

The EU as an actor at the WTO: its strengths and weaknesses throughout history

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Abstract

During the last decade, many reforms took place in the European Union legal and policy framework. Some of those reforms were motivated by the participation of the European Union and its member States in the World Trade Organization. This paper aims to analyze the role of the European Union as an actor in that organization, paying special attention to its mixed legal nature – EU and Member States. With that purpose, the evolution of the relationship between the EU member States and the EU itself as simultaneous actors at the WTO is studied. The division of competences is also reviewed. Finally, the analysis of the EU position in different negotiation rounds (Uruguay, Doha) for the agricultural sector is reviewed as an example of the evolution in the protection of European interests. The paper shows that some changes in the Treaty of Lisbon have strengthened the legal framework for the EU to be heard with a unique voice in the WTO.

Keywords: World Trade Organization, European Union, Common Commercial Policy, Uruguay Round, Doha Round, Common Agricultural Policy, mixed agreements, competences

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1. Introduction

The aim of the continuous reforms of the European Union Common Trade Policy has been to protect the common interests of the Union and the individual interests of its member States. Agriculture, services and commodities are only a few of the sectors regulated within that framework. Nevertheless, the European action for protection of those interests is subject to limits. EU Law and the values and principles established in the treaties and the ECJ jurisprudence are the first limits to be respected, but not the only ones. One of the most important sets of limits that must be observed is derived from an international commitment: the decision made by the European member States that the EU would be part of the GATT and WTO agreements. Membership in that organization, whose main objective is to establish rules that promote trade liberalization, forces the EU Common Trade Policy to respect those rules.

Participation of the EU in the WTO sets out many challenges from the legal perspective. In the early days of the international trade system, EU member States were contracting parties to the GATT. Later on, the European Communities became a *de facto* member that would be officially recognized as such by all other WTO contracting parties. Coexistence of the European Communities and EU member States as actors at the WTO built a complex scenario for negotiations. Who was the main actor? Could a EU member State vote against the position that the European Communities adopted in a particular negotiation? Before a negotiation, was there a previous agreement among EU member States in order to establish a common position? Was that position binding to all EU member States? This parallel membership brought many problems.

After the adoption of an agreement, that coexistence was also problematic. The nature of those agreements has been described as mixed and had particular legal effects.

In general, other WTO contracting parties accepted this double membership. However, the EU law evolution recently led to the recognition of the EU international legal personality, and to the creation of the High Representative of the Union for Foreign Affairs and Security Policy and of the European External Action Service. Those changes seem to be motivated by the will of the EU to speak with one voice at the international level. The division of competencies has also experienced some changes.

This new framework invites to study the extent to which these changes will contribute to achieve that goal regarding international trade and the WTO, and also to check whether it is the most adequate framework for the values and objectives of the EU in the field.

From the policy perspective, negotiations have taken place in many different sectors such as agriculture, services or intellectual property. Along those negotiations, the EU has described a coherent strategy aimed to protect its own interests. Reviewing

the positions maintained by the EU in the past and recent rounds in the agricultural sector will give us an idea of possible trends for the future.

All the above-mentioned challenges are a matter of great concern since, as figures show, the EU is one of the main actors of the WTO. The share of the EU in world total exports for 2011 represented 15.06%, and the share in world total imports 16.54%¹.

Taking into account those facts, the purpose of this paper is to analyze the key aspects of this special relationship with many different characters: the EU, EU member States, the WTO as an international organization, and other WTO contracting parties.

With that purpose, the methodology first aims to analyze history and normative changes, and then to study the practice based on the use of those norms, in order to state the role of the EU at the WTO. The paper is divided in three sections. In the first one, the nature of the EU as an actor at the WTO is analyzed, especially reflecting on the changes determined by the Treaty of Lisbon and how they affect the role of the EU in international trade.

The second section focuses on the different kinds of competencies recognized in European Union law and jurisprudence. The division of competencies related to trade is studied in order to determine which of them belongs to the EU or to European member States. The legal effects of such a division are of great relevance.

The last section revises the position of the EU in the main negotiation rounds in the WTO for the agricultural sector, in order to detect the extent to which it has been coherent and protective of the interests of the EU and its member States.

2. The EU and its member states: simultaneous actors at the WTO?

International Organizations are generally conformed by sovereign States. That is the case of the OECD, the OPEC, the IMF or of the most universal organization: the United Nations. Nevertheless, non-state actors are increasingly recognized as members of international organizations. These non-state actors might be civil society organizations (NGOs) or supranational entities. That is the case of the European Union, whose role at the international level experienced a very interesting evolution in the last decade. This evolution is especially striking in the case of international trade. In the last forty years, the WTO and its members have witnessed the emergence of a new actor among them: the European Union.

