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Extending European cooperation:
The European Union and the
'New' international trade agenda

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INTRODUCTION¹

Understanding the reasons for international cooperation is one of the central puzzles of international relations theory. This paper addresses one part of that puzzle: what is the impact of prior cooperation on decisions to extend cooperation to new areas of policy? This aspect of international cooperation is becoming increasingly pertinent as regional, plurilateral and multilateral agreements proliferate. My specific focus is on why and how the member governments of the European Union engage in international negotiations concerning the ‘new’ issues of trade in services and foreign direct investment. The central riddle is that the EU’s member governments have repeatedly sought to cooperate in such negotiations, despite significant differences in their economic interests and without having previously committed themselves to cooperate.

I argue that the higher than expected incidence of cooperation can be explained if one incorporates a fuller understanding of how the European Union’s institutional framework, the *acquis communautaire*, shapes the interaction among the member governments. The *acquis* increases the likelihood of cooperation through three specific mechanisms: First, the EU’s institutions can constrain member government choices in ways that were not foreseen when they were created. Second, the EU’s institutions sometimes increase the costs for the member governments of not agreeing to cooperate. Third, the institutionalization of cooperation among the member governments in some areas enhances the ‘appropriateness’ of cooperation in others, and causes the member governments, at the very least, to give greater weight to their longer-term interests compared to their shorter-term considerations.

The EU is particularly interesting for my purposes as it is the world’s most extensive and intensive international organization. I focus on the EU’s foreign economic policy for two main reasons. First, a common trade policy was one of the most central and earliest areas of European cooperation. Second,

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there is a stark contrast between the relatively static Treaty arrangements governing European foreign economic policy and the dramatic transformations that have taken place in the nature of international economic exchange and the agenda of multilateral negotiations since the European Economic Community was established in 1957.²

I begin this paper by discussing existing analyses of EU foreign economic policy. I then challenge these analyses with empirical evidence drawn from European participation in three recent international negotiations: the ‘basic’ telecommunications services agreement, the multilateral agreement on investment and an EU-US ‘open skies’ air service agreement. On the basis of this empirical evidence I posit an alternative explanation of cooperation that incorporates elements of historical institutionalist analysis. I conclude by drawing out the implications of my argument for understanding international cooperation in the EU and more generally.

UNDERSTANDING EUROPEAN FOREIGN ECONOMIC POLICY- MAKING

The vast majority of analyses of European foreign economic policy concentrate on trade in goods within the scope of the EU’s common commercial policy. This focus is understandable as only since the mid-1980s have other trade issues – such as trade in services, foreign direct investment, competition policy, environmental policy – gained prominence on the international agenda. In addition, although the importance of trade in services and of foreign investment have increased markedly, trade in goods remains the dominant form of international economic exchange. This narrow empirical focus, however, has obscured some short-comings in the prevailing analysis.

This paper engages with three short-comings in the existing literature in particular:

- An over reliance on economic pluralist explanations of government preference formation;
- A reductionist view of the impact of the EU’s institutional framework on outcomes; and
- A failure to problematize cooperation.

² The European Coal and Steel Community was founded in 1952, but it was narrow in focus and did not involve a developed foreign economic policy. In 1957 the European Economic Community (and the European Atomic Community) was established. This is the real core of today’s EU. Although not technically correct, for the sake of clarity I follow common usage and use the term European Union (EU) throughout.

The last of these is the most significant for my argument, but it is best understood in the context of the other two.

Economic Interests as the Source of Policy

Many analyses of EU external economic policy implicitly or explicitly view economic, particularly producer, interests as the drivers of government trade policy (see, for example, Hine, 1985; Nedergaard, 1993; Wolf, 1983).³ Hayes (1993) is an exception in stressing the role of domestic political institutions in shaping the influence of economic interests and in explicitly recognizing that governments have independent interests. Such, more sophisticated treatments of trade policy can be found elsewhere (see, for example, Milner, 1997; and implicitly Putnam, 1988), but are largely lacking with respect to the EU.

This short-coming is potentially significant as the EU's member governments are engaged in an institutionalized, iterated process of cooperation. In such circumstances, one would expect 'diffuse' (long-term institutional and political) as well as 'specific' (short-term, economic) interests to matter (Axelrod and Keohane, 1985; North, 1990; Tsebelis, 1990). Further under at least some circumstances, one might expect governments to safeguard their 'diffuse' interests at the expense of 'specific' interests. Such behavior has been noted generally in the EU (Eising and Kohler-Koch, 1999; Hayes-Renshaw and Wallace, 1996; Lewis, 2000; Sandholtz, 1996). There are indications that the tendency to compromise for the sake of unity may be particularly strong with respect to foreign economic policy (Hayes, 1993; Johnson, 1998; Wolf, 1983; Woolcock, 2000). Such behavior, however, tends only remarked upon in passing in the literature. Its causes and consequences not seriously examined. An exception is Odell (1993), who notes that political considerations concerning the credibility of EU institutions and the value of joint bargaining strength were factors in the British and German governments' responses to the sanctions threatened by the US in the wake of the Iberian enlargement.

