

## Introduction

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Let's unite. And the world will listen to us.

— Pro-European ad campaign, September 1992

THE EUROPEAN UNION (EU), the world's largest trader and a heavyweight in the international political economy, is not an easy bargainer to deal with. The complex, unusual, often unintelligible nature of the European "beast" has left many foreign negotiators perplexed: if the EU speaks with one voice in trade, does it hold the final say over international trade agreements? Once concluded by EU negotiators, can agreements be overturned by recalcitrant EU member states? When is it appropriate to negotiate with the EU or with the member states directly? Over time, both the requirement to present a common front and the complexity of the EU's institutional structure have served the EU well in international trade negotiations.

Just take the negotiation of the landmark free trade agreement with South Africa as an illustration. In 1995 the EU and South Africa started negotiating a sweeping trade-liberalizing deal supposed to free 90 percent of the trade between them. After four years of intense, sometimes tense negotiations—in particular over the issue of the labeling of South Africa's fortified wines as "port" and "sherry," which it eventually agreed to phase out—EU and South African negotiators finally concluded a deal in 1999, due to enter into force in January 2000. To the dismay of other EU member states, at the last minute Italy refused to ratify the agreement, unless South Africa dropped the use of the words "grappa" for its minuscule annual production of 30,000 bottles of the similar alcoholic drink, and Greece decided to block ratification as well, unless South Africa dropped forever the use of the name "ouzo" (which, embarrassed EU negotiators later realized, was not produced at all in South Africa).<sup>1</sup> South African negotiators were astonished by these new demands and by the inability of the EU to overcome its internal disputes. South African President Thabo Mbeki lashed out at the EU for showing bad faith in raising objections after the signature of the accord, and the South African Trade Minister Alec Erwin lamented that it was impossible to negotiate with the EU if it was incapable of raising itself above peripheral concerns, but their

<sup>1</sup> Victor Mallet, "Attempts to Rescue EU-SA Pact," *Financial Times*, January 19, 2000; Nicol Degli Innocenti, "Brussels Wins Pyrrhic Victory on Spirits Labeling," *Financial Times*, February 17, 2000.

protests were to no avail.<sup>2</sup> South Africa eventually caved in and agreed to end the controversy over the names of spirits, and the landmark EU-South Africa free trade deal was finally implemented.

As many trade negotiators around the world have come to realize, it is not easy to bargain with the European Union. With its complex institutional procedures and multiple masters, more often than once its trade partners have been forced to give in to a EU speaking with a single voice, but a single voice reached through an unclear division of competences. Nor is the United States an easy bargainer, for that matter. Between checks and balances among the various branches of government and the easy capture of Congress by special trade interests, American trade negotiators have often used their institutional constraints as bargaining advantages. Willingly or not, the EU has come to rival the United States in this domain. It has become a mighty actor in world trade policy because its member states have pooled sovereignty and external representation in trade, thereby making the collective whole greater than the sum of its parts. But part of this might has come from the incomplete integration of European trade policy, leaving room for involvement by the member states, and from the constant political battles over trade competence between national and supranational actors.

The fact that the EU speaks with a “single voice” in trade has enabled it to affect the distributional outcomes of international trade negotiations and shape the global political economy. Indeed, the EU has exerted a particularly liberalizing influence on the international trading of services and has actively contributed to the development of institutional rules within the World Trade Organization (WTO) designed to prevent unilateralism. In this case, international bargaining power has been a positive externality of the pooling of the diverse European national positions on trade under a single institutional umbrella. By contrast, cacophony is costly, or so it seems: only when the European Union speaks with a single voice has it been able to convey its structural weight into international negotiating leverage.

This book aims to answer many of the questions raised by the process of “trading voices” in the European Union. By which mechanisms does a single internal voice translate into external bargaining power? What are the distributional outcomes of trading individual voices for a single one in an international negotiation? Does the EU’s influence lie merely in the combined weight of each of the member states, or does it depend on individual states’ preferences or the rules through which these preferences are aggregated into a single voice? When the member states have diverse

<sup>2</sup> Charlotte Denny, “Trading Names: EU and South Africa’s War of Words,” *The Guardian*, February 15, 2000.

positions, how does this diversity translate into the outcomes that the collective entity is able to extract in the international negotiation? In particular, which combination of institutional rules and individual preferences makes member states winners or losers from the single voice arrangement? Finally, what are the trade-offs between the advantages of scale in terms of international influence and the internal political costs of having to override heterogeneous preferences?

This book is about the politics of international trade bargaining. It analyzes the determinants of EU bargaining power in international trade negotiations, with a detailed study of four cases of transatlantic trade disputes. The central argument is that the EU's complex institutional structure and the obligation to negotiate international agreements with a "single voice" have an important, sometimes decisive, impact on international trade negotiations—but a different one than is commonly believed. Most claim that the EU has little influence or that it strengthens the European voice in such disputes; instead, I show that the requirement to present a common front in international trade negotiations can strengthen or weaken the EU's bargaining leverage, predictably so, depending on the type of voting rules employed, the distribution of preferences, and the specifics of the issue. Specifically, I find that unanimity voting strengthens the hand of EU negotiators to resist demands for policy changes but weakens their ability to advocate policy changes. Adding to the growing literature on both rational and historical institutionalism, this book aims to specify the conditions under which institutions matter and transform outcomes in a way not predicted by preferences and power alone. A related argument is that, far from having a negative impact on the collective bargaining power, the diversity of European positions might, in some circumstances, act as an influence multiplier and therefore become an asset.