The emergence of the EU as an actor is of particular interest, since it does not mean the end of the European States' membership of the WTO. They have not lost their status as contracting parties in that organization. This parallel

¹ WTO, *Trade Profiles*, 2011.

membership has caused some problems that will be described in the following paragraphs. In methodological terms, the review of the EU performance at the WTO throughout history will be used as the basis to understand the current strengths and weaknesses that need to be highlighted today.

2.1. First steps: membership at the GATT

The creation of the European Coal and Steel Community in 1951 was the first challenge for its six member States, who were at the same time WTO contracting parties². The ECSC Treaty set up neither a free-trade area, nor a custom union, under the terms of article XXIV of the GATT. It just aimed at achieving a common market for the two commodities. However, that purpose would imply actions that could eventually violate certain obligations under the GATT. Therefore, the six ECSC member States requested a waiver from some of those obligations in order to fulfill their duties under the ECSC Treaty (Hilf, Jacobs, Petersmann, 1986). Those waivers were accepted by the other GATT contracting parties, by the November 10, 1952 decision. And a new kind of informal membership was inaugurated.

Based on the aforementioned decision, the High Authority of the ECSC was present at negotiations regarding coal and steel products, in the Geneva Round (1956), the Dillon Round (1960), and the Kennedy Round (1964). In fact, the Geneva Protocol to the General Agreement, containing the results of the Kennedy Round, made concessions to the ECSC countries as a group for the first time³. This established a precedent in the WTO practice that would serve as the basis for recognition of the EEC as a “special” member, at least *de facto*.

The process by which the EEC started to be considered an actor at the WTO began in 1956, when the EEC Treaty was negotiated. Aware of the relevance of fulfilling the GATT obligations, the ECSC States manifested their commitment to communicate the content of the EEC Treaty to the GATT contracting parties prior to its ratification⁴. This attitude of compromise shows how European States conceived the EEC project: as an autonomous part of the international community respectful with regard to international commitments. The GATT and liberalization of trade were supported internationally and had been working for a decade. European States knew that, for the EEC project to be successful, respect of international obligations was needed.

² Belgium, France, Luxemburg, Netherlands, Germany and Italy were members of the European Coal and Steel Community. Belgium, France, Luxembourg, Netherlands and United Kingdom were parties to the GATT since 1948. Denmark, Greece and Italy became parties in 1950. Germany became a party to the GATT in 1951.

³ See GATT, “Legal Instruments Embodying the Results of the 1964-1967 Trade Conference, Schedule XL bis- Member States of the ECSC”, vol. IV, p. 3065.

⁴ Their worry responded to article XXVI. 7.a) of the GATT.

In that sense, communication of the content of the EEC Treaty to the GATT contracting parties (March 1957) firmly declared the European intention to fulfill obligations derived from GATT. In that declaration, Baron Snoy d'Oppuers stated that "as long as the six would remain contracting parties to the General Agreement they would scrupulously observe their obligations under this Agreement"⁵. He also pointed out, in the same declaration, that the EEC Treaty "shall be implemented in conformity with the General Agreement", making special reference to articles 9, 110, 116, 234 ad 229 of the EEC Treaty.

The other GATT contracting parties responded positively to that commitment, and accepted the EC as a contracting party instead of just recognizing it as a supranational entity with strong influence on GATT negotiations. Starting in 1960, contracting parties negotiated directly with the EC, not with their member States. Even in the case when dispute settlements referred to a single European State, proceedings were stated against the EC as a contracting party (Petersmann, 1986, p. 23). The EC were *de facto* a GATT contracting party.

As it has already been mentioned, the 1967 Geneva Protocol established a precedent in the recognition of other actors in the WTO. This was shown again in the 1979 Geneva Protocol to the General Agreement that embodied the results of the Tokyo Round. In that protocol, schedules of the different European countries were collected in a single document for the European Communities⁶, referring to the Benelux, the EEC and the ECSC member States as a group.

2.2. The European Communities recognition as a contracting party at the WTO and mixed membership

The fact that even dispute settlements were directed to the EC shows the extent to which the EC were accepted as a contracting party by other members of the GATT. The European Communities were not a contracting party to the GATT. Only the EC member States were. But, as the Geneva 1979 Protocol showed, the EC had progressively acquired the status of a contracting party to all intents and purposes. Ever since then, all agreements and protocols negotiated according to the GATT rules have been open for acceptance by contracting parties to the GATT and by the EEC (or EC). Actually, since 1970, most agreements negotiated in the GATT framework have been accepted by the EC, without acceptance by the EC member States as such (Bourgeois, 2001).

