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## Work Package 4 Politics and Ideology

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### **The WTO and the EU: Leadership *versus* Power in International Image**

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## **Abstract**

This EuroBroadMap working paper focuses on how the European Union (EU) is perceived in the World Trade Organization (WTO) negotiating system. Based on relevant academic literature, this paper examines the ‘actor-ness’ of the EU *via* two negotiation cases: one related to the ‘Banana war’, the other one related to GMO. It appears that the EU economic power is barely translated into leadership.

**Key-words:** European Union, World Trade Organization, perceptions, power, GMO, banana war

## **Résumé**

Ce *working paper* du projet EuroBroadMap s’intéresse à la façon dont est perçue l’Union européenne (UE) au sein de l’Organisation Mondiale du Commerce (OMC). Basé sur la littérature scientifique récente, ce papier évalue le statut d’acteur de l’UE *via* deux études de cas : l’une concerne la guerre de la banane, l’autre les OGM. Il apparaît que la puissance économique de l’UE ne se traduit que rarement en influence.

**Mots clés :** Union européenne, Organisation Mondiale du Commerce, perceptions, pouvoir, OGM, guerre de la banane

Cover: <http://www.wto.org/english/thewto>

## Introduction

This paper details the role that the European Union plays within the World Trade Organisation (WTO). The WTO is one of several international organisations in which the EU has the status as an international actor and thus is placed on a similar level with states. Since trade policy is an exclusive competency of the EU, the EU acts on behalf of its 27 member states, as opposed to environmental or climate change policy where the EU has shared competency and negotiates as a partner in addition to the individual member states.

The explicit aim of the paper is to identify the role played by the EU, thereby allowing for some generalisations to be made as to how the EU is perceived by other parties in the WTO negotiating system. How does the EU wield a leadership role and exercise power within the WTO? What are some of the features of EU ‘actorness’ as seen from within the WTO? The more implicit question in this inquiry is to understand how other parties see the EU as an actor in the WTO. Thus we explore how the EU nourishes a certain image in its trade proceedings and how this is perceived by the other parties of the WTO.

As the scope of this effort is limited in time and resources, it has not been possible to gather first hand data from third parties as to their perceptions of how the EU behaves within the WTO, as such this is not an institutional sociological enquiry. The paper does however draw upon the relevant academic literature where such empirical analyses have been made. It then puts this into the context of the international relations literature of the EU as an international actor; and relates the conclusions to examples from two specific negotiation cases within the WTO framework.

## 1 The European Union as an actor in the WTO

The World Trade Organisation is an international institution designed to assist in the liberalisation of global trade. It provides an institutional forum in which governments can negotiate trade agreements and settle trade disputes through a system of trading rules. As a scion of the earlier GATT (General Agreement on Tariffs and Trade), the WTO (since 1995) functions as the continuation and extension of an international regime consisting of a set of rules, norms, principles and decision making procedures around which the expectations of relevant actors converge (Krasner 1982: 186). The intellectual construct of international regimes has long been employed to analyse how and why sovereign nation states cooperate to achieve common goals. As such, ‘Norms are therefore not only ‘guidance devices’, but also the means which allow people to pursue goals, share meanings, communicate with each other, criticize assertions, and justify actions’ (Kratochwil 1989: 11). Thus

as a regime, the WTO was designed by its members and exists as a structure *via* the activities of the involved actors. The EU (then the European Community) was one of the key members in designing the WTO.

One of the features of an international regime is that actors choose to belong or feel pressure to belong in order to accomplish a goal multilaterally that cannot be accomplished alone or even bi-laterally. However in order for such multilateralism within an international regime to be effective, all parties must accept their mutual obligations and constrain their behaviour if they expect other parties to do likewise (Young 2011: 115). Such mutual rules increase the likelihood of compliance.

Particularly in the post-Cold War era, the European Union has sought an international identity and political role *via* participation in international regimes such as the WTO (Blavoukos and Bourantonis 2011: 2). Since the early years of the WTO, the European Union has ‘depicted itself as the most committed advocate of the multilateral trading system and has been particularly active in advancing a ‘rules-based’ agenda’ (Young 2011: 116). Further, the EU generally has a good record of complying with WTO rules, despite the fact that the few cases where the EU has been seen in a problematic light are those that stand out in the international community. Young (2011: 124) further asserts that the EU as a distinctive actor in the WTO has more to do with power and its internal politics than with its commitment to the WTO regime.