This book is also about the EU as a global actor. In spite of its reputation as an economic giant but a political dwarf, the EU has developed into a highly active, though unorthodox, global actor with a multifaceted set of foreign policies. These policies are far more ambitious than those of any other regional economic organization. From trade to global aid, from sustainable development to democratic consolidation, the EU has become implicated in world affairs and has developed an international presence not captured by a focus on military and diplomatic capacities alone. The EU is the single biggest market for imports from developing countries, and it exports more than twice the amount to developing countries than the United States, Japan, and Canada put together.<sup>3</sup> The EU is the world's largest aid donor, providing more than 50 percent of global

<sup>3</sup> Eurostat, in "The European Community's Development Policy," communication from the Commission to the Council and the European Parliament, April 26, 2000.

aid, and it has long offered trade preferences to the least developed countries. Yet the EU still lacks a comprehensive external policy encompassing trade, development, diplomatic action, security, and defense. By analyzing the one area in which the EU is an uncontested world power, this book sheds light on some misunderstood determinants of its international influence and offers a glimpse at the EU's potential as an international actor—potential not yet realized in areas of international activity other than trade.

This book is also about transatlantic relations, which are becoming more complex and more contested in the twenty-first century. Trade being the only forum in which the EU speaks to the United States with an equal voice, an analysis of the EU as a global trader and trade negotiator can provide an understanding of the dynamics of the sometimes stormy transatlantic trade relationship. The EU is currently the world's largest trader and one of the main players involved in negotiating trade agreements as part of the ongoing Doha Development Round under the WTO. This provides opportunities for further transatlantic trade conflicts, as do the numerous EU-U.S. disputes under consideration at the WTO, such as those on Genetically Modified Organisms and on tax breaks on exports ("Foreign Sales Corporation").

Finally, this book can be read as a primer about the history and making of trade policy in the European Union. Trade is the EU's oldest, and most successfully integrated, common policy.<sup>4</sup> Over the past two decades, trade policy has spilled out of the restricted confines of customs duties and tariffs. It now links commercial flows and the collective preferences of societies on issues such as health, the environment, culture, and social rights. This book traces the evolution of the rules for making trade policy in Europe from the 1957 Treaty of Rome to the 2003 draft Constitution, from De Gaulle's 1965 empty chair policy to the 1994 judicial challenge to the EU's competence over trade in services. By focusing on the political trade-offs associated with the pooling of external representation, this book presents the first systematic evidence of why the current battle over trade is located partly in the battle over institutions, as antiglobalization activists have realized. The institutional battle is particularly acute in the EU because of its complex multilevel structure and the ambitious constitutional exercise in which its members have engaged ahead of its enlargement to the east. The results of this battle seem of prime importance for the rest of the world since the EU is the world's largest trader.

<sup>4</sup> In a table summarizing issue areas and levels of authority in Europe, "commercial negotiations" is the only issue out of twenty-eight to be coded as having all policy decisions taken at the EC level. The table was originally designed by Lindberg and Scheingold (1970) and was updated and reproduced in Donahue and Pollack (2001).

## Trading Voices: The Pooling of International Representation

From its very beginning in 1958 with six participating member states, the European Economic Community (EEC) became a single actor in trade policy. The requirement of pooling external representation in international trade negotiations was enshrined in the emerging European institutional structure. Why did national governments transfer part of their trade policymaking authority to the supranational level with relatively little hesitation? The main reason was legal and practical: the only way the EEC could legally exist under the General Agreement on Tariffs and Trade (GATT) was to be a customs union, and the only practical way to manage the external relations of such a union was by adopting a single voice in trade. The EEC's founding fathers also believed that the benefits of "trading voices" far outweighed the costs. As in the United States, where negotiating authority is often transferred temporarily to the executive branch, the delegation of competence could provide greater insulation from domestic pressures and therefore ensure economic liberalization.<sup>5</sup> A final motivation was the assumption that unity brings strength, and therefore that a unified voice would reinforce Europe's international bargaining power.

<sup>5</sup> Petersmann (1991: 288–289) enumerates the traditional arguments in favor of the delegation of foreign policy to the executive branch. If trade policy is conceived as part of foreign policy, then some of these arguments could justify the delegation of trade policy to the most centralized level of government.

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

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

A third line of argument is that the implications of foreign policy questions for the individual citizen are often remote, indirect, and obscure, so that most people and also parliamentarians tend to give little attention to foreign policy issues and leave them to "the experts."

*Legal Obligation and Efficiency of the Negotiating Process*

The Common Commercial Policy was created, above all, by an exogenous legal obligation. The single voice in trade was indeed necessary for the European Community to be allowed under the existing GATT rules. European regional integration represented an exception to the principle of multilateralism on which the GATT was based, but according to its article XXIV, the rule of the most favored nation could be circumvented by the creation of a free-trade zone or a customs union, in the hope that such zones would eventually encourage comprehensive global trade liberalization.

