

This is a repository copy of *Competitive Liberalisation and the 'Global Europe' Services and Investment Agenda: Locating the Commercial Drivers of the EU-ACP Economic Partnership Agreements*.

White Rose Research Online URL for this paper:

<https://eprints.whiterose.ac.uk/74988/>

Version: Published Version

Article:

Heron, Tony orcid.org/0000-0002-1237-2624 (2012) Competitive Liberalisation and the 'Global Europe' Services and Investment Agenda: Locating the Commercial Drivers of the EU-ACP Economic Partnership Agreements. *JCMS-JOURNAL OF COMMON MARKET STUDIES*. 250–266. ISSN 0021-9886

<https://doi.org/10.1111/j.1468-5965.2011.02220.x>

Reuse

Items deposited in White Rose Research Online are protected by copyright, with all rights reserved unless indicated otherwise. They may be downloaded and/or printed for private study, or other acts as permitted by national copyright laws. The publisher or other rights holders may allow further reproduction and re-use of the full text version. This is indicated by the licence information on the White Rose Research Online record for the item.

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.

COMPETITIVE LIBERALISATION AND THE 'GLOBAL EUROPE' SERVICES AND INVESTMENT AGENDA: LOCATING THE COMMERCIAL DRIVERS OF THE EU-ACP ECONOMIC PARTNERSHIP AGREEMENTS*

Gabriel Siles-Brügge and Tony Heron

Abstract

For much of the last decade the EU has been involved in protracted and controversial negotiations with the ACP group of countries with the aim of establishing a series of 'WTO-compatible' Economic Partnership Agreements (EPAs). In this article, we locate the EPAs within the context of the wider shift in EU trade policy towards bilateralism. In doing so, we eschew much of the existing literature within EU Studies and, instead, turn to recent work in IPE emphasising the 'domestic-societal' and 'systemic' drivers of preferential liberalisation. Recent strands of this literature have drawn particular attention to the presence of a 'WTO plus' agenda – including the so-called 'Singapore Issues' – in driving developed countries to compete for preferential access in developing country markets. Although neither domestic-societal nor systemic pressures are sufficient to explain the EPAs – or indeed EU trade policy more generally – drawing attention to the above features allows us to account for why they have gone beyond the original remit of 'WTO compatibility' and why aspects of the emerging agreements bear close similarity to the EU's supposedly more commercially-oriented bilateral agreements.

I. Introduction

For much of the last decade the European Union (EU) has been involved in controversial and protracted negotiations with the African, Caribbean and Pacific (ACP) group of countries with the aim of establishing a series of 'World Trade Organisation (WTO)-compatible' Economic Partnership Agreements (EPAs). Although these negotiations

* This article is based on a paper first presented to the Political Studies Association Annual Conference, Edinburgh, UK, 30 March-1 April 2010. The authors would like to thank the three anonymous reviewers for their very helpful comments and suggestions. Any flaws that remain are solely the responsibility of the authors. Tony Heron acknowledges the financial support of the UK Economic and Social Research Council (First Grant Scheme Award No. RES-061-25-0198). The article also draws on Gabriel Siles-Brügge's doctoral research, funded by an ESRC Postgraduate Studentship.

have generated a great deal of critical commentary and debate (e.g. Babarinde and Faber, 2005; Goodison, 2007; Stevens, 2008; Faber and Orbie, 2009), there has been little attempt to locate the EPAs within the context of the EU's wider external trade strategy. A feature common to both the EPAs and the EU's supposedly more commercially-oriented free trade agreements (FTAs) is the presence of a 'WTO plus' agenda, including the so-called 'Singapore Issues' that originally formed an integral part of the WTO Doha Development Agenda (DDA) but were subsequently abandoned following the collapse of the Cancún Ministerial in September 2003.¹ After Cancún, the EU responded – albeit somewhat belatedly – to the United States' (US) pre-emptive shift towards 'competitive liberalisation' (Zoellick, 2002) by launching its *Global Europe* trade strategy document in October 2006. The essential thrust of *Global Europe* was that the aim of promoting internal competitiveness and job creation through further liberalisation and marketisation under the auspice of the Lisbon Agenda needed to run in tandem with a more offensive external trade strategy (see Hay, 2007). More particularly, *Global Europe* signalled the demise of the EU's self-imposed moratorium on commercial FTAs that was introduced in 1999² as part of a policy of *multilateralism first* designed to advance what eventually became the DDA. While *Global Europe* reaffirmed the EU's continued support for the WTO, it nevertheless argued the case for FTAs going

¹ The term 'Singapore Issues' refers to those behind-the-border issues that were introduced for the first time at the inaugural WTO Ministerial, held in Singapore in December 1996: namely, competition policy; transparency in government procurement; trade facilitation and trade and investment.

² Although the EU did negotiate a series of bilateral action plans with its Eastern European and Mediterranean trade partners during this period – which included WTO plus provisions – these were not primarily driven by economic interests but rather by the EU's geostrategically-motivated European Neighbourhood Policy.

‘further and faster in promoting openness and integration’ by extending coverage to issue areas like services, investment, public procurement and competition policy ‘which are not ready for multilateral discussions’ (European Commission, 2006d, p. 10). In short, *Global Europe* presaged a shift in the EU’s external commercial strategy from *multilateralism first* to *competitive liberalisation*.

In the following article, we seek to account for the shift in the EU’s external strategy presaged by *Global Europe*. We do this with a specific focus on the EPAs. Although much of the debate about the EPAs has concentrated on the issue of ‘WTO compatibility’, the presence of a WTO plus agenda within the negotiations suggests that the agreements are, at least in part, driven by a set of independent, political and commercial interests. Existing literature within EU Studies, focusing on institutional dynamics and bureaucratic preferences within the context of politically-insulated policy structures, offers insufficient clues as to why the EU has moved from *multilateralism first* to *competitive liberalisation*, why WTO plus issues have figured so prominently and why this strategy has informed negotiations in its ‘development’ as well as its ‘commercial’ FTAs. To address these questions we turn, instead, to an alternative set of theoretical explanations borrowed from International Political Economy (IPE) which emphasise the ‘domestic-societal’ and ‘systemic’ drivers of preferential liberalisation. Recent strands of this literature have drawn particular attention to the prominence of services and investment liberalisation in driving developed countries to compete for preferential access to developing country markets. More specifically, the recent proliferation of regional and bilateral FTAs is, in large measure, a reflection of the trade preferences of multinational firms seeking to secure ‘first mover’ advantages in highly-regulated service markets. Evidence suggests that during the 2000s EU policy-makers were not

immune from services industry lobbying against the backdrop of active commercial diplomacy elsewhere driven by the actions of the US, Japan and other global competitors. These domestic-societal and systemic pressures were reflected in the EU's subsequent bilateral services and investment agenda and, more tangibly, in agreements including the EU-CARIFORUM³ EPA and the EU-Korea FTA. Although neither domestic-societal nor systemic pressures are sufficient to explain the EPAs – or indeed EU trade policy more generally – drawing attention to the above features does allow us to account for why they have gone beyond the original remit of compatibility with the WTO's legal requirements and why aspects of the emerging agreements bear similarity to the EU's bilateral FTAs. In advancing this argument, the article seeks to make a twofold contribution. On the one hand, the article builds on and arguably goes beyond recent IPE scholarship focused on the political dynamics of WTO-plus North-South trade diplomacy (Phillips, 2005; Shadlen, 2008; Gallagher, 2008; Heron, 2010) by shedding further light on the commercial imperatives underpinning preferential liberalisation. On the other hand, a more specific aim of the article is to reveal the extent to which EU trade policy is more permeable to interest group and systemic influences than usually acknowledged – which, in our view, is a necessary first step in bringing its study into the political economy mainstream.

³ The Caribbean Forum of African, Caribbean and Pacific states (CARIFORUM) was established in 1992 to facilitate cooperation between the English-speaking Caribbean Community (CARICOM) and the Dominican Republic and Haiti, following the accession of the latter to the Lomé Convention. Although 13 of the 15 members of CARIFORUM – Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Jamaica, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago – signed the EPA on 15 October 2008, Guyana initially refused to sign only to do so five days later on 20 October. Haiti, which qualifies for EU unilateral trade preferences as a Least-Developed Country (LDC), signed the EPA on 11 December 2009.

The rest of the article is organised as follows. In the second section, we highlight the limitations of institutionalist approaches to EU trade policy and map out an alternative IPE explanation that draws particular attention to the role of interest group and external competitive pressures in fostering a more aggressive regional and bilateral trade strategy, distinct from the EU's traditional multilateral diplomacy. In the third section, we offer a brief, stylised reading of the historical evolution of EU-ACP trade diplomacy on the basis of this model. In the fourth section, we consider in more detail the foundation of a distinct EU bilateral services and investment agenda; in doing so, we focus specifically on the so-called 'Minimum Platform on Investment', a template for services and investment provisions used by the EU in all of its FTAs since 2006. In the process, we aim to uncover the underlying politics behind this by comparing the services and investment provisions of the EU-CARIFORUM EPA with those of the supposedly more commercially-oriented EU-Korean FTA. Ultimately, we conclude that even though it is claimed that the two agreements are driven by fundamentally different policy agendas – 'development cooperation' versus 'external competitiveness' – the services and investment provisions are, in fact, derived from the same set of commercial and political imperatives.