Trade policy is one of the areas where the European Communities have direct competency. Thus in its external trade relations, including actions within the WTO, the EU functions as a unified actor. In operational terms this means that the European Commission (usually staffed by representatives from the Directorate General for Trade in this instance) negotiates within the WTO on behalf of all 27 Member States who have delegated power to the Commission. While the Commission negotiates on behalf of the Member States, it acts in consultation with the ‘Article 133 Committee’, so called after Article 133 of the European Community Treaty. Composed of representatives of the Member States, the Article 133 Committee’s job is to coordinate EU trade policy. It is in this Committee that the Commission presents and secures its proposals to the WTO. Major formal decisions also require the approval of the Council of Ministers (Kerremans 2011: 138).

As such the EU’s participation in the WTO negotiating rounds can often be characterised in terms of Putnam’s (1988) classic ‘two-level’ or indeed ‘three-level games’, or as pressure from above and below (Kerremans 2011). In the latter sense the EU is under pressure both from the other parties of the WTO and its member states and constituencies. Depending on the issue, some of which will require unanimity within the Council and Committee 133 and others which rely on a qualified majority, the Commission will face more or less pressure channelled through these delegation chains (Kerremans 2011:

138).

## 2 The European Union's Power and Leadership Role in the WTO

The WTO offers an important venue for the EU to define itself internationally. Given the EU's stated historical reticence about the use of military force in international relations, foreign trade negotiations present one of the most important forums through which the EU expresses itself as a global actor (Dur and Zimmerman 2007: 771). The significance of international trade negotiations is also emphasised by the notion that the continuing success of the EU depends on a stable economy within the community and on being a leader in global economic affairs (Meunier 2007: 910). Further, in terms of how the EU is perceived, its presence in the WTO is arguably of greater importance than a state actor, given that the EU does not enjoy the 'traditional advantages of statehood' (Elgström 2007: 951), such as a strong perception of internal cohesion. Finally, it is worth considering that although EU foreign policy is primarily developed through internal processes and ideas, it is also partially crafted in response to the expectations and feedback received from other stakeholders (Elgström 2007: 952).

Within the WTO, the EU is frequently portrayed as a significant power and a leading actor in trade negotiations. This reputation, fostered in academia, and by the EU itself, is accurate in some aspects; however certain shortcomings are undoubtedly also apparent. In support of its perception as an important actor in the WTO, statistically, the EU is the largest exporter, and second largest importer in the world. This fact alone makes the EU a highly attractive partner for preferential trade agreements (Dur and Zimmerman 2007: 772). As such, 'given its market size, it would be unthinkable for a multilateral trade agreement to be concluded in the WTO without EU participation' (Dur and Zimmerman 2007: 771). This underlines Elgström's (2007: 958) finding that 'given the way in which the WTO functions, the EU and the US are seen as *de facto* leaders.'

## 3 Source of EU power in the WTO

In a key study on perceptions of the EU in international trade negotiations, Elgström (2007) problematizes the notion, held by the EU itself and other actors, that the EU is a powerful and leading actor in global trade negotiations. Data to this effect was collected by Elgström and a team *via* interviews with Permanent Representatives to the WTO in Geneva in May 2005. The results of the study portray at least four sources of EU power: the economic presence and overall might of the Union; its direct use of economic statecraft;

its functioning as a model; and influence derived from its formal institutional structure. Elgström (2007:954) further elaborates these as:

- Economic presence and overall might of the Union: ‘The growing economic presence of the European Union has ensured that in many respects it can be regarded as a great power rivalling the US. While its capacity to grant or refuse access to its huge internal market has made the EU a ‘formidable trade power’ and a ‘powerful bargainer in the multilateral trading system’. Finally, nothing happens in the WTO if the EU is not on board; ‘it cannot decide alone, but it has to agree’.
- Direct use of economic statecraft: The EU is increasingly ready and able to use its trade muscles to serve political goals; however, there is no evidence in Elgström’s material of the EU utilising this kind of influence in WTO trade negotiations.
- Role model: the attractiveness of the EU and the consequent wish to conclude cooperation agreements with the Union have in many cases resulted in the adoption of the EU as a role model and in the imitation of its policies. However, its ‘Image as a champion of free trade is tarnished by its reputation as a protectionist force in agricultural policy.’
- Institutional setup: A number of recent studies agree that the EU’s institutional structure works to its advantage. Here, restrictions on the negotiating agent, including unanimity voting and an inflexible mandate, force other countries to anticipate the inflexibility and to make greater concessions.