The objective of the 1957 Treaty of Rome was to create a customs union among Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany in which there would be no barriers to trade and a common external tariff would be applied to imports from third countries. The EEC's founding fathers chose to build a customs union for both economic and political reasons.<sup>6</sup> Economically, it did not seem to make sense to keep separate tariffs with third countries while abolishing customs duties among member states who were geographically contiguous. If external tariffs were kept separate, imports from third countries would flock to the member state with the lowest tariffs and then circulate freely within the zone, thereby rendering national tariffs obsolete. Moreover, contemporary customs union theory argued that the dismantling of tariffs and quotas, as well as the establishment of a common external tariff, would force a more efficient use of factors of production.<sup>7</sup> Politically, the creation of a customs union, which entailed some sharing of sovereignty with respect to the conduct of trade policy, meant closer cooperation and relationships between former enemies.

Because a customs union is a community of nations that liberalize trade internally while erecting common external barriers, it does require a common policy toward third countries. In particular, a mechanism was needed to harmonize the national rules governing the entry of products from third countries into each of the EEC's member states, in order to avoid diversion of trade, misallocation of factors of production, and distortion of competition stemming from the free movement of goods within the boundaries of the Common Market. The creation of a customs union therefore meant the establishment of a common external tariff (CET)—

<sup>6</sup> See, for instance, the "Spaak report," "Rapport des chefs de délégation aux ministres des affaires étrangères," Bruxelles, April 21, 1956, Mae 120 f/56.

<sup>7</sup> See, e.g., Viner (1950).

that is, a tariff rate uniformly applied to imports of goods and services from countries outside the EEC, irrespective of the member state of destination. Originally the CET was the arithmetic average of the national tariffs applied in 1957 by the member states. It was subsequently negotiated down in successive rounds of multilateral trade negotiations under GATT. The newly created European Commission was granted the authority to negotiate for the collectivity in order to allow the internal market to function as a unit.

The delegation of negotiating competence to the collective entity was expected to increase the efficiency of the process. Indeed, trade policymaking has always been a long and complex process. In the United States, the passage of the American Smoot-Hawley Tariff Act of 1930 had been a “truly Sisyphean labor,” according to Schnattschneider, who counted eleven thousand pages of testimony and briefs collected over forty-three days.<sup>8</sup> Concentrating the power to negotiate into the hands of a small number of executive agents could maximize the gains obtained in the external negotiation and accelerate the attainment of these gains since it likely speeds up the negotiating process.<sup>9</sup> Increased efficiency is indeed a traditional argument used in principal/agent analysis to justify the delegation of competence from a principal to an agent.

As in the United States, efficiency was, and still is, one of the main arguments used in Europe to justify the delegation of trade negotiating competence to the supranational level. Commission negotiators are better equipped than national negotiators to bargain internationally with successful results because they avoid long domestic debates about the details of the issues being negotiated. Moreover, if EU negotiators are given sufficient but restricted competence, they can credibly conclude agreements that the other party knows will be approved internally. The efficiency argument was succinctly summarized by former EU Trade Commissioner Sir Leon Brittan, who argued that wider powers for the Commission and an end to the unanimity rule would “speed up negotiations, simplify decision-making and increase the EU’s trade policy influence in relation to the U.S. and Japan.”<sup>10</sup>

<sup>8</sup> Schnattschneider (1935), quoted in Bailey, Goldstein, and Weingast (1997: 312).

<sup>9</sup> Some scholars of U.S. trade policy have recently expressed doubts about the validity of the “efficiency” rationale. While it is true that the concentration of negotiating authority into the hands of the executive reduces inefficiencies, recent work argues that there are other ways to streamline the process than by delegating to the president. The legislators could have chosen instead to use differently existing organizations, to create new committees and commissions, and to establish new rules. See Bailey, Goldstein, and Weingast (1997).

<sup>10</sup> Lionel Barber, “Brussels Strives to Call the Tune on Trade,” *Financial Times*, March 12, 1997, p. 6.

### *Trade Liberalization through “Insulation”*

European policymakers also chose to centralize trade policymaking in order to insulate the process from protectionist pressures and, as a result, promote trade liberalization. Drawing on their familiarity with the American system and their admiration of the Interstate Commerce Clause, the founding fathers of Europe, Jean Monnet and Paul-Henri Spaak above all, planned to replicate the system in the European Community.<sup>11</sup>

The political economy canon has long been that the politics of trade are characterized, almost universally, by collective action problems and a bias toward protectionism. The benefits from protection are concentrated, whereas its costs are dispersed.<sup>12</sup> Therefore, it is easier for import-competing industries than for consumers to act collectively, because they form a much smaller group in relative terms.<sup>13</sup> As many scholars of political economy have observed over the years, the political system is thus structurally biased in favor of protectionism.<sup>14</sup>

The delegation of trade policy-making authority to the most unitary level of government facilitates the insulation of the process from domestic pressures and, as a result, promotes trade liberalization. This is because different decision-makers have different constituencies, and local politicians are more susceptible to special interests than the president, whose constituency is national. Looking at the U.S. experience illuminates the dilemmas faced by policymakers in trying to achieve collective policy in the midst of special interest pressure. A standard view among studies of the American trade policymaking process is that Congress delegated trade authority to the president to insulate its members from protectionist domestic pressures and to promote a more liberal international political economy.<sup>15</sup> Because each representative can become hostage to a handful of special interests, the congressional policymaking process leads either to policy impasse or to logrolling and inefficiently high levels of protectionism, such as the 1930 Smoot-Hawley Tariff Act.<sup>16</sup> With a national rather than parochial constituency, the president is expected to have more

<sup>11</sup> Interview with Paul Boel, May 2004.

