: TRIPs and public health and agricultural subsidies (see for example Bridges 09.10.2002; FT 29.08.2003). The contentious issues were debated throughout 2002, but solutions were not found (Bridges 12.12.2002; see also Bridges 20.12.2002).

Developed countries continued their initiatives aiming at building support by developing countries. In March 2002, developed countries pledged double the amount to the “Doha Development Trust Fund” than had been requested by the WTO Secretariat in its plan for 2002 (Bridges 12.03.2002). Throughout 2002, Lamy continued to emphasise the importance of the development dimension in the trade round and how the development dimension should be operationalised (for example European Commission 2002d). However, these attempts by the EU did not

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199 A group of developing countries also feared that their interests would not be represented appropriately by WTO DG Mike Moore, if he became chairman of the TNC. A compromise was reached, which meant that WTO DG Moore took up the chairmanship but had to follow a set of procedures ensuring that all interests were taken on board (Bridges 05.02.2002).
necessarily result in EU successes in other negotiation areas. The agreement on deadlines for NAMA modalities was regarded as a success for developing countries, especially the African Group and India, over the EU’s proposal (Bridges 24.07.2002). The EU also failed to align the deadline of the review for S&D with the agriculture and services negotiations due to the resistance of LDC and African countries (Bridges 06.08.2002).

Agriculture now quickly moved to become the linchpin and crunch point of the negotiations. In early 2003, the negotiations stalled, which Chair Harbinson attributed to a lack of flexibility to compromise (Bridges 29.01.2003, 06.02.2003). The TNC noted uneven progress in the different negotiation areas, with Services Chair Ambassador Jara warning that other negotiation areas should not impede the current good progress in the request-offer process in the services area (Bridges 06.02.2003). With services now embedded in the broader round, the links between negotiation levels and areas clearly became more important.

From spring 2003 onwards, preparations for the Cancún Ministerial intensified. The first Mini-Ministerial that followed took place in Tokyo and 22 trade ministers attended. Apparently, the looming US invasion of Iraq hindered progress, especially as the EU and the US were at odds over this, a further example where external events impacted on the WTO negotiations. Rifts over agriculture and TRIPS and health persisted (Bridges 19.02.2003), and no movement was achieved until March (Bridges 05.03.2003). The first deadline for the establishment of modalities in the agriculture negotiations was missed. This negotiation failure was reflected across other negotiation areas: in the CTS-SS, only few offers were submitted in line with the end of March deadline (Bridges 04.04.2003). Deadlines on TRIPs and public health, implementation issues and S&D were equally missed (Bridges 10.04.2003). The OECD and other international institutions (for example G8) urged for progress in the Doha Round (see for example Bridges 07.05.2003, 04.06.2003). However, these

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At the same time, the US obtained fast track negotiation authority for the Doha negotiations, which raised hopes that the US would be able to play a more active role in the negotiations in the future (Bridges 06.08.2002), which might be beneficial to the EU as well.
attempts to push forward the Doha negotiations did not translate into actual movement in the technical negotiations (Bridges 10.04.2003).

The EU and the US reacted to this with increasing flexibility on the Singapore issues: while the EU had previously indicated that it would like to see the negotiations on the Singapore issues reconfirmed in Cancún (Bridges 10.04.2003), the EU and the US now indicated that the Singapore issues could be considered on a separate basis (Bridges 14.05.2003). To build support for the Cancún Ministerial, the EU also continued its strategy of “wooing” especially the LDC. For example, in a speech at the 2nd mini-Ministerial Conference, Lamy suggested that by the time of the Cancún Ministerial a significant development package should be reached, which should include decisions on S&D, market access commitments in sectors of interest to developing countries, improved pro-development WTO rules, and technical assistance (European Commission 2003g).201

At the same time, LDC ministers finalised their common strategy for the Cancún Ministerial (Bridges 28.05.2003). India and China announced they would strengthen their cooperation in the WTO (Bridges 03.07.2003). It also seems that developing countries were getting support from a further source now: a US lobbyist pointed to the changing strategy of developing countries, which would form alliances with Western NGOs (IUST 10.05.2002). Developing countries hence continued to build coalitions and expand their capacity to participate in the negotiations. The groups they met in were, among others, the ACP, the African Group, the LDCs, the Small and Vulnerable Economies (SVEs), and the Like Minded Group (LMG). When pressures increased on the developing countries in the run up to Cancún in 2003, several new groups formed, among them the G20 dealing with agriculture (see below; see also Narlikar and Tussie 2004; Narlikar 2005).202

201 Lamy equally emphasised the importance of the development dimension in the Doha negotiations at an ASEM meeting shortly before the Cancún Ministerial (European Commission 2003h).

202 These groups were, among others, the “Core Group” of developing countries, which opposed the Singapore issues, a coalition on cotton, and a group dealing with strategic products and special safeguard mechanism, and the G20. Narlikar and Tussie describe the work of these coalitions (Narlikar and Tussie 2004).
Unexpectedly for the EU, a new issue was brought to the negotiation table by another new coalition of four African countries. In a June 2003 TNC meeting, Benin, Burkina Faso, Mali and Chad called for the eradication of cotton subsidies, arguing that their economies were damaged substantially by export subsidies of certain countries, most of all the USA. The proposal received positive reactions from many countries, including the EU. This was logical as the EU does not give cotton subsidies (Bridges 12.06.2003; FT 15.09.2003; Narlikar and Tussie 2004). The cotton issue would, however, impact the WTO agenda more than the EU probably expected at this point of time.

Disagreement among WTO members persisted, with the next Mini-Ministerial, held in Sharm el-Sheikh, Egypt, not producing a move forward. The EU’s internal problems in approving its CAP reform seem to have had a negative impact on the negotiations (Bridges 25.06.2003), but the way to a more offensive position of the EU on agriculture was cleared with the approval of the CAP reform203 in July 2003. However, the European Commission was now also internally faced with resistance against the Singapore issues, as NGOs campaigned against a launch of negotiations on them (Bridges 03.07.2003, 10.07.2003).

To drive forward the negotiation process, General Council Chair Perez del Castillo submitted a draft Ministerial text in his own responsibility shortly before the WTO annual “recess” in August. The draft text contained a broad framework and there were no propositions for specific modalities in the various negotiation areas. Developing countries complained that the text was one-sidedly biased towards developed country issues (Bridges 28.07.2003). A third mini-Ministerial in August put increased pressure on the EU and the US to overcome the deadlock in the agriculture negotiations (Bridges 21.08.2003). Subsequently, the EU and the USA circulated a proposal on agricultural trade, which although criticised by many developing countries gave rise to new hopes for a success during the Ministerial and for overcoming the deadlock in agricultural negotiations (Bridges 21.08.2003; FT 19.08.2003). A compromise between the EU and the US, which would then form the
basis of a compromise among the broader membership, was common in GATT times. This time, however, the paper was heavily criticised exactly for being a deal just between the EU and the US. An EU business representative suggested that the G20 had formed mainly as an adverse reaction to the EU-US compromise on agriculture. In this sense the EU-US attempt to move forward the negotiations backfired and even led to the formation of a clearer opposition coalition (interview 32, 33; see also Narlikar 2005).

Not much time now remained to bridge the remaining, substantial gaps between delegations. General Council Chair Perez del Castillo, in cooperation with WTO DG Supachai, issued a further version of the draft Ministerial Declaration.\textsuperscript{204} As Heads of Delegations could not agree on a more refined version of the text, Perez del Castillo decided to forward the draft Declaration in his own responsibility to Ministers at Cancún (Bridges 28.08.2003). The Cancún Ministerial had been meant to be a mid-term review of the progress of the DDA negotiations, as foreseen by Paragraph 45 DDA, and to provide the “necessary political guidance” to enable Geneva based negotiators to continue their work (TERI 2003: 4). As negotiations proceeded more slowly than foreseen in the DDA, the agenda for the Ministerial was now substantially reduced and finally ministers were only meant to agree on a broad negotiation framework, with modalities to be added later on in negotiations in Geneva (FT 15.09.2003; Bridges 10.09.2003).

### 8.1.1 The Cancún WTO Ministerial\textsuperscript{205}

During the first day in Cancún, five working groups were established to deal with

- agriculture

\textsuperscript{203} According to an interviewee, the CAP reform gave the EU space for a range of concessions on agriculture, while the US remained under great pressure domestically (interview 30).

\textsuperscript{204} It contained “sections on agriculture, non-agricultural market access, services, rules, trade-related aspects of intellectual property rights (TRIPS), environment, dispute settlement, special and differential (S&D) treatment for developing countries, implementation issues, the Singapore issues, and some smaller topics”, as much as new sections on a “sectoral initiative on cotton; commodity issues; and coherence”. It was accompanied by an “annex outlining a framework for establishing modalities in agriculture, a similar annex for non-agricultural market access, an annex on S&D, and annexes on the Singapore issues”. 
• non-agricultural market access (NAMA)\textsuperscript{206}
• development issues (implementation and S&D)
• Singapore issues,\textsuperscript{207} and
• other issues (which would depend on the preferences of the delegations, for example a TRIPS registry for geographical indications for wines and spirits).

As the services negotiations had been proceeding relatively smoothly, no working group was established in this area and it was supposed to be dealt with under “other issues”. Apparently, services was not seen as a critical area at this stage. Despite the already contested nature of the EU-US draft on agriculture of August 2003, agriculture negotiations proceeded on the basis of this draft, as other drafts had not gained much support. In regard to the Singapore issues, the DDA requested members to take a decision on whether to hold future negotiations on these. The decision on the Singapore issues was linked by some developing countries to progress in the negotiations on agriculture, implementation issues and review of provisions for S&D for developing countries. Developing countries were also disappointed with the draft proposal on development issues (Bridges 10.09.2003; see also Mkapa 2004).\textsuperscript{208} Significant divisions on the context of the Ministerial text hence persisted.

Informal “pressure techniques”, as observed in Doha, were in use during the Cancún Ministerial (Narlikar 2004): During the first days of the conference, the EU and the US apparently tried unsuccessfully to prevent further members from joining the G20. The

\textsuperscript{205} A detailed account of the Cancún Ministerial can be found in TERI 2003 and ICTSD 2003.

\textsuperscript{206} In the NAMA negotiations, members disagreed about the level of tariff cuts developing countries should commit to; and progress in these negotiations was by many members linked to progress in the agriculture negotiations.

\textsuperscript{207} African countries and least-developed countries, India, Pakistan, Cuba and others opposed the negotiations on the Singapore issues, whereas others, especially the EU and Japan, were major proponents.

\textsuperscript{208} The discussion surrounding the relationship between multilateral environmental agreements (MEAs) and the WTO agreements was considered as another bargaining chip of the EU. Further issues under negotiation were trade rules, TRIPs, dispute settlement, cotton, and the commodity crisis (concerning the fact that many developing countries depend on only one or two products for their exports).
EU seems to have put pressure on the ACP, and the US on Arab countries. However, they did not prevent the G20 from taking a strong position on agriculture against the developed countries (Bridges 11.09.2003). As could be expected, as early as day 2 an agreement on agriculture seemed increasingly unlikely. Additionally, the four African countries had managed to “catapult” the cotton subsidy issue into the centre of the Conference, which now constituted another stumbling block for the conference. At the same time, the EU was still trying to start negotiations on the Singapore issues in the face of fierce opposition (Bridges 12.09.2003). With the last day of the conference arriving, gaps in all negotiation areas remained substantial (Bridges 14.09.2003). In a final attempt to arrive at a compromise, Chairman Derbez issued a new draft text. He first scheduled consultations on the controversial Singapore issues, which were supposed to be followed by discussions on agriculture. However, in a very contested move, Conference Chair Derbez decided to close the Conference after what he saw as irreconcilable positions became visible in the discussion on the Singapore issues (Guardian 16.09.2003; see also Odell 2007).

As a reaction to this abrupt end to the conference, Commissioner Lamy criticised the decision-making procedures in the WTO as no longer suitable and created a famous quotation by calling the WTO a “medieval” institution (Guardian 16.09.2003). While both the EU and the US expressed deep disappointment at this abrupt and unsuccessful end to the conference, this sentiment was not shared throughout the WTO membership. The G20 was proud at finding its unity and a new ACP/LDC/African Union coalition had emerged, complaining that its priorities had been sidelined (Bridges 15.09.2003). Developing country representatives used the Cancún failure to argue for a true prioritisation of development concerns in the Doha negotiations (Mkapa 2004). Quickly, the EU was identified as the scapegoat for the failure of the Ministerial Conference, as it was argued that it had not shown enough flexibility on the Singapore issues (FT 15.09.2003). The EU refused to accept this “blame”, pointing out how much it had moved from its initial position, the responsibility of other actors in the system and that procedural problems had existed during the conference (European Commission 2003j, 2003k).
As had the failure of Seattle, the failure of Cancún led to a substantial debate. Apart from the differences on the substance of the Ministerial Declaration, several other sets of explanations for the failure of Cancún were discussed.

It was argued that in terms of conference management, as in Seattle, conference preparations started too late, with WTO members spending more time on discussing broad issues rather than focusing on achieving goals in specific areas. Pedersen argued that the attempt to make the conference process more transparent and inclusive had now been taken so far that result-orientated negotiation occurred far too late in the Cancún Ministerial (2006: 119-120). As finally a draft proposal was circulated by Perez del Castillo, Chair of the General Council, it did not gain the support of many WTO members and time was too short for further discussions and modifications (TERI 2003: 19). Despite the resistance of developing countries to the Chairman’s text and despite its questionable origin as a draft of the Chairman rather than the WTO membership, the text was used to form the basis for further discussions (Narlikar 2004: 423; see also Narlikar and Wilkinson 2004: 449).

To Narlikar and Wilkinson, this disregard for developing countries’ is not just an issue of conference management, but symptom of a broader systemic neglect of developing country interests in the world trade regime, which is favoured by the informal procedures with which the WTO negotiations function (2004). Narlikar argued that while the agenda had continuously been expanded to include new issues that were favoured by developed countries, developing countries’ interests had not been sufficiently included (2004: 423; see also Wade 2003). Additionally, resource imbalances between developed and developing countries continued to create imbalances in the negotiation process (Narlikar and Wilkinson 2004: 452ff). This systemic disadvantage of developing countries led to their resistance at Cancún and was a key factor in the failure of Cancún. The form that this resistance took was,

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209 “The size of the official US and EU delegations was estimated to be in excess of 800 each. […] Japanese officials […] estimated [the size of their delegation] to be between ‘three and four hundred, maybe more.’ New Zealand and Australia (with populations of roughly three and 18 million respectively) had delegations of 30 and 70. […] The Nigerian delegation, for instance, stood at 12; Malawi having ‘learnt’ from previous meetings, took a delegation of 30; the Central African Republic contingent numbered three; and Barbados managed eight.” (Narlikar and Wilkinson 2004: 452).
according to Narlikar and Wilkinson, by improved cooperation (2004). Hence, Wilkinson argued later on that contrary to the Seattle Conference, Cancún had not been disrupted by public demonstrations and bad conference management, but that the systemic disadvantage of developing countries was the core reason for its failure. According to Wilkinson, this systemic disadvantage was likely to persist in the WTO as it was inbuilt in the regime (2006b).

However, others argued that the establishment of the various developing country coalitions, including the G20, and the active role existing developing countries played, hence constituted a new step in the developing countries’ search for better representation in the WTO and their improved usage of their resources (Pedersen 2006: 120; see also Bhagwati 2005b). Narlikar and Tussie speak of “the role that developing countries played at Cancún”, which “was unfamiliar and innovative”. The innovation in the developing countries’ participation in the negotiations they see in their “effective coalition formation”. The qualitatively new feature of these coalitions was that they not only exchanged information, but managed to keep up their positions throughout the negotiations and that apart from being a blocking coalition, they developed their own agenda. This was indicative of the new proactive approach taken by the developing countries. Additionally, the G20 was able to withstand bilateral pressure by the EU and the US (Narlikar and Tussie 2004, see also Mkapa 2004; Narlikar 2005; Wolfe 2006). Hurrell and Narlikar compare the initiatives of developing countries prior and at Cancún with the activities of developing countries in the 1970s. They come to the conclusion that at Cancún, the developing countries’ initiatives had a different quality than in the 1970s, which was among other issues because developing countries were able to use their knowledge and research capacities more efficiently. Learning contributed to this new adaptation to the institutional setting of the WTO, and meant for example that coalitions adapted to

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210 The EU was one of the first to react to the G20 emergence and set up a meeting with the it in order to built confidence. This happened at a time when the US was still refusing to even talk to the G20 as a group. The meeting dealt with agriculture, because when the EU tried to raise NAMA in the meeting, the chair Brazil indicated they would no longer be chairing for this topic and every country would talk for itself (interview 10). The EU’s attempt at issue linkage here hence failed. Lamy also joined a meeting of the G20 in December in Brazil, after which they issued a joint statement (Bridges 17.12.2003).
several different issue areas at different points of time. Rather than being competitors, different developing country coalitions now even coordinated between themselves (2006; Narlikar 2005).\textsuperscript{211} The developing country coalitions had also learnt that they could use the input and support of developed country NGOs to support them during the negotiation (Narlikar 2005).

Obviously, the emergence and new quality of coalitions had an impact on the way negotiations function in the WTO.\textsuperscript{212} China’s WTO accession in 2001 had also added a further factor into the WTO game, and China was now an active member of the G20. Overall, this shows that although consensus between the EU and the USA was still a necessary condition for the success of negotiations in the WTO, it now was no longer a main and at times sufficient criterion. The failure of the EU-US agreement on agriculture in August 2003 indicated this (Narlikar and Tussie 2004; Eglin 2004; Schott 2004). The WTO was moving from a bipolar institution to a multipolar one.

Contrary to other commentators, Wolfe and Bhagwati doubted that the failure of Cancún was of much significance for the future of the Doha Round negotiation (Wolfe 2004b; Bhagwati 2004). Wolfe argued that Cancún did not constitute a big turning point for the WTO, but saw Cancún as a further step in a longer process of development. As he saw Cancún as part of the broader DDA negotiation process, Cancún failed because the negotiations in Geneva had not yet advanced far enough and because of the increasing complexity in the negotiations, and process might soon after be achieved again (2004b). While Bhagwati had regarded the Seattle failure as significant as it failed to launch a new trade negotiation, he already then had indicated that failed Ministerial Conferences had been inherent to negotiation processes in GATT trade rounds (Bhagwati 2001). Cancún to him clarified a set of issues such as the Singapore issues, and also meant a re-balancing of the system through the emergence of a stronger representation of the developing countries (see

\textsuperscript{211} In a later work, Hurrell and Narlikar trace the route to power through learning for the actors India and Brazil in particular (2007).
above; Bhagwati 2005b). To him, the ceasing of civil society protests around the
WTO meetings was a further sign for the trade regime’s healthiness and functioning.
He located the reasons for the break-down of Cancún in strategic mistakes by all
parties and little space for compromise in the position of the G20. As this to him were
only temporary challenges, he assumed that negotiation in the Doha Round would
soon progress again, especially as the multilateral system was the only viable option
to pursue developing and developed country interests (Bhagwati 2004). Hence, he
continued to advocate trade liberalisation through the WTO mechanism. In a later
article, he accused Western NGOs for misleading developing countries by
advocating a range of fallacies about trade policy. As important issues for the
future role of the WTO, he advocated re-introducing the centrality of the principle of
non-discrimination. This should and could not done by reversing regional trade
arrangements and S&D, which had undermined the principle, but by taking
multilateral liberalisation far enough that these exceptions lost their relevance. The
WTO should also concentrate on its main business, and especially make progress in
the services negotiations and on agriculture, and not become diverted by issues such
as trade and labour, or trade and environment, which had been pushed by interest
groups in developed countries and which are not desired by developing countries
(Bhagwati 2005a, 2005b).

8.1.2 Progress of the negotiations after Cancún
The WTO community was left without a roadmap for further negotiations after the
abrupt failure of the Cancún Ministerial. The IMF, the World Bank and some business
organisations called for a quick resumption of the round, but it was not clear how this
would happen in Geneva. USTR Zoellick emphasised that the US would now

\[212\] The G20’s achievement was to pressurise the EU and the USA to reform their agricultural policies.
Beyond agriculture, the G20 had no common positions. It comprises a very diverse range of
countries such as China, India, Brazil and Indonesia with equally diverging interests, which
immediately gave rise to speculations as to whether the coalition could remain stable after the end
of the conference (see for example Narlikar 2005).

\[213\] This were for example that further trade liberalisation might harm developing countries’ economic
development or a misrepresentation of the fact that due to the exemptions from trade liberalisation
prior to the Uruguay Round and due to S&D, developing countries trade barriers were in fact greater
than those of developed countries (Bhagwati 2005).
concentrate on bilateral and regional initiatives with those countries that had played a constructive role in Cancún (Bridges 25.09.2003). The US hence quickly announced a new focus in its trade policy, which it might already have prepared before the Cancún Ministerial though. The EU on the other hand withdrew into a reflection period. In the meantime, the G20 underwent some transformations, as both Colombia and Peru left the coalition to start FTA negotiations with the US, followed by Guatemala, Ecuador and Costa Rica shortly afterwards. Apparently, there was continuing pressure from the US on the G20, and the group did adopt a more conciliatory position. The US, EU and the G20 blamed each other for the failure of the conference. In an article in the Wall Street Journal, Zoellick called on the EU to make “aggressive proposals” on the international level on the basis of its CAP reform (Bridges 08.10.2003, 15.10.2003; IUST 07.10.2003).

Throughout autumn 2003, negotiations remained “in limbo”. October meetings for NAMA and agriculture were cancelled, and only services negotiations went ahead as planned (see below) (Bridges 08.10.2003, 15.10.2003; IUST 07.10.2003). Formal and informal consultations continued throughout autumn 2003. The EU and the US both indicated that they were not ready to take on leadership to restart the talks (Bridges 23.10.2003; see also Wolfe 2004). Discussion based on the Derbez text continued (Bridges 30.10.2003). However, as the EU’s position on the Singapore issues also was not clear, no deal could be reached (Bridges 13.11.2003). The EU also indicated that it might not yet be ready for new discussions by 15 December, as mandated by Cancún (Bridges 19.11.2003). Still, an interviewee stated that it was the

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214 Over the next two years, the US entered and concluded a range of new bilateral FTAs.

215 Zoellick also asked Japan for greater leadership.

216 A developing country trade diplomat was quoted: "After a nuclear war one thing survives: cockroaches, now its the GATS" (Bridges 08.10.2003).

217 An APEC meeting produced a compromise (among APEC ministers) to use the Derbez text as the starting point for further negotiations (Bridges 23.10.2003), but India had continued problems with such an approach as the Derbez text foresaw a “Swiss Formula” to reduce tariffs on agriculture (Bridges 30.10.2003). Lamy had also indicated that the EU had problems with the Derbez text, and the EU position remained unclear (Bridges 30.10.2003). At the end of October 2003, Chair Perez del Castillo and WTO DG Supachai held informal “Ambassador plus one” ‘green-room’ meetings with ca. 30 countries. Consultations included agriculture, NAMA, cotton and the ‘Singapore Issues’.
EU’s intention to support the General Council Chair in this consultation process and to keep the round alive: “we wanted the show back on the road” (interview 10).

It seems that DG Trade had not anticipated the failure of Cancún despite certain indicators in the run-up to the conference, as they had considered their offer as viable to other delegations and had considered a deal on the Singapore issues as feasible (email exchange with interviewee 14). Rather than quickly issuing a new trade policy strategy as the US had done, the European Commission started an EU internal discussion by circulating an “initial think-piece” on the failed ministerial. The document entitled "The Doha Development Agenda After Cancún" contained the idea for a WTO I and WTO II (WTO at different paces) and raised a set of questions about the future of European trade policy (European Commission 2003i).

Box 8.1 Defining the post-Cancún EU strategy

<table>
<thead>
<tr>
<th>Lamy’s key questions for a post-Cancún EU strategy:</th>
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<tbody>
<tr>
<td>• “Should the EU retain the same philosophical underpinning to its trade policy -- i.e. that trade policy should represent a combination of market access and rules?</td>
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<tr>
<td>• What is the best forum for pursuing the EU's trade policy agenda?</td>
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<tr>
<td>• There appear to be selective appetites for progress on both market access and rules within the WTO - is there a place for a plurilateral approach?</td>
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<tr>
<td>• What is the future of trade preferences (given that in some cases preferences may offer greater benefits to developing countries than multilateral market opening)?</td>
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<tr>
<td>• What contribution can the WTO realistically make to development?</td>
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<td>• What scope for WTO reform exists? To what extent is the consensus approach effective/useful? Is there a place for a Secretary General's right of initiative?“</td>
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Source: Bridges 30.10.2003; European Commission 2003i

Throughout autumn 2003, the EU kept its negotiation position, outlining several times that it could not continue to make further concessions without being granted concessions in return. Bridges stated that the EU “has taken the approach of listening rather than leading with regard to reviving international trade talks” (Bridges 30.10.2003). This also meant that the EU negotiators remained “conspicuously quiet” during informal talks in Geneva. Obviously, the talks could not resume without the EU’s active participation and Supachai asked the EU to retake a leadership role. The
G20 had already called for a revival of the round and even the US expressed its support for revival at APEC (Bridges 30.10.2003).

Lamy figured that the passiveness of the EU had made other players become more active, apparently a result desired by the EU (Bridges 30.10.2003). Due to EU member states pressure, the Commission started to be active again in the WTO after three months (although apparently there were internal voices that called on it to remain inactive for longer) (interview 6). On 26 November, the European Commission adopted a post-Cancún strategy, which was up for discussion in the Council of Ministers and the European Parliament on 02 December (Bridges 26.11.2003).218 While the EU remained clearly devoted to the WTO and the DDA and indicated flexibility in some areas, Fischler called on all developed countries to grant duty free market access to LDC and reminded WTO negotiators of the potential of South-South trade. The EU’s 2002 reforms of the CAP would have to be recognised and the G20 should be ready to make concessions as well (Bridges 04.12.2003).

A second round of informal talks in the WTO ended on 09.12.2003, with members not being able to relaunch negotiations at the General Council Meeting on 15.12.2003. While members had confirmed their commitment to the negotiations and the multilateral process, positions had not converged. Some members did not think it was useful to restart the negotiations groups in 2004 if no progress had been made, while others, for example India, were content to move forward in this way (Bridges 11.12.2003). Although WTO members did not make decisions on substance until the end of 2003, the year ended with the decision to revive all negotiation bodies in 2004 (Bridges 17.12.2003).

8.2 Issue-area framework negotiations: making slow progress

As seen in the last chapter, the services negotiations progressed largely unnoticed by the rest of the WTO in the years 2002-2003. The CTS-SS needed to continue the

218 The new EU strategy paper was criticised both by the Greens in the European Parliament and civil society groups: one critique was that it was a mere tactical repositioning and no new strategy had been revised, with the Singapore issues slowly being dismantled (Greens). Another critique was that the paper did not provide an answer to the strong rebuke from developing countries, but was still focused on how to achieve EU interests (WDM).
remaining framing negotiations as required by the GATS agreement (“negotiations about negotiations”), but in 2002 discussions on market access negotiations (“negotiations about substance”) started. As will be visible in this section, these issue-area specific negotiations (“negotiations about substance”) were intermingled with the issue-area framework negotiations.

8.2.1 Credits for autonomous liberalisation
The first issue under continued negotiation was that of credits for autonomous liberalisation. The EU submitted a proposal on 22 February 2002 on the assessment and treatment of autonomous liberalisation (S/CSS/W/133). It suggested that autonomous liberalisation criteria should be developed multilaterally, but then WTO members should negotiate bilaterally, but transparently (Bridges 26.02.2002, 19.03.2002, 26.03.2002; WTO TN/S/M/1 05.06.2002).219

In March and June 2002, delegations rejected the Chair’s draft texts for modalities (JOB (02)/35). A key stumbling block was the previously raised issue whether all trading partners or only developing countries should be able to claim autonomous liberalisation credits. The current Chair’s text did not differentiate between the two country groupings, but developing countries held that the whole idea of liberalisation credits would be led ad absurdum should developed countries be granted credits as well (JOB (02)/35/Rev.1) (WTO TN/S/M/1 05.06.2002).

A further critical issue was whether credits should be restricted to the area of services, or whether cross-deals could be undertaken, for example with the goods trade negotiations. Additionally, some acceding members asked for their commitments during the accession process to be eligible for the credits. This was rejected by other delegations, among them the EU, which argued that the credit was only applicable to liberalisation “since previous negotiations” (GATS Article XIX:3) (Bridges 04.06.2002; WTO TN/S/M/1 05.06.2002).
The discussion on autonomous liberalisation was suspended: according to Bridges sources, “just too many controversies remained”. The CTS Chair, Chile’s Ambassador Alejandro Jara, intended to use consultations in order to reach agreement on the outstanding issues (Bridges 04.06.2002). In the subsequent discussion in the CTS-SS, Jara identified the key outstanding issues as:

first, the situation of recently acceded members; second, the scope of the modalities, particularly with reference to developing country members; third, the possibility of obtaining credit through concessions on trade in goods; and, fourth, the relationship between autonomous liberalization and bindings (WTO TN/S/M/2 10.07.2002).

WTO members agreed on an informal consultation process to find a compromise.

Subsequently, 24 developing country members submitted a list of alternative modalities as a response to the Chair’s draft modalities. The paper apparently indicated that the DDA placed developing countries at its centre and that therefore only they should be eligible for autonomous liberalisation credits. In the subsequent CTS-SS meeting, Jara indicated that the informal meetings so far had only led to a greater understanding of different positions, but not to a compromise. Jara called for more realism and flexibility in negotiation positions (Bridges 31.10.2002; WTO TN/S/M/3 17.09.2002).

The informal consultation process continued through autumn 2002 with minor movement (WTO TN/S/M/4 11.02.2003). In the CTS-SS meeting, blame-shifting between the delegations continued. The US, the EU, Canada, Australia, Japan and Poland expressed their regret that agreement had not been reached on the basis of the current draft by Jara and urged for flexibility (Job(02)/35/Rev.2). Uruguay, Brazil and Malaysia emphasised that developing countries had shown flexibility, but that now flexibility had to come from the rest of the WTO membership. Thailand

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219 The EU paper was supported by Switzerland. Further new proposals were from Hong Kong (China) (S/CSS/W/134) and Paraguay (S/CSS/W/140). A formula approach was suggested by Uruguay (and previously Korea in S/CSS/W/126). Hong Kong (China) supported a middle ground position between the EU’s and Uruguay’s approach: its proposal foresaw the establishment of common modalities and criteria, while the actual credit would be determined bilaterally. The purely multilateral approach seemed unlikely and the Chair advocated therefore the middle ground approach.
complained that no ASEAN member had been called to attend the chair’s informal consultations and the recently acceded members Lithuania, China and Jordan re-iterated their quest for special treatment (WTO TN/S/M/5 21.02.2003). A further series of informal meetings followed and the 13 January 2003 CTS-SS meeting made progress on the basis of these consultations. Chair Jara circulated a few new drafting suggestions, because the group of 24 developing countries could not agree with the current draft (JOB (02)/35/Rev.2).\textsuperscript{221}

The Chair’s new proposal clarified that all developing countries would receive special consideration and re-assured the G24 countries that a differentiation between different developing countries was not intended. At the same time, the new proposal weakened the clause on newly acceded countries. The Chair’s proposal clarified that the modalities for the credits did not constitute a legal right to the credits, but that they had to be granted on a bilateral basis.\textsuperscript{222} The Chair’s suggestions seem to have been received positively and WTO members apparently committed to finishing the autonomous liberalisation modalities negotiations by February 2003.