Despite these strengths, ‘the EU is seen as a key actor in the WTO, but not necessarily as a leader. Its leadership potential is diminished by perceived incoherence across issue areas, by a lack of perceived legitimacy and to a lesser extent, by an excessive focus on internal coordination’ (Elgström 2007: 954). In what follows we will explore further the reasoning behind why the EU, while a powerful actor, cannot fully exert a leadership role in the WTO. This reasoning is largely connected with how other parties perceive the EU’s institutional incoherence, to the lack of legitimacy in the eyes of the international community and to excessive internal coordination routines. Thus within the WTO the positive types of power that the EU can wield and which could be considered force multipliers in one sense are the elements of its institutional capacity that can, at the same time, effectively undermine its leadership role.

### **3.1 Incoherent institutional context**

This perceived incoherence results from a number of factors, including the famed ‘capabilities-expectation gap’ where a problematic mismatch is seen to emerge between expectations of what the EU is ‘supposed’ to accomplish in the world and the means and capacities that the EU actually has at its disposal (Elgström 2007: 951). For example, the results of trade negotiations can vary depending on which Directorate-General is presenting the EU’s position and when (Dur and Zimmerman 2007: 780). Many countries, particularly those from the developing world, also find the EU’s organisational structure to be difficult to understand. They perceive the EU as ‘opaque’ and often have difficulty comprehending how decisions have been arrived at (Elgström 2006: 29). Incoherence may also result from the fact that the EU needs to amalgamate the different interests of its domestic constituents, before it can start negotiations (Dur 2007: 834). As domestic situations within the member states can change quite rapidly, as illustrated by the ongoing currency crisis, the mandate that the EU is provided with can be altered to a considerable degree and changes can often be rapid. While this can occur in any nation that is a member of the WTO, the fact that challenges to EU policy may result from changes in the domestic attitudes of a handful of the 27 member states suggests that internally consistent and cohesive policies can be often difficult to arrive at and maintain. Finally, the internal compromises that are frequently necessary for the EU to reach agreements at the international level often require trade-offs that can alter the EU’s position, leading to situations whereby other actors do not have a clear indication of the direction that the EU is heading (Elgström 2006: 30).

### **3.2 Excessive internal coordination of relational resources**

Particularly at the onset of the WTO negotiations, the EU was perceived by other countries as being riddled by complex internal and external processes that were difficult to understand, as opposed to the United States, with its domestic process that is generally considered transparent, if blunt. The high degree of internal accord that is necessary before the EU begins external negotiations can have both positive and negative effects on its perception in the WTO. In endeavouring for consensus amongst the now 27 Member States, the EU has been perceived as spending most of its time ‘negotiating with itself’ (Elgström 2007: 961). This results in slow decision making and inflexible joint positions, something well illustrated by the EU’s agricultural policies. In Elgström’s (2007: 959) empirical work, he had several respondents highlight that ‘all efforts are put into internal negotiations’ and that intra-EU coordination ‘takes a lot of time and energy’, leaving less room for consultations with outsiders.

The internal wrangling threatens to significantly reduce the EU’s flexibil-

ity at the international level. This can be particularly problematic towards the end of a round of negotiations, whereby small changes proposed by other actors often require hours of internal consultation from the EU, thus slowing the process (Elgström 2006: 29). Contrarily, this time consuming process also allows the EU to present a united front; generally ensuring that it is perceived as a single entity and thus very difficult to divide. The rigid position that the EU frequently adopts during international trade negotiations to ensure that all member states are in accordance can also be problematic, as it does not allow EU negotiators to make significant concessions, even when deals are close at hand. However, given that other nations are aware of this restraint, if a nation or smaller trading block is interested in reaching an agreement with the EU, it is often willing to make more concessions to secure a deal (Elgström 2007: 957).

### **3.3 A lack of legitimacy to mobilise action**

The EU's perceived lack of legitimacy is well illustrated in the current Doha Development Round of WTO negotiations, launched in Doha, Qatar in November 2001 with the EU as its main instigator (Ahnliid 2005: 130). Here, the EU's negotiating position in regards to trade policy focuses on aggressive liberalisation, with the goal of increasing market access in non-agricultural products. There is a particular emphasis on reducing tariff peaks and on facilitating trade, with little regard for protecting European industrial sectors' (Young 2007: 798). Despite significant efforts to increase market access in a range of sectors and a stated aim of trade liberalisation, its protectionist agricultural policy is the issue which has put the EU most on the defensive. It is also the EU policy for which the Doha Round has the most serious implications. The EU's position throughout the Doha Round has been that the existing internal policy determines what it will accept in the negotiations and that there will be no concessions that are not compatible with the Common Agricultural Policy (CAP) (Young 2007: 804). Therefore, there is a perceived lack of legitimacy in the EU's efforts at trade liberalisation as they are unwilling to accept any challenge to their existing agricultural policies, an important, and often controversial, aspect of international trade.

