

Exporting Europe's Trade Policy

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1. INTRODUCTION

THE European Union (EU) is increasingly influencing the policy decisions of its trade partners when regional trade agreements (RTAs) are negotiated. European hegemonic tendencies in the trade arena have already been noted in the literature (Pelkmans and Brenton, 1999; Trebilcock, 2002; Messerlin, 1995 and 2001; and Kaminski, 1999). Messerlin (1995) shows how, under the European Agreements (EAs) influence, the Central and Eastern European countries (CEECs) have substituted regional preferential privileges for previously non-discriminatory policies, resulting in weaker discipline with the possibility of softer recourse to contingent protection measures. Still, Kaminski finds that the EU was instrumental in disciplining its partners' trade policies away from contingent protection and recourse to non-tariff barriers, upgrading them along the way to advanced trade policy standards. This liberalisation remained however preferential, without translating into a most favoured nation (MFN) one.¹

This paper has the wider objective to demonstrate that the European influence is actually extending to all partners in regional trade agreements (not only the accession candidates), and that it tends to pervade numerous areas covered by the new generation of deep agreements. We also show that this influence, in effect the exporting of a European model, is increasingly prescriptive, as demonstrated for instance by the pressure exerted in favour of setting up South-South agreements to European standards. This substantiates the comment that:

[d]eep economic integration among nation states is typically predicated either on the existence of a hegemonic power with the ability to impress its will on other smaller and weaker states [...] or on the willingness of member states to cede substantial aspects of their domestic political sovereignty . . . (Trebilcock and Howse, 1999).

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¹ Estonia and Czech Republic excepted.

One particular concern of this research is to examine how this new European strategy interplays with the multilateral trade liberalisation agenda.

2. THE NEW WAVE OF EUROPEAN-LED REGIONALISM: FROM PROSCRIPTION TO PRESCRIPTION OF TRADE RULES

The number of active RTAs notified to the WTO is 162 today.² The place of the European Union (EU) on the regionalism map is historical. The first RTA notified to the WTO was the Treaty of Rome, and the EU is the most advanced and sophisticated of the existing RTAs. More important, the role of the EU is also pivotal because of the number of RTAs it has initiated. In the web of RTAs notified to the WTO, about 40 directly involve the EU, and a similar number involve pairs of countries with which the EU has an agreement.³ Most of these agreements are concentrated within – and more recently among – four distinct regional ‘bloc-spokes’⁴ sponsored by the EU: the Central European Free Trade Area (CEFTA), the Baltic Free Trade Area (BFTA), the Mediterranean region and the Balkans.⁵ Historically, granting trade preferences to partners is the norm rather than the exception for the EU, revealing its preference for discriminatory trade policies (Messerlin, 1999). Of all EU trade partners, Stevens and Kennan (2000) report that only nine are subject to the MFN regime.

The term ‘new regionalism’ (see for instance Panagariya and Srinivasan, 1998) has been coined to describe the growth of RTAs, but is the contribution of European policy to this new regionalism as important as the numbers suggest?⁶ Yes and no. Yes, because Europe has embarked upon signing deeper RTAs with its trade partners. This entails, in many instances, the transformation of autonomous preferential agreements or agreements focusing mostly on eliminating tariffs on industrial goods, into deep bilateral agreements, which include not only economic, but political and social dimensions. However, the increase in number of RTAs generated by Europe is largely mechanical, resulting from the duplication of existing agreements, and are issued from the same blueprint. The European regionalism is therefore not as innovative as it looks.

The European regional trade policy comes after a period – the second half of the 1980s – when the EU was inward-looking, focusing on the completion of the single market programme. This gigantic exercise of policy coordination and

² Source: WTO.

³ Accounting for the number of RTAs is subject to approximation because of the successive enlargements of the EU and the revision of some RTAs.

⁴ See Enders and Wonnacott (1996).

⁵ We will not mention the EEA/EFTA in the rest of this paper.

⁶ In this logic, bilateral RTAs with n partners would lead to $n(n - 1)/2$ agreements.

harmonisation was successful, and is unparalleled. EU officials can take legitimate pride in this, and may have inferred that this was the track to follow also in the pursuit of EU's closer relationships with trade partners. Regional relations have since been shaped by a loose transposition of this approach, around a framework partly inspired by the *acquis communautaire*.⁷ The new European regional policy then switched to a positive integration model (Tinbergen, 1954) in which domestic regulations are prescribed, beyond the traditional trade model of negative integration where domestic regulations are proscribed. One way to achieve this is through regulatory harmonisation.

The current wave of deep RTAs rests on two complementary strategies: the sponsorship of sub-regional RTAs under Europe's leadership; and the promotion of trade and harmonisation policies implemented through a template of Association Agreements with the EU.

3. EXPORTING THE EUROPEAN REGIONAL MODEL: SOUTH-SOUTH REGIONAL INTEGRATION WITH EUROPE AT THE HELM

a. Sub-regional Integration in Exchange of Deep Integration with the EU

A visible feature of Europe's regional policy is what Pelkmans and Brenton (1999) have dubbed 'you-too-preferentialism': the propensity to 'export' actively to partner countries its model of regional integration.⁸ The latter terminology is from the European Commission itself, but the claim is denied:

The efforts of the EU to promote and support regional integration among developing countries should not at all be interpreted as an attempt to 'export' the European integration model (European Commission, 1995a).⁹

This policy features two broad characteristics that have developed over time. First, the EU is using its bargaining power to win over partner countries into regional agreements among themselves. Secondly, Europe is becoming more directive: (a) using, in a series of recent agreements, conditionality to ensure that partner countries comply with the objective of South-South integration, and (b) offering prescriptions as to the format and content of the promoted South-South RTAs.

⁷ References to the Single Market are frequent in official documents about regional partnerships. For instance, a recent paper about the EPA process says: 'Taking the EU, being the world's most integrated region, as an example . . .' (European Commission, 2003a). Similar language is found in European Commission (1998a).

⁸ This policy of encouraging partner countries to form regional agreements is expressed, for instance, in the conclusions of the Essen Council (European Council, 1994). See also European Commission (1997).

⁹ As quoted by Bilal (2004).

The promotion of sub-regional integration, as a complement to the EU's own relations with its partners, is reminiscent of an early provision in the founding Treaty of the EU, which envisioned a two-pillar system based on non-reciprocal preferences granted to associated countries (former colonies), and the formation of a single free-trade zone among these countries. Messerlin (1999) recalls that this framework was never implemented because it was felt that '*it limited the freedom of each newly independent associated country to set its own trade policy*' (emphasis added).

