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# What Single Voice? European Institutions and EU–U.S. Trade Negotiations

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## Introduction

“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.<sup>1</sup> This slogan summarizes well one of the central rationales for trade integration: by pooling together their resources and creating a large market attractive to foreign trading interests, the constituent members of the European Union (EU)<sup>2</sup> can obtain greater international leverage than they would by acting individually. From the creation of the European Community (EC) in 1957, member countries accepted the principle of a single external voice in trade and therefore transferred their sovereignty over trade policy to the supranational level.

When the EU enters into trade negotiations with third countries, its fifteen member states have to reach a common position at the European level before it can be defended at the international level with a “single voice.” Member states use several different rules to aggregate their divergent interests into this single voice. For in-

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1. “Qu’on s’unisse. Et le monde nous écouterà.” September 1992. Author’s translation.

2. For reasons of convenience, I will mainly use the designation “European Union” (EU) throughout this article, except in the case studies where I refer specifically to the “European Community” (EC). Although the broader European institution was renamed European Union 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.

stance, they can agree that they will each hold veto power over the common position adopted, or they can decide instead according to the majority rule. They can also agree to grant their common negotiators a lot of leeway in the bargaining process, or they can keep their negotiators under very tight rein. The institutional rules through which the divergent preferences of the member states are aggregated into one common position are open to change and strategic manipulation, sometimes even during the course of a negotiation. How do these different rules affect the bargaining capabilities of the EU in international negotiations? More generally, what is the impact of internal EU institutions on international outcomes?

I develop an institutionalist model of the bargaining power of the EU in international trade negotiations. I define bargaining power as the ability of a negotiating actor to obtain the best possible deal in the negotiation, that is, to obtain the most from its opponent while conceding the least, other things being equal. Since it is problematic to define the “collective” interest of the EU 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 will observe the EU’s collective bargaining power from the point of view of its negotiating opponent.<sup>3</sup>

Drawing on the new institutionalist literature and studies of multilevel games, I develop a central model based on three variables: (1) the internal voting rules in the EU, (2) the nature of the delegation by the member states to their negotiating agent, and (3) the negotiating context relative to the status quo. Differentiating between a “conservative” and a “reformist” negotiating context, I argue that voting rules and negotiating competence in the EU determine both the probability that the negotiating parties conclude an international agreement and the substantive outcome of the negotiations. Using this model, I find that the institutional design of the EU has a clear impact on those international trade negotiations designed to change the European policy status quo. In this “conservative” case, unanimity voting and restricted delegation make the EU a tough bargainer: the negotiating opponent cannot obtain more than what the most conservative EU state is willing to concede. By contrast, qualified majority voting and extensive delegation produce a more favorable agreement for the EU’s negotiating opponent. Thus, in the “reformist” case where the EU seeks a change in the policy status quo of its opponent, I find that the institutional design of the EU plays a lesser role in determining the final outcome of international negotiations.

To explore the predictions of the model, I use three cases of conflictual trade negotiations between the EU and the United States, its main trading partner. I selected cases that each provide some variation in the combination of the central inde-

3. The common bargaining position adopted by the member states sets the limits of the mandate given to EU 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 EU negotiators defend with a single voice in international settings. Therefore it is possible to talk about an EU “collective interest,” equated with the common position. I determined that it was less ambiguous to define the EU’s collective bargaining by default: if the U.S. bargaining power is enhanced, the EU collective bargaining power is reduced, and vice versa.

pendent variables: (1) the agricultural negotiations during the Uruguay Round of GATT (“conservative” case with majority voting and extensive delegation, followed by return to unanimity voting and restricted delegation); (2) the dispute over reciprocity in public procurement in the early 1990s (“reformist” case with majority voting and delegation, with an attempt by the United States to “divide and rule”); and (3) the open skies negotiations in international aviation ongoing since 1992 (no supranational competence initially, followed by unanimity voting and some delegation). In all three cases I find that, for a given set of member states’ preferences, the institutional rules in place in the EU have had a direct impact on the process and outcome of EU–U.S. negotiations.

I first present the three central variables of internal voting rules, delegation of negotiating competence, and nature of the negotiating context. Based on these three variables, I then develop an institutionalist model of the external bargaining impact of the EU. In the subsequent section, I explore the predictions of the central model in three case studies of trade negotiations between the EU and the United States. I conclude by analyzing the theoretical implications of the central model. I also explore the impact of a recent institutional shift in the delegation of EU trade competence for third countries, for the overall process of European integration, and for the future of the international political economy.

## **Institutionalist Determinants of the EU’s International Bargaining Capabilities**

The fifteen members of the EU negotiate international trade agreements as a single entity, in spite of their diverging preferences. Different institutional rules, both for decision making and for delegating negotiating authority, can be put in place to fulfill this obligation of “speaking with one voice.” Which rules provide the EU with the stronger bargaining capabilities on the international scene? Would the EU not be more effective in reaching its negotiating objectives if its representatives had flexible instructions, negotiating autonomy, and the certitude that the agreement could not be overturned domestically?

The standard assumption is that the EU is handicapped internationally by the complexity of its institutions and the limitations on the competence of its negotiators. Hugo Paemen, who was chief EU negotiator during the Uruguay Round, identified three “fundamental institutional flaws” in his own account of the negotiations.<sup>4</sup> First, the lowest common denominator position prevents the EU 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 EU deprives negotiators of one crucial bargaining element: uncertainty. Because member states reveal their position during the Council meetings, which set the limits within which EU negotiators are allowed to proceed, the EU cannot hide its bottom

4. Paemen and Bensch 1996, 95.

line. Finally, as a result of the shared power between the Commission and the member states, the EU 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 EU negotiators themselves, who have relentlessly asked member states for increased competence over trade issues.

Negotiation theory suggests that in certain conditions, however, we could expect the EU 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 notes in *The Strategy of Conflict*, having one's hands tied internally can be useful for extracting concessions externally. Moreover, 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.*"<sup>5</sup>

This paradoxical idea that bargaining strength can, under certain conditions, derive from a position of weakness has become known in the political science literature as the "Schelling conjecture."<sup>6</sup> U.S. negotiators have often employed this tactic, obtaining bargaining leverage by reminding their opponents of the likelihood that Congress will reject the agreement being negotiated.

Studies of two-level games, initiated by Robert Putnam's seminal 1988 study, have attempted to confirm Schelling's intuition that the constraints imposed by domestic institutions could prove a bargaining asset in international negotiations.<sup>7</sup> Frederick Mayer modeled the conditions under which division can be an asset or liability in international negotiations.<sup>8</sup> Other scholars attempted to test empirically the interactions between domestic politics and international bargaining.<sup>9</sup> They concluded that although potentially beneficial, the strategy of the divided bargainer has not been used much in practice.

Two-level game studies have often concentrated on the impact of domestic ratification procedures on international agreements. Yet ratification is only one aspect of the complex web of rules through which diverse preferences are aggregated into a common position. In the EU case, this complexity is amplified by the existence of three levels that interact in international bargaining: domestic, supranational (European), and international. Moreover, the two-level game literature has generally not considered the existence of distinct negotiating contexts, based on the nature of the demands in the negotiation. Yet whether preferences are distributed on one side of the status quo or the other transforms the potential impact of institutional rules on the final outcome, as I will demonstrate later in this section. I argue, therefore, that three

5. Schelling 1960, 19 (emphasis added).

6. See, for instance, Milner 1997.

7. Putnam 1988.

8. Mayer 1992.

9. For example, the contributors in Evans, Jacobson, and Putnam 1993.

central variables contribute to determining the EU's external bargaining power: the internal EU voting rules, the degree of delegation to the supranational level, and the nature of the negotiating context. After examining each of these variables in turn, I show how they combine into a partial model of external bargaining.

### *Internal EU Decision-making Rules*

The first variable that will be used in this model to account for the potential external bargaining power of the EU is the nature of its voting rules.<sup>10</sup> By joining the EU, individual member states have delegated their authority to make trade policy to the collective Council of Ministers. National preferences have to be aggregated into a supranational "common position" before they can be defended at the international level. The conduct of trade policy reveals a second level of delegation, this time from the Council of Ministers to its negotiating agent, the EU Commission. Before the opening of trade negotiations between the EU and third countries, the Commission drafts a proposed negotiating mandate covering the Community's objectives. The key policy discussions then take place in a special committee, which examines and amends Commission proposals on a consensual basis,<sup>11</sup> before transmitting them to the Committee of Permanent Representatives (COREPER). The proposal is then examined by the General Affairs Council (composed of foreign ministers from the member states), which ultimately hands out a negotiating mandate to the Commission.<sup>12</sup> Commission officials conduct international trade negotiations, within the limits set by the Council's mandate. At the conclusion of the negotiations, the Council approves or rejects the trade agreement.