EU legitimacy is further undermined by their refusal to make significant efforts to liberalise the European market for agriculture despite the fact that the 'Stated cornerstone of the EU's trade policy since the launch of the Doha Round in 2001 has been to distribute fairly the benefits of globalisation, using trade liberalisation to improve the economic development of the least advanced countries' (Meunier 2007: 913). Given that many of the 'least advanced countries' rely almost exclusively on agriculture for economic development, there appears to be a significant degree of contradiction between the EU's message on international trade, and its actions. EU legitimacy on this issue is damaged by questions regarding their motivation for pro-

moting such objectives. As the agenda of the Doha Development Round is much wider in scope than previous rounds, and specifically targets improving the situation in the developing countries, the EU is in somewhat of a normative dilemma. How can the EU pursue its goals of free trade and development in light of the protectionist nature of its agricultural policies (Ahnliid 2005: 130)? In addition to (or rather than) promoting humanitarian goals, the EU's position in the Doha Round and initiatives such as 'Everything But Arms' (EBA) are seen as EU attempts to shore up support from poor countries (Young 2007: 801). Finally, any characterisation of the EU as a 'spokesman for the less developed countries' will continue to be greeted with great suspicion, as long as they refuse to consider changes to their position on agriculture in international trade (Elgström 2006: 27).

While its ambivalent message regarding international trade is viewed as the most serious reason for questions regarding EU motivations, other initiatives have also come to be perceived as suspect. This includes attempts to promote environmental protection, which are seen as efforts to create competitive advantages for EU firms; endeavours to create common rules for investment are perceived to favour companies from the developed world; and an EU attempt to exclude a significant number of poor nations, members of the G90, from legislation reducing trade protection, which was derided as an attempt to divide and conquer less developed nations (Elgström 2006: 24).

Despite these challenges of credibility, 'The EU is said to have a better image in Geneva than its great power competitor, the US, particularly in its relations with developing countries' (Elgström 2007: 962). It should also be noted that the EU has played an important role in the growth of the WTO, particularly concerning the inclusion of Cambodia, Saudi Arabia and Vietnam (Meunier 2007: 912). Furthermore, 'through their efforts to promote human rights and environmental issues into the agenda, the EU is seen as a positive force in the world; however a majority of the respondents felt that these issues did not belong to the WTO agenda and felt they were confrontational and potentially undermining for the WTO' (Elgström 2007: 959).

EU efforts to introduce measures dealing with issues other than trade are seen positively by some WTO members; however others find such efforts to be patronising or arrogant (Elgström 2006: 29). It is also important to note that the EU's role as a major donor of development assistance is also beneficial in reducing scepticism among developing nations. Therefore, in this regard, the EU is greeted with a mix of support and suspicion.

### **3.4 Territorial ramifications**

In cases where internal discontent has been aired publicly, as was the case during the early stages of the 'Banana War', a trade issue that will be dis-

cussed shortly, there is often a spatial or territorial aspect to the negotiations. In these situations, there are often clear divisions between ‘northern’ and ‘southern’ or old and new EU member states. At the WTO, the territorial diversity of the EU states has undoubtedly contributed to its perceived lack of coherence, its lack of legitimacy and the need for excessive coordination.

The territorial aspect of the EU’s lack of coherence stems from the fact that internal conflicts frequently involve geographic divisions within the European Union. As compromises and trade-offs are made between northern and southern/new and old member states, EU positions can more strongly reflect the need for internal accord, with less emphasis on the continuity of EU positions in international trade.

At the WTO, the division between north and south Europe has been instrumental in the EU’s perceived lack of legitimacy, primarily as a result of the CAP, which as previously mentioned is a central source of contention for the EU during the ongoing Doha Round. In this case, the EU’s declared aim of trade liberalisation is often greeted with scepticism given its unwillingness to liberalise agricultural trade. This issue is recognised at the EU level. Here, the majority of free trade-oriented northern states would be pleased to eliminate the CAP immediately, thereby allowing the EU to take a clear stance in favour of trade liberalisation. The ‘northern liberal Member States’ are spearheaded, primarily, by Germany and the UK and are also supported by the likes of Sweden and Denmark. In the two latter countries, trade unions play an important role, and they thus seek to combine free trade with a social agenda and development, including worldwide labour standards (Ahnliid 2005: 134). The ‘northern liberals’ therefore often evoke the EU’s ‘leadership role’ in their dealings with the developing countries.