However, the treatment of newly acceded WTO members remained contentious until the end of the negotiations (Bridges 15.01.2003). When Jara issued a third draft of the modalities (JOB (02)/35/Rev3), the draft again was widely accepted, but the newly acceded countries Bulgaria, Jordan, the Kyrgyz Republic and Oman still voiced critique.\textsuperscript{223} Bulgaria, Jordan and Oman then agreed to the text, but a debate

\textsuperscript{220} The group of 24 developing countries included Argentina, Bolivia, Brazil, Ecuador, Dominican Republic, Guatemala, Honduras, India, Indonesia, Malaysia, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Peru, the Philippines, Senegal, Sri Lanka, Thailand, Venezuela and Uruguay.

\textsuperscript{221} In their opinion, the issue of developing countries had not been not adequately dealt with in Jara’s draft, while newly acceded countries received too much attention.

\textsuperscript{222} However, the draft now also foresaw a bilateral, plurilateral or multilateral advancement of the application of the modalities, rather than only bilateral.

\textsuperscript{223} Bulgaria intervened in the CTS-SS to argue that the value of the autonomous liberalisation credit granted would depend entirely on bilateral negotiations, and it accused other delegations of purposefully weakening the potential modalities. Bulgaria threatened to not approve of the agriculture modalities and to delimit its services offer.
still took place with the Kyrgyz Republic\textsuperscript{224} (Bridges 05.03.2003; WTO TN/S/M/6 25.04.2003), which finally failed with its request. The CTS approved modalities for the treatment of autonomous liberalisation on 06 March 2003.

\begin{adjustwidth}{-2cm}{-2cm}
\textbf{Box 8.2 Autonomous liberalisation: negotiation result}

\begin{multicols}{2}

\textbf{Autonomous liberalisation: definition and value}

The modalities define an “autonomous liberalisation measure (ALM)” and the criteria to define the value of an autonomous liberalisation measure (JOB(02)/35/Rev3). An autonomous liberalisation measure is

\begin{itemize}
  \item “subject to scheduling under Part III (Specific Commitments) of the GATS, and/or leading to the termination of a most favoured nation (MFN) exemption;
  \item compatible with the principle of most-favoured nation (MFN);
  \item undertaken by the liberalising Member unilaterally since previous negotiations, in accordance with article XIX of the GATS; and
  \item applicable to any or all service sectors.”
\end{itemize}

To assess an autonomous liberalisation measure, the following criteria (among others) are applicable:

\begin{itemize}
  \item “sectoral coverage;
  \item liberalising nature of the measure concerned (for example elimination of measures restricting market access; elimination of existing measures that are inconsistent with national treatment and/or MFN);
  \item date of entry into force and duration of the measure;
  \item share of the sector in the total trade of the trading partner;
  \item share of the trading partner in the total trade in the sector autonomously liberalised by the liberalising Member;
  \item importance and impact of the autonomous liberalisation measures on the liberalising Member's economy;
  \item market potential in the liberalising Member for the trading partner; and
  \item opportunities for the expansion of foreign participation in the sector after the introduction of the measure.”
\end{itemize}
\end{multicols}
\end{adjustwidth}

\textsuperscript{224} The Kyrgyz Republic was asking for a footnote for paragraph 10 to be inserted into the draft. The footnote would have acknowledged the commitments made by recently acceded countries. The Chair and his supporters held that the inclusion of the footnote would not be legally binding in any case. Instead, they recommended that the Kyrgyz Republic could issue a statement after the modalities had been agreed upon.
Possible types of credit

- for example a liberalisation measure to be undertaken by a trading partner in sectors of interest to the liberalising Member under the GATS;
- a decision to refrain from pursuing a request addressed to the liberalising Member;
- or any other form that the liberalising Member and its trading partner may agree upon.

Source: Bridges 13.03.2003

The criteria for the assessment of an autonomous liberalisation measure guide the bilateral process in which the credits are established. This means that criteria do not establish a right for receiving credits, but that credits have to be negotiated bilaterally - under the supervision of the CTS if requested by the negotiating parties. The CTS also has an overall supervisory function. While the new modalities apply to all WTO members, members are required to take into account the level of development of their negotiation partner (Bridges 13.03.2003).

The agreement on the autonomous liberalisation credits was welcomed as a positive sign of movement while other Doha negotiations had slowed down or come to a halt:

WTO Secretary-General Supachai Panitchpakdi stated that "this agreement should inject new dynamism not only in the services negotiations but also in other areas of the Doha agenda" (WTO TN/S/M/6 25.04.2003).

An EU official indicated that the EU considered the autonomous liberalisation modalities as a necessity, as they were part of the negotiation modalities. However, the Commission was also aware that the modalities might not be effective in practice. The EU official explained that the autonomous liberalisation credits would be tested by Honduras, which had made an offer on telecoms after it already liberalised unilaterally and now seemed to intend to use the autonomous liberalisation credit. The EU official indicated that from his point of view, this was a tactical mistake and that the EU would simply indicate its own unilateral liberalisation rather than granting autonomous liberalisation credits (interview 6), made possible as the autonomous liberalisation credits were not restricted to developing countries. The autonomous liberalisation credit system’s effects might hence turn out to be rather limited in practice.
8.2.2 Modalities for the special treatment for least-developed countries

In 2002, the CTS-SS started discussion on the establishment of modalities for special treatment for least-developed countries (as mandated by Art. IV(3) and Art. XIX GATS). The item was brought to the agenda by Uganda on behalf of other LDC. Here was hence yet another group that sought to shape the regime for its specific demands in embarking on “negotiations about negotiations”.

LDC demanded, among a range of other issues, that they “should not be requested to make specific commitments in more than four services sectors” and that WTO members granted “national treatment” and market access in sectors of export interest to the LDC (WTO TN/S/M/1 05.06.2002). Although several developed countries expressed understanding and support for the concerns of LDC, the US suggested that the modalities that were required by the GATS framework were meant to increase the effective participation of LDC in the GATS negotiations rather than to increase their share in services trade. Similarly, while the EU offered support to the LDC for their participation in the services negotiations, it argued that the GATS already provided the necessary flexibility to accommodate the concerns of the LDC. However, the EU indicated its willingness to discuss all the issues brought to the table by the LDC (WTO TN/S/M/2 10.07.2002). Informal consultations took place and the LDC submitted a proposal for LDC modalities at the end of 2002 (WTO TN/S/M/4 11.02.2003; JOB(02)/205).

The reactions to the new LDC’s proposal can be grouped in two broad groups: India reacted positively to these requests, stating that the needs of LDC should be taken into account in requests, but indicated that capacity constraints in services trade were a problem not limited to LDC, hence it was also a problem that developing countries encountered. China supported India’s statement.

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225 Details of the LDC requests can be found in WTO TN/S/M/1 05.06.2002.
226 On the basis of their new proposal (JOB(02)/205), the Zambian representative argued that S&D provisions in Art. XIX and Art. IV GATS should be made more suitable for the needs of LDC. LDC should also not be requested to commit anything that “went beyond their developmental, economic and financial needs”, while full, effective and operational market access, including in Mode 4, should be granted to LDC alongside technical assistance. Cuba, Burkina Faso, Benin, Djibouti, Tanzania, Uganda, Ghana expressed their support for this position during the meeting (WTO TN/S/M/5 21.02.2003).
Developed countries in general did not want the modalities to be too comprehensive and prescriptive: the Japanese negotiator cautioned WTO members not to forestall any results of bilateral or multilateral negotiations and argued that in general the LDC proposal was too prescriptive; in other words Japan wanted the text to be less precise. The EU negotiator said that the EU had already taken into account the special needs of LDC in the preparation of its requests. Like Japan, he cautioned that some clauses in the LDC proposal were beyond the scope of the modalities. Additionally, the modalities were meant to increase participation of LDC in the negotiations, whereas the proposed clauses seemed to exclude LDC from certain possible negotiations (as they would limit the commitments they would have to make). The US supported the statements of the EU and Japan.

Again it was decided that negotiations should move forward in informal discussions (WTO TN/S/M/5 21.02.2003). In May 2003, LDC submitted a second draft for the LDC modalities (TN/S/W/13)\(^{(227)}\) (WTO TN/S/W/13 07.05.2003), which as such was welcomed by developed countries, but the substance of which received harsh critique from the demandeurs (in this case Japan, Korea, Switzerland, Hong Kong (China), US, Poland, Hungary, Singapore and others). The EU criticised the draft’s prescriptive character, which it did not see as the purpose of modalities. However, rather than holding further discussions in the CTS-SS, the EU asked for a switch to informal consultations to proceed on the matter. This idea was supported by a range of delegations.

Developing countries did not present a united position on the proposed LDC modalities. The LDC draft was supported by Indonesia, Cuba, Morocco. Pakistan asked for further consultation and analysis of the draft. Malaysia indicated that it did not think the binding clauses in the draft proposal should be applicable to developing countries. Zambia, the representative of the proposal on behalf of the LDC, indicated its disappointment with the many reservations raised and hoped that the modalities

\(^{(227)}\) Among other provisions, the draft modalities contained far-reaching demands, as for example it asked WTO members to “grant full market access and national treatment to LDC in the sectors and modes of supply of export interest to them”, and as it asked for Mode 4 commitments “particularly for unskilled and semi-skilled persons” (WTO TN/S/W/13 07.05.2003)
would not be voided of their substance during the negotiation process (WTO TN/S/M/7 30.06.2003; Bridges 21.05.2003). In the next CTS-SS meeting, the Secretariat had prepared a new draft, which sought to balance interests better (JOB(03)/127, JOB(03)/184/Rev.2). In the meantime, the LDC refused to engage in the negotiations and make any offers in the negotiations before the modalities were agreed upon and in this way pressured for the modalities (IUST 11.07.2003).

Modalities for LDC were agreed upon on 03 September 2003, arguably in an attempt to assure the LDC’s cooperation for the forthcoming WTO Ministerial (WTO TN/S/13 05.09.2003). The modalities call on WTO members to offer flexibility to LDC and to take into account their economic difficulties, but again it is questionable what impact, apart from framing expectations and ideas in the negotiations, the modalities would have. So while this part of the “negotiations about negotiations” was concluded, the result was not worth too much in the end and can be circumvented by using other loopholes.

8.2.3 Assessment of liberalisation of services trade
As the assessment exercise had been converted into a permanent agenda item, discussions continued in 2002, starting with a repetition of positions. Several members, including Peru, Pakistan and Cuba, reiterated the position that the assessment had to be completed before undertaking new commitments. Several African countries emphasised that the assessment was a “collective responsibility.”

228 The US also submitted an alternative draft (Job (03)/133). While both the Secretariat and the US proposals were based on the Zambian proposal, the WTO Secretariat added information obtained in informal consultations. The US proposal incorporated less binding language and was less comprehensive (Bridges 10.07.2003).

229 For them, the main objective of the assessment exercise was to analyse whether GATS objectives, and more specifically the objective of increasing participation of developing countries (Art. IV:1), had been achieved.

230 Discussion about the assessment exercise was aided from outside of the CTS-SS: on 14-15 March, the WTO Secretariat organised a Symposium on Assessment of Trade in Services for WTO members (Bridges 19.03.2002). NGOs also held meetings on GATS assessment to brief WTO member delegations about the assessment efforts undertaken by several institutions. External organisations contributed to the CTS-SS discussion directly at times; for example, in the last 2003 CTS-SS sessions OECD services experts presented case studies of developing countries’ involvement in services trade. Korea encouraged the OECD to carry out more studies of this kind, which would show the positive results of services liberalisation to developing countries. Naturally, developing countries questioned methodology and findings of the studies.
Developing countries thus felt the continued need to show the significance of this agenda item.

The EU and others replied with the “usual” arguments: the assessment of service trade was to be conducted on a national level; it should be conducted qualitatively rather than quantitatively; and as it was an ongoing item on the CTS-SS agenda, it did not have to be concluded before market access negotiations could start. The EU representative also indicated that technical assistance would be available from his delegation for the national assessment of services trade (Bridges 26.02.2002, 19.03.2002; WTO TN/S/M/1 05.06.2002).

The assessment exercise continued to be the place where developing countries tried to postpone the market access negotiations, and where developed countries continued to repeat their own, opposite position (WTO TN/S/M/2 10.07.2002). In subsequent CTS-SS meetings, discussions were based on exemplary case studies, submitted by various WTO members. The discussion now turned to questions relating to what interpretation of the available statistics would be appropriate and whether GATS had hindered or furthered the developing countries development in services trade. The US pointed out that little liberalisation had been achieved so far and the effects of GATS could therefore not be determined. The EU argued for a qualitative assessment of services trade flows which in its point of view would give a better assessment of the importance of services trade flows for developing countries than the statistics that had been submitted by developing countries (WTO TN/S/M/3 17.09.2002). The debate gained in precision on the basis of the case studies, and the EU was trying to dispel and counter-argue the fears of developing countries with regard to services liberalisation (WTO TN/S/M/4 11.02.2003; WTO TN/S/M/5 21.02.2003). The assessment exercise thus developed into a key discussion area in the negotiations, knowledge-exchange and build-up of a common or shared understanding. The richness of the debate is exemplified by the fact that 145

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231 For example, in June 2002, a new informal paper was submitted by Pakistan. The Pakistani submission was based on a joint submission by Cuba, Pakistan, Senegal, Sri Lanka, Tanzania, Uganda, Zambia and Zimbabwe (S/CSS/W/131). They advocated an assessment of whether GATS had increased the participation of developing countries in the services negotiations (Bridges 04.06.2005).
submissions had been submitted to it since 1998 (Bridges 17.07.2003). However, it also seems the discussion lost in prominence and focus at the end of 2002/beginning of 2003 because WTO members started to concentrate on the bilateral negotiation process. Additionally, developing countries continued to express their disappointment with the assessment process, although the EU assessed the process positively (WTO TN/S/M/7 30.06.2003).

8.2.4 Market access negotiations
At the Doha Ministerial, it had been decided that initial requests should be submitted by 30 June 2002, which constituted the start of “negotiations on substance”. For the case of the EU, the two relevant fora which warrant observation with regard to the market access negotiations are the discussions in the CTS-SS and internally in the EU.

A first question the CTS-SS dealt with was how the sectoral discussions that had been running during 2001 would be continued. In the first CTS-SS sessions, the chair indicated that the format in which they had been conducted during 2001 had come to the end of their usefulness (WTO TN/S/M/1 05.06.2002). Time needed to be allocated to bilateral (and plurilateral) meetings to consult on the initial requests.232 Obviously, a new focus on the request-offer process and a turn to bilateral negotiations was not desired by all delegations. The agenda item on sectoral discussions hence remained a standing item on the insistence of some delegations, but in subsequent meetings discussions became substantially shorter (Bridges 19.03.2002, 26.03.2002).

With the end of June 2002 deadline looming, WTO delegations started to prepare their initial requests for submission. The European Commission developed its requests with industry input, input from EU delegations in other countries, from EU

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232 This poses a challenge for the assessment of the EU's influence on the negotiations, as records of the bilateral meetings are not available. For this reason, interview material can give an indication of WTO members' perception of the EU's actorness in bilateral meetings.
member states and from their industries.\textsuperscript{233} The EU’s preparatory process was disrupted on 16 April 2002, when draft EU services requests, directed at OECD and advanced developing countries (named “Group 1” – “specifically targeted countries”), leaked to the public and caused a strong, negative reaction by NGOs. The documents were drafts and still being discussed between the Commission and the Member States. An interviewee suggested that it was a member state department which leaked the requests. For the first time, services negotiations received full public attention and for the first time, the internet was used widely for distributing the papers. The earlier, apparently mostly positive tone with regard to services negotiations had changed. Commission officials were appalled by the leakage, and had to defend against allegations that the EU was intending to dismantle public services in developing countries, which would lead to privatisation both domestically and abroad (interview 31; Bridges 23.04.2002; European Commission 2002a, also European Commission 2002f).\textsuperscript{234}

\textsuperscript{233} According to an interviewee, the Commission drafts the position, and then discusses it with the EU member states. The EU official also indicated that the Commission would not receive “input” with regard to every line of the requests and some sectors get more input than others (for example financial services) (interview 9); which means that the European Commission has to develop certain areas by itself.

\textsuperscript{234} For example, an association of European trade unions asked the EU in a letter to assure them that it would not enter any such agreement, and that it would ensure workers’ rights for commitments under Mode 4 and development-friendliness of Mode 3 commitments. Lamy answered that while the leaked requests were still in a preparatory process and did not reflect an adopted official position of the EU, it could be seen from the requests that the EU did not have a “hidden agenda” with regard to services and that all publicly stated negotiation objectives were adhered to. The letter clarified that the EU did not see GATS as asking for a privatisation of public services and that the EU Commission did not intend to do so, because this would constitute a breach of the EU treaties as well (European Commission 2002a, also European Commission 2002f). This first leakage of services made the Commission realise that they had to be more careful with its communications. For example, the Commission started to send different versions of proposals to each EU member state, so that they could identify who leaked the request. This created an administrative burden (interview 6).
This leakage of the EU services requests in 2002 gave rise to an unprecedented anti-GATS campaign, that would only abate somewhat in 2004/2005.\footnote{In Geneva, NGOs seem to cooperate and share information among each other. Leaked documents are used to prepare the developing countries for the next move of the “demandeurs” (interview 29). The South Centre, an intergovernmental organisation with a pro-development focus, gives support to developing countries and provides a meeting platform for their discussions. It seems that the South Centre also cooperates extensively with NGOs campaigning on the services issue. NGOs campaigning on an international level are: Friends of the Earth (FOE), World Development Movement (WDM), Oxfam (starting to work on services), Action Aid (starting to work on services), World Wildlife Fund (WWF), International Gender and Trade Network (IGTN), Third World Network (TWN), International Confederation of Free Trade Unions (ICTFU) and Public Services International (PSI). NGOs from developing countries active in Geneva are: TWN, Focus on the Global South (interview 23).} Compared to the campaigns in other negotiation areas (agriculture, NAMA), the campaigns might have been less extensive (interview 8, 29), which could have been due to the technicality of the services issue making it more difficult for NGOs to follow the negotiations and develop them into viable publicity (interview 29).\footnote{An EU official claimed that the NGOs sometimes are not informed what they are protesting against, but are protesting anyway (interview 9). Similarly, a developed country representative argued that often he could refute the NGO claims very easily on the basis of his own documentation of the negotiations. The management of public relations had become an essential part of his work (interview 21). Doubts about the effectiveness of the NGOs’ contribution to the services negotiations were also raised by another EU official: although his position directly involved relations to developing countries, he did not have any direct contact with NGOs. He suggested that their views were collected mostly via the civil society dialogue (interview 3). However, the civil society dialogue does not allow any in-depth discussion. Similarly to industry input, it hence seems that the NGOs deliver broad ideas rather than specific, targeted input. Another EU official suggested that it was rather the European Parliament which was very receptive to NGO messages (interview 3). This could indicate that these broad ideas of the NGOs are delivered to the Commission via two channels: civil society dialogue and European Parliament.} Still, a developed country representative suggested that the Commission is much more concerned with dealing with NGOs than are the US, Korea or Japan and it takes them much more into account when presenting its position than other countries (interview 20).

Increasingly EU civil society undermined the EU’s negotiation power, as they took on positions that were represented mostly by developing countries in the WTO. For example, in an open letter to Pascal Lamy and the 133 Committee, civil society groups asked for more transparency in the GATS request-offer process. They also asked for a halting of the negotiations until an assessment of the services liberalisation had been made (Bridges 17.05.2002, Mkapa 2004). The European Commission had to change its public relation approach to build support for the
negotiations domestically.\textsuperscript{237} In May 2002, Lamy spoke to the European Parliament to convince them that the EU negotiation proposals did not represent a new or revised EU approach to services liberalisation, but were in line with former policies. He reassured the European Parliament that public services would be safeguarded and emphasised the flexibility of GATS (European Commission 2002e). However, the opposition was not so easily calmed. In a statement of 22 October 2002, more than 70 members of the European Parliament, mostly from left-wing parties, demanded that the European Commission should ensure consultation with the European Parliament before submitting offers to the 133 Committee and before taking any decision about “offers” of service liberalisation. The statement also called for the EU to make no demands on developing countries’ public services, for public services to remain untouched and no further progress in service liberalisation until a “full and independent, economic, social and environmental impact assessment is conducted.” (Bridges 31.10.2002). As a further reaction to this heightening internal opposition, the European Commission attempted to include civil society into the negotiation process by starting a consultation process for the preparation of its first offer (European Commission 2002c, 2002g).

WTO delegations’ reactions to the leak were mixed: delegations were not too surprised about the contents of the requests, as the EU had already told them that its approach would be ambitious. They had expected though that the requests towards weaker developing countries and LDC would be less extensive. Some delegations criticised the NGO allegations as built on misconceptions about the nature of services liberalisation and deregulation. Other delegations were obviously “positively surprised” to now be able to compare the different EU requests, while it also gave them a head start before the 30 June deadline and the US requests (Bridges 23.04.2002).

\textsuperscript{237} There were also reactions from the WTO side to this growing opposition to the services negotiations. WTO DG Mike Moore and Chair Jara reacted to NGO criticism with a press release on 28 June, stating that there was no threat to public services and that initial requests would still be changed during the negotiation process. NGOs warned about the lack of definitions in the GATS exclusion of public services, and of the differing interpretations that could arise from this lack of clarity (Bridges 03.07.2002).
In the CTS-SS, the first round of requests started to trickle in at the beginning of July 2002. The US submitted its initial requests to 142 countries on 01 July 2002. According to the published summary, the US requests covered 12 service sectors and also dealt with several horizontal issues (investment barriers under Mode 3 (for example ENTs), Mode 3 restrictions, transparency in domestic legislation). Important to note might have been that the US asked the EU to bind its current level of liberalisation in audiovisual services. While the EU had tried to convince NGOs that the GATS did not lead to privatisation of public services, it seemed that the US requests did indeed contain a request to trading partners to privatisate their telecommunication enterprises. The most extensive requests of the US targeted developed countries and a set of key developing countries, such as Brazil, India and China. Requests to LDC were of a far less extensive range (2-3 pages) (Bridges 03.07.2002; IUST 05.07.2002).

Shortly after the US, the EU submitted its initial requests to 109 WTO members. The EU stated that it did not submit requests to accession countries and members of the European Economic Area (EEA). It emphasised in its executive summary that it focused on fewer sectors in its requests to developing countries and on even fewer, key sectors for LDC. In line with its previous strategy, the EU also sought to dispel worries of the NGO community in explaining that its requests did not impede the provision of public services and they did not target health and audiovisual services. The EU emphasised that its requests on environmental services did not deal with access to water resources and would not impede the host governments’ ability to

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238 The requests remained confidential, but the US published an executive summary.
239 These were telecommunication; financial services; express delivery services; energy services; environmental services; distribution services; education and training services; lodging and other tourism services; professional services; computer and related services; advertising services; and audiovisual services.
240 Korea, Switzerland, Norway, Australia, Brazil, China, and Taiwan had submitted requests at this state, and requests by the EU and Canada were expected shortly.
241 The EEA is composed of the EFTA (European Free Trade Association) countries and the EU member states. The Commission had a “gentlemen agreement” with accession candidates not to exchange requests and offers during the GATS 2000 negotiations. An interviewee argued that this could have “poisoned” the atmosphere, because of conflicts that could arise in the bilateral. Additionally, the candidate countries would take over the acquis communautaire in any case (anonymous interviewee).
regulate. Lamy commented that the EU’s requests had been formulated in ways both to sustain the importance of services trade in the EU and to make it possible for developing countries to benefit from increased services trade (European Commission 2002b; Bridges 10.07.2002).²⁴²

In the CTS-SS, the progress of the market access negotiations started to be discussed under “Review of progress in negotiations of participants” at the end of October 2002. Brazil emphasised Mercosur’s commitment to the services negotiations, but warned that progress in other negotiation areas, especially in agriculture, had been sluggish. The Brazilian representative complained that economic arguments that were often used in the services negotiations, such as “win-win scenarios” and “efficient allocation of resources”, were not applied to agriculture. The Malaysian negotiator complained that his country had been put under significant pressure by other WTO members recently with regard to the services negotiations, which was risking domestic support for the negotiations. Malaysia supported Brazil in terms of the linkage between services and agriculture, but also the link to S&D. Developing countries pointed to their capacity constraints and difficulties emerging for them due to the comprehensiveness of requests (WTO TN/S/M/4 11.02.2003). Thailand warned that while the market access negotiations in services had moved forward, progress was lacking in agriculture, S&D, TRIPs and health-related issues and the GATS rules negotiations. The negotiator complained about a lack of transparency of the market access negotiations and about an over-emphasis on Mode 3 to the detriment of Mode 4 (WTO TN/S/M/5 21.02.2003). In subsequent CTS-SS meetings, several developing countries insisted that a systematic review of the bilateral negotiations was a mandated task of the CTS-SS (WTO TN/S/M/5 21.02.2003), which was contested at least partially by the developed countries, who seemed to rather want to “get on” with the (bilateral) market access negotiations.

In general, at this stage the bilateral process seems to have been assessed positively – or at least the demandeurs tried to keep a positive atmosphere in the

²⁴² Canada, Australia, Japan, South Korea, China, India, New Zealand, Poland, Norway, Switzerland and Taiwan had also circulated their requests at this stage (Bridges 10.07.2002).
negotiations (WTO TN/S/M/5 21 February 2003). However, additional to the various complaints by Brazil, Malaysia, Thailand and others, the Philippine representative indicated in spring 2003 that only 40 WTO members had submitted requests, although members at this point of time were already required to prepare and present initial offers. The link between agriculture and services was emphasised heavily at this stage of the negotiations and might be one explanation for the delay in the submission of requests (WTO TN/S/M/6 25.04.2003).

The changing relations to civil society now impacted directly on the CTS-SS (rather than before only on the WTO as a whole or on national delegations). In a meeting in May 2003, the Chair indicated that he and capital delegations were asked for information on the state of the negotiations and he was wondering whether “basic information” could be made public, for example with regard to the number of offers. Some delegations expressed their concern as to how this information would interfere with the negotiation process, for example whether countries could be put under pressure by the public to make offers although they are not interested in doing so (WTO TN/S/M/7 30.06.2003). The Quad was divided on the issue. Japan and the US wanted to keep their offers confidential, whereas the EU and Canada wanted to make them available to the public (IUST 28.03.2003). Services liberalisation now was a topic for a wide range of NGOs and trade unions. The European Commission itself continued its internal explanation of GATS. In a public hearing in the European Parliament, organised by the Heinrich Boell Foundation, Lamy outlined that the Commission’s services agenda was not about pure liberalisation or privatisation, but about “market access and rule-making”, and that the GATS framework kept intact the regulatory freedom of each government. Lamy outlined that under GATS governments are not obliged to open any sector, and he repeated that the EU did not

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243 Hong Kong (China), as part of the demandeurs, called members to keep up the good pace of work in the services negotiations.

244 The first People’s World Water Forum took place in Florence, 21-22 March 2003, and criticised the potential water liberalisation under GATS (Bridges 26.03.2003). The charity “Save the children” published a report about the potentially disastrous impacts of service liberalisation under the GATS (Bridges 10.04.2003a). The International Confederation of Free Trade Unions (ICFTU) asked for safeguards to prevent “public services or other services of public interest” being submitted to private sector competition under GATS (Bridges 10.04.2003). In March 2003, the European Parliament adopted a resolution on GATS (European Parliament 2003).
make any demands on health, education and audio-visual services (European Commission 2003c, e).

Preparation for the first set of offers started in the EU and as previously with the EU draft requests, the draft EU offers leaked in February 2003. On 5 February 2003, Pascal Lamy introduced the EU’s draft initial service offers. If accepted in its current form, the EU offer would have included further market opening in banking, telecommunication, computer, postal, distribution, tourism, transport and environmental services, but not in public services or in audiovisual services, as the Commission ruled out any commitment in this sector. The EU offer also included market opening in Mode 4. Bridges quotes Pascal Lamy:

This carefully constructed proposal will strengthen the EU's position in the Doha negotiations because it addresses the interests of others, particularly developing countries. At the same time it ensures that services of collective interests in the EU such as education and health are preserved.

NGOs generally approved of the draft offer, but they regretted that the offer included postal, retail, environmental and transport services. The Third World Network demanded that the EU should withdraw its request for these sectors (Bridges 06.02.2003). During the preparation of its offer, the European Commission tried to make a more extensive offer on Mode 4 and the offer on Mode 4 was considered the “most ambitious aspect” of the draft EU offer. Apparently, it would have significantly increased the temporary access of professionals to the EU market. It seemed that in this way the Commission sought to accommodate for example the demands of India. However, in the EU internal consultation process the Commission faced resistance by certain EU member states. While some Nordic countries, for example Sweden, seem to have been supportive, the resistance against the Commission proposal was led by Belgium, various national labour agencies and workers unions. Lamy tried to diffuse worries in emphasising the differentiation between changes to immigration law and the short term entry of workers, but the proposal still caused security and illegal immigration concerns. With regard to maritime services, where the Commission tried to revive its 1996 offer, the Commission faced resistance by
Germany, Belgium and the Netherlands, who urged for a more cautious negotiation strategy. On postal services, the Commission faced resistance from postal worker unions. On audiovisual services, the countries that had acceded in 1995 would have to take back a commitment. In other areas, it seemed the EU was offering a mere binding of actual market access and no new commitments (IUST 21.03.2003). The European Commission tried to accommodate the concerns of civil society in an (apparently unprecedented) consultation process in the preparation of the offers,\textsuperscript{246} which apart from civil society involved industry and the EU institutions (European Commission 2003f).

In the WTO, hopes for significant offers to be presented by the March 30 deadline were decreasing, with only 30 offers\textsuperscript{247} having been tabled by the beginning of March. The Head of the Services Division explained that (1) while the services negotiations are the most advanced in the Doha Round, lack of progress in other areas had decreased members’ motivation to keep up the pace in the services negotiations (for example access to essential medicines, S&D, agriculture negotiations). (2) Many countries still took time to thoroughly prepare their requests to make effective requests. Mainly developed countries, including Australia, Canada, New Zealand and the US, submitted their offers on time for the end of March 2003 deadline. The Commission’s internal division meant that the EU had not yet agreed on its offer and postponed submission. The EU’s internal problems here caused a definite drawback for the EU and the US seems to have had a more effective impact on the negotiations. According to Bridges, some saw the US offer as a kind of benchmark for the other offers, because it showed a clear intent to move forward

\textsuperscript{245} ENTs were a further crunching point.

\textsuperscript{246} The offer needed to go through the Council and the European Parliament for consideration, before being forwarded to other WTO members.

\textsuperscript{247} In the discussion surrounding the WTO services negotiations, the number of submitted offers and requests became a proxy to the progress made in the negotiations. However, it should be noted that the number of offers on its own can be misleading and does not express the actual impact of the offers on world services trade. An interviewee gave an example: in May 2005 there were 52 offers on the table, covering 95% of services trade. Five crucial countries were missing to cover nearly all services trade: South Africa, Philippines, Pakistan, Venezuela and Morocco (interview 30).
even despite other areas stalling. However, developing countries had not yet submitted any offers (and only 30 had submitted requests) (Bridges 02.04.2003). Taking a closer look at the US offer, however, puts into question how far the US would be an effective leader in the negotiations. IUST comments that the US offer did not go beyond existing US law and hence just bound commitments that had already been made unilaterally. The US had only added two new sectors to its commitments: express delivery and energy services, again offering to bind existing market access. The US did not offer to liberalise the provision of water services and other public monopolies such as postal delivery, as had been requested by the EU, because the Bush administration expected these requests to be retracted by the EU. This can be seen as a direct result of the civil society campaigning in the EU. The US offer remained cautious on Mode 4 as well (IUST 28.03.2003, 04.04.2003) and an interviewee assessed that the US was much more restrained in the services negotiations than the EU overall (interview 30).