This recognition of the EC membership proved to be useful in legal terms, since many disputes were referred to EC countries. In that sense, an important

⁵ Baron Snoy d'Oppuers, speaking on behalf of the EEC States to the Intersessional Committee of the GATT Contracting Parties in 1957, GATT document IC/SR, p. 39.

⁶ GATT, Geneva Protocol to the General Agreement of Tariffs and Trade (Tokyo Round), vol. IV, 1979, "Schedules LXXII and LXXII bis-European Communities", p. 3471.

part of the Dillon Round and the Kennedy Round negotiations was focused on the resolution of problems resulting from the Common Customs Tariff and the Common Agricultural Policy of the EEC⁷. In fact, the compatibility of the EEC's commercial regime with the GATT was frequently questioned. That was the case of some differences regarding the interpretation of article XXIV of the GATT⁸ or of the 1982 complaint by the US on the incompatibility of the EEC's preferential arrangements with Mediterranean countries with the GATT⁹.

The European Communities were constituted in 1986, and although the EC were a *sui generis* contracting party in the GATT, the twelve European Economic Community Countries preserved their condition of contracting parties in the GATT as well¹⁰. This double membership has been seen by Petersmann as an example of “the successful creation in the GATT practice of all necessary institutions and procedures in spite of the lack of expression of treaty provisions” (Petersmann, 1986, p. 37).

The *ad hoc* formula adopted in the GATT framework was to assume that the EC status was a mixed membership, where EC member States and the EC itself coexisted as GATT contracting parties. Its practical application did not cause noticeable trouble, at least for a while, since other GATT contracting parties accepted the situation as transitory and understood that the European integration process required flexibility. Nevertheless, in the course of time, patience of the other contracting parties started to diminish, especially with regard to the absence of a clear agreement between the EC and its member States on division of competences.

2.3. The EU as a contracting party: a new name for a new reality?

The Maastricht Treaty (1992) initiated an essential phase for the European integration process. Its ratification implied some relevant changes that would modify the WTO-EU relations.

The Maastricht Treaty modified the European nomenclature: the European Communities denomination was substituted by the expression “European Union”. The EU would cover the three European Communities – in what was

⁷ About the common agricultural policy of the EEC, see section 3. The completion of the common market transitional period was achieved in January 1970, and the EEC communicated the GATT that it was “naturally prepared to assume such obligations as a customs union and as an economic union in accordance with the letter and spirit of the General Agreement in the same way as all other contracting parties” (GATT document, C7M/61, p. 6).

⁸ Accession of new members, such as Greece, to the EC, generated reports on this issue (Report regarding accession of Greece was adopted in 9 March 1983).

⁹ Complaint by the US against “EC-Tariff treatment on imports of citrus products from certain countries in the Mediterranean region”, Panel Report of 1985 (L/5776).

¹⁰ Portugal (1962), Spain (1963), Ireland (1967). For the rest, see footnote 4.

called the communitarized pillar¹¹ –, the Common Foreign and Security Policy pillar and the pillar on Police and Judicial Co-operation in Criminal Matters. This new name had a strong symbolic meaning, since it showed the underlying idea of going further with the political integration process in Europe. The remaining question is: was the new name supported by the adequate legal and policy machinery to achieve that goal? We will answer that question after studying the whole integration process, including the Treaty of Lisbon.

In order to reach that aim -a political union- some first steps were taken in Maastricht. The role of the EU in international relations was strengthened, the first pillar was based in common policies, and some new legal instruments were created for the second pillar, such as common actions and common positions (Gutierrez Espada, Cervell, Piernas, Garcíandía, 2012). At that time, the Uruguay Round was close to its end, and the creation of the World Trade Organization by the Marrakesh Agreement was imminent. The new EU took that opportunity to agree that the EC would be a legally recognized WTO member. However, it did not decide that this new membership would replace EC member states as contracting parties. The Commission understood that too many controversial issues were already being faced after the Maastricht Treaty and that it was smarter not to make this decision in that context¹².

Article XI of the Marrakesh Agreement recognized the EC member States and the EC as original members of the WTO. The other WTO contracting parties accepted that position, understanding the aforementioned context. However, it was not clear whether their support would last forever.

