

Agenda disputes and strategic venue preferences: the Doha Crisis and Europe's flight to regionalism

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**Agenda Disputes and Strategic Venue Preferences:
The Doha Crisis and Europe's Flight to Regionalism**

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Abstract

Agenda-setting disputes have become increasingly central to the conduct of multilateral trade negotiations. Introducing some simple concepts from Negotiations Theory, we focus on the dynamic interplay between the Doha Round's agenda setting and bargaining stages, underlining their implications for the European Union's evolving win-set in the negotiations. We argue that, by successful enshrining a narrow agenda, key developing countries reduced the set of possible final settlements that were both multilaterally viable and attractive from the point of view of key European interests. In an attempt to avoid imposing concentrated costs on those interests, the European Commission has responded by pursuing its best alternative to a multilateral agreement, shifting negotiating resources away from the multilateral table and towards regional FTA negotiations.

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Introduction

Developing country advocates have long noted the irony of including the word “development” in the official title of a round of multilateral trade negotiations they perceive as being about anything but development. In this paper, however, we will suggest that the round’s title - the “Doha Development Agenda” - is as ironic for its third word as for its second, because agenda-setting controversies have been at least as influential in leading to the round’s collapse as disagreements over its development content.

Many of the bitterest disagreements in the seven years of negotiations leading up to Doha’s (apparently final) collapse centered precisely on what should be included in the agenda. For three years after the launch of the round, European negotiators insisted that a Development Agenda should include talks on issues like competition policy, investment and transparency in public procurement (the so called “Singapore Issues”): matters that most developing countries did not wish to open to negotiations. Once the most controversial of those issues were excluded from the agenda, bargaining towards a final agreement became impossible, and the round found itself mired in an impasse that could never be resolved. In this paper, we explore the dynamic interplay between the agenda disputes leading up to the 2004 agenda settlement (the July Package) and the deadlocked bargaining interaction that followed it, exploring how the European Commission’s failure to secure its preferred agenda for the round pre-configure a European negotiating stance that led to open-ended deadlock and to a shift in its negotiating priorities away from multilateralism and towards bilateral, regional and inter-regional agreements.

In a recent survey of the literature on EU trade policy making, Dur and Zimmermann (2007: 783) note that “virtually no research has been carried out that tries to apply the vast literature on negotiation theory to EU negotiations.” In what follows, we begin to fill this gap by introducing some basic concepts from negotiations theory into our explanation of the EU’s behavior in the Doha Round of Multilateral Trade Negotiations.

First, we introduce the basic distinction between an “agenda setting” and a “bargaining” stage of negotiations, noting the importance of the former in settling what Zartman (1977, 1978) calls the “fair terms of exchange” that will underlie an eventual agreement. We argue that agenda setting pre-configure negotiators’ “win sets”, understood as the range of possible agreements that they see

as both *viable* and *desirable*. We then explore the ways in which the eventual agenda settlement to the Doha Round has closed the European Commission's Doha win-set and led it to shift negotiating resources to other venues, rather than to accept an agreement that would impose high costs on influential European pressure groups.

These simple tools from negotiations theory allow us to extend De Bièvre and Dür's 2005 model of trade policy (De Bièvre and Dür 2005, Dür 2007, Dür 2008) making to the relatively neglected dimension of agenda setting and venue selection. We follow De Bièvre and Dür's behavioral model of policy makers as *office seekers*, devoid of ideological concerns. We cast their agenda preferences as strategic responses to complex patterns of sectoral interest group preferences expressed through lobbying. The Commission's role, in this interpretation, is not to reach a common understanding with its negotiating partners at the multilateral table, or even to further some abstract, exogenously given conception of the "European interest"; it is to negotiate strategically to optimize its responsiveness to its own sectoral lobbies.

Office seeking commission officials will be concerned chiefly with preventing sectoral interests from mobilizing against them, and secondarily with conveying concentrated benefits on them. They will ignore the interests of consumers (because consumers are unable to overcome the collective action problem and therefore do not mobilize politically in ways that challenge their ability to retain office), and work instead to (1) minimize the adjustment costs accruing to those European sectoral groups that would bear a disproportionate portion of the losses that arise from a multilateral agreement, and to (2) maximize the gains to those sectors that stand to capture concentrated gains from an agreement.

We show that negotiators maintain these twin goals even when they lead them to adopt inconsistent negotiating stances, and even when they threaten to scuttle chances for agreement at the multilateral level. Contrary to standard accounts of the political economy of trade, negotiators need not respond to the underlying incompatibility between import competitors' interests and exporters' interests by siding with the former and against the latter at the multilateral table. Instead, they sometimes prefer to shift negotiating resources from the multilateral level to venues that appear less hostile to their inconsistent preferences.

In short, this paper seeks to extend De Bièvre and Dür's model of European Trade Policy-Making by introducing the agenda setting and venue shifting dimension to their framework, noting the way

the commission has acted strategically to set an agenda for the Doha Round that would expand its win set, and has responded to an eventual, unfavorable agenda settlement by shifting negotiating resources to bilateral, regional and inter-regional negotiations. The first part sets out our extension of De Bièvre and Dür's model, the second part applies it empirically to the case of European decision making in the Doha Round Negotiations.

Part I. Theory

1.1 The rising importance of agenda setting

By now, it is practically a cliché to note that agenda setting controversies have become increasingly prominent in multilateral trade negotiations. And yet, as we will see, the most influential models of the political economy of trade policy making in negotiated settings obviate the agenda setting problem altogether, assuming that today's trade negotiators bargain over much the same sorts of issues that dominated their agendas half a century ago.

In his classic formulation, Zartman (1977, 1978) describes negotiations as proceeding sequentially through three stages: a pre-negotiation stage, where the parties feel each other out to explore whether they may have something to gain from negotiation, a formula-setting stage, where the basic shape of the forecoming bargain is determined, and a bargaining stage, or end-game. In multilateral negotiations, agenda-setting can be assimilated to this formula-setting stage, where negotiators agree what Zartman calls the fair "terms of exchange": a common understanding of what is legitimately to be traded off against what.