The EU finally submitted its initial services offer on 29 April and made it conditional on offers of similar depth from other members. The content of the EU offer is summarised in Box 8.3.

Box 8.3   Content of the EU offer

| Sectors: business services, computer and related services, research and development services, real estate services, rental/leasing services without operators, rental services with operators, other business services, communication services, construction and related engineering services, distribution services, privately funded educational services, environmental services (incl. distribution of water, but no cross-border transportation), financial services, tourism and tourism-related services, recreational, cultural and sporting services, transport services, other services. |
| Various sensitive services sectors are excluded from the offer, among others education, health, social services, and audiovisuals; reflecting civil society concerns and interests of some regional authorities in the EU. Public utilities: no change to current limitations. |
| Modes: the offer of the EU with regard to Mode 4 was regarded as “superficial”. Bridges pointed to the following potential EU commitments: Corporate managers and specialists will be allowed to stay for an extended period of three years. Graduate corporate trainees will be allowed to stay a maximum period of 12 months. In either case, an economic needs test will not be required. |

248 By April 2003, the EU had received 35 requests, 27 were from developing countries (European Commission 2003f).
Foreign companies with a contract to provide services to a client in the EU will be allowed to send highly skilled corporate employees to the EU for a maximum period of six months (within a period of 12 months). This period was previously limited to three months. The offer does not, however, apply to important services sectors such as research and development, construction, higher education and entertainment.

A new category of contractual services is offered. Self-employed, highly skilled people will be allowed to enter the EU for up to six months. This applies only to architectural, engineering and integrated engineering services, computer, management consulting and translation services. The entry of individual service suppliers is subject to a numerical ceiling, for which the modalities and level are still to be determined.

Scope: the EU offer includes some modification to the EU regime on investment. Subsidies in the services sector remain unchanged.

Source: Bridges 07.05.2003; European Commission 2003b

Commentators pointed out that as the EU offer was maintaining all services subsidies, it was of limited benefit to developing countries’ service suppliers. The proposed commitments on Mode 4 were criticised by GATS Watch:

The EU offer on mode four appears to be very poor. The possibility of concessions in mode four has been used by the EU and by businesses to sell the GATS negotiations to developing countries. The current EU offer shows that this is for the most part an empty promise.

The EU’s offers on the water sector were also criticised by civil society groups (Friends of the Earth, World Development Movement (WDM), Centre for International Environmental Law), although the European Commission emphasised that its liberalisation proposals in the water service sector only concerned the distribution of water “through ‘mains’” (Bridges 07.05.2003).

In the WTO, the offers by developed countries were sharply criticised by developing countries. They accused the US of making unjustified demands on developing countries while offering very little in return. Both the EU and US offer were criticised for their offers on Mode 4. The US justified itself by pointing to its significant commitments in the Uruguay Round and to its unilateral liberalisation. The ESM proved another critical point, with the EU, US and Canada insisting that the GATS

249 The offer excluded less-skilled labour and “GATS-type” visas, proposed by various developing countries, as it was feared that this could undermine normal visa procedures.
just mandated the discussion of whether such a mechanism would be desirable, while Brazil, Malaysia and other developing countries considered the mechanism as essential for further progress in the negotiations (IUST 30.05.2003) – arguments that had been made in the GATS discussions since 2005. Some members, including the EU and Japan, criticised some other WTO members' offers for having very little substance. This was rejected by developing countries with a reference to agriculture negotiations. Issue-linkages were hence now made between all different negotiation items and between services and other negotiation areas. At the same time, developing countries also opposed the proposal that the Secretariat should prepare a paper summarising which country had submitted an offer, sectoral coverage and other issues, which could have increased transparency in the negotiations, which obviously was not desired by them (Bridges 28.05.2003).

The submission of the first offers in the WTO hence changed the tone of the discussions in the CTS-SS. So far, the services negotiations had been left relatively unnoticed by the WTO negotiations overall and seemed to run smoothly: “Countries were sailing along.” (interview 28). While the number of requests had already remained behind expectations, the submission of the first offers created a first crisis in the services negotiations, because of a perceived lack of quality in the offers and the slow pace of submissions. In this first round of offers, only some 30 offers had been submitted by the summer of 2003 (IUST 11.07.2003, 250 15.08.2003251). These included offers from Mercosur countries, but more than 10 of the offers came from developed countries. Tunisia explained on behalf of the African Group that the lack of

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250 In July 2003, 27 countries had submitted services offers. These countries were the US, EU, Japan, Canada, Australia, Mexico, New Zealand, Korea, Czech Republic, Slovenia, Uruguay, Taiwan, Paraguay, Norway, Iceland, Bahrain, Liechtenstein, Panama, Argentina, Switzerland, Senegal, Israel, Hong Kong (China), Poland, Macao, China and Saint Kitts and Nevis (IUST 11.07.2003).

251 In August 2003, 30 WTO members had submitted services offers. The countries were the US, the European Union, Japan, New Zealand, Australia, Korea, Uruguay, Taiwan, Canada, Paraguay, Norway, Bahrain, Iceland, Liechtenstein, Panama, Argentina, Switzerland, Senegal, Israel, Hong Kong (China), Poland, Saint Kitts and Nevis, the Czech Republic, Macao, Mexico, Fiji, Slovenia, the Slovak Republic, Singapore and Chile (IUST 15.08.2003).
requests and offers from African countries was due to resource constraints. Japan regretted that some of the key developing countries, who had also been very active in the CTS-SS, had not yet submitted their offers.

At the same time, the Tunisian representative complained that offers received by African countries so far had not taken account of their concerns, and Uruguay assessed the quality of offers as below expectations. Of course, countries were trying to “advertise” their own offers as “ambitious”: Mexico introduced its own offer as “ambitious” and regretted the lack of positive responses to it. Again, the link to other negotiation areas was emphasised: developing countries reminded other WTO members of the sluggish progress in the rules negotiations and the link to agriculture as much as the lack of offers on Mode 4 (WTO TN/S/M/7 30.06.2003; WTO TN/S/M/8 29.09.2003). In July 2003, 14 developing countries warned that the offers on Mode 4 had been too limited. Apparently, the issue became more difficult to deal with for the US and EU, as India had become a leader on the Mode 4 issue and had rallied the support of many developing countries, among them China (IUST 11.07.2003). LDC continued to hold back submission of their requests and offers until LDC S&D modalities were agreed upon (Bridges 17.07.2003).

Developing countries thought to further shape the agenda of the CTS-SS in insisting on the implementation of Paragraph 15 of the Negotiation Guidelines (“review of the progress in the negotiations regarding the effective implementation of the objectives of Articles IV and XIX:2”) by discussing the item in a sub-heading to the “review of negotiations” agenda point. Various delegations suggested in a proposal to assess the negotiations by answering a set of questions, aiming to facilitate the assessment

252 Tunisia explained that this not only meant countries could not effectively participate in the negotiations, but also that they could not support their domestic industries to increase their competitiveness. As the bilateral process constituted a further burden on their scarce resource, the representative called for a “multilateralisation” of negotiations on Mode 4 and tourism services as a solution to this problem.

253 Countries that supported the paper on Mode 4 were India, China, Argentina, Bolivia, Chile, Colombia, the Dominican Republic, Egypt, Guatemala, Mexico, Pakistan, Peru, the Philippines and Thailand.

254 These delegations were Peru, Barbados, Bolivia, Colombia, Cuba, China, Ecuador, Egypt, Honduras, India, Indonesia, Jamaica, Malaysia, Nicaragua, Pakistan, Peru, Dominican Republic, Trinidad and Tobago and Venezuela.
of the offers by individual members. Discussion ensued as to whether the WTO Secretariat could undertake part of the work or whether members should undertake the assessment completely on their own. The US, Canada and Japan showed their disapproval for mandating the Secretariat for a qualitative assessment task (WTO TN/S/M/8 29.09.2003). However, in 2003 no further work was undertaken in this respect, as WTO members thought that more offers should be submitted first (WTO TN/S/M/9 05.02.2004).

8.2.5 Preparation of the Cancún Ministerial in the CTS/CTS-SS

In the middle of 2003, the preparations for the Cancún Ministerial started in the CTS/CTS-SS. Jara presented a report to the TNC on 14 July, which was supposed to form the basis for the service text during the Cancún Ministerial (Bridges 17.07.2003). In line with previous discussions, the draft on services was criticised by various developing countries for over-emphasising market access, while neglecting horizontal and rule-making issues. They also complained that the offers of developed countries contained little new commitments, especially on Mode 4. Hence, a group of developing countries proposed a revision of the draft Ministerial text in early August.255 Their new proposal "urged participants to intensify [...] their efforts and improve the quality of their offers, particularly in sectors and modes of supply of export interest to developing countries especially Mode 4" and the text re-emphasised the importance of the various deadlines in the rule-making negotiations (esp. ESM). Some of the changes were inserted into the pre-Cancún draft ministerial text (Bridges 28.08.2003, IUST 15.08.2003), but the US did not approve of the developing country draft text and presented its own draft proposal on August 20. Jara tried to broker a compromise (IUST 22.08.2003) and as there was also not yet an agreement on modalities for the treatment of LDC, Chair Jara also continued consultations on this issue in order to reach agreement before the Cancún Ministerial (Bridges 28.08.2003; IUST 15.08.2003), as this constituted a crucial area to sustain LDC cooperation during the Cancún Ministerial.

255 The group included Bolivia, China, Colombia, Cuba, Egypt, Guatemala, India, Indonesia, Malaysia, Mexico, Nicaragua, Pakistan, Peru, the Philippines, Thailand, Uganda and Zimbabwe.
Finally, during the Cancún Ministerial, services played a very minor role. It was not negotiated in a separate negotiation group, but added into the “miscellaneous group’s” agenda. As it was not seen as major concern of WTO members, the miscellaneous group did not negotiate services and members were advised to negotiate bilaterally (Bridges 12.09.2003). As the Cancún Ministerial remained without outcome, new directions for the services negotiations were not given.

However, as discussed above, despite the cancellation of all other negotiation bodies, the CTS and its subsidiary bodies met from 29 September to 6 October as planned, which apparently surprised several delegations. Member states’ positions had not changed significantly and the future of the negotiations remained unclear: while some suggested the CTS should wait for movement in other committees, theoretically the CTS could move forward without further political guidance due to the nature of the request-offer process. CTS-SS meetings took place on 06. and 09. October 2003, but seemed to have lacked enthusiasm and mostly dealt with “routine” issues, with negotiators being mostly concerned as to how negotiations overall would move forward.256 A subsequent Heads of Delegations (HoD) meeting confirmed that the CTS would also meet as scheduled in December, but the Heads of Delegations meeting mostly concentrated on agriculture and did not issue a new schedule for the services negotiations (Bridges 08.10.2003, 15.10.2003; WTO TN/S/M/9 05.02.2004). An interviewee confirmed that despite the formal continuation of the services negotiations, there was hardly any progress in the negotiations, and that activity levels would only start to increase again after the July 2004 framework (interview 6).

In October 2003, India announced it would soon submit its initial offer. One commentator considered the Indian move as strategic to diffuse suggestions that India as part of the G20 was not ready to compromise in Cancún (Bridges 08.10.2003, 15.10.2003). In December 2003, the CTS meetings and its subsidiary bodies apparently made some progress despite the still stalled Doha Round.

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256 A proposal on Mode 4 by India and 13 other developing countries (including Argentina, China, South Africa) from May 2003 was discussed.
negotiations. The number of requests and offers continued to increase.\textsuperscript{257} There was hence still movement in the different places in which the services negotiations took place.\textsuperscript{258} Accordingly, one commentator pointed out that services was still an area of interest to many WTO members and now showed most dynamism in the Doha Round (Bridges 11.12.2003).

\textbf{8.3 Interim Conclusion}

This chapter has looked at the impact of the EU on the WTO negotiations overall and on trade in services from the launch of the Doha Round to the failed Cancún Ministerial Conference and its initial aftermath. This third phase in the negotiations under consideration in this dissertation is initially characterised by low activity: little movement occurred in 2002 as the DDA had just been established and preparatory work was ongoing in all sub-committees. In 2003, negotiations gained in prominence in the run-up to the Cancún Ministerial and agriculture became the major stumbling block on the agenda. After the failure of Cancún, negotiations were interrupted, with only the services negotiations continuing, although they arguably were also hindered from making any substantial progress.

In the trade in services negotiations, activity also initially remained low, albeit with ongoing “skirmishes” between developed and developing countries taking place. The first focus of these was the assessment exercise, which developed into a key area for knowledge-exchange in GATS 2000. The second focus was the market access negotiations. While already the number of requests had remained below expectations, the submission of the first offers created a first crisis in the services negotiations, because of a perceived lack of quality in the offers and the slow pace of

\textsuperscript{257} 62 mainly developed or larger developing countries had now submitted requests; more than 40 offers were submitted in 2003. New offers were received by (inter alia): Bahrain, Bulgaria, Colombia, Chile, Czech Republic, Fiji, Guatemala, Hong Kong (China), Korea, Macao, China, Paraguay, Peoples Republic of China, Peru, Slovak Republic, Slovenia, Sri Lanka, St Christopher and Nevis, Thailand and Turkey.

\textsuperscript{258} For example, the Japanese representative indicated that the bilateralas Japan had held during this special session had been less intensive than before, but activity still had been visible in the multilateral meetings, in the Friends groups and in the subsidiary bodies.
submissions. Two agreements on the framework for the GATS 2000 negotiations are found: the agreement on autonomous liberalisation credits and the LDC modalities.

In order to build consensus in the WTO (research question 5), the EU continued to emphasise the importance of development in the WTO. It tried to build support from the LDC especially, by suggesting a development package for Cancún. At the same time, issue linkage gained in importance at this stage of the negotiation: with services now embedded in the broader round and with agriculture becoming the key stumbling block in the negotiations, the EU’s offensive interest services was increasingly held back by this. With the market access negotiations starting in the middle of 2002, new linkages between the market access negotiations and the rules negotiations and S&D were established, which were used by other actors to defend against the EU’s offensive interest in the market access negotiations. The issue linkage desired by the EU for tactical reasons thus developed into a double-edged sword.

A further attempt by the EU to build consensus was co-leadership with the US: the EU and the US tried to assume leadership in the negotiations and to resolve the deadlock in the negotiations by proposing a deal on agriculture. This attempt failed and was interpreted as the end of EU-US co-leadership of the WTO. The power shift was hence further changing the way the WTO functioned. The EU also tried offering flexibility in its negotiation position by suggesting that the Singapore issues could be “de-bundled”, but this was not followed through by the EU. In the end, after the failure of Cancún, the EU’s strategy was to stay committed to the regime (while the US quickly announced a new focus in its trade policy) and in this way arguably try to keep the negotiations going.

In the services negotiations, the EU used the assessment exercise to further the case for services liberalisation, especially with regard to developing countries (research question 5). Little happened in these negotiations though: the assessment exercise continued to be a place where developing countries tried to postpone the market access negotiations, and developed countries repeated their well-known counter-positions. On the autonomous liberalisation credits, the Commission made sure the agreement had not too much impact, and it seems it had a similar approach on LDC modalities (research question 6). For both negotiation outcomes, it is
questionable what impact they will have, apart from framing expectations and ideas in the negotiations. The modalities were negotiated because the regime in form of the GATS required WTO members to do so, and because certain WTO members had obvious interests in establishing such a mechanism, but they might constitute a void mechanism. They might have been a mere “negotiation about negotiations”, without any real impact on “negotiations about substance”.

In terms of EU strategy for consensus building (research question 5), at this stage we can thus see the use of offering “rewards” in the form of integrating development concerns into the negotiations at various stages, issue-linkage, co-leadership with the US, shaping the debates (on services liberalisation) assessment, suggesting (but not following through) more flexibility on its negotiation position, ensuring that adversarial outcomes (on autonomous liberalisation credits and LDC modalities) do not have a too far-reaching impact.

Did outcomes at this stage reflect the EU’s preferences (research question 6)? As mentioned above, the EU-US co-leadership did not have the desired outcome, arguably because of the power shift happening in the WTO. Overall, this shows that although consensus between the EU and the USA are still necessary conditions for a success of negotiations in the WTO, it now was no longer a main and at times sufficient criteria. It can be argued that the failure of the Cancún Ministerial, following the shifts in negotiation dynamics in Seattle and Doha, was a further expression and institutionalisation of this shift in power in the WTO. This was also expressed in the emergence of a new level of cooperation between developing countries, as despite their differences in interests and needs they managed to draw up a more or less coherent agenda. The establishment of the G20, and finally the ACP/LDC/African Union coalition at the end of the Ministerial (later on referred to as G90, see also Narlikar 2005; Wolfe 2006), constituted new steps in the developing countries’ search for better representation in the WTO and their improved usage of their resources. However, the failure of Cancún can also be seen as indicating the failure of the major players (EU, US) in the regime to accommodate the new situation (research question 1). Four small African countries also managed to re-shape the WTO agenda, indicating the limits of the EU’s ability to control it.
On the results in the services negotiations, LDC modalities and autonomous liberalisation credits, the EU neither showed great support nor clear rejection of the proposal, but again the negotiation results were not particularly far-reaching, arguably reflecting the EU’s power to prevent adverse outcomes (research question 6). On market access negotiations, services negotiators realised in 2003 that far too few requests had been submitted. The subsequent first round of offers also delivered few offers. A first sense of crisis occurred in the services negotiations. Additional to this unsatisfying result for the EU, the EU came under increased pressure due to new prominence of the Mode 4 issue.259

The services negotiations also reveal a further point on the resources of the EU (research question 2). The leakage of the EU draft requests meant that the Commission now had to react to a new “game” in terms of its relations to EU member states and civil society. The Commission started a strategy of “heavy lobbying” (towards NGOs, the European Parliament, etc.) at the domestic level.260 The services negotiations now had become highly politicised. Increasingly EU civil society undermined the EU’s negotiation power, as they took on positions that were represented mostly by developing countries in the WTO (see also Narlikar 2005: 9). The European Commission had to change its public relation approach to build support for the negotiations domestically.

The Commission’s internal division meant that the EU had not yet agreed on its offer and postponed submission. The EU’s internal problems here caused a definite

259 Apparently, the issue became more difficult to deal with for the US and EU, as India had become a leader on the Mode 4 issue and had rallied the support of many developing countries, among them China.

260 For non-EU WTO members, the importance that European NGOs now have in the negotiation process can be bewildering (interview 20). The (frequent) leakage of documents creates a certain mistrust, but by now seems an established element of the “game”. Several interviewees indicated that NGOs frequently receive internal EU documents. For example at the Hong Kong Ministerial, the members of the European Parliament in the EU delegation leaked a strategic document. Another interviewee indicated that documents leaked to IGOs or NGOs, which redistributed them to developing countries (anonymous interviewees). A developing country interviewee indicated that this kind of leakage would frequently happen in his home country as well, and was not too special, and was an expression of certain societal parts feeling under pressure from the proposals in the documents (interview 25, 29). It might also be that this document leakage has already become “part of the game”, and that the Commission is well aware that its counterparts might have read internal papers (interview 29).
drawback for the EU and the US seems to have had a more effective impact on the negotiations.

The EU’s attempts at driving the negotiations forward had at this stage mostly been unsuccessful. In the WTO, the shifting negotiation dynamic made it hard to control the outcomes, while at the same time, the EU’s domestic resources proved shaky. The next chapter will now follow the EU’s attempts to revive the Doha Round between 2003-2005.
9 From Cancún to Hong Kong 2004-2005: Lowering expectations

After the Doha Round had slowly started in 2002, it had come to a sudden halt in 2003 with the failure of the Cancún Ministerial. The services negotiations were also slowed down. Negotiations had been formally restarted, but it did not yet seem that any progress on the substance of the issues had been made. How would the EU try to push the negotiations forward now that positions had become so very clear in the Doha Round? The next two years would be years of high activity and tense negotiations throughout, as WTO members delved deeper into the issues at stake.

The first section in this chapter deals with the attempts to find a compromise on the Doha Round that could appease all WTO members. The second section follows the services negotiations with the intensifying market access negotiations.

9.1 Overall framework negotiations: admitting defeat?

9.1.1 Towards the July 2004 framework
The year 2004 started with concerns in the European Commission, as it feared that negotiations would remain without results because of the US elections. Throughout the year, the Commission hence made special efforts to ensure that the talks moved forward (European Commission 2004g). However, despite the Commission’s fears, the US in fact took an unexpected initiative in January 2004 to revive the stalled trade negotiations (although it was at the same time involved in a multitude of bilateral trade talks). The US brought back its idea of a narrow trade round, proposing a slimmed down version of the Doha round with an initial negotiation framework to be established by mid-2004.261 Apart from this new agenda, the US also diverted from the EU-US common position from August 2003 on agriculture and again demanded the end to export subsidies. While the EU indicated officially that it welcomed the US’

261 Apparently this round would have dealt with the areas NAMA, agriculture, services and S&D.
activism as such, it clearly pursued a different agenda (Bridges 14.01.2004; IUST 13.02.2004).

In speeches, Lamy indicated areas in which the EU position had changed as a result of the Cancún Ministerial. The EU had moved to a more flexible position on the Singapore issues and on the extension of the geographical indication register. On agriculture, the EU offered to negotiate a list of products on which it would end export subsidies. On the Singapore issues, the EU agreed on a “de-bundling” and on prioritising trade facilitation and transparency in government procurement. While the US was already engaged in a set of bilateral negotiations, the Commission had decided to prioritise the WTO negotiations (European Commission 2004a, 2004b). As in previous years, the Commission attempted to reach out to the various groups of developing countries, especially the new G20 and G90 (European Commission 2004a, 2004b).262

In Geneva, despite these attempts at leadership by increasing flexibility by first the US, and afterwards the EU, compromise was not yet within reach. A 12-13 February meeting between the EU and the G20 did not achieve any breakthrough (Bridges 19.02.2004).263 While the US seemed to have moved towards a more proactive position in agriculture, and towards the round as a whole, the EU’s initiatives seem not to have been enough to lift it out of the new defensive position it found itself in (Bridges 26.02.2004).

262 The G90 was a joint coalition of the African Union, ACPs and LDC with ca. 64 members (WTO 2007d). On the new coalitions, Lamy had held consultations with the G90 and the G20 in December 2003 already, and met representatives of various countries in January/February 2003 (India, Indonesia, Bangladesh) (European Commission 2004b, 2004c). The EU apparently fostered links to domestic ministries as well: for example, in two ASEAN countries the EU has made regular contact and visits with the ministry domestically (interview 15, 16). Domestically, as after the Seattle Ministerial, ideas for WTO reform were discussed in the EU as well. In a discussion with the “Kangaroo” group (a group promoting further advancement of the single market) in the European Parliament, Lamy discussed various ideas for WTO reform. These included improvements to conference management, an expanded WTO Secretariat and better public access to the WTO (Bridges 04.02.2004; European Commission 2004e). Again these ideas seemed to have remained without result.

263 In various capitals, high level meetings had been taking place to revive the trade talks. An informal meeting on trade issues was held from 18-19 February 2004 in Mombasa, Kenya. Before the meeting, Zoellick had met Asian and African trade ministers in their capitals (Bridges 19.02.2004). The lack of progress in the Doha Round negotiations was also discussed at the World Economic Forum at Davos (Bridges 28.01.2004).
In attempts to further focus and drive forward the negotiations, Supachai, the US and the EU suggested the summer of 2004 as the new target date for a framework for the negotiations (Bridges 04.03.2004). While negotiations gained in pace in April 2004, progress was still highly dependent on movement in agriculture. The future of the Singapore issues remained uncertain, with the EU’s exact position remaining somewhat unclear (Bridges 08.04.2004). The search for solutions for the stalled negotiations hence moved to “micro-Ministerials” (Bridges 05.05.2004; see also Wolfe 2004). With the pressure for a deal increased by the looming change in the European Commission and US presidential elections (Bridges 05.05.2004), Lamy and Fischler then offered to end all export subsidies and to give more lenient treatment for weaker developing countries – a concept that was called the “round for free”. The “round for free” meant that LDC and other weaker developing countries would not be asked to undertake any new commitments, apart from binding certain tariffs and participating in the trade facilitation negotiations. The Commission had realised that these countries did not have the negotiation capacity to participate properly in the DDA and also would not be in a position to implement the results of complex negotiations in any case. This recognition was a significant strategic change for the EU. Lamy and Fischler also called for a significant step forward in services liberalisation, marking a shift in attention of the EU to the services negotiations (Bridges 13.05.2004; IUST 09.05.2004; European Commission 2004f, g). In the WTO, the reactions to this new EU initiative went from positive (USA) to negative by some developing countries, which feared the EU’s “round for free” idea was intended to split developing country solidarity (Bridges 13.05.2004; IUST 09.05.2004; European Commission 2004m). It is significant though that when the Commission had already announced the new initiative, it was still contested by some of the EU member states: France, Ireland, Belgium and Hungary doubted the Commission had the mandate to end export subsidies. Germany, the UK, Denmark, Sweden, Finland

264 Zoellick convened such a meeting on 01 May 2004 with Lamy and representatives of Kenya and South Africa.
and the Netherlands supported the proposal (Bridges 13.05.2004; IUST 09.05.2004; European Commission 2004f, g). The European Commission apparently had taken the EU member states by surprise by stretching its mandate in order to arrive at a compromise at the international level. The EU’s new initiative seems to have been fruitful in the short-term: the Paris Mini-Ministerial ended with renewed optimism and Lamy was quoted with “the (trade) volcano is smoking again”. The General Council now agreed to the idea promoted by Supachai, the US and EU of a negotiation framework to be established by July 2004 (Bridges 19.05.2004).

At about the same time, the new coalition of the “FIPs” (five interested parties) emerged in the agriculture negotiations and replaced the EU-US co-leadership in this area (Bridges 23.06.2004; see also Wolfe 2004). Similarly, the new Quad emerged in the negotiations overall (see also Wolfe 2006). Interviewees attributed this was to the power shift in the WTO (interview 17); this meant that developing countries moved into the centre of decision-making and that these new coalitions signified a strategic adaptation of the EU and the US to the new power structure in the WTO (interview 35; see also Wilkinson 2006a).

265 Outside the WTO, the EU initiative was also not uncontested: a NGO representative criticised that the proposal would be (partially?) made meaningless by the EU’s Economic Partnership Agreement (EPA) negotiations with the ACP, which requested market opening from the same vulnerable economies that were protected by the “round for free” approach (interview 35).

266 The “G90” initiative hence was a surprise move by Lamy, which the Council of course could not publicly renounce. Apparently, another tactic the Commission uses to overcome the limitation the Council sets for it is by overloading the Council with proposals and expertise in often very short time, so that the Council cannot thoroughly examine all the proposals (interview 32).

267 The FIPs were the EU, US, Australia, Brazil and India.

268 The “new Quad” (also “G4”) consisted of the EU, US, India and Brazil. However, both the FIPs and the new Quad seemed to have come together in different formats. The WTO describes on its website that the EU, US, India, Brazil, Japan and Australia have met as the Quint, the G6, or in the formation of the new Quad, the FIPs, or the four interested parties (WTO 2007). Prior to this, in the overall framework negotiations, the Quad had lost in importance significantly. While the EU still coordinated with Japan and Canada, dialogue with India and Brazil was now paramount (interview 10, 12). A discussion on why it was Brazil and India, and not other developing countries, that acceded to the centre of decision-making in the WTO see Hurrell and Narlikar (2007).

269 The G90 established their own “steering committee” for the WTO negotiations, further enhancing the coordination of their negotiation strategies. LDC continued to coordinate their positions as well (Bridges 09.06.2004, 13.05.2004).
In June 2004, the initial draft version for the July framework was discussed during a Heads of Delegations meeting (Bridges 09.06.2004, 16.06.2004).\textsuperscript{270} Intense negotiations subsequently took place (Bridges 07.07.2004).\textsuperscript{271} A FIPs meeting in early July did not result in convergence on the July framework, but Lamy indicated that a good discussion had taken place. The G90 met again, accompanied by sharp warnings from Supachai, Lamy and Zoellick to move towards compromise (Bridges 14.07.2004). The G90 had by now emerged as a viable negotiation partner and was recognised as such by the European Commission (European Commission 2004g, h).\textsuperscript{272}

Efforts to reach agreement continued, but while there were specialised meetings on NAMA and agriculture, there were none on services. For the draft text, the EU and the US hence asked for a better balance between the negotiation areas and a whole group of countries was reported to have called for more attention to services in the draft framework (Bridges 21.07.2004). For a short while, it seemed that agreement again would not be possible, as there seemed to be little willingness to compromise (IUST 23.07.2004),\textsuperscript{273} but the July framework was finally successfully agreed upon.

The framework extended the deadline of the Doha negotiations unlimitedly and it indicated five negotiation areas which needed to progress: agriculture, non-agricultural market access (NAMA), development issues, trade facilitation and services. With regard to other areas of the Doha mandate, the framework restated the need for further negotiations. The agriculture text was seen as the most important part of the agreement, as it apparently struck an improved balance between the

\textsuperscript{270} Calls by APEC Ministers and the G8 for movement in the negotiations followed (Bridges 09.06.2004, 16.06.2004).

\textsuperscript{271} The FIPs and the G90 held (separate) Ministerial level meetings. However, there might have been a “gap” between events on the Ministerial level and the technical negotiations in Geneva: in the TNC, Jara reported limited progress in the negotiations (Bridges 07.07.2004). The African Group continued to request that the Singapore issues were dropped completely from the WTO agenda, if the negotiations on trade facilitation were to go ahead (IUST 11.06.2004).

\textsuperscript{272} In Lamy’s speeches, and in a speech by Commissioner Hübner at a meeting of the G90, the EU recognised the emergence of the G90 as negotiation partner (European Commission 2004g, h).

\textsuperscript{273} Critical issues were agriculture, S&D and trade facilitation.
different negotiation areas compared to previous texts. On services, the text foresaw a new deadline of May 2005 for the submission of revised offers. Zoellick counted it as a US success that services was now again a third area equal in value to agriculture and NAMA with a separate paragraph on services in the declaration and not, as had been originally foreseen, included into a paragraph with other negotiation areas (Bridges 03.08.2004; IUST 06.08.2004).

While IUST analysts judged that the text on NAMA and services showed a lack of progress since the Cancún Ministerial, the main WTO players greeted the framework as a milestone and expressed content with the agreement reached. Celso Amorin of Brazil received “praise” by both the EU and US for his role as broker for the deal (Bridges 03.08.2004; IUST 06.08.2004). The EU welcomed the July framework, and Fischler estimated that the EU May 2005 letter had made movement possible (European Commission 2004i).

9.1.2 The run-up to the Hong Kong Ministerial

After the July framework had been agreed upon, technical discussions continued in Geneva (Bridges 24.11.2004, 01.12.2004), but though the July framework meant certain progress, it had not yet provided a full solution to the issues under negotiation and conflicts hence re-emerged quickly (Wilkinson 2006a). In December 2004, Commissioner Mandelson outlined that “detailed modalities” would have to be agreed upon in the planned 2005 Hong Kong Ministerial (IUST 26.11.2004). In an end of January 2005 Mini-Ministerial, held on the sides of the Davos meeting, Ministers from

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274 Apparently, the new coalition of the FIPs played a strong role in reaching consensus in agriculture. The new influence of the FIPs was criticised by the G10 (group of net food importers; members are Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland and Chinese Taipei (WTO 2007d)) and the G33 fighting for the place in the decision-making process. The G33, under the leadership of Indonesia, was focusing on proposals for special and differential treatment and special products (Campolina Soares 2005).

