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# Procurement Liberalization Diffusion in EU Agreements: Signalling Stewardship?

Sangeeta KHORANA & Maria GARCIA<sup>\*</sup>

*The European Union (EU) has concluded bilateral trade agreements with Korea, Latin America, Central America and CARIFORUM states. Using the example of procurement liberalization commitments undertaken by the EU and partner countries, this article analyses how conformity between bilateral agreements and the WTO plurilateral Government Procurement Agreement is likely to promote competition and transparency, and be a stepping stone to future multilateral liberalization. It argues that liberalization through bilateral agreements will first, promote and reinforce EU's prominence in shaping future multilateral liberalization; second, fulfil EU's aspiration of playing a leading role in defining the map of 'global governance' for future multilateral liberalization.*

## 1 INTRODUCTION

Regional and bilateral Free Trade Agreements (FTAs) are an increasingly significant feature of world trade.<sup>1</sup> Numbers have multiplied in the 2000s given the impossibility of concluding the World Trade Organization (WTO) Doha Round. In 2006, the European Union's (EU) trade policy condensed in the 'Global Europe' strategy and the follow-up 'Growth, Jobs and Trade' (2010), prioritized new generation FTAs which are 'comprehensive in scope, provide for liberalization of substantially all trade [...] and go beyond WTO disciplines'.<sup>2</sup> Encapsulated in this are dual aims – an interest-led motivation to open markets and further business opportunities for EU firms;<sup>3</sup> and a normative aspiration to export a preferred model of liberalization, governance and multilateral regulation.

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<sup>1</sup> WTO (2012), World Trade Report 2011, Geneva.

<sup>2</sup> European Commission (2006) *Global Europe: Competing in the World*, 11, trade.ec.europa.eu/doclib/docs/2006/october/tradoc\_130376.pdf (accessed 25 Jun. 2013).

<sup>3</sup> *Ibid.* And European Commission (2010) *Report on progress achieved on the Global Europe strategy, 2006-2010*, Commission Staff Working document, SEC (2010) 1268/2 (Brussels), [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_146941.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146941.pdf) (accessed 25 Jun. 2013).

This article deals with the normative aspiration of the EU to incorporate Government Procurement (GP) provisions in its recent FTAs with Latin American and Asian states. It addresses how the EU exports its preferred regulatory model and assesses whether these agreements could foster multilateral convergence in procurement through a common external governance model. The extension of EU rules and practices beyond its borders has been captured by the ‘external governance’ literature,<sup>4</sup> which focuses on Europe’s neighbourhood and when third parties adopt its norms. Wunderlich (2012) highlights that the adoption of EU rules is determined by competing influence of EU institutional factors, domestic factors in third parties and the interdependence of external governance providers.<sup>5</sup> Esther Barbe et al. (2009) point out that the EU may act more as a transmitter of rules that have been elaborated in other international fora.<sup>6</sup> The case of GP reflects this duality: the EU transmits multilateral rules, but it is also exporting its preferred GP model, as its internal procurement model is compatible with, and is aiming to inform the multilateral setting. Thus, the article argues that the EU’s extension of GP rules responds to: interest-led motivation to open markets, normative aspirations and the desire to encourage adoption of multilateral norms, facilitated by its GP regime where adaptations to a global GP system have already eventuated. What makes this article topical is that procurement liberalization has been a contentious issue that emerging and developing states have rejected at the WTO, and where only limited liberalization exists under the voluntary WTO Government Procurement Agreement (GPA).

The structure of this article is as follows: Section II discusses the rationale for FTAs in light of the global governance debate. Section III highlights the significance of GP liberalization and provides an overview on GPA regulations. Section IV summarizes EU’s recent FTAs. Section V examines whether procurement liberalization through FTAs conforms to multilateral provisions, comments on how commitments by non-GPA member countries provide momentum to streamline domestic frameworks and foster international cooperation within the wider WTO architecture. Section VI concludes by arguing that the EU employs FTAs to further normative liberalization by transposing GP

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<sup>4</sup> Gänzle, S., *Externalizing EU Governance and the European Neighbourhood Policy: towards a Framework for Analysis*, 61 *Europe-Asia J.* 1715–1734 (2009); Lavenex, S., *A Governance Perspective on the European Neighbourhood Policy: Integration beyond Conditionality?* 15 *J. European Pub. Policy* 938–955 (2008); Lavenex, S. & Schimmelfennig, F., *EU Rules beyond EU Borders: Theorizing External Governance in European Politics*, 16 *J. European Pub. Policy* 791–812 (2009).

<sup>5</sup> Wunderlich, D., *The Limits of External Governance: Implementing EU External Migration Policy*, 19 *J. European Pub. Policy* 1414–1433 (2012).

<sup>6</sup> Barbé, E., Costa, O., Herranz Surrallés, A., Natorski, N. *Which Rules Shape EU External Governance? Patterns of Rule Selection in Foreign and Security Policies*, 16 *J. European Pub. Policy* 835–852 (2009).

rules elsewhere to create momentum for liberalization and to support its pursuit of a multilateral world.

## 2 FTAS AND GLOBAL GOVERNANCE DEBATE

Regionalism has motivated a growing interest in the determinants of FTAs. Economic rationales include the ease of negotiations amongst fewer partners, the ability to preclude liberalization in certain sectors,<sup>7</sup> to mitigate the fear of ‘losing out to neighbours’ through trade diversion, and contagion effects generated by spill-overs.<sup>8</sup> Political explanations include the spread of democracy generating new alliances,<sup>9</sup> lack of momentum at the multilateral level, and the quest for geopolitical stability.<sup>10</sup> Edward Mansfield and Helen Milner (1999) propose that regionalism comes in waves, and Richard Baldwin (1997) argues that the ‘new’ wave arises from domino forces created by 1980s Eurocentric round of preferential liberalization.<sup>11</sup> Current ‘new’ regionalism is ‘deeper’ than traditional trade agreements,<sup>12</sup> with partners willing to negotiate investment, procurement, competition policy and intellectual property rights issues. Although traditional models of trade suggest that FTAs between countries which share differences in comparative advantages makes economic sense, Mansfield et al. argue that political support may be complicated due to the unequal distribution of factor rewards, implying ‘good politics drives out good economics’, as agreements between

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<sup>7</sup> Ravenhill, J., *The New Bilateralism in the Asia Pacific* 24 *Third World Q.* 299–317 (2003).

<sup>8</sup> Baldwin, R., *A Domino Theory of Regionalism*, Centre for Economic Policy Research, London, Working paper No. 857 (1993).