In simple negotiating situations marked by a strong, tacit understanding about what is to be traded off against what, agenda setting need not be controversial. The formula that implicitly underpins the agreement to be reached between a used car salesman and his customer is not a subject of controversy: both parties understand it to be "car in return for money", and are therefore able to move directly into the bargaining stage.

In more complex negotiations, tacit understanding about the basic shape of the underlying bargain to be struck cannot be taken for granted. In the absence of a pre-existing agreement about what is to be traded off against what, negotiators find it impossible to move into a bargaining interaction. Instead, they must pursue a formula-setting exercise where they come to a common understanding of the fair terms of exchange for the given negotiation situation.

In its early decades, agenda setting disputes were muted in the multilateral trade regime. Negotiators advanced on the basis of widely shared, taken-for-granted understanding of the legitimate formula for negotiations. The first six rounds of multilateral negotiations under the GATT (1947-1967), centered on the kinds of policy instruments economists have traditionally understood as constituting trade policy: import tariffs and quotas. The title of the original 1947 agreement itself - the General Agreement on *Tariffs and Trade* - attests to the fact that, in the immediate post-war period, the “grand bargain” underlying multilateral trade negotiations struck practitioners as self-evident: market access for market access. Since “everyone already knew” what was to be traded off against what, agenda-setting controversies were limited to technical discussions over the bargaining methodology for reciprocal, MFN tariff abatement – with proponents of a formula-based approach squaring off against proponents of tariff line by tariff line negotiations during the formula-setting stage to the Kennedy Round.

By the 1980s, however, successive rounds of tariff abatement under the GATT led to demands to broaden the multilateral agenda beyond its traditional focus. The GATT-regime came to suffer from a case of “diminishing returns to tariff abatement”: as border barriers fell, they played an ever lesser role in impeding cross-border manufacturing trade. After seven rounds of liberalization, average tariff rates for manufactured goods had already been brought down considerably, from 40% at the launch of the multilateral system to a mere 4.7% after implementation of the Tokyo Round agreements (WTO 2005). Gradually, tariffs lost their traditional role as the primary negotiable impediment to cross-border commerce. In their place, a host of policies that had not traditionally been considered “trade policies” at all (e.g. local content requirements, subsidies, etc.) loomed ever larger as effective barriers to trade, whether or not they had been consciously conceived as “trade policies”.

The trend magnified the importance of agenda-setting in the conduct of multilateral trade rounds. Once “non-tariff barriers” (NTBs) were mainstreamed into the conduct of multilateral negotiations, essentially any area of economic policy making could be, in a sufficiently creative trade diplomat’s hands, construed as somehow “trade related”. Because there is no self-evident answer to the underlying question of what does and what does not belong under the aegis of the WTO (Howse 2001), once the multilateral trade negotiating agenda is expanded to include NTBs defining the precise borders of the system, the specific policy areas to be disciplined, becomes an issue with nearly inexhaustible potential to generate dissent. Policy makers could no longer move directly into a bargaining interaction: first, they needed to agree about what they were to bargain over.

1.2 Two Level Games and Negotiation Win-Sets

Traditional analyses of negotiating dynamics in the multilateral trade system have tended to miss the dynamic interplay between the formula-setting stage and the bargaining stage, losing sight of the fact that, office seeking negotiators face incentives to work strategically towards an agenda settlement that maximizes their chances of obtaining a favorable final settlement. To borrow Putnam's 1988 analogy of two-level games, they seek an agenda that optimizes their win-sets: the set of agreements they perceive as both *viable* at the multilateral level and *desirable* at the domestic level. Viability, in this context, is determined by a proposal's attractiveness to one's negotiating partners (Putnam's international level game) while desirability is determined by the predicted distribution of costs and benefits of an agreement to mobilized domestic constituents (Putnam's domestic level game). The range of agreements that are both viable and desirable constitute the negotiator's win set:

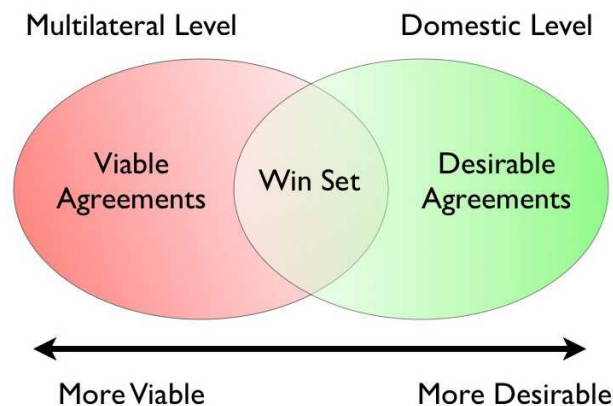


Figure 1: Conceptualizing the Win Set.

Clearly, for a potential settlement to be included in the negotiator's set of desirable agreements, it must be preferable to the situation that would result in the absence of any agreement. Negotiations analysts have long stressed the importance of negotiator's "fall-back positions": their "best alternatives to a negotiating agreement" (BATNA). From the point of view of any given negotiating *venue*, however, the BATNA need not be "no agreement at all," and may instead be "agreement, but not in this venue." For a participant engaged in a multilateral trade negotiation, we argue, the best alternative to a *multilaterally* negotiated agreement may well be a set of bilaterally, regionally and inter-regionally negotiated agreements.

As we will see, this is precisely the situation the European commission has found itself in since failing to secure its preferred agenda for the Doha Round negotiations. The agenda settlement eventu-

ally reached in August 2004 restricted both its set of viable and its set of desirable agreement, increasing the relative attractiveness of bilateral, regional and interregional agreements and leaving the commission without a viable win set at the multilateral level. This failure in agenda setting forced the commission to toughen its negotiating stance on the remaining agenda items and contributed to the intractable three way deadlock in negotiations summarized as the Doha triangle.

1.3. The orthodox account of the political economy of trade negotiations

Orthodox economists' treatments of the political economy of trade policy negotiations remain happily oblivious to the increasing prominence of agenda setting controversies at the WTO. The most influential academic model to explain reciprocity-based trade negotiations developed by Bagwell and Staiger (2002), "assumes away" agenda controversies altogether, treating trade negotiations as synonymous with the kind of reciprocal market access *quid pro quo* that dominated the early decades (and *only* the early decades) of the trade regime's history.