This policy can be traced back to the mid-1990s. Then, the EU supported the formation of the CEFTA, and the BFTA, in the association process with the CEECs and the Baltic States. It endorsed 'the promotion of intra-regional co-operation' as an element of the pre-accession strategy.¹⁰

The European policy has taken a new turn with its Mediterranean partners by formalising the objective of regional trade cooperation into its agreements with them. The Barcelona Declaration of 1995 envisages regional integration between the MEDA countries, and a Euro-Mediterranean free trade area,¹¹ and regional cooperation on trade is among the provisions of a majority of the Euro-Mediterranean Association Agreements (EMAAAs).¹² It should be noted that Turkey, Malta and Cyprus, although being associated in the MEDA process, constitute an exception to the EU regional strategy. This is due to these countries' close association to the EU (membership in the Customs Union and/or prospect of accession). Moreover, the partnership with Mediterranean countries is an early example (if not the first) of Europe making the signing of South-South RTAs a pre-condition for further concessions in the EMAAAs.¹³

The conditionality strategy is pursued in the more recent Stabilisation and Association Agreements (SAAs) with the Balkan countries. The agreements stipulate that negotiations for a Convention on regional cooperation, which includes the establishment of a free trade area, begin when two SAAs are signed by the EU and be concluded 'within two years after the entry into force' of the SAAs. The establishment of this RTA with other SAA's participants is besides set as a '... condition for the further development of the relations between [the country] and the EU'.¹⁴

¹⁰ European Council (1994). Regional economic cooperation is covered by Article 72 of the EA. Other regional policies include regional cooperation in energy and environment policies (Articles 79 and 81) and a rather general paragraph on regional development (Article 87).

¹¹ *Barcelona Declaration* adopted at the Euro-Mediterranean conference, 27–28 November 1995 (http://europa.eu.int/comm/external_relations/euromed/bd.htm).

¹² While most agreements (Algeria, Morocco, Tunisia, Egypt, Jordan) incorporate an article on regional cooperation, and reference to intra-regional trade, this provision is absent from the EMAA with Lebanon. While present in the agreement with Israel, no mention of trade is made.

¹³ See Section 4a(i) on rules of origin below.

¹⁴ Article 12 of the SAAs.

The Cotonou Agreement of June 2000 is equally prescriptive. Article 37(5) specifies the conditions for negotiating Economic Partnership Agreements (EPAs) with Europe. Among them is the condition that the 'regional trade integration process within ACP' countries will be taken into account in being allowed to enter the negotiation phase of the new bilateral trading arrangements with the EU.¹⁵

Finally, in the current negotiations with Latin American countries, the EU is asking for regional integration before negotiating RTAs with them. In the negotiations with Mercosur the EU stated its minimal requirements, among which is the realisation of a Mercosur-integrated market. The EU is also already pushing Mercosur countries to integrate faster. With Central American and Andean Community countries, the opening of negotiations is predicated on an assessment of the integration processes in these regions (Bilal, 2004).

b. South-South RTAs by European Design

The second aspect of Europe's attitude to South-South RTAs is that it seeks to shape them. First, the form of regional integration seems in many instances to be dictated by Europe. In most partnerships, the language makes bilateral agreements implicit: this can, for instance, be seen in the Essen Council conclusions,¹⁶ less apparent perhaps in the text of the Barcelona Declaration,¹⁷ and clearly in the language of the SAAs.¹⁸

Unlike the other promoted South-South regional processes, in the Cotonou strategy the EU is advocating for regional agreements, building upon the existing regional initiatives. Furthermore, the EU pushed the ACP countries towards its preferred solution of conducting agreements with regional grouping of countries.¹⁹ In this process, the EU first seemed to decide unilaterally the composition of the six country groupings, before acknowledging that the ACP countries should decide for themselves the number and membership of the groups (Schilder, 2000). It remains, however, that Cotonou partners have an obligation to form regional groups, whose eligibility criteria are defined by the Cotonou Agreement, or opt out of the agreement.²⁰

¹⁵ Intra-regionalism is affirmed in several parts of the agreement: e.g. Articles 1(4) and 2, Article 28 and Article 35.

¹⁶ The Essen European Council of 1994 encouraged 'the associated countries to expand bilateral free trade relationships they each have with the Union to their relations with each other' (European Council, 1994).

¹⁷ The Barcelona Declaration speaks of 'trade agreements' between MEDA countries and does not mention regional initiatives, except the final objective of a Euro-Mediterranean free trade area.

¹⁸ Lloyd (2002) analyses the specific dynamics of the proliferation of bilateral agreements, and the growth in the number of RTAs in general.

¹⁹ The EC initially suggested four possible scenarios (European Commission, 1996) but pushed for a reciprocal trade agreement solution.

²⁰ This also puts the ACP countries in the unusual position of having to negotiate trade liberalisation as a group with the EU, despite having different trade regimes (Bilal, 2004).

Secondly, the Association agreements offer prescriptions regarding the content of the sub-regional initiatives. The Barcelona Declaration, for instance, specifies an extensive list of areas to be covered in this process. The Agreements between Balkan countries are set to be constructed around the three ‘pillars’ of the European bilateral agreements: political dialogue, economic cooperation, and justice and home affairs.²¹ In the Cotonou Agreement, the European Commission developed a ‘toolbox’ with five ‘building blocks’ for the negotiation of the South-South regional agreements. This should lead to agreements with relatively similar structures.²²

Finally, in all agreements signed with the EU, a consultation mechanism provides the EU with the possibility of overseeing trade policy developments, in particular relating to the signing of RTAs (or Customs Unions) with other countries.²³ It may give the EU scope to have a say on trade policy moves taken by its partners, and is in all likelihood an insurance against nullifying any preferential concessions granted in the context of the agreements. From the perspective of accession, such control over partners’ trade policy is more understandable, since the future common commercial policy may require the annulment of anterior preferential deals (such as the free trade area in agricultural products in the BFTA).

4. RTAS AND ALIGNMENT OF POLICIES WITH THE EU

Having considered one dimension of the EU’s regional strategy, the replication of regionalism among its trading partners, we now turn to the contents of bilateral agreements with Europe itself, and how their provisions also tend to export European trade rules.

a. Border Measures

(i) Classification of products and rules of origin

The EU imposes, in some instances, its classification of products. In the EMAA with Jordan, Morocco and Tunisia, as in the SAA with Croatia and FYROM, the Combined Nomenclature (CN) will be used for the classification of goods

²¹ See Article 13 of the SAA agreements.

²² The five areas are: liberalisation of trade in goods; services; trade rules; competition policy and state aid; and regional policies on intellectual property, investment, procurement, labour, consumer rights and environment. See European Commission (2003a).

²³ The language of the consultation mechanism is identical in the EAs, EMAs, SAAs and in the agreement with South Africa, but not in the agreement with Mexico, where consultation will be held at the request of one partner (in the other agreements it is automatic). The wording of the provision does not make very clear what might happen should the consultation lead to disagreement.

exchanged between the two parties.²⁴ For the SAAs, the provisions on customs cooperation specifically foresee that the countries will adopt the CN.

