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The European Union and New Leading Powers: Towards Partnership in Strategic Trade Policy Areas

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Abstract

This Article aims at understanding the potential of partnerships of the European Union ('EU') with emergent global actors (the so-called new leading powers ('NLPs') or 'BRIC countries'), focusing on international trade law and policy. Although the power base of these actors (Brazil, Russia, India, and China—the BRIC countries) is their respective region (South America for the case of Brazil, Eastern Europe for Russia, the Subcontinent for India, and the Far East for China), there may be specific policy areas in which their influence might be global. With this in mind, the Article raises interesting questions: Is the EU an attractive trade partner for the new leading powers? Does the EU want cooperation with the BRIC countries? What can the EU expect from cooperation with the BRIC countries? What are the characteristics of these partners? What are the EU's priorities in its foreign trade policy? With which partners should the EU cooperate in which policy areas? With which instruments can the EU engage these partners and how can internal coordination within the EU be ensured?

ARTICLES

THE EUROPEAN UNION AND NEW LEADING POWERS: TOWARDS PARTNERSHIP IN STRATEGIC TRADE POLICY AREAS*

*Dr. Rafael Leal-Arcas***

INTRODUCTION

This Article aims at understanding the potential of partnerships of the European Union (“EU”) with emergent global actors (the so-called new leading powers (“NLPs”) or “BRIC countries”),¹ focusing on international trade law and policy. Al-

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1. BRIC is a term used in economics to refer to the combination of Brazil, Russia,

though the power base of these actors (Brazil, Russia, India, and China—the BRIC countries) is their respective region (South America for the case of Brazil, Eastern Europe for Russia, the Subcontinent for India, and the Far East for China),² there may be specific policy areas in which their influence might be global.³ With this in mind, the Article raises interesting questions: Is the EU an attractive trade partner for the new leading powers? Does the EU want cooperation with the BRIC countries? What can the EU expect from cooperation with the BRIC countries? What are the characteristics of these partners? What are the EU's priorities in its foreign trade policy? With which partners should the EU cooperate in which policy areas? With which instruments can the EU engage these partners and how can internal coordination within the EU be ensured?

This Article argues that the EU's objective of engaging with the BRIC countries on trade matters is to establish peace, security, and prosperity in the twenty-first century. Trade creates economic ties and generates more prosperity; thus it contributes to peace and security, since nations that trade with each other do not go to war. An example is the EU integration project. The same argument is true multilaterally: before the creation of Doha Round in 2001, developing and least-developed countries

India, and China. General thinking is that the term was first prominently used in a thesis by Jim O'Neill, chief global economist, at the Goldman Sachs investment bank. O'Neill argues that the economic potential of Brazil, Russia, India, and China is such that they may become among the four most dominant economies by the year 2050. These countries encompass over twenty-five percent of the world's land coverage and forty percent of the world's population. The BRIC countries have taken steps to increase their political cooperation, mainly as a way of influencing the position of the United States on major trade accords, or, through the implicit threat of political cooperation, as a way of extracting political concessions from the United States, such as the proposed nuclear cooperation with India. See generally Goldman Sachs, BRICs, <http://www2.goldmansachs.com/ideas/brics/index.html> (last visited Nov. 11, 2008); Wikipedia, BRIC, http://en.wikipedia.org/wiki/BRIC#cite_note-0 (last visited Oct. 24, 2008) (summarizing O'Neill's BRIC thesis).

2. For an economic analysis of the success of the BRIC countries, see generally Dominic Wilson & Roopa Purushothaman, *Dreaming with BRICs: The Path to 2050* (Goldman Sachs, Global Econ. Paper No. 99, 2003) (providing economic analysis of the potential for success of the BRIC countries).

3. In 2007, the International Monetary Fund ("IMF") ranked China as the fourth wealthiest nation in the world in absolute terms; Brazil, Russia, and India came in tenth, eleventh, and twelfth respectively. See International Monetary Fund, Report for Selected Countries and Subjects, *World Economic Outlook Database*, April 2008, <http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/index.aspx> (last visited Oct. 24, 2008).

had been marginalized in the world trading system,⁴ which brought with it serious economic implications. In 2001 in Doha (Qatar), developing countries were promised inclusion in the world trading system in order to achieve a higher level of justice and equity in the world. That is why the Doha Round is called the development agenda.⁵ The argument is that a more open and equitable trading system⁶ brings peace to the world and, in this sense, the Doha Round should not be approached as a zero-sum game—as many developing countries seem to perceive it—but as a win-win situation.⁷ To achieve this, a new and better

4. See generally Faizel Ismail, *How Can Least-Developed Countries and Other Small, Weak and Vulnerable Economies Also Gain from the Doha Development Agenda on the Road to Hong Kong?*, 40 J. WORLD TRADE 37 (2006) (focusing on the concerns and perspectives of least-developed countries (“LDCs”)).

5. Not everyone agrees with the governmental position that the Doha Round is beneficial to developing and least-developed countries. For severe criticisms of the Doha Round, see Commission Memo, MEMO/06/247 (June 23, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/247&format=HTML&aged=0&language=EN&guiLanguage=en> (noting gains limitations for the “poorest and most vulnerable countries . . .”); Press Release, Oxfam, *New WTO Framework Doesn’t Add up to Development* (June 22, 2006), available at http://www.oxfam.org/en/news/pressreleases2006/pr060622_wto (questioning the benefit of offers made by the European Union (“EU”) and United States) (last visited May 18, 2008); Antoine Bouët, Simon Mevel, & David Orden, *More or Less Ambition in the Doha Round: Winners and Losers from Trade Liberalisation with a Development Perspective*, in *THE WORLD ECONOMY* 1253 (2007) (describing how Doha outcomes are not guaranteed to be beneficial for LDCs; rather, outcomes will depend on the specifics of the final negotiated agreement); Thomas W. Hertel & Roman Keeney, *What Is at Stake: The Relative Importance of Import Barriers, Export Subsidies, and Domestic Support*, WORLD BANK, available at http://siteresources.worldbank.org/INTTRADERESEARHC/Resouces/Ch2AgTradeBook_HertelKeeney.pdf (criticizing the idea that trade liberalization alone will aid least developed countries); S. Kinnman & M. Lodefalk, *Economic Implications of the Doha Round* (Swedish National Board of Trade, July 2006) (suggesting that the strongest results go to the developing countries, but warning that “[e]xcluding some elements of liberalisation from the round may turn potential gains into losses, for some countries.”).