Indeed, the very existence of international trade negotiations presents a puzzle to neoclassical economics. A discipline that takes Ricardo's theory of comparative advantage as one of its foundation stones has first to explain why policy makers should have to be offered concessions in order to undertake liberalizing commitments that would be in their national interest even if undertaken unilaterally. The practice of describing commitments to lower one's own trade barriers as "concessions", though widespread in the context of trade negotiations, strikes academic economists as fundamentally absurd; the equivalent of demanding a bribe to take one's hand off of a hot furnace. Expressing the consensus view within his discipline, Paul Krugman notes that,

There is no generally accepted label for the theoretical underpinnings of the GATT. I like to refer to it as 'GATT-think' — a simple set of principles that is entirely consistent, explains most of what goes on in negotiations, but makes no sense in terms of economics...The reason why GATT-think works is, instead, that it captures some basic realities of the political process." (Krugman, 1997)

In their highly influential paper, Bagwell and Staiger (1999) sought to incorporate the "basic political realities" GATT-think captures into standard trade theory. Their account leans heavily on the one defensible use of tariffs in the neoclassical theoretical canon: the optimal tariff. Briefly stated, neoclassical theory demonstrates that border barriers can increase national welfare by manipulating the terms of trade to the home country's benefit (and to the foreign nation's detriment.)

Bagwell and Staiger's reasoning is straightforward: when countries set out their tariffs independently, each will seek to manipulate the terms of trade by imposing an optimal tariff. But if all countries seek to manipulate their terms of trade simultaneously, the exercise becomes self-defeating:

the terms of trade remain constant, while the volume of trade diminishes, and with it economic welfare. Citing the logic of collective action, Bagwell and Staiger interpret this dynamic as a straightforward instance of coordination failure. Enforceable multilateral agreements based on the principles of reciprocity and non-discrimination are, in this view, nothing more than a mechanism for resolving such a coordination failure.

The purpose of a trade agreement is then to eliminate the terms-of-trade-driven restrictions in trade volume that arise when policies are set unilaterally, and thereby offer governments a means of escape from a Prisoners' Dilemma. (Bagwell and Staiger, p. 2)

From this point of view, the “grand bargain” underlying multilateral negotiations can *only* be a reciprocal tradeoff of market access concessions. In this account, the reciprocity rule is the key to explaining why trade negotiations are welfare-improving.

While accepting this broad description, a number of authors (Gilligan 1997, Davis 2004, Sherman 2005, Baldwin 2006) have sought to flesh out the specific political economy mechanisms underlying Bagwell and Staiger's account, by identifying how sectoral interest's lobbying activities create political pressure to resolve the terms of trade prisoner's dilemma through reciprocal liberalization. Their accounts explicitly draw the link between the positions adopted by trade policy-makers and the pressures they face within what Sherman (2002) describes as the “political market for protection.”

Their starting point is a well-understood observation, stemming from standard trade theory. Protective tariffs create both winners and losers. While their overall welfare costs typically outweigh their benefits, those costs are diffused among a large number of losers (consumers), while benefits are concentrated on a small number of winners (import competing producers). The monetary sums any individual consumer stands to lose are therefore typically small, while the sums a given import competitor stands to win can be very substantial. Though, notionally, consumers would collectively benefit from removing tariffs, in practice they fail organize to press their case because they face an insurmountable collective action problem (Olson 1965): very few of them are even *aware* of their losses. Import competitors, on the other hand, find it relatively easy to mobilize politically to demand protection: they are few, and the prospective gains for each of them are large. Rational trade policy makers will therefore feel safe in ignoring consumers, but will make sure to satisfy the demands of import competitors. Thus, *when trade policies are set unilaterally*, countries tend towards protectionism.

Gilligan (1997) stresses that this dynamic takes hold because, when trade policies are set unilaterally, exporters are passive: they have no particular reason to organize politically in favor of one trade policy stance or another. By contrast, when trade policy is coordinated with trading partners, the political economy dynamics of trade policy making change. If negotiations are conducted under the rule of reciprocity, exporters find that their access to foreign markets now depends on the level of protection in the home market. In this situation, the home country's export sector becomes, for the first time, a potential beneficiary of concentrated gains. It is only then that exporters "appear on the radar screen" of trade policy makers, since the potential for concentrated gains enables them to overcome their collective action problem.

In other words, when trade policies are negotiated reciprocally, exporters' incentives become the mirror image of import-competitors'. The benefits of improved access to foreign markets are concentrated on them, the sums to be captured are substantial, and the constituency that stands to benefit is much smaller and more cohesive than the constituency that will bear the costs (in terms of increased domestic prices for the export sector's goods) of improved access to foreign markets. In this way, multilateral negotiations are said to create a sectoral interest in favor of home market liberalization where none existed before.

As Baldwin puts it,

Reciprocity is the key. It converts each nation's exporters from bystanders in the tariff debate to opponents of protection within their own nation. Exporters can win the prize of better access to foreign markets only if tariffs in their home nation are lowered, so lobbying against domestic tariffs becomes a way of lowering foreign tariffs. (Baldwin 2006, p. 8)

In a similar vein, Sherman (2005) argues that "GATT, by institutionalizing trade negotiations, has transformed trade politics from a political market for protection into a political contest between exporters and import-competitors," and goes on to argue that the structure of international trade negotiations shows pro liberalization bias.

Sherman's image of trade policy making as "*contest*" is telling. The implied metaphor here is a tug-of-war, with import competitors pulling the nation's tariff profile in one direction while exporters tug the rope in the liberalizing direction. The policy stance that results from this sectoral tug-of-war can be inferred simply by "adding the lobbying vectors": when import competitors lobby "harder" than exporters, trade policy become relatively more protectionist, when exporters out lobby import competitors, trade policy turns more liberal. The key fact about reciprocally negotiated trade agreements, in this telling, is that it strengthens the pro-liberalization vector, tending to result in more liberal tariff preferences in all negotiating partners.