A central characteristic of the trade policymaking process in the EU is the uncertainty surrounding the voting rules in use for both the mandate and the ratification stages. The Council has often agreed to the mandate by unanimity voting because of the existence of a formal or informal veto right by individual member states. According to the 1957 Treaty of Rome, unanimity voting should have been used for external trade only until January 1966, the end of the transitional period. 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

10. On the issue of EU trade policymaking, see Woolcock and Hodges 1996; and Johnson 1998.

11. The "Committee 113" is composed of senior civil servants and trade experts from the member states. If the Committee 113 proposes amendments, the formal consultation procedure applies: the proposal goes back to the Commission, which could theoretically reject the amendments, in which case the Council would need unanimity to proceed with them. In practice, however, the Commission is cautious and prefers redrafting its proposals rather than facing a showdown. Article 113 was renamed Article 133 in the 1997 Amsterdam Treaty.

12. Unlike in most policy areas falling under Community competence, where the legislative process is now shared between the Council of Ministers, the Commission, and the European Parliament, trade policy remains one of the last bastions of sole Council legislative power. As long as international trade negotiations are conducted on the legal basis of Article 113 (now Article 133), which determines trade policy, neither the codecision nor the cooperation procedures, involving the Parliament's right to amend or reject legislative proposals, applies.

gentleman's agreement according to which an individual member state could veto a decision otherwise taken according to qualified majority voting if it deemed that vital national interests were at stake.<sup>13</sup>

The 1985 Single European Act attempted to establish the primacy of majority voting. With the exception of sensitive areas such as taxes, employee rights, and the free movement of persons, the member states agreed to use majority voting to legislate on all economic matters.<sup>14</sup> Since then, at least on paper, the Council agrees on a common external bargaining position for international trade negotiations on "traditional" trade issues (exclusive of services and intellectual property) according to a "qualified majority" system. This is a procedure under which member states are assigned different voting weights, based approximately on the size of their population, and by which roughly two-thirds of the votes are needed in order for a proposal to be accepted.<sup>15</sup> Nevertheless, in reaching a common bargaining position for international trade negotiations, as in reaching most other policy decisions in the Community, member states have most often attempted to find a general consensus around a given issue without resorting to a formal vote.<sup>16</sup>

The 1997 Treaty of Amsterdam further increased the uncertainty surrounding the actual voting rules on trade policy: Article 113 was amended to allow the Council to decide unanimously, possibly on a case-by-case basis, on the voting rules to be used for international trade negotiations in the "new" areas of services and intellectual property. This institutional change leaves open the possibility of a European fast-track system, albeit limited only to the "new" trade issues, whereby the member states could agree at the outset of every negotiation on the voting rules (unanimity or qualified majority) to be used for ratification.<sup>17</sup>

The ratification of international trade agreements also involves some confusion and uncertainty over voting rules. In the traditional goods sectors (including agriculture), ratification occurs in theory according to qualified majority voting. In this case, the member states are not allowed individual ratifications. In the nongoods sectors

13. On the Luxembourg Compromise and the various legislative procedures today, see Garrett 1995. Meunier analyzes the historical relation between the Luxembourg Compromise and the Kennedy Round of trade negotiations. Meunier 1998a.

14. On the issue of voting in the Single European Act, see Moravcsik 1991.

15. Currently Germany, France, Italy, and the United Kingdom each have ten votes; Spain has eight votes; Belgium, Greece, the Netherlands, and Portugal have five votes; Austria and Sweden have four votes; Ireland, Denmark, and Finland have three votes; and Luxembourg has two votes. Sixty-two votes out of a total of eighty-seven 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 sixty-two votes must be cast by at least ten member states.

16. In 1994 only 14 percent of the legislation adopted by the Council was formally put to a vote and subject to negative votes and abstentions. *Guide to EU Institutions*, The Council, <<http://europa.eu.int>>. Moreover, though in theory the consultation procedure (under which Commission proposals can be amended by the Council only unanimously) applies, in practice the Commission alters its proposal several times following the deliberations of the 113 Committee in order to ensure adoption by the Council (Garrett and Tsebelis argue that the consultation procedure gives the agenda-setting Commission the possibility to act strategically in presenting its proposals to the Council. Garrett and Tsebelis 1999).

17. Meunier and Nicolaïdis analyze the Amsterdam reform of trade policymaking and the debates over unanimity versus majority voting and exclusive versus mixed competence in trade negotiations. Meunier and Nicolaïdis 1999.

where the Community and the member states share competence over certain international agreements (referred to as “mixed competence” agreements), the member states use their own national procedures for ratification. In theory it means that an individual state could veto *ex post* an international deal negotiated on its behalf by the whole Community. When there is doubt about the nature of the agreement, the formal voting rules can be bent within certain limits to satisfy a discontented member state, such as in the case of the Uruguay Round, which was approved under unanimity voting to appease France.

The current tendency of the member states to hold onto the veto right on all matters and the recent increase in the number of trade negotiations dealing with nontraditional trade issues, such as services and intellectual property, where “mixed competence” applies, have reinforced this institutional uncertainty. Thus, understanding the effects of the EU’s decision-making rules on its external bargaining power is all the more salient, both theoretically and empirically.

In the following model, I use a simple spatial representation of the EU internal voting process where the issue-specific policy preferences of the member states are ordered along a single dimension from the status quo to a higher degree of preferred policy change.<sup>18</sup> For instance, if the issue being voted on is the reduction of agricultural subsidies, some countries may prefer to keep the current level, whereas others may want them completely eliminated, and the majority may be somewhere in between. In many cases of trade negotiations involving removing impediments to trade, the alignment of preferences mirrors the protectionist versus liberal dichotomy: the countries closest to the status quo are protectionist, whereas those farthest from the status quo are pushing for international liberalization. For the sake of simplicity, I make the additional assumption that all countries are on the same side of the status quo.<sup>19</sup>

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).

**Unanimity voting.** When each member state possesses the power of veto, whether at the outset of a negotiation or at the ratification stage, the common position eventually reached is the lowest common denominator.<sup>20</sup> Indeed, in case member states fail to agree on any other common position, the status quo is the default position, which enables the most conservative state to set the terms of the collective message.<sup>21</sup> By contrast, this power to dictate the terms of the final decision to fellow Community members does not apply to the state with the other extreme preferences because,

18. See, for instance, Garrett 1995; and Garrett and Tsebelis 1996.

19. Later in the model I will address the case in which the preferences of some member states are more restrictive than the status quo.

20. Garrett and Tsebelis 1996, 281.

21. It can be argued that, in practice, not all states share an equal veto right: a threat of veto from one of the big member states (France, Germany, and the United Kingdom) carries more weight than a threat of veto from a smaller one. In theory, however, any country can rally the collective position around its preferences under the unanimity rule.

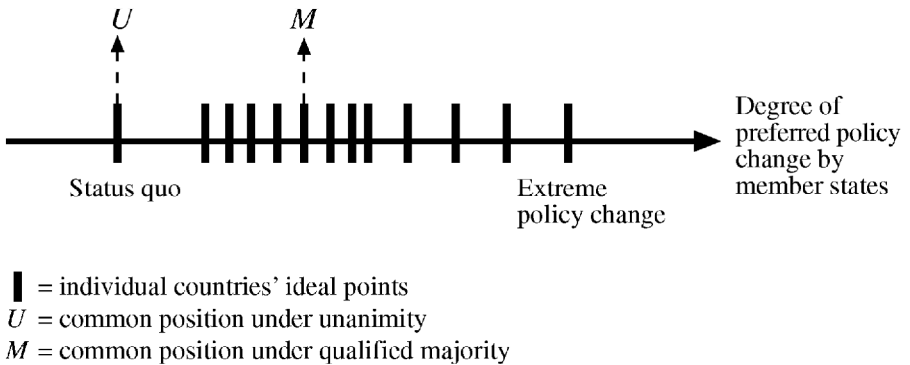


FIGURE 1. Impact of internal voting rules on the EU common position.

theoretically, it prefers any proposal that provides an improvement over the status quo. Therefore, unanimity voting has the effect of amplifying the most conservative voice by giving it the weight of all member states when it becomes the common EU position.

**Majority voting.** By contrast, the majority rule has the effect of mitigating extreme positions. Under the qualified majority system, states must gather about one-third of the total EU votes to block a proposal. Several studies of the EU decision-making system have tried to highlight the ability of particular governments to influence the outcome of Council decisions by analyzing the possible winning coalitions to which each member state is pivotal.<sup>22</sup> Applied to the configuration of preferences displayed in Figure 1, the studies' results suggest that the common position under qualified majority voting usually falls around the proposal originally made by the Commission—except when the Commission has extreme preferences, in which case it lies at the limit of what the qualified majority will accept.<sup>23</sup> Therefore, most member states benefit from this voting rule because it gives their preferred position the support of the whole Community. The losers from this voting rule are the states with extreme preferences, since they can be outvoted.