The Treaties of Amsterdam and Nice followed the tendency inaugurated by Maastricht, with the purpose of deepening the political integration process. Finally, the Treaty of Lisbon constituted the milestone of that process, articulating mechanisms that may enable this goal to be really achievable. The EU was finally recognized legal personality in article 47 of the Treaty on the European Union declaring in a Primary Law norm what was already accepted *de facto*, as the European Parliament stated in its resolution on the legal personality of the European Union¹³. This legal personality allows the EU to subscribe international agreements as a subject of International Law.

The Treaty of Lisbon contained another key innovation regarding the relation between the EU and the WTO: the creation of the High Representative for Foreign Affairs and Security Policy, and of the European External Action

¹¹ Common Trade Policy and competence on trade were included in this first pillar. Therefore, the EU continued to be referred in the GATT as EC.

¹² See Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJEC L/336, 23 December 1994).

¹³ European Parliament resolution on the legal personality of the European Union (2001/2021(IN)).

Service. In order to allow the EU to speak with one voice in external affairs, Catherine Ashton inaugurated the position of High Representative, supported by the European External Action Service¹⁴, a complex organizational apparatus composed by personnel from the European Commission, the Council of the European Union, and diplomatic services of European member States¹⁵.

At present, it is mainly the European Commission who negotiates at the WTO on behalf of the European Union, representing it in the WTO General Council¹⁶. It coordinates with the EU member States through the Trade Policy Committee, and follows the guidelines stated by member States in the Council of Ministers, in order to better represent and protect European interests¹⁷. The signature of international agreements requires authorization of the Council and European Parliament.

Nevertheless, the membership of European States at the WTO needs to be kept in mind. In spite of the institutional efforts of the Commission and the Council for coordination with the States, a stronger coordination might be needed in particular circumstances. The role of the High Representative and the European External Action Service is relevant in that sense, especially in what concerns the Union Delegations.

The Council Decision establishing the organization and functioning of the European External Action Service regulates the creation of Union Delegations¹⁸, a new figure derived from the pre-existing Commission Delegations¹⁹. For decades, the EU has had a Commission Delegation in Geneva to deal with international organizations. However, the volume of the WTO negotiations motivated that the High Representative created a new European Union Delegation in Geneva to deal with WTO issues: the Permanent Mission of the

¹⁴ She was designated for the position by Dec. 2009/880/EU, OJEU L315/49, 2.12.2009.

¹⁵ About this new apparatus, see Cardwell, P. J., *EU external relations law and policy in the post-Lisbon era*, T. M. C. Asser Press, The Hague, 2012, 433 pp.

¹⁶ It also represents the EU in other formations of the General Council such as the Dispute Settlement Body and the Trade Policy Review Body. The Commission also represents the EU in subsidiary WTO bodies such as the Council for Trade in Goods or the Committee for Trade and the Environment.

¹⁷ Protection of those interests requires sometimes consultation to the European Economic and Social Committee. Also, the Commission has the obligation to inform the European Parliament of negotiations at the WTO.

¹⁸ Article 5 of the Council Decision of 26 July 2010 establishing the organization and functioning of the European External Action Service (2010/427/EU, OJEU L201/30, 3.08.2010) states that the decision to open or close a delegation shall be adopted by the High Representative, in agreement with the Council and the Commission.

¹⁹ Note of the General Secretariat of the Council of the EU on The High Representative for Foreign Affairs and Security Policy and the European External Action Service, November 2009, p. 3.

EU to the WTO²⁰. The Delegation represents the interests of the European Union and its 27 Member States in the area of multilateral trade, and negotiates on their behalf at the WTO; coordinates the positions of the European Union and its 27 Member States for multilateral trade negotiations; and promotes the visibility and understanding of the European Union's trade policy through contacts, information activities and networking with other diplomatic missions and Geneva-based international organizations, bodies and agencies²¹.

The competences of the Permanent Mission in trade show how the Treaty of Lisbon has contributed with very useful instruments to a better representation of the EU at the WTO. However, the Permanent Mission and the European External Action Service are at an early stage of their development. Time will confirm whether this tendency towards a stronger common position within the EU will be consolidated or not. Besides, mixed membership keeps being a challenge for the EU, as will be confirmed when analyzing the division of competences.

3. Division of competences in the EU and its consequences for trade issues

Recognition of the EU as a legitimate contracting party in the WTO meant an improvement in its situation compared to the now obsolete *de facto* recognition. However, as noted above, the dual membership regime maintained even after that legal recognition – EU and European member States – set out a controversy, especially regarding the division of competences in the EU.

European Primary Law states trade as an exclusive competence of the European Union. Nevertheless, before Lisbon, some other matters linked to the WTO norms remained in the sphere of authority of European member States. This unclear division of some competencies was aggravated by the lack of a code or regulation clarifying the borderline situations.