Implicit in this metaphor is that the “flag” tied to the middle of the rope moves unambiguously in one direction or the other: countries are portrayed as becoming *either* more liberal *or* more protectionist. In other words, what we have is a model that *assumes* that the heterogeneous preferences of contesting lobbies will be aggregated and harmonized by trade policy makers, presumably leading to coherent (and increasingly liberal) negotiating postures able to underpin multilateral consensus.

At the international level, the formulation of multilateral trade agreements comes to be seen as the art of crafting deals that allow offensive interests to out-lobby defensive interests in each of the Member countries and thereby move trade policy stances in an homogenously liberalizing direction. The bar this sets for the successful conclusion of a trade agreement is not as high as it might appear at first: as Bagwell and Staiger (1999, 2002) show, cooperative solutions to the prisoners’ dilemma problem of cross-border tariff setting are Pareto optimal. It is possible for offensive interests in all Members to secure gains that outweigh those of their defensive counterparts, as the successful conclusion of eight rounds of GATT negotiation demonstrates.

1.4 Shortcomings of the Orthodox Account

Influential though it has been, the view of trade negotiations as contests between exporters and import competitors fails to account for some of the most salient features of the multilateral trade regime today: the salience of agenda controversies, and the inconsistency of negotiator’s positions. In fact, on these two issues, the approach pioneered by Bagwell and Staiger merely begs the question, *assuming* a market access centered agenda that hasn’t been seen in decades as well as a level of coherence in negotiating stances that is conspicuously absent from real world negotiations. It is those phenomena that call out for an explanation.

A second shortcoming is contained in the “tug of war” metaphore that dominates accounts of the “contest between lobbies”: the metaphor precludes the possibility that the “flag” can, under some circumstances, move in both directions at once. As Dür and de Bièvre (2005) have shown, when faced with heterogeneous lobbying pressures, trade policy makers in the European Union have typically responded by delegating authority to specialized agents charged with catering *both* to exporters *and* to import competitors at the same time. Modeling trade policy makers as strategizing office seekers, they argue that specialized delegation is the strategy most closely aligned with their underlying interests:

Political actors, whether principals or agents, do not have a specific trade policy preference independent of constituency demands. They rather act as office seekers, avoiding the mobilization of political enemies. Voters experience only diffuse benefits or suffer diffuse costs from trade policies, and they are not capable of organizing effectively on the trade issue (Olson, 1965). However, when well-organized groups feel threatened by concentrated costs from trade policies, they can polarize voters by supporting an opposition candidate and, thus, mobilize voters indirectly. Because legislators face uncertainty about election results, they are eager to make sure that no organized group supports the opposition. Those holding office, consequently, engineer trade policies that produce only diffuse costs. (De Bièvre and Dür 2005: 1274.)

Note that this behavioral model of trade policy makers stresses their defensive posture: while they will seek both to benefit offensive interests and to avoid creating costs for defensive interests, their priority will be to avoid mobilizing constituencies against them by imposing concentrated costs on any sector.

Such a behavioral model shows why the image of a tug-of-war pitting exporters against import competitors is misleading. It is arbitrary to assume that trade policy makers *must* respond to heterogeneous lobbying pressures by “adding the vectors” to yield a coherent policy stance, one that “splits the difference” between the competing lobbies’ preferred outcomes. In practice, De Bièvre and Dür show that trade policy makers have more often responded by setting out inconsistent negotiating positions, positions that are *both* protectionist - in sectors of concern to defensive interests - *and* liberal - in sectors of concern to offensive interests.

Rather than doing so automatically, as Sherman, Gilligan, Davis and Baldwin expect, the European commission has shown great resistance to when asked to aggregate and harmonize heterogeneous sectoral interests in the context of the Doha Round. As we will see, when faced with the prospect of a multilateral agreement that imposes concentrated losses on key mobilized constituencies, the Commission has appealed to its “Best Alternative to a Multilaterally Negotiated Agreement”, preferring to shift venues by placing renewed emphasis on bilateral and interregional negotiations.

Moreover, the orthodox view fails to account for the growing acrimony in agenda setting negotiations. As we have seen, Bagwell and Staiger’s insights are formally applicable only to the extent that trade negotiators limit themselves to trading off market access concessions. Such a stance assumes away the evident growth in the multilateral system’s jurisdiction, its expanding reach into areas formerly reserved to domestic regulatory policy, as well as the agenda controversies that have marked the latest round of multilateral negotiations.

Part II. Empirics

In this second part, we seek to apply the theoretical insights just developed to the history of the multilateral trade regime with a view to explaining the strategic stance of European negotiators within the Doha Round negotiations.

2.1. The lopsided *acquis* of the GATT regime

Since at least the Tokyo Round, multilateral negotiators have approached agenda setting strategically, in the hope of pre-configuring an agreement likely to maximize the concentrated benefits for its offensive interests and to minimize concentrated losses for defensive ones. Negotiators understand that a favorable agenda can expand their win sets, by enlarging both the range of *desirable* negotiating outcomes and potentially obviating the politically difficult task of harmonizing heterogeneous preferences (that is, of having to take sides with their offensive interests and impose concentrated costs on their defensive interests) at the end of the round.

For European Commission negotiators, such a strategic approach to agenda setting has been especially necessary in the Doha Round due to the particular characteristics the trade regime has developed after successive rounds of liberalization. Had previous rounds liberalized trade homogeneously across different sectors, a traditional market access for market access *quid pro quo* may have been able to underpin a successful Doha settlement. But this was far from the situation negotiators encountered at the outset of the round.

Reciprocal market access negotiations have been victims of their own success. Nine successful rounds of multilateral negotiations concentrated on manufactured goods, together with considerable regional as well as unilateral liberalization, mean that border barriers to trade no longer loom particularly large in the calculations of industrial exporters. Non agricultural market access (NAMA) negotiations have run into a serious problem of “diminishing returns to liberalization”, leading offensive lobbies (and policy makers) turn their attention to other, less visible mechanisms that now play a relatively greater role in impeding trade.

This situation does not, however, extend to agriculture, which was “bracketed” in round after round of GATT negotiations and only formally became part of the multilateral regime with the 1994 Marrakech agreements. In that sense, the *acquis* of the GATT regime is unbalanced. Tariffs are substantially lower in manufacturing than in agricultural trade. Countries with an offensive interest in agri-

cultural goods do not face the same kind of diminishing returns to tariff liberalization as countries with an offensive interest in manufacturing.