275 Civil society organisations criticised the deal and the WTO in general. The critics included the International Confederation of Free Trade Unions (ICFTU) which criticised the deal for not addressing the threat to public services (Bridges 03.08.2004; IUST 06.08.2004).

276 Apart from this, several groups, including APEC and the African group, restated their support for the Doha Round (Bridges 24.11.2004, 01.12.2004).
25 WTO members called for increased movement in the Doha negotiations. They would concentrate on five negotiation areas; in the case of services, they were asking for the submission of more offers. However, of course disagreement prevailed as to how progress in the negotiations should be achieved: the EU reminded WTO members that it had already agreed to end export subsidies, which was a “big concession”, and it asked developing countries to move with respect of NAMA and the liberalisation of South-South trade. The Indians replied by reminding the EU that movement was needed in the services negotiations with regard to Mode 4 (Bridges 02.02.2005).

In a February 2005 TNC meeting, Supachai explained that if members wanted to conclude the round by December 2005 in the Hong Kong WTO Ministerial, they would have to agree on modalities by July 2005, before the summer break (Bridges 16.02.2005). During a second Mini-Ministerial in March 2005, the EU and the US asked for initial movement in NAMA and services, whereas Brazil and Australia wanted to see movement on agriculture subsidies first (Bridges 09.03.2005). When the agriculture negotiations were suspended in April 2005, this caused deadlock in the other negotiation areas (Bridges 20.04.2005).

The third Mini-Ministerial, held in May 2005 in Paris, seemed to have revived optimism, especially as the agriculture dispute (on the “ad valorem” equivalent conversion rate, see footnote 280) was resolved in the beginning of May 2005. This can be seen as part of a range of smaller compromises found in the run-up to Hong Kong (see for example Wilkinson 2006a). At the Mini-Ministerial, agriculture was

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277 Mandelson became the new trade commissioner in November 2004. His first speeches show a continuation of approach (as to be expected), but he clearly urged trading partners to make concessions (European Commission 2004j, k, l).

278 30 Ministers took part in the Mini-Ministerial, which was held in Kenya in March 2005, with a larger than usual African participation in the meeting.

279 At this stage of the Doha Round, WTO DG Supachai kept on reminding negotiators that they had to move fast in the negotiations in order to achieve the end of year target (Bridges 23.03.2005).

280 This suspension was due to disagreement over the so-called ‘ad valorem’ equivalents (AVEs). “Specific” agricultural tariffs based on imported quantities need to be converted into ‘ad valorem’ equivalents, which are tariffs based upon the price of the product. Before a tariff reduction formula can be agreed upon in the agriculture negotiations, “ad valorem” equivalents need to be established (Bridges 23.05.2005).
once more the main subject of the meeting, with NAMA and services discussed as secondary items. On services, Ministers called for high quality offers, and, as a new development, were envisaging a mechanism to assess services offers (Bridges 11.05.2005). Due to persistent disagreements, Supachai lessened expectations for the July approximations (Bridges 18.05.2005).

The African Union met to coordinate its position on the Doha negotiations, and Mandelson urged for greater involvement of African countries in the negotiations (Bridges 15.06.2005). The LDC also coordinated their position, and were especially critical of the EU’s proposed changes to its sugar market regime (Bridges 29.06.2005). At various times, some WTO members, especially developing countries, expressed their scepticism about the Mini-Ministerial process: while they agreed that the process moved the negotiations forward, they thought it should not be institutionalised and they complained about intransparency (Bridges 18.05.2005, 20.07.2005, 27.07.2005; Pedersen 2006).

During the Dalian Mini-Ministerial in July 2005, it seemed that some movement occurred in the agriculture negotiations, but none in NAMA and services. While Mandelson spoke of a softening of positions, the EU and the US were criticised for not agreeing to the G20 proposal on agriculture (Bridges 13.07.2005; European Commission 2005f). The link of different negotiation areas to agriculture “appear[ed] to be posing serious barriers to the talks” (Bridges 20.07.2005).

Despite all attempts, the talks failed to achieve the expected July approximations and were interrupted for the WTO summer break, with agriculture apparently blocking the other negotiation areas. Mandelson urged for a compromise which could unlock several negotiation areas at the same time (Bridges 03.08.2005). LDC complained

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281 APEC members expressed concern over a lack of progress in services (Bridges 18.05.2005). The OECD and APEC called for movement on the Doha negotiations (Bridges 15.06.2005). The G8 agreed on debt relief and promised greater market opening for developing countries, and pushed for the movement in the round (Bridges 13.07.2005).

282 Singapore, Malaysia and Thailand called for transparency in the Mini-Ministerial process.

283 High level meetings between the EU and the US took place during agriculture week (Bridges 21.09.2005). Six major business groups from the US, the EU, Canada, Mexico, Japan, and Australia stated in a 6 September warning that the Doha Round talks were "on the verge of collapse". They argued for sectoral approaches in NAMA and services (Bridges 07.09.2005).
that they struggled to keep up with progress in the trade negotiations, for example with drafting submission on S&D and with the extensive meetings on agriculture and on services (Bridges 05.10.2005).

The EU continued to strongly link progress in agriculture to ambitious tariff cuts in NAMA, and Commission President Barroso asked Brazil to move with respect to services. The EU also upheld its proposal for a differentiation beyond developing countries and LDC, which had always been highly contested in the WTO (Bridges 12.10.2005, 19.10.2005). During these tense negotiations in the WTO, the European Commission faced strong opposition inside the EU. France accused the Commission of overstepping its negotiation mandate and called for a special expert committee to review EU WTO concessions. The French position was not uncontested inside of the EU, and British Foreign Secretary Jack Straw was quoted saying:

No negotiations are possible if you have to negotiate with people in the room and at the same time negotiate with your own side... that would make the negotiating team powerless.

Mandelson expressed his dismay at the idea: such a committee would “stop the world trade talks in their tracks” (Bridges 19.10.2005).

WTO DG Lamy 284 set out a new roadmap for the way towards the Hong Kong Ministerial and indicated that “modalities” would have to be achieved by mid-October. It was evident by then that the round would not be concluded at the Hong Kong Ministerial, but Lamy still promoted an ambitious 2006 conclusion of the trade round, in the light of the 01 July 2007 expiry of the US President’s Trade Promotion Authority (TPA) (Bridges 19.10.2005). 285 After the US had made a new offer in the agriculture negotiations, the FIPs consultations broke up at the end of October without agreement on agriculture, giving rise to fears about a failure at the Hong

284 Lamy started his term as new WTO DG in the beginning of September 2005. In the beginning of 2005, the search for the new WTO director had started. In a move to improve civil society relations, the candidates even met with representatives of civil society (Bridges 26.01.2005). In June 2005, Pascal Lamy was confirmed as new WTO DG. The selection process had run smoothly and had not impacted negatively on the negotiation process like in 1999. Lamy still had sufficient time to prepare for the Hong Kong Ministerial as well (Bridges 01.06.2005).

285 The Trade Promotion Authority allows the US President to present a negotiated trade agreement as a whole to Congress, which can then either agree or disagree with the agreement, but cannot amend the agreement. Trade Promotion Authority was up to 2000 called “fast track”.
Kong Ministerial. The EU slid into a “scapegoat position” and was pressured to make an improved agriculture offer. However, it emphasised it needed concessions in other areas first. For example, for services, Mandelson called again for mandatory, quantitative benchmarks (Bridges 26.10.2005; European Commission 2005g). It seems that the EU failed to resist the pressure of its negotiation partners: in view of its fruitless attempts to achieve movement in other negotiation areas, the EU made a new offer on agriculture at the end of October 2005. The offer was made conditional on movement in other areas, for example the EU was still demanding mandatory qualitative and quantitative targets (“benchmarks”) for services liberalisation, the extension of the geographical indication register and seemed to assume differentiation between different categories of developing countries.\textsuperscript{286} Despite the new agricultural offer, developing countries complained about the asymmetry in the EU’s offers and demands across negotiation areas (Bridges 02.11.2005, European Commission 2005h).

For the now prominent services negotiations, the EU proposed that developed countries would have to bind 139 (out of 163) subsectors, against 93 sectors for developing countries. LDC and “small and vulnerable” economies would be exempted. The EU also asked for binding of existing market access, better sectoral and Mode 1, 3 and 4 commitments. Some observers feared that the insistence of the EU on the benchmarks could be “counterproductive” and indicated that developing countries were afraid of an erosion of their flexibilities under GATS (Bridges 02.11.2005, European Commission 2005h).\textsuperscript{287}

\textsuperscript{286} Apparently some members of the “core group” (an agriculture coalition) were surprised about the conditionality in the EU’s offer.

\textsuperscript{287} The EU also kept pushing for an extension of the geographical indication register (to products other than spirits and wines); here the negotiations also were blocked (Bridges 02.11.2005). On the development issue, the EU was advocating: (1) duty and quota-free access for all LDC products by all developed countries; (2) an outcome to the cotton dispute; (3) adoption of the S&D treatment package for LDC; and (4) a credible aid for trade package. (European Commission 2005j). The Commission also wanted to introduce a further differentiation besides LDC and developing countries and asked for an extension of the LDC treatment to small and vulnerable economies. How these would be identified was still unclear, but the EU proposed certain economic and geographic indicators. The EU hence differentiated between LDC, small and vulnerable economies, and advanced developing countries (European Commission 2005k).
The EU’s new agriculture offer, however, failed to restart the talks. Brazil accused the EU of still offering too little on agriculture and making unreasonably ambitious demands on services. A group of developing countries issued a statement on what they considered as a crucial outcome for development in the Doha Round, rejecting any approach in services other than the bilateral request-offer approach, and asking for further movement in areas of interest to developing countries (Mode 4 etc.) (Bridges 02.11.2005).

The increasing tensions and deadlock in the negotiations led to a further lowering of expectations for the Hong Kong Ministerial, arguably a step that prevented the Hong Kong Ministerial from failing because of too high expectations (Wilkinson 2006a). Blame-shifting continued (Bridges 09.11.2005). Towards the end of November 2005, WTO DG Lamy released a draft Ministerial text to WTO members and informal consultations among 25-30 key WTO members ensued (Bridges 30.11.2005). In the final run up to the conference, the services text was especially contentious, as some developing countries disapproved of the sense of urgency that the services chair had inserted in the text (Bridges 07.12.2005).

The WTO General Council adopted a revised version of Lamy’s text as a basis for the Hong Kong Ministerial. The draft text did not leave too many areas open for actual debate and discussion during the Hong Kong Ministerial. However, attached

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288 The countries were Egypt, Kenya, Mauritius, Rwanda, Senegal, South Africa, Tunisia, Zambia, and Zimbabwe. Similarly, in October, civil society organisations published the “Dhaka Declaration on LDC interests in the Doha Round”, which rejected benchmark proposals and asked for more commitments on Mode 4 (Bridges 19.10.2005).

289 In a Ministerial meeting between the EU, the US, Brazil, India, and Japan, Ministers coined the idea to hold a further Ministerial meeting in 2006 to agree on modalities (Bridges 23.11.2005).

290 Again, the EU was blamed for the lack of progress due to its stance on agriculture. The EU itself blamed for example India and Brazil for not moving forward on NAMA and services despite the new EU offer.

291 The areas still open for discussion included a new date for agreeing on negotiation modalities for agriculture and NAMA. WTO DG Pascal Lamy and General Council Chair Ambassador Amina Mohamed (Kenya) tried to move issues beyond this decision by sending sets of questions about what could constitute these modalities.
to the draft Ministerial declaration were the reports from the various negotiation areas with many contentious areas (Bridges 07.12.2005, 13.12.2005). 292

9.1.3 The WTO Hong Kong Ministerial
During the first day of the conference, Mandelson called for other developed countries to adopt the EU’s duty and quota free access offer for LDC. Japan had already announced the adoption of the measure and the EU was now mostly interested that the US and other developed countries joined this initiative (European Commission 2005i). The EU was hence using the positive position of benefactor it had brought itself into.

At the same time, in a notable attempt to build support from developing countries, Japan, the EU and the US announced an expansion of their “aid for trade” spending (EU: from 400 Million p.a. to 2 Billion). This new aid package came with the warning by USTR Portman that a development package could be lost if no overall Doha deal was reached. These announcements were called “bribes” by some NGOs, which argued that they were supposed to hide that there was no real change in Western trade policies (Bridges 14.12.2005, 15.12.2005; European Commission 2005j; see also Wilkinson 2006a).

With regard to conference proceedings, it was decided to first focus on agriculture, NAMA and a “development package” for LDC, as these were areas where progress was most needed. Notably, despite its new prominence and contentiousness, services had been scheduled to be negotiated only after agreement in the three previous areas had been reached (Bridges 14.12.2005, 15.12.2005; European Commission 2005j).

292 Draft annexes concerned negotiations on agriculture, NAMA, services, rules, trade facilitation and S&D treatment for least-developed countries. Only the text on trade facilitation had already been agreed upon in Geneva. The other texts had been submitted at the Chairs’ own responsibility. The services text was seen as much more precise than other texts, but it contained heavily contested areas such as the introduction of qualitative targets for members – albeit non-binding ones – and plurilateral negotiations. The clause on the plurilateral negotiations foresaw that WTO members would have to enter plurilateral negotiations if this was requested by another group of countries. Some WTO members feared that this could bring them under considerable pressure to commit services sectors under GATS (Bridges 07.12.2005, 13.12.2005).
On day two, the cotton issue emerged again as key area on the conference agenda, followed by critique of the EU’s new banana tariff regime.\textsuperscript{293} On domestic support, the EU and Switzerland now were the only countries disagreeing with a proposed 2010 end date for export subsidies, and it looked as if the EU would have to concede in this area. On services, the discussion about the annex continued. India and Brazil seemed to want to preserve the annex in its current form, but the ACP, the African Group and Malaysia were contemplating submitting a new version of the text. The EU still intended to achieve a more ambitious annex, but in different ways than the US (Bridges 15.12.2005).\textsuperscript{294}

On the third day of the conference, new texts on agriculture, NAMA and S&D were debated in the “Green Room”. The G90 had floated a new draft text for services as well, which was based on an earlier text drafted by ASEAN.\textsuperscript{295} Developing countries alleged the EU, US and Lamy of “blackmailing” them. It was speculated that the EU would use services as a bargaining chip so that it would not have to commit any further on agriculture (Bridges 16.12.2005). In the press conference, Mandelson complained that too much focus was on export subsidies, and threatened that the EU would not sign up to a declaration that would not offer movement in other areas (European Commission 2005e).

On the fourth day, WTO members redrafted the text of the Ministerial Declaration.\textsuperscript{296} The EU was clearly disappointed by a reference to its proposal on the liberalisation of government procurement in services being dropped from the Ministerial Declaration.

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\textsuperscript{293} The US refused an “early harvest” ("WTO speech" for a negotiation result agreed upon before the whole DDA negotiations have been concluded) on cotton, arguing that its cotton subsidies did not substantially distort world cotton prices. Benin, Burkina Faso, Chad and Mali decided to increase the urgency of their appeal. Similarly, Honduras, Colombia and Ecuador used the publicity available in the conference to voice their continued disagreement about the EU’s new banana tariff regime and urged for a solution by the end of the Ministerial (Bridges 16.12.2005). This initiative was later on contravened by the ACP, which said they would block any declaration if their preferential market access to the EU was not protected beyond 2006 (Bridges 17.12.2005).

\textsuperscript{294} On development, the EU continued to lobby for an extension of its EBA initiative by other countries. The US seemed to have lobbied LDC to accept the exclusion of certain sensitive products.

\textsuperscript{295} The G90 text in general weakened the original draft text and completely dropped the notion of targets or benchmarks.

\textsuperscript{296} In the services negotiations, a 15-member committee (US, the EU, Malawi, Rwanda, Hong Kong (China), Chile and others) was mandated to redraft Annex C.
The G-20, the G-33, the ACP, the LDC Group, the African Group and Small Economies held a joint press conference, in which they lauded the cooperation meetings between all developing country members of the WTO as unprecedented (Bridges 17.12.2005, 18.12.2005).

As expected, no concrete figures or modalities were agreed upon in the final Ministerial Declaration. However, the EU had to accept a 2013 end date for phasing out export subsidies, which apparently had made agreement possible on the last day of the conference (Bridges 19.12.2005; WTO 2005d; see also Wilkinson 2006a). Although the text thus contained some clarification about the future agriculture negotiations, in large parts the text constituted a road map for further negotiations rather than clarifying the content of the various negotiations. In the NAMA negotiations, the picture was similar, although agreement existed on the kind of formula that would be used for tariff cuttings. The duty- and quota free access to developed countries markets would be granted to LDC by 2008. On services, the Annex C of the declaration had been significantly weakened compared to the original version. Although a plurilateral negotiation approach had been introduced, there was no longer an obligation to participate in the process (due to the insistence of the G90 and some ASEAN countries). The benchmarking proposal had been dismissed completely, only non-binding targets were agreed upon. The EU and Japan were clearly disappointed by this text, but they nonetheless agreed to it (Bridges 19.12.2005; WTO 2005d; see also Wilkinson 2006a). In the final press conference, Mandelson called the Ministerial “a week of disappointment”, but he said that the

297 Remarkably, the four African countries Benin, Burkina Faso, Chad and Mali, who had been pushing the cotton issue since 2003 achieved parts of their goals: cotton subsidies would be ended by 2006; and duty- and quota-free market access would be granted for cotton from LDC. However, it was suggested that this was of limited usefulness for them, as they did not usually export cotton to developed countries, and as domestic subsidies would still hold down the price of US cotton in other markets.

298 However, developed countries would be able to under certain circumstances “carve-out” 3% of product lines. This could make the new agreement non-efficient, as LDC usually export only a few products (see for example Wilkinson 2006a).

299 A first deadline for the submission of plurilateral requests was set for 28 February.

300 On bananas, no solution was found, but it also did not develop into a major issue. Other areas which were discussed were trade and environment, TRIPs and the Convention on Biological Diversity (CBD).
week had at least not been a failure (European Commission 2005c). Now there were only three main pillars left on the DDA: agriculture, NAMA and services, but services was the sidelined issue of the three (Wolfe 2007b).

While Hong Kong thus did not produce a breakthrough for the round, according to Wilkinson its most significant achievement is providing a clearer shape of how the outcome of the Doha Round negotiations might look like. In his analysis of the pre-Hong Kong process, Wilkinson finds that it was shaped by “[a] willingness to keep moving forward with negotiations despite the persistence of significant differences”, visible for example in the solution to the ad valorem conflict, and the various agricultural offers that were made in the run up to the Ministerial. Failure had also been avoided by the fact that members scaled back expectations early enough during the process. In terms of conference management, Ministers could this time negotiate from a pre-negotiated text (Wilkinson 2006a). Wilkinson hence also argued that the previous failure of Ministerial conferences had promoted later agreement and hence also the agreement at Hong Kong (Wilkinson 2006b).

As at previous Ministerial Conferences, other commentators relate the negotiations surrounding and at the Hong Kong Ministerial to the broader changes the WTO was experiencing, such as the power shift, ideas shaping the trade regime and the status of the GPE. At the time of the Hong Kong Ministerial, Bergsten pointed out that the Doha Round was suffering from near deadlock or very limited progress, whose origins were due to the increased complexity in the WTO because of the increases in membership and issue areas, and the wider economic and ideational climate in which the DDA negotiations are taking place (2005; see also Hills 2005):

The massive current account imbalances and currency misalignments pushing trade politics in dangerously protectionist directions in both the United States and Europe; [and] the strong and growing antiglobalization sentiments that stalemate virtually every trade debate on both sides of the Atlantic and elsewhere; and the absence of a compelling reason for the political leaders of the chief holdout countries to make the necessary concessions to reach an agreement (2005).

Bergsten hence argues for a political move to overcome the economic limitations underlying the Doha sluggishness. However, single countries alone cannot make the necessary changes, but the issues need to be addressed both by key developed and
developing countries. Threats to the interests from powerful players, for example from bilateral or regional integration, could also ensure progress in the multilateral negotiations (2005).

Bhagwati continued to express his widely positive assessment of progress in the Doha Round. He argued that with civil society protests have subsided since the Seattle Ministerial, the challenges facing the DDA negotiations was mostly disagreement among WTO members. Since WTO members had at or after Cancún settled some difficult issues such as the question of the Singapore issues, Bhagwati was hence optimistic that the Doha Round would conclude successfully in 2007 (Bhagwati 2005b; FT 15.11.2005).

While the Hong Kong WTO Ministerial hence did not constitute a further widely publicised breakdown of the negotiations, it meant a continuation and deepening of the changes that the WTO was experiencing. The next section analyses the services negotiations, which have taken place in parallel, and sheds light on the EU’s attempts to increase the importance of the services negotiations between the Cancún and Hong Kong Ministerial Conferences.

9.2 Issue-area framework negotiations: much ado about very little?

After modalities on autonomous liberalisation and the LDC modalities had been agreed upon, the issues that remained in the issue-area framework negotiations were the ongoing assessment exercise and the actual market access negotiations. As with the overall negotiations, the services negotiations gained in pace and intensity.

9.2.1 Assessment exercise

On the assessment issue, the years 2004 and 2005 constituted a continuation of further discussion: talks continued on the basis of case studies\(^\text{301}\) (WTO TN/S/M/10

\(^{301}\) For example, Rwanda presented a paper on “Assessment of Trade in Services in LDC: The Case of Rwanda” to highlight the difficulties that LDC encountered in services trade (WTO TN/S/M/16 28.10.2005).
18.05.2004) and on the basis of presentations by various external organisations.\textsuperscript{302} Discussion centred extensively around Mode 4. UNCTAD presented its 2004 World Investment Report on the shift to FDI, which the EU used to argue for more extensive Mode 3 commitments (WTO TN/S/M/13 28.01.2005). Members continued to discuss examples from various countries, for example on how an appropriate regulatory framework could be established, the benefits of liberalisation etc. (WTO TN/S/M/14 26.04.2005; WTO TN/S/M/15 15.09.2005). A further topic was the relationship between Mode 4 commitments and migration. Delegations emphasised the importance of a dialogue between the migration policy and trade policy community on the issue of Mode 4 (WTO TN/S/M/16 28.10.2005). The assessment exercise had hence become an institutionalised knowledge exchange, but as it did not have a clear objective, it remained repetitive. An attempt by certain developed countries (the EU and the US were named in this case) to drive forward the services negotiations by building up knowledge of the services sector were funding International Trade Centre (ITC) programmes\textsuperscript{303} which helped countries’ services assessment. Countries funded included Bangladesh, Indonesia, Kenya and Rwanda (WTO TN/S/M/12 09.11.2004). Overall, an interviewee from a developing country suggested that the EU was not interested in furthering the assessment exercise because it could reveal negative outcomes of services liberalisation and therefore would undermine the case the EU had made (interview 27).

\textbf{9.2.2 Market access negotiations}

Negotiations on market access proceeded with India submitting its initial offer (TN/S/I/IND).\textsuperscript{304} The offer was welcomed by other developing countries, while developed countries, including the EU, showed disappointment due to the perceived low level of commitments in the offer (Bridges 21.01.2004). On 1 March 2004, the

\textsuperscript{302} In September/October 2004, UNCTAD, the OECD, the International Organisation for Migration (IOM) and the World Bank gave presentations in the CTS-SS. UNCTAD presented its 2004 World Investment Report on the shift to FDI. The EU used this report to argue for more extensive Mode 3 commitments (WTO TN/S/M/13 28.01.2005).

\textsuperscript{303} The ITC is a joint technical support centre by the WTO and UNCTAD.

\textsuperscript{304} The offer concentrated mostly on Mode 1 and 2. The EU asked India to improve its offer, especially in the area of telecom, distribution, or environmental services sectors.
CTS met to take stock of the offers submitted so far. It found that in general the level of ambitions in the offers was relatively low, and constituted a locking-in of current levels of service liberalisation rather than a movement towards greater liberalisation. Jara, new chair of the CTS, pointed out that this would not provide new opportunities for business. Bridges reported:

> Although trade in services has been considered one of the main engines of the Doha round of negotiations, trade sources stress that most of the offers have proven to be very cautious, containing only a low level of commitments. This phenomenon applies to the offers of both developed and developing countries. The US, for example, did not offer anything new on mode 4, which is of critical interest to developing countries, and India, in its recent offer, maintained a number of development buffers (Bridges 03.03.2004).

After an informal meeting with various countries, Chair Jara held informal “confessionals” in order to establish why many delegations had been so hesitant to submit services offers (IUST 02.04.2004, 30.04.2004; Bridges 24.03.2004)). WTO members voiced their complaints about the offers presented so far: while most developed countries complained about the lack of offers from many countries, developing countries criticised the lack of quality and depth in the offers. The usual complaints about Mode 4 were voiced: developing countries criticised that Mode 4 offers were often linked to Mode 3 and that there were restrictions for different levels of skills. The EU representative defended the EU position indicating that it had extended de-linked Mode 4 offers (from Mode 3 commitments) and explained that South-South liberalisation was very important in Mode 4. The representative added that Mode 4 was therefore not a developed-developing countries issue. The EU representative also argued for better quality in offers (IUST 02.04.2004).

In preparation for the July framework, the Chair assembled a draft on the basis of informal consultations between the US, European Union, Brazil and India.

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305 US, European Union, Japan, Switzerland, Australia, Switzerland, the Philippines, Brazil, India, Hong Kong (China), Argentina and Chile.

306 42 countries had so far presented their offers, with (key agriculture exporters) Brazil, South Africa, the Philippines and Egypt still missing.

307 Other complaints were about restrictions on Mode 4 (such as ENT) and the attached visa and work permit requirements; and the lack of coherence between different offers (for example due to different services classifications).
However, for other developing countries, language on Mode 4 was too weak (IUST 02.07.2004). Discussion was held in informal mode, and a revised text was edited (JOB(04)/86/Rev.1). The discussion held in the CTS-SS was a repetition of previous arguments: the EU was disappointed by the poor quality in offers, Brazil pointed to the sluggish agriculture negotiations, and Thailand (on behalf of ASEAN) to the link with the rules negotiations (WTO TN/S/M/11 08.09.2004). In the General Council, African countries and other developing countries continued to argue for stronger language on Mode 4 and a separate paragraph on services, which was rejected by the EU and the US (IUST 11.06.2004).

Brazil’s subsequent submission of its initial offer was interpreted by observers as a strategic move to show that despite the lack of movement in agriculture, Brazil contributed constructively to the Doha negotiations. Apparently, the Brazilian offer in fact did not include new liberalisation in the services sector and it was linked not only to the agriculture negotiations, but also to the GATS rules negotiations (JOB(04)/86/Rev.1) (Bridges 07.07.2004).308

In the beginning of July 2004, the CTS-SS agreed on a set of recommendations, which were to be integrated into the July Framework. The recommendations for example called for a better quality in offers (Bridges 07.07.2004). The chair presented the results of the “confessionals” (informal bilateral meetings), which he had held with those delegations resident in Geneva and non-LDC who had not yet submitted offers. The chair argued this had increased his understanding of these countries’ technical and political difficulties. At this stage, 44 offers representing 65 WTO members had been received. Not taking into account the LDC, 52 offers were still missing. The quality of offers was generally considered as “modest” (WTO

308 The Brazilian service offer was made public in late September 2004 (TN/S/O/BRA). Most commitments were in Mode 3 (qualitatively seen); other than that new commitments were offered only under veterinary services, Mode 1 and 2. Brazil emphasised that the offer in no way should impede on its right to regulate and on its public services (Bridges 29.09.2004).
As May 2005 had already been set as benchmark for revised offers, progress was now urgently needed.

In the CTS-SS at the end of September/beginning of October 2004, the demandeurs\textsuperscript{310} hence urged for more and better offers. Chile, Hong Kong (China) and the EU identified an intensification of the negotiations and expected this to become visible on all levels (for example also in the Friends groups). Japan dismissed the idea of an issue linkage between the rules negotiations and the market access negotiations. Extensive discussions on Mode 4 also took place.\textsuperscript{311} The US encouraged developing countries to focus not only on Mode 4, but on other areas such as tourism which they had identified as their interests earlier. Brazil rebuked this idea and emphasised that each country had the right to choose on what to focus in the services negotiations (WTO TN/S/M/12 09.11.2004).\textsuperscript{312}

The year 2004 ended with a stark warning by various demandeur countries that WTO members would have to refocus the services negotiations on market access, because otherwise they might risk a failure at the Hong Kong Ministerial (IUST

\textsuperscript{309} Apart from this, discussion in the June/July CTS-SS centred around proposals on logistics (TN/S/W/20) by Australia, Liechtenstein, Mauritius, New Zealand, Nicaragua, Switzerland, Chinese Taipei and Hong Kong (China), as well as Mode 1 (JOB(04)/87) by Chile, India and Mexico. Mode 4 was also discussed as it had been raised again by India.

\textsuperscript{310} The proponents of the services negotiations are referred to as the “demandeurs”. For more information on the demandeurs see Annex 4 (Sect. 12.4).

\textsuperscript{311} The International Organisation for Migration (IOM), UNCTAD and the OECD provided input for the discussion.

\textsuperscript{312} A group of countries submitted a paper on GATS Art. IV implementation and on progress in the negotiations in general. The sponsors of the paper pointed out that the paper also answered the US’ criticism that developing countries were too focused on Mode 4. The paper analysed initial offers and also tourism services (TN/S/W/23). The tourism issue hence re-emerged on the CTS-SS agenda after two years of silence. The paper was by Brazil, Colombia, Dominican Republic, El Salvador, India, Indonesia, Nicaragua, the Philippines, Thailand and co-sponsor Peru. In the same meeting, Switzerland presented two papers, one on the “Importance of Improving the Scheduling of GATS Commitments” (TN/S/W/21) and one on ‘E-Work Permits in Switzerland’ (TN/S/W/22). Both submissions incited extensive discussion and showed how much WTO members can shape discussions by timely submissions. The scheduling debate raised a whole host of issues, which had previously been dealt with in the Committee on Specific Commitments (CSC).
The demandeurs, including the EU, warned of a delay in the negotiations, due to the different, regulatory nature of the services negotiations. To arrive at a successful outcome through the bilateral request-offer process would take extensive preparation and several rounds of requests and offers. If sudden movement occurred in the other negotiation areas, the services negotiations would not be able to catch up easily (IUST 10.12.2004; Bridges 01.12.2004; WTO TN/S/M/13 28.01.2005). Some negotiators argued that the demandeurs now started to push so strongly for a re-concentration on market access that in the Hong Kong Declaration most attention would be devoted to market access and not to other areas in the services negotiations (IUST 10.12.2004; Bridges 01.12.2004). In the subsequent November/December 2004 CTS-SS, the demandeurs’ renewed emphasis on the market access negotiations led Brazil to remind them of the rules negotiations, which had also been mentioned in the July framework. Japan countered that the linkage between market access and rules negotiations should not be overemphasised, so that no “negative linkages” would be created. The EU representative expressed the EU’s concern about the lagging of the services negotiations behind other negotiation areas. He reminded other WTO members of the EU’s efforts on Mode 4 and asked developing countries to reconsider the South-South dimension of Mode 4. Developing countries added to their usual arguments the issue of incoherent classification systems, which in their opinion obstructed the negotiations further (WTO TN/S/M/13 28.01.2005; IUST 10.12.2004). The lack of new offers led to fewer bilaterals being held during the CTS-SS (IUST 10.12.2004).