<sup>12</sup> This was first noticed by Schattschneider (1935: 127–128).

<sup>13</sup> On collective action problems, see the seminal work of Olson (1982).

<sup>14</sup> See, for instance, Olson (1982); Goldstein (1988); Magee, Brock, and Young (1989); Goldstein (1993); O’Halloran (1994); Destler (1996); Gilligan (1997); Hiscox (2002).

<sup>15</sup> See, for instance, Bauer, Pool, and Dexter (1963); Destler (1996). There are some disagreements in the recent literature over the primary motivations for the delegation of trade policy, as well as the nature of the delegation itself. See O’Halloran (1994) and Bailey, Goldstein, and Weingast (1997) for dissenting views.

<sup>16</sup> See O’Halloran (1994: 7).

liberal preferences on trade policy than members of Congress. Therefore, delegation facilitates liberalization.<sup>17</sup>

The delegation of trade authority to the executive branch has enabled congressional representatives to pursue the goal of an open world economy. The hope of the legislators who initiated the institutional change in the United States in 1934, and later of those who signed the 1962 Trade Expansion Act, was to embed liberalism into the institutional process. The Democratic legislators designed institutions that would lower tariffs and outlive their partisan control over Congress.<sup>18</sup> At the same time that it created free trade, the delegation of trade authority to the executive enabled U.S. legislators to avoid being blamed for the domestic consequences of these liberal policy decisions. They delegated decision making, but they retained their right to criticize foreign countries and the administration on behalf of disaffected constituents. O'Halloran summarizes the "blame shirking" argument: "This decision-making process allows the United States to pursue liberal trade policies without holding members of Congress directly accountable to constituents injured by import competition. Legislators can thereby claim credit as a champion of the disaffected without having to deliver on their threats."<sup>19</sup>

Coming in the postwar era, with the memory of the international consequences of American protectionism still fresh in their minds, the decision of the founding member states of the European Community to delegate trade negotiating authority to the supranational level can similarly be explained by this willingness to insulate international trade agreements from protectionist pressures. The newly designed Council of Ministers, where the national interests of the European member states are represented, could also be prone, like the U.S. Congress, to protectionist tendencies. European policymakers even have to face an additional level of lobbying, as special interests can be of a national, regional, or sectoral nature. Letting international trade negotiations be conducted by supranational agents and trade policy decisions be taken by a majority of member states was expected to prevent the disproportionate capture of trade policy by protectionist interests.<sup>20</sup>

<sup>17</sup> See Destler (1996); O'Halloran (1994).

<sup>18</sup> The central argument of Bailey, Goldstein, and Weingast (1997: 316) is that the RTAA was passed in 1934 not so much because Congress abdicated control or sought to deflect political pressure, but because "the Democratic leadership wanted lower tariffs that would pass an increasingly skeptical Congress and would be able to outlive Democratic control of Congress. The institutions they designed met this goal."

<sup>19</sup> O'Halloran (1994: 17–18). These arguments were originally made by Bauer, Pool, and Dexter (1963) and Mayhew (1974).

<sup>20</sup> One main difference from the American institutional structure, however, is that the protectionist or liberal tendencies of the EU trade policy process are less easy to predict because of the blurring of the executive and the legislative branches into the Council of Ministers

### *A Single Voice as Instrument of International Power*

A third rationale for delegating the trade negotiating authority from the national to the supranational level rested on the traditional assumption that internal unity brings external strength, and therefore that the pooling of international representation would enhance the external voice of the European Community. This assumption has been prevalent in the rhetoric of pro-integrationist politicians and permeates the literature on European integration.

The initial motivations of European policymakers for fostering unity in Western Europe and setting up the EC institutions were primarily economic (to improve standards of living and create a large market) and security-related (to act as a bulwark against the progression of communism and prevent the return of a nationalist Germany).<sup>21</sup> One of the less avowed goals of integration was to restore Europe's past might and transform it into a force equal to that of the United States.<sup>22</sup> The phrase "United States of Europe," given worldwide fame by Winston Churchill's 1946 speech and later popularized by Jean Monnet in his "Action Committee for the United States of Europe," is in itself a testimony to this goal.

Integration arose from the loss of influence of Europe, sanctioned by the Second World War, and coincided with the demise of the European colonial empires. Europe relayed dreams of grandeur for some politicians, who pledged to use European unification to bring back international strength. Many proponents of European integration feared the growing dependence of Europe on the United States as a consequence of the Marshall Plan and envisioned European integration as a means to assert the

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and the European Commission, as argued by Petersmann (1991: 167): "The lack of separation of legislative and executive governmental powers in the EEC, especially in the field of the common agricultural and commercial policies, has born out this liberal concern that the combination of discretionary legislative and executive powers, unconstrained by substantive constitutional principles and effective judicial control, risks to be abused for the sake of coalitions of various organized interests and to lead to the abandonment of liberal principles in favor of discriminatory measures benefiting the various 'distributive coalitions' (e.g. agricultural, textiles, and steel lobbies in the EEC). The increasing number of bilateral and sectoral special arrangements for trade in agricultural products, textiles, apparel, steel, ship-building, synthetic fibres, automobiles, etc., first negotiated with domestic industry lobbies and subsequently on the intergovernmental level, reflect an increasing prevalence of special interests over the general public interest."