The EU agreements contain different generations of rules of origin. This has resulted in a growing web of preferential rules. The EU resolved, after the Essen summit of 1994, to unify its policy by having one identical set of preferential rules of origin in all its trade agreements. It started by implementing the pan-European rules of origin within the EEA and with acceding countries in three stages, starting from diagonal cumulation to end up with the more advantageous full cumulation within the EU/EFTA/CEFTA/BFTA area.²⁵ The objective is now to perform the same exercise with Mediterranean countries, where several sets of rules coexist.²⁶ The SAAs will incorporate the pan-European rules of origin from the start, but so far only bilateral cumulation is offered.

Another dimension of this harmonisation process is the diffusion of EU rules of origin within the regional agreements between partner countries. CEFTA countries are applying the pan-European system of rules of origin, while in the Mediterranean area, the Agadir Agreement signed in 2004 between Egypt, Jordan, Morocco and Tunisia, projects to use the harmonised European rules of origin.

The latter has probably been incited by the EU policy. Mediterranean partners (outside Maghreb) are promised the more advantageous scheme of regional cumulation under the proviso that agreements between partner countries will include

... at the very least *the same administrative cooperation provisions and identical rules of origin* as those contained in the EU agreements with [the] countries (emphasis added, European Commission, 1998b).

The logic seems to be that the possibility of cumulation of origin will be offered only if there are regional trade agreements between the countries.

(ii) Tariff measures on agricultural products

The Association Agreements are contributing to the creation of tariff quotas.²⁷ Such trade instruments were not used by some countries before (Algeria, Egypt

²⁴ Not in the agreements with Algeria, Lebanon, Egypt and Israel.

²⁵ The difference between diagonal cumulation and full cumulation lies in how the processed inputs are included. The latter regime is the most favourable one. See e.g. Komuro (1997).

²⁶ This absence of uniformisation stems chiefly from the lag between the negotiations of each bilateral EMA. Rules have considerably changed. Also the EC has resorted to two different strategies of cumulation in the Maghreb region (full), and in the Mashrek region (diagonal). This strategy has been weakly enforced, since Egypt can theoretically fully cumulate with the entire MEDA region. Differences arise not only in the criteria for determining origin, but also in the possibilities of cumulation, and in the acceptance or not of drawback schemes.

²⁷ On imports of products originating from the EU, the number of tariff quotas in the agreements is as follows: Morocco (45), Egypt (15), Israel (66), Algeria (63), Chile (33), South Africa (16), Tunisia (34), FYROM (15), Croatia (34).

and Chile),²⁸ and when they were used, the evidence suggests that the agreement contributes to increasing their number.²⁹

(iii) Contingent protection

The safeguard provisions in the EU RTAs are numerous, and cover: a special safeguard on agriculture; import surge; balance of payments problems; restructuring clause; re-export and shortage; exchange rate restrictions; and security exemptions. Other contingent protection measures, anti-dumping and anti-subsidy, are also included in the agreements.

The presence of these measures diffuses the recourse to contingent protection. For instance, signing an RTA may give partner countries the incentive to adopt anti-dumping and anti-subsidy laws. Messerlin (1995) documents the rise of anti-dumping measures in the CEECs soon after the signing of the EAs. There are several ongoing efforts in the Mediterranean countries (Jordan, Lebanon and Algeria) to draft anti-dumping legislation. Egypt has had an anti-dumping legislation since 1998.³⁰ The EU is not directly assisting in the designing and implementation of such laws (although it has sometimes been asked to do so).

(iv) Trade facilitation

Harmonisation of border procedures, when it simplifies and makes them more efficient and accessible, facilitates trade exchanges. The EU offers access to some of its standards and procedures in its RTAs, such as the use of Europe's Single Administrative Document, as provided in some EMAAs,³¹ the SAAs and Mexico agreements.³² However, provisions related to trade facilitation remain very limited to customs cooperation, and do not contain in general core principles beyond the simplification of customs procedures (only in recent agreements: Egypt, SAAs and Cotonou), such as due process or transparency.³³ In a sense the agreements (at least the earlier ones) seem more motivated by a vision of customs enforcement than a desire to facilitate trade flows. The exceptions to this are the agreements with Mexico and Chile. In the agreement with Mexico this is affirmed

²⁸ Chile and Egypt are not notifying any tariff quota to the WTO.

²⁹ For instance, Morocco and Israel notified respectively 16 and 12 tariff quotas to the WTO. Moreover, this increase occurs obviously on discriminatory tariff quotas, which are a minority of those notified to the WTO: in 2001, out of 1,371 notified tariff quotas, only 217 were country-specific (Bharucha, 2001).

³⁰ The process is also correlated to the joining of WTO for many countries (CEECs, some Mediterranean countries). Although nothing compels any country to adopt anti-dumping laws in order to join the WTO, they often end up adopting this developed country 'standard', certainly as a form of insurance (towards the domestic protectionist constituencies, and as an escape clause for the future).

³¹ Not with Israel and Lebanon.

³² Not in the agreements with Chile, which speaks of a single customs document, and South Africa.

³³ Although the agreement with Israel foresees automation.

by the creation of a Special Committee on Customs Cooperation, and the joint adherence to the principles of transparency, efficiency and integrity. The Chile agreement goes deeper, calling for a single window, transparency, customs automation, risk assessment methods and appeal procedures. The provisions in the agreement with Chile are close to what the EU is seeking to obtain in a WTO agreement on trade facilitation (Fasan, 2004).

b. Standards and Regulations

(i) Standards and phytosanitary measures

All of the new generation agreements include provisions relating to technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS); there are, however, large variations, possibly reflecting the evolution of Europe's policy, and in some instances the negotiating power and level of sophistication of its partners.

For TBT, one can distinguish three categories of agreements. First, a large number of agreements refer to 'harmonisation' with (EAs, Morocco, Tunisia, and Algeria), 'conformity with' (SAAs), or increasing use of (Jordan and Lebanon),³⁴ EU technical regulations and procedures. Second, agreements with typically larger or more economically advanced countries are different in spirit, being shallower, and omitting direct reference to European standards and technical rules. The agreements with Egypt and Israel mention in this respect only a reduction in differences in standardisation and conformity assessment.³⁵ The agreement with South Africa foresees mutual recognition agreements (MRAs) only. The third category is the agreement with Chile, which contains more balanced and ambitious provisions than its predecessors, including the establishment of a Committee, some emphasis on good regulatory practices, and convergence and alignment to international standards.³⁶ The Cotonou process has TBT as one of its central features, and as a priority in the 'road maps' adopted for the regional negotiations. Harmonisation at regional level of TBT and SPS is an objective.³⁷

Most agreements include MRAs, either as an alternative or as a complement to harmonisation to improve market access when standards are involved. MRAs allow for the partner country's authorities to issue certificates of conformity with EU standards. The only exception is the SAAs, which suggests a strict upward harmonisation route.

The SPS provisions of Europe's RTAs also refer to harmonisation, but without specific reference to EU legislation. Most agreements are relatively modest in

³⁴ This different wording suggests a more gradual approach.