This issue was of vital relevance, mainly for two reasons. On the one hand, a distinction is needed between the European Union competences and those of member States in order to know who had to exercise each of them, internally and externally (with third countries). That was the case of negotiations with the WTO, where clarification was essential for an adequate development of roles in that particular international organization and in its negotiations. Otherwise, European and national interests would hardly be protected.

²⁰ Communication from the European Commission to the Council and the European Parliament on the Establishment of an EU Delegation to the UN in Geneva (Brussels, 26.5.2010 COM(2010) 287 final) considered it was convenient to split in two delegations the existing Delegation in Geneva, one for UN matters and the other one for WTO issues.

²¹ It was created in January 2011. The role of the Delegation can be consulted at URL: http://eeas.europa.eu/delegations/wto/about_us/delegation_role/index_en.htm.

On the other hand, the existence of two different levels of competence – European and national – determined the legal nature of the agreements reached within the WTO framework. That is the origin of their characterization as mixed agreements. The special nature of these mixed agreements makes them an interesting object of analysis because of the theoretical challenges they offer to the legal discipline, and because distinct legal effects derive from that mixed nature.

In this section, the division of competences in trade between the EU and its member States is analyzed. The nature of mixed agreements is also studied, being mainly focused on its legal effects.

3.1. Different types of competences in the EU and the Common Trade Policy

Before Lisbon, division of competences was unclear and dispersed along the Treaties. The Treaty of Lisbon contributed to the clarification of this issue, distinguishing between exclusive competences, shared competences and supporting competences²². Exclusive competences are regulated in article 3 of the TFEU, and only the EU is able to legislate and adopt binding acts in those matters. Shared competences are regulated in article 4 of the same Treaty and are to be adopted by the EU and member States, but not simultaneously; Member States will exercise them only as far as the EU has not exercised them, or has decided not to exercise them. Principles of proportionality and subsidiarity need to be regarded when exercising those competences²³. Finally, in supporting competences²⁴ the main role is played by member States. The EU role in those competences is to support, coordinate or complement their actions (Chalmers, Davies, Monti, 2010).

²² Competences in the EU could also be classified as explicit, implicit and subsidiary. Explicit competences are those explicitly recognized in the Treaties. The doctrine of implicit competences developed by the jurisprudence of the ECJ states that some competences are to be exercised by the EU, even if they were not explicitly recognized in Treaties. The effect of this doctrine in the WTO-EU relations is recognition to the EU of international trade competences at the external level. Subsidiary competences are based on the “flexibility clause” stated in article 352 of the TFEU. This article allows the EU to exercise competences that were not attributed regularly by member States to the EU, in the case where this exercise is considered as necessary to achieve the EU goals.

The distinction of explicit, implicit and subsidiary competences shows the different mechanisms used by the EU to achieve its objectives in trade, internally and externally. The experience of sharing with its member states the condition of WTO contracting parties had a strong influence in this tendency to broaden its scope.

²³ Note that the Protocol on the Application of the Principles of Subsidiarity and Proportionality is applicable (16.12.2004, OJEU, C 310/207).

²⁴ Article 6 of the TFEU.

Article 3.1.e) of the TFEU classifies the common commercial policy as an EU exclusive competence²⁵. Based on this norm, the EU has developed a strong Common Commercial Policy that has become a key aspect of its policy and institutional activity. Measures and decisions have been taken regarding exports, liberalized and non liberalized imports, and defensive measures against dumping or counterfeiting.

Given the global nature of commercial transactions, an important aspect of the CCP is the signature of agreements with third countries, especially at the WTO, such as commercial agreements, agreements for limitation of exports, and cooperation agreements. Those agreements regulate different sectors, such as agriculture, services, and intellectual property rights. We must be aware of the difficulty that this implies: the EU has an exclusive competence on common commercial policy, but this policy may be regulating a sector where the EU competence is of a different nature. That is the case of agriculture or transports (as part of the agreement on services), recognized by the Treaty of Lisbon as shared competences²⁶; also, tourism is classified as a supporting competence²⁷. The diversity of competence types related to trade has been the origin of some difficulties in the EU-WTO framework, as will be seen below, since some of the agreements were of a mixed nature, i.e., the TRIPS (Trade-related Aspects of Intellectual Property Rights) or the GATS (General Agreement on Trade in Services) agreements.

Taking that problem into account, the Treaty of Lisbon also contributed to the clarification of this situation with a key norm: article 207 of the TFEU. This article states that “the common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies”. This norm expressly recognizes the European Union an exclusive competence on the most common negotiation fields at the WTO, considerably reducing the use of mixed agreements.