<sup>21</sup> See Dinan (1994) for an introduction to the history and origins of the European Community. See Monnet (1978) and Milward (1984) for analyses of the relationship between European integration and the U. S. global power.

<sup>22</sup> Some American actors of this period deny that this was ever an underlying motivation, but there is plenty of evidence to the contrary, starting with Jean Monnet's own writings and testimonies.

continent's independence.<sup>23</sup> As the French newspaper *Le Monde* wrote in 1957, "Is the lack of enthusiasm [of the United States for the creation of the EEC] prompted by the thought that, were the Common Market to succeed, Europe would need less American aid and would become more independent?"<sup>24</sup> Even Jean Monnet, the pro-American "founding father" of the European Community, envisioned building a European bloc equal to the United States in economic and political strength. He aimed to realize an equal partnership between the United States and Europe.<sup>25</sup>

The "third force" mythology was omnipresent in the public debate in Europe in the postwar years. German and Italian policymakers assumed that European unity would bring strength in order to mobilize political forces longing for a new form of national identity.<sup>26</sup> The French were particularly intent on resisting the United States to demonstrate Europe's new strength and independence. This motivation for furthering European integration culminated in the Gaullist period. Although De Gaulle's suspicions of regional integration were deep for the transfer of sovereignty it seemed to imply, he also foresaw its potential for interposing Europe as a third force in the world, where France alone could not have succeeded.<sup>27</sup> According to this Gaullist rhetoric, the movement toward European integration was an important step toward independence from the American tutelage.

The reasoning that applied to political relations also applied, with even more vigor and persuasion, to trade relations. The European and American press commonly assumed since the early days of European integration that being united would give the Europeans greater bargaining leverage vis-à-vis the United States. The issue was already raised in 1943, when the U.S. State Department analyzed the policy opportunities and dangers of the afterwar period. According to economist Jacob Viner, a member of the Special Subcommittee on Problems of European Organization, Euro-

<sup>23</sup> Dinan (1994: 18).

<sup>24</sup> *Le Monde*, editorial, January 20, 1957.

<sup>25</sup> In "Jean Monnet's Methods," François Duchêne, a Monnet collaborator, writes: "Few contemporaries beyond a restricted circle of like-minded reformers ever fully grasped the paradox, in traditional, national terms, of Monnet's refusal to be a European nationalist, and yet his determination that a uniting Europe should achieve 'equality' with the United States. It is ironic that Gaullists saw Monnet as a pawn of the Americans (thus jettisoning Monnet's cherished goal of association in equality); while Kissinger, in the *Years of Upheaval* (ch. V) viewed him as a subtler kind of European Gaullist proposing to obtain from America by stealth what de Gaulle hoped to snatch by defiance (thus jettisoning the stress on interdependence and cooperation)" (in Brinkley and Hackett 1991: 204).

<sup>26</sup> In Italy, this argument was particularly popular with the anti-American right wing, but it was widely used and supported by all major political parties. I am grateful to Federico Romero for bringing this point to my attention.

<sup>27</sup> Dinan (1994: chap. 2).

pean economic unification would increase the area's bargaining power, as it had in its time increased the power of the United States and the Zollverein, and this bargaining power would be directed primarily against the United States.<sup>28</sup> This did not prevent successive U.S. administrations from strongly supporting the establishment of the European Community and thereby the strengthening of a trade rival because of the overriding priority of strengthening Europe as a security partner.

The spillover logic was expected to be at work in the domain of external relations: "speaking with one voice" in trade affairs would lead to increased international power of the EC, which ultimately translated into common foreign and security policy. American policymakers were well aware of the "third force" dangers associated with the creation of the European Economic Community. In 1961, in regard to the implementation of a regional trade bloc in Europe, the *New York Times* indeed warned of "the possibility that a united Western Europe might break from the United States and take its stand as the balancing power between East and West."<sup>29</sup> Therefore, not surprisingly, the "third force" rhetoric and the potential consequences of the Common External Tariff on transatlantic power relations were at the heart of the preliminary Kennedy Round discussions, which debuted in 1962.

The subsequent advances toward broader and deeper European integration led to even higher expectations that the EC was going to use its reinforced leverage to assert a new world leadership role in trade policy. This assumption was particularly prevalent in the early days of the Uruguay Round negotiations, which took place amidst the relaunching of European integration with the Single European Act and widespread academic and political discussions of the decline of U.S. hegemony. The progress of economic and political integration and the strengthening of the Commission's supranational powers suggested that the EC's negotiating effectiveness would increase.<sup>30</sup> Indeed, the Single European Act, which transformed the decision-making procedures in the EC and committed to complete the European internal market by 1992, provoked the fear of American negotiators. The United States worried, first, that the EC would retreat behind fortresslike walls, and second, that it could now stand up

<sup>28</sup> See Devuyt (1998) for an analysis of the intellectual debate in the United States during the creation of the European Community and references to the Special Subcommittee on Problems of European Organization, which can be consulted at the U.S. National Archives, General Records of the U.S. Department of State, Records of Harley Notter, 1939–1945, Records of the Advisory Committee on Postwar Foreign Policy.