II. Understanding the 'politics' of EU trade policy

The key to much of the existing literature on EU trade policy is the so-called 'collusive delegation' thesis (Meunier and Nicolaïdis, 1999; Nicolaïdis and Meunier, 2002; Meunier, 2005; Woolcock, 2005; Zimmerman, 2007). By this is meant that national governments *chose* to delegate trade policy-making authority to the supranational

Commission in the Treaty of Rome⁴ in order to ‘insulate the process from protectionist pressures and, as a result, promote trade liberalisation’ (Meunier, 2005, p. 8). Since then further integration – in particular the Single Market Programme – has entrenched the alleged ‘depoliticisation’ of trade-policy making (see Hanson, 1998), thus enabling the EU to play a key role in promoting multilateral liberalisation (Woolcock and Hodges, 1996). The EU’s commitment to multilateralism was the cornerstone of its approach to the latter stages of the Uruguay Round (1986-1993) and the subsequent Doha Round, launched in Qatar in December 2001. Indeed, in 1999 it went so far as to announce a self-imposed ‘moratorium’ on new commercial FTAs in order to underscore its commitment to the Doha Round (see fn. 2). Despite threats to the contrary, the EU maintained this position in the immediate aftermath of the collapse of the Cancún Ministerial in September 2003 when competitors stepped up their efforts to secure bilateral trade deals. Even so, it was not too long before the EU’s faith in multilateralism began to unravel. In October 2006, following a prolonged lull in the Doha Round, the European Commission announced a new trade doctrine when it launched its *Global Europe* strategy document, which advocated a more offensive approach to bilateral negotiations. On this basis, the Commission requested negotiating mandates for bilateral FTAs with India, the Association of Southeast Asian Nations (ASEAN) and South Korea from the Council of Ministers in 2007, with the first of these – the EU-Korea FTA – signed in October 2010.

⁴ Under the 1957 Treaty of Rome’s Article 113 (subsequently renumbered as Article 133 and now Article 207 under the Treaty of Lisbon), establishing the so-called Common Commercial Policy (CCP), the authority to negotiate trade agreements in goods with third parties was delegated by the Member States to the European Commission, subject to a mandate from the intergovernmental Council of Ministers that spelled out the relevant negotiating directives.

So how do institutionalists emphasising the depoliticisation of EU trade policy account for this apparent turn away from multilateralism towards bilateralism? The most popular approach relies on rational-choice institutionalism utilising a particular form of 'principal-agent' analysis in which political actors are seen as largely insulated from societal pressures (Elsig, 2002; Kerremans, 2004; Nicolaïdis, 1999; Meunier, 2000, 2007; van den Hoven, 2002; Elsig, 2007). Accordingly, the 'collusive delegation' of policy-making authority from the principal (Member States in the Council) to the agent (the Commission) is subject to various control mechanisms to ensure that the latter acts subject to the mandate it has been set by the former. The key assumption, of course, is that there is a divergence of interests between principal and agent, on the basis of their respective *functions* as guardians of the national interest and drivers of further and deeper European integration (Meunier and Nicolaïdis, 1999; Nicolaïdis and Meunier, 2002; Pollack, 2003; Meunier, 2005; Billiet, 2006; van den Hoven, 2004). The application of principle-agent analysis to EU trade policy has led to the conclusion that *Global Europe* is a product of the Commission's and, more specifically, of DG Trade's, efforts to continue exercising leadership – to varying degrees – in trade policy, especially vis-à-vis the Council of Ministers (Elsig, 2007; Meunier, 2007).

While this literature does offer undeniable insight into the institutional dynamics that shape the EU's trade policy, the underlying assumption of depoliticisation is nonetheless problematic. It is odd, for instance, that institutionalists hardly mention the role of interest groups – as either influencing Member States or the Commission – in formulating trade policy. Another characteristic of institutional accounts of EU trade policy is the tendency to overlook the wider international systemic context in which

trade diplomacy is embedded (see, for an exception, Sbragia, 2010). This oversight is particularly surprising given the voluminous IPE literature dedicated to the study of trade politics. In our view, the IPE trade literature has much to say about the EU and arguably offers a more compelling and dynamic understanding of how trade politics actually works.⁵ Although the IPE trade literature – at least that situated within the mainstream of the discipline – has traditionally been subdivided into ‘second image’ or domestic-societal and ‘third image’ or systemic explanations, scholars have begun to explore the potential synergies between the two.⁶ Richard Baldwin (1993, 1997) was an early and perhaps the most famous exponent of this. During the 1990s, Baldwin advanced a ‘domino theory’ of regionalism, according to which the fear of trade diversion from a preferential trade agreement will prompt interest groups to lobby government to secure comparable market access to offset any potential loss of competitiveness. This sets a chain of ‘dominoes’ in motion, as progressively more states respond to corporate lobbying by joining the ‘free trade bandwagon’ (Gruber, 2001).

Although Baldwin’s work was appropriate for early 1990s during the heyday of ‘open regionalism’, it has less to say about the partial and fragmented system of bilateral FTAs

⁵ There exists in the field of EU Studies an incipient literature which also seeks to problematise the narrative of depoliticisation, pointing to the role that interest groups play within EU trade governance (see, amongst others, DeBièvre, 2002; DeBièvre and Dür, 2005; Dür, 2007, 2008; Woll, 2006, 2008). Similarly, there have also been some studies of EU preferential trade policies that have paid attention to such dynamics (see, for example, Heydon and Woolcock, 2009). However, such work essentially borrows arguments from the wider IPE literature on trade policy.

⁶ The terms ‘second image’ and ‘third image’ derive from International Relations theory – which IPE has traditionally drawn upon – and were coined by Kenneth Waltz (1959), who also identified ‘first image’ explanations as those located at the level of the individual.

that has emerged in the last few years. Here other scholars have pointed to the importance of market structures – in the form of imperfect competition and increasing returns to scale (IRS) – in shaping firms’ preferences for regional and bilateral FTAs (Casella, 1996; Milner, 1997). In the case of the North American Free Trade Agreement (NAFTA), for example, Kerry Chase (2003, 2005) argues that US firms favoured preferential over multilateral liberalisation precisely because the economic rents associated with IRS were restricted to those residing in the NAFTA trade area. This consideration was especially relevant for firms engaged in cross-border intra-industry and intra-firm trade because NAFTA’s rules of origin (among other provisions) served to restrict the benefits of location to North American firms. This, in turn, provided a strong incentive for extra-regional firms to push their own governments towards similar arrangements, thus providing further momentum to the proliferation of regional and bilateral FTAs.

Relating these insights to our own case study, the key point is that not only are there theoretical grounds for thinking that export-oriented firms may favour preferential over multilateral liberalisation; the sensitivity of these firms to changes in the trade policies of *other* countries is also seen as crucial. Nowhere is this clearer than in recent scholarship on services and investment as drivers of competitive liberalisation. According to Mark Manger (2009, also 2008, especially, pp. 2459-60), investment in developing country services markets (‘mode 3’ service delivery in WTO parlance) – e.g. telecommunications, professional services, retail banking and other financial services, utilities and so on – is usually characterised by large economies of scale requiring major investments. In these circumstances, multinational firms will push for preferential access for two reasons. On the one hand, incumbent service operators which have

already incurred significant sunk costs will favour preferential liberalisation of investment because – even if applied on a non-discriminatory basis (which the lifting of foreign equity restrictions often is) – it provides ‘first-mover’ advantages. On the other hand and more importantly, where regulation is very important for a given sector, preferential liberalisation itself creates ‘first-mover’ advantages for potential entrants. This is because the elimination of regulatory restrictions previously blocking or hampering the operation of foreign service suppliers is usually carried out on a discriminatory basis. The exclusion of others from an FTA ensures that firms benefitting from its provisions may be able to establish a dominant position through ‘first-entry’. In the extreme cases of limited licensing – often found in telecommunications – and standard-setting latecomers may be completely prevented from entry or severely disadvantaged by the adoption of different regulations to that of their home market (Manger, 2009: 44-8). In short, the competitive logic of services liberalisation in emerging economies is precisely that which underpins the EU’s *Global Europe* trade strategy – and this, so we will argue, informs important aspects of its ‘development’ as well as its ‘commercial’ diplomacy.