The majority of the southern states (particularly Portugal, Spain, France, Greece and Italy) oppose this strong liberal stance with regard to agricultural products, however. For them, preferential agricultural policies are seen as a key aspect of their respective national economies, and doing away with the CAP would be very unpopular domestically. Thus a cautious trade policy, fuelled by agricultural and anti-globalisation interests is often advocated by these countries (Ahnliid 2005: 134). As such, they have refused to accept any changes that could threaten the CAP. As a result, this division has limited the EU’s ability to pursue a coherent trade policy at the WTO, which in turn has challenged EU legitimacy in this forum.

The need for excessive internal coordination is also explained in large part by the territorial divisions within the EU. As illustrated in the CAP case, there are often internal divisions which can be difficult to resolve. Given the importance of presenting a united front internationally, the EU must spend a large part of its time ensuring that all its members are in agreement about the position they will adopt. If a counter offer is made, they must again discuss this internally before responding. Given that the EU’s position,

and any counter offers, will affect various member states in different ways, frequently within a spatial context, internal coordination is necessary to satisfy all members, regardless of whether they are considered to be part of the north or south, new or old.

### 3.5 Managed globalisation: There and back again?

At the end of the 1990s, the EU's policy regarding trade actions was characterised, most saliently by Pascal Lamy, current Head of the WTO, as *mondialisation maîtrisée* or 'managed globalisation'. This policy featured a reliance on a globalisation that is multilateral in nature, institutionalised and codified as an alternative to the *ad hoc*, de-regulation globalisation favoured by the US and the UK (Abdelal and Meunier 2010: 352). It was also thought that the EU needed to provide a viable alternative to the type of liberalised globalisation against which vociferous protests were made at the 1999 WTO meeting in Seattle (Abdelal and Meunier 2010: 255). The institutional slant of managed globalisation puts an emphasis not only on multilateralism but also on coordination and deliberation among global actors. Interestingly the era of managed globalisation coincides with the call for 'good governance' in the EU White Paper on European Governance (CEC 2001). Within the WTO this was also manifested in the EU's attempt to bring non-trade issues, such as the environment and development into the global trade negotiations realm, witnessed primarily during the initiation of the Doha Development Round, where the EU was a major player.

In recent years, the EU could be conceptualised as moving away from a doctrine of managed globalisation, in favour of a more liberalised policy laid out in 'Global Europe: Competing in the World'<sup>1</sup>. The central point of Global Europe is that in order to benefit from globalisation, Europe must become more competitive and competitiveness must be fostered both by internal and external measures. Global Europe has been perceived as a return to the roots of trade policy - trade negotiations used to achieve economic, not foreign policy, objectives (Meunier 2007: 916). In line with this, Young (2007: 799) found that 'It would appear that the Commission's Directorate General for Trade, which leads most trade negotiations on behalf of the EU, has embraced liberal economic ideas.' These liberal economic ideas were echoed internally in the sentiments of the Lisbon Strategy of 2000<sup>2</sup> which sought to make the EU the most competitive, knowledge-intensive economy in the world and even more so in the renewed Lisbon Strategy of 2005<sup>3</sup>.

The EU as a whole also supported a codified set of rules for reporting

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<sup>1</sup><http://ec.europa.eu/trade/creating-opportunities/>

<sup>2</sup>Presidency Conclusions of the Lisbon European Council, 23-24 March 2000, Council documents Nr. 100/1/00.

<sup>3</sup>COM(2005): Communication to the Spring European Council 'Working Together for growth and jobs - a new start for the Lisbon Strategy', 24, February 2, 2005.

trade violations in the WTO. A number of member states were unhappy with this position, feeling that the WTO was impinging on their sovereignty and promoting a world governed by neo-liberal profit at the expense of safety and values. To add ‘insult to injury’ the first two WTO cases involving the EU (bananas and beef hormones), were lost to the US (Meunier 2007: 912). The result has been perhaps to see the pendulum once again swinging back towards ‘managed globalisation’ as the world financial crisis brought to the fore some of the limits of ad hoc globalisation (Abdelal and Meunier 2010: 363). Thus, EU support for a codified set of rules and global norms illustrates its position in favour of multilateralism and a greater degree of globalisation in the international system.

