

**The EU and the GATS:  
Shaping the Framework for the Globalisation of Services Trade**

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## **The EU and the GATS: Shaping the Framework for the Globalisation of Services Trade<sup>1</sup>**

### **Introduction**

This conference raises the question whether regionalisation can “tame” globalisation. In reality, however, regionalisation and globalisation are not alternative paths to the management of globalisation processes; they often exist in a strongly interdependent relationship, reflecting the strategies and tactics of a wide range of actors as well as the interpenetration of policy environments. Within this broad context, this paper looks at this potential interdependence of regionalisation and globalisation in examining how a powerful actor, the EU, has shaped the evolving service trade regimes on the multilateral and the regional/bilateral level. The main hypothesis is that actors use power to shape regimes and that they will try to maximise the returns of this use of power. This will influence their choice for multilateral or regional/bilateral regimes to “tame” globalisation into a format that suits their interests.

The EU’s involvement in the formation of the services trade regime can be analysed along three major dimensions: first of all, there is the EU’s internal dimension, which in itself shows features of a regionalisation of service trade. Various authors, and most recently Langhammer (2005) and Messerlin (2005), have analysed the state of the internal market of services in the EU. The internal service market remains far from being a “common” market and the future of this important sector of the EU economies has incited fierce debates exposing an ideological dispute between supporters of the “European social model” and a “free market economy” (and their various derivatives). In this way the EU as a regional trading zone is a “laboratory” for cross-border service liberalisation and co-operation policies it might seek to export outside of its borders.

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<sup>1</sup> This paper presents findings from an ongoing doctoral research project on the EU’s impact on the multilateral trade regime.

On the basis of the competencies attributed to the EU in the area of trade policy the “service trade laboratory EU” has been able to engage in experiments outside of its own borders: the EU has been and is significantly involved in the construction of the services trade regime on the multilateral level in the form of the General Agreement on Trade in Services (GATS) in the framework of the World Trade Organisation (WTO). This multilateral involvement constitutes the second dimension of the EU’s involvement in the services trade regime. The multilateral role of the EU is closely related to the EU’s engagement in regional and bilateral negotiations, which forms the third dimension of the EU’s involvement in the services trade regime. To make a statement about the interdependence between the multilateral and the regional/bilateral level and the use of power in them, this paper focuses on these two latter dimensions: the EU’s impact on the multilateral and inter-regional/bilateral level, as the EU can be seen as a unitary actor in them and as this allows us - up to a certain degree - to consider the EU as a “black box” acting on the basis of accumulated power resources.

The paper begins by outlining the evolution of service trade in the global political economy. The second section explores the concept of power in regimes. This concept will be used to analyse the EU’s involvement in the multilateral services trade regime in the WTO and the EU’s regional/bilateral provisions on service trade. The conclusions consider what kind of “taming” of service trade globalisation the EU is involved in and potential future developments.

### **Background: Developments in Trade in Services**

The UN “System of National Accounts (SNA)” defines services as the following:

“Services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. Services are heterogeneous outputs produced to order and typically consist of changes in the conditions of the consuming units realized by the activities of producers at the demand of the consumers. By the time their production is completed they must have been provided to the consumers.” (UN SNA 1993)

When services are traded internationally, this can occur in four ways (the categorisation follows the “Modes” of the GATS)

- a) across the border: from the territory of one country into the territory of another country (Mode 1);
- b) in the host country: in the territory of one country to the service consumer of another country (Mode 2);
- c) through foreign direct investment (FDI): by a service supplier of one country, through commercial presence in the territory of another country (Mode 3);
- d) through the movement of natural persons: by a service supplier of one country, through presence of natural persons of a country in the territory of another country (Mode 4).

A 2004 report by the WTO suggests that while the share of trade in services was growing faster than trade in goods in the late 1980s, the picture afterwards is more mixed. While estimates state that services still constitute about one fifth of world trade in balance of payments terms (UN 2002: 9), their traded value has increased significantly during the last decades (see Table 1).

*Table 1 World trade in commercial services (billion dollars and percentages)*

		<b>Exports</b>						
		Value	Value	Annual percentage change				
		1994	2004	1995-2000	2001	2002	2003	2004
World		1036	2100	5	0	7	13	16
		<b>Imports</b>						
		Value	Value	Annual percentage change				
		1994	2004	1995-2000	2001	2002	2003	2004
World		1043	2081	4	1	5	14	16

*Source: adapted from WTO 2005a; WTO2004a, b*

The actual share of services in world trade can safely be assumed to be much greater than that, because data on trade in services is still only incompletely

available. This is among other reasons due to the fact that a large part of services are dependent on FDI<sup>2</sup>. Similarly, the movement of natural persons and subsequent provision of services (GATS Mode 4) is not recorded as trade in services in the balance of payments. A further part of trade in services is recorded under the trade in goods statistic, as it forms part of trade in goods (e.g. the provision of export credits). Technological changes such as the emergence and growth of e-commerce suggest a further increase in the importance of trade in services for the future<sup>3</sup>.