³⁵ Technical regulations are not mentioned.

³⁶ The Agreement contains, in Article 18, a reference to European technical regulations, but most provisions refer to international standards only.

³⁷ For instance in European Commission (2004b).

ambition, except with Mexico, and in particular Chile, which foresee institutional arrangements to reinforce cooperation.

Reference to the WTO agreements on TBT and SPS exists only in recent agreements with South Africa, Mexico and Chile.

(ii) *Competition policy*

Heydon (2003) notes that there are two types of RTAs with respect to the inclusion of competition provisions. The first category of agreements contains general obligations to tackle anti-competitive behaviour, while the second envisages more extensive coordination of competition standards. The European agreements mostly belong to the latter type, but again, the degree of EU-inspired language varies. In the majority of agreements, reference is made to the EU Treaty's substantive competition provisions and control of state aid (EAs, SAAs and the first generation of EMAAs).³⁸ Reporting mechanisms on public aid are moreover planned in some agreements.³⁹

In the agreements referring to EU law, the provisions are potentially far-reaching, as they include law enforcement (Hoekman and Mavroidis, 1996). Competition shall be assessed on 'practices arising from the application of Community Competition rules'.⁴⁰ The SAAs go beyond this with commitments to a five-year implementation period, and to setting up an independent competition authority (a requirement also present in the Cotonou process). This said, these provisions are less prescriptive than the equivalent one in the EA with Turkey. The Turkey agreement is explicit on the obligation to implement the EU law, while at most the EAs are asked to harmonise (Peers, 1996). The EAs have besides not prevented a large degree of diversity in the legislation and their implementation in the CEECs (Hoekman and Mavroidis, 1996), although the EU has been more stringent about the compliance of its accession candidate partners with EU standards than of its own member states (Hoekman, 1998).

By contrast, other agreements do not refer to EU legislation. First, some agreements contain shallow provisions on competition. Egypt and Israel refer only to a vocabulary similar to that of the EU Treaty, but not to the application of the articles specifically. The Cotonou Agreement is for now relatively unspecific,

³⁸ See, for instance, Articles 64 and 66 of the EA with Czech Republic; Articles 69 and 70 of the Macedonia SAA. For the Mediterranean countries (Jordan, Morocco and Tunisia), see e.g. Articles 36, 37 and 38 of the EMAA with Morocco and Tunisia. The agreement with Palestine does not refer to the Treaty provisions, but uses similar language. Article 86 (ex-90) of the Treaty of Rome, on public undertakings and undertakings to which special rights have been granted, is mentioned in the aforementioned agreements, *except* in the EMAAs.

³⁹ Israel, Jordan, Morocco, the Palestinian Authority, Tunisia, Chile, the SAAs and the EAs.

⁴⁰ This proviso is not only present in the EAs, but also in the EMAAs with Morocco, Tunisia, Jordan and the Palestinian Authority, despite that, for the latter, there is no reference to EU Treaty articles. The wording varies slightly.

refers in general terms to anti-trust rules, collusion and abuse of dominance, and pledges the implementation of the appropriate legal framework and national competition authorities. The agreements with Lebanon and Algeria are the least ambitious, offering only loose provisions, and disregarding state aid. Other agreements go instead for some form of mutual recognition of competition regimes. The agreement with South Africa establishes the principle of 'positive comity' in Article 38 of the agreement, meaning that a party to the RTA whose interest is at stake can lodge a complaint. A similar approach is taken in the agreements with Mexico and Chile. The Global Agreement with Mexico is the most evolved in this respect, although it excludes state aid, and does not cover public undertakings (Szepesi, 2004).

Another point of interest is the link between competition and anti-dumping provisions. Unlike other RTAs, anti-dumping is not prohibited in European agreements. In the EAs, anti-dumping provisions were used as a bargaining chip by Europe for the enforcement of competition policy, another element of implicit conditionality in the RTAs (Hoekman, 1998).⁴¹

(iii) Trade-related intellectual property rights (TRIPS)

Concern has been raised recently that bilateral agreements are the vehicle for enforcing intellectual property obligations that go beyond what is required by the TRIPS agreement, the so-called TRIPS-plus provisions. Generally the EU has taken a less aggressive approach than the USA,⁴² mostly referring to agreements and conventions present in the TRIPS package. However, the EU agreements contain commitments going beyond the WTO requirements. GRAIN (2001) reports augmented TRIPS provisions on biodiversity in the Cotonou Agreement, and in agreements with Morocco, South Africa, Jordan, Tunisia, Mexico and Bangladesh.⁴³ These agreements include provisions requesting adherence to the UPOV convention and the Budapest Treaty (not part of the TRIPS package), as well as a reference to the patenting of biotech inventions.

A further cause for concern is the suggestion of a 'race-to-the-top' in the language of the agreements: adherence to 'highest international standards' (such as in the MEDA agreements);⁴⁴ undertakings to go beyond TRIPS (as in the agreement with South Africa); adoption of a 'level of protection of intellectual, industrial and commercial property rights similar to that existing in the Community, including effective means of enforcing such rights' (emphasis added; in the

⁴¹ This is explicit in the conclusions of the Essen summit, where less use of European commercial defence instruments is promised against the implementation of 'competition policy and control of state aids', as well as 'other parts of Community law linked to the internal market' (European Council, 1994).

⁴² On the US FTAs and TRIPS provisions, see Fink and Reichmüller (2005).

⁴³ Also in the agreements with the former Yugoslav Republic of Macedonia.

⁴⁴ The agreement with Egypt refers to 'prevailing international standards' only.

Croatia SAA). The EU influence oscillates here between pushing international standards and promoting its own standards. With regard to the latter, other domains of interest to the EU are copyright, geographic indications (GIs) of origin and database protection. European RTAs contain provisions on GIs that are TRIPS-plus (Vivas-Eugui and Spennemann, 2005).⁴⁵ Likewise, the *sui generis* regime of database protection is included in the intellectual property provisions of the Cotonou Agreement, and in the recent agreements with South Africa, Croatia, Mexico and Chile.

(iv) Other provisions

We have reviewed several cases where the European regional trade agreements are used to promote EU rules with the partner country. There is also a general tendency towards the institutionalisation of the provisions foreseen under the agreements. This institutionalisation can serve two purposes. On the one hand, it implements effective cooperation, by for instance establishing the positive comity approach. On the other hand, it can be the vehicle for supra-national overseeing of rules, and for Europe's overarching influence. This area of the RTAs is not well studied yet.

Europe's influence is also exerted in several other domains covered in the RTAs, which we do not examine in detail, such as in provisions on services, investment and government procurement. These naturally tend to go beyond the WTO, in the absence of an agreement on investment, limited membership to the Government Procurement Agreement, shallow commitments in the GATS, and non-membership to the WTO of some partners. Pascal Lamy, the European Commission (EC) Trade Commissioner, recently confirmed the EU strategic approach:

We always use bilateral free trade agreements to move things beyond WTO standards. By definition, a bilateral trade agreement is 'WTO-plus' (Lamy, 2004).