A Narrow View of EU Institutions

The focus of the vast majority of the literature on EU policy with respect to goods has also contributed to a very narrow view of the role of the EU's institutions in shaping policy. Under the 1957 Treaty of Rome external trade in

³ It should be noted that most discussions of EU foreign economic policy do not specify the origins of member government preferences. Government positions in internal and external negotiations are simply reported without thorough explanation. (see, for example, Benyon and Bourgeois, 1984; Devuyt, 1995; Hanson, 1998; Johnson, 1998; Jolstad, 1997; McAleese, 1994; Meunier, 1998; Paeman and Bensch, 1995; Pearce and Sutton, 1985; Tsoukalis, 1997; Woolcock and Hodges, 1996).

goods is governed by the EU's common commercial policy. This means that it is the exclusive responsibility (competence in EU parlance) of the EU. As a consequence, the member governments are no longer legally entitled to pursue their own policies with respect to many trade issues. The European Commission represents the EU in the negotiations, and decisions within the common commercial policy can be taken by a qualified majority of the member governments acting in the Council of Ministers.

As a consequence, most analyses of EU trade policy consider only the impact of qualified majority voting and the Commission's role as negotiator on whether EU policy is protectionist or liberal (see, for example, Hayes, 1993; Johnson, 1998; Meunier, 1998; Meunier and Nicolaïdis, 1998; Wolf, 1983).

Only a few scholars consider how the EU's institutional framework more broadly considered affects the aggregation of government preferences. A crucial issue that has received little attention except from lawyers (see, for example, Barav, 1981; Bourgeois, 1981, 1987; Cremona, 1999; Emiliou, 1996; MacLeod, Hendry and Hyett, 1996) and the Commission (1985; 1995; 1996a), is how the EU's exclusive competence for foreign economic policy has expanded over time as the result of judicial interpretation.⁴ This has obvious implications for how the member governments interact on trade issues. I shall return to this point below.

A handful of scholars have examined how the EU's institutional framework affects the way the member governments interact in other ways as well. Hanson (1998) stresses the importance of the single European market program in undermining the effectiveness of national quantitative restrictions and the difficulty of agreeing European-level replacements as a driver of the abolition of residual national quantitative restrictions in 1994. In essence, the interdependence of the EU's member governments can, under certain circumstances, increase a member state's interdependence with the rest of the world. Patterson (1997) and Smith (1994a; 1999) emphasize the interaction of national, European and international pressures and policies, most notably with respect to the 1992 reform of the common agricultural policy in the shadow of the Uruguay Round. Jolstad (1997) points to the Commission's use of its power under EU competition rules to vet government subsidies to raise the cost of non-agreement for at least some member governments and thereby move forward the negotiations in the Organization for Economic Cooperation and Development (OECD) on ship-building subsidies.

⁴ A notable exception is Smith (1994b). For a more detailed discussion of the evolution of Community competence, see Young, 2000a.

Taking Cooperation for Granted

The most serious short-coming in the literature from my point of view, however, is that the emphasis on trade in goods has also contributed to a tendency to treat a common EU negotiating position as the only possible outcome. Some authors who examine the EU's external policies with respect to non-trade issues (e.g., Hill (1993) on foreign policy; Jupille (1999) on environmental policy; Rhodes (1998) in an overview of EU external policy) recognize that the member governments have a choice about cooperation. Because an array of foreign economic policy issues fall outside the scope of the common commercial policy,⁵ whether to cooperate in international negotiations on such issues also requires a deliberate decision. Cooperation beyond what is strictly required by the Treaty has been a feature of EU foreign economic policy since before the creation of the customs union in 1968 (Alting von Geusau, 1967; Lindberg, 1963). Treatments of such episodes with respect to trade, however, tend to be descriptive and do not go into detail about the positions of individual governments.⁶

What attempts there have been at explaining extending cooperation in foreign economic policy are limited to discussions of the periodic intergovernmental conferences (IGCs) at which revisions to the Treaty are considered. Most of these analyses at least implicitly adopt an economic pluralist approach. Alting von Geusau (1967), Brusse (1997) and Moravcsik (1998), for example, in their explanations of the design of the common commercial policy in the Treaty of Rome, focus on whether the governments were liberal or protectionist. Meunier and Nicolaïdis (1998), however, find economic pluralist arguments inadequate to explain why particular member governments opposed extending the scope of the common commercial policy in the 1996 IGC that led up to the Treaty of Amsterdam. They find it necessary to introduce some member governments' 'ideological bias' in favor of sovereignty. Moravcsik and Nicolaïdis (1999) likewise find an analysis rooted in economic pluralism incapable of explaining the lack of reform of the common commercial policy at Amsterdam.

⁵ The December 2000 Treaty of Nice substantially broadened the scope of the common commercial policy. Nonetheless, some important issues - most notably non-service FDI and transport services - remain outside its scope.

⁶ See, for example, Benyon and Bourgeois (1984) on the 1982 EC-US Steel arrangement and Bourgeois (1982) on the technical barriers to trade negotiations during the Tokyo Round of General Agreement on Tariff and Trade negotiations.