The quantitative expansion of service trade created a (perceived) need for international policies dealing with this globalisation phenomenon. Thus, in parallel with the quantitative expansion of trade in service, regulatory activity surrounding this part of world trade has gained in pace: On the multilateral level, with the share of services growing in importance in the industrialised countries and with the first signs of important technological changes ahead, services entered the GATT (General Agreement on Tariffs and Trade) negotiation agenda at the end of the Tokyo Round of trade negotiations (1973-1979) as an initiative of the USA. During the Uruguay Round (1986-1993), the GATS was negotiated and constituted the first multilateral agreement on trade in services. The GATS remains an unfinished framework and negotiations about it are ongoing.

Similarly to what has been happening on the multilateral level, services liberalisation and co-operation have been inserted into many newly concluded

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<sup>2</sup> This means that after an initial investment there are no reported flows of services across the border; production by the foreign supplier and consumption by the domestic consumer take place domestically. While data on foreign affiliates trade in services is internationally not available, the manual by the UN et al. states that for the US: "In 1998, services delivered to foreign markets by foreign affiliates of United States companies, and to United States markets by United States affiliates of foreign companies, exceeded the respective values of the exports and imports of services recorded in the United States balance of payments" (UN 2002: 9)

<sup>3</sup> In 1994, an initiative of the United Nations, the European Commission, the IMF, OECD, UNCTAD and WTO started to push forward the development of internationally coherent concepts, definitions and classification for trade in services and to improve the availability of internationally comparable trade in services data (UN 2002: vii). The resulting manual provides countries with a framework to classify service trade, incorporating attempts to count the services provided locally by foreign affiliates. This comprehensive manual has so far only been implemented by a few OECD countries.

regional and bilateral trade agreements (Abugattas 2004). Taken together, this shows an impressive expansion of international legislation surrounding trade in services, but as much as the measurement of trade in services remains a “building site”, multilateral and regional negotiations struggle with unresolved definitional and conceptual issues. “Liberalisation of service trade” is often stated as an objective of these negotiations, but it is questionable in how far this has actually been achieved up to now. The interdependence of cross-border trade in services and a vast range of sensitive policy areas such as investment and immigration policies on the host country level add to the challenges in setting the frameworks for a global trade in services.

### **Concepts: Regimes, Power and Multi-level Governance**

The argument so far has shown that while there has been a quantitative growth of trade in services and while “trade in services” has figured on many agendas on the regional and multilateral level, the trade in services regime remains under construction. A whole host of nascent definitions and concepts remain to be defined.

These nascent definitions and concepts create an opportunity for actors to shape the trade in service regime. According to the well-known definition of Krasner, regimes are

“implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.” (Krasner 1983: 2)<sup>4</sup>

Many have criticised that this definition, and in fact regime theory as a whole, has been dominated by interest-based approaches. In a seminal article, Krasner

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<sup>4</sup> As with a very broad definition, one of the major difficulties that occurs here is how to distinguish implicit principles in an actor’s behaviour from a behaviour that occurs arbitrarily.

incorporates power into his regime-theoretical framework and argues that the distribution of capabilities between actors explains the nature of the outcome of a regime extension or creation (Krasner 1991). The negotiations taking place in the service regime constitute regime extensions and creations, and thus they are in principle susceptible to analysis in terms of power as defined by Krasner.

The necessary precondition for an actor to be able to shape the services frameworks is the possession of “structural power” and the capability to operationalise this power on the multilateral, the regional and the bilateral level of governance:

“Structural power [...] is the power to shape and determine the structures of the global political economy within which other states, their political institutions, their economic enterprises and (not least) their scientists and other professional people have to operate.”  
(Strange 1994: 24ff)

The outcomes of a mobilisation of structural power are the shaping of frameworks and the framing of negotiation results. Structural power becomes visible in agenda-setting and control over (policy and scientific) dialogues. It also shows itself in coalition-building and in the use of diverse channels of influence to achieve outcomes.

It is important to distinguish between two different types of structural power: one is independent of the regime (power over the regime). The second type of structural power is the one at work in the framework of an existing regime (such as the WTO). This distinction is important because the actor bases its actions on the characteristics of the regime and this affects its power. Power is transmitted and transformed by the norms, rules and principles of the current regime, empowering or disempowering the actor. “Power over the regime” will lead to a regime which reflects the distribution of capabilities between the participants who established the regime. “Power over the regime” should thus initially equal “power in the regime”. This changes when the distribution of power underlying the regime starts to change: Both Guzzini and Krasner speak about the “time lag” which occurs with this change in the power distribution: the distribution of power is much more dynamic than the static properties of a regime. The time lag in transmission of power changes means

that norms can have an influence without being dependent on power or - to take this argument further – the regime is partially independent of the underlying power distribution and may run counter the most powerful states' interests (Krasner 1983: 357; Guzzini 1993: 451). "Power in the regime" is no longer equal to "power over the regime".