The EU agreements are, however, relatively timid on investment and government procurement (one exception to the latter is the agreement with Mexico; see Heydon, 2003), although one would expect that these would be important topics in the EU's own trade agenda. On services, the ambition of various EU agreement varies largely (Ullrich, 2004), with Mexico and Chile containing the most sophisticated provisions. Among the EMEA agreements, the agreements with Lebanon and Algeria are also quite ambitious. This might reflect the fact that these are recent agreements, but perhaps also that both are not yet WTO members.

It is necessary to recall here the distinction between the general objective of promoting a WTO-plus agenda, and the more narrow issue, explored here, of Europe exporting its own designed policies. The WTO-plus agenda matters,

⁴⁵ Interestingly, provisions of agreements with South Africa and Chile allow for the automatic recognition of European GIs in the partner country, therefore exporting the GI protection there.

because it seeks to influence unilaterally the multilateral architecture, but it does not necessarily promote EU standards, and in some instances pushes internationally agreed practices: we reviewed some examples, such as the promotion of the UPOV convention, and trade facilitation measures which reflect the provisions of the Revised Kyoto Convention.

c. Additional Channels of Transmission: Conditionality and Technical Assistance

Promotion of regional liberalisation and diffusion of European policies through negotiated agreements are not the only mechanisms through which Europe influences its partners' trade policies. RTAs are an element of a broader policy that contains not only economic provisions, but also political and financial assistance endeavours.

Transfers, either financial or in kind (technical assistance and capacity building), are also important vehicles for the diffusion of European practices, and often accompany the Association process. Regional support is one of the six priority areas of European development policies (European Commission, 2004a). For instance, the EU supported the Agadir initiative from its inception with a €4 million MEDA programme.⁴⁶

European direct financial transfers are now most often subject to conditionality. The tool is relatively recent, first used in 1991 with ACP partner countries and shortly after with Mediterranean partners. Conditional EU support was, in the early years of implementation, linked to adjustment programmes led and designed by the World Bank or the IMF (with often some trade policy content). However, more recently the European Commission (2000) underlined that EU conditional aid shall focus more on regional integration issues, in particular towards the ACP⁴⁷ and Mediterranean countries.

Studying the details of conditionality as enforced by the EC is beyond the scope of this paper, and we have no evidence that the instrument has been used to enforce the transposition of EU regulation in the partner countries. This is not unlikely, although several caveats would apply. First, conditionality as an instrument is easier to implement in the framework of the removal of discrimination (*negative* integration) than in trying to achieve harmonisation. Conditional loans indeed rest on the meeting of criteria that have to be easily observable and measurable, such as the elimination of tariffs. On the other hand, the technical nature of regulatory harmonisation, and the difficulty in translating it into clear and measurable criteria, makes it much more difficult to subject to conditional loans.

⁴⁶ 'Commissioner Patten attends signature of Agadir Agreement', *European Commission Press Notice*, IP/04/256 (24 February, 2004).

⁴⁷ For instance €100 million were set aside to support WAEMU countries.

It may also prove politically difficult to tie hegemonic claims to what is presented as development assistance. Finally, in the context of Europe's aid policy, it is more likely that conditionality is not designed to enforce a hegemonic agenda, but rather to ensure that assistance is effectively spent.

Provision of technical assistance and in-house expertise seems therefore a more adequate vehicle through which technological and knowledge transfer of EU practices and rules to the beneficiary country is carried out: from the provision of policy guidance, to equipment, expertise and training. However, the EU has been relatively unsuccessful in this area, despite considerable financial efforts.⁴⁸

5. BENEVOLENT OR SELFISH HEGEMON? THE CONSEQUENCES OF EU POLICY

We have described so far the influence of the new wave of agreements on the choice of external trade policy by partners. There is persuasive evidence that entering into such agreements with Europe comes with, sometimes significant, limitations on the choice of these policies. In the light of our review, there are several good reasons why this occurs. We briefly review the motives for developing countries to opt voluntarily for limiting their policy choice, and for Europe to diffuse its policies and vision of regional integration.

There are obvious advantages for developing countries in upgrading their existing regulatory framework along a European template. This can help them to cope, at lower cost, with market failures unaddressed until then (competition, technical regulations, intellectual property and trade facilitation). Another related motive is the reduction of transaction costs duplication (by having one set of identical rules). Strategic motives also play a great role, such as enhancing prospects of market access by conforming in the domestic market to rules the EU requires on imports. The aim can also be to facilitate negotiations by adopting identical instruments to Europe's. Using the same nomenclature, or trade instruments such as tariff quotas, makes comparison of negotiating offers more straightforward. Partner countries also mirror the EU's defensive trade strategies by adopting contingent protection laws.

Europe's motives are also well known. Foreign policy has commanded the new regional policy, which followed the fall of communism in Central Europe, the war in the Balkans and the Arab-Israeli conflict. The aim is double: to stabilise individually fragile neighbours by associating them more closely to the European bloc, and to promote regional stability through integration. A concomitant

⁴⁸ This explains why the assistance strategy moved towards budget support attached to conditionality. See European Commission (2004a).

positive outcome is that creating regional blocs reduces trade diversion, and hub-and-spoke effects on investment (in addition to expanding trade liberalisation). These mitigating effects, however, diminish with the size and efficiency of the region, which begs some questions regarding the EPA process. For some, the economic benefits are attractive enough to recommend a coercive approach (Enders and Wonnacott, 1996). Another motive is the attempt to reform the EU's preferential trade policy, more in line with WTO requirements,⁴⁹ and away from the 'pyramid of preferences'⁵⁰ and unilateral concessions. A strategic approach to RTAs should not be excluded either. The European Commission (1995b) emphasises economic presence in partners' markets as a principle underpinning its regional policy. This is confirmed by recent experience, when the EU started negotiating agreements to counter US RTAs (Mexico, Chile, Mercosur, South Africa). The promotion of individual rules is predicated on the same general principle. For instance, the policy on standards in European RTAs is:

... to promote where possible, the adoption of overseas standards, and regulatory approaches based on, or compatible with, international and European practices, in order to improve the market access and competitiveness of European products (European Commission, 2001).⁵¹

We will not offer after this brief review any conclusion as to whether Europe behaves as a benevolent or a selfish hegemon. We note that strategic commercial interest motives, on both sides, could explain the specific features of the RTAs that we have reviewed. Another remark is, as would be expected, that the extent to which Europe's hegemonic influence applies is correlated to the status of development, economic strength, and dependence on European market access, of its partner countries. We witness that countries like Mexico, Israel, Egypt or South Africa retained more flexibility than others. A limiting factor is also the fact that the EU is not a hegemon in the classical sense (Keohane, 1984), being itself a regional agreement, and the European Commission's decisions are subject to the vetting of member states. The formation of coalitions of like-minded interests among them will vary depending on the country with which an agreement is negotiated, resulting in different outcomes.