6. Mr Mandelson, who referred to a development package for LDCs as “indispensable,” indicated at the Hong Kong World Trade Organization (“WTO”) Ministerial Conference that the EU had committed to step up annual spending on aid for trade to two billion Euros by 2010. One billion of this will come from EU Member States, which agreed at the Hong Kong Ministerial Conference to the increase (from 400 million Euros per year); the remainder will come from the European Commission. See, e.g., Gale, Cengage Learning, *EU to More than Double Trade Aid to Developing Countries*, Dec. 19, 2005 (“Europe did not come to Hong Kong empty-handed on aid for trade . . .”); Mariarosaria Iorio, *The Doha Development Agenda (DDA) and Aid for Trade: Finding the Policy Link* (International Gender and Trade Network, 2007) (analyzing, *inter alia*, “the rationale and principles of Aid for Trade.”).

7. For an analysis of the evolution of the world trading system, see generally Paul Demaret, *The Metamorphoses of the GATT: From the Havana Charter to the World Trade Or-*

global economic governance framework is needed. The Bretton Woods institutions, which are outdated, need to be reformed and improved.

This Article also argues that there remains substantial scope for all BRIC countries (except for Russia, which is not yet a member of the World Trade Organization (“WTO”)) to make further commitments towards greater liberalization within the services sectors and within all modes of supply provided in the General Agreement on Trade in Services (“GATS”). It will be demonstrated that, despite the commitments made within the GATS, services sectors still exhibit limitations that restrict equal competition for foreign competitors, sometimes resulting in non-compliance with the WTO doctrines of market access and national treatment. Different WTO countries set different strategies for services liberalization, reflected in their GATS or other negotiating positions. Excessive use of non-tariff barriers⁸ can lead to ineffective enforcement of GATS commitments, resulting in true market access lagging behind bound rates. Some countries keep a conservative position on their bound commitments, while in reality a more liberal access is enjoyed, affording them stronger leverage on future rounds of negotiation. A failure to effectively enforce bound commitments can also reflect an inability within a country to ensure uniform domestic implementation.⁹

It will also be argued that the attitude of the BRIC countries toward multilateralism and responsibility in global economic governance is questionable or unclear. For example, China and Russia are already relatively powerful. India and Brazil, however, want to become more important players; they seem to lean against “traditional” powers (mainly the United States), and tend

ganization, 34 COLUM. J. TRANSNAT'L L. 123 (1995) (analyzing the evolution of the world trading system).

8. Non-tariff barriers or non-tariff measures are “measures other than tariffs applied by governments at the border that determine the extent to which a good or service has access to the import market.” WALTER GOODE, *DICTIONARY OF TRADE POLICY TERMS* 309 (5th ed. 2007).

9. Among those who claim that there is potential for developing countries to benefit from trade liberalization are Kym Anderson, Will Martin, & Dominique van der Mensbrugghe. See Will Martin, & Dominique van der Mensbrugghe, *Doha Merchandise Trade Reform: What's at Stake for Developing Countries?* (World Bank Policy Research Working Paper No. WPS3848, 2006), available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2006/02/15/000016406_20060215164859/Rendered/PDF/wps3848.pdf.

to focus on South-South regionalism. Evidence of this is the trilateral developmental initiative among India, Brazil, and South Africa (“IBSA”).¹⁰ It is therefore necessary to pave the way for responsible multilateralism for the common goal, i.e., the establishment of peace, security, and prosperity in the twenty-first century.

The EU has a long history of promoting regional integration in other parts of the world, especially among developing countries. This is based on its own nature as the oldest and most advanced regional scheme, coupled with the perception among leading European policymakers that the EU does indeed constitute a model for others.¹¹ The EU has therefore long viewed itself as a “‘natural’ supporter of regional initiatives,”¹² a view that sparked the increasing externalization of its model over time. This policy has become one of the cornerstones of the EU’s development policy, and the incentive of offering market access to the EU’s large internal market in support of such a strategy has gained in salience in recent years. By promoting regional integration, therefore, the EU actively influences emergent forms of regional governance in other parts of the world.

The EU’s main motivation for the promotion of regional integration is predicated on trade and economic gains. According to this view, the EU needs to have important economic interests at stake in order to get involved in the integrative efforts of other countries. These interests are two-fold. First, the EU promotes the integration of national markets into regional econo-

10. The India, Brazil, South Africa (“IBSA”) Dialogue Forum represents three important poles for galvanizing South-South cooperation and greater understanding between three important continents of the developing world namely, Africa, Asia, and South America. The forum provides the three countries with a platform to engage in discussions for cooperation in the field of agriculture, trade, culture, and defense, among others. *See*, IBSA, About IBSA, <http://www.ibsa-trilateral.org> (last visited Oct. 24, 2008); *see also* IBSA, Brasilia Declaration, http://www.ibsa.nic.in/brasil_declaration.htm (last visited Oct. 24, 2008).

11. Rt. Hon. David Miliband, MP, Foreign Sec’y of the U.K., Europe 2030: Model Power Not Superpower, Remarks at the College of Europe, Bruges (Nov. 15, 2007) (“The EU . . . could be a model power of regional cooperation.”); *see also* Romano Prodi, President of the Eur. Comm’n, Eur. and Global Governance, Speech to the 2d COMECE Congress, Brussels (Mar. 31, 2000) (“Imperfect though [the European model] still is, it nevertheless works on a continental scale . . . and I believe . . . that it would also work globally.”).

12. Commission Communicaton, COM (95) 219 Final, at 6 (1995) (Support for Regional Economic Integration Efforts among Developing Countries).

mies to benefit from economies of scale when supplying them with EU goods. Second, through the negotiation of bi-regional trade agreements, the EU has a powerful tool to shape the framework of economic governance in counterpart regions.¹³

The EU has a lot to gain from the integration of small, fragmented markets into larger economic units in which EU products can circulate more easily. Market size has become an important criterion for investment and trade decisions by private companies and serves as a strong incentive for European traders and investors: “[T]he whole will grow faster than the sum of its parts, offering outlets for our exports and opportunities for our investors.”¹⁴ This rationale is best reflected in the EU’s new approach to integration in Africa through the negotiation of economic partnership agreements (“EPAs”):¹⁵ [T]hey “should deal with all factors that constrain business activities in [African, Caribbean, and Pacific] countries”¹⁶ through “the creation of open, integrated regions sufficiently large to trigger economies of scale, support trade and attract foreign investment.”¹⁷ Such a strategy has been evaluated by one commentator as indicating that it “is based upon securing market access for European producers while selling the concept of the European ‘model’ of regional integration.”¹⁸ As the creation of regional markets goes hand in hand with the development of a regional economic governance framework, the EU has an interest in being able to access the enlarged market on terms that are favorable to its own industry. Regional economic integration is an ongoing process that is never complete. The EU has a comparative advantage to

13. See generally Sophie Meunier & Kalypso Nicolaidis, *The European Union as a Conflicted Trade Power*, 13 J EUR. PUB. POL’Y 906 (2006) (examining underpinnings of EU’s formidable trade power).