Powerful actors have a further option though: they can shift between different forums of governance. The different regimes on the bilateral, regional or multilateral level filter power differently and they are interdependent, creating different opportunities for a powerful actor. It will here be assumed that actors try to maximise the effects of their power and choose levels of governance accordingly. In other words, they try to maximise their "return on power investment (ROP)". In this way they "tame" globalisation according to their interests.

This leads us to the following suggestion:

If the returns on power investment are high in a regime, a powerful actor will use the regime to "tame" globalisation according to its own interests. If the returns on power investment in a regime are decreasing, the actor will defect and look for other ways to mould globalisation.

We will now test this hypothesis on the empirical cases of the EU's participation in the WTO's services negotiations and of the EU's regional/bilateral strategy.

### **The EU in the Multilateral Services Regime after 1995<sup>5</sup>**

The EU is a key actor in the multilateral trading regime with its main institution WTO. The EU possesses power in the WTO not only because of its economic and institutional resources, but because of the WTO's norms, rules and principles.

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<sup>5</sup> If not indicated otherwise, evidence presented in this section originates from the author's research and a series of interviews conducted in spring 2005 with WTO negotiators and trade experts from interest representations and NGOs. The two major sources used to retrieve information about the negotiation processes in the WTO are the database "US Trade Online" (since 1993) and "Bridges Weekly Trade News Digest" (since 1997).

The WTO provides an access channel to all member countries at once, and hence makes negotiations more economical. In the services area, even the European Commission (with more staff than the United States Trade Representative (USTR)) complains about a shortage of resources to conduct a vast range of far-reaching bilateral negotiations. The GATS framework potentially facilitates this negotiation process. The creation of widely accepted (as emerging from consensus) rules for service trade liberalisation and regulation is another reason for choosing the multilateral framework.

The WTO's relatively strong Dispute Settlement Body (DSB) with its evolving case law provides a clear advantage compared to regional/bilateral arrangements, which lack strong dispute settlement systems (with the notable exception of the EU's ECJ). Shaffer argues extensively that the case law in the WTO is importantly shaped by those actors that use it the most and provide most of the expertise – the EU and the US (Shaffer 2004).

The WTO is the only organisation that has granted the EU full legal membership (and in fact the WTO agreements do not foresee the membership of any other regional integration zone). This is an expression of a long established actorness and presence of the EU in the trade regime, on which it builds its participation. The long established actorness of the EU also shapes expectations of other participants in the regime and arguably their preferences.

Implicit principles of the WTO regime create a further area for empowerment of actors: The WTO agenda is set by the members and agenda-setting or what one might call “agenda-breaking”, preventing issues from being brought onto the agenda, are key ways to shaping outcomes. Part of the agenda becomes legalised into the regime's framework, and this can be beneficial for certain actors (e.g. the GATS foresees periodic services negotiations to increase the level of liberalisation (Art. XIX)). While the WTO agreement foresees complex decision-making rules, decisions in the WTO are always taken by consensus (voting actually never takes place). This gives room for those members of the WTO who can rally support behind their own position and who can build coalitions. For the services regime, interviewees repeatedly referred to the EU's strong position in preparing proposals

and initiating “friends” groups. They mentioned that while the US has “taken a backseat” in the current round of negotiations, the EU is the key role in working towards consensus. With the role of the WTO Secretariat being nearly entirely supportive, the expertise brought into the negotiations by the members is used as a base for decisions, which gives the EU (with its highly specialised negotiators and experts) an excellent starting point. Arguably, EU negotiators and experts might in fact be even more skilled at “selling” their ideas in the WTO than those of other WTO members as they will have already had to defend them in front of the 133 Committee<sup>67</sup>.

The broadened agenda of the WTO after the Uruguay Round provided the EU with new possibilities for issue-linkages and cross-deals. The EU thus found itself in a regime that promised large potential for the EU to pursue its interests. In fact, the EU did celebrate a range of policy successes in the 1995-2000 time sphere. Important ones were in the services negotiations. There were widespread speculations whether the EU would be the next leader in world trade and the European Commission used this “leadership hypothesis” to increase its leverage inside the EU and to challenge the US (see e.g. van den Hoven 2004).