Bearing these remarks in mind, we now turn to the examination of the issues raised by the exporting of Europe's policies. Our review of RTAs reveals that the influence of Europe is limited to what can be seen as classical trade issues, i.e. policies also discussed in the WTO and other international fora. This includes positive integration policies such as TRIPS, TBTs and competition policy. In other, behind-the-border regulatory policies, despite the inclusion of large areas

⁴⁹ This point is arguably subject to debate, as discussed below.

⁵⁰ Stevens and Kennan (2000) note for instance that the granting of preferences such as the GSP or ACP status is not very consistent with the level of development of the partners, each preferential regime hosting a range of low to middle income countries.

⁵¹ A similar rationale is found for GIs (European Commission, 2003c).

of cooperation, and of a provision on harmonisation of legislations, the ambition of the RTAs remain modest.⁵²

a. Complexity

Complexity is generated: by the multiplication of bilateral agreements;⁵³ by their depth; by the positive integration dimensions. Partner countries that face severe institutional constraints⁵⁴ are unlikely to have the capacity to manage several RTAs simultaneously (a question of particular concern for South-South partnerships). This process results in the fragmentation of liberalisation efforts, where marginal returns from bilateral liberalisation decrease fast, and which is certainly more costly than multilateral liberalisation. Complexity also favours weak disciplines and risk of capture, which in turn creates additional costs of switching to future more liberal regimes. Lower marginal gains and increased costs may delay or prevent countries from moving to a pure MFN regime.

Complexity is not only created by the commitment to upgrade to advanced intellectual property or competition standards, but is also found in the diffusion of border measures like European CN, rules of origin and tariff quotas. For countries with relatively unsophisticated customs administration, and low diversity in trade, adopting the CN classification (more than 10,000 entries at the eight-digit level) is not a natural choice. It is nevertheless true that this might represent an improvement for some countries with already complex classifications,⁵⁵ which have tended to be abused as *de facto* contingent protection or corruption instruments. European rules of origin are so tortuous that exporters often forgive the associated preferences (Brenton and Manchin, 2003).⁵⁶

Another potential pitfall is what has been coined in the literature as the 'fallacy of transposition' of the European model: the assumption that the regulatory experience of developed countries can be replicated in developing countries (Langhammer and Hiemenz, 1991).⁵⁷ Besides, regional integration policies are not implemented in a vacuum. Partner countries have pre-existing legal systems

⁵² The provisions on approximation of legislation are largely void of obligations. In the EAs, approximation of legislation was a precondition to accession and had to be achieved in numerous fields. However, most of the implementation was done unilaterally by the countries themselves. In the SAAs, approximation of legislation is also required in several fields, with mostly 'trade' elements of the *acquis* to be undertaken first. Bringing domestic legislation closer to the European one is also an objective in the EMA, although without further specification in the case of Tunisia, Morocco, Jordan and Algeria. The agreements with Egypt and Israel, as well as Lebanon, differ, since only mutual approximation is mentioned.

⁵³ This is acknowledged in European Commission (1996).

⁵⁴ These same constraints also incite them to seek deep integration with the EU.

⁵⁵ Tunisia has for example a nine-digit classification.

⁵⁶ The EU has vowed to simplify its rules of origin (European Commission, 2003b).

⁵⁷ A point also outlined in Trebilcock (2002).

and jurisprudence in the areas of cooperation with the EU.⁵⁸ The EU and its partners should put some effort into a market for information about the scope of legal solutions to solve comparable problems, including information on how these solutions are tied into the general legal framework and enforcement institutions (Pistor, 2002). Even cooperation on regulations is difficult (although arguably less than pure harmonisation). For example, MRAs require a high degree of regulatory *rapprochement*, similar capacity, as well as some trust between nations. For smaller, less developed nations, for which equivalent standards or SPS regulation may not yet exist, MRA endeavours could result in upward harmonisation (Nicolaidis, 1996).

One may finally question the EU's *own* capacity to monitor so many RTAs and the preferential status of 120-plus countries. This explains the European tendency to a blueprint, cost minimising, strategy with similar agreement structures and provisions.⁵⁹ The consistency of Europe's approach is however only superficial.⁶⁰ Tradeoffs resulting from negotiations with partners of varied interest and strength lead to complex differences among agreements and defeat partly the objective of uniformity. Another dimension of the lack of consistency is also apparent in the fact that the agreements sponsored by Europe are alternatively moving towards and away from a multilateral agenda of liberalisation.

b. Hegemony and Rent Capture

Other concerns are the private and unilateral capture of the process. Bhagwati (1994) and Haggard (1995) highlight the leverage that can be exerted by developed countries over developing ones. Even more than in the multilateral framework, where developed countries tend to set the agenda, bilateral relations are shaped by the most sophisticated partners. Bhagwati and Panagariya (1996) advocate against RTAs among and with hegemonies, because they do not foresee any credible commitment from the big nations to avoid exerting their market power.

This power asymmetry is more acute within the complex and non-transparent non-tariff and regulatory measures, because information asymmetries add to the

⁵⁸ For which there might be less elements of commonality than between the states that joined the EU (the situation of the transition states also being different, as they had to largely rebuild their legal system).

⁵⁹ The overall architecture, areas of interest, and content of the EU RTAs are indeed very similar. Recently, however, the agreements with Chile and to a lesser extent Mexico represent a departure from the classical structure and content of the EAs. See also Section 6, below.

⁶⁰ This echoes the findings of the assessment carried out by Hughes, Sasse and Gordon (2004) in the context of the EU's regional policy with the CEECs. It is interesting to note that divergences within the Commission, and lack of specificity of the *acquis* itself, explained why institutional convergence failed.

imbalance. In such cases, it is also likely that rent capture incentives might be created, since specific and detailed technical knowledge is scarce, and likely to be in private hands. For instance, the unification of rules of origin under the pan-European harmonised system (the adoption of the CN is another example) has ambiguous welfare implications. This will admittedly reduce transaction costs. However, such rules are biased towards developed country standards. They involve an extensive knowledge of the production and supply processes in each industry. This will tend to generate significant information asymmetries that favour the European private productive sector as the only one able to truly understand the design of such rules. Besides these rules are not negotiable; European interests can lobby for changes of tariff classification,⁶¹ and for ad hoc stringent rules of origin,⁶² a possibility denied to their trading partners. This opens scope for private capture, as noted by Hoekman (1993) with rules of origin, and Baldwin (2001) with standards. The economic logic would call for a cooperative definition of the rules.

c. Spreading Weak Discipline

Complexity and rent capture imply that Europe will not necessarily enforce discipline when its direct interests are not at stake. In some cases, such as tariff reduction, Europe's mercantilist incentives coincide with welfare-enhancing policies for the partner country, but the same is not necessarily true of positive integration. The mercantilist calls for a level playing field and upward harmonisation will indeed facilitate market access, but also come at a cost for the economy if not adapted to its needs, and comparative advantage. Europe, as a benevolent broker, is often (but not necessarily) a reality. This is, especially, when vested interests will pressure for rules to their own benefit, or diverging interests among member states will prevent reaching the optimal efficient agreement. There is not in the bilateral agreements the check-and-balance system that exists in the WTO. In particular, in the positive integration and rule-making dimension of the agreements, the EU pushes for rule enforcement without a systematic effort of spelling out strict discipline. It would be essential first to ensure that cooperation in these areas is welfare enhancing for both parties, and does not create discrimination against non-member countries to the RTA or within the RTA. This would imply that cooperation starts with a needs assessment and impact test, rather than presuming that harmonisation is a force of progress. In addition, principles of

⁶¹ The European process of determining product classification is, to our knowledge, quite opaque. In the US industries routinely lobby for changes of classification such as a recent petition for reclassification of casein (US Customs, 2002).