III. The EU-ACP Economic Partnership Agreements

At a glance, the EPAs would appear to substantiate a key element of the institutionalist account of EU trade policy, as relayed in the previous section. That is to say, in the same way that the ‘collusive delegation’ of trade policy-making authority underpinned the commitment to multilateral liberalisation at the expense of the protectionist interests of Member States, it had a not dissimilar effect on the ‘clientelist’ (Ravenhill, 1985) relationship which has traditionally characterised development cooperation between

the EU and ACP. As is well known, the Lomé convention (which preceded the Cotonou Agreement and hence the EPAs) was established in 1975 following the United Kingdom's accession to the Common Market in 1973, which required extending the geographical focus of the Yaoundé Convention – which had offered reciprocal trade preferences to former African colonies of France and Belgium since 1963 – to include the Caribbean and Pacific Commonwealth states. Unlike the Yaoundé Convention, preferences under Lomé were granted on a non-reciprocal basis while commodity protocols for bananas, beef, rum and sugar offered eligible ACP states guaranteed prices in excess of those available on the world market. All told, the Lomé Convention was renewed on three separate occasions – 1981, 1985 and 1989 – but was ultimately deemed to have failed in its principal objectives of promoting economic growth and diversification (European Commission, 1996b; Gibb, 2000).

Important as these policies failings were, however, the key catalyst for the demise of Lomé was a series of adverse legal rulings against the EU's banana protocol under both the GATT and the WTO. In 1994 the GATT ruled that Lomé was inconsistent with the MFN clause because it did not constitute a 'free trade area' or 'customs union' (due to the lack of reciprocity) but nor was it consistent with the 1979 Enabling Clause (because it discriminated between developing countries). In response, the EU immediately sought and received a five-year waiver for Lomé (although this did not prevent further legal challenges to the banana regime) in advance of the introduction of the much-strengthened dispute-settlement mechanism in 1995 (Ravenhill, 2004; Heron,

2010).⁷ Although the EU possessed the option to seek a further waiver – for which there are numerous other precedents under both the GATT and WTO – it soon intimated that its intention would be to recast the entire ACP trade relationship in such a way as to make it ‘WTO compatible’. Accordingly, the Cotonou Partnership Act of 2000 settled on the formula of replacing Lomé with separate EPAs based on six ‘regions’ – the Caribbean; the Pacific; West; Central; Eastern and Southern; and Southern Africa (SADC-minus) – as identified by the Commission.⁸ In order to make this possible, the EU would seek an extension to the WTO waiver (which was subsequently granted during the 2001 Doha Ministerial in Qatar) in order to allow the ACP sufficient breathing space to prepare for the EPA negotiations, scheduled to begin in September 2002 and end no later than 31 December 2007.⁹

⁷ Under the WTO, the rules governing the granting of legal waivers were tightened up considerably, requiring a 77 per cent majority for approval as opposed to the 66 per cent that was the norm under the GATT 1947.

⁸ In November 2007, the five countries of the East African Community (EAC) – Burundi, Kenya, Rwanda, Tanzania and Uganda – broke away from the East and Southern Africa ‘region’ and signed a separate interim agreement with the EU, thus creating a seventh ACP group.

⁹ The Cotonou Agreement made special provisions for LDCs, which would be granted Lomé-equivalent duty- and quota-free preferences under what became the ‘Everything but Arms’ (EBA) agreement of 2001. By including the handful of UN-designated LDCs that had been excluded from Lomé, the EBA effectively got around the issue of WTO incompatibility since the regime was now legally consistent with the 1979 Enabling Clause. At the same time, however, this neat solution made the task of establishing region-wide EPAs even more problematic: with duty- and quota-free treatment now available to the LDCs through EBA there was very little incentive for them to abandon non-reciprocity in order to participate in the EPA process!

The significance of all of this, with respect to the more specific aims of the article, is that even though the trade component of the Cotonou Agreement was supposedly driven by the necessity of ‘WTO compatibility’ – specifically with Article XXIV of the WTO Agreement, which provides an exemption from MFN for ‘free trade areas’ – the negotiating remit of the EPAs included liberalisation commitments in a whole raft of ‘trade-related’ areas like services, investment and intellectual property that were not covered by the original Lomé protocol and were thus not subject to WTO litigation.¹⁰ The inclusion of services, investment and other trade-related issues in the EPA negotiations reflected a fundamental shift in EU trade policy built on a more aggressive approach towards penetrating overseas markets (European Commission, 1996a; Faber and Orbie, 2009). The key to this new trade strategy was not just the new ‘*emphasis on the objective of third country market opening*’ in the Community’s commercial policy’ (European Commission, 1996a, p. 4, emphasis in the original); it also signalled a more active role for pro-liberalisation European business interests – which had played a relatively negligible role in EU trade policy-making during the Uruguay Round negotiations (Cowles, 1997) – in shaping the future trade agenda.¹¹ This translated into an ambitious agenda which formed the basis for the EU’s Millennium – and later Doha – Trade Round objectives first enunciated at the Singapore Ministerial in 1996. The

¹⁰ Aside from the areas already mentioned, the Cotonou Agreement also mentioned provisions on competition policy, trade and environment and trade and labour standards (but omitted government procurement). That being said, these issues were not actively pursued by the EU until the arrival of Peter Mandelson as Trade Commissioner, as we shall see below.

¹¹ This went from feeding the Commission information to pursue cases in the context of WTO dispute settlement (see De Bièvre, 2002; Shaffer, 2006) to lobbying it on the position to take in the upcoming round of multilateral trade negotiations (see Brittan, 1999).

undoing of the EU's ambitious WTO agenda, first at Seattle in 1999 and, later following the launching of the DDA in the aftermath of 11 September 2001 terrorists attacks, the Cancún Ministerial in 2003 led to a prolonged lull in the Round and considerable dampening of expectations amongst European policy-makers and business leaders (Young, 2007). Although it would take another three years before the announcement of *Global Europe*, the Cancún Ministerial was the key turning point in the Round for the EU and the beginning of the end of its nascent *multilateralism first* trade strategy.

It was at this point that wider, systemic influences began to play a more prominent role in EU trade politics, as its two main rivals in emerging services and investment markets – the US and Japan – increasingly turned to bilateral trade diplomacy. After four decades of commitment to multilateralism, Japan signed its first FTA with Singapore in 2003, a 'basic accord' with the Philippines in 2004 and had launched negotiations with South Korea, Malaysia and Thailand by 2006 (Manger, 2005). The US, for its part, had by 2006 signed an FTA with Singapore and was also negotiating with Korea, Malaysia and Thailand as part of its policy of competitive liberalisation. Although the significance of the new bilateral activism was ultimately not lost on the European Commission (see, for example, European Commission, 2006a), the strategic calculation made under Trade Commissioner Pascal Lamy's leadership appeared to be that an 'inclusive' multilateral round would be more commercially advantageous to the EU, irrespective of the bilateral drift of its main competitors. Following the debacle at Cancún in 2003 – which eventually led, among other things, to the three most controversial Singapore Issues (competition policy, transparency in government procurement and investment) being dropped from the Doha agenda – the EU found itself having to respond to the acceleration of the US's policy of competitive liberalisation. This policy shift was seen as

especially relevant because of the strong emphasis the US's bilaterals placed on services and investment liberalisation and regulatory harmonisation (Wunsch-Vincent, 2003). It was therefore not surprising that the European services industry – which stood to lose out on ‘first mover’ advantages in the lucrative emerging markets of Asia and Latin America – was among the first to advocate a copy-cat strategy, calling for the EU to abandon the ‘moratorium’ on new FTAs even before the Cancún Ministerial had taken place (ESF, 2003). The representations made by the European Services Forum (ESF) and other industry lobbyists would soon find a sympathetic ear in the new Trade Commissioner Peter Mandelson (who replaced Pascal Lamy in November 2004) and would in turn be reflected in the 2006 *Global Europe* strategy document. This envisaged a new generation of FTAs with a strong regulatory dimension focused on WTO plus issues (particularly the Singapore Issues of investment and public procurement) designed to match or exceed the gains attained by competitors.

A good indication of the ESF's influence with trade policy-makers was the degree to which *Global Europe* constituted a *volte face* when compared to a previous key policy-making document, the ‘Trade and Competitiveness Issues Paper’ (for more details on this earlier document, see Siles-Brügge, 2011). This was particularly evident in services liberalisation. The Issues Paper had stated that ‘[s]ubstantial gains may be expected from further integration of the EU's internal market, intuitively more likely than with regard to external liberalisation’ (European Commission, 2005, p. 24). However, following intense ESF lobbying this position was subsequently reversed in *Global Europe* (Telephone interview, European Commission official, 5 May, 2010), where it was argued that the EU's new FTAs should strive for ‘the highest possible degree of trade liberalisation, including far-reaching liberalisation of services and investment’

(European Commission, 2006d, p. 11). As a result, *Global Europe* was also accompanied by a key template on investment liberalisation, aimed at serving the export interests of European service suppliers (see Section IV).