Services had entered the GATT agenda due to the US’ insistence in the Tokyo Round. This was met with the strong opposition of developing countries who feared detrimental effects of services liberalisation for the development of their economies. Equally, developing countries were hesitant to include service trade in the negotiation agenda for the Uruguay Round (and kept this opinion during the Uruguay Round service negotiations)<sup>8</sup> (Hoekman/Kostecki 2001: 249). The conflict between the developing countries and developed countries prevails throughout the services negotiations and it reflects the diverging interests in this area of the global

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<sup>6</sup> The 133 Committee is the main working group on trade policy in the Council of Ministers.

<sup>7</sup> There is also the often used argument that the WTO’s multilateral framework provides the European Commission with leverage internally: on the one hand, to increase its own competencies and on the other hand, to drive forward reforms it would otherwise not have been able to deal with.

<sup>8</sup> Important actors were Argentina, Brazil, Egypt, India, Nigeria, Yugoslavia.

political economy. If one speaks about “developing countries” here it is important to note that participation in the services negotiations is “patchy” – developing countries who have an interest in the negotiations and who dispose of the necessary resources do take part in the negotiations, but lots of developing countries do not have significant service industries in many sectors and devote their scarce resources to areas such as agriculture where they have more immediate interests. The side-effect of this “patchy” participation is that those with a key interest and with the necessary resources shape the frameworks, in which the others have to operate later on.

While the EU and the US are on a “macro level” in support of liberalisation of service trade, the services negotiations reveal different conceptual ideas on all other levels. Many of the key conflicts in the services regime are conflicts between the EU and the US and a failure to find solutions to these conflicts can impede the progress of the negotiations overall.

As negotiators in services trade were wandering into unknown territory in the Uruguay Round, a large part of the negotiations were dominated by rule-making. Liberalisation negotiations and commitments were of secondary importance in the Uruguay Round (WTO 2000/2001: 103). In the GATS, countries therefore bound current levels of openness or even below these levels. The GATS remains a very flexible agreement, in which different players can accommodate their individual interests and needs. The drawback of this flexibility is that actual levels of liberalisation are very hard to assess.

After the Uruguay Round, the GATS framework remained incomplete in a number of issue areas. Negotiations on maritime services, telecom services, financial services and the movement of natural persons were scheduled to continue after the Uruguay Round. With regard to the rules framework of the GATS, a range of outstanding issues was left to be resolved by later negotiations. The issues were emergency safeguard measures (ESMs), government procurement and subsidies. Disciplines on the regulation for service providers (the requirements foreign service providers have to meet to enter a foreign market) were another issue which remained open for negotiation after the Uruguay Round.

“Services” have been identified as a key offensive interest for the EU – and this has been postulated as such in official documentation (speeches, press releases). At the same time, the EU postulated services as the area where it could outweigh “losses” in the agricultural negotiations. For the EU as a major source of FDI, the GATS with its Mode 3 provides an interesting tool for the liberalisation of services FDI. It includes provisions which the EU was not able to achieve in the proposed separate frameworks of the Multilateral Agreement on Investment (MAI) and the Multilateral Framework for Investment (MFI). This gives the EU a great incentive to push for greater market access and more transparency. Financial and telecommunication services are usually quoted as the EU’s main offensive interests. Examples of the EU’s main defensive interests include audiovisual services, which became highly visible in the negotiations for the telecommunication agreement, the negotiations for Mode 4, the ESM and service subsidies.

In the three years following after the Uruguay Agreements came into force, negotiations were conducted in various groups in the WTO. The financial services negotiations provided a first test of the EU’s ability to use the newly created WTO to shape the regime further. During the Uruguay Round, a deal on financial services failed because of a) the demands of the EU and the USA, and b) the reluctance of Japan and other Asian and Latin American countries. The new negotiations, starting in 1995, were again dominated by conflicts between the EU and the US on one side and a range of emerging economies on the other side. While the US apparently tabled more ambitious proposals than the EU, it was the EU who fought for a compromise after the US withdrew from the talks in the middle of 1995. Negotiations without the participation of the US were unprecedented in the GATT/WTO. The EU received lots of praise for its move and there was wide-spread speculation whether the EU would from now on become the leader in the WTO. Developing countries (notably India) tried to link the financial services negotiations with those on the “Movement of Natural Persons”, held in parallel in 1995, but these negotiations ended without a significant result. The restart of the financial services negotiations in 1997 was preceded by an improved co-ordination strategy of European and American financial services industries. The negotiations were shaped by an external event: the Asian financial crises. Interestingly, this crisis was

used by the Asian countries to argue for increased flexibility in the agreement, while the EU used it to argue that appropriate financial liberalisation combined with regulation would be the “right” economic recipe to follow.