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313 A paper on this was distributed at the end of November and discussed in the November/December CTS-SS. The US, the EU, Japan, Canada, Australia, Chile, Hong Kong (China), Iceland, India, Korea, Mexico, New Zealand, Norway, Singapore, Switzerland, and Taiwan were the sponsors of the paper. By now, 47 offers representing 71 Members had been submitted, with 45 offers still missing. Countries that had not yet tabled offers were South East Asian countries such as Malaysia, the Philippines and Indonesia, and for example Pakistan, South Africa and Egypt.

314 Mode 4 was once again on the agenda of the CTS-SS. Australia started the discussion with a presentation of Australian Mode 4 entrance requirements. Equally, Chile held a presentation on Mode 4. Under the heading “Proposals Relating to the Negotiations under Article XIX of the GATS”, WTO members now consulted on increasingly detailed issues (WTO TN/S/M/13 28.01.2005; IUST 10.12.2004).
After this last CTS-SS in 2004, the “crisis mood” in the services negotiations was spreading, as engagement of many countries was lacking. Mamdouh, the head of the WTO Secretariat’s services division, did not see any progress in the negotiations after the two week negotiations. Only Chair Jara assessed the situation more positively (Bridges 08.12.2004).315

Twice in early 2004, sources report intervention by the services industry, which had not been that obvious before in Geneva. First, in April industry representatives from the US, the EU, Australia, Hong Kong (China) and Japan visited Geneva, and expressed concern about the lack of movement in the negotiations (IUST 02.04.2004, 30.04.2004; Bridges 24.03.2004). Second, services coalitions from the US, EU, Australia, Canada, Hong Kong (China), India, Japan, Chile and Singapore sent a letter on 25 June 2004 to WTO DG Supachai to urge progress in the negotiations (IUST 02.07.2004; Bridges 07.07.2004).316 This raises the question as to how much lobbying the European services industry was conducting both in the EU and in Geneva. Box 9.1 presents results from the interviews.

Box 9.1 The services industry and the GATS 2000 negotiations – interview results

<table>
<thead>
<tr>
<th>How far does the ESF and European industry in general lobby alongside the Commission in Geneva or domestically?</th>
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<tr>
<td>Clearly, the ESF has established itself as the key interlocutor for the services unit at DG Trade. It is the most active services industry association in Brussels (interview 3). In Brussels, industry associations activities’ would usually include presenting their position papers and/or arranging meetings with the Commission (interview 6). An interviewee indicated that services industry associations have become very successful in identifying services as a tool for economic development</td>
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315 Jara stated that there was political will in the services negotiations and that they had advanced to a similar state than the NAMA and agriculture negotiations. At this stage, 37 non-LDC countries, incl. Indonesia, the Philippines, South Africa, Morocco, and Venezuela had not yet submitted offers. Malaysia submitted its offer on 03.12.2004 and Egypt announced its offer for shortly after the CTS.

316 Other stakeholders trying to impact the services negotiations were the World Consumer Rights Day, which highlighted that water and sewage services should not be liberalised under GATS (Bridges 18.03.2004). Representatives from the international trade and migration communities convened in Geneva on 4-5 October for the conference “Managing the movement of people: what can be learned for Mode 4 of the WTO General Agreement on Trade in Services (GATS)” (follow-up to a similar conference held in November 2003; organised jointly by the International Organisation for Migration (IOM), the World Bank and the WTO) (Bridges 06.10.2004). The UN Millennium Development Goals argued for Mode 4 liberalisation (Bridges 19.01.2005).
and are thus indicating a “win-win set” in the negotiations (interview 13).

However, apart from the ESF, only a few other sectoral associations are conducting lobbying on the services issue in Brussels; the associations mostly seem to rely on the ESF.317 Asked as to why only so few associations take an interest in the services negotiations, two EU officials speculated that most of them would conduct lobbying via the EU member states (interview 3, also interview 9). For example, while the services unit only had few contact with the financial services industry, national ministries of finance seem to receive more input, esp. in the UK. Groups active in the UK are the Lotus group, the legal, financial, shipping and telecommunication services associations (interview 3, similarly in interview 13). EU officials hence assumed that the Commission would be informed of business interests via the Council of Ministers. Alternatively, the level of activity of an association can depend on the person that is employed there (interview 6). Another official saw the reason more inside the structure of the industry associations: the official commented that the “organisation of industry [at the EU level] is ineffective in major sectors, financial, telecoms, express, maritime, for example”. The different positions within services sectors mean that the industries either hardly manage to build a common position, and if they do their position is very general (interview 5). However, another official indicated that while the industry positions are often rather general, sectoral organisations have at times provided the Commission with more detailed information. For example, when the EU services requests were prepared, some associations identified target markets and sometimes even trade barriers (interview 6). The lack of input from business could also be a result of the structure of service sectors and from the different paces in which business operates compared to international negotiations. Rather than trying to influence the international framework and waiting for the result of lengthy processes of international negotiations, business might overcome hurdles to its entry into markets by alternative strategies, for example setting up a joint venture. It is particularly difficult for government representatives and for the associations to get access to the information of these stakeholders, as they can be reluctant to reveal internal information (interview 14). This leaves the impact on trade policy rules to a few big players who can afford to directly influence the negotiations in Brussels. And indeed, single companies do at times contact the services unit (interview 3). However, this does not seem frequent.

Interviewees from non-EU countries reported that in terms of European industry, they had been approached nearly exclusively by the ESF (other lobbying organisations active were the CSI, and at times the Australian services organisation). The ESF would set up meetings with staff from Geneva delegations and it would arrive with ca. 10 sectoral CEOs or other high level business representatives. One interviewee reported that they would not receive the ESF delegation with an equally high ranking counterpart, so that the ambassadors would hardly participate in such meetings (interview 15, 16, 17, 18, 19, 21, 26). The ESF also sets up information meetings for its delegations with the services

317 The association dealing with maritime transport services, the “European Community Shipowner’s Association” (ECSA), was named as a further active association. Apparently, it had even provided the Commission and hence the “Friends of Maritime services” with a list of target countries, which with slight alterations was accepted by the Friends groups. In the case of professional services, the Commission seems to have good contacts with some of the more active associations, for example lawyers and architects. While the veterinary sector and nurses have a range of associations, they are not playing an active role. The European Banking Federation (FBE) seems to have been active in earlier years, but it is not clear what their influence is today. The engineering association was active in the early 2000s, but activity has ceased since then. The accountancy services industry is also not active, and the interviewee suggested that this was due to the substantial influence the “big five” in the industry have anyway on any rules concerning them (interview 6, 34). An interviewee from a sectoral organisation criticised that on certain issues, for example professional services, there was a “British dominance” in the ESF. He also emphasised that the ESF could only assume statements on horizontal issues, as his organisation would not accept if the ESF took on a position on a sectoral matter. On computer services, IBM Europe seems to have a crucial influence on the direction of the ESF (interview 34). This is indicative of various conflicts existing inside of the ESF.

318 The interviewees felt that the CSI had similar problems, but its lobbying “routes” were better established.
division at the WTO (interview 28). However, not all countries seem to have been targeted by the ESF (interview 23). The only other activities of European services industry in Geneva were by the British financial services industry, and apparently a visit from logistics and telecoms associations. An interviewee mentioned that the British industry is “quite present” (interview 18, 24). However, the organised receptions and briefings do not necessarily have obvious effects on the negotiations (interview 24).

Two interviewees wondered whether the industry was really interested in market access via the GATS, as it seemed that the industry’s issues were so different from what the Commission was pursuing. An interviewee therefore questioned the EU’s motivation behind its position in and support of the services negotiations (interview 15, 16, similar interview 17). Other interviewees suggested that for parts of the industry the negotiations were already irrelevant and hence the pressure was low (interview 21, 28). Interviewees also questioned the effectiveness of the ESF and the services industries in general, because it did not seem able to influence the Commission position. Importantly, it seemed to them that the European services industry has failed to positively influence the domestic debate\(^{318}\) (interview 17, 21, 26).

Source: Interviews

The interview results apparently confirm the picture obtained in earlier chapters, namely that business interest on trade in services is ambiguous and might be limiting the EU’s negotiation capacity.

In the WTO, in line with remarks of the demandeurs, the EU attempted to raise the priority of the services negotiations in the WTO. The Commission indicated that advancing services would be a core EU objective at the Hong Kong Ministerial. It considered it as a problem that several developed countries (probably referring to the US) were not yet ready to make better offers on Mode 4. The Commission regarded this as crucial for a negotiation success on services (European Commission 2004m). In another instance, Lamy had indicated the potential that lay in the EU’s offer on Mode 4 for developing countries, although he also referred to EU internal disagreements on Mode 4 (European Commission 2004d).

In a further attempt to raise the stakes of the services negotiations, the EU tabled its revised requests to WTO members on 25.01.2005. The submission of the request was judged as an important attempt at moving the negotiations forward and in clarifying what trading partners should include in the revised offers. According to an EU official, the Commission launched new services requests in early 2005:

> specifically to get the debate going […] and to encourage others to also put forward revised requests.

But this strategy would not be very successful:
in the event, not many others did, but I think it gave us something to discuss in bilateral meetings […] we could explain them [the new requests], we could remind people of our initial requests, which by then they had probably forgotten about (interview 3).

The EU constrained its request from LDC even further.³¹⁹ Aware of civil society attention to the services negotiations, the EU emphasised that it had consulted with civil society representatives about the requests, that the requests did not restrain domestic regulation and that they took into account the policy objectives of developing countries (Bridges 02.02.2005; IUST 28.01.2005; European Commission 2005c, d).³²⁰ It seems that in its internal reflection, the Commission had realised that with regard to the LDC and other low income countries, it would not achieve any market access. In the subsequent negotiations with LDC and the African Group, the Commission had apparently realised that while these countries realised the development dimension of the sectors, they were concerned about a lack of regulatory environment. The Commission hence found itself torn between acknowledging that regulatory systems are indeed difficult to install and being wary that countries might use this argument as an excuse for not liberalising. The Commission increasingly realised the difficulties experienced by this group of countries and finally agreed not to ask anything of them unless they were interested in committing themselves. At the same time, this apparent concession was paying tribute to the fact that the Commission received no or hardly any offers from the LDC (interview 3).

³¹⁹ For LDC, the EU asked for the opening of only 2-5 sectors out of five proposed sectors: telecommunications, financial, transport, construction and/or environmental services. The Commission thought to target sectors as they had an explicit development dimension (i.e. key infrastructure services) (interview 3). LDC were not obliged to make any offers, but the EU stated it believed in the benefit of services sector opening for development. While the internal discussion in the Commission led it to this new approach towards the LDC/low income group and while it had envisaged making substantial changes to the requests for developing countries, after internal discussion the Commission decided to leave the requests to developing countries broadly unchanged. The Commission hence sought to fulfil the new requests for a development dimension by altering the requests to low income economies/LDC. It seems that the development dimension of the GATS was something the Commission had to newly integrate into its vision with regard to the GATS. An interviewee even described a move from where the Commission thought that LDC/developing countries did not participate for tactical reasons to a situation today where the Commission is much more aware of the capacity constraints experienced by the LDC (interview 3).
While the new approach towards the LDC/low income countries failed to persuade them to a greater participation in the services negotiations, it did influence the Commission’s ideas for the benchmarking proposal and the increased understanding of LDC/low income countries problems apparently led the Commission to install technical assistance programs in the services areas. The communication between the Services unit and DG Development intensified and DG Trade gave a grant to the ITC for programmes helping mainly the LDC to assess their services interests (interview 3).

As in previous years, the WTO Secretariat tried to facilitate negotiations and hence played into the hands of the EU.\textsuperscript{321} However, again the EU and the US apparently contradicted each other: Deputy USTR Allgeier stated that issue linkages should not be made but negotiations needed to move bit by bit, while the EU re-emphasised the importance of issue linkages (Bridges 16.02.2005). While the request-offer process did not see big changes, the intensity of the talks is reported to have increased. Different proposals (on more than 15 sectoral issues) were discussed (Bridges 23.02.2005; WTO TN/S/M/14 26.04.2005).\textsuperscript{322} While hence part of the WTO membership held detailed discussions on the issues involved in the services negotiations, others claimed to being held back purely by capacity constraints: the African group complained it was not able to participate in the discussion, as

\textsuperscript{320} It was unclear whether the US would also submit a revised request; and it was speculated that the US would rather indicate its priorities for revised offers in informal bilateral meetings. Revised requests were not expected from WTO members.

\textsuperscript{321} Supachai repeatedly stated that a “critical mass of service offers” would be needed by Hong Kong (China) in order to conclude the round by 2006 (Bridges 16.02.2005). He urged African countries to be more active in the negotiations and to submit more service offers (Bridges 26.01.2005). In May 2005, he again warned that movement was lacking in the service trade negotiations and urged especially developing countries to submit offers (Bridges 04.05.2005).

\textsuperscript{322} Indonesia submitted its initial offer. There were two different proposals for the classification under Mode 4: Proposal (TN/S/W/31) by Argentina, Bolivia, Brazil, Chile, Colombia, India, Mexico, Pakistan, Peru, the Philippines, Thailand, and Uruguay proposed classifying professionals as “intra-corporate transferees”, “business visitors”, “contractual service suppliers”, and “independent professionals”, plus a further, flexible category. ENTs and other links to market access would be abolished. The second proposal supported a similar system, but wanted simply the categories and no link to market access (TN/S/W/32, by Bulgaria, Canada, the EU, and Romania). During the meeting, Brazil, Colombia, and the Philippines presented an informal document proposing disciplines on domestic regulation; and the US submitted a proposal on transparency in domestic regulation.
translations of documents had not been provided to them. They complained that this had become a “frequent occurrence”.\textsuperscript{323} The discussion on progress in the negotiations was a repetition of arguments: while the discussions had intensified, WTO members expressed their disappointment with the sluggish progress in the services negotiations. Some delegations called for guidance from the overall negotiation on how the services negotiations should progress (WTO TN/S/M/14 26.04.2005). In spring 2005, the Chair of the CTS-SS conducted a range of informal consultations, among others with the African Group and the LDC with regard to S&D provisions (WTO TN/S/M/14/Suppl.1 30.05.2005), a further attempt to build consensus among WTO members.

In discussions throughout 2004/2005 the question as to how to assess the quality of offers was important. At this stage (May 2005), the EU representative said that such an assessment was not necessary, as the quality of offers clearly was poor. An idea of “benchmarks” to assess the offers had been raised in the informal consultations the Chair had held, and in the meeting the Brazilian representative rebuked the idea as there were no benchmarks in other negotiation areas. Rwanda reminded fellow negotiators about the benchmarks contained in the LDC modalities, which in its opinion had not been adhered to (WTO TN/S/M/14/Suppl.1 30.05.2005).

When the three weeks CTS-SS in February 2005 concluded, the chief of the WTO Secretariat’s service division Mamdouh complained that increased activity in the negotiations had not led to proportional results in the negotiations, which could have a negative effect on the whole round. Delegates of some countries emphasised that countries needed to bring services more to the fore back in capitals, and hence increase its importance during the Mini-Ministerials and other meetings in the overall negotiations. Thus, in 2005’s 2\textsuperscript{nd} Mini-Ministerial, held in Kenya, the EU and others tried to get services back on the main agenda (together with other negotiation group chairs and other delegations) (Bridges 02.03.2005). Naturally, Brazil apparently complained that agriculture was neglected and that too much focus was given to developed country issues such as services (Bridges 09.03.2005).

\textsuperscript{323} The chair blamed delegations for not submitting papers on time for translations to be made.
In the informal document, which was the outcome of the next mini-Ministerial in Paris, members agreed that a sufficient number of “high quality offers/revised offers” needed to be submitted before the end of July. They also agreed to find practical measures to assess the quality of services offers (Bridges 04.05.2005, 11.05.2005; IUST 18.03.2005), as the realisation was spreading that the request-offer process was not delivering the desired results (Bridges 18.05.2005). The benchmarking proposal was subsequently brought forward by the US, the EU, Australia, Bahrain, Canada, Japan, Norway, Oman, Panama, Singapore, Switzerland and Taiwan (Bridges 15.06.2005). In EU-hosted senior level talks with the US, Brazil, Canada, Hong Kong (China), India, Japan and Kenya, officials apparently agreed to support the recent benchmarking proposal (Bridges 22.06.2005), but this harmony among some of the key players was short-lived and already in the June/July 2005 CTS-SS, developing countries again asked for more focus on the rules negotiations than on market access (Bridges 22.06.2005).

The CTS-SS chair made a quantitative assessment of the offers and indicated that most offers did not extend commitments into the requested areas. He raised the question whether WTO members had difficulties in taking on further commitments due to the nature of GATS. The reaction of delegations was mixed, ranging from Brazil criticising the chair for having prepared the assessment in his own responsibility to India offering a different assessment of the offers. The EU representative expressed the EU’s “serious” disappointment with the quality of the current offers. Even the revised offers had in the EU’s opinion not led to better

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324 The US started to “float” proposals for improvements with other WTO members. Deputy USTR Allgeier proposed to supplement the request-offer approach by further liberalisation in “core critical areas”.

325 They complained that only little progress had been made in the rules negotiations, despite the last two services clusters being focused on them.

326 The chairman’s assessment was quantitative, as a qualitative assessment was too difficult to do. At the same time, the Secretariat was mandated to provide a review tool for every sector, which clarified which commitments had been undertaken. 24 initial offers were still outstanding (excluding LDC offers) at this stage, out of which 18 were of acceding members or African countries. 21 revised offers had been submitted so far.

327 Brazil also criticised that his opinion did not reflect the opinions of members. An alternative assessment of offers on Mode 4 was proposed by a group of countries, led by India (Job(05)/131).
commitments, which was, according to the EU, due to the reliance on the request-offer method.\textsuperscript{328} The EU representative therefore suggested a re-consideration of the negotiation method.\textsuperscript{329} The EU’s ideas were contested in the CTS-SS, with other WTO members trying to prioritise their own negotiation concerns: Brazil and Argentina even doubted that there was a “crisis” in the services negotiations and suggested the crisis was “created” by some WTO members.\textsuperscript{330} Japan and Taiwan supported a benchmark proposal. The US did not express support for the benchmark proposal, but it expressed support for the exploration of additional negotiation approaches as foreseen in the modalities (WTO TN/S/M/15 15.09.2005).\textsuperscript{331}

The EU submitted its revised offer at the beginning of June 2005 (European Commission 2005d).\textsuperscript{332} In August 2005, service negotiators from the EU, the US, Japan, Canada, Hong Kong (China), Chile, Mexico, India, and Australia (in total apparently 14 countries) met informally to set up a work programme for the lead up to the Hong Kong Ministerial in the autumn 2005. It can be speculated that these meetings were installed as a reaction to the development of the July 2004 framework when services was side-lined until the end (WTO TN/S/20 11.07.2005; Bridges 03.08.2005).\textsuperscript{333}

\begin{itemize}
\item\textsuperscript{328} Hong Kong (China) offered another explication of the low quality of the services offers: the representative indicated that a vicious circle had occurred in which one meagre offer was followed by another; and it indicated that its domestic constituencies had therefore questioned the authorities as to what the reward for a more ambitious offer would be.
\item\textsuperscript{329} The EU suggested to complement the bilateral negotiation approach with further multilateral or plurilateral approaches. First elements of the new “services package” should be included in the July approximations and further elaborated until the Hong Kong Ministerial.
\item\textsuperscript{330} Brazil argued that political attention was needed for the agriculture rather than for the services negotiations, and that the difficulties in the services negotiations could be overcome within the CTS-SS and hence without attention by the overall negotiations. It also doubted the assessment undertaken by the Secretariat and questioned why LDC had not submitted offers. He thought that this was mostly due to a lack of understanding of the LDC that they had something to gain from the services negotiations. Overall, Argentina and Brazil doubted there was a “crisis” in the services negotiations; the “crisis” was “created” by some WTO members.
\item\textsuperscript{331} Bolivia, Chile, Columbia, Dominican Republic, Guatemala, India, Indonesia, Mexico, Pakistan, Peru, Philippines and Thailand.
\item\textsuperscript{332} The offer was 408 pages long, reflecting the non-integrated state of the EU’s domestic services market.
\item\textsuperscript{333} They scheduled weekly informal consultations. The consultations were supposed to focus on issues raised in the last report to the TNC.
\end{itemize}
In September 2005, the demandeur countries Australia, Japan, Korea, New Zealand, Taiwan, and the EU put forward a proposal for “benchmarks” in the GATS. The proposals were distributed as “non-papers” during the informal consultations held by Jara. All the proponents of the benchmarking approach submitted different proposals, and with the Hong Kong Ministerial to be held three months later, the submission of the benchmarking proposals actually came quite late.

The EU and Japan were the most outspoken proponents of the benchmark; the EU thought that services benchmarks could bring the two services negotiations in line with agriculture negotiations. However, Argentina, Brazil, Egypt, Malaysia, the Philippines and other developing countries were strongly opposed to the benchmarking and the plurilateral approach (Bridges 21.09.2005). With regard to the benchmarking proposal, developing countries’ opposition can be grouped into four areas: first, some countries thought that benchmarks would be incompatible with the GATS structure; second, they doubted it was suitable to promote development in developing countries; third, they thought it might put further strain on developing

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334 Japan proposed that target levels for each country should be agreed. The EU proposed a formula-based approach ensuring both quantitative as well as qualitative commitments. The EU’s benchmarks would mean a strong link between Mode 3 and 4 and the proposal did not establish independent benchmarks for Mode 4. The aim of the proposal was common baselines for all WTO members. Australia’s proposal aimed to agree a number of subsectors which would have to be liberalised and hence to establish clear, mandatory goals for the negotiations. Korea suggested the use of a multilaterally determined percentage of sectors/subsectors, which would have to be liberalised. The request offer approach would be used to determine (sub)sectors for commitment in each specific case. New Zealand’s proposal aimed to quantify levels of commitment. Each member would rank itself according to its sub-sectoral, sectoral, and modal coverage, with penalties for limitations on market access and national treatment. A target score would be used for further liberalisation. The Swiss proposal followed the one of New Zealand. Taiwan wanted to de-link Mode 3 and 4 and introduce a measurement for full and partial commitments in Mode 1-3. The proposals were said to also contain calls for a plurilateral approach.

335 Brazil doubted that the benchmarking proposals could be brought in harmony with the GATS structure and provisions in general, and proposed to rather concentrate on having more balanced commitment across modes of supply and unifying the classification system. The African Group supported the Brazilian intervention. The Philippines, Malaysia, Indonesia and Thailand complained that the proposals would galvanise the request-offer process. LDC expressed their concern that the proposed complementary approaches could “overturn” the nature of GATS.

336 The Philippines, Malaysia, Indonesia and Thailand complained there was a lack of a development dimension in the proposals. They were worried markets might be opened abruptly and policy space would be reduced significantly. LDC asked the other WTO members not to demand commitments from the LDC which went beyond their capacity. The LDC explained that their priorities for the Hong Kong Ministerial were preferential market access for LDC’s limited services exports, and effective technical assistance and capacity-building.
countries’ scarce negotiation resources in the WTO and fourth, they argued benchmarks might lead to disproportionate commitments by developing countries. With regard to the plurilateral approach, developing countries were concerned that it would constitute a very untransparent and difficult to follow negotiation approach.

Several developing countries complained about the low level in offers by the demandeurs themselves.

The demandeurs defended their proposals: they argued that they wanted to raise the level of ambition in the services negotiations multilaterally, that benchmarking would make the services negotiations more assessable and comparable to the agriculture negotiations. The EU reminded fellow negotiators that among the objectives of the DDA was to create new commercially meaningful market access, and a balance between the negotiation areas. The EU delegation felt that this balance had not been achieved due to the low level of ambition in the services negotiations even after five years of negotiations and two rounds of requests-offers. While the EU delegate promised the EU would carefully reflect on the concerns raised with regard to the benchmarking approach, he argued that flexibility of the GATS was maintained under the new approach. He promoted the EU’s approach in outlining that it accommodated targets that had been formulated by other delegations with regard to Mode 4, cross-border supply of services and Mode 3. He indicated that the EU was also supporting a plurilateral approach.

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337 The Philippines, Malaysia, Indonesia and Thailand indicated that the demandeurs in the negotiations had a much better resource equipment, which allowed them to send experts to all meetings and to capitals, and which gave them lobbying power the developing countries did not have.

338 It was argued that benchmarks would burden developing countries disproportionately as developed countries had already made further reaching liberalisation commitments (and would hence not have to commit much further to fulfil the benchmarks).

339 The plurilateral approach was also rejected by some developing countries, because they considered it as a way of negotiation as intransparent as the Friends groups, which they found very difficult to follow due to their limited resources.

340 Korea and New Zealand explained that they intended to raise the level of ambition multilaterally. Australia argued that if a significant number of WTO members was not willing to liberalise services as they had committed to under GATS, then services would no longer be at par with agriculture and NAMA, which Australia could clearly not support.
The US delegate did emphasise the importance of raising the targets for the services negotiations, but again the delegate did not clearly support the benchmarking proposals.\(^{341}\) The US intended to work towards a package on domestic regulation and GATS rules, and for a statement on LDC in the Hong Kong Declaration (WTO TN/S/M/16 28.10.2005).\(^{342}\)

In September 2005 as well, a new services coalition was established by the “new” Quad. The group was to be chaired by the US and India and its aim was to advance the service talks and to assess benchmark proposals (Bridges 28.09.2005).\(^{343}\) An EU official indicated that they viewed this new Indian activism, including the leadership in this new group, in the services negotiations as positive and that the group was meant to facilitate the run-up to the Hong Kong Ministerial (interview 8). This intended impact seems to have been achieved: according to an interviewee, the group did have an impact on annex E (interview 26).\(^{344}\) Apparently, the group was meant to do for services what the FIPs did for agriculture, but it did not have much success. However, an interviewee interpreted the chairmanship of the new group as indicative of the changing interests in services (interview 18).

Over the course of the 2004-2005 services negotiations, WTO members expressed increasing concern about the lack of participation of LDC in the services negotiations. The LDC distributed a paper on the implementation of the LDC modalities (JOB(05)/114), which was subsequently discussed. The EU delegate argued that the EU’s extensive commitments in Mode 1 and 4 would create new business opportunities for LDC; however he also clarified that lower skilled workers were not covered under GATS in the EU’s opinion, as this was a case of seeking access to the domestic employment markets. The LDC contested the EU’s interpretation that non-

\(^{341}\) Instead, he emphasised the need for flexibility and maintaining the original structure of GATS. The US supported a “general qualitative multilateral guideline” to move forward the services negotiations, and a potential plurilateral approach.

\(^{342}\) The benchmarking proposals were formally debated in the September 2005 CTS-SS.

\(^{343}\) Apparently, the members were Argentina, Australia, Brazil, Canada, Chile, China, Egypt, the EU, India, Japan, Malaysia, Mexico, Singapore, South Korea, and the US.

\(^{344}\) However, after the Hong Kong Ministerial, the coalition seems to have vanished: another interviewee described the group as very informal and as inactive since the Hong Kong Ministerial (interview 8).
skilled labour was always seeking access to the labour market and that it was not covered under GATS (TN/S/W/54) (WTO TN/S/M/15 15.09.2005; WTO TN/S/M/16 28.10.2005).

In 2005, lobbying by some industry representatives was also obvious. EU, Japanese and US financial services representatives held a meeting on the benefits of financial services for developing countries (Bridges 09.02.2005). The US and EU services industry stated that offers were especially needed by South Africa, Indonesia, Pakistan, the Philippines and Venezuela, and that the services offers then available would already cover 95% of services trade worldwide (Bridges 04.05.2005, 11.05.2005; IUST 18.03.2005). Alongside the June CTS-SS meeting, services representatives from the EU, US, Chile, Singapore, Hong Kong (China), Canada etc. were meeting – an interviewee saw this as evidence that the cooperation of the services industries was increasingly strong (interview 30).

9.2.3 The EU and services at the Hong Kong Ministerial
As mentioned above, at the Hong Kong Ministerial, it was decided to first discuss NAMA and agriculture, and services was scheduled for the third day, when progress was expected to have occurred in the two first areas (interview 19). The danger of this strategy was, of course, that the very contentious services annex would only be debated at a later stage of the conference, but it might indicate a general prioritisation of agenda issues on the Doha agenda.

During the Hong Kong Ministerial, there was a strong conflict surrounding Annex E, including the benchmarking proposal. According to interviewees, it was the ACP, some ASEAN countries and the African Union (coordinator Egypt) which made it fail. However, these are countries that were mostly not affected by the proposal, and the proposal apparently even contained positive provisions for them (interview 15, 20, 27):

those countries are not even requested, but talk about domestic regulation or the schedule for the plurilateral (interview 20).

This clearly shows an unexpected and undesired effect of the WTO expansion, namely that parties that are not (yet) concerned by a WTO regulation now can
influence and veto regulation. It is worth remarking that in the subsequent plurilaterals, requests were concentrated on the “critical mass countries”, i.e. the target markets of the demandeurs.\(^{345}\) This means that some countries that at the Hong Kong Ministerial could decide how to move forward in the services negotiations were not affected by their own decisions (interview 15). For the EU, seeing especially the ACP working so strongly and successfully against the EU’s proposal seems to have been a new situation (interview 8). Around and after the Hong Kong Ministerial the EU hence made steps to improve its cooperation with the ACP, because of a set of “misunderstandings” in the run up to the Hong Kong Ministerial (interview 3, 27)\(^{346}\).

With regard to the GATS rules negotiations, the EU pushed for a text on government procurement in services equally ambitious as the ESM and rules on service subsidies. However, interviewees from developing countries suggested that the item is both “dead” as too many WTO members dislike it and also not a real priority for the EU, as the EU for example had not updated its position on government procurement since 2003. Still, other WTO members agreed to a text putting government procurement on a similar level – and an interviewee clearly emphasised that for them, after all a mandate as such did not mean commitment anyway. The interviewee speculated that government procurement might be a bargaining chip versus the ESM, as the Commission was fully aware that government procurement would not move forward, but did keep it on the agenda (interview 15).

The kind of “games” that were employed in the “last minute” policy-making in the Hong Kong negotiations are exemplified by the following example: the services facilitator at the Hong Kong Ministerial apparently used “blackmailing” against some developing countries (putting strong pressure on these countries), which the

\(^{345}\) For more information on the “critical mass” countries see Annex 4 (Sect. 12.4).

\(^{346}\) It can be assumed that this had to do with the rejection of the benchmarking proposal, but the EU changed its strategy too late in order for it to have any effects. The EU understood its new role as to explain to the ACP “what actually was going on” in the services negotiations (interview 3). In the overall negotiations, there have been attempts to include an ACP representative in the Mini-Ministerials (interview 27). It is also interesting to note that the ACP Secretariat in Geneva receives financial support from the EU. Despite this and other EU efforts to facilitate the ACP’s representation in the negotiation process and to accommodate their needs, the ACP often oppose the EU in the negotiations, which an interviewee suggesting that this was an ACP attempt to be granted more financial assistance (interview 33).
defensive countries leaked to the NGO community and the press. An interviewee told the anecdote that subsequently the NGOs were “running around” the conference centre with “anti-GATS” stickers, which means that the strategy of the defensive countries clearly was working (anonymous interviewee).

With regard to the failed benchmarking approach, two things can be noticed: despite the earlier linkage between the EU’s new agriculture offer and the benchmarking approach, the EU kept its agriculture offer despite the failure of the agriculture negotiations. An interviewee explained it would not have been politically feasible to withdraw the agriculture offer and it was the EU’s commitment to the round which made it pay in disproportionate terms (interview 8). This shows again how little the EU can control this negotiation and this EU linkage clearly was ineffective.