<sup>9</sup> Mansfield, E., Milner, H. & P. Rosendorff, *Replication, Realism, and Robustness: Analyzing Political Regimes and International Trade* 96 *Am. Political Sci. Rev.* 167–169 (2002); Wu, J. P., *Measuring and Explaining Levels of Regional Economic Integration*, ZEI Working Paper B12/2004, Centre for European Integration Studies, Bonn (2004).

<sup>10</sup> Mansfield, E. & J. Pevehouse, *Trade Blocs, Trade Flows, and International Conflict*, 54 *Intl. Org.* 775–808 (2000); Martin, P., Mayer, T. & M. Thoenig, *Make Trade Not War?* 75 *Rev. Econ. Stud.* 865–900 (2008); Martin, P., Mayer, T. & M. Thoenig, *The Geography of Conflicts and Free Trade Agreements*, CEPR Discussion Paper 7740 (2010); Vicard, V., *Trade, Conflicts and Political Integration: Explaining the Heterogeneity of Regional Trade Agreements*, CES Working Paper 22 (2008).

<sup>11</sup> Richard Baldwin, Edward Mansfield and Helen Milner argue that the concurrent rounds of multilateral negotiations play an important role in motivating this wave of regionalism. See Mansfield, E., & Milner, H., *The New Wave of Regionalism*, 53 *Intl. Org.* 589–627 (1999); Baldwin, R., *The Causes of Regionalism*, 20 *The World Econ.* 865–888 (1997).

<sup>12</sup> Baldwin, R., *21st Century Regionalism: Filling the Gap between 21st Century Trade and 20th Century Trade Rules*, WTO Economic Research and Statistics Division. Staff Working Paper ERSD-2011-08 (2011). Paper presented at the WTO’s ‘Workshop on PTAs and the WTO: A New Era’; Burfisher, M., Robinson, S. & Thierfelder, K., *Regionalism: Old and New, Theory and Practice*, Agricultural Policy Reform and the WTO: Where are we Heading? Invited paper presented at conference Capri, 23–26 Jun. 2003; Burfisher, M., Robinson, S. & Thierfelder, K., *Regionalism: Old and New, Theory and Practice*, Agricultural Policy Reform and the WTO: Where are we Heading? Invited paper presented at conference Capri, 23–26 Jun. 2003.

countries with similar factor endowments may be politically easier to conclude.<sup>13</sup> Furthermore, the presence of 'appropriate' governance structures within a country can, in principle, facilitate the flow of goods and ideas and is often associated with a more liberal trade stance.<sup>14</sup> It is no coincidence, that where those governance structures are absent, the EU incorporates these into the FTA, as in the case of GP.

An important debate within the literature concerns the compatibility of FTAs with the WTO regime, which has pitted proponents of FTAs as 'stumbling blocks',<sup>15</sup> against supporters of the FTAs as 'stepping stones' towards global liberalization thesis.<sup>16</sup> The latter has been explained through 'domino effects' where outsiders become insiders to FTAs to offset trade diversion effects, thus changing the domestic constellation of pressures for and against liberalization.<sup>17</sup> This rationale is also present in some states' deliberate abandonment of the WTO, like the USA's turn to bilateralism in the 2000s to encourage 'competitive liberalization' amongst partners,<sup>18</sup> thus weakening the developing world's opposition to liberalization as articulated at the WTO. However, 'stepping stone' analyses, focusing on trade effects mainly in goods and some services, have obviated the matter of the effect of the inclusion of new regulatory issues in FTAs. This article contributes to this literature by focusing on the latter in the inclusion of GP regimes in EU's new FTAs.

<sup>13</sup> Mansfield, E. D., Milner, H. V., & Pevehouse, J. C., *Democracy, Veto Players and the Depth of Regional Integration*, 31 *The World Econ.* 67–96, 69 (2008).

<sup>14</sup> Within this category of determinants should lie the role of multilateral negotiations in the formation of new trade agreements as suggested by Mansfield and Reinhardt. These are omitted in this article as the period under investigation only includes one round of negotiations unlike that used in E. Mansfield & E. Reinhardt, *Multilateral Determinants of Regionalism: The effect of GATT/WTO on the formation of Preferential Trade Agreements*, 57 *Intl. Org.* 829–862 (2003).

<sup>15</sup> Bhagwati, J., *The World Trade System*, 48 *J. Intl. Affairs* 279–285 (1994). Bhagwati, J., *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (Oxford U. Press 2008). Thurow, L., *Head to Head: The Coming Battle among Japan, Europe and America* (William Morrow 1992).

<sup>16</sup> Krugman, P., *Regionalism versus Multilateralism: Analytical Notes*, in *New Dimensions in Regional Integration* (J. de Melo & A. Panagariya eds., Cambridge U. Press 1993); Lamy, P., *Stepping Stones or Stumbling Blocks? The EU's Approach towards the Problem of Multilateralism v. Regionalism in Trade Policy*, 25 *The World Econ.* 1399–1413 (2002); Wei, S. & Frankel, J., *Can Regional Blocs be a Stepping Stone to Global Free Trade?: A Political Economy Analysis*, 5 *Intl. Rev. Econ. & Fin.* 339–347 (1996).

<sup>17</sup> Baldwin, R., *A Domino Theory of Regionalism*, Centre for Economic Policy Research, London, Working paper No. 857 (1993).

<sup>18</sup> Schott, J., *Free Trade Agreements and US Trade Policy: A Comparative Analysis of US Initiatives in Latin America, the Asia-Pacific Region, and the Middle East and North Africa*, 20 *The Intl. Trade J.* 95–138 (2006).

### 3 SIGNIFICANCE OF PROCUREMENT LIBERALIZATION AND THE INTERNATIONAL FRAMEWORK

Public procurement represents a major economic sector outside the main WTO regime. Estimates show that public expenditure on goods, works and services in the EU amounts to over EUR 2 trillion in 2009 (nearly 16% of total EU's Gross Domestic Product (GDP)), and for developing and transition economies, this is 50% of total GDP.<sup>19</sup> Public procurement markets remain guarded by national governments and in some cases politicized. They can be viewed as part of a state's developmental policies to direct investment to particular areas or support domestic sectors. In some instances, public procurement can be vulnerable to corruption and rent seeking by contracting authorities in countries lacking stable institutions. Literature on the influence of international commitments on institutional reform is scarce. However, some studies focusing on procurement mechanisms and their susceptibility to corruption, suggest that corruption in public contracting activity reduces efficiency, leads to waste, and creates resistance to reform from vested interests.<sup>20</sup> Within the broader context of international trade, studies report that ill-functioning institutions impair trade, and increase the costs of trading.<sup>21</sup> Dollar and Kraay report a positive correlation between openness and the quality of institutions.<sup>22</sup> Bolaky and Freund argue that international trade generates benefits only when liberalization is complemented by educational, regulatory environment, and other institutional reforms.<sup>23</sup> Rodrik suggests that successful institutional reforms require integrating imported rules and regulations into local institutions.<sup>24</sup> Linking trade liberalization and institutions, some scholars argue that liberalization strengthens institutional frameworks, augments transparency and enhances public accountability.<sup>25</sup> The creation of institutional frameworks within the WTO or

<sup>19</sup> European Commission, *Proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement*, COM (2012) 124, [http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc\\_149243.pdf](http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc_149243.pdf) (accessed 15 Aug. 2013).