⁶² Such as the double transformation rule by which a product will be conferred preferential origin only if it has been subject to two different transformation processes, a requirement difficult to meet. The low tolerance rule for textile products is another example. Euratex, the federation of European textile producers, is known to follow these issues very closely, and briefing the European Commission.

transparency, efficiency, cost-reflectiveness, due process and accountability could be systemised.

South-South bilateral agreements between small nations do not offer the discipline provided by an RTA with a larger partner or in a larger regional framework. For instance, trade frictions have affected the Baltic Free Trade Area initiative, when Latvia decided to levy duties on imports of pork from its two partners.⁶³ The bilateral framework will prevent the EU from policing efficiently such practices, since they are not directly part of the agreement, while in a true regional scheme they would be.

d. WTO Compatibility?

The EU regional policy is influencing how its partners liberalise. On the positive side, the EU has promoted great strides in the liberalisation of partner countries, particularly as most were very protectionist to start with. The question now is what remains to be done? The literature on the effects of deep integration agreements varies in tone about their positive contribution, but concurs to remain cautious about the future.⁶⁴ Besides the question of balance of power, and discipline *within* the regional arrangement, there is also the question of the systemic effect of regionalism *outside*, on the non-members. If discriminatory instruments contained in RTAs generate weak disciplines, this enhances both risks of diversion from the objective of multilateral liberalisation, and the risk of private capture evoked above, which may oppose future liberalisation.⁶⁵ Developing countries are likely to be more sensitive to private pressures for protection. Institutions are not as strong; lobby groups have resources, and generally good access to the administration.

The EU agreements also contribute to diffusing rules at odds with or beyond the WTO. The use of tariff quotas contradicts the spirit of the WTO Agreement, since these were designed to guarantee minimal market access for developing countries' agricultural products, and securing historical market shares, not to provide market access to developed countries. Tariff quotas are second-best instruments, and are not well policed by the WTO (Bharucha, 2001). Tangemann and Josling (2000) argue that the first-come-first-served allocation favoured by the EU (and some of its partners) is not conducive to competition. It can end up

⁶³ In December 1999, the Latvian government, under pressure from the agricultural lobby, decided to impose a 70 per cent tariff on pork, without consulting its BFTA partners. Problems were also encountered in the egg trade.

⁶⁴ See e.g. Baldwin (1997) and Pelkmans and Brenton (1999).

⁶⁵ Hoekman and Djankov (1996) note this in the context of the EAs' experience: they have contributed to the transition in the CEECs. However, if unaccompanied by a clear MFN liberalisation policy, regional integration can result in the creation of coalitions between EU and local firms resisting further opening of the market, hence the path-dependence theorised by Bhagwati (1993).

granting access to non-efficient (only good at being first in line) or rent-seeking suppliers.⁶⁶ However, by automatically increasing the quota, as in most EU RTAs (Algeria is a notable exception), the EU is gradually liberalising access to its market. Of the contingent protection instruments foreseen in the agreements, the special safeguard and the restructuring clause do not seem to be WTO-compatible.⁶⁷ In another potential breach of multilateral rules, the effect of regional agreements can be to increase protection against third countries. The application of rules of origin can come as a *de facto* prohibition on the use of third-country originating inputs, which can be interpreted as a breach of GATT Article XXIV:5.⁶⁸ The spread of standards designed by the EU may result in reduced market access for third parties (albeit on an MFN basis). A simple example is when standards do not exist in a country and are created to meet harmonisation objectives. On the other hand, the application of MRAs also presents challenges, as it raises the issue of consistency with the MFN principle, which is affirmed in the TBT and SPS Agreements.⁶⁹

Perhaps less worrying, but still in the category of systemic effects, there is evidence that European regional strategies are implemented with the aim of influencing the multilateral system. In the rule-making process of positive integration, the new intellectual property, competition, and standards regulations adopted by Europe's trade partners, are multilateralised, since applied on an MFN basis thereafter. Similarly, when the CN classification is adopted, this classification will also be used in the trade with the rest of the world.

In the context of policy diffusion, the EU agreements help the adoption of desirable disciplines, such as those policing government subsidies (countervailing and competition provisions), in particular when these do not exist in the country, or are only partly covered in the WTO. More generally, the European agreements have also been instrumental in promoting adhesion to the WTO, which partly answers Bhagwati's (1993) question regarding the path dependency of RTAs. Some partner countries have conducted their process of WTO adhesion in parallel with negotiations to enter RTAs with EU (the SAAs, Algeria, Lebanon

⁶⁶ The auctioning of the licences, the solution favoured by Tangermann and Josling (2000), has not received much political support within the EU.

⁶⁷ The other safeguards are similar to those permitted under GATT Articles XI (shortage), XII (balance of payment), XV (exchange rate), XX (general exceptions) and XIX (emergency). The question of WTO compatibility should also be seen in the light of Article XXIV:8, which does not mention Article XIX (safeguard measures), Article VI (anti-dumping) and Article XVI (countervailing duties).

⁶⁸ Article XXIV:5 states that duties and other restrictive regulations of commerce should not on the whole be higher or more restrictive than those prior to the formation of an RTA.

⁶⁹ Ongulo and Ito (2003). A similar problem is raised in the context of discriminatory implementation of GIs' protection in RTAs and the relationship with TRIPS Article IV:d (Vivas-Eugui and Spennemann, 2005). It is also unclear whether TBT and SPS are covered by Article XXIV:8 as 'other restrictive regulations of commerce' that should be eliminated on substantially all the trade.

or Jordan). Idiosyncratic benefits also arise from individual initiatives, like in the Cotonou process, where the promotion of regional integration is thought to have provided an impetus for rationalising the web of regional agreements in the region (Hinckle and Schiff, 2004).