The paradox I am trying to explain is actually the inverse of this. Rather than trying to explain non-cooperation when economic pluralism would predict cooperation, I am trying to explain cooperation when economic pluralism suggests it should not occur.

COOPERATION WHERE NONE SHOULD BE

Underlying (usually implicitly) most explanations of EU foreign economic policy are the assumptions that: cooperation occurs when economic interests converge and/or when the common commercial policy compels it. Significantly, as I am trying to explain cooperation, these assumptions are analogues of two of the three pillars on which the liberal intergovernmentalist approach to explaining European integration rests: government preferences reflect domestic economic interests;⁷ outcomes reflect the relative bargaining power of the member states; and institutions enforce only previously undertaken commitments (Moravcsik, 1998).

My cases, however, are selected so as to meet neither criteria for cooperation. In each case, the congruence of government preferences with respect to international liberalization was fairly low, although increasing. In addition, the issues at stake in each case fell outside the scope of the common commercial policy. Nonetheless, in each case some form of cooperation was pursued.

Diverse Economic Interests

Despite nascent changes to policy in most of the member states in each policy area during the 1980s, significant differences in the member governments' economic interests persisted at the time when the crucial decisions to cooperate were taken.

In telecommunications services, for example, the emergence of new technologies, new demand for global communications and growing acceptance of neo-liberal economic ideas had an impact on policy throughout Europe, but these pressures did not fall on equally fertile soil in each EU member state. Consequently, during the latter half of the 1980s and early 1990s the EU's

⁷ I use the term preferences to refer to the preferred policies for realizing specific objectives (interests) This echoes Milner's (1997) usage. Moravcsik (1997) makes a similar distinction, but uses the term 'preferences' for fundamental interests and 'policy choices' for what I call preferences. Thus, in my terms, while various actors' interests are exogenous, preferences are influenced by the actors' understandings of causal relationships between means and ends and by their views of what behaviors are appropriate (March and Olsen, 1998). This distinction is important as it makes explicit how institutions affect preferences.

member governments adopted different responses (Bronckers and Larouche, 1997; Thatcher, 1999; Smith, 1999). The British, Danish, Finnish and Swedish governments introduced competition. The Belgian, Dutch German, French and Luxembourg governments embarked on less radical reforms, such as establishing independent regulatory authorities and liberalizing cellular markets. Other member governments, particularly those of Greece, Portugal and Spain, did not really grapple with the new challenges until EU policy began to exert pressure (Noam, 1992; Thatcher, 1995).

Significant differences are evident in national policies governing foreign direct investment, despite increased liberalization sparked by the spread of neo-liberal economic ideas (Brewer and S. Young, 1995; 1998).⁸ The French, Greek and, to a lesser extent, Portuguese governments, in particular, are still somewhat leery of non-EU FDI (USTR, 1999). In addition, some countries are much more active exporters of FDI to non-EU countries than others. Outward FDI is much more important⁹ to Ireland, the Netherlands, Sweden and the UK than it is to Austria, Greece and Italy.

Differences among the EU member states' economic interests are most marked with regard to an EU-US agreement to liberalize air services.¹⁰ The European airlines' views of a liberal EU-US air service agreement reflect: the relative importance of the transatlantic market; their ability to compete; how exposed they are to indirect competition from airlines based in other member states; and whether they value a close relationship with a US carrier. Not surprisingly, these factors differ widely among the European airlines.

The transatlantic market is more than twice as important to Aer Lingus (Ireland), British Airways, Lufthansa (Germany) and Royal Dutch KLM than it is to Finnair, Iberia (Spain) and TAP (Portugal).¹¹ In addition, the UK dominates the

⁸ Witness the variation in the member governments' exceptions to the OECD's National Treatment Instrument (NTI), the precursor to the MAI (<http://www.oecd.org/daf/cm/cmis/country/>).

⁹ For these purposes, the importance of FDI is evaluated in terms of FDI flows (not stock) as a proportion of gross domestic product. The countries are rather crudely, but illustratively, grouped into those having higher and lower than average shares of FDI as a proportion of GDP. The calculations are my own based on Eurostat data.

¹⁰ For most member states such an agreement implied a double liberalization. Existing bilateral arrangements were quite restrictive, limiting the number of carriers and including government oversight of fares. Removing those restrictions would increase competition. Removing them in an EU-US context would increase competition further, particularly among EU airlines.

¹¹ These assessments are made based on the share of total revenue-passenger kilometers accounted for by transatlantic routes. The calculations are my own based on Association of European Airlines data.

transatlantic aviation market.¹² Many European airlines - particularly Air France, Iberia, TAP and Olympic (Greece) - struggled during the 1990s, while BA and KLM were the only consistently profitable European 'flag carriers' during the decade (*Airline Business*, September 1998). Further, airlines operating from more eastern member states are more exposed to indirect competition from other European carriers.¹³ They are thus more sensitive than their western competitors to policy changes in other member states. Lastly, the US offered two inducements to European governments to conclude bilateral liberal air service agreements: 'disproportionately' beneficial agreements (direct access to all international airports in the much larger US) and permission for the national airlines to cooperate closely with US carriers (DoT, 1997).