This suggests that countries' agenda priorities at the WTO will vary systematically according to Members' distribution of offensive interests between agriculture and manufacturing. Members with an offensive interest in agriculture could be expected to prefer a narrow agenda based on reciprocal market access concessions, whereas Members with an offensive interest in manufacturing will seek to expand their win sets by advocating a broader agenda that stresses the types of regulatory issues that loom largest in their horizons.

At the same time, negotiators face a second legacy issue: *tariff overhang* in manufacturing markets. The term refers to the gap between the multilaterally negotiated upper limits on tariffs (bound tariff rates) and the rates importing countries apply in practice. This gap, which practitioners refer to informally as "water in the tariffs", has grown substantial in many developing countries. A decade and a half of unilateral liberalization, often under pressure from the Breton Woods institutions, resulted in substantial unilateral cuts in applied tariff rates, and to the growth of the gap between applied and bound rates. Tariff overhang erodes the value of all but the most drastic reciprocal market access concessions in the eyes of European manufacturing exporters, since only extremely aggressive concessions would reach beyond the water in many developing country tariffs and provide actual improvements in applied rates.

The lopsided *acquis* of the GATT regime, alongside tariff overhang, suggest that a multilateral negotiating agenda centered on a traditional, market access for market access *quid pro quo* would be of limited interest to European offensive interests. From their point of view, the priority will be to harmonize the kinds of behind-the-border regulations that have presented the greatest obstacles to them as they attempt to operate overseas. If we assume that Commission negotiators are concerned to maximize the concentrated gains accruing to those offensive interests, then we can see why the EU's long championed an expansive agenda for the Doha Round.

2.2. The Rise and Fall of Europe's Multilateral Win Set (1996-2006)

The fundamental question at the outset of the Doha Round concerned the "grand bargain" that would underpin a final agreement. During the Uruguay Round (1986-1994) issue linkages had been established at the multilateral level for the first time between the traditional tariff abatement agenda and new issues. Rather than trading off access to the home market in return for access to

trade partners' markets in the traditional way, the Uruguay Round's "grand bargain" called for developing countries to accept disciplines in areas not previously regulated by the trade regime in return for improved access to developed countries' agricultural and textile markets. Was Doha to be a traditional, market access for market access agreement, or was it to be patterned on a Uruguay Round style grand bargain?

Beginning with the 1996 Singapore Ministerial Conference, European Negotiators made clear their preference for a Uruguay Round style agreement. Realizing that major players in the developing world saw its main defensive interests (agricultural liberalization) as the *raison d'être* for the new round, the Commission sought to preemptively expand its win set by setting an agenda that would allow it to set off concessions in agriculture against gains in new regulatory areas.

Specifically, the Commission strove to include disciplines on the so-called "Singapore Issues" in the Doha agenda. These four new issues - standards for public procurement, competition policy, investment policy and trade facilitation - covered areas that had not previously been covered by the trade regime: at least, not on a multilateral basis. Alongside this emphasis on the Singapore Issues, the EU prioritized a new agreement for Trade in Services that, in itself, would amount to a behind-the-border agreement on investment rules and regulatory matters (e.g., banking regulations, standards for public procurement, etc.)

EU advocacy of the Singapore Issues fits in well within the behavior one might expect by extending Dür and de Bièvre's model of EU trade policy making into agenda setting controversies. Establishing the principle of "national treatment" in public procurement, for instance, would create concentrated benefits for EU offensive interests by allowing European companies to compete directly in a vast, worldwide market that had been regulated by plurilateral agreements only. Disciplining investment and competition rules multilaterally, implicitly along the model of the regulatory frameworks in force in Europe, would greatly simplify and regularize operations for European-based multinational enterprises, effectively multilateralizing the business practices they were already familiar with. The inclusion of the Singapore Issues into the Doha Agenda would generate concentrated benefits for exporters analogous to those created, in previous rounds, by reciprocal tariff abatement.

The "grand bargain" the European Union envisioned for the Doha Round could be schematized as:

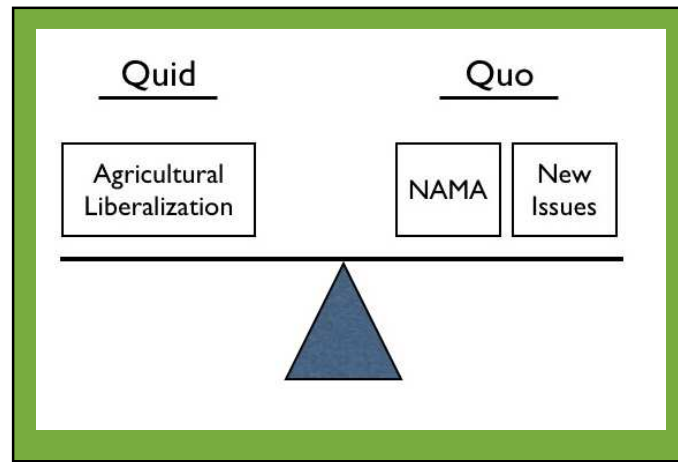


Figure 1: The EU's preferred grand bargain

The EU's push to include these new issues in the Doha Agenda met bitter opposition from many of the WTO's developing Members. Still smarting from the unanticipated costs of implementing new disciplines after the Uruguay Round, and disappointed by the meager new market access opportunities that agreement had opened up. Developing countries had assumed that, in agreeing to label Doha a "development round", the developed world's representatives had agreed to prioritize those issues of most interest to the developing world. The commission's dogged determination to include the Singapore issues in the Doha Agenda was perceived as inconsistent with its pledge to make Doha "about development", and was interpreted as fresh evidence of EU "hypocrisy."

After five years of difficult negotiations, including the two spectacularly failed Ministerials in Seattle and Cancún, the EU relented on August 1st, 2004, agreeing to drop three of the four new issues from the Doha Agenda, and leaving only the least controversial of them - trade facilitation - up for new negotiations. This agenda setting agreement, normally referred to as the July Package, was seen as an important victory for developing countries at the time. The EU had been forced to accept an agenda consistent with Doha's billing as a "development round": one whose focus remained on the issues of concern to developing country members.