6. DISCIPLINING THE EU

Hegemony is at the heart of Europe's regional strategy. Our review questions the import by RTA partners of EU instruments and regulations, a specific feature of this strategy. Our assessment concludes that caution is advised before applying the European formula. The broader question of the true nature and motives of Europe's hegemony in this context, and the assessment of the overall impact of Europe's regional trade strategy, are beyond this undertaking. We observed that this strategy can be fuelled by different logics: unilateral and strategic, or multi-lateral and liberal. This apparent dichotomy needs to be addressed in future research. Likewise, further work on the interaction of the multiple rules promoted by hegemonies such as the EU and the USA in their RTAs, and the investigation of whether hegemon-led regional deep integration is a necessity, in the absence of effective substitutes (such as the multilateral negotiations, or sector-specific agreements) could be conducted.⁷⁰

A lesson from this research is that the numerous manifestations of Europe's prescriptive approach do not necessarily offer a very consistent image. Despite similar architectures, reminiscent of the *acquis communautaire*, the bilateral agreements vary in detail and depth, as well as in whether they are prescriptive or rather based on mutual cooperation. They also waver between commitment to the WTO, and more Eurocentric prescriptions. In its prescriptive dimensions, the EU regional policy seems to derive from earlier strategies applied for the internal market, of upward harmonisation, and assimilation of neighbours in the European sphere. RTAs look sometimes as 'residuals' of this single-market policy.

The lack of coherent strategy could partly be due to the fact that Europe is a limited hegemon. In this respect, one could question whether Europe shows too much inclination for prescriptive policies.

An alternative approach is to shift towards more cooperative and flexible policies. Despite retaining hegemonic elements in its agenda, Europe shows signs of turning towards this approach, as in the recent agreements with Chile and Mexico. In the EPA negotiations, the EU is distancing itself from the 'one-size-fits-all' model and stresses that RTAs can be achieved in different ways, sequences and speeds.⁷¹

⁷⁰ Bilateral investment treaties come to mind.

⁷¹ European Commission (2003a).

Heydon (2003) finds that allowing such flexibility enables to scale regional ambitions to specific development objectives and local circumstances. However, flexibility also creates more complexity, and can end up with added discrimination. MRAs, which are an example of flexible approach, are bilateral and discriminatory. On the contrary pure harmonisation of standards would normally be MFN based.⁷² Therefore, even when flexibility is desirable, strong disciplines need to accompany it.

a. Towards a More Balanced Approach?

The second lesson is that this hegemonic influence, when potent, should not be mistaken as the only substitute for strong discipline. Strong discipline does not mean that countries cannot decide for themselves, and we saw that the EU agreements can, on the contrary, become the ground for weak disciplines. This suggests that European RTAs should either incorporate core rules within the agreements themselves, or subject themselves to more robust external discipline.

This may imply a change in the logic of the current agreements. Emphasis should be put on universal core principles, guaranteeing efficient and non-discriminatory rule making, rather than prescriptive rule making. Such disciplines are conspicuously absent from many of the provisions in the current EU-sponsored trade agreements. The first consequence is the lack of a common and clear approach, as exceptions to the prescription are negotiated, leading to a multiplicity of ad hoc agreements, whereas core principles could only be either accepted or rejected. Secondly, guarantee that commitments will be respected rests on an interpretation of relatively complex language and on the anchorage with the EU, not in the objectivity of rules themselves, or reference to international rules, more likely to be embedded in core principles. Adoption of core principles would seem therefore to meet a desirable objective of simplicity.

We saw that relying on the EU's power to discipline itself and to discipline sub-regional agreements is not realistic. In this context, discipline should come also from the outside. The WTO offers the legal framework for this. A strong Article XXIV,⁷³ and the WTO dispute settlement mechanism, to solve bilateral disputes (in lieu or in addition to existing dispute settlement procedures in the agreement), could provide an interesting, albeit not necessarily straightforwardly feasible, solution.

What could be the core principles? We adopt here the broad recommendations suggested by Trebilcock (2002). Affirming the basic duties of non-discrimination,

⁷² It cannot be excluded that standards could be created and applied in a discriminatory fashion, but this is unlikely.

⁷³ The review of Article XXIV is currently under negotiation in the WTO, with most submissions calling for more stringent and transparent rules.

with the principles of national treatment (NT) and MFN, would infuse a key element of discipline of the regulatory dimensions of the European regional policy by guaranteeing that the discriminatory effects of RTAs are contained.

Advocating for MFN may sound strange in the context of an RTA, but not when considering first that deep integration entails the adoption of domestic laws that do not traditionally include any preferential dimension: competition, intellectual property, trade facilitation and standards, for instance. Therefore, the MFN principle would reinforce this presumption, and also avoid potential inconsistencies with the WTO agreement.⁷⁴ Other domestic policies, such as those governing investment, services, procurement or MRAs, tend to be implemented in discriminatory fashion. However, examples of RTAs that incorporate an MFN principle in these sectors exist: the NAFTA agreement on investment (Trebilcock, 2002), or in APEC (Heydon, 2003). One benefit of adopting the MFN principle is to avoid diversion effects.

NT is perhaps seen as not an issue in European RTAs, and is sometimes requested in the provisions,⁷⁵ but is key for all the behind-the-border policy elements of the agreement. The principles currently adopted in European RTAs (such as alignment of policies on standards) do not guarantee that domestic producers will not unduly be favoured. Besides, in the perspective of dispute settlement, judging whether national treatment is applied or not is probably more realistic than judging on whether two regulations are applied identically.

Core principles of transparency, accountability, cost-reflectiveness, proportionality and due process could be more present in the text of the agreements. In some cases these are affirmed (such as for notification of state aid, or the Chile agreement provisions on trade facilitation), but they do not seem to be the basis of the European approach.

Finally, when needed, each positive regulatory approach should be subjected to a needs and impact test. The economic case for the *rapprochement* of trade regulations as it is advocated in European agreements is still not clear. One should here distinguish between regulatory initiatives aimed at solving common market failures or negative externalities (i.e. need for SPS to combat diseases, or reducing the duplication of compliance costs), and non-interdependent regulatory initiatives that aim at improving the welfare of parties (e.g. implementation of competition law).⁷⁶ The case for harmonisation is stronger in the first instance than in the second, where deep integration is only one way to implement and anchor reform.

⁷⁴ This would indeed be necessary, as these policies can sometimes be implemented with preferential features, such as the request made to Mercosur to fast-track the clearance of EU goods, or the automatic recognition of European geographic indications of origin in the Chile and South Africa agreements (Vivas-Eugui and Spennemann, 2005). See also note 69 above on the question of consistency with the WTO.

⁷⁵ In the EAs, for instance, in the provisions on investment.

⁷⁶ As long as it does not affect trade between the two parties.

The above recommendations strongly suggest that the premise should not be regulatory alignment of policies, but rather regulatory competition, based on a set of core rules, not least because building regulatory institutions with blueprints is difficult. Partner countries of the EU should be particularly aware of unilateral harmonisation, and demand instead that harmonisation shall be mutually agreed.

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