Weak intended Commitments

In addition to these significant differences among the economic interests of the member governments, there were not clear, firm prior commitments by the member governments to cooperate in the relevant international negotiations. This situation had its roots in the Treaty of Rome. In 1957 the six founding governments of what was to become the EU agreed the common commercial policy in order to provide the framework for their economic relations with the rest of the world. Differences among the liberal and more protectionist governments, however, produced an awkward compromise (Lindberg, 1963; Moravcsik, 1998). One component of this compromise was that the precise scope of the common commercial policy was not defined. Although the Treaty explicitly includes some commercial policy instruments - essentially reflecting the main trade-policy preoccupations of the time - it is silent on others, leaving open the question of precisely where the boundary between EU and member state authority lies. Until the December 2000 Treaty of Nice, subsequent Treaty revisions did not alter the scope of the common commercial policy.¹⁴

The only indicative list of policies falling within the common commercial policy has meant that its scope has been open to repeated interpretation. I shall return to the crucial issue of interpretation below. Here, suffice it to say that in non of my cases did the common commercial policy require cooperation. At the

¹² US-UK flights account for 40 percent of all passenger traffic between the US and EU member states (US Department of Commerce figures reported in *Avmark Aviation Economist*, August/September 1997). An estimated 15 percent of these passengers are destined for other EU member states (CAA, 1994; OFT, 1997).

¹³ This is because consumers prefer not to 'back track;' travel away from their final destination (CA, 1997; CFA, 1997). Thus a German customer would prefer to fly to the US via London than via Stockholm.

¹⁴ The Treaty of Nice brings trade in most services - excluding educational, social, human health and audiovisual services - and trade-related intellectual property rights within the common commercial policy.

time the crucial decision to cooperate was taken the policy area in question either fell outside the scope of the common commercial policy (FDI and air transport) or was the subject of a dispute between the Commission and at least some member governments (telecommunications).

Evidence of Cooperation

Despite differences among the economic interests of the member states and the lack of prior commitments to cooperate there was at least some cooperation in each of my cases. Such cooperation was strongest and most successful in the 'basic' telecommunications negotiations. The EU pursued a common negotiating position, albeit one with internal differentiation,¹⁵ with the Commission as negotiator. In the MAI negotiations the EU member governments agreed to cooperate on some issues - such as a most-favored-nation exemption for regional economic integration organizations and effective exclusion of audio-visual services - but not on others, most importantly each government's exceptions to the national treatment principle. I call such cooperation 'targeted.' This cooperation ultimately broke-down after the negotiations ran into trouble over the constraints being imposed on governments' regulatory autonomy. Cooperation was least developed with respect to air transport. Although they did not agree to cooperate on the politically and economically sensitive issue of traffic rights (market access), the member governments did give the Commission a mandate to negotiate with the US on regulatory issues (such as the coordination of competition policies).

The key aspects of each case are summarized in Table 1.

¹⁵ The EU and its member states submitted a single negotiating position, but in addition to some common points it contained specific reservations by individual member (seven member governments submitted no reservations). See EC&MS, 1995.

Table 1 Economic interests and intended commitments at the time of cooperative decisions

<i>Case</i>	<i>Different economic interests</i>	<i>Weak intended commitments</i>	<i>Cooperative decision</i>
Telecommunications	Public ownership, monopolies Different reforms Different operator interests	Inclusion within common commercial policy contested	Common position (April 1994)
Investment	Very different inward investment policies Major differences in importance of inward and outward FDI	Excluded from common commercial policy	Targeted cooperation (May 1995)
Air transport	Public ownership, monopolies Different airline interests US inducements to act unilaterally	Excluded from common commercial policy	De facto targeted cooperation (June 1996)

EXPLAINING COOPERATION

If economic interests are not congruent and agreed commitments do not compel cooperation, how do we explain observed cooperation? In the rest of this paper, I seek to develop a more comprehensive approach to understanding European foreign economic policy and intergovernmental cooperation more generally.

Because the member governments, at least with respect to the aspects of foreign economic policy that interest me, have a choice about whether to cooperate or act unilaterally, such decisions cannot be treated simply as day-to-day policy-making. Rather they involve a degree of sovereignty pooling. At the same time, decisions to participate in specific international negotiations cannot be considered wholesale integration; the decisions are substantively narrow and usually time-limited. Thus, my focus falls somewhere between the broad categories of ‘history-making’ decisions about extending integration and ‘day-to-day’ decision-making within established policy areas that have been identified in the literature on the European Union (Hix, 1996; Peterson, 1995; Wallace, 2000). As it appears that international relations approaches are better suited to explaining ‘history-making’ decisions in the EU while comparative politics approaches fit ‘day-to-day’ decision-making better (Hix, 1996; Peterson, 1995; Wallace, 2000), it is appropriate that my analytical approach draws on both approaches. This is in keeping with the fading of the strict segmentation of analytical approaches to the EU (and to international relations more generally) (Pollack, 2000; Wallace, 2000).