Returning now to the EPAs, although standard interpretations of the transition from Lomé to Cotonou focus on organisational changes and competing bureaucratic interests inside the European Commission (Holland, 2002; Ravenhill, 2004; Carbone, 2007; van den Hoven, 2007; Elgström and Pilegaard, 2008; Pilegaard, 2009), it is important to note that responsibility for the ACP had already moved from DG Development to DG Trade at the beginning of Lamy's tenure in 1999 and at his insistence (Interviews, European Commission officials, Brussels, 16 and 23 September 2009). At this point, WTO plus issues had barely figured in the EPA negotiations and would not do so until two years into the negotiations (Interview, non-governmental organisation representative, Brussels, 2 October 2009).¹² By contrast, the arrival of Peter Mandelson appeared to coincide with a convergence between the EU's 'commercial' and 'development' trade diplomacy against the backdrop of the collapse of Cancún and the acceleration of competitive liberalisation. Looking more closely at the issues of services and investment, we can see that the shift in approach to the EPAs dovetailed neatly with the rise of the *Global Europe* trade strategy. Significantly, this shift corresponded with a notable increase in the lobbying efforts of the ESF designed to ensure that future EPAs

¹² Articles 21.1, 21.5 and 75 of the Cotonou Agreement refer to competition and investment, but in the context of regional and national economic development, not as further items for negotiation with the EU. Public procurement is not mentioned in the agreement at all. These omissions are replicated in the memorandum accompanying the 2002 EPA mandate (which is still of restricted circulation) (European Commission, 2002).

contained WTO plus provisions – as revealed in a letter to Mandelson dated November 2007 which requested that he ‘ensure that the interim agreements contain binding commitments to continue negotiations [on services]’ (ESF, 2007b, p. 2). It was in this context that the services and investment provisions of the EPAs began to take shape – both in the ‘interim’ agreements signed with most of the ACP between 2007 and 2009 (practically all of which contained ‘rendezvous clauses’ committing the parties to conclude a future services and investment agreement – see Table 1 below)¹³ and, in the case of CARIFORUM, a full-blown chapter and market access schedules in the EPA.

Table 1: Services, Investment and other WTO Plus Issues in Interim EPAs (IEPAs)

	<u>Status of Agreement (as of April 2011)</u>	<u>Rendezvous Clauses for Services and Investment</u>	<u>Rendezvous Clause for Competition</u>	<u>Rendezvous Clause for Public Procurement</u>
Central Africa IEPA	Only Cameroon (initialled Dec 2007, signed Jan 2009).	Yes, specific ‘services and establishment’ R-V clause (deadline: 1 January 2009)	Yes (deadline: 1 January 2009)	Yes (deadline: 1 January 2009)
Western Africa IEPAs	Separate agreement with Ghana (initialled Dec 2007, signature pending).	Yes (deadline: end of 2008)	Yes (deadline: end of 2008)	No
	Separate agreement with Côte d’Ivoire (initialled Dec 2007, signed Nov 2008).	Yes (no deadline, but parties are ‘encouraged’ to conclude a full EPA covering this issue by ‘end 2008’)	Yes (no deadline, but parties are ‘encouraged’ to conclude a full EPA covering this issue by ‘end 2008’)	Yes (no deadline, but parties are ‘encouraged’ to conclude a full EPA covering this issue by ‘end 2008’)
East African	Initialled Nov 2007, signature pending.	Yes (no deadline)	Yes (no deadline)	Yes, but only transparency

¹³ Despite EU efforts, there has been practically no movement on any of these issues since the signing and/or initialling of the IEPAs. In this sense, the rendezvous clause deadlines, where present, have been relatively meaningless despite formally committing both parties to conclude negotiations on a certain issue by a particular date. This is nowhere as clear as in the case of Cameroon IEPA deadlines of 1 January 2009, which are prior to the signing of the IEPA by Cameroon itself!

Community IEPA				(no deadline)
Eastern and Southern Africa IEPA	Signed by Madagascar, Mauritius, the Seychelles, and Zimbabwe (Aug 2009; initialled by all Novber-Dec 2007). Signature pending from Comoros and Zambia.	Services but not investment (no deadline)	No	No
Pacific IEPA	Signed by Papua New Guinea (July 2009) and Fiji (Dec 2009). Originally initialled in Nov 2007 by both countries.	No	No	No
SADC (minus South Africa) IEPA	Signed by Botswana, Lesotho, Mozambique, and Swaziland (June, 2009, initialled by all Dec 2007) Signature pending from Namibia.	Yes (deadline: 31 December, 2008)	Yes, but only cooperation (no deadline)	Yes, but only cooperation (no deadline)

Sources: the texts of various agreements.

Underpinning the drive for a ‘consistent’ approach in bilateral services and investment negotiations, the so-called ‘Minimum Platform on Investment’ was a product of this setting. The next section, which addresses this agenda in more detail, describes the gradual but inexorable convergence between the EU’s ‘commercial’ and ‘development’ trade strategies.

IV. The convergence of ‘commercial’ and ‘development’ trade diplomacy: *Global Europe* and the EU’s new bilateral services and investment agenda

In making the case for a new generation of FTAs *Global Europe* identified a whole range of emerging markets in Asia, Latin America and elsewhere deemed ripe for commercial exploitation. In contrast, at no point did it mention the ACP other than to suggest that these countries, along with Central America and the Andean Community, were

peripheral to Europe's main commercial interests and that the EPAs and other similar agreements were designed to meet development rather than trade objectives. *Global Europe* thus provided a clear demarcation between the EU's 'main trade interests' in which 'economic factors must play a primary role' (European Commission 2006d, pp. 10-11) and its trade agreements with peripheral countries in which the primary motive was promoting sustainable development through the gradual regional and global integration of these countries into the world economy in a manner consistent with WTO rules (European Commission 2006d, p. 3). Even in the case of CARIFORUM – thus far the only comprehensive EPA to have been concluded – the Commission maintained the agreement was guided by development rather than commercial considerations:

By explicitly taking into account the development objectives, needs and interests of the CARIFORUM region the EPA is very different from every other trade agreement negotiated up to now between developed and developing countries. This comprehensive approach is what constitutes the development dimension of the EPA and all the provisions of the EPA are designed to support it (European Commission, 2009, p. 1).

Although the above statement would at first glance appear difficult to reject on the basis of straightforward economic interests, a closer reading of the relevant documents reveals that the 'development' and 'commercial' FTAs that have so far been negotiated under the auspice of *Global Europe* share far more in common than suggested. While institutionalists provide one possible explanation for this overlap in terms of functional integration and bureaucratic preferences, in this article we have chosen to focus instead on the wider systemic and political context. In so doing, we offer a

theoretical explanation for why the EU embraced *competitive liberalisation*, why WTO plus issues figured so prominently and why this strategy informed negotiations in ‘development’ as well as ‘commercial’ FTAs. In this section of the article, we aim to substantiate these claims by focusing on perhaps the most innovative aspect of the EU’s post-Cancún trade strategy: the so-called ‘Minimum Platform’ on investment, a template for a chapter on ‘Establishment, trade in services and e-commerce’ that was to be included in the EU’s *Global Europe* FTAs.¹⁴ On the surface the Minimum Platform would appear to corroborate institutionalist arguments stressing principal-agent dynamics and functional integration. It did, after all, expand Commission competence to cover the negotiation of all ‘pre-establishment’ investment liberalisation, while ‘post-establishment’ protection and promotion of investment remained the exclusive purview of Member States through their own bilateral investment treaties (Interview, European Commission official, Brussels, 22 September 2009).¹⁵ In our view, however, the real significance of the Minimum Platform for EU trade policy lay not so much with negotiating competence, as would be emphasised by institutionalists, but the stress placed on liberalisation in *future* FTAs. This is highlighted by the fact that the Commission has had full competence to negotiate liberalisation for ‘mode 3’ services –

¹⁴ The text of the Minimum Platform quoted in this article is that of a leaked, and now freely available, draft presented to the Council’s Article 133 Committee (responsible for trade policy) in July 2006, as the final text is still of ‘restricted’ circulation. However, it should be noted that the final text is unlikely to have changed very much from this draft as the EU’s subsequent FTA with Korea and EPA with CARIFORUM seem to mirror it quite closely (see below). Included with this draft was an explanatory memorandum, which is also cited below.

¹⁵ Since then, of course, the Treaty of Lisbon has come into force, which in Article 207 does give the Commission sole authority to negotiate agreements on investment.

which account for the lion's share of EU foreign direct investment (see Eurostat, 2008, p. 17) – since the 2001 Treaty of Nice (for more on this, see Nicolaïdis and Meunier, 2002).

To reiterate, then, what is most striking about the Minimum Platform was the emphasis placed on services and investment liberalisation within the context of the EU's post-Cancún trade strategy. The fact that it was referred to as a *Minimum* Platform was not only a reference to its nature as an institutional compromise between the Council and Commission:¹⁶ it also referred to the 'minimum' being sought from trade partners in future FTAs. In this respect, the emphasis placed by the Minimum Platform on the need for a 'consistent' approach – which is not something that has figured prominently to this day in FTA mandates in other areas like government procurement and intellectual property rights (Interviews, European Commission officials, Brussels, 29 April and 6 May 2010) – is significant, pointing to a common set of drivers for agreements negotiated on the basis of its liberalisation provisions. That said, the intention was still – albeit on the basis of the Minimum Platform – to adapt the FTA negotiating mandate to the particular circumstances of a trading partner, particularly with a view to match any market access gains acquired by a competitor through an FTA or otherwise (European Commission, 2006b, p. 2). This desire for competitiveness-driven adaptability was also reflected in a novel 'review clause' for investment, which, in the words of its drafters, was included 'with a view to allow in the future a possible upgrading of establishment provisions' (European Commission, 2006c, p. 2).