<sup>29</sup> Richard Mooney, "Common Market: Effect on the US," *New York Times*, international edition, November 13, 1961.

<sup>30</sup> Claim made, for instance, by Steve Dryden, "Trade Warriors," *Europe* (May 1990): 15–16.

to the United States in bilateral and multilateral negotiations.<sup>31</sup> Once the renewed efforts toward integration became publicized around 1987–1988, a common view was that “the rest of the world is feeling at worst considerable apprehension and at best a great deal of anxious uncertainty about what the effects of 1992 might be for their trade and economic relations with this looming economic superpower.”<sup>32</sup>

Most of the official U.S. response to the Single European Act emphasized the potential trade consequences of complete economic unity in Europe. American policymakers did not much discuss the institutional transformations toward increased supranationalism, which the act entailed. Once again, the assumption was that an institutionally stronger EC would produce yet a tougher EC bargaining stance in the GATT negotiations. The link between integration and political influence was made more apparent during the debate on the 1992 Maastricht Treaty on European Union, which provided steps toward further monetary and political integration. The argument that deeper supranational ties would strengthen the EC’s position in trade, and possibly foreign policy, negotiations was used again during the 1997 and 2000 Inter-Governmental Conferences leading to the redrafting of the treaty, including the articles governing trade policy. In the discussions of the Constitutional Convention (2002–2004), especially those that took place in the wake of the transatlantic debacle over Iraq, the argument that pooling sovereignty over external representation would enhance Europe’s international power was heard once again.

### Arguments, Evidence, and Findings

What are the expected effects of transferring trade policy sovereignty to the supranational level and pooling external representation? Despite the theoretical and practical salience of this question, the literature on European integration has neither asked nor answered it.<sup>33</sup> The lack of prior

<sup>31</sup> As Joseph Greenwald stated: “The return of self-confidence engendered by the Europe 1992 process has led the EC to be more contentious in disputes with its trading partners. European Commission officials say privately that, while the United States can push weak countries around, the Community can now stand up and slug it out with an aggressively protectionist United States” (quoted in Hufbauer 1990: 346).

<sup>32</sup> Golt (1988).

<sup>33</sup> One of the most systematic studies to date is Frieden (2004). Scholars in the *Deutschian* and, more recently, constructivist traditions have suggested in passing some relationship between the EU’s internal features and external influence, as have some contributors to the neofunctionalist literature, but none has formulated testable hypotheses on this possible linkage. See, for instance, Deutsch et al. (1957); Schmitter (1969); Lindberg and Scheingold (1970); Wendt (1994); Mercer (1995).

research on the subject may stem from the fact that European integration was long believed to be an experiment in the making—and an experiment likely to fail. As a result, scholars initially addressed issues such as how the EEC was created, where it was going, and through which process.<sup>34</sup> When European integration proved resilient and the EEC expanded and deepened, the next wave of scholarship started to study the internal effects of European integration: how does it affect domestic politics and democratic legitimacy?<sup>35</sup> What is the impact of integration on national policies?<sup>36</sup> This is the focus of most of the current literature on European integration. Since the European Union has withstood forty years of progress, crises, and enlargement, however, it is time finally to ask how the process of integration affected outsiders and the EU's own position in the world political and economic system.

Another explanation for the lack of scholarly focus on the question of the EU's external impact is the widespread assumption, both in political rhetoric and in the political science literature, that internal unity creates external strength. The belief that economic and political unity would put Europe on an equal basis with the United States in the conduct of world affairs, including in the formulation of world trading rules, has long been anchored in politicians' rhetoric in Europe and, to some extent, in the United States. Yet does "trading voices"—the transfer of negotiating authority to the supranational level—represent the best means for European states to secure a meaningful international voice in trade? This book analyzes whether the EU has indeed become increasingly effective in international trade negotiations as it has integrated and consolidated internally.

Finally, the absence of systematic study of the linkage between internal unity and external strength may have been influenced by the realist assumption that the EU acts merely as a messenger, relaying the preferences of the member states from one forum to another without altering them. The common European position, which is reached internally through an intergovernmental bargain, can only reflect the preferences of the more powerful member states. As Grieco wrote during the Uruguay Round, "the arguments presented by the EC Commission in the context of the GATT, as in other international forums, are based on and driven by the

<sup>34</sup> This is the classic neofunctionalism vs. intergovernmentalism debate exemplified by Haas (1958) and later Sandholtz and Zysman (1989) and Moravcsik (1991). See Caporaso and Keeler (1995) for an overview of the evolution of the scholarship on European integration.

<sup>35</sup> On the rich controversy over the issue of the "democratic deficit," see, among others, Williams (1991); Wallace (1993); Majone (1996); Weiler (1997); Banchoff and Smith (1999); Scharpf (1999); Cederman (2000); Schmitter (2000); Moravcsik (2001); Siedentop (2001).

<sup>36</sup> See, for instance, Cowles, Caporaso, and Risse (2001).

interests and preferences of the individual EC member states and especially the EC's core countries, Britain, Germany, and France."<sup>37</sup> Therefore, institutional developments inside the EU appear to have an effect on international negotiations only insofar as the big member states change their strategic assessment of what is desirable in the international arena.