The one-dimensional spatial model presented in Figure 1 illustrates the mechanical effects of different voting rules on policy decisions under a given set of preferences. It shows that unanimity voting (*ex ante* or *ex post*) amplifies the most conservative voice, whereas majority voting mitigates the extremes. Of course this presentation is extremely simplified. For one, it does not take into account the reality

22. For an application of the power indexes method for studying decision making in the Council of Ministers, see, for instance, Hosli 1996. Recent criticism of this literature, however, suggests 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. For a thorough analysis of the complexities of EU voting rules, see Garrett and Tsebelis 1996 and 1999.

23. Jupille 1999.



that states with outlying preferences can often be appeased through side payments, issue linkages, and temporal trade-offs, which diminish the likelihood that they will use their veto power.<sup>24</sup> Yet despite its simplified assumptions, this model provides a first step toward analyzing the impact of the EU's institutional structure on its external bargaining capabilities.

### *Negotiating Competence*

A second institutional variable that is crucial in determining the potential external bargaining power of the EU is the competence delegated by member states to EU negotiators. The practical conduct of international trade negotiations involves some delegation of competence by the Council (principal) to the Commission (agent).<sup>25</sup> Kalypso Nicolaïdis has established a useful distinction between three attributes of the negotiating mandate that help us operationalize the variable "delegation of competence": 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 be subject to updating to fit changes in the political environment.

*Autonomy* refers to the extent to which the principals are actually involved in the negotiations. The autonomy of the agent can be limited for instance by "obligations of reporting regularly to the principals" and by having the principals actually "sitting at the negotiating table alongside the agent."<sup>26</sup>

*Authority* 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."<sup>27</sup>

These three attributes of the delegation depend as much on the formal rules as on the current political climate. De jure, for negotiations involving trade in goods, EU 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. De facto, maintaining the authority of the Commission is a day-to-day struggle. Commission representatives attempt to exercise as much autonomy as possible without asserting it in such a manner that it could provoke a backlash from sovereignty-wary member states. The rules and prac-

24. For an analysis of the strategic use of internal side-payments, see Mayer 1992.

25. Recent studies stemming from the rational choice institutionalist tradition have analyzed the act of delegating authority for certain functions by a group of principals (the member states in the Council) to an agent (the Commission) in the EU context. See, for instance, Pollack 1997; and Nicolaïdis 1999.

26. Nicolaïdis 1999, 11.

27. Ibid.

tice of delegating negotiating competence are currently undergoing institutional revision in the EU: in certain trade areas they are becoming the hybrid arrangement known as “mixed competences,” whereby both the principals and their agent are allowed to negotiate.<sup>28</sup>

Finally, the nature of the delegation is an important variable because the agent’s own preferences may also affect the content of the final agreement. As Mark Pollack has argued, the Commission does have preferences distinct from those of the member states.<sup>29</sup> 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 competence, it can be expected to move the location of the agreement within the bargaining space 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 U.S. administration’s push for the fast-track procedure.

### *Nature of the Negotiating Context*

A third variable central to this model is the nature of the negotiating context. I find that the distribution of the policy preferences of the EU and of its negotiating opponent relative to the status quo determines distinct negotiating situations. In turn, these distinctive contexts influence the impact of EU institutional mechanisms on the external bargaining capabilities of the EU.

Several assumptions need to be made about the nature of the negotiating context. I assume that the distribution of policy preferences of the member states is observable by all agents. Information, or lack thereof, is therefore not a crucial element in the model.<sup>30</sup> Member states as well as third countries can roughly observe the preferences of a country on a given issue—for instance, by following debates in national parliaments, holding formal and informal conversations with members of government, reading the national press, and following opinion polls.

I also make the simplifying assumption that the EU 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 trade regime, all negotiations are linked. In the “prenegotiation” phase, the actors identify the problems to be addressed and agree on the issues to

28. Meunier and Nicolajdis 1999.

29. Pollack 1996.

30. For a model of EU–U.S. trade negotiations based partly on incomplete information, see Clark, Duchesne, and Meunier forthcoming.

include in the negotiations.<sup>31</sup> 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. For instance, the EC was drawn into negotiating agricultural liberalization in the Uruguay Round only under the promise that financial and other services would be included in the multilateral negotiation. The second phase is the actual conduct of the negotiations on substantive issues, during which concessions are made and details are hammered out. This is why it is fair to assume, for the purpose of my model, that after the prenegotiation phase has occurred, neither party can refuse to negotiate.

A second practical rationale for this assumption is that most trade negotiations are of an “integrative” nature.<sup>32</sup> Countries accept entrance into these negotiations primarily because they hope to derive some benefit. This is in stark contrast with most foreign policy negotiations, which are about dividing a “fixed pie.” In an integrative negotiation, which is about increasing the size of the pie, 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 public procurement are good examples of such negotiations. For the purpose of our model, it is therefore fair to assume that each party accepts the negotiation initiated by the other party.

A further assumption is that the preferences of the actors are not symmetrically distributed around the status quo. One can assume that governments prefer too little rather than too much policy change. If the issue being discussed is the reduction of agricultural subsidies, for instance, it is politically more costly (mostly for reasons of collective action problems) to reduce them too much rather than preserving them at the current level.

Finally, I make the assumption that the EU’s negotiating opponent is a unitary actor. I therefore treat the opponent as a “black box,” whose internal institutional procedures have no impact on the international negotiation.<sup>33</sup>

Let us distinguish between two negotiating contexts. For simplicity, I refer to the EU’s negotiating opponent as the United States—but the model can account for the bargaining of the EU with any other third country.

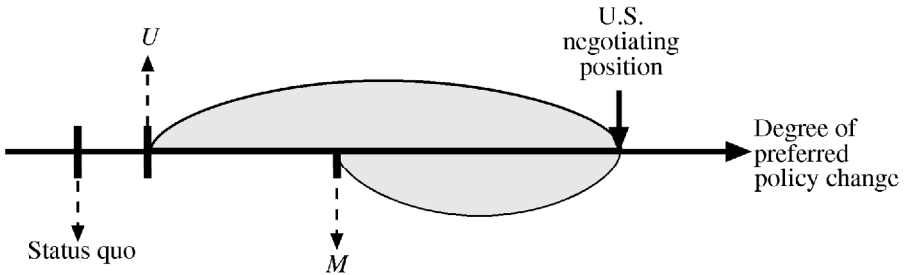
**Case 1 (conservative).** In the first configuration, the preferences of the EU member states and of the negotiating opponent are distributed so that the opponent is the

31. For a discussion of the multiple phases of a multilateral negotiation, see Hampson 1995.

32. The distinction comes from Walton and McKersie 1965. See also Mayer 1992.

33. Since the opponent’s institutions have an impact in the real world, I therefore always speak of the EU’s “potential” (and not actual) bargaining capabilities. Interesting results would surely emerge from relaxing this assumption.

## a. Case 1 (conservative)



$U$  = common position under unanimity voting

$M$  = common position under qualified majority voting

Shaded areas represent U.S.–EU bargaining space

## b. Case 2 (reformist)

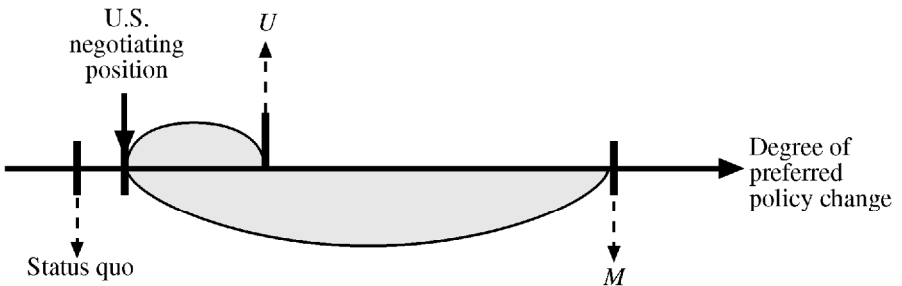


FIGURE 2. Impact of EU voting rules on bargaining space with third countries.

furthest away from the status quo. This definition rules out cases in which the preferences of the member states are distributed on both sides of the status quo. If unanimity voting is equated with the status quo position, whereas majority voting yields a common position further remote from the opponent than was the status quo, then I argue that the opponent will not challenge the EU into a negotiation. This would be a Quixotic fight since, in the best case, all the opponent would obtain from the EU 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. In other words, the negotiating opponent challenges the EU to change its policy, based on its assessment that the worst possible outcome is the status quo. In Figure 2a, this situation translates into any negotiation where both  $M$  (the common EU position under majority voting) and  $U$  (the common EU position under unanimity voting) fall between the demandeur's position and the status quo.