Rather than reject a rationalist approach outright, I advance three qualifications stemming from historical institutionalist analysis (Bulmer, 1994; Hall, 1986; March and Olsen, 1984; Pierson, 1996; Thelen and Stienmo, 1992). The first follows from the observation that institutions do not always perform the way that they were intended to when they were agreed. In particular, in international legal systems with binding third-party arbitration (such as the EU and to a lesser extent the World Trade Organization), the constraints may change contrary to the preferences of the member governments. The second qualification is that the commitments entered into by the member governments among themselves can affect the costs of not agreeing to cooperate with respect to others. The third qualification is to recognize that membership in the EU changes how governments consider cooperation and assess their interests. Aspects of each of these mechanisms can be found in the literature on European foreign economic policy, but nowhere are they pulled together or treated systematically.

The *Acquis* as an Unintended Constraint

The most fundamental impact of the EU's institutions on foreign economic policy is in determining whether the member governments must participate in international negotiations through the EU or if they can choose to participate unilaterally. In other words the *acquis* determines whether competence for particular issues resides with the EU, the member states or both. Where exclusive external competence resides with the EU (as is the case with the common commercial policy), the member governments cannot pursue unilateral policies. In such circumstances the *acquis* establishes clear procedures and decision rules facilitate collective participation in international negotiations. Where competence resides with the member states, the governments can choose whether or not to cooperate at the European level in order to influence international negotiations.

As alluded to above, the allocation of competence for foreign economic policy has changed over time, driven primarily by tension between the Commission and some member governments over the interpretation of the Treaty and by the European Court of Justice's adjudication of those disputes that have been brought before it (Weiler, 1991; Young, 2000a). The extension of EU competence in foreign economic policy has occurred along two dimensions. The first is through the gradual broadening of the scope of the common commercial policy to encompass policy areas not specifically mentioned in the Treaty of Rome. The second, more dramatic, dimension is through the 'doctrine of implied powers,' which was established by the ECJ's 1971 *ERTA* judgement.¹⁶ This doctrine holds that exclusive external competence is conferred on the EU when there are 'common (internal) rules' that might be adversely affected by unilateral (external) agreements or where internal rules specifically address the treatment of third country firms.¹⁷

The timing and substance of the ECJ's Opinion 1/94¹⁸ on the conclusion of the Uruguay Round was crucial in each of my cases. It specifically addressed the allocation of competence for trade in services (telecommunications and air transport) and foreign investment (telecommunications and FDI).¹⁹ The

¹⁶ 'Commission of the European Communities v. Council of the European Communities', Case 22/70 (ERTA), *European Court Report*, 263.

¹⁷ The 'doctrine of implied powers' is much more nuanced and complicated than depicted here, but this crude sketch captures the key points. See Emiliou (1996) and MacLeod, Hendry and Hyett (1996).

¹⁸ 'Opinion 1/94,' *European Court Report* [1994] I-5267.

¹⁹ Opinion 1/94 addressed FDI because establishment was formally recognized as one of four ways in which services can be supplied across borders. Because of this the ECJ heard the Uruguay Round Agreement case in conjunction with an earlier case, brought by the Belgian government, concerning the authority to conclude the National Treatment Instrument.

negotiations on ‘basic’ telecommunications began in April 1994 just after the Commission had requested the Court’s opinion on the conclusion of the Uruguay Round. The Court’s Opinion was published in November 1994, shortly before the launch of the MAI negotiations (May 1995) and as the tension between the Commission and member governments over ‘open skies’ agreements with the US were beginning to mount.

In its Opinion the Court held that only the cross-border supply of services falls within the scope of the common commercial policy. Even this was a broader interpretation of the common commercial policy than the British, Danish, French and German governments supported (ECJ, 1994). It implied that, had the member governments not already been cooperating in the ‘basic’ telecommunications negotiations, they would have had to, at least on some aspects.

The Court, however, ruled that the other three modes of supply identified in the negotiations - establishment (FDI), consumption abroad and presence of natural persons - were outside the scope of the common commercial policy.²⁰ The Court also explicitly excluded transport services from the scope of the common commercial policy.

Although the ECJ had excluded FDI and air transport from the scope of the common commercial policy, the EU had some claim to external competence in these areas by dint of the ‘doctrine of implied powers.’ Some aspects of the MAI negotiations - including financial services and investment incentives - because they are governed by common rules fell within the EU’s exclusive external competence, and so necessitated a degree of cooperation. The applicability of the doctrine of implied powers with respect to air transport, however, was (and is) diminished because the member governments had systematically excised references to external aviation relations from the Commission’s proposals on liberalizing the European aviation market.

The Impact of the *acquis* on the Cost of Non-agreement

The *acquis* also can affect the member governments’ alternatives to cooperation. It does so in two ways. The first is, to an extent, the automatic by-product of European integration; it is difficult for a member government to insulate itself against the actions of its partners, including their foreign economic policies. As a result, the effectiveness of a unilateral policy may be undermined. The second requires agency on the part of the EU’s supranational organizations, which can

Although this Opinion 2/92 (*European Court Report* [1995] I-525) was delivered separately a few months later, just before the start of the MAI negotiations, the conclusion was the same: FDI is primarily a member state competence.