9.3 Interim Conclusion

This chapter followed the DDA negotiations after the Cancún Ministerial to the Hong Kong Ministerial. This last section of the DDA negotiations under consideration in this thesis here shows a heightening of activity on all negotiation levels, both in the overall and in the services negotiations. Agriculture turned out to be continuously the most critical issue on the DDA agenda. The EU had serious difficulties in maintaining its negotiation position and found itself cornered several times. Even after the EU offered to end export subsidies, pressure mounted on the EU and it had to make more concessions. The services negotiations re-gained in importance, and in 2005 especially, the EU tried to push services on the overall negotiation agenda, but failed. At the Hong Kong Ministerial, parity was established between agriculture and NAMA, and services was further sidelined (see also Wolfe 2007b).

In terms of EU resources (research question 2), the results presented in this chapter apparently confirm the picture obtained in earlier chapters, namely that business interest on trade in services is ambiguous. In the time period covered in this chapter, there were lobbying efforts of business associations, but there was no extensive reporting about this – either the actions of business were simply not covered by the sources used for this research, or their lobbying efforts were insignificant and did not create a lot of “noise”. It seems that overall, the civil society campaigns died down in
this phase of the negotiations. However, a developing country interviewee suggested that because the Singapore issues were dropped after Cancún, the NGOs could concentrate on services (interview 19), which implies that pressure might have continued in this area of the negotiations.

Again, the relationship between the Commission and the EU member states proved a double-edged sword for the EU. With regard to the Round for free initiative, the Commission seems to have taken the EU member states by surprise by stretching its mandate in order to arrive at a compromise at the international level. An interviewee observed that the Commission overall became “very aggressive” on services in 2005, which led people to wonder if the EU wanted to create an overall crisis in the round, but the interviewee suggested that the EU’s activism mostly had to do with EU-internal pressure, especially by France (interview 26). Managing its domestic “resources” hence continued to take up part of the EU’s negotiation capacity, but the public resistance of certain EU member states against too far-reaching commitment might also have helped the European Commission to sustain its case in the WTO.

The chapter also provides an interesting case for empowerment through the regime (research question 3). As indicated in Sect. 3.1.2, the WTO consensus system de facto attributes similar voting power to all WTO members. A practical result of this was visible with regard to the decision on plurilateral services negotiations. WTO members that did not even (yet) have a stake in world services trade or would not take part in the plurilateral process could influence and veto this idea. Of course, this problem does not only exist with regard to the plurilateral approach, but was also visible with regard to the benchmarking proposal. It can be argued that here in particular the regime was disadvantageous for the EU, as it attributed significant organisationally-dependent capabilities to actors pursuing agendas adverse to the EU’s interests although they would not be affected by the regime change anyway. In more general terms, this raises questions as to who should shape the rules in the WTO.

As in the previous chapters, this chapter also gives a range of examples for the EU’s attempts at agenda-shaping (research question 4) and coalition- and consensus-building (research question 5). In 2005, the European Commission invested heavily
in promoting the benchmarking proposal, but it did not succeed (research question 6). Why did this significant investment of power fail? The interviewed Commission officials recognised that their own approach was sketchy, as of course it did not take into account the relative importance of a sectoral commitment. While the services unit officials were aware that a quantitative approach to services would be difficult, the benchmarking proposal was meant to give orientation to the discussion:

we saw that the offers were very limited in substance and very often we saw that some of the countries were not really playing the game (interview 8).

Apparently, the Commission wanted to use benchmarking as a tool to expose the low level of commitment in services by other members and as a counterbalance to agriculture (interview 8, see also Wolfe 2007b). A point of criticism was that the EU’s approach would have exempted the EU from making major new commitments, which had to do with the generally higher level of binding by the EU and the very different level of commitments that existed among WTO members (interview 5). Interviewees from (non-EU) WTO members also pointed out that the benchmarking proposal was a “void” proposal. It was clear to all the negotiators that even if there had been some quantitative or qualitative targets for each WTO member these would in practice not have been effective and would also not make the offers more comparable (interview 18, 20, 21, 23). It is hence evident that the substance of the proposal itself could be a reason for the failure of the proposal.

In terms of consensus-building for the benchmarking-proposal, a Commission official evaluated their efforts of convincing the WTO membership that the bilateral request-offer process was not working as reasonably successful (research question 5). However, the Commission found further consensus-building much more difficult. The Commission tried to build consensus among the demandeurs, but even this was problematic and the EU official estimated that the biggest hurdle was that the Commission failed to convince the US of the benchmarking idea. The opposition to the benchmarking proposal was led by Brazil, and the official estimated that the opposition’s task was an easy one given the absence of US support for the proposal.
A second reason for the failure of the benchmarking proposal was hence a failure by the EU to build consensus and support for the idea.\footnote{The EU’s heavy support for the failed benchmarking approach might have had unintended strategic costs for the EU. Interviewees from (non-EU) WTO members questioned that the EU’s approach for the benchmarking proposal had been a good strategic decision, arguing that it led to distrust and created divisions rather than consensus. For them, the benchmarking proposal looked like a leverage for agriculture (interview 17, 19). In the eyes of the interviewees, the EU clearly lost credibility because of this attempt to push the benchmarks, and the way they did it. They added that in 2006 it seems the Commission was playing a similar “game” with the stocktaking exercise, casting doubts on the EU’s seriousness about the services negotiations: while the EU was perceived as consistently emphasising services in the Doha negotiations, it did not show convincing activism in the services negotiations (interview 18, 20, 21, 23). In the eyes of (non-EU) WTO members, the Commission also lost credibility, because it pushed for benchmarks for various months in 2005 but only submitted a proposal in October (interview 21).}

Clearly, there have not only been attempts to introduce new initiatives to induce movement into the round. Important new coalitions emerged in the 2003-2005 period: the “FIPs” were set up in the agriculture negotiations and replaced the EU-US co-leadership in this area (Bridges 23.06.2004). Similarly, the new Quad emerged in the negotiations overall. Interviewees indicated that this was due to the power shift in the WTO (interview 17); this meant that developing countries moved into the centre of decision-making and these new coalitions signified strategic adaptations of the EU and the US to the new power structure in the WTO (interview 35; research question 1).

Similarly, in the services negotiations, a US-India led group was set up in the run-up to the Hong Kong Ministerial as a “FIPs-equivalent” in services, but this informal coalition soon became meaningless. This seems to be in line with the formerly observed absence of negotiation coalitions in the services negotiations. However, interviewees described a situation where cooperation does take place in various forms. In services, coalitions apparently are more informal than in other negotiation areas and can vary across issue areas (see Annex 4 (Sect.12.4)).\footnote{As to the Quad, while it was mentioned regularly in earlier chapters as an acting coalition in the services negotiations, it seemed to have disappeared here. Interviewees explained that while coordination in the Quad had been key in the services negotiations in the}
Uruguay Round and in the late 1990s, the Quad today seems to have a limited impact. The power shift now seems to have started to impact on the coalitions that are steering the WTO negotiations on the different levels.

With regard to the outcomes of the services negotiations, the EU was increasingly worried about the results of the services negotiations (see also Bergsten 2005). It realised that offers submitted to it were far below its expectations. While it had postulated “effective market access” as one of its negotiation goals, this seemed increasingly unachievable: Commission officials did not estimate that there would be any new “commercially viable market access” market access in the sectors they were dealing with (interview 3; 5). Interviewees from (non-EU) WTO members confirmed the assessment that there would be no or hardly any commercially viable market access as a result of the round (interview 17, 18, 19, 21, 26). A sense of “crisis” hence built up among the demandeurs in the services negotiations. As in the overall negotiations, the European Commission now lowered its demands: it reacted by introducing a distinction between different developing country groups and lowering its requests to each group. The European Commission was apparently increasingly aware that there were real and substantial capacity problems in LDC and developing countries and that they were not simply using capacity problems as a strategic blockage of the negotiations. The Commission had realised that these

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349 Assessing the quality of the offers is, however, highly individual, as WTO members have not yet allowed the WTO Secretariat to conduct a comprehensive assessment of the offers (however, even if the Secretariat would be mandated to do so, it might struggle to find the capacity to undertake a comprehensive assessment). Hence, no official assessment exists.

350 The Commission had on the one hand to realise other players’ reservations, and on the other hand, realised that pushing harder on services or restraining the offers on agriculture further might have created further conflicts in the negotiations (interview 10). The Commission officials are clearly dissatisfied with the current negotiation result (interview 5). At the same time, Commission officials were aware that in many countries services liberalisation was much further advanced than what had been committed in the WTO, even in those countries that hardly participated in the negotiations (interview 3). Apparently for the Commission, it had been a gradual realisation during the negotiations that market access was getting “thinner and thinner” (interview 10).

351 The gains through the negotiations would still be legal certainty and a possibility to overcome domestic interests, although this was not what the Commission intended initially. Many countries would first liberalise services domestically, anticipate the effects and then make a commitment at the WTO (interview 21).

352 A NGO representative alleged that the EU’s attempt to create different developing countries’ subgroups was part of a strategy to break the unity of developing countries though (interview 35).
countries did not have the negotiation capacity to participate properly in the DDA and also would not be in a position to implement the results of complex negotiations in any case. This recognition was a significant strategic change for the EU. Hence, the European Commission increased cooperation with LDC (also to "sell" its ideas for the services negotiations), and technical assistance. So far though, the new approach towards the LDC/low income countries failed to persuade them to a greater participation in the services negotiations. The EU also tried to help the ACP in their participation in the services negotiations, but arguably efforts came too late to salvage the benchmarking proposal.

The EU and the US continued to pursue different agendas with regard to the WTO. After the Cancún Ministerial, the US had quickly turned to a new strategy of bilateral agreements, whereas the EU continued its unambiguous support for the regime. The contribution of the US to the revival of the round after the Cancún Ministerial seems significant, starting with its early 2004 surprise initiative to revive the Doha negotiations. However, there does not seem to have been much cooperation between the two, as the US in part undermined the EU’s position.

As in previous chapters, the links between different negotiation areas were used by different actors. Arguably, the Commission used government procurement as a bargaining chip inside the services negotiations. The services negotiations continued to be pinned against the agriculture negotiations.353

While the EU has been successful in keeping the round going until the Hong Kong 2005 Ministerial and not letting a WTO Ministerial fail a further time, it had to make a set of substantial concessions. Flexibility in the EU position has increased.354 This in particular seems to have contributed to the interim success of the July 2004 framework. However, the EU’s benchmarking proposal failed. At a first glance, the plurilateral approach initiated by the Hong Kong Ministerial looks like a revival of the

353 A developed country representative suggested, however, that the importance of the services negotiations had gone up and that the EU had tried to be more proactive, and that the benchmarking proposal was an indication of the EU that the importance of services had gone up (interview 20).
354 The EU was forced to become more flexible and dropped the Singapore issues. It also increased its flexibility on the geographic indication issue.
plurilateral approaches that have taken place in the mid-1990s and which the EU found to be relatively successful, but this view did not last long into 2006.\textsuperscript{355} Despite all the efforts of the EU, compromise seems still not in reach and the impact of the EU on negotiation outcomes seems rather limited (research question 6).

How has the EU’s approach changed because of the power shift (research question 1)? As in previous chapters, the EU has tried to increase cooperation with certain actors and it took part in a set of new coalitions. However, apart from these strategic changes, the important observation in this chapter is the changes in its substantial demands that the EU made. The major change was dropping the Singapore issues and there was a decision by the EU whether to stay with the WTO or to move to a different forum (interview 5, 6), with the EU deciding to continue focusing on the WTO (as opposed to the US). The Commission also made concession in agriculture. In the services negotiations, the Commission realised that it had been too ambitious in the WTO and lowered its expectations for the services negotiations (interview 8). The EU hence moved from making strategic adaptations to the power shift to making changes in its demands in the negotiations.

The last two years under observation in this thesis hence did not prove entirely successful for the EU, as it had to make substantial concessions to prevent the WTO negotiations from breaking down and as it failed to establish the services negotiations as on equal level with the NAMA and agriculture negotiations. Having with this last case study chapter now completed the consideration and analysis of the EU’s contribution to the WTO negotiations between 1995-2005, the subsequent

\textsuperscript{355} While the plurilaterals held in spring 2006 were seen as successful by an EU official, and while the official suggested that in the Uruguay Round the best results were achieved in the plurilateral negotiations (interview 5), enthusiasm for the plurilaterals waned quickly in 2006, as it brought with itself the same problems as previously, namely that there was no obligation to take part in it. The advantage of the process was increased transparency in the negotiations, and it allowed the EU to focus on its target markets (interview 8). However, another EU official admitted that the Commission had concluded that the plurilaterals were so “successful” because they did not mean real commitment for anyone (interview 8). A representative from a developing country suggested that the plurilaterals were the first time that the demandeurs were forced to cooperate among themselves. This led to a lowering of ambitions, welcomed by the opponents. However, the discussion raised by the plurilaterals soon faded away in spring 2006 (interview 19). Developing countries which were not requested through the plurilateral process also quickly started to complain that they were excluded from the discussion (interview 28).
conclusion in the next chapter will sum up the results of this investigation and revisit the propositions put forward in chapter 2 above and the research questions set out in chapter 3 above to provide a complete picture of the EU’s impact on the WTO negotiations.
10 Conclusion

This thesis has assessed the EU’s impact on the international trade regime by analysing the WTO negotiations between 1995-2005 based on an actor-centered power concept. Initially it was argued that the WTO as a “make-or-break” forum provided a core place for the EU to establish its identity as an international actor, as the EU is equipped with far-reaching capacities for action due to its resource equipment in trade policy and due to its organisationally-dependent capabilities. It was then asked how the EU would try to use its resources to shape the WTO negotiations and hence the international trade regime. The thesis was based on two core assumptions set out in the Introduction: first, the assumption that power matters in regimes, and that an actor-centered power approach could crucially contribute to our understanding of outcomes of negotiation processes in the international trade regime; and second, that a power shift has occurred in the WTO, with consequent effects for the EU’s capacity to respond and to achieve policy effectiveness.

Chapter 2 above set out the theoretical framework used in this thesis. It reviewed the concept of the “international regime” and “power” in political theory and IPE theory, and then argued for a broad-based analysis of actor power in international regimes, for which it put forward five propositions. These can be re-presented here as the initial baseline for overall conclusions to the thesis:

- First, that analysis of actor power in international regimes depends initially on specification of the international regime, its qualities and the issue-area(s) it relates to.
- Second, that analysis of actor power in international regimes depends on an assessment of the resources and capacities that the actor brings to the regime (in other words, of ‘power to’ existing independent of the regime – in Keohane and Nye’s terms, ‘underlying capabilities’).
- Third, that analysis of actor power in international regimes must take account of the actor’s ‘organisationally dependent capabilities’ and thus of resources
derived from involvement in the regime itself (what might be defined as ‘power from’ the regime – in Barnett and Duvall’s terms, ‘institutional power’).

• Fourth, that analysis of actor power in international regimes can profitably focus on formal negotiation and bargaining processes in which the actor is involved (and thus on what might be termed ‘power in’ negotiations), with particular reference to processes of agenda setting and coalition building.

• Finally, that analysis of actor power in international regimes must include an assessment of outcomes in relation to actor preferences (and thus what can be seen as ‘power over’ in the regime setting – in Barnett and Duvall’s terms ‘compulsory power’).

Chapter 3 above introduced the regime under consideration in this thesis, the world trade regime with its key organisation the WTO, and the issue area chosen for this investigation, trade in services. It also introduced the way in which the WTO’s institutional framework might influence the organisationally-dependent capabilities of the actors involved in the WTO and argued that a power shift was taking place in the WTO in the time of observation. In this chapter, six research questions were developed based on the discussion of the international trade regime and the five propositions for an actor-centered power approach:

1. How has the EU recognised and adapted to the power shift in the WTO?

2. What resources for action does the EU have in the WTO?

3. Which organisationally-dependent capabilities exist for the EU in the framework of the WTO?

4. To what extent is the EU capable or not capable of influencing the processes leading to the WTO’s negotiation agendas? Are there differences between the different types of negotiations in the WTO?

5. To what extent does the EU have the capacity to build and lead coalitions within the WTO and in which other ways does it acquire support for its positions?

6. Do outcomes of WTO negotiations reflect preferences of the EU? Why or why not?

These research questions guided the investigation in this thesis and through the case study. Chapter 4 assessed the EU’s resources and organisationally-dependent
capabilities for action in the WTO, thus dealing with the context for consideration of research questions 2 and 3. Chapters 5-9 contained the case study on the WTO negotiations in general and in trade in services, thus dealing in particular with research questions 4-6. This last chapter gathers and evaluates the results of the investigation and revisits the research questions. It will do so by dealing with questions 2-6 as they are illuminated by the case study, and then by returning to the broader consideration of research question 1 in light of the evidence.

10.1 Results of the investigation

With regard to the resources brought by the EU to the WTO (research question 2), chapter 3 established that the EU’s resource equipment for shaping the world trade regime is, as expected, unique and extensive. Its power in the WTO is founded on its economic resources and the attractiveness of its internal market, both overall and specifically in services. The growing competencies of the EU in trade policy form the basis of its political power, and the EU disposes of significant institutional resources. While the distribution of competencies between the EU and the EU member states is mixed in the area of the “new trade issues”, carrying the risk of potential frictional losses, the effect of this competence distribution remains unclear. EU business and civil society were identified as further potential factors of the EU’s domestic resources. The EU’s vast network of formal and informal relations with its trading partners provides the EU with further resources for its impact on WTO negotiations.

The EU also benefits from a range of organisationally-dependent capabilities in the WTO (research question 3). It acts on the basis of a long established actoriness and of a special legal status. The EU has a disproportionate influence on the decision-making in the WTO, and on the DSB. It is in a position to shape the structure of the WTO and the negotiations. In many instances, the WTO framework, and the WTO Secretariat in particular, play into the hands of the EU. Theoretically, therefore, the EU should be able to establish leadership and live up to its “superpower image” in the WTO.

In chapter 2, it was postulated that in order to observe actor power in a regime, it was important to look not only at resources, but also at the negotiation process and at
outcomes of a process of regime change. This request was taken up by three research questions (research questions 4-6). They drew special attention to the EU’s ability to shape the WTO’s agenda, to build coalitions and more generally attract support to its proposals, and to what extent the outcomes in the WTO reflected the EU’s preferences.

Research question 4 dealt with the agenda-setting capacity of the EU. As shown in the case study, a first aim of the EU was obviously to shape the WTO’s agenda. With regard to the overall agenda-setting in the WTO, the first phase observed in this thesis showed a very definite impact of the EU. It came up with the idea for the new trade round and arguably took over leadership from the US at stages. The EU was hence definitely turning from a rather defensive position during the GATT years to one of leadership and a more offensive position in the 1990s. At the same time, it can be argued that the EU perceived increased opportunities for power usage in the WTO, which led it to position itself as a new leader in the organisation. The interim failure at Seattle was overcome by the EU with increased investment in consensus-building (research question 5). The launch of the Doha trade round can hence be counted as a considerable success of the EU in agenda-setting.

However, this success was on the one hand not a complete or long-lasting one, as the EU’s agenda had been significantly watered down for the sake of finding a compromise. It was thus not clear whether the EU’s success at this stage would lead to a longer lasting reshaping of the regime or not. On the other hand, even before the Seattle Ministerial, conflicts arose to such an extent that the EU struggled to exert control over them.

In the services negotiations, the EU was active in the negotiations continuing after the Uruguay Round and displayed the ability to shape and lead the negotiations to a certain extent. In the preparations for the GATS 2000 negotiations, there first seemed not to have been too much impact of the EU, although the EU seemed to have built support at the domestic level and clarified its own position. It became evident that the EU wanted an ambitious outcome from the services negotiations and it pushed for this for the next five years. Ways in which it tried to shape the services negotiations
included (research question 5), among others, providing substance to the assessment exercise, providing technical assistance, and issue linkage.

In chapter 9, it was evident that the EU attempted to raise the importance of services on the WTO agenda.\textsuperscript{356} The EU constantly countered the linkage made by the developing countries between agriculture and services with requests for movement on services.\textsuperscript{357} However, in the end a negative linkage between services and agriculture seems to have prevailed. Services became “the odd nr. 3”, with the link between agriculture and NAMA being institutionalised at the Hong Kong Ministerial (Art. 24 Hong Kong Declaration).\textsuperscript{358} The EU’s attempt at raising the services issue had therefore not been successful. Clearly, by 2005 the single undertaking once desired by the EU had become a “double edged sword” for the EU and issue linkages were not working out for it. WTO members attempted linkages inside the services negotiations (ESM versus market access, Mode 4 versus market access) and across issue areas (services versus agriculture), and with agriculture becoming the key stumbling block in the negotiations, the EU’s offensive interest in services was increasingly held back by this.

The EU clearly exerted pressure on members and the process, which was visible in the case study, and it played a major role in the negotiations, but did outcomes reflect its preferences (as asked by research question 6)?\textsuperscript{359}

As discussed in chapter 9, it became evident to the negotiators during the services negotiations that offers were rather limited. The EU had initially postulated “effective market access” as a negotiation goal, but this now seemed unachievable. The

\begin{itemize}
\item \textsuperscript{356} In 2006 it tried to have a “services Mini Ministerial” alongside the planned NAMA Ministerial, but this idea was rejected by the WTO members (interview 15, 19).
\item \textsuperscript{357} This was confirmed by interviews 19 and 20. An interviewee suggested that this might be a very difficult strategy, because it would be rather difficult to think that a movement in services would appease European farmers. It also remained completely unclear what kind of concession would have made a movement in agriculture possible (interview 20).
\item \textsuperscript{358} This was mentioned in interview 24 and 21, and similarly in interview 26. There is no fourth negotiation area which could be a balance to services. TRIPs and S&D do not have enough weight to be this (interview 24).
\item \textsuperscript{359} All the results that are discussed here are, of course, temporary. With the current slow movement of the trade round looks as if the Doha Round will carry on after 2007.
\end{itemize}
European Commission hence had to significantly lower its ambitions in the services negotiations, and the GATS negotiations would then only serve to provide a certain level of legal security for WTO members (interview 8).\(^{360}\)

In other areas of the services negotiations it also seems that the EU did not achieve its preferred outcomes: with regard to government procurement, the EU had clearly shown an offensive interest, but many developing countries were reluctant or completely opposed. It seems that at the Hong Kong Ministerial, the EU had managed an interim success on the issue (see section 9.2.3), but it remains unclear whether an agreement can be reached.\(^{361}\) Similarly, at the beginning of the GATS negotiations, a new classification system was an objective for several WTO members.\(^{362}\) Although all Friends groups promoted new classification systems, nothing had been agreed upon and movement could not be expected (interview 9). Disagreement between the EU and the US prevailed here as well (interview 19).\(^{363}\)

With the accountancy disciplines having been successfully agreed upon, the EU had intended to push for similar disciplines for domestic regulation in other sectors, but there were differences among WTO members about which approach to take. Because a very ambitious proposal could have had unpredictable ramifications, the negotiations became reduced to transparency on domestic disciplines (interview 30), and no results have been achieved. The other example for a failed EU initiative, the benchmarking proposal, was discussed in detail in Section 9.3. Other interim

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\(^{360}\) This was a disappointment for certain parts of the EU industry: as the services negotiations were in crisis, many industry representatives seemed to have (further?) lost confidence in GATS: it was sobering for those who viewed GATS as very important and had great expectations in it (interview 32).

\(^{361}\) This was confirmed by interviews 3 and 19. An interviewee suggested that the EU was losing credibility because it continued to push the government procurement issue in the working group, although it knew the negotiations would eventually fail (interview 23).

\(^{362}\) An EU official described it as a key problem of the GATS that there was no agreed classification system, which meant that everyone used different ones.

\(^{363}\) A member of the WTO Secretariat explained that the Secretariat had built a classification on the basis of the CPC UN classification system, but that countries use any classification they think fit. This makes commitments even less comparable, as countries can create carve outs that undermine what they seem to be committing to (interview 28). A developing country interviewee suggested that disagreement between the EU and US on the classification issue meant that in order to comply with the requests of both the EU and the US on telecommunications his country would have to use two different schedules of commitment (interview 19).
decisions were either preparatory (framework), or irrelevant for the EU (for example LDC modalities). It seems that in terms of working towards or achieving its offensive interest the EU was not very successful.

It appears that the EU was more successful with regard to safeguarding its defensive interests in the negotiations. Although the EU (and the US) did not prevent issues like the ESM, rules on service subsidies or Mode 4 from emerging on the agenda, they prevented decisions that would have been unfavourable for them. On other outcomes, it is evident that the EU tried to not let them be too far-reaching (Mode 4, autonomous liberalisation modalities, LDC modalities). For the ESM and the services subsidies question, the EU took a “wait and see” attitude, and, as the EU had preferred it, results were not achieved (by 2007). Equally on its sensitive sectors (especially audiovisual, health and education services), the EU managed to prevent the negotiations from going anywhere (which was of course criticised by (non-EU) WTO members).

10.1.1 Reasons for the EU’s failure to use its resources effectively

What were the reasons for the EU’s failure to transform its resources reliably into outcomes? The case study has suggested a range of answers to this general question, which relate back to the research questions. The first set of answers relates to the EU’s resources, the second to the nature of the regime and the EU’s organisationally-dependent capabilities, the third to the EU’s ability to build consensus and coalitions, and the fourth to the power shift and the EU’s adaptation to it.

364 The discussion on the ESM had become more technical in the last years, but the question of feasibility (technical) and desirability (political) had not yet been resolved (interview 23). An EU official said that from the EU’s perspective, there was a lack of concrete proposals by the proponents of the ESM and disciplines on services subsidies (interview 3). An interviewee described his country’s attempt to find a watertight definition for the ESM (interview 15). Often, negotiators from developed countries will “take apart” the proposals made by developing countries. This is part of the game, of course – a legally “watertight” definition needs to be found, although this is much harder to deliver for those countries with less analytical capacity (interview 15, 35). Main proponents of the ESM remained ASEAN countries (interview 35).
**EU underlying resources**

The first set of reasons is related to the EU’s underlying resources, which brings us back to research question 2:

First, the relationship between the EU and the EU member states at times contravened or undermined the Commission’s strategy in the WTO, especially when it came to concessions on agriculture (Bergsten 2005). Although this was not always the case, at times the EU’s relationship with its member states proved a stumbling block for the EU in the negotiations. Second, the EU’s relationship with business does not seem to provide an unambiguous source of resources. With regard to trade in services, after the apparent sectoral industry impact on services negotiations in the second half of the 1990s, there was hardly any indication of business involvement in the analysis of chapters 7–9. This raises the question as to how far European industry actually influences the services negotiations today and how far they even have an interest in the negotiations. Overall, it has been claimed that, in contrast to the Uruguay Round, business support in the developed countries was low for the Doha Round (see also Odell 2003: 8; TERI 2003: 25ff), which coincides with the findings in this research.

Third, a major change in terms of the EU’s resources was the changing attitude of civil society towards trade policy in general and towards services liberalisation in

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365 This was confirmed by interview 18. According to an interviewee, the EU landed a successful “coup” with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, which might enable it to continue to protect audiovisual services from liberalisation (interview 19).

366 This was supported by interviewees: despite its resources, the EU is regarded also as a more slow-moving or less outspoken negotiation partner, due to its internal constraints (interview 14, 18, 23). The “more refined position”, that an EU official lauded, was experienced by (non-EU) WTO members as a tactical obstacle, e.g. the US could take a very ambitious proposal and then negotiate downwards from this basis, whereas the EU was rather inflexible with its position (interview 15). An interviewee observed that the EU negotiators were often more vague in the negotiations; “leaving a window open” as it had to check with the 25 member states. The US’ negotiation style was described as more direct and straightforward (interview 19, similarly 20). The Commission negotiators seemed more restrained by their mandate. An interviewee described “Of course we [all] follow instructions from the capital. But if the discussion goes somewhere unexpectedly, I only have to keep in mind my colleagues in [my capital] and whether I can sell this to them [...]. So I can step out of my mandate if I think fit.” (interview 20, similar in interview 21). While the Commission negotiators seem very though negotiating inside their mandate, they do not have the same freedom as other WTO members, and they often remain silent or reserve their right to speak for later if the discussion departs from the foreseen (interview 20).
particular. Similarly to the other major change in the trade regime, the increasing prominence of developing countries in the WTO, this change slowly revealed its full effects after the Seattle Ministerial. The EU reacted with attempts to improve its relations to civil society both inside the EU and in the broader, international realm.

At the EU level, civil society’s emerging interest in the services issue has changed the EU’s position and strategy on services. Civil society interaction has added a fourth partner to the Commission-Council-industry game. An evident example of the effects of NGO involvement is the EU dropping all requests on education and health services (see chapter 8). The EU’s approach to services liberalisation has hence been shaped by the NGO and media campaigns since 2001. One can also say that the EU’s resources were diminished as EU civil society took on positions that were represented most directly by developing countries in the WTO.

Clearly, the perception of the WTO overall has changed since the 1990s. “WTO” became synonymous for “globalisation”, understood negatively (interview 32). The 2005 Bolkestein directive discussion could be regarded as a further discussion undermining the EU’s bargaining power in the WTO. It reveals the sensitivities on the EU level – so the Commission faces two crucial and demanding settings in the services negotiations: internally with civil society and outside (in the WTO) with the developing countries. Of course, all other WTO members are aware of the EU’s internal discussion and it has weakened the EU’s position in the services negotiations.

Fourth, it might have been problematic for the EU to fully utilise its resources. It is interesting to note that some of the resources which the EU could use seem not to have been fully utilised: for example, the EU seemed to hardly use the EU

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367 An EU official indicated that this move by the Commission importantly undermined the anti-GATS campaign, while it meant giving up only a minor EU interest. Therefore, he considered this as a successful EU strategy (interview 6).

368 This was confirmed by interview 23.
delegations abroad for lobbying. The EU offered technical assistance to developing country WTO members rather than engaging with authorities in national capitals (interview 23). This could be an important point especially for specialised negotiations such as the services negotiations: another interviewee suggested that the services negotiations are “won” in the capital, because this is where the Geneva based negotiators receive their instructions from (interview 17), but the EU did not seem to use this channel so often.

Fifth, it can be asked whether the EU used its resources wisely. It has been mentioned several times that the EU quantitatively and qualitatively has much more expertise than other WTO members, which in itself can be overpowering for negotiation partners. The technical expertise of the EU negotiators, and the fact that the EU can make more extensive use of its capital based experts, also means that the services negotiations often take place between EU technocrats and (trade) diplomats from its trading partners. At times, this seems to have led to a clash of different approaches. It can be suspected that cultural differences also play into negotiation approaches being perceived differently.

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369 Interviewees verified this for the case of the Philippines, Israel, India, Hong Kong (China), Colombia and Brazil. The US seems to have done this very strongly: the US delegations seemed involved in the negotiations and supported the work of the US administration (interview 14, 18, 15, 17, 19, 24, 13). It seemed that in certain countries, not only the US, but also Japan, Australia, and Canada were actively lobbying the domestic capital with regard to the WTO negotiations.