The majority of conflictual EU–U.S. trade negotiations since the 1960s have involved the preservation of the European policy status quo. Transatlantic negotiations on agriculture, for instance, have typically been characterized by U.S. demands for

change in the EU's protectionist Common Agricultural Policy (CAP). Other similar negotiating contexts have included the dispute over the national content of broadcast programs during the Uruguay Round and the EU banana import regime.

**Case 2 (reformist).** In the second configuration, the opponent's preferences are closer to the status quo than the preferences of the EU member states. In other words, the EU is the one making demands on the policy status quo of a recalcitrant negotiating opponent. As shown in Figure 2b, this situation translates into any negotiation where the opponent's position falls between the status quo and both  $U$  (the common EU position under unanimity voting) and  $M$  (the common EU position under majority voting).<sup>34</sup>

The advent of the Single Market program, which made the EU more attractive and powerful, and the simultaneous return to unilateralism in U.S. trade policy produced a rapid increase of trade negotiations in which the EU has become the "demandeur" since the late 1980s.<sup>35</sup> For instance, the EU tried to pry open its competitors' markets with negotiations on reciprocity in the original Second Banking Directive in 1988 and in the Utilities Directive on public procurement in 1990.

## EU Institutions and International Trade Negotiations

By which mechanisms do internal institutions affect external outcomes? Under what conditions are EU institutions an asset or a liability in international trade negotiations? Which voting rules and delegation of competence maximize the potential bargaining power of the EU? The model presented in this section tries to answer these questions. Table 1 summarizes the findings and the predictions about the institutional determinants of the EU's external bargaining capabilities.

### *External Impact of EU Voting Rules*

Internal voting rules affect the EU's potential international bargaining power differently depending on whether preferences are distributed according to the first configuration or the second.

**Case 1 (conservative).** As long as the EU as a whole is closer to the status quo than its negotiating opponent, bargaining theory predicts that the outcome of the negotia-

34. The assumption of uncertainty over the decision-making rules enables us to make abstractions of the strategic behavior of member states over whether to use their veto. There have been many documented cases in the EU 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 large budget-reform package in order to get a higher quota for milk production and an assurance that 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 article.

35. See, for instance, Hocking and Smith 1997.

TABLE 1. *The EU's institutional structure and international trade negotiations*

<i>Negotiating context relative to status quo</i>		
<i>Voting rule</i>	<i>Conservative (Case 1)</i>	<i>Reformist (Case 2)</i>
Unanimity	<p><i>Likelihood of agreement</i> : Low.  <i>Bargaining outcome</i> : Stands at the ideal point of the most conservative EU member state.  <i>Winners and losers</i> : EU collective bargaining power is high. The most conservative state wins; most other member states would have benefited from a different voting rule.</p>	<p><i>Likelihood of negotiation</i> : Low.  <i>Bargaining outcome</i> : Stands at the ideal point of the negotiating opponent.  <i>Winners and losers</i> : The opponent is protected from change; thus the EC bargaining power is low. The opponent can play "divide and rule." The amplified preferences of the most conservative country have only a limited impact on the final outcome.</p>
Qualified majority	<p><i>Likelihood of agreement</i> : High.  <i>Bargaining outcome</i> : Stands at the ideal point of the pivotal EU state.  <i>Winners and losers</i> : EU collective bargaining power (measured from the opponent's viewpoint) is lower than under unanimity. The most conservative states lose from this voting rule.</p>	<p><i>Likelihood of negotiation</i> : High.  <i>Bargaining outcome</i> : Stands at the ideal point of the opponent.  <i>Winners and losers</i> : The opponent holds the keys to the agreement but cannot use a "divide and rule" strategy. The reformist countries benefit from having the issue put on the negotiating table, even if no agreement is reached.</p>
<i>Negotiating competence</i>		
Restricted delegation	The "tied hands" strategy and the Schelling conjecture apply; they work to the advantage of the EU as a whole.	No tied hands strategy. The opponent benefits from the capture of the agent by the less reformist member state.
Extensive delegation	No tied hands strategy since the agents have some bargaining latitude. The negotiation is more likely to progress successfully when the negotiators can find creative compromises.	No tied hands strategy. The likelihood of agreement is increased by the bargaining latitude available to the negotiating agent.

tion will be equated with the EU's position.<sup>36</sup> In this case, the opponent cannot obtain departures from the status quo greater than what the EU is willing to offer. Nevertheless, it can potentially win more or fewer concessions depending on the voting rules governing the EU's internal decision-making process.

36. The outcomes were determined using the Nash bargaining solution. I am very grateful to William Clark and Ariel Rubinstein for helping me identify the most appropriate tools for analyzing the possible outcomes of these negotiations.

Unanimity voting amplifies the power of the EU's most conservative 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. Unanimity voting has the effect of restricting the international "win set" and therefore the likelihood that an agreement will be reached.<sup>37</sup> The institutional difficulties associated with altering the common position make the EU a very tough bargainer. When the negotiating opponent knows that the EU cannot deviate from its offer, the Community 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 gains, or even no gains, for the opponent. In that sense, unanimity voting reinforces the potential bargaining power of the Community.

Qualified majority voting, by contrast, mitigates the extremes. The most conservative state cannot impose its preference on others to preserve the status quo. Therefore, qualified majority voting increases the size of the international win set. It also increases the likelihood that an agreement will be reached, since there is no uncertainty that the final deal will be approved by the Council. The challenging opponent benefits from being faced with a Community governed by the majority rule in this case. It can expect greater gains than it would have obtained, with the same distribution of European preferences, under unanimity voting. In that sense, qualified majority voting does not enhance the EU external bargaining power as much as unanimity voting does.

**Case 2 (reformist).** When the EU stands further away from the status quo than its negotiating opponent, bargaining theory predicts that the outcome of the negotiation will be equated with the opponent's position. Therefore, the internal EU voting rules have a less decisive impact on the final outcome of the international negotiation than in the first case, even though they still influence the likelihood and the process of the negotiation.

Unanimity voting ensures that the common negotiating position stands as close as possible to the position of the third country. Since it takes only one member state to cancel EU demands for change, 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 EU (for instance, through promises of side payments, such as a major public purchase, or a trade-off with another area, such as defense). This Trojan Horse can use the threat of veto in order to get EU demands for policy change dropped. If the negotiation were to proceed, the outcome would stand at the opponent's ideal point. Most offensives, however, never materialize into actual negotiations.

Qualified majority voting has the effect of making the negotiation more likely since only a majority of member states are needed to challenge the policies of third countries. The absence of veto power deprives the negotiating opponent of the option of driving a wedge between member states by convincing only one country to derail

37. See Putnam 1988. The "win set" is defined as the set of potential agreements that would be ratified by domestic constituencies.

the EU's offensive. As long as the opponent holds the keys to the preservation of the status quo, however, the outcome of the negotiation will also stand at the opponent's ideal point.<sup>38</sup>

### *External Impact of Delegating Competence to EU Negotiators*

The nature of the competence delegated to Commission negotiators also affects the EU's potential international bargaining power differently under the first and second negotiating contexts. Does more flexibility and autonomy of its negotiating agents always translate into greater external bargaining power for the EU? More generally, what are the implications of the principal-agent relationship on bargaining with a third party?

**Case 1 (conservative).** Negotiators with limited flexibility have very little room for maneuver and cannot hide their bottom line, since the EU reservation value 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. In a case where the EU common position is conservative relative to the status quo, tight constraints exerted by the member states on the negotiators can enhance the credibility that the offer made is of a "take it or leave it" nature. The negotiating opponent is aware that the hands of the EU negotiators are "tied": each bargaining move by the agent has to be cleared by the principals—that is, by the most conservative principal. As a result of the EU negotiators' "tied hands," the challenger may settle for only limited concessions, for fear of being left with no agreement at all. Hence, limited negotiating delegation ensures that the final outcome does not deviate from the preferred position of the EU. It can thus be used strategically to enhance the bargaining power of the EU as a whole. This hypothesis is consistent with the "Schelling conjecture," though the hypothesis restricts the applicability of the conjecture to specific conditions.