<sup>20</sup> Infante, D. & Smirnova, J., *Rent Seeking Under a Weak Institutional Environment*, 104 *Econ. Letters* 118–121 (2009); Cule, M. & Fulton, M., *Some Implications of the Unofficial Economy -Bureaucratic Corruption Relationship in Transition Countries*, 18 *Econ. Letters* 207–211 (2005).

<sup>21</sup> Anderson, J. E., *Trade and Informal Institutions* (mimeo) (2001). Anderson, J. E. & D. Marcouiller, *Insecurity and the Pattern of Trade: An Empirical Investigation*, 84 *Rev. Econ. & Statistics* 342–352 (2002).

<sup>22</sup> Dollar, D. & Kraay, A., *Institutions, Trade and Growth*, 50 *J. Monetary Econ.* 133–162 (2003).

<sup>23</sup> Bolaky, B. & Freund, C., *Trade, Regulations, and Growth*, World Bank Policy Research Paper 3255, Washington: World Bank (2004).

<sup>24</sup> *In Search of Prosperity: Analytic Narratives on Economic Growth* (Rodrik, D. ed., Princeton U. Press 2003).

<sup>25</sup> Hood, C. (2001) *Transparency*, in *Encyclopaedia of Democratic Thought* 700–705 (P.B. Clarke & J. Foweraker eds., Routledge 2001); Bastida, F. & Benito, B., *Central Government Budget Practices and Transparency: An International Comparison*, 85 *Pub. Administration* 667–716 (2007); Khorana, S., Kerr, W. A. & Mishra, N., *Piercing the Puzzle of Procurement Liberalization: Case-Study on Vietnam*, 41 *Policy & Pol.* (2013).

FTAs is informed by these views and aims to create certainty regarding markets and business opportunities.

The GPA is a plurilateral agreement within the WTO and applies to those WTO member countries that choose to join its membership. In this regard, it differs from the General Agreement on Trade and Tariffs (GATT) and General Agreement on Trade in Services (GATS) agreements founding the WTO which all WTO members must abide by. The WTO system is not directly applicable but its rules are enforced domestically through mobilization of interests triggered by the WTO dispute settlement system.<sup>26</sup> Although the voluntary GPA is subject to the state-to-state dispute settlement system, only three requests for panels have been opened. Of the two opened by the EU, both were resolved by the parties outside of the appellate body and related to language used in tenders.<sup>27</sup> The GPA was negotiated in parallel to the Uruguay Round, and entered into force on 1 January 1996. It was created with the commitment to facilitate additional Parties' accession. Renegotiations of an updated GPA, taking account of new technological developments in procurement and extending the agreement to further procuring entities, were finalized in December 2011. This is likely to enter into force in 2013 after ratification by members. Renegotiations introduced greater flexibility in levels of openness to facilitate developing state accession to GPA.<sup>28</sup> The GPA has forty-two members – thirty-six developed and six developing countries. Emerging and developing states have dithered over GPA, due to a failure to see sufficient potential benefits or lack of regulatory frameworks, and their own use of procurement as a domestic development tool.<sup>29</sup> The GPA mandates members to establish an agreed framework for procurement regulations and procedures, with non-discrimination and national treatment as core principles that apply to all procurements covered by the Agreement.<sup>30</sup> The GPA includes procurements made by the entities listed by each country in its

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<sup>26</sup> De Ville, F., *European Union Regulatory Politics in the Shadow of the WTO: WTO Rules as Frame of Reference and Rhetorical Device*, 19 J. European Pub. Policy 700–718 (2012).

<sup>27</sup> World Trade Org., *Dispute settlement under the GPA*, [http://www.wto.org/english/tratop\\_e/gproc\\_e/disput\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/disput_e.htm) (accessed 15 Jul. 2013).

<sup>28</sup> *Ibid.*

<sup>29</sup> Developed country members comprise: the European Communities including its twenty-seven Member States, Canada, Iceland, Japan, Switzerland and the United States. Current developing country GPA members – Hong Kong, South Korea, Singapore, Israel, Taiwan and Aruba (of the Kingdom of the Netherlands).

<sup>30</sup> This accords 'no less favourable' treatment to any other countries' suppliers than they allow to their domestic products, services and suppliers (Art. III: 1a) and does not allow for discrimination among goods, services and suppliers of other Parties (Art. III: 1b). Each member country is required to ensure that its entities do not treat domestic suppliers differently on the basis of a greater or lesser degree of foreign affiliation or ownership, and that there is no discrimination against domestic suppliers because their good or service is produced in the territory of another Party (Art. III: 2).



Appendix I Annexes.<sup>31</sup> Coverage is defined by: (i) value such that only contracts that exceed a certain threshold are covered; (ii) identity of the procuring agency, i.e. only those listed by the parties in the annexes; (iii) type of goods and services; and (iv) the origin of goods and services covering GPA members. The Agreement also lists conditions for participation and procedural requirements for suppliers and procuring entities. Requirements for procurement processes include: (i) the use of technical specifications; (ii) allowable tendering procedures; (iii) qualification of suppliers; (iv) invitations to participate in intended procurements; (v) selection procedures; (vi) time limits for tendering and delivery of documents; (vii) tender documentation; (viii) submission, receipt and opening of tenders, and the awarding of contracts; (ix) negotiations by entities with suppliers; and (x) the use of limited tendering. These intend to ensure that all procurements are conducted in a transparent and competitive manner. Other features of the GPA are requirements regarding availability and nature of bid challenge procedures (i.e., domestic review procedures for products, services and suppliers) and the provision of electronic bidding. Domestic review procedures aim to provide a framework for supplier challenges to address either: (i) a breach of the Agreement; or (ii) where a supplier does not have a right to challenge directly a breach of the Agreement under the domestic law, a failure to comply with the GPA signatory's measures implementing the Agreement. Furthermore, the GPA requires signatories to conduct procurements 'in a transparent and impartial manner, and avoid conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention against Corruption'.<sup>32</sup> The GPA involves processes rather than outcomes, and allows a degree of flexibility. States choose which entities are exempt from GPA. The European Commission estimates that only 25% of contestable public procurement markets have been committed internationally through GPA or FTAs.<sup>33</sup> Even GPA members have had their openness questioned (e.g., EU complaints against USA 'Buy American' campaigns).<sup>34</sup> Moreover, the voluntary nature of the GPA has remained as

<sup>31</sup> Each Party's Appendix I Annexes specify the entities and threshold value above which individual procurements are covered by the Agreement. Appendix I includes Annexes such that *Annexes 1-3* specify the central and sub-central government entities as well as other entities, such as public utilities, that each Party has committed to complying with the Agreement. As a general rule, all goods are covered by the GPA, while Annexes 4 and 5 to Appendix I specify each Party's covered services and construction services. Appendix I also include 'Notes' and 'General Notes' which qualify the coverage accorded under the Agreement.