14. Pascal Lamy, Regionalism and Multilateralism in Latin America, Speech Delivered at the Federação das Indústrias do Estado de São Paulo (July 10, 2001).

15. Economic partnership agreements are “bilateral or plurilateral agreement[s]. The content of such agreements varies greatly. Some merely promote voluntary economic cooperation between the partners. Others are proper free-trade agreements.” GOODE, *supra* note 8, at 145.

16. European Commission, manuscript for information brochure, *Making Globalisation Work for Everyone: The European Union and World Trade* (2002).

17. European Commission, Trade Issues, *Africa, Caribbean, Pacific. EPA Negotiations: Toolbox*, http://ec.europa.eu/trade/issues/bilateral/regions/acp/toolbox_en.htm#top (last visited Apr. 25, 2008).

18. Mary Farrell, *The EU and Inter-Regional Cooperation: In Search of Global Presence?*, in *THE POLITICAL ECONOMY OF EUROPEAN INTEGRATION* 19 (Amy Verdun & Erik Jones eds., 2005).

other such schemes as its integration process is the most advanced and it can therefore draw on its long experience in formulating common rules to impact the economic integration process of others.¹⁹

The research method used in this Article has been an interdisciplinary qualitative approach to the analysis of law, international political economy, and international relations, thereby moving away from the textual-formalistic reading of law. It is the author's conviction that significant answers to legal questions can be found only in a wider political, economic, and social context.

This Article is divided into seven parts: after the Introduction and some general remarks, the Article will present the EU's unilateral approach to international trade law in relation to the BRIC countries, followed by the multilateral approach when dealing with the BRIC countries in trade issues. Its bilateral/regional approach to the NLPs follows, with an examination of each of the BRIC countries, before the Conclusion.

I. *GENERAL REMARKS*

Why is trade important in the political arena? A trade agreement is often considered to belong to a bilateral political agreement, even if the scope might be rather limited (e.g., Asian bilateralism). Trade is about money, and money is a powerful instrument to foster political relations. Trade can be used as a "carrot" or as a "stick." Trade can be used as a "carrot" when preferences for certain countries create competitive advantages versus third parties. This is not possible multilaterally due to the most-favored-nation ("MFN") treatment. The MFN treatment (General Agreement on Tariffs and Trade ("GATT") Article I, GATS Article II, and Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Article 4), is the principle of not discriminating between one's trading partners. In other words, the MFN principle is about treating other WTO members

19. See generally Anne-Sophie Claeys & Alice Sindzingre, *Regional Integration as a Transfer of Rules: The Case of the Relationship Between the European Union and the West African Economic and Monetary Union (WAEMU)*, Paper Presented to Development Studies Association Annual Conference, Glasgow, University of Strathclyde (Sept. 10-12, 2003), available at <http://www.edpsg.org/Documents/dp26.doc> (observing that "the EU has constituted a model of regional integration for a certain number of developing countries . . .").

equally. Under the WTO Agreements, countries cannot normally discriminate between their trading partners. If you grant someone a special favor (such as a lower customs duty rate for one of their products), then you have to do the same for all other WTO members.²⁰

This principle, known as MFN treatment, is the core principle of the WTO Agreements. It is so important that it is the first Article of the GATT, which governs trade in goods. MFN is also a priority in the GATS (Article II) and the TRIPS Agreement (Article 4), although in each agreement the principle is handled slightly differently.²¹ Some exceptions are allowed, namely the so-called enabling clause²² and the preferential tariff treatment for least-developed countries.²³ For example, countries can set up a free-trade agreement²⁴ that applies only to goods traded within the group—discriminating against goods from outside. Or, countries can give developing countries special access to their markets. Or, a country can raise barriers against products that are considered to be traded unfairly from specific countries. In the case of services, countries are allowed, in limited circumstances, to discriminate. The agreements, however, only permit these exceptions under strict conditions. In general, MFN means that every time a WTO country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners—whether rich or poor, weak or strong.

20. See, GOODE, *supra* note 8, at 285-86 (explaining the most-favored-nation (“MFN”) principle).

21. Together, those three Agreements cover all three main areas of trade handled by the WTO.

22. See Decision, *Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*, L/4903 (Nov. 28, 1979), available at http://www.wto.int/english/docs_e/legal_e/tokyo_enabling_e.pdf (“Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.”).

23. See Decision on Waiver, *Preferential Tariff Treatment for Least Developed Countries*, ¶ 1, WT/L/304 (June 15, 1999) (“[T]he provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries . . .”).

24. A free-trade agreement is “a contractual arrangement between two or more countries under which they give each other preferential market access, usually called free trade. In practice, free-trade agreements tend to allow for all sorts of exceptions . . . to cover sensitive products.” GOODE, *supra* note 8, at 181.

Certain exceptions²⁵ are, however, envisaged in the context of specific service activities within the framework of a list of exemptions from the MFN requirement. Work on this subject started in 2000. When the GATS came into force in 1995, WTO members were allowed a once-only opportunity to take an exemption from the MFN principle of non-discrimination between a member's trading partners. The measure for which the exemption was taken is described in a member's MFN exemption list, indicating to which member the more favorable treatment applies, and specifying its duration. In principle, these exemptions should not last for more than ten years. As mandated by the GATS, all these exemptions are currently being reviewed to examine whether the conditions which created the need for these exemptions in the first place still exist. And in any case, they are part of the current services negotiations. In fact, each government has included in its schedule the services for which it guarantees access to its market by setting out the limits it wishes to maintain for such access.

Trade can also be used as a "stick." For example: (1) To deny preferences to a certain country when granting them to others, thereby creating discrimination and trade diversion; (2) Through trade defense instruments²⁶ such as antidumping and safeguard measures; (3) The WTO dispute settlement system.

As we will see later, trade agreements often include some non-trade policy objectives. This is the case of cooperation agreements that relate to sustainable development, human rights, good governance, *et cetera*. These agreements are usually aimed at lesser-developed countries. Examples of cooperation agreements²⁷ are the Andean Pact (today Andean Community)²⁸

25. Exceptions are binding provisions on all signatories built into the core text of an agreement that lists the circumstances when a country may violate a term of an agreement without penalty. Exceptions only come into play as a defense when a country's law or policy has been challenged in a dispute resolution as a violation of an agreement.

26. Trade defense instruments, also known as contingent protections, are "protective mechanisms . . . that are legal under the WTO agreements. They may be triggered to counter the effects of dumping, subsidies, and unexpected import surges causing injury to domestic industry. Such mechanisms include anti-dumping measures, countervailing duties and safeguards." GOODE, *supra* note 8, at 101.