370 The interviewed diplomats seemed to feel that they had a distinctively different identity from “technocrats”. According to an interviewee, some EU negotiators seemed to lack the “international exposure” to understand the Geneva “game”, and they seem to underestimate the difference between “Brussels and Geneva”. While they were “brilliant technically”, they could not play the political game in Geneva (interview 21). An (Asian) interviewee suggested that there was “something” about the public relations strategy of the EU towards other delegations: other countries, e.g. Asian countries, were much more open, but negotiators from the Quad were more restraint. He indicated that it might be both cultural (because he felt that e.g. Spanish negotiators were much more engaging than other Europeans) or because of the above mentioned technocrat versus diplomat rift (interview 23). Another (Asian) interviewee suggested that the EU’s way of asking for commitments was “demanding them as a right”, whereas in his culture they would look for a realisable compromise rather (interview 16), which might have to do with either the diplomat versus the technocrat rift, or also was a cultural issue, or both. The technocrat versus diplomat rift seems to occur in other countries as well, though: an interviewee commented on the problems that occur when the Commission flies in experts that are not always based in Geneva. He indicated that the same problem occurs with negotiators from his own capital: “[they] can come up with incredible things, because they don’t know what's possible here. […] I afterwards repair the damage here.” (interview 21).
The regime’s nature and the EU’s organisationally-dependent capabilities

A second set of reasons for the EU’s failure to transform its power into outcomes is related to the nature of the regime and the issue area, and hence leads back to the question of organisationally-dependent capabilities that the EU derives from the international trade regime (research question 3).

First of all, the services issue is to a large extent regulatory in nature. In the WTO, however, it has become embedded in a tariff-style negotiation. The difficulty in applying the concept of reciprocity to such an area was evident in section 3.3 and the case study. The insertion of the various negotiation areas into one framework means that negotiations with very different paces are conducted in parallel, which can lead to sub-optimal negotiation outcomes.\(^{371}\)

Second, services liberalisation is a new and highly complex negotiation area (exemplified by the problems experienced with services liberalisation at the EU’s domestic level) and this apparently brings a lot of insecurity to the negotiations. It means that during the negotiations, processes of policy learning and experimenting are ongoing, which was evident in the assessment exercise. This situation is exacerbated by the fact that even nationally, in many countries experiments with services liberalisation have only been conducted recently, for example in many developing countries only in the late 1980s (interview 17). The lack of reliable trade in services data and scientific assessment as to what services liberalisation entails has been mentioned throughout the case study chapters. This means that many WTO members are unsure about the effects of liberalisation, which makes them reluctant to commit multilaterally. Even if the EU had invested more political capital into the services negotiations, results so far might not have been different.\(^{372}\)

Third, the complex nature of the services negotiations and the resulting hesitant attitude towards multilateral commitment is reflected in the flexibility inherent in the

\(^{371}\) For example, Ministerial Conferences are pre-scheduled by the regime. This means that Ministerial Conferences are scheduled at times when the “negotiation machinery” in Geneva has not yet advanced far enough (interview 10). For a similar argument see Narlikar 2004.

\(^{372}\) An interviewee indicated that in this special situation, the EU (or the “demandeurs” as a group) might not have been able to achieve a better result even if they had conducted more intensive lobbying, (interview 24).
GATS framework. This flexibility of the GATS agreement gives a lot of room of manoeuvre to the negotiators and makes the negotiations particularly un-transparent.\(^{373}\) This is exacerbated by the fact that market access negotiations take place bilaterally. This makes it hard for any country, regardless of its resources, to lead or significantly influence the outcome of the negotiations.

Fourth, the technicality and lack of assessment mechanisms of the services area create a gap between the specialised services negotiators and the politicised, hierarchically higher levels in the WTO negotiations.\(^{374}\) This might be the reason for the unconnectedness of the services negotiations to the overall negotiations for extended periods, which has been observed in this dissertation. It could also be that services negotiations are “unattractive” for senior ministers – political capital cannot easily be extracted from these complex negotiations, which are hard to “sell”

\(^{373}\) An interviewee explained this on the basis of the development provisions in GATS: the GATS agreement could be the most development friendly but it depends on the negotiators’ discretion and their goodwill, because what exactly development friendly would mean is open to interpretation (interview 3). The complexity of the services negotiations make them also very hard to observe from the outside. An example for this is the debate surrounding the “positive list/negative list” approach. It is often assumed that a “positive list” gives more choice and flexibility to the trading partners. The EU has favoured a “positive list” approach in bilaterals, while the US’ negative list is seen as liberalising services further and more aggressively. EU officials feel they cannot push for it as politically unacceptable (interview 3), not in the developing countries’ interest and that it is simply not the EU’s approach (interview 3, 6). An EU official also explained that the US’ negative list approach is a “farce” as the US exempts from its negative list all the regulations on the sub-federal level (interview 6).

\(^{374}\) The senior level of trade negotiator has usually negotiated NAMA during their career and are hence not familiar with this new area (interview 18). An interviewee reported this from a Green Room meeting at the Hong Kong Ministerial, where despite previous briefings he was astonished by the lack of knowledge among senior officials (anonymous interviewee). Services negotiators are generally junior staff, which is different from negotiators in the agriculture and NAMA negotiations. An interviewee mentioned informally that this created a good atmosphere, with lots of “fun” among the services negotiators (interview 15). “Socialising” seems to be an important dimension of the negotiations, and even after exchanging harsh tones in the negotiation room, they will later on socialise with everyone (interview 21). The junior staff in the services negotiations, in the opinion of another negotiator, leads to them not being able to handle the political dimension of the negotiations well. Many of them apparently come from trade ministries, have a very technical outlook, and are less able to play the “alliance building” game and other political games (interview 19). Another interviewee suggested that Quad negotiators spent time “socialising”, but would use this relaxed atmosphere to still push their own agenda on other countries (interview 29). Narlikar observers an expert-senior level gap for other areas under negotiation in the WTO as well (2004).
domestically. The EU’s organisationally-dependent capabilities are hence especially restrained by the nature of the issue area of trade in services, a problem which became increasingly evident during the research.

The EU’s ability to build consensus and coalitions
A third set of reasons for the EU’s failure to achieve its preferred outcomes is related to the EU’s ability to build consensus and coalitions (research question 5).

The first dimension with regard to consensus- and coalition-building is the EU-US relationship. Across the case study and in all different types of negotiations, the EU-US dimension emerged as crucial. It was evident from the sectoral services negotiations in the late 1990s that although the EU might at times be able to take over leadership from the US, an agreement without the US would be impossible or at least very unattractive for WTO members. With regard to the DDA, the EU’s more ambitious agenda finally was down-sized during the negotiations to something much more like the initial US agenda. Additionally, throughout the negotiations, support by the US was crucial for the progress of the EU’s ideas in the negotiations. Competition of ideas, but also convergence was visible. For example, with regard to the benchmarking proposal, a key reason why it failed was the hesitant US position. Although EU-US leadership might no longer have the effectiveness it used to have (see the failed EU-US deal on agriculture in 2003), it is still indispensable (see also Wolfe 2007b; Odell 2006). Interviewees confirmed this for the services negotiations (interview 10, 14, 33). Across the case study, it was also evident that the EU and the US disagreed about how to proceed in a lot of instances. Failure to agree on a

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375 Another interviewee suggested that Ministers had to be very cautious as the services negotiations touched upon competencies of various domestic ministries and could easily lead to competence fights. It required lots of coordination beforehand (anonymous interviewee), and it was also often not clear to Ministers what gains they could actually claim to have won when they were returning home (due to the complexity of the negotiations) (interview 30).

376 As was visible prior to Cancún in the agriculture negotiations, it can be risky for the EU-US to try to push forward a solution on their own (interview 33). Another interviewee suggested that there was a strong competitiveness going on between the EU and the US. This competitiveness could be strategically deployed by other WTO members (interview 21).
common agenda between the EU and the US can be seen as one reason for the failure of the EU.\footnote{For more information on the position of the USA, and arguments on why it had difficulties to participate actively in the current trade round, see Annex 5 (Sect. 12.5) and Bergsten 2005.}

The second dimension with regard to coalitions is the Quad. Quad coordination emerged as crucial in the sectoral services negotiations in the late 1990s and disagreement among the Quad in the run-up to the Seattle Ministerial meant that it could not give any ambitious guidance to the negotiations. This lack of coordination among the Quad continued to be a major stumbling block in the services negotiations, for example with regard to the services modalities and benchmarking. Failure to create a common agenda among the Quad is hence a further reason for the failure of the EU’s agenda.

Inside the services negotiations, this lack of coordination around the EU’s agenda seems to also be visible with regard to the “demandeurs”. An interviewee indicated that the “demandeurs” did not show as much solidarity among themselves as did the opponents of services liberalisation (interview 9, similarly in 17).\footnote{As seen before, it is a key feature of the services negotiations that each country has both defensive and offensive areas. This leads to a situation which requires a delicate balancing for the negotiators. A negotiator from a developing country indicated his astonishment as to how far the “demandeurs” in these negotiations let their negotiation strategies be driven by their defensive interests: both the EU and the US would spend much more time defending their defensive areas than pursuing their offensive areas (interview 18).} Overall, an interviewee identified a lack of leadership: “In services, those who were supposed to lead the negotiations were confused” and did not exert the leadership they should have (interview 19).\footnote{As an example, the interviewee mentioned the benchmarking proposal. The “demandeurs” could not agree among themselves and came up with 7 different proposals for the benchmarks. This incoherent approach apparently could easily be dismantled by the opposing countries (interview 19).}

A lack of cooperation hence seems to prevail among the proponents of the negotiations on various levels,\footnote{The “Friends” groups also seem to have failed to reach out and build consensus in the services negotiations (see Annex 4 (Annex 12.4)).} and makes it harder for the EU to implement its agenda.
The power shift and the EU’s adaptation to it

The last set of reasons for the EU’s lack of success in affecting outcomes evolves around the power shift and the ways in which the EU has recognised and adapted to it (research question 1).

As argued in section 4.3 on the organisationally-dependent capabilities of the EU in the WTO, the WTO seemed to be a regime which was favourably tilted towards the EU. It seemed to provide the EU with an excellent place for power usage. This analysis seemed confirmed by the early years (1995-1998) in the case study: the EU seemed to be able to shape the agenda (the new round idea), provide leadership in the negotiations (financial services negotiations) and arrive at (at least superficially) desired outcomes (financial services agreement, telecommunication agreement, accountancy disciplines). The analysis so far suggests that the regime then started to change in a way which decreased the EU’s power in the WTO.

This power shift in the WTO was caused primarily by the growing membership of the WTO, mostly developing countries, and the new economic impact of many developing countries (see section 3.2; Bergsten 2005). Throughout the case study, it was visible that developing countries were seeking better representation in the WTO. The establishment of the G20 and the ACP/LDC/African Union coalition were expressions of this search and of the improved usage of the developing countries’ resources. Another example is that in the services negotiations, Brazil emerged as a developing country leader (see chapter 9 and Annex 5 (Sect. 12.5)), and India was involved in the leadership of a pro-services coalition. This increased “presence” of developing countries in the WTO negotiations is reflected in the reporting about developing countries’ participation in the negotiations, which rose significantly after the Seattle Ministerial. A further component of the power shift might be the US’ “fuzzy” position and lack of support for the WTO, which could be attributed to a relative decline of US resources.

381 It was an important change compared to the end of the Uruguay Round that some developing countries were part of the “demandeurs” in the service negotiations (see Annex 4 (Sect. 12.4)).

382 The US’ lack of activity can also be due to a lack of interest. An hypothesis is that the USA had achieved in general what it wanted in the Uruguay Round and so is not a driving force in the Doha negotiations (TERI 2003: 4).
From the EU’s realisation of the power shift around the 1999 Seattle Ministerial, it took several steps in an attempt to adapt to the power shift (mainly research question 1, but also research question 5). A first step in this adaptation to the power shift was the increased outreach towards developing countries, which included various initiatives such as the EBA initiative and the “round for free” idea. The EU clearly moved the “development issue” into the core of its communication strategy with developing countries and into the centre of the WTO agenda. The EU hence made strategic changes at first to adapt to the power shift.

After this strategic adaptation did not deliver the desired outcomes in the regime, the EU started to display greater flexibility in its position. Before the Cancún Ministerial, it had only quietly dropped the trade and labour issue. After the Cancún Ministerial, the EU made far-reaching concessions to arrive at a consensus. This included unbundling and mostly abandoning the Singapore issues, various concessions on agriculture and importantly lowering its ambitions in the services negotiations. The second step in the EU’s adaptation was thus changing the substance of its WTO agenda.

A third step, occurring in parallel to the dismantling of the EU’s agenda in the WTO, was participation in new coalitions. These were in particular the FIPs and the new Quad, which were active in the agriculture and the overall negotiations. However, the new Quad does not seem to exist as a formation in the services negotiations itself and the EU tended to coordinate bilaterally.383 But an interviewee observed that the EU’s informal cooperation with other WTO members has changed as well: the EU apparently now consults India before it turns to other Quad members in the services negotiations (interview 20). The EU was also involved in the US-Indian led informal coalition in the run-up to the Hong Kong Ministerial, which can be seen as an attempt to adapt to the changed power situation in the WTO. Though this attempt was not entirely successful, it shows that relationships between WTO members have started to change. The power shift hence has impacted on the relationships the EU has within the WTO.

383 This was confirmed by interviews 8 and 25.
Whether the adaptations the EU has made so far to the power shift have been sufficient to arrive at agreements desirable to the EU remains to be seen. The adaptations the EU has made will take longer to take their full effect, as will knowledge-shaping initiatives such as technical assistance and capacity-building. At a later stage, when other forces might play more into the hands of the EU (for example if more developing countries have positive experiences with services liberalisation), the EU might again find more favourable conditions for achieving its agenda in the WTO.

Despite its outstanding resource equipment, the WTO negotiations have become too complex for the EU to decisively influence them. The resources of the EU are not extensive enough to set the regime’s rules. Due to the special nature of the issue area, the services negotiations are particularly unmanageable and do not seem to present the EU with a setting for achieving its preferences. In the services negotiations, the lack of cooperation among the various members of the “demandeurs”, including the EU-US dimension, and the Quad, has made progress in the negotiations very hard to achieve for the EU. This lack of cooperation is replicated in the overall DDA negotiations. At the same time, the erosion of the EU’s resources by the shifting attitude in civil society towards the services negotiations and towards trade policy in general has increased the task for the European Commission, which is now faced with a civil society “management task” on top of the WTO negotiations.

The power-based analysis of the EU’s impact on the trade regime has hence revealed a range of opportunities for action and power usage that the EU encounters in the trade regime on the basis of its resources, and which it exploited more or less successfully over the time period under observation, 1995-2005. However, it has also

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384 For example, an interviewee criticised the “demandeurs” for not creating sufficient new coalitions to steer the services negotiations. He hence suggested that the reaction of the “demandeurs” to the new situation in the WTO had been completely insufficient; as the lack of coalitions meant that differences between WTO members had not been bridged as it had happened in agriculture and NAMA (interview 19).

385 From the point of view of a 133 Committee member, the Commission’s efforts at addressing capacity building issues and providing technical assistance for LDC are very useful, but have not yet been acknowledged (interview 13).
clearly shown the limitations, and the increase in limitations, that the EU has experienced in shaping the international trade regime.

10.2 Revisiting international regimes and actor power

What does this tell us about the actor-centered power approach and international regimes? The middle ground definition of a regime adopted in section 2.1.1 has provided a useful “lens” to focus attention on both the formal aspects of the international regime, and the informal aspects predominant in negotiation processes, which have a key influence on regime change in the WTO.

Extending the conventional interest-based focus of regime theory to a power-based regime analysis has drawn our attention to a range of interesting and significant factors in the case study that otherwise have been neglected.

The research confirmed that the power status of an actor in a regime is not static, for two key reasons: first, resources are not static. The EU’s resources underwent substantial shifts during the phase of the case study. This confirmed the suggestions by Keohane, Nye and Habeeb introduced in section 2.3. Second, the regime itself is not static, as there are constant shifts in the nature of the regime and in the power distribution underlying it.

A factor that stood out in the case study was the variation in contents, pace and nature of the negotiations overall and the issue-area specific negotiations. Though the negotiations were inextricably linked under the heading of the WTO, they proceeded at different paces and had different power and interest constellations. This created tensions in and between the different negotiations. The differentiation between different levels of negotiation proved hence to be crucial, and it is clear that in an analysis of power in international regimes, generalisations across issue areas should not easily be made. The case study approach, taking into account the power constellations in a specific issue area, proved a useful tool in order not to oversimplify the impact of an actor’s power by only looking at the overall power constellation.
As predicted by Keohane and Nye, resources alone do not mean an actor actually can shape a regime. The international trade regime did show a “life of its own” and it shaped the organisationally-dependent capabilities actors have in them (including the support of the WTO Secretariat for certain policy proposals). An actor’s capacity to shape the regime is hence limited importantly by the structure of the regime, which in itself is a result of the nature of the issue areas covered by the regime. In this way, this power-based regime analysis can contribute to debates on the relationship between agent and structure. In contrast to what might have been found if a negotiation theory approach had been used, the regime analysis drew the attention to the multiple factors shaping international negotiations, delivering a “thick” description both of the regime, the actor, the process of negotiation and hence regime change, and the interaction between agent and structure.

As argued in Krasner’s work, the shift in the power distribution underlying the regime resulted in pressure on the regime to shift, too, but the regime proved static for a while. Nonetheless, there was increasing pressure on the regime to adapt to the new underlying power distribution, and this adaptation would evidently be to the detriment of the previously powerful actors in the regime. Additionally, even an actor as rich in underlying resources and organisationally-dependent capabilities as the EU encountered difficulties in directing the regime changes analysed in this thesis into directions it desired. It might be concluded that international regimes, once established, remain largely uncontrollable even for powerful actors.

With regard to the different aspects of power as described in sections 2.2 and 2.3, normative factors such as knowledge and the control of it emerged as crucial power resources in the negotiation process in the trade in services issue area: first, actors negotiated with imperfect knowledge; second, the lack of knowledge significantly impeded the progress of the negotiations and the input of various actors in the regime; third, input of knowledge had the potential to “unlock” the deadlock in the negotiations; fourth, knowledge “production” and learning occurred in parallel with the negotiation process (the EU negotiators apparently learnt both about the issue area and the new power constellation, which made it impossible for the EU to pursue its original objective of obtaining “commercially significant market access” in trade in
services). The comparison between the overall negotiations and the nature of the trade in services negotiations also give an indication that in technical negotiations such as trade in services the possession of the power factor “knowledge” is crucial, whereas in the more politicised, general negotiations other power factors (issue-linkage, overall economic power, relations to other actors) are more important.

With regard to whether normative considerations would prevent the EU from fully using its resources in the bargaining process (Sect. 2.3.3), it was not clear for the case under investigation that there might have been normative considerations within the EU restricting its ability to fully use its resources in the negotiations. Some negotiators from other WTO countries raised doubts about the depth of the “proclaimed interest” of the EU in the services negotiations and in the WTO overall, but there was no further evidence to support this. Thus, while it is important to keep in mind that an actor might not fully use its resources in the bargaining process due to tactical or normative considerations for an analysis of actor power, for this investigation there is no evidence that this has significantly skewed the results (and the previous analysis of resources was intended to minimise this potential problem). On the other hand, it seems that resources and interests can be strongly correlated; it seems logical that the Commission would “invest” more resources in areas it has stronger interests in and it might be that the European services industry would be better equipped and organised if its interest in international trade was more extensive.

What does this tell us about the validity of our initial five propositions? One thing it tells us is that they are good ways of generating targeted questions and that they seem to provide a logical framework for the evaluation of the evidence. More specifically, we can say the following:

1. The evidence in the thesis clearly points to the importance of specifying the regime, its qualities and the issue areas it relates to. Much of the preceding argument in these conclusions shows that the changing nature of the regime and in particular the characteristics of the services area was a potent factor in conditioning the ability of the EU to fulfil its potential and pursue its preferences.
2. There is clearly a role for the analysis and evaluation of the resources and capabilities an actor brings to the regime, but the case of the EU and services shows that the context and the ways in which these resources are deployed are crucial to their effective use.

3. Organisationally dependent capabilities matter, but crucially they are mediated and modified by the changing power context and by the demands of specific sets of negotiations, which can produce a set of “moving targets” competing for policy-makers’ attention. There is no straight line between organisationally dependent capabilities and actors’ success.

4. The negotiation process itself – the ways in which it is organised, and the context within which it takes place – can significantly modify the capacity of actors to shape agendas and to build coalitions. The EU was successful in doing both of these things at some stages and on some issues, but ultimately could not transfer those limited successes into broad-ranging “victories” within an increasingly intractable negotiating environment.

5. Finally, and as suggested above, the EU found it increasingly difficult to transform its underlying and organisationally dependent capabilities into power over the regime and achievement of its stated preferences in the area of services trade, and had to adapt its objectives and strategies to this realisation. Whilst it could defend its established positions effectively on key issues, it could not make progress on its offensive agenda for a variety of reasons, many of them outlined above.

This brings the argument back to more general considerations of “regime” and “power”, as raised in chapter 2. Whilst we cannot revisit all of the issues raised there, it is appropriate here to note especially the questions raised by Barnett and Duvall in their treatment of power, and those noted by Keohane and Nye in their treatments of international regimes. In respect of the latter, it seems clear that an actor-centred power perspective can add both to competing approaches based on interests or on knowledge and to power approaches that emphasise a more structural and aggregate approach. It is also clear from what has been argued here that we are not talking about actors as insulated from their environments; in fact, it is precisely the interaction of actors, environments, issues and institutions that makes the approach
appealing and appropriate. In respect of power more generally, the evidence and the conclusions we have drawn from it seem clearly to support the more differentiated approach adopted by Barnett and Duvall, in contrast to those approaches that privilege structural or relational power alone. We have seen considerable evidence to support the validity of ideas of “compulsory power”, but also evidence that shows the limitations of these ideas. Likewise, we have seen evidence to support the notion of “institutional power”, but also evidence of the ways in which this power can be mediated and contained or constrained. We have not focused specifically on notions of “structural power” or that of “productive power” as advanced by Barnett and Duvall, and this was not the intention of the thesis, but there are ways in which one might pursue these as a further avenue for the investigation of WTO negotiations.

10.3 Revisiting methodology

A few words seem necessary about the methodology used in this thesis. In using process-tracing within the case study approach, the thesis addressed a critique of regime theory, namely that it is too encompassing and structural to produce credible results (Checkel 2005: 4). The combination of the case study approach and process-tracing provided a valuable insight into the mechanisms at work inside the world trade regime and proved useful for generating a range of explanations about the causes for the EU’s failure to convert its resources into outcomes. A particular strength of these methods was their firm rooting in “real life”. However, assuming the process-tracing method in combination with the case study approach also meant that a huge quantity of documents had to be reviewed in order to arrive at comprehensive and accurate results. Various data sources were triangulated (specialist press, newspapers, official documents, interviews) to verify the results. Evidently, as Checkel has already argued, this choice of method proved highly time-intensive (Checkel 2005).

The three types of negotiations indicated in Table 3.4 are interdependent and occurred in parallel. For example the sectoral, “issue-area specific” negotiations in the GATS 2000 negotiations mostly took place in bilateral negotiations (not documented) or inside the CTS-SS alongside the issue-area framework setting
negotiations and the differentiation between the different types of negotiations required distinct care and attention. There were interlinkages not only between different negotiation types, but also between issue areas and different stages in the negotiation process. Agenda setting turned out to be a process that did not end with the establishment of a formal agenda, but continued while negotiations already started. The complexity of the negotiations thus had to be taken into account in the analysis in this dissertation. To follow the coalitions in the WTO proved another challenge: often coalitions were highly informal and only partially reported about at best; so that interview data needed to be generated to arrive at an account of the coalitions’ development.

Interviews delivered a practical, first-hand insight into the negotiations, but due to job rotation, interviewees covered time periods and different negotiations to varying extents. When using expert interviewing as in this thesis, this job rotation in institutions obviously poses an obstacle. Nonetheless, the interviews proved extremely useful to obtain an insight into the crucial, informal side of the negotiations in the WTO. The detailed information on coalitions in the services negotiations, set out in detail in Annex 4 (Sect. 12.4), would otherwise not have been available. The interviews also delivered evaluations on the different events in the negotiations, both from an EU and a non-EU point of view, and explanations on the technical issues in the services trade negotiations. EU officials commented on the internal motivations behind the EU’s moves, which greatly supported the analysis in the case study. Interviewees brought my attention especially to the nature of the regime and its impact on the negotiations as a further dimension in the EU’s difficulties in using its resources effectively in the WTO.

The time period 1995-2005, chosen for this thesis, allowed us to observe the functioning of the WTO in the first ten years of its existence, the agenda-setting process preceding the Doha Round and the decisive first four years of the Doha Round negotiations. Within this time period, crucial developments in terms of the EU’s power impact on the WTO occurred and were integrated into the EU’s approach to the WTO. The time period chosen hence gave us the opportunity to analyse the EU’s role during an important time of change in the international trade regime.
10.4 Outlook
The actor-centred power approach developed and utilised in this thesis could be carried further into a range of interesting and challenging directions: the research could be expanded to other issue areas in the WTO, to other time periods in the WTO or to other regimes the EU is involved in. This could greatly further our understanding of the EU’s impact in the GPE. Alternatively, the concept could be applied to other actors in the GPE, hence furthering our understanding of the role of different actors in international regimes. With regard to EU trade policy, it could be especially interesting to investigate the (diffuse) factors that shape the EU trade policy domestically, such as businesses and NGOs. There is also surprisingly little literature on the national processes in the EU member states, which feed into the development of the EU trade policy. The EU’s trade policy, though long established and prominent, is thus an area requiring and deserving further academic attention.

What does the analysis in this thesis suggest for the future of EU trade policy making? With Lamy’s departure as trade commissioner and the round falling further into limbo in 2006, the EU’s firm commitment to “multilateralism” seems to have started to become less strong and the EU has entered negotiations for a new generation of bilateral trade agreements. This move was not only initiated by the EU though; in fact it seems that some of the EU’s trading partners had urged the EU to negotiate new bilateral or interregional trade agreements with them. This movement towards bilateralism was also not limited to the EU; other WTO members had also turned to negotiating bilateral agreements.386 The increasing complexity in the WTO negotiations might hence induce a rise in EU and worldwide bilateralism. Although bilateralism is of course not a new form of managing the international trade regime, the current move to bilateralism might prove qualitatively different from former bilateralism, because of the effects of the power shift on the multilateral trade regime.

386 Apparently, the Andean Community, ASEAN and Central American countries had asked the EU for bilateral agreements, but the EU had kept them waiting (interview 35). Two interviewees indicated that due to the meagre results in the services negotiations their domestic colleagues were already heavily involved in bilateral negotiations (interview 16, 21). It seems that bilaterally, trading partners show greater flexibility with regard to the special needs of their negotiation partner (interview 23). A former EU official also observed a higher commitment by the ACP in the interregional Economic Partnership Agreement (EPA) negotiations with the EU than in the WTO process (interview 3).
The difficulties arising from negotiating a regulatory issue like services, which is qualitatively so different from the “traditional” areas of trade policy, multilaterally does indeed raise the question whether in the case of regulatory issues a comprehensive institution like the WTO is the way forward. Specialised regimes might provide a more tailored approach to the difficulties of regulatory cooperation and liberalisation. A move towards bilateral regulatory cooperation in certain of the EU’s trade relations was already visible prior to 2006 (see for example IUST 12.03.2004 and IUST 18.02.2005). Additionally, specialised regimes or bilateral agreements could contain the complexity of the negotiations. The obvious disadvantage of bilateralism for the EU is the heavy burden it puts on the Commission’s resources. Even the European Commission would encounter resource constraints in managing bilateral trade relations at some stage.

What would this all mean for the WTO? An EU official suggested that the WTO would have to be kept in place, as a “symbol” (interview 4), rather than as primary place for shaping the international trade regime. What we have seen in this thesis is that the WTO might be suffering from its own success: it was such a successful regime that it became overcrowded both in terms of members and in terms of issue areas under its heading. It might hence be losing its greatest advantage, which was to produce effective, commercially relevant results for its members.
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11.3 Articles, reports and books


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12 Appendices

12.1 Annex 1: The three main paradigms in regime theory in comparison

<table>
<thead>
<tr>
<th>Regime formation</th>
<th>Realism</th>
<th>Liberalism</th>
<th>Cognitivism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Positive gains out of cooperation under anarchy; facilitated by hegemon. Bipolar or bimodal distribution of power is necessary for the success of regime formation. The greater the degree of symmetry in the distribution of power, the more likely is a success in regime formation. The existence of a small group of great powers (i.e. a directorate) enhances prospects for regime formation.</td>
<td>States cooperate to achieve joint gains and to increase certainty and transparency in international politics. Necessary conditions for regime formation: joint gains/contract zone of agreement. Success depending on the process of bargaining: conditions for that are integrative bargaining and a veil of uncertainty; equity of options; availability of salient solutions; exogenous shocks or crises; policy priority of the issue; or a low priority for all participants; concentration on scientific rather than political issues; the greater the role of negotiators with scientific or technical considerations/competence; participation of all relevant parties; availability of compliance mechanisms; emergence of individual leadership. Concentrate on importance of the structure for the later regime characteristics.</td>
<td>Shared beliefs and assumptions concerning the issue area create converging expectations, beliefs about causal effects. Impact of epistemic communities on the decision making process, especially when levels of uncertainty increase. The coordinating function of ideas influences the content of the regime.</td>
</tr>
<tr>
<td>Persistence</td>
<td></td>
<td>Emphasise the role of epistemic communities as defenders of the regime.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Change or maintenance</td>
<td>Regimes incorporate “sunk costs”, states also “consider” their reputation and thus rather comply.</td>
<td>Due to change in underlying ideas and norms. Norms can “survive” in a regime.</td>
<td></td>
</tr>
<tr>
<td>Demise/destruction of a regime</td>
<td>Decline of hegemon. Change in the distribution of capabilities.</td>
<td>Change in interests. E.g. by disagreement in the epistemic community which supported the regime (Haas 1993: 189).</td>
<td></td>
</tr>
<tr>
<td>Rational actor</td>
<td>Yes, maximise relative and absolute gains.</td>
<td>Rational egoists; goal: maximise absolute gains. No</td>
<td></td>
</tr>
<tr>
<td>Role of the state</td>
<td>Primacy of the state</td>
<td>Impact of the structure on regime rather than state power</td>
<td></td>
</tr>
<tr>
<td>Role of international institutions</td>
<td>Minimal in the mainstream, post-classicals assume that institutions are structured by and reflect the distribution of power in international society</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Role of non-state actors</td>
<td>Only as background variables</td>
<td>Generally state-oriented, sometimes incorporation of IGOs and epistemic communities; firms and non-profit NGOs hardly considered. Epistemic communities/advocacy organisation influence regime (creation, sometimes even state interests).</td>
<td></td>
</tr>
</tbody>
</table>


Box 12.1 Article 133 of the EC Treaty

Article 133

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

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

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

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

The relevant provisions of Article 300 shall apply.