<sup>32</sup> World Trade Org., *Trade Policy Review: report by the EU*, WT/TPR/G/248, 20 June 2011, [http://www.wto.org/english/tratop\\_e/tpr\\_e/g248\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g248_e.doc) (accessed 17 Jul. 2012).

<sup>33</sup> European Commission, *Proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement*, COM (2012) 124, [http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc\\_149243.pdf](http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc_149243.pdf) (accessed 15 Aug. 2013).

<sup>34</sup> *EurActiv* (2012), *Brussels seeks reciprocity in trade deals*, 21 Mar. 2012, <http://www.euractiv.com/innovation-enterprise/brussels-seeks-reciprocity-trade-news-511665> (accessed 10 Jul. 2013).

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developing states blocked attempts to incorporate procurement into the main corpus of the WTO during the beleaguered Doha Round.<sup>35</sup> The USA and EU have subsequently made the adoption of these issues a key objective of their FTAs.<sup>36</sup>

In the European case, a further imperative for the externalization of GP liberalization derives from the creation of its single market. Since the Single European Act (1985), the EU has applied a regime of procurement liberalization, removing preferential treatment of national industry in government purchasing. Subsequent Directives from 2004 and 2011 have increased liberalization.<sup>37</sup> Morton has described this process as dominated by the European Commission's promotion of a competition policy agenda demanding the removal of national barriers to cross-border competition,<sup>38</sup> where procurement is examined through the principles of non-discrimination, competition and transparency.<sup>39</sup> As Smith purports:

As integration of the EC public procurement market proceeded and suppliers enhanced their abilities to compete for contracts across borders, the European Commission could soften opposition to the public procurement regime from suppliers who would have to relinquish privileged relationships with public authorities by creating greater opportunities for European firms abroad.<sup>40</sup>

Indeed, the European Commission (as the EU's international trade negotiator)<sup>41</sup> was a driving force behind the GPA, as once EU states lost the ability to control GP fostering more markets abroad would be beneficial to EU suppliers,

<sup>35</sup> The so-called Singapore issues (investment, competition policy, transparency in public procurement and trade facilitation) were brought onto the WTO agenda at the 1996 Singapore Ministerial meeting. Despite EU and USA pressure for their adoption during the Doha Round, resistance from the developing world and Brazil and India as leaders of the G22 group led to the collapse of negotiations at the 2003 Cancun Ministerial. It was decided to proceed only with the trade facilitation negotiations (and the other negotiations on agriculture, non-agricultural market access, etc.). Negotiations continue slowly ahead of the December 2013 Bali Ministerial.

<sup>36</sup> Non-GPA members sometimes include GP in FTAs (e.g., Chile, ANZCERTA between Australia and New Zealand). See Kim, D., *A Study on the Government Procurement Provisions of Korean Free Trade Agreements: Centering on the Case of Korea-US FTA*, Paper presented at the 4th International Public Procurement Conference in Seoul, 26–28 Aug. 2010, [http://www.ipppa.org/ippp4\\_proceedings9.htm](http://www.ipppa.org/ippp4_proceedings9.htm) (accessed 1 Jul. 2013).

<sup>37</sup> The current legal bases for public procurement in the EU are the revised Directives 2004/17/EC (procurement in the water, energy, transport and postal services sectors) and 2004/18/EC (public works, supply and service contracts).

<sup>38</sup> Morton, A., *European Union Public Procurement Law, the Public Sector and Public Service Provision*, European Public Services Briefings No. 4, European Services Strategy Unit (2012).

<sup>39</sup> Bovis, C. H., *Developing Public Procurement Regulation: Jurisprudence and Its Influence in Law Making*, 43 Com. Mkt. L. Rev. 461–495, 461 (2006).

<sup>40</sup> Smith, M. P., *Single Market, Global Competition: Regulating the European Market in a Global Economy*, 17 J. European Pub. Policy 936–956, 948 (2010).

<sup>41</sup> The collusive delegation theory of EU trade policy, argues that the institutional set-up isolates the Commission from protectionist interests and explains its liberalizing stance (see Meunier, S., *What Single Voice? European Institutions and EU-US Trade Negotiations*, 54 Intl. Org. 103–135 (2000);

who already had to adapt internally to a more competitive environment.<sup>42</sup> In the Doha Round, the Commission was a key proponent of the incorporation of Singapore issues.<sup>43</sup> The EU has made attempts to ‘externalize’ its regulatory regime by encouraging expanded membership of the GPA, and acceptance of GPA-standard regulations in FTAs. It has extended to the international arena the same arguments used to justify EU procurement liberalization, such as the claim that benefits to domestic suppliers of protected markets are offset by increased procurement costs.<sup>44</sup> This logic is now so entrenched in Europe, that discussions regarding a European Commission proposal for a GP International Initiative (March 2012), in which the Commission suggested restricting access to EU GP markets to companies from countries that limit access to EU firms, were objected on the grounds that this would go against the EU’s GP policies of obtaining best value for public money.<sup>45</sup> Furthermore, concerns were expressed that this would indirectly legitimize ‘Buy American’ and other campaigns that the EU opposes.<sup>46</sup>

The problems the EU has encountered in reshaping international GP rules to its image, and advantage, are summarized in the GP International Initiative: ‘the EU lacks leverage to foster the globalization of procurement’, especially as the EU is more open than other GPA partners and has given contracts in areas not covered by the GPA.<sup>47</sup> As the GPA lies beyond the ‘single undertaking’ of negotiations at the WTO, greater GP market access cannot be traded-off against other issues at the WTO. Europe’s liberal internal regime, mandating transparency, openness and opting for the most economically advantageous tender<sup>48</sup> weakens the EU’s possibilities for leveraging its GP market in the GPA, as, legally, procurement entities cannot retaliate against closed GP markets by excluding their companies’ bids. At the FTA level, however, where the EU can offer concessions on other

Meunier, S. & Nicolaidis, K., *Who Speaks for Europe? The Delegation of Trade Authority in the EU*, 37 J. Com. Mkt. Stud. 477–510 (1999).