A more extensive delegation of negotiating competence has one immediate effect on the process of bargaining with third countries: it improves the chances of concluding an international agreement. When the negotiators have been delegated more extensive flexibility, autonomy, and authority by the principals, they have more institutional latitude to find creative bargaining solutions. They can successfully negotiate an international agreement, knowing that their principals will not be allowed to bicker on the details of the deal. This is the rationale behind the "fast track" process of executive delegation in U.S. trade policy. When the EU common position is closer to the status quo than that of its opponent, an extensive delegation of competence en-

38. In cases where the EU can use retaliation and alter the context of the negotiation, as in the EU-U.S. negotiations over public procurement in 1990-94, internal voting rules start again to affect the outcome of the negotiation: majority voting can enhance the collective bargaining power of the Community, whereas unanimity voting is more desirable for the opponent. Note that these effects are the opposite of what was shown in the "conservative" case.



tails a more liberalizing outcome than would have been achieved under restricted delegation. On the other hand, an extensive delegation of competence in the EU brings greater rewards for the negotiating opponent. EU negotiators cannot exploit the “tied hands” strategy, and the opponent knows that EU negotiators will be able to “sell” the agreement as a whole to their principals.

**Case 2 (reformist).** When the EU is the one demanding change in the policy status quo of its negotiating opponent, the degree of competence delegation does not have a direct impact on the final outcome of the negotiations, but it can influence their likelihood and process.

As in the conservative case, a restricted delegation of negotiating competence ensures the capture of the negotiating process by the most conservative state in the EU—in a reformist context, this means the state whose preferences are closest to those of the negotiating opponent. Therefore, unlike in the conservative case, limited EU competence plays to the advantage of the opponent. The Schellingesque strategy of “tied hands” does not apply in this case. As for the likelihood of an agreement, it is low, since the negotiators do not have much latitude over the details of the deal.

Conversely, an extensive delegation of competence means that EU negotiators can make demands, offers, and concessions without awaiting incessantly for the member states’ approval. It increases the likelihood that a final agreement will be concluded. The Schelling conjecture does not apply in this case either.

As demonstrated in this model, the variables of voting rules and negotiating competence are quite distinct in theory. They each produce specific effects on the process and outcome of international bargaining. In practice, however, they are most often positively correlated. Commission autonomy is fundamentally endogenous to the voting rules in place, which are largely determined by the will of the member states. When unanimity voting is used (formally or informally), fewer policymaking functions are delegated to the agent: the most conservative member state tends to keep a tight leash on the Commission to ensure that the negotiating mandate is respected.<sup>39</sup> Member states may be reluctant to delegate extensively when the issue at stake is particularly salient for them, even though the treaties require them to do so. In that case, the most conservative country will insist that EU negotiators report every step in the bargaining process and wait for orders before making any concessions. Under majority voting, by contrast, negotiators usually have more bargaining latitude. The mandate given is more vague, thereby giving the negotiators more flexibility. Therefore, the most conservative state does not need to keep the negotiators in check since it will not have the final say on the agreement anyway.

We can therefore present a simplified version of the model, in which the variables of internal voting rules and nature of the delegation combine into the single heading of “supranational competence.” Table 2 presents the results of this basic model.

This simplified model highlights that the optimal EU institutional design is not the same for everyone. From the opponent’s point of view, qualified majority voting is

39. Argument made by Franchino 1998.

TABLE 2. *EU supranational competence and external bargaining power*

<i>Supranational competence</i>	<i>Negotiating context—status quo</i>	
	<i>Conservative (Case 1)</i>	<i>Reformist (Case 2)</i>
Low (unanimity voting and restricted negotiator autonomy)	High EU bargaining power	No EU bargaining power
High (qualified majority voting and some negotiator autonomy)	Some, though limited, EU bargaining power	No EU bargaining power

preferable. In the “conservative” case when the EU common position is closer to the status quo, majority voting clearly improves the final outcome for the negotiating opponent. In the “reformist” case, however, the EU does not hold the keys to the final outcome anyway. For maximizing EU bargaining strength in international negotiations, therefore, the design should be reversed: unanimity voting produces a stubborn, “tied hands” international bargainer. From the point of view of individual member states, the optimal institutional design differs depending on their preferences. Limited supranational competence should be favored by a state at the conservative extreme of the preference distribution, since such competence amplifies its external voice by giving it the weight of the whole Community. By contrast, relatively higher supranational competence is desirable for states with median preferences, because it attenuates the extremes and gives their own position the support of the whole Community.

The combination of negotiating context and supranational competence points to the existence of a link between the EU’s institutions and external bargaining power. It also highlights a link between the EU’s institutions and the nature of the international political economy. Most trade negotiations today are about market access and “behind the border issues,” not tariff reductions.<sup>40</sup> Member states’ preferences can be ordered along a continuum going from protectionism to liberalism. For a given set of member states’ preferences, the supranational competence exerted by the EU can have a different impact on the potential for world trade liberalization. Unanimity voting and restricted delegation are likely to exert a protectionist influence on the international political economy. In the first case where the EU’s opponent attempts to lift access restrictions to the European market, unanimity voting subjects the collective EU position to the whims of its most protectionist member. In the second case where the EU attempts to get its opponent to lift restrictions against access to its own market, unanimity voting makes the EU more likely to stop pursuing negotiations, thereby failing to promote liberalization. Majority voting, by contrast, has a liberalizing influence on the world economy, since it prevents states with conservative preferences from holding the EU position hostage. The influence of the EU’s institutional structure on international economic liberalization is worth considering, since the EU

40. See, for instance, Peterson and Cowles 1998.

is the world's largest trader and, along with the United States and Japan, sets almost all of the world's economic rules.

The case studies presented in the following section illustrate the impact of EU institutions on a series of major trade liberalizing negotiations between the EU and the United States in the 1990s.

### **The Internal–External Linkage in EU–U.S. Trade Negotiations**

From its creation, the EC has conducted many trade negotiations with the United States, its main trading and investment partner. Over the years, the EC and the United States have successfully reached trade agreements on nonconflictual 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. Many other EC–U.S. trade negotiations have been conflictual, such as on agriculture, audiovisual services, and aeronautics. In order to probe the propositions developed in the previous sections of this article, I have chosen to study three cases of conflictual EC–U.S. trade negotiations, each of which provides some variation in the combination of the central independent variables. Table 3 summarizes the effects of the EU's institutional structure on these three cases of EU–U.S. negotiations. Predictably, there is no case combining a reformist context and low supranational competence. When each individual member state holds veto power, it is not likely that a EU-led offensive will actually materialize into a genuine negotiation with a third country, since it takes only one member state to cancel EU demands for change.

All three case studies point to the fact that, given exogenous member states' preferences and depending on the negotiating context, the institutional mechanisms through which member states transferred their trade sovereignty affected the process and outcome of the final international agreement.

#### *Agriculture in the Uruguay Round: Before and After the Blair House Agreement*

The EC–U.S. negotiation on agriculture during the Uruguay Round epitomizes EC behavior in most conflictual trade negotiations with the “extremism” of one conservative member state.<sup>41</sup> At the same time, this negotiation is unusual because the institutional rules were altered during its course. I argue that the initial EC–U.S. agreement on agriculture, known as the “Blair House” accord, was made possible by the apex of Commission autonomy reached in 1992 and the institutional confusion following the Single European Act. By contrast, the renegotiation of this accord was enabled by the subsequent reining in of Commission negotiators and by the reinstatement of the veto power threat in 1993. The result was a final agreement more favorable to the most conservative EU state than the initial Blair House accord.

41. For a detailed case study of the Uruguay Round agricultural negotiations, see Meunier 1998b.

TABLE 3. *Effects of EU institutions on specific EU–U.S. trade negotiations*

<i>Supranational competence</i>	<i>Negotiating context—status quo</i>	
	<i>Conservative (Case 1)</i>	<i>Reformist (Case 2)</i>
No EU competence	Open skies agreements (Phase 1)	
Low (unanimity voting and no negotiator autonomy)	Uruguay Round agricultural negotiations (Phase 2) Open skies agreements (Phase 2)	None
High (qualified majority voting and some negotiator autonomy)	Uruguay Round agricultural negotiations (Phase 1)	Public procurement negotiations

The United States provided the initial impetus for tackling agricultural liberalization once and for all. The subsidies war between the United States and the EC, which had intensified in the early 1980s when each side retaliated against each other's agricultural subsidies with the imposition of other protectionist measures, became too costly for the United States.<sup>42</sup>

These negotiations were potentially divisive for the Community, whose ten, and then twelve, members had extremely divergent preferences with respect to agriculture. Great Britain and the Netherlands, both net financial contributors to the Common Agricultural Policy (CAP), hoped that the multilateral negotiations would provide an "external push" enabling the EC to slow the increasing agricultural costs. Other member states, above all France, but also to some extent Belgium, Ireland, Italy, and Germany, were determined to keep a high degree of agricultural protection. 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. As a major services provider, however, France finally agreed in March 1985 to go ahead with multilateral agricultural negotiations in exchange for inclusion in GATT talks of its most important concerns, notably the liberalization of investment and other services.<sup>43</sup>

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 gap between the European and American positions. In July 1987, the United States called for a complete elimination of all subsidies in agriculture by 2000 and demanded a phase-out over ten years of all export barriers and subsidized exports. By contrast, the EC only reiterated the nonnegotiability of the CAP, a reduction (not elimination) of all forms of support, and short-term measures. The institutional inability of the EC to offer concessions going beyond its lowest common denominator position almost

42. In 1986 U.S. and EC domestic agricultural support programs cost about \$25 billion each.

43. Paemen and Bensch 1995, 36, 46–48.

terminated the Uruguay Round altogether. The EC representatives' lack of negotiating autonomy, moreover, prevented a successful conclusion of the Brussels ministerial meeting of December 1990, originally intended to close the round, and again in December 1991. Arthur Dunkel, the Director General of GATT, subsequently ordered the Community to conclude an informal bilateral pre-agreement on agriculture with the United States before the final multilateral agreement could be negotiated.