Some exceptions have been made to this general rule regarding “intellectual property, foreign direct investment”, “trade in cultural and audiovisual services” where a prejudice might be caused to the Union’s cultural and linguistic diversity, and trade in “social, education and health services”, where an agreement could risk seriously disturbing the national organization of such services and prejudicing the responsibility of Member States to deliver

²⁵ This is coherent with the objective of “free and fair trade” established in article 3.5 of the TEU.

²⁶ Article 4.2 d) and 4.g) of the TFEU.

²⁷ Article 6 d) of the TFEU.

them²⁸. In those cases, mixed agreements are used, and this remains a challenge for the EU and member States.

3.2. Mixed agreements: legal nature and effects

An agreement with the WTO may be mixed in two senses. Firstly, it may contain norms on subject-matters characterized as different types of competences for the EU. Secondly, parties to the agreement are the EU and European member States at the same time.

Mixed agreements are the legal mechanism used by the EU and its member States, “when it appears that the subject-matter of an agreement or contract falls in part within the competence of the EU (Community, in original text) and in part within that of the Member States”²⁹. Without this mechanism, every time an agreement has to be signed at the WTO, the difficulty of determining whether the EU or its member States are competent on the subject-matter would cause paralysis. Instead of trying to clarify doubt, mixed agreements evade controversy enabling member States to operate under the umbrella of the EU capacity to subscribe international treaties on commercial issues³⁰.

Looking at the legal effects of mixed agreements, from a careful reading of the Treaties, it can be inferred that international agreements made by the European Union are subordinated to Primary Law, and prevail over Secondary Law. Article 218.11 of the TFEU states that: “a member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties”. Moreover, article 216.2 of the TFEU recognizes that “agreements concluded by the Union are binding upon the institutions of the Union and on its member States”.

The effects of the mixed agreements will differ according to whether the relevant articles of the agreement pertain to European Law or fall under the competence of the individual States. The norms pertaining to European law become part of the European legal system from the moment the agreement enters into force. The norms falling under national competences will become part of the European legal system either directly or through a national norm, according to what the national law states in that respect (Cebada, 2002). Jurisdiction of the European Court of Justice on the agreements is still a

²⁸ Transports are referred to in another part of the Treaties, in order to ensure policy coherence.

²⁹ Opinion 2/91 (ILO Convention concerning the Safety in the Use of Chemicals at Work), 1993, ECR I-1061, para. 36).

³⁰ Some references about mixed agreements may be found in O’Keeffe and Schermers (eds.), *Mixed Agreements*, Kluwer, The Hague, 1983. Bourgeosi, Dewost Gaiffé (eds.), *La communauté européenne et les accords mixtes quelles perspectives*, Pie, Brussels, 1997.

controversial issue. A part of the doctrine considers that its jurisdiction is limited to clauses of a mixed agreement that do not extend beyond the EU's field of operation, and other parts understand the Court may interpret agreements in their entirety³¹.

Regarding the issues that might derive from the legal nature of mixed agreements, it seemed that respect of the principle of sincere cooperation³² required the adoption of a Code of Conduct that would regulate the division of competencies in the field and execution of the mixed agreements. In 1994, the Permanent Representatives Committee drafted a Code of Conduct for the Council, member States and the Commission, relating to negotiations after the Uruguay Round on financial services. It was approved and entered into force in 1994 and it was used until 1997, when those negotiations ended. At a broader level, many attempts were made to adopt a Code of conduct defining the participation of the EU and its Member States in areas of shared power at the WTO. However, it was difficult to achieve consensus between member States, the Council and the Commission (Blázquez Navarro, 2007).

Notwithstanding the lack of a Code of conduct, the EU and its member States have learned from the past and the Treaty of Lisbon regulation of competences has contributed to an improvement in their exercise, as was shown with regard to the content of article 207 of the TFEU.

4. The EU position in negotiation rounds: the agricultural sector

The last section of this paper goes beyond legal and institutional aspects of the EU-WTO relationship. Its aim is to offer the reader an overview of the position maintained by the EU in commercial policy for the agricultural sector.

Since the creation of the WTO at the Uruguay Round, many negotiation rounds have taken place. Cities such as Singapore, Doha, Hong Kong, Geneva and Cancun have witnessed WTO ministerial conferences where contracting parties, including the EU and its member states, have negotiated terms of liberalization of trade. Those negotiations focused in different sectors, such as services, raw materials, agriculture or intellectual property rights.