Others argue that positions result from the interplay of interests with exporting industries often gaining more support (De Bieve, D. & Dür, A., *Constituency Interests and Delegation in EU and American Trade Policy*, 38 Comp. Political Stud. 1271–1296 (2005); Dür, A., *Bringing Economic Interests Back into the Study of EU Trade Policy-Making*, 10 Brit. J. Pol. & Intl. Rel. 27–45 (2008).

<sup>42</sup> *Supra.*, p. 948.

<sup>43</sup> Abdewal, R. & Meunier, S., *Managed Globalisation: Doctrine, Practice and Promise*, 17 J. European Pub. Policy 350–367 (2010).

<sup>44</sup> *Supra.*, pp. 948–949.

<sup>45</sup> The UK, Sweden, Czech Republic and Germany as the main exporter in Europe were most vocal in voicing these concerns.

<sup>46</sup> EurActiv, *Brussels seeks reciprocity in trade deals* 21 Mar. 2012, <http://www.euractiv.com/innovation-enterprise/brussels-seeks-reciprocity-trade-news-511665> (accessed 10 Jul. 2013).

<sup>47</sup> European Commission, *Proposal for a Regulation on the access of third-country goods and services to the Union’s internal market in public procurement*, COM (2012) 124, at 2, [http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc\\_149243.pdf](http://trade.ec.europa.eu/doclib/docs/2012/march/tradedoc_149243.pdf) (accessed 15 Aug. 2013).

<sup>48</sup> Morton, A., *European Union Public Procurement Law, the public sector and Public Service Provision*, European Public Services Briefings No. 4, European Services Strategy Unit (2012).

matters to partners in exchange for access to GP markets, the EU stands a better chance of externalizing its preferred GP regime.

#### 4 MAPPING EU'S RECENT BILATERAL TRADE AGREEMENTS

Before the 2000s, EU FTAs followed political motives (development, rapprochement to neighbours). Current FTAs are driven by a competitiveness agenda introduced in the 'Global Europe' trade policy<sup>49</sup> that aims to open markets and pursue the 'Singapore issues'. Within this, procurement figures as a new area of importance with significant untapped potential for EU exporters.<sup>50</sup> The recently concluded EU-Singapore FTA allows EU bidders opportunities in public tendering, including the utilities sectors for the first time. Both partners have agreed on transparency and non-discrimination rules extending beyond the realm of WTO GPA. Other EU agreements include FTA with Korea (in effect), EPAs with ACP states (EU-CARIFORUM agreement)<sup>51</sup> and Association Agreements (AAs) with Central America and Peru/Colombia (pending implementation).<sup>52</sup> The EU is negotiating further FTAs in Asia with India, Malaysia and Vietnam,<sup>53</sup> which have been mired by GP discussions. The rapidly growing FTA numbers with extensive GP chapters make an analysis topical, and subsequent sections explore the main commitments and approaches in the FTAs already finalized, to draw lessons for ongoing negotiations.

An analysis of GP chapters in EU FTAs shows provisions mirror the GPA language, classifications and commitments. Table 1 summarizes EU FTA provisions, compares these with GPA commitments, and classifies agreements as WTO-plus

<sup>49</sup> Woolcock, S., *European Union policy towards Free Trade Agreements*, ECIPE Working Paper 03/2007 (2007).

<sup>50</sup> The strategy set out an integrated approach, linking the internal and external aspects of the EU's competitiveness. In operational terms, Global Europe's main innovation was that, while reaffirming the EU's commitment to the multilateral system and the Doha Round, it ended the de facto moratorium on launching new FTAs. The Global Europe strategy applied new economic criteria to the launch of FTAs, focusing on partners with high market potential (economic size and growth) and significant economic benefits from removing tariffs and non-tariff barriers (e.g., due to high existing barriers). As a result, a series of more economically orientated negotiations were launched with Korea, India and ASEAN in 2007 and Canada in 2009. Negotiations with Mercosur were re-launched in 2010. See European Commission, *Global Europe: Competing in the World*, 2006, [trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130376.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf) (accessed 25 Jun. 2013).

<sup>51</sup> With the expiry of the WTO waiver, the EU regulated its relations with ACP countries and allowed for non-reciprocal preferential trade under the Cotonou regime. Timetables for liberalization are more gradual for the ACP states.

<sup>52</sup> The intent varies between agreements, for instance CARIFORUM Agreement aims to alleviate poverty, promote regional integration and economic cooperation to foster integration into the global economy (European Commission, 2009). AAs establish a broader cooperation framework on trade, political, security, economic and human rights.

<sup>53</sup> Negotiations began with Japan and Thailand in 2013.

and WTO-extra depending on the level of commitment undertaken by partners. This classification borrows the typology developed by Horn et al. in their comparison of EU and USA FTAs.<sup>54</sup> For them WTO-plus categories refer to inclusion of provisions that are not currently part of the binding corpus of the WTO, but have been or are being discussed at the WTO (e.g., services liberalization). WTO-extra refers to provisions completely outside the current remit of WTO discussions (e.g., non-nuclear proliferation, ILO provisions). Because GPA is optional at the WTO level, all FTAs containing GP frameworks are classified as WTO-plus. This category covers provisions that aim for progressive liberalization and GPA-compliant procurement framework. Whereas WTO-extra provisions refer to additional liberalization commitments in areas not currently covered or regulated by the WTO GPA.

*Table 1 EU Trade Agreements with Government Procurement Provisions*

<i>Date of Entry</i>	<i>Agreement</i>	<i>Type</i>	<i>Objective</i>	<i>Commitments undertaken by Partner Countries</i>
Nov-08	EU-CARIFORUM	Economic Partnership Agreement	Regional procurement market liberalization	WTO-plus
May-10	EU-Central America	Association Agreement	Effective, reciprocal and gradual opening of respective procurement markets	WTO-plus
Jan-10	EU-Latin America	Association Agreement	Effective and reciprocal opening of government procurement markets of the Parties	WTO-plus
Jul-11	EU-Korea	FTA	Mutual liberalization	WTO-extra

*Source:* Authors' compilation.

<sup>54</sup> Horn, H., Mavroidis, P. & Sapir, A., *Beyond the WTO? An Anatomy of US and EU Preferential Trade Agreements*, Bruegel Blueprint, Brussels, 2009, <http://www.bruegel.org/publications/publication-detail/publication/238-beyond-the-wto-an-anatomy-of-eu-and-us-preferential-trade-agreements/> (accessed 27 Aug. 2013).