²⁰ The Treaty of Nice did away with this distinction.

sometimes leverage the member governments' commitments in one area to increase the cost of non-agreement in another, related area.

Interlocking interdependencies

As the EU is an international organization as well as an international actor, the member states have interdependencies among themselves, as well as with the rest of the world. Their internal interdependence has bearing both on the member governments' preferences regarding intra-EU cooperation and on their bargaining power for shaping any resulting common position.²¹ Interdependencies within the EU are particularly intense because the EU's institutional framework prohibits the use against other member states of many of the instruments that other governments usually deploy for coping with external economic shocks.

Thus the preferences of the member governments with respect to cooperation and their relative bargaining power in shaping a common position (if there is one) are influenced by the *interaction* of their intra- and extra-EU interdependencies. Member governments of countries that are highly interdependent with the rest of the world are likely to favor an international agreement. The governments of member states that have high intra-EU interdependence but low extra-EU interdependence may prefer an EU-only solution. Those that have both high intra- and extra-EU interdependencies will be in a weak position compared to less interdependent governments when it comes to agreeing a common EU negotiating position.

Whether third-country firms can circumvent a member government's restrictions by investing first in another member state was a factor in intra-EU cooperation in both the MAI and 'basic' telecommunications services negotiations.²² The impact of such indirect competition is mitigated in air services because foreign ownership is capped by EU rules. Even so, the creation of a single aviation market put pressure on some of the less liberal member

²¹ Hanson (1998) advances this argument to explain the elimination of residual national quantitative restrictions in 1994.

²² The right of establishment (Article 43 (ex-52) of the Treaty of Rome) prevents member governments from excluding EU firms from their markets. If a third-country firm, by establishing in one member state, is considered an EU firm — essentially an issue of how Article 48 (ex-58) of the Treaty of Rome is interpreted — then it too can enter any other member state's market. There is currently an open question with the Commission and a number of member governments taking the liberal line while other member governments, notably that of France, taking a more restrictive view.

governments, because they could not prevent airlines from other member states from competing indirectly with their national airlines.²³

Manipulation of the costs of non-agreement

The European Commission can sometimes manipulate the member governments' prior commitments in ways that increase the attractiveness of cooperation by raising the costs of non-agreement (Schmidt, 1997; Wallace, 1996). In particular, the Commission can draw upon its position as the 'guardian' of the Treaty and its responsibility for implementing competition policy.²⁴

The Commission, for example, has repeatedly threatened legal action against the member governments for failing to ensure that their air service agreements with third countries respect Treaty requirements, particularly the principle of non-discrimination.²⁵ Thus far this strategy has had little success, contributing only to the member governments agreeing a limited mandate for negotiations with the US. In October 1998 the Commission (1998) upped the ante by referring cases against eight member states — Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Sweden, and the UK — to the European Court of Justice. These cases are pending at the time of writing (December 2000). If the Court rules in the Commission's favor, the *acquis* will more tightly constrain the member governments' scope for unilateral action, increasing the pressure on them to cooperate.

The Commission had more success using its powers under EU competition rules to help make a success of the 'basic' telecommunications services negotiations. The breakthrough in the negotiations came in November 1996 when the EU and US in a coordinated move tabled improved offers for liberalizing access to their telecommunications markets. The EU was able to make an improved offer because the Commission had leveraged its internal competition powers to accelerate the pace of liberalization in some member

²³ For example, although British Airways cannot compete directly with Air France on the Paris-New York route, it can compete indirectly flying passengers Paris-London-New York.

²⁴ Jølstad (1997), for example, notes the Commission's use of its competition powers to press the member governments to compromise during the OECD negotiations on ship-building subsidies.

²⁵ The provisions of virtually all bilateral air service agreements apply only to airlines of the two participating countries. Under old-style ASAs the airlines are specified by name. 'Open-skies' agreements do not name specific airlines, but apply to airlines owned and controlled by nationals of the participating countries. This, the Commission argues, conflicts with the principle of non-discrimination within the EU, undermines the concept of the EU airline established in EU law, and distorts the single market because not being able to offer international routes might discourage cross-border investment.

states (Commission, 1997). In particular, it required that Spain accelerate the break-up of its voice telephony monopoly as a condition for approving Spanish telecommunications company Telefonica's accession to the Dutch-Swedish-Swiss alliance Unisource (Commission, 1996b).

The European *acquis* and Member Government Preferences

In addition to influencing whether the member governments have a choice about cooperating and the costs associated with non-cooperation, the *acquis* can also have a more profound influence on their preferences regarding cooperation. Again the impact of the *acquis* has two components. The first is that the institutionalization of intensive and extensive cooperation makes new cooperation appear to be an 'appropriate' response (March and Olsen, 1998; Risse-Kappen, 1996). Cooperation is at least considered. The second is that because they are engaged in a long-term process of iterated cooperation, the member governments are sometimes willing to sacrifice short-term gains for longer-term benefits (Eising and Kohler-Koch, 1999; Lewis, 2000; Sandholtz, 1996). Thus, although the member governments need to satisfy their domestic constituents, they have choices about ways of doing so, some unilateral, some collective. In addition, membership in the European Union brings benefits, both economic (larger markets) and political (greater negotiating weight). The member governments therefore have an incentive to support the vibrancy of the institution, or at least to avoid undermining it.