³¹ Bourgeois, J. H. J., *The European Court of Justice and the WTO: Problems and Challenges*, in J. H. H. Weiler (Ed.), *The EU, the WTO and the NAFTA. Towards a Common Law of International Trade*, Collected courses of the Academy of European Law, vol. IX/1, Oxford University Press, Academy of European Law, European University Institute, pp. 71-123, pp. 81-82; Arnulf, A., *Does the Court of Justice Have Inherent Jurisdiction?*, 27 *CML Review*, 1990, 683-708. Some relevant cases in this field are *Les Verts v. European Parliament* (1986, ECR 1339, CJEC Judgment of 23 April, 1986) and *Amministrazione delle Finanze dello Stato v. Società Petrolifera Italiana (SPI) and SpA Michelin Italiana (SAMI)*, (1983, ECR 801, CJEC Judgment of 16 March 1983).

³² Established in articles 4 and 13 of the TEU.

The goal of the EU to be able to speak with one voice is not only a matter of legal or institutional instruments. Those might help. But for the content of the European trade strategy to be common, integration needs to be achieved in economic and social variables.

In the subsections below, the position of the EU on agricultural negotiations at the WTO is reviewed. As it has been seen in Section 3, the Common Agricultural Policy constitutes one of the main policies and legal sectors in the European Union. Besides, as stated below, the common agricultural policy has been defined by the Treaty of Lisbon as a shared competence and therefore the adoption of a common position for all European member States remains a challenge.

First, the Uruguay Round that led to the creation of the WTO is analyzed. Second, some details of the European position on the Doha Round negotiations are offered.

4.1. The Uruguay Round

The GATT contracting parties spent almost eight years in negotiations under the Uruguay Round framework, dealing with very diverse matters, such as tariffs, non-tariff barriers, natural resource products, textiles, agriculture or intellectual property. Those efforts culminated in the creation of the WTO. A new era began for international trade, in the framework of the rules agreed during those eight years of negotiations and by the adopted policies.

The European Union, as one of the main contracting parties at the WTO, had a strategy for the Round, based on the defense of European interests and determined by the objectives set by the Treaties in each sector. Agriculture was one of the most difficult sectors in those negotiations.

The European Union negotiated agricultural matters in the WTO determined by the internal Common Agricultural Policy³³. In the Geneva meeting, gradual and substantial reductions in agricultural support and protection were set as a long-term objective. The European Community supported gradual cuts in agricultural support, based on an aggregate measurement of support (AMS), that would serve to calculate support schemes and define their reduction. However, that proposal did not receive support from other actors as the Cairns Group, the United States or Japan.

The EU was accused of being responsible for the Heysel Conference (1990) failure, because it did not accept the demands of the majority of the

³³ In 1985, just before the first meeting of the Uruguay Round in Punta del Este, the third reform of the CAP had taken place. The next reform would be implemented in 1992, during the Uruguay Round of negotiations.

participating countries³⁴. In 1992, the European Union implemented the fourth reform of the Common Agricultural Policy, incorporating the forecasted results of the Uruguay Round. The Uruguay Round finally included an Agreement on Agriculture adopted in 1993, thus regulating market access, domestic support and export competition.

The European Commission defined the 1992 reform as a first step to prepare the EU agriculture for the future, based on three main aspects: forecasted budgetary problems, enlargement of the EU towards the East, and the negotiations context at the WTO. In that sense, it stated that it would be “increasingly important for the EU’s agriculture to be competitive and it must have a policy which provides the right conditions for this”. The need for that change towards a more competitive sector was determined by negotiations aimed at reducing support and protection in agriculture, expected for 2000³⁵.

Within that context, the Commission stated in its strategy document “Agenda 2000” that the EU would have to rely a lot less on price support mechanisms in the future; increase incentives for farmers to contribute to the protection of the environment and to the protection of the European countryside; achieve a competitive and environment-friendly agriculture; and keep rural communities as a fundamental part of the European model of society. The idea was to create the conditions for EU farmers and the EU food industry to be in a good position to take advantage of the change when it happened³⁶.

The Uruguay Round could be evaluated as successful for the European Union regarding the double membership and competence issues because, notwithstanding the legitimacy problems of the EC in the WTO, the European position was presented unanimously at the negotiation processes.

4.2. The Doha Round

The Doha Round is the ongoing challenge for the European Union in that same sense. Now that the Treaty of Lisbon has articulated some institutional reforms promoting, at least in theory, a common position of the European Union and its member States at the WTO, negotiations in the Doha Round give the European Union an opportunity to show how efficient these mechanisms work at the policy level.