The U.S.–EC agricultural negotiations were put on hold while the EC reformed its Common Agricultural Policy. On 21 May 1992, after a year of intense debate, the Council adopted the reform of the CAP designed by Agriculture Commissioner Ray MacSharry. The reform limited production, entailed a substantial reduction in support prices (to be compensated by aids), and set aside land from production. The CAP reform, however, did not address the issues of market access and export subsidies, which were central to the GATT negotiations. The Commission favored 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 United States. Countries reluctant to change the CAP eventually agreed to the reform because the combination of budget constraints, Commission agenda setting, and outside pressures made such a reform inevitable.<sup>44</sup>

By redefining the negotiating mandate and granting more flexibility to Commission negotiators, this reform enabled the bilateral negotiations to move forward. European and American officials disagreed over the meaning of the reform, however. European policymakers argued that it represented the upper limit of changes that the EC could make to its agricultural policy. By contrast, the United States argued that the reform was an internal EC matter. Above all, the U.S. government wanted to avoid rigidity in the European position. The United States therefore rejected EC attempts to “lock in” a negotiating position by reaching internal agreements first—thus, to have its “hands tied” by prior internal bargaining.

After intense bilateral negotiations on agriculture in October 1992 failed to produce results, the United States decided to link the ongoing oilseeds dispute to the GATT discussions and threatened the EC with a full-blown trade war.<sup>45</sup> Carla Hills, the United States Trade Representative (USTR), announced a retaliatory 200 percent punitive tariff on \$300 million of European food imports effective 5 December if the EC did not reduce its oilseeds production. By targeting French products, but also German and Italian products, for retaliation, the United States tried to “divide and rule” the EC by increasing the internal pressure on France, the most conservative member state.

On 18 and 19 November 1992, MacSharry and External Affairs Commissioner Frans Andriessen met with Agriculture Secretary Ed Madigan and Carla Hills in the Blair House residence in Washington. After a series of proposals and counterproposals, MacSharry enabled a breakthrough in the negotiations by offering a 21 percent

44. Keeler 1996; Patterson 1997; Paarlberg 1997.

45. In the 1961–62 Dillon Round, the EC granted zero-duty access to the then little-used oilseeds and cereal substitutes. The EC then started to subsidize its production in order to limit imports. The dispute erupted when the United States challenged the EC oilseeds subsidy program in GATT. Successive GATT panels found against the EC, which refused to comply with the findings.

reduction in the volume of subsidized exports, as well as a 36 percent reduction in budget over six years, using 1986–90 as the base period. The Blair House compromise also provided for a 20 percent reduction in EC internal price support over six years, with the period 1986–88 as reference. Finally, European and U.S. negotiators agreed to a “peace clause” that would exempt internal support measures and export subsidies that did not violate the terms of the agreement from any future trade actions. A separate deal on oilseeds was also concluded, thus ending a long-standing transatlantic dispute and canceling the promised U.S. trade sanctions against the EC.

The increased autonomy of the EU 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 the U.S. negotiators.<sup>46</sup> This enhanced autonomy gave rise to accusations within the EC that the Commission had negotiated the agreement in secret, especially in the absence of a specific text for over a week.<sup>47</sup> The Blair House agreement was interpreted at the time as a negotiating success for the EC. The agreement occurred in spite of strong opposition from France, the most recalcitrant country, because the combination of weakened unanimity voting in decision making and heightened negotiating autonomy “freed the hands” of EU negotiators, thereby breaking the negotiation paralysis to the benefit of both the United States and the majority of member states.

France immediately attempted to reclaim some of the institutional competence delegated to the supranational Commission in order to alter the already negotiated “pre-agreement.” Fueled by violent domestic protests from angry farmers and by crucial national elections, French politicians embarked on a crusade to challenge the content of the agreement and the conditions under which it had been reached. Above all, they blamed the EU negotiators for exceeding their mandate. In private, French officials criticized Andriessen and MacSharry, but they also denounced the EC institutional mechanisms, which had allowed the overruling of fundamental objections by a member state.<sup>48</sup> Successive French governments ardently tried to reassert the unanimity rule in the EC in order to reject the agreement. The veto threat was reinforced by the March 1993 election of a center-right coalition after a campaign in which the protection of French farmers, the CAP reform, and the Blair House deal negotiated by “foreign” commissioners were central issues. In May the new government unveiled its official stance on the Blair House accord, accepting the oilseeds deal but vowing to fight the other parts of the agreement. French European affairs minister Alain Lamassoure blamed the conclusion of the Blair House accord on institutional flaws in the EC decision-making process that resulted in “a certain confusion of responsibilities.”<sup>49</sup>

U.S. negotiators closely followed the legal arguments about the constitutionality of a veto under the provisions of the 1986 Single European Act.<sup>50</sup> The U.S. adminis-

46. Meunier 1998b.

47. “Obfuscation by the Commission on EC–U.S. GATT Deal,” *Agra Europe*, 4 December 1992.

48. Interviews with French officials, May 1994.

49. “EC Decision-making Is Not Working—French Minister,” *Reuters*, 22 April 1993.

50. Interviews with senior U.S. Department of Agriculture and USTR officials, January 1995.

tration officially made clear that it had no intention of reopening the Blair House compromise and treated the renegotiation issue as an internal EC matter. The Commission and all member states, except 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 the words of the new EC Agricultural Commissioner René Steichen, could also prove risky because many American agricultural groups felt that the United States 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 European bureaucracy created by the Maastricht debate.

France spent the next five months trying to find 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. 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. His 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.

At the request of the French government, an exceptional "jumbo Council" met on 20 September to finally enable the EC to present a common front in the multilateral negotiations. After an intense session, thirty-five ministers of trade, agriculture, and foreign affairs compromised on the need for "clarification" of the Blair House agreement. This decision appeased France while not overtly jeopardizing the results of the Uruguay Round. The Commission's negotiating autonomy proved to be the dominant and most controversial issue during the Council debates. France had 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 the Blair House agreement was negotiated. Trade commissioner Leon Brittan, complaining that a Franco-German proposal risked tying his hands in the negotiations, urged the ministers not to demand any new negotiating mandate. French foreign minister Alain Juppé angrily retorted that Brittan had no right to oppose member states' negotiating instructions. This internal drama further strengthened suspicions of the Commission's excessive power. In the end no new mandate was given to Brittan, but the Council decided to "monitor constantly the negotiations" on the basis of Commission reports during each session of the General Affairs Council. It also informally decided to approve the Uruguay Round results by consensus.<sup>51</sup> This represented a clear step toward a return to strict intergovernmentalism in trade negotiating matters and a reining in of the Commission's negotiating powers.

The threat of a major crisis if the EC demands for "clarification" of the Blair House agreement were not met eventually contributed to a reversal of the U.S. posi-

51. Devuyst 1995.

tion. The U.S. administration ultimately agreed to renegotiate specific elements of the agreement, rather than confront a possible breakdown of the talks before the crucial ultimatum enforced by the expiration of the U.S. Congressional Fast Track Authority on 15 December 1993.<sup>52</sup>

In exchange for accepting the EC–U.S. agreement, France demanded a toughening of the EC’s procedures against unfair trading practices. Germany dropped its long-standing opposition to a measure giving the Commission greater power to impose antidumping duties on unfairly priced imports. The French government had succeeded in making it easier for a conservative member state to capture the negotiating position of the EC in a “conservative” case, while at the same time enhancing the EC’s capabilities for becoming an international “demandeur” 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, whereas the United States 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 voting and tight control over the Commission, the most recalcitrant country exerted a preponderant influence on the final outcome. When the Uruguay Round was concluded on 15 December 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.”<sup>53</sup>

### *Manipulating the Status Quo: The “Divide and Rule” Strategy and the 1994 Government Procurement Agreement*

The EC–U.S. negotiations on public procurement, which overlapped with the Uruguay Round agricultural negotiations, represent one of the first successful attempts by the Community to obtain a change in U.S. domestic regulations. The decision to complete the Single Market by 1992 gave the EC a new impetus in international trade negotiations: a large internal market was both more attractive and more threatening to third countries, since the EC had now 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: EC liberalization measures would not be unilateral in those areas not yet covered by existing GATT rules, such as services. A corollary of this new leading role of the EC in international liberalization 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 successful.