Recent scholarship on European integration has attempted to analyze the EU as an actor able to enjoy some autonomy from its constituent member states. Inspired by rational-choice theory and focusing on the autonomous behavior of goal-oriented supranational actors through the lens of the principal-agent theories of delegation, this literature tries to specify the conditions under which institutions matter and how causal mechanisms operate.<sup>38</sup> In internal negotiations over EU policy, supranational actors derive their autonomy primarily from the cleavages among member states' preferences, from their own role as agenda-setters, and from the loopholes in the oversight mechanisms established by the member states to control them, which vary by issue area.<sup>39</sup> The result is an independent causal role attributed to the EU.

In external settings, the EU derives some of its autonomy from the multilevel nature of the international negotiating process, which requires agreements to be reached at the domestic, supranational, and international levels. The two-level games highlighted by Robert Putnam imply that negotiators are able to increase their influence on the final outcome of a negotiation by using their relay position to manipulate both their domestic constituency and negotiating opponents.<sup>40</sup> Applied to the three levels of bargaining faced by EU representatives when they engage in international negotiations, this argument suggests that the EU's external bargaining impact is determined by the ambitions of its institutional agents.<sup>41</sup> As a result of their partial autonomy and ability to manipulate their various constituencies, the supranational negotiators can exert a definite impact on the final international agreement, which is likely to be tilted in favor of their own pro-integrationist (or proliberalizing) views.

This rational supranationalist hypothesis about the EU as an autonomous actor in a multilevel setting rests on the fundamental assumption

<sup>37</sup> Grieco (1990: 21).

<sup>38</sup> On rational choice institutionalism, see Riker (1980); Moe (1984); Weingast and Marshall (1988); Shepsle (1989); North (1990). On historical institutionalism, see March and Olsen (1984); Steinmo et al. (1992); Pierson (1996, 2000); Thelen (1999). For the insights of institutionalist analysis applied to the study of the EU, see, for instance, Tsebelis (1994); Garrett (1995); Garrett and Tsebelis (1996); Nicolaïdis (1998); Jupille and Caporaso (1999); Keohane and Martin (1999); Dowding (2000); Aspinwall and Schneider (2001); Pollack (2003).

<sup>39</sup> Pollack (1997).

<sup>40</sup> Putnam (1988); Evans, Jacobson, and Putnam (1993).

<sup>41</sup> See Patterson (1997) on the three-level games in the EU.

that supranational negotiators are purposive actors with preferences distinct from those of the constituencies they have been created to serve. The independent causal effects of the EU on external bargaining stem from their drive to maximize their autonomy. Therefore, the EU is in a strong international position when its negotiating agents have enough leeway to promote their own agenda. Yet, in practice, EU negotiators are often forced to defend internationally a Community position that goes against their own preferences, but they seek to conclude the agreements for which they have been mandated anyhow.

This book builds on the insights provided by rational supranationalism but focuses on specific institutional features in addition to the autonomy of supranational actors and specifies how third countries can exploit these supranational preferences to their advantage. By examining variation in institutional rules within the EU for making trade policy, I try to answer the question not only of how the EU matters, but more precisely of how internal EU rules affect external outcomes. I develop a model of the bargaining power of the European Union in international trade negotiations, defining 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, *ceteris paribus*. 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.

To explain variations in EU international bargaining power, I examine the procedures (formal and informal) through which the national positions of the member states on trade are aggregated into a single voice at the European level, and the procedures through which this single voice is relayed at the international level. Who represents the voice of the EU in international trade negotiations, and how do the member states agree on what to say? Based on the concepts and methodology of new institutionalist theory, my central argument is that the EU is not merely a forum in which the European states exchange concessions. Rather, it is primarily an institutional framework that has been designed by, but can become constraining for, the member states. Indeed, the main finding of this book is that the EU’s institutional structure exerts an independent causal effect on the process and outcome of international negotiations, given an exogenous distribution of national preferences.

In the chapters that follow, I consider the impact of the pooling of external representation on international negotiations. Chapter 1 offers a historical account of the transfer of the authority to negotiate international trade agreements to the supranational level in the EC (and later the EU), explaining the legal and political battles over national sovereignty and

supranational autonomy, which rose to the forefront of the institutional debate in Europe in the 1990s. This chapter also attempts to shed light on the complexities of the trade policymaking process in the EU, in particular the making of the “single voice” in trade. In chapter 2, I develop an institutionalist model about the strategic implications of being forced to negotiate externally as a single entity. This model is based on two central variables, which will be explained in chapter 2: (1) the degree of supranational competence (including the internal voting rules in the EU—unanimity vs. qualified majority voting—and the nature of the delegation by the member states to their negotiating agent—restrictive vs. extensive); and (2) the negotiating context relative to the status quo. Differentiating between a “conservative” and a “reformist” negotiating context, I argue that the EU supranational competence determines both the probability that the negotiating parties will conclude an international agreement and the substantive outcome of the negotiations. The main finding of this model is 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 and restrictive 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 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 the determination of the final outcome of international negotiations. If the negotiation has to reach a conclusion for outside reasons, however, I find that majority voting strengthens the influence of the EU over unanimity voting.