Overall, the financial services negotiations were dominated by the EU and the US, with the EU taking a distinct leadership position. In order to achieve consensus, there was “pressure” by the EU and the US on countries which refused to comply: With partially “ludicrous” arguments such as the threat of withdrawal of American market access (e.g. towards the Malaysians – without any Malaysian firm being interested in such access) in the end they succeeded to gain compliance. External events (the Asian financial crises and diverging interpretations of it) were used to gain support for the EU position. EU negotiators can be seen as shaping the scientific (or pseudo-scientific) discussions around the negotiations and as using the media (e.g. Trade Commissioner Sir L. Brittan with a message of urgency in the *Financial Times*), while positioning the EU in a positive light (“the EU financial market is the most open in the world”). Developing countries attempted to use cross-linkages, which did not seem to have had an important effect. While the negotiations about the Movement of Natural Persons receded to the background with a relatively minor outcome, the financial services agreement was lauded widely.

There is also evidence that various regional forums were used as preparatory forums for the financial services negotiations (e.g. the Asia-Pacific Economic Cooperation (APEC)). Interestingly, the WTO Secretariat which is supposed to take a neutral position was supportive of the agreement, e.g. Ruggiero giving a speech on the benefits of financial liberalisation. Equally, the EU’s position was supported by reports pointing out the importance of financial liberalisation and how financial liberalisation could help to fund infrastructure projects in developing countries.

The negotiations on telecommunications have followed similar patterns, although the conflicts between the EU and the US have been more pronounced here. The agreement achieved on accountancy services seemed at the time to be the first step to disciplines for domestic regulation of services (WTO 1998).

If we now look at those negotiations which were favoured mostly by the developing countries, we can see that outcomes here were relatively minor or non-existent: The negotiations on the movement of natural persons ended in 1995 with a minor outcome and hardly any attention by the press. The GATS working party on GATS rules spent most of its time trying to determine how to move forward with regard to ESMs and services subsidies. Progress on these has not been achieved (even until 2005). Interviewees attribute this mainly to the reluctance of the EU and the US to design such a mechanism and speak about “delaying tactics”. After 10 years of negotiations and proposals, the question whether a safeguard mechanism is feasible and desirable has not been solved, although interviewees have pointed to the fact that safeguards are in place in other agreements (e.g. the textiles agreement).

Thus, one can argue that this phase was successful for the EU: it even managed to temporarily take over leadership from the US. The only obvious failure was the maritime service negotiations, which failed because of resistance of US industries. Although the EU and the US did not prevent issues like the ESM, services subsidies or Mode 4 to emerge on the agenda, they prevented decisions that would have been unfavourable for them<sup>9</sup>.

The GATS 2000 negotiations started as foreseen in 2000, despite the failure of the Seattle Conference. The negotiations were linked up with the agriculture negotiations and later on inserted into the Doha Round negotiations. They are taking place in a changed environment from that of the earlier services negotiations: The WTO regime has proven very attractive and its membership has increased significantly, with a vast amount of developing and least developed countries joining the WTO. That developing countries are part of the GATT/WTO is not new in itself, but they have managed to improve their strategies of co-operation (see e.g. Narlikar

2004) and started to influence the negotiations more strongly. The economic rise of a group of key actors (notably Brazil, India, South Africa and China, but also Mexico, Thailand, Indonesia and Malaysia) shifted the distribution of power underlying the regime and the actors have started to improve their position in the regime based on exactly the norms, principles and rules that the EU was looking to benefit from.

This has effects on the informal decision-making mechanisms in the WTO: The complexity of consensus-building has increased and the mechanisms of decision-making have become more difficult to manage. The developing countries' challenge to the informal decision-making mechanisms of the WTO is symbolised in the protest against the Green Room Process, with the "Green Room" standing for the exclusive and elitist decision-making procedures in the GATT and the WTO.

The GATS 2000 negotiations thus reveal a different negotiation pattern than before. The services negotiations up to now (September 2005) have been marked by "non-progress" rather than progress. Although the "critical mass" of initial offers (not revised offers!) of 70 out of a 100 countries taking part in the negotiations has been reached, the quality of the offers (in terms of achieving further liberalisation) has generally been described as "poor". Difficulties in assessing the quality of offers persist<sup>10</sup>, which has made it very hard for the EU to find an equal balance between committing in agriculture and gaining in services, which it intended to do initially. Developing countries continue to underline the close link with the agriculture negotiations, where they ask for greater commitments from the EU. They also emphasise the link to the "rules negotiations" on domestic regulation, subsidies to

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<sup>9</sup> "Mode 4" is always presented as a key interest of the developing countries in the services negotiations. In fact, the developing countries are interested in the movement of both skilled and unskilled labour. The EU and the US (and Japan) have used Mode 4 to improve the conditions for the movement of highly skilled labour (university degree + relevant experience/upper management position), but are not ready to concede in the area of low skilled labour.