¹⁶ The term 'minimum' reflected a compromise between the Commission's and Member States' competing claims for competence in the sense that it provided the Commission with the 'minimum' tools necessary to effectively negotiate ambitious trade agreements (Interviews, European Commission officials, Brussels, September-October 2009).

The most significant innovation, however, was the Minimum Platform's MFN clause covering establishment provisions (see Figure 1). Generally speaking, the purpose of such clauses in international trade agreements is to ensure that new trade preferences granted by a party to others are extended automatically to the signatories of a particular agreement. MFN forms the basis of the WTO General Agreement on Trade in Services (GATS), with a general exemption in Article V for regional economic integration agreements and more specific exemptions listed under an Annex of the GATS. What is particularly telling in this case is not just the inclusion of the provision itself, but the nature of the MFN exemption in the Minimum Platform for preferences granted under regional economic integration agreements. Whereas under GATS Article V an MFN exemption exists for practically all such agreements (provided they have 'substantial sector coverage' and eliminate 'substantially all discrimination'), in the Minimum Platform the wording is far more restrictive. It provides an MFN exemption only for a 'regional economic integration agreement requiring the Parties thereto to approximate their legislation' (European Commission, 2006b, p. 7). Although, to an extent, this type of language can be seen as a means of overcoming the technical and legal complexities of negotiating rules of origin for services, facilitating the 'multilateralisation' of preferential services commitments (see Miroudot, Sauvage and Sudreau, 2010), the explanatory memorandum attached to the Minimum Platform spells out the EU's primary motivations for including such a highly restrictive MFN clause quite clearly:

By [wording the clause] so, the EU is in a position to obtain as many advantages as possible that could stem from other preferential agreements to which one of the EU's contracting parties would also be a

party (*the EU should at least obtain the treatment granted by US FTAs*) without prejudicing some EU preferential policies (ex: in the framework of the EEA [European Economic Area] or of EU-accession processes) (European Commission, 2006c, p. 2, emphasis added).

Significantly, the MFN clause in the Minimum Platform is phrased in such a manner as to apply retroactively: in other words, it would affect all preferential treatment granted by the partner in question, even if this had been granted *prior* to the entry into force of the agreement with the EU. This marked stress on seeking (at least) parity with EU competitors – with the US singled out as a particular target – is not altogether surprising, given the context of the Minimum Platform proposals and their clear link to the *Global Europe* strategy.

Figure 1: The MFN Clause in the Minimum Platform

Article [...]

Most-favoured-nation treatment

1. With respect to any measures affecting establishment covered by this Chapter, each Party shall accord to investors of the other Party a treatment no less favourable than that it accords to like investors of any third country.
2. Treatment granted to investors of a third country by either Party arising from a regional economic integration agreement requiring the Parties thereto to approximate their legislation shall be excluded from the obligation of this provision [...]

Source: European Commission (2006b, p. 7).

It is rare to find such a provision for services and/or investment in the EU's previous bilateral trade agreements. Neither the EU-Chile FTA – widely heralded as a benchmark for future trade agreements by EU officials prior to *Global Europe*¹⁷ – nor an important draft EU-Common Market of the South (MERCOSUR) FTA text from 2004 contained such a clause (European Commission, 2006c, p. 4). Even where such an MFN clause was included for establishment in services – such as in the EU's FTA with Mexico – this followed the wording of the GATS more narrowly, providing an exemption for any 'agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS' (EC-Mexico Joint Council, 2001, p. 3). Similarly, although the EU-Mexico FTA contained a review clause for services, ostensibly to 'upgrade' the agreement, the EU's bilateral agenda at that time was subordinated to its multilateral trade strategy. The review of services provisions, which according to the review clause had originally been scheduled to take place in 2004, was postponed because both parties were interested in pursuing services negotiations at the multilateral level (O'Boyle, 2005). That is not to say that the services and investment provisions in either the EU-Chile or EU-Mexico FTA were insignificant; indeed, in the areas of telecommunications and financial services, there is evidence of strong interest group pressures seeking at least parity with US liberalisation efforts in the region (Manger, 2009). But the key difference is that these two FTAs were concluded at a time when the EU was still primarily targeting multilateral liberalisation with most corporate lobbying reflecting localised market pressures rather than the wider systemic forces that shaped *Global Europe* and the Minimum Platform.

¹⁷ In an interview conducted in March 2006 with an EU official on EU bilateral trade agreements, the official in question promptly produced a copy of this FTA and noted that it represented a 'model' agreement.

The inclusion of the review and MFN clauses as a ‘minimum’ requirement for future FTAs were thus significant policy innovations that underscored the post-Cancún sensitivity of EU policy-makers to the competitive systemic pressures found in global services markets. The fact that these two clauses were included under the rubric of establishment, moreover, underscored the importance of these pressures for mode 3 service suppliers, clearly reflecting the ESF’s demands that future FTAs ‘should also include a clause guaranteeing that any preferential treatment granted to third countries in the future is automatically extended to the EU’ (ESF, 2007a, p. 2). Of course, the drive for ‘consistency’ also reflected a wider strategic aim of creating what Craig VanGrasstek (2000: 169-7) has called a ‘spiral of precedents’ intended to influence the post-DDA trade agenda at the multilateral level. But this is consistent with our broader argument in the sense that EU policy-makers were determined to match US gains through an equally ‘consistent’ and activist bilateral trade strategy. Most importantly, the fact that the Minimum Platform was used as the basis for the negotiation of the services and establishment provisions in the EU’s ‘development’ as well as its ‘commercial’ FTAs pointed to a noticeable convergence in the EU’s post-Cancún bilateral diplomacy. The degree of convergence can be best illustrated by comparing briefly the respective services and investment provisions contained in actual agreements.

Table 2: Comparing the Services and Investment Provisions in the EU-CARIFORUM EPA and the EU’s ‘Commercial’ FTAs

	<u>(Draft) FTA Mandates</u>	<u>EU-CARIFORUM EPA</u>	<u>EU-Korea FTA</u>
Single Services & Investment Chapter	EU-India and EU-ASEAN mandates: ‘Title 3: Trade in Services, Establishment’	‘Title II: Investment, Trade in Services and E-Commerce’	‘Chapter Seven: Trade in Services, Establishment and Electronic Commerce’
MFN Clause for	Retroactive clause sought	Article 70. Does not apply equally to	Article 7.14. Applies

<p>Commercial Establishment</p>	<p>in both cases.</p> <p>EU-India mandate (Article 23): 'EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of any third country as regards cross-border supply of services and establishment.'</p> <p>EU-ASEAN mandate (Article 23): 'Whenever an ASEAN partner has concluded another economic integration agreement with a third country which is not within the ASEAN region, EU investors and service suppliers shall be granted at least parity with the treatments granted to investors and service suppliers of this third country as regards to cross-border supply of services and establishment.'</p>	<p>both parties. Not retroactive.</p> <p>EU to offer full MFN (no economic integration agreement exemption).</p> <p>The ACP Parties only to offer MFN for agreements with 'major trading economies' (Article 70, paragraph 1b): 'any developed country, or any country accounting for a share of world merchandise exports above 1 % [...] or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 % [...]' (Article 70, paragraph 4). In this case, the EU and CARIFORUM are to enter into consultations to decide whether the Caribbean state(s) in question may deny the EU MFN treatment (Article 70, paragraph 5).</p> <p>MFN regional economic integration agreement exemption (Article 70, paragraph 2, applies only to CARIFORUM Party): 'When a Party [...] concludes a regional economic integration agreement creating an internal market or requiring the parties thereto to significantly approximate their legislation with a view to removing non-discriminatory obstacles to commercial presence and to trade in services, the treatment that such Party or Signatory CARIFORUM State grants to commercial presences and investors of third countries [...] is not covered by the [MFN clause].'</p>	<p>equally to both parties. Not retroactive.</p> <p>MFN regional economic integration agreement exemption wording (Article 7.14, paragraph 2): 'Treatment arising from a regional economic integration agreement granted by either Party to establishments and investors of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in [the schedule of specific services commitments].'</p>
<p>Review Clause for Establishment</p>	<p>None.</p>	<p>Article 74. 'With a view to the progressive liberalisation of investments, the Parties shall review the investment legal framework, the investment environment, and the flow of investments between them [...] no later than three years after the entry into force [...] and at regular intervals thereafter.'</p>	<p>Article 7.16. As for the EU-CARIFORUM EPA but with an additional provision: 'In the context of [this] Review [...] the Parties shall assess any obstacles to investment that have been encountered and shall undertake negotiations to address such obstacles'.</p>

Sources: the texts of various mandates and agreements.

