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The EU has signed a plethora of bilateral and regional agreements since its inception, as well as being a key player in the multilateral trade institutions. This binary trade strategy, combining multilateralism with bilateralism/regionalism has been characteristic of its external trade relations. Even during its attempt to “manage globalisation” through favouring the multilateral approach in the late 1990s and early 2000s, the EU continued to negotiate Preferential Trade Agreements (PTAs).

Yet, there are two major differences between the maelstrom of bilateral trade negotiations that the EU has launched since the mid-2000s and the agreements signed in the past. The first is that bilateral agreements up until 2006 served principally non-economic purposes. In the past, EU economic interests were served by multilateral agreements while neighbourhood and development objectives were pursued through bilateral or regional means. PTAs justified purely by economic interests are a trademark of the 21st century. The second difference is that the EU has sought to establish new-generation free trade areas (FTAs) with non-European developed countries. The agreement with South Korea entered into force in 2011 and, in 2013, the EU reached an agreement with both Canada and Singapore and started negotiations not only with the United States (US) but also with Japan. Is the EU's new bilateralism endangering multilateralism?

Just like previous European Commission trade strategy papers *Trade for All* argues that it is the other way round: EU bilateralism is designed to help multilateralism. This article shows that this outcome is not obvious. While EU bilateralism may promote multilateralism, it could also hinder it. On the other hand, for a bilateral EU approach to promote multilateralism, the multilateral system of governance must not be deadlocked. In the first section of this paper, the European Commission's perception that the EU bilateral approach does not run counter to its multilateral approach is reviewed in a critical manner. The second section is devoted to explaining the need to add a multilateral condition to that reasoning.

The European Commission's reasoning

The EU's bilateral trade strategy since 2006, including the Transatlantic Trade and Investment Partnership (TTIP), has been justified by the European Commission on the basis that deep and comprehensive trade agreements are compatible with multilateralism. The Commission's argument is the following: preferential agreements that allow for progress on what has been achieved at multilateral level (WTO+ topics) and in areas not already covered by the World Trade Organization (WTO-X items) may be considered stepping stones rather than stumbling blocks for multilateral liberalisation because they allow both for more trade creation than diversion and prepare the ground for the multilateralisation of their provisions. In other words, the EU's recent bilateral negotiations and agreements should be seen, at worst, as complementary to multilateral negotiations in the Doha Round and at best as promoters of them.

On page 10 of its *Global Europe* strategy published in 2006, the European Commission specifically states that:

Free Trade Agreements (FTAs), if approached with care, can build on WTO and other international rules by going further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalisation ... To have a positive impact FTAs must be comprehensive in scope, provide for liberalisation of substantially all trade and go beyond WTO disciplines. The EU's priority will be to ensure that any new FTAs, including our own, serve as a stepping stone, not a stumbling block for multilateral liberalisation.

In its 2010 *Trade, Growth and World Affairs* strategy, the message remained the same: "the bilateral is not the enemy of the multilateral. The opposite may hold truer: liberalisation fuels liberalisation" (p. 5). In its 2015 *Trade for All* strategy, the message is even stronger: "The EU needs to pursue bilateral and regional agreements in a manner that supports returning the WTO to the centre of global trade negotiating" (p. 29).

This argumentation takes into account several decades of debate on the complementarity of bilateral and multilateral approaches to trade addressed from different perspectives by experts in international law and international economic policy. In line with Article XXIV of the General Agreement on Tariffs and Trade (GATT), it accepts that, while both approaches may reinforce each other, bilateralism may hinder multilateralism and hence such preferential agreements should only be allowed under certain conditions. Article XXIV allows for bilateral agreements establishing FTAs or customs unions if they ensure greater trade liberalisation. More specifically, these agreements must meet certain conditions to be accepted:¹

1. Article XXIV takes into account the Understanding signed in the Uruguay Round intended to clarify and specify some aspects of the article that had led to controversies and different interpretations.

- 1) They must affect all commercial exchanges or an "essential" part of them.
- 2) In the case of customs unions, the common external tariff should not imply greater protection against third countries. If this is so, the union should compensate for the added protection with tariff reductions in other tariff headings.

3) Regional arrangements should be carried out within a maximum of 10 years.

The validity of these conditions has been endorsed by the analysis of the bilateralism-multilateralism rapport conducted from an economic policy perspective. Economists such as Baldwin (2006) have argued that bilateralism and multilateralism may feed back into each other and in fact have done so. This position is based largely on the effects of the trade creation that result from bilateral agreements and considers that these arrangements may be the building blocks of multilateralism in the medium to long term. Other authors such as Bhagwati (2008) argue instead that bilateralism can erode multilateralism mainly through trade diversion effects, that is, the inherent discrimination in market access these agreements entail. This view sustains that bilateral agreements are stumbling blocks to the multilateral system, as such a tangle of agreements – “spaghetti bowls” – hinders trade. As both positions are based on empirical evidence, one may conclude that the nature of PTAs can determine their compatibility with the multilateral system: the more an agreement favours trade creation over trade diversion the more likely it is to support the multilateral system.²

In tune with this conclusion, the European Commission argues that its bilateral approach is compatible with multilateralism because of its nature. As EU bilateral agreements – especially those with developed countries – cover WTO+ and WTO-X issues, they should only enable progress in trade liberalisation, never a pull-back from it. WTO+ issues involve progress on market access for both goods and services with provisions not only on discriminatory measures (such as tariffs in the case of goods) but also on regulatory convergence in the technical, sanitary and phytosanitary areas. WTO-X issues involve progress in rule convergence. Following the *World Trade Report 2011*, the main policy areas covered by WTO-X provisions are: competition policy, investment, movement of capital, and intellectual property rights not covered by TRIPS. The next largest group of policy areas are: environmental laws, labour market regulations, and measures on visa and asylum. The European Commission therefore assumes that the more ambitious the agreement in terms of regulatory and rule convergence, the more positive the net effect on trade creation and trade diversion.

This rationale cannot be accused of lacking analytical support. The WTO itself accepts that when PTAs focus primarily on reducing non-tariff barriers their results are expected to benefit third countries (less trade diversion effects), since: “By their very nature, some deep integration provisions are *de facto* extended to non-members because they are embedded in broader regulatory frameworks that apply to all trading partners” (World Trade Report 2011:168). Provisions regarding competition policy or state-owned firms, for example, would immediately benefit all foreign producers. Other deep integration provisions such as common standards are expected to have net trade creation effects with third countries after an adaptation period.

Preferential deep and comprehensive agreements can of course be designed to create new trade diversion effects, especially through different norm recognition schemes and a plurality of norms of origin. Blanchard (2015: 92) shows that “preferential agreements can allow

2. It should be noted that for some authors like Baldwin, trade diversion, that is, any bilateral or regional agreement containing inherent discrimination against third countries can trigger a domino effect by encouraging third countries to participate in the preferential agreement.

governments to harness the trade liberalizing potential of [vertical] international ownership” by creating potential trade-investment complementarity. De Ville and Siles-Brügge (2016) attest that the TTIP is unlikely to lead to global standards because the prevalent mode of regulatory cooperation will be neither harmonisation nor *erga omnes* mutual recognition as in the European Single Market but *bilateral* mutual recognition of regulations. In other words, these authors sustain that most regulatory equivalence will not be extended to suppliers from outside the TTIP. Such trade diversion, however, would not be the result of an increase in protection with regard to third countries but by discriminating when reducing barriers to trade. In other words, third countries would not be facing new barriers.

In any case, the Commission assumes that such agreements will not go against multilateralism due to their nature, that is, their capacity to generate a positive net effect of trade creation and diversion. In *Trade for All*, the EU’s bilateral approach has the power to support returning the WTO to the centre of global trade negotiating. Since *Global Europe*, it has been expected to prepare the ground for the next level of multilateral liberalisation. Such reasoning implies the potential technical feasibility of multilateralisation of bilateral or regional agreements. As these PTAs cover areas that have not yet been agreed upon in the WTO, their provisions should have the potential to become multilateral, especially if these provisions are similar in different bilateral or regional agreements.

Mega-regionals such as the TTIP could have the capacity to transform “spaghetti bowls” (chaos resulting from many different FTAs) into “lasagna dishes” (Estevadeordal et al., 2013). These would be separate processes from the WTO but complementary in their aim of reducing transaction costs inherent in the “spaghetti bowls”. As Abbott puts it: “The WTO might, in effect, ‘free-ride’ on all the PTA activity taking place” (2007: 582). In fact, one frequent example of how bilateral agreements can be regionalised and even become multilateral is the creation of the pan-European system of rules of origin in 1997 (Baldwin, 2013).³ Sticking with the metaphor, creating lasagne would be a step towards the development of a multilateral super-pizza.⁴

In *Trade for All*, the European Commission explicitly commits itself for the first time to an open approach to bilateral and regional agreements so as to “develop contributions to address key challenges facing the WTO based on solutions achieved in bilateral and regional initiatives” (p.30). This open approach entails a readiness to enlarge its FTAs to third countries willing to join them (including the TTIP) and explore the possibility of extending “accumulation of origin”.

This is not, however, self-evident. As Bhagwati remarks: “Lasagna cannot be made from spaghetti: it needs flat pasta. And pizza cannot be made from lasagna either!” (2008: 94-95). Multilateralisation may not take place even if bilateral agreements are technically compliant. These agreements can divert multilateral negotiating capacity and create valid alternative market access for key economic actors (Conceição-Held, 2013). They can also provoke a negative reaction from third countries. Some economists argue that multilateralisation of TTIP rules may not occur because China and other large emerging markets are big enough

3. The system led to the homogenisation of the rules of origin the EU had agreed with eastern European countries through a system of diagonal accumulation creating a “customs union of rules of origin” in the words of Baldwin (2013: 6). The EU has extended this system of rules of origin to its Mediterranean partners and other bilateral agreements.
4. Another way to multilateralise bilateral agreements in the area of at-the-border barriers would be to make them irrelevant by binding “most favoured nation tariffs” or WTO tariffs to zero for a set of goods (as the Agreement on Information Technology did in 1996). If tariffs are zero for all imports, irrespective of origin, granting bilateral or regional preferences would no longer make sense (Baldwin, 2006). This is in fact the case for nearly 50% of world trade.

to reject an adaptation to TTIP rules – thus leading to global market fragmentation – even if they are not yet in a position to set up their own systems of deeper disciplines. While the exporters among the emerging trade powers will have to adapt to TTIP-based norms, their public authorities may reject them and “continue to attract offshored factories with a ‘my internal market for your factories and technology’ deal” (Baldwin, 2012: 20). On the other hand, such mega-regionals may set up overly forward-looking rules in areas that less developed economies would struggle to accommodate.⁵ The countries that tend to lose most decision-making power in the context of bilateral negotiations are the least economically powerful (Bhagwati, 2008; Abbott, 2007).

To conclude, while the European Commission’s argument is plausible, the probability that its bilateral approach will feed its multilateral approach is not one hundred per cent. Multilateralisation cannot be expected to automatically follow its bilateral approach even in cases when such multilateralisation is technically achievable. So, when would multilateralisation take place? How can we ensure that it would take place?

The multilateral condition

Baldwin and Evenett (2011) have argued that bilateralism can complement multilateralism when the multilateral system is active, and may be a substitute for it when the multilateral system is stagnant. In their words:

... regionalism per se was not the problem. Multilateralism and regionalism have gone hand in hand throughout the GATT/WTO’s history. Regional and bilateral arrangements were embedded in a vibrant and reactive multilateral system – a system that could and frequently did update its disciplines on preferential arrangements. Regionalism in a world where multilateralism was permanently deadlocked would be a very different proposition – regionalism would begin to act as a substitute to multilateralism rather than a complement (Baldwin and Evenett, 2011: 5-6).

The existence of a nexus between the multilateral context and bilateral agreements has also been underlined by other authors. In their preliminary evaluation of NAFTA, Bergsten and Schott argue that: “The startup of NAFTA negotiations in 1991 gave renewed impetus to the Uruguay Round in the GATT, which had stalled in 1990 because of US-Europe differences over agriculture, by reminding the Europeans that the United States could pursue alternative trade strategies” (1997: 3). The authors further argue that the congressional passage of NAFTA in November 1993 together with the launching of a new era of cooperation via the APEC summit in Seattle “played a critical role” in bringing the Uruguay Round to a successful conclusion in the following month.

Mansfield and Reinhardt, following a systematic approach, claim that “developments at the heart of GATT/WTO encourage its members to form PTAs as devices to obtain bargaining leverage within the multilateral regime” (2003: 829). Reciprocal preferential arrangements

5. Business Desk of *The New Zealand Herald*, “TPP risk weaker world trade system –ex WTO boss”, 21 July 2014. Interview with Dr Supachai, former WTO Director-General (2002-2005).

would both furnish states with insurance against the emergence of conditions within GATT/WTO that could threaten their economic interests (such as a failure to reach agreement in multilateral talks) and give them a greater voice in multilateral trade talks by increasing their market power. Their econometrical analysis indicates that developments within the multilateral regime that can create incentives to preferential trade agreement creation include the periodic multilateral trade negotiations sponsored by GATT/WTO. This result has been vindicated by Baccini and Dür in a more recent quantitative analysis. These authors also find that “countries are more likely to sign an agreement in tandem with negotiations at the WTO level” (2012: 75).

Taken together, these studies highlight that the multilateral context may be favourable or unfavourable to the compatibility between bilateralism and multilateralism. In particular, they seem to indicate that the more difficulties multilateral negotiations face, the more likely it is that members will negotiate bilateral agreements as a strategy to get agreement at the multilateral level or at least as an insurance against the round stalling or failing to ensure certain market access results. However, if these difficulties are too severe, they may lead towards the bilateral agreements becoming substitutes to a multilateral accord. On the basis of this analytical understanding, EU bilateralism could only be a promoter of multilateralism in certain contexts and the European Commission should include the multilateral context in the equation. For the multilateralisation of PTAs to be possible, the multilateral system should not be in too severe difficulties. Table 1 summarises this analytical insight using the building and stumbling blocks terminology.

Table 1. Relationship between bilateral and multilateral negotiations

Multilateral negotiations difficulties	Difficulties NOT too severe	Difficulties too severe
Incentive to bilateral agreements	Bilaterals as building blocks for multilateralism (facilitators)	Bilaterals as stumbling blocks to multilateralism (substitutes)

Source: author's own.

The literature does not provide a definition of what should be considered too severe multilateral negotiation difficulties. Nevertheless, one would expect these difficulties to be at least apparent, that is, to be recognised by observers as especially severe, which is to say, that they prevent any possibility of agreement in the short or even medium term. In the case of the Doha Development Round (DDR) we can find such a period after agreement was nearly achieved in both July and December 2008. Though the DDR had been declared dead by some analysts at different times, it became *vox populi* after 2008. In fact, according to *Bridges Weekly* of 11 January 2012, the WTO Ministerial Conference in December 2011 formally concluded that DDR was in a “stalemate”. Although the financial crisis that broke out in 2008 did not challenge the idea that trade should be as free as possible, the difficulty in reaching agreements at multilateral level put into question the ability of the WTO to be effective. It may even be argued that the difficulties enacting the mini-package agreement achieved in December 2013 at

the Bali Ministerial Conference did not do much good to rebuild the WTO's image. After the Nairobi agreement in December 2015, however, there is a new optimism in the air (see Jara in this monograph).

One could therefore interpret that while the bilateral negotiations that the EU started in the mid-2000s were not intended to substitute for a multilateral agreement, the new-generation FTAs the EU has sought to establish with non-European developed countries since 2009, including the TTIP, could be attempts to substitute rather than promote multilateralism. In a context of dynamic multilateral negotiations, these bilateral agreements may just be a way to have more negotiating power. In a context of severe difficulties in multilateral negotiations, however, such bilateral agreements have the potential to become substitutes for a multilateral approach, especially on WTO-X issues. From this perspective, the European Commission's reasoning based on the technical potential for the multilateralisation of EU bilateral trade agreements would not be good enough and EU trade policy would have been giving precedence to bilateralism over multilateralism from 2009 to 2015.

There is nevertheless an alternative vision: the exit tactic perspective. Observers agree that a break in the structure of multilateral trade governance took place at the WTO Ministerial Conference held in Cancun in 2003, confirming dissatisfaction among certain members that emerged in 2001 (Seattle WTO Ministerial Conference). Despite concessions to developing countries, consensus building in both the GATT and the WTO has largely been determined by the US, in later decades in collaboration with the EU, along with Japan and Canada – the so-called Quad. The post-World War II structure of international trade was referred to as “the club model” where small numbers of rich-country trade ministers controlled the agenda and made deals because the fundamentals of policy were cross-nationally consistent.

In Cancun, India and Brazil led a new coalition called the G20 that also included China (which became a WTO member in 2001) and rejected the agreement on agriculture proposed by the US and the EU, challenging the classic Western leadership on trade governance. From 2004 onwards, new consensus groups in various formations emerged: the so-called “new Quad” (EU, US, India and Brazil), the G5 (with Australia), G6 (with Japan) or G7 (with China). Analysts speak of a period of “structural power shifts”, as the old Quad hegemonic position dissipated, but without a new power formation able to provide effective leadership on concluding the DDR (Barbé et al., 2016).

It is in this new challenging environment that EU bilateralism has been revived. While the EU's first reaction to Cancun was to centre its bilateral attempts on the emerging economies, after the 2008 failure to reach an agreement in the DDR the EU shifted the focal point back to the members of the old trade “club” that had controlled the governance of the trade multilateral system up until Cancun. This new locus of EU bilateralism is much more dangerous for multilateralism. While bilateral agreements with emerging economies could not offer an alternative to a DDR agreement, PTAs with old Quad members could make the EU less dependent on a multilateral approach. Yet the potential creation of a preferential market among developed countries also increases the pressure upon the new trade veto players to lower their expectations

and facilitate a multilateral compromise. The threat of isolation may help break the WTO negotiating deadlock. This is what Steinberg has called an “exit tactic” (2002: 349).

There is contradictory empirical evidence at the time of writing. On the one hand, there is some evidence that China may be taking the path to start an FTA race. China is now actively pursuing the Regional Comprehensive Economic Partnership (RCEP)⁶ and the China-Japan-South Korea FTA as well as a possible Asia-Pacific FTA and a network of FTAs with the countries located along the old Silk Road. Such a race would lower the probability of the multilateralisation of EU bilateral agreements because it would offer alternative BATNAs (Best Alternative to a Negotiated Agreement) as well as alternative possible global standards. On the other hand, the sectoral agreements reached at the Nairobi WTO Ministerial Conference of December 2015 confirmed that while the principle of single undertaking of the Doha Round is dead, PTAs have not been the death knells for any global agreement. It may indicate that the exit strategy is working and that the multilateral system is no longer deadlocked (although whether that means the EU and US have regained their position of strength in international trade governance remains to be seen).

Conclusion

This article has argued that the EU’s new bilateralism may be endangering multilateralism. While the European Commission’s claim that the WTO+ and WTO-X nature of the agreements should be taken into account to establish the compatibility of bilateral and multilateral trade approaches is based on a solid body of research, it is not a sufficient condition. Their complementarity may also be influenced by what is happening at multilateral level. Difficulties in multilateral negotiations lead towards new bilateral agreements as a strategy to reach agreement at multilateral level, but when these difficulties become too severe bilateral agreements may be a substitute for multilateral agreements and ensure new market access.

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6. The RCEP includes the 10 ASEAN countries and six of its RTA partners: China, India, Japan, South Korea, Australia and New Zealand.

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