However, from the point of view of the EU, this developing country victory reduced the negotiation's win set. It both limited the set of multilaterally viable potential agreements, (because it made it impossible to establish issue linkages between new issues and market access issues, as was done in the Uruguay Round) and, more relevantly, limited the set of domestically desirable potential agreements, as this more limited agenda both increased the prospect of concentrated losses to the

Europe's agricultural sector, and diminished the prospects for concentrated gains for Europe's offensive interests. Not surprisingly, after July 2004, the European negotiating stance hardened.

The grand bargain on offer was no longer "balanced" from the point of view of the EU's internal political economy. It's a situation we may schematize so:

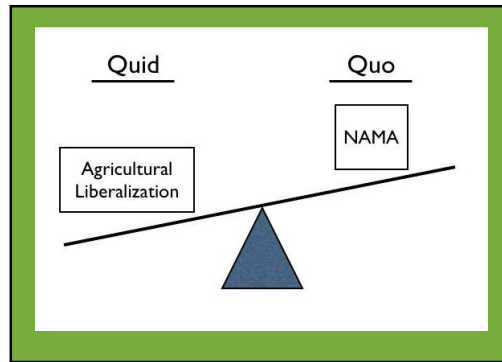


Figure 4: The Bargain without the new issues

The exclusion of the new issues from the agenda forced the European negotiators to seek concentrated gains for its export interests elsewhere in order to re-balance the round's "grand bargain". The commission's solution was to place increased emphasis on the non-agricultural market access negotiations, substantially hardening its demand from developing countries by insisting that NAMA concessions eliminate tariff overhang in key industry, resulting in cuts to *applied*, and not just *bound*, tariffs.

At the Hong Kong Ministerial conference in December 2005, EU negotiators demanded that non-agricultural tariffs be reduced via the Swiss formula with a coefficient of 15. The proposal would effectively cap bound tariffs for manufactured goods at 15% on an *ad valorem* basis, while slashing all existing tariff bindings in manufacturing. The commission argued that only such drastic measures would effectively eliminate the tariff overhang and provide actual improvements in market access to its exporters. In effect, once the new issues were excluded from the agenda, NAMA loomed much larger in the EU's vision of a Doha Round grand bargain:

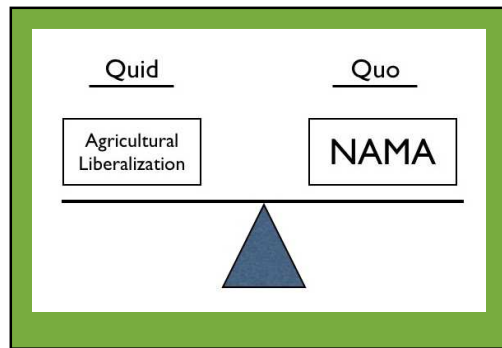


Figure 5: A balanced agreement with expanded NAMA ambitions

Demands for tariff cuts on the scale implied by a Swiss 15 settlement, however, were unacceptable to leading G20 countries. Coupled with the EU's defensive stance on cuts to agricultural tariffs, its demand for aggressive industrial liberalization deepened the perception of policy inconsistency that underpinned developing countries' view of a "hypocritical" EU stance. Ironically, having made the key concessions to resolve the perception of agenda inconsistency, the commission was forced into a position that strengthened perceptions of policy inconsistency.

2.3. Describing the Doha Triangle

How can we describe the complex set off issues that have prevented the Doha Round from reaching agreement since setting a formal agenda in 2004? At the center of the difficulties has been a three-way deadlock between the three main negotiating blocs on the three most contentious topics up for negotiation - a fundamental impasse the negotiators themselves have come to refer to as "the triangle" (WTO News, 2006.) The three players are the European Union, the United States, and the G20 group of relatively advanced developing countries - which includes Brazil, India, South Africa, Thailand, Argentina and China. The three topics are industrial liberalization and two aspects of agricultural liberalization: tariffs and subsidies.

Each of the three players has an offensive interests in two of the three agenda items and a defensive interest in the third. The rub, of course, is that each partner's defensive priority also constitutes the other two players' offensive priority. The triangle can be schematized thus:

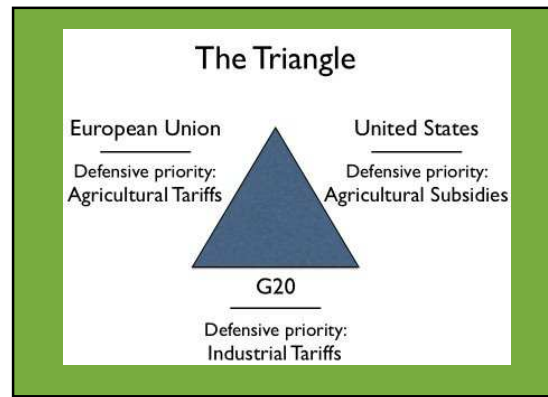


Figure 1: The Triangle

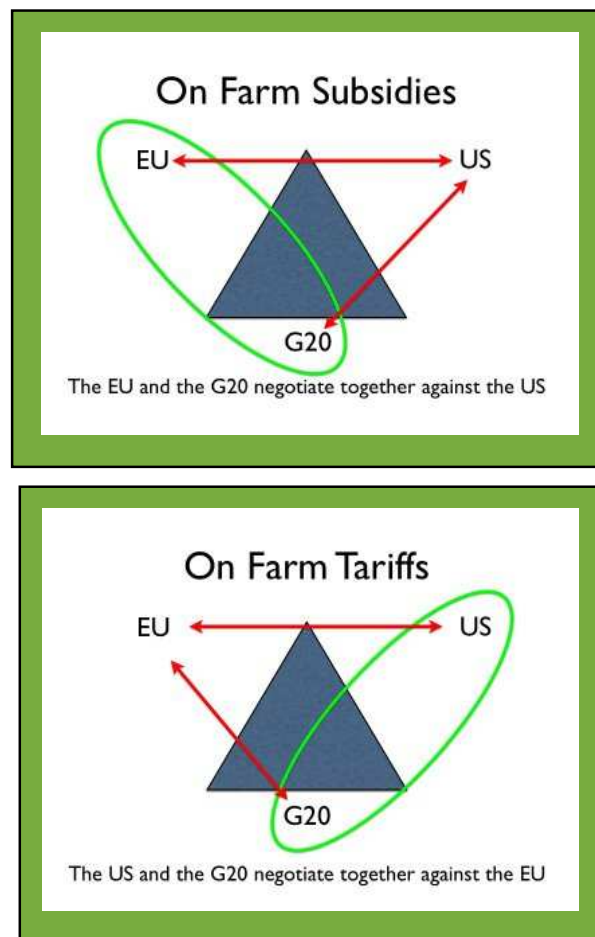
Each issue pits two of the blocks against the third, in a round-robin pattern. The EU's first negotiating priority has been to avoid major cuts in agricultural tariffs, the main mechanism for protecting its dominant defensive lobby. Though European farmers also benefit from substantial subsidies, the EU's Common Agricultural Policy has been extensively reformed in the last decade to ensure those subsidies are compatible with WTO rules (Swinbanka and Daugbjergb 2006). Having brought its domestic support regime into line with multilateral disciplines, the commission now wants to see the US pursue a similar path. At the same time, much European industry is export oriented and, due to outsourcing trends, relies on internationally disaggregated value chains, so the EU's foremost offensive priority has been to secure multilateral liberalization for manufactured goods.

The United States, by contrast, has negotiated defensively on agricultural subsidies, and offensively on agricultural and industrial tariffs. Politically influential US agricultural producers receive generous subsidies that have not been reformed to conform with WTO rules, so the US Trade Representative's major red-lines during the Doha Round have concerned avoiding deep cuts in those subsidies. Although a handful of US crops also benefits from considerable tariff protection, US farm tariffs are typically not as high as Europe's. US agriculture operates on a larger scale than its European counterpart, with higher capital:labor ratios and productivity. US farmers therefore do not perceive multilateral tariff abatement to be as risky to their underlying interests as European farmers do. In parallel, US industry is as export oriented and dependent on cross border value chains as its European counterpart, so tariff cuts in manufacturing markets was an offensive priority for the USTR.

Generalizing about a group as heterogeneous as the G20 group of relatively advanced developing countries is, admittedly, a fraught exercise. However, in general terms, a number of G20 countries provide few agricultural subsidies and, in some cases, world leading agricultural export sectors

based on strong comparative advantages in agriculture. Their negotiators have therefore pushed to secure drastically improved access to the agricultural sectors of the developed countries. Though the G20 is officially an agriculture-only club, and therefore doesn't have a single position on non agricultural issues such as industrial tariffs, some influential G20 industrial sectors - particularly in Brazil, Argentina, South Africa and India - are not internationally competitive and stand to bear concentrated losses should an aggressive NAMA deal be struck. Key G20 countries have therefore negotiated defensively on industrial tariffs. The major exception, of course, has been China.

The overall pattern of alliance making on these three issues, then, would look like this:



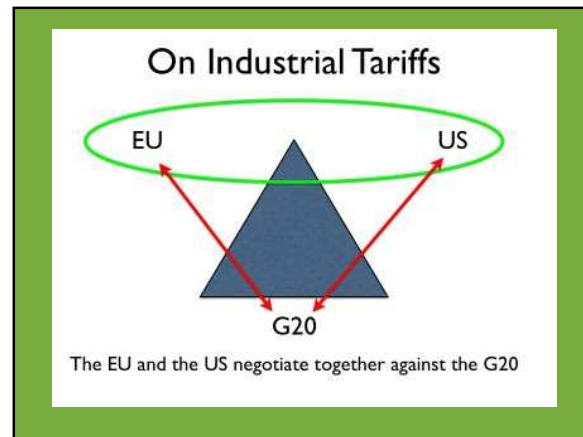


Figure 2: Triangle Dynamics

“The triangle” has become a familiar point of reference for Doha Round practitioners, a sort of negotiator’s shorthand to designate the central deadlock in the talks. From a theoretical point of view, what’s particularly interesting is that the deadlock it describes is based entirely on the internal inconsistency of the negotiating position of each of the main trade blocs, on their simultaneous liberalism and protectionism (in different sectors).

It bears noting that the persistence of the Doha Impasse is at odds with the predictions of the orthodox account of the political economy of trade policy making. While the conflict between exporters’ and import competitors’ interests is clear, the salient fact is that negotiators have not responded to heterogeneous pressures by harmonizing heterogeneous interests into a coherent policy stance, as theory predicts. Offensive interests have not “outlobbied” defensive interests in any of the three main triangle trade partners; they have not forced negotiators to side with them and against the interests of import competitors by adopting a consistently liberal position. Rather, and even in the face of lasting deadlock, negotiators have retained their inconsistent positions, and sought more promising venues in which to advance them.

The triangle therefore bolsters De Bièvre and Dür’s behavioral assumptions about trade policy makers’ decision making. On both sides of the Atlantic, as well as in the global south, negotiators seek to secure concentrated benefits for their offensive interests and to avoid imposing concentrated costs on their defensive lobbies.

2.4. The turn to the new regionalism

Up until the conclusion of the Uruguay Round, developed countries found the grand bargain that implicitly underpinned multilateral liberalization attractive enough to reach agreement. But in the current round, the implicit quid-pro-quo envisaged by the main powers caused an unprecedented level of controversy and was eventually rejected in the 2004 July Package. We have argued that agenda choices pre-configure the range of potential agreements in a round. Our contention is that the Doha Round has deadlocked because the agenda choices made in the summer of 2004 leave the European Union without a win set.