## 4 WTO Trade Disputes Involving the EU

In the following section we highlight two WTO disputes involving the EU - the Banana War and the GMO Dispute - as examples of the type of power and influence the EU actually wields in international trade negotiations and how these disputes colour how other actors see the EU within the WTO.

### 4.1 The ‘Banana War’

Pascal Lamy, Director-General of the WTO and the former EU Commissioner for Trade has described this dispute as the ‘one of the most technically complex, politically sensitive and commercially meaningful legal disputes ever brought to the WTO’<sup>4</sup>. It lasted more than fifteen years and although it appeared to have been resolved in 2006, problems flared again in 2008.

The ‘banana war’ came about in response to the EU’s regulatory regime for imported bananas, the Common Market Organisation for Bananas (CMOB), enacted in 1993. The regime was implemented as part of the Single European Act, 1986, which had the aim of creating an integrated market amongst the EU member states (Read 2001: 262). Prior to the enactment of the CMOB, each EU member state had its own banana import policy, whereby former colonial empires gave preference to nations with which they had historical ties, a standard banana tariff of 20% applied in a number of countries and there was no tariff on any banana imported into Germany. Given this patchwork of policies, the development of the new regime was controversial in itself, exposing deep rifts between member states.

Under the new regime, the overseas territories and former colonies of EU member states were given preferential status, while imports from several Latin American countries and Ecuador were restricted (Simi and Kaushik 2008: 1). The aim was to meet EU member states’ responsibilities to former colonies and create a single European market.

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<sup>4</sup>WTO Press release 15 December 2009, <http://www.wto.org/>

Prior to the new regime's implementation, EU member states faced opposition to their respective banana import strategies. Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela challenged the EU's restrictions at the GATT, charging that the measures were discriminatory (Simi and Kaushik 2008: 1). GATT found the EU to be in contravention of international trade law; however given that the regime was replaced just as the findings were delivered, the ruling was largely irrelevant (Read 2001: 266).

The complaint was renewed shortly after the implementation of the CMOB on similar grounds, with the five Latin American countries, with the support of the US, arguing that the tariff quotas levied by the EU were highly restrictive and discriminatory (Read 2001: 267). The EU was again found to be breaking GATT rules; however given that the rules were not legally binding, the EU chose to ignore the ruling by this time however the WTO nearly ready for launch.

The WTO was designed to have binding rules, with the possibility for retaliatory measures. Recognising the threat that this posed to the regime, the EU came to an agreement, mediated by the US, with four of the five nations, excluding Guatemala. The EU's banana trade regime was challenged yet again following the implementation of the WTO regime. This case differed significantly from the previous two in that it fell under WTO procedures, which included binding discipline, and that the complaint was led by the US, along with Guatemala, Honduras and Mexico (Read 2001: 269). Although not a direct party to the dispute, the US took on a leading role in response to industry pressure from Chiquita, the leading US banana firm, who had adopted a market strategy that included greater European market penetration. Given US involvement as lead plaintiff, it is interesting to note that at this point, the dispute came to centre on two import-driven, consumer countries, neither of which was involved in significant banana production. The EU was found to be in violation of WTO regulations though its preferential tariff treatment for former colonies and was found to be permitted under a separate waiver. As such, the EU was required to reform its banana import regime by January, 1999 (Read 2001: 275). Subsequently, the EU challenged the ruling, and lost, but felt that a better result could be negotiated during the initial negotiations of the Doha Round (Simi and Kaushik 2008: 3).

Despite four more years of negotiation, the EU and its opponents were unable to come to an agreement that satisfied all of the concerned parties. As a result, Ecuador, Colombia, the US and Panama put forward arguments against the EU's banana import policies, respectively. This in turn led to continued negotiation, a conclusion to which was reached in December 2009, under the Geneva Agreement on Trade in Bananas (WTO 2009). At this point, the dispute appeared to have been resolved; however as illustrated throughout 'one of the longest running 'sagas' in the history of the post-

WWII multilateral trading system', this does not entirely rule out further litigation.