52. The 6 December 1993 EC–U.S. agricultural agreement extended the “peace clause” and the timetable for cutting subsidized farm exports from six to nine years. Market access for imports was fixed according to the type of product (animal feed, meat, and so on), instead of the more restrictive product-by-product curbs. Direct assistance to farmers provided under the 1992 CAP reform was not challenged. Finally, 1991–92 was taken as the reference period instead of 1986–88, allowing the EC to export an additional eight million tons of grain.

53. “France Could Back Brittan for EC President,” *Reuters*, 14 December 1993.



As part of the Single Market program, the member states agreed to deregulate their national public procurement markets. In particular, the 1990 “Utilities Directive” opened up public contracts competition in the previously excluded sectors of water, energy, transport, and telecommunications. After a long-fought internal battle, the Council agreed to include in the 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. EC producers would receive a mandatory 3 percent price preference in the award of public procurement contracts, and the contracting entities would be allowed to exclude offers in which less than half of the value of the goods or services to be provided were of EC origin.

The Commission had argued strongly in favor of the inclusion of an EC preference clause as part of a strategy of “offensive reciprocity” in the upcoming international negotiations on public procurement taking place in parallel to the Uruguay Round. This institutionalized European preference could indeed become negotiating leverage against the discriminatory U.S. legislation (the 1933 “Buy American” Act imposed a mandatory price preference of 6–12 percent in favor of products of U.S. origin on all purchases by U.S. federal agencies and agencies funded by federal funds). It would be dropped from the directive, however, once an international agreement had been reached on public procurement. In other words, the EC was threatening to unilaterally change the current policy status quo if the United States did not comply with its demands. The Commission was responsible for negotiating the Government Procurement Agreement on behalf of the member states, who had given EU negotiators some latitude in order to obtain concessions from the U.S. side. According to the treaties, the voting rule governing issues of public procurement was qualified majority.

The U.S. government initially used the tactic of targeted retaliation in order to divide up the member states and hopefully change the EC consensus on the reciprocity clause. In February 1992 the U.S. administration threatened to impose sanctions on the entry into force of the Utilities Directive in January 1993, unless the EC removed the reciprocity clause. In February 1993 USTR Mickey Kantor announced his intention of prohibiting awards of U.S. federal contracts for products and services from the EC. In reaction, 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.<sup>54</sup>

The EC and the United States concluded a partial deal in April 1993. According to the agreement, the EC would not apply the reciprocity clause in certain cases (mostly in the electrical equipment sector). In exchange, the United States would remove all discrimination against EC bids for procurement by the five publicly owned federal electrical utilities, plus the Tennessee Valley Authority. The United States also agreed to set in motion a process designed to eventually eliminate Buy American provisions

54. “Council Unanimously Denounces Latest U.S. Trade Decisions.” *Agence Europe*, 3 February 1993 (emphasis added).

carried out at subfederal levels. Finally, both sides agreed to launch a joint, independent study of access to the EC and U.S. procurement markets. This agreement was only partial, however. For most public procurement sectors, the EC had largely kept the reciprocity clause. The United States therefore decided to apply some limited sanctions. In turn, the EC decided to retaliate by applying its own countersanctions to the United States.

Given the limited success of its earlier retaliatory strategy, the U.S. administration changed tactics. It attempted to introduce a “Trojan Horse” in the Community by heating up the opposition of one of the member states. In June 1993 it was discovered that Germany had breached European solidarity by concluding a surprise telecommunications deal with the United States. U.S. officials intentionally revealed that Germany agreed to ignore the public procurement directive mandating preferential treatment for EC suppliers in telecommunications on the basis of a 1954 German–U.S. treaty prohibiting trade discrimination. The bilateral move effectively freed German and U.S. suppliers from EC–U.S. sanctions and countersanctions imposed in a dispute over mutual charges of discrimination against outside suppliers. The Commission argued that this surprise bilateral deal was illegal and immediately threatened legal action against Germany.

The United States presumed that this unexpected breach of European solidarity by one of the EC’s foremost pro-integrationist members would impact the U.S.–EC negotiations. As one analyst wrote at the time, “if the Americans’ plan was to try to erode Europe’s admirable yet shaky unified stance on trade policy, they succeeded.”<sup>55</sup> What Germany “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.”

Contrary to U.S. expectations, this “divide and rule” strategy did not succeed. The EC immediately acted as if the deal were illegal and therefore void. Moreover, the EC did not have to be unanimous to pursue its offensive on the U.S. public procurement policy. Germany had declared its opposition to the reciprocity clause from the start. Had unanimity voting been the decision-making rule in place in the EC at the time, the negotiations on public procurement would not have proceeded under the shadow of Article 29. The absence of the unanimity requirement coupled with the strong Community reaction to the U.S.–German deal on telecommunications definitely influenced the negotiating process.

The bilateral agreement on public procurement was eventually concluded in April 1994. As predicted by our model, the United States held the keys to the final agreement, since this was a “reformist” case. In the end, however, the United States acquiesced to several of the EC’s original demands, while the EC withdrew concessions on telecommunications, which had been the U.S. central objective in the negotiations. This outcome was made possible because the EU institutional rules did not

55. “EC/U.S.: German Public Procurement Opt-out Heading to the Top,” *European Report*, 16 June 1993.

let the United States successfully employ its strategy of “divide and rule.” Indeed, the rules in place prevented the member state most sympathetic to U.S. views to alter the content of the Utilities Directive and therefore terminate the bilateral negotiation with the United States.

### *Multiple Voices: The “Open Skies” Agreements*

There are very few remaining issues in which the EU has little or no competence in international trade negotiations. In these cases, third countries interested in changing the 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 EC–U.S. dispute over the “open skies” agreement provides an interesting illustration of how third countries can strike better deals when the member states are free agents in the external sphere, as opposed to when member states negotiate with a single voice. In the case of the deregulation of international aviation, the United States exploited the absence of European discipline by concluding a series of bilateral agreements with several member states. The case could be made that these agreements would not have been reached had the Commission been the sole negotiator for the EU, regardless of the voting mode in place, because three big member states initially opposed this U.S.-led liberalization.

International aviation has operated since 1944 under the framework of the Chicago Convention and thousands of ensuing bilateral air service agreements that determine, among other issues, the routes, frequency, seat capacity, and fare regulations 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.

When the issue of international aviation deregulation rose to the fore in 1990, France, Germany, and Great Britain resisted U.S. attempts to open up the transatlantic skies because of the large international stakes held by their national carriers. An internal debate over competence erupted in the Community. The Commission claimed that Article 113 gave it the authority to negotiate international air services with third countries, as it did any other external trade agreement. The majority of member states, however, opposed the Commission’s proposal to take over aviation negotiations. Thus, the Community was prevented from assuming external negotiating competence in this field.

The small states of the EU became the focus of the EC–U.S. “open skies” dispute and of an internal EC feud. In the absence of supranational negotiating authority, the United States could legally enter into bilateral agreements with individual member states. The strategy adopted by the United States was to pick “off one country at a time.”<sup>56</sup> U.S. negotiators hoped that bilateral agreements with the smaller EC countries (which were expected to increase competition, offer greater capacity, and lower transatlantic fares) would pressure the big countries to conclude similar deals.

56. “Standing Firm for Open Skies,” *The New York Times*, 24 December 1992.

Airlines in small EC countries—such as Sabena in Belgium and KLM in the Netherlands—were particularly interested in international liberalization. Since they were not offering domestic service, they needed to compete aggressively on world routes. In September 1992 the Netherlands and the United States signed the first of the “open skies” agreements. The Commission and the big member states accurately interpreted this as an attempt by the United States to “divide and conquer EC aviation.”<sup>57</sup> The Commission also feared that the unilateral Dutch action would undermine future negotiations should the supranational EU ever take over.<sup>58</sup>

The Dutch–U.S. agreement 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.”<sup>59</sup> Despite a November 1994 ruling by the European Court of Justice concluding that international transport fell outside of the scope of the common commercial policy, the Commission continued to insist that it was responsible for aviation negotiations because the open skies agreements impacted Community legislation. In February 1995 Transport Commissioner Neil Kinnock 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 United States. Kinnock argued that such arrangements would benefit the United States at Europe’s expense. The Commission’s rationale was that if the EC negotiated with a single voice, it would have the clout to get a better bargain. Kinnock threatened to take the governments to court if they pushed ahead with their plans.