<sup>10</sup> In the recent months, proposals for "benchmarks" for liberalisation have been extensively discussed. In general, these seek to make it obligatory to bind a certain number of sectors under the GATS. This would amount to a change in the structure of the GATS regime and its current very flexible and individual approach to liberalisation.

the services sector, and a possible ESM to protect domestic services providers in emergency situations. As has been mentioned earlier, progress in these areas has not been made (Bridges 03.08.2005; Bridges 21.09.2005).

Recently, a new “special group” has been set up, chaired by the US and India, to try to push forward the services negotiations prior to the Hongkong Ministerial. It comprises Argentina, Australia, Brazil, Canada, Chile, China, Egypt, the EU, India, Japan, Malaysia, Mexico, Singapore, South Korea, and the US (Bridges 28.09.2005). This new group is symptomatic of the search for new consensus and decision-making mechanisms. The services negotiations as a whole are structured by these informal groupings, called “friends” groups. These are informal groupings that prepare common positions. Various interviewees have reported the EU’s very active position in these groupings (and in initiating them) and the predominance of EU negotiators in submitting written proposals to the friends groups. At the same time, certain developing countries have complained about the exclusiveness of these groupings, as “friends” groups function on the basis of “invitations” by those countries already members of the groups<sup>11</sup>.

In the current situation, it thus looks as if the EU still has an important impact on the negotiations, but due to the power change in the regime it is now much harder for the EU to achieve a result which reflects its interests. Mechanisms like the “friends groups” or the recent proposals on benchmarking (see Footnote 10) are attempts by the EU to shape the regime back into a format where it would produce the results which are in the EU’s interest.

We can thus say that the returns on power investment for the EU’s participation in the GATS have diminished. It is increasingly difficult for the EU to shape the multilateral services regime. The GATS regime with its complex structure has so far

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<sup>11</sup> The defining impact of the EU is also visible in an example given by one interviewee: In environmental services, a common classification could not be found (after years of discussion). A group of countries had agreed to table their offers following the classification of the EU, which might render it into a “de facto classification”. This is the first time this has happened: There has been no multilateral agreement and then the definition has emerged out of a single members proposal.

not been able to yield the returns the EU expected: increasing liberalisation, while protecting key domestic interests. Will the EU defect from the regime and look for other ways to mould the services regime according to its own ideas?

### **The EU's Regional and Bilateral Service Provisions**

We now move on from the multilateral level to assess service provisions in the EU's regional and bilateral agreements and how they relate to the development on the multilateral level.

The trade agreements the EU concluded after 1995 all contain provisions on service trade. The EU's agreements are all based on the provisions set out in the GATS. In this way, the EU's approach differs from that of the US, which with the 1994 NAFTA (North American Free Trade Agreement between Canada, Mexico and the United States) and other agreements had followed an approach to services trade liberalisation different from the GATS (see e.g. Stephenson 2000)<sup>12</sup>.

The Euro-Mediterranean agreements (negotiated since 1995) are limited in scope with regard to both liberalisation of services and co-operation in matters related to services trade<sup>13</sup>. The exceptions here are the agreements with Jordan and Algeria, which contain commitments going further than the other Euro-Mediterranean agreements. All the agreements are based on GATS provisions. It is significant here that Algeria is not yet a WTO member, and thus in fact is implementing WTO legislation even prior to its accession<sup>14</sup>. While the ECDPM assesses the services provisions in the Euro-Mediterranean agreements as "relatively shallow", it also

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<sup>12</sup> The following considerations and observations are based on an InBrief by the ECDPM (European Centre for Development Policy Management), which compared the services sections of ten free trade agreements concluded by the EU. For a more detailed discussion of the services provisions in the EU free trade agreements, the reader is referred to this analysis.

<sup>13</sup> These agreements were with Tunisia (1995), Israel (1995), Morocco (1996), Jordan (1997), the Palestinian Authority (1997), Algeria (2001), and Lebanon (2002).

<sup>14</sup> Algeria has been an observer to the GATT and the WTO since 1987. The "Working Party for the accession of Algeria" met for the first time in 1998. Algeria submitted revised offers on trade in goods and services in January 2005 (WTO 2005b).

points to the space for further liberalisation, which is incorporated in the agreements, and their focus on far-reaching co-operation in the services sector.

The EU and South Africa “Trade, Development and Co-operation Agreement (TDCA)”<sup>15</sup> is less ambitious with regard to services trade than the Euro-Mediterranean agreements, but it leaves scope for far-reaching future liberalisation in all four modes of supply. The agreement also explicitly refers to the area of maritime services, which due to domestic issues in the US has so far failed in the WTO. Emphasis in this agreement is on economic co-operation.

The “Economic Partnership, Political Co-ordination and Co-operation Agreement” (signed 8 December 1997 and entered into force on 1 October 2000) between the EU and Mexico makes much further reaching provision for a later liberalisation of service trade: It includes a “standstill” provision in force since 2001 and provides for a second phase of negotiations which are supposed to take part after the end of the services negotiations in the WTO.