The table shows that all agreements emphasize liberalization as FTAs ‘are important for the EU to benefit from growth in fast-growing markets in the medium-to long term and that these contribute to solving the most systemic trade barriers in government procurement’.<sup>55</sup> In WTO-plus agreements, the explicit acknowledgement of procurement liberalization significance with a separate chapter on related taxonomies is a common theme. These focus on key GPA elements, i.e. non-discrimination and national treatment, general institutional improvements through procedural reforms, including electronic publication of planned procurements to enhance transparency. In doing so, FTAs aspire to employ trading obligations as a reform vehicle to revamp partners’ national procurement systems, and to ‘externalize’ EU’s model. The WTO-extra commitments in EU-Korea FTA include Build-Operate-Transfer (BOT) commitments, which extend the scope of GPA coverage beyond conventional goods, services and construction. Commitments additionally apply to local governments in Seoul, Busan, Incheon and Gyonggi-do, besides entities covered under the GPA.<sup>56</sup>

## 5 DO EU FTAS FACILITATE A MODEL FOR MULTILATERAL PROCUREMENT LIBERALIZATION?

Transmission and adoption of multilateral rules is a core feature of EU FTAs (e.g., international car standards and ILO labour provisions in EU-Korea FTA). Europe’s multilateral vocation has become a legal requirement in its external action under Article 21(1) of the Lisbon Treaty (2008) which obliges the EU to ‘promote multilateral solutions to common problems’. Renard (2012) justifies this multilateral commitment because if a new global order were to emerge outside a multilateral framework, the EU risks having little weight in international negotiations.<sup>57</sup> Procurement liberalization by the EU through FTAs is analogous with its perspective that deep FTAs will support developing countries to cope with complex multilateral negotiations, and that convergence achieved through

<sup>55</sup> European Commission, *International Affairs: Free Trade Agreements*, Brussels, 11 July 2011, [http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index\\_en.htm](http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index_en.htm) (accessed 17 Aug. 2013).

<sup>56</sup> The USA-Korea FTA also does not extend Korean GP coverage beyond that in the GPA. See Kim, D., *A Study on the Government Procurement Provisions of Korean Free Trade Agreements: Centering on the Case of Korea-US FTA*, Paper presented at the 4th International Public Procurement Conference in Seoul, 26–28 Aug. 2010, [http://www.ippa.org/ippc4\\_proceedings9.htm](http://www.ippa.org/ippc4_proceedings9.htm) (accessed 1 Jul. 2013).

<sup>57</sup> Renard, T., *The EU Strategic Partnerships Review: Ten Guiding Principles*, FRIDE Policy Brief 2, 2012 (available at <http://www.fride.org/publication/1011/the-eu-strategic-partnerships-review-ten-guiding-principles>).

such agreements will foster multilateral cooperation on procurement.<sup>58</sup> This finds resonance in Medvedev's (2010) work, which sees bilateral agreements as opportunities to lock-in domestic reforms and stepping stones to deep integration including trade in procurement, services, investment, and labour mobility.<sup>59</sup> In this manner, the EU's agreements provide a means to pursue mutual economic interests, address political tensions and pave the way for collective voice.<sup>60</sup> Grevi and Khandekar (2012) comment that the EU's overlapping bilateral partnerships constitute a 'smart grid' for global politics that will enable it to connect with countries that may not be global powers but perform a lynchpin role.<sup>61</sup> Gratius (2011) argues that, although hard to achieve, bilateral partnerships narrow differences and support developing joint initiatives in multilateral settings, particularly where some partners play an increasingly important role at the regional level.<sup>62</sup> Earlier literature agrees that bilateral agreements do foster multilateral convergence if integrated regions adopt provisions similar to the WTO rules.<sup>63</sup> The European Commission (2010) articulates its view that EU's motives for pursuing procurement liberalization through FTAs are 'not limited to additional market access but using these as a stepping stone for progressive liberalization in partner countries'.<sup>64</sup>

An analysis of the FTAs demonstrates conformity between commitments and GPA provisions. In line with GPA provisions, EU FTAs make specific reference to non-discrimination and the GPA language applies. The coverage of goods, services and construction services as well as entities by non-GPA countries in Latin America, follow the GPA model so that all goods are covered unless specifically

<sup>58</sup> European Commission, *Report on progress achieved on the Global Europe strategy, 2006-2010*, Commission Staff Working document, SEC(2010) 1268/2 (Brussels), 2010, [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_146941.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146941.pdf) (accessed 25 Jun. 2013).

<sup>59</sup> Medvedev, D., *Preferential Trade Agreements and Their Role in World Trade*, 146 Rev. World Econ. 199–222 (2010).

<sup>60</sup> Renard, T., *The EU Strategic Partnerships Review: Ten Guiding Principles*, FRIDE Policy Brief 2, 2012 (available at <http://www.fride.org/publication/1011/the-eu-strategic-partnerships-review:-ten-guiding-principles>).

<sup>61</sup> Grevi, G. & G. Khandekar, *Why EU Strategic Partnerships matter?* working paper No. 1, European Strategic Partnerships Observatory, FRIDE, Egmont (2012).

<sup>62</sup> Gratius, S., *Can EU Strategic Partnerships Deepen Multilateralism?* Working paper No. 109, September, European Strategic Partnerships Observatory, FRIDE, Egmont (2011).

<sup>63</sup> Zahrnt, V., *How Regionalisation Can Be a Pillar of a More Effective World Trade Organization*, 39 J. World Trade 671–699 (2005); Lamy, P. (2006) speech dated 17 Oct. 2006 to the European Parliament's International Trade Committee, where he warned that the Doha failure will seriously weaken the trading system, [http://www.wto.org/english/news\\_e/sppl\\_e/sppl144\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl144_e.htm) (accessed 30 Aug. 2013).

<sup>64</sup> European Commission, *Report on progress achieved on the Global Europe strategy, 2006-2010*, Commission Staff Working document, SEC(2010) 1268/2 (Brussels), 2010, [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_146941.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146941.pdf) (accessed 25 Jun. 2013); see also Zahrnt, V., *How Regionalisation can be a Pillar of a More Effective World Trade Organization*, 39 J. World Trade 671–699 (2005).

excluded. There are detailed coverage commitments in annexes, detailing central, sub-central and other entities covered. The EU-Peru/Colombia and EU-Central American agreements incorporate comprehensive entity coverage, with entities listed positively, but goods and services follow a negative list, i.e., those not mentioned are subject to liberalization commitments. However, in EU-Peru/Colombia all universal services and construction services covered are listed in a positive manner. The proximity of FTA with GPA regulations emphasizes the aims of future convergence – for Latin American countries, the agreement subdivides listings into A and B (Panama's list also has C category) for annex three entities, i.e., 'other entities' for which differing threshold values apply, allowing the specified entities to increase competitiveness over time. Similarly, EU-CARIFORUM agreement limits coverage to central government entities only. An important point is that although the level of liberalization and coverage of entities varies between countries, commitments at the bilateral level are primarily driven by identifying sectors that constitute a competitive challenge and strengthening these over time.