As Table 2 reveals, there are a number obvious similarities between the draft EU mandates for India and ASEAN and the EU-Korea FTA, on the one hand, and the CARIFORUM EPA, on the other. First, all of these agreements mirror the Minimum Platform in the sense of including services and investment under a single rubric.

Second, both the EU-Korea FTA and the CARIFORUM EPA include a similarly-worded review clause for services and establishment provisions that opens the door to a future upgrading of liberalisation commitments. Most importantly, however, the CARIFORUM EPA provides for an MFN clause for establishment in Article 70, with a restrictive exemption for regional economic integration agreements for the CARIFORUM Signatory Parties. All of these provisions are found in the EU-Korea FTA and in the draft mandates¹⁸ for the EU-India and EU-ASEAN FTAs (see European Commission, 2007a, b). This suggests common drivers for the EU's bilateral trade agenda in services and investment as the Minimum Platform is a (relatively) consistently applied template, particularly in terms of the key policy innovations it introduced. Furthermore, the fact that the two draft FTA mandates do not include an MFN exemption for regional economic integration agreements underscores the point that the *Minimum* Platform is only ever the 'minimum' that is being *sought* from these FTAs.

Despite this, the argument here is not that the EU has simply imposed commercially-driven services and investment provisions on the ACP via the EPAs without resistance or contestation. Indeed, what is most striking about the political dynamics of the EPAs is that CARIFORUM – a region relatively well endowed with the bureaucratic capacity and supranational authority deemed necessary to negotiate region-wide and technically-complex reciprocal trade agreements – effectively broke ranks with the rest of the ACP in signing a comprehensive EPA when others did no more than sign 'goods only' interim

¹⁸ Although they are only drafts, these mandates are unlikely to have been subject to much change in their current form (Interview, European Commission official, Brussels, 9 September 2009).

agreements.¹⁹ At least insofar as the CARIFORUM agreement is concerned, much appears to rest on a supposedly key difference between the services and investments chapters of the EPA and the Korea FTA and the draft mandates for India and ASEAN: namely, the principle of *special and differential treatment* (Telephone interview, CARIFORUM trade negotiator, Kingston, Jamaica, 8 January 2009; Interview, European Commission official, Brussels, 15 December 2009). This principle – which is enshrined in the Cotonou Agreement and is designed to meet the ‘special and differential’ needs of ACP service suppliers and (albeit subsequently, as investment did not feature in the Cotonou Agreement as an area for discussion) investors – is based on three separate concessions. First, even though the CARIFORUM Agreement grants full MFN treatment – there is no exemption for regional economic integration agreements as found in the EU-Korea FTA – this only applies to FTAs concluded with a ‘major trading economy’ (see Table 2). As a result, it is possible to argue that the ‘non-reciprocal’ MFN provision may bring dynamic gains to CARIFORUM countries – which would benefit in the event that the EU signed an FTA with a third party without necessarily having to make further concessions. This, however, is offset by the precise wording of the clause (see also fn. 21), which defines a ‘major trading economy’ to include not only developed countries but also developing countries like Brazil, China, India and Mexico – all of which possess

¹⁹ A superficial interpretation of this suggests that the small, service-based economies of the Caribbean recognised the potential economic benefits of a WTO plus agreement, but this reading is at odds with the region’s previous actions in other diplomatic settings, such as participation in various South-South coalitions aimed at preventing the inclusion of these very same issues within the Doha Round. A more sophisticated explanation for CARIFORUM’s decision to sign a comprehensive EPA is provided by Tony Heron (2010).

rapidly growing services markets.²⁰ This has led some to argue that the MFN clause will diminish any future bargaining leverage that CARIFORUM would have in signing an FTA with a major developing country since the region would be unable to offer preference margins vis-à-vis the EU to any country or group of countries or would otherwise have to extend these trade benefits to the EU (ECLAC, 2008; Dièye and Hanson, 2008). As if to underscore this point, officials in the European Commission have justified the inclusion of the MFN clause for services and investment by stressing that they do not want the EU to be at a competitive disadvantage as a result of having signed EPAs (Interview, European Commission official, Brussels, 15 December 2009).

The second aspect of special and differential treatment is said to reside in the non-automaticity of the MFN clause, by which is meant that the negotiation of a subsequent FTA would not immediately precipitate the application of MFN – as in the case of the EU-Korea FTA – but rather lead to ‘consultations’ between the EU and CARIFORUM. In theory, this concession grants CARIFORUM significant flexibility in the application of MFN; yet it remains to be seen how far the region will be able to resist EU pressure to extend MFN treatment or liberalise investment further, given the power asymmetries inherent to the EU-ACP relationship. Indeed, the very fact that the MFN clause was

²⁰ Although the Cotonou Agreement also required preference-receiving countries to grant to the EU any more favourable treatment offered to other developed countries, the CARIFORUM text extends this to advanced developing countries and regions which account for more than 1 per cent and 1.5 per cent of world trade respectively. The UN Economic Commission for Latin America and the Caribbean (ECLAC, 2008, p. 32) estimates that, on the basis of 2005 trade data, this provision would be sufficient to preclude CARIFORUM from signing an FTA with China, Brazil, Hong Kong, Singapore, Mexico, Taiwan, ASEAN and MERCOSUR without offering MFN treatment to the EU.

retained in the CARIFORUM agreement – the issue was hotly contested during the negotiations and it remains one of the most controversial aspects of talks in the other ACP regions – speaks volumes for the asymmetrical power dynamics inherent in the EPA process (Elgström, 2000; Forwood, 2001; Stevens, 2006; Meyn, 2008; Heron, 2010; Bishop, Heron and Payne, forthcoming).²¹ The third and final concession to CARIFORUM is that the review clause discussed earlier is less onerous than that enshrined in the EU-Korea FTA, in the sense that it does not include a commitment to address outstanding ‘obstacles to investment’. In other areas, however, it appears that CARIFORUM negotiators actually obtained *fewer* concessions than their Korean counterparts in diluting the EU’s desired MFN clause: that is to say, the CARIFORUM text conforms more narrowly to the wording of the Minimum Platform than that found in the EU-Korea FTA; it is more restrictive, exempting fewer potential agreements from an invocation of the MFN clause (the EPA refers to an exemption for regional economic integration agreements creating an ‘internal market’ or ‘requiring the parties thereto to approximate their legislation’, whereas in the EU-Korea FTA, any agreement with a ‘significantly higher level of obligations’ is excluded – see Table 2 for more details). In

²¹ An alternative interpretation is that the presence of the MFN clause (alongside the review clause which is discussed below) actually served the commercial interests of CARIFORUM since its services industry would stand to benefit from subsequent EU FTAs based on higher levels of obligation (see also discussion above on dynamic gains); yet, it is significant that in the area of ‘mode 4’ (that is, the movement of natural persons – the aspect of services liberalisation in which CARIFORUM possessed the most offensive interests) the EPA text mentions neither MFN nor the review clause. Moreover, in extensive interviews conducted with CARIFORUM negotiators soon after the signing of the EPA, the acceptance of the MFN clause was mentioned *only* in terms of a necessary quid pro quo for EU concessions in areas such as ‘mode 4’, delayed liberalisation schedules and product exemptions and preferential access to development aid.

sum, the EU's supposed allowances for 'special and differential' treatment in services and investment do not appear to have proven too much of an obstacle in furthering its commercial objectives: in this case, ensuring at least parity with its most significant competitors in 'mode 3' service delivery.

V. Conclusion

The purpose of this article was to shed light on the increasing convergence between the EU's trade and development diplomacy with a specific focus on the EPAs. In so doing, we have gone against the grain of current orthodoxy in EU studies, with its emphasis on principal-agent dynamics in the context of politically-insulated policy structures, to highlight the 'domestic-societal' and 'systemic' influences behind the shift towards bilateralism. The motive here was not to provide an overarching or alternative conceptual frame for explaining the EPAs – or EU trade more generally – but to offer a means of thinking about the policy-making process in a way that addresses a specific research puzzle frequently identified but seldom explained adequately in the literature: that is, why have the EPAs gone beyond the original remit of 'WTO compatibility' and why do certain aspects of the emerging agreements bear so much similarity to the EU's supposedly more commercially-oriented FTAs? Our solution to this puzzle has been to situate the EPAs within the wider context of EU trade policy and therein identify services and investment as key drivers of preferential liberalisation – and to reveal the extent to which this agenda has shaped the content of the EU's 'development' as well as 'commercial' FTAs. Of course the actual implementation of these agreements, including provisions for services and investment liberalisation, is some way off and cannot be guaranteed at this stage. This is especially the case with the CARIFORUM EPA. But this

does not detract from our key finding that in principle the two agreements share a virtually identical approach to services and investment – the Minimum Platform – which reflects a determination on the part of the EU to match or exceed the liberalisation gains of its commercial rivals. Clearly the arguments that we have rehearsed in this article require additional refinement – and it remains to be seen how far further empirical study will serve to substantiate and broaden our findings. For now at least, we have shed further light on some of the commercial imperatives underpinning preferential liberalisation – an issue that is frequently dealt with in the extant IPE trade literature implicitly but not always explicitly. In the case of EU studies, the article has demonstrated some of the insights that can be gleaned from looking beyond the idiosyncrasies of the EU to the wider commercial and political context that defines its policy choices. More particularly, we have illustrated the extent to which EU trade policy is in fact more permeable to interest group and systemic influences than usually acknowledged, which, in our view, is a necessary first step in bringing its study into the political economy mainstream.