The last free trade agreement (FTA) the EU has concluded is the EU-Chile Association Agreement (signed in November 2002, provisionally in effect since 1 February 2003). It is the most extensive agreement with regard to its provisions in services trade. It contains a commitment to the liberalisation of the movement of natural persons, which might become interesting in the future (although the language remains vague). The ECDPM brief concludes its analysis of the EU-Chile Agreement as following:

“While building on many elements of previous agreements, the Association Agreement between the EU and Chile is the most complex of the FTAs examined in this brief. [...] [I]t differs from the earlier FTAs in that [a review to facilitate progress toward further liberalisation] is an ongoing process within the Association Committee.”

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<sup>15</sup> The TDCA has been signed on 11 October 1999 and has been in force, provisionally and partially, since January 2000.

The ECDPM brief finds a trend towards greater institutionalisation of the services provisions and a move from potential to actual liberalisation, esp. in the agreements with Mexico and Chile.

For the argument in this paper it is important to see that while all these agreements contain more or less far-reaching options for further liberalisation of service trade between the parties, the agreements are based on GATS provisions and rely on GATS level of liberalisation. Progress with regard to liberalisation thus remains dependent on the results of the WTO negotiations, although they do open the door for further, independent approaches. If we assume that the EU has a distinct interest in deepening liberalisation in several areas in services trade, a liberalisation strategy distinct from the GATS (although not independent and not yet yielding results) is only visible in the last two agreements – and there only partially.

This gives further evidence to the statement made earlier, namely that returns of power investment were better for the EU inside the WTO with its GATS agreement than in regional/bilateral negotiations. When these sets of agreements were negotiated, the GATS agreement constituted a valid approach to use in all the regional/bilateral agreements.

However, relying on a multilateral framework, which is unfinished in many respects, also creates the possibility for an actor to pursue policies bilaterally that it cannot pursue multilaterally. GATS provisions have shaped the regional/bilateral agreements and have even shaped the agreement with non-WTO member Algeria. Is there evidence for the EU's regional/bilateral strategy shaping the multilateral regime? Abugattas argues that issues that have been left open for interpretation in the GATS framework are now being defined by the main users of the provisions in regional agreements (Abugattas Majluf 2004: 17-20):

- (1) GATS Art. V requires Regional Trade Agreements to comply with a set of provisions. Several regional trade agreements have attempted to define these provisions clearer – the EC Association Agreement with Jordan being one of them.

(2) One of the main, complex provisions of Art. V is the requirement for “substantial sectoral coverage”. With no commonly agreed classification system for service sectors in place and multilateral interpretation of what constitutes “substantial coverage”, this has been interpreted differently by WTO members: most Regional Trade Agreements have in practice come into force excluding whole sectors (and not just parts of sectors) or modes of supply – e.g. Mode 4 in agreements modelled after NAFTA. Abugattas explicitly refers to the problem that countries participating in regional integration agreements start to interpret the rules set out on the multilateral level:

“The problem is that, instead of being determined on the basis of GATS Art. V, sectoral coverage is being defined pragmatically on the basis of the specific interests of the parties.” (2004: 19). This includes the EU.

At the same time, and this is visible across all the agreements analysed by the ECDPM, the EU’s “exceptions” (e.g. audiovisual services) are replicated on a regional/bilateral level as much as special attention is given to those areas where the EU has special interests (financial services, telecommunications). Similarly, when Latvia negotiated the conditions for its WTO entry with the US, the EU managed to prevent Latvia from committing in the area of audiovisual services, as this would have been problematic when Latvia eventually would enter the EU and its trade policy would be integrated into the EU’s.

### **The Relationship between the Multilateral and the Regional/Bilateral Approach**

Thus, we find a complex relationship between the EU’s involvement on the multilateral level and on the regional/bilateral level: the multilateral regime has importantly shaped the regional/bilateral regime, but there are areas where “holes” in the multilateral regime have been partially filled by regional agreements. At the same time, the EU projected its own vision of the services regime onto both levels and in this way attempted to “tame” globalisation into its own desired format.

If the situation is now changing and the returns for power investment on the multilateral level decrease for the EU, will it increasingly use the other possible levels to pursue this “taming”?

From interviews, there is evidence that the sluggish movement in the services negotiations has led to considerations in various “stakeholder organisations” in the EU (133 Committee, Commission, NGOs and business representations) that services liberalisation in the WTO is a questionable venture. One interviewee pointed out that

“The European Commission is wondering whether service liberalisation can work on the multilateral level.”.