## **4.2 European territorial differences in the 'Banana Wars'**

Among the many interesting aspects of this case, one of its most striking characteristics is how visible internal divisions among EU member states were during the early years of the dispute. For the most part, former colonial states were reluctant to make any changes that threatened the arrangements that they had established with their former colonies. This is illustrated by the fact that five of the six countries (France, Italy, the UK, Portugal and Spain) who offered preferred status to certain nations were former colonial powers. Beyond a simple economic exchange, these colonial ties indicate that the EU countries perceived themselves to have had closer relationships with their former colonies, a perception that was likely reciprocal. Beyond the banana trade, this appears to have extended to other international flows, including immigration. In this sense, countries with established relationships were considered to be 'closer', regardless of distance, than those without, such as the Latin American states. The perceived importance of colonial linkages is underscored by Germany, who following the First World War was forced to give up its colonies. Without any perceived obligations or ties to their former colonies, Germany provided open access to its banana markets for all exporters.

## **4.3 Perceptions of the EU during the dispute**

This case offers a good example of how the EU is frequently perceived in the WTO. In one respect the EU was seeking to defend its self-interest by maintaining its traditional ties to the detriment of other WTO nations. At the same time, part of the argument in support of maintaining this favouritism was that this near-exclusive arrangement served as a form of aid to specific developing countries. This claim is somewhat justifiable given that bananas are the only crop that can be easily produced and grown year round in a number of nations that face the regular spectre that their crops will be destroyed as a result of storms or hurricanes (Simi and Kaushik 2008: 4). The humanitarian aspect of the EU's argument is greeted with some scepticism however; as The Union is unwilling to extend these benefits to developing nations that do not share the same colonial past.

The EU has also been characterised as a 'bully' in this dispute. Given its enormous economic weight, it was extremely difficult for the Latin American countries to ensure that the EU accepted the GATT and WTO outcomes prior to US involvement. Characterisation as a bully was further strengthened by the EU's choice to ignore or sidestep repeated GATT and WTO rulings, something that would not have been possible for smaller states. Fi-

nally, this case also highlights Elgström's (2006: 27) descriptions of the EU as both a 'positive force in the world' and as a 'patronising and colonial-minded great power actor' in the WTO.

#### 4.4 The GMO Dispute

The rise of genetically modified organisms (GMO) represents a new facet on which trade disputes may arise. In this case, 'widely recognised as one of the most difficult in WTO history', the US, Argentina and Canada took a case against the EU to the WTO in 2003 (Granville-West 2006: 47). During the early 1990s, the EU approved a number of GMO crops for use. However subsequent to a number of health scares, including Bovine spongiform encephalopathy (BSE), also known as 'Mad Cow Disease', accompanied by a concerted effort by a number of nongovernmental organisations (NGOs) to highlight the risks of biotechnology; public concern regarding the safety of the food chain grew. This led to the implementation of bans on GMOs in a number of member states and an EU-wide suspension on GMO approvals from 1997 to 2004 on the grounds that human and environmental safety could be at risk (Granville-West 2006: 47).

In response to what they saw as a *de facto* ban on GMOs, the plaintiffs took the EU and a number of specific member states to court in an effort to force open EU markets. At the centre of the dispute, and the catalyst for controversy, was the issue of how an administration could take legal action in favour of technology that was considered to be risky, without losing public trust (Granville-West 2006: 49).

The EU countered that it had updated its laws and that the challenge was irrelevant; however it was recognised that eight of the nine countries that instigated national bans had refused to lift them. The WTO found that there had been unnecessary delay in implementing the new rules, but refused to address Argentina and Canada's argument that GMO crops were 'like' their natural counterparts, which would have meant any barrier against them would have contravened WTO law (Granville-West 2006: 51). The WTO panel also ruled against the member states, a decision that aroused controversy in the perception that the US, Argentina and Canada were aggressively pushing countries to accept technology that they did not want (Granville-West 2006: 51). This argument was strengthened by the fact the EU was producing less than 1% of all GMOs and thus was not seeking to be protectionist towards domestic technologies (Granville-West 2006: 50).

The EU responded to the ruling by renewing negotiations with the complainants. In 2009, it reached an agreement with Canada, chiefly calling for biannual dialogue and return to case by case authorisation of GMOs<sup>5</sup>. A

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<sup>5</sup><http://europa.eu/rapid/pressReleasesAction>

similar agreement with Argentina was reached in 2010. Negotiations are ongoing with the US. At this point, only two GMOs are allowed to be grown in the EU, a maize strain, given permission in 1998 and a starch potato, given permission in 2010. Currently, Austria, Hungary, France, Germany, Greece and Luxembourg maintain bans on GMOs.