27. Commission of the European Communities, Proposal for a Council Decision Concerning the Conclusion of a Framework Cooperation Agreement Between the European Economic Community and the Andean Pact, COM (92) 463 Final (Nov. 13, 1992).

as well as the Association of South-East Asian Nations (“ASEAN”)²⁹ in 1980. Agreements were also designed to help some Asian countries address problems arising from the loss of certain preferences from the Commonwealth.³⁰ This was the case with India,³¹ Pakistan,³² Sri Lanka,³³ and Bangladesh.³⁴

In the case of the EU’s neighborhood, there were clear foreign policy objectives. With Eastern Europe, there was a strong role of trade policy in fostering foreign policy objectives. The re-integration of Eastern Europe into the EU has been facilitated by offering access to a huge market. With other countries in the European neighborhood, similar but not equally large economic incentives are offered in order to attain foreign policy goals such as security, stability, and peace. This is the case of North Africa and the Middle East.

28. The Andean Community is a trade bloc comprising until recently five South American countries: Bolivia, Colombia, Ecuador, Peru, and Venezuela. In 2006, Venezuela announced its withdrawal, reducing the Andean Community to four member states. The trade bloc was called the Andean Pact until 1996, and came into existence with the signing of the Cartagena Agreement in 1969. Its headquarters are located in Lima, Peru. *See* Comunidad Andina: About Us, <http://www.comunidadandina.org/ingles/quienes/brief.htm> (last visited Oct. 24, 2008) (providing brief history of Andean Community).

29. The Association of Southeast Asian Nations (“ASEAN”) is composed of ten members. The five Founding Countries of ASEAN are Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The rest of the countries are Brunei, Cambodia, Laos, Myanmar, and Vietnam. “[T]he aims and purposes of the Association are: (1) To accelerate economic growth, social progress and cultural development in the region and (2) To promote regional peace and stability” Association of Southeast Asian Nations, Overview, <http://www.aseansec.org/64.htm> (last visited Nov. 4, 2008).

30. The implementation of the “declaration of intent” does not require the conclusion of any agreement. *See* ASEAN-EEC Joint Declaration, Kuala Lumpur, (Mar. 7, 1980), <http://www.aseansec.org/1500.htm> (last visited Oct. 24, 2008).

31. *See* Council Regulation No. 3113/84, O.J. L 292/1, at 5 (1984) (“Agreement in the Form of an Exchange of Letters Between the European Economic Community and the Republic of India on the Guaranteed Prices for Cane Sugar for the 1984/85 Delivery Period.”).

32. *See* Council Regulation No. 1196/86, O.J. L 108/1 (1986) (“On the Conclusion of the Agreement for Commercial, Economic and Development Cooperation Between the European Economic Community and the Islamic Republic of Pakistan.”).

33. Council Decision No. 90/537/EEC, O.J. L 301/1 (1990) (“Council Decision of 27 July 1990 Concerning the Conclusion of the Agreement Between the European Economic Community and the Democratic Socialist Republic of Sri Lanka on Trade in Textile Products.”).

34. One early agreement with Bangladesh was on commercial cooperation. *See* Council Regulation No. 2785/76, O.J. L 19/1 (1976) (“On the Conclusion of the Commercial Cooperation Agreement Between the European Community and the People’s Republic of Bangladesh.”).

This Article will next tackle the three legal instruments or types of liberalization used by the EU: unilateralism, multilateralism, and bilateralism/regionalism.

II. UNILATERALISM

The focus of attention in this Section is to see whether the EU can increase cooperation and establish trust through unilateral liberalization. In purely economic terms, unilateral MFN liberalization is in the interest of each country. However, trade liberalization in political-economic terms is seen as a concession and is resisted by import substitution³⁵ industries. This means that unilateral MFN liberalization on a broad scale is often not very viable for the EU.

When looking at bilateral political relations, we note that unilateral liberalization could work as a “carrot” to the benefit of the country in question. Given that only one country benefits, this is politically more feasible. Unilateral liberalization could also work as a “stick” because withdrawal is possible at any time.

The EU already uses unilateral preferences. An example is the everything-but-arms initiative,³⁶ which provides the most favorable treatment of all EU unilateral initiatives, granting the least-developed countries (“LDCs”)³⁷ duty-free and quota-free

35. Import substitution is “a policy for the development of a domestic productive capacity in goods and services to reduce or displace imports, often with the expectation of increases in employment and reductions in the current account deficit.” GOODE, *supra* note 8, at 222.

36. Council Regulation No. 416/2001/EEC (2001). This regulation grants duty-free access to imports of all products from least developed countries without any quantitative restrictions, except to arms and munitions.

37. The LDCs are the forty-nine poorest nations in the world, often disproportionately experiencing the negative effects of corporate globalization. These forty-nine recognized countries, as defined by the United Nations, are deemed structurally handicapped in their development process, facing more than other developing countries the risk of failing to come out of poverty as a result of these handicaps, and in need of the highest degree of consideration from the international community in support of their development efforts. Numerous indicators can be used to illustrate that these are really the poorest nations on earth, such as their increasing marginalization in the world economy, as reflected in their tiny share of world exports. Although they make up around 10% of the world’s population, LDCs account for less than 0.5% of world exports. In 1980, their share was 0.8%. “LLDC” is sometimes used for “least-developed countries” in opposition to “LDC,” which then stands for “less-developed countries.” An empirical study that explains the difficulties of these nations in the world trading system is Chakriya Bowman, *Case Study 33, The Pacific Island Nations: Towards Shared Representation*, in *MANAGING THE CHALLENGES OF WTO PARTICIPATION: 45 CASE STUDIES*, (Peter Gallagher, Patrick Low, & Andrew Stoler eds., 2005), available at <http://www>.

access to the EU market. Another EU unilateral mechanism is the preferential treatment given to the African, Caribbean and Pacific (“ACP”) countries,³⁸ although neither one of these programs is applicable to the BRIC countries. The original Treaty of Rome (“EEC Treaty”)³⁹ contained guidelines about external relations. First, the EEC Treaty established a special regime for development aid and cooperation, which initially aided developing countries that had a long-standing relationship (mostly former colonies) with founding Member States.⁴⁰ This regime was further developed through the Yaoundé and Lomé Conventions, which linked seventy developing countries to the European Economic Community (“EEC”).⁴¹

In this sense, we see that one of the main reasons for international negotiations between the then EEC and third-parties was the historic link between the various Member States of the EEC and overseas territories or dependencies. Shortly after the establishment of the EEC, there was an important transformation in the links between these countries and the common market, which, according to Part IV of the EEC Treaty, consisted of a two-way free access for each other’s products and a special EEC aid program. To address the issue of access for these countries,

wto.org/english/res_e/booksp_e/casestudies_e/case33_e.htm#fntext10 (last visited Nov. 4, 2008).