The 'appropriateness' of cooperation

One striking feature of what we observe is the deeply ingrained habit among EU governments of considering cooperation when they do not have to, such that it appears to be an almost automatic reaction. This suggests that the member governments consider intra-EU cooperation an 'appropriate' potential response to almost all external economic challenges. They may not ultimately select cooperation, but they do at least consider it.

The member governments have formally acknowledged the desirability of cooperative responses by establishing principles of cooperation in external relations in the Treaty, particularly Article 10 (ex-5) of the Treaty of Rome and Article 3 (ex-C) of the Treaty on European Union.²⁶ Although such principles leave the governments wiggle room, they do provide focal points around which the governments' expectations about cooperation can converge (Eising and Kohler-Koch, 1999). The 'soft' institutions ('modalities') agreed to structure the member governments' cooperation during the MAI negotiations, for example,

²⁶ See Majone (2000) on the role of such 'relational contracting' as a means of addressing the incomplete contracting presented by the Treaties.

make explicit reference to Treaty obligations to cooperate and to relevant ECJ jurisprudence. The ECJ's Opinion 1/94 stressed the obligation on the member governments and Commission to cooperate closely when engaged in negotiations involving issues of mixed competence.

Even with respect to transatlantic air services, where national economic interests were very divergent, the member governments consulted and discussed whether to respond collectively. In 1993 they decided that extensive cooperation might have its place at some point in the future, but not then. In 1996 they agreed to engage in limited 'targeted' cooperation with respect to regulatory issues.

That the member governments look to each other as a natural grouping in external negotiations is underlined by their agreeing to cooperate in both the MAI and 'basic' telecommunications services negotiations before formally discussing what negotiating positions they would adopt. In the case of the MAI they agreed to cooperate without having settled how they would structure that cooperation. In both cases, admittedly, the risks associated with cooperation were mitigated by the fact that each member government would have to accept the final outcome, and so had a firm guarantee that its vital interests could not be ignored or overrun.

A longer-term view of preferences

Membership in the EU may also influence how governments understand and pursue their interests. Membership means that the governments are constantly interacting across a wide range of policies. In this context, at the very least, narrow short term objectives might be compromised in the anticipation of reaping long-term gains (Eising and Kohler-Koch, 1999; Lewis, 2000; North, 1990; Sandholtz, 1996; Tsebelis, 1990). Thus 'diffuse' (long-term institutional and political) as well as 'specific' (short-term, economic) interests matter, and the latter may be sacrificed for the former (Axelrod and Keohane, 1985; Hayes-Renshaw and Wallace, 1996). This is more likely to happen when the 'specific' interests at stake are not that important (economically and politically).

The tendency of the EU's member governments to take decisions by consensus even when qualified majority voting applies (Hayes-Renshaw and Wallace, 1997), supports this contention. As noted above, consensual decision-making appears to be especially common in foreign economic policy (Hayes, 1993; Johnson, 1998; Wolf, 1983; Woolcock, 2000). In particular, it appears as though governments that would prefer liberal negotiating positions accept less-than-liberal common positions.

Another indication of governments taking a broader view of their interests is the tendency of the member government holding the rotating six-month presidency of the EU to compromise (Hayes-Renshaw and Wallace, 1997; Young and Wallace, 2000). A striking example of this was the Danish government's vote in favor of the protectionist banana trade regime in February 1993, under its presidency, when in the preceding December and in subsequent votes on reforming the regime, it voted against. Perhaps crucially, Denmark did not have strong economic interests at stake.

My cases provide further evidence that tolerance of distasteful common negotiating positions facilitates cooperation. Specifically, the more liberal member governments seemed to tolerate negotiating positions that are substantially less liberal than they would like. This was the case in both the 'basic' telecommunications and MAI negotiations. In both negotiations the more liberal member governments accepted that audio-visual services would effectively be excluded from the agreement. In the MAI negotiations the more liberal governments also supported special treatment for regional economic integration organizations. In the 'basic' telecommunications services negotiations the more liberal member governments did not put pressure on other member governments to accelerate their internal liberalizations in order to make external concessions. Such compromises, however, do not appear to have been a factor with respect to transatlantic air services. Here the more protectionist governments have persistently resisted a common (liberal) position.

The Framing, not Determining, Role of the *acquis*

Although the features of the *acquis* discussed above increase the likelihood of cooperation in various ways, the member governments retain significant discretion. Even where the exclusive competence has passed to the EU, the member governments can choose not to cooperate, although they cannot legally negotiate unilaterally. However, one would expect that the more constraining the unintended constraint, the greater the degree of internal interdependence and the higher the cost of non-agreement, the more likely cooperation is. A decisive factor, however, remains the congruence of the member governments' economic interests. The institutionalization of interaction only increase tolerance; it is not absolute or unquestioning. When really vital interests are threatened (particularly for little apparent gain), cooperation is less likely or is likely to break down.