All FTAs scrutinized allow procurement thresholds to vary, with higher initial thresholds reducing over time for non-GPA members. This flexible approach illustrates the emphasis on conformity with GPA thresholds over the longer term. For instance, Peru adheres to GPA threshold values for sub-central governments, while Colombia commits to an initial value double that for the GPA indicative of partner countries' aspiration to progressively work towards being able to upgrade from its observer status at the GPA to membership. Similarly, under the EU-Central America agreement, El Salvador, Guatemala, Nicaragua and Honduras propose to work down towards GPA threshold values over specified periods from higher thresholds to GPA norms. The level of GPA conformity for construction services is particularly striking while thresholds for services are split into two categories. Under annex II, Central America states maintain higher threshold value than that of the GPA; while annex III lists all countries into categories (B and C in the case of Panama) referring to sub-government level agencies, conforms to the GPA threshold value for goods and services and list A is half the GPA value. Guatemala utilizes an approach that allows working down to GPA thresholds incrementally. This suggests that the EU aims to generate momentum in partner countries to streamline procurement frameworks and achieve GPA-compliant thresholds, and is consistent with the EU's understanding of multilateralism which includes 'helping other countries to implement and abide by [international] rules'.<sup>65</sup> This will eventually facilitate procurement liberalization at the multilateral

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<sup>65</sup> European Commission, Communication on the EU and the UN: The Choice of Multilateralism, COM (2003) 526 final.



level. The EU-Korea FTA resonates the intention of additional liberalization by extending Korea's coverage of entities beyond those listed under the GPA. Korea though retains threshold values for contracts for new sub-government level entities that are three times higher than those of the EU (SDR 15,000,000).

EU FTAs export GPA provisions on tendering modalities and procedures. Supplier qualification guidelines, modelled after the GPA, aim to prevent discrimination, focus on clarity in technical specifications and a commitment to fair competition for tendering. All agreements require technical specifications in terms of performance rather than design, and based on international standards, where they exist, or, otherwise, on national technical regulations, recognized national standards, or building codes, as required by the GPA. Provisions on suppliers' qualification are closely aligned with the GPA, i.e., maintaining suppliers' lists, and that a notice inviting all interested suppliers to apply for inclusion is published annually. Finally, all FTAs follow GPA requirements on time limit provisions for foreign suppliers to prepare and submit bids for participation.

Further in line with the GPA, open tendering is treated as the 'base case', with the use of selective and limited tendering subject to special rules and conditions to preserve transparency and competition to the extent possible. All agreements require purchasing entities to invite tenders from a maximum number of foreign suppliers and ensure that conditions for supplier qualification do not discriminate against these. The FTAs also include safeguards to ensure that negotiations do not discriminate between suppliers. With regards to negotiations, similar preconditions as specified in the GPA apply where entities can negotiate with suppliers provided this is indicated in the initial tender notice or if it appears from the tender evaluation that no one tender is the most advantageous.

The FTAs also list derogations to services procured by entities with regards to commitments and domestic policy issues in appendix I. Services exempt within EU-Central America agreement are research and development, education and health services. Additional derogations for electricity distribution are listed by Costa Rica, Nicaragua and Panama. Exceptionally El Salvador has not listed derogations. Sector specific derogations are also listed under the EU-Peru/Colombia for agricultural products in the cases of agricultural support and food assistance programmes, procurement of goods for army and police. Beverage and tobacco products, textiles, apparel and leather products, live animals, are also listed under derogations negotiated. An example with regards to domestic policy considerations includes the condition relating to the hiring of local personnel in rural areas to promote employment and improve conditions in the EU-Peru/Colombia agreement. The EU-CARIFORUM agreement allows exceptions for a range of government activities not subject to competition. The inclusion of such derogations addresses the issue that developing countries set aside

policies for favoured sectors or groups, which is always a contentious matter at the multilateral level.

An important innovation of these FTAs is the introduction of comprehensive and non-discriminatory review procedures to enable suppliers to challenge the tender award. The degree of depth varies between agreements though all provide an impartial administrative authority for the review of challenge. The EU-Central America and EU-Peru/Colombia agreements are particularly detailed and provide information on bid challenge modalities, hinting at the willingness of partners to have bid challenge mechanisms to GPA-standard. The FTAs also contain dispute settlement provisions as separate chapters – there is an exhaustive treatment of arbitration, and the EU-Central America agreement includes provisions on temporary remedies. The most novel are the guidelines on temporary remedies that outline situations where the country complained against failures to notify measures taken to comply earlier than the expiry of the reasonable time period. The EU-Peru/Colombia agreement requires countries to establish timely, effective and transparent review procedure as well as provide for interim measures to ensure suppliers are able to participate in the procurement. This agreement also requires the partners to provide suppliers with decisions, and, upon request, provide unsuccessful suppliers with reasons for non-selection, in line with the GPA.

The FTA provisions on transparency follow the GPA with detailed guidance, and focus on publishing information of notice for procurements, providing information to suppliers on award decisions, and on request providing unsuccessful suppliers with reasons for non-selection. The only exception is when this may prejudice fair competition between suppliers. All agreements, except the EU-CARIFORUM EPA, specifically mention e-procurement and electronic auctions. The EU-Central America agreement highlights electronic auction procurements and requires the entities to provide participants with automatic evaluation methods.

Like the GPA, all FTAs provide for cooperation through formalized institutional arrangements. The Latin American agreements require countries to establish a committee to meet once a year or upon written request. The EU-Korea FTA establishes a working group to consider issues on government procurement and on any other issues related to the implementation of this Chapter. In the EU-CARIFORUM, decisions on the application or extension of the procurement rules are to be made by the Joint CARIFORUM – EC Council. With regards to technical cooperation and assistance, the CARIFORUM EPA reflects the aspiration of countries to liberalize regional procurement with support from the EU, through exchanges of experience, the establishment of appropriate systems to ensure compliance and the creation of an online facility at a regional level.