Contrary to the conventional assumption that the EU’s cumbersome decision-making procedures have negative effects on its external bargaining potential, in certain circumstances the EU can indeed use its institutional constraints strategically in order to reach its negotiating objectives. In these specific cases, I show that being “divided but united” (that is, having divergent preferences but being forced to present a single face to the outside world) can give the EU an edge in international bargaining, as was originally foreshadowed by Schelling.<sup>42</sup> Conversely, when the EU does not have exclusive negotiating competence and the third country aims to change the status quo, each member state, acting as free agent, can try to resist external attempts at changing the status quo but has no control over the fallout of its neighbors’ own international agreements. When some member states wish to change the international status quo,

<sup>42</sup> Schelling (1960).

one member state alone does not have sufficient weight to successfully launch an offensive against a third country without the support of a collective bargaining unit.

Pointing to the strategic implications of “trading voices” does not imply, however, that the EU uses its institutional structure consciously as a bargaining constraint to extract concessions from its opponents. As the book will show, the EU’s institutional peculiarities may force its negotiating opponents to accept a hard bargain, but this may be in spite of the preferences of a majority of EU member states who would have preferred a different common bargaining position from the lowest common denominator. Nevertheless, whether the EU uses its institutional peculiarities as negotiating tricks or is constrained by them in its negotiating margin of maneuver, the end result is the same: the EU’s internal rules have an external outcome, willingly or not.

To explore the predictions that key institutional features of the EU’s internal trade policymaking process affect the outcomes of international trade negotiations, I study four cases of conflictual trade negotiations between the EU and the United States. I selected the United States because it has been the EU’s main trading partner since its creation, because it has enjoyed a fairly balanced trade relationship with the EU, and because it is almost structurally equal to the EU—whether in terms of economic output, population, level of development, or standard of living. The particular cases presented offer different combinations of the independent variables to illustrate the argument that negotiating as a single bloc can strengthen or handicap the bargaining position of the EU as a whole, depending on a determined set of conditions.

1. *The EC-U.S. agricultural negotiations in the Kennedy Round (1964–1967)* are an example of “conservative” negotiation in which supranational autonomy was nonexistent and the mode of decision making in the EC was unanimity. The United States capitulated to an inflexible Common Market, and the final deal reflected the EC’s lowest common denominator position.

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

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

4. *The transatlantic “open skies” agreements on international aviation (1992–2003)* represent a “control” case since negotiating competence initially belonged to the individual member states before being partly turned over to the supranational level in 1996. From a legal perspective, transportation is not subject to the usual rules of trade policy (neither in the EU nor at the WTO), but from a political perspective it falls under the general heading of trade. In the “open skies” case, the United States was able to exploit the absence of European discipline by concluding a series of bilateral agreements with several small member states, without being held up by the three big states that initially opposed this U.S.-led liberalization. This case illustrates how third countries can strike better deals when member states are free agents in the external sphere than they would have when dealing with a unified EU.

These cases all point to the fact that, given exogenous member states’ preferences and depending on the conservative/reformist negotiating context, the degree to which member states were willing to let go of their sovereignty affected the process and outcome of the final international trade agreement. The main conclusion is that 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 negotiators’ moves. Member states with median preferences, especially if they are small, are better off inside a Community governed by 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. The model presented in this book should help predict how ongoing institutional changes will affect the EU’s future external bargaining capabilities, the process of European integration, and the nature of the pressure (liberal or protectionist) exerted by the EU on the world political economy.

This study of the bargaining effects of combining negotiating forces with others has theoretical implications. First, it may be useful for explaining the bargaining effectiveness of institutionalized coalitions in settings other than the EU (e.g., NAFTA, federal systems) and in international negotiations over issues other than trade (e.g., monetary policy,

environment, foreign policy).<sup>43</sup> Second, this study confirms that the EU exerts an independent causal effect on world politics. The mere fact of belonging to the EU transforms a state's chances of shaping the outside world. The realization that small states may exert a disproportionate influence on world affairs through the EU's institutional design should be seriously considered as the EU has recently expanded its membership to more small states and is simultaneously taking on new roles in foreign affairs. Moreover, because the EU now initiates international policy changes rather than reacts to them, it has an increasingly proactive role in the world's political economy. The argument developed in the present book suggests that the EU's capacity at setting the agenda in key areas of the international economy depends heavily on its own institutional features.

Even though this book focuses primarily on the implications of institutional rules on external bargaining power, efficiency and influence are not the only concerns when politicians design and alter the rules for making trade policy. Increasingly, political leaders are struggling to find a politically acceptable balance between efficiency and legitimacy. As the famous demonstrations in Seattle and subsequent antiglobalization protests have shown, the issue of the political legitimacy of trade policymaking institutions can no longer be taken lightly. The grievances regarding the undemocratic nature of trade policy have the potential to be particularly acute in the European Union, where the global economy is increasingly important in determining the daily lives of citizens because of the extensive trade openness of EU members, and where trade policy is affecting Europeans in a more direct manner than ever before, as the nature of what is now considered as "trade" and therefore up for international bargaining and deregulation has changed dramatically in the past few years.

<sup>43</sup> On the potential application of the institutionalist argument to monetary policy, see McNamara and Meunier (2002). On the environment, see Jupille (2000); Sbragia (1997).