During the Doha Round negotiations, denominated as the Round for Development, the European Union has shown a clear commitment to development and environment through trade. It has also stated its belief in

³⁴ European Parliament, “External agricultural policy: agricultural agreements under GATT/WTO”, Fact Sheets, 24/04/2001.

³⁵ European Commission, *World Trade: Global Partnership, Global Opportunities*, 1998.

³⁶ European Commission, “Agenda 2000: For a stronger and wider Union” (COM(97) 2000), 16 July 1997.

multilateral liberalization and rule-making. Among the objectives that the European Commission has established for the Doha negotiations, the creation of trade flows with growing emerging economies such as China, Brazil and India could be highlighted. The European Union also wants to improve access to the services market³⁷.

Agriculture is an essential subject-matter in the Doha Round. Difficulties in achieving agreements in that and other sectors have created a general feeling of failure among the contracting parties. Those difficulties will hopefully be overcome with political will and negotiation efforts. However, the Doha Agenda is of a global nature and that means that, for the Round to be concluded, agreements must be achieved in every sector, including agriculture. The interconnected character of diverse sectors' negotiations is a new aspect of WTO agreements (Millet, García-Durán, 2006, p. 95).

At first, the Common Agricultural Policy was seen as an obstacle for progress on the Doha negotiations, since export subsidies, domestic support and control of access to markets protected the EU farmers. However, its reform in 2003 showed the EU commitment to eliminate tariffs and other barriers. In fact, during negotiations, the EU offered to cut farm tariffs by 60%, reduce trade distorting farm subsidies by 80%, and eliminate farm export subsidies altogether.

Negotiations continued and the EU assumed compromises that would be difficult to fulfill with the 2003 CAP. Therefore, new reforms were needed in order to achieve international objectives. In 2008, a new reform of the CAP tried to modernize the sector and make it more market-oriented. At present, a new reform is being discussed after the presentation of a legal proposal by the Commission. The main idea of the proposal is to make the CAP more effective by increasing the competitiveness and the sustainability of the sector³⁸.

In general, it could be said that the European Union is acting as a real union in the WTO during the Doha Round negotiations, and that it is acting coherently both internally and externally. The Treaty of Lisbon has contributed to this unity, with some of the aforementioned reforms. It is interesting to note for example the role the European Parliament adopted in commercial issues on agriculture since its entry into force. Playing that role, by resolution to the Council the 8th March 2011, the EP "calls on the Commission to comply strictly with its negotiating mandate from the Council, which sets the most recent reform of the CAP as the limit of its action, provided that equivalent concessions are obtained from its trading partners; asks it to refrain from making any proposals

³⁷ URL: <http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/doha/>.

³⁸ The proposal was presented on October 12, 2011 and could be approved by the end of 2013. It would enter into force on the 1st of January 2014.

that would predetermine the decisions to be made on the future of the CAP post-2013”³⁹.

The new role of the EP shows the extent to which the Treaty of Lisbon and other reforms at the European Union have contributed to the consolidation of the EU as a contracting party to the WTO, speaking with one voice. Some aspects of the division of competences with member States are still controversial. However, the EU and its member States have developed useful mechanisms and have shown a strong will to work in a successful partnership. We will have to wait to see whether other new agents such as the Geneva Delegation are also useful.

5. Conclusions

The WTO constitutes, together with the IMF and the World Bank, the institutional economic framework at the international level. Sovereign States are still the most important subjects of international law and of the aforementioned international organizations. Nevertheless, in response to a globalized world and economy, integration processes have been generalized in the last decades.

The European Union is the result of one of those integration processes, the origin of which goes back to the Schumann Declaration in the 1950's. What started as a group of States with some common norms is now an international organization with legal personality that aspires to become a political union and is legitimized to subscribe international agreements with other States and international organizations.

Its consolidation in the WTO as a contracting party, in parallel with the membership of its member States, presents some particular characteristics with legal effects which have been analyzed in this paper.

It can be concluded from the study that the evolution of the European integration process has contributed to a better participation of the EU in the WTO, the Treaty of Lisbon being the greatest exponent of that contribution, although some challenges regarding division of competencies or the legal nature of mixed agreements remain unresolved.

Some years after the entry into force of the Treaty of Lisbon, it would be desirable that the EU and its member States open an internal discussion on the double membership issue and decide whether it is better that only the EU represents European interests at the WTO, or whether the current situation should be maintained.

³⁹ European Parliament resolution of March 8, 2011 on EU agriculture and international trade (2010/2110(INI)).

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