38. Such unilateral measures certainly do not help multilaterally. In July 2008, Ecuador threatened to sidetrack the WTO mini-ministerial conference that took place in July 2008, whose aim was to give a final push to the Doha Round, unless an agreement on banana tariffs was reached to reduce the preferential treatment that the European Community (“EC”) has been offering the African, Caribbean, and Pacific (“ACP”) countries. See generally Eric J. Lyman & Daniel Pruzin, *Ecuador Ready to Block Doha Deal Until Banana Feud Resolved*, WTO REP. (July 23, 2008). However, on July 26, 2008,

[E]ven Latin American banana exporters and the U.S. . . . reached an agreement with the EU on the latter’s import regime for bananas. . . . [B]ased on a proposal by [Pascal] Lamy, the EC would cut its MFN tariffs on bananas . . . by the beginning of 2016 The pact would exempt the EU from having to cut banana tariffs under a Doha [Round].

WTO Members Move Forward on Bananas, Tropical Products, but Major Differences Loom, BRIDGES DAILY UPDATE, July 28, 2008, <http://ictsd.net/downloads/2008/07/daily-update-issue-8.pdf>.

39. Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty].

40. Bernard Martenczuk, *Cooperation with Developing and Other Third Countries: Elements of a Community Foreign Policy*, in EXTERNAL ECONOMIC RELATIONS AND FOREIGN POLICY IN THE EUROPEAN UNION 385–417 (Stefan Griller & Brigit Weidel eds., 2002).

41. See Hugo Paemen, *The European Union in International Affairs: Recent Developments*, 22 *FORDHAM INT’L L.J.* 136, 138 (1999).

the Yaoundé Convention was held.⁴²

The Yaoundé Convention took place with eighteen African States and Madagascar.⁴³ After the first enlargement of the Community, the whole system was renegotiated (in 1973/1974) with nearly fifty countries (all the former dependencies of the United Kingdom ("UK") in Africa, the Pacific, and the Caribbean). In 1975, the Lomé Convention, between the EEC and this group of countries, introduced new ideas such as the organization of commercial and industrial cooperation and the stabilization of export earnings.⁴⁴

The Yaoundé Conventions linked the EEC to African States, providing, *inter alia*, financial and technical assistance for economic development. Two important examples are the Convention of Association between the EEC and Associated African States, of July 20, 1963,⁴⁵ and the Convention of Association between the EEC and Associated African States, of July 29, 1969.⁴⁶ With reference to the Lomé Conventions, there have been four additional agreements negotiated, the African, Caribbean, and

42. See Convention of Association Between the European Economic Community and Associated African States, July 20, 1963, 2 I.L.M. 971 (1963) [hereinafter First Yaoundé Convention]. It was on January 1, 1971, that the Second Yaoundé Convention entered into force (eighteen African countries) as well as the Arusha Convention (three Eastern African countries), and the Council Decision concerning the association of the EC Member States' overseas territories. See Convention of Association Between the European Economic Community and the African and Malagasy States Associated with that Community, July 29, 1969, 9 I.L.M. 484 (1970) [hereinafter Second Yaoundé Convention]; Agreement Establishing an Association Between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, Sept. 24, 1969, O.J. L 282/80 (1970); Council Decision No. 70/595, O.J. L 282/83 (1970).

43. See, e.g., Rafael Leal-Arcas, *Unitary Character of EC External Trade Relations*, 7 COLUM. J. EUR. L. 335, 364 (2001). For example, an agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar regarding fishing off the coast of Madagascar was signed some years later. See Agreement Between the European Economic Community and the Government of the Democratic Republic of Madagascar on Fishing Off Madagascar, Jan. 28, 1986, O.J. L 73/26 (1986).

44. See Kurt M. Rozelsky, *European Economic Communities—Environmental Policy—Legal Basis and International Implications of Council Regulation on the Supervision of Shipments of Hazardous Waste*, 23 GA. J. INT'L & COMP. L. 111, 129 n.125 (1993) (citing African, Caribbean, and Pacific Countries-European Economic Community Convention, Feb. 28, 1975, 14 I.L.M. 595 (1975) [hereinafter Lomé I]). It was on February 28, 1975 that the signature of the so-called Lomé I took place between the EEC and 46 ACP countries. See *id.*

45. See generally First Yaoundé Convention, *supra* note 42.

46. See generally Second Yaoundé Convention, *supra* note 42.

Pacific Countries-European Economic Community Convention (“ACP-EEC Convention”), of February 28, 1975,⁴⁷ the second ACP-EEC Convention, of October 31, 1979,⁴⁸ the third ACP-EEC Convention, of December 8, 1984,⁴⁹ and the fourth ACP-EEC Convention, of December 1, 1989.⁵⁰ Thanks to these Conventions,⁵¹ over ninety-nine percent of these countries’ imports enjoy free access to the EU.⁵²

Another unilateral tool used by the EU is the Generalized

47. See generally Lomé I, *supra* note 44. The ACP was formed when the first Lomé Convention was signed with the European Economic Community (“EEC”) in 1975. In 2002, it encompassed seventy-eight states (forty-eight African states, sixteen Caribbean states, fourteen Pacific states), which all have preferential trading relation with the EEC. See African, Caribbean and Pacific Group of States (ACP Group), Frequently Asked Questions, <http://www.acpsec.org/en/faq.htm> (last visited Oct. 24, 2008); see also ACP Group, Member States, http://www.acpsec.org/en/acp_states.htm (last visited Oct. 24, 2008).

48. Second ACP-EEC Convention, *opened for signature* Oct. 31, 1979, 1277 U.N.T.S. 348 [hereinafter Lomé II].

49. Third ACP-EEC Convention, *opened for signature* Dec. 8, 1984, 1922 U.N.T.S. 4 [hereinafter Lomé III].

50. Fourth ACP-EEC Convention, *opened for signature* Dec. 15, 1989, 1924 U.N.T.S. 4 [hereinafter Lomé IV].

51. Not everyone is of the view that Economic Partnership Agreements (“EPAs”) are fair or beneficial for ACP countries. See Paul Orengoh, *East Africa: EPA Controversy Continues*, TRADE LAW CENTRE FOR SOUTHERN AFRICA, May 29, 2007, http://www.tralac.org/cgi-bin/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=42422&cat_id=1211; Ronald Sanders, *A New Colonialism? EU Trade Demands and ACP Countries*, HUNTINGTON NEWS, June 16, 2007, <http://www.huntingtonnews.net/columns/070616-sanders-columnseutrade.html>.