In transatlantic air services, for example, the constraints imposed by the *acquis* are quite weak and are largely restricted to regulatory issues. Indirect competition is a problem for some European airlines, but it is the member

governments of those airlines for which it is less of an issue that are most resistant to a common position. Although cooperation has been discussed, the economic interests at stake are sufficiently important and different that the member governments have not agreed to cooperate on the crucial issue of traffic rights.

The constraints imposed by the *acquis* were slightly more of an issue in the MAI negotiations, although responsibility for the bulk of the substance of the negotiation resided with the member governments. The degree of policy interdependence within the EU with respect to FDI is contested. The French government, for one, contends that third-country firms that are established in an EU member state do not benefit from the right of establishment. Thus a third-country firm could not circumvent French restrictions by first investing in a more liberal member state. In addition, there were important differences in the member government's interests. The French government's main objectives - special treatment for regional economic integration organizations and audio-visual services on the one hand and disciplines on sub-national governments and reduction of the US government's list of exceptions - were the issues on which the US appeared intransigent. With apparently little to gain and potentially much to lose, the French government withdrew from the talks in October 1998.

The differentiated impact of the *acquis* on cooperation is summarized in Table 2.

Table 2 Impact of the *acquis* on cooperation

<i>Case</i>	<i>Unintended constraint</i>	<i>Cost of non-cooperation</i>		<i>Impact on preferences</i>		<i>Cooperative outcome</i>
		<i>Interlocking interdependencies</i>	<i>Manipulation of commitments</i>	<i>'Appropriateness' of cooperation</i>	<i>Willingness to compromise</i>	
Telecommunications	Cross-border supply of services within the common commercial policy	Once liberalization in place, firms established in one member state can establish in any?	Commission used competition rules to extract concessions from Spain, Ireland and Portugal	Member governments agreed to cooperate ahead of ECJ ruling on Uruguay Round	Liberal member governments did not pressure others to improve offers in attempt to break April 1996 deadlock	Full cooperation
Investment	'Doctrine of implied powers' required collective participation on some issues, e.g., financial services and investment incentives	Firms established in one member state can establish in any?		Member governments agreed to cooperate despite ECJ ruling on NTI and prior to agreeing 'modalities'	Liberal member governments supported REIO clause and special treatment of audio-visual services	Unsuccessful targeted cooperation
Air transport	'Doctrine of implied powers' required collective participation on regulatory issues	Indirect competition through hubs and near-by airports	Commission prosecuting nationality clauses in ASAs (case pending)	Discussed cooperation and established procedures for agreeing.		Common position on regulatory issues Non-cooperation on traffic rights

CONCLUSIONS

The conventional wisdom has it that the failure of the Treaty-base of the European Union's foreign economic policy to keep pace with the development of the international economic agenda prevents the EU from acting coherently and effectively in international trade negotiations.²⁷ My analysis suggests that this concern is exaggerated. The EU has actually encountered remarkably few problems in participating in international negotiations that address issues falling outside the common commercial policy. Further, cooperation has occurred even when the member governments' economic interests have not been congruent. In such circumstances, the absence of formal arrangements may actually enhance the likelihood and effectiveness of collective EU participation, because they are not required to agree common positions on all aspects of a negotiation.

As my focus is on extending cooperation within a highly institutionalized international organization, one would expect the institutions to play a role. Significantly, the EU's institutional framework plays an unintended role beyond its original scope. Specifically, cooperation is required across a broader range of foreign economic policy than most member governments wish. Further, the iterated process of cooperation has led member governments to consider cooperation an appropriate response to external economic challenges. It also appears as though, at the very least, member governments are more willing to compromise in the short-run in order to secure broader, longer-term aims. These considerations are likely to have the greatest impact at the margins, where vital interests are not at stake. None the less, such an impact may have important implications for the likelihood of cooperation.

Although the EU is by far and a way the most highly institutionalized international organization in the world, some of the implications of my analysis have broader relevance. With the introduction of binding dispute settlement in the WTO, for example, there are already indications that the significance of prior commitments can change through legal interpretation. Additionally, the threat of legal action, backed up by sanctions, by shaping the cost of non-agreement, has implications for the preferences and relative bargaining power of the WTO's members when they consider cooperation in new areas, including potentially in multilateral environmental agreements.

²⁷ The Treaty of Nice has not eliminated the problem. The Commission's (2000: 2) assessment of the agreement, for example, is that 'the progress made in improving the operation of the EU's trade policy is modest.' In particular, it considers it 'unfortunate' that the Treaty did not bring FDI (except in services) within the scope of the common commercial policy (p. 1).

Other aspects of the analysis will gain greater relevance if other regional trade agreements develop further. Moves to remove internal barriers could lead to the interlocking of intra- and extra- interdependencies that we already see in the EU. This effect, of course, intensifies the more liberal the internal regime becomes. In addition, repeated interaction among the members of regional trade arrangements could be expected to cause the participating governments to at least evaluate courses of action in the light of the implications for the regional arrangement. Although the current state of regional trade areas is not such that we should expect to see such behavior soon, in time it might become more prevalent, if not reaching the levels seen within the EU.

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