Word count: 8228

Correspondence:

Gabriel Siles-Brügge, Department of Politics, University of Sheffield, Elmfield, Northumberland Road, Sheffield, S10 2TU, UK. Email: g.siles-brugge@sheffield.ac.uk.

Tony Heron, Department of Politics, University of Sheffield, Elmfield, Northumberland Road, Sheffield, S10 2TU, UK. Email: t.heron@sheffield.ac.uk.

References

- Babarinde, O. and Faber, G. (eds) (2005) *The European Union and the Developing Countries: The Cotonou Agreement* (Leiden: Martinus Nijhoff Publishers).
- Baldwin, R.E. (1993) 'A Domino Theory of Regionalism'. NBER Working Paper, No. 4465.
- Baldwin, R.E. (1997) 'The Causes of Regionalism'. *The World Economy*, Vol. 20, No. 7, pp. 865-88.
- Billiet, S. (2006) 'From GATT to the WTO: The Internal Struggle for External Competences in the EU'. *Journal of Common Market Studies*, Vol. 44, No. 5, pp. 899-919.
- Bishop, M. L, Heron T. and Payne, T. (forthcoming) 'Caribbean Development Alternatives and the European Union-CARIFORUM Economic Partnership Agreement'. *Journal of International Relations and Development*.
- Brittan, L. (1999), 'European Service Leaders' Group'. Speech delivered to the European Service Leaders' Group. Available at: <<http://www.esf.be/pdfs/documents/speeches/splb0199.pdf>>.
- Carbone, M. (2007) 'EBA, EU Trade Policy and the ACP: A Tale of Two North-South Divides'. In Faber, G. and Orbie, J. (eds) *European Union Trade Politics and Development: 'Everything But Arms' Unravelling* (Abingdon: Routledge).
- Casella, A. (1996) 'Large Countries, Small Countries and the Enlargement of Trade Blocs'. *European Economic Review*, Vol. 40, No. 2, pp. 389-415.
- Chase, K.A. (2003) 'Economic Interests and Regional Trading Arrangements: The Case of NAFTA'. *International Organization*, Vol. 57, No. 1, pp. 137-74.

- Chase, K.A. (2005) *Trading Blocs: States, Firms, and Regions in the World Economy* (Ann Arbor: The University of Michigan Press).
- Cowles, M.G. (1997) 'The Changing Architecture of Big Business'. Paper presented at the 5th Biennial ECSA Conference, Seattle, May 29.
- De Bièvre, D. (2002) 'The WTO and Domestic Coalitions: The Effects of Negotiations and Enforcement in the European Union'. PhD Thesis, European University Institute.
- De Bièvre, D. and Dür, A. (2005) 'Constituency Interests and Delegation in European and American Trade Policy'. *Comparative Political Studies*, Vol. 38, No. 10, pp. 1271-96.
- Dièye, C.T. and Hanson, V. (2008) 'MFN Provisions in EPAs: A Threat to South-South Trade?'. *Trade Negotiations Insights*, Vol. 7, No. 2, pp. 1-3.
- Dür, A. (2007) 'EU Trade Policy as Protection for Exporters: The Agreements with Chile and Mexico'. *Journal of Common Market Studies*, Vol. 45, No. 4, pp. 883-855.
- Dür, A. (2008) 'Bringing Economic Interests Back into the Study of EU Trade Policy-Making'. *British Journal of Politics and International Relations*, Vol. 10, No. 1, pp. 27-45
- ECLAC (2008) 'Review of CARIFORUM-EU EPA in Development Cooperation and WTO Compatibility'. Available at: <<http://www.eclac.org/publicaciones/xml/5/34435/L.177.pdf>>.
- EC-Mexico Joint Council (2001) 'Decision No 2/2001 of the EU-Mexico Joint Council of 27 February 2001'. Available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:070:0007:0050:EN:PDF>>.
- Elgström, O. (2000) 'Lomé and Post-Lomé: Asymmetric Negotiations and the Impact of Norms'. *European Foreign Affairs Review*, Vol. 5, pp. 175-95.

- Elgström, O. and Pilegaard, J. (2008) 'Imposed Incoherence: Negotiating Economic Partnership Agreements'. *Journal of European Integration*, Vol. 30, No. 3, pp. 363-80.
- Elsig, M. (2002) *The EU's Common Commercial Policy: Institutions, Interests and Ideas* (London: Ashgate).
- Elsig, M. (2007) 'The EU's Choice of Regulatory Venues for Trade Negotiations: A Tale of Agency Power?'. *Journal of Common Market Studies*, Vol. 45, No. 4, pp. 927-48.
- ESF (2003) 'New ESF Priorities for the DDA'. Available at: <<http://www.esf.be/new/wp-content/uploads/2009/01/esf-new-priorities-for-the-dda.pdf>>.
- ESF (2007a) 'ESF Position Paper on EU Free Trade Agreements'. Available at: <<http://www.esf.be/new/wp-content/uploads/2009/01/esf-position-paper-on-eu-free-trade-agreements-final.pdf>>.
- ESF (2007b) 'Negotiations of Services Commitments in the Economic Partnership Agreements'. Letter to Peter Mandelson. Available at: <<http://www.esf.be/new/wp-content/uploads/2009/01/esf2007-27-peter-mandelson-services-in-epas1.pdf>>.
- European Commission (1996a) 'The Global Challenge of International Trade: A Market Access Strategy for the European Union'. COM(96) 53 final.
- European Commission (1996b) 'Green Paper on Relations between the European Union and the ACP Countries'. COM(96) 570 final.
- European Commission (2002) 'Recommendation for a Council Decision Authorising the Commission to Negotiate Economic Partnership Agreements with the ACP Countries and Regions'. SEC(2002) 351 final.
- European Commission (2005) 'Trade and Competitiveness Issues Paper'.

European Commission (2006a) 'Report – “External Aspects of Competitiveness”:
Consultation of EU Business Federations – 18 January 2006’.

European Commission (2006b) 'Note for the Attention of the 133 Committee: Minimum
Platform on Investment for EU FTAs – Provisions on Establishment in Template
for a Title on “Establishment, Trade in Services and E-commerce”'. D(2006) 9219.
Available at: <http://www.iisd.org/pdf/2006/itn_ecom.pdf>.

European Commission (2006c) 'Note for the Attention of the 133 Committee: Minimum
Platform on Investment for EU FTAs – Provisions on Establishment in Template
for a Title on “Establishment, Trade in Services and E-commerce” – Explanatory
Memorandum’. D(2006) 9219. Available
at:<http://www.iisd.org/pdf/2006/itn_ecom.pdf>.

European Commission (2006d) 'Global Europe: Competing in the World'.COM(2006)
567 final.

European Commission (2007a) 'EU Draft Mandate for ASEAN'. Available at:
<http://www.bilaterals.org/article.php3?id_article=8211>.

European Commission (2007b) 'EU Draft Mandate for India'. Available at:
<http://www.bilaterals.org/IMG/doc_India_draft_mandate_061206.doc>.

European Commission (2009) 'Introduction to the CARIFORUM-EC EPA'. Available at:
<http://trade.ec.europa.eu/doclib/docs/2010/march/tradoc_145879.pdf>.

Eurostat (2008) *European Union Foreign Direct Investment Yearbook 2008: Data 2001-
2006* (Luxembourg: Office for Official Publications of the European Communities).

Faber, G. and Orbie, J. (eds) (2009) *Beyond Market Access for Economic Development: EU-
Africa Relations in Transition* (London: Routledge).

Forwood, G. (2001) 'The Road to Cotonou: Negotiating a Successor to Lomé' *Journal of
Common Market Studies*, Vol. 39, No. 3, pp. 423-42.