52. It is worth noting that there are future EPAs. See, e.g., Lillian Crawford-Abbenettes, Andrea Ewart & Rolande Pryce, *The Caribbean*, 41 INT’L LAW. 765, 772 (2007) (“In response to WTO determinations that this preferential regime violated WTO rules, in 2000 the EU and ACP countries launched negotiations to re-establish trade relations on a reciprocal basis by replacing the Lomé Convention with Economic Partnership Agreements . . . within each region of the ACP.” (citations omitted)). These agreements were done in the framework of the so-called Economic Partnership Agreements. For instance, the ACP countries and the EC have agreed to enter into economic integration agreements—concluding new WTO-compatible trading arrangements, progressively removing barriers to trade among them, and enhancing cooperation in all areas related to trade. To this end, EPAs will be negotiated with ACP regions engaged in a regional economic integration process. EPAs are thus intended to consolidate regional integration initiatives within the ACP. They are also aimed at providing an open, transparent, and predictable framework for goods and services to circulate freely, thus increasing competitiveness of the ACP and ultimately facilitating the transition towards their full participation in a liberalizing world economy—thereby complementing any initiative taken in the multilateral context. Formal negotiations started in September 2002 and EPAs entered into force on January 1, 2008 at the latest. The non-reciprocal Lomé IV trade preferences continued to be applied during the interim period (2000–07).

System of Preferences (“GSP”),⁵³ a vital tool of the EC’s pro-development trade policy.⁵⁴ This is a multilaterally agreed instrument, where the BRIC countries are beneficiaries. However, tariff reductions are generally not very meaningful because of preference margins not being very large, because of sensitive goods, graduation for product groups where competitiveness has increased, or restrictive rules of origin. Recently, though, “[a]s a result of re-calculations to reflect the evolution of [international] trade, preferences for specific product groups will be re-established for six beneficiary countries of the GSP (Algeria, India, Indonesia, Russia, South Africa, and Thailand).”⁵⁵

It is interesting to note that, although the EU also offers a special incentive arrangement to foster sustainable development and good governance, called the GSP Plus incentive system,⁵⁶ none of the BRIC countries want to be part of it, presumably because they do not like conditionality. So would it make sense

53. The idea of granting developing countries preferential tariff rates in the markets of industrialized countries was originally presented by Raul Prebisch, the first Secretary-General of United Nations Conference on Trade and Development (“UNCTAD”), at the first UNCTAD conference in 1964. Kevin Moss, *The Consequences of the WTO Appellate Body Decision in EC—Tariff Preferences for the African Growth Opportunity Act and Sub-Saharan Africa*, 38 N.Y.U. J. INT’L L. & POL. 665, 669 (2005-06). The Generalized System of Preferences (“GSP”) was adopted at UNCTAD II in New Delhi in 1968. Dionysia-Theodora Avgerinopoulou, *Legislative Development: Implementation and Enforcement of Multilateral Environmental Agreements—The New EC Generalized System of Preferences Scheme*, 12 COLUM. J. EUR. L. 827, 829 (2005-06); see generally Kelé Onyejekwe, *International Law of Trade Preferences: Emanations from the European Union and the United States*, 26 ST. MARY’S L.J. 425, 447-49 (1994-95) (outlining evolution of preferential economic trade agreements under UNCTAD).

54. See Oren Perez, *Multiple Regimes, Issue Linkage, and International Cooperation: Exploring the Role of the WTO*, 26 U. PA. J. INT’L ECON. L. 735, 761 (2005).

55. Commission Press Release, European Union Maintains Trade Preferences for Developing Countries, July 23, 2008, <http://trade.ec.europa.eu/doclib/html/139873.htm>.

56. To benefit from the GSP Plus scheme, countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. They also need to have ratified and effectively implemented the sixteen core conventions on human and labor rights and seven (out of eleven) of the conventions related to good governance and the protection of the environment. At the same time, beneficiary countries must commit themselves to ratifying and effectively implementing the international conventions which they have not yet ratified. In any case, the twenty-seven conventions have to be ratified by the beneficiary countries by December 31, 2008. See generally Lorand Bartels, *The WTO Legality of the EU’s GSP+ Arrangement*, 10 J. INT’L ECON. L. 869, 871 (2007) (describing requirements for GSP Plus qualification). For the list of conventions to qualify for the GSP Plus scheme, see Commission Press Release, GSP: The New Preferential Market Access System for Developing Countries, June 23, 2005, <http://trade.ec.europa.eu/doclib/html/123861.htm>.

to create a new unilateral instrument? Not really, since the political resistance for competition from the BRIC countries would probably be strong, particularly with regard to China and Brazil when it comes to agriculture.

III. MULTILATERALISM

The question to ask is how to foster more constructive multilateralism by using a trade policy approach. The Doha Round⁵⁷ was the result of widespread agreement among delegates at the Fourth WTO Ministerial Conference in Doha that it was time to address the imbalances of previous rounds and to offer developing countries the prospect of trade talks which they could see were to their benefit.⁵⁸ Although wealth redistribution seems to be vital to truly help the poor nations of the world, the author agrees with WTO Director-General Lamy that the WTO's role is not about redistribution of wealth. So a new Round was necessary to include poor countries in the world trading system, and to promote economic development, as well as to alleviate poverty.⁵⁹

The WTO members are currently negotiating the Doha Development Agenda ("DDA").⁶⁰ A successful result of the DDA

57. For a summary of the current Doha Round of trade negotiations, see RAFAEL LEAL-ARCAS, *THEORY AND PRACTICE OF EC EXTERNAL TRADE LAW AND POLICY* 486-500 (2008) [hereinafter LEAL-ARCAS, *EC EXTERNAL TRADE LAW*].

58. For an overview of the Doha Round, see generally Sungjoon Cho, *Doha's Development*, 25 *BERKELEY J. INT'L L.* 165 (2007).

59. This is certainly the position of former EU Trade Commissioner Peter Mandelson, who said at a Party of European Socialists conference in Brussels on Decent Work that far from being responsible for poor labor conditions, free trade could be a ladder out of poverty and "an engine of the very prosperity that helps societies put poor labour conditions behind them for good." Peter Mandelson, EU Trade Commissioner, *Free Trade Is Not the Enemy of Decent Work, Speaking Points at Party of European Socialist's Conference* (May 10, 2006), http://ec.europa.eu/commission_barroso/ashton/speeches_articles/sppm098_en.htm. He concluded: "The enemy of decent work is our willingness to turn a blind eye to it. Free trade does not mean trade indifferent to fair conditions of production." *Id.*

60. Interestingly, rich countries call this agenda of negotiations the "Doha Development Agenda," whereas poor countries refer to it as the "Everything but Development Round." See, e.g., Chakravarthi Raghavan, *An Everything But Development Round from Doha*, *SUNS—SOUTH-NORTH DEVELOPMENT MONITOR*, Nov. 16, 2001 <http://www.twinside.org.sg/title/twe268a.htm> (last visited Oct. 18, 2008). It has certainly been a mistake to call this round the "development round," since the DDA is a multilateral trade negotiation with very little input on development. *Id.* This rather vague distinction between rich and poor countries is based on the World Bank's country classification. See *The World Bank Data & Statistics, Country Classification*, <http://web.world>

will mean more growth and development in the world trading system. *A sensu contrario*, failure of the DDA will imply no growth or development for the world, especially the poorest countries on the planet. In addition, the failure of the DDA will be regarded as a missed historic opportunity to eliminate export subsidies, to put an end to trade distortion. Consequently, all countries of the world trading system will lose, especially developing countries. With a successful result, the biggest gains to development will certainly be in the core areas of goods, services and agriculture, and so liberalizing trade among developing countries is an essential part of the Doha exercise.⁶¹ That is why the international community cannot miss the opportunity offered by the DDA, which can set a vision for the global economy for the next decades and make a major contribution to development.