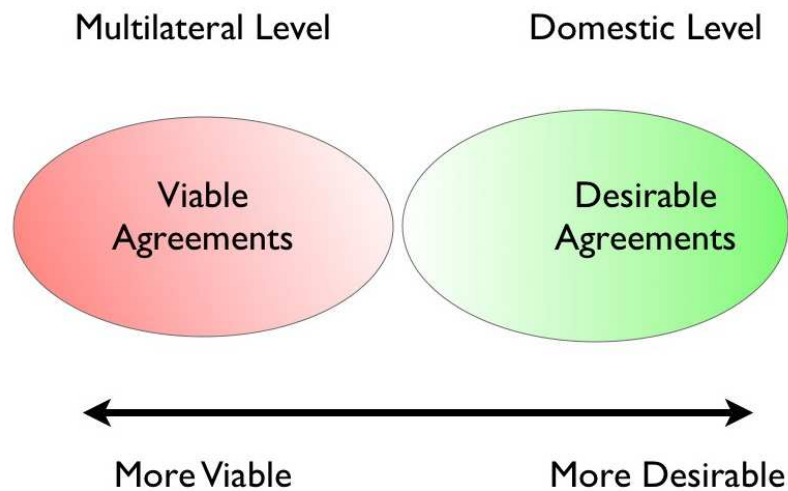


Figure X: The disappearance of the commission's winset

By dashing the prospect of new multilateral disciplines on competition, investment and government procurement, the eventual agenda compromise shrunk the set of desirable potential agreements from the European Commission's point of view, by eliminating the field of negotiations most likely to produce concentrated gains for Europe's offensive interests. It also limited the possibility of establishing issue linkages between agricultural liberalization and new issues, shrinking the set of viable agreements by ruling out the kinds of issue linkages that had allowed Uruguay Round negotiators to trade concessions on Intellectual Property Rights, for instance, for concessions on tariff cuts for textiles. The result was the closing of the European Union's win set in the Doha Round.

Of course, its failure in agenda setting did not diminish the commission's underlying interest in exporting its regulatory standards on competition, investment and government procurement. When an agenda settlement forecloses the possibility of agreement in one negotiating forum, an office seeking policy maker will search for a different venue to achieve the same goals. And this, indeed, is

what the commission has done. In October 2006, the commission ended its self-imposed, seven year moratorium on launching new regional and bilateral talks, heralding a shift in its preferred negotiating venue. In an influential strategy paper, DG Trade pledged to deepen Europe's system of "spaghetti bowl agreements", stressing the need for a "new generation of Free Trade Agreements" and pledging to prioritize negotiations with partners with large potential markets for EU exporters such as ASEAN, the Gulf Co-operation Council and South Korea. The new strategy explicitly notes that, "future FTAs should also include new provisions for investment, IPR, public procurement and competition." (European Commission, 2006.) Elsig (2006:942) describes this shift as an autonomous strategic decision on the part of the commission in response to mounting frustration over the lack of progress around the multilateral table.

The conclusion that this "turn towards the new regionalism" constitutes the commission's perceived "best alternative to a multilaterally negotiated agreement" stems from an examination of its position in the early, agenda-setting part of the Doha Round. As Young (2007) frames it, during agenda setting talks the commission systematically favours agreements that do not require it to undergo internal regulatory change, in other words, deals that tend to "scale up" the EU *acquis*. Such agreements:

- Require little or no further agricultural liberalization or reform to the CAP
- Markedly improve European firms' access to foreign industrial and service markets
- "Export" the EU's regulatory framework, by strengthening norms on intellectual property, tightening norms on investment, government procurement, competition, etc. As we have seen, the foreclosed the possibility of adopting such a blueprint at the multilateral level.

If the choice facing the commission had been "multilateral agreement or no agreement," the commission may have agreed to aggregate heterogeneous interests, accepting a more consistent negotiating stance even at the cost of imposing concentrated costs on import competitors, all for the sake of reaching agreement. But, in the era of the New Regionalism, this was not the choice facing the commission. The depth of its commitment to the multilateral process depends on its judgment about the relative likelihood of realizing its priorities at the multilateral or at the regional or bilateral levels. In the terminology of negotiations theory, from the commission's perspective the best alternative to a multilaterally negotiated agreement was not no-agreement-at-all; it was a set of bilateral, regional or interregionally negotiated agreements.

This turn to the new regionalism was enabled by a series of factors. First, commission negotiators have substantial experience in regional and bilateral negotiations. The EU itself, lest we forget, was

itself originally a Customs Union, and the EU has developed an extensive web of bilateral and regional trade pacts, ranging from the Euromed Agreements with Mediterranean basin states to the growing number of Economic Partnership agreements with former European colonies in Africa, the Caribbean and the Pacific under the Cotonou Agreement. Alongside these are trade agreements with such far-flung trade partners as South Africa, Chile and Kazakhstan. Moreover, negotiations towards bilateral and regional agreements were ongoing with Mexico, the Mercosur and the Andean Community.

The attractions of such “spaghetti bowl” agreements are plain. By negotiating asymmetrically with weaker trade partners, the EU prevents the aggregation of developing countries' bargaining power through broad-based coalitions such as the G20, which managed to block adoption of an expansive regulatory agenda at the Doha Round. As a result, the commission exercises far more leverage over agenda-setting in regional and bilateral settings than at the multilateral level. The asymmetric value of market access concessions in bilateral negotiations between the EU and small developing countries greatly expands the commission's win set. The three dropped Singapore Issues feature prominently in all of the EU's bilateral and regional negotiations, as well as issues the commission never even tried to place on the multilateral agenda, (e.g. cooperation in the fight against money laundering and drug trafficking). The potential to trade off access to its market for concessions on such disparate issues would simply not exist in a WTO setting. So, as a strategy, venue switching preserves the viability of an inconsistent policy stance, forestalling the need for the commission to undertake the politically problematic task of siding with offensive interests and against defensive ones.

In short, our argument is that, throughout the Doha Round European policy makers have acted strategically to preserve the viability of an inconsistent negotiating stance. In agenda setting negotiations, commission negotiators sought the agenda most likely to allow them to continue to champion the interests both of its defensive and of its offensive lobby. When it failed to secure its desired agenda at the multilateral level, the commission responded not by abandoning trade diplomacy (no-agreement) but by venue switching: redirecting negotiating resources regional and bilateral negotiations it judged more likely to yield agreements that confer concentrated benefits on their offensive interests and limit the concentrated costs accruing to its defensive interests.

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