- Gallagher, K. P. (2008) 'Trading Away the Ladder? Trade Politics and Economic Development in the Americas', *New Political Economy*, Vol. 13, No. 1, pp. 37-59.
- Gibb, R. (2000) "Post-Lomé: The European Union and the South". *Third World Quarterly*, Vol. 21, No. 4, pp. 457-81.
- Goodison, P. (2007) 'EU Trade Policy and the Future of Africa's Relationship with the EU'. *Review of African Political Economy*, Vol. 34, No. 112, pp. 247-66.
- Gruber, L. (2001) 'Power Politics and the Free Trade Bandwagon'. *Comparative Political Studies*, Vol. 34, No. 7, pp. 703-41.
- Hanson, B.T. (1998) 'What Happened to Fortress Europe? External Trade Policy Liberalization in the European Union'. *International Organization*, Vol. 52, No. 1, pp. 55-85.
- Hay, C. (2007) 'What Doesn't Kill You Can Only Make You Stronger: The Doha Development Round, the Services Directive, and the EU's Conception of Competitiveness'. *Journal of Common Market Studies*, Annual Review, pp. 25-43.
- Heron, T. (2010) 'Asymmetrical Bargaining and Development Trade-offs in the EU-CARIFORUM Economic Partnership Agreement'. *Review of International Political Economy*, *iFirst*, pp. 1-30.
- Heydon, K. and Woolcock, S. (2009) *The Rise of Bilateralism: Comparing American, European and Asian Approaches to Preferential Trade Agreements* (Tokyo: United Nations Press).
- Holland, M. (2002) *The European Union and the Third World* (Basingstoke: Palgrave).
- Kerremans, B. (2004) 'What Went Wrong in Cancun? A Principal-Agent View on the EU's Rationale towards the Doha Development Round'. *European Foreign Affairs Review*, Vol. 9, No. 3, pp. 363-93.

- Manger, M. (2005) 'Competition and Bilateralism in Trade Policy: The Case of Japan's Free Trade Agreements'. *Review of International Political Economy*, Vol. 12, No. 5, pp. 804-28.
- Manger, M. (2008) 'International Investment Agreements and Services Markets: Locking in Market Failure?'. *World Development*, Vol. 36, No. 11, pp. 2456-69.
- Manger, M. (2009) *Investing in Protection: The Politics of Preferential Trade Agreements between North and South* (Cambridge: Cambridge University Press).
- Meunier, S. (2000) 'What Single Voice? European Institutions and EU-US Trade Negotiations'. *International Organization*, Vol. 54, No. 1, pp. 103-35.
- Meunier, S. (2005) *Trading Voices: The European Union in International Commercial Negotiations* (Princeton, NJ: Princeton University Press).
- Meunier, S. (2007) 'Managing Globalisation? The EU in International Trade Negotiations'. *Journal of Common Market Studies*, Vol. 45, No. 4, pp. 905-26.
- Meunier, S. and Nicolaïdis, K. (1999) 'Who Speaks for Europe? The Delegation of Trade Authority in the EU'. *Journal of Common Market Studies*, Vol. 37, No. 3, pp. 477-501.
- Meyn, M. (2008) 'Economic Partnership Agreements: A 'Historic Step' Towards a Partnership of Equals?'. *Development Policy Review*, Vol. 26, No. 5, pp. 515-28.
- Milner, H.V. (1997) 'Industries, Governments, and the Creation of Regional Trade Blocs'. In Mansfield, E.D. and Milner, H.V. (eds) *The Political Economy of Regionalism* (New York: Columbia University Press).
- Miroudot, S., Sauvage, J. and Sudreau, M. (2010) 'Multilateralising Regionalism: How Preferential Are Services Commitments in Regional Trade Agreements?'. OECD Trade Policy Working Papers, No. 106.

- Nicolaïdis, K. (1999) 'Minimising Agency Costs in Two-Level Games: Lessons from the Trade Authority Controversies in the United States and European Union'. In Mnookin, R.H., Susskind, L.E. with Foster, P.C. (eds) *Negotiating on Behalf of Others: Advice to Lawyers, Business Executives, Sports Agents, Diplomats, Politicians, and Everybody Else* (London: Sage).
- Nicolaïdis, K. and Meunier, S. (2002) 'Revisiting Trade Competence in the European Union: Amsterdam, Nice and Beyond'. In Hosli, M. van Deemen, A. and Widgrén, M. (eds) *Institutional Challenges in the European Union* (London: Routledge).
- O'Boyle, M. (2005) 'Mexico, European Union Exchange Proposals to Deepen FTA in Services, Farm, Investment'. *International Trade Reporter*, 14 March.
- Phillips, N. (2005) 'U.S. Power and the Politics of Economic Governance in the Americas'. *Latin American Politics and Society*, Vol. 47, No. 4, pp. 1-25.
- Pilegaard, J. (2009) '... and Never the Twain Shall Meet? An Institutional Perspective of EU Trade and Development Policies in the Context of the EPA Negotiations'. In Faber, G. and Orbie, J. (eds) *Beyond Market Access for Economic Development: EU-Africa Relations in Transition* (London: Routledge).
- Pollack, M.A. (2003) *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU* (Oxford: Oxford University Press).
- Ravenhill, J. (1985) *Collective Clientelism: The Lomé Conventions and North-South Relations* (New York: Columbia University Press).
- Ravenhill, J. (2004) 'Back to the Nest? Europe's Relations with the African, Caribbean and Pacific Group of Countries'. In Aggarwal, V.K. and Fogarty, E.A. (eds) *EU Trade Strategies: Between Regionalism and Globalism* (London: Palgrave Macmillan).

- Shadlen, K. (2008) 'Globalisation, Power and Integration: The Political Economy of Regional and Bilateral Trade Agreements in the Americas'. *Journal of Development Studies*, 44, No. 1, pp. 1-20.
- Sbragia, A. (2010) 'The EU, the US, and Trade Policy: Competitive Interdependence in the Management of Globalisation'. *Journal of European Public Policy*, Vol. 17, No. 3, pp. 368-82.
- Shaffer, G.C. (2006) 'What's New in EU Trade Dispute Settlement? Judicialisation, Public-Private Networks and the WTO legal order'. *Journal of European Public Policy*, Vol. 13, No. 6, pp. 832-850.
- Siles-Brügge, G. (2011) 'Resisting Protectionism after the Crisis: Strategic Economic Discourse and the EU-Korea Free Trade Agreement'. *New Political Economy*, 16 (5).
- Stevens, C. (2006) 'The EU, Africa and Economic Partnership Agreements: Unintended Consequences of Policy Leverage'. *Journal of Modern African Studies*, Vol. 44, No. 3, pp. 1-18.
- Stevens, C. (2008) 'Economic Partnership Agreements: What Can We Learn?'. *New Political Economy*, Vol. 13, No. 2, pp. 211-23.
- van den Hoven (2007) 'Bureaucratic Competition in EU Trade Policy: EBA as a Case of Competing Two-Level Games?'. In Faber, G. and Orbie, J. (eds) *European Union Trade Politics and Development: 'Everything But Arms' Unravelling* (Abingdon: Routledge).
- van den Hoven, A. (2002), 'Interest Group Influence on Trade Policy in a Multilevel Polity: Analysing the EU Position at the Doha WTO Ministerial Conference'. RSC Working Paper, No. 2002/67.

- van den Hoven, A. (2004) 'Assuming Leadership in Multilateral Economic Institutions: The EU's "Development" Discourse and Strategy'. *West European Politics*, Vol. 27, No. 2, pp. 256-83.
- VanGrasstek, C. (1998) 'What is the FTAA's Role in the USA's Global Strategy?'. *Capítulos del SELA*, Vol. 54, pp. 163-173. As cited in N. Phillips (2005) 'U.S. Power and the Politics of Economic Governance in the Americas'. *Latin American Politics and Society*, Vol. 47, No. 4, p. 9.
- Waltz, K. (1959) *Man, the State, and War* (New York: Columbia University Press).
- Woll, C. (2006) 'Trade Policy Lobbying in the European Union: Who Captures Whom?'. Max-Planck-Institut für Gesellschaftsforschung Working Paper, No. 06/07.
- Woll, C. (2008) *Firm Interests: How Governments Shape Business Lobbying on Global Trade* (Ithaca: Cornell University Press).
- Woolcock, S. (2005) 'European Union Trade Policy: Domestic Institutions and Systemic Factors'. In Kelly, D. and Grant, W. (eds) *The Politics of International Trade in the Twenty-First Century: Actors, Issues, and Regional Dynamics* (Basingstoke: Palgrave).
- Woolcock, S. and Hodges, M. (1996) 'EU Policy in the Uruguay Round'. In Wallace, H. and Wallace, W. (eds) *Policy-Making in the European Union*, 3rd edn (Oxford: Oxford University Press).
- Wunsch-Vincent, S. (2003) 'The Digital Trade Agenda of the US: Parallel Tracks of Bilateral, Regional and Multilateral Liberalisation'. *Aussenwirtschaft*, Vol. 58, No. 1, pp. 7-46.
- Young, A.R. (2007) 'Negotiating with Diminished Expectations: The EU and the Doha Development Round', in Lee, D. and Wilkinson, R. (eds) *The WTO after Hong Kong: Progress in, and Prospects for, the Doha Development Agenda* (London: Routledge).

Zimmermann, H. (2007) *Drachenzähmung: Die EU und die USA in den Verhandlungen um die Integration Chinas in den Welthandel* (Baden-Baden: Nomos).

Zoellick, R.B. (2002) 'Unleashing the Trade Winds'. *The Economist*, 5 December.