Many deadlines for the conclusion of the Doha Round have been missed. In my opinion, the main actors to blame are the EC and the U.S., based on their own selfishness. Others blame India and especially China for the failure to conclude the Doha Round in July 2008.⁶² There has been lack of progress or very slow progress of the Doha round, which has brought generalized frustration to the world trading system. There are multiple reasons for the lack of progress: disagreement over major issues (such as agriculture), national elections in major WTO members (for example, the United States in 2008, India in 2009), as well as the unclear definition of the term “development” in the Doha Round. Moreover, since lack of trust seems to be an important impediment toward progress in the Doha Round, bilateral dialogues as well as more intensive and broader political cooperation between the EU and Brazil/India/China may establish new trust. In this sense, it is worth noting that during the Doha Round, various Strategic Partnerships between the EU and some

bank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458-menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html (last visited Mar. 20, 2008).

61. As we saw in the pre-Hong Kong Ministerial Conference period of negotiations, the agriculture negotiations are considered key to the success of the overall Doha Round of WTO talks. See generally Matthew Newell, Note, *Cotton, U.S. Domestic Policy, and Trade Wars: The Future of WTO Agriculture Negotiations*, 14 MINN. J. GLOBAL TRADE 301 (2005) (arguing agricultural negotiations carry large impact on the ongoing Doha Round).

62. See C. FRED BERGSTEN ET AL., CHINA'S RISE: CHALLENGES AND OPPORTUNITIES 15 (2008).

of the BRIC countries have taken place.⁶³

In this context, what role do the New Leading Powers play multilaterally? How can the EU engage with them to foster the DDA? Some of the BRIC countries play an increasingly important role at the WTO. They have attained a global reach in trade policy since the Cancún WTO Ministerial Conference in September 2003. Because major divides exist among the various WTO members in relation to what the WTO's future agenda should comprise, the Doha Ministerial conference text put off all the major decisions until the following WTO Ministerial conference in Cancún, whose principal aim was to present an overview of the progress of the negotiations in the framework of the DDA. In Cancún, talks were intended to forge agreement on the Doha Round's objectives but collapsed due to a strong North-South divide on agricultural issues.⁶⁴ Developing nations gained in strength, forming two new negotiating groups—the G-20,⁶⁵ consisting of middle-income developing countries, and the G-90⁶⁶ group of poorer developing countries—and finally rejecting the deal that they viewed as unfavorable.

Evidence of the fact that some of the BRIC countries are

63. See Commission of the European Communities, Towards an EU-Brazil Strategic Partnership, COM (2007) 281 Final (May 2007) [hereinafter Towards EU-Brazil Partnership], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0281:FIN:EN:PDF> (Brazil); Agreement on Partnership and Cooperation Establishing a Partnership Between the European Communities and their Member States, of the One Part, and the Russian Federation, of the Other Part, June 24, 1994, O.J. L 327/3 (1997) (Russia); Commission of the European Communities, An EU-India Strategic Partnership, COM (2004) 430 Final (June 2004), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0430:FIN:EN:PDF> (India); Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, May 21, 1985, O.J. L 250/2 (1985) (China).

64. See Elizabeth Becker, *Poorer Countries Pull Out of Talks Over World Trade*, N.Y. TIMES, Sept. 15, 2003, at A1; Carmen G. Gonzalez, *Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage*, 17 BERKELEY LA RAZA L.J. 65, 73-74 (2006) (explaining North-South dichotomy and reason for Cancún talk breakdown).

65. The Group of 20, or G-20, is a group of developing countries focused on tearing down industrialized countries' barriers to agricultural trade. In March 2006, the group included twenty-three countries: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe. See G-20, Members, <http://www.g-20.mre.gov.br/members.asp> (last visited Oct. 19, 2008).

66. The G-90 is a tripartite alliance of the African Union ("AU"), the ACP Group and LDCs, forming a majority of developing countries in the WTO. See Food and Agriculture Organization of the United Nations, Negotiating Coalitions, http://www.fao-logs.ch/coalitions_en.htm (last visited Oct. 19, 2008).

increasingly playing important roles multilaterally is in the G-20, where Brazil and India seem to act as leaders.⁶⁷ In the G-4, Brazil and India are now members (with the United States and the European Community (“EC”)) and have replaced Japan and Canada in this small circle. As for China in the WTO, it seems to have a strong interest, but is active only behind the scenes, which is rather surprising compared to India’s or Brazil’s attitude at the WTO. It is expected of China to assume more multilateral responsibility and behave multilaterally as pro-actively as other new leading powers such as India and Brazil. Russia is not yet a member of the WTO. The EU has readily accepted the new prominent role of Brazil and India and engages constructively with them multilaterally.

The EU pushes for a successful and ambitious Doha Round since it believes that it is both in the interests of the EU and the wider global economy. Moreover, the EU believes that a deal in which all WTO members contribute based on their capacities would:

[S]trengthen the multilateral [trading] system and the WTO by bringing the new rising powers into a trade deal as core contributors for the first time; [it would] provide a shot of confidence in a highly uncertain global economy; [it would] create valuable new economic growth in the global economy, which can contribute to new trade for EU companies, job creation and greater competitiveness; [and finally, it would] remove important distortions in global farm trade that in many cases currently create unfair pressure on farming in the developing world.⁶⁸

So what is required from the EU to conclude the DDA? Agricultural liberalization seems to be the key issue.⁶⁹ Efforts to reach a preliminary agreement on the crucial Doha Trade

67. This new phenomenon of India and Brazil playing hardball at the WTO is clearly explained in FAREED ZAKARIA, *THE POST-AMERICAN WORLD* 37 (2008).

68. European Commission, Trade Issues, *Doha Development Agenda, Doha WTO Ministerial*, http://ec.europa.eu/trade/issues/newround/doha_da/geneva08/index_en.htm (last visited Oct. 22, 2008).