In June 1996, despite formal opposition from Great Britain, the Transport Council finally authorized the Commission to negotiate a multilateral aviation agreement with the United States; however, the mandate 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 discuss the central issue of traffic rights with their U.S. counterparts, EU negotiators would have to come back to the Council for a new mandate. Bilateral talks between senior U.S. and EU aviation officials started in October 1996, with the goal of allowing U.S. carriers to fly anywhere in the EU and offering European airlines access to every U.S. city. An overall EU–U.S. agreement would replace all the existing bilateral agreements between the United States and EU member states, such as pacts between United Airlines and Lufthansa, Northwest Airlines and KLM, Delta Airlines and Swissair, and Sabena and Austrian Airlines.

Nevertheless, the agreement to delegate some negotiating competence to the supranational level came too late for many. The absence of a prior EU front on the issue of

57. Bruce Barnard, “EC Weighs Pooling of Aviation Accord,” *Journal of Commerce*, 15 March 1993.

58. “Especially under the Carter and Clinton administrations, the U.S. 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 U.S. and European carriers) been highly successful in diverting trade toward more cooperative countries such as the Netherlands.” Staniland 1996, 4–5.

59. Dobson 1995, 225.

international aviation undoubtedly affected the European bargaining position and will likely have consequences on the content of the final agreement eventually reached with the United States.<sup>60</sup> By concluding bilateral agreements with several member states before the negotiating authority was transferred to the Community level, the United States managed to change the bargaining conditions for the upcoming negotiations in its favor. The United States would have had more difficulty in securing a favorable deal for its international airline carriers if the EU had negotiated as a whole with decisions taken under the unanimity voting rule because the big member states would have captured the European negotiating position. The “open skies” dispute is a clear case where the absence of a unitary bargaining position played to the benefit of the EU’s negotiating opponent and where a different institutional framework would have produced extremely different outcomes.

## Conclusion

In this article I develop an institutionalist model of the bargaining power of the EU in international trade negotiations. Differentiating between “conservative” and “reformist” negotiating contexts, I argue that the EU’s effectiveness as an international trade negotiator is determined partly by two distinct, but correlated, institutional mechanisms: the *de facto* voting rules used by the EU Council of Ministers and the negotiating competence delegated to Commission representatives. When the collective position of the EU is closer to the status quo than that of its opponent, I argue that supranational competence mitigated the extremes and rendered the conclusion of an international agreement more likely but deprived the EU of some bargaining leverage. By contrast, a high degree of national control over the bargaining process renders the conclusion of an international agreement less likely but can successfully tilt the final result of the international negotiation toward the position of the most recalcitrant member state. Internal EU institutional procedures are of lesser importance to the final negotiating outcome when the opponent wants a smaller departure from the status quo than does the EU, but these procedures still influence the process and likelihood of a negotiation. The case studies of EU–U.S. trade negotiations on agriculture, public procurement, and open skies illustrate these propositions. They confirm that, given exogenous member states’ preferences, the institutional mechanisms through which member states transfer their sovereignty affect international trade agreements.

Member states do not benefit equally from being forced to share their external trade powers with others. States with conservative preferences can improve their bargaining power over acting on their own on the international scene by negotiating with a “single voice” while retaining their power to veto the deal and control the

60. In October 1998 the Commission formally referred eight member states to the European Court of Justice on the ground that the cumulative effects of the bilateral open skies agreements interfered with the operation of the Community’s internal aviation market. The Commission argued that a common approach should be developed in order to achieve a Transatlantic Common Aviation Area.

negotiators' moves. Member states with median preferences, especially if they are small, are better off inside a Community governed by the majority rule. Of course, the alignment of member states' preferences varies by issue, but member states cannot opt in and out of the EU on an issue-by-issue basis.

Following the conclusion of the Uruguay Round, a majority of member states signaled their preference for regaining some of the supranational autonomy they had earlier delegated to the Community in trade matters. This rollback of supranational competence was confirmed by a controversial 1994 ruling on trade competence by the European Court of Justice and by the 1997 reform of the Maastricht Treaty article dealing with trade negotiations. In trade over "new issues" (such as services and intellectual property), judges and politicians argued in favor of "shared" competence between the national and supranational levels.<sup>61</sup> This shift away from exclusive supranational competence in the policy field that was the most successfully integrated might render third countries more reluctant to conduct negotiations and make concessions to EU representatives. The whole Blair House renegotiation debate triggered questions about the external legitimacy of the Community, leading some of its negotiating partners to question its credibility if it "cannot deliver on the outcome of a negotiation."<sup>62</sup> Since then, other agreements have been negotiated with a single voice by the Commission on behalf of the whole Community, only to be reneged on later by the member states.<sup>63</sup> Because negotiations are an iterated game, the growing uncertainty that the concluded deal will hold may weaken the long-term credibility of the Commission and render its negotiating task more difficult in the future.<sup>64</sup> My model suggests that the EU will be hampered in its more frequent reformist endeavors by the constant threat of having one of its numerous member states break from its ranks. I predict that U.S. trade negotiators will increasingly try to play the "divide and rule" strategy of seeking bilateral deals with "friendly" member states when the EU's negotiating authority is contested. Indeed, U.S. negotiators have already started to exploit the EU'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 U.S. favor.<sup>65</sup> My 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.

61. Court of Justice of the European Communities, Opinion 1/94, 15 November 1994, I-123. Meunier and Nicolajdis analyze the competence debate and the Court's opinion. Meunier and Nicolajdis 1999.

62. Peter Cook, Australian trade minister, quoted in "U.S. Position on Uruguay Round Talks Needs to Be Less Rigid, French Official Says," *Bureau of National Affairs*, 21 October 1993.

63. In 1997 the Council attacked deals with Mexico and Jordan. "Trade Deal Debacles Bring Criticism of Union Mandate," *European Voice*, 10–16 July 1997.

64. This problem is not unique to the EU and is one of the main rationales for the fast-track procedure in the United States.

65. Private interview by the author with officials from the External Affairs Directorate (DG1), April 1997.

This study of the linkage between the EU's internal structure and its external effectiveness has theoretical implications, both for the specific study of European integration and more generally for the study of international relations. First, this approach may be useful for explaining the effectiveness of the EU in other international settings, such as environmental negotiations,<sup>66</sup> foreign affairs, and monetary policy. Second, this study shows that the Community has indeed external consequences, even if the vast majority of EU studies have focused so far on the internal impact of integration. Finally, this internal–external linkage reveals that the EU is an international actor to be reckoned with, no matter what realist scholars preoccupied with the central role of states might want to argue. I have shown that institutions do matter, since the mere fact of belonging to the Community transforms a state's chances of shaping the outside world. In the spirit of the research agenda put forth by Lisa Martin and Beth Simmons in 1998, I have also tried to demonstrate how institutions matter.<sup>67</sup> 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 EU expands to include more small states and simultaneously takes on new roles in foreign affairs.

The analysis of this internal–external linkage also has important practical implications. The EC was originally created to transcend the old rivalries of western European nation-states. Its institutional design attempted a delicate balance between reaping the economic benefits of a large internal market and retaining some degree of national sovereignty. Increasingly, the EU seems to be influencing the behavior of other actors in the international political economy. Above all, the EU is a model for other regional integration efforts. Countries in Asia, North America, and Latin America are trying to imitate the apparent successes of the EU in the commercial sphere.<sup>68</sup> Unlike the founding members of the Common Market, however, other countries have the advantage of hindsight to view the successes and failures of the EU's unique institutions. What they can learn about the optimal institutional design to enhance their external effectiveness might weigh crucially in their decision to emulate or reject the Community's original approach to sharing sovereignty. The internal–external linkage is also crucial because the EU has an increasingly proactive role in the world's political economy. It now initiates rather than reacts to international policy changes; for instance, the EU, not the United States, has been at the forefront of launching the Millennium Round of multilateral trade talks under the World Trade Organization. My model suggests that the EU's capacity for setting the agenda in key areas of the international economy depends heavily on its own institutional features. The formidable reassessment that the issue of trade competence is currently undergoing in the EU might well have the unintended consequence of dampening the Community's new-found international strength.

66. Jupille 1999.

67. Martin and Simmons 1998.

68. See the introduction in Rhodes 1998.

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