Another one said that

“EU-US regulatory co-operation and similar issues are the issues of the future. They need to be dealt with in specialised regimes (as e.g. the one in telecommunications); you cannot do this multilaterally. [...] Many in the industry say that one cannot expect anything anymore from the WTO in the services area, rather bilateral. It is sobering for those who thought the GATS was very important and had high expectations in it. [...] In general one has lowered expectations a lot.”

Up to now these considerations do not yet seem to have been transformed into tangible policies. With the African, Caribbean and Pacific States (ACPs), the EU seems to suggest services liberalisation only to those countries which already have experience in services liberalisation. In the Mercosur negotiations, the EU’s demands in services have led to a deadlock, clashing with Mercosur’s demands for increased access to the EU’s agricultural market. However, the very tangible and concrete measures proposed in the recent EU-US Joint EU-US Work Programme implementing the “Initiative to Enhance Transatlantic Economic Integration and Growth” of the June 2005 EU-US Summit might be the first indication of a shift towards an EU policy which places complex regulatory issues similarly to those in the services sector in a more manageable framework for the EU.

## **Conclusion**

This paper set out to examine the EU’s impact on the multilateral and regional/bilateral service trade regimes. The main hypothesis was that actors use

power to shape regimes and that they will try to maximise the returns of this use of power. This will influence their choice for regional or multilateral regimes to “tame” globalisation into a format that suits their interests.

In the mid-1990s, the multilateral regime had become more attractive for the EU with the inception of the WTO. With the GATS, the DSB and a growing membership, it seemed to have promised the EU the opportunity to achieve its goals rather than on the regional and bilateral level. The returns of power investment were higher in the multilateral regime than on the other levels of governance. Thus, the EU attempted to mould the regime according to its interests. The GATS framework seems to have been considered as sufficient by the European Commission. The regional/bilateral agreements negotiated and concluded in this phase are based on the GATS with only minor deviations, although the option for a future, further reaching liberalisation and co-operation has been included into the agreements.

In the late 1990s, the picture started to change though: Arriving at a consensus in the WTO and in the services negotiations has become much more difficult. One can therefore argue that power in the WTO has shifted twice: The first time the EU was empowered and hence developed a strategy based on its potential leadership opportunity, focusing on the multilateral level. The second power shift was one in the favour of certain actors from the developing world, who now sought to profit from the WTO regime with its consensus rule, the single undertaking and the DSB in a similar way to what the EU had intended. Increasingly, these empowered developing countries are exerting pressure on those regime structures which disadvantage them, such as the “Green Room process” and other informal consensus-finding mechanisms. This has left the EU, and notably the European Commission and the EU constituents, in a situation where the future strategy of the EU remains unclear and where the EU is striving to adapt to the new power distribution.

The hypothesis set up in this paper suggests that the EU will defect from the multilateral regime and shift to a regional strategy to again maximise its power returns. Why has the EU not yet done so?

Arguably, regimes are “sticky”: Once an actor has committed to them, defection from them would render the whole power investment worthless. This means that it might be better for an actor to “live with” the low returns from an existing regime rather than committing to another high initial investment with potentially higher, but also uncertain returns to power investment.

In this specific case of service trade, it might also be a lack of interest inside the EU, which has prevented an EU shift. First, the EU member states’ own attempts at EU internal services liberalisation have proven difficult and have been received in a hostile way by large parts of civil society. Second, the member states interests in this area might be so diverse that a clear mandate for the European Commission cannot be achieved and it cannot move forward to commit to further reaching liberalisation and co-operation commitments. Third, the structure of the European industry in this area is arguably more decentralised and less well represented on the European level, which results in a lack of lobbying power. Fourth, it might be that the European Commission prefers to test the technically demanding and time-intensive measures for liberalisation and co-operation in the services area first on the EU level and with trading partners with a similar level of development before using them in its relationships with other, less homogenous trading partners.

What does this tell us about the nature of the globalisation in service trade? The EU can here be observed as an actor shaping globalisation. One can argue that globalisation of services is a process which is shaped by actors. It is not an anonymous force but a tailor-made “piece of cloth” to suit those actors who possess power. At the same times, these actors have to cope with unintended side-effects (e.g. of the “too popular” WTO regime) and they deal with suboptimal solutions to complex problems.

If we take globalisation to mean a liberalisation and acceleration of service trade, the EU could be seen as both agent and brake of globalisation. Its policies will – according to its interests – either enhance or slow down the process of globalisation. In both ways the EU “tames” globalisation into a format it prefers.

We have also seen that the relationship between the regional and multilateral service trade regimes is not a one-way street, but that these regimes are (mutually)

interdependent. If we take globalisation to mean increasing regulation on a level above the nation state and if the assumption that the EU will defect from the multilateral level proves right in the future, it can be suggested that in the future regionalisation will exacerbate globalisation rather than tame it.

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This paper presents findings and reflections of an ongoing research project.  
Comments are very welcome!

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