69. Pascal Lamy, on May 29, 2008, told the Committee of International Trade of the European Parliament that the world, and in particular the European Union, has a major stake in the conclusion of the Doha Round. Pascal Lamy, Director-General of the WTO, Speech to the European Parliament Committee on International Trade (May 29, 2008), http://www.wto.org/english/news_e/sppl_e/sppl90_e.htm. In Pascal Lamy’s view, the solution to the current situation in the world does not lie in protectionism. *Id.*

Round have stalled on the issue of agricultural subsidies and tariffs. The big trading blocs in the WTO (the United States, Brazil, and Australia on one side, and the EC on the other) had been engaged in a tit-for-tat struggle,⁷⁰ each refusing to accept that offers of subsidy cuts from the others had gone far enough. The G-20 is demanding heavier cuts from both sides. It is interesting to see the differences of opinion between the G-20's strong stance on eliminating agricultural subsidies and the then-EU trade commissioner Peter Mandelson's statement that while there was a need for an ambitious Doha Round outcome, focusing on agriculture alone would be counter-productive. Brazil's foreign minister, Celso Amorim, argued that:

[P]ositive and concrete indications, on the part of the developed countries, early on, about the key elements of the agricultural negotiations are indispensable to set the tone for a positive dynamic on all areas of [the] negotiations He pointed to unresolved issues beyond the gaps on trade-distorting subsidies, such as the speed with which tariff cuts would be phased in, tariff capping, and a potential provision in the draft agriculture text (Paragraph 80) that would allow countries to create tariff quotas for products for which none currently exist, which he said would create 'a zone of indetermination.'⁷¹

In response to a U.S. offer to cut farming subsidies by sixty percent, the EC had offered to reduce its tariffs on agricultural goods by, on average, thirty-eight percent—an insufficient figure in the eyes of the United States and the developing countries. The EC, however, was driven by internal conflict, with France accusing then-Commissioner Mandelson of exceeding his mandate to negotiate on behalf of the EU.⁷² To prove the lack of trust that EU Member States tend to have toward the Commission, let us remember that on February 18, 2008, after rejecting

70. Tit-for-tat is the *modus operandi* in international trade. For example, Country A raises barriers on Product X because Country B did it to Product Y.

71. *Political Positioning Dominates Opening Day of WTO Talks*, BRIDGES DAILY UPDATE, July 22, 2008, <http://ictsd.net/downloads/2008/07/bridges-daily-update-22-july.pdf>.

72. It is interesting to observe the French fixation on agriculture, given the small percentage that it represents on France's GDP. U.S. CENTRAL INTELLIGENCE AGENCY, THE 2008 WORLD FACTBOOK: FRANCE (2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html> (last visited Nov. 12, 2008). The argument of a French political obligation to look after France's farmers seems evident, but is it macroeconomically justified?

the revised draft proposals for agriculture, industry, and services trade in the framework of the Doha Round, France's Minister for Agriculture, along with nineteen other EU ministers for agriculture, showed once again their lack of trust toward the European Commission in trade negotiations. Whereas for former EU Trade Commissioner Mandelson the agricultural proposal forms "a good basis for further negotiations,"⁷³ the views of France's Agriculture Minister, Michel Barnier, were that the text in agriculture was "totally unbalanced between concessions . . . and other issues like services, industry or geographical indications, where we see no progress."⁷⁴ France's rejection of the draft comes as no real surprise after years of intense lobbying against any large tariff and subsidy cuts, since France fears that the draft could destroy its farming sector.⁷⁵ However, the fact that the rejection of the draft has the backing of so many other EU Members States could signal bad news for the Doha talks.

Turning now to the BRIC countries, what is required from them to conclude the Doha Round? An immediate reaction would be that the BRIC countries should be prepared to accept more responsibility for the multilateral system, i.e., they should hide less behind the status of a developing country and stand up to their own ambition to new leadership. This is certainly true in the case of China. However, the term "development" is not clearly defined in the Doha Round. If the Doha Round is concluded, certainly Brazil, China, and India will greatly benefit from better access to developed countries' markets and to each other's markets. However, this may happen partly at the expense of other poorer developing countries.

"In recent months, the U.S. and the EU have by and large stopped [criticizing] each other on agricultural trade. Instead, they have turned their fire on developing countries like Brazil, India, and China, blaming [those countries'] resistance on industrial tariff cuts for the impasse in the negotiations."⁷⁶ To

73. Posting of Keith Good to FarmPolicy.com, Twenty EU Members Cool to Latest WTO Farm Text, <http://www.farmpolicy.com/?p=628> (February 19, 2008, 05:28 CST).

74. See EurActiv.com, France Rallies EU Partners Against World Trade Pact (Feb. 19, 2008), <http://www.euractiv.com/en/trade/france-rallies-eu-partners-world-trade-pact/article-170401> (last visited Nov. 12, 2008).

75. See *id.*

76. Geneva Mini-Ministerial: "Now or Never" for Real this Time?, BRIDGES DAILY UPDATE, July 21, 2008, <http://ictsd.net/i/wto/englishupdates/12911/>.

prove this point, in his statement to the Trade Negotiations Committee during the July 2008 WTO Mini-Ministerial Conference, David Shark, a U.S. trade official, took aim at India and China for “insisting on the ability to raise agricultural tariffs in violation of their current WTO commitments, and firmly refusing to take part in sector-specific liberalization initiatives for industrial machinery, electronics, and chemicals.”⁷⁷

The BRIC countries should also accept greater differentiation among developing countries in the WTO and lower market barriers vis-à-vis poorer developing countries. In this sense, the former EU trade chief expects a proactive role of the New Leading Powers:

“A limited number of developing countries must accept tariff cuts imposed by a NAMA coefficient,” [Peter Mandelson] told the [Trade Negotiations Committee at the WTO], referring to Brazil, China, India, and the rest of the 30-odd relatively larger developing countries required to use the standard tariff reduction formula. “They must be real. These cuts must provide some new market access in practice. That is the political bottom line. Nothing else will work for us. Nothing else will close the deal.”⁷⁸

A. *WTO Mini-Ministerial Conference of July 2008*

Governments’ latest attempt to salvage a deal in the Doha Round broke down on July 29, 2008, as ministers acknowledged that they were unable to reach a compromise after nine days of a WTO mini-ministerial summit.⁷⁹ This was due to an increase in tariffs by developing countries to protect farmers from import surges under a special safeguard mechanism.⁸⁰ Import-sensitive China and India were pitted against the United States’ demands for predictable market access for farm products. A rational ex-

77. *Id.* (internal quotes omitted).

78. *Political Positioning Dominates Opening