In summary, the agreements concluded by the EU with non-GPA signatories are closely aligned with the GPA and include procedural and substantive provisions on e-procurement and transparency. In cases where the legal framework varies from liberalization commitments through the FTA, partner countries are required to make changes to their existing procurement framework. Commitments allow higher initial procurement threshold values, restrictive entities coverage, and provide for a transition period to implement obligations in line with the harmonized approach based on GPA-style obligations. In this manner, agreements provide momentum to streamline legal procurement frameworks in partner countries and promote competition and transparency. Thus, FTAs offer an opportunity for multilateral convergence, given that a common liberalization matrix will support reducing divergences with partners and within the multilateral system. Explicit GPA-style binding obligations can be a learning process for non-GPA countries, which will create a feeling of 'ownership of rules' before these make any firm commitment to the GPA. Colombia's application for observer status to the WTO GPA can, thus, be construed as an implicit expression to test liberalization on a smaller scale before committing to multilateral liberalization. The argument for phased approach to procurement liberalization under FTAs is also relevant given the added benefits of reduced transaction costs for developing countries negotiating future GPA accession. In the short term, bilateral agreements reflect the willingness of partner countries to liberalize procurements. In the longer term, the overall approach to liberalization hints at an implicit and 'soft commitment' undertaking approach which aims to explore future GPA accession by bridging traditionally distant agendas between countries. To date, however these partners have chosen to remain outside the GPA, even though they will apply the bulk of the GPA with relation to the EU, and the USA, which also included similar provisions in its FTAs with the region. This hints at a reluctance to liberalize GP which is only overcome when it is used as a bargaining chip to gain concessions on other matters in negotiations – something not possible within the current GPA.

## 6 EU'S GLOBAL GOVERNANCE MODEL FOR PROCUREMENT: CONCLUDING THOUGHTS

The rationale extended for the pursuit of bilateral agreements by the EU is that structured partnerships facilitate mutual understanding and rapprochement, boost multilateral efforts and allow partners to address shared concerns on global

challenges.<sup>66</sup> Within this context, EU FTAs can be seen as a stepping stone for multilateral procurement liberalization in that the agreements have GPA-style provisions with all partners. It is likely that a similar situation could emerge, as what developed within the EU, such that adaptation to the FTA GP regime alters partners' opposition to liberalizing GP multilaterally as once the rules have been adapted at a bilateral level, costs of joining the GPA are reduced.

Proximity between the GPA and EU's recently concluded FTAs suggests the EU could use its 'new generation' FTAs for possible incremental extension of the multilateral system in the longer term. In doing so, the EU is likely to play a key role in establishing a framework for global governance, which is in line with Europe's post 2006 FTAs strategy of WTO-plus agreements. An underlying emphasis of FTAs has been to enhance transparency in partner countries, which also demonstrates the effectiveness of FTAs as a transmitter of multilateral rules beyond the immediate EU neighbourhood. Transmission, however, has been easier with some partners like South Korea, which share the commitment to liberalize in addition to the WTO GPA. Further, the 'external governance' suggestion that the alignment with EU policy preferences, or, acceptance of the legitimacy of rules to be exported, are significant in garnering acquiescence for these, are supported by these findings. Nonetheless, where partners did not share those views (e.g., CARIFORUM), 'external governance' and acquiescence to EU demands resulted from asymmetric power and domestic factors. In the case of CARIFORUM states that were concerned with the loss of trade preferences in the EU, resulting from the expiration of the WTO waiver for the EU's development policy, have sought an FTA with the EU. Moreover, their calculation was that a willingness to sign a comprehensive agreement and do so before other EPA groupings was a trade-off for other commitments from the EU, especially preferential access to European Development Fund and Aid for Trade budget.<sup>67</sup> Thus, issue-linkage and conditionality are facilitating factors in 'external governance' and norm transmission in the absence of shared partners' commitments to liberalization. Additionally, the codification of commitments through FTAs provides a critical leverage for common actions that are compatible and conducive to stronger multilateral cooperation.<sup>68</sup> Incentives and trade-offs are, therefore, important factors in individual states' decisions to participate in multilateral cooperation, and the GPA allows these through special and differential treatment provisions to developing countries.

<sup>66</sup> Grevi, G. & G. Khandekar, *Why EU Strategic Partnerships matter?* working paper No. 1, European Strategic Partnerships Observatory, FRIDE, Egmont (2012).

<sup>67</sup> Heron, T., *Asymmetric Bargaining and Development Trade-Offs in the CARIFORUM-EU Economic Partnership Agreement* 18 Rev. Intl. Political Econ. 328–357 (2011).

<sup>68</sup> *Supra*.

The recent successful completion of GPA-compliant FTAs between EU and partner countries suggests that the EU could employ bilateral relations as an engine to harmonize FTAs with the plurilateral GPA, which has few developing countries members, for deeper cooperation and eventually take a lead in defining a roadmap for global governance. While EU's trade policy recognizes that Doha talks have been gridlocked, it also demonstrates the commitment to 'channel efforts into mapping a clearer long-term design for global governance'.<sup>69</sup> From the EU's perspective, FTAs gradually extend its preferred long-term governance design and guarantee market access for its firms. Assuming that the EU can include similar provisions in ongoing negotiations with India, Malaysia, Vietnam, Japan and Thailand, this will lay the ground for future GPA membership by these countries and will also provide EU firms access to larger markets under a consistent set of conditions. Furthermore, the flexibility that the EU was willing to concede to the smaller economies of Latin America is likely to provide a model for future negotiations with other developing countries in Asia. In the EU-CARIFORUM EPA, DG Trade stressed the importance it attaches to GP market opening as a principle. Given the asymmetry in the relationship, acquiescence was easier. Moreover, the EU accepted exceptions given the limited size of the CARIFORUM GP market, where most procurements are likely to be below threshold values. In negotiations with larger emerging economies, there is less incentive to merely apply the principle. Delays and deadlocks in the negotiations with India, in part due to lack of agreement on extent of GP liberalization,<sup>70</sup> confirms that the EU wants to guarantee its firms' access to larger markets. However, strong opposition from Asian partners to GP liberalization means that the EU may have to resort to flexibility and dilute its aspirations to conclude an agreement.

To conclude, bilateral cooperation can be a viable formula to strengthen EU's effective multilateralism approach. As Grevi contends 'bilateral and multilateral frameworks should be seen as connected and not as alternative levels of engagement in building a new international order'.<sup>71</sup> The EU FTAs can, thus, be employed as an alternate vector for engagement at the inter-regional level to support the EU's role as a global actor shaping a functioning multilateral order. Progress, however, depends on the political will of partner countries to open dialogue on controversial issues including the principles of sovereignty and non-interference.

<sup>69</sup> Solbes, P. & R. Youngs, *Europe Is Failing to Shape the Global Governance Debate* Europe's World 8–12 (2011).

<sup>70</sup> Khorana, S. & Garcia, M., *EU-India Free Trade Agreement: One Step Forward, One Back?* 51 J. Com. Mkt. Stud. 274–300 (2013).

<sup>71</sup> Grevi, G., *Why European Strategic Partnerships Matter*, Working Paper: 1, FRIDE (2012).



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