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

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6. By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation. In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

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

Source: European Union 2001

### 12.3 Annex 3: EU-25 trade with its main partners in services

Table 12.2  EU-25 trade with its main partners, total services (in million EUR)

<table>
<thead>
<tr>
<th>Rank*</th>
<th>Trading partner</th>
<th>Export</th>
<th>Import</th>
<th>Balance</th>
<th>Export</th>
<th>Import</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Switzerland</td>
<td>45734</td>
<td>34407</td>
<td>11326</td>
<td>49565</td>
<td>36677</td>
<td>12888</td>
</tr>
<tr>
<td>2</td>
<td>Japan</td>
<td>18712</td>
<td>10665</td>
<td>8047</td>
<td>19969</td>
<td>11871</td>
<td>8098</td>
</tr>
<tr>
<td>3</td>
<td>USA</td>
<td>119979</td>
<td>109780</td>
<td>10200</td>
<td>122872</td>
<td>115967</td>
<td>6905</td>
</tr>
<tr>
<td>4</td>
<td>Norway</td>
<td>13172</td>
<td>9396</td>
<td>3776</td>
<td>15117</td>
<td>9668</td>
<td>5450</td>
</tr>
<tr>
<td>5</td>
<td>Russia</td>
<td>9094</td>
<td>6800</td>
<td>2294</td>
<td>11444</td>
<td>8125</td>
<td>3320</td>
</tr>
<tr>
<td>6</td>
<td>Singapore</td>
<td>7483</td>
<td>5047</td>
<td>2435</td>
<td>8264</td>
<td>5521</td>
<td>2743</td>
</tr>
<tr>
<td>7</td>
<td>Hong Kong (China)</td>
<td>7209</td>
<td>5259</td>
<td>1950</td>
<td>8181</td>
<td>5645</td>
<td>2537</td>
</tr>
<tr>
<td>8</td>
<td>Nigeria</td>
<td>2970</td>
<td>859</td>
<td>2111</td>
<td>3371</td>
<td>964</td>
<td>2408</td>
</tr>
<tr>
<td>9</td>
<td>South Korea</td>
<td>5553</td>
<td>3281</td>
<td>2272</td>
<td>5725</td>
<td>3424</td>
<td>2300</td>
</tr>
<tr>
<td>10</td>
<td>China</td>
<td>9121</td>
<td>7183</td>
<td>1939</td>
<td>11109</td>
<td>8848</td>
<td>2261</td>
</tr>
<tr>
<td>11</td>
<td>Australia</td>
<td>7034</td>
<td>5198</td>
<td>1836</td>
<td>8054</td>
<td>5860</td>
<td>2194</td>
</tr>
<tr>
<td>12</td>
<td>Taiwan</td>
<td>3130</td>
<td>2055</td>
<td>1075</td>
<td>3267</td>
<td>1978</td>
<td>1289</td>
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<tr>
<td>13</td>
<td>Canada</td>
<td>8083</td>
<td>7122</td>
<td>961</td>
<td>8474</td>
<td>7642</td>
<td>832</td>
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<tr>
<td>14</td>
<td>South Africa</td>
<td>4311</td>
<td>3966</td>
<td>345</td>
<td>4833</td>
<td>4031</td>
<td>802</td>
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<tr>
<td>15</td>
<td>Mexico</td>
<td>3592</td>
<td>2741</td>
<td>851</td>
<td>3416</td>
<td>2653</td>
<td>763</td>
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<tr>
<td>16</td>
<td>Chile</td>
<td>1278</td>
<td>815</td>
<td>463</td>
<td>1650</td>
<td>957</td>
<td>692</td>
</tr>
<tr>
<td>17</td>
<td>Venezuela</td>
<td>937</td>
<td>474</td>
<td>463</td>
<td>1175</td>
<td>588</td>
<td>587</td>
</tr>
<tr>
<td>18</td>
<td>Israel</td>
<td>3047</td>
<td>1997</td>
<td>1050</td>
<td>2829</td>
<td>2249</td>
<td>580</td>
</tr>
<tr>
<td>19</td>
<td>India</td>
<td>3759</td>
<td>3962</td>
<td>-203</td>
<td>5261</td>
<td>4688</td>
<td>573</td>
</tr>
<tr>
<td>20</td>
<td>Brazil</td>
<td>3725</td>
<td>3452</td>
<td>273</td>
<td>4460</td>
<td>3939</td>
<td>522</td>
</tr>
<tr>
<td>21</td>
<td>Malaysia</td>
<td>1911</td>
<td>1507</td>
<td>404</td>
<td>1943</td>
<td>1518</td>
<td>425</td>
</tr>
<tr>
<td>22</td>
<td>New Zealand</td>
<td>1499</td>
<td>1161</td>
<td>339</td>
<td>1638</td>
<td>1318</td>
<td>319</td>
</tr>
<tr>
<td>23</td>
<td>Iceland</td>
<td>536</td>
<td>629</td>
<td>-93</td>
<td>768</td>
<td>628</td>
<td>140</td>
</tr>
<tr>
<td>24</td>
<td>Uruguay</td>
<td>252</td>
<td>207</td>
<td>45</td>
<td>318</td>
<td>203</td>
<td>115</td>
</tr>
<tr>
<td>25</td>
<td>Indonesia</td>
<td>1073</td>
<td>1051</td>
<td>22</td>
<td>1157</td>
<td>1047</td>
<td>110</td>
</tr>
<tr>
<td>26</td>
<td>Philippines</td>
<td>824</td>
<td>731</td>
<td>93</td>
<td>912</td>
<td>857</td>
<td>55</td>
</tr>
<tr>
<td>27</td>
<td>Argentina</td>
<td>1210</td>
<td>1201</td>
<td>8</td>
<td>1472</td>
<td>1417</td>
<td>54</td>
</tr>
<tr>
<td>28</td>
<td>Romania</td>
<td>2379</td>
<td>2296</td>
<td>84</td>
<td>2871</td>
<td>3058</td>
<td>-187</td>
</tr>
<tr>
<td>29</td>
<td>Liechtenstein</td>
<td>399</td>
<td>492</td>
<td>-94</td>
<td>407</td>
<td>611</td>
<td>-204</td>
</tr>
<tr>
<td>30</td>
<td>Bulgaria</td>
<td>1089</td>
<td>1661</td>
<td>-571</td>
<td>1144</td>
<td>2044</td>
<td>-900</td>
</tr>
</tbody>
</table>
12.4 Annex 4: Coalitions and cooperation in the services negotiations

As mentioned in the chapters above, much cooperation in the services negotiations does not happen in formal coalitions (as for example the “Cairns Group” in the agriculture negotiations). Cooperation often seems to occur informally. Negotiators that are “close” to the EU negotiators can have very frequent contacts with the EU, frequent phone calls are made and lunch appointments (interview 21). This can at least partially be attributed to the fact that the services negotiations are of regulatory nature and comprise a range of vastly different sectors so that interests are often too diverging to form formal coalitions. Still, informal coalitions do exist in the services negotiations.

In “Geneva speech”, the proponents of the services negotiations are referred to as the “demandeurs”. As the “demandeurs” are no formal coalition, there is no official list of who the “demandeurs” are. Interviewees indicated that looking at the sponsors of the plurilateral requests could give an indication:
Table 12.3 Identifying the “demandeurs” in the services negotiations

<table>
<thead>
<tr>
<th>Sponsors of the plurilateral requests</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong> (Air, Ar, Comp, Cons, Edu, En, Env, Fin, Leg, Log, Mar, Tel)</td>
</tr>
<tr>
<td><strong>Canada</strong> (Ar, Comp, Cons, En, Env, Leg, Log, Mar, Tel)</td>
</tr>
<tr>
<td><strong>Chile</strong> (Air, Ar, Comp, Cross, Log)</td>
</tr>
<tr>
<td>Djibouti (Log)</td>
</tr>
<tr>
<td>Ecuador (Fin)</td>
</tr>
<tr>
<td><strong>EU</strong> (Air, Ar, Comp, Cons, En, Env, Fin, Log, Mar, Pos, Tel)</td>
</tr>
<tr>
<td><strong>Hong Kong</strong> (China) (Audio, Comp, Cross, Fin, Log, Mar, Tel)</td>
</tr>
<tr>
<td>Iceland (Log, Mar)</td>
</tr>
<tr>
<td><strong>India</strong> (Comp, Cross)</td>
</tr>
<tr>
<td><strong>Japan</strong> (Ar, Audio, Comp, Cons, En, Env, Fin, Log, Mar, Pos, Tel)</td>
</tr>
<tr>
<td><strong>Korea</strong> (Ar, Comp, Cons, En, Env, Fin, Log, Mar, Tel)</td>
</tr>
<tr>
<td>Liechtenstein (Log)</td>
</tr>
<tr>
<td>Malaysia (Cons, Edu)</td>
</tr>
<tr>
<td><strong>Mauritius</strong> (Log)</td>
</tr>
<tr>
<td><strong>Mexico</strong> (Ar, Audio, Comp, Cons, Cross, Mar)</td>
</tr>
<tr>
<td><strong>New Zealand</strong> (Air, Ar, Comp, Cons, Cross, Leg, Log, Mar, Pos)</td>
</tr>
<tr>
<td>Nicaragua (Log)</td>
</tr>
<tr>
<td><strong>Norway</strong> (Air, Ar, Comp, Cons, En, Env, Fin, Leg, Log, Mar, Tel)</td>
</tr>
<tr>
<td>Pakistan (Comp, Cross)</td>
</tr>
<tr>
<td>Panama (Log, Mar)</td>
</tr>
<tr>
<td><strong>Peru</strong> (Comp, Log)</td>
</tr>
</tbody>
</table>

387 Air = air transport services; Ar = Architectural, Engineering and Integrated Engineering Services; Audio = audiovisual services; Comp = computer and related services; Cons = Construction services; Cross = cross border supply of services (Mode 1); Edu = private education services; En = Energy services; Env = Environmental services; Fin = financial services; Leg = legal services; Log = logistics services; Mar = maritime transport services; Pos = Postal and courier services (incl. express delivery); Tel = Telecommunication services. Countries that can definitely be counted as a “demandeur” are marked in bold. Others have rather sectoral interests only. The Mode 4 request and the request on distribution services were not available. An interviewee indicated as the demandeurs or the members of the “very good Friends” the US, EU, Japan, Canada, Hong Kong (China), China, Mexico, Chile, Switzerland, Singapore, Taiwan, Korea and Australia (or roughly the OECD plus Chile, Mexico, Hong Kong (China), Singapore, India) (interview 19). Obviously, as the “very good Friends” are an informal coalition, this is an approximation of its membership rather than “hard facts”. Within the “demandeurs”, the most “natural” allies for the EU are the countries surrounding the EU geographically: Turkey, Bulgaria, Romania, Norway and Switzerland. The Norwegians have aligned their position completely to the EU, not so the Swiss (interview 21). Before the 2004 enlargement, the 10 2004 accession countries plus Turkey, Bulgaria, Romania and Croatia coordinated their positions with the EU. After the 2004 enlargement, this coordination seems to have come to a halt. Clearly, however, candidate countries would try to align themselves as much as possible with the EU position, because they do not want to risk causing any friction with the EU (anonymous interviewee). At times, it seems that the Anglo-Saxon countries, the US, UK, New Zealand, Australia have a common position, which might be due to their similar regulatory system (interview 24).
The “demandeurs” convene in the – allegedly very - informal coalition of “the very good Friends of services”. Many of the “very good Friends” countries are the coordinators of the different Friends groups. The group discusses the objectives of the sectoral Friends groups (interview 9, interview 19).

An important part of technical discussions in the services negotiations seems to take place in the so-called “Friends groups”. The “Friends groups” are sectoral coalitions of the “demandeurs”.388 Friends groups involve the most active countries in the services negotiations, mostly developed countries. The Friends groups are technocratic discussion forums for expert negotiators, which concentrate entirely on technical issues like classifications and the discussion of positions (i.e. this is completely different from the political forum “Green Room”).389 The effect of the Friends groups on the negotiation process is contested. Clearly, they were places for

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388 The Friends are entirely informal; and their cooperation can be very intense or rather loose. There is no public record of Friends group activity, as the “beauty” of these groups is their informality. Formalising the groups would apparently destroy the Friends group, as they are made for open and informal debate. The Commission has records of the Friends group meetings in the form of notes of the participating negotiators. These notes are not publicly available and have also not leaked to the internet.

389 Some Friends groups have some developing country members. Access to the Friends groups is by invitation of the existing members; and the Friends’ activities include consultation and the development of papers and proposals. For the EU, only the Commission negotiators take part in Friends group meetings (interview 2, 3). The way that the Commission presented its involvement in the Friends groups is, according to a NGO representative, that it was much more active than the US (interview 35). An EU official suggested that the EU had an especially strong role in those Friends groups that it chaired: energy and environment. Japan is said not to be very active in the Friends groups and Canada seemed constrained by its narrow interests (interview 9, 17).
consultation and technical experiments, but it is questionable to what extent they would actually lead countries to make market access commitments (interview 6). An EU official lamented that the Friends groups had wasted most of the time with discussion among themselves, but had failed to communicate their ideas to the rest of the WTO members. When the Friends groups - after long discussions - sent communications to other WTO members, these would often not give much attention to the ideas presented in those communications. Only with the plurilateral approaches the Friends had turned more to the outside (interview 9). An interviewee from a developing country had a similar assessment of the situation: the Friends in his point of view had for a long time focused on technical discussions among themselves, rather than reaching out to the broader membership (interview 19). Equally, the Friends groups’ work might have been impeded by their exclusiveness (interview 9). Being mostly composed of developed countries, they also encountered problems understanding the concerns of the broader WTO membership. The interviewee said that the Friends group negotiators seemed to lack an understanding of the political sensitivities involved in the services negotiations for many countries and therefore had failed to make proposals searching and exploiting a common ground. In this way, they had been discussing on the grounds of an OECD type of regulatory framework, which then was very difficult to “sell” to the broader WTO membership (interview 19). After the plurilateral requests had been presented in February/March 2006, the Friends groups did not meet again, as discussion had shifted to this new forum. However, with the ceasing of the plurilateral process they might regain importance (interview 17).

Compared to the Uruguay Round, they seem to have lost in importance (interview 28). An EU official gave an example: Australia invited all its “target markets” to a first meeting for the “Friends of legal services”, among these Hong Kong (China), Brazil, Thailand, Malaysia. Many countries did not have an interest in the group, and therefore never again participated in meetings of the group after this first time. The remaining Friends group moved on to discuss the classification issue in legal services. The EU played a very active role and the official estimated that this constituted a “real success story”, because the Friends developed a proposal for a new classification. The paper that was subsequently developed was co-signed by several developing countries (TN/S/W/37). However, despite this interim success for the EU, the paper had been developed without a linkage to market access, and when the discussion turned to market access issues, a range of “not so liberal” countries left the Friends group (interview 6).
Due to the informal and undocumented way in which the Friends groups function, there is no record of who participates in these groups. The sponsors of the 2006 plurilateral requests can be taken as an indication of who is associated with which sectoral Friends group.

Table 12.4  Presumed members of the Friends groups

<table>
<thead>
<tr>
<th>Group</th>
<th>presumed members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air transport</td>
<td>Australia, Chile, the European Communities, New Zealand, Norway and Switzerland</td>
</tr>
<tr>
<td>Architectural, Engineering and Integrated Engineering Services</td>
<td>Australia, Canada, Chile, the European Communities, Japan, Korea, Mexico, New Zealand, Norway, Switzerland and the United States</td>
</tr>
<tr>
<td>Audiovisual services</td>
<td>Hong Kong (China), Japan, Mexico, Singapore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
<tr>
<td>Computer and related services</td>
<td>Australia, Canada, Chile, the European Communities, Hong Kong (China), India, Japan, Republic of Korea, Mexico, New Zealand, Norway, Pakistan, Peru, Singapore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
<tr>
<td>Construction services</td>
<td>Australia, Canada, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the European Communities, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Norway, Singapore, Turkey, and the United States of America</td>
</tr>
<tr>
<td>Cross border supply of services (Mode 1)</td>
<td>Chile, Hong Kong (China), India, Mexico, New Zealand, Pakistan, Switzerland, Singapore, The Separate customs Territory of Taiwan, Penghu, Kinmen and Matsu</td>
</tr>
<tr>
<td>Distribution services</td>
<td>n/a</td>
</tr>
<tr>
<td>Education (private) services</td>
<td>Australia, Chinese Taipei, Malaysia and the United States</td>
</tr>
<tr>
<td>Energy services</td>
<td>Australia, Canada, the European Communities, Japan, Norway, The Kingdom of Saudi Arabia, Republic of Korea, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Singapore, the United States</td>
</tr>
<tr>
<td>Environmental services</td>
<td>Australia, Canada, the European Communities, Japan, Korea, Norway, Switzerland, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
<tr>
<td>Financial services</td>
<td>Australia, Canada, the European Communities, Ecuador, Hong Kong (China), Japan, the Republic of Korea, Norway, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
<tr>
<td>Legal services</td>
<td>Australia, Canada, the EU, Japan, New Zealand, Norway and the USA</td>
</tr>
<tr>
<td>Logistics services</td>
<td>Australia, Canada, Chile, Djibouti, the European Communities, Hong Kong (China), Iceland, Japan, Korea, Liechtenstein, Mauritius, New Zealand, Nicaragua, Norway, Panama, Peru, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
<tr>
<td>Maritime services</td>
<td>Australia, Canada, the European Communities and its Member States, Hong Kong (China), Iceland, Japan, Republic of Korea, Mexico, New Zealand, Norway, Panama, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States</td>
</tr>
</tbody>
</table>
Postal and courier services, incl. express delivery
EU, Japan, New Zealand, US

Telecommunication services
Australia, Canada, the European Communities, Hong Kong (China), Japan, Republic of Korea, Norway, Singapore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States of America.

Source: based on the 2006 plurilateral requests (available from http://www.esf.be)

With regard to the (mostly) defensive countries, as for the “demandeurs” there is no formal coalition of the defensive players in the services negotiations. However, there is informal coordination among the various groupings that can be understood to be part of the defensive side of the negotiations. Membership in the various groupings can overlap.

As has been mentioned before, the core of the negotiations takes place between the “demandeurs” and a range of emerging economies. These main target countries for requests are called (in “Geneva speech”) the “critical mass” countries. These are the countries whose markets are key targets for the “demandeurs”. Again, it is not entirely clear which countries belong to the “critical mass” countries, and they might differ across sectors, but it seems that up to 30 countries can be counted to this group. It appears that Brazil, Argentina, China, India, Pakistan, Philippines, Indonesia, Malaysia, Thailand, Egypt, Morocco, South Africa and Nigeria are “critical mass countries”, as they have been identified as core recipients for plurilateral requests.391 As seen in chapter 9 above, these countries experience a special pressure to enter commitments, especially after LDC and other vulnerable economies have been exempted from commitments in this trade round.

Of course, there are more defensive players in the services negotiations than the “critical mass” countries. As the developed countries try to coordinate among

391 While the plurilateral requests leaked to the internet and an identification of the sponsors is possible, the recipients of the requests have been kept secret. TWN has identified a range of core recipients for the requests, which are used here as a first indication of who the “critical mass countries” are (TWN 2006).
themselves, the developing countries aim to “keep a common front”.\footnote{An example of informal coordination of the defensive countries was prior and at the Hong Kong Ministerial, where they refused the benchmarks. In the plurilateral negotiations, they decided to block Mode 1 and 2 commitments, and commitments under Art. 18 GATS. They also coordinated their (defensive) approach against transparency in government procurement (interview 19).} Brazil’s influence on the defensive players seems crucial. According to an interviewee, Brazil’s new capacity to coordinate the opponents of service liberalisation (compared to the Uruguay Round) has created a very effective opposition. Brazil is clearly viewed as the leader of the opponents (interview 9).\footnote{For example, Brazil apparently worked to prevent the G20 from co-signing proposals with developed countries (interview 6). This could indicate that while the G20 do not have a position on services, their positions might still end up aligned to each other due to informal channels of communication and cooperation.}

The \textbf{LDC’s} also aim to coordinate among themselves. As discussed in the earlier chapters, they have improved their representation in the negotiations in various ways.\footnote{After realising that part of their exclusion in the negotiations was due to a lack of manpower, LDC established focal points and appointed a spokesperson (interview 27). They have an overall representative (in 2006: Zambia) and focal points for each negotiation area. For services it was Rwanda, and in 2006 Uganda. 32 LDC are currently WTO members. Often, 1-2 persons in national delegations are conducting the whole of the WTO negotiations, so that the focal points take over crucial work for them. As discussed before, the LDC are exempted from committing in the Doha Round, but have identified a set of priorities for themselves. The LDC demand a) an operationalisation of special treatment; b) movement on mode 4 (see paper in May 2006); and c) that the situation of LDC should be recognised in the domestic regulation negotiations. While the LDC are no longer being requested, commitments will be extended to them via MFN (interview 22).} Comparable to this is the coordination between the \textbf{ACP (WTO 2005)}.\footnote{Apart from the groupings discussed here, ASEAN, the African Group and Mercosur also play a role in the services negotiations.} Apart from the groupings discussed here, ASEAN, the African Group and Mercosur also play a role in the services negotiations.

\section*{12.5 Annex 5: The position of key WTO members in the services negotiations}

While countries can be identified as generally offensive or defensive in the negotiations, interests are not as coherently distributed as in other negotiation areas. All actors have both offensive and defensive sectors and interests in the services area, which is one of the particularities and the uniqueness of the services
negotiations (interview 17). This section introduces how the positions of some of the key players in the negotiations were perceived by interviewees.

**Brazil:** Brazil is perceived as extremely defensive in the services negotiations. Consequently, it has started to act as leader of the defensive developing countries (interview 9, 16). Brazil is rather interested in designing “good safeguards” than achieving good new market access (interview 25). Brazil’s defensive position is certainly partially strategic (interview 23), however, it might find itself in a defensive position in its region and in Mercosur as well (interview 18). For the EU, “negotiations with them have been a bit difficult” (interview 3).

**India:** India has shifted its position in the services negotiations from a hesitant one to a more active one. It has taken on a (partial?) demandeur position, and has made an extensive offer which gave it leverage in the negotiations. Its co-leadership of the informal group in the run-up to the Hong Kong Ministerial can be seen as a sign of this changed position. India has offensive interests in Mode 4, including on skilled persons. In line with its chairmanship of the Friends groups, India now seems to push strongly for movement on Mode 4 and cross-border supply of services. However, even India, a major trade power, has only one (part-time) services expert in its Geneva delegation plus 1-2 experts domestically. (interview 15, 17, 18, 31). India also seems to be switching from its main interest being on Mode 4 to developing broader interests in the services negotiations, for example on Mode 3 (interview 30, 31).

**USA:** While the US was the explicit sponsor of the services negotiations in the Uruguay Round, it now seems to play a less prominent role (interview 28). However, it is unclear to what extent the US’ position on services has changed, and whether this was driven by a loss of US power, interest or whether the US’ position is simply strategic. An EU official gave an example: he described the US as rather hesitant in the services negotiations; it had tried to avoid having too many meetings in Geneva. If the developing countries had questions in the meetings, the US would rather try to answer them bilaterally than in the plenum. However, the official attributed this to a different strategy rather than a disinterest, because in his point of view the US had clear interests in the services negotiations (interview 7). The US also did not submit
an ambitious offer, which could have put it in a leadership position in the negotiations (interview 21), which could indicate a lack of interest though. Two non-EU WTO interviewees criticised the US negotiators in Geneva for spending too much time on its defensive areas (mode 4 and maritime services), where the US did not move at all - while its domestic Ministries tried to pursue the offensive interests (interview 18, 21). The two apparent defensive areas of the US are maritime services and Mode 4. An EU official felt that the US does not want to impede an outcome on maritime services, but does not want to make commitments either (interview 5). However, as other WTO members considered commitment by the US crucial, the maritime services negotiations turned into a game of “everyone against the US” (interview 6). An EU official also blamed the US for being a major stumbling block in the services negotiations due to its inability to move on Mode 4, which due to its linkage to market access can hold up further progress. The EU was therefore working to make the US move forward (interview 6). An EU industry representative indicated that there has been a change in the perception of the US by DG Trade. Rather than transparency and trust, a certain distrust has become enrooted in the transatlantic relationship (interview 32).

**China:** China is seen as still very “low key” in the negotiations. China seems to still define its position. While it could have offensive interests, it might not pursue them as they might run counter the interests of other developing countries (interview 16).

**ASEAN:** The eight ASEAN countries which are members of the WTO (Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore (though rather a demandeur!) and Thailand) are key target markets for the demandeurs. Still, the ASEANs seem to have dropped in importance as target market due to the emergence of China. They assume a rather protectionist stance in the negotiations due to domestic disinterest in the services negotiations. Interviewees indicated the discrepancy between their own agenda versus the agendas of their capital based experts. The Geneva based negotiators said they were more open to liberalisation than their capital counterparts or than domestic industries (interview 15, 16). This defensiveness, for example, leads them to be the major sponsors behind the ESM negotiations. The capacity of the ASEANs to analyse their own situation in service
trade is much advanced compared to other developing countries. Still, the lack of resources is evident. The example was given of a delegation with one junior official working on the services issue (although this is common across delegations), where the capital had not updated the position for months. Consequently, the delegation could not contribute anything new to the meetings. However, negotiators also suggested that in this case resources might be especially scarce due to a shift in priorities towards bilateral FTAs (anonymous interviewees).

**Other developing countries:** For many other developing countries, it is even hard to identify their priorities for the negotiations (interview 3, 12). They also lack understanding of the negotiation process. This problem concerns for example many African countries, the Central Americans and Middle East countries (who do not even attend meetings) (anonymous interviewee). The LDC suffer from the same problem, but have used their group to identify a few general priorities (see above). Often though, they concentrate on the GATS framework rather than on specific commitments. They were for example holding others responsible for not implementing Art. 4 and 19, or they would concentrate on their interest on Mode 4, but fail to define their interests in terms of sectors (interview 3). While the resource constraints are evident, an interviewee suggested that this also has to do with a “traditionalist” mindset, a “we play defensive so why should we care”-attitude. Some would argue that in this way they are also losing out opportunities for gains (anonymous interviewee).

An EU official doubted this assessed lack of interest in the services issue:

> over the last year or so I have been encouraged when talking to the LDC and ACPs, to see that they do see that trade in services offers a lot of potential in terms of development. [...] they do feel they need more time. They don’t understand the issues enough; they don’t have the capacity to negotiate [...].

While realising that these countries need more time, the Commission had to weigh this against what it thought could be a hugely beneficial agreement in the services sector and hence pressed for this. The result of the Hong Kong Ministerial (no commitment for LDC on services) was a result of the EU realising that the LDC were
not ready for services liberalisation. This signifies a see change in the Commission (interview 3).

South and Central American countries (except for Costa Rica) assume in general defensive positions (interview 28).

12.6 Annex 6: List of interviews

European Commission
1. Former member of the European Commission, DG Trade, Brussels, 30.05.2005
2. Administrator, European Commission, DG Trade, Brussels, 17.05.2005
6. Administrator, European Commission, DG Trade, Brussels, 27.04.2006
7. Administrator, European Commission, DG Trade, Brussels, 27.04.2006
11. Former member of the European Commission, DG Trade, Geneva, 16.06.2006

Council of Ministers
12. Advisor, [an EU member state] representation at the EU, Brussels, 28.05.2005

396 Due to the strict confidentiality required by many interviewees, all interviews have been made anonymous (a list with full details about the interviewees has been provided separately to the external and internal examiner).
13. Advisor, [a national ministry], London, 26.05.2006

**Non-EU WTO members**

14. Former Director for International Organisations and European Union, Ministry of Finance, [a developed country WTO member], Leuven, 30.04.2005

15. Counsellor, Permanent Mission of [a developing country WTO member] to the WTO, Geneva, 13.06.2006


18. Deputy Representative of [a developed country WTO member] to the WTO, Geneva, 14.06.2006

19. Counsellor, Permanent Mission of [a developing country WTO member] to the UN Office and other International Organisations in Geneva, Geneva, 15.06.2006

20. Counsellor, Permanent Mission of [a developed country WTO member], Geneva, 15.06.2006


22. Economic Minister, Permanent Mission of [a developing country WTO member], Geneva, 19.06.2006


**International and Intergovernmental Organisations**

27. Expert, ACP Secretariat, Brussels, 28.03.2006


29. Representative, South Centre, Geneva, 21.06.2006

**Industry**

30. Representative, European Services Forum, Brussels, 10.05.2005

31. Representative, European Services Forum, Brussels, 27.03.2006 (follow-up interview)

32. Advisor, Federation of German Industries (BDI), Brussels, 17.05.2005

33. Advisor, Union of Industrial and Employers’ Confederations of Europe (UNICE), Brussels, 23.05.2005

34. Representative, European Community Shipowner’s Association (ECSA), Brussels, 25.05.2006

**NGOs**

35. Representative, 11.11.11., Platform of the Vlaamse Nord-Zuidbeweging (Flamish North South Movement), Brussels, 17.05.2005

### 12.7 Annex 7: Sample interview schedules

For the type of expert interview conducted for this thesis, it proved useful to adapt the questionnaires to the organisational background, position and specialisation of each interviewee. This annex shows two sample questionnaires used in the interviews.
Box 12.2  Sample interview schedule for European Commission member

Interview on “The EU in the WTO services negotiations”

Process of the GATS 2000 negotiations

1. Many analysts regard the Cancún Ministerial as marking the end of EU-US bipolarity in the WTO system. Can this be observed in the services negotiations as well? What effect has the emergence of the “new Quad” in the WTO had in the services negotiations?

2. After the Cancún Ministerial, the EU had a phase of strategic repositioning. In your point of view, did the outcome of the Cancún Ministerial change your approach to the negotiations on services? If yes, what kind of changes did you make (Strategy? Demands? New coalitions?)

3. What role did the new US-India led grouping play in the run-up to the Hong Kong Ministerial? Was it a successful coalition? Why was it led by the US and India?

4. How did you try to build consensus for the benchmark proposal? Why did it fail? Why did the plurilateral approach succeed?

5. In October, the EU made its new agriculture offer dependent on, among other issues, agreement on quantitative and qualitative benchmarks in the services negotiations. The benchmark proposal was rejected – why did the EU keep up its agriculture offer?

6. Two apparent interim results in the GATS negotiations were the “Modalities for the treatment of autonomous liberalisation” (06 March 2003) and the “Modalities for the special treatment for LDCs”. Both reflect developing country interests. Are there interim results in the GATS negotiations that you would call an EU (or OECD/developed country) success?

7. What effects has the Anti-GATS campaign in the early 2000s had on the EU’s strategy with regard to service?

8. Do you estimate that you can achieve a higher level of commitments to services liberalisation and further rules setting in the current bilateral and interregional negotiations on services? Why has the Commission not yet adopted a negative list approach like the US?

Further Information

Can you recommend any other persons whose views would be useful in answering the questions raised by this research?

Thank you for your time!

Box 12.3  Sample interview schedule for a non-EU WTO member country

Interview on “The EU in the WTO services negotiations”

Assessment of the GATS 2000 negotiations

1. If the current services offers were implemented, would there be new commercially viable market access for service providers from your country in foreign markets? How do you view this result?

2. Would you say your country is more interested or less interested in multilateral services liberalisation via the GATS compared to the situation 10 years ago? Why?

3. Do you think the negotiation dynamics in the services negotiations have changed since 2000? For instance, what effect has the emergence of the “new Quad” or G4 had on the services negotiations?
The EU in the services negotiations

4. After the Cancún Ministerial, the EU had a phase of strategic repositioning. In your point of view, did the outcome of the Cancún Ministerial change the EU's approach to the negotiations on services?

5. In your experience, which resources and strategy does the EU use to communicate its position in the services negotiations to you?

6. To what extent do you think the EU member states support the European Commission’s position in the WTO services negotiations? Have you observed diverging positions between the European Commission and its member states?

7. In how far do you think the EU is successful in the services negotiations (e.g. in agenda-setting, promoting or hindering outcomes, or in comparison to other actors)? Why is it successful or not successful?

8. What, if any, is your experience with the European industry in support of the services negotiations?

Further Information

Can you recommend any other persons whose views would be useful in answering the questions raised by this research?

Thank you for your time!