#### **4.5 Perceptions of the EU during the dispute**

This dispute has led to a division of perceptions on the EU among participants and observers. Those who oppose the EU's actions view efforts to block GMOs as an effort to further protect European agriculture under the guise of environmental protection (Elgström 2006: 24). From this perspective, EU measures are creating an advantage for EU enterprises while blocking foreign competition. As such, it is argued that the EU is attempting to circumvent WTO law, while also creating a safeguard in the event that the CAP system is ever repealed. Scepticism is particularly ingrained among the largest global GMO producers, including the USA, Argentina, Canada, Brazil and South Africa.

Conversely, others see the EU's position as an exercise in caution. From this perspective, the EU dealt with health scares in the 1990s as a result of a lax regulatory system; something that they are now making every effort to prevent from recurring. Significant opposition to GMOs persists around the world, a factor that lends credence to the EU's position. Of particular importance is the fact that this opposition remains particularly strong in a number of EU member states. As such, any effort to force countries to repeal their bans would likely be met by widespread opposition among politicians who would see the move as politically unpopular and a public who could perceive this as a threat to their national sovereignty. Further, those in support of the EU do not feel that GMOs and conventional crops can be considered 'like'. Rather, these new crops are seen as manufactured products, designed with the aim of meeting the needs of producers, with little regard for the long term effects on consumers and the environment. The GMO dispute presents a case where the EU has attempted to wield normative power and link other normative considerations, such as environmental and health issues, into global trade negotiations.

#### **4.6 EU Leadership *versus* Power**

There is no doubt that the EU remains a powerful actor in the WTO context; however as illustrated above, power does not necessarily translate into leadership. Rather, as Elgström (2007: 953) states, 'The EU may in the short run gain support for a particular proposal by relying on economic pressure and implicit threats, but to exert a more long-lasting influence, it arguably

has to base its support on normative consent, in line with advocacy for a consistent effort on the part of the EU to act as a different civilian power.’

In international negotiations the EU is generally seen as a rigid and conservative actor, constrained by the time-consuming procedures for garnering support from 27 Member States and the institutional complexity of its policy-making apparatus (Elgström and Strömvik 2005). However Elgström and Strömvik (2005) assess how the particular context of the negotiating arena will play an important role in determining when and how the EU exhibits more flexibility and innovation in its negotiating power. They conclude that in questions where the EU purports to promote revisionist goals as a ‘norm entrepreneur’ (Finnemore 1996) by use of ‘soft’ power, rather than maintain the *status quo* of their existing interests; the EU can indeed act flexibly and proactively. In using ‘soft’ power, the EU has been able to successfully link globalised trade with other issues, such as global development and environmental concerns, while (perhaps less successfully) downplaying its rather protectionist stance in agricultural issues. On one hand, the EU can be seen as an international actor which is quite adept at adapting to changing global conditions (Elgström and Strömvik 2005: 125). On the other hand, this can also be seen as an attempt by the EU to use these issues to their own economic advantage. Some international actors feel that issues such as development and environment, despite their importance, are auxiliary to the trade negotiations and should take place outside of the WTO aegis. Environmental protection or labour standards issues are less contentious among the Member States than issues such as agricultural subsidies. Thus by focusing on the linkages of issues with trade, other actors may feel that the EU is deflecting attention away from the areas where it does not have a high degree of political unity.

The EU often sees itself as a carrier or disseminator of ‘high values’ (GARNET 2005-2010<sup>6</sup>) or as a role model for other regional groupings in the Developing World (Elgström and Strömvik 2005), particularly in the area of international trade negotiations. In fact the ‘present international trade structure has for a large part been shaped by the EU, and trade is arguably the only international arena in which the EU applies its full economic and political clout’. (Higgott *et al.* 2005: vii). The international community, however, does not always find this to be true, and rather sees the EU as patronising. While the EU is largely seen as an economic giant, it is seldom perceived as a world power (Lucarelli 2010: 2). The rhetorical intentions of the EU may be good, but the institutions’ power to mobilise action is marked by a ‘governance gap’. This gap is characterised by a lack of legitimacy in mobilising action, incoherence in the institutional context and a need for

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<sup>6</sup>GARNET Jointly Executed Research Project 5.2.1: Report on The Commission’s Diplomats and the EU International Image, GARNET (EU 6<sup>th</sup> Framework Programme 2005-2010).

excessive international coordination and lack of consistency in adherence to a firm globalisation agenda. It is fuelled further by the territorial/national positions in respect of the degree of trade liberalisation supported.

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<sup>7</sup>[http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0428en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf)

<sup>8</sup><http://europa.eu/rapid/pressReleasesAction>

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