The ‘Global Europe’ Services and Investment Agenda: Bringing Politics Back Into the Study of EU Trade Policy

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I – Introduction

In October 2009, after a series of controversial negotiations, the European Union (EU) and South Korea finally initialed the Free Trade Agreement (FTA) that they had been negotiating for over two years. This agreement is the most visible expression so far of the new ‘Global Europe Strategy’ (henceforth ‘Global Europe’), which was announced in October 2006 by the European Commission’s Directorate-General (DG) for Trade (European Commission, 2006d). This strategy spelled the end of the ‘moratorium’ on new FTAs that had been at the heart of EU trade policy since 1999, with a new emphasis on negotiating bilateral trade agreements with emerging (and largely Asian) economies taking the place of the EU’s previous ‘multilateralism-only’ approach. This paper asks what led the European Commission to change its trade strategy, focusing in particular on the case of the EU-Korea FTA agreement.

Existing institutionalist explanations in the field of European Studies are unable to account for the EU’s policy shift because they have argued that functional integration has insulated European trade policy-makers from interest groups and systemic pressures. This depoliticization may explain the stability demonstrated by EU trade policy during the 1990s and early 2000s, but is unable to account for the strategic shift of 2006. This paper therefore argues that more can be gained from the International Political Economy (IPE) literature on regionalism, which emphasizes ‘domestic-societal’ and ‘systemic’ drivers of preferential liberalization. Recent strands of that literature have, in particular, emphasized the role of services and investment liberalization in driving developed economies to seek preferential access to emerging economies. It will be shown that these factors have played a key role in shaping the EU’s trade policy-making in recent years, which is the venue for a lively politics of interest.

The paper is structured as follows. Section II highlights the limitations of institutionalist approaches to studying EU trade policy, and maps out an alternative IPE explanation of ‘Global Europe’ emphasizing the importance of the services industry in shaping EU trade strategy. Section III applies this framework to study the evolution of the EU’s trade strategy, while Section IV considers in more detail how the influence of the services industry has shaped the European services and investment agenda. Section V then looks more closely at the services and investment provisions within the recently initialed EU-Korea FTA and the role played by the services industry during the negotiations. Section VI concludes by offering an overview of the arguments presented in the paper and suggests avenues for further research once we have ‘brought politics back in’ to the study of EU trade policy.

II – Explanations of EU Trade Strategy

The theoretical starting point for much of the existing literature on EU trade policy is the so-called ‘collusive delegation’ argument (see Meunier and Nicolaïdis, 1999; Nicolaïdis and Meunier, 2002; Meunier, 2005; Woolcock, 2005; Zimmerman, 2007). The proponents of this argument start from the position that the delegation of trade policy-making authority from national governments to the supranational Commission in the Treaty of Rome was intended to ‘insulate the process from protectionist pressures and, as a result, promote trade liberalization’ (Meunier, 2005, p. 8). Crucially, this view has found its way into a historical narrative in European Studies concerning the ‘exceptional’ nature of EU external trade policy-making.
The underlying assumption of this narrative is that institutional developments over the past twenty years have underscored the depoliticization of EU trade governance. In this vein, Brian Hanson (1998) argues in an influential piece that one of the unintended consequences of the Single Market Program was to further shield policy-makers from protectionist interests by introducing qualified majority voting into new arenas of economic policy-making in the Council. This change in institutional set-up – so the conventional wisdom goes – was reflected in a shift in EU trade policy during the Uruguay Round; after decades of defensiveness over agriculture, the EU became increasingly supportive of the multilateral trading system (Woolcock and Hodges, 1996). Supporters of this argument contrast the EU’s policy shift to that of the United States (US), which is alleged turned increasingly away from multilateralism in the late 1980s and early 1990s due to the increased politicization of its trade policy (Woolcock and Hodges, 1996; Woolcock, 2000; on the shift in US policy, see Destler, 2005). The EU – now relatively unencumbered from protectionist and other special interest group interference in trade policy-making – was thus able to assume hegemonic responsibility for the multilateral system that was in the past bestowed upon the US.

Up to a point, it can be argued that this depoliticized view of trade policy is consistent with the stability demonstrated by EU trade policy during the 1990s and early 2000s. The new multilateral approach it had adopted during the Uruguay Round was to become a cornerstone of the EU’s approach in the subsequent Doha Round of the World Trade Organization (WTO), launched in the Qatari capital in 2001. It even went as far as announcing a ‘moratorium’ on new Free Trade Agreements (FTAs) in 1999. The EU maintained this position even after the debacle at the Cancún Ministerial in September 2003 – where most of the Singapore issues were dropped from the Doha agenda – when other competitors (particularly Asian nations and the US) were stepping up their efforts in seeking bilateral trade deals (on on Asian FTAs, see Dent, 2006; Ravenhill, 2003, 2008; on US ‘competitive liberalization’, see Destler, 2005). It was not until October 2006 – following a prolonged lull in the Doha Round – that the European Commission announced a new trade strategy by launching its ‘Global Europe’ communication (European Commission, 2006d). Couched in the terms of the Lisbon Agenda – which aimed to promote internal competitiveness and job creation through further liberalization and marketization – it announced a more offensive external trade strategy built on a new generation of bilateral trade deals with emerging markets, trade-defense instruments, vigilant protection of intellectual property and so forth (see Hay 2007). Negotiating mandates for FTAs with India, Korea, and ASEAN were consequently sought from the Council in April 2007, with the first agreement – the EU-Korea FTA – being initialed in October 2009.

**Institutionalist Explanations of the EU’s New Trade Strategy**

Given its emphasis on institutional stability, how can the EU Studies literature explain this shift towards bilateralism? Explanations have principally been concerned with studying the effects of institutional conflict resulting from the delegation of policy-making authority. Most have adopted a Rational Choice Institutionalist approach known as Principal-Agent theory (PA) (for advocates of using PA in studying EU trade policy, see Elsig, 2002; Kerremans, 2004; Pollack, 1997; for applications, see also Nicolaïdis, 1999; Meunier, 2000, 2007; van den Hoven, 2002; Elsig, 2007). The underlying assumption has been that there is a divergence of interests between principal and agent, with most scholars simply attributing pro-integrationist and liberal trade preference to the Commission. Member States, in contrast, are usually painted as being mainly concerned with preserving national sovereignty (e.g. Meunier and Nicolaïdis, 1999; Nicolaïdis and Meunier, 2002; Pollack, 2003; Meunier,
The preferences of the Commission and Member States are seen to derive from their respective functions as agents of European integration and guardians of the national interest. Part of this literature has therefore focused on the battle over trade policy competences between the Member States and the Commission following the expansion of the international trade agenda into ‘new’ issue areas, including services and investment, not originally foreseen in the Treaties (e.g. Meunier and Nicolaidis, 1999, 2000; Young, 2002).

This leads the literature to argue that the EU’s trade strategy has been a product of the Commission’s – more specifically, of DG Trade’s – efforts at exercising leadership in trade policy, especially vis-à-vis the Council of Ministers. This argument has been made for the EU’s policy During Uruguay Round (Vahl, 1997) and its multilateral approach During the Doha Round (van den Hoven, 2004; Billiet, 2006). In a similar vein, ‘Global Europe’ is seen as an effort to continue exercising leadership in trade policy – to varying degrees – in the face of the stagnation of the multilateral trade strategy. As such, it is either seen as evidence of DG Trade’s ‘entrepreneurial ability to repackage Member State preferences into a consensual doctrine’ (Meunier, 2007, p. 905) or of the Commission’s power to reset the trade policy agenda according to its ideological preferences (Elsig, 2007).

The emphasis on institutional and political stability has meant that this view has difficulty in explaining the greater contingency displaced by EU trade policy-making in recent years. The notion that the Commission – or DG Trade more specifically – has been driven by a bureau-maximizing logic may suggest why there was an institutional imperative to change course when the multilateral strategy was seen to be failing. However, it is difficult for explanations stressing the importance of institutions to account for the strategic shift in the absence of significant institutional change to the EU’s trade policy-making machinery. Moreover, even though these accounts do offer some insight into the institutional dynamics that may have shaped the EU’s new bilateral trade strategy, the underlying depoliticized view of EU trade policy-making is nonetheless problematic. Although working with the assumption that functional integration has served to insulate policy-makers, little empirical evidence has been invoked to support the argument that interest groups play a negligible role in European trade policy-making (Dür, 2008). Another related problem is the tendency of such institutional accounts to overlook the wider international systemic context within which trade diplomacy is rooted. The problem is that the EU is being treated as an ‘exceptionally’ depoliticized entity, divorced from its context within the international political economy, when it is not the only trading entity to be signing bilateral trade agreements with emerging markets. This article therefore attempts to situate the EU’s foreign economic policy-making within the wider IPE literature on trade policy, which offers a more compelling and dynamic understanding of the ‘politics’ of trade.

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2 Although some allowances are made for assumed national trade preferences (e.g. Meunier and Nicolaidis, 1999), these are usually simply given exogenously. This appears justified because Member States’ trade preferences are considered to be relatively stable (Johnson 1998). As almost to confirm this widespread assumption, there is a dearth of works on the formation of member state trade policies (for an exception to this see Falke, 2005).

3 The Treaty of Lisbon, which only involved a few minor changes to the EU trade policy-making machinery, most notably a role for the European Parliament in ratifying all subsequent international trade agreements, only came into force in late 2009.

4 There exists in the field of European Studies an incipient literature which also seeks to problematize the narrative of depoliticization, pointing to the role that interest groups play within EU trade governance (see, amongst others, De Bièvre, 2002; Dür and De Bièvre, 2005; Dür, 2007, 2008; Woll, 2006, 2008). However, it essentially borrows arguments from the wider IPE literature on trade policy.
**Bringing Politics Back In**

Within mainstream IPE accounts of trade policy one can differentiate between two – albeit sometimes overlapping – schools of thought. The first emphasizes ‘domestic-societal’ sources of trade policy. This school is largely based on the US experience, wherein trade policy is determined by the outcome interest group competition (for a review, see Hillman 1989). Some within the school deploy a pure rationalist-pluralist model of political action in which the state is conceived as an ‘empty vessel’, serving simply to aggregate the preferences of domestic interest groups (Grossman and Helpman, 1994; Hiscox, 2002). Other, more nuanced accounts place more emphasis on the mediating role of political institutions and independent interests of policy-makers (e.g. Haggard, 1995; Woll, 2008). The crucial point, however, is that trade policy is seen as contingent on social and political factors, rather than being institutionally determined.

The second school of thought within IPE puts emphasis on the ‘systemic’ determinants of trade policy. It is embedded within the so-called ‘neo-neo’ debate which dominated mainstream IPE scholarship in the 1990s (for a review, see Katzenstein, et al., 1998). The theoretical foundations for this debate were taken from Kenneth Waltz’s *Theory of International Politics* (1979), the main point of contention being the extent to which the ‘self-help’ system generated by the anarchical international environment could, or could not be, mitigated by international institutions. The insights gleaned from the ‘neo-neo’ debate have been particularly relevant in studying the phenomenon of economic regionalism – common IPE shorthand for the joining of preferential trade agreements – in the wake of US hegemonic decline. In the absence of hegemonic leadership it is argued that states are more likely to defect from the multilateral system to sign preferential trade deals in order to counteract protectionist swings in the trade policies of key trading partners (Mansfield, 1998). Alternatively, such action may be in seen in terms of welfare-maximizing logic as states respond to the behavior of commercial rivals. In other words, states may be motivated on defensive grounds to protect export interests, but they might likewise be prompted to proactively form or join such an economic grouping to benefit from ‘trade creation’ effects (Pomfret, 1988; Yarbrough and Yarbrough, 1992). Finally, the pursuit of preferential trade deals can also serve to enhance market power and hence, commercial bargaining power vis-à-vis one another (Oye, 1992). Ultimately, the commonality of such approaches is that they stress the ‘contagion effect’ (Mansfield, 1998) of different strategies, that is, the *strategic interaction* between different trade agreements.

Although both ‘domestic-societal’ and ‘systemic’ explanations have their own distinct logics of explanation, it would be wrong to overstate divisions between both schools of thought. Several works in IPE have invoked both sorts of explanation, the most prominent of which is Richard Baldwin’s (1993; 1997) ‘domino theory of regionalism’. Baldwin argued that the fear of trade diversion from a preferential trade agreement will prompt interest groups to lobby their governments to seek to join trade agreements to offset any potential loss of competitiveness. This sets a chain of dominoes in motion, as more and more states are lobbied by their exporters to join existing preferential trading arrangements. Nevertheless, of perhaps greater relevance to the EU’s ‘Global Europe’ strategy – with its emphasis on emerging markets – is a growing literature which stresses the importance of Foreign Direct Investment (FDI) in manufacturing and services as drivers of North-South regionalism (Chase, 2003, 2005; Manger, 2005, 2006, 2009).
In the EU case, specifically, there appears to be a very close relationship between services and investment liberalization, with investment in services comprising the lion’s share of EU27 outward FDI stocks – 68% of the total in 2005, compared to only 21% in manufacturing (Eurostat, 2008, p. 17). Mark Manger’s (2006; 2009) argument concerning services liberalization for those firms having established or seeking a commercial presence in the host country through investment (‘mode 3’ in GATS parlance) therefore seems particularly relevant. He contends that such services markets are often marked by large economies of scale requiring significant ‘sunk’ costs in infrastructure. This gives ‘first-entrants’ into emerging country markets an advantage over potential competitors, allowing them to establish a dominant market position and deter further entry. Services firms may lobby their governments for preferential access to such markets for two reasons. Firstly, where standards are very important for a given sector, preferential liberalization itself creates ‘first-mover’ advantages. This may be either for the reason that – in the case of limited licensing – latecomers may be completely blocked from entry, or because – as in the case of standard-setting – they may be disadvantaged by the adoption of different regulations to that of their home market (Manger, 2009, pp. 44-8). Secondly, even in situations where standard-setting does not create an additional barrier to entry, incumbent service operators with significant investment may favor preferential liberalization because – and despite the fact that it might be applied non-discriminatorily – it still allows them to take advantage of their ‘first-mover’ advantage to improve their dominant position. In this latter case FDI in a given market is a key indicator of firms’ interest in a preferential trade deal.

In Manger’s account, the nature of services markets in emerging economies adds a competitive logic to preferential trade liberalization, which links the insights of ‘domestic-societal’ accounts stressing the role of interest groups to the wider systemic determinants of trade policy. It therefore gives us a compelling idea of what a ‘politics’ of EU trade governance may look like. The aim of the next section is to apply his insights – and those of the other IPE in both theorists he builds on – to consider the evolution of the EU’s trade strategy from multilateralism to ‘Global Europe’.

III – Tracing the Evolution of EU Trade Strategy

EU trade policy was marked from inception by two potentially incommensurate trade regimes (and sets of political economic interests) which constrained its ability to negotiate multilateral trade agreements. While under the Common Agricultural Policy (CAP) the EU sought to provide support payments and tariff protection for its agricultural producers, the stated objective of the customs union – in Article 110 of the Treaty of Rome – was to achieve the progressive liberalization of industrial tariffs through multilateral liberalization. Facing US attempts to pry open EU agricultural markets in both the Kennedy Round (1964-1967) and the Tokyo Round (1973-1979), European negotiators adopted a defensive attitude towards the multilateral trading system (Preeg, 1970; Winham, 1986). Apart from resulting in a general reticence to initiate and partake in new trade rounds, this defensiveness on agriculture notably translated into European opposition to strengthening the General Agreement on Tariffs and Trade (GATT) through the establishment of open and judicialized proceedings, as these had the potential to undo the EU’s agricultural support system. This is perhaps best illustrated by its opposition During the Tokyo Round to the establishment of a multilateral surveillance mechanism to monitor the selective application of the safeguard clause (see Winham, 1986, pp. 243-7).
The EU as a Trade Multilateralist

Although it initially treated the Uruguay Round (1986-1994) with similar circumspection and maintained a largely defensive position on agriculture throughout (Paemen and Bensch, 1995), the EU’s attitude to the multilateral trading system was about to change. During the Uruguay Round’s Mid-Term Review in Montreal in February 1990 the EU proposed – jointly with Canada – the creation of a new Multilateral Trade Organization. This was followed in March by a proposal on improving multilateral dispute-settlement procedures (Woolcock and Hodges, 1996). This move towards supporting the judicialization of the international trading system marked the beginning of a decisive shift in EU trade strategy. This was consolidated in the 1996 ‘Market Access Strategy’, which stressed the EU’s multilateralist orientation in trade (European Commission, 1996). A ‘moratorium’ on new FTAs followed in the run-up to the Seattle Ministerial of 1999, which was expected to launch a new Round of trade talks. The content of the Market Access Strategy – an ambitious liberalization agenda focused on a number of so-called ‘WTO plus’ issues, such as services liberalization, trade and investment, and government procurement – was to prefigure the EU’s official Millennium (later Doha) Round objectives (European Commission, 1999). The EU approach on WTO plus issues was thus distinct from the start to that of the US, which over time increasingly favored addressing WTO plus issues through bilateral negotiations, as came to be explicitly expressed in its policy of ‘competitive liberalization’.

However, rather than seeing the EU’s multilateral trade strategy as the embodiment of the ‘exceptionally’ depoliticized nature of EU trade governance, as is the case in the institutionalist accounts reviewed earlier, the approach taken here is to assess it in light of the systemic and domestic-societal sources of trade policy identified by the IPE literature. Here, were developments on the domestic (EU) level were perhaps of greater importance. The forces of agricultural protectionism – which had in the past been so dominant in trade policy – were increasingly subordinated to interests favoring greater liberalization and a more proactive European trade strategy. This was perhaps most clearly reflected in the 1996 Market Access Strategy’s two principal objectives, which were

- a more systematic, more coherent, and more pro-active approach to both negotiation and enforcement of trade deals and rules on the part of the Community [EU], and
- greater emphasis on the objective of third country market opening in the Community’s commercial policy (European Commission, 1996, p. 4, emphasis in the original).

One of cornerstones of this new strategy was a concerted effort on behalf of the Commission to involve business interests in policy-making. The objective was to have them ‘provide the Commission with adequate information […] to eliminate barriers [to trade]’ (European Commission, 1996, p. 12, emphasis in the original). As a result European business interests, which had played a relatively negligible role in EU trade policy-making during the Uruguay Round negotiations (Cowles, 1997), were increasingly involved in various consultations with the Commission following the implementation Market Access Strategy. This went from feeding the Commission information to pursue cases in the context of WTO dispute settlement (see De Bièvre, 2002; Shaffer, 2006) to lobbying it on the position to take in the upcoming round of multilateral trade negotiations (see below). Thus, and contrary to the
expectations of the state autonomy thesis, (pro-liberalization) interest groups became increasingly involved in European trade policy-making following the turn to multilateralism.

The importance attached to addressing the so-called ‘new issues’ within the multilateral context – in contrast to the US’s preference for bilateral or unilateral action – spoke volumes as to the nature of the markets that the EU was interested in targeting through its multilateralist strategy. Already during the Uruguay Round negotiations, US negotiators in both the services and intellectual property rights talks – which aimed to establish frameworks to address both issues within the multilateral trading system – had openly professed a preference for a framework that would be both more demanding of participants and thus potentially more limited in terms membership, in light of the objections raised by developing countries. In contrast, the EU favored a more ‘inclusive’ GATS and TRIPS, willing to countenance more modest agreements to ensure the participation of emerging economies. This seemed to be motivated by commercial considerations, particularly when it came to services, where EU firms had a stake in developing and emerging markets not shared by its American counterparts (Paemen and Bensch, 1995).

The EU’s ambitious Market Access Strategy and Doha Round agenda similarly suggested that the EU hoped to reap the benefits of an ‘inclusive’ multilateral Round. On services, the EU hoped to obtain ‘more and better commitments from all WTO members on market access and national treatment’ (European Commission, 1999, p. 8). Accordingly, the EU’s GATS requests going into the Doha Round were not only addressed to a large number of emerging economies, but also featured demands for improved commitments on market access and national treatment in a large number of services sectors (for a copy of all leaked EU GATS requests, see Corporate Europe Observatory and Transnational Institute, 2003). Such an ambitious multilateral agenda was not unexpected given that EU countries accounted for just over a third of total commercial services exports in 1999 (author’s calculation using data in WTO, 1999). There was also still much potential for liberalization in services, in contrast to manufacturing where average levels of protection were already relatively low from decades of tariff-based multilateral trade rounds.

This allowed, in light of the Market Access Strategy’s emphasis on engagement with pro-liberalization business groups, the services lobby to emerge as a key player in trade policy-making, which came to be closely allied to policy-makers in the Commission. Having noted how effectively the US services industry had ‘cooperated’ with American negotiators during the Uruguay Round, Trade Commissioner Leon Brittan actively encouraged the CEOs of major European services firms to reorganize themselves into a more cohesive and inclusive organization.6 The European Services Forum (ESF) thus came into being in early 1999 and served originally as a vehicle to aggregate the preferences of the European services industry and feed these into the EU position during the Doha Round services talks.7

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5 These came to be called the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
6 Before 1999, European firms had been represented in Brussels by the European Tradable Services Network (ETSN) an organization generally considered to lack proactive leadership or political clout given its limited membership (Arkell, 2001).
7 Interview with an interest group representative, Brussels, 14 September, 2009.
Business Pressure After Cancún

In the first couple of years of the Doha Round, the ESF and the Union of Union of Industrial and Employers’ Confederations of Europe (known by its French acronym, UNICE)\(^8\) both supported the Commission’s multilateral trade strategy, largely because of the expectation of significant market access gains. At this stage, the few ongoing bilateral/regional trade agreements that the EU was pursing were indeed largely perceived as a side-show by the ESF and UNICE, both of whom were focused on securing gains at the multilateral level.\(^9\)

However, the undoing of the EU’s ambitious WTO agenda at the Cancún Ministerial in September 2003 – which resulted in the dropping of the Singapore issues from the Doha Round agenda and led to a prolonged lull in the Round – meant that expectations amongst European policy-makers and business leaders were considerably dampened (Young, 2007). Although it would take another three years before the announcement of ‘Global Europe’, the Cancún Ministerial was the key turning point in the Round for the EU and the beginning of the end of its multilateral trade strategy, as interest groups grew increasingly impatient with the lack of new and tangible liberalization gains.

Prior to Cancún, European business groups were relatively unequivocal in their support for the EU’s ‘multilateralism-only’ approach. Days before the summit, in a position paper co-authored with other international business groups, UNICE and the ESF stressed that

> while regionalism/bilateralism can be a useful means for liberalization, multilateral liberalization is our end goal. Therefore, we call on WTO members to allocate all the priority and necessary resources to the ongoing DDA negotiations (ESF et al., 2003, p. 2).

Following the Cancún debacle, however, the ESF was quick to change its position and begin lobbying the Commission to lift its ‘moratorium’ on new FTAs. As early as November 2003 it stated that

> the European services industry cannot ignore situations where its major competitors are gaining new markets via bilateral free trade agreements. The EU should therefore, as an additional policy tool, conclude the ongoing bilateral and bi-regional free trade agreements and be ready to open new ones when appropriate (ESF, 2003, emphasis added).

Services sectors were perhaps one of the earliest, and most forceful, advocates of a shift towards bilateralism. This is perhaps understandable given ‘first-mover’ advantages in services markets, but was perhaps also the product of a general feeling among services lobbyists and negotiators that the Doha Round – by focusing on trade-offs between industrial and agricultural market access – was sidelining the issue of services.\(^10\) However, the ESF was not the only organization that was dissatisfied with the EU’s ‘multilateralism-only’ strategy following Cancún. The lack of progress from September 2003 onwards, with a much reduced negotiating agenda and no agreement on modalities reached at the Hong Kong Ministerial of December 2005, seemed to erode other economic interest groups’ confidence in the Doha

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\(^8\) UNICE is the largest cross-sectoral business pressure group in the EU, representing national business federations (Greenwood, 2003). It was changed its name to BUSINESSEUROPE in 2007.

\(^9\) Interview with interest group representative, Brussels, 14 September, 2009.

Round. By January 2006, a Commission report on consultations with business noted that ‘[r]egarding market access, the [business] federations are clearly disappointed so far and not optimistic for the future about the outcome of multilateral negotiations’ (European Commission, 2006a, p. 1).

It is not surprising that these factors should have eventually prompted the Commission into action. In September 2005 – a year after Pascal Lamy was replaced by Peter Mandelson as Trade Commissioner – DG Trade presented its so-called ‘Trade and Competitiveness Issues Paper’, a document which aimed ‘to show how trade policy can […] contribute to competitiveness and which policy levers should be used to maximize its contribution’ (European Commission, 2005, p. 3, emphasis added). It was not, however, very explicit, merely reiterating the previous Market Access Strategy’s emphasis on providing European exporters with ‘adequate access to third markets’ (European Commission, 2005, p. 3). In this respect, it acknowledged the fears increasingly expressed by European business leaders, noting that EU producers did not have adequate access to the growing markets in East Asia and were losing market share to key competitors. There was no mention of specific ‘policy levers’ – such as bilateral trade agreements – or of particular trading partners to target. This might explain the widespread disappointment within the European business community at the time, which complained about was that they largely saw as an ‘academic’ paper. In the face of a flagging Round and the increasing turn to bilateralism of its competitors, it seemed to offer little in the way of market access in order to address European industry’s lagging competitiveness in East Asian emerging markets.11

In the Far East the key competitors that business was worried about – and which were explicitly mentioned in the Issues Paper – were naturally not the emerging markets themselves – as ‘noodle-bowl’ FTAs typically included only modest provisions on investment and services liberalization (Ravenhill, 2008). Rather, the two countries singled out by the Issues Paper had been the US and Japan. After four decades of multilateralist trade policy, the latter had signed its first FTA with Singapore in 2003 and a ‘basic accord’ with the Philippines in 2004, with negotiations underway with South Korea, Malaysia, and Thailand by 2006 (see Manger, 2005). The US, in turn, had by 2006 signed an FTA with Singapore and was also negotiating with Korea, Malaysia, and Thailand as part of its policy of ‘competitive liberalization’.

It was particularly the ESF that was worried about these competitive dynamics, as can be noted from its November 2003 position quoted at length above (ESF, 2003). In consultations with DG Trade following the publication of the Issues Paper, the ESF’s requests would grow even more insistent. Reacting specifically to the Issues Paper, it called on the Commission to specifically target ‘key emerging countries’, among them India, Brazil, China, and several Association of Southeast Asian Nations (ASEAN) members (European Commission, 2006a). It stressed not only that the Commission avoid interregional negotiations with ASEAN because they would become interminable, but also that for ‘each FTA concluded by our competitors, we lose 2 or 3% of the markets’ (European Commission, 2006a, p. 6). Perhaps most illustratively, it underscored that ‘[w]hatever the outcome of the DDA [Doha Development Round] […] the Commission should focus on bilateral negotiations with [the aforementioned] key emerging countries’ (European Commission, 2006a, p. 6, emphasis added). Whereas before Cancún the EU’s bilateral trade negotiations had largely been perceived as a sideshow by the ESF, the competitive pressure exerted by the EU’s

11 Interview with an interest group representative, Brussels, 14 September, 2009.
competitors in East Asia was making FTAs seem increasingly necessary, in order to offset any competitive advantage that may have been gained. In the case of the US’s FTAs this was doubly relevant for services because of the strong emphasis they placed on regulatory provisions. In Asia, European negotiators not only faced highly regulated services markets, but were in essence competing with a very assertive US bilateral WTO-plus strategy for ‘first entry’. The ESF, for instance, was to argue that

European companies are gradually losing current market share and potential future access to these markets and regularly have to wait longer to obtain licenses required for market entry as competitors often obtain privileged access to these as an informal but nonetheless integral part of bilateral deals (ESF, 2007a, p. 2).

European business’s requests for more assertive action following the publication of the Issues Paper would ultimately find themselves reflected in the ‘Global Europe’ strategy document, which was both specific in terms of the policy tools it foresaw – a new emphasis on FTAs – and the markets to be targeted – emerging economies in East Asia and (to a lesser extent) Latin America. DG Trade explicitly stated in the ‘Impact Assessment Report’ that it was heeding the calls of business for action following the publication of the Issues Paper: ‘[r]egarding market access, business representatives requested more action at bilateral level […] [with] [a]ttention to be given to countries which have or are negotiating free trade agreements (FTAs) with EU competitors and where we are losing market share’ (European Commission, 2006e, p. 5). Pressure from business groups, and in particular the services lobby, in the face of competitive pressures in East Asia seems to therefore have played a key role in prompting the Commission to change tack in 2006 and abandon its multilateral strategic orientation. The insights provided by Manger’s (2006; 2009) combination of ‘systemic’ and ‘domestic-societal’ IPE explanations of trade policy seem particularly pertinent in this regard – particularly in terms of conceptualizing FTAs as creating ‘first-mover’ advantages in highly-regulated services sectors – but only for the period after Cancún.

IV – The EU’s New Bilateral Services and Investment Agenda

‘Global Europe’ stressed the need to pursue a ‘far-reaching liberalization of services and investment’ (European Commission, 2006d, p. 11). The importance of this agenda was underscored by the adoption of the so-called ‘Minimum Platform on investment for EU FTAs’. This template for ‘a Title on “Establishment, trade in services and e-commerce”’ in subsequent FTA mandates was formulated in anticipation of the ‘Global Europe’ strategy – a draft was circulated to the Members States in July 2006 – and approved by the Council of Ministers in November 2006 (European Commission, 2006b).

The Minimum Platform

Handling services and investment liberalization under one chapter was a considerable innovation within EU trade policy which, up to a point, seemed to correspond to

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12 The text of the Minimum Platform quoted in this paper is that of a leaked and now freely available draft presented to the Article 133 Committee in July 2006, as the final text is still of ‘restricted’ circulation. However, it should be noted that the text is unlikely to have changed very much from this draft as the EU’s subsequent FTA with Korea seems to mirror it quite closely (see Section V below). Included with this draft was an explanatory memorandum, which is also cited below.
institutionalist arguments stressing functional logics of integration at the heart of EU trade policy. The Minimum Platform expanded the Commission’s existing negotiating competence for mode 3 services delivery under the Treaty of Nice to cover ‘establishment’ in all sectors. It did this by drawing a distinction between the post-establishment protection and promotion of investment on one side – which remained the exclusive purview of Member States through their various bilateral investment treaties (BITs) – and the pre-establishment liberalization of investment on the other, which was to be negotiated by the Commission. The importance of the Minimum Platform, however, lay not so much in its expansion of trade negotiating competence, as would be argued by institutionalists, but rather in the emphasis that it placed on liberalization in services (particularly mode 3) in future FTAs. This is because the central focus of any trade-related investment negotiation was always going to be services – where the Commission already had a negotiating competence under the Treaty of Nice – given that investment in services comprised the lion’s share of EU FDI (see statistics above). This is underscored by the fact that one unit in DG Trade was already tasked to handle both issues jointly by the time the Minimum Platform proposal was submitted to the Member States for consideration in July 2006.

What was more noteworthy about the Minimum Platform was the emphasis placed on services and investment liberalization within the context of the ‘Global Europe’ strategy. As part of this, it also included provisions that stemmed from a need to respond to the competitive pressures exerted by other trading partners in the international economic environment. For one, the fact that it was labeled as a Minimum Platform is not only a reference to its nature as an institutional compromise between Council Commission, but is, more importantly, illustrative of its adaptive nature as a template for future mandates. Put quite simply, it is the ‘minimum’ sought from future FTAs. The intention was always to adapt the mandate to the particular circumstances of a trading partner, particularly with a view to match any market access gains acquired by a competitor through an FTA or otherwise (see European Commission, 2006b, p. 2). This desire for competitiveness-driven adaptability was also reflected in a novel ‘review clause’ for investment, which, in the words of its drafters, was included ‘with a view to allow in the future a possible upgrading of establishment provisions’ (European Commission, 2006c, p. 2).

The most significant innovation in the Minimum Platform, however, was its proposal for a Most-Favored-Nation (MFN) clause covering establishment provisions. Generally speaking, the purpose of such clauses in international trade agreements is to ensure that new trade preferences granted by a party to others are extended automatically to the signatories of a particular agreement. MFN forms the basis of the WTO GATS agreement, with a general exemption in Article V for regional economic integration agreements and more specific exemptions listed under an Annex of the GATS. What is particularly telling, therefore, is not just the inclusion of the provision itself in the Minimum Platform – which only addresses establishment – but rather the nature of the MFN exemption in the Minimum Platform for preferences granted under regional economic integration agreements. Whereas under the

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13 Interview with a European Commission official, Brussels, 22 September, 2009. Since then, of course, the Treaty of Lisbon has come into force, which in its Article 207 does give the Commission sole authority to negotiate agreements on investment. However, the Council and Commission still need to have a discussion as to how to put this into practice. Interview with a European Commission official, Brussels, 22 September, 2009.
14 In July 2006, this unit’s remit was defined as ‘Trade in services; GATS. Investment’ (European Commission, 2006c, p. 1). By 2010 this same unit was more parsimoniously referred to as the ‘Services and Investment’ unit (European Commission, 2010).
15 It should be also be added that MFN is also at the heart of the international trading system in goods, although there are again a number of exceptions to the principle for regional trade agreements and developing countries.
GATS Article V an MFN exemption exists for practically all such agreements (provided they have ‘substantial sector coverage’ and eliminate ‘substantially all discrimination’), in the Minimum Platform the wording is more restrictive. It provides an MFN exemption only for a ‘regional economic integration agreement requiring the Parties thereto to approximate their legislation’ (European Commission, 2006b, p. 7). The explanatory memorandum attached to the Minimum Platform spells out the EU’s motivations quite clearly:

By [wording the clause] so, the EU is in a position to obtain as many advantages as possible that could stem from other preferential agreements to which one of the EU’s contracting parties would also be a party (the EU should at least obtain the treatment granted by US FTAs) without prejudicing some EU preferential policies (ex: in the framework of the EEA [European Economic Area] or of EU-accession processes) (European Commission, 2006c, p. 2, emphasis added)

The stress on seeking parity with EU competitors – with the US singled out as a particular target – is not altogether surprising, given the context of the Minimum Platform proposals and their clear link to the ‘Global Europe’ strategy. The fact that its two principal innovations vis-à-vis prior negotiating arrangements – the review and MFN clauses – were under the rubric of establishment, moreover, seems to underscore the importance of these competitive systemic pressures for mode 3 service suppliers, as argued by Manger (2009). The MFN clause was particularly significant, as it was a relatively to find such a provision for services and/or investment in the EU’s previous bilateral trade agreements. Not even the EU-Chile FTA, widely heralded as a benchmark for future trade agreements by EU officials, contained such a clause as neither did an important draft EU-Mercosur FTA text from 2004 (European Commission, 2006c, p. 4). One previous agreement that had included an MFN clause for establishment in services was the EU’s FTA with Mexico. However, this clause seemed to more narrowly follow the wording of the GATS, providing an exemption for any ‘agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS’ (EC-Mexico Joint Council, 2001, p. 3). Similarly, although the EU-Mexico FTA contained a review clause for services, ostensibly to ‘upgrade’ the agreement, it was clear that the EU’s bilateral agenda at the time was subordinated to the EU’s multilateral trade strategy. The review of services provisions, which according to the review clause had originally been scheduled to take place in 2004, was originally postponed because both parties were interested in pursuing services negotiations at the multilateral level (O’Boyle, 2005).

The importance of systemic pressures in shaping an ambitious post-Cancún bilateral services and investment agenda is therefore clearly reflected in the Minimum Platform’s provisions. On the domestic/interest group side, the Minimum Platform therefore also reflected some of the ESF requests. The services lobby was to argue, for instance, that the EU’s future ‘Global Europe’ FTAs ‘should also include a clause guaranteeing that any preferential treatment

16 In an interview conducted in March 2006 with an EU official on EU bilateral trade agreements, the official in question promptly produced a copy of this FTA and noted that it represented a ‘model’ agreement.
17 This is not to say that the services and investment provisions in either the EU-Chile and/or EU-Mexico FTA were insignificant. Particularly for telecommunications and financial services, there were strong interest group pressures for seeking at least parity with US liberalization efforts in the region (see Manger, 2006; 2009). However, given the general strategic direction of EU trade policy, these two FTAs can be seen to be the result of interest group activism in response to localized market pressures rather than the product of wider systemic forces, of the type that shaped ‘Global Europe’ and which were so strongly reflected in the Minimum Platform.
granting to third countries in the future is automatically extended to the EU’ (ESF, 2007, p. 2). This was an obvious reference to the sort of MFN clause that had figured so prominently in the Minimum Platform.

The Minimum Platform and ‘Global Europe’ FTAs

But how did the Minimum Platform translate into specific provisions in ‘Global Europe’ FTAs? Section V considers the EU-Korea FTA in detail – the only agreement completed since the announcement of the strategy – but at this stage it is useful to consider the likely impact for other FTAs as well. On the basis of publicly available draft mandates for the EU-India and EU-ASEAN trade negotiations (European Commission, 2006f; 2006g), one can form a good opinion of the impact of the Minimum Platform in these cases, as these mandates are unlikely to vary much from their current form. Table 1 provides the wording from both of these drafts of the MFN clause for services. It thus becomes clear that in both cases a strong MFN clause is being sought, without even an exception for regional economic integration agreements. This underscores the point that the Minimum Platform is in fact simply the ‘minimum’ that is being sought from these FTAs.

<table>
<thead>
<tr>
<th>EU-ASEAN Draft Mandate</th>
<th>EU-India FTA Draft Mandate</th>
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<tbody>
<tr>
<td>‘23. Whenever an ASEAN partner has concluded another economic integration agreement with a third country which is not within the ASEAN region, EU investors and service suppliers shall be granted at least parity with the treatments granted to investors and service suppliers of this third country as regards to cross-border supply of services and establishment.’ (European Commission, 2007a)</td>
<td>‘23. EU investors and service suppliers shall be granted at least parity with the treatment granted to investors and service suppliers of any third country as regards cross-border supply of services and establishment.’ (European Commission, 2007b, p. 9)</td>
</tr>
</tbody>
</table>

Table 1 – The MFN Clause in ‘Global Europe’ FTA Mandates

V – The EU Korea FTA

Having considered the shape of the EU’s new bilateral services and investment agenda, this paper turns to the case of the EU-Korea FTA and the role played by competitive and interest group pressures in shaping this particular agreement. Initialed in October 2009 after over two years of negotiation, this was the first of a so-called ‘new generation’ of FTAs foreseen in the ‘Global Europe’ communication. It widely perceived as a point of reference for future agreements by EU trade officials, particularly as a result of the unprecedented level of liberalization foreseen in services and investment. Moreover, the choice of South Korea as a partner for a trade agreement says much about the competitive factors shaping EU trade strategy. Although Korea was relatively new to the bilateral game – it was one of only two WTO members not to have signed a single preferential trade agreement prior to 2004 – it was fast off the mark. By the time it launched negotiations with the EU in May 2007 it had already concluded FTA negotiations with Chile (2004), the European Free Trade Area

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18 This is most relevant in the case of the recently initiated bilateral EU-Singapore FTA talks, which superseded efforts to arrive at an interregional trade agreement with ASEAN as a whole.
19 Interview with a European Commission official, Brussels, 23 September, 2009.
At this point, Korea was also pursuing talks with Canada, Mexico, India, and Japan. The Korea-US (KORUS) FTA was to worry EU services negotiators in particular, given its significant provisions for services and investment liberalization (see below).

Trade and Investment Statistics

Despite a similar allocation of production among sectors between the Korean and the EU economies, in 2004 trade with Korea only accounted for 1.3% of EU25 trade in services, compared to 2.4% of the total in merchandise trade (François, 2006). According to an influential study commissioned by DG Trade on the effects of an EU-Korea FTA, this was only partly due to the presence of non-tradable services, having more to do with the high levels of trade barriers in the sector. That same study argued that the trade cost equivalent levels of import protection in Korea for EU25 service suppliers (46%) were almost double the average tariffs on agriculture and processed foods (28%) and almost eight-fold the average tariff on manufacturing (6%) (François, 2006, pp. 16-7). It is therefore not altogether surprising that this study found ‘that most of the economic gains [from an FTA] are attributable to liberalizing trade in services’, up to 70% of the total according to one econometric estimation advanced by the author (François, 2006, p. 4). Such views seemed to be echoed in other studies (e.g. Kim, 2005; Guerin et al., 2007), which also underscored the EU’s comparative advantage in a number of commercial services sectors, most notably in insurance, other financial, and professional services (Guerin et al., 2007, pp. 41-52). These were also the two most outwardly-oriented services sectors in the EU economy, comprising the vast majority of the EU27’s total external FDI stocks, with professional (or business) services and financial services taking up 17% and 63% respectively of total stocks (author’s calculation using data from Eurostat, 2008, p. 71). Given this comparative advantage, it is also not surprising that in 2006 trade in services was skewed in favor of the EU, and more so than average; the EU27 surplus in services trade with Korea of 2.8€ billion, or about a quarter of total services trade between both parties, was proportionally greater than Korea’s trade deficit in services with the world, which amounted to little over a sixth of its total services trade (author’s calculation using data from European Commission, 2009). Similarly, the EU27’s outward FDI stocks in Korea of 28.4€ billion in 2006 dwarfed Korea’s 7.4€ billion of FDI stocks in the EU (European Commission, 2009).

The services and investment negotiations were therefore going to be of crucial importance to the EU. The pattern of the negotiations was also set, with the EU as a clear demandeur in the services talks facing off a trading partner with a largely protected services market. Moreover, the fact that the EU’s outward FDI stocks of 28.4€ billion comprised only approximately 1% of the EU27 total (author’s calculation, using data from European Commission, 2009) suggests that the major concern for EU service providers seeking an FTA with Korea was not so much improving on an existing market position as an incumbent. Rather, the presence of elevated trade barriers in services suggests that the main concern for EU firms was likely to be competing with the US for ‘first entry’ into a highly regulated market.

The Negotiations: Trading Automobiles for Services

European negotiators submitted a substantial offer early on in the services talks, hoping to elicit a reciprocal response from the Korean side. This, however, was not the case, as Korean negotiators made what was considered to be – amongst EU officials – a rather modest submission and rebuffed European requests for an improved offer. It was only around
October 2008, over a year into the negotiation that the Korean side began to make concessions and negotiations were able to move forward rather swiftly. This change of tack came at a time when the EU first demonstrated a willingness to make concessions on electronics manufacturing and, principally, automobiles. It is thus not surprising that the perception amongst European services negotiators was that Korea had been blocking the EU’s offensive agenda in – among other areas – services and investment (where Korea was largely defensive) until its offensive interests in automobiles – and to a lesser extent electronics and textiles – (where the EU was defensive) were satisfied.20

The importance of this trade-off is underscored by the substantial nature of the concessions made to Korean negotiators in the automobile sector. Apart from accepting a substantial elimination of duties and other barriers in a sector in which it had a substantial trade deficit, the EU ended up accepting so-called ‘duty drawback’ in the sector; Korean producers would continue to be allowed to claim back any import duty on parts used in manufacture for export. This had traditionally been a ‘red line’ for EU trade negotiators and was an area of clear offensive Korean interest, so much so that Korean negotiators had refused to compromise on the issue.21 Unsurprisingly, it was widely perceived by the automobile sector as providing a significant (and unfair) advantage to Korean producers,22 particularly at a time where the sector was experiencing severe economic strain following the onset of the Financial Crisis. In response, the sector’s supranational interest group, the European Automobile Manufacturers’ Association (known by its French acronym, ACEA), mounted a concerted lobbying campaign targeting Member States and Members of the European Parliament23 – who under the Lisbon Treaty’s new provisions on trade policy were to be given the power to ratify the EU-Korea FTA. This appeared to pay dividends, at first, when several Member States voiced concerns over the implications of the FTA for their automobile sectors (Goldirova, 2009). But these concerns were put largely to rest at a July 2009 meeting of the Article 133 Committee of Member State trade representatives, where recalcitrant Member States were given the option of clarifying provisions on a safeguard clause for automobiles without re-opening the negotiations with Korea.24 This failed to satisfy the automobile industry or its most ardent advocates in the European Parliament, who claimed not only that it contained numerous loopholes, but also that the safeguard clause was unlikely to be used.25

The European services lobby, for its part, was one of the most forceful advocates of the final agreement, arguing in a position paper released strategically at the height of the campaign against the FTA26 – a few days before the key July 2009 Article 133 Committee meeting – ‘for the rapid conclusion of the [FTA] which has been negotiated between the European Union and the Republic of Korea’ (ESF, 2009, p. 1). What is more, the ESF underscored that the ‘proper balance of the benefits of the agreement’ had to be realized,

21 Interview with a European Commission official, Brussels, 17 December, 2009.
22 Interview with Mr. Erik Bergelin, Director of the Trade and Economics Section at ACEA, Brussels, 24 September, 2009. Moreover, ‘duty drawback’ raised the spectre of indirect imports from China.
23 Interview with Mr. Erik Bergelin, Director of the Trade and Economics Section at ACEA, Brussels, 24 September, 2009.
24 Interview with an interest group representative, Brussels, 14 September, 2009.
25 Interview with a European Commission official, Brussels, 17 December, 2009. The EU has, so far, never made use of a safeguard clause (such as Article XIX of the GATT) to restrict imports.
26 Interview with an interest group representative, Brussels, 14 September, 2009.
‘including the enormous potential for the various services sectors [...] that desperately need further market access abroad so as to allow our companies to maintain their competitive advantage’ (ESF, 2009, p. 2).

The fact that the Commission made a similar judgment of the benefits of the FTA is a powerful indication of the importance attached to ‘Global Europe’s’ offensive liberalization agenda, of which services and engagement with pro-liberalization interest groups formed an integral part. Its decision to make such significant concessions on automobiles – particularly when it came to ‘duty drawback’ – was also telling of the relative lack of influence within EU trade decision-making of protectionist interest groups.

**Key Gains in the EU Korea FTA: Standard-Setting and First-Mover Advantages**

The degree of influence wielded by the ESF and other services lobbyists within the EU’s trade policy-making is also reflected in the services and investment provisions of the FTA itself. Table 2 below provides an overview of the key concessions sought by various services sectors and the extent to which these were reflected in the final FTA – as a result of pressure from EU negotiators. The fact that both columns in that Table bear a striking resemblance to one another not only suggests that services lobbyists were quite effective in influencing EU decision-makers, but also points to the importance of the concessions made by the EU in the automobile sector (and other protected industries such as textiles and electronics); the evidence above has suggested that it is unlikely the Koreans would have yielded to European requests in services unless they gained ground in their offensive interests.

What becomes clear from Table 2 is the fact that an important part of the requests coming from the ESF and others concerned the binding of liberalization already undertaken autonomously by Korea – with the modest commitments ‘bound’ in the GATS negotiations taken as the benchmark by business. This was particularly relevant in the case of modes 1 and 2 for professional services (such as accounting, auditing, bookkeeping, and taxation services) as well as for certain financial services (banking and insurance), where relevant commitments were obtained from the Korean side. This is partly related to the nature of multilateral negotiations for the liberalization of trade in services, which are largely concerned with simply ‘binding’ autonomous liberalization – more so than in the case of tariff negotiations for goods. In the absence of much progress in the Doha Round services negotiations, European service providers sought additional legal security by binding commitments bilaterally (rather than multilaterally), something that was perhaps given greater weight with the onset of the Financial Crisis and the fear that states might adopt protectionist measures. One representative of the services industry, for example, was to remark that there was an increasing concern with securing core markets, rather than expanding into new ones.

However, this alone cannot explain the urgency with which the ESF pushed the Commission to conclude the EU-Korea FTA negotiations and to pursue bilateral trade agreements in the first place. Crucially, one could not overlook the KORUS FTA agreement that had been signed, but not yet ratified, and which included significant provisions for services and investment liberalization in financial and professional services, the two most outwardly oriented EU services sectors (see FDI statistics above). For services industries, it was

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27 Interview with an interest group representative, Brussels, 14 September, 2009.
28 Interview with an interest group representative, Brussels, 14 September, 2009.
<table>
<thead>
<tr>
<th><strong>Key Requests from Service Industries (mostly based on ESF, 2007b, pp. 2-4)</strong></th>
<th><strong>Key Gains in the EU-Korea FTA (2009)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modes 1 and 2 (cross-border supply of services and consumption abroad)</strong></td>
<td><strong>Modes 1 and 2</strong></td>
</tr>
<tr>
<td>Improvement on Korean WTO offer (in brackets) sought for all sectors mentioned below.</td>
<td>Accounting, auditing, bookkeeping, and taxation services: bound liberalization in mode 2 for qualified public/tax accountants.</td>
</tr>
<tr>
<td>For both modes 1 and 2, improved offers sought for accounting, auditing, bookkeeping services (mode 2 unbound), taxation (modes 1 and 2 unbound for reconciliation and representative services), insurance (modes 1 and 2 unbound for direct insurance, brokerage, auxiliary insurance services), and banking and securities (modes 1 and 2 totally unbound).</td>
<td>Computer services: additional liberalization in modes 1 and 2.</td>
</tr>
<tr>
<td>For mode 1, improved offers sought for, amongst others, computer and related services (no commitments), courier (restricted to air and sea), postal (exclusive rights for the Korean Postal Authority), distribution (limited market access for pharmaceuticals and medical goods), and telecommunication (restrictions on satellite broadcasters)⁹⁹ services.</td>
<td>Courier services: full liberalization for express delivery services.</td>
</tr>
<tr>
<td><strong>Mode 3 (commercial presence)</strong></td>
<td>Insurance services: bound liberalization for brokerage and auxiliary insurance services.</td>
</tr>
<tr>
<td>Status quo in brackets.</td>
<td>Banking and securities: some bound liberalization.</td>
</tr>
<tr>
<td>Accounting, auditing, bookkeeping, and taxation services: liberalization sought of qualification requirements (only Korean qualified professionals allowed to set up practices/firms)</td>
<td><strong>Telecommunication services:</strong> satellite broadcasters can operate directly in Korea without having to liaise with a local operator.</td>
</tr>
<tr>
<td>Legal services: full liberalization sought (establishment of foreign lawyers not permitted).</td>
<td><strong>Mode 3</strong></td>
</tr>
<tr>
<td>Telecommunication services: Parity sought with KORUS FTA, with 100% foreign equity cap (49% at present). Complicated licensing.</td>
<td>Accounting, auditing, bookkeeping, and taxation services: Public accountants certified in an EU Member State allowed to invest in Korean firms (49% foreign equity cap). EU tax accountants allowed to establish an office.</td>
</tr>
<tr>
<td><strong>Legal services: Law firms established in the EU allowed to set up a branch in Korea and form partnerships with Korean firms. EU lawyers allowed to use home title.</strong></td>
<td><strong>Telecommunication services:</strong> 100% foreign equity cap.</td>
</tr>
</tbody>
</table>

⁹⁹ Interview with a European Commission official, Brussels, 23 September, 2009.
Financial Services:
For financial services, expansive terminology was sought (particularly by the UK financial services industry) to cover all financial service suppliers (e.g. Reuters and Lloyd’s of London).  

For financial services, the agreement uses the more expansive term ‘financial service supplier’ was used, rather than just ‘financial institutions’ as in the KORUS FTA.

Insurance services: **Stress on removal of restrictions on data-sharing.** Numerous other restrictions to be addressed (among them: nationality and residence restrictions on personnel and company offices for brokering; non-transparent regulatory process; interference by the regulator in product pricing and ranking of providers).

Insurance services: **Elimination of restrictions on data-sharing.** Limited liberalization for insurance brokerage (2 employees per branch).

Banking: **Stress on removal of restrictions on data-sharing.** Numerous other restrictions to be addressed (among them: discriminatory regulations; lack of regulatory transparency and use of non-internationally recognized approaches to regulation; nationality and residence restrictions; outsourcing restrictions)

Banking: **Elimination of restrictions on data-sharing.** Nationality and residence restrictions and discriminatory regulations (in favor of domestic suppliers) remain.

Securities: **Stress on improving licensing process and moving towards best international practice in regulation.**

Securities: **Elimination of restrictions on data-sharing.** Article 7.24 provides that ‘[e]ach party shall, to the extent practicable, ensure that internationally agreed standards for regulation and supervision in the financial services sector […] are implemented and applied’ including ‘the Objectives and Principles of Securities Regulation of the International Organization of Securities Commissions’.

**Other issues**

Strong MFN clause (ESF, 2007a, p. 2)

MFN clause present in the FTA.

‘Treatment arising from a regional economic integration agreement granted by either Party to establishments and investors of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in [the schedule of specific services commitments].’

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| **Table 2 – Key Requests from Service Industries Compared Against Key Gains in the EU-Korea FTA** |

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30 Interview with European Commission official, Brussels, 29 September, 2009.
therefore necessary that the EU-Korea agreement achieve at least parity with the US, if not more. What was particularly noteworthy, therefore, was the fact that the EU-Korea FTA included a number of clearly discriminatory provisions for the liberalization of mode 3 services delivery which at times not only matched US gains, but exceeded them. This was the case, for instance, in legal and financial services (see Table 2). In the case of the former, the ability for lawyers to use their home title and establish an office in Korea was restricted to those lawyers based in an EU Member State. Perhaps even more significantly, the EU-Korea FTA’s chapters on financial services referred to ‘financial service suppliers’, rather than the more restrictive ‘financial institution’ used in the KORUS FTA. It was a provision that EU negotiators fought especially hard to include, responding in large measure to pressure from the UK and its financial services industry. A particular concern was that providers of financial services such as Reuters or Lloyd’s of London (a City-based insurance market) that were not ‘financial institutions’ would not otherwise be covered by the (non-discriminatory) regulatory liberalization already undertaken by Korea in the context of the KORUS FTA.

Thus, although the list of commitments in financial services was very similar to that achieved by the US, it covered a greater list of suppliers.

In other cases, liberalization in line with (discriminatory) US gains was all that was sought. In the case of telecommunications services, the foreign equity cap that existed for investments was raised to match the KORUS FTA level of 100 percent. Similarly, a persistent gripe of the (UK) financial services industry had been the data transfer restrictions imposed by Korean authorities, which had legally prohibited the transfer of customers’ data outside of Korea without individual consent. Such firms would have been required to establish a data processing center in Korea in order to operate a branch, severely undermining the competitiveness of foreign-based financial service suppliers in the Korean market. The restriction had been lifted for US-based financial institutions by the KORUS FTA and so a resolution of the issue was of paramount concern to EU-based interests. In the end, a similar outcome was achieved via Article 7.43 of the EU-Korea FTA, which allowed for the transfer of information outside of Korea by financial service suppliers ‘for data processing, where such processing is required in the ordinary course of business’ (EU-Korea FTA Agreement, 2009).

Other provisions sought by the EU in the FTA, in contrast, were non-discriminatory in nature. This included, most notably, market access for the cross-border supply of satellite broadcast transmission services in telecommunications, which had previously not been able to operate in the Korean market. However, it was clear that the most significant concessions sought (and obtained) by the EU were in sectors where regulatory provisions had previously severely restricted or even outright prohibited the establishment of European service suppliers (e.g. in financial, legal, and telecommunications services). Moreover, the service

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31 Interview with an interest group representative, Brussels, 14 September, 2009.
32 To prevent the exclusion of Lloyd’s of London, which is regulated by Acts of the UK Parliament and is thus a particularly sui generis organization, Article 7.37 of the EU-Korea FTA (2009) also provided a restrictive definition of what a ‘public entity’ was for the purposes of financial services (such entities are generally exempt from the liberalization provisions of FTAs): ‘a government, a central bank or monetary authority of a Party or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms’. Interview with a European Commission official, Brussels, 29 September, 2009.
33 Interview with a European Commission official, Brussels, 29 September, 2009.
34 Interview with a European Commission official, Brussels, 29 September, 2009.
industry’s demands were shaped in large part by competitive pressures stemming from the discriminatory clauses of the KORUS FTA agreement, which, although yet not ratified, had the potential to give the US a ‘first-mover’ advantage in terms of gaining access to Korea’s highly regulated services markets. The importance of this dynamic is underscored by the MFN clause found in the agreement, which largely mirrors the Minimum Platform’s restrictive MFN exemption for regional economic trade agreements. Furthermore, although there was some existing EU investment in services in Korea, European services lobbyists (and negotiators) did not appear to be very concerned with expanding the market share of European incumbents. Thus, only one of Manger’s (2009) two propositions regarding the role of services and investment in preferential trade liberalization seems to be of much relevance in the case of the EU-Korea FTA. Similarly, it does not take into consideration the interest shown by the ESF and other services lobbyists in binding Korea’s autonomous liberalization (predominantly in modes 1 and 2) in the absence of progress in the Doha Round. Nevertheless, his framework has clearly provided a useful insight into the role played by societal interests and systemic pressures in shaping the EU’s bilateral trade agreements.

VI – Conclusion

The aim of this paper has been, first and foremost, to challenge the widespread institutionalist view that EU trade policy is uniquely depoliticized. To do so, it has deployed arguments from IPE that stress the importance of pressure from the services industry in pushing for North-South preferential liberalization in services and investment. The paper has been able to show that the ‘Global Europe’ strategy emerged as a response to interest group pressure – focusing in particular on the role of the services sector and its responsiveness to systemic competitive pressures in East Asia. These drivers were also present in the EU’s subsequent bilateral services and investment agenda – epitomized by the so-called Minimum Platform – and the EU-Korea FTA. In the case of the latter, Manger’s (2009) arguments about service suppliers competing for ‘first-entry’ ring particularly true in light of the EU services industries’ drive to secure at least parity with the discriminatory provisions of the KORUS FTA.

That is not to say that the IPE arguments considered here are without their own limitations. For one, Manger (2009) does not take into account the effect of a stagnating multilateral trade round on the interests of services interests. Indeed, in the EU case the ESF only became concerned about systemic competitive pressures after the Cancún debacle, which severely dampened business confidence in the Doha Round. In a similar fashion, stagnation at the multilateral level seemed to push the services sectors into seeking to bind Korea’s autonomous liberalization in the context of the EU-Korea FTA. Perhaps more importantly, the EU-Korea FTA raises questions about the underlying assumptions of much of rationalist IPE scholarship regarding Olsonian assumptions about the more effective mobilization of ‘losers’ – particularly in light of the failure of the automobile industry to successfully counter the FTA (see Siles Brügge, forthcoming). However, this paper is only the first step on a long road to bring the study of EU trade policy out of relative obscurity into the political economy mainstream. It shows that rather than being the product of an exceptionally depoliticized policy-making machinery, the EU’s trade strategy has been shaped over the years by a lively politics of interest.
References


