EUROPE DIVIDED BUT UNITED: INSTITUTIONAL INTEGRATION
AND E.C.-U.S. TRADE NEGOTIATIONS SINCE 1962

by

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ABSTRACT

The European Community (EC) has reshaped power relations in the international
arena and influenced the nature of the world political economy through its role in
international trade negotiations. From the inception of the EC, its constituent member states
have delegated their authority to negotiate international trade agreements to the
supranational level. They are obligated to first reach a common bargaining position, which
is then defended at the international level by Community negotiators. How does this “single
voice” obligation affect the likelihood of an international agreement, the content of the
agreement, and the individual countries’ chances at influencing the final agreement? More
generally, what are the bargaining effects of combining negotiating forces with others? This
dissertation also attempts to shed light on the “paradox of unity”: why has the bargaining
leverage of the EC in international trade negotiations not progressed at the same time, and
with the same intensity, as the deepening of its institutional structure and the increase of its
relative capabilities in the world economy over its forty years of existence?

Building on the theoretical framework of “new institutionalist” analysis, this
dissertation finds that three factors mostly determine the likely impact of negotiating as a
single entity on international agreements: the defensive or offensive nature of the
negotiating context; the internal voting rules of the negotiating bloc; and the negotiating
competence delegated to supranational agents. Contrary to the political conventional
wisdom about internal unity as external strength, in certain circumstances being “divided
but united” could give the EC an edge in international bargaining. Case-studies of EC-US
negotiations on agriculture in the Kennedy Round (1964-1967) and Uruguay Round
(1986-1993), on public procurement (1990-1994), and on transatlantic “open skies”
aviation agreements (1992-present) all confirm that, for a given set of national preferences,
key institutional features of the EC’s trade policy-making process affect the process and
outcomes of international trade agreements. Recent institutional change in the EC towards a
return to intergovernmentalism in trade policy, however, suggests that member states may
forfeit future international influence for the sake of national sovereignty.

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Sophie Meunier-Aitsahalia is currently a Lecturer in International Business at the University of Chicago’s Graduate School of Business, where she has developed and taught the class “The European Union: Business and Politics.” She received her B.A. in Political Science from the Institut d’Etudes Politiques de Paris in 1989, with a double major in International Relations and Economics and a special concentration in European Community studies. While a doctoral student at MIT focusing on International Political Economy, she has been also associated with the Harvard University’s Minda de Gunzburg Center for European Studies (since 1991) and the University of Chicago’s Program for International Politics, Economics and Security (1993-1995). Her publications include “Divided but United: European Trade Policy Integration and EC-US Agricultural Negotiations in the Uruguay Round,” in The European Union in the World Community, Carolyn Rhodes ed. (Boulder, CO: Lynne Rienner, forthcoming Summer 1998) and “Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision” (co-authored with Karen J. Alter), Comparative Political Studies, Vol. 26, No. 4, January 1994.
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This dissertation was born out of my dual personal interests in European integration and Transatlantic relations. My politically formative college years at the Institut d’Etudes Politiques de Paris coincided with the explosion of awareness and enthusiasm about the European Community in the wake of the “relaunching” of Europe in the mid-1980s. As a child deeply moved by my parents’ stories about the hardship and devastation brought to their families by World War II, I naturally became convinced of the desirability of political and economic integration among the peoples of Europe. I therefore rode the wave of enthusiasm surrounding the signing of the Single European Act and graduated from Sciences Po with a special concentration in European Community studies, having co-founded two student organizations designed to promote the goal of European integration. Nevertheless, I always displayed more reservation and skepticism than was found within the unconditional pro-European militantism of some of my classmates. In particular, I was intrigued by the apparent self-centeredness of the 1992 program and was concerned by the pro-EC discourse’s lack of attention to any external consequences of further European integration. Armed with some personal familiarity with American culture and intellectual curiosity about American political science, I therefore decided to gain some distance from Europhoria and study the external effects of European integration from an outside perspective.

The initial argument that I previewed in the early phases of the dissertation process was quite different from the argument I have ended up making in the final version. I originally set up the project to prove that an increase in European internal integration would
automatically translate into an increase in Europe’s international power. It would be easy, I believed, to compare the relative evolution of European integration and the EC’s external bargaining power. This was, after all, the common wisdom propagated by European media and politicians. The contribution of my dissertation would then be to find explanations for this positive correlation. But my exploratory research rapidly revealed the unfeasibility of such a project. First, attempting to measure integration and bargaining power proved to be a Herculean task --and a sure invitation to methodological criticism. More importantly, a survey of some major negotiations in which the EC had been involved suggested a much more nuanced picture than the conventional wisdom assumed. In some cases, it even seemed impossible to argue that the European Community has more external bargaining leverage today than it did thirty years ago. I was forced to undertake a radical revision of my initial argument and set out instead to explore the conditions in which integration among nations reshaped power relations in the negotiation of international trade agreements. Luckily, I had the intellectual honesty and courage to scrap up my old drafts and political convictions. The results have been a more substantial contribution to the international political economy debate and a healthy maturation of my own beliefs and assumptions about European integration. I hope to convince the reader that I made the right decision.

For their generous financial support at each stage of this project, I want to extend my gratitude to the MIT Department of Political Science; the French Ministère des Affaires Étrangères; the Program for the Study of Germany and Europe at Harvard University’s Minda de Gunzburg Center for European Studies; the MacArthur Foundation Summer Grant at the MIT Center for International Studies; the John Fitzgerald Kennedy Presidential Library; the European Community Studies Association; and the Center for International Business Education and Research at the University of Chicago’s Graduate School of Business.
This dissertation owes a lot to the MIT Department of Political Science where it was initially developed. The exceptional quality of the teaching and the personal attention to students' needs made possible by the relatively small size of the department have indelibly framed my approach to political science and my professional ethics. I am grateful and proud to have been part of this department. I would like in particular to thank Helen Ray for helping me navigate bureaucratic hurdles during all these years and for making sure that I had not disappeared from the face of the earth even after I moved to Chicago, went on numerous research trips to Europe, and became a mother. I feel also extremely fortunate to have been an associate of the Minda de Gunzburg Center for European Studies at Harvard University, where the exceptionally stimulating environment proved as precious for this project as it proved distractive. I am particularly grateful to Andy Moravcsik for his dedication to the seminar on European integration and for his commitment to raising the visibility of European integration studies, as well as to Abby Collins for keeping the Center such a busy and beautiful place. Finally, I wrote this dissertation at the University of Chicago while a graduate research associate at the Program on International Politics, Economics and Security (PIPES), and later a Lecturer in International Business at the Graduate School of Business. I want to thank Charles Lipson and Duncan Snidal for welcoming me as a part of the PIPES family, Jim Fearon for initiating me to game theory, and Dean Robert Hamada for giving me the chance to develop a course on the European Union for the MBA program. The respectful encouragement provided by my students turned out to be a source of strength in the last months of this dissertation.

This study is based extensively on primary research and interviews. I want to thank Jacques Delors, as well as all the European and American officials who generously agreed to answer my questions, most often under conditions of anonymity, in particular at DG 1, the cabinet of Karel Van Miert, the cabinet of Leon Brittan, the USTR, and the USDA. Special thanks also to the staff of the Sciences Po library, the library of the EC

I owe my greatest intellectual and professional debt to Suzanne Berger, who provided a welcoming bridge between French and American academia upon my arrival in the United States and who has been a constant source of guidance ever since. She has supervised this study from the first pages of the first dissertation prospectus to the last pages of the final version, offering encouragement and criticism at every step in the process. Her intellectual rigor, her professional discipline, and her clear analyses of the determinants of politics have provided me with the challenges and inspiration for a life of scholarship. It is hard to imagine a better mentor, and I feel extremely fortunate to have been working so closely with her. Ken Oye has also been very instrumental in the development of this dissertation. A wonderful teacher, he helped me design the project in one of his graduate seminars and later contributed to improving this study with his amazing ability to quickly grasp the essence of arguments and put them in broader perspective. The third member of my dissertation committee, Stanley Hoffmann, is one of the reasons why I came to the United States to do a PhD in the first place. His traditional, more European approach to international political analysis, as well as his jovial conversations about French politics, were for me a reassuring beacon in my first few years as graduate student. I feel very honored to have counted him as one of my dissertation advisers.

I also want to thank all the scholars who were kind enough to provide me with helpful comments on various parts of this project. I am particularly grateful to Karen Alter, Maria Green Cowles, Brian Hanson, John Keeler, Andrew Kydd, Andrew Moravcsik, Kalypso Nicolaïdis, Rob Paarlberg, Mark Pollack, Carolyn Rhodes, Alberta Sbragia, and Martin Staniland. I also want to thank the participants of the December 1993 and December 1994 Harvard University Graduate Student Workshop on European Integration; the May 1996 European Community Studies Association Workshop "The European Union in the
World Community”; the two PIPES workshops at the University of Chicago where I presented the central arguments of this dissertation; and the various ECSA, APSA, and ISA conferences in which I presented various chapters in different stages of completion. Their comments and criticisms have challenged me to face my own biases and improve the overall quality of the project. Finally, I want to offer special thanks to Amy Ambrose, who volunteered to read the entire manuscript and offered stylistic improvements.

On the personal front, I would like to thank my parents for their unqualified belief, for as long as I can remember, that I know best what is best for me in all walks of life. I will be eternally grateful that they did not show selfishness in letting their only child cross the Atlantic in pursuit of academic dreams—perhaps out of ignorance of the real duration of a Ph.D. in political science... I am lucky to have inherited a little bit of my mother’s prodigious memory and some of my father’s curiosity for the details of different cultures (as well as their common love of food), and I hope that these assets will help me throughout my career as a scholar. I also want to thank my late great aunt Mathilde Rubenfeld, who taught me to be a child of the world without forgetting one’s roots and whose generous hospitality year after year at her Long Island house fostered my vocation as a student of Transatlantic issues. My gratitude goes as well to my late grandmother Georgette Meunier, an especially graceful woman who was reassured before her death that I had chosen the safe haven of academia instead of the tempting realm of politics. I could not have finished this dissertation in a timely fashion, and without entirely losing my sanity, if not for the devotion of Irena Mnich who helped me cover the home front when it seemed that the world could halt until my project was completed. Special thanks also to my friends Maria Green Cowles, for her cheerful companionship over the years, and Judith Weinstein, for proving that there is life beyond academia.

The contribution of my son Idir to this dissertation is difficult to pinpoint. On the one hand, his pressing needs certainly slowed down the process and at many times drained
all the creative energy that I had. On the other hand, his existence has brought me such incomparable joy that I am not sure I would have had the courage to complete the project if not for his unconditional love and my willingness to teach him pride of accomplishment. Surrounded by parents, grandparents, and so many family members who hold doctorates, he now believes that writing a thesis is a normal stage of life, like starting school, getting married, and owning a car. When he grows up, he wants to write a thesis on mice, preferably blue, and teach children how to have fun. I shall not deter him from embarking on the path to writing a dissertation, but I am sure that he will change his mind many times before he reaches the right age.

The greatest inspiration of all, however, I have derived from my husband, Yacine Ait-Sahalia, whose striving for excellence, whatever task he engages in, I have not ceased to admire. His role in my life and that of this project has been so tremendously important that no acknowledgment could even start to convey all the love and gratitude that I feel for him. We came together to pursue graduate studies at MIT. Without his impulse, I would never have had the boldness to break free from the educational and professional mold carefully crafted for me and my peers by the French administrative system. Without his loving friendship, I would not have withstood the demanding requirements of graduate life as a stranger in a strange land. Many times over the past ten years, he could have chosen the easy route of supporting my on-and-off temptations of an alternative career as a food writer, which might have been more directly rewarding for the household. I praise him for instead giving me the strength and luxury to focus on my research, as well as for voicing healthy skepticism and putting academic achievements in perspective when the dissertation process was becoming overbearing. His emotional support has constantly provided an unquestioned backdrop for my pursuit of intellectual fulfillment, while his academic and personal accomplishments have always set the highest of standards. To him and to Idir, our greatest collaborative effort, I dedicate this thesis.
INTRODUCTION

“Europe is an economic giant but a political dwarf.” This metaphor starts or concludes many studies of the European Union (EU) as an international actor.1 The economic successes of the EU on the international scene stand in startling contrast with its foreign policy debacles, indeed. Its international political responsibilities have not advanced simultaneously with its global economic might. The few experiments towards creating a collective framework for foreign policy in Europe have either been doomed from the start, like the failed 1954 European Defense Community, or have lived only to be ridiculed for Europe’s incapacity to act, as was demonstrated by the Yugoslav crisis. Do these foreign policy failures mean that the European Community (EC), and now the European Union, have had no external impact?

Neither political scientists, nor politicians contest that European integration was above all an internal experiment, whose primary goals were to foster economic prosperity and political stability within the Community’s own borders. Concerns about the international role of the new entity being created were secondary to the primary internal objectives. Another reason for the inward-lookingness of the EU has been the unwillingness of its constituent member states to relinquish the same degree of national

1See, for instance, Cameron 1998. See also Willy De Clercq, chair of the judicial affairs and citizens’ rights committee in the European Parliament, pointing to the EU’s failure to provide a united foreign policy response to the Asian financial turmoil and crises over Iraq and Bosnia, reported in AFP, “EU a “political dwarf” bemoans Belgian minister,” 3 March 1998.
sovereignty in the "more nationally sensitive" realm of foreign affairs than they had in the economic arena. Whereas the member states have transferred the authority to negotiate trade policy, manage agricultural policy, regulate standards, and even make monetary policy decisions, to the collective level, no sizable power to voice a single position on foreign policy matters has been delegated to supranational representatives. Therefore few studies have attempted to identify systematically the nature of the EU influence in the world and its role in shaping the international system.²

Despite its sound-bite appeal, however, the metaphor of the EU as economic giant but political dwarf fails to capture the reality of the EU’s international power. While the EU still does not have the foreign affairs attributes of a unitary state, it does exercise international influence through other channels. First, the EU’s internal policies have some impact beyond the European borders. Whether the member states adopt EU-wide high labor standards, thus possibly triggering a delocalization of production outside the EU, or whether they deregulate their financial services, thus becoming more attractive to foreign investors and prompting some reorganization of their competitors’ own financial markets, the EU contributes to shaping the rest of the world.

Moreover, given its sheer economic size, the European Union is indeed a global power. Today the EU is the world’s largest trader, as well as the world’s largest single market. Its Gross National Product is larger than that of the United States, and it is the world’s largest investor. The size of its population, 370 million people, puts it third in the world, only after China and India. As such, the EU has had a major impact on the nature of the international political economy. In recent years, the EU has exerted a particularly liberalizing influence on the international trading of services and has actively contributed to the development of institutional rules within the World Trade Organization designed to

²The most recent and convincing approach is Rhodes forthcoming 1998.
prevent unilateralism. The EU’s international impact has increased over the years and should continue to increase in the years to come, as a result both of the expansion of the global trade agenda to new issues considered “domestic” policies until now and of the future enlargement of the EU to new member states from Central and Eastern Europe.

A final avenue through which the European Union asserts its international presence is international trade negotiations. Since its creation in 1957, the European Community (EC)\(^3\) has been one of the most influential players in international trade negotiations. Indeed, where it lacked an effective presence in the diplomacy and security realms, the EC has long compensated by a powerful external personality as a trade actor. The EC was originally set up as a customs union. A common customs tariff governed the entry of all goods into the EC, so that they could circulate freely within its internal borders. National member states were no longer allowed to negotiate their separate trade deals with the rest of the world. Instead, the EC became the sole interlocutor of the member states’ trading partners. Almost instantly from its inception, the fledgling institution negotiating as a single entity on behalf of its diverse member states has been able to impose its definite mark on all the successive rounds of multilateral trade negotiations in which it participated.

Being a successful trade negotiator has today become a central component of a state’s foreign policy. International trade negotiations are crucial in shaping the world political economy. They can direct international trade flows by bringing down tariffs and regulatory barriers. They touch on a growing number of issues, as all sectors of the economy become interdependent. They also involve an increasing number of players, with the effect of necessitating coalition-building and deemphasizing the traditionally central role

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\(^3\)For reasons of convenience and institutional accuracy, the designation "European Community" or "EC" will be primarily used throughout this dissertation. While the broader European institution was renamed "European Union" (EU) by the 1993 implementation of the Maastricht Treaty, the EC is still the official designation of the EU’s “first pillar” which is in charge of economic and trade policy.
of individual states. Finally, they can impose one particular vision of society to an increasingly globalized world economy, through the international spreading of certain norms and principles. Hence, as one of the world’s largest trade negotiators, the EC cannot be characterized as lacking international might --the European Union might be a security dwarf, but it is surely exerting considerable political power through its negotiating capacity, which affects an ever expanding range of issues from controlling the competitive environment to defending human rights and working conditions in third countries.

Even though the EC is now projecting considerable political power through the external impact of its internal policies, its sheer economic size, and its role as trade negotiator, its international political role has been overlooked by analysts focusing on more traditional aspects of “foreign policy” and by realist scholars for whom the EC is only a medium through which nation states aggregate their real power. In particular, the impact of the EC on international trade negotiations have never been systematically studied. We do not know with certainty what the existence of the EC adds to, or subtracts from, the international negotiating power of its member states. We intuitively suspect that negotiating as a single bloc increases the bargaining strength of its constituent members, but we do not know for sure how and why this increase occurs or even whether there is an increase at all. We also ignore how the grouping of the European states into a single entity affects the opportunities of third countries to exert their own power in trade negotiations. The primary objective of this dissertation is therefore to analyze how integration among nations reshapes power relations in the international arena.

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4See Hampson 1995 for a very interesting analysis of international negotiations, particularly multilateral negotiations.

5Such as the 1997 investigation by the EC of the Boeing-McDonnell Douglas merger in the US.
The central puzzle: external effects of internal integration?

From the inception of the European Community its constituent member states have delegated their authority to negotiate international trade agreements to the supranational level. They are obligated to first reach a common bargaining position, which is then defended at the international level by Community negotiators speaking with a “single voice.” The behavior of the EC in international trade negotiations is therefore characterized by a constant tension between the need to take into account the internal divergences among member states and the obligation to present a common front internationally --the EC is divided but united.

How does this “single voice” obligation affect the likelihood of an international agreement, the content of the agreement, and the individual countries' chances at influencing the final agreement? It is easy to comprehend why countries strengthen their individual voices by combining forces with others when their interests converge on a given issue. But what is the effect of being forced to negotiate as part of a single whole when the interests of the constituent parties are divergent? How has the institutional integration of trade policy in the EC affected its external bargaining capabilities and its effectiveness in shaping the international trading system? More generally, what are the bargaining effects of combining negotiating forces with others? These are novel questions that neither the political science nor the international trade literatures have addressed.

My dissertation analyzes the bargaining constraints and opportunities for the EC created by the obligation to negotiate as a single entity. It assesses which country has the most to gain or lose by negotiating as part of an indivisible whole when its interests diverge from those of its partners. It explores the conditions under which third countries can exploit or, on the contrary, be the victims of the EC’s cumbersome institutional structure. Finally,
it examines the impact of the "single voice" obligation on a series of trade negotiations with the United States, the EC's main trading partner.

**The effects of the EC's "single voice": a novel question**

Why has trade policy, unlike foreign policy, been transferred to the supranational level from the inception of the European Community? What are, in theory, the expected effects of the EC negotiating as a single bloc on international trade agreements? Despite its theoretical and practical salience, the literature on European integration has neither asked nor answered this question. Scholars in the Deutschian and, more recently, constructivist traditions have suggested in passing some relationship between the EC's internal features and external influence, as have some contributors to the neo-functionalist literature, but none have formulated testable hypotheses on this possible linkage.6

The lack of prior research on the subject, I assume, stems from the fact that European integration was long believed to be an experiment in the making—and an experiment perhaps bound to fail. As a result, scholars first addressed issues such as how the EC was created, where it was going, and through which process.7 When European integration proved indeed resilient and the EC expanded and deepened, the next wave of scholarship started to study the internal effects of European integration: how does it affect domestic politics? What is the impact of integration on national policies? This is the focus of most of the current literature on European integration. I believe, however, that since the EC has withstood forty years of progress and crises, it is time to finally address the issue of its external consequences. How does the process of integration in Europe affect

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7This is the classic neo-functionalism vs. intergovernmentalism debate exemplified by Haas 1958 and later Sandholtz and Zysman 1989 and Moravcsik 1991. See Caporaso and Keeler 1995 for an overview of the evolution of the scholarship on European integration.
outsiders? How does it affect the EC's own position in the world political and economic system? My dissertation is one of the first attempts at systematically studying the impact of the EC on the outside world.

Another explanation for the lack of scholarly focus on the question of the EC's external impact is the widespread assumption, both in political rhetoric and in the political science literature, that internal unity creates external strength. A comparison with the US trade policy-making process suggests that the authority to negotiate external trade agreements has been granted to the most centralized level of government, in part, to insulate trade policy from divisive domestic pressures and, in part, on grounds of bargaining efficiency. Has the EC indeed become increasingly effective in international trade negotiations as it has integrated and consolidated internally?

My dissertation starts from an intriguing empirical puzzle, which challenges this traditional assumption: in certain cases, integration and unified decision-making in the EC have indeed weakened Europe's bargaining power in successive rounds of trade negotiations with the United States. I call this puzzle the "paradox of unity." As the Community deepens and widens internally, it does not increase its external bargaining leverage directly. Why has this bargaining leverage in international trade negotiations not progressed simultaneously to, and with the same intensity as, the deepening of the EC's institutional structure and the increase of its relative capabilities in the world economy over its forty years of existence? Could it be that different institutional arrangements in the EC produce different external results? Despite the intuitive appeal of the assumption of unity as strength, we therefore need to probe its theoretical foundations in order to explain the paradox of unity. My dissertation represents the first systematic study of the bargaining effects of negotiating international trade agreements as a single bloc.
The argument: the EC as consequential institutional framework

This dissertation explains the "paradox of unity" by analyzing the differential effects of various institutional arrangements in the EC on its external stance. My central argument is that the EC's institutional structure exerts an independent causal effect on the process and outcome of international negotiations, given an exogenous distribution of national preferences. The EC can be a more or less efficient bargainer at the international level, I argue, depending on the internal rules that the member states use to aggregate their diverse preferences and delegate external negotiating authority.

My argument builds on the theoretical framework of "new institutionalist" theory, which has been developed primarily by scholars of American politics working within the rational choice tradition, and has found resonance in historical studies of European policy. More recently, some scholars of European integration have started to apply the insights of institutionalist analysis to the study of the EC. Here I apply the concepts and methodology of this new institutionalism to analyze the external impact of European integration. I argue that the EC is not merely a forum in which the European states exchange concessions. It is primarily an institutional framework that has been designed by, but can become constraining for, the member states. By examining specifically the interactions between the institutions of the EC and its external impact, I explore the role of institutional design in maximizing the EC's external bargaining potential.

I develop a multi-step model about the strategic implications of being forced to negotiate externally as a single entity. The argument starts by showing how different internal voting rules in the EC (unanimity or majority) produce different policy outcomes.

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9For instance see Tsebelis 1994; Garrett 1995; Pollack 1997; and Nicolaïdis 1998.
for a given set of national preferences. The second step of the argument introduces a novel distinction, based on existing negotiation literature, between negotiations of a “defensive” and “offensive” nature, depending on the identity of the party challenging the policy status quo. I define a negotiation as *defensive* when it is initiated by the EC’s opponent in order to change the European policy status quo; conversely, an *offensive* negotiation is one initiated by the EC with the goal of changing the policy status quo of a third country. I then examine how voting rules influence the collective bargaining leverage of the EC in defensive and offensive negotiations. In the fourth step I introduce an additional element of complexity to the argument by studying, based on principal/agent analysis, the strategic effects of the delegation of negotiating competence by the member states to the Commission. Finally, I offer a series of predictions about the external bargaining effects of negotiating international trade agreements with a single voice. This simple model focuses on the role of EC decision-making rules as amplifying or mitigating factors in the definition of a common bargaining position and highlights the potential winners and losers from the surrendering of their right to act as free agents in international negotiations. Many scholars and policy-makers regard the EC’s cumbersome decision-making procedures as having negative effects on its external bargaining potential. I contend, however, that the EC can use these institutional constraints strategically in order to reach its negotiating objectives.

By combining the three key variables of *nature of the negotiating context, internal voting rules* and *negotiating competence delegated to supranational agents*, I can highlight four scenarios about the strategic effects of the EC’s institutional structure on international trade negotiations.

*1) Low supranational competence and defensive negotiation*: In a defensive case where Commission negotiators act with no autonomy following an unanimous decision by the member states, the agenda is set by the state with the most conservative preferences, and the hands of EC
negotiators are tied. The negotiating opponent challenging EC policy is therefore forced into making concessions or keeping the status quo. The conclusion of an international agreement is less likely, but those that do get signed reflect an enhanced EC bargaining strength. EC collective bargaining power is high, but only directly benefits the extremist state.

• 2) More supranational competence and defensive negotiation: In a defensive case where member states decide by majority and Commission negotiators have some bargaining latitude, median states set the bargaining agenda. Here, reaching an international agreement is more likely. From the opponent’s point of view, the EC is not a “tough” bargainer. The majority of member states gains, but the most conservative members, whose voice has been attenuated, lose from being forced to negotiate as a whole.

• 3) Low supranational competence and offensive negotiation: In an offensive case where Commission negotiators act with no autonomy following a unanimous decision by the member states, the most conservative state, possibly coopted by the defending opponent as a “Trojan Horse,” can set the agenda and cut short the offensive. Therefore most offensives do not materialize into actual negotiations. The opponent is protected from policy change; thus the EC bargaining power is low. Most member states lose by being subjected to the amplified preferences of the extremist country.

• 4) More supranational competence and offensive negotiation: When a majority of member states suffices to launch an offensive action, it is harder for the defending opponent to play divisive tactics inside the EC, and therefore offensives become more frequent. Median states set the agenda.
The conclusion of an international agreement is more likely and will likely tilt towards the EC position. The voice of the extreme state is attenuated, but the majority of member states gains from negotiating as a single bloc.

Contrary to the conventional assumption that the EC's cumbersome decision-making procedures have negative effects on its external bargaining potential, in certain circumstances the EC can indeed use its institutional constraints strategically in order to reach its negotiating objectives. In these specific cases, I show that being "divided but united" (that is, having divergent preferences but being forced to present a single face to the outside world) can give the EC an edge in international bargaining, as was originally foreshadowed by Schelling.\textsuperscript{10} This could help explain the paradox of unity. Conversely, when the EC does not have exclusive negotiating competence and the third country aims to change the status quo, each member state, acting as free agent, can attempt to resist external attempts at changing the status quo but has no control over the fallout of its neighbors' own international agreements. When some member states wish to change the international status quo, one member state alone does not have sufficient weight to successfully launch an offensive against a third country without the support of a collective bargaining unit.

\textit{Case-studies of EC-US trade negotiations}

The central argument of this dissertation is that key institutional features of the EC's internal trade policy-making process affect the outcomes of international trade negotiations and can explain the paradox of unity. I then put this argument to the test in the analysis of a series of trade negotiations between the EC and its main trading partner since its creation -- the United States. I selected cases of EC-US trade negotiations which offer different combinations of the three independent variables in order to illustrate the argument that

\textsuperscript{10}Schelling 1960.
negotiating as a single bloc can strengthen or handicap the bargaining position of the EC as a whole, depending on a determined set of conditions. This dissertation therefore contributes empirical knowledge on the following four cases of EC-US trade negotiations, and more specifically on the role played by the EC’s use or non-use of a single voice.

1) **The EC-US agricultural negotiations in the Kennedy Round (1964-1967)** are an example of “defensive” negotiation in which the supranational autonomy was non-existent and the mode of decision-making in the EC was unanimity. The US capitulated to an inflexible Common Market and the final deal reflected the EC’s lowest common denominator position.

2) **The EC-US agricultural negotiations in the Uruguay Round (1986-1993)** provide an interesting variation in the independent variables, since in this “defensive” negotiation informal changes in the decision-making process and greater autonomy seized by the Community negotiators enabled an EC-US agreement to be reached, only to be renegotiated when some member states reaffirmed their veto right and curbed the “free hands” of the Commission. As a result, the final agreement was less satisfactory for the US and for the majority of member states than was the original one.

3) **The EC-US negotiations on public procurement (1990-1994)** illustrate the rather successful “offensive” attempt by the Community to open up the American public procurement market, thanks to the majority requirement and in spite of US attempts to introduce a “Trojan Horse” in the EC by concluding a forbidden bilateral deal with one of the member states.

4) **The transatlantic “open skies” agreements on international aviation (1992-present)** represent a “control” case since negotiating competence initially belonged to the individual member states before being partly turned over to
the supranational level in 1996. The US was able to exploit the absence of Community discipline by concluding a series of bilateral agreements with several small member states, without being held up by the three big states which initially opposed this US-led liberalization. This case illustrates how third countries can strike better deals when member states are free agents in the external sphere than they would have when dealing with a unified Community.

These four cases all point to the fact that, given exogenous member states’ preferences and depending on the defensive/offensive negotiating context, the degree to which member states were willing to let go of their sovereignty affected the process and outcome of the final international trade agreement.

**Institutional effects vs. competing explanations**

The case-studies illustrated the central hypothesis of this dissertation: the European Community’s internal decision-making structure exerts an independent causal effect on the process and outcome of international negotiations. Yet the observed outcomes in each of these cases could possibly be attributed to other variables. Therefore, I systematically examine other explanations which could account for the observations in all four cases --and explain the paradox of unity.

On the one hand, there exist alternative theories of the EC’s independent impact on international negotiations, although they have not been well specified. In order to reconstruct these alternative explanations, I derive hypotheses about the external bargaining impact of the EC from the existing literature on European integration. I find three major candidate hypotheses as alternative explanations:

- **The EC as discriminator and competitor:** Advanced by liberal economic theories, this hypothesis claims that the trade discrimination effects inherent to a
customs union and the increased economic competitiveness resulting from a single economic market enhance the EC’s international bargaining strength but decrease the likelihood of an international agreement being reached (i.e. Viner).\textsuperscript{11} It is therefore the strength of the EC’s internal market that explains the outcomes observed in the cases.

• \textit{The EC as transformer of national identities:} Suggested by the communitarian and constructivist literatures, this hypothesis implies that being forced to negotiate as a bloc creates a collective identity distinct from the sum of its constituent parts and therefore affects international negotiations in a positive way for the EC as a whole (i.e. Deutsch, Wendt).\textsuperscript{12} Therefore, the further along the EC appears on the integration continuum, the higher its external bargaining strength.

• \textit{The EC as autonomous actor in a multilevel game:} Based on two-level game theory and the principal/agent model, this hypothesis suggests that the external bargaining impact of the Community is determined by the ambitions of its institutional agents and can be therefore enhanced or diminished depending on supranational preferences and resources (i.e. Putnam, Pollack).\textsuperscript{13} Therefore, the EC is in a strong international position when its negotiating agents have enough leeway to promote their own agenda.

On the other hand, the outcomes of EC-US negotiations can also be explained by factors independent of a systematic impact of European integration. This is what intergovernmentalist theory suggests, whose hypothesis of \textit{the EC as a messenger} denies

\textsuperscript{11}Viner 1950.

\textsuperscript{12}Deutsch 1957; Wendt 1994.

\textsuperscript{13}Putnam 1988; Pollack 1997.
any independent external impact to the obligation of negotiating international agreements with a single voice because member states retain the power to withdraw the delegation of policy competence to the supranational level at all times (i.e. Moravcsik, Grieco).\textsuperscript{14} Therefore, all the effects observed in the cases should be attributed to other factors, such as changes in the international balance of power. As a result of this hypothesis, it is fair to explore alternative explanations of the outcomes of EC-US negotiations which do not focus on the systematic impact of European integration. Among these alternative explanations are systemic variables, such as the security environment and the existence of outside options; domestic variables, such as interest group pressure and change in government coalitions and domestic preferences; and negotiation-specific variables, such as specificity of the issue discussed and personalities of the negotiators. I refute these other explanations partly or in their entirety either because their predictions fail, or because the results are consistent with the predictions but the factors are epiphenomenal. In both cases I show that these explanations are not sufficient because they fail to recognize institutional factors, which form the basis of the institutional analysis of this dissertation.

\textit{Conclusions}

This dissertation finds that member states do not benefit equally from being forced to share their external trade powers with others. When their preferences diverge from those of their Community partners, they improve their bargaining power over acting on their own on the international scene by being forced to negotiate with a "single voice" while retaining their right to veto the deal and control the negotiators' moves. States with median preferences, especially if they are small, are better off inside a Community governed by majority rule. Of course the alignment of national preferences varies by issue, but member states cannot opt in and out of the Community on an ad hoc basis --at least for the moment.

\textsuperscript{14}Moravcsik 1991; Grieco 1990.
My institutionalist model offers a first cut at predicting the bargaining process and possibly the outcome in advance of the negotiation.

The central argument leaves one question unanswered. If institutions influence policy outcomes, then actors should have preferences over institutions as they do over policies. Do member states in fact try to transform institutional rules to take into account their intended or unintended consequences? Despite the theoretical and practical evidence pointing to a higher effectiveness of the EC in international negotiations when its collective position cannot be torn apart by third countries, especially in offensive cases, member states are indeed engaged in a legal and political battle to regain some of the supranational autonomy they delegated earlier to the Community. This tension between national sovereignty and international bargaining efficiency has recently risen to the forefront of the institutional debate in Europe. A 1994 ruling by the European Court of Justice followed by a rewriting of the Treaty articles concerned with EC trade policy making at the 1997 Amsterdam intergovernmental summit represent a setback for supranational autonomy and authority in trade negotiations. They state that the Community and the member states share "mixed competences" in the fields of services and intellectual property. The model presented in my dissertation should help predict how these ongoing institutional changes will affect the EC's future external bargaining capabilities, the process of European integration, and the nature of the pressure (liberal or protectionist) exerted by the EC on the world political economy.

Next the conclusion explores the theoretical implications of this study of the bargaining effects of combining negotiating forces with others. First, the model may be useful for explaining the bargaining effectiveness of institutionalized coalitions in settings others than the EC (i.e. NAFTA, federal systems, etc.) and in international negotiations
over issues other than trade (i.e. environment, foreign policy). \textsuperscript{15} Second, this study goes against realist conclusions about regional integration by revealing that the EC exerts an independent causal effect on world politics. The mere fact of belonging to the Community transforms a state's chances of shaping the outside world. The realization that small states may exert a disproportionate influence on world affairs through the institutional design of the Community should be seriously considered as the European Union expands more to small states and simultaneously takes on new roles in foreign affairs.

Finally, the conclusion derives policy prescriptions from the realization that the institutional structure of the EC affects the nature of international trade agreements. First, the Community is increasingly a model for other regional integration efforts which, by learning about the optimal institutional design to enhance their external effectiveness, may decide which institutions in the Community's original approach to sovereignty-sharing they will emulate or reject. \textsuperscript{16} Second, because the EC now initiates international policy changes rather than reacts to them, it has an increasingly pro-active role in the world's political economy. My institutionalist model suggests that the EC's capacity at setting the agenda in key areas of the international economy depends heavily on its own institutional features.

\textit{Outline of dissertation}

The first part of this dissertation hypothesizes on the impact of regional integration on international negotiations. Chapter 1 explores the linkage between internal unity and external strength. The first section presents the trade policy-making process in the European Community and compares it with the process used in the United States. This comparison finds in the second section that the transfer of the authority to negotiate

\textsuperscript{15}On the potential application of the institutionalist argument to the environment, see the work in progress of Jupille 1997 and Sbragia 1997.

\textsuperscript{16}Rhodes 1997.
international trade agreements to the most centralized level of government in both cases is motivated by greater insulation from domestic pressures and efficiency of the negotiating process. The third section highlights that the political discourse on the "single voice" issue has been relying on the assumption that internal unity brings external strength, but this does not seem to hold up to the empirical puzzle of the "paradox of unity."

Chapter 2 elaborates an institutionalist argument about the independent causal effects of negotiating international agreement as a single entity. I develop a multi-step institutionalist model of the EC's external impact, focusing on the Community's institutional features as both constraint and leverage in international trade negotiations. This model shows that the EC's institutional structure exerts an independent causal effect on the process and outcome of international negotiations, given an exogenous distribution of national preferences. The EC does indeed affect international outcomes through its institutional features --mainly the internal decision-making rules and the competence delegated to the supranational negotiators. The direction of this effect is in turn determined by the negotiating context --defensive or offensive. Based on the central independent variables of negotiating context, voting rules and negotiators' autonomy, I generate a series of hypotheses to account for every negotiating situation in which the EC tries to reach an international trade agreement.

The second part of this dissertation presents the case-studies and offers evidence of the external impact of the EC's single voice (or lack thereof) in a series of EC-US trade negotiations. These specific cases were selected because they each offer a different combination of the institutional variables. Chapter 3 studies EC-US agricultural negotiations during the Kennedy Round (1962-1967). Chapter 4 examines EC-US agricultural negotiations during the Uruguay Round (1986-1993). Chapter 5 discusses the EC-US dispute over reciprocity in public procurement (1990-1994). Finally Chapter 6
analyses the recent transatlantic “open skies” agreements on international aviation (1992-present).

The third part of this dissertation summarizes the findings and highlights their theoretical and political implications. In light of the results from the case-studies, Chapter 7 compares the explanatory power of the institutionalist argument with that of hypotheses derived from the literature on regional integration, as well as a series of *ad hoc* competing explanations. It finds that only the institutionalist argument is refined enough and at the same time simple enough (because it is not based on preferences) to explain variation in the process and outcome of international trade negotiations. Chapter 8 concludes the dissertation by summarizing the institutionalist argument and showing that the theoretical and practical findings of this study point in a different direction than the current institutional trend in the European Union. The conclusion examines in detail the move toward increased intergovernmentalism in trade policy-making, exemplified by the recent judicial and political decisions to divide trade authority on services between the Commission and the member states, and analyzes their implications for third countries, for the overall process of European integration, and for the future of the international political economy. The findings have numerous policy implications for the current and future members of the European Union, for their trading partners, and for any group of countries or corporate entities wishing to have a single spokesperson negotiating on their behalf.
PART I

INTERNAL UNITY AND EXTERNAL STRENGTH
CHAPTER 1

UNITY BRINGS STRENGTH: RATIONALES FOR A SINGLE EC VOICE IN TRADE

“Europe's external trade policy has been perhaps the finest advertisement for the pooling of national sovereignty since the European Community came into being. It has made Europe a powerful force for open markets across the world, giving her the lead in trade liberalization, securing access for European firms abroad and preventing the worst excesses of predatory trading by our partners. It has converted the single European market into a vast negotiating lever to win global access for European exports and investment by challenging our partners to be as open as we are to them.”

Sir Leon Brittan

In international trade negotiations, the European Community (EC) “speaks with one voice.” Indeed, the EC has long been more integrated in trade matters than in any other policy area. Member states still cannot agree on a common course of action in most affairs of security and foreign policy and no institutional constraints can force them to do so. But decades ago they gave up their power to act as autonomous actors in trade negotiations. Instead, they first agree on a common bargaining position, which is then carried into international fora by members of the supranational Commission. Nowhere more than in the international political economy sphere should we expect to witness the independent external impact of the European Community --if impact there was at all.

Why did the EC’s founding member states decide to delegate the competence to make and negotiate trade policy from the start of their integrative enterprise, unlike foreign and security policy? What economic and political benefits did they expect would outweigh concerns about lost sovereignty in the realm of international trade? This chapter analyzes the rationales for endowing the diverse Community with a single voice in trade negotiations. The first section compares the trade negotiating processes in the European Community and the United States in order to highlight the benefits that the devolution of trade authority at the most unitary level of government has been expected to bring. The second section analyzes two prominent political rationales for a single external voice in trade policy: isolation from domestic pressures and increased international efficiency. Finally, the third section of this chapter argues that the main reason why the authority to negotiate external trade agreements was integrated early on in the EC was the assumption that internal unity brings external strength. Is there indeed a positive correlation between the internal unity achieved through a “single voice” and the external bargaining strength of the EC, as the rhetoric of politicians for so many years of the EC’s existence leads us to believe? I conclude this chapter by highlighting a “paradox of unity” that prevailing rhetoric fails to explain: why did the Community become instantly successful as an international trade negotiator when it was initially created, and why does it appear to have struggled more to get concessions from its trade partners in recent years?

I. Negotiating Trade with a Single Voice in the European Community and the United States

The principle of unitary representation in international trade negotiations was one of the founding principles and major innovations of the Treaty of Rome, which created the European Economic Community. For many practical purposes, the EC resembles a single, albeit diverse, state when it comes to negotiating international trade agreements. At least
this is how third countries have long viewed the role of the EC in the General Agreement on Tariffs and Trade (GATT), which for the negotiating phase of trade agreements treated the EC as one of its Contracting Parties. The trade policy-making process in the EC is a unique blend of intergovernmental and supranational features. In many ways, however, it resembles the American process of delegating trade negotiating authority to the executive branch under the fast-track legislation. In both cases, the authority to negotiate international trade agreements belongs to the most unitary level of government -- the supranational Commission acting on behalf of the EC Council of Ministers, and the US executive acting on delegation of the US Congress. This section explores the practice of trade negotiating in the EC and the US in order to later analyze the rationale for entrusting the negotiation of international trade agreements to the most centralized level of government.

1) The Common Commercial Policy, symbol of successful integration

The principle of unitary representation in international trade negotiations was a cornerstone of the Common Commercial Policy, itself one of the major pillars of the emerging institutional framework of the European Community in 1957. The competence to elaborate, negotiate and implement trade policy has been delegated to the EC level since the Treaty of Rome, which innovated over previous institutional arrangements in Europe by granting the Community an external personality in the field of trade relations. In theory, the Common Commercial Policy is therefore one of the EC policies the most tilted in favor

2Precursor of the World Trade Organization.

3On the particular status of the EC in GATT, see Bourgeois 1995; Denza 1996; and Meunier and Nicolaïdis 1997.

4The 1951 Treaty of Paris started from the principle that the powers of the member states in commercial policy should not be affected by the integration of their coal and steel sectors, and therefore the European Coal and Steel Community did not have external powers. See Trade Policy Review: The European Communities, 1991, GATT, Geneva, June 1991, Volume I.
of supranational versus national competence. As such, it has become a symbol of successful integration.

a) The trade policy-making process.\textsuperscript{5}

Unlike in other areas which came only gradually and partially under supranational competence, the Community took over responsibilities for external trade from its very beginning. The Founding Fathers might have envisioned long-term political prospects for the EC, but they conceived it primarily as a common trading area with external borders. A mechanism was needed to harmonize the national rules governing the entry of products from third countries into each of the EC's member states, in order to avoid diversion of trade, misallocation of factors of production and distortion of competition stemming from the free movement of goods within the boundaries of the Common Market. The creation of a common external tariff and a set of common rules to protect these external borders were thus seen as central pillars to the European edifice.

The common commercial policy is based on the three principles of a common external tariff, common trade agreements with the rest of the world, and the uniform application of trade instruments across member states. The Community's competence over trade policy covers various roles. In addition to participating in multilateral trade negotiations, the EC concludes and monitors commercial agreements with many countries (such as free trade agreements with the European Economic Area and preferential agreements with Mediterranean countries and African-Caribbean-Pacific countries under the Lomé Convention). The EC is also in charge of protecting its member states against unfair

trade practices, mainly through the use of policy instruments to deal with dumping and subsidies. 6

The creation of the European Community transferred authority in the field of trade policy from the individual states and their parliaments to the assembly of European states, acting collectively through the Council of Ministers. The Treaty of Rome provided for exclusive supranational competence over trade issues after the end of the "transitory period," during which the member states would implement and get accustomed to the new European institutions. The Council of Ministers was to take bargaining positions under unanimity until January 1966, according to Article 111. Qualified majority voting would have been automatically instituted after this date, had France's De Gaulle not paralyzed the functioning of Community institutions with the "empty chair" crisis during the Kennedy Round. The crisis resulted in the "Luxembourg Compromise," a gentleman's agreement according to which a state can veto a decision otherwise taken according to qualified majority if vital national interests are at stake. 7

The subsequent addition of new member states since 1973 (including Great Britain and Denmark at the outset of the Tokyo Round and Spain and Portugal at the outset of the Uruguay Round) increased the divergence of interests within the EC and rendered even more difficult the task of reaching a common bargaining position for international trade negotiations. Nevertheless, the provisions determining the trade policy-making process have remained quite unchanged since the Treaty of Rome's original wording of Article 113, which granted the Community exclusive competence in trade policy, albeit without defining


trade policy. This process is dominated, in theory, by the supranational Commission acting on behalf of the member states.

b) *The intergovernmental/supranational balance in the trade negotiating process.*

The conduct of trade policy and, especially, the negotiation of trade agreements reveals a second level of authority delegation, this time from the Council of Ministers to its agent, the European Commission. It is governed by the so-called "113 procedure." The Commission elaborates proposals for the initiation and content of international trade negotiations. The key policy discussions then take place in the "113 Committee" composed of senior civil servants and trade experts from the member states as well as Commission representatives. The Committee examines and amends these proposals on a consensual basis, before transmitting them to the Committee of Permanent Representatives (COREPER) and subsequently to the General Affairs Council (composed of the foreign

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8 Article 113 of the EEC Treaty amended by the Treaty on European Union:

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping and subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more states or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

The relevant provisions of Article 228 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by qualified majority.”

9 See Woolcock and Hodges 1996 on the negotiating process.

10 The "113 Committee" is named after Article 113 of the Treaty of Rome, which states that international trade negotiations will be conducted by the Commission assisted by a special committee designated by the Council.
affairs ministers), which then hands out a negotiating mandate to the Commission on a qualified majority basis. In practice, however, the aggregation of the divergent interests of the member states into one single bargaining position is often based on consensus, as with most other areas of policy-making in the EC. Decisions are not adopted if a country, especially one of the three major countries, firmly opposes it. Even during the height of the crisis created by French demands for a renegotiation of the Uruguay Round agricultural agreement between the EC and the US in 1993, member states insisted that the tradition of consensus be not broken.  

Following the adoption of the negotiating mandate by the Council, the actual conduct of international trade negotiations for the EC is carried out by members of the Commission, acting under the authority of the Commissioner in charge of external economic affairs. In principle, as long as they remain within the limits set by the mandate, Commission negotiators are free to conduct bargaining with third countries as they wish. In practice the negotiators' latitude and flexibility vary case by case, depending on the member states' willingness to retain control over the issue being negotiated. At the conclusion of the negotiations, the Council approves or rejects the trade agreement, in principle on a qualified majority basis but often in practice on a consensual basis.

The competence over external trade negotiations is therefore fairly centralized at the Commission and Council levels. Unlike in other fields of external agreements, such as the association agreements, the European Parliament has no formal say in the 113 process. Subsequent Treaty modifications, such as the 1986 Single European Act and the 1991 Maastricht Treaty, have not increased the role of the Parliament in the trade policy-making process. In practice, there exist some informal procedures for informing and consulting the

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Parliament: the Commission and the Council inform the Parliament of the conduct of international trade negotiations on an informal basis and may request the Parliament’s approval before the formal ratification of an international agreement. There is, however, no formalized procedure for the Parliament’s input into the trade policy-making process.

A delicate balance between the national and supranational levels therefore characterizes trade policy in the EC --and in particular the negotiation of external trade agreements. The member states retain their power to make the ultimate decisions, but they delegate the day-to-day operation of trade policy to their agent, the Commission. This process is not without resemblance to trade policy making in the United States.

2) The Fast-Track process in the US

The United States Constitution gives Congress the basic authority over international trade.\textsuperscript{12} In practice, trade policy is formulated in cooperation between the executive branch, the legislative branch, and the private sector. Through its Trade Acts, Congress periodically delegates the trade authority to the President of the United States. Similar to the European Council of Ministers, however, Congress has always retained the ultimate authority over international trade agreements and is gradually trying to reassert its competence.

\textit{a) Legislative authority over trade policy.}

In order to prevent foreign entanglements and ensure that executive power would stay in check, the founding fathers of the United States Constitution declared the primacy of the legislative branch over trade matters. Article I of the US Constitution gave Congress

exclusive authority to enact legislation governing international trade by granting it sole power “to regulate commerce with foreign nations” and “to lay and collect ... duties.”\textsuperscript{13} The Constitution granted the President no trade-specific authority, other than the power to conduct diplomacy and make foreign treaties to be approved by a two thirds majority of the Senate. In the aftermath of the Smoot-Hawley Tariff Act of 1930 and the Depression, however, Congress started to delegate some of its constitutional authority over trade matters to the executive branch.

The American Politics literature divides over the interpretation of this delegation.\textsuperscript{14} Some scholars of American trade policy-making, sometimes referred to as belonging to the “presidential dominance” school, suggest, in I. M. Destler’s words, that “Congress legislated itself out of the business of making product-specific trade law. There were exceptions, of course. But, as a general rule, Congress as a collective body was as assiduous in avoiding specific trade barriers after 1934 as it had been in imposing them the century before.”\textsuperscript{15} Other scholars, such as O’Halloran, argue that “congressional delegations of authority in this century have not implied that Congress has lost control over trade policy. Rather, Congress meticulously designs procedures to ensure that the actions taken by the President are in line with legislators’ preferences.”\textsuperscript{16} In any case, from the 1930s on, the Legislative and the Executive have come to share the power to make trade policy, with the balance tilting in favor of one or the other branch at different points in time.

\textsuperscript{13}US Constitution, Article I, Section 8.
\textsuperscript{14}Pahre 1997 summarizes the existing interpretations.
\textsuperscript{15}Destler 1996, pp. 13-14.
\textsuperscript{16}O’Halloran 1994.
b) Executive competence over trade negotiations.

According to O’Halloran, there was a long tradition in US trade policy, starting in the late 1800s, of delegating authority to the executive branch to negotiate reciprocal trade concessions.\(^{17}\) The Reciprocal Trade Agreements Act (RTAA) of 1934, however, represents a watershed in the congressional delegation of trade authority. Through the RTAA, Congress delegated to the Executive the authority to negotiate and implement tariff-cutting pacts with other nations. It gave the President the right to reduce any US tariff by up to 50 percent without further recourse to Congress. This authority was renewed in 1937, 1940 and 1943, and it was updated in 1945.\(^{18}\) More politically controversial extensions of authority were delegated by Congress to the President in 1947, 1953, and 1954.\(^{19}\)

This approach showed signs of outdating, however, as “item-by-item tariff negotiations produced diminishing returns; protectionist pressures regained strength in the United States; and the European Common Market, created in 1957, posed a new challenge.”\(^{20}\) At President Kennedy’s urging, Congress responded in 1962 with the Trade Expansion Act, which granted the President a generous delegation of powers over trade and authorized the Executive to engage in negotiations cutting tariffs across the board, in exchange for reductions by its trading partners.

The 1962 trade act also created in the White House the post of a special representative for trade negotiations (STR) designated by the President, in order to remove

\(^{17}\)O’Halloran 1994, p. 108.

\(^{18}\)Destler 1996, p. 12.

\(^{19}\)See O’Halloran 1994, Chapter 5, for a comprehensive history of congressional delegation of trade authority to the executive in the United States.

the responsibility for trade policy-making and negotiating from the State Department and the primacy of political and military concerns. This presidential negotiator had two main roles: to be the chief representative of the United States during the authorized negotiations and also coordinate the interagency trade organization in charge of making, negotiating and implementing trade agreements. "The new negotiator and his aides were clearly intended to play the "executive broker" role required by the American trade policy making system -- between domestic interests and foreign governments, between the executive branch and Congress, and among the concerned government agencies." 21 Congress strengthened the Special Trade Representative by making his office statutory in an amendment to the 1974 Trade Act. Its head was given Cabinet rank. In 1979 Congress forced the Carter administration to carry out a trade reorganization that increased the office's size and power and renamed it the Office of the United State Trade Representative (USTR). 22

c) The fast-track process.

The extensive delegation of authority in the 1962 Trade Expansion Act was followed by the absence of delegation from 1967 to 1973. 23 In the 1974 Trade Reform Act, Congress resumed delegation through the creation of a new policy instrument called the "fast-track" procedure, which on one hand was designed to accommodate the broader scope of international trade negotiations to encompass non-tariff barriers to trade, and on the other hand to keep a close watch on the use of presidential authority, through elaborate


22"It was assigned "international trade policy development, coordination and negotiation functions," and it included responsibilities previously handled by State regarding GATT, bilateral, commodity, and East-West trade matters, as well as policy responsibility for overseeing trade-remedy cases. At the level of trade administration, Commerce was to become "the focus of non-agricultural operational trade responsibilities." It was therefore given Treasury's authority over countervailing duty and antidumping cases, as well as state's jurisdiction over commercial attaches. [...] And the adjective "nonagricultural" signaled a bow to political reality: farm interests would never accept the transfer of responsibility and expertise for their products from the Department of Agriculture." Destler 1996, p. 117.

23See O'Halloran 1994, pp. 95-96 for an explanation of the delegation stalemate.
checks and controls. The introduction of the fast-track procedure in the US institutional framework has often been described as a reassertion of Congressional authority over trade policy. Fast-track was first used in the Trade Act of 1974 for the upcoming Tokyo Round negotiations of GATT.

The fast-track process requires Congress to vote an international trade agreement up or down, without the possibility to reopen any of its provisions. An agreement negotiated under fast-track needs only a simple majority in both houses of Congress to be enacted, instead of a two thirds Senate majority for a regular treaty. The three main features of fast-track authority are: (1) extensive consultation between the Executive and Legislative during the trade negotiations; (2) the requirement to vote the implementing legislation within ninety days of submission by the Executive; and (3) an up or down vote with no amendments.24 Fast-track procedures can be divided into ex-ante and ex-post requirements, according to O’Halloran.25 Ex-ante requirements include an initial vote over the use of fast-track procedures (where the President faces a possible veto), congressional monitoring and advice, extensive consultation with the private sector, and public hearings. Ex-post requirements include the drafting of the implementing legislation and congressional approval procedures.

The fast-track authority was renewed by Congress in 1979, 1984, 1988, 1991 and 1993, but with increasing controversy and institutional mechanisms for congressional oversight. In the 1980s, under intense pressure from unprecedented trade deficits, Congress passed the first congressionally-initiated omnibus trade bill since before Smoot-Hawley. The 1988 Omnibus Trade Act established procedures for tougher executive action to enter resistant foreign markets, but did not reclaim the legislative constitutional power to

24 For an analysis of the fast-track procedure, see “Fast track: Critical to America’s continued prosperity,” in Business America, October 1997.

impose product-specific trade barriers. The legislators “continued to delegate broad powers to the executive --in the 1988 act and in the 1991 vote renewing “fast-track” negotiating authority for the multilateral Uruguay Round and for free trade negotiations with Mexico. But they did so more grudgingly, with more detailed demands and timetables, which constrained administration flexibility.”

The renewal of fast track has become increasingly questioned as the international trade agenda expanded to include “new” issues (such as services and intellectual property currently, and labor and environmental issues in the future), which are more domestically sensitive than manufactured goods. In September 1997 President Clinton submitted to Congress legislation renewing fast-track authority until 2001. The Executive argued that fast-track would be crucial for the negotiations currently on the WTO agenda (government procurement, intellectual property, agriculture, and services), key sectors of the future such as information technology, and free trade agreements with the emerging economies of Asia and Latin America. Yet given the political difficulties in the House and Senate surrounding the delegation of trade authority, the Executive withdrew its fast-track proposal and the US President is currently without fast-track authority over trade issues.

3) *Multilevel trade policy processes in the EC and US*

Although the United States is a unitary state whereas the European Community is a hybrid intergovernmental grouping of sovereign states with supranational features, their trade policy-making and negotiating processes have gradually come to share many similarities. Over the years, and in spite of formal constitutional rules, they each have

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26Destler 1996, p. 66.

27For a dossier on the current renewal of the fast-track authority, see “Fast track: Critical to America’s continued prosperity,” in *Business America*, October 1997.
found a similar balance between centralization for the sake of efficiency and legislative control for the sake of democracy. Both institutional systems can be characterized by multiple layers of authority. Trade competence in both the EC and US cases is delegated by multiple principals (the member states/Congress) to a single agent (EC Commission/US Executive).28 Both the article 113 procedure and the fast track procedure, however, have been subjected since the early 1990s to reinterpretation, as the principals have tried to reassert control over their agents.

The EC and US decision-making and negotiating procedures share similar features, which scholars and the media, but not the policy-makers themselves, have often failed to notice. A very crude analogy would be between the Commission to the US Executive; the Council of Ministers to the US Congress; DGI (the Directorate General for External Relations) to the USTR for their role in the coordination of trade policy; and the 113 Committee and the US advisory groups which are consulted throughout the negotiations.29

To push the analogy further, the American fast-track process finds echo in the trade negotiating procedure under Article 113. Indeed, Sir Leon Brittan, the Commissioner for External Affairs since the last year of the Uruguay Round, is the first one to compare this procedure to the American fast-track: similar to Congress, which delegates full authority to negotiate international trade agreements to the Executive (within set negotiating limits) and then votes the final agreement up or down without the possibility of amendments, the member states in the Council delegate full negotiating authority to the Commission (within the limits set by the mandate) and then accept or reject the final agreement.30 Yet not

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28See Nicolaïdis 1998 for an analysis of the delegation of authority to a single agent by multiple principals and an application to the EU and US cases.

29See Smith 1994 for a similar analogy.

everyone in the Community shares this interpretation of the division of competences between the national and supranational authorities. While the Commission promotes this "fast track" version in order to gain crucial flexibility during negotiations, several member states wish to exert tighter control over the EC negotiators' every move.\textsuperscript{31} Indeed, recent political developments in the EC point to a growing feud between the Commission and some member states over the division of competences between supranational and national authorities.\textsuperscript{32}

Yet proponents of a swifter and more centralized approach to the decision-making and negotiating of international agreements in the EC should perhaps look to a model different from the US fast-track for inspiration. Unlike what its name indicates, the "fast-track" is indeed not fast --even though it might be a faster track than any available alternative. The process entails difficult consultations among the Executive, Congress and representatives of interest groups and it can be blocked by the Legislative at many junctures in the institutional process, including before the beginning of the negotiation (where Congress can control the content of the upcoming negotiations and set the specifics of the negotiating mandate) and at the conclusion of the international agreement.

Despite the many similarities shared with the trade policy-making process in the US, however, the EC institutional structure remains unique. Several scholars and practitioners have analyzed its multilevel features and argued that the Community faces a supplementary level of bargaining, since it needs to reconcile the conflicting demands of the member states, themselves determined by the conflicting demands of various domestic

\textsuperscript{31}In the last months of the Uruguay Round, for instance, Commission negotiators had to report to the member states on the progress of the negotiations every two weeks, and the final agreement was presented to the Council before the Commission could conclude it. The negotiating autonomy of the Commission was, in effect, limited.

\textsuperscript{32}See Chapter 8 of this dissertation, "From Single to Multiple Voices," and Meunier and Nicolaidis 1997, for a detailed discussion of these recent developments.
groups, before EC negotiators can reach international agreements.\textsuperscript{33} “What makes the Community process more complex than that of the ordinary unitary state is that twelve views at governmental level have to be taken into account in addition to the normally opposing views of different sectors of industry and of consumers that might be affected as well as different government agencies.”\textsuperscript{34} This analysis is particularly salient since the multi-level game literature has shown that the interplay between these different levels of government affects the process and outcomes of international negotiations.\textsuperscript{35}

The comparison between the EC and US institutional processes has highlighted that, in both cases, the principal holders of sovereignty have been willing to transfer the authority to make and negotiate trade policy to the most centralized level of government, albeit with extensive checks and constraints. The next section explores what sovereignty was traded off for and why the benefits were expected to outweigh the disadvantages of losing sovereign control over trade policy.

\section*{II. Rationales for a Single Voice in Trade}

From the inception of the European Community, the transfer of negotiating competence to the supranational level was not expected to be a problem in trade, unlike in foreign policy. The obligation of a single voice in trade negotiations and the transfer of the authority to negotiate international trade agreements to the most unitary level of government were enshrined in the emerging EC institutional structure, as it had been customarily done in the United States in the previous decades: to the supranational Commission acting on

\begin{footnotesize}
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\item[33]See for example Pollack, 1996, p. 44.
\item[35]On multi-level game analysis, see for instance Putnam 1988; and Evans, Jacobson, Putnam 1993.
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behalf of the EC Council of Ministers, and to the US executive branch acting on delegation of the US Congress. What motivated the EC’s Founding Fathers to make the Community a single actor in international trade policy? Why did national governments transfer part of their trade policy-making authority to the supranational level with relatively little hesitation? What political objectives did they expect from such delegation?

The United States faced the same issues during formation. What lessons did the EC learn from the American experiment in institutional design of trade policy-making? What was the logic behind the delegation of the competence to negotiate international trade agreements to the most unitary level of government in both the US and the EC? Greater insulation from domestic pressures and efficiency of the negotiating process are the two prominent rationales most often discussed in the literature on political economy and American politics.\(^ {36} \)

\(^ {36} \) Petersmann 1991, pp. 288-289, enumerates the traditional arguments in favor of the delegation of foreign policy to the executive branch. If trade policy is conceived as part of foreign policy, then some of these arguments could justify the delegation of trade policy to the most centralized level of government. “According to a long tradition of political arguments, described already by Thucydidies and later defended by supporters not only of monarchical absolutism (e.g. Machiavelli, Bodin, Hobbes) but also of liberal democracies (e.g. Locke, Montesquieu, Tocqueville), there is an inherent incompatibility between the requirements of foreign policy and the ideals of rule of law and democratic decision-making. [ ... ]

The main reasons advanced in support of the perception of foreign policy as “high policy”, permanently confronted with exceptional situations which require conducting foreign policy in a non-democratic manner unconstrained by stringent legal requirements, are the following:

a) A first argument (e.g. by Locke) is that foreign policy decisions have to react to foreign events and often result from international bargaining processes, in which the national bargaining position may be weakened by openness and internal disunity and which may be conducted best in secrecy by “professionals” who know the adversary and know how to bargain. National parliaments have little influence on these international bargaining processes, and parliamentary debates “will normally involve only retrospective examination of the consequences of irrevocable decisions already implemented.” Hence, the sovereign right of parliament to change such an agreement or to stop its implementation is, in fact, mainly theoretical because of the costs that such actions might entail.

b) A second argument traditionally invoked in support of the incompatibility hypothesis is that foreign policy questions involve the nation’s security and integrity and that these “supreme interests” are too important to be left to democratic politics which often tends to avoid unpleasant choices (e.g. military expenditures) and may lead to irrational foreign policy decisions.

c) A third line of argument is that the implications of foreign policy questions for the individual citizen are often remote, indirect and obscure so that most people and also parliamentarians tend to give little attention to foreign policy issues and leave them to “the experts.”
1) Insulation from domestic pressures

A standard view among studies of the American trade policy-making process is that Congress delegated trade authority to the President in order to insulate its members from protectionist domestic pressures and to promote a more liberal international political economy.\textsuperscript{37} It has been well documented that Congress (or any parliament for that matter) has a tendency to produce a protectionist trade policy because the losers from freer trade have a greater incentive to mobilize than those who benefit from the policy. Because each representative can become hostage to a handful of special interests, the congressional policy-making process leads either to policy impasse or to logrolling and inefficiently high levels of protectionism.\textsuperscript{38} The disastrous consequences of the highly detailed, highly protectionist 1930 Smoot-Hawley Tariff Act taught members of Congress the lesson that the existing institutions could not produce a rational trade policy.

An executive system of trade policy-making was supposed to be more liberalizing because the national constituency of the President renders him less susceptible to particularistic concerns on specific items.\textsuperscript{39} Therefore, according to this “insulation” hypothesis, the central rationale for the US Congress’ original delegation of trade authority to the President in 1934 was to protect itself “from the direct, one-sided pressure from producer interests that had led them to make bad trade law.”\textsuperscript{40} In Destler’s words, “such “voluntary restraint” by the Congress was the central domestic political prerequisite for US

\textsuperscript{37}See for instance Bauer, Sola Pool and Dexter 1963; Destler 1996. There are some disagreements in the recent literature over the primary motivations for the delegation of trade policy, as well as the nature of the delegation itself. See O’Halloran 1994 and Bailey, Goldstein and Weingast 1997 for dissenting views.

\textsuperscript{38}See O’Halloran 1994, p. 7.

\textsuperscript{39}O’Halloran 1994, p. 5.

\textsuperscript{40}Destler 1996, p. 14.
international trade leadership. By delegating responsibility to the Executive and by helping fashion a system that protected legislators from one-sided restrictive pressures, Congress made it possible for successive presidents to maintain and expand the liberal trade order."\textsuperscript{41}

The delegation of trade authority to the executive branch enabled congressional representatives to pursue the goal of an open world economy, seen as a prerequisite for world peace. The hope of the legislators who initiated the institutional change in the US in 1934, and later of those who signed the 1962 Trade Expansion Act, was to embed liberalism into the institutional process. The Democratic legislators designed institutions that would lower tariffs and outlive their partisan control over Congress.\textsuperscript{42} They succeeded in this endeavor. Indeed, for several decades after World War II, trade policy was a non-partisan issue, unlike what it had been in previous US history.\textsuperscript{43} It is only since the 1970s that protectionism has reappeared as a theme in the US political discourse.

At the same time that it created free trade, the delegation of trade authority to the Executive enabled US legislators to avoid being blamed for the domestic consequences of these liberal policy decisions. They delegated decision-making, but they retained their right to criticize foreign countries and the administration on behalf of disaffected constituents. O’Halloran summarized the “blame shirking” argument: “This decision-making process allows the United States to pursue liberal trade policies without holding members of Congress directly accountable to constituents injured by import competition. Legislators can thereby claim credit as a champion of the disaffected without having to deliver on their

\textsuperscript{41}Destler 1996, p. 65.

\textsuperscript{42}The central argument of Bailey, Goldstein and Weingast is that the RTAA was passed in 1934 not so much because Congress abdicated control or sought to deflect political pressure, but because “the Democratic leadership wanted lower tariffs that would pass an increasingly skeptical Congress and would be able to outlive Democratic control of Congress. The institutions they designed met this goal.” Bailey, Goldstein and Weingast 1997, p. 316.

\textsuperscript{43}For a discussion of trade as a non-party issue in American politics, see Destler 1996, pp. 30-32.
threats.” Destler agrees that this institutional system worked because it gave great leeway to Congress: “The majority were free to make noise, to give protectionist speeches or introduce bills favored by particular constituencies, secure in the knowledge that nothing statutory was likely to result.”

The decision of the founding member states of the European Community to delegate trade negotiating authority to the supranational level can also be explained by this willingness to insulate international trade agreements from protectionist pressures. Even more than Congress, the EC Council of Ministers is prone to protectionist tendencies as a result of national, regional and sectoral special interests. By allowing, in theory, trade policy decisions to be taken by a majority of member states only and international trade negotiations to be conducted by supranational agents, the EC institutions were designed to prevent the disproportionate capture of trade policy by protectionist interests.

A main difference with the American institutional structure, however, is that the Commission is not the Executive and the Council is not the Legislative. The blurring of the traditional branches in the two institutions made the protectionist or liberal tendencies of the trade policy process less easy to predict, as argued by Petersmann:

The lack of separation of legislative and executive governmental powers in the EEC, especially in the field of the common agricultural and commercial policies, has born out this liberal concern that the combination of discretionary legislative and executive powers, unconstrained by substantive constitutional principles and effective judicial control, risks to be abused for the sake of coalitions of various organized interests and to lead to the abandonment of liberal principles in favor of discriminatory measures benefiting the various “distributive coalitions” (e.g. agricultural, textiles, and steel lobbies in the EEC). The increasing number of bilateral and sectoral special arrangements for trade in agricultural products, textiles, apparel, steel, shipbuilding, synthetic fibres, automobiles, etc., first negotiated with domestic industry lobbies and subsequently on the

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44O'Halloran 1994, pp. 17-18. These arguments were originally made by Bauer, Pool and Dexter 1963 and Mayhew 1974..

45Destler 1996, p. 32.
intergovernmental level, reflect an increasing prevalence of special interests over the general public interest.\textsuperscript{46}

Overall, however, the original EC treaty provided for a high level of supranational competence over trade matters, which was supposed to shield the EC from protectionist tendencies, as the next chapter of this dissertation will demonstrate.

2) Efficiency and credibility of the negotiating process

The second rationale justifying the delegation of the competence to negotiate international trade agreements is the expected increased efficiency of the process. Trade policy making has always been a long and complex process. The passage of the Smoot-Hawley Tariff Act of 1930 had already been a "truly Sisyphean labor," according to Schnattschneider who counted eleven thousand pages of testimony and briefs collected over forty-three days.\textsuperscript{47} As trade negotiations moved away from the traditional focus on limiting tariff barriers towards non-tariff barriers in issues newly integrated onto the trade agenda, trade regulations have become increasingly detailed and too complicated for legislators to handle.\textsuperscript{48} The Executive is better equipped to study the issues, have the necessary resources, and handle the details of international trade negotiations. Therefore concentrating the power to negotiate into the hands of a small number of executive agents can maximize the gains obtained in the external negotiation and it can accelerate the attainment of these gains since it likely speeds up the negotiating process.\textsuperscript{49}

\textsuperscript{46}Petersmann 1991, p. 167.

\textsuperscript{47}Schnattschneider 1935, quoted in Bailey, Goldstein and Weingast 1997, p. 312.


\textsuperscript{49}Some scholars of US trade policy have recently expressed doubts about the validity of the "efficiency" rationale. While it is true that the concentration of negotiating authority into the hands of the executive reduces inefficiencies, recent work argues that there are other ways to streamline the process than by delegating to the president. The legislators could have chosen instead to use differently existing
Increased efficiency is indeed a traditional argument used in principal/agent analysis to justify the delegation of competence from a principal to an agent. The literature addresses, however, the issue of “agency losses” which might occur in the event of conflicts between the principal and the agent. Delegating the authority to negotiate international trade agreements to a single agent does not systematically optimize the efficiency of the process. In the case of a conflict of interests between the agent and its principal, years of international bargaining could be put to waste. This possibility justifies, in turn, limitations placed on the delegation of competence –such as those embodied in the “fast track” process where the executive agent needs to secure an initial agreement on the negotiating mandate from its congressional principals. This system reduces the uncertainty that the international agreement will be accepted ex post by Congress.

Efficiency is also an argument frequently used in the EC to justify the delegation of trade negotiating competence to the supranational level. Commission negotiators are better equipped than national negotiators to bargain internationally with successful results because they avoid long drawn-out domestic debates about the details of the issues being negotiated. Moreover, if they are given sufficient but restricted competence, they can credibly conclude agreements which the other party knows will be approved internally. Efficiency of the negotiating process and insulation from domestic pressure are therefore two arguments frequently employed in the EC as in the US to justify the delegation of trade competence to the most centralized level of government.

organizations, to create new committees and commissions, and to establish new rules. See Bailey, Goldstein and Weingast 1997.

50See Pollack 1997 for a summary of the efficiency argument in principal/agent delegation.

51O’Halloran 1994, p. 150. See also Destler 1996, p. 73.
III. Does Unity Bring Strength? Political Rhetoric and the Paradox of Unity

"Let's unite. And the world will listen to us" was an ad campaign used to mobilize the pro-European camp in France during the 1992 referendum on the Maastricht Treaty on European Union.52 This slogan refers to a third rationale for delegating the trade negotiating authority from the national to the supranational level --the traditional assumption that internal unity brings external strength and therefore that the external voice of the European Community would be enhanced by a deepening of its internal institutions. Whether or not this advertisement influenced the final decision by the French people to barely approve the Maastricht blueprint for further European integration is outside the focus of this dissertation. The central question I ask is whether the statement made in the advertisement was true. Does combining forces into a single voice give greater external clout?

The assumption that unity brings strength, and therefore that a single voice is a strategic advantage in international negotiations, is prevalent in the rhetoric of pro-integrationist politicians and permeates the literature on European integration. This section first examines the political rhetoric on internal unity as external strength and then suggests that its theoretical foundations need to be probed in order to explain the "paradox of unity."

1) Political Rhetoric

The belief that economic and political unity would put Europe on an equal basis with the United States in the conduct of world affairs, including in the formulation of world

trading rules, has long been anchored in politicians' rhetoric in Europe and, to some extent, in the US. A popular political slogan across Europe was that integration would increase the international strength and prestige of the EC as a whole and, therefore, of its individual member states.

The initial motivations of European policy-makers for fostering unity in Western Europe and setting up the EC institutions were primarily economic (to improve standards of living and create a large market) and security-related (to act as a bulwark against the progression of communism and prevent the return of a nationalist Germany).\textsuperscript{53} One of the less avowed goals of integration was to restore Europe's past might and transform it into a force equal to that of the United States.\textsuperscript{54} The phrase "United States of Europe," given worldwide fame by Winston Churchill's 1946 speech and later popularized by Monnet in his "Action Committee for the United States of Europe," is in itself a testimony of this goal.

Integration arose from the loss of influence of Europe, sanctioned by the Second World War, and coincided with the demise of the European colonial empires. Europe relayed dreams of grandeur for some politicians, who pledged to use European unification to bring back international strength. Many proponents of European integration feared the growing dependence of Europe on the United States as a consequence of the Marshall Plan and envisioned European integration as a means to assert the continent's independence.\textsuperscript{55} As the French newspaper \textit{Le Monde} wrote in 1957, "Is the lack of enthusiasm [of the United States for the creation of the EEC] prompted by the thought that, were the Common Market to succeed, Europe would need less American aid and would become more

\textsuperscript{53}See Dinan 1994 for an introduction to the history and origins of the European Community. See Monnet 1978; and Milward 1984 for analyses of the relationship between European integration and the United States' global power.

\textsuperscript{54}Some American actors of this period deny that this was ever an underlying motivation, but there is plenty of evidence to the contrary, starting with Jean Monnet's own writings and testimonies.

\textsuperscript{55}Dinan 1994 p. 18.
independent?" Even Jean Monnet, the pro-American "founding father" of the European Community, envisioned building a European bloc equal to the US in economic and political strength. His goal was to realize an equal partnership between the US and Europe.\footnote{Le Monde, editorial, 20 January 1957.}

The "third force" mythology was omnipresent in the public debate in Europe in the postwar years. German and Italian policy-makers assumed that European unity would bring strength in order to mobilize political forces longing for a new form of national identity.\footnote{In "Jean Monnet's Methods," François Duchène, a Monnet collaborator, writes: "Few contemporaries beyond a restricted circle of like-minded reformers ever fully grasped the paradox, in traditional, national terms, of Monnet's refusal to be a European nationalist, and yet his determination that a uniting Europe should achieve 'equality' with the United States. It is ironic that Gaullists saw Monnet as a pawn of the Americans (thus jettisoning Monnet's cherished goal of association in equality); while Kissinger, in the Years of Upheaval (ch. V) viewed him as a subtler kind of European Gaullist proposing to obtain from America by stealth what de Gaulle hoped to snatch by defiance (thus jettisoning the stress on interdependence and cooperation)." (in Brinkley and Hackett, 1991, p. 204)\footnote{In Italy, this argument was particularly popular with the anti-American right wing, but it was widely used and supported by all major political parties. I am grateful to Federico Romero for bringing this point to my attention.}} Of all original members of the EC, however, the French were particularly adamant in resisting the US to demonstrate Europe's new strength and independence. Immediately after the war, French socialist Léon Blum suggested that the Europeans should form a common political alliance in order to improve their standing vis-à-vis the United States and offer to the world a "third way" between capitalism and communism.

This motivation for furthering European integration culminated in the Gaullist period, when the idea that Europe had to demarcate itself from the two blocs and become a "third force" emerged. Although De Gaulle's suspicions of regional integration were deep for the transfer of sovereignty it seemed to imply, he also foresaw its potential for interposing Europe as a third force in the world, where France alone could not have
succeeded.\textsuperscript{59} According to this Gaullist rhetoric, the movement toward European integration was an important step toward independence from the American tutelage.

The reasoning that applied to political relations also applied, with even more vigor and persuasion, to trade relations. The idea that being united would give the Europeans a greater bargaining leverage vis-a-vis the US has been commonly assumed in the European and American press since the early days of European integration. This argument was indeed a justification for the creation of a common commercial policy early on in the integrative process --the consequences of which were feared by the US administration. Already in 1943, when the US State Department was analyzing the policy opportunities and dangers of the afterwar period, the issue of increased European bargaining power was raised. According to economist Jacob Viner, a member of the Special Subcommittee on problems of European Organization, European economic unification would increase the area's bargaining power, as it had in its time increased the power of the United States and the Zollverein, and this bargaining power would be directed primarily against the US.\textsuperscript{60} Therefore it is no surprise that the "third force" rhetoric and the potential consequences of the Common External Tariff on Transatlantic bargaining were at the heart of the Kennedy Round discussions.\textsuperscript{61}

The spillover logic was expected to be at work in the domain of external relations: "speaking with one voice" in trade affairs would lead to an increased international power of the EC, which ultimately translated into common foreign and security policy. American


\textsuperscript{60}See Devy 1997, for an analysis of the intellectual debate in the US during the creation of the European Community and references to the Special Subcommittee on Problems of European Organization, which can be consulted at the US National Archives, General Records of the US Department of State, Records of Harley Notter, 1939-1945, Records of the Advisory Committee on Postwar Foreign Policy.

\textsuperscript{61}See Chapter 3 of this dissertation, "EC-US Agricultural Negotiations in the Kennedy Round (1962-1967)."
policy-makers were well aware of the "third force" dangers associated with the creation of the European Economic Community. In 1961, in regards to the implementation of a regional trade bloc in Europe, the New York Times indeed warned of "the possibility that a united Western Europe might break from the United States and take its stand as the balancing power between East and West."62

The subsequent advances toward broader and deeper European integration led to even higher expectations that the EC was going to use its reinforced leverage to assert a new world leadership role in trade policy. This assumption was particularly prevalent in the early days of in the Uruguay Round negotiations, which came on the heels of the relaunching of Europe with the Single European Act and the drive to complete the European single market by 1992. The assumption was given particular credence since the relaunching of Europe took place amidst discussions of the US' hegemonic decline.

As economic and political integration progressed and the supranational powers of the Commission were strengthened, it was therefore anticipated that the EC's negotiating effectiveness would increase.63 Indeed, the Single European Act, which transformed the decision-making procedures in the EC and committed to complete the European internal market by 1992, provoked the fear of American negotiators. The US worried, first, that the EC would retreat behind fortress-like walls; and second, that the EC could now stand up and hold up to the US in bi- and multilateral negotiations.64 Once the renewed efforts toward integration became publicized around 1987-88, a prevalent view was that "the rest


64See Joseph Greenwald: "The return of self-confidence engendered by the Europe 1992 process has led the EC to be more contentious in disputes with its trading partners. European Commission officials say privately that, while the United States can push weak countries around, the Community can now stand up and slug it out with an aggressively protectionist United States." (in Hufbauer, 1990, p. 346)
of the world is feeling at worst considerable apprehension and at best a great deal of anxious uncertainty about what the effects of 1992 might be for their trade and economic relations with this looming economic superpower."65

Most of the official US understanding of the Single European Act emphasized the potential trade consequences of complete economic unity in Europe. American policymakers did not much discuss the institutional transformations toward increased supranationalism, which the Act entailed. Once again, an institutionally stronger EC was assumed to produce yet a tougher EC bargaining stance in the GATT negotiations. The link between integration and political influence was made more apparent during the debate on the 1991 Maastricht Treaty on European Union, which provided steps toward further monetary and political integration. The argument that deeper supranational ties would strengthen the EC's position in trade, and possibly foreign policy, negotiations was used once more during the 1997 Inter-Governmental Conference leading to the redrafting of the Treaty.66

2) The Internal/External Correlation and the Paradox of Unity

From the formative days of the European Coal and Steel Community, precursor of the EC, up to the present move towards an expanded and more deeply integrated European Union, politicians have assumed that pooling their economic and political resources into one single entity would strengthen their international effectiveness. National governments have proved reluctant to give up their sacrosanct sovereignty over foreign policy, despite this common belief that their influence would increase were they to combine forces. Yet

66See Chapter 8 of this dissertation, "From Single to Multiple Voices."
they have long used the rationale of international effectiveness to pool their trade policy-making authority and negotiate international trade deals as a single bloc. Does this assumption hold up to historical scrutiny? A survey of trade negotiations between the EC and its main trading partner since its creation, the United States, suggests a more nuanced, even paradoxical, finding about the correlation between degree of internal integration and external bargaining strength.

In the Kennedy Round of GATT, which was the first international negotiation to which it participated in its own right, the Community proved a very efficient negotiator. The Community, acting on behalf of its six constituent states, obtained satisfaction for most of its demands, while the US had to retreat on the agricultural issue. Yet the EC’s institutional structure was far from the “internal unity” model advocated by the rhetoric: the Community was incontestably an intergovernmental organization, where little but the requirement of a common negotiator, the Common External Tariff and the fledgling Common Agricultural Policy held the institutional edifice together. Why was the EC successful in international trade negotiations from its very beginning?

By contrast, the EC is of a quite different nature today. Community competence has progressively expanded over an ever broader range of policy areas --from industrial policy and Research and Development in the 1970s, to foreign policy and the environment through the 1986 Single European Act, to monetary policy with the 1991 Maastricht Treaty. At the same time the number of member states has grown from six in 1957, to nine in 1973, to ten in 1980, to twelve in 1986, and to fifteen in 1995. The institutional structure has evolved as well, with an increasing recourse to qualified majority as the formal mode of decision-making. In that sense, the Community is more “united” internally today than in the 1960s. Why, then, does the EC face apparently more hurdles in the current international

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67 The agricultural negotiations in the Kennedy Round are the focus of Chapter 3 of this dissertation.
negotiations on agriculture and services than it did in the early agricultural deals? Is the long
trend towards increased EC bargaining strength predicted by the “internal unity as external
strength” assumption not corroborated by history?

The EC is indeed a powerful external actor in international trade negotiations, but at
first glance it may be no more effective today with fifteen constituent states and an
extremely diverse range of activities than in its early days with six members and few
integrated policies. I call this “the paradox of unity.” As the Community deepens and
widens internally, it does not automatically increase its relative bargaining power
externally. Despite the intuitive appeal of the assumption of unity as strength, therefore, we
need to probe its theoretical foundations in order to explain the paradox of unity. The
primary objective of this dissertation is to analyze the potential impact of institutional
integration on the process and outcome of international negotiations in which the EC
participates as an actor distinct from its constituent states.
CHAPTER 2

DIVIDED BUT UNITED: IMPACT OF THE EC'S INSTITUTIONAL
STRUCTURE ON INTERNATIONAL NEGOTIATIONS

In the area of trade policy, negotiations between the Member States can
sometimes be far more grueling than negotiations with third countries.
Inevitably, proposals intended to reflect the collective position --i.e. the
Community interest --are amended to take account of the disparate national views
until, in many cases, all that is left is the "lowest common denominator." During the Uruguay Round negotiations, this fundamental institutional flaw was
cruelly exposed from time to time by the lackluster performance of the European
Community.

Hugo Paemen, principal EC negotiator during the Uruguay Round.¹

From the inception of the European Community, the member states have transferred
their authority to negotiate international trade agreements to the supranational level. They
are obligated to first reach a common bargaining position, which is then defended at the
international table on their behalf by Community negotiators. How does this "single voice"
obligation affect the likelihood of an international agreement being reached, the content of
the agreement, and the individual countries' chances at influencing the final agreement? It is
easy to comprehend why countries will strengthen their individual voices by combining
forces with others when their interests converge on a given issue. But what is the effect of
being forced to negotiate as part of a single whole when the interests of the constituent
parties are divergent? Is there a positive correlation between the EC's internal unity and its

¹Paemen and Bensch 1995, p. 95. Mr. Paemen is currently the EU Ambassador to the United States.
external strength? Finally, under what conditions can third countries exploit or, on the contrary, be victims of the EC's institutional structure?

This chapter analyzes how the obligation to negotiate international trade agreements with a single voice has affected the external bargaining capabilities of the European Community. It focuses on the bargaining constraints and opportunities created by the "single voice" requirement and examines theoretically its impact upon international trade negotiations. My central argument is that the EC's institutional structure exerts an independent causal effect on the process and outcome of international negotiations, given an exogenous distribution of national preferences. By developing a multi-step model about the strategic effects of being forced to negotiate externally as a single entity, I show that the EC does indeed affect international outcomes through its institutional features --mainly the internal decision-making rules and the competence delegated to the supranational negotiators. The direction of this effect is in turn determined by the negotiating context -- defensive or offensive. I also argue that in certain circumstances, contrary to the conventional assumption expressed in the opening quote that the EC's cumbersome decision-making procedures have negative effects on its external bargaining potential, the EC can indeed use its institutional constraints strategically in order to reach its negotiating objectives. This might explain the apparent "paradox of unity" highlighted in the previous chapter.

I. Institutionalist Analysis and the Delegation of Trade Authority in the European Community

Brussels bureaucrats, as well as European and American politicians, have long shared the assumption that a single voice gives the EC more bargaining leverage in its external negotiations, as Chapter 1 argued. Yet the existing literature on regional integration
has never asked, nor answered, whether this conjecture was true. Scholars in the
Deutschian and, more recently, constructivist traditions have suggested in passing some
relationship between the EC's internal features and its external influence, as have some
contributors to the neo-functionalist literature, but none have formulated testable
hypotheses about this possible linkage. Recent studies which have applied the insights of
rational choice institutionalism and principal/agent analysis to the EC seem much more
promising for understanding the consequences of various decision-making structures in the
Community. Drawing on this "new institutionalism" literature, I explore the influence of
institutional mechanisms aggregating the diverse preferences of the member states into a
coherent whole on policy outcomes. Specifically, I propose to examine the interactions
between the EC's internal institutions and external impact in order to determine the optimal
institutional design maximizing the EC's external bargaining potential.

1) Institutionalist analysis

Institutional analysis explores the role played by institutions in determining social
and political outcomes. The term "institutions" designates the set of formal and informal
rules that constrain policy choice. They are distinct from "organizations," which are agents
rather than mere structure. The central questions motivating institutionalist inquiries have to
do with the rationales for designing specific institutions, the way in which these institutions

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2See for instance Deutsch et al. 1957; Wendt 1994; Mercer 1995; Schmitter 1969; and Lindberg and
Scheingold 1970. For a detailed discussion of the existing literature on the external consequences of internal
integration in Europe, see Chapter 7.

3For instance see Pollack 1997; and Nicolaïdis 1998.

4McCubbins and Sullivan 1987 define institutions as "the rules of the game that constrain individual
choices and provide incentives for individual action" (p. 3). Similarly, North 1990 defines institutions as
"the rules of the game in a society" which "consist of formal written rules as well as typically unwritten
codes of conduct that underlie and supplement formal rules" (pp. 3-4).
shape policy outcomes, and the process of institutional change. Institutionalism starts with the central assumption that actors have preferences defined exogenously, but with the observation that knowing these preferences is not sufficient to predict the policies that will be enacted. It is the process through which these preferences are channeled which determines policy outcomes. The basic premise of institutional analysis is, therefore, that institutions do exert an independent influence on policy outcomes.

Far from being a unified school of thought, institutionalist analysis branches out into at least three distinct theoretical approaches, as summarized by Hall and Taylor: historical institutionalism, rational choice institutionalism, and sociological institutionalism. Only the former two are directly relevant for the central question of this dissertation. Historical institutionalism emphasizes the role of institutions in pushing society along a certain set of "paths," in creating unintended consequences, and in ensuring their own historical persistence. Institutions are resilient partly because they constrain the set of policy change that is available to legislators and other societal actors at a given time. Another variant of institutionalist theory is "rational choice institutionalism," developed mainly by studies of the American congressional process, which argues that the procedural rules of Congress structure the choice available to its members and solve their collective action problems. In combination with the so-called "new economics of organization," which focus on transaction costs to explain the development of institutions, and with theories of agency, which focus on the mechanisms for delegation of authority by a

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5 Hall and Taylor 1996 provide an exhaustive review of the three variants of institutionalism in political science.

6 Quintessential examples of historical institutionalism can be found in March and Olsen 1989; Steinmo 1992; and Pierson 1996.

7 See for instance the works of Riker 1980 and Shepsle 1989.


"principal" to an "agent," rational choice institutionalism has provided interesting answers to the question of institutional impact by emphasizing the role of strategic interaction in the determination of policy outcomes. Both historical and rational choice institutionalisms rejoin to argue that, given exogenously defined preferences, institutions affect individual actions, and therefore policy outcomes, by altering the expectations that actors have about the actions of others.

Studies of trade policy making in the United States have fruitfully used institutionalist analysis, going back to the pioneering work of Schnattschneider who argued in 1935 that the protectionist Smoot-Hawley tariff resulted from a deficient legislative process that gave producer interests disproportionate influence in shaping policy.¹⁰ Subsequently, many scholars have focused on the policy implications of various institutional arrangements, such as the committee system, open and closed rules, and party leadership, in order to understand the policies eventually adopted in a wide range of sectors. Recently, scholars of American politics have explicitly applied the insights of rational institutionalism to the analysis of US trade policy by studying its process in order to understand its outcomes. O'Halloran accounted for variations in the levels of US trade protection since the 19th century by examining in thorough detail the delegation of the trade negotiating authority from the congressional principal to its executive agent.¹¹ Bailey, Goldstein and Weingast explained the passage of the 1934 Reciprocal Trade Agreements Act and the subsequent liberalization of US trade policy by looking at the political institutions that were set up in the 1930s.¹² Milner and Rosendorff attempted to explain the fast-track process by examining the respective roles of the Executive and the Legislative in


¹¹O'Halloran 1994.

¹²Bailey, Goldstein and Weingast 1997.
the trade policy making process and arguing that the executive principal chose to add a legislative veto in order to gain bargaining leverage over foreigners by “tying its hands” through the constraint of congressional ratification.\textsuperscript{13} Pahre recently studied the increasing instability of the institutional rules governing US trade policy (including the difficulties surrounding the adoption of the fast-track process) by focusing on the details of congressional procedures.\textsuperscript{14} The strength of their analyses lies, I believe, in their ability to move away from a simple focus on preferences and power relations to understand the sometimes paradoxical nature of trade policies.

2) Institutionalist analysis and EC policy-making

Institutional mechanisms are neutral neither in the American, nor in the European policy making processes. As the insights of the rational choice literature and historical institutionalism suggest, different decision-making rules produce different outcomes for a given, unchanged set of preferences. In the European Community, not every member state is created equal in its ability to impact the common external bargaining position adopted at the EC level on a given issue. The common bargaining position is not an average of all the member states’ preferences, and the bargaining power of the EC at the international level is not the sum of all the member states’ individual bargaining power. Some institutional rules can empower individual states with a disproportionate clout. The institutional framework under which collective decisions are made in the EC can exert a distorting effect by amplifying or mitigating the voice of some member states. In turn, this distorting effect has external bargaining consequences.

\textsuperscript{13}Milner and Rosendorff 1997.

\textsuperscript{14}Pahre 1997.
Yet the external impact of internal EC institutions has been neither studied, nor even raised as a question in the literature on European integration. The scholarly debates on the EC have mostly focused on the nature and process of European integration, but they have long ignored the policy consequences of the EC's institutional rules. As Garrett observed in 1995, "the EU's procedures for passing legislation are very complicated. Many influential academic studies simply ignore the details of these procedures. Scholars who do focus on legislative procedures spend more time describing them than they do on assessing their impact on the course of integration."\textsuperscript{15} Instead, the literature on European integration has been held hostage to a useful but now overdrawn debate between partisans of neo-functionalist and intergovernmentalist approaches to explaining the process of regional integration.\textsuperscript{16} As a result, studies of European integration have balanced between an all-or-nothing approach to the nature of the EC: either it is simply a juxtaposition of member states who maintain their full sovereignty on all issues and use institutions merely as instruments, as intergovernmentalism acknowledges (in which case studying the EC \textit{per se} is useless since it is only a forum for intergovernmental bargaining); or the EC is a peculiar construct with quasi-federal structures, as neo-functionalism claims (in which case the study of the EC becomes analytically isolated in a special corner of the comparative politics discipline). I contend that a focus on the EC institutions as determinants of the internal and external consequences of European integration could move the field of EC studies beyond this central debate by reconciling the contradictory pulls of comparative and international analyses --both offer insights which have to be integrated for a thorough understanding of policy-making in Europe.

\textsuperscript{15}Garrett 1995, p. 290.

\textsuperscript{16}Pierson 1996 provides a good summary of the arguments of the two camps. Among the most influential contributions to this debate are Haas 1958; Sandholtz and Zysman 1989; Moravcsik 1991; Garrett 1992.
Recent studies have attempted to fill in this analytical gap by examining the role played by some institutional procedures in the process of integration. By focusing on the agenda-setting role of the various EC institutions, for instance, studies by Tsebelis, Garrett, and Pollack have integrated some key precepts of intergovernmentalist theory with a detailed analysis of the peculiar European policy process, and have thereby increased our understanding of the nature of European integration.\textsuperscript{17} Another recent seminal contribution by Pierson analyzed the impact of historically entrenched institutions in the EC on change in the process of European integration.\textsuperscript{18} If recent scholarship on European integration is slowly moving in the direction of institutionalist analysis to understand the consequences of the existing institutional structure in the EC on further integration, it still has not looked beyond the geographical and intellectual boundaries of the European Community.

This dissertation proposes to apply the concepts and methodology of the new institutionalist analysis --based on the American politics literature, on historical institutionalism, and on the more recent rational choice institutionalist studies of the European Community-- to analyze the external impact of European integration. I argue that the EC is not merely a forum in which the European states exchange concessions. It is primarily a consequential institutional framework that has been designed by, but can become constraining for, the member states. Rather than simply adding the national bargaining power of each of its constituent states, some of the EC’s institutional features specifically amplify or mitigate the influence of some individual member states. As a result, the process and outcome of international negotiations in which the EC participates are different from what would have resulted from an independent participation of each member state --and from a different set of rules governing the aggregation of the member states' 

\textsuperscript{17}See for instance Tsebelis 1994; Garrett 1995; Garrett and Tsebelis 1996; and Pollack 1997. See also Scharpf 1988.

\textsuperscript{18}Pierson 1996.
preferences within the single Community entity. This analysis can account for the paradox of unity, because it argues that the intergovernmentalist design, which was the only institutional framework of the EC in its early days, may make the EC a tougher international negotiator than a more supranational structure.

II. An Institutionalist Model of the EC’s Impact on International Bargaining

Nowhere more than in trade matters has the European Community been as integrated institutionally. Whereas member states still cannot agree on a common course of action in most affairs of security and foreign policy, they have surrendered their autonomy in international trade negotiations to the supranational Community for several decades. Instead, they first have to agree on a common bargaining position, which Commission negotiators speaking with a “single voice” then carry out at the international table. As long as they remain within the limits set by the “negotiating mandate” agreed to by the Council of Ministers, Commission negotiators are the sole representatives allowed to conduct trade bargaining with third countries on behalf of Community members. Once the supranational negotiators have reached an agreement with third countries, the member states approve or reject the deal made on their behalf through a vote in the Council.¹⁹ Therefore, nowhere more than in the international political economy sphere should we expect to witness the independent external impact of the European Community, if there has been one at all.

The existence of this “single voice” obligation raises a series of theoretical and empirical questions. How does the EC’s internal decision-making process affect the type of common position that the Community defends at the international level? Which individual

¹⁹For a good introduction to the process of EU trade policy making see Woolcock and Hodges 1996.
member states see their own international bargaining power enhanced or diminished by the effects of the EU’s internal features? Does the institutional structure of the Community, which is handicapped by the conflicting preferences of the member states and at the same time their reluctance to transfer sovereignty to solve these conflicts, always constrain its capacity to act on the international scene? Can these institutional constraints be used, in certain conditions, as bargaining leverage instead of handicap? Which institutional design can maximize the EU’s collective external bargaining power? Finally, how does the obligation for the EU to negotiate trade agreements as a single entity contribute to shaping the international trading system? In this section I design an institutionalist model to answer these questions and generate a series of hypotheses about the international effects of the EU’s unique institutional structure. The argument unfolds in five successive steps: 1) the model analyzes how the internal EU voting rules (unanimity or majority) impact the common bargaining position eventually reached by the member states; 2) it introduces a novel distinction between “defensive” and “offensive” negotiations; 3) it examines how the internal voting rules influence the external bargaining power of the EU as a whole in defensive and offensive negotiations; 4) it studies the strategic effects of the delegation of negotiating competence by the member states to the Commission; and 5) it combines all these variables to offer a series of predictions about the external bargaining effects of negotiating international trade agreements with a single voice.

1) Impact of the EU’s decision-making rules on its common bargaining position

In most policy areas falling under Community competence, the legislative process is now shared between the Council of Ministers, the Commission, and the European Parliament. This process can be extremely complex. As a result, scholars are debating the optimal way of accounting for the various interactions between the existing institutions
when modeling decision-making in the EU. By contrast, trade policy remains one of the last bastions of sole Council legislative power. Even though successive revisions of the treaty founding the European Union (the 1985 Single European Act, the 1991 Maastricht Treaty, and the 1997 Amsterdam Treaty) have increased the participation of the European Parliament in the legislative process, they have left commercial policy untouched. As long as international trade negotiations are conducted on the legal basis of Article 113 which determines trade policy, neither the co-decision nor the cooperation procedures, involving the Parliament's right to amend or reject legislative proposals, apply.

The common EC external bargaining position can be adopted, in theory, following one of two voting rules: unanimity or qualified majority. Decision-making has often taken the form of unanimity because of the existence of a formal or informal veto right by individual member states. In the early days of the Community, the Council of Ministers took bargaining positions on external trade under unanimity, but it was supposed to stop the practice in January 1966, end of the transitional period. Qualified majority voting would have been automatically instituted after this date, had France's De Gaulle not paralyzed the functioning of Community institutions with the "empty chair" crisis during the Kennedy Round. The crisis resulted in the "Luxembourg Compromise," a gentleman's agreement according to which an individual member state could veto a decision otherwise taken according to qualified majority if vital national interests were at stake.

The 1985 Single European Act, which launched the "1992 program" of market liberalization in Europe, attempted to establish the primacy of majority voting in the EC. With the exception of sensitive areas such as taxes, employee rights, and the free

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20 See for instance Garrett and Tsebelis 1996 for an interesting critique of intergovernmentalism based on the increasing interactions of the various EC institutions in the decision-making process.

21 See Garrett 1995 on the Luxembourg Compromise and the various legislative procedures today. See also Chapter 3 for an analysis of the historical relation between the Luxembourg Compromise and the Kennedy Round of trade negotiations.
movement of persons, the member states agreed to use qualified majority to legislate on all economic matters. In particular, the Single European Act asserted majority as the mode of decision-making in external trade. Since then, at least on paper, the Council agrees on a common external bargaining position according to qualified majority --a system under which member states are assigned different voting weights, based approximately on the size of their population, and by which a number of votes roughly equivalent to two-thirds is needed in order for a proposal to be accepted.

The voting practices, however, are not as clear as the voting rules suggest. Indeed, consensus is the most widely used mode of decision-making. In reaching a common bargaining position for international trade negotiations as in reaching most other policy decisions in the Community, member states try to find a general consensus around a given issue without resorting to a formal vote. From a theoretical standpoint, consensus is not worth adding to a simple model of the impact of voting rules because it does not yield significantly different results from either unanimity or majority, depending on the way consensus is achieved. Even when member states never put the decision to a formal vote, a consensus reached under de facto unanimity rule and a consensus reached under de facto majority rule produce different outcomes, each one close to what a recourse to formal voting would have yielded. Unanimity and majority, on the contrary, have a very contrasted impact on the content of the decision eventually reached by the member states.

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23 The current vote weights in the EC are the following: Germany, France, Italy and the United Kingdom each have 10 votes; Spain has 8 votes; Belgium, Greece, the Netherlands and Portugal have 5 votes; Austria and Sweden have 4 votes; Ireland, Denmark and Finland have 3 votes; and Luxembourg has 2 votes. 62 votes out of a total of 87 votes need to be cast in its favor for a Commission proposal to be adopted. In other cases, the qualified majority remains the same but the 62 votes must be cast by at least 10 member states.

24 In 1994 only 14% of the legislation adopted by the Council was formally put to a vote and subject of negative votes and abstentions. (source: Guide to EU institutions, The Council, EUROPA web server).
For the sake of parsimony, I will analyze the effects of only the unanimity and majority rules on the common external bargaining position.

As for the ratification of international trade agreements, it occurs in theory according to the rule of qualified majority, as in the decision on the negotiating mandate. Yet the formal voting rules can also be bent within certain limits to satisfy a discontented member state. For instance the member states agreed in September 1993 to France’s demands for approving the final Uruguay Round agreement unanimously, while in theory the Council adopts trade agreements on a majority basis.

Therefore, despite the formal voting rules enshrined in the Single European Act and the subsequent treaties, institutional uncertainty remains in the EC. First, there still exist legal and political doubts over whether member states can use their veto power granted under the Luxembourg’s compromise, which was never rejected from, nor included into the EC constitution. Therefore, before entering an international trade negotiation, no one knows for sure if one member state, considering that its vital national interests are at stake, will not attempt to veto the international deal. Moreover, uncertainty also governs the ratification of international agreements, which member states can decide will have to be approved unanimously. It is this uncertainty, coupled with the current tendency of the member states to favor a return to the pure intergovernmentalist approach of retaining the veto right on all matters,\textsuperscript{25} which makes the study of the effects of the EC’s decision-making rules on its external bargaining power so relevant, both theoretically and empirically.

\textsuperscript{25}On the issue of the unanimity vs. majority debate in trade policy and the exclusivity vs. mixity of competence of Commission negotiators, see Meunier and Nicolaïdis 1997. This issue will also be addressed in Chapter 8.
In the following model and remainder of this chapter, I take the policy preferences of the member states as given. I do not explain why different states have different policy preferences, nor how they form these preferences. I make the assumption that the member states' preferences on a given issue-area can be ordered along a single dimension from the status quo to a higher degree of preferred policy change.26 For instance, if the issue being voted on is the opening up of the car market, some countries may prefer to keep the current restrictions on car imports, while others may want to completely lift all the restrictions, and the majority may be somewhere in between. In many cases of trade negotiations which are about removing impediments to trade, the alignment of preferences mirrors the protectionist versus liberal dichotomy: the countries closest to the status quo are protectionist, while the countries farthest from the status quo are pushing for international liberalization. I also make the assumption, firmly grounded empirically, that the preferences of the member states are not similar --therefore a decision made by the Council under unanimity differs from a decision made under majority.

Whether member states follow the voting rule of unanimity or qualified majority to make their decision produces different common bargaining positions under a given set of policy preferences (see Figure 1). For the sake of simplification, I make the additional assumption that all countries are on the same side of the status quo --that is, they do not have policy preferences more restrictive than the status quo.27

26The assumption that preferences are reducible to a single dimension is frequently employed in the literature, as is discussed in Milner 1997, p. 37.

27I will address the case in which the preferences of the member states are distributed on both sides of the status quo in the next step of the model.
Figure 1

Impact of internal voting rules on the EC common position

U
\[\uparrow\]

\[\rightarrow\]

status quo

M
\[\uparrow\]

\[\rightarrow\]

degree of preferred policy change by member states

\[\textit{extreme policy change}\]

U = common position under unanimity
M = common position under qualified majority

Unanimity. When each member state, irrespectively of its size, possesses the power of veto, the preferences of the country least interested in changing the status quo dominate the decision-making process. As a result of unanimity voting, the common position eventually reached is the lowest common denominator. If the dimension along which member states order their preferences is policy change (for instance, less regulation in a certain sector or more provision of a certain good), the common position adopted is that of the state keenest on preserving the status quo. Indeed, in case member states fail to agree on any other common position, the status quo is the default position. The most conservative (or protectionist) state is able to set the terms of the collective position because it is empowered with a “nuclear weapon” --the veto right. This extreme state has the institutional ability to block the adoption of any proposal going beyond what it is willing to offer. By contrast, this power to dictate the terms of the final decision to the other member states does not apply to the state with the other extreme preferences because, theoretically,

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29 It can be argued that, in practice, not all states share an equal veto right: a threat of veto from one of the big countries (France, Germany, and the UK) carries more weight than a threat of veto from a smaller member state. In theory, however, any country can rally the collective position around its preferences under unanimity rule.
it prefers any proposal that provides an improvement to the status quo and therefore has no ground for veto. Therefore, all other member states lose from being forced to negotiate international agreements with a single voice because unanimity has the effect of amplifying the most conservative voice by turning it into the official position of the Community.

**Majority.** By contrast to unanimity, majority rule has the effect of mitigating extreme positions. Since states must gather one third of the total Community votes to block a proposal under the qualified majority system, the terms of the final agreement satisfy the median rather than the deviant countries. Studies of the EC’s decision-making system based on “power indexes,” which analyze all mathematical possible winning coalitions to which each member state is pivotal, have tried to highlight the ability of particular governments to influence the outcome of Council decisions.\(^{30}\) Recent criticism of this literature, however, has shown that it has systematically overestimated the power of governments with extreme preferences and underestimated the power of more centrist governments because of its lack of emphasis of the policy preferences of the member states.\(^{31}\) I agree with the latter view that it is essential to take into account the substantive distribution of preferences when analyzing the common EC position that the voting rule of qualified majority can produce. Therefore, as Figure 1 shows, the losers from the single voice arrangement in trade are the states with extreme preferences, since they can be outvoted by qualified majority. The majority of member states, however, benefits from this voting rule which gives their preferred position the support of the whole Community.

The one-dimensional spatial model presented in Figure 1 provides a simple illustration of the mechanical effects of different voting rules on policy decisions, under a given set of preferences. It shows that unanimity amplifies the most protectionist voice,

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\(^{30}\)See for instance Hosli 1995 for an application of the power indices method to the study of decision-making in the Council of Ministers.

\(^{31}\)Garrett and Tsebelis 1996.
while majority mitigates the extremes. Of course this presentation is extremely simplified. For once, it does not take into account the reality that states with outlying preferences can often be appeased through side-payments, issue-linkages, and temporal trade-offs, which diminishes the likelihood that they will recourse to veto. Yet despite its simplified assumptions, this model is able to highlight the independent causal role of institutional rules and sets the stage for analyzing the impact of the EC’s institutional structure on its external bargaining capabilities.

2) Defensive or offensive negotiations: the negotiating context as a central variable

If different decision-making rules in the EC produce different policy positions under a given set of preferences, then they should also have a differential effect on the Community’s external bargaining capabilities. How do the institutional conditions under which the common position is reached influence the external bargaining capabilities of the Community as a whole? How do third countries build a negotiating strategy against their European opponent in the face of institutional uncertainty? How can the individual member states manipulate the EC institutions to maximize their benefits, or minimize their losses, in international negotiations? The second step of my institutionalist model introduces the independent variable “nature of demands,” which characterizes a negotiation as “defensive” or “offensive” in relation to the status quo, in order to later explain the strategic effects of the EC’s institutional framework on its external bargaining capabilities.

The conceptual roots of this distinction go back to the negotiating literature’s characterization of one of the parties to a negotiation as the “demandeur” --or, according to

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32See Mayer 1992 for an analysis of the strategic use of internal side-payments.
the terminology of Glenn Snyder and Paul Diesing, as a "challenger" of the "defender"'s position. Both from a theoretical and a practical standpoint, the politics of these two situations are quite different. I propose here to study systematically the impact of the negotiating context on the EC's optimal choice of voting rule in a given negotiation. As this chapter will show, the defensive or offensive nature of demands indeed reverts the direction of the effects of the EC's decision-making mode on its external bargaining capabilities.

I assume that the distribution of policy preferences of the member states are fully observable by all agents --member states as well as third countries. This is a fair assumption since it is possible to guess grossly the preferences of a country on a given issue by following debates in national parliaments, holding formal and informal conversations with members of government, reading the national press, and following opinion polls. The French position on the issue of agricultural liberalization and national content of broadcasting programs during the Uruguay Round of GATT came as a surprise to no one, for instance --even if it was difficult to predict exactly how hard the French government was willing to push and prioritize agriculture against other goals of the negotiation.

Let us also assume that uncertainty is cast over the internal voting rules in the EC. The EC's negotiating opponent does not know at the outset of a negotiation whether the qualified majority rule will apply, as it is supposed to, or whether some member states will decide to use their veto. Even the member states are uncertain as to whether the decision will be made according to unanimity or qualified majority. While in all cases of trade negotiations the treaties governing the EC call for the use of qualified majority to agree on the common external bargaining position, it is always possible that one member state will

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33Snyder and Diesing 1977.
try to impose its veto on the international agreement --either at the time the common negotiating position is agreed upon or upon ratification.

Let us further assume that the EC’s negotiating opponent does not act based on the probabilities of outcome. The opponent does not decide whether or not to engage the EC in a negotiation based on the expected value of its own gain following the probability $P$ that the EC will vote under majority rule and the probability $P - 1$ that the EC will vote under unanimity. Rather, I make the assumption that the opponent will base its strategic decision about whether to initiate a negotiation with the EC on calculations of worst possible outcome.

Finally, I make the simplifying assumption that the EC and its opponent do not have the choice of accepting or rejecting a negotiation when it is initiated by the other party. There are two main empirical rationales for this assumption. First, negotiations on a given issue cannot be examined separately from negotiations on other issues: in today’s multilateral negotiations first under the auspices of GATT and now as part of the WTO, all negotiations are linked. In reality, trade negotiations are a multi-step process: in the first phase, or “prernegotiation,” the actors identify the problems to be addressed and agree on the issues to include in the negotiations. This first phase can take years to complete, during which the parties weigh in their chances of obtaining favorable outcomes on a given issue and balance them against issues from which their opponent is expected to derive greater relative gains. The second phase is the actual conduct of the negotiations on substantive issues, during which concessions are made and details are hammered out. The final phase is that of agreement and implementation. For instance, the EC was drawn into negotiating agricultural liberalization in the Uruguay Round of GATT only under the promise that financial and other services would be included in the multilateral negotiation as well (or

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34See Hampson 1995 for a discussion of the multiple phases of a multilateral negotiation.
under the threat that they would be excluded if agriculture were excluded). In many cases, therefore, the EC accepts to enter into a negotiation which is expected to bring greater rewards to its opponent because of a trade-off with another area in which the EC is expected to gain more. In this chapter, I study negotiations after the pre-negotiation phase has been settled. Actors find themselves in situations where they could be attacked, or where they could attack, as a result of prenegotiation bargaining. This is why it is fair to assume, for the purpose of my model, that neither party can refuse to negotiate.

A second practical rationale is that most trade negotiations are of what the negotiation literature has labeled “integrative” nature. Countries accept entrance into these negotiations in the first place because they hope to derive some benefit. This is in stark contrast with most foreign policy negotiations which are about claiming ownership on a piece of land. In an integrative negotiation, each side is likely to try to maximize the benefits the opponent is willing to extend, while minimizing its own concessions. If the issue being negotiated is the liberalization of a particular sector and its opening up to foreign competition, for instance, each side agrees to the negotiation based on its belief that gaining new markets will be beneficial. Each party, however, may try to obtain the freest possible access to its opponent’s market while keeping as many restrictions as possible on the entry to its own market. The transatlantic disputes on aircraft subsidies and national preferences on public procurement are good examples of such negotiations. For the purpose of our model, it means that the EC may chose to enter into a negotiation with the US knowing that it will have to make some concessions, but expecting that these will be traded off against equivalent concessions on the US side on a similar issue. It is therefore fair to assume that each party accepts the negotiation initiated by the other party.

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35 The distinction between “distributive” negotiations (about dividing a fixed pie) and “integrative” negotiations (about increasing the size of the pie) comes from Walton and McKersie 1965. See also Mayer 1992.
All these assumptions being established, let us examine the distinction between “defensive” and “offensive” negotiating contexts. For reasons of simplification, I sometimes refer to the EC’s negotiating opponent as the US --but the model can account for the bargaining of the EC with any other third country.

**Defensive.** In a defensive situation, the negotiating opponent challenges the EC to change the policy status quo. It is termed “defensive” because the opponent is the first mover and initiates a negotiating “attack” against European policies. I define as “defensive” any negotiating situation in which the EC’s opponent demands a change in the status quo, based on its assessment that whatever the voting mode in place in the EC, the worst outcome it can obtain from the negotiation is no policy change. On Figure 2a, a defensive situation translates into any negotiation where both M (the common EC position under majority) and U (the common EC position under unanimity) fall between the demandeur’s position and the status quo. The opponent cannot suffer any losses in a defensive situation since the worst possible outcome is the status quo. Nevertheless, it can potentially win greater or fewer concessions depending on the voting rules governing the EC’s internal decision-making process (see Figure 2a).

This definition rules out cases in which the preferences of the member states are distributed on both sides of the status quo. If unanimity is equated with the status quo position, while majority yields a common position further remote from the opponent than was the status quo, then I argue that the opponent will not challenge the EC into a negotiation. This would be a Quixotic fight since, in the best case all the opponent would obtain from the EC would be the status quo and, in the worst case, it would have the potential to obtain a bargaining outcome worse than the current status quo.

The majority of conflictual EC-US trade negotiations since the 1960s have involved the preservation of the European policy status quo. Agriculture, which has provided over half of all transatlantic trade disputes since the creation of the European Community, has
typically involved defensive negotiations in which the US demanded from the EC changes in its protectionist Common Agricultural Policy (CAP). Other clear recent defensive negotiations have included, for instance, the dispute over the national content of broadcast programs during the Uruguay Round or the fight over the EC policy on beef hormones.

Offensive. In an offensive situation, the EC is the one making demands on a recalcitrant negotiating opponent. It is termed "offensive" because the EC challenges its opponent's policy status quo. I define as "offensive" any negotiating situation in which the EC demands a change in the opponent's policy, based on its assessment that the worst outcome it can obtain from the negotiation is no policy change. On Figure 2b, an offensive situation translates into any negotiation where the opponent's position falls between the status quo and both U (the common EC position under unanimity) and M (the common EC position under majority). The EC cannot suffer any losses in an offensive situation since the worst possible outcome is the status quo. Nevertheless, it can potentially win greater or fewer concessions depending on whether it bases its decisions on majority or unanimity (see Figure 2b).36

The advent of the Single Market program, which offered the EC more to bargain with as well as the more credible threat of an alternative option, and the simultaneous return to protectionism and unilateralism in US trade policy produced a rapid increase in trade negotiations in which the EC went on the offensive since the early 1990s. For instance the EC tried to pry open its competitors' markets with negotiations on reciprocity in the original

36The assumption of uncertainty over the decision-making rules enables us to make abstraction of the strategic behavior of member states over whether to use their veto. There have been many documented cases in the EC where member states have vetoed a deal that they did not care about, only to obtain internal concessions in other issue-areas. For instance, in 1994, Spain threatened to veto the accession of Austria, Finland and Sweden, unless its fishermen were allowed to fish in British and Irish waters. In 1992 Italy blocked a big budget-reform package in order to get a higher quota for milk production and an assurance it would not be prosecuted for earlier cheating on its milk quota. This give-and-take game between the member states is outside the focus of this paper.
Figure 2
Impact of EC voting rules on bargaining space with third countries

Figure 2a: Defensive case

$U$ = common position under unanimity
$M$ = common position under qualified majority

Figure 2b: Offensive case

$U$ = common position under unanimity
$M$ = common position under qualified majority
The definition of the negotiating context based on the nature of the party initiating the demand for policy change removes some ambiguity from the defensive-offensive dichotomy: what if one member state considers a situation defensive when it may be viewed as offensive by another member state? When a trade issue does not fall under supranational competence, such as in the “open skies” agreements on aviation, some member states may wish to resist an opponent’s challenge, while others may use the negotiation to challenge the opponent’s too restrictive policies. Nevertheless, once member states have agreed on a common position, whether by unanimity or majority, it is easier to determine whether the Community as a whole is placed in a defensive or offensive posture by looking at where the initiative for the negotiation originated.

In both the defensive and offensive cases, the central question which this chapter proposes to answer becomes the following: given the distribution of preferences of the member states, what internal voting rule should the EC adopt to maximize its bargaining power in the international negotiation? By combining the defensive/offensive variable with the unanimity/majority variable, my model should contribute to predicting the bargaining power of the Community in international negotiations and the shape of the final international agreement.

3) Effects of the EC’s institutional structure on its international bargaining power

In conjunction with the defensive or offensive posture of the Community, the rules used de facto by the Council to adopt a common bargaining position and later ratify the final trade agreement determine the EC’s external bargaining capabilities. Which rule increases, and which rule decreases, the Community’s potential bargaining power? I define bargaining power as the ability of a negotiating actor to obtain the best possible deal in the
international negotiation—that is, to obtain the most from its opponent while conceding the least. Since it is problematic to define the "collective" interest of the EC as a whole other than by looking at the common position the member states selected as a result of the voting rule in use, I chose to observe the EC's collective bargaining power from the point of view of its opponent.37 What the EC's opponent was able to achieve (or not) in the negotiation is a good approximation of the bargaining power of the EC as a whole. This definition of the EC's potential bargaining power leads me to asking a second question: Which voting rule will be to the advantage of individual member states in specific negotiating situations?

The combination of the external negotiating context with the internal voting rules in the EC results in four possible scenarios. Table 1 summarizes the results. It should be noted that the party initiating the negotiation will always "win" since it would not have started the negotiation otherwise: the US will "win" in a defensive case, while the EC will "win" in an offensive case. The interesting question that this model tries to answer, however, is the degree to which they will "win" and the degree to which the EC's bargaining power will be enhanced or reduced by its institutional features.

37The common bargaining position adopted by the member states sets the limits of the mandate given to Commission representatives in international negotiations. Although some or even most member states may not benefit from this common position, once it has been adopted it becomes the official position that Community negotiators defend with a single voice in international settings. Therefore it is possible to talk about an EC "collective interest," equated with the common position. I considered that it was less ambiguous to define the EC's collective bargaining by default: if the US bargaining power is enhanced, then the EC collective bargaining power is reduced, and vice-versa.
TABLE 1

Effects of the EC’s Institutional Structure on the Opponent’s Bargaining Outcome

<table>
<thead>
<tr>
<th>VOTING RULES</th>
<th>NATURE OF DEMANDS RELATIVE TO STATUS QUO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Defensive</td>
</tr>
<tr>
<td></td>
<td>Offensive</td>
</tr>
<tr>
<td>Unanimity</td>
<td>(1) Small or no gain for opponent.</td>
</tr>
<tr>
<td>Majority</td>
<td>(2) Larger relative gain for opponent</td>
</tr>
</tbody>
</table>

(1) Unanimity and defensive. Unanimity amplifies the power of the EC’s most conservative (or protectionist) state by ensuring that the negotiating position adopted is the lowest common denominator, while enabling this position to resonate internationally through the combined weight of the whole Community. In a defensive case, unanimity rule makes bargaining harder for the third country challenger because it widens the distance separating the two negotiating positions (see Figure 2a). It also has the effect of restricting the international “win-set,” to use the terms employed by Robert Putnam, and therefore the likelihood that an agreement will be reached.38 It takes only one deviant country to block progress in the negotiations and the consensus can only occur around that country’s position. The institutional impossibility to alter the common position, also known to the negotiating opponent, makes the EC a very tough bargainer, since it cannot deviate from its

38Putnam 1988. The “win-set” is defined as the set of potential agreements that would be ratified by domestic constituencies.
offer and can use its institutional constraints as an excuse for not coming up with enough concessions. Therefore, the threat of having one outlying country eventually overturn the international agreement leads to minimal, or even no gains for the opponent. In that sense, unanimity reinforces the EC’s bargaining power.

(2) Majority and defensive. Majority, by contrast, mitigates the extremes. In a defensive case, majority means that the most conservative state cannot impose its preference to preserve the status quo upon the other member states --and neither can it impose this preference on the negotiating opponent. Therefore majority reduces the distance separating the bargaining positions of the EC and its challenger (see Figure 2a). In other words, it increases the size of the international win-set and the likelihood that an agreement will be reached, since there is no uncertainty that the final deal will be approved by the Council. It is more beneficial for the challenging opponent to be faced with a Community governed by majority rule in a defensive case. It can expect greater gains than it would have obtained, with the same distribution of European preferences, under unanimity.

(3) Unanimity and offensive. In an offensive case where unanimity is used, the least aggressive member state subjects the Community position to its own preferences. The unanimity rule ensures that the common negotiating position stands as close as possible to the position of the third country defender (see Figure 2b). Since it takes only one member state to cut short the offense, the unanimity requirement makes a Community-led offensive less likely. It is easy to imagine that the negotiating opponent can try to divide and rule the member states by introducing its own “Trojan Horse” in the Community to cancel the European offensive. All the opponent needs to do is reward one single state for its opposition to the offensive action through promises of side-payments (such as a major public purchase) or a trade-off with another area (such as defense). Under offensive conditions, therefore, unanimity leads to minimal or no losses for the opponent. In that case, unanimity reduces the bargaining power of the EC.
(4) Majority and offensive. Since it increases the influence of the member states with median preferences, majority rule increases the bargaining space between the negotiating positions of the EC and its opponent (see Figure 2b). This offensive carries the international bargaining weight of the whole Community, even if some of its members disagree. Majority has the effect of making an EC offensive more likely since only a majority of member states are needed to challenge the policies of third countries. Moreover, the absence of veto power deprives the negotiating opponent of the option of driving a wedge among member states by convincing only one country to derail the EC’s offensive. Therefore, an EC offensive carried under unanimity rule can produce larger relative losses for its opponent. In other words, the overall strategic effect of the usage of majority voting is to enhance the collective bargaining power of the Community.

These four propositions all point to the existence of a direct link between the EC’s internal voting rules and its external bargaining power. The combination of the negotiating context and voting rules variables also point to a link between the EC’s institutional structure and the nature of the international political economy. Most trade negotiations today are about market access. The preferences of the member states can be ordered along a continuum going from protectionism to liberalism. As Table 2 shows, the voting rules in place in the EC exert a differentiated influence on the potential for world liberalization, for a given set of preferences. The use of unanimity in the EC is likely to exert a protectionist influence on the international political economy. In a defensive case where the EC’s opponent attempts to lift restrictions to access to the European market, unanimity subjects the collective EC position to the whims of its most protectionist member. In an offensive case where the EC attempts to get its opponent to lift restrictions against access to its own market, unanimity makes the EC-led offensive more likely to be dropped, thereby failing to promote liberalization. Majority, by contrast, has a liberalizing influence on the world economy, since in both defensive and offensive situations, it prevents the states with
conservative preferences from holding the Community’s position hostage to their own position. The influence of the EC’s institutional structure on international economic liberalization is worth considering, since the EC is the world’s largest trader and, along with the US and Japan, sets almost all of the world’s economic rules.

Table 2

Influence of the EC’s Institutional Structure on Market Liberalization

<table>
<thead>
<tr>
<th>Voting Rules</th>
<th>Nature of Demands Relative to Status Quo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Defensive</td>
</tr>
<tr>
<td>Unanimity</td>
<td>Protectionist</td>
</tr>
<tr>
<td>Majority</td>
<td>Liberal</td>
</tr>
</tbody>
</table>

4) The strategic role of the negotiator

While I have established that internal voting rules in the EC have direct effects on external negotiations, I have not yet considered the other component of the institutional structure governing the negotiation of external agreements --namely, the competence granted to the negotiators. Yet the institutional conditions under which the member states delegate the power to negotiate also influence international policy outcomes. The fourth step of my argument, therefore, consists of adding an extra level of complexity to the model by considering the implications of the negotiator’s autonomy (or lack thereof) on the
outcome of international agreements. The two central questions that this additional variable
tries to answer are: Does more flexibility and autonomy of its negotiators always translate
into greater external bargaining power for the EC? How does the nature of the delegation
from the member states to its negotiating arm, the Commission, affect the location of the
final international agreement within the bargaining space between the opponent's position
and the EC position?

The standard assumption about the external effects of the EC's institutions
(comprising both the voting rules and the competence of the negotiating agent) is that they
handicap its bargaining power in international negotiations. Hugo Paemen, who was chief
EC negotiator during the Uruguay Round, identified three "fundamental institutional flaws"
in his own account of the negotiations. First, as I argued earlier, the decision-making
procedures tend to produce a bargaining position that is the lowest common denominator of
all member states' positions. According to Paemen, this prevents the Community from
making innovative proposals and therefore from having a lot to offer to its negotiating
opponent in order to extract concessions of a similar nature. Second, the institutional
design of the EC deprives Community negotiators of one crucial bargaining element:
uncertainty. Because member states reveal their position during the Council meetings which
set the limits within which Commission negotiators are allowed to proceed, the Community
cannot hide its bottom line. Finally, as a result of the sharing of power between the
Commission and the member states, the Community is ill-equipped to act swiftly in the
final hours of a negotiation, when agreements are always hammered out. This view of the
institutional framework as constraint has been mostly propagated by the EC negotiators
themselves, who have relentlessly asked member states for further devolution of authority
to the supranational institutions in order to fix these institutional handicaps.

39Paemen and Bensch 1996, 95.
In certain conditions, however, I argue that it might be possible for the EC to use some of its institutional flaws strategically in order to gain concessions from, or avoid making concessions to, its negotiating opponent. As Thomas Schelling suggested in *The Strategy of Conflict*, having one's hands tied internally can be useful for extracting concessions externally and the "power to bind oneself," for instance through inflexible negotiating instructions and divisions highly visible to the opposite party, can confer strength in negotiations.

The well-known principle that one should pick good negotiators to represent him and then give them complete flexibility and authority --a principle commonly voiced by negotiators themselves-- is by no means as self-evident as its proponents suggest; the power of a negotiator often rests on a manifest inability to make concessions and to meet demands.40

US negotiators have often employed this tactic, obtaining bargaining leverage by reminding their opponents of the likelihood of a rejection by Congress of the agreement being negotiated.

The literature on both principal/agent interactions and two-level games has attempted to confirm Schelling's intuition that domestic institutions have a strategic effect on international negotiations. Studies of two-level games, initiated by Robert Putnam's seminal 1988 article, have addressed how the constraints imposed on the negotiator by the coexistence of the domestic and international levels could become a bargaining asset in certain circumstances.41 Some scholars, such as Frederik Mayer, modeled the conditions under which division can be an asset or liability in international negotiations,42 while others, working collectively on the 1993 *Double-Edged Diplomacy* volume, attempted to

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test empirically the interactions between domestic politics and international bargaining.\textsuperscript{43} They concluded that although potentially beneficial, the strategy of the divided bargainer has not been used much in practice. Yet these studies did not directly address the issue of European integration and international trade negotiations, where such an analysis could explain bargaining outcomes. More recently, scholars such as Pollack and Nicolaïdis, stemming out of the rational choice institutionalist tradition, have examined the interactions between the member states and the Commission in terms of principal/agent analysis.\textsuperscript{44} These studies analyze the act of delegation of authority for certain functions by a group of principals (i.e. the member states in the Council) to an agent (i.e. the Commission) and examine the possibilities of having an agent pursuing its own agenda at the expense of the principals' goals. Building on the insights of these works, I examine how the institutional delegation of negotiating competence by the member states to Commission officials affects the content of the international agreement eventually reached.

Nicolaïdis has recently established a useful distinction between the three attributes typically comprised in the mandate delegated by the principals to the negotiating agent.\textsuperscript{45} They are flexibility, autonomy, and authority. Flexibility refers to the nature of the mandate that the principals give to their agents at the outset of an international negotiation. A mandate can be vague and flexible, with the negotiators being instructed to do "the best they can," or it can be more restricted, with a specification of the concessions that are acceptable. It can also serve for the entire duration of the negotiation or it can be subject to updating to fit changes in the negotiating and political environment. The second attribute of the delegating process is autonomy, which refers to the extent to which the principals are actually involved in the negotiations. Limited autonomy can involve "obligations of

\textsuperscript{43}Evans et al., 1993
\textsuperscript{44}See for instance Pollack 1997 and Nicolaïdis 1998.
\textsuperscript{45}Nicolaïdis 1998.
reporting regularly to the principals” as well as actually “sitting at the negotiating table alongside the agent.”46 Finally, the delegation process is characterized by the degree of authority granted to the negotiators, which refers to the ability of the agent to make promises and deliver on these promises. The authority of the negotiator depends on the procedures used for ratification and on the uncertainty associated with these procedures. As Nicolaïdis rightly observes, “this is the only one of our three attributes which is used in the analysis of two-level games. It is indeed the most visible and quantifiable constraint.”47

The degree to which the member states delegate flexibility, autonomy, and authority to the Commission negotiators affects the EC’s external bargaining power. All three attributes are linked and generally go in the same direction, which we can characterize as more or less supranational competence. More supranational competence, however, does not automatically imply more bargaining power. Negotiators with limited flexibility have very little room for manoeuvre and cannot hide their bottom line, since the reservation value of the EC becomes common knowledge. Negotiators with little autonomy are required to constantly report to the member states and await further negotiating instructions. Negotiators with limited authority cannot guarantee that the principals will uphold the agreement negotiated on their behalf. Virtually all negotiators present restrictions to their leeway as handicap, but in a case combining unanimity and defensive position, it can also enhance the credibility that the offer made is of a “take it or leave it” form. As a result of the negotiators’ “tied hands,” the challenger may settle for only limited concessions, for fear of being left with no agreement at all. In that sense, limited negotiating flexibility moves the final outcome closer to the preferred position of the EC and, thus, can be used strategically to enhance the bargaining power of the EC as a whole. The existence of flexibility, on the

46 Nicolaïdis 1998, p. 11.
other hand, increases the chances of conclusion of an international agreement since the negotiators have more institutional latitude to find creative solutions.

The supranational competence of Commission negotiators depends as much on the formal rules than on the current political climate --as is so often the case in the European Community. *De jure*, EC negotiators work within the limits set by the negotiating mandate agreed to by the Council but are left free to conduct the bargaining as they wish until the final agreement is submitted to the member states for approval. This procedure is close to the American "fast track" used as a model by Commission officials. *De facto*, the authority of the Commission is a day-to-day struggle, where Commission representatives attempt the delicate balance of exercising as much autonomy as possible without ever asserting it so much as to provoke a backlash from sovereignty-wary member states. The rules and practice of delegation of negotiating competence is currently the subject of institutional debate in the EC. The formal rules governing negotiating competence in certain trade areas in the future may indeed become the hybrid and impractical arrangement known as "mixed competences," whereby both the principals and their agent are allowed to negotiate.\(^{48}\)

One final point worth mentioning is that the agent’s own preferences may also affect the content of the final agreement. As Pollack has argued, the EC Commission does have preferences distinct from those of the member states.\(^{49}\) Since the Commission is a complex organization composed of multiple individuals from multiple countries working in multiple areas, it is difficult to talk globally about its substantive preferences. In the specific case of international trade negotiations, however, the Commission can be generally characterized as more liberal than the majority of the member states. Thus, if the Commission is more of a free-trader than its principals, and if it enjoys some supranational

\(^{48}\)See Meunier and Nicolaïdis 1997.

\(^{49}\)Pollack 1996.
competence, it can be expected to move the location of the agreement within the bargaining space, bounded by the position of the EC and that of its opponent, further up on the protectionist-to-liberal scale. It is more difficult for member states to veto an agreement once it has been negotiated and presented to them as a fait accompli than to change specific provisions as the negotiations proceed. This is also the rationale behind the US government’s push for the fast-track procedure.

5) Europe divided but united: consequences of the EC’s institutional structure on international trade negotiations

I have proven so far that the internal institutional features of the EC (voting rules and supranational competence) affect its external bargaining power. Two central questions remain unanswered: What is the optimal institutional design to maximize the external bargaining power of the Community as a whole? Which individual member states do specific institutional arrangements favor? The final step of my institutionalist argument is therefore to combine all the variables previously introduced in order to generate predictions about the effects of the EC’s institutional framework on its external bargaining capabilities.

While in theory the variables of voting rules and negotiating competence are quite distinct, in practice they are most often positively correlated. Commission autonomy is fundamentally endogenous to the voting rules in place, themselves determined by the will of the member states. When unanimity is used, the most conservative member state tends to keep a tight leash on the Commission to ensure that the negotiating mandate is respected. Member states may be reluctant to delegate sovereignty to the Community when the issue at stake is particularly salient for them or on matters of principle, even though the treaties require them to do so. In that case, the extremist country will insist that EC negotiators report every step in the negotiation and wait for orders before making any concessions.
Under majority voting, by contrast, negotiators have usually more bargaining latitude. The mandate given is more vague, thereby making the negotiators more flexible, and there is no use for the extremist country to keep the negotiators in check since it will not have the final say on the agreement anyway.

I chose to introduce in my argument the variables “voting rules” and “negotiating competence” in two separate stages in order to highlight the different mechanisms through which they affect the external bargaining strength of the EC as a whole: the voting rules determine the bargaining space between the position of the EC and that of its opponent, while the negotiating competence contributes to determining the location of the final agreement within this bargaining space. In the following table, which summarizes my predictions about the impact of the EC’s institutional structure on international trade negotiations, I chose to group these variables under the single heading of “supranational competence” because of the positive correlation between them.
<table>
<thead>
<tr>
<th>SUPRA-NATIONAL COMPETENCE</th>
<th>NATURE OF DEMANDS/STATUS QUO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low (Unanimity and limited Commission Autonomy)</td>
<td>Defensive</td>
</tr>
<tr>
<td>• Bargaining process: Dominated by the most conservative state. Tied hands of EC negotiators.</td>
<td>• Bargaining process: Agenda set by the recalcitrant state. The opponent can play divide and rule by introducing a “Trojan horse” in the EC.</td>
</tr>
<tr>
<td>• Likelihood of agreement: Low.</td>
<td>• Likelihood of agreement: Low. Most offensives do not materialize into actual negotiations.</td>
</tr>
<tr>
<td>• Bargaining outcome: Limited concessions to the opponent or status quo.</td>
<td>• Outcome: Limited change of the opponent’s policy.</td>
</tr>
<tr>
<td>• Winners and losers (collective and individual): The EC collective bargaining power is high, but only the extremist state benefits. The most conservative voice is amplified, while most other member states would have fared better by negotiating on their own.</td>
<td>• Winners and losers: The opponent is protected from change; thus the EC bargaining power is low. Most member states lose by being subjected to the amplified preferences of the extremist country.</td>
</tr>
<tr>
<td>High (Majority and relative Commission Autonomy)</td>
<td>• Bargaining process: Median states set the agenda.</td>
</tr>
<tr>
<td>• Likelihood of agreement: High.</td>
<td>• Likelihood of agreement: Relatively high. Negotiations are more frequent.</td>
</tr>
<tr>
<td>• Bargaining outcome: somewhere in the middle between the EC and its opponent’s positions.</td>
<td>• Bargaining outcome: somewhere in the middle between the EC and its opponent’s positions.</td>
</tr>
<tr>
<td>• Winners and losers: From the opponent’s point of view, the EC is not a “tough” bargainer. The majority of member states gains, but the most conservative members, whose voice has been attenuated, lose from being forced to negotiate as a whole.</td>
<td>• Winners and losers: The EC collective bargaining power is strong. The voice of the extreme state is attenuated, but the majority of member states gains from negotiating as a single bloc.</td>
</tr>
</tbody>
</table>
The model presented in this chapter asked what is the optimal institutional design for maximizing the external bargaining strength of the whole Community in trade negotiations. I answered that it depends on the situation and it depends for whom. From the point of view of the opponent, majority is preferable in defensive cases, while unanimity is preferable in offensive cases. Therefore, from the point of view of the EC as a whole, limited supranational competence should be instituted in defensive cases, while more competence should be delegated to the supranational level in offensive cases. From the point of view of the individual member states, however, the optimal institutional design is different. Limited supranational competence should be preferred by a state at the conservative extreme of the preference distribution, because it amplifies its external voice by giving it the international resonance of the whole Community in both defensive and offensive cases. By contrast, relatively higher supranational competence is desirable for states with median preferences, because it attenuates the extreme positions and gives their own position the support of the whole Community. Of course the alignment of member states' preferences varies by issue, but member states cannot opt in and out of the Community on an issue-by-issue basis --at least for the moment.

This chapter presented a model linking preferences, institutions, and outcomes. It argued that the EC's trade policy is not driven purely by national preferences, as intergovernmentalists usually claim; instead, the policy is determined by the institutions through which these preferences are aggregated. I will examine the propositions about the impact of diverse institutional features of the EC on its external influence in a series of case-studies in the following part of this dissertation. This argument raises one unaddressed question, which I will attempt to answer in the concluding chapter: if institutions influence policy outcomes, then what can the member states do to change the institutions in their favor? Inertia surrounds existing institutional arrangements, as historical institutionalism
emphasizes, but although costly to change, institutions are not permanent.\textsuperscript{50} Chapter 8 will explore the current institutional battle in the European Union over the reform of the procedures governing the negotiation of international trade agreements.

\textsuperscript{50}See for instance Scharpf 1988 about the "joint decision trap" and Pierson 1996 about micro-level "lock-ins" of specific institutions.
PART II

CASE-STUDIES OF EC-US TRADE NEGOTIATIONS
The first part of this dissertation argued that integration among nations indeed reshapes power relations in the international arena. Through its authority to negotiate international trade agreements, which the member states have delegated from the beginning of their integrative enterprise, the European Community has impacted the world political economy. I have argued that the internal decision-making structure of the EC exerts an independent causal effect on the process and outcome of international negotiations, under a given set of national preferences. Based on the independent variables of negotiating context, voting rules, and negotiating competence, I have developed a series of hypotheses about the effect of the EC’s "single voice" in trade on the likelihood of an international agreement, the content of the agreement, and the individual countries’ chances at influencing the final agreement.

The second part of this dissertation explores these hypotheses through a series of case-studies of trade negotiations between the European Community and the United States since 1962. I will address competing explanations in Chapter 7, which compares the explanatory power of the institutionalist argument with that of hypotheses that I derive from the literature on regional integration, as well as a series of ad hoc competing explanations, such as security imperatives and pressure by domestic interest groups. The main conclusion of the case-studies, however, is that the internal structure of the EC is crucial to the content of the final agreement with third countries.

Since its creation, the European Community has conducted many trade negotiations with the United States, its main trading and investment partner. If the institutions of the Community indeed impact its external bargaining capabilities, it should be particularly apparent in trade negotiations with the US, since the desire to put Europe on an equal basis with the United States in the conduct of world affairs, including in the formulation of world trading rules, was one of the less avowed rationales behind the initial creation of the
Community, as Chapter 1 argued. This is the primary reason why I have chosen to study cases of EC-US trade negotiations.

The EC and US have successfully reached trade agreements on non-conflictual issues when their bargaining position easily converged or when trade-offs between sectors were possible, such as the successive reductions of industrial tariffs since the 1960s. Most other EC-US trade negotiations have been conflictual, sometimes very publicly, such as on agriculture, audiovisual services and aeronautics. There have been several conflictual cases since the late 1980s in which the EC went on the offensive, trying to pry open the US or Japanese markets, such as with the reciprocity demands of the original Second Banking Directive in 1988 and the third-country provisions of the Utilities Directive on public procurement in 1990. Except for these few market-opening efforts, however, the vast majority of conflictual trade negotiations in which the EC participated has involved some challenge of the European policy status quo.

The cases of EC-US trade negotiations examined in this dissertation are the agricultural negotiations during the Kennedy Round (1962-1967), the agricultural negotiations during the Uruguay Round (1986-1993), the negotiations on reciprocity in public procurement (1990-1994), and the ongoing transatlantic negotiations on “open skies” agreements in international aviation (since 1992). All these cases resulted in agreements, but often after protracted negotiations and years of impasse. In some instances, the final international agreement reflected disproportionately one party’s preferences. In others, the EC and the US had to make similar concessions in order to reach an agreement. In some instances, the final international agreement was disproportionately weighed in favor of one member state. In others, the agreement satisfied a majority of member states. The institutionalist argument developed in Chapter 2 will help explain the variance in outcomes between these cases.
Several motives guided my selection of specific cases. First, they involve different issue-areas (agriculture, procurement, air transport), which prevents criticisms of outcomes determined by the "special" nature of one issue. At the same time, two of these cases focus on agriculture, which is justified historically since the bulk of EC-US trade disputes since the creation of the Common Market has involved agricultural policy. This enables me to make comparisons between the two cases, which are not spoiled by the introduction of other issue variables. Second, these four cases offer some variation in the time factor. They make possible inter-temporal comparisons, since one case took place in the 1960s, one in the 1980s, and two in the 1990s. Each of these cases also unfolded over periods of several years, which provide for institutional change within almost each case. At the same time, several of these cases overlap in time, thus enabling me to eliminate outside factors, such as changes in the security environment, in the comparison.

Most importantly, I chose these four cases because they each provide some variation in the combination of the central independent variables --nature of demands in negotiation and degree of supranational competence. With respect to the negotiating context variable, I chose to contrast one genuine defensive case (the Kennedy Round agricultural negotiations), with one genuine offensive case (EC-US negotiations on public procurement) and two cases where the defensive/offensive variables were less clear (the Uruguay Round agricultural negotiations and the transatlantic "open skies" agreements).

With respect to the institutional variable, I selected two cases where the institutional remained constant throughout the negotiation and two cases in which the rules of the game changed in the middle. The agricultural negotiations during the Kennedy Round epitomize intergovernmentalism and provide a clear illustration of the constraints and opportunities deriving from negotiating with tied hands. The agricultural negotiations during the Uruguay Round offer a rare example of agreement in a defensive negotiation resulting from a sizable degree of supranational competence, especially when contrasted to the recapture of national
competence through the reinstatement of the veto power after 1992. The dispute over reciprocity in public procurement represents the first successful offensive attempt by a Community deciding under qualified majority rule and enjoying some supranational competence. The open skies negotiations in international aviation illustrate in a first stage what happens when member states are not obligated to negotiate with a single voice, and in a second stage how the transfer of negotiating competence to the supranational level affects the international agreement. The institutional variance included in the selection of cases provides for a clearer illustration of the institutionalist argument that I made in Chapter 2.

In all cases, I attempt to engage in careful process-tracing in order to establish the specific formal and informal institutional rules in place, as well as the preferences of the member states and the Commission. I also try to apply counter-factual analysis to each of the cases and ask what would have happened under a different set of institutional procedures.

Table 3 summarizes how each of the case-studies fits in the combination of negotiating context and institutional framework. There is no case of offensive negotiations coupled with low supranational competence because by definition the Community can afford to attack others' markets only when it has successfully liberalized its own, which implies some surrendering of national sovereignty.
<table>
<thead>
<tr>
<th>SUPRA-NATIONAL COMPETENCE</th>
<th>NATURE OF DEMANDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>No EC competence</td>
<td>Defensive: Open skies agreements (1)</td>
</tr>
<tr>
<td></td>
<td>Offensive: [inexistent]</td>
</tr>
<tr>
<td>Low</td>
<td>Defensive: Kennedy Round agricultural negotiations</td>
</tr>
<tr>
<td>(Unanimity and no Commission Autonomy)</td>
<td>Offensive: Uruguay Round agricultural negotiations (2)</td>
</tr>
<tr>
<td></td>
<td>Offensive: Open skies agreements (2)</td>
</tr>
<tr>
<td>High</td>
<td>Defensive: Uruguay Round agricultural negotiations (1)</td>
</tr>
<tr>
<td>(Majority and some Commission Autonomy)</td>
<td>Offensive: Public procurement negotiations</td>
</tr>
</tbody>
</table>

Table 4

Effects of the EC's institutional structure on specific EC-US trade negotiations.
Chapter 3 examines the EC-US agricultural negotiations in the Kennedy Round (1964-1967). This is an example of "defensive" negotiation in which the supranational autonomy was non-existent and the mode of decision-making in the EC was unanimity. The US capitulated to an inflexible Common Market and the final deal reflected the EC's lowest common denominator position.

Chapter 4 focuses on the EC-US agricultural negotiations in the Uruguay Round (1986-1993). This case-study provides an interesting variation in the independent variables, since in this ambiguous "defensive" negotiation informal changes in the decision-making process and greater autonomy seized by the Community negotiators enabled an EC-US agreement to be reached, only to be renegotiated when some member states reaffirmed their veto right and curbed the "free hands" of the Commission. As a result, the final agreement was less satisfactory for the US and the majority of member states than the original one.

Chapter 5 analyzes the EC-US negotiations on public procurement (1990-1994) as a rather successful "offensive" attempt by the Community to open up the American public procurement market, thanks to the majority requirement and in spite of US attempts at introducing a "Trojan Horse" in the EC by concluding a forbidden bilateral deal with one of the member states.

Chapter 6, finally, explores the ongoing transatlantic "open skies" negotiations on international aviation (1992-present), which represent a "control" case since the negotiating competence initially belonged to the individual member states, before being partly turned over to the supranational level in 1996. The US was able to exploit the absence of Community discipline by concluding a series of bilateral agreements with several small member states, without being held up by the three big states which initially opposed this US-led liberalization. This case illustrates how third countries can strike better deals when
the member states are free agents in the external sphere than they would have under Community competence.

These four cases allow us to address the question of the external consequences of institutional integration and to test the hypotheses made in the first part of the dissertation. They contribute to empirical knowledge about EC-US trade negotiations, and more specifically about the role played by the EC’s use or non-use of a single voice. The case-studies all point to the fact that, given exogenous member states’ preferences and depending on the defensive/offensive negotiating context, the degree to which member states were willing to let go of their sovereignty affected the process and outcome of the final international trade agreement.
CHAPTER 3

EC-US AGRICULTURAL NEGOTIATIONS IN THE KENNEDY ROUND
1962-1967

The Kennedy Round of the General Agreement of Tariffs and Trade (GATT) was the first real test of the effect of the recent integration of the six members of the European Community on international trade negotiations. The rapid economic successes of the Common Market prompted the American administration to engage in global negotiations with the EC to ensure that it would not turn into a protectionist fortress. Industrial tariffs were the primary issue negotiated in the round. Nevertheless, the fear generated by the formation of the Common Agricultural Policy (CAP) in Europe led the US administration to make agriculture the benchmark by which to judge the success or failure of the round. A central agricultural disagreement between the US and the EC, resulting from the simultaneous establishment of the CAP, rapidly deadlocked the negotiations, at times jeopardizing progress in other sectors. Eventually, the Europeans obtained an international agricultural agreement on their own terms. Why did the EC gain favorable outcomes in negotiations with the US when it was still institutionally weak and inexperienced? Why was the US defeated in the Kennedy Round on "grounds of its own choosing" at a time of US hegemony and fledgling integration in Western Europe?

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1This chapter is based on research undertaken at the John F. Kennedy Presidential Library in Boston, MA, particularly the papers of Special Trade Representative Christian Herter. I am grateful to the Kennedy Library for its help and financial support.

This chapter argues that the EC’s institutional constraints partly determined the preponderant influence exerted by the EC on the final agreement in agriculture. In this purely defensive case, where the EC was trying to preserve externally the hard-won internal European status quo on agricultural policy, the strict intergovernmentalist decision-making process served as formidable bargaining leverage. On several occasions the EC used its incomplete transition from national to collective policies as an excuse for not making progress in the negotiations. Given the inflexibility of the European position and the tied hands of the Commission negotiators, rendered even more credible by the 1965 crisis of the EC institutions, the US administration was forced to give way to an incapacitated Common Market and to accept agreements it disliked, for fear of being left with no agreement at all.

I. American and European Objectives in the Kennedy Round

Even though the Kennedy Round was formally launched only in May 1964, its beginnings are often traced to the GATT Ministerial Conference of May 16-21, 1963, during which the principal protagonists agreed on the broad principles and objectives of the negotiation. In particular, it is during this conference that the EC and the US decided to include agriculture into the Kennedy Round, but unable to agree on the specifics because of their divergent preferences, they left the controversial details for later to resolve.

1) American objectives in the Kennedy Round

The Kennedy Round was the first real test of the external effects of the integration of trade policy and trade negotiating authority in the European Economic Community (EEC). The Dillon Round (1960-1962) aimed at resolving technical problems caused by the
creation of the Common External Tariff in the EEC; only a small part of the negotiations was devoted to true tariff reductions. By contrast, the Kennedy Round was called in direct response to the challenge posed to the US by the rapid success of the Common Market and the impending establishment of the Common Agricultural Policy.

a) A reaction to the successes of the Common Market

The most pressing economic issue facing the US in the early 1960s was the impact of the formation of the European Economic Community: it could affect both the US’ growing unemployment rate and the deficit of the US balance of payments, two central themes of the Kennedy electoral campaign in 1960. In July 1961, the United Kingdom had announced its decision to apply for membership in the EEC. The strong belief shared by Kennedy administration officials that the British government’s application for membership into the Common Market was going to be successful increased the urgency of an American response to the potential external effects of the EEC and prompted the US to demand a new round of multilateral trade negotiations. In his January 1962 special message to Congress, Kennedy emphasized the obsolescence of US trade policy as a result of "the growth of the European Common Market":

An economy which may soon nearly equal our own, protected by a single external tariff similar to our own, has progressed with such success and momentum that it has surpassed its original timetable, convinced those initially skeptical that there is now no turning back, and laid the groundwork for a radical alteration of the economics of the Atlantic Alliance.3

Even after France vetoed the entry of Great Britain in January 1963, the US still pledged to succeed with a new round of negotiations designed to prevent the EEC from turning inward-looking. American policy was to prevent an EEC market of 190 million

3Kennedy 1962, p. 68.
people, providing production potential equal to that of the US, from fragmenting the
Western world into competing trade blocs and provoking the demise of the multilateral
trading system. Preserving access for US goods into the Common Market was absolutely
crucial to the US economy, since in the years since the creation of the European
Community US exports to the EEC had grown roughly three times as fast as US trade with
any other major destination.\(^4\) Moreover, American officials worried about the newfound
bargaining strength of the Common Market countries and about the necessity “to deal with
them as a group.”\(^5\)

In launching the preparatory steps for the Kennedy Round in 1962, the central
objective of the US was therefore to curtail any protectionist tendencies of the Common
Market both in the industrial and agricultural sectors. The bargaining principle proposed by
the US was to cut all tariffs (industrial and agricultural) in half over five years, with a
minimum of exceptions. This would ensure that all product groups would be subject to
substantial tariff reductions. The longer term goal of the US was to set a precedent for
dealing with the “unified and coequal bargaining force with the United States”\(^6\) and
learning to share power in the determination of world trade rules.

\(b)\) The inclusion of agriculture

The initial impetus for including agriculture in the Kennedy round negotiations was
American. The Treaty of Rome founding the European Economic Community had provided

\(^4\)See Box 7 George Ball “Components of a strategy for the Kennedy Round”, preliminary draft, 10
December 1963: “Our trade with Western Europe is important not only in absolute terms but because of the
rapid rate of growth it has enjoyed. Reflecting the prosperity that has accompanied the Common Market,
US exports to the EEC in recent years have grown roughly three times as fast as our trade to any other
major destination.[...] Since the growth rate of the Common Market countries is beginning to slow down,
it is doubtful that the previous growth rate of American exports to that area will continue.”

\(^5\)Seymour E. Harris, Memorandum on trade policy, December 4, 1961, NSF Box 309-310, Trade, General,
1962.

an obligation to establish common rules for agriculture, but little guidance on how to proceed. So much uncertainty was surrounding the nature of the emerging agricultural arrangements in the Common Market that the US wanted to anchor agriculture firmly in multilateral trading rules. The Kennedy administration expected that these negotiations would curtail the potentially protectionist nascent Common Agricultural Policy (CAP) and result in fair access for US agricultural exports in Europe. At the time of the Kennedy Round, agricultural products represented 40 percent of US exports to the EEC. It was therefore vital to ensure that American producers would not suffer from discriminatory measures resulting from the integration of the agricultural sector in Europe. Hence, US officials emphasized unambiguously that the Kennedy Round would be a success only if liberalization applied to agricultural products.\(^7\) Indeed, the US set the rules of the game and, at the outset, selected agriculture as the key issue by which to judge the success of the round, as opposed to industrial goods.\(^8\)

The first encounter of the US with the CAP, over the issue of poultry exports, occurred during the preliminary negotiations for the Kennedy Round.\(^9\) By mid-1962 Germany was the biggest customer of American chicken, accounting for 56 percent of total US poultry exports.\(^10\) When the EEC initiated its variable levy system in July 1962 as a result of the implementation of the first CAP measures, the immediate impact on US

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\(^7\) Christian Herter, US Special Trade Representative, quoted in *The Journal of Commerce*, 15 May 1963: "The participants in the Kennedy Round have laid down as their object the liberalization of trade because it is seen to be to their advantage. But such liberalization cannot be achieved in any field unless it applies as much to agricultural products as to industrial products. With agricultural exports to the EEC running at the rate of $1.6 billion per annum, the USA would find it difficult to estimate what tariff reductions on industrial products that interest the Community it could reasonably offer if significant offers were not forthcoming from the EEC in the agricultural field."

\(^8\) Why, then, as Shonfield asked, "had the Americans decided to make this essentially secondary, and exceptionally difficult, matter the key issue in the biggest multilateral tariff negotiation ever undertaken? The answer which suggested itself was that they had come to the conclusion that they now had a decisive competitive edge in agricultural trade and were determined to exploit it in full." Shonfield, 1976, p. 33.


chicken exports to Germany was more than a doubling of the previous tariff -- from less than 5 cents a pound in July 1962 to 13.5 cents in July 1963. In nine months under the new system, US exports of poultry to Germany had dropped to 40 percent of the previous year's level. By 1965, there was virtually no more exports of US chickens to the German market. After months of trying to negotiate a rollback of the higher tariffs from the EEC, the US decided to retaliate against the Common Market by raising tariffs on $46 million of EEC exports. Eventually, a GATT panel ruled that the US could impose sanctions in the amount of $26 million, which officially ended the "Chicken War." This had been the first concrete test of the new agricultural policy of the EEC members and had suggested that the Common Agricultural Policy would surely have a variety of other negative trade effects on third countries. Therefore, the 1963 "Chicken War" reinforced the determination of the United States to prevent a potential disruption of world trade in agriculture caused by newly or soon-to-be enacted rules in the Common Market.

The Kennedy administration had other motivations for limiting the anticipated negative effects of the CAP. First, US officials initially believed that Great Britain would join the EEC. Since Britain was the world's largest agricultural importer, the US became worried at the prospect that it may adopt the CAP. Second, farm exports were expected to reverse the deterioration of the US balance of payments.11 Moreover, President Kennedy needed to curb the protectionist tendencies of the CAP because of a deal struck with Congress, which agreed to support the 1962 Trade Expansion Act in return for the promise that US agricultural exports would be facilitated.12 Finally, the technological revolution

11T. K. Warley 1976, p. 320: "There was a spreading awareness that agriculture was one of the few industries in which the United States had an unassailable economic advantage and in which it could meet foreign competition head to head and win.[...] Thus, progressively over the course of the 1960s, agriculture gradually moved in official thinking from being an expensive problem to the status of a glamour industry, capable, were it not for the policies of others, of meeting a trinity of priority policy objectives and delivering a huge prize to the American economy."

12According to Warley, congressional support could be obtained only "if the negotiations manifestly held out some promise to the farm lobbies that opportunities for their agricultural exports to the European
which had ensured the productivity and competitiveness of American agriculture was starting to reach the Common Market. US officials feared that European politicians would have great difficulty resisting domestic demands for an expanding share of the European agricultural market.\textsuperscript{13} For all these reasons, the US elected to make the preservation of its access to European agricultural markets its primary objective in the upcoming round of multilateral trade negotiations.

\textit{c) Main US agricultural objectives in the Kennedy Round negotiations}

The central US strategy in the Kennedy Round was to ensure that GATT rules would apply equally to industrial and agricultural products, and in particular that agricultural production and trade would be determined by comparative advantage and market mechanisms. In order to confront the EEC on its proposed CAP, the US was thus ready to abandon its traditionally protectionist agricultural policy.\textsuperscript{14} The main American objectives to reach through the Kennedy Round negotiations were to prevent the acceleration of the movement of the Community countries toward agricultural self-sufficiency as a result of the existence of incentives for uneconomic production, "to liberalize to the maximum extent possible the Communities' common barriers to trade, and to establish a precedent for further efforts in the future to keep the Communities outward looking in both political and economic terms."\textsuperscript{15}

\footnotesize

market would be improved by rolling back the protectionist tendencies evidenced in the CAP." (Warley, 1976, p. 378)

\textsuperscript{13}Box 7 George Ball "Components of a strategy for the Kennedy Round", preliminary draft, 10 December 1963.

\textsuperscript{14}Until 1952, far from playing a trade liberalizing leadership in agricultural matters, the US was seeking ways of protecting its agriculture through means such as import restrictions, disposal of surplus stocks, use of export subsidies, and a formal waiver from GATT obligations (which it obtained in 1955). Indeed, since the 1933 Agricultural Adjustment Act (AAA) the US was pursuing protectionist domestic agricultural policy.

\textsuperscript{15}Box 12, Bernard Norwood, 10/8/64-2/10/66, Memorandum from Bernard Norwood to Christian Herter, Subject: Country committee evaluations of concessions to be sought by the United States in the Kennedy Round, October 27, 1964.
The preferences of the US in the agricultural negotiations with the Common Market were initially threefold. First, the US wanted tariff concessions on agricultural goods similar to the tariff concessions on industrial goods, that is, cuts of 50 percent.\(^{16}\) Second, the US wanted the removal of non-tariff barriers not justified under GATT, since non-tariff barriers had restrained American agricultural exports to Western Europe more than tariff barriers. US projections for agricultural exports in 1970 estimated that if foreign tariffs remained at their 1963 levels but if non-tariff barriers were removed, the United States could expect to export roughly $4.6 billion, as compared with roughly $4.0 billion if non-tariff barriers continued to remain in effect.\(^{17}\) Finally, the US hoped for, if not the abandonment, at least an accommodation of the system of “variable levies” adopted by the Europeans in 1961, which would obviously distort competition.\(^{18}\)

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\(^{16}\)See Herter: "The vital importance of the inclusion of agriculture in the Sixth Round has been emphasized by the United States from the outset. The United States has repeatedly insisted that the objective of the agricultural negotiations should be trade liberalization equal to that achieved in the non-agricultural sector, meaning 50% tariff cuts where tariffs provide the effective protection, and, where other forms of protection are employed, such as variable levies, liberalization equivalent to a 50% cut in fixed tariffs." (Hearings, 1966, p. 25).

\(^{17}\)USDA, Major agricultural objectives in trade negotiations, August 7, 1963 (NSF Box 309-310, Trade General 8/63).

\(^{18}\)“One type of arrangement which we could accept would be a limit on EEC protection at a level which would permit United States (and Free World) access to the Community’s markets. This was the first alternative proposed to the Community as a means of accommodating our poultry trade in the West German market. In effect this arrangement, which in the case of the EEC would require a negotiated limit on the variable levy, also places a limit on the prices which internal producers receive for the same product.

The same objective could be secured by starting with EEC producer prices. For example, for grains, if the EEC were to agree to hold producer prices in France to the 1962-63 crop levels, there would not be an unduly large inducement to expand output in that country. Since the danger to world trade comes primarily from the threat of expanded French output, the freezing of French prices at current levels would largely remove the danger. If this were done, we could look with sympathy on the use of deficit payments to other EEC grain producers. But even in this case, we would have to have an understanding with the Community about the level of the levy since it could be manipulated to induce higher internal EEC prices and thus greater output.

Another type of arrangement which we could accept in order to accommodate these items would be a low-duty (or levy) quota for a United States (or Free World) share of the markets of the Community. This type of arrangement was an alternative proposal to the EEC as a means of obtaining access for our poultry. Also, as a third alternative, we might accept arrangements under international commodity agreements which would enable us to obtain reasonable access to the markets of the Community." USDA, Major agricultural objectives in trade negotiations, August 7, 1963 (NSF Box 309-310, Trade General 8/63).
In sum, realizing the potential dangers of the not-yet-established Common Agricultural Policy, the American administration vowed to use the Kennedy Round to bring European agricultural policy provisions in consonance with the rules of GATT. As summarized in a memorandum setting the US negotiating objectives on agriculture, “the US should stress the need for the EEC to fit its Common Agricultural Policy to solutions to these problems and to the requirements of the GATT rather than to try to fit solutions and the requirements of the GATT to its Common Agricultural Policy.”^{19}

2) The EC’s objectives in the Kennedy Round

The Europeans received the invitation for a new round of GATT talks favorably, but with sizable reservations and without much enthusiasm. On one hand, the premise of the Kennedy Round was viewed by the Europeans as a recognition of the new-found economic power and potential bargaining strength of the Community. They could use the opportunity of the round to legitimize internationally their internal arrangements. On the other hand, the six member states sought to avoid a round of difficult negotiations that might shatter their fragile unity and jeopardize the foundations laid for the Common Agricultural Policy, a cornerstone in the European bargain struck between France and Germany.

\textit{a) Diversity of member states preferences on agriculture}

The European Economic Community officially agreed to the inclusion of agriculture in the Kennedy Round during the prenegotiations of May 1963, but on the \textit{sine qua non} condition that its own agricultural policy be set and completed before any international

\footnote{USDA, Major agricultural objectives in trade negotiations, August 7, 1963 (NSF Box 309-310, Trade General 8/63).}
accord on agricultural exports could be reached. The Community's common negotiating position on agriculture was not set at the beginning of the round, however, since the member states, especially France and Germany, had conflicting interests. The Common Agricultural Policy was a complex edifice based on the principles of uniform price levels throughout the Community, on the existence of target prices for certain products such as grains, and on variable levies amounting to the difference between target and import prices in order to prevent imports from underselling domestic production. Under this system, imports were only residual supplies, which could be tapped only if domestic production could not meet demand. As a result, an increase in domestic production would automatically substitute imports. Additionally, export subsidies could be provided for selling surpluses outside the Community.

The Franco-German disagreement was particularly acute on the issue of grains prices. France was the largest and most efficient farm producer in the Common Market. On one hand, French agriculture was vulnerable to competition from outside the Community because of the traditional protection it enjoyed, including higher domestic prices than those prevailing on world markets. On the other hand, the productivity of French agriculture was rapidly increasing as a result of technological developments. Since the French farm labor force was not declining at the same rate as productivity was increasing, France needed some outlets, within or outside the Common Market, for its potentially increasing surpluses. For that reason, De Gaulle insisted repeatedly that "France considers it a condition of its membership in the Community that the other Five import from France the products France produces and that they have heretofore imported from outside the Community, and that any French surpluses not absorbed within the Community be treated
as Community surpluses whose sale on world markets is subsidized from Community resources.\textsuperscript{20}

The French position on agriculture with respect to both the establishment of the CAP and the Kennedy Round agricultural negotiations was therefore clear. Inside the Community, France desired as free a market as possible in order to benefit from its competitive advantage. On the particular issue of grains prices, France demanded unified prices sufficiently low to dominate cereal production in the Community. In that sense, French interests were quite compatible with US interests, even though the unified grains prices proposed by France were higher than those favored by the US.\textsuperscript{21} On the external front, however, France had a rather autarkic view of what Europe’s agricultural policy should be. The French government wanted external protection to shield European producers from outside competition and demanded the collective financing of export subsidies.

Germany, by contrast, was the most expensively protected and least competitive agricultural producer in the Community. Were the French agricultural proposal adopted, Germany would have to make the largest downwards price adjustment and at the same time would have to contribute heavily to the financing of the export subsidies benefiting French farmers. Therefore, the German government proposed instead to agree on a European unified grains price sufficiently high to maintain the competitiveness of German farmers. Chancellor Erhard hoped to use the pretext of the Kennedy Round to speed up the

\textsuperscript{20}Box 7 Ambassador Charles Bohlen, Background Paper for Christian Herter, “French Attitudes toward the Kennedy Round.” 11 March 1964.

\textsuperscript{21}Box 7 George Ball “Components of a strategy for the Kennedy Round”, preliminary draft, 10 December 1963.
rationalization of German agriculture, but not to the extent of gravely alienating the German farm vote.\textsuperscript{22}

The other four member states also exhibited diverse preferences on agriculture, but none carried as much weight on the final decision as France and Germany. The Italian economy was heavily dependent on foreign trade. Therefore, Italy attached a lot of importance to the successful conclusion of the Kennedy Round, which it expected would prevent French, or Franco-German hegemony over the Community. The Netherlands also hoped that the agricultural solution chosen by the Europeans would enable the successful completion of the Kennedy Round, since it had already had to raise its traditionally low tariffs in order to align with the Common External Tariff. Belgium's attitude towards the agricultural negotiations was somewhat ambivalent, balancing between Prime Minister Spaak's desire for a successful multilateral negotiation and the necessity to take into account domestic protectionist pressures. As for Luxembourg, it hoped that the trade negotiations would succeed, but had only a limited role to play.\textsuperscript{23}

Despite their divergences, the six member states could easily agree on one central feature of agricultural policy: agriculture was not a sector like the others. As T. K. Warley reported,

the EEC's posture in the Kennedy Round was liberal in all areas but agriculture. Its common external tariff was lower on average than most; it had offered to reduce it in the Dillon Round by more than the US negotiators could match; and [...] the Community was perfectly willing to negotiate on the basis of a 50 percent linear reduction of tariffs on manufactures. However, it took the view that agriculture was different by reason of the universal involvement of governments in agricultural policies and the consequent

\textsuperscript{22}Box 7 George Ball "Components of a strategy for the Kennedy Round", preliminary draft, 10 December 1963.

\textsuperscript{23}Box 7 George Ball "Components of a strategy for the Kennedy Round", preliminary draft, 10 December 1963.
distortions in world markets which resulted from the interactions of national support policies.\textsuperscript{24}

Therefore, the central objective of the Common Market countries in the Kennedy Round was to prevent negotiations with the US from hindering the formation of the CAP, whose rules were going to be created as the multilateral negotiations progressed. The Community agreed to discuss the regulation of world agricultural trade, but with the hope that it could set up the CAP without foreign intervention. In that sense the agricultural component of the Kennedy Round can be characterized as a purely defensive case, according to the terminology proposed by this dissertation: the US launched the Kennedy Round to change preemptively EC agricultural policy, on which the Europeans themselves had not yet found a status quo. Once they agreed on the status quo, their objective would become to defend it from foreign attacks.

\hspace{1cm} \textit{b) The synchronization issue: internal vs. external developments of agricultural policy}

The preparatory negotiations for the Kennedy Round started as the Community had not yet put in place the Common Agricultural Policy or even agreed on its main principles. The variable levy system, so much criticized by the American administration, was adopted in 1961. Some other provisions, including the levy on poultry, were adopted in 1962. The rest of the CAP, including the controversial unified grains price, was very fastidious to put in place. Since the outset of the Kennedy Round pre-negotiations, the EC had made clear that it would settle on an international agricultural agreement until its own internal system of protection and common agricultural policies were completed. A major issue in the pre-negotiations became the so-called “synchronization” of the establishment of the CAP with the international agreement in the Kennedy Round.

\textsuperscript{24}Warley 1976.
The US worried that France might demand the full implementation of the CAP as a condition for the Kennedy Round. Indeed, the French position was that no agricultural offers would be possible in the multilateral negotiations until the Six had reached an agreement on the CAP and on EEC agricultural prices. The US administration was concerned about the establishment of the CAP prior to the launching of the Kennedy Round negotiations because it felt that “since the EEC’s internal difficulties in securing agreement on agricultural policy are so great, there are grave doubts as to whether it can or will be willing to negotiate changes in its agricultural regulations even after they are adopted by the EEC Council.”

The German Foreign Minister, Schröder, proposed the “synchronization” principle according to which the internal and external negotiations on agriculture would proceed simultaneously. Under this plan, Germany would trade off acquiescence in common agricultural policies for beef, rice and dairy products (but not common grain prices) in return for French cooperation in the Kennedy Round. The US silently favored this proposal greatly, because it could increase its influence on the eventual design of the CAP and could therefore prevent the “lock-in” of an unfavorable European agricultural policy. Yet the “synchronization” principle could not be followed through, and the rest of the Kennedy Round negotiations confirmed the worst fears of the US administration with respect to both the content of the CAP and the negative impact of the EC’s institutional difficulties on American bargaining leverage.

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II. Internal Institutional Paralysis and Deadlocked External Negotiations

The Kennedy Round officially opened on May 4, 1964 with no common position on agriculture from the six members of the Common Market. The absence of internal agreement on a Common Agricultural Policy in the EEC paralyzed the international negotiating process until December 1964. The US was put in the singular position of having to wait for the Europeans to resolve their internal divisions before any progress could be made in the bilateral EC-US negotiations. This eventually resulted in the "decouplage" of industrial and agricultural negotiations, a situation that the US administration had forcefully rejected at the outset of the round. Subsequent institutional paralysis in the EC prevented the US negotiators from making any gains in agriculture, instead of playing to their advantage. Despite US attempts to further divide the six member states in order to change the EC's internal decision-making rules, France's de Gaulle went through with the "empty chair crisis," which the US administration was forced to witness helplessly.

1) Internal EC deadlocks and its effects on the external agricultural negotiation

The US negotiators found themselves in the awkward situation of having to wait for the European farm policy to be implemented before negotiations with the goal of altering this policy could begin. As a result of its unfinished CAP, the EC by and large determined the agenda, and consequently, the outcomes of the Kennedy Round negotiations on agriculture.
a) The Mansholt Plan

In February 1964 the EEC finally made a negotiating proposal for the agricultural negotiations through its agriculture commissioner. Under the so-called Mansholt Plan, the Common Market would first agree on the remainder of its common agricultural policy (including the grains price). Then, the various parties to the Kennedy Round negotiations would attempt to calculate and compare their total amounts of agricultural support, subsidization and protection. This was called the principle of "montants de soutien" (margins of support): after this comprehensive calculation of government protection in agriculture, the US and the EEC would negotiate the reduction of margins of support, which were the difference between the price of products on the international market and the price received by domestic producers. Importers would be allowed to assess an additional levy if export prices were lower than a negotiated reference price. This proposal focused the debate specifically on the trade distorting effects of government intervention and placed limits for the first time on domestic agricultural policies. The plan also promised an end to export subsidy wars.

For the EC, the "montants de soutien" proposal represented a real concession, which had been difficult to agree upon internally. But the US rejected the proposal because it represented a special code for agricultural products --and the US wanted the application of the fifty percent GATT rule to every sector, including agriculture. On the contrary, the European proposal was eliminating price as a mechanism for determining production and trade patterns. Instead, it introduced a rule tailored to the developing CAP, which would allow for a temporary freeze of EC common support prices and would enable the variable levy system to continue unchanged. In rejecting this proposal, however, the US administration had apparently not measured the extent to which it was difficult for the EC to reach a common bargaining position --and its inflexibility once it was reached.
b) The Decouplage, first American concession

The Kennedy Round started while the Six had still not resolved their disagreements over most agricultural policy issues—including the highly controversial unified grains price. In other words, the Kennedy Round started without a common negotiating position from the Community on agriculture.

For the first few months of the Kennedy Round, the central issue progressively became the question of whether the negotiations on industry and agriculture would progress in parallel. The “decouplage” (uncoupling) of the two sectors could affect dramatically the progress of the round. First, US officials believed that if the industrial negotiations went ahead on their own, agriculture would be left out of the final agreement, as it had been under all the other GATT rounds. This should not be allowed to happen since the US had made agriculture the benchmark by which to judge the success of the Kennedy Round. Second, the simultaneous progress of industrial and agricultural negotiations would enable negotiators to use linkage between the two sectors to conclude deals.

As the deadline of November 16, 1964 for the tabling of exceptions and offers approached, the Six were stalemated. They had not reached an agreement on a unified grains price, and they had made such an agreement a prerequisite to their Kennedy Round agricultural offers. The US refused to get into the internal EEC debate and continued to insist that both industrial and agricultural offers would be presented at the same time. American officials hoped that the parallel progress of the two would force the rapid conclusion of the European agricultural deadlock. France, however, seized this opportunity to suggest that perhaps the EEC should postpone as well the submission of its list of exceptions in the industrial sector until the conclusion of an internal EEC agreement on agriculture. The US administration apparently believed De Gaulle’s threats that there would
be no negotiation with the US as long as the CAP had not been established, and that if the member states failed to resolve their differences on the CAP, there would be no more Common Market at all.\(^{26}\)

These internal divisions in the EEC had a direct impact on the GATT negotiations. Thanks to its internal stalemate, the Common Market achieved one of its initial objectives in the negotiations, which was to delay the link between the submission of offers in the industrial and the agricultural sectors. Tired of waiting for a European decision on agriculture, the US administration radically changed its negotiating strategy and in November 1964 dropped what US officials qualified as a "bomb" --the decision to proceed in the Kennedy Round negotiations on industrial goods without waiting for agricultural rules to be tabled as well. This was a major concession on the part of the US.

\textit{c) The grains agreement}

The decouplage was supposed to facilitate the resolution of the long-drawn debate in the EEC over the setting of the unified grains price. The central issue to resolve was the level of this price: would it be closer to the lower French level or to the higher German level? The US was particularly worried about a higher level than the current French price, since it might artificially stimulate extra production in France and reduce exports to the Community. According to the internal EC decision-making rules, no common bargaining position could be presented in the GATT negotiations until all member states approved it. In December 1963, Germany rejected the Commission proposal on a unified price level for grains midway between the French and German prices, thereby creating a major stalemate in the EEC and in GATT. Preeg explained German opposition by arguing that after France vetoed the entry of Great Britain into the Community in January 1963 and strains arose

\(^{26}\)Peyrefitte 1997, Chapter 10.
between France and Germany on nuclear issues, in spite of the Franco-German friendship
treaty, Germany became less inclined to make commitments on agriculture that would
primarily benefit France.\textsuperscript{27}

After years of unsuccessful negotiations prior to the Kennedy Round and months of
debate while the round was already under way, an internal EEC agreement on grain prices
and financing of the subsidy system was finally achieved in December 1964. The price
eventually adopted was higher than the French price (by about 15 percent), but lower than
the German. Previsions at the time estimated that these unified grains prices would result in
an increment of about three million tons in production, or roughly thirty percent of net
imports, by 1970.\textsuperscript{28}

2) The "empty chair" crisis\textsuperscript{29}

The December 1964 internal EEC agreement on grains prices had eased the
stalemate on agriculture and by March 1965, the parties to the Kennedy Round agreed to
set a timetable for specific agricultural offers: they would start negotiations on a world
grains arrangement soon after April, they would negotiate on government protection
between May and September, and they would make specific negotiating offers by
September. This timetable could not be followed, however, as the internal and external
dimensions of the Common Agricultural Policy clashed when France decided to
temporarily boycott the EC institutions.

\textsuperscript{27}Preeg 1970, p. 72.

\textsuperscript{28}Krause 1968, pp. 102-107. Also quoted in Preeg 1970, p. 34.

\textsuperscript{29}On the empty chair crisis, see for instance Newhouse 1968; and Preeg 1970, Chapter 7.
a) The origins of the “empty chair” crisis

The December 1964 meeting on grains prices had directed the Commission to make a proposal addressing the financing of the CAP for the period covering the next five years. In early 1965 the Commission proposed that agricultural export subsidies be paid by a fund contributed to by all member states. French farmers would be the main beneficiaries of this subsidy arrangement. After 1967, the Commission proposed that the revenues from the common external tariffs on industrial goods be gradually transferred to the Community budget, in turn used in its majority to finance agricultural policy. Aside from the financing issue, the Commission also introduced in the proposal a clause to implement greater supranational decision-making in the EC. The Commission hoped that, in exchange for the collective financing of export subsidies, France would accept the participation of the European Parliament in determining the Community budget, as well as other measures designed to increase supranational powers in the EC.

This was a risky move by the Commission since the conflict between the supranational aspirations of the Commission and the intergovernmentalist views of De Gaulle’s “Europe des patries” had not been resolved. Several analysts argued that the Commission felt strengthened by the success of the December 1964 meeting on grains prices, in which agriculture commissioner Mansholt had played a crucial role and which, as a result, had legitimized the Commission even in the eyes of the suspicious French leader.

France, expectedly, disagreed with all aspects of the proposal, especially the part about the transfer of powers to the Parliament. The other five member states generally supported the Commission’s proposal, considering that since France was going to benefit the most from the agreement on financial regulations, it could make some trade-offs on institutional issues. Up until the moment of the meeting on June 28-30, 1965 where the Commission proposal was to be discussed by the Council, a compromise seemed
plausible. At the actual meeting, however, last minute attempts for conciliation failed. Yet instead of stopping the clock and resuming discussions in July, Couve de Murville, the French president of the Council, ended the discussions and announced to the press that it had been impossible to find an agreement.

The pretext for the crisis had been the Commission’s proposal bundling the financing of the CAP with a delegation of power to the European Parliament. Yet the threat of a crisis had been brewing for quite a while. Already in July 1964 De Gaulle suggested that were Germany to reject French proposals for the Common Agricultural Policy, then France would stop going to Brussels.\(^\text{30}\) If the Franco-German disagreement on agriculture was the trigger for the crisis, the underlying cause was institutional.\(^\text{31}\) The real objection of De Gaulle was against the rule of qualified majority voting in the Council, which, according to the Treaty of Rome, was scheduled to replace unanimity as of January 1, 1966. De Gaulle used the opportunity of the crisis triggered by the Commission’s proposal to settle once and for all his disagreement with the institutional trend taken by the Common Market.\(^\text{32}\) Rather than abdicating France’s veto power and delegating more authority to the supranational institutions, the General preferred to have France boycott the Community institutions altogether —leaving an “empty chair” in all Council meetings. Since full

\(\text{30}\) Reported in Peyrefitte 1997, p. 263.

\(\text{31}\) Peyrefitte reports that on June 12, 1965, the General already warned him of his intentions by telling him: “Hallstein believes he is the President of the supranational Government. He does not even hide his plan, which is to transpose to the European level the institutional structure of federal Germany. The Commission would become the federal Government. The European Parliament would become what is today the Bundestag. The Council of Ministers would become the Bundesrat —that is, the Senate! This is crazy. But do not be mistaken: this is an institutional strait that would end up succeeding if we do not stop it now. And we are the only ones who can do this.” (Peyrefitte 1997, p. 286, my translation).

\(\text{32}\) “We should use this crisis to end once and for all these ulterior political motives. It is unthinkable that, on January 1, 1966, our economy will be subjected to the rule of majority, which will be able to impose upon us the will or our partners who, as we have seen, can coalesce against us. We should use this opportunity to revise the wrong rationales which have been exposing us to endure the diktats of others. Let’s revise this silliness! As for the Commission, it has exhibited a partiality which suits neither its mission, nor even good manners. It must be replaced by another one in its entirety.” General de Gaulle, reported in Peyrefitte 1997, p. 292 (my translation).
membership was required on voting matters, the French boycott led to a suspension of all EEC operations starting on July 1, 1965.

b) The “empty chair” and the Kennedy Round

With no meeting of the Council, the Community had no authority to decide on offers for the Kennedy Round. Yet the internal EC crisis started as the Europeans were expected to present their agricultural offers to their GATT negotiating partners. Some technical work could continue under the existing mandate, but for any significant breakthrough in the negotiations, the Council needed a new mandate --and France needed to participate.33 As a result, the internal EC crisis in effect shut down the agricultural talks in GATT, since one of the main participants was unable to come up with a negotiating position.

The US administration adopted a very strict policy of not attempting to intervene in the European institutional conflict. Instead, the Americans stayed out of the debate, maintained an explicit “no comment” attitude and, in the Special Trade Representative Christian Herter’s words, greeted De Gaulle’s “efforts to dominate or destroy the Common Market with sad silence.”34

The internal EC crisis put the Kennedy Round, in which all offers on remaining agricultural products had to be presented by September 16, in jeopardy. The participants to the Kennedy Round were facing a dilemma as a result of the Community’s institutional inability to make its negotiating offers on schedule: should they proceed or not with the negotiations? One option was to postpone the negotiations until the EEC was in a position to reciprocate. This option entailed several dangers, including the possibility, taken

33See Preeg 1970, p. 113.
seriously for the first time, that time could run out on the US negotiating authority, which was due to expire on June 30, 1967. As a result, agriculture might drop out of the negotiation altogether, were the other GATT participants to insist on the conclusion of the industrial negotiations before the expiration of US negotiating authority. The alternative option was to proceed without the EEC. This would restore momentum to the talks and push them towards a successful conclusion. At the same time, going ahead without the EEC could reduce pressure for the Community to make significant offers at a later time, since there would no longer be the leverage of parallel schedule for all countries.

After carefully weighing the pros and cons of each option, the US administration decided to move ahead on schedule and table its offers on September 16. US negotiators withheld, however, their offers on products of particular export interests to the EEC, in order to minimize any future negotiating advantage that the delay might give the Community. Herter also explicitly warned that US offers “are made in the expectation that the other major participants will make ... offers of like degree. If this proves not to be the case, the US will withdraw or modify its offers on both agricultural and industrial products to the extent it deems necessary to achieve reciprocity in the negotiations.”

The Kennedy Round proceeded in the following months in a quite discouraging manner for the negotiators, who could work only on marginal issues, without the presence of one of the two central participants. The year 1965 was therefore a year of stagnation and fear that if no progress was made, many countries would return to restrictive and protectionist policies. The US also tried to elaborate alternative courses of action if the EEC were to cease participation in the talks altogether. Among the options discussed were the formation of a broader economic bloc without the EEC, the Atlantic Common Market, as

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35 Evans, p. 216.

36 Quoted in Preeg 1970, p. 115.
well as the conclusion of a GATT agreement withdrawing most favored nation clause for the EEC, as long as it could not make concessions. Nevertheless, both options might exacerbate the European split and make reconciliation even more difficult. In short, there was no good alternative to EEC participation in the Kennedy Round, and all the US could do was to wait for the Europeans to overcome their institutional crisis.

c) The Luxembourg Compromise

The tide started turning in early 1966, soon after the French presidential election of December 1965 in which De Gaulle had to face a runoff election against his competitor, partly as a result of the opposition of farm groups, who strongly supported the Common Market. The "empty chair" crisis was eased at the Council meeting in Luxembourg on January 30, 1966, where the Six agreed to disagree. The question of qualified majority voting was left open. Noting that there was a divergence of views on the issue, the member states unanimously agreed to get back to work on the backlog of Community business -- that is, internal farm policy and the Kennedy Round.

The "empty chair" crisis officially ended in May 1966 with the so-called "Luxembourg Compromise," which authorized Member States to keep a veto power on matters of vital importance to them. This compromise voided, in effect, the passage from unanimity to qualified majority voting envisioned by the Treaty of Rome. For the rest of the Kennedy Round negotiations, it meant that the EC position would always be the lowest common denominator position of the six member states.

The Council also reached in May an agreement on the financial regulations which had caused the crisis a year earlier. The compromise included a complicated burden-sharing procedure until 1970 (with France paying a larger share than Germany), a declaration of intent about the use of receipts from the common external tariff for the Community budget after 1970, and a declaration of intent by the Five to reinforce the authority of the European
parliament. The Germans made the accord on farm financing conditional upon reaching the necessary decisions for the Kennedy Round. In July, the EEC finally agreed to its Kennedy Round agricultural offers.

**III. Institutional Constraints, “Tied Hands” and the Conclusion of the Kennedy Round**

The long blockage of the EC institutions had a direct impact on the Kennedy Round negotiations. Faced with the severe institutional crisis in the EC and with undesirable European agricultural offers when the negotiations resumed in September 1966 after the end of the “empty chair” crisis, the US finally came to the conclusion that any solution representing small progress in the farm sector was better than no solution at all. Given the institutional weaknesses of its opponent, the US had few options available but to make concessions and, ultimately, accept the lowest-common-denominator EC position by fear of obtaining nothing otherwise.

1) **Negotiators with tied hands**

The story of the "empty chair" crisis and, more generally, of the Kennedy Round agricultural negotiations suggests that the EC used its institutional constraints as bargaining assets. The internal voting rules in the EC and the lack of latitude granted to European negotiators heavily contributed to the American team’s inability to reach a better deal for the United States.

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37From archival research in various US documents on the Kennedy Round negotiations, John F. Kennedy Library, Boston, MA. See also Zeiler 1992, p. 183.
a) The fait accompli

Even before the Kennedy Round had started, American negotiators knew that they were facing a very difficult task as a result of the Community's internal procedures --and lack of familiarity in the use of such procedures. US officials believed at the outset of the round that whatever decisions would be made in Brussels would be difficult, if not impossible to alter in the multilateral context. Yet they believed that they could avoid being presented with a fait accompli: "With respect to the assumption that the United States must conduct negotiations within the limits of the Common Agricultural Policy as it has thus far evolved, there does not seem to be any real reason why we should place ourselves in such a negotiating straight jacket." 38

The strategy they devised was mostly "to influence the establishment of the common price before it was set, rather than to attempt to negotiate a reduction in this price after its establishment." 39 The American strategy to prevent decisions made in Brussels to be unalterable in the Kennedy Round is best stated by George Ball in the following excerpt of the December 1963 "Components of a strategy for the Kennedy Round":

Recognizing that the EEC positions and policies once negotiated internally are difficult to negotiate externally, we should

a) seek skillfully to influence EEC decisions before they are taken;

b) develop further our bilateral relations with the member states and the Commission.

c) seek more formal prior bilateral consultative arrangements with the Commission, with Germany, and also with one or more other EEC states, perhaps including France;

d) urge the Commission to explain to GATT members its agricultural proposals and to take into consideration third country comments prior to EEC decisions.

38 USDA, Major agricultural objectives in trade negotiations, August 7, 1963 (NSF Box 309-310, Trade General 8/63).

39 Memorandum for the files, 16 August 1963, subject: August 15 meeting with under secretary Murphy (Agricultural Policy, 8/13/63-12/31/63). Emphasis is in original text.
e) seek to encourage the EEC to grant a flexible negotiating mandate to the Commission.40

Getting themselves out of the EC institutional straight jacket, however, proved just impossible to do for US negotiators. Ex post, when asked why they failed to reach a more favorable agricultural agreement in the Kennedy Round, American policy makers often contended that the transitional stage of European integration prevented effective negotiations. George Ball, for instance, declared that "the reason for the disappointments in bargaining [...] result primarily from the difficulties the Six have had in trying to put their individual agricultural policies together."41 Similarly Christian Herter, the US Special Trade Representative, asserted that "the lack of progress in the Kennedy Round goes right back to the fact that the largest trading partner in the world, the Common Market, has taken so long to develop a comprehensive negotiating position [...] Until the Common Market could adjust itself and get a trading position, there was no way of negotiating."42

b) Absence of negotiating flexibility and autonomy

The US administration realized early on that the flexibility of the Community’s agricultural mandate was crucial to the American bargaining position. In 1964 US officials, looking ahead to the upcoming negotiations, argued that “the effectiveness of the year-end decisions would depend to a considerable extent upon the flexibility and imagination of the Commission in its negotiations on the Kennedy Round. If the Commission exploited to the maximum its mandate and reflected the expressed desire of the Germans, Dutch and others for negotiations with some real flexibility, then perhaps the importance of the sticky points

40Box 7 George Ball “Components of a strategy for the Kennedy Round”, preliminary draft, 10 December 1963.

41Hearings 1966, p. 6.

42Hearings 1966, p. 44.
could be minimized and maybe some significant progress could be made.” At the same time the US administration realized that the Commission could be one of the US’ best allies. Therefore American officials had to be careful not to antagonize the Commission by having informal bilateral talks with the individual member states, and instead insisted on having the Commission as their exclusive interlocutor. Yet the US preference for EC negotiating flexibility and autonomy did not materialize during the negotiations.

One major innovation of the Treaty of Rome had been the creation of a Community with external personality. In particular, the EC took over negotiating functions from the member states in international trade negotiations. Under Article 111, decisions on bargaining positions were to be taken by the Council of Ministers under the unanimity rule until January 1966, end of the transitory period. Had France not obtained the Luxembourg Compromise ending the "empty chair" crisis, qualified majority voting would have been automatically instituted after this date. While the mandate to negotiate was agreed by unanimously by the representatives of the member states, the actual negotiations were carried by members of the Commission on behalf of the EC. This procedure led to

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43 Box 16, Ambassador John W. Tuthill, 7/30/63- 7/20/64, Letter from Tuthill to Robert Schaetzel, Deputy Assistant Secretary for Atlantic Affairs, Department of State, 9 January 1964.

44 "The Commission is clearly much more receptive to negotiations along the lines we envisage than several of the national states and would be inclined to be considerably more liberal in its approach to the solution of the problems involved.” (Objectives for Governor Herter’s trip to Brussels, January 25, 1963, Box 16, Trips-Europe, 1/24/63-2/4/63).

45 See Box 7 Ambassador Blumenthal 6/19/63-8/28/64, W. Michael Blumenthal to Christian Herter, October 16, 1963: “We must be very careful in these bilaterals not to create the suspicion of wishing in any way to divide the six and I intend to go to the particular pains to avoid any such impression. At the same time, since the idea of having an exchange of views was first raised with us by the Germans and the French, we should be equally clear that we consider it our right, and quite proper, to have informal exchanges with each of the EEC member states without in any way abrogating the Commission’s role as chief EEC spokesman. I certainly agree with Ambassador Tuthill’s view that throughout the negotiations we must establish the principle of negotiating with the Commission (hoping they have a mandate) while maintaining bilateral contacts with the member states as a means of gaining a better understanding of individual viewpoints.”

46 The 1952 European Coal and Steel Community did not have external powers.

47 The Belgian Jean Rey, later President of the EC Commission, was the chief EC negotiator in the Kennedy Round.
awkward situations where the EC negotiators were powerless to make any compromise or counterproposal until they received a new negotiating mandate, agreed to once again by unanimity, from the Council.48

As a result of the desire of member states (especially France) to keep a complete check on the progress of the GATT talks, EC negotiators had their "hands tied" during the Kennedy Round and the EC bargaining position was therefore quite rigid. In that sense, Community negotiators were mere messengers with no ability to make constructive proposals in the heat of the negotiations. As stated by Warley, "the Kennedy Round agricultural negotiations were in fact bedeviled by the limited authority of the negotiators. [...] The Commission had constantly to return to Brussels for instructions and was, for most of the time, a carrier of messages from the Council of Ministers."49 Throughout the Round, American negotiators kept complaining about the hurdles created by the EC internal arrangements.50 Indeed, this inflexibility of the EC position had important consequences on the bargaining process with the United States, which had to make sensible proposals and counteroffers with a high chance of being accepted by the EC member states.

The inflexible negotiating position of the Community also came from the absence of secrecy surrounding the EC decision-making process. "Council decisions --debated at length and attended by large numbers of people-- quickly became public knowledge. It was

48Representatives of the Member States were present during the negotiations in Geneva, but they were not allowed to negotiate directly.


50Archival material on the Kennedy Round at the J. F. Kennedy Library shows that US negotiators were extremely preoccupied with internal EC decision-making procedures and tried to influence some EC member states to soften and majorize the procedures. See for instance "Memorandum from Governor Herter to Mr. Rehm, February 4, 1963: "Please let me have the answer to the following question: If the EEC Commission makes recommendations to the Council favorable to us in modifying sections of the Common Agricultural Policy, and those recommendations are vetoed in the Council by one nation, can the United States take retaliatory action against that one nation, or must it consider the EEC as a single entity?" (Box 14, John Rehm, 2/4/63-6/3/64).
virtually impossible to maintain security at Brussels (a consideration aggravated by the widely held belief that the Americans, in particular, had ready access to Community information). As a consequence of rigid, publicly known mandates, the Community spokesmen at Geneva could not effectively negotiate, and became primarily conveyors of messages to and from Brussels.”\textsuperscript{51} As a result of Community internal debates becoming public knowledge, the US knew what the EC’s reservation value was in the negotiation, but it also knew that the EC could not accept anything beyond this reservation value.

Finally, the inflexibility of the EC negotiating position came from the fear of endangering the fragile Community structure. Each internal decision (grain prices, exports subsidies, etc.) had been so painful and difficult to reach that the member states felt that what had been agreed to became a binding commitment. They worried that any type of pressure for renegotiating these commitments, and particularly outside pressure, would disturb the fragile balance arduously achieved in the Community and jeopardize the chances of future internal compromises. Therefore, "once an accord had been reached in the Council it was too fragile to permit significant changes in the Geneva negotiations."\textsuperscript{52} In consequence, the Community derived some leverage out of its inflexibility.

2) \textit{The Kennedy Round agricultural agreement}

The Kennedy Round negotiations were concluded under the pending threat of expiration of the US executive authority to negotiate. In 1962, US President Kennedy had obtained the passage of the Trade Expansion Act (TEA), which was the centerpiece of his

\textsuperscript{51}Preeg 1970, p. 38.

\textsuperscript{52}Warley 1976, p. 388.
legislative agenda.\(^53\) The TEA authorized the President, for a period of five years, to reduce tariffs by as much as 50 percent, and even eliminate them completely on products for which the US and the Common Market accounted for 80 percent of the world market. At the end of the period, Congress would simply accept or reject the agreement negotiated by the President, without being allowed to tinker with the details. The succession of crises and deadlocks in the Kennedy Round pushed the multilateral negotiations close to the date of expiration of the presidential authority. By June 30, 1967, any negotiated reduction on a particular item would have had to be approved by Congress. In order to avoid this occurrence, the Kennedy Round ended in a marathon session between the US and the EC in May 1967.

The US and the EEC disagreed over the level of agricultural offers until the last day of the negotiations. In the end, however, the US was very disappointed by the EEC agricultural offers, but had no option but acknowledging defeat. In order to conclude the whole Kennedy Round, which was being held up by the agricultural negotiations, the US had been forced to make many concessions throughout the negotiating process: the American administration had retreated on the issue of food access guarantees; it had decided not to wait for an accord on cereals within the Common Market to proceed with agricultural negotiations; finally, the US had allowed the decoupling of industrial and agricultural negotiations. These concessions resulted in the signing of a final agreement that was not making the changes in agricultural trade originally intended by the Kennedy administration.\(^54\)


\(^54\) It was already clear in 1966 that the US was going to be the big loser of the agricultural negotiations. See Box 5 agriculture + EEC, Memorandum to The President from The Secretary of Agriculture, August 1, 1966, Subject: Kennedy Round negotiations --Tabling offers, Agriculture department exceptions:

"1. The United States agricultural offer to the EEC is a very generous one, encompassing a 50 percent cut in tariff on some $315 million of US agricultural imports in 1965. The items covered include some that are very sensitive politically, such as tobacco. At the same time we are being called on to make offers on dairy
It would not be fair to say that the US "lost" the Kennedy Round, for it gained important trading benefits in several sectors and its overall exports grew as a result of the final agreement. But the US clearly was the loser in the agricultural negotiations, having achieved none of its initial objectives. Therefore, "in the economic folklore of the United States in the late 1960s and early 1970s, the Kennedy Round was firmly established as a failure."¹⁵⁵ By contrast, the final outcomes satisfied the European Community and established its reputation as a strong bargainer.

In the non-grain agricultural sector, the Europeans made ultimately few concessions.¹⁵⁶ Tariff reductions of 20 percent on average were mutually obtained by the US and the EC on only a few items (other than cereals, meat and dairy products). Faced with a relative defeat in the non-grain negotiations, the American administration reported its hopes on the International Grain Agreement instead, only once again to be resisted by the EC. The US finally accepted a less than favorable agreement. The negotiations to provide access to markets protected by a self-sufficiency ratio commitment (mainly the EC) were

and meat products, specifically beef  If it should become known that such offers are being considered, particularly in the absence of anything even remotely commensurate by the EEC, there would be a swift and serious political repercussion in the United States, and there is every reason to expect that they will become known through the EEC.

2. The EEC will make no meaningful offer. From advance information we have, it seems likely that their offer, rather than representing progress, would result in a more protectionist rather than more liberal trade position. It is argued that we have made progress in the negotiation because the EEC has on some few items abandoned its completely unrealistic montant de soutien position, which would have only frozen high EEC support levels and which would not have liberalized trade. Initially the EEC insisted this system cover all products. The fact that the EEC will now offer shallow duty cuts on a few items does not represent any real progress in my judgment. Their offers, overall, still do not constitute a basis for negotiating anything but increased protection in the EEC market. It appears that all the EEC is trying to do is legalize internationally its notorious variable levy and gate price system, which relegates third countries to a residual supplier position. The EEC has just finished setting its internal agricultural support prices. The EEC internal price levels on many products are now at least half again as high as the United States price levels, and considerably higher than was previously the case. Such an uneconomic high level of internal pricing can have only one effect. It will certainly increase domestic production within the EEC. With the application of the notorious variable fee system which protects the most inefficient internal producer from any outside competition, it will limit trade possibilities. Moreover, the process of setting these prices is difficult, time-consuming and both economically and politically hazardous. This being the case, it is impossible to conceive the EEC ministers will now turn around and reverse these decisions.”


¹⁵⁶See Preeg 1970 and Evans 1971 for an analysis of the results.
unsuccessful. The deadlock in the sector of cereals was finally broken when the US agreed to drop its demands for access guarantees in exchange for the EC to abandon its margin of support plan. As a consequence, a comprehensive approach to an international grains arrangement was ultimately abandoned. The only accord to be reached was on a joint food aid commitment and minimum wheat prices. In sum, the final outcomes were quite fruitless relative to the original expectations of the United States. While a small agreement was reached in the grains negotiations, the broader issue of market access and accommodation of the practices of the Common Agricultural Policy remained unresolved.

Overall, the final outcome of the negotiations in the grains sector was rather negative compared to the original expectations of the US on three fronts: the price levels agreed upon were too high to advantage US farmers; US farm exports were not guaranteed access to EC markets; and the commitment in food aid to developing countries was far below the initial target. When not complaining about the "modest success" of the negotiation on agriculture, US officials confessed that the American expectations had not been met. Nevertheless, despite the disappointment in agriculture negotiations, the American administration endorsed the Kennedy Round agreement, partly because the overall tariff reductions on industrial goods were impressive and advantageous for US exporters, partly to prevent the likely resurgence of protectionism at home if the negotiations were to fail. The final Kennedy Round agreement spurred many criticisms in the United States, mainly in the agricultural sector where, at best, the results were judged moderate. Others were less forgiving about the deal finally struck in Geneva, such as Congressman Odin Langen (R-Minn) who, on behalf of the House Republican Task Force


58Worthington: "I am afraid you have to come to the conclusion that certainly we cannot hope to get out of this negotiation in agriculture what we hoped we would get when we went into it. We did have high hopes that the massive bargaining authorities which the Congress gave us would enable us to deal successfully with the developing variable levy systems of the European Economic Community." (Hearings, 1966, p. 66)
on Agriculture, called the Kennedy Round a "failure" and complained that the US farmers had been "sold out" by the US negotiators.  

By opposition, the Common Market concluded the agricultural negotiations triumphantly. Against most expectations, the EC had proven its ability to resist effectively US demands for market access and even to dictate the terms of the final agreement. The initial goal of the EC in the Kennedy Round --to ensure that the Americans accepted in principle to let "agricultural trade accommodate itself to the CAP and not the converse"-- was reached. This led a historian to conclude that, in short, "the Europeans enjoyed more decisive leverage at international trade negotiations than ever before."  

Conclusion: Internal Weakness as External Strength in the Early Phase of Integration

As a consequence of the failure of the EC and the US to reach a substantial agreement on agriculture, the Common Market was left free to maintain its support prices at a very high level, which eventually gave rise to enormous surpluses exported with the help of subsidies. As predicted by the central model of this dissertation, in this purely defensive case the final agricultural agreement of the Kennedy Round was extremely favorable to the EC, thanks to the institutional paralysis in Europe epitomized by the "empty chair crisis" and the complete lack of autonomy from the Commission's negotiators. It is only after France blocked the policy-making process in the EC that the Kennedy Round was concluded on European terms. Thus, contrary to expectations derived from the conventional wisdom about unity and strength, the study of the bargaining processes in the

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60Krause, 1968, p. 214.
Kennedy Round agricultural negotiations reveals that internal strife and institutional constraints can indeed be turned into bargaining assets—or bargaining handicaps from the viewpoint of third parties.

Because the EC polity was weak—that is, no institutional rule besides veto existed to mediate the divergent interests of the member states—the terms of the final agreement were dictated by the most reluctant country. In this “defensive” case where the EC was trying to preserve the status quo on its newly enacted Common Agricultural Policy, the unanimity rule meant that the common position adopted was the lowest common denominator. Moreover, unanimity resulted in inflexibility of the negotiating position agreed upon. The US administration was presented with a “fait accompli”: the internal EC difficulties in agreeing on the CAP had been so obvious that the policy adopted by the Europeans had become an established fact. It was unthinkable for US negotiators of asking for changes in the CAP after the “empty chair crisis.” Finally, unanimity enhanced the credibility that the offer made is of "take it or leave it" form, since the negotiators had no room to maneuver. The lack of Commission autonomy made a renegotiation of the agricultural package impracticable before the deadline provided by the expiration of the US negotiating authority.

This chapter also suggests that the EC obtained favorable outcomes in the Kennedy Round because integration was still in its early stages. The first phase of European integration, which began in 1958 and covered the whole Kennedy Round period, was a time of elaboration and consolidation of the European Community. Most policy decisions had not been transferred yet to the supranational level; the EC supranational institutions were not strong and autonomous; the Community had not yet become a fait acquis in the eyes of its partners. In this first period, the European nations forming the Community moved from totally uncoordinated to partially coordinated positions in trade negotiations, while linked together by a relatively weak supranational polity. The unanimity rule
prevailed as the only policy-making procedure and the EC had no experience yet in resolving internal conflicts. In a situation where the weakness of the EC's institutional mechanisms prevented an automatic resolution of disputes, the complete inability of the Community to offer concessions beyond the lowest common denominator appeared extremely credible. Hence, despite its important political and economic power superiority, the United States was unable to unlock the position of the EC and therefore had to accept this "hands tied" position as the final outcome of the negotiations. It thus seems that the partially integrated EC derived unexpected negotiating strength from its institutional weaknesses.

Moreover, the actual and perceived fragility of the European Community in its early phase also served as a bargaining asset in favor of the Europeans. The member states were still in the process of building the foundations of the Community when the US demanded the first trade concessions. Such concessions could have destroyed the fragile balance of interests holding together the various EC countries. In particular, the CAP was a keystone of the European edifice, which could be disintegrated if its fundamental principles were jeopardized. Therefore, even if some EC member states disagreed with the French proposed policy on agriculture (especially Germany), they finally accepted to hang together in order to preserve the fragile Community, as if having the CAP was more important than having a successful Kennedy Round. American policymakers were also particularly sensitive to this argument for security reasons. The United States had supported Western European efforts to integrate their economies in the hope that the EC would create a strong border against the East, perhaps complete with a defense component in the long term. American negotiators had to weigh seriously the threat of a disintegration of the Six which could be partly caused by American demands for changes in agricultural policy.

The reverse side of this argument suggests that a stronger and more integrated Europe might be less able to resist American demands. The second phase in the
development of European integration can be loosely defined as a state in which an important number of policy decisions have been transferred to the supranational level, the central institutions have grown stronger, collective-integrated policy-making has become routine, and the scope of EC decision-making has extended. A consequence of its increasing unitary character and centralized decision-making procedures might be to render the EC negotiating positions less prone to capture by a radical country. The next chapter will examine, by contrast, the well-oiled EC institutional machinery in the Uruguay Round of GATT (1986-1993), during which the Community was no longer a fragile construction but had become a fait acquis.
CHAPTER 4


The negotiations on agriculture between the European Community and the United States during the Uruguay Round of GATT provide a particularly good illustration of the external consequences of the EC's single negotiating voice in a "defensive" situation, in spite of the liberal preferences of many member states. At the same time, these negotiations offer some unusual contrast with respect to the institutional dimension between the apex of Commission autonomy versus the subsequent reining in of Commission negotiators and between the institutional confusion following the Single European Act versus the subsequent reinstatement of veto power.

When agricultural liberalization was tackled once again in multilateral negotiations, after the blatant failures of the Kennedy and Tokyo Rounds, it was put on top of the negotiating agenda by the US but resisted by the EC. The wide gap between the positions of the member states at the start of the Uruguay Round prevented the Community from making any concessions departing from the status quo. The European Community and the United States therefore negotiated for six years without any result. The decision to finally undertake a reform of the Common Agricultural Policy in 1992 paved the way for an agricultural agreement with the United States. The so-called "Blair House agreement" on agriculture was really made possible, I argue, by the combination of a weakened unanimity rule and greater autonomy seized by Commission negotiators. Blair House represented a turning point for the delegation of negotiating authority to the supranational representatives,
however. The institutional rules which had enabled the conclusion of the agreement were subsequently informally altered to limit the Commission's negotiating autonomy and reaffirm unanimity as the mode of decision-making in the Community. This institutional change in the EC eventually resulted in the renegotiation of the US-EC agricultural agreement, which was less satisfactory for the US and the majority of member states than the original one.

I. Deadlocked Negotiations

Negotiations between the EC and the US on agriculture made no notable progress for six years, threatening to thwart the whole Uruguay Round in the wake of their failure. I argue that the wide divergences about agricultural liberalization between the member states paralyzed the EC’s bargaining potential and enabled the EC to offer to the world only a perpetuation of the status quo as its bargaining position. In a “defensive” situation, the institutional practice of consensual decision-making leads to the adoption of the smallest common denominator as the single position and therefore diminishes the likelihood of a final international agreement. The first six years of the agricultural negotiations in the Uruguay Round are a perfect illustration of this hypothesis.

1) Initial negotiating demands

The initial impetus for the Uruguay Round was American. The US wanted to bring trade in services within the multilateral system, strengthen GATT rules and disciplines, and
once and for all tackle agricultural liberalization.\(^1\) Agricultural trade disputes between the US and the EC intensified in the early 1980s, while each side retaliated with the imposition of costly protectionist measures. Between 1981 and 1986 US agricultural exports declined in both volume and value, while the EC performed well, largely because of the Common Agricultural Policy (CAP)'s export subsidy program. In retaliation, the United States Department of Agriculture (USDA) established in May 1985 the Export Enhancement Program, which distributed government subsidies to US exporters, while Congress provided for lower loan rates to US agricultural exporters through the Food Security Act.\(^2\) In response, the EC further increased its compensation to European producers. In 1986, US and EC domestic agricultural support programs were estimated at about $25 billion each. Also, for the first time in 1986, the EC temporarily surpassed the US as the world's largest agricultural exporter (even though at the same time it remained the world's largest importer of agricultural products). One of the central US objective in the Uruguay Round was therefore to get rid of the CAP because the US-EC "subsidy war" was becoming too expensive.

The EC first rejected the concept of a new round of multilateral trade negotiations with special emphasis on agriculture when the US introduced the idea at the GATT ministerial meeting of November 1982. Given its own economic recession, the weakness of its central institutions and the ambient "Europessimism," the EC found new multilateral trade talks premature. Moreover, the Europeans perceived the negotiations as a means for the US to respond to its own problems (mainly the overvaluation of the dollar) at the expense of EC producers. The context was not very favorable to a positive reception of a

\(^{1}\)See Hampson 1996, especially pp. 180-185, for a clear analysis of the players in the Uruguay Round and their objectives. See also Schott 1994 and Bayard and Elliott 1994 about the US impetus for the Uruguay Round.

\(^{2}\)Libby 1992.
new US-led trade initiative anyway: the US and the EC were engaged in a series of trade disputes over steel, various agricultural issues, and the Soviet gas pipeline.

Most importantly, the reopening of agricultural talks just four years after the conclusion of the Tokyo Round had the potential for being highly divisive within the Community. The ten, and then twelve EC countries had extremely divergent interests with respect to agriculture. Great Britain and the Netherlands, both net financial contributors to the CAP, hoped that the multilateral negotiations would provide an "external push" enabling the EC to slow the increasing costs of the CAP. Other member states, above all France but also to some extent Belgium, Ireland, Italy and Germany, wanted to keep a high degree of agricultural protection in Europe. As Europe's first and the world's second agricultural exporter, France was particularly adamant about maintaining the current system of export subsidies and protected market access for agricultural products, especially given the importance of the rural vote in French domestic politics.³

The EC was therefore put in a defensive position on agriculture even before the start of the Uruguay Round, as it had been in all previous rounds of multilateral trade negotiations in which the issue was raised. Given the "centrifugal forces"⁴ within the Community coupled with the practice of consensual decision-making on such an important issue, the only common position on which the EC could initially agree was the preservation of the status quo.

Although considered a "failure" at the time, the 1982 GATT meeting set in motion important preparatory technical work for a new round of multilateral negotiations, which intensified in 1985, as the EC boosted efforts to consolidate its internal market. On March

³See Keeler 1996.
⁴Paemen and Bensch 1995 p. 46.
19, 1985 the EC Council declared itself in favor of launching a new round of multilateral negotiations in order to halt protectionism and correct the imbalances whose origins lie in the financial and monetary areas. The EC Commission took six months of in-depth consultations with the member states to prepare the negotiating directives forming the "Overall Approach" towards the new round of multilateral negotiations, but neither France, Italy nor Greece wished to commit themselves and no qualified majority could be found in support of the Commission's text at the 17 June 1986 Council in Luxembourg.

France, in particular, had three requests for the upcoming round. First, the section on agriculture would have to be rewritten entirely to ensure "the defense of the Common Agricultural Policy". Second, France wanted to raise the question of exchange rate fluctuations. Third, it wanted to obtain the "rebalancing of rights and obligations" (in other words, attack the American waiver on agriculture gained by the US in the 1950s). As a result, External Relations commissioner Willy de Clercq went to the inaugural Uruguay Round meeting at Punta del Este with a tough mandate. The EC mandate was to "limit the damage" in agriculture and at the same time open up the Japanese market and restrict American exceptions. As Paemen and Bensch relate, "unable to agree, but constrained to act by the pressure of events, the Ministers of the Twelve Member States decided to pass the buck to the European Commission." After prenegotiation posturing by each party at the inaugural meeting, a breakthrough occurred, which enabled the EC to finally accept the launching of a new round of multilateral trade negotiations. France, a major services provider, agreed to discuss agriculture in exchange for the inclusion in GATT talks of its most important concerns, such as liberalization of investment and services, the issue of

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5Paemen and Bensch 1995, p. 36.
6Paemen and Bensch 1995, p. 47.
8Paemen and Bensch 1995, p. 56.
exchange rate fluctuations, and the "rebalancing" of former privileges. The EC had agreed that world trade in agriculture was problematic and that support was costly, but it hoped to replicate the scenario of the Kennedy Round: to get agricultural reform on its own terms and to receive confirmation that the CAP would be allowed to continue.

The launching of the Uruguay Round in September 1986 was followed by a long series of negotiating stalemates in the agricultural sector as a result of the wide divergences separating the European from the American positions. The US was first to officially put up its negotiating proposal before the GATT group dealing with agriculture in July 1987. It called for a complete elimination of all subsidies in agriculture by the year 2000 --a negotiating position called the "zero option" by analogy to ongoing arms control negotiations. It also demanded a phase-out over ten years of the quantities exported with the aid of export subsidies and a phase-out of all import barriers over ten years.

The EC was taken aback by the extreme nature of the American negotiating proposal, which could not be dismissed purely as a "bluff." The Europeans did not submit their own proposal until late October, reiterating their initial plea for short-term measures, non-negotiability of the CAP, and reduction of all forms of support. A divided Community was ready to make some concessions on the issue of domestic support, but was unable to offer anything on either market access or export subsidies. As one of the key negotiators for the EC himself acknowledged, "seeing no scope for a compromise on the

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10 Paarlberg 1993.

11 In his own account of the negotiations, Paemen wrote: "The European Community immediately claimed that the Americans were bluffing. Proposals like these would cause problems even for US agriculture, because the Americans too used subsidies, even to support their exports. But no matter how loudly the European Community yelled, there was no changing the facts. If they were really serious about liberalizing, the Americans had the resources to get by without aid. The same could not be said of the Community. There were good reasons for thinking the Americans' proposal might be a bluff. Then again, no one could be certain." Paemen and Bensch 1995, p. 106.
basis of such a bold position as that of the US, the EC decided to opt for splendid isolation."\textsuperscript{12}

2) \textit{Negotiating stalemates}

The wide gap separating the US and EC positions and the inability of the EC to offer concessions going beyond its lowest common denominator led to a series of negotiating stalemates, which almost terminated the Uruguay Round altogether. The December 1988 Montreal ministerial meeting, initially conceived as a mid-term review for the Uruguay Round, ended in failure because there was no room for compromise between two widely opposite positions. Some progress was made in early 1989 after a new US negotiating team, headed by Secretary for Agriculture Clayton Yeutter, gave a lot of ground in order to quickly reach an agreement on agriculture, but a series of crises throughout 1990 slowed down progress in the negotiations. It seemed that EC negotiators "evidently assumed that, as in past GATT rounds, agriculture would be taken off the table before the end of the negotiations."\textsuperscript{13}

The Commission, however, was resolved to cut back agricultural support, which was costing up to 60\% of the total EC budget. The Agriculture Council rejected the Commission’s agriculture proposal in September 1990 for going too far. Most ministers vigorously defended their farmers' interests in Brussels, especially Germany which was in the midst of reunification. The Council adopted a much watered-down text in November, which proposed a 30 percent cut in domestic support over five years, to be calculated from

\textsuperscript{12}\textit{Paemen and Bensch 1995, p. 107.}
\textsuperscript{13}\textit{Schott 1994.}
1986, as well as a correcting mechanism to take into account currency fluctuations and improved conditions for export competition.

The EC representatives’ lack of negotiating autonomy prevented a successful conclusion of the Brussels ministerial meeting of December 1990, originally intended to close the Uruguay Round. After an initial crisis triggered by an American ultimatum, Renato Ruggiero, the Italian trade minister and president of the Council, asked the Commission to continue the negotiation while exercising "a degree of flexibility in keeping with the spirit of its mandate." "In the bustling microcosm of the Heysel, the news traveled fast. The Commission had been granted flexibility!"\textsuperscript{14} The US and other countries agreed to a compromise by Swedish Agriculture minister Mats Hellström, which proposed a reduction of 30 percent in export subsidies, import restrictions, and domestic supports from 1990 levels to be implemented over five years. Ray MacSharry, the Agriculture Commissioner, tried to use up this flexibility, but in the end the Hellström proposal proved to be beyond the Commission’s negotiating mandate. The Brussels meeting consequently collapsed and participants criticized the crucial lack of flexibility of EC negotiators. This collapse conforms to one of the hypotheses presented in Chapter 2: the lack of supranational competence in a defensive situation decreases the likelihood of reaching an international agreement.

Negotiations resumed but made no progress until December 1991 when Arthur Dunkel, the Director General of GATT, drafted a proposal providing specific terms for reductions in export subsidies, domestic support, and import restrictions. Most countries accepted the Dunkel Draft as a basis for the final agreement on agriculture, but the EC Council rejected the text for several reasons.\textsuperscript{15} Dunkel also introduced the principle

\textsuperscript{14}For a detailed account of the 1990 Heysel negotiations, see Paemen and Bensch 1995, pp. 185-186.

\textsuperscript{15}Including the absence of a "rebalancing" agreement and the non-exemption of the EC’s compensation payments from GATT discipline. Schott 1994, p. 46.
whereby no amendment to his draft would be taken into consideration unless the proposing country had held informal negotiations beforehand with the other parties and obtained their support. For the European Community, this meant that a bilateral pre-agreement on agriculture had to be concluded with the US.

3) Capping the CAP: the 1992 reform

The US-EC agricultural negotiations were put on hold while the EC, facing increasing isolation internationally and rising budgetary pressures, undertook an internal reform of its Common Agricultural Policy.\textsuperscript{16} By redefining the negotiating mandate, quieting internal divisions and granting more flexibility to Commission negotiators, this reform enabled the bilateral negotiations to move forward and eventually result in an agreement.

\textit{a) The 1992 CAP reform}

On May 21, 1992, after a year of intense debate, the EC Council of Ministers adopted the reform of the CAP presented by Agriculture Commissioner Ray MacSharry. The reform was revolutionary because it capped production, entailed a substantial reduction in support prices (to be compensated by aids), and proposed to set-aside land out of production. The main internal disagreements, opposing Northern versus Southern states, and large-farm states versus small-farm states, focused on the proposed levels of price and quota cuts, the distribution and duration of compensatory payments, and the effects of the reform on farm income and production. Reforming the CAP in order to control spending and limit surplus production had been a subject of debate in the EC since the end of the

\textsuperscript{16}See Keeler 1996 on the relationship between the CAP reform and the GATT negotiations.
Kennedy Round. Previous CAP reforms, however, only managed to modify existing policy mechanisms. The 1992 reform was more drastic. Unlike the negotiations in GATT, however, the reform did not address the crucial issues of market access and export subsidies.

Agriculture Commissioner Mac Sharry played a very active role in setting the agenda for a CAP reform, designing the actual reform, and getting it approved by the Council. The Commission wanted a reform in order to avoid a budgetary crisis and diffuse internal criticism of the EC's wasteful and protectionist policies. The Commission also hoped to derive a more flexible negotiating mandate from the reform in order to successfully reach a deal with the US. Countries reluctant to change in the functioning of the CAP, such as France, eventually agreed to the reform because the combination of budget constraints, Commission agenda-setting and outside pressures made such a reform inevitable.\(^{17}\) France could also use the strategic advantage of locking in the CAP reform now to avoid making further concessions to the US later.

\textit{b) International bargaining consequences of the CAP reform}

European and American officials disagreed over the meaning of the CAP reform. European policy-makers argued that this reform represented the upper limit of changes that the EC could make to its agricultural policy. By contrast, the US argued that the reform was an internal EC matter, addressing only the issue of internal support. It was interpreted as the basis for a future US-EC agreement that would also include provisions on market access and export subsidies. Above all, the US wanted to avoid rigidity in the European position and therefore rejected EC attempts to "lock in" a negotiating position by reaching internal agreements first —that is, having its "hands tied" by a prior internal agreement, in

\(^{17}\)See Keeler 1996.
Schelling's words. When EC negotiators first demanded reciprocal concessions as a result of the CAP reform, Carla Hills, the United States Trade Representative (USTR), suggested instead several ways in which the reform could be expanded to deal directly with the issues in the trade talks.¹⁸

US-EC agricultural negotiations were stalled for many years because divisions between the member states had prevented the EC from departing from its defensive bargaining position. The absence of a real institutional mechanism to settle internal differences and the lack of autonomy granted to EC negotiators resulted in paralysis of the negotiating process. The CAP reform broke the long deadlock in the negotiations because it forced the member states to reach an internal agreement and therefore define a common position. The reform delimited the Commission representatives' new negotiating mandate. The CAP reform also enabled the bilateral negotiations to move forward and eventually result in an agreement because in effect the vagueness of the new mandate granted more autonomy to Commission negotiators.

II. Internal Divisions, Commission Autonomy and Conclusion of the Blair House Agreement

Negotiations between the US and the EC accelerated after the adoption of the CAP reform, leading to the so-called "Blair House" agreement of November 20, 1992, which almost brought the Uruguay Round negotiations on agriculture to a successful end. The combination of a weakened unanimity rule and greater autonomy seized by Commission negotiators made the conclusion of the agreement really possible. This illustrates the

hypothesis that supranational competence in a defensive case makes the conclusion of an international agreement more likely.

I) Internal EC crisis

A series of intense bilateral negotiations on agriculture at high political level started in Brussels in October 1992. It failed to produce results as France pressured the Community to make new demands and brandished its veto threat, suggesting that the Commission negotiators were going beyond their mandate as defined by the CAP reform. The US responded to the failure of the negotiations by linking the oilseeds dispute to the ongoing discussions and menacing the EC with a full-blown trade war. Carla Hills announced a retaliatory 200 percent punitive tariff on $300 million of European food imports effective December 5 if the EC did not reduce its oilseeds production from 13 to 8 million tons. By targeting French, but also German and Italian products for retaliation, the US tried to “divide and rule” the EC by increasing the member states' pressure on France, in order to avoid the final capture of the collective EC position by the preferences of the most extreme member state. The US administration also tried to exploit the obvious lack of cohesiveness in the EC by forcing the member states favorable to its views to simply disregard the outliers and reach a bilateral agreement.

Negotiations resumed in Chicago on November 2 and 3 in this tense bilateral context, although the American administration was particularly eager for a deal that would

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20In the 1961-1962 Dillon Round negotiations, the EC granted zero-duty access to oilseeds and cereal substitutes, which at the time were not used much. Since then, the EC started to provide internal support to European production of oilseeds in order to limit oilseeds imports. The dispute erupted when the US challenged the EC oilseeds subsidy program in GATT. Successive GATT panels found against the EC, which refused to comply.
come before the presidential election. The talks did not produce any progress in the bilateral negotiations but resulted in a major internal crisis in the Community. Before concluding a deal, American negotiators wanted to ensure that the agreement negotiated by the Commission representatives would be supported by the Council. In a surprise move, Agriculture Commissioner Ray MacSharry offered proof of the Council's likely support in the person of Mr. John Gummer, the British president of the Agriculture Council, who was secretly in Chicago to monitor the talks and assured US Agriculture Secretary Edward Madigan that the EC would back the deal.\textsuperscript{21} This created a scandal in EC circles: "The Commission and the presidency were going behind the backs of their Community partners in order to stitch up the deal!"\textsuperscript{22} That same evening, Commission President Jacques Delors told MacSharry that the agreement being negotiated would be voted down in Brussels because it was too costly for the Community and exceeded the Commission's negotiating mandate. Denouncing Delors' interference and infringement on the negotiators' autonomy, MacSharry presented his resignation from the Commission on his way back to Brussels.\textsuperscript{23}

This internal EC crisis influenced the course of subsequent EC-US negotiations, even though Delors and MacSharry settled their differences a couple of days later (with MacSharry returning to his post as Agriculture Commissioner). Beyond a conflict of


\textsuperscript{22} Paemen and Bensch 1995, p. 214.

\textsuperscript{23} "During that evening Mr. Delors called Mr. MacSharry from Brussels. He told him that his offer would require more cuts in output than those planned under the latest reform of the common agricultural policy, and that the gesture therefore went beyond the Commission's negotiating mandate. Mr. Delors also said, apparently, that he would oppose such a deal; that the Commission would vote it down; and that if it went to the Council two countries would invoke the "Luxembourg Compromise." (…) Mr. Delors maintains that, as one of four commissioners charged with the GATT talks, he has every right to call a commissioner if he believes he is exceeding his mandate. Furthermore, Mr. Delors believes that the Commission president has a duty to try to prevent any country becoming isolated in the defense of its essential interests. In the past he has protected Germany on coal subsidies. This time the country happened to be France. Many view Mr. Delors' efforts to block a deal less charitably, putting them down to his ambitions for the French presidency." In \textit{The Economist}, "Blood is thicker than rape oil," 14 November 1992.
personalities, the crisis revealed that the EC institutional system was not functioning properly. According to a Commission official, "the Commission does not meet anymore, leaving the Commissioner in charge of the negotiation to act as he wishes. In other words, it is a mess. We have been in free wheel for two years."24 The crisis further revealed the extent of internal divisions in the EC, not only between the member states but also between and within the various EC institutions. As a French analyst wrote at the time,

[In Chicago] the Americans understood that their adversaries were at loggerheads. As long as the American offers were too remote from their own proposals, divergences between the Europeans were of no consequence. (...) But on November 2 and 3, the Americans witnessed the explosion of European divisions. (...) The Commission and its Commissioners are divided on the opportunity of counter-retaliatory measures. The Americans now have everything to gain from an immediate resumption of the negotiations."25

Internal EC divisions appeared even more clearly in the following Council meetings. On November 9 EC foreign ministers denied French demands for European retaliation against US trade sanctions. At the Agriculture Council of November 16 expected to adopt a common position for the GATT negotiations to resume that week, an isolated France tried to convince the other member states that the proposed agreement with the US was going far beyond the CAP reform. MacSharry did not answer France's question about the compatibility with the reform and proceeded with a new round of bilateral talks.

2) The Blair House agreement


After a series of proposals and counterproposals, MacSharry enabled a breakthrough in the negotiations by offering a reduction of 21% in the volume of subsidized exports (and not 24, as in the Dunkel Draft), as well as 36 percent in budget over six years, using 1986-1990 as the base period. The Blair House compromise also provided for a 20 percent reduction in internal price support over six years, with the period 1986-88 as reference. Finally, European and American negotiators agreed to a "peace clause" that would exempt from trade actions those internal support measures and export subsidies that do not violate the terms of the agreement. A separate deal on oilseeds was also concluded, ending several years of EC-US disputes and GATT litigation and canceling the promised US trade sanctions against the EC.

The increased autonomy seized by the EC negotiators made the Blair House compromise possible. Their fairly broad mandate and adequate flexibility to negotiate were apparent from the beginning of the talks, including to American negotiators.  


29Personal interview with senior USDA official, January 1995.
"Madigan, speaking with reporters as he entered the Blair House, where the talks were being held, said that the EC negotiators reportedly were coming to the talks with "enhanced flexibility.""  

This enhanced autonomy gave rise to accusations that the Commission had negotiated the agreement in secret. And, if we are to believe this Commission official, when pressed by representatives of the member states to give some explanation, "instead we would read the newspaper, we would leave to go to the bathroom. (...) The Commission tried to encourage secret diplomacy." The member states even ignored the exact content of the "ghost" compromise for several days after its negotiation. The Commission argued that there was no formal text because the agreement was made in part by telephone and in part through exchange of notes. While the Commission held a meeting on November 20 to present the broad characteristics of the agreement, the only specific text that the member states had in hand for a week was a two-page, USTR press-release. Only a week later did the Commission finally send a ten-page document to the member states, including five pages confirming the compatibility of the agreement with the CAP reform.  

The Blair House agreement was interpreted at the time as a relative negotiating success for the EC. The agreement was able to occur in spite of strong opposition from France, the most recalcitrant country, because the Commission representatives exercised a particularly high degree of autonomy during the Blair House negotiations. The combination of weakened unanimity and a greater Commission autonomy actually "freed the hands" of

EC negotiators, thereby breaking the negotiation paralysis. The agreement reached reflected the US bargaining strength but served the interests of the majority of member states. The negotiating outcome would have been different, had France been able to control the EC decision-making process by a stricter unanimity rule and a tighter check kept on the Commission negotiators.

III. Veto, Tied Hands and Renegotiation of the Blair House Agreement

Despite the conclusion of the Blair House deal, the EC-US agricultural negotiations were reopened before the end of the Uruguay Round. Since the vast majority of member states supported the Blair House agreement, why did the United States eventually agree to its renegotiation? This section argues that an informal institutional change in the EC, characterized by the reinstating of the veto power and a tighter member states' control over the Commission, affected the process and outcome of the international negotiations. As a result of this rollback of EC supranational authority in international trade negotiations, the final bilateral agreement was heavily influenced by France, the most recalcitrant country in the EC.

1) French opposition to Blair House

The French government opposed the Blair House agreement as soon as it was signed, on the grounds that it was not compatible with the CAP reform. Italy and Spain were also skeptical at first of Blair House, but only Belgium seemed ready to support France in its demand for a renegotiation of the accord. Fueled by violent domestic

protests from angry farmers and by crucial national elections in March 1993, the French government embarked on a crusade to denounce the content of the agreement and contest the conditions under which it had been reached. Above all, French policy-makers blamed the EC negotiators who, they claimed, had exceeded their mandate. In private, French officials criticized the personalities of Andriessen and MacSharry, but they also denounced the EC institutions, which seemed to drift away from intergovernmentalism and allowed the overruling of fundamental objections by a member state.35 The French goal thus became to reopen the agricultural negotiations and at the same time curb the erosion of “negotiating by consensus” and the growing autonomy of the EC negotiators.

A period of stagnation during which all the major actors changed followed the flurry of negotiating activity that preceded Blair House. Andriessen was replaced in January by René Steichen and MacSharry by Sir Leon Brittan. Mickey Kantor succeeded Hills and Mike Espy replaced Madigan when the new US administration came into office. In Germany Ignaz Kiechle, the long-time Christian Social Union (CSU) Agriculture minister known as a tireless defender of farming interests, was replaced by Jochen Borchert, a CDU member sympathetic to the Blair House agreement.36 In France, after a long electoral campaign in which the protection of French farmers, the CAP reform and the opposition to the Blair House compromise were central issues, the Socialist government was overwhelmingly replaced on March 28 by a Center-Right government known for its loyalty to farmers. During the campaign, Jacques Chirac, the leader of the Gaullist party, went so far as to denounce the "foreign" EC commissioners who negotiated the deal.37

The successive French governments attempted to reclaim some of the institutional competence delegated to the supranational Commission in order to alter the already negotiated "pre-agreement." They concentrated first on the reinstatement of the veto right in the EC. Starting in February, the socialist government officially threatened to invoke the Luxembourg Compromise against the Blair House agreement, which could provoke a major institutional crisis within the EC, not without resemblance to the "empty chair" crisis during the Kennedy Round.38 Observers noted that France could have difficulty in vetoing the deal because other member states may not agree that France's vital interests were at stake.39 But the French threat to sabotage Blair House was plausible and the possibility of a veto was constantly in the minds of American negotiators, who were closely following the legal arguments in the EC about the constitutionality of a veto and the fact that the Luxembourg Compromise may no longer be applicable as a result of the 1986 Single European Act.40 American officials took the threat of veto particularly seriously because the recent difficulties surrounding the Maastricht Treaty on European Union had created new uncertainties as to the future of European integration.

In April Agriculture Commissioner René Steichen tried to seek an accord on the separate oilseeds deal, which required EC endorsement independently from the rest of the Uruguay Round, but the vote was postponed until the newly elected French government had clarified its position on Blair House. The French stance was finally unveiled on May 12 in a memorandum accepting the oilseeds deal but vowing to fight the other parts of the

38See Chapter 3.
39"The first two attempts to invoke the Compromise -- by Denmark in 1981 over fisheries and by Britain the following year over farm prices-- were overruled. The other countries simply went ahead and voted the measures through. Since then the use of the veto has been formally accepted four times on farm disputes. France used it over farm exchange rates in 1982, Germany over cereals prices in 1985, Ireland over beef in 1986 and Greece over farm exchange rates in 1988." Peter Blackburn, "Luxembourg Compromise reappears to haunt EC GATT talks," Reuters, 15 September 1993.
40Personal interviews with senior USDA official and USTR official, January 1995.
agreement. The memorandum disagreed primarily with the length of the "peace clause" and the concept of reducing the volume of agricultural exports; instead, France preferred to limit subsidies. The memorandum was well received in Ireland, which had hardened considerably its anti-Blair House stance throughout the spring of 1993 because it feared the consequences of the deal for the Irish beef industry. The May 28 Agriculture Council bought off French objections to the oilseeds agreement by a generous increase in the set-aside payments for land that farmers take out of production and other concessions. On June 8 the EC foreign ministers endorsed the oilseeds deal with the US, which reduced subsidized exports by restricting the amount of land that EC farmers can sow with oilseeds. Nevertheless, the strong opposition of the French government to the Blair House agreement dampened the celebratory mood of the oilseeds deal ratification.

2) Institutional demands: new trade policy instruments

France blamed the conclusion of the Blair House agreement on institutional flaws in the EC. French European Affairs Minister Alain Lamassoure said that EC decision-making was not working properly and the Commission's methods were unsatisfactory, ending up "with a certain confusion of responsabilities." Citing the Blair House accord, he complained about the unclear definition of competences in the Community and asked governments to ensure that the Commission stick to its negotiating mandate and that

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42 Sean Flynn, "Sutherland's appointment presents the government with a dilemma," Irish Times, 10 June 1993. See also Sean Flynn, "Renegotiated GATT deal is not on, Steichen says," Irish Times, 15 June 1993.

national parliaments be associated with the aims of that mandate. The Balladur government was seeking to regain more control over the Commission's conduct of the GATT talks. "It is necessary to recover a certain right to examine the way all this is going on so we don't find ourselves facing a fait accompli."45

The French memorandum also complained about the inadequacy of the EC's retaliatory trade policy instruments and argued that the EC decision-making process, which allows a minority of states to block use of such instruments, had to be reformed. The memorandum suggested a new commercial defense instrument that would speed up anti-dumping rules and pleaded for an improvement of the efficacy of the Community's existing trade instruments in order to match the "impressive arsenal of American unilateralism." The French goal was to change the institutional rules of the game in the EC by, on one hand, making it easier for one outlying member state to rally its reluctant Community partners to its defensive position and, on the other hand, making it more difficult for one outlying member states to resist launching a trade offensive or retaliatory action against a third country.

In June Belgium backed French demands for new trade instruments to fight unfair trade practices by third countries and for strengthening EC trade defense mechanisms. Ireland, Portugal and Spain also supported the French view, but Germany disagreed. External Affairs Commissioner Leon Brittan argued that the Community had all the instruments it needed, notably the "New Commercial Policy Instrument" introduced in 1984 and modeled after the US Section 301 procedure. What was required was the political

44"EC decision-making is not working--French minister," Reuters, 22 April 1993.
will to use them.\textsuperscript{46} From then on, limiting Commission autonomy, reinstating the veto right, and providing the EC with offensive trade instruments became intertwined with the French demands for renegotiating the Blair House agreement.

3) \textit{From divided to united: France's rally for renegotiation}

The US administration made clear that it had no intention of reopening Blair House and treated the renegotiation issue as an internal EC matter. The Commission and all member states, with the exception of France and Ireland, also opposed the renegotiation of a deal that had been legitimately agreed to by the EC representatives. "Opening up Pandora's Box," in Commissioner Steichen's words, could also prove risky, because many American agricultural groups felt that the US had granted too many concessions to the EC. Finally, renegotiating Blair House could provoke a crisis in the EC about the legitimacy of the Commission's representation, especially in the current atmosphere of mistrust of the EC created by the Maastricht debate.

France spent the next five months trying to find some allies to reopen the Blair House deal. In June Belgium offered France some welcome support by making the compatibility of the Blair House agreement with the 1992 CAP reform a priority of its upcoming presidency.\textsuperscript{47} In July the French government formally requested a special "jumbo" meeting of EC foreign affairs, trade and agriculture ministers to discuss the reopening of Blair House. Despite the opposition of several member states, the Belgian government ultimately decided to organize the "jumbo Council" in order to reestablish

\textsuperscript{46}"France wins some support for GATT stance," op. cit. See also "French government releases official position on GATT talks," \textit{International Trade Reporter}, 19 May 1993.

\textsuperscript{47}"Belgium to seek changes to Blair House deal," \textit{Reuters}, 23 June 1993.
Community coherence, fearing that France would have no remorse using its veto power if it felt isolated.\(^{48}\) Belgium also hoped to improve confidence and communication between the Commission and the member states, in order to avoid a repeat of the crisis following the secrecy of the Blair House agreement negotiations.\(^{49}\)

Germany, which initially expressed firm opposition to reopening the deal, played a crucial role in mediating the renegotiation crisis. In late August Chancellor Kohl surprised everyone by announcing that Germany shared some French concerns about the Blair House compromise: "Europe should affirm its personality and identity in the trade negotiations and have the means to defend its essential interests. (...) That means the Blair House agreement in its present form is unacceptable for us (and) that Europe should have trade policy instruments that make it equal to the others."\(^{50}\) Kohl's concessions to France were interpreted as either a trade-off for the financial crisis of the summer or as an extraordinary gesture of Franco-German solidarity.\(^{51}\)

In a second memorandum sent to the Commission and the member states on September 1, the French government stated that the summer's monetary instability had rendered the Blair House agreement further incompatible with the CAP reform and it demanded the addition of firm protection against currency fluctuations.\(^{52}\) France also

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\(^{48}\)"The prime objective of the [Belgian] Presidency was therefore to get France out of its corner." Devuyst 1995, pp. 452-453.

\(^{49}\)Belgium could achieve such an objective because "as a federalist oriented Member State, Belgium was in a position to request greater Member States scrutiny over the Commission without being suspected of trying to restrict the Commission's treaty powers." Devuyst 1995.


\(^{51}\) "Franco-German alliance sought over GATT/ERM issues," Agrar Europe, 27 August 1993.

\(^{52}\) Reuters, "Senior farm officials prepare for jumbo GATT council," 14 September 1993.
presented a separate paper on trade policy, proposing that the Community adopt more aggressive trade tactics against unfair competition and be more efficient in the defense of European trade interests. More controversially, the French memorandum also called for changes in EC internal procedures to ensure national governments' closer control over the Commission during multilateral negotiations and to avoid the scarcely transparent conditions under which previous agreements, such as Blair House, were negotiated.

The French government simultaneously revived its veto threat for the first time in months. At the same time France and Ireland engaged in heavy lobbying of their Community partners before the jumbo Council. On September 13 the Spanish government, concerned about its own fruit, rice, sugar and wine production, backed France in a memorandum arguing that several provisions of the Blair House accord had to be revised and calling for transparency in future negotiations. The Spanish paper said that the importance of the issues at hand made it crucial that the Council be kept informed at all times of the progress of negotiations, so as to avoid the Community presented with a "fait accompli." Greece also sent a memorandum objecting to certain provisions of Blair House on September 15. The subject of the delegation of trade negotiating authority to the Commission came back to the forefront of institutional discussions in the EC, given the influence that the autonomy seized by Commission negotiators during the Blair House negotiations had on the final agreement with the US.

At the same time France attempted to pursue an alternative strategy. The French government tried to bypass the Community and negotiate directly with the United States in

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the hope of increasing its direct impact on the final outcome of the Uruguay Round. "We would not call this negotiations, but we believe we should speak directly with the United States either bilaterally or with the EC Commission," said a senior Balladur aide in September.\textsuperscript{56} This strategy proved fruitless, however, as the US had no interest in negotiating with France directly when the EC compromise position was less extreme than the French. Indeed, American officials made clear to France that the EC Commission is the sole European negotiator; they were determined not to be suckled into a bilateral negotiation with France on revising Blair House.\textsuperscript{57} When an outlying member state is in a defensive position, the negotiating opponent is better off if decisions in the Community are taken according to majority and if the supranational representatives have bargaining authority than if the outlier retains control of the decision-making and negotiating processes.

\textbf{4) The Jumbo Council and the reclaiming of unanimity and Commission control}

The exceptional "jumbo Council" of September 20 eventually enabled the EC to present a common front in the multilateral negotiations, at the expense of Commission autonomy and majority decision-making. After an intense session, thirty-five ministers of trade, agriculture and foreign affairs agreed on the need for "clarification," "interpretation" and "amplification" of the Blair House agreement and reaffirmed the fundamental principles of the CAP. This was a compromise solution, which achieved the objective of preventing France's isolation while not jeopardizing the results of the Uruguay Round.


\textsuperscript{57}Interview with senior USDA official, January 1995. See also Reuters, "Brittan says US moves on GATT cultural position," 29 September 1993.
The Commission's negotiating autonomy proved to be the dominant and most controversial issue during the Council. Complaining that a Franco-German proposal risked tying his hands in the negotiations, Brittan urged the ministers not to demand any new negotiating mandate. French Foreign Minister Alain Juppé angrily retorted that Brittan, a "petty official who had exceeded his brief," had no right to oppose member states' negotiating instructions. This internal drama further strengthened suspicions of the Commission's excessive power. Although in the end no new mandate was given to Brittan, only "certain general orientations" for maintaining the EC's export capabilities and ensuring that international commitments are compatible with the CAP reform, the Council decided to "monitor constantly the negotiations" on the basis of Commission reports during each session of the General Affairs Council. This decision was the first step toward a return to strict intergovernmentalism in trade negotiating matters and a reining in of the Commission's negotiating powers.

Another result of the Jumbo Council was the clear reinstatement of unanimity as the basic decision-making principle in trade negotiations. The Council decided to approve the Uruguay Round results by consensus. This important decision was confirmed informally during the November General Affairs Council, which also discussed the issue of Commission autonomy and decision-making in external trade negotiations. In October, at


60 Devuyst 1995. See also Lionel Barber, "French coaxed back into farm trade fold," Financial Times, 22 September 1993.
France's demand, the member states agreed to ask the Commission for a written report on the trade talks every two weeks until the December deadline.\textsuperscript{61}

5) \textit{Renegotiation of Blair House}

The threat of a major crisis if the EC demands for "clarification" of Blair House were not met contributed to a reversal of the US position on the renegotiation of the agreement. In November Kantor recognized that the French objections to Blair House had provoked an internal EC debate that somewhat hampered its ability to make a bigger offer.\textsuperscript{62} The US administration ultimately agreed to renegotiate specific elements of the agreement, rather than confront a possible breakdown of the talks before the crucial ultimatum provided by the expiration of the US Fast Track Authority on December 15, 1993.

The Commission's negotiating autonomy was severely limited during the final days of the negotiations. Brittan shuttled "virtually directly from the negotiating room to the EU Council meeting to report --and presumably seek approval-- from EU foreign and trade ministers."\textsuperscript{63} Negotiations had to be concluded ahead of the deadline, so EC foreign ministers could review the final text of a GATT agreement before authorizing Brittan to sign it on their behalf. "One French official boasted that ministers were keeping Sir Leon on such a tight leash that officials were 'practically following him into his bedroom.'"\textsuperscript{64}


\textsuperscript{63}David Dodwell, "Hopes run high for tariff cutting deal," \textit{Financial Times}, 1 December 1993.

The EC-US agricultural agreement, finally concluded on December 6, changed several important elements of the original Blair House accord. The "peace clause" was extended from six to nine years, as well as the timetable for cutting subsidized farm exports (the bulk of the cuts were moved to the later years of the implementation period). Market access for imports was fixed according to the type of product (animal feed, meat, dairy products, etc.), instead of the more restrictive product-by-product curbs. Direct assistance to farmers provided under the 1992 CAP reform was not challenged. Finally, and most importantly, 1991-92 was taken as the reference period instead of 1986-88. This would allow the EC to export an additional 8 million tons of grain compared to the original Blair House agreement.

In exchange for accepting the agricultural agreement, France demanded a toughening of the way the EC handles unfair trading procedures and changes in the voting system within the EC on anti-dumping.65 To avoid a French veto still plausible until the last day, Germany dropped on December 15 its long-standing opposition to a measure giving the Commission greater power to impose anti-dumping duties on unfairly priced imports. The French government had succeeded in making it easier for a defensive member state to capture the negotiating position of the EC, while at the same time enhancing the EC's offensive capabilities by making it harder for reluctant member states to reject an offensive trade action.

The EC gained more than mere "clarification" in the final agreement on agriculture, while the US was forced to retreat during the last weeks of the negotiations. As a result of the constraints created by the EC obligation to negotiate as a whole while retaining the principle of unanimity and tight Commission control, the most recalcitrant country exerted a preponderant influence on the final outcome. When the Uruguay Round was concluded on

December 15, 1993, the veto right had been reinstated, the Commission's autonomy was curtailed, and Juppé was able to "voice admiration for the way Brittan had obtained a better deal on subsidized farm exports than the 1992 Blair House accord..."66

Conclusion

The obligation for member states to combine their external negotiating efforts into one single Community position influences the final outcome of international trade agreements to which the EC participates. As was hypothesized in Chapter 2, supranational competence in a defensive context enhances the likelihood of a final international agreement and this agreement reflects the preferences of the median states. The Blair House breakthrough was able to occur after six years of deadlock in the EC-US negotiations thanks to an internal agreement on agriculture finally entrusting the Commission with some supranational competence in the form of a bargaining mandate. The Blair House agreement, negotiated in good faith between representatives of the EC and the US, was renegotiated because the European negotiating authority was contested and the institutional rules of the game were altered. By reinstating the veto right and tightening member states' control over Commission negotiators, France forced a divided EC to accept its point of view and cornered the US into partly renegotiating the Blair House deal. This case-study conforms with the hypothesis that the use of unanimity in a defensive context makes the EC a tough bargainer and leads to the adoption of a final agreement closer to the status quo. The eventual capture of the EC voting rules and Commission latitude by the most recalcitrant member state resulted indeed in the "lowest-common denominator" final agreement.

From the perspective of the negotiating opponent, a Community where individual member states retain tight control over the negotiating process through unanimity voting and strict oversight of the Commission’s negotiating activities is a much tougher adversary than a Community governed by majority rule and centralized Commission power. Had the EC member states not integrated their trade negotiating authority, the US could have successfully negotiated bilateral agreements with the majority of these states, while remaining in disagreement with the outlier. It happened for instance in the case of the “open skies” agreements, discussed in Chapter 6, which the US was able to secure with several member states, because air traffic regulation does not fall under Community competence. But by joining the European Union, the member states have committed to a unitary external trade policy in the areas covered by the single market, including agriculture. In this case, the majority of member states were eventually constrained by the institutional structure of the EC into accepting an agreement that they did not favor but that was forcefully negotiated by an inflexible EC ruled by its most recalcitrant member.
CHAPTER 5

EC-US NEGOTIATIONS ON PUBLIC PROCUREMENT: 1990-1994

The decision to complete the Single Market by 1992 gave the EC a new impetus in international trade negotiations by providing it with the means to be offensive. A large internal market was both more attractive and more threatening to third countries, as the EC now had the credible option of retreating domestically if international concessions were not satisfactory. In the late 1980s the Commission developed the concept of reciprocity in order to retain its international negotiating leverage by ensuring that its internal liberalization measures were not unilateral in those areas not yet covered by existing GATT rules, such as services. A corollary of this new offensiveness was the accompanying switch to majority voting, since the Community could afford to be offensive in those areas in which the Single Market liberalization was being shaped successfully. As a result, most cases of negotiations in which the EC went on the offensive are also cases in which there was some degree of supranational competence.

The EC-US negotiations on public procurement represent the first rather successful "offensive" attempt by the Community to open up American markets. The EC included a reciprocity clause in its 1990 "Utilities" directive liberalizing public procurement in the transports, telecommunications, energy and water sectors in order to pry open the American public procurement markets. Despite its intense attempts at dividing the member states through retaliatory measures and a clear "Trojan horse" strategy that turned Germany against its European partners, the US failed to dilute the EC offensive. The majority
requirement coupled with the offensive nature of the EC common position in the bilateral negotiations made it difficult for the Community’s defending opponent to successfully play divisive tactics for its own benefit. This eventually resulted in the 1994 EC-US agreement on public procurement, which was generally held as a success for the European negotiators.

I. The Creation of the Internal Market in Public Procurement and its External Consequences

As part of the Single Market program, the member states deregulated their public procurement markets, traditionally national bastions, through a series of directives. In September 1990 the Council adopted the so-called “Utilities Directive”, which opened up to competition public contracts in the previously excluded sectors of water, energy, transport and telecommunications. After a long-fought internal battle, the Council agreed to include in the Utilities Directive the controversial Article 29 (also known as the “reciprocity clause”) in order to deal preemptively with the external consequences of the EC’s internal liberalization measures. This reciprocity clause had also been introduced into the directive as bargaining leverage for the upcoming multilateral negotiations on public procurement.

1) Completing the Internal Market in public procurement

a) Importance of public procurement in European economies

Public procurement has long been one of the most important sectors of European economies. Studies from 1989 estimated public procurement in EC countries to represent 9 percent of national GDP if only contracts placed by central and local governments were
considered, and as much as 15 percent of GDP if nationalized industries were included.\(^1\) Four-fifths of all public procurement takes place in the sectors of energy, telecommunications, transport and water.

The public procurement sector had been traditionally dominated by "buy national" policies. Despite earlier attempts by the Commission to open up public procurement, cross-border competition remained minimal.\(^2\) In 1989 it was estimated that the portion of public works granted by EC member states to non-national contractors (including from other EC countries) was less than 2 percent.\(^3\) Indeed, the Commission-sponsored Cecchini report calculated that the opening up of the public procurement market could increase the gross national product of the EC by as much as one percent.\(^4\) In theory savings would be achieved by using foreign suppliers who offer lower prices; competition from foreign suppliers and contractors would press nationals to reduce their offers; and all suppliers would have to restructure their production to face the competition.

The Commission argued for years that the procurement practices in the EC damaged both purchasers and suppliers. "Purchasers suffer because they get limited choice and poor value for money, while producers are increasingly victims of their closed home markets, which have fragmented European industries narrowly along national lines. As a consequence, in businesses such as telecommunications and boiler making, Europe has

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\(^4\)Cecchini 1988.
long suffered from excess capacity and a surfeit of small manufacturers lacking the scale economies available to their US and Japanese competitors.\textsuperscript{5} Despite these economic realities, however, the Commission had failed to convince the member states to abandon their practice of favoring overtly their nationals in the award of public contracts.

\textit{b) Towards an integrated public procurement market in the EC}

The Single European Act and the 1992 program designed to complete the internal EC market provided the political momentum needed to integrate public procurement practices in the EC. Member states agreed to include procurement among the list of sectors to be liberalized by December 1992. Under the Commission's impulse, a legislative program was set up to address the trade distortions created by national procurement practices. The first part of the Commission's program was to strengthen the existing, but ineffectual, legislative provisions on public procurement. Second, the Commission planned to toughen up provisions for sanctions and enforcement, whose earlier weaknesses had hampered previous efforts at creating a single procurement market. To this effect, the member states adopted the so-called "remedies" directive, which sets up the procedures for appeals against discrimination in the award of public contracts.\textsuperscript{6}

Finally, in October 1988, the Commission drafted its original proposal for tackling once and for all the "heartland of monopoly purchasing." Despite being responsible for over half of all EC public procurement, the "excluded sectors" of water, energy and transports had previously been exempted from EC rules.\textsuperscript{7} After intense internal discussion among the member states, the Commission revised its proposal in August 1989 to include


\textsuperscript{6}Directive 89/665 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ 1989 L395/33.

the field of telecommunications, while withdrawing the energy sector from the proposal’s range of application.\(^8\) On 17 September 1990, the Council finally adopted the directive opening up to competition public contracts in previously excluded sectors --commonly referred to as the “Utilities” directive.\(^9\) This directive was to come into effect in January 1993 in all member states except Spain (January 1996) and Greece and Portugal (July 1997).\(^10\)

2) **External consequences of the internal market in public procurement**

The internal market program had an exclusively European focus. The member states and the Commission failed to address the external implications of their internal endeavor for several years after the initial drafting of the 1992 program, giving rise to suspicions of a Fortress Europe by the Community’s trading partners. The measures taken by the Community after 1988 to deal with the external implications of the Single European market only confirmed these suspicions by turning the EC into a champion of the “offensive reciprocity” strategy.

\(\textit{a) External effects of internal liberalization}\)

In the Explanatory memorandum to the proposed directive (1988), the Commission argued that “the Community is running a serious risk of unilaterally making its domestic

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\(^9\)Directive 90/531 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ 1990 L297/1.

\(^10\)Because the member states wanted to keep a portion of the market for their own firms, contracts valued at less than 5 millions Ecus for public works, 600,000 ecus for public supplies in the telecommunications sector and 400,000 ecus for supplies contracts in other sectors were excluded from the directive’s scope of application.
market more accessible to third-country firms if the directives on the excluded sectors fail to take proper account of the external dimension.” This risk was particularly salient since the sectors addressed by the Utilities directive were not yet covered by multilateral rules, although multilateral negotiations on public procurement were scheduled to begin in 1990. The absence of GATT coverage provided the EC, however, with the right to insist upon reciprocal access to others’ markets on its own terms. This meant that the EC could use the lure of the expected benefits from the removal of trade and investment barriers under the EC 1992 program to extract reciprocal access’ rights to the markets of other countries.\(^\text{11}\) In particular, the Commission hoped to get rid of the discriminatory preferences in the US legislation.\(^\text{12}\)

\(b\) The “Buy American” legislation.

The Commission did not want to give away to the US the benefits of EC internal liberalization when this country’s own public procurement practices were governed by the blatantly discriminatory “Buy American” provisions. The US had enacted the “Buy American” Act in 1933 as a measure designed to help the American economy out of the great depression. Despite the disappearance of the economic conditions justifying its initial enactment and a gradual erosion of the scope of the Act through bilateral treaties which waived some of its restrictions, it was never abolished.

The Buy American Act gives a preference to domestic over foreign products in the purchase of manufactured products and construction materials used in public works and public buildings throughout the US. It does not apply to services. The Buy American


provisions impose a mandatory 6% price preference in favor of US origin products on all purchases by US federal agencies or those financed by federal funds. This preference is increased to 12% for purchases from small or minority owned businesses.\textsuperscript{13} This preference can be increased by Congress permanently for a particular sector, or on an ad hoc basis in the annual budgetary procedure.\textsuperscript{14}

According to the EC, there were at least 40 Buy American provisions at the federal level, a minimum of 37 at the state level, and many more at the local government level in 1989.\textsuperscript{15} The EC found that Buy American programs granted price preferences from 6 percent to 50 percent for products with a minimum 50-percent domestic content. Moreover, local preferences were scheduled to rise to 60 percent by October 1, 1991. Buy American restrictions were applied to procurement in many sectors, including the transportation sector, where the price preference in the mass transit and highway construction sector is 25 percent rather than the standard 6 percent.\textsuperscript{16} The EC considered Buy American programs at the state and local level to be increasingly important, because of the diminished opportunities for federal procurement due to budgetary constraints. According to the EC, state and local procurement represented 70 percent of total US public procurement.\textsuperscript{17}

\textsuperscript{13}In extreme cases, US small businesses can have as many as 5,000 employees.

\textsuperscript{14}"Commission responds to US trade measures in telecoms and procurement." \textit{Rapid}, Commission of the European Communities, 1 February 1993.


\textsuperscript{16}Buy American restrictions apply to other sectors as well, including paper for currency, securities and passports; hand and measuring tools; and procurement by the National Science Foundation, the Voice of America Program, and the Small Business Administration.

c) The "Buy European" reciprocity clause

In order to avoid the free-riding of outside countries on the liberalization of the EC internal public procurement practices, the Commission suggested to include in the "Utilities" directive a reciprocity provision --also known as the "Buy European" clause. The Commission's initial proposal in 1988 provided that the contracting entities could exclude offers in which less than half of the value of the goods or services to be provided is of EC origin and that EC producers would receive a mandatory 3-percent price preference. This way, the Commission argued, the EC would defend its commercial interests and its negotiating position in the upcoming multilateral public procurement negotiations by making no unilateral concession, but on the contrary, creating a positive incentive for third countries to give guarantees of equal access to similar markets.18

The member states were initially extremely divided on the issue of the reciprocity clause. The more liberal states --the UK, Germany and the Netherlands-- disagreed that barriers should be erected around the Community. They suggested, however, that they could accept some milder form of EC preference as a lever to negotiate reciprocal agreements with third countries.19 Other member states, such as France and Italy, argued that the Community should protect its markets in public procurement, especially when other trading blocs had their own protectionist measures, and should agree on a strong system of Community preference for tactical reasons before the next round of international


negotiations. Indeed, France claimed that the Commission’s proposal was not aggressive enough and needed further strengthening.\textsuperscript{20}

The member states failed to agree on the issue of reciprocity in 1989.\textsuperscript{21} Another divisive issue was the energy sector. The UK had argued from the start that most of the energy sector (mainly hydrocarbon exploration and production of solid fuels) should be excluded from the directive’s scope of application. France, by contrast, wanted to include energy under the new EC public procurement rules. Finally, a deal was hammered out by the French presidency of the Community in the second half of 1989: oil, gas and coal exploration in the North Sea were excluded from the “Utilities” directive on the grounds that the sector was already competitive. In exchange, the UK would go along with the Buy-Europe clause.\textsuperscript{22}

On 22 February 1990, therefore, the EC Council of Ministers agreed on the “Utilities” directive which included Article 29—the reciprocity clause. The vote was 11 to 1. Despite the inclusion of the Buy European clause into the directive, Edith Cresson, French European Affairs Minister, voted against the text because its impact was considerably softened through partial exclusion of the water and energy sectors.\textsuperscript{23} Only a qualified majority vote was needed for the directive to be adopted, however. The reciprocity clause had become part of EC law.


\textsuperscript{22}“Public procurement: Agreement on principle on utilities directive.” European Report, 24 February 1990, p. 11.

\textsuperscript{23}“Public procurement: Agreement on principle on utilities directive.” European Report, 24 February 1990, p. 11.
Hence, after a long internal fight, the EC decided to introduce a reciprocity provision as part of its new public procurement legislation to be used as an offensive device in the upcoming multilateral negotiations. The Internal Market Commissioner, Martin Bangemann, assured the member states that the reciprocity clause would be revoked as soon as an agreement on public procurement opening American markets to a satisfactory degree would be reached.24

II. Offensive Reciprocity in EC-US Negotiations on Public Procurement

Multilateral negotiations on public procurement started in 1990. The Commission was responsible for negotiating the Government Procurement Agreement on behalf of the member states, who had agreed on the negotiating mandate according to qualified majority and had given EC negotiators some latitude in order to obtain concessions from the US side. As I hypothesized in Chapter 2, the offensive nature of the Community position in these negotiations coupled with the supranational competence conferred by the majority rule put the US in a difficult negotiating situation.

1) The Government Procurement negotiations

a) History of public procurement negotiations

The discriminatory trade effects of public procurement practices were first addressed at the multilateral level during the 1973-1979 Tokyo Round of GATT. The Government Procurement Code was signed in 1979 by the EC, the United States, Canada, five EFTA countries (excluding Iceland), Japan, Hong Kong, Singapore and Israel. The agreement established rules for transparency and non-discrimination in the award of public contracts by a list of major government agencies. The Code was incomplete, however. It covered contracts for goods but not for services. Also, it excluded government procurement in the energy, telecommunications, and transportation sectors partly because EC negotiators during the Tokyo Round did not have jurisdiction over the utility procurement procedures of its member states.

The signatories to the Code had agreed that they would commence negotiations to expand the code’s coverage to purchases that were not initially covered within 3 years of its entry into force. The first phase of the renegotiations started in 1984 and was implemented on February 14, 1988. The second phase of the renegotiations began in 1987. Its goal was to expand the code’s coverage to the so-called excluded sectors, to services contracts, and to remaining government bodies --including central government agencies not yet covered, subcentral government agencies, and certain public utilities. In effect, the

25 For a history of the public procurement negotiations, see Winham 1986.


28 The Effects of Greater Economic Integration within the European Community on the United States. United States International Trade Commission, USITC Publication 2204, July 1989, p. 15-10. See also
negotiations to enlarge the Government Procurement Agreement took place in parallel with the Uruguay Round, in the hope of taking advantage of its liberalizing momentum.\footnote{Indeed, signatories of the 1979 GATT procurement code met on the sidelines of the Uruguay Round from December 3 to 7, 1989 in Brussels to try to use the momentum of the multilateral talks to make some progress on opening up public procurement to greater competition worldwide. See “GATT/Public procurement: American inflexibility.” \textit{European Report}, 11 December 1990, p. 9.}

\textit{b) EC and US initial negotiating positions}

The European Community and the United States entered these negotiations in an unusual situation: for once, the EC was the \textit{demandeur} and the US wanted to preserve the status quo. Moreover, the EC approached the negotiating table with the leverage created by its strategy of “offensive reciprocity.”

\textit{EC position.} Thanks to its own internal market program, the Community took the lead in the negotiations to liberalize public procurement practices.\footnote{“GATT government procurement agreement -- report of a panel on the United States procurement of a sonar mapping systems.” \textit{Rapid}, Commission of the European Communities, 15 May 1992.} The EC put forward the first, and most liberal, offer in August 1990. It proposed that all public procurement markets be opened up to competition under conditions similar to those prevailing within the EEC under the new public procurement directives. In effect, this would mean transparency of procedures, publication of calls for bids, prohibition of discriminatory clauses and recourse for companies excluded from competing for a contract.\footnote{“Possible areas of agreement.” \textit{European Report}, 30 November 1990, p. 16.} The central objective of the EC in the negotiations was to expand the coverage of the code to subcentral procurement states, municipalities, and other lower levels of government). Its main targets
were the US states and the "Buy American" provisions.\textsuperscript{32} The EC also hoped for increased access to US utilities markets, such as urban transport, airports, and water supply. The carrot that the EC provided its negotiating partners was the access to the European internal procurement market. The stick was the Utilities directive's reciprocity clause, which others had no right to contest as long as the sectors of water, energy, transport and telecommunications were not covered by the multilateral rules.\textsuperscript{33}

\textit{US position.} The US responded to the European offensive with a much more limited proposal. American negotiators agreed to discuss the coverage of central procurement currently excluded from the Code.\textsuperscript{34} They claimed, however, that subcentral procurement could be liberalized by states only on a voluntary basis. The main objectives of the US in the procurement negotiations were, first, to include European utilities under the new Government Procurement Code and abolish the reciprocity clause in order to have full access to the EC procurement market. Second, the US wanted to preserve the existing preferences to US suppliers.

\textbf{2) Reciprocity and retaliation}\textsuperscript{35}

The US tried to counter the EC offensive. At first, the American government used the tactic of targeted retaliation in order to divide up the member states and hopefully change the EC consensus on the reciprocity clause. This strategy led to threats of counter-

\textsuperscript{32}\textit{The Effects of Greater Economic Integration within the European Community on the United States.} United States International Trade Commission, USITC Publication 2204, July 1989, p. 4-18.

\textsuperscript{33}\textit{The Effects of Greater Economic Integration within the European Community on the United States.} United States International Trade Commission, USITC Publication 2204, July 1989, p. 4-18.

\textsuperscript{34}“Possible areas of agreement.” \textit{European Report}, 30 November 1990, p. 16.

\textsuperscript{35}Title borrowed from Bayard and Elliott 1994.
retaliation by the EC and further US attempts at retaliation, despite the signing of an incomplete provisional agreement in April 1993.

a) US retaliatory measures

The multilateral negotiations on public procurement quickly turned into bilateral negotiations between the EC and the US after the negotiators had reached an impasse at the end of 1990.36 When no significant progress was made in the bilateral negotiations, the US adopted the strategy of retaliation. In February 1992 Carla Hills, the United States Trade Representative (USTR), threatened to impose sanctions upon the entry into force of the Utilities Directive on public procurement in January 1993, unless the EC removed the reciprocity clause. These threatened sanctions were based on the identification of the EC by the US administration as “a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against US products or services” in telecommunications and electrical utilities.37

The European member states were united in their outrage against these threatened US sanctions directed against the “Buy European” provisions, which were introduced in the Utilities directive precisely as a mirror-image to the US’ own discriminatory provisions in public procurement.

The United States’ position shows little regard for the fact of the case, the multilateral consequences of its own behavior. The provision in question is intended to prevent the liberalization of public procurement within the Community, achieved under the EC Internal Market program, from giving unilateral rights to bidders in third countries which keep their own markets closed. [...] It is hard to understand why the country which operates the Buy American Act, whose sole aim is to discriminate systematically in government


Indeed, the EC had formally offered to ban all discrimination in public procurement in the negotiations, provided that the US would be prepared to guarantee comparable access for EC suppliers to US markets.39

The member states divided, however, as to the response to adopt to these threatened sanctions. France insisted that it would be risky to implement the directive on time if no agreement had been reached with the US in the GATT negotiations. Spain and Belgium also supported this position and requested a delay in implementation of the directive. The Commission and the other member states took a different position, however, rejecting the idea of reworking or postponing the directive.40 Given the institutional context of majority voting and supranational latitude governing public procurement, the solution adopted by the EC was to wait and hope for a quick resolution of the bilateral negotiations. Hence, the Utilities directive entered into force on January 1, 1993.41

The US administration extended the deadline for the application of the sanctions against the EC, but in February Mickey Kantor, the new USTR, announced its intention to prohibit awards of Federal contracts for products and services from the EC, to take effect from March 22, 1993.

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b) EC counter-retaliation

In reaction to the US sanctions, the General Affairs Council discussed the possibility of counter-retaliation and its Danish president argued that "it is important that the Community speak with a single voice" during the bilateral contacts due to take place in the following days.\textsuperscript{42} Trade observers estimated that the US sanctions could cost the EC some 45-50 million dollars.\textsuperscript{43} Not every member state was touched the same way by the US retaliation, however. France and Germany, with their companies Alcatel and Siemens, were expected to suffer the most from the US sanctions.\textsuperscript{44} Nevertheless, at the February 2 Council meeting, the member states gave External Trade Commissioner Leon Brittan their unequivocal support and mandate to continue defending the EC directive in face of US sanctions.\textsuperscript{45}

After a meeting with Commission president Jacques Delors, speaking on behalf of a united Community, Kantor postponed the US sanctions on 19 March 1993. The threatened sanctions were due to start on March 22.\textsuperscript{46} The Commission tried to convince the Americans of having an independent body proceed with an objective analysis of the current state of the respective public procurement markets, so as then to be able to seek fair reciprocity. The US postponed the sanctions a second time in late March, with the hope that


\textsuperscript{44}"EC: Reaction from Sir Leon Brittan to US restrictions on EC countries in public procurement sector." \textit{Agence Europe}, 3 February 1993.


the Commission would begin the process of deciding not to implement Article 29 of the directive on public procurement --if a bilateral agreement was reached in April.47

To the satisfaction of France, the Commission confirmed that the EC would not unilaterally renounce its reciprocity clause. Brittan reiterated that Article 29 would continue to be a “means of negotiations” for improving access to the American public procurement market. By contrast to France, Germany supported the withdrawal of the Community’s discriminatory provisions. The German government had never favored the reciprocity provisions, and in the face of the potential damage inflicted to German companies by the US sanctions, it preferred to abandon the clause on the condition of reaching a “balanced compromise” with the US giving the EC guarantees.48

c) The April 1993 partial EC-US agreement

The EC and the US concluded a partial deal in April 1993. According to the agreement, the EC would disapply the reciprocity clause in some cases (mostly in the electrical equipment sector). In exchange, the US would remove all discrimination against EC bids for procurement by the five publicly owned federal electrical utilities, plus the Tennessee Valley Authority. The US also agreed to set in train a process designed to eventually eliminate Buy American provisions carried out at subfederal level. The US Administration committed to approach the governors of all 50 states as well as the largest US cities and municipalities (with a population of over half a million) about the withdrawal

47“EC: In the public procurement dispute, Washington will not retaliate until the meeting of 19-20 April.” Agence Europe, 30 March, 1993.

48“EC: General Affairs Council comments on progress in trade negotiations with US.” Agence Europe, 6 April 1993.
of the American preferences in public procurement. Finally, both sides agreed to launch a joint, independent study of access to the EC and US procurement markets.

The member states were unanimous in their approval of the partial EC-US deal. The Article 113 Committee met on April 22 to hear the initial reactions of member states. Brittan recommended the deal to the EC, arguing that thanks to the agreement European firms would, for the first time in 60 years, start to have access to contracts at the subfederal level. Moreover, by representing a de-escalation of EC-US tensions, the agreement would help the atmosphere in GATT. The May 10 Foreign Affairs Council agreed to drop Article 29 of the EC's Utilities directive in exchange for the United States removing the Buy American preferences on the Tennessee Valley Authority and the five federal power administrations of the US Department of Energy.

This agreement was only partial, however. It covered mostly heavy electrical equipment but did not involve telecommunications at all. For the most part, the EC had kept the reciprocity clause. As a result, the US decided to proceed with some limited sanctions anyway, while continuing negotiating on the remaining procurement issues such as telecommunications. The American administration announced sanctions of about $20 million a year against EC suppliers, supposed to represent the share of the utilities market


in telecommunications.\textsuperscript{54} In June the EC agreed to retaliate to these limited US sanctions by applying its own counter-sanctions, worth $15 million.

Hence, the US strategy of fending off the EC public procurement offensive with threatened and actual retaliation failed to produce its expected results. The EC’s institutional rules of qualified majority voting and supranational competence enabled the Community to carry through an offensive against American public procurement practices. In the face of US retaliation, these institutional rules once again acted to strengthen the bargaining leverage of the EC as a whole by not letting internal disagreements among the member states, mostly France and Germany, to derail the resolve of the majority of the EC’s constituent states to go ahead with their strategy of offensive reciprocity.

\textbf{III. Successes and Failures of the Trojan Horse Strategy}

Given the limited success of its earlier retaliatory strategy, the US administration changed tactics and attempted to introduce a “Trojan Horse” in the Community, by heating up the opposition of one of the member states. Despite the successful conclusion of a US-Germany deal on telecommunications and the ensuing political turmoil in the EC, the US failed to break up the EC offensive which was led under the majority rule. As a result, the final multilateral agreement on public procurement was generally held as a success for the European negotiators.

\textsuperscript{54}“COREPER sets limited counter-sanctions against US.” Reuters, 2 June 1993.
1) Germany as target of the Trojan Horse strategy

Shortly after the conclusion of the partial EC-US procurement agreement and the resumption of the bilateral negotiations on the remaining issues, the EC Council passed a Regulation seeking to restrict access for US companies to EC public contracts in the telecommunications sector as a reprisal for the sanctions applied by the Americans in the same sector. Three days later, it was discovered that Germany had breached European solidarity by concluding a surprise telecommunications deal with the US.

a) The secret Germany-US agreement

On 11 June 1993, three days after the adoption by the EC of counter-measures against American companies, US officials revealed that Germany had concluded a secret deal with the US on telecommunications procurement. On the basis of an obsolete German-US friendship treaty, Germany agreed to ignore the public procurement directive mandating preferential treatment for EC suppliers in telecommunications. The bilateral move effectively freed German and US suppliers from EC-US sanctions and counter-sanctions imposed in a dispute over mutual charges of discrimination against outside suppliers.55 The Commission argued that this surprise bilateral deal was illegal and immediately threatened legal action against Germany.

The German government first tried to deny that it had signed an agreement with the United States for the sanctions to be lifted on either side. While denying the existence of the agreement, the German Economy Minister, Guenter Rexrodt, confirmed, however, that Germany had no intention of applying Article 29's preferential clause to US companies and accordingly the US sanctions had no longer any reason to apply. Bonn had a different


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interpretation of Article 29, he argued, pointing out that in the German translation, the preference clause on prices is not mandatory.56

After its failure to deny the existence of the agreement, Germany attempted to justify its decision to make such an agreement with the US to not apply the EC public procurement directive discriminating against US telecommunications firms bidding for Community government contracts. German officials cited the existence of a 1954 friendship treaty between Germany and the United States prohibiting trade discrimination between the two countries. Moreover, Germany’s ambassador to the EC said that Germany’s opposition to the reciprocity clause had been known since the EC drew up the directive.57

b) Political implications of the “Trojan Horse”

This unexpected breach of European solidarity by one of the EC’s foremost pro-integrationist members was initially expected to have external consequences. This is precisely why the US administration pursued secret negotiations with Germany, concluded a secret deal, and then revealed very publicly the existence of this deal. “If the Americans’ plan was to try to erode Europe’s admirable yet shaky unified stance on trade policy, they succeeded,” wrote an analyst at the time.58 “What Mr. Rexrodt thought would be an under-the-table agreement, Mr. Kantor made public with great fanfare, taking advantage of this opportunity to sow the seeds of discord among the member states and to put the Commission in a difficult position, right in the middle of GATT negotiations.”

57“Bonn defends telecoms stand, but agrees to talk.” Reuters, 16 June 1993.
After the initial bewilderment at the possible existence of the German-American deal, the Commission immediately attacked its legality and even talked about imposing sanctions against Germany, while waiting for the European Court of Justice to start summary proceedings. The position of the Commission, supported by several member states, was that the EC gave periodic authority to renew bilateral cooperation agreements between EC member states and non-EC countries only on the understanding that they did not run counter to EC trade policy. Otherwise they risked weakening the Community's position in multilateral negotiations.\(^{59}\) France, in particular, had called on the Commission to investigate what it called "an infringement of Community solidarity."

In a June 11 statement, the Commission claimed that Germany was obliged to grant the preference clause and pointed out that EC trade policy is an exclusive competence of the Community. Therefore the member states have no right to encroach upon this competence by signing bilateral trade agreements with non-EC countries. Article 234 of the EC Treaty makes it quite clear that if agreements concluded prior to the application of the Treaty are incompatible with the Treaty, the member states are obliged to remove any incompatible features. Moreover, the Commission stressed that, just like all the other member states, Germany signed on June 8 the countermeasures retaliating against the American sanctions in telecommunications procurement.\(^{60}\) Therefore Germany was compelled to apply the countermeasures.

Eventually, the Council adopted in December 1993 a decision according to which the member states' bilateral friendship, trade and navigation treaties and trade agreements could only be renewed "as regards those areas not covered by agreements between the

\(^{59}\) Bonn defends telecoms stand, but agrees to talk." \textit{Reuters}, 16 June 1993.

Community and the third countries concerned insofar as their provisions are not contrary to existing common policies.\textsuperscript{61}

Institutional constraints in the EC were clearly one of the reasons why Germany had negotiated a secret deal with the US. Had the internal market in public procurement been governed by unanimity rule, Germany would simply have opposed the reciprocity provisions from the start. Later, pressed by its telecommunications firm Siemens, which is well established on the American market, Germany would have opposed the retaliatory countermeasures against American telecoms companies. The supranational competence over procurement issues forced Germany into breaking EC law by acting on its own. These institutional rules also prevented the German “defection” from having a long-lasting impact on the Community’s position in the procurement negotiations, however, despite the initial political shock that it caused.

2) \textit{Unity is strength: The 1994 EC-US bilateral agreement on public procurement}

Bilateral negotiations resumed after the German incident and accelerated frantically in the last days of the Uruguay Round. The EC and the US, along with the other signatories to the 1979 GATT Procurement Code, finally concluded on December 15 an Agreement on Government Procurement amending the Code negotiated during the Tokyo Round. The basic principle governing the new agreement, which included all large national procurement purchases beyond a high threshold, was that of “national treatment” or non-

\textsuperscript{61}Council decision 93/679/EC of 6 December 1993 authorizing the automatic renewal or maintenance in force of provisions governing matters covered by the Common Commercial Policy contained in the friendship, trade and navigation treaties and in trade agreements concluded between member states and third countries. O.J.E.C. 18 December 1993, L 317.
discrimination against foreign bidders. The EC and the US, however, failed to complete their negotiations on other aspects of public procurement before the December 1993 deadline for the end of the Uruguay Round, but they agreed to try to reach an agreement before the signing of the Uruguay Round on April 15, 1994 in Marrakesh.

The remaining issues were, of course, the most contentious. On the one hand, the EC still wanted a greater coverage of sub-central procurement under the new Code and a removal of the "Buy American" restrictions. European negotiators complained that the December 1993 agreement was likely to apply to less than half of the US States and also that the United States intended to open only one of the 'excluded' sectors -- electricity -- to competition from European bidders. The Commission therefore insisted that the EC would continue to adhere strictly to the principle of reciprocity. On the other hand, the US complained about the discriminatory restrictions on the participation by US firms in the EU's telecommunications and electrical utilities sectors. The two sides agreed to commission the Anglo-American consulting firm Deloitte and Touche to produce a study estimating the nature, volume and international competitive value of public procurement on both sides of the Atlantic and later agreed to accept this study as the basis for further discussions.


63 "Irrespective of whether the specific figures in the Deloitte Touche report are accepted, the value of the markets under negotiation -- and thus the potential gains to firms on both sides of the Atlantic -- is enormous. Under the code's category B -- purchases at sub-central level -- the EU says that its offer would open up markets worth over $100 billion. According to EU estimates, the sectors that stand the most to gain are telecommunications equipment (public sector only; the rest falls under category C), computer and office equipment, instruments (especially medical and measuring instruments), chemicals (including pharmaceuticals), machinery and machine tools, metal fabrication, electrical equipment, gas equipment, plumbing equipment, foodstuffs, furniture, banking, and financial services. The value of the potential market under Category C -- utilities and state-owned enterprises -- will depend on the success of US negotiators in opening the EU's market. However, US estimates place the value of the EU market for telecommunications equipment at about $30 billion. With regard to non-telecommunications sectors, the EU values its offer at between $40 billion and $50 billion, consisting of 24 billion for the electrical utilities and the remainder for airports, ports, urban transportation, and water authorities." Michael Calingaert, "High stakes in US-EU public procurement negotiations." EuroWatch, Vol. 6, No. 1, 4 April 1994. See also "GATT/public procurement: Brussels and Washington near agreement." European Report, 9 April 1994.
The bilateral talks accelerated again before the signing of the Uruguay Round. In March 1994, 36 US states --up from 24-- agreed to open their public contracts to European suppliers.\footnote{"GATT/public procurement: Brussels and Washington near agreement." \textit{European Report}, 9 April 1994.} Finally, the US and the EC finally struck a public procurement deal on April 14, 1994. It was expected to open up $200 billion of business in government contracts -- that is, almost double what was expected to result from the December 1993 agreement. In the end, 39 of the 50 American states (among which the five most important --California, New York, Illinois, Texas and Florida) agreed to open up public procurement to the EC. European companies also gained free access to contracts passed by seven American cities: Boston, Dallas, Indianapolis, Chicago, Detroit, Nashville and San Antonio. For their part, the Europeans agreed to give American companies access to public supply contracts, be they passed by cities, regions or member states. One of the principal markets targeted by the Americans was the electronics sector which alone accounts for $28 billion in Europe.

The two sides failed to find acceptable compromises on all issues in negotiation, however, so the Marrakesh accord excluded both the EC’s huge telecommunications sector, controlled by monopolies in most of the member states, and some of the “Buy American” provisions notably on public transport on the US side. A senior US official blamed internal EU squabbling for the deadlock in telecommunications and vowed that the US would try every possible route to gain access to the European telecommunications sector, which was estimated to be worth $20 billion.\footnote{Lyndsay Griffiths, “US, EU strike government contracts deal.” \textit{Reuters}, 14 April 1994.} The official would not say, however, if the Americans were already holding other quiet negotiations with some member states, but Mickey Kantor, the USTR, admitted that such negotiations would be difficult as several member states were determined to hang onto control of public
procurement contracts in this sector. European negotiators, for their part, claimed that the EC refused to open up its telecommunications sector because the Americans did not agree to completely abandon their "Buy American Act."

Hence, when the bilateral agreement on public procurement was concluded in April 1994, the US had acquiesced to many of the initial EC demands (at least on paper), while the EC withdrew concessions on telecommunications, which had been the US central objective in the negotiations. This result, which reflected the position of the median rather than extreme member states, was achieved partly thanks to the transfer of negotiating competence to the supranational level.

**Conclusion: From Single to Multiple Voices Again**

The EC quite successfully negotiated changes in US procurement practices thanks to its own institutional features. The Commission was responsible for negotiating the Government Procurement Agreement on behalf of the member states, who had agreed on the negotiating mandate according to qualified majority and had given EC negotiators some latitude in order to obtain concessions from the US side. This case-study highlighted one of the hypotheses made in Chapter 2: The EC’s institutional rules of qualified majority voting and supranational competence enabled the Community to carry through an offensive against American public procurement practices. Moreover, the offensive nature of the Community position in these negotiations coupled with the supranational competence conferred by the majority rule put the US in a difficult bargaining situation.

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In the face of US retaliation, these institutional rules once again acted to strengthen the bargaining leverage of the EC as a whole by not letting internal disagreements among the member states, mostly France and Germany, cut short the EC offensive. Despite US efforts at undermining European unity in the procurement dispute through the negotiation of a secret Germany-US agreement, the Trojan Horse strategy did not eventually succeed. The EC immediately acted as if the deal was illegal and therefore void. Moreover, the EC did not have to be unanimous to pursue its offensive on the US public procurement policy.

A counterfactual analysis might shed additional light on this case: Germany had declared its opposition to the reciprocity clause from the start. Had unanimity been the decision-making rule in place in the EC at the time, two alternative scenarios could have occurred. Either the internal market in public procurement would not have been completed because countries such as France would not have agreed to internal liberalization not accompanied by measures dealing with its external implications. Or, once the internal procurement market was in place, the international negotiations on public procurement would not have proceeded under the shadow of Article 29 because countries such as Germany would have disapproved of the strategy of offensive reciprocity. It is precisely because the member states were constrained by the institutional requirement of majority that Germany felt the need to negotiate a “secret” agreement with the US.

In the end, the absence of an unanimity requirement coupled with the strong Community reaction to the US-German deal on telecommunications reinforced the bargaining power of the EC and influenced the final outcome of the Government Procurement Agreement. Unable to break through the “single voice” of the EC to single out the weakest supporter of the reciprocity strategy, the US found itself obligated to negotiate on the basis of sheer numbers --or else the EC was withdrawing concessions, as it ended up doing on telecommunications. In the two previous case-studies of “defensive” negotiations, EC voting rules and Commission latitude were eventually captured by the
most recalcitrant member state, which resulted in the "lowest-common denominator" final agreement and diminished the bargaining strength of the EC's negotiating opponent. This chapter, by contrast, enlightened how the bargaining strength of the EC's negotiating opponent can be reduced by the use of majority voting and the granting of supranational negotiating competence in an offensive case, where the EC's opponent is the one hanging on to the status quo.
CHAPTER 6

TRANSATLANTIC OPEN SKIES AGREEMENTS

“It happened that there were in the two armies [the Alban and the Roman] at that
time three brothers born at one birth, neither in age nor strength ill-matched. That
they were called Horatii and Curatii is certain enough. [...] The kings arranged with
the three brothers that they should fight with swords, each in defense of their
respective country. [...] The state whose champions should come off victorious in the
combat should rule the other state without further dispute. [...] Having engaged hand
to hand, [...] two of the Romans fell lifeless, the three Albans being wounded. [...] The
Roman legions were breathless with apprehension at the dangerous position of
this one man, whom the three Curatii had surrounded. He happened to be unhurt, so
that, though alone he was by no means a match for them all together, yet he was full
of confidence against each singly. In order therefore to separate their attack, he took
to flight, presuming that they would each pursue him with such swiftness as the
wounded state of his body would permit. He had now fled a considerable distance
from the place where the fight had taken place, when, looking back, he perceived that
they were pursuing him at a great distance from each other, and that one of them was
not far from him. On him he turned round with great fury, and Horatius by this time
victorious, having slain his antagonist, was now proceeding to a second attack. [...] Wherefore before the other, who was not far off, could come up to him, he slew the
second Curatius also. And now, the combat being brought to equal terms, one on
each side remained, but unequally matched in hope and strength. The one was inspired
with courage for a third contest by the fact that his body was uninjured by a weapon
and by his double victory; the other dragging along his body exhausted from his
wound, exhausted from running, and dispirited by the slaughter of his brothers before
his eyes, thus met his victorious antagonist. And indeed there was no fight. The
Roman thrust his sword down from above into his throat, while he with difficulty
supported the weight of his arms, and stripped him as he lay prostrate.” Titus Livius,
B.C. 672-640

When no supranational competence has been delegated to the Community level,
third countries interested in changing the European status quo have the opportunity to
conclude bilateral agreements with the member states open to compromise without being
held up by the recalcitrant member states. The recent EC-US row over the “open skies”

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1I would like to thank Martin Staniland for his comments.

2I am thankful to former EC Commission President Jacques Delors for suggesting this analogy to me. The
analogy will be explained in the last section of this chapter.
agreement offers an interesting illustration of how third countries can strike better deals when the member states are free agents in the external sphere than they would have under Community competence. This case provides elements for a counterfactual analysis of the previous three cases in which the “single voice” obligation had consequences for the process and outcomes of negotiations between the EC and the US. At the same time, as in the Blair House chapter, the “open skies” negotiations are characterized by a change in the institutional variable midway through the case, which offers control and contrast invaluable for the analysis.

In the case of negotiating the deregulation of international aviation, the US exploited the absence of Community discipline by concluding a series of bilateral agreements with several small member states. These agreements would not have been reached, had the Commission been the sole negotiator for the EC, and whatever the voting mode in place, because the three big member states initially opposed this US-led liberalization. The open skies agreements with the small member states eventually had a “domino effect” in the Community, leading one state after another to alter its preferences and choose to conclude an open skies agreement with the US. Eventually, after Germany reached an open skies deal of its own, representatives of the member states agreed to transfer some authority over the aviation negotiations to the Commission. This chapter argues that the transatlantic negotiations over open skies, still ongoing today, have been fundamentally altered, first, by the bilateral agreements negotiated prior to the transfer of competence to the supranational level and second, by the eventual adoption of a “single voice” requirement.

I. The Dispute over Negotiating Authority in Aviation

The original founders of the European Community excluded air transport from the sectors over which the Commission could take over external negotiating responsibilities.
The issue of liberalization of transatlantic air transport emerged in the late 1970s under the impulse of the United States' liberalization of its domestic aviation market, but with no success. When the US addressed the issue again in the early 1990s, the institutional question of competence was formally raised in the Community. The Commission suggested that, as in other sectors being negotiated at the international level, the Community would benefit from negotiating the proposed transatlantic aviation agreements with a "single voice." If there was any doubt about Community authority on the issue, why not reform the Treaty by finally transferring the negotiating competence over air transport to the supranational level? Without reforming the Treaty, why not at least give the Commission a temporary competence, until the completion of the "open skies" negotiations, as the member states did for the negotiations on services taking place simultaneously in the Uruguay Round?

1) Absence of supranational competence in the aviation sector

The Treaty of Rome explicitly treated air and sea transport differently from other sectors of the economy. Article 84 stated that "the Council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport." In the absence of clear legal support for the extension of supranational competence to the aviation sector and given the salience of the sovereignty feelings on aviation justified by concerns about the "national interest," no one challenged the member states' authority on the matter. Therefore, these categories of transport were simply considered to fall outside the scope of the Treaty.³

A couple of legal and political developments occurred in the 1970s and 1980s. First, the European Court of Justice declared in a 1974 judgment that in principle the provisions of the Community’s competition laws, articles 85 and 86, did apply to aviation. The opening paragraphs of both those articles prohibited collusion that would distort the market and the abuse of dominant positions. “However, it was one thing to declare that airlines should be subject to competition laws, it was another matter to implement this. In fact means of implementation were inadequate and attempts by the Commission to develop airline policy were largely unsuccessful and a decade slipped by without significant progress being made.”

Slow progress was made towards a single aviation market in the mid-1980s. Until then, European air transport was strictly regulated on a national basis. Capacity was restricted; rates were regulated at a high level; competition was almost non-existent (except for charter flights); and all major airlines were state-owned and heavily subsidized. In a 1984 memorandum on airline policy, the Commission proposed a gradual deregulation of air transport in Europe. Under the impulse of Great Britain and the Netherlands, who began unilateral deregulation, and as a reaction to the deregulation of the US domestic aviation market, the EC had felt pressure to design a common policy in air transport. The member states temporarily rejected the recommendations of the Commission.

Nevertheless, continuing political and institutional pressure eventually triggered a change in the course of the Community’s common air transport policy. The 1986 Single European Act changed the institutional requirement of unanimity to qualified majority regarding the “appropriate provisions” that could be laid down for air and sea transport.

4Dobson 1995, p. 191.
5Dobson 1995 p. 188.
6Article 84(2), Single European Act: “The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.”
Moreover, the 1986 "Nouvelles Frontières" ruling by the European Court of Justice opened up a means to implement competition rules in aviation. Finally, with the support of the British presidency, the Commission presented a modest liberalization package, which the Council adopted in December 1987. It was supplemented in November 1990 by a second package, which expanded the possibility of fare discounting, eased market access, and liberalized seat capacity. Yet despite these internal reforms, the member states had not addressed the issue of external powers and of who would be responsible for translating these reforms at the international level.

2) The early 1990s feud over competences

International aviation has operated since 1944 under the framework of the Chicago Convention and the ensuing thousands of bilateral Air Service Agreements, which determine the routes, frequency, seat capacity, and fare regulations\(^7\) applicable to airline carriers. Since the deregulation of its domestic airline industry in 1978, the United States has led the international effort to liberalize international air transport through "open skies" agreements. The Community was not institutionally ready, however, to tackle aviation liberalization as a single entity.

a) The impetus of US deregulation

The United States undertook a revolutionary reform of its domestic aviation policy in 1978, opening up for the first time air transport across state boundaries to competition. The realization of economies of scale made possible by deregulation gradually led to the emergence of mega-carriers, such as American Airlines and United Airlines. The US

\(^7\)Organized through IATA conferences.
deregulation had direct consequences for the European airline industry. As Dobson observed, it "affected Europe in three ways: it created an example of what a market-led airline industry could achieve; it resulted in US diplomatic pressures for a more liberal international airline system; and it released market dynamics to which European airlines would eventually have to respond."8

The expansion of US carriers into transatlantic routes was to some extent a matter of need --and survival. They were over-equipped, they had heavily invested into hubs, and in many cases they badly needed the profits that transatlantic routes would bring them.9 Therefore, the large US carriers pressed the American administration to allow them to compete without restriction on the international market to achieve even greater economies of scale. As a result, the United States stepped up its demands to renegotiate the old Air Service Agreements (ASAs) which were concluded with the different European countries in the 1940s and 1950s. In 1989 the International Air Transport Association organized a conference designed to renegotiate the ASAs to adapt them to the new realities of air transport. "By the time of the IATA Marrakesh Conference in 1989, Americans were "paranoid" about the prospect of "Fortress Europe" reducing commercial opportunities for their airlines."10

b) Internal divisions in the EC over "open skies"

For the first time, the member states were forced to consider the implications of the "open skies" negotiations on the EC and address the issue of competence. British Airways, in particular, complained about the handicaps it felt in the transatlantic market as a result of

8Dobson 1995, p. 179.
9I am thankful to Martin Staniland for raising this issue.
the absence of a single EC market in aviation.\textsuperscript{11} Frustrated about the lack of access to the US market, it favored a single European response to US deregulation in the hope of using the bargaining leverage of Europe as a whole to obtain higher concessions from its American counterparts. The member states had, however, divided preferences regarding the open skies agreements and the desirable institutional framework for such agreements.

Great Britain and the Netherlands were most open to the idea of air transport deregulation.\textsuperscript{12} Yet Great Britain, along with France and Germany, went on the defensive, resisting US attempts to open up the transatlantic skies because of the large international stakes held by their national carriers. The big member states disagreed, however, on the best institutional design to fend off the American offensive. Through the voice of their foreign affairs ministries, France and Germany were not reluctant to having the EC negotiate as a whole in international aviation --even though their transport ministries were formally opposed to any transfer of negotiating competence.\textsuperscript{13} The position of British Airways, as expressed by its Chairman, was also that the European air transport market should be liberalized first, and that the Community should then take over the negotiations with the United States: "We need the Community to begin to make use of its negotiating strength against the strong countries outside."\textsuperscript{14} On grounds of sovereignty principles, however, the British government opposed the Commission's proposal to take over aviation negotiations. The UK was supported by several small member states, which had

\textsuperscript{11} "BA, for example, felt increasingly disadvantaged in the transatlantic market because of the huge pool of passengers in the USA located away from international gateways. While its American competitors could draw these passengers into their hubs for onward flights across the Atlantic BA was not allowed to." Dobson 1995, p. 189-190.

\textsuperscript{12} "Both had developed their main international airports as gateways to and from Europe and they wanted better access to foreign passenger markets. They also had the best developed national reform programs in the early 1980s." Dobson, 1995, p. 179.

\textsuperscript{13} Private interview with EU Commission official, December 1997.

\textsuperscript{14} Lord King's remarks to the Royal Aeronautical Society, 16 May 1991, text courtesy of BA, quoted in Dobson 1995, p. 190.
liberalizing preferences regarding air travel deregulation and feared that the takeover of external negotiating competence by the Community would exert a protectionist pressure.

In 1990 the Commission proposed to the Council (composed of Transportation Ministers) to become the exclusive negotiator of “open skies” agreements on behalf of the member states. In its Communication entitled “Community Relations with Third Countries in Aviation Matters,” the Commission claimed that Article 113, governing the Common Commercial Policy, gave it the authority to negotiate international air services with third countries, as it did any other external trade agreement. This was the first time that the Commission used the argument that the external commercial aspects of transport were included in the Common Commercial Policy. In the past, the Commission’s position had been that member states retained their competence to conclude aviation agreements with third countries, except in specific situations. Under the impulse of its president, Jacques Delors, the Commission claimed that it was now time for the Community to take over the external negotiating responsibilities in air transport. Since the Commission’s services were not technically and administratively ready to assume such a role, however, the Communication suggested that member states could conclude bilateral “open skies” agreements with third countries until 31 December 1992, provided that such negotiations had been authorized by the Council. After this date, the Commission would be granted the full negotiating competence.

The transportation ministries refused virulently to let go of their traditional competence to negotiate air transport agreements. The member states unanimously rejected the Commission’s second proposal in 1992 and settled temporarily the internal conflict by

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15 COM(90) 17 final, Brussels, 23 February 1990.
16 For a detailed analysis of the Commission’s communication, see Close 1990.
preventing the Community from taking over external negotiating competences in this field. Member states therefore embarked on the renegotiation of (or refusal to renegotiate) their bilateral Air Service Agreements with the United States on their own, hoping to obtain a better deal for themselves individually.\textsuperscript{18}

II. Bilateral Agreements as an Effective "Divide and Rule" Strategy

As a result of the big member states' opposition to the US policy challenge, the small states of the European Community became the focus of the EC-US "open skies" dispute and of the internal EC feud. This American strategy of picking off one country at a time had a "domino effect," leading to member states changing their position on the open skies issue one after the other and preventing the Community from exercising its potential bargaining power.

1) Focus on small states

a) The US and EC negotiating competence

The successive US administrations paid close attention to the legal wrangling in the EC regarding the issue of external competence. Under President Bush, US transportation officials genuinely believed that having a single Community interlocutor was more in their interest than a multitude of European voices. They judged the liberalizing efforts coming

\textsuperscript{18}Private interview with Commission official, December 1997.
from Brussels to be more in line with US economic and ideological objectives than the policies emanating from the majority of European member states.\textsuperscript{19}

In July 1991, the Commission presented its proposals for the completion of the single aviation market, which covered issues such as route and airline licensing, ownership regulations and the fare regime.\textsuperscript{20} The EC-led deregulation did not go as far as the US model. It did not cover crucial items such as the allocation of airport gateway slots and still left the door open to government financial assistance to bail out national airlines, leading the British and Dutch governments to criticize the proposals for not being adventurous enough. Yet the Commission’s proposals were still several steps ahead of what the majority of EC member states were willing to accept.

The Clinton administration publicly encouraged the supranational takeover of aviation policy. US aviation officials visited Brussels to express support for the Commission’s attempts to secure external competence.\textsuperscript{21} When it became clear that the Commission could not obtain an external negotiating mandate from the member states, however, the US administration changed its strategy on the issue.\textsuperscript{22}

\textit{b) The US “divide and rule” strategy}

In the absence of Community negotiating authority, the US was legally allowed to enter into bilateral agreements with individual member states. The strategy adopted by the US was to “pick off one country at a time.”\textsuperscript{23} Federico Peña, the US Secretary of

\textsuperscript{19}Private interview with Commission official, December 1997.

\textsuperscript{20}Dobson 1995, p. 222.

\textsuperscript{21}Mark Odell, “The great divide: the ideological gap between US and European aeropolitics has become a yawning gulf, as economic pressures mount up on airlines from both blocs.” \textit{Airline Business}, July 1993.

\textsuperscript{22}Going back to the “divide and conquer” strategy that the US used during the Carter administration.

Transportation, made publicly clear that the American administration had adopted a deliberately discriminatory and divisive strategy. Mr. Peña’s aim was to pick off some countries in order to “put competitive pressure on neighboring countries to follow suit.” In particular, American negotiators hoped that bilateral agreements with the smaller EC countries would pressure the big countries to conclude similar deals.

Airlines in small EC countries -- such as Sabena in Belgium and KLM in the Netherlands -- were particularly interested in the international liberalization offered by the US because they were not providing domestic service and therefore needed to compete aggressively on international routes. Moreover, as Staniland points out, they already had experience and interests in international aviation markets: “Ex-imperial countries such as Belgium and the Netherlands, have inherited large stakes in the long-distance market, sustained by the commercial and cultural networks that empire leaves behind.”

A Commission official warned the member states of the “very real danger that our trading partners will pick off one country against another, and make a mockery of our single market” if the practice of individual bilateral negotiations continued. Yet this threat was not sufficient to tilt the member states in favor of a common negotiating framework.

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24 As Secretary Kahn had done in the late 1970s.


28 Jonathan Faull, head of travel and tourism at the EC competition directorate. Quoted in Mark Odell, “The great divide: the ideological gap between US and European aepolitics has become a yawning gulf, as economic pressures mount up on airlines from both blocs.” Airline Business, July 1993.
2) The domino effect

The Commission’s attempt to take over the competence to negotiate external trade agreements was seriously undermined in 1992 by the conclusion of the first “open skies” pact between the United States and an EC member state. This prompted a multitude of other member states to subsequently conclude their own individual “open skies” agreements with the US.

a) The Dutch-US agreement

In September 1992, the Netherlands and the US signed the first of the “open skies” agreements. It gave KLM Royal Dutch Airlines virtually unrestricted access into the US market. To observers at the time, the “treaty looked oddly one-sided: it gave US carriers access to a postage-stamp-size country, while giving the Dutch access to the US. But the Administration’s rationale emerged later when KLM, the Dutch carrier, took advantage of the treaty to seek approval for a plan to link up with Northwest Airlines.”29

The Commission, once again, warned the member states that the US was attempting to “divide and conquer EC aviation.”30 On the one hand, aviation officials at the Commission argued that the bilateral deals gave US carriers much more favorable access to the Community market than they would have obtained had the EC negotiated as a single bloc. The greater market leverage which the EC could have derived from negotiating a whole could have earned EC carriers the right to carry passengers between US airports.31

29 “Standing firm for open skies.” New York Times, 24 December 1992. Of course one needs to look at KLM’s international routes as well to explain the attractiveness of this small country for the US.


On the other hand, they believed that the unilateral Dutch action would undermine future negotiations should the Community take over.\textsuperscript{32}

\textit{b) The subsequent bilateral open skies agreements}

Other EC member states were fearful of the consequences of the Dutch-US open skies agreement. They believed it would increase competition, offer greater capacity and lower transatlantic fares. Feeling threatened by the privileged access enjoyed by KLM to the US market, airline carriers from other European countries started to link up with US partners. In order to do so, however, they needed their governments to sign open skies treaties with the US government.\textsuperscript{33}

The US approached each of the member states in turn, hoping to obtain the liberalization of air transport in fragmented European markets until all of them would be covered by bilateral open skies agreements. As predicted by EC officials, this strategy was successful: like a row of dominoes, bilateral open skies agreements with individual member states were concluded with the US one after the other. In the absence of Community competence, several member states started negotiating their own bilateral open skies pacts with the US in order to reap some of the benefits of air travel liberalization for themselves. As a result, between 1992 and 1995 nine European countries, including six EU member states (Belgium, Luxembourg, Finland, Austria, Sweden and Denmark) concluded individually open skies agreements with the US, which removed restrictions on capacity,

\textsuperscript{32}“Especially under the Carter and Clinton administrations, the US has openly adopted such a “divide-and-rule” tactic in dealing with the EU. The tactic has failed to break down the resistance of the more obdurate Member States, but it has (in association with a policy of encouraging alliances between US and European carriers) been highly successful in diverting trade toward more cooperative countries such as the Netherlands.” Staniland 1996, 4-5.

frequency of flights and destinations. They did so, in spite of the Commission’s explicit request for them not to sign.

In February 1995 Neil Kinnock, the EC Transport Commissioner, wrote to the governments of six small EC states --Austria, Belgium, Denmark, Finland, Sweden and Luxembourg-- to ask them not to sign their planned “open skies” agreements with the US. Kinnock argued that such arrangements would benefit the US at Europe’s expense. The Commission’s view was that the open skies pacts offered by the United States “would perpetuate the current imbalance characterizing the international air transport system which, for historical reasons, discriminates in favor of American companies.” If, instead, the EC negotiated as one, it would have the clout to get a better bargain. Moreover, Kinnock warned that the “cumulative effect” of open skies pacts with the United States and American competition within the EU market could “undermine and ultimately destroy” EU policy on air transport. The Commission argued that the bilateral accords would undermine its own attempts to reach a wider EU air pact with the United States, come the day that external negotiating competence was transferred to the supranational level. The ultimate goal of the Commission was eventually to obtain total freedom of access to the United States’ air transport market --including the cabotage rights to carry passengers on domestic American routes, including within one state, and to embark passengers in the US and fly them to a foreign destination. Individual member states negotiating on their own with the US did not, and could never, obtain such rights.

34The other three European states were Iceland, Norway and Switzerland.


Yet the US lure of immediate rewards proved more convincing to those member states who had negotiated bilateral “open skies” deals than the EC promise of greater rewards in the future, should they negotiate as one. Part of the US strategy to “divide and conquer” EC aviation was the announcement, at the very outset of the open skies negotiations, that the bilateral accords would only be confirmed if all of the nine countries approved sign in turn.  

This tactic put additional pressure on France, the United Kingdom, and especially Germany, since its traffic could easily be diverted to the Netherlands if it did not sign an open skies pact of its own.

III. Toward Supranational Competence in Aviation

The Dutch-US agreement had prompted the Commission to attempt again to assert its negotiating authority in the field of international aviation in order to “prevent discriminatory rights being gained by individual states at the cost of fellow members.” Yet apart from Spain and, to some extent, Germany, the member states staunchly refused until 1996 to transfer the external negotiating competence to the EC level. It took the success of the US “divide and rule” strategy, as well as a changing legal framework in the EC, to trigger some move on the external competence front. Yet the four years during which the Commission was not allowed to negotiate open skies agreements on behalf of the EC as a whole have fundamentally altered the set of possible concessions that it can obtain today from the United States.

38“Air transport: Commission ready to go to Court over agreements with the US.” European Report, 3 March 1995.


1) A changing legal framework

The issue of external negotiating competence in international aviation was not formally settled in the EC for several years because the member states were not willing to abdicate their sovereignty in a field that, unlike other areas of trade policy, had not been "communitarized" from the early days of European integration. The concern over sovereignty was particularly salient given the monopolistic and symbolic nature of most national airlines and given the historical connection between aviation and national security.

On one hand, the member states used a practical argument, which the Netherlands voiced publicly to justify its 1992 deal with the United States, against Community competence: the Commission was not bureaucratically equipped to deal with international aviation negotiations. Its understaffing and inexperience in the matter would certainly be handicaps vis-à-vis US negotiators.41 On the other hand, the member states could just not agree on the desirable negotiating position to adopt. Some countries, such as France and Greece, feared that the Commission would be too liberal. Other member states, such as the United Kingdom, suspected that the EC negotiators would be too conservative in their demands and concessions and probably biased in their allocation of routes. Each member state felt that it would obtain a deal more satisfactory for its own interests if its national administration negotiated on its behalf.

Institutional paralysis meant that the status quo prevailed, thereby opening the door for the domino succession of bilateral US-European "open skies" agreements. The legal framework of EC aviation policy, however, started changing around 1993-1994, opening up new debates and possibilities for a Community takeover of external negotiating competences in air transport.

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a) Changes in the Community's common transport policy

On 1 January 1993, the third and final package of measures laying down the foundations of deregulation of European civil aviation entered into force. They completed the process of gradual market liberalization initiated with the 1987 and 1990 packages. This “third package” consisted mainly of three complementary sets of regulations, which largely replaced the bilateral agreements existing between member states.42 First, it established common rules for the granting of licenses to European carriers: air carriers could be licensed in the EC only if they were majority owned and effectively controlled by member states or nationals of member states. Second, air carriers licensed in the EC would mostly enjoy free access to all intra-Community routes. Finally, EC carriers would be free to set their fares and rates for services within the internal market, with government intervention on pricing limited to only exceptional circumstances.

The implementation of the Third Package extended the competence of the Commission over aviation policy by expanding the number of air transport issues to be now decided and managed at the collective EC level. While it did not directly address the Commission’s external negotiating competence, indirectly the Third Package severely restricted the content of international agreements that member states could negotiate on their own without implications for the internal European air transport market.

b) The European Court of Justice's Opinion 1/94

Another major legal development in the EC to affect directly the dispute over external negotiating competences in aviation was the opinion on Article 113 delivered by

42 On the third package see Niejahr and Abbamonte 1996. See also “Air transport: total liberalization of European skies on April 1.” European Report, 19 March 1997.
the European Court of Justice in November 1994. The legal issue concerning the future of trade negotiating authority in the Community emerged at the outset of the Uruguay Round in 1986. Who, of the Commission or the member states, was responsible for negotiating the “new issues” (services and intellectual property) not explicitly covered in the Treaty of Rome? The temporary settlement granted the Commission negotiating authority on behalf of the EC and the member states for practical reasons. The ratification of the Final Act concluding the Uruguay Round prompted the long-delayed reexamination of the division of competences between the Commission and the member states. Unable to find a compromise with the member states, the Commission asked the European Court of Justice for an “advisory opinion” on the issue of competence in all trade-related sectors, with the expectation that the Court would confirm the Community’s exclusive authority with respect to the negotiation of external trade agreements. The Council, the European Parliament, and eight member states contested the Commission’s reasoning.

On 15 November 1994, the Court delivered its key 1/94 Advisory Opinion. The judges confirmed that the Community had sole competence to conclude international agreements on trade of goods. In the most controversial aspect of the ruling, however, the Court held that the member states and the Community shared competence in dealing with non-goods trade. On the particular issue of air transport, the judges ruled that international agreements on transport (maritime and aviation) did not fall under the Community’s trade policy competence because they were covered by separate articles in the EC Treaty.

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43For a detailed analysis of the Court’s Opinion 1/94 see Meunier and Nicolaïdis 1997. See also Chapter 8 of this dissertation.

44Court of Justice of the European Communities, Opinion 1/94, 15 November 1994, I-123.
By ruling in favor of the institutional status quo, this judgment can be interpreted as a setback for the unity of external representation in the EC and, more generally, for the process of European integration. Nevertheless, this judgment also had a positive impact on the Commission’s quest for collective authority in open skies negotiations. By clarifying, even restrictively, the legal definition of the scope of Article 113, the Court’s opinion forced the Commission to explore other legal avenues for obtaining the right to negotiate external aviation agreements on behalf of the EC as a whole.

\[c\) Threatened legal action\]

In March 1995 the Commission announced that it would use legal recourse in order to obtain the right to negotiate open skies agreements on behalf of the EC as a whole. In June the Commission announced that it would take Great Britain to the European Court of Justice and that it was preparing similar action against the member states who had signed open skies agreements with the US.\(^{45}\) Despite threats that the Commission would challenge open skies pacts signed by individual member states at the Court of Justice, the bilateral agreements between the US and EC member states went ahead as scheduled.\(^{46}\) Since the Court’s 1/94 opinion had confirmed that international transport falls outside of the scope of the Common Commercial Policy, member states felt that their bilateral agreements were legally safe.

On the other hand, the Commission selected the option of approaching the competence issue from a different legal angle, based on previous case-law according to which the Commission is responsible for any foreign negotiations that affect internal EC

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regulations ("in foro externo, in foro interno"). If, by examining the proposed accords
"we can prove that they will impact on existing Community legislation, then they fall within
the Community's mandate," said a Commission spokesman.47 The liberalization of the
EC's internal air transport market, resulting from the entering into force of the third
package in 1993, had changed the Commission's bargaining leverage vis-à-vis the member
states. If the Commission could prove that the new bilateral open skies agreements
negotiated between the US and individual EC member states had a direct effect on the
single market, then it was legally allowed to contest the legality of such agreements in
Court.48 The Commission was all the more entitled to pursue such a legal recourse if it
could prove that the individual agreements would have an adverse economic effect on the
single aviation market.

One legal avenue that the Commission chose to explore in particular was the
exclusive competence that it possessed under competition policy. Commission officials
complained that the US had been using its antitrust powers as a lever to force open
transatlantic markets on its own terms.49 For instance, the granting of antitrust immunity to
shield the KLM and Northwest alliance from the rigors of American competition law
weighed heavily in the Netherlands' acceptance of an open skies agreement with the US.
The US had subsequently bestowed similar immunity on the SAS/United alliance, the
tripartite SAS/United/Lufthansa alliance, and the Delta/Sabena/Swissair/Austrian
partnership. The Commission realized that the combination of new authority, as a result of
the liberalization of the EC's internal aviation market, with its exclusive powers over

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47 "EU nations sign open skies pact with US in spite of Commission's threats." Aviation Europe, 9 March
1995.

48 "EU nations sign open skies pact with US in spite of Commission's threats." Aviation Europe, 9 March
1995.

49 Ron Katz, "Trust in US multinational airline alliances make harmonized competition rules between US

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competition policy could be used as leverage to obtain from the member states the external competence for negotiating international aviation agreements.

2) A *limited negotiating mandate*

   *a) The 1995 battle over competence*

   In the spring of 1995, the member states started talking about ensuring the coherence of their positions in the open skies negotiations with the US. The British transport minister, Brian Mawhinney, argued that there was no urgency in defining a common attitude because it is "hard to see how smaller nations signing bilateral air agreements with the United States would plunge European aviation into a crisis." 50 The French government, by contrast, believed that all ongoing bilateral talks with the US should be frozen until the EC received the negotiating competence.

   In June 1995 Neil Kinnock, the Transport Commissioner, made a proposal to the Council mandating the European Commission to open negotiations with the US in the field of civil aviation. 51 He argued that such a common mandate would be

   a positive response to the US effort which they frankly admit [is]--to divide Europe in setting the ground rules for relations in the field of civil aviation and to impose pressure on the other member states that are not considering the "open skies" proposal. [...] These are the advances that can best be achieved when Europe acts together in civil aviation as it has in other areas of international commerce. That is surely one of the central purposes of being a Union. Sovereignty is about the ability to exercise power and in this case the member states are at their most powerful acting together. 52

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Yet the member states once again rejected the Commission’s plea for the right to negotiate external aviation agreements. In September, the US announced the signing of an open skies agreement with Belgium, completing a goal of reaching six individual accords with EC nations.

b) The German reversal

The US “divide and rule” strategy came closer to full success when Germany, in a fundamental reversal of position, agreed to sign an open skies agreement with the US in February 1996 (the agreement was formally signed in May). The bilateral deal was accompanied by an antitrust exemption granted by the US government to the Lufthansa/United alliance. Until now, Germany (on behalf of Lufthansa) had been one of the fiercest opponents of the bilateral accords and one of the only voices mildly sympathetic to the Commission’s call for negotiating competence. Once Germany was in the “bilaterals” camp, it gave, in the words of one analyst, a “sense of inevitability about the future of remaining US-Europe bilaterals.”

The German change of heart regarding the open skies issue put the Commission in a delicate situation. On the one hand, the Commission vowed to take Germany to Court, on competition grounds, if it signed an open skies accord with the US. Washington had indeed made the open skies agreement a precondition of the granting of antitrust immunity to the Lufthansa/United alliance. On the other hand, the Commission needed the support


of the German government in its institutional battle to gain some external negotiating competence away from the member states.  

\textit{c) The limited June 1996 mandate}

The succession of bilateral open skies deals between the US and individual member states, coupled with the recent legal changes regarding the internal aviation market, contributed to the partial delegation of negotiating competences to the EC level in June 1996. Seven out of fifteen member states had already concluded transatlantic agreements. Through their individual actions, they had put market pressures on their European partners, forcing them to initiate their own transatlantic arrangements. At the same time, their opposition to a Commission takeover of negotiating competences diminished as they had already secured their individual deals. As long as negotiations led by the Commission did not endanger the advantages they had already won individually, they appeared favorable to such a transfer of competences. Of course, under these conditions, there was not much left for the Commission to negotiate.

Some of the member states were also worried about the decision by the Commission to use its powers under competition policy to unravel the individual deals they had signed with the US. A precondition to most deals had been the granting of antitrust immunity to transatlantic airline alliances by the US administration. Yet none of these deals had been exempted from antitrust violations by the EC. The threat by the Commission to examine minutely each of these deals for antitrust violations and to take each of these deals to Court was no bluff. In early June the EC Transport Commissioner, Neil Kinnock, and the Competition Commissioner, Karel van Miert, sent shock waves throughout the


56“European Union still split over air transport talks with US.” \textit{Agence France Presse}, 11 March 1996.
Community by placing the proposed alliance between British Airways and American Airlines under investigation, and announcing that they would simultaneously investigate the five existing transatlantic alliances: Lufthansa-United; SAS-United; Swissair-Sabena-Austrian Airlines-Delta; KLM-Northwest; and BA-US Air.\textsuperscript{57} Part of the explanation for why the member states, after so many years of opposition, eventually agreed to give the EC some negotiating authority in the field of international aviation was the promise by the Commission to withdraw the legal action it had already engaged.\textsuperscript{58} The antitrust investigation of the deals, however, continued.

By June 1996, when the issue of EC competence was once again formally addressed by the Council, only Great Britain remained staunchly opposed to some delegation of authority to the supranational level. The British transatlantic market represented 30\% of the European market for the US, and the British government believed as a matter of principle that its interests would be best served if taken care of by British negotiators. The position of the British government, however, seemed at odds with the views of British Airways, whose chief executive, Bob Ayling, expressed himself in support of the common EC voice on open skies agreements.\textsuperscript{59}

The French government favored a partial takeover by the Commission, but insisted that its negotiating mandate should exclude air traffic rights between the EU and the United States.\textsuperscript{60} Therefore, despite formal opposition from Great Britain, the June 1996 Transport

\textsuperscript{57}Mark Odell, Lois Jones, Mead Jennings, “Antitrust is key in open skies talks”. \textit{Airline Business}, August 1996.

\textsuperscript{58}Private interview with Commission official, December 1997. See also Mark Odell, Lois Jones, Mead Jennings, “Antitrust is key in open skies talks”. \textit{Airline Business}, August 1996.

\textsuperscript{59}Mark Odell, Lois Jones, Mead Jennings, “Antitrust is key in open skies talks”. \textit{Airline Business}, August 1996.

\textsuperscript{60}“European Union still split over air transport talks with US.” \textit{Agence France Presse}, 11 March 1996.
Council finally granted the Commission some authority to negotiate a multilateral aviation agreement with the United States in a 14 to 1 vote --majority voting applied on the issue.

The mandate, however, was extremely limited. Member states authorized the Commission to talk only about secondary aviation issues (such as access to computer reservation systems, code-sharing and ownership restrictions). To be able to discuss the central issue of traffic rights with their American counterparts, EC negotiators would have to come back to the Council for a new mandate.\(^61\) Moreover, the mandate was accompanied by a commitment from the Commission not to "roll back" the liberalization that had already been achieved in bilateral agreements.\(^62\)

Bilateral talks between senior US and EC aviation officials were to start in October 1996, with the goal of allowing American carriers to fly anywhere in the EC and offer European airlines access to every US city. An overall EC-US agreement would replace all the existing bilateral agreements between the US and EC member states, as well as the commercial alliances between United Airlines and the German Lufthansa, Northwest Airlines and KLM, and Delta Airlines and Swissair, Sabena and Austrian Airlines.

The US administration publicly expressed its skepticism over the two-stage mandate granted to the EC negotiators, with the "soft issues" such as state aid and antitrust policy being negotiated first, before approaching the more contentious issues such as traffic rights.\(^63\) American officials even said that they would not negotiate aviation pacts with the EC until its negotiators had full authority to discuss issues that would move the market


toward completely free competition.\(^{64}\) Charles Hunnicut, US assistant secretary for aviation, therefore claimed that he expected the October talks to be primarily "a listening session" on the US part, since the Clinton administration was unwilling to negotiate until the EU had complete authority to discuss core issues. In the meantime, US negotiators would continue to seek bilateral deals with European countries and would concentrate their efforts on reaching agreements with Great Britain, France, Italy and Spain.\(^{65}\)

\(d)\) \textit{Towards full EU competence on external aviation agreements?}

The Commission has always argued that it was seeking to gain full negotiating competence in external aviation agreements not for political "virility" but on economic grounds. EC aviation officials have long claimed that the open skies agreements proposed by Washington were "unfair and grossly unbalanced against Europe."\(^{66}\) They maintained that these bilateral deals gave US carriers unrestricted rights to operate to and from European countries without giving EU airlines equivalent access to the internal US market, beyond a limited number of gateways. These deals, argued the Commission, would circumvent EU regulations on fair trading and consumer protection.\(^{67}\) Faced with the United States, therefore, it is better in terms of bargaining power to negotiate as a union.

The Commission's case for full competence was strengthened by the final stage of airline deregulation in Europe. April 1, 1997 marked the entry into force of the complete liberalization of the EU's internal aviation market. Among the most important measures

\(^{64}\) Michele Kayal, "Clinton puts conditions on aviation talks with EU." \textit{Journal of Commerce}, 1 October 1996.


\(^{67}\) Barry James, "Gingerly, EU and US move toward open skies." \textit{International Herald Tribune}, 2 September 1996.
included in this final deregulation package was the introduction of unrestricted cabotage—meaning that a European airline will be able to use the national routes of any member state.68

A second round of talks between US and EC aviation officials took place in Brussels in April 1997. The talks centered on technical issues, such as code-sharing and computerized reservation systems.69 The negotiators also discussed unofficially substantive issues such as traffic rights, market access, fares or capacity, for which EU officials do not have the authority to negotiate.

**Conclusion: Horatii, Curiatii, and the EC-US Open Skies Agreements**

The agreement to delegate some negotiating competence to the supranational level came, but it came too late for the EC to be able to exercise the potential bargaining leverage, which it had claimed to possess all along. The absence of a prior common EC front on the issue of international aviation undoubtedly affected the current European bargaining position and will therefore have consequences on the content of the final agreement eventually reached with the United States.

By concluding bilateral agreements with several member states before the negotiating authority was transferred to the Community level, the US managed to change the bargaining conditions for the upcoming negotiations in its favor. Given the initial opposition of the three biggest member states to the US “open skies” initiative, it would have been much more difficult for the US administration to secure a favorable deal for its

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68 For more information on the deregulation of the EU’s air transport, see “Air transport: total liberalization of European skies on April 1.” European Report, 19 March 1997.

international airline carriers if the EC had negotiated as a whole with decisions taken under the unanimity rule because the big member states would have captured the European negotiating position. Even under majority rule, the small member states would not have carried enough voting weight to push the whole Community into as liberalizing a transatlantic deal as the individual deals they achieved for themselves.

Instead, unable to agree on their preferred policy orientation and therefore unwilling to transfer the negotiating responsibility to the collective level, the member states chose to take the matter into their own hands. First the Dutch-US deal, and then the succession of bilateral deals between the US and individual EC member states presented the rest of the EC with a fait accompli.

Like the lone remaining Horatius fighting to rule and not be ruled, the US benefited from the absence of Community solidarity in its contest for favorable open international skies. Instead of fighting them as a bloc and probably incurring more severe damages, the US had to wait for the single member states to separate and distance themselves from each other in their race to reach individual open skies agreements. Like the three Curatii, the member states, starting with the Netherlands, rushed to conclude deals with the US, but they did so at different speeds. In lieu of stabbing them, as in the Roman legend, all the US administration had to do was to conclude reasonable individual agreements with each of them --all of which seemed beneficial enough for both parties but none of which could obtain major rights that only the lure of a unified market equivalent in size to that of the US could have conferred.

The “open skies” dispute is a clear case where the absence of unitary bargaining position played to the benefit of the EC’s negotiating opponent and where a different

70See the introduction for a presentation of the Horatii and Curatii story.
institutional framework would have produced extremely different outcomes. Moreover the separate open-skies accords that the US had initially reached with eight European countries tilted the cards for the remainder of the US-EU open skies discussions. Now that about 40 percent of US-Europe traffic flies under open skies, the EU will never be able to deliver the collective gains that it claimed it would be able to achieve better than the collection of individual member states. Whether this unique case of member state autonomy in trade negotiations will be used by the partisans or opponents of supranational competence in trade matters remains to be seen.
PART III

FINDINGS AND CONCLUSIONS
CHAPTER 7

INSTITUTIONAL EFFECTS VS. COMPETING EXPLANATIONS

The case-studies in Part II provide empirical evidence supporting the central hypothesis of this dissertation: for given member state preferences, the European Community's internal decision-making structure exerts an independent causal effect on the process and outcome of international negotiations. In each of the cases, the nature of the negotiating context and the degree to which member states were willing to let go of their sovereignty, both through the voting rules in effect and the delegation of negotiating competence to supranational negotiators, affected the final trade agreement reached with the United States.

Yet the observed outcomes in each of these cases could conceivably be attributed to other variables. For instance, some would argue that security imperatives explain the EC's negotiating strength in the Kennedy Round, while pressure by domestic interest groups account for the eventual renegotiation of the agricultural agreement in the Uruguay Round. Since international trade negotiations are necessarily overdetermined by virtue of their complex nature, it is clear that alternative explanations can be offered to explain the particular outcome of each negotiation. However, the challenge is to provide an encompassing theory able to explain all outcomes in all cases --or at least the outcomes in most cases-- and to predict the results of future negotiations. Can any alternative variable meet this challenge better than the institutionalist approach that I develop in this dissertation?
This chapter systematically examines other explanations which could account for the observations in all four cases and explain the “paradox of unity.” The first section explores alternative theories of the EC’s independent impact on international negotiations. I derive hypotheses about the external bargaining impact of the EC from the existing literature on European integration. The liberal economic literature suggests the hypothesis of the EC as discriminator and competitor. The integrationist literature inspires the hypothesis of the EC as transformer of national identities. The rational supranationalist literature, based on two-level game studies and principal/agent models, suggests the hypothesis of the EC as autonomous actor in a multilevel game. The second section presents alternative explanations of the outcomes of EC-US negotiations which do not focus on the systematic impact of European integration. Instead, these explanations are based on realist/intergovernmentalist theory, systemic variables such as the security environment and the existence of outside options, domestic variables, issue-related variables, and negotiation-specific variables.

Despite the host of variables that could explain the process and outcomes of EC-US negotiations, I show that none is as encompassing as the institutionalist analysis provided by this dissertation. I refute other explanations either because their predictions do not materialize, or because the results are consistent with the predictions but the explanatory factors were themselves the result of other variables. In both cases I argue that these explanations are not sufficient because they fail to recognize institutional factors.

I. The External Impact of European Integration through Other Mechanisms

What determines the bargaining leverage of the European Community in international negotiations is a question that scholars of European integration have not
addressed. More generally, the integration literature contains neither a formal assessment of the power impact of unity, nor a systematic debate about the expected consequences of integration on the relations of the integrating region with the third country. Yet three competing theories purporting to explain the direction of European integration offer disjointed elements of answer, which can provide the basis for deriving hypotheses about the external bargaining impact of combining negotiating forces into a single voice. In this section I derive hypotheses from the spirit of economic liberal theory, integrationist theories, and rational-supranationalist theories in order to revisit the case-studies and provide alternative explanations of the outcomes of EC-US negotiations. Table 4 on the following page summarizes these hypotheses regarding the external impact of the EC and contrasts them with my institutionalist analysis. I conclude that none of these hypotheses has the explanatory power of the institutionalist argument.
### Table 5
**Alternative Theories of the EC’s External Impact**

<table>
<thead>
<tr>
<th>Competing Theories</th>
<th>Hypothesis</th>
<th>Role of EC</th>
<th>Determinant of bargaining impact</th>
<th>Independent EC Impact</th>
<th>External bargaining impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Liberalism</strong></td>
<td>&quot;the EC as discriminator and competitor&quot;</td>
<td>liberal market</td>
<td>economic strength</td>
<td>yes</td>
<td>enhances EC bargaining strength and reduces likelihood of international agreement</td>
</tr>
<tr>
<td><strong>Integrationism</strong></td>
<td>&quot;the EC as transformer of national identities&quot;</td>
<td>social laboratory</td>
<td>collective identity</td>
<td>yes</td>
<td>enhances collective bargaining strength</td>
</tr>
<tr>
<td><strong>Rational supranationalism</strong></td>
<td>&quot;the EC as autonomous actor in a multilevel game&quot;</td>
<td>autonomy maximizer</td>
<td>institutional preferences</td>
<td>yes</td>
<td>enhances likelihood of pro-integrationist final agreement</td>
</tr>
<tr>
<td><strong>Institutionalism</strong></td>
<td>&quot;the EC as consequential institutional structure&quot;</td>
<td>institutional framework</td>
<td>institutional features (decision-making rules and negotiating autonomy)</td>
<td>yes</td>
<td>depends on specific institutional conditions</td>
</tr>
</tbody>
</table>
1) Economic Liberalism: The Community as Discriminator and Competitor

Economic theories of regional integration offer a first alternative explanation to the institutionalist argument of the linkage between internal integration and external bargaining strength—and thus of the outcomes observed in the case-studies. Based on the assumption that economic strength can be translated into negotiating advantage, liberal economic theory expects the integration of European economies into a single, unified market to have an impact on the EC's stance in international economic relations. The three mechanisms through which the EC exerts its independent external effects on the world political economy are the built-in discriminatory provisions of a common market, its enhanced competitiveness, and the attractiveness of its size.

Customs union theory suggests that, by its very nature, a customs union protected by a common external tariff discriminates against outsiders. 1 Countries inside the union enjoy preferential treatment at the expense of third countries. Thus the integrating region derives some bargaining advantage from being in the position of making concessions while the outside country is automatically placed in a position of demandeur since it cannot belong to the "club." Since Article XXIV of the General Agreement on Tariffs and Trade (GATT) exempted customs unions from the "most favored nation" clause, which would otherwise oblige them to grant the same preferential treatment to outside members, this discriminatory effect could play in favor of the EC in international trade negotiations.

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1See for instance Viner, 1950. The discrimination effects against outsiders are more or less accentuated depending on the degree of trade diversion or creation engendered by economic integration, as was first argued by Viner and has since become a standard argument among economists (i.e. de Melo and Panagariya, 1993).
Enhanced competitiveness is the second economic mechanism through which internal integration can affect the EC's external stance. Liberal economic theory, which has been underlying the process of European integration from the outset, argues that market integration has the effect of increasing competitiveness --through economies of scale in production, heightened competition, higher investment, and greater research and innovation. This enhanced competitiveness in turn increases the combativity of the EC, because of its new economic might and the argument that the Single European Market, the largest market in the world, can be self-sufficient. Becoming more independent from outside economies, the EC could therefore afford to refuse concessions and thereby increase its own influence on world trading rules. This assumption can explain the attitude of the EC in the late 1980s which gave rise to third countries’ suspicions of a “Fortress Europe.”

Finally, the creation of a larger internal market through integration also enhances the external bargaining strength of the region because the stakes are higher: whoever gets access to its market can now get access to a more desirable, larger market. As Hirschman argued in 1945, the bigger one’s own market, and the greater the government’s discretion in opening it up or closing it off, the greater one’s potential economic power. The offer to open up one’s own huge market to other exporters, in return for concessions, can thus be an effective means of influence. This puts third countries in a position of demandeur and should therefore improve the EC’s international bargaining position. Suddenly European countries have more to offer to the outside world, and they can expect some equal concessions in return.

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2On the relationship between foreign trade and national power, see the groundbreaking work of Albert Hirschman (1945).
According to this theory, it is therefore the strength of the EC's internal market that explains the outcomes observed in the cases. The market hypothesis convincingly explains the long-term evolution of the EC as an international actor able to increasingly shape the world political economy in its favor. It predicts that the EC should become both more offensive and more able to resist challenges as the integration of its internal market progresses. Indeed, the EC now initiates international policy changes rather than reacts to them, as evidenced by the growing offensiveness of the Community in international trade negotiations and the recent modeling of EC-US Mutual Recognition Agreements after the EC's own mutual recognition policy.\(^3\) It is undoubtedly the completion of its internal market in many sectors of the economy which has enabled the EC to set the agenda in key areas of the international economy.

This market hypothesis, however, fails to explain particular international trade negotiations. It predicts that the EC's external bargaining strength should be positively correlated with its level of internal economic integration. Therefore it can neither explain the paradox of unity, nor more specifically the process and outcomes of the Kennedy and Uruguay Round negotiations on agriculture. Moreover, it cannot account for variation or reversal of the EC's bargaining strength within the same negotiation, while the internal market is held constant or even integrates even further. Therefore it cannot explain the conclusion of the Blair House agreement, nor predict its renegotiation. The market hypothesis cannot account either for variation across issues at a given time, despite a similar degree of internal market integration. It could therefore not predict that the EC would obtain a favorable outcome in the public procurement negotiations, while having internal and external difficulties with agricultural negotiations. Finally, the market

\(^3\)Nicolaidis 1997.
hypothesis cannot explain why the EC is able to hold out concessions from its negotiating challenger in areas where the European internal market is barely integrated.

2) Integrationism: The Community as Transformer of National Identities

It is also possible to derive hypotheses about the linkage between internal integration and external bargaining strength from the various political theories of regional integration, which can thus provide a second alternative to my institutionalist approach. Many scholars of the Community have speculated that European integration may have an indelible effect on its participants. They see the EC as a social laboratory that transforms national identities into a collective identity distinct from the sum of its constituent parts. In this view, the Community has a definite impact on international negotiations, since the collective position it champions leads to bargaining outcomes different from those to be expected if each member state was left to negotiate on its own.

Early studies of the emerging process of European integration posited that belonging to the Community would transform the preferences of its participants, and therefore alter the external environment. Karl Deutsch and his "communitarian" followers argued that successive stages of integration could be expected to gradually build a sense of community in the region, at the expense of outsiders.\(^4\) By becoming socialized as "Europeans," EC policy-makers, negotiators, and technical experts would develop ways of working which would increasingly isolate those who do not belong to this network. Therefore, the stronger the sense of European solidarity, the harder the EC would defend its position externally. Hence, in the spirit of this communitarian approach, giving the EC a

\(^4\)Deutsch et al. 1957.
single voice in international trade negotiations would contribute to strengthening its bargaining position.

This Deutschian theory of political communities finds resonance in today’s constructivist approach to international relations. Alexander Wendt’s focus on the transformation of state identities suggests that the creation of a European entity has altered national interests and implies that the Community’s constituent members will identify collectively in the face of external pressure.5 These Deutschian views also reappear in Jonathan Mercer’s application of “self-help” analysis to European integration, when he states that the identification with a group leads to greater perceived differences with outsiders, and therefore to discrimination against non-members.6

Ernst Haas and other neo-functionalist scholars have also argued that far from being a passive process, European integration actively transforms the Community into a whole bigger than the sum of its parts. The spillover mechanism, at the heart of the Community’s successful expansion, occurs independently of the will of the member states.7 Although one could derive from this reasoning an argument about how this internal transformation affects the EC’s external relations, neo-functionalist scholars have nonetheless remained rather silent on the expected effects of negotiating as a single entity. Philippe Schmitter presented the “theory of externalization,” a first attempt at formulating the institutional mechanisms through which regional integration in the EC could be translated into political influence at the international level.8 “Externalization” suggests that the less national governments retain control over policy decisions, the more third countries will come to

5Wendt 1994.
6Mercer 1995.
7Haas 1958.
8Schmitter 1969.
consider the regional entity as a whole and bargain to avoid the discriminatory effects of being "left out" from the sharing of the integration benefits --therefore increasing the international bargaining leverage of the Community. Other political scientists, such as Leon Lindberg and Stuart Scheingold, have claimed that in theory, "acting in concert can generate significant bargaining power." 9

One can interpret this integrationist view as arguing that the further the EC stands along the integration continuum, the higher its external bargaining strength. It suggests the existence of a direct linkage between internal developments in the Community and external negotiations, which is mediated by the definition of a new European identity vis-à-vis outsiders and by outsiders. The impact of the creation of a collective European identity on international bargaining processes is twofold. First, the EC behaves in international negotiations as an actor in its own right, able to successfully conduct negotiations with the Community interest in sight. Second, the collective bargaining power of the Community is both different from and stronger than the sum of the individual bargaining power of each of the member states if left on their own.

The history of international trade negotiations in which the EC has taken part as a single voice speaking on behalf of its component states reveals, indeed, that its bargaining power may have differed from what could have been expected from the member states acting as free agents. However, is it really because member states have altered their national preferences as a result of their belonging to the EC, as the integrationist mechanism suggests? If this were the case, there would have been no separate bilateral deals on open skies between individual member states and the US, triggered by the member states' refusal to negotiate collectively on the issue. Moreover, if national preferences had been transformed as a result of integration, it should be particularly apparent in the agricultural

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9 Lindberg and Scheingold 1970.
sector, since agricultural policy has been handled at the Community level since the early 1960s. By contrast, it should have been impossible for EC member states to conclude a public procurement agreement with the US, since the internal market on public procurement existed on paper only when the external negotiations started and since the member states had divergent preferences on the issue. Neither of these predictions was confirmed by the case-studies. Even though there might be some validity to the claim that being joint members in the European Community might lead states to gradually alter the perception of their own interests, this is a long-term transformation that cannot explain variations in the process and outcomes of concomitant negotiations. It is therefore not useful for explaining the paradox of unity, nor accounting for the outcomes observed in the four case-studies.

3) **Rational Supranationalism: The Community as Autonomous Actor in a Multi-level Game**

The third and final theory from which one can derive hypotheses about the linkage between internal integration and external strength can be labeled “rational supranationalism” (or rational choice integration theory). My own institutionalist argument is closest to this approach. Recent scholarship has attempted to analyze the Community as an actor able to enjoy some autonomy from its constituent member states. Providing a middle ground between the whole-or-nothing expected independent effects of the Community predicted by the integrationist and intergovernmentalist analyses, this hypothesis focuses on the autonomous behavior of goal-oriented supranational actors through the lens of the principal-agent model developed by rational choice theorists. In internal negotiations over Community policy, according to Mark Pollack, supranational actors derive their autonomy primarily from the cleavages among member states’ preferences, from their own role as agenda-setters, and from the loopholes in the oversight mechanisms established by the
member states to control them—which vary by issue-area.\textsuperscript{10} The result is an independent causal role attributed to the Community.

In external settings, the EC derives some of its autonomy from the multilevel nature of the international negotiating process, which requires agreements to be reached at the domestic, Community, and international levels. The two-level game highlighted by Robert Putnam implies that chief negotiators are able to increase their influence on the final outcome of a negotiation by using their relay position to manipulate both their domestic constituency and negotiating opponents.\textsuperscript{11} Applied to the three levels of bargaining faced by EC representatives when they engage in international negotiations, this argument suggests that the external bargaining impact of the Community is determined by the ambitions of its institutional agents. As a result of their partial autonomy and ability to manipulate their various constituencies, the supranational negotiators can exert a definite impact on the final international agreement, which is likely to be tilted in favor of their own pro-integrationist (or pro-liberalizing) views.

This rational supranationalist hypothesis about the EC as an autonomous actor in a multilevel setting rests on the fundamental assumption that supranational negotiators are purposive actors with preferences distinct from those of the constituencies they have been created to serve. The independent causal effects of the Community on external bargaining stem from their drive to maximize their autonomy. Therefore, the EC is in a strong international position when its negotiating agents have enough leeway to promote their own agenda.

\textsuperscript{10}Pollack 1997.

This assumption of purposive supranational actors distinguishes my institutionalist analysis from rational supranationalism. In practice, EC negotiators are often forced to defend internationally a Community position which goes against their own preferences. Neither Hjizjen in the Kennedy Round, nor Brittan in the Uruguay Round favored particularly the negotiating instructions that they had been assigned by the Council. And yet they concluded the agreements for which they had been mandated. When EC negotiators did try to overstep their instructions to reach an international agreement more in line with their own preferences, such as MacSharry in November 1992, the agreement was later contested. Hence, one of the shortcomings of this hypothesis is that it fails to explain why the EC can be a successful bargainer in these circumstances. Moreover, rational supranationalism does not specify how third countries can exploit these supranational preferences to their advantage and the consequences of this exploitation on the final international agreement. By focusing not only on the autonomy and preferences of supranational actors but adding the supplementary dimensions of voting rules and nature of the negotiating context, the institutionalist argument provides a more thorough explanation than rational supranationalism could if it were investigating directly the question of the external impact of internal integration.

The three theories of regional integration, from which hypotheses about the external bargaining consequences of European integration can be derived, fail to convincingly account for the four cases of EC-US negotiations studied in this dissertation --and more generally to explain the determinants of the EC's external bargaining strength. Except for rational supranationalism, the other analyses make assumptions but do not offer a theory of how preferences translate into external bargaining leverage. Preferences, whether national or supranational, are therefore not sufficient to explain the external impact of the EC. The institutionalist argument, by contrast, does not hinge on the determination of preferences. Rather, preferences can be taken as given. The theory analyzes the different ways in which these preferences determine the process and outcomes of the international agreements.
eventually reached with third countries. This is why the institutionalist theory has more explanatory power than the three alternative hypotheses which were presented in this section.

II. Alternative Explanations of EC-US Negotiating Outcomes

If hypotheses that link internal integration and external bargaining strength fail to provide a compelling alternative to institutionalism as an explanation of EC-US negotiating outcomes, it may be because such a link does not exist after all. The realist (intergovernmentalist) scholarship on integration has long argued that the Community is simply a forum where the most powerful member states make deals and is a messenger of these deals from the internal to the external levels. Therefore, the paradox of unity and elements of the case-studies ought to be explained by variables unrelated to the external impact of internal integration in the EC, such as systemic, domestic, and negotiation-specific variables. Despite the important contributions that each of these variables make to our understanding of the four cases of EC-US trade negotiations studied in this dissertation, this section concludes that none of these explanations is as encompassing as the institutionalist analysis.

1) Realist Theory: The Community as a Messenger

Realist analysis attributes to the Community the sole role of a messenger and therefore denies it any independent external impact. The standard realist analysis of the world sees the states as the primary, if not unique, actors in international relations. Rational self-interest motivates their actions on the international scene. Their primary goal is to
maintain, or better, increase, their relative standing in the worldwide balance of power.\textsuperscript{12} Transposed to the study of European integration, this analysis has given birth to the intergovernmentalist approach, which views the Community as a mere gathering of sovereign states.\textsuperscript{13} Member states delegate power to the supranational institutions only when it serves their interests to do so. The corollary is that member states retain ultimate authority at all times.

It is therefore not surprising that intergovernmentalist scholars do not study the external effects of European integration. By definition they expect neither external consequences directly attributable to integration, nor independent changes in member state preferences. European integration cannot have external consequences of its own. The assumption is that the Community acts as a mere messenger, which relays the preferences of the member states from one forum to another without altering them. As a result of this assumption, the common EC position, which is reached internally through an intergovernmental bargain, can only reflect the preferences of the more powerful member states. As Grieco states, "the arguments presented by the EC Commission in the context of the GATT, as in other international forums, are based on and driven by the interests and preferences of the individual EC member states and especially the EC's core countries, Britain, Germany, and France."\textsuperscript{14} Therefore, developments inside the Community appear to have an effect on international negotiations only in so far as the big member states change their strategic assessment of what is desirable in the international arena.

Hence one could expect the intergovernmentalist analysis answer to the central question of this dissertation to be that all the effects observed in the cases should be

\textsuperscript{12}See for example Waltz 1959; Gilpin 1981; Grieco 1990.
\textsuperscript{13}Moravcsik 1991; Garrett 1992.
\textsuperscript{14}Grieco 1990, p. 21.
attributed to other factors, such as changes in the international balance of power or changes in domestic preferences. Indeed, the history of international trade negotiations in which the EC had to come up with a single negotiating position points to a resilience, not a disappearance, of national preferences. The virulence of French arguments on agriculture or the Portuguese insistence on textiles during the Uruguay Round do not suggest an increasing convergence in the determination of collective preferences, as is assumed by communitarian analysis for instance. However, the history of the Community’s single voice in international trade negotiations also reveals that its bargaining power differed from the sum of its member states’ individual bargaining power, if they acted as a free agent, or from what a simple balance of power analysis would suggest. Another weakness of the intergovernmentalist approach in accounting for international trade negotiations is that in several instances the EC succeeded in defending a common position antagonistic to the preferences of one big member state. The case of public procurement is a prime example of this.

Despite these shortcomings, this intergovernmentalist analysis could be valid if there indeed existed explanations other than ones based on a linkage between internal EC developments and external bargaining position to systematically account for the paradox of unity and the outcomes observed in the four case-studies. Borrowing Kenneth Waltz’ hierarchization of world politics into three levels of analysis, I will present in the following sections the alternative explanations in three distinct groups: systemic, domestic, and individual (ad hoc) variables.

2) Systemic variables

Several systemic variables have affected the conduct of EC-US negotiations in the direction of greater American resistance to European demands and may have contributed to
reducing the number of bargaining assets held by European negotiators. Four arguments, in particular, can be extended from their original focus in an attempt to explain the paradox of unity and the outcomes of the four cases of EC-US trade negotiations presented in the previous part of this dissertation. These arguments are based on security leverage, hegemonic stability theory, number of actors in the international system, and presence of outside options.

a) Security leverage

The evolution of the international security environment and the primacy of security concerns have provided policy analysts with the most common explanation for the discrepancies in European and American bargaining power in trade negotiations since the 1960s. According to this argument, security imperatives outweighed economic interests in the determination of US trade policy in the Kennedy Round era. Since it was crucial for US security to maintain Western Europe under the American defense umbrella, the EEC could use the Gaullist threat of building a European "third force" or of initiating a "rapprochement" with Eastern Europe as leverage in order to obtain what it wanted from the trade negotiations. Indeed, according to Shonfield, "in the folklore, the reason for the failure [of the Kennedy Round] is simple: the United States was too tender with its clever and ruthless allies."15 In the bipolar world of the 1960s, American negotiators were cautious not to antagonize the members of the EEC, which served as a protective bulwark against the spread of communism.16

15Shonfield 1976, p. 31.
16Care should be taken, however, not to overemphasize the political objectives of the round and the subordination of economic to political imperatives. Answering the question "are we prepared to make economic concessions to secure in return certain political objectives?" Robert McNeill, Deputy Assistant Secretary for Trade Policy, Department of Commerce, declared: "We are prepared to make only those economic --well, we are prepared to conclude a trade agreement that is truly reciprocal in the economic sense. We are not prepared in the executive branch to conclude an agreement that will be underbalanced insofar as our economic interests are concerned, in order to achieve a political objective." 1966 Hearings, op. cit., p. 55.
By contrast, as the security argument would naturally suggest, the time when economic interests had to be subordinated to foreign policy imperatives and when security commitments in effect burdened the US economy is almost gone. With the end of the Cold War, coinciding with the middle of the Uruguay Round negotiations, the European bargaining assets based on security imperatives faded. Therefore Mickey Kantor, at the time the Clinton administration's special trade representative, declared that since the cohesion of the Western bloc against the East was no longer a primary necessity, there was no reason for the US to continue granting economic sacrifices to its allies. Thus, as a result of transformation in the international distribution of power, the EC lost one of its main bargaining assets.\(^\text{17}\)

Although it is true that trade policy decisions are not made without taking into account the general context of the relationship between one country and its negotiating opponent, the security leverage argument falls short on three grounds. First, there is no historical evidence that the US acted in the Kennedy Round on the assumption that security imperatives prevailed over economic interests. On the contrary, hundreds of pages of internal US documents at the Kennedy Presidential Library recount discussions of the US strategy in the Kennedy Round negotiations without ever mentioning security arguments. When they did, it was instead to suggest that although security had overclouded trade imperatives in the immediate postwar period, the context had changed and therefore economic interests should no longer be held hostage to security interests. Special Trade Representative Christian Herter makes this very clear in the following excerpt from an internal 1964 memorandum:

> Perhaps I was the first to do this in stating my opinion that the negotiations should be pursued with the utmost determination through whatever crises may

arise and without fear that such determination might lead to the disruption of the Common Market. However, Under Secretary Ball made clear that the State Department was fully in accord with this position and was only concerned that our negotiating strategy and tactics be as little disruptive as possible. As he noted, the Common Market will not fall apart because of US insistence on a fair and reasonable trade bargain.  

Second, it is not because the Cold War is over that the US no longer needs European allies. Many threats to US security replaced the former Communist threat. The uncertainties surrounding the fall of the Berlin wall, the collapse of the Soviet Union, and the disintegration of Yugoslavia rendered the need for coalition building in a multipolar world perhaps more pressing than ever before. As was demonstrated by the Gulf War, which took place during the Uruguay Round, the US needs allies with whom to face these new dangers, both as geographical beachheads from where to launch attacks (for instance Saudi Arabia during the Gulf War, and also in Europe, especially if the US were to intervene in the Balkans) and to secure votes in the United Nations to obtain a mandate to act (especially in the Security Council). Therefore, given the uncertain security context in which the Uruguay Round took place, the security argument would predict that the US could not have attempted to engage in any economic bargaining which could have had the effect of alienating the support of its European allies. Therefore it cannot account for the paradox of unity.

Third, the security leverage argument could be interpreted as going in the opposite direction from explaining the paradox of unity. We can argue that it is the US who had political leverage back in the 1960s thanks to its commitment to European security, and it is the US who has lost today this main bargaining leverage. This is indeed the interpretation that I have seen used by US policy-makers in the 1960s. In the early days of the Kennedy Round, President Kennedy threatened to cut back the level of US troops overseas if

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18 Box 5, Agricultural Policy 1/30/64–7/1/64, Memorandum to Hon. Orville Freeman and Hon. George W. Ball, by Christian Herter, February 6, 1964.
American agricultural exporters could not be guaranteed access to European markets. In 1963 George Ball, Under Secretary of State, also discussed “the use of political leverage” as part of his proposed strategy for the Kennedy Round, and most importantly addressed the shortcomings of the use of political leverage for detailed economic issues:

Quite clearly the limits of our commercial bargaining position are such that we could hardly hope to bring about the drastic liberalization of world trade at which we are aiming without the employment of political leverage. We hold the paramount position in the Atlantic Alliance and most of our negotiating partners are committed to our fundamental political strategy of Atlantic partnership. Moreover, they all have reason to fear our reactions should such a basic and far-reaching American initiative as the TEA be allowed to fail. But at the same time we must be aware of the limits of political pressure. In sensitive sectors --such as agriculture and coal-- these limits are narrow. Our experience with poultry demonstrated that clearly. It also demonstrated another important principle --that political leverage has limited value when applied to questions of detail.

The menace that should the EEC block GATT trade liberalization, the US would pull its troops out of Europe, was often made indirectly clear by subsequent US administrations. As the Soviet menace was progressively waning throughout the 1980s, however, several European leaders, led by the French, suggested that if the US wanted to withdraw its troops from Europe it was welcome to do so. This created a perception that a US bargaining asset was disappearing. But in practice this threat of a linkage between troops and trade concessions was never taken seriously by the EC. Moreover, with the end of the Cold War, the threat has become more credible. On balance, therefore, changes in the international security environment have somewhat decreased the bargaining leverage of the EC in trade negotiations, but not clearly enough to explain the paradox of unity.

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20 Box 7, George Ball “Components of a strategy for the Kennedy Round”, preliminary draft, 10 December 1963.
b) Hegemonic stability

A second type of systemic explanation for the evolution of the EC's bargaining strength in international trade negotiations derives from hegemonic stability theory. The central proposition of this theory, developed initially by Kindleberger to explain the Great Depression of the 1920s, is that the world needs a hegemon to be stable. A hegemon is a country which is preponderant over all others in raw materials, sources of capital, markets, and competitive advantage in the production of highly valued goods. The hegemonic stability theory of the world's political economy is based on the assumption that the open international trading system is somewhat a public good --especially under the premise of the Most Favored Nation clause in GATT, according to which a tariff reduction granted by one country to another will be extended to all other members of GATT even if they do not reciprocate themselves. Therefore, a free rider problem may occur and as a result, the world trading system will fail to be open. Building on the work of Olson, the theory of hegemonic stability argues that when a member of the group (in this case, the international system) is so much larger than the others, the problem of free riding dissipates, first because the costs of free rides are relatively small compared to the gains from stability incurred by the hegemon, and second because the hegemon has the leverage of its own gigantic market to force other countries to reciprocate concessions. As a result, the presence of a hegemonic state ensures the openness of the world political economy --as long as the hegemon is in its ascendancy. In periods of hegemonic decline, however, the international trading system might revert to protectionism.

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23 See Baldwin for a discussion of hegemonic stability theory and the openness of the international trading system.

24 Olson 1965.
Hegemonic stability theory can provide a partial answer to the paradox of unity and the differences in bargaining outcomes observed in the four cases of EC-US negotiations studied in this dissertation. In the immediate postwar period, the US emerged as the unchallenged hegemonic power in the Western world. The successive American administrations chose to bear the costs of establishing a liberal international economic order, for instance through the creation of the GATT trade regime and the establishment of the Marshall Plan, in order to avoid a return to the closure of the international trading system in the 1930s which had partly contributed to the war. One could argue that during the Kennedy Round the US was still playing its role of hegemon. Therefore the US was willing to accept limited concessions from a European Community free riding in agriculture. By contrast, when its hegemonic power started to decline in the 1970s and was questioned in the late 1980s, time of the Uruguay Round, the US could no longer accept one-sided concessions. Hence, the number of transatlantic trade disputes dramatically increased, the US became more combative and acrimonious in its trade negotiations with the EC, and overall the EC-US relationship became more symmetrical. This could explain the paradox of unity.

Although the theory of hegemonic stability offers insights about EC-US trade negotiations which are soundly grounded historically, it suffers from several shortcomings which disqualify it as an encompassing explanation of the four case-studies. Most importantly, as has been abundantly pointed out in the literature, the theory of hegemonic stability is not a reliable predictor of the evolution of the international trade regime in periods of hegemonic decline. Most critiques of this theory have emphasized that international trade cooperation has increased as the American relative power eroded, instead of decreasing as predicted by hegemonic stability theory.25 European integration and rapid

economic growth in Japan have challenged the preponderance of the American economy, yet international trade agreements are negotiated in an increasing number of issue-areas and the WTO has larger powers than GATT ever had.

Moreover, historical evidence does not suggest that American policy makers in the 1960s saw the US as a hegemon in such dire straits for economic openness at all costs. Rather, the Kennedy Round was one of the first clear manifestations of the US hegemonic decline. Officials from the Kennedy and Johnson administrations all shared the assumption that the Kennedy Round negotiations with the Common Market was an exercise in bargaining among equals, not one in one-sided hegemonic domination. Moreover, in the words of a historian, "by early 1964, however, the Kennedy Round seemed no longer a grand, cooperative effort, but a quibbling, tough discussion between business rivals." Therefore, hegemonic stability theory is not an appropriate guide for understanding the evolution of EC-US trade negotiations.

c) Number of actors and alliance potentials

A third systemic argument for explaining the paradox of unity has to do with the number of actors operating in the international system and the alliance opportunities that they provide. The bargaining power of a protagonist increases with the number of potential alliances that it can strike on a particular topic. The number of countries participating in GATT more than doubled between the Kennedy and Uruguay Rounds, thereby increasing the potential for making alliances to achieve negotiating objectives. Fifty-two countries took part in the Kennedy Round, but only four important actors had any real weight in the negotiations -- the US, the EC, the United Kingdom and Japan. The debate, especially in agriculture, completely turned to a bilateral negotiation between the US and the EC.

Indeed, no alliances with third countries, mostly acting as a passive bloc, could have put pressure on one of the two protagonists.

By contrast, at the start of the Uruguay Round in September 1986, ninety-two countries belonged to GATT. Membership had risen to one-hundred-five by the end of 1992, and to one-hundred-fifteen by the end of the negotiations in December 1993. While the agricultural negotiations were still dominated by the US-EC confrontation, other countries gathered under the "Cairns Group" banner played a non-negligible role in pushing for reform.\(^{27}\) The explanation based on the number of actors in the system, or the theory of coalitions,\(^{28}\) would argue that such support for the US was critical in determining the outcome of the Uruguay Round agricultural negotiations.

Nevertheless, two opposing groups were distinguished early on --the US fought alongside the Cairns Group (the "reformers" group), but the EC was not isolated either as it garnered the support of Japan and the EFTA countries (the "status quo" group). Thus, unlike in the Kennedy Round, the US was not alone; but neither was the EC. In fact, the Cairns Group was more extreme than the US in its endeavor to obtain complete liberalization of world agricultural trade, pressing for a complete elimination not only of the EC's export subsidies, but also for the suppression of the US Export Enhancement Program and the Targeted Export Assistance Program, created in 1985. Several times, for instance at the inaugural Punta del Este conference, the US found itself playing the "middle man" between the EC and the Cairns group. Thus the existence of other actors beyond the US and the EC transformed the dynamics of the negotiations and introduced new bargaining assets in the game. The effect of such alliances is likely to be negotiation-

\(^{27}\)Fourteen countries, accounting for nearly a quarter of the world's exports of agricultural products, founded the Cairns Group in August 1986 with the explicit goal of fighting both European and American agricultural trade policies: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay.

\(^{28}\)Hampson 1995.
specific (for instance, the Cairns Group does not have any commonalty of interests with the US, or among themselves, on topics other than agricultural liberalization). Therefore it is difficult to extract systematic predictions from this argument.

Moreover, by definition, this line of analysis does not apply to bilateral, or in effect bilateral, negotiations. For instance, it cannot account for the outcome of the EC-US public procurement case, which turned rapidly into a bilateral negotiation, even though it was originally conducted under the auspices of the multilateral General Procurement Agreement. Neither can this analysis explain the outcomes of the open skies negotiations, which were based, like all international aviation agreements, on the principle of bilateralism.

d) Outside options

A final major transformation in the international system between the Kennedy and Uruguay Rounds, which could therefore explain the paradox of unity and the outcomes observed in the case-studies, has been the changed potential for making alliances bypassing the multilateral system --or "outside options." As several French scholars have argued, from the 1950s to the 1970s the preference system instituted between EC countries and their former colonies was mostly sufficient to ensure economic growth in Europe.29 The EC was not too dependent on the results of GATT multilateral negotiations and could therefore hold a strong stance against the US, even at the cost of failure of the round.30 By contrast, the US desperately needed access to the European market, since neither Asia nor Latin America were providing enough outlets for American production. The US was

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30 See "Common Market is cool to concessions for US," in The New York Times, 12 May 1962, which shows that the EEC was in a good bargaining position because "the US market is less important for the Common Market members than the European market is for the United States."
therefore in a situation of *demandeur*, thereby providing the EC with a bargaining asset, which could explain its victory in the Kennedy Round agricultural negotiations.

At the time of the Uruguay Round negotiations, the situation was reversed. For the first time the US had other channels of negotiations outside GATT, while the EC could not expect major gains from further regionalization: the countries of the European Free Trade Association were already closely associated with the EC internal market, and neither Eastern Europe nor the developing countries seemed at the time able to trigger the expansion of the Western European economies in the near future. By opposition, the US could then count on Asia and on the North American Free Trade agreement (NAFTA) with Canada and Mexico. During the course of the Uruguay Round negotiations, the US entered in a whole series of cooperation arrangements and free trade agreement with non-European countries, with the effect of showing the EC that outside options were available. The NAFTA negotiations were completed in August 1992 and the treaty formally signed on December 17, 1992.\(^\text{31}\)

During the same year, President Bush declared the US intent of entering into a free trade agreement with Chile and implemented the Andean Trade Preferences Act (Bolivia and Colombia). Also, most countries in the Caribbean Basin benefited from preferential tariffs and quota treatment under the US Caribbean Basin Economic Recovery Act. Indeed, "the proportion of total US imports from countries benefiting from such preferences reached an all-time high of 16 percent in 1992."\(^\text{32}\) As the result of these outside options, the US administration, conscious of this new situation, could "tough it out" when bargaining with the EC. Thus, when Clayton Yeutter, the US Trade Representative,

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\(^{32}\)USITC, op. cit., p. xii.
declared in September 1986 that the US would walk away from the negotiations if US demands (including the complete ending of farm subsidies) were not met, the threat appeared credible.33

The “outside option” argument could also be used to explain the case of open skies. One could argue that since the EC was not presenting a common front in the aviation negotiations, the US “outside option” was indeed inside the Community. The US was not fighting for access to any particular market, except possibly for London’s Heathrow Airport, but for a foothold inside the Community, through which connecting traffic could be directed. Hence, the Dutch-US open skies deal could be interpreted as an alternative option for the US to the signing of a bilateral deal with Germany, for instance.

In the public procurement case, however, the EC had no outside option available that could compensate for the failure to access American procurement markets. Even the prospects of the opening up of Central and Eastern Europe was no match for the potential of US procurement, were the Buy American restrictions lifted. Yet in spite of the absence of an outside option, the EC succeeded in obtaining concessions from the US. One of the shortcomings of an explanation of international negotiation outcomes based on the “outside option” variable is that it is problematic for a country to use the “outside option” card when it is the one initiating the attack on the other’s policy status quo. The defending country in a negotiation can always claim to have outside options in case the negotiation fails, since it did not want the agreement in the first place. But for the challenger, the lure of the opening up of the defendant’s market is by definition more attractive than any alternative option -- otherwise the challenger would have concentrated its efforts on the other option in the first place.

33See “US to walk out of trade talks if demands are not met,” by Robert Trautman, Reuters, 8 September 1986.
Another shortcoming of the analysis of international negotiations based on the "outside option" variable is that even when it exists, an outside option is rarely of equal value to the first option pursued. Most often, both the negotiating challenger and the negotiating defendant know that this outside option is only a second choice. The Clinton administration inaugurated APEC with great fanfare in 1993 to signal to the Europeans that were the Uruguay Round to fail the US would still have a back-up position, but the argument that a GATT agreement was no more valuable than Pacific economic cooperation was not credible. Moreover, outside options are often a complement, not a substitute, to the negotiation initially pursued. The structure of US trade with Mexico is significantly different from the structure of US trade with the EC. Therefore NAFTA is not a substitute for Transatlantic free trade, but a complement. As a result, the "outside option" variable, although clearly a contributor to a country's bargaining leverage, carries only limited power to explain international negotiating outcomes.

This section presents the main systemic analyses which can explain the paradox of unity and the case-studies, as well as predict the process and outcomes of international trade negotiations in which the EC takes part. Each of the four variables --security leverage, hegemonic stability, number of actors, and outside options-- can offer only a partial explanation. In some cases, the systemic variables, while all based on the same assumption that the nature of the system determines international negotiating outcomes, can even yield contradictory predictions. For instance, some of the hypotheses based on the security leverage analysis are plainly contradictory. Similarly, the simultaneous increase in the number of potential alliances within the system and in the potential options outside of the system appears contradictory. More generally, the main problem of systemic variables in building a theory of international negotiations is that they cannot explain variance in outcomes of simultaneous cases. Systemic variables, such as security environment and hegemonic stability, are based on slow moving changes in the state of the system and can thus explain only long trend evolutions. Yet two different negotiations held simultaneously
between the same actors can result in divergent outcomes, such as the agricultural negotiations in the Uruguay Round and the public procurement negotiations conducted in parallel.

3) **Domestic Variables**

A second category of explanations for the paradox of unity can be found at the level of the "second image" -- domestic variables. The EC bargaining strength may have decreased since the Kennedy Round as a result of change in the domestic determination, objectives, and capacities of the US and the EC member states. These factors are themselves the result of change in domestic coalitions, in the pressure exerted by various interest groups, and in the structure and capacities of the participants to international trade negotiations.

   *a) Electoral cycles and changes in domestic coalitions*

*Alternance* of administrations are often accompanied by change in policy goals and ideology, and therefore by change in the determination to obtain satisfaction or in the resistance to concessions on certain issues in international negotiations. Different government coalitions take the desires of key interest groups into account differently when formulating their trade policy. For instance, if the French Right comes to power on a platform vowing to protect French agricultural interests, it is likely that the confrontational style of US-EC trade negotiations in agriculture is going to increase.

Change in governmental coalitions or in party ideology may also affect the degree of protectionism acceptable to domestic political forces. One could argue that when the US Democratic Party was the herald of free trade, starting in the mid-1930s and all the way throughout the Kennedy Round negotiations, the US was more willing to settle on any
trade agreement with the European Community, even an unbalanced agreement --any agreement was better than no agreement for the promotion of the free trade ideology. By contrast, a US president elected on a platform of "managed trade," like Clinton, might have been more likely to accept a certain dose of protectionism and thus to refuse making unilateral trade concessions to reluctant European negotiators.

Electoral cycles in the US and the various EC member states can affect trade negotiations. The proximity of a crucial national election can paralyze international negotiations because the incumbent government chooses to halt temporarily the negotiating process in order to avoid making a stake of the international issue in the domestic political debate. On the contrary, a candidate may wish to present to his domestic audience an image of international firmness and may therefore use international negotiations for domestic posturing in an electoral period. For instance, Carla Hills publicly announced the retaliatory sanctions against the EC in the oilseeds case in the week preceding the American presidential election of November 1992. Furthermore, the controversy about the Blair House agreement and the firm determination of the French socialist government to immediately demand its renegotiation can be directly attributed to the crucial parliamentary election of March 1993, in which the incumbents had to fend off their right wing adversaries' virulent criticisms that the interests of French farmers had been sold off at Blair House. One could similarly argue that the end of the "empty chair" crisis and the resumption of the Kennedy Round negotiations in early 1966 result from the French presidential election of December 1965, in which the strong electoral support for the Common Market, especially by farm groups, was partly responsible for De Gaulle's failure to win a majority vote in the first round of balloting.34 The French attitude towards its

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34Preeg 1970, p. 120.
European partners became more conciliatory in between the two electoral rounds, and De Gaulle ended the crisis soon after his short victory on December 19.

Several criticisms can be made of this analysis. First, it fails to explain the outcomes of negotiations on issues of lesser public political salience. While public opinion in France and Ireland was well aware of agricultural negotiations over suppressing farm subsidies during the Uruguay Round, the public procurement talks never made it either to the headlines, nor to the debates during national electoral campaigns. Yet public procurement represents 11 percent of the European Union’s GNP. Second, the electoral cycle argument can play in the opposite direction if the incumbent government chooses to time negotiating concessions sooner, rather than closer to the election date. Third, negotiating deadlines are often independent from national electoral cycles, especially in multilateral settings like GATT negotiations, where it would be too complex to accommodate each major participant’s domestic electoral schedule. Finally, on major issues, the fracture lines in public opinion may not fall along party lines. In the US as in most European countries, free trade is favored by the center and abhorred by the extremes. It may be divisive inside each major party and each major government coalition (e.g. both the Democratic and Republican parties in the US have pro- and anti-free trade factions). As a result, it might not be in the interest of any big party to make the issue of international liberalizing trade agreements a partisan issue in electoral times.

b) Interest group model

A second, and related, domestic variable which could account for the different outcomes observed in the case-studies is the influence applied by various domestic special interest groups. The traditional pressure group model of politics suggests that variations in the level of trade protection are explained by the pressures that sectors, firms, and workers
exert on politicians.\textsuperscript{35} Political institutions become captive to those special interest groups who are especially powerful for a variety of reasons, including financial support, historical relationship, or potential for disruption (e.g. French farmers and truck drivers' lengthy and violent protests). As a result, both the international negotiating position and the bargaining strength of a country can be directly traced to the domestic power of certain pressure groups.

The relative influence of one pressure group over another may explain differences in bargaining outcomes of two simultaneous international negotiations. In particular, in the context of my study, this variable has the potential to explain cross-sectional differences between simultaneously-held defensive and offensive negotiations. This is in marked contrast to the systemic variables, which could only offer an explanation for time-series differences in negotiations.

A well organized, politically powerful group will force its government to fight for its own cause at the international bargaining table. Yet not all pressure groups carry the same political weight. The literature on pressure groups, starting with Olson’s seminal 1965 study, generally agrees that small groups representing concentrated interests are the most powerful.\textsuperscript{36} In trade policy, groups representing protectionist interests are more likely to successfully influence the political process than those benefiting from free trade. The central reason is that “the industries that would benefit from protection have more concentrated resources than the consumers that are hurt by protectionism, they will organize more effectively and have greater influence on the political process.”\textsuperscript{37}

\textsuperscript{35}See for instance Gourevitch 1986, Rogowski 1987; and Magee and Young 1987.

\textsuperscript{36}Olson 1965.

\textsuperscript{37}O’Halloran 1994, p. 13.
Therefore, applied to the distinction between defensive and offensive negotiations introduced in Chapter 2, one should expect groups representing protectionist-oriented sectors to mobilize their political resources in a defensive negotiation, while an offensive negotiation would not yield similar mobilization by the more diffuse interests served by the opening of international trade borders. Even if the particular interests of those hoping to benefit from international liberalization were concentrated, such as those representing large European banks or construction companies for instance, one can expect the fight put up by sectors and individuals set to lose well-known advantages to be fiercer than the one led by those hoping to derive yet-unknown benefits in international trade negotiations.

The pressure group model could therefore explain the case-studies and the paradox of unity by arguing that the Community obtained better results in agriculture in the 1960s than in the 1990s because the agricultural pressure groups in the member states were more politically powerful at the time, mostly for demographic reasons. Moreover, France eventually kept a low profile in the last leg of the Uruguay Round negotiations because its agricultural lobby had been assuaged by important amount of financial compensation as a result of the arrangements related to the reformed CAP in the fall of 1993.38 Side-payments can therefore tame the protectionist power of special interests. With respect to the defensive/offensive dichotomy, the pressure group model seems to predict that the EC would be firmer in its defense of existing interests than in the offensive pursuit of new benefits. Therefore, one should observe better success of the EC in defending internationally its agricultural status quo during the Uruguay Round than in pushing to change the American status quo in public procurement during the same period, since the firms and industries expected to benefit from a relaxation of the Buy American legislation had more diffuse interests than the farmers’ groups fighting to preserve their subsidies.

38See Devuyst 1997.
Agricultural negotiations are a good candidate for the use of the pressure group model of politics. They are a case in which it seems relatively easy to discern a general "national interest": overall, keeping subsidies or getting access to the other’s market is the preference of everyone. But in most other cases, various interest groups with conflicting preferences might try to exert their political influence on a given issue, and the "national interest" might be harder to determine. For instance, in the case of open skies, should the UK defend the interests of BAA, the largest airport operator in the world (who manages Heathrow and, among others, Pittsburgh’s international airport), or should it fight for British Airways who is unwilling to relinquish control on any of its coveted slots at Heathrow? Moreover, in the future, when negotiations cover new issues such as services and intellectual property, it might become even more difficult to aggregate the divergent interests within the same country into a single national interest.

c) State structure and capacities

A third domestic variable which might affect EC-US negotiations is change in state structure and capacities. The demographic and economic evolution of the countries studied over thirty years might contribute to explaining the paradox of unity. For instance, the continuation of the trend towards rural exodus might diminish a country’s international credibility in agricultural negotiations. The percentage of farmers in the working population might determine the willingness of a national government to oppose (or demand) agricultural concessions. This percentage has not changed much between the two rounds in the US, but has been dramatically reduced in France.\(^{39}\) As a result, one could expect the outcomes of agricultural negotiations to be less tilted towards preserving the European status quo, since presumably France could no longer claim agriculture to be a “vital

\(^{39}\)Even if, as Keeler argues, the "farming community" at large still has a considerable political influence in France (Keeler, 1996).
national interest.” The reverse argument could also be made, however. A government might be expected to fight harder to protect its last remaining farmers from extinction, on the grounds for instance of preservation of social heritage and geographical landscape. The state structure argument can partly explain the bargaining position that countries adopt in international negotiations, but it cannot predict their bargaining leverage.

A related variable which could potentially explain changes in the relative EC-US bargaining strengths is that of domestic capacities. For instance, the thesis about American relative economic decline in the 1980s would suggest that factors internal to the US, such as poor education and insufficient productivity, may damage the US bargaining position in international negotiations and, therefore, increase EC negotiating strength. On the other hand, although this decline may deprive the US of some bargaining assets, it may also have increased the American resolve and determination to obtain compliance of the EC to liberal multilateral trading rules.

Moreover, since relative rates of growth among economies evolve slowly and changes in the trends are difficult to identify in real time, negotiators on any particular issue are unlikely to be aware of them and less likely to take them into account at the time they are bargaining. The Uruguay Round started amidst talks about the American decline, but in the 1990s the US economy grew the fastest among all advanced industrialized countries, while by contrast Asian economies, which fifteen years ago were expected to surpass the US by the end of the century, have failed to fulfill these expectations – especially in the past few months. In other words, the confidence level at any point in time regarding these supposed relative trends is sufficiently too low to be of any value in the determination of relative bargaining strength, either perceived or real.

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40 This thesis was developed in several studies, including Kennedy, 1987; and Gilpin, 1981.
Finally, the state of the domestic economy may provide some answer to the paradox of unity. The US faced slow growth and balance of payment difficulties during the Kennedy Round, but the new pressures subsequently brought on by the American economy may have heightened US determination to obtain satisfactory results in the Uruguay Round. The multilateral negotiations started as the US was experiencing a high budget deficit (caused by loose fiscal policy and tight monetary policy) and high interest rates, which led to an overvaluation of the dollar and produced a major US trade deficit.\textsuperscript{41} According to many observers, the American position toward trade negotiations with the EC changed drastically as the US experienced its first bilateral trade deficit in 1986.\textsuperscript{42} More specific pressures were parallely brought onto world agricultural markets, resulting in a farm crisis in the United States in the mid-1980s and reinforcing trade tensions across the Atlantic. Twenty years of CAP dramatically increased the European agricultural output, with the result first of evicting American production from the European market and, second, of competing with US production in third countries and leading to an agricultural surplus that could not be absorbed by the world market. The consequences of US deficits and hardships on world agricultural markets led to a heightened resolve by the American administration to fight unfair EC agricultural subsidies and to refuse to make concessions in bilateral negotiations.

This economic argument is plausible, but only to a certain extent. As economists would argue, utility functions are monotonic --i.e. more is always better. It is not because a country's economy is in good shape (to be distinguished from a country’s economy being hegemonic) that it is ready to accept its negotiating opponents’ position without counterpart. As long as a country is assumed to take only its own welfare into account in determining its preferences, the fact that a concession by the relatively rich country would

\textsuperscript{41}The US trade deficit reached $100 billion in 1984.

\textsuperscript{42}Based on private interviews at the EC Commission.
create a lower decrease in utility relative to the gain obtained by the relatively poor country (i.e. utility preferences are concave) is irrelevant. Therefore, one should not expect the US (nor the EC) to relax their standards of what are acceptable concessions from the opposite party because their domestic economies are temporarily in good standing.

The domestic variables which I presented in this section clearly have to be taken into account while analyzing international negotiations. They all contribute to explaining a country's bargaining position by building a theory of preference formation. Nevertheless, these analyses do not answer the central question of this dissertation because they do not explain how preferences are translated into bargaining leverage. By contrast, the institutionalist analysis takes preferences as given and illuminates the link between negotiating preferences and negotiating leverage by focusing on the determinants of bargaining leverage. In that sense, domestic explanations and institutionalist analysis are complementary in the study of international negotiations.

4) Negotiation-Specific Variables

Finally, the relative bargaining strength of the EC vis-à-vis the US may have been affected by ad hoc variables, such as the changing nature of the issues negotiated and the individuals who handled the negotiations.

a) Nature of issues in negotiations

One argument that is sometimes used to explain differences in bargaining outcomes is that the nature of the issues at stake influences the final result. These outcomes can always be explained with reference to the "specificity" of the issue-area addressed in the negotiation. In other words, it is not possible to compare apples with oranges --or agriculture with aviation or public procurement.
Even for two negotiations in the same sector (such as the Kennedy Round and Uruguay Round negotiations on agriculture), it might be impossible to undertake a comparison because the nature of the specific issues being negotiated is different. Indeed, if emphasis was placed in both the Kennedy and Uruguay Rounds on agriculture, the nature of the proposed agricultural reform differed. The main instrument through which market access in agriculture would be guaranteed according to the Kennedy Round's initial objective was the control of world prices of agricultural commodities. It was more a price fixing exercise than a liberal endeavor. The Uruguay Round, by contrast, aimed at eliminating trade distortions in world agricultural trade by focusing on national agricultural policies. Second, the Uruguay Round was the eighth round of multilateral negotiations undertaken under the aegis of GATT. Each round resulted in a significant reduction in tariffs, measures having equivalent effect, and even non-tariff barriers. As a result, there were less "easy" issues upon which to bargain. The Uruguay Round tackled either new issues never negotiated before, such as services or cultural goods, or issues addressed but unresolved in previous negotiations, such as agriculture. As a result of the inherent difficulty of the issues in discussion, it could have been expected that the bargaining strength of the EC would be impaired as the negotiations became tougher.

Therefore, according to this *ad hoc* argument, no explanation is necessary for the paradox of unity since, in the absence of possible comparison between the bargaining outcomes in different negotiations, there is no paradox at all. I dispute the validity of this argument because, like in the case of the variable to follow, the focus on the nature of the issues being negotiated cannot be an encompassing explanation of international trade negotiations. It is not sufficient to say that the specificity of the issues drive the differences in bargaining outcomes. The real challenge is to explain what determines this specificity, for instance by examining pressures by domestic interest groups or the relative weight of the issue in question in the national economy of the parties to the negotiation.
b) The negotiators

Finally, a variable that recurs in historical accounts of all negotiations as well as in negotiation theory is the personality of the negotiators. According to this view, the process and outcomes of negotiations can be explained, at least partly, by the skills, personal experience, values and ideology of individual negotiators and decision-makers.43

Many commentators have attributed, for instance, the display of European force and antagonism toward the US during the Kennedy Round to De Gaulle himself. His strong personality led the US to believe his threats of sabotaging any deal not favorable to French interests and sacrificing the Common Market and even the Atlantic Alliance to do so. The EC negotiators were no match to De Gaulle in their dealings with the US. Therefore, the US conceded in the agricultural negotiations. By opposition, no vocal European personality aiming at reducing American hegemony governed one of the EC member states during the Uruguay Round. Moreover, the EC negotiators during Blair House, Frans Andriessen and Ray MacSharry, were biased in favor of agricultural liberalization and ready to interpret loosely their negotiating instructions in order to devise creative solutions to solve the agricultural impasse. As a result, the US was able to conclude with the EC the favorable Blair House agreement. The replacement of the two EC commissioners who negotiated Blair House with two other personalities, Leon Brittan and René Steichen, in January 1993 may explain the eventual renegotiation of the agreement.

Similarly, references have been made to the personalities of the various American trade negotiators. Christian Herter, the first US Special Trade Representative, was an Atlanticist. Born in Paris, he was a key Congressman in the passage of the Marshall Plan

43Not surprisingly, the various individuals whom I interviewed for this dissertation all emphasized the crucial role played by individual negotiators in striking deals and concluding negotiations.
in 1947 and later served as Secretary of State in 1959.\textsuperscript{44} Associated to the pro-European clique of Jean Monnet's friends in the American government, he was therefore not prone to a conflictual style of negotiating with the Common Market, which may have contributed to the eventual failure of the US in the agricultural part of the Kennedy Round. The personality of Herter was highly different from that of Carla Hills, the US trade representative in the Uruguay Round, who vowed to bring down European and Japanese trade barriers with a "crowbar." The combination of weaker European leadership and stronger American antagonism may partly explain why the United States ultimately made more concessions in the Kennedy than in the Uruguay Round.

While the personal skills and values of individual negotiators may indeed play some role in the negotiating process, however, it can only explain marginal outcomes. There is only so much a negotiator can do when he or she is constrained in their every move by strict negotiating instructions emanating from their home governments. The firmness, friendliness, and creativity that individual negotiators might display at the international table are allowed to exist only within the limits set by their principals. The variable focusing on the delegation of negotiating competence, which constitutes part of my central argument, is more valuable --and more generalizable-- in explaining international bargaining outcomes than a strict emphasis on the negotiators themselves.

\textsuperscript{44}For a history of Herter's tenure as Special Trade Representative, see Steve Dryden, "Trade Warriors," \textit{Europe}, May 1990, pp. 15-16.
**Conclusion: The Relative Power of the Institutionalist Explanation**

Both the theories of integration, assuming a linkage between internal integration and external strength, and the diverse systemic, domestic and *ad hoc* variables presented in this chapter yield valuable insights into our understanding of the behavior of the European Community in international trade negotiations. They contribute bits and pieces to highlighting the determinants of the Community's international bargaining position on different issues, but for the most part they yield such contradictory predictions and combine in ways so complex that they have only limited explanatory power.

The more valuable approaches, such as the pressure group model of politics and the analysis based on state structure and capacities, clearly capture important dimensions of EC trade policy-making and contribute to explaining the determinants of EC bargaining positions in international trade negotiations, but not the determinants of the EC's collective bargaining leverage. Because these approaches are unable to explain how preferences in turn affect international bargaining, they need to be coupled with a model of negotiating power in order to successfully explain international bargaining outcomes. Of the multiple variables presented in this chapter, only the market hypothesis, rational supranationalism, and the “outside options” variable address directly the question of the determinants of external bargaining leverage. Yet they offer contradictory assessments of the paradox of unity and fail to explain the outcomes of those negotiations in which their central assumptions did not materialize. Moreover, each of these explanations is incomplete because it fails to take into account the crucial role of institutional factors in translating internal preferences into external leverage.

The approach here to understanding the external bargaining impact of the Community centers on the existing institutional framework at the supranational level.
Given an exogenous distribution of national preferences and the defensive or offensive nature of the international negotiating context, the voting rules through which preferences are aggregated and the level of supranational competence that member states consent to grant EC negotiators determine to a large extent the bargaining potential of the EC speaking with one voice in international trade negotiations. The central focus of this dissertation on the aggregation of national preferences into a collective position defended internationally with a single voice distinguishes this approach from traditional institutionalist explanations of trade policy-making, which emphasize only the impact of national institutional arrangements. This approach also differs from two-level game analysis through its non-exclusive emphasis on the delegation of negotiating authority, supplemented by a focus on voting rules and negotiating context as additional explanatory variables.

By emphasizing the role played by institutional mechanisms for preference aggregation and the crucial distinction between defensive and offensive negotiations, and by combining these two variables with the two-level game analysis focus on the delegation of negotiating competence, I attempt to construct a theory of the determinants of external bargaining leverage. This supranational institutionalist theory may also be used to account for the role of the EC in the world. This argument has the potential for being applied more generally to the analysis of international negotiations, especially in a world where collective trade groupings constituted of distinct sovereign entities are likely to become more prevalent.
CHAPTER 8

CONCLUSION: FROM SINGLE TO MULTIPLE VOICES

This dissertation examined how integration among nations can reshape power relations in the international arena. It explained how the European Community influences the nature of the world political economy through its role in international trade negotiations. It attempted to shed light on the “paradox of unity”: why has the bargaining leverage of the EC in international trade negotiations not progressed at the same time, and with the same intensity, as the deepening of its institutional structure and the increase of its relative capabilities in the world economy over its forty years of existence? Contrary to the political conventional wisdom about internal unity as external strength, in certain circumstances being “divided but united” could give the EC an edge in international bargaining, as was originally foreshadowed by Schelling. More generally, the paradox of unity could be explained by a focus on key institutional features of the EC’s trade policy-making process.

Detailed studies of four cases of EC-US trade negotiations, as well as a careful examination of the multitude of alternative variables which could conceivably account for the outcomes observed, confirmed the explanatory power of the supranational institutionalist argument that I developed in this dissertation. One further proof of the validity of this argument is that some member states of the EC, realizing that they need control over its institutions in order to control the outcome of international agreements, are currently trying to regain some of their lost sovereignty in the realm of trade. After a summary of the principle findings and possible extensions of this dissertation, the conclusion will focus on the institutional battle over trade policy-making currently raging in
the European Union. Finally, I will examine the theoretical and political implications of this thesis.

I. Negotiating as One as Handicap and Leverage in International Negotiations

1) Divided but united: Summary of findings

Trade policy is not driven purely by preferences, as is claimed by the pressure group model. Neither does it automatically result from the relative international capabilities of states, as realism assumes. Instead, I have argued that the institutions through which preferences are aggregated influence outcomes. European integration poses a special challenge to analysts of world politics in that it adds a supplementary level of preference aggregation, which clearly cannot be captured by the traditional realist assumption of states operating in the international system as unitary actors. Existing theories of regional integration and international relations have neglected to address the question of the independent impact of the existence of the European Community on the rest of the world. The key goal of this dissertation was to remedy this lacuna in the literature by developing a simple model of the external consequences of the obligation for the EC member states to negotiate international trade agreements with a single voice.

Three factors mostly determine the likely impact of negotiating as a single entity on the final international agreement. The first key variable is the nature of the negotiating context, which can be either defensive or offensive, depending on the identity of the party challenging the policy status quo. Second, the internal voting rules of the negotiating bloc have a major impact on its external bargaining leverage. National preferences can be
aggregated into a single voice at the Community level according to either majority or unanimity voting. Whether one rule is chosen over the other dramatically impacts both the bargaining position defended internationally by the EC and its effectiveness in obtaining a final international outcome close to this bargaining position. Finally, the third variable is the negotiating competence delegated to supranational agents, which is strongly positively correlated with the institutional rules variable. The institutional conditions under which the member states delegate bargaining flexibility, autonomy and authority to the negotiators also affects the potential bargaining leverage of the single entity in international negotiations.

The central supranational institutionalist argument of this dissertation rests on the combination of these three key factors. Going back to the initial questions which motivated my inquiry, I am now able to offer the following answers.

• Does the European Community have an independent causal effect on international agreements? Yes. Both the theoretical model and the case-studies of EC-US trade negotiations in agriculture, public procurement and open skies confirmed that, given exogenous member state preferences and depending on the defensive/offensive negotiating context, the degree with which member states let go of their sovereignty impacts the process and outcome of international trade agreements. This finding contradicts the standard intergovernmentalist view that the existence of the EC is inconsequential since it serves only the purposes of forum where member states make deals and messenger relaying position from the collective to the international levels.

• How does the obligation for EC member states to unite their bargaining positions into a “single voice” affect the likelihood and content of international agreements? It depends on the case. By combining the three key variables of negotiating context, voting rules in the EC, and negotiating autonomy delegated to Commission agents,
I was able to highlight four ideal scenarios about the strategic effects of the EC’s institutional structure on international trade negotiations.

1) *Low supranational competence and defensive negotiation*: When Commission negotiators act in a defensive case with no autonomy following an unanimous decision by the member states, the agenda is set by the most conservative state and the hands of EC negotiators are tied. The challenging opponent is therefore forced into making concessions or keeping the status quo. The conclusion of an international agreement is less likely, but if signed, the final agreement reflect an enhanced EC bargaining strength. The EC collective bargaining power is high, but only the extremist state benefits.

2) *More supranational competence and defensive negotiation*: When member states choose their collective negotiating position according to majority and Commission negotiators have some bargaining latitude in a defensive case, median states set the bargaining agenda. The conclusion of an international agreement is more likely. From the opponent’s point of view, the EC is not a “tough” bargainer. The majority of member states gains, but the most conservative members, whose voice has been attenuated, lose from being forced to negotiate as a whole.

3) *Low supranational competence and offensive negotiation*: When Commission negotiators act in an offensive case with no autonomy following a unanimous decision by the member states, the most conservative state, possibly coopted by the defending opponent as a “Trojan Horse,” can set the agenda and cut short the offense. Therefore most offensives do not materialize into actual negotiations. The opponent is protected from policy change; thus the EC bargaining power is low. Most
member states lose by being subjected to the amplified preferences of the extremist country.

4) *More supranational competence and offensive negotiation:* When a majority of member states suffices to launch offensive actions, it is harder for the defending opponent to play divisive tactics inside the EC and therefore offensives become more frequent. Median states set the agenda. The conclusion of an international agreement is more likely and will likely be tilted in favor of the EC's position. The voice of the extreme state is attenuated, but the majority of member states gains from negotiating as a single bloc.

• *Has the EC indeed become increasingly effective in international trade negotiations as it has integrated and consolidated internally? Do the EC’s internal conflicts hurt its potential international bargaining leverage in international negotiations, as conventional wisdom assumes?* The answer to these two questions is no, in certain circumstances. Contrary to the conventional assumption that the EC’s cumbersome decision-making procedures have negative effects on its external bargaining potential, I argued that in specific cases the EC could use its institutional constraints strategically in order to reach its negotiating objectives. This is where being divided but united can give the EC an edge in international bargaining.

• *What individual benefits does combining negotiating forces with others yield to members of the coalition? Do the individual member states have a similar chance at influencing the final agreement?* The member states of the EC do not benefit equally from being forced to share their external trade powers with others. When their preferences diverge from those of their Community partners, they improve their bargaining power over acting on their own on the international scene by being
forced to negotiate with a "single voice" while retaining their right to veto the deal and control the negotiators' moves. States with median preferences, especially if they are small, are better off inside a Community governed by majority rule. Of course the alignment of national preferences varies by issue, but member states cannot opt in and out of the Community on an ad hoc basis --at least for the moment.

The theoretical linkage between divergent national preferences and single collective bargaining leverage at the international level rests on the crucial role of institutional designs. For a given distribution of member state preferences, the institutional mechanisms through which these "divided" preferences were "united" at the supranational level affected the process and outcomes of international negotiations involving the EC. Divided but united, the European Community has an important impact on world politics.

2) Refining the argument

There are several important topics which I did not explore systematically in this dissertation but constitute an agenda for future research. The following three possible extensions of the present study are particularly worth pursuing: the credibility of institutional constraints in a repeated game, the analysis of the negotiating opponent's own institutional constraints, and a formal treatment of the issue in game theoretic terms.

a) The credibility of institutional constraints in a repeated game

Institutional constraints can play to the EC's international bargaining advantage in certain circumstances, but does the repetition of negotiations over time affect the negotiating opponent's strategy in dealing with the Community? I have not examined in this dissertation the issue of iteration, which is central to game theory research. Axelrod, for
instance, has shown that iteration could foster cooperation in games which had non-cooperative solutions when played only once.\textsuperscript{1} I believe that the linked issues of iteration and credibility are important for predicting the process and outcomes of international trade negotiations. It is likely that the tools and tricks used in one negotiation, such as the empty chair policy, cannot be duplicated in a subsequent negotiation. When negotiations are repeated, the parties learn about each other’s constraints and attempt to adjust accordingly, for instance by transforming their own institutions to mirror their opponent’s constraints or by ceasing to give up to the opponent’s institutional blackmail. Indeed, constraining domestic institutions which can force an agreement reached internationally to be renegotiated damage, in the long run, the reputation of negotiators as well as institutions. The study of how one learns to cooperate with a complex party and how some institutional assets get transformed into handicaps over time could be a logical extension of this dissertation.

\textit{b) Taking the negotiating opponent into account}

Throughout this study I held the institutional structure of the EC’s negotiating opponent constant and I treated the opponent as a black box. This is why I often spoke of “potential” bargaining leverage, and not actual bargaining power. Another logical extension of my dissertation could be to relax the assumption that the opponent’s institutions are constant and inconsequential. Instead, one could take into account the institutional structure of the opponent, examine the constraints that it imposes on the international negotiation, and see how the institutional constraints interact on both sides of the bargaining table. Comparing and contrasting the EC and US trade policy-making process could prove particularly interesting since they share many similarities and, given the place of the EC and the US as the world’s two foremost trading entities, have the potential to learn from each

\textsuperscript{1}Axelrod 1984.
other with every negotiation. Another research project could then be to study the bargaining effects of a variety of institutional systems and examine their interactions.

c) Formal extension of the argument

Both the main topic of this dissertation and the two extensions which I just suggested lend themselves naturally to a formal treatment using the tools of game theory. In particular, among the questions this formal analysis could help answer, the following stand out. First, are the conclusions that I reached robust to different plausible specifications of the strategies that actors in international trade negotiations can follow, as well as to the other assumptions made? Second, to what extent can the intertemporal exchange of gains and losses across different issue areas explain the outcome of any particular negotiation? Finally, the game theoretic approach could lead to an explicit analysis of how the gains from trade get split in any given negotiation as a function of the initial positions of the actors, the strategies they follow, and their respective bargaining powers. I expect to pursue such an avenue in future work.

II. Malleable Institutions: From Single to Multiple Voices

If institutions influence policy outcomes, then actors will have preferences over institutions as they do over policies. Are the member states trying to transform the institutional rules of the Community to take account of their intended or unintended consequences? Despite the theoretical and practical evidence pointing to a higher effectiveness of the EC in international negotiations when its collective position cannot be torn apart by third countries, especially in offensive cases, member states are indeed engaged in a legal and political battle to regain some of the supranational autonomy they
delegated earlier to the Community. This battle shares many similarities with the current impasse in American politics over the renewal of the fast track executive authority for international trade negotiations.

This tension between national sovereignty and international bargaining efficiency has recently risen to the forefront of the institutional debate in Europe. For the first time in the history of European integration, a formal reassessment of external trade competences is taking place. Ruling on a dispute over competences between several member states and the Commission, the European Court of Justice declared in November 1994 that the member states and the Commission shared mixed competences in the “new areas” of trade, such as services and intellectual property. This decision, and the subsequent rewriting of the Treaty articles concerned with EC trade policy making at the 1997 Amsterdam intergovernmental summit, represent a setback for supranational autonomy and authority in trade negotiations. This formal acknowledgment that trade policy could go “back to diversity” might drastically change the nature of whose voice speaks on behalf of the European Union in future trade negotiations.

This section explores the recent shift of competences in EU trade policy from the supranational Commission back to the member states. The model presented in my dissertation should help predict how these ongoing institutional changes will affect the EC’s future external bargaining capabilities, the process of European integration, and the nature of the pressure (liberal or protectionist) exerted by the EC on the world political economy.

\(^2\)For a detailed analysis of the competence debate and the Court’s Opinion 1/94 see Meunier and Nicolaïdis 1997.
1) The shift towards "mixed competences" in trade negotiations

As Chapter 1 showed, the principle of unitary representation in international trade negotiations was a cornerstone of the Common Commercial Policy, itself one of the major pillars of the emerging institutional framework of the European Community in 1957. Member states have often contested this transfer of negotiating power to the supranational authority when it did not serve their immediate national interests. This resulted in internal EC crises and confusion for the negotiating partners. Nevertheless, the core principle of the "single voice" was never fundamentally questioned until the recent formal reassessment of the Community's external trade competences.

The legal issue concerning the future of trade negotiating authority in the Community emerged at the outset of the Uruguay Round in 1986. Who, of the Commission or the member states, was responsible for negotiating the "new issues" (services and intellectual property) not explicitly covered in the Treaty of Rome? The temporary settlement granted the Commission negotiating authority on behalf of the EC and the member states for practical reasons. The ratification of the Final Act concluding the Uruguay Round prompted the long-delayed reexamination of the division of competences between the Commission and the member states. After a heated political and legal debate, a compromise was eventually agreed on in March 1994: both the Council President and the External Commissioner signed the Final Act on 15 April 1994 in Marrakech on behalf of the Community. Representatives of each of the member states also signed, in the name of their respective governments.

A major debate also arose as to the EC's representation in the new World Trade Organization (WTO). The Commission offered the member states to become contracting

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3Devuyst 1995.
parties in the WTO provided that they would accept the principle of unitary representation of the EC in all sectors of trade negotiations. The Commission even suggested that the WTO treaty should be approved both by an unanimous Council and by the European Parliament, when neither was required by law. Unable to find a compromise with the member states, however, the Commission asked the European Court of Justice for an "advisory opinion" on the issue of competence, with the expectation that the Court would confirm the Community's exclusive authority with respect to the negotiation of external trade agreements. The Council, the European Parliament, and eight member states\(^4\) contested the "extravagant" Commission's request for the Court's opinion.\(^5\) The difficult role of the Court was therefore to arbitrate between the Commission and the member states --and between two opposite approaches to European integration.

On 15 November 1994, the Court delivered its key 1/94 Advisory Opinion. The judges confirmed that the Community had sole competence to conclude international agreements on trade of goods, but surprisingly ruled that the member states and the Community shared joint competence to deal with non-goods trade.\(^6\) The Commission subsequently fought hard to revise Article 113 as part of the 1997 Inter-Governmental Conference in order to undo the damage done by the Court’s ruling. In particular, the Commission wanted to state explicitly that the responsibility to negotiate trade agreements on any type of services and intellectual property should be delegated exclusively to the supranational level on grounds of practical effectiveness. Sir Leon Brittan, the Trade Commissioner, argued that wider powers for the Commission and an end to the unanimity rule would "speed up negotiations, simplify decision-making and increase the EU’s trade

\(^4\)Denmark, France, Germany, Greece, the Netherlands, Portugal, Spain and the UK.

\(^5\)Hilf 1995, 246.

\(^6\)Court of Justice of the European Communities, *Opinion 1/94*, 15 November 1994, 1-123.
policy influence in relation to the US and Japan.”7 The Commission also argued that the extension of Article 113 to cover all matters of trade would render the Community a more efficient bargainer, since currently “the need for unanimity leads to the EU adopting lowest-common-denominator bargaining positions easily exploited by other countries.”

The June 1997 Amsterdam Summit, however, confirmed the trend initiated during the Uruguay Round towards growing reluctance to allow the Commission to conduct the EC trade policy. The fifteen Heads of State and Government rejected the Commission’s demands for more negotiating powers in services and intellectual property. Instead, they agreed that the Council can decide, by unanimity, to extend the Commission’s powers. No one knows yet whether this will be done permanently or on an ad hoc basis.

2) Explaining the shift away from a single voice

This institutional shift toward tighter member states’ control over external trade negotiating can be explained in part by the experience of the Uruguay Round. The Blair House agreement represented a turning point in the delegation of negotiating authority to the supranational representatives. The informal “flirtation” with majority rule and increased autonomy of Commission negotiators, which enabled the initial agreement to be concluded, were rapidly followed by a reaffirmation of the veto right and fundamentally intergovernmentalist nature of the Community decision-making process. This recapture of power by the member states is also part of a more general trend in the Community, which is undergoing dramatic institutional changes as a result of the successive and prospective enlargements. As the Maastricht debate over the creation of the European Union has shown, member states are increasingly wary of further devolution of sovereignty to the

supranational level. The 1997 IGC seems to point towards a generalized reinforcement of member states’ control over the evolution of Community policies.

More problematic to explain than the member states’ incentives for the recapture of external trade competences is the Court’s rationale for its anti-integrationist 1994 ruling. Legal scholars generally agree that the Court’s opinion on “mixed competences” was a hard decision. First, the Court had to rule under pressure, since the Commission submitted its demand for an opinion on 6 April 1994, while the WTO agreement was to enter into force on 1 January 1995. Moreover, the Court’s decision must be seen in the context of uncertainty as to the future of the Community, its own uncertain political future, and recent case-law more inclined to protect member states’ interests.8 The general trend of the Court’s opinion was, according to Meinhardt Hilf, “strengthening the competences of the EC in the area of its core competences whilst being rather reluctant to recognize additional competences for the Community if this is not met by the support of the member states.”9

Certainly there was a legal basis for the Court’s ruling of mixed competences. The EC never formally substituted the member states in GATT, whose creation preceded that of the Community. From its inception, however, the EC has been the exclusive conductor of all GATT negotiations on behalf of its member states. For all practical purposes, therefore, the EC had been accepted by the other GATT contracting parties as one of theirs. The rationale for not formally replacing the member states by the EC as a GATT contracting party was that it could wait until the GATT was amended for another reason --for instance, the creation of the WTO.10 Another rationale was that the member states continued to enjoy

8This is the core argument of Meunier and Nicolaídís 1997.
9Hilf 1995, 255.
10Bourgeois 1995.
their individual voting rights in GATT. If the EC formally substituted them, it would certainly be granted only a single vote.\textsuperscript{11}

On the other hand, the Commission’s main argument that Article 113, because of its non-exhaustive wording, covers all issues under the WTO agreement could have been valid as well. The Court’s own case-law seemed to imply the exclusivity of Community competence in external trade. Since the ERTA judgment and the Court’s Opinion 1/76 of 1976, the doctrine was that “the EC has powers to act in the international sphere on matters with respect to which the EC has powers to act in the internal EC sphere.”\textsuperscript{12} Moreover, the Court had previously declared the exclusivity of the Community’s external powers, stating that member states can no longer assume international obligations which might affect the EC’s internal rules or alter their scope. Therefore legal scholars,\textsuperscript{13} pointing to inconsistencies in the reasoning of the Court in this case, suggest that the Court could plausibly have ruled instead in favor of exclusive Community competence in external trade relations.\textsuperscript{14}

The Court was not the only actor responsible for this retreat away from unity in trade policy. Considering that it was too political an issue for the Court to handle, the

\textsuperscript{11}“Only some side-agreements under the Tokyo Round had been signed on behalf of the EC itself.” Hilf 1995, 247.

\textsuperscript{12}Bourgeois 1995, 773.

\textsuperscript{13}See for instance Bourgeois 1995, 776.

\textsuperscript{14}In Meunier and Nicolaïdis 1997, we identify four main arguments against the judgment rendered by the Court:

1) consistency between the EU’s internal and external powers;

2) importance of the adaptability of trade policy to changes in the world political economy;

3) nature of trade in services and intellectual property as not fundamentally distinct from that of trade in goods;

4) political arguments regarding the traditional role of the Court as a pathbreaker for further European integration.
judges cautiously decided to hand the decision back to the member states and hence pronounced a conservative ruling that would serve as interim arrangement while waiting for the revision of the treaty in the Inter-Governmental Conference. In other words, the judges put the ball back in the camp of the member states, who agreed to tackle this issue as part of the general institutional revision of the EU treaties in 1996. In order to avoid future competence disputes, politicians—not judges—would have to amend the treaty either by following the Court’s opinion to enshrine this new sharing of sovereignty in the texts or by explicitly “expanding” Community trade competence to include new issues.

The motivations of the majority of member states who challenged the Commission in 1994 and later pushed for a restrictive interpretation of supranational trade competence in the Amsterdam treaty were also ambiguous. The general interpretation is that the member states chose their restrictive stance on the issue based either on a fundamental distrust for extending supranational competence in any area (such as Great Britain and Denmark), or on fundamental protectionist interests (such as France and, at least initially, Germany). In this post-Maastricht era, where expanding the Community’s reach had become increasingly unpopular, they were reluctant to give up forever entire new sectors of their trade policy. Such reasoning was short-sighted, I would argue. The member states were eventually able

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15“How member states picked their sides in the competence debate can be seen as a function of their preferences along two dimensions: the degree of economic openness (liberalism vs. protectionism) and the degree of integration (integration vs. sovereignty). International openness seems best served by a Community with exclusive trade competence, since its collective negotiating position cannot be held up by one recalcitrant member state. Mixed competence and thus unanimity, by contrast, is the institutional tool of choice for states with protectionist interests. Integration is best served by exclusive Community competence over trade, by definition since it is synonymous with a “common” policy and since it projects a unified image to the outside world. Sovereignty, by contrast, calls for heightened member state restrictions over the Community’s trade competence. If a state’s preferences are aligned similarly along both dimensions, then it is easy to predict its side in the competence debate: a state that is both protectionist and sovereignty-conscious will undoubtedly opt for a restriction of the Community’s external trade competence, while a liberal and integration-prone state will push for expanding supranational competence to the “new” trade issues. If a state’s preferences contradict each other along the two dimensions, then its side in the competence debate might be determined by the relative weight of the openness/integration dimensions or by an outside event around which this state’s domestic debate crystallized. This analysis of the national preferences on the competence issue reveals many contradictions, either structural or case-by-case, in the member states’ positions.” Meunier and Nicolaïdis 1997.
to reintroduce their sovereign control over increasingly important sectors of trade policy by requiring a unanimous decision on the institutional procedures to be applied at the beginning of each new trade negotiation. Doing so ensures that their national interests would not be subordinated to those of a majority of countries with a plausibly very different structure of national interests. The protectionist preferences of a member state could not be overruled by the liberal orientation of its European partners. By the same token, however, they are handing back the veto right on some trade issues to all member states --which means that all can be held hostage to the interests of the most protectionist country. This dissertation suggests that this is potentially troublesome for the EC in terms of international bargaining effectiveness in offensive negotiations.

3) *Expected consequences of this retreat away from unity*

The Court's opinion on the division of external trade competences between the Community and the member states did set back the process of integration in Europe in the short term, which was only confirmed with the Amsterdam Treaty ending the Inter-Governmental Conference. Coming at a particularly crucial time of institutional reform, this rollback of supranational powers in external trade appeared very symbolic since the common trade policy was the deepest and longest integrated policy in Europe. The long-term impact of the ruling may be less significant that the immediate consequences, however. Indeed, both the language of the Court and of the Amsterdam Summit were quite imprecise, so there would be room for interpretation when conflicts on "new issues" arise in the future.16

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16 The new article 113 (5) as finally adopted in Amsterdam reads as follows: "The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraph 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs."
This institutional shift away from supranational competence will have an impact on the effectiveness of the EC as an international actor. Above all, it makes third countries more reticent to conduct negotiations and make concessions to Community representatives. The whole Blair House renegotiation debate triggered questions about the legitimacy of the Commission's representation not only inside but also outside the Community, leading some of its negotiating partners to question the credibility of the Commission if it "cannot deliver on the outcome of a negotiation."\textsuperscript{17} Since then, there have been other instances of deals negotiated with a single voice by the Commission on behalf of the whole Community, only to be reneged later by the member states.\textsuperscript{18} Because negotiations are an iterated game, the growing uncertainty that the concluded deal will hold through may weaken the long-term credibility of the Commission and render its negotiating task more difficult in the future.

The institutionalist model suggests that the EC will be disadvantaged in its more frequent offensive endeavors by the constant threat of having one of its increasingly numerous member states break from its ranks. US trade negotiators will predictably increasingly try to play the "divide and rule" strategy of seeking bilateral deals with "friendly" member states when the EC negotiating authority is contested. Indeed, US negotiators have already started to exploit the EC's institutional uncertainties as bargaining leverage in their favor, for instance by contesting the legality of the negotiators' competence when the proposals are not in US favor.\textsuperscript{19}

\textsuperscript{17}Peter Cook, Australian Trade Minister, quoted in \textit{Bureau of National Affairs}, "US position on Uruguay Round talks needs to be less rigid, French official says," 21 October 1993.


\textsuperscript{19}Private interview with DGI official, April 1997.
This model also predicts that the Community will exert an increasingly protectionist pressure on the world political economy, because its collective position will be more easily captured by the most conservative member state and because Commission negotiators, who have traditionally held a free-trade bias, will enjoy less negotiating autonomy.

Section 3: Theoretical and Practical Implications

Finally, I would like to highlight the implications of this research both for the study of world politics and for the actual shape of the world political economy.

1) Theoretical Implications

My study of the bargaining implications of combining negotiating forces with others has more general implications. The central finding is that the Community has indeed external consequences. This goes against the realist assumptions about regional integration. Instead, I demonstrate that the EC exerts an independent causal effect on world politics. The existence of the internal/external linkage reveals that the EC is an international actor to be reckoned with, no matter what realist scholars preoccupied with the central role of states might want to argue. If the European Community were only a forum in which strong states make grand bargains among themselves, as intergovernmentalism claims, then these states would never have to be subjected to the conclusion of international agreements which they disfavor, because they always have the option of withdrawing their participation to collective decision-making. Instead, I have shown in this study that the mere fact of belonging to the Community transforms a state’s chances of shaping the outside world.

An exclusive focus on states’ relative capabilities cannot provide an accurate explanation of the outcomes of international negotiations. Because it ignores that beyond
mediating preferences, institutions indeed produce a collective bargaining position distinct from the mean of member state preferences and have some bargaining effects of their own, realism is ill-equipped to analyze the international bargaining leverage of a "divided but united" collection of states like the European Community. Instead, the supranational institutionalist argument has shown that a state with relatively large capabilities can be constrained by prior institutional rules into lending its power internationally to defend a bargaining position that it dislikes --and as a result see its international voice diluted. Conversely, a state with relatively small capabilities can see its voice amplified internationally because the supranational institutions constrain its European partners to accommodate its power of blockage. The realization that small states may exert a disproportionate influence on world affairs through the institutional design of the Community should be seriously considered in light of the future enlargement of the European Union to Central and Eastern European states --small states in their majority-- and the likely simultaneous expansion of collective competences in foreign affairs.

Furthermore, this supranational institutionalist argument has a contribution to make to current literatures on domestic factors in international relations. As Helen Milner recently noted, "although the importance of domestic politics to international relations has been noted frequently, a theory of domestic factors is not available. No counterpart exists to Waltz's *Theory of International Politics* for the role of domestic factors."20 Scholars interested in highlighting the importance of domestic, particularly institutional, factors in determining international outcomes could consider, as I did in this dissertation, the non-neutral role of institutions in the aggregation of individual preferences at a collective level.

Finally, this central finding has the potential for being usefully exploited both by scholars of European integration and, more generally, scholars of international relations.

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The field of regional integration studies has so far ignored the external implications of the existence of the European Community, focusing instead so far on the internal consequences of integration. I expect that my supranational institutionalist approach will be useful to other scholars for explaining the effectiveness of the EC in other international settings. First, a similar analysis could be fruitfully applied to the study of the EC's role in international environmental negotiations, where the institutional structure of the Community, like in trade policy, has exhibited some variance across cases. Second, scholars of world politics will soon need a framework to analyze the external impact of European Monetary Union, whereby monetary decisions in the majority of EU countries will be made by a single entity and carried through internationally with a single voice. I believe that parts of my arguments could serve precisely this analytical purpose. Finally, if the EU is ever to take on an international role in foreign policy matters, the impact of its single voice in shaping world affairs will need to be studied. Hopefully my thesis can provide some analytical elements for this task.

2) Policy implications

The realization that the institutional structure of the EC affects the nature of international trade agreements has also important policy implications. Three of these policy issues stand up as particularly important in my view: the existence of an optimal institutional design, the liberalizing or protectionist effect of the EC on the world political economy, and the role of EC institutions as model for other state groupings in formation.

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21Borrowing from my theoretical framework, Jupille has started to develop a bargaining model of the impact of various institutional arrangements in the EC on its bargaining power, and that of the individual member states, in environmental negotiations (Jupille 1997). Sbragia 1997 is also starting to address similar issues in global environmental politics.
Is there an optimal institutional design?

Policy-makers may seek to derive lessons from this analysis for designing the optimal institutions. My short answer to the question of the optimal institutional design is that it depends on the cases—as was summarized by the four ideal scenarios. My longer answer raises two additional issues.

First, when talking about “optimal” design, one has to ask: optimal for whom? For a state with typically protectionist preferences, the better institutional arrangement is one in which tight control can be exerted on the process of trade policy-making (through the requirement of unanimity) and trade negotiating (through strict constraints placed on the negotiators). For a state with typically liberalizing preferences, the reverse is true. The real world problem is that states have different preferences on different issues. A state can be, generally, protectionist, but at the forefront of liberalization in a specific sector of the economy. Conversely, a state can be, generally, liberal, but held up by powerful protectionist interests on a specific issue. Is it possible to make up institutional arrangements regarding trade policy on an ad hoc basis? Only a system similar to the American fast track, or the Amsterdam decision by the member states to state the institutional arrangements at the beginning of each new negotiation can solve this problem. They can do so only to a limited extent, however, since modern negotiations are often addressing a variety of issues simultaneously, and it would be impractical to bargain endlessly on which rules to use for which particular topic before the beginning of each negotiation.

Second, the question of optimal design raises an issue of fairness. The current political equilibrium in the EC is that the interests of a country can be subordinated to the national interests that another country deems vital. Most national policy-makers seem to recognize that they could be in the shoes of the others and are therefore satisfied with
keeping the veto power. This explains partly the current drive by a majority of member states to extend the rule of unanimity decision-making in the new areas of trade policy. From a democratic perspective, however, one can question the fairness of an arrangement according to which the blocking minority always gets its way. A different equilibrium could be one in which the decision is always made by majority vote and therefore imposed upon the states for which it causes a vital problem. Since the voting weights of member states necessary to cast a majority vote are only remotely proportional to the countries' population, thereby favoring smaller states, the democratic aspect of this arrangement can also be subject to scrutiny. Both solutions, therefore, lead to problems of democratic deficit, which in turn can damage the political legitimacy of the EU in the European member states.

b) The EC as liberalizing or protectionist force on the world political economy?

Another direct policy implication of this study lies in the determination of the EC's liberalizing or protectionist impact on the world's political economy. My institutionalist model suggests that the EC's capacity at setting the agenda in key areas of the international economy depends heavily on its own institutional features. In its initial decades of existence, the EC was a passive actor in international negotiations, more preoccupied in building its own internal policies and defending them against assaults by the outside world, than in initiating international policy changes. As a result, it exerted a more protectionist pressure on the world political economy, especially given the definition of the Community's bargaining position at the lowest common denominator of its members. Since the early 1990s, however, the EC has been initiating international policy changes, rather than reacting to them. If the recent international negotiations on telecommunications and information technology, where internal policy developments in the EC led the rest of the world into their path, are any indication, one could expect the Community to be increasingly at the forefront of liberalization of the world economy. What institutional
arrangement regarding trade policy the member states can arrive on will determine whether the EC will be able to indeed materialize into this liberalizing force for the rest of the world.

c) The EC as world model for regional integration

The final policy implication of this study rests on the role of European integration as a model for other attempts at regional integration in the world. The European Community was originally an unique experience designed to transcend the old rivalries of the western European nation states. It was conceived neither as a simple free trade area, nor as a fusion of previously sovereign states into a federal entity. The initial institutional design of the EC attempted a delicate balance between ripping off the economic benefits of a large internal market while retaining some degree of national sovereignty. Increasingly, the existence of the Community seems to be influencing the behavior of other actors in the international political economy. Above all, the Community is a model for other regional integration efforts. In Asia, North America and Latin America, other countries are trying to imitate the apparent successes of the EC in the commercial sphere. Unlike the founding members of the Common Market, however, they have the benefit of hindsight and can look back to the successes and failures of the EC’s unique institutions. What they can learn about the optimal institutional design to enhance their external effectiveness might crucially influence their decision to emulate or reject the Community’s original approach to sovereignty-sharing.

The central contribution of this dissertation was to demonstrate that European integration has had an independent impact in shaping the world political economy in its forty years of existence. More specifically, it was to highlight that different institutional

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arrangements at the supranational level affect differently the process and outcomes of trade negotiations at the international level, given a set distribution of national preferences. While one of the conclusions of my study was that in certain defensive cases obvious internal divisions resolved only through unanimity could play to the advantage of the EC in international negotiations, another conclusion was that in cases of offensive negotiations, the EC’s bargaining leverage would be enhanced by its display of a single, unified voice at the international table. One can expect these offensive negotiations, where the EC challenges the policy status quo of third countries, to become more frequent in the future. Yet the route that member states are choosing in their current institutional redesign seems to be taking them in the opposite direction. The formidable reassessment which the issue of trade competence is currently undergoing in the EC might well have the unintended consequence of dampening the Community’s new found international strength. Perhaps a counterbalance will be found in the launching of a new round of multilateral negotiations at the dawn of the new millennium. These negotiations could challenge the European Union, fresh from its double experiment of monetary integration and eastward expansion, into reassessing its external role and the institutional tools necessary to ensure its role.


Emiliou, Nicholas and David O’Keeffe. 1996. *The European Union and World Trade Law*. Chichester: John Wiley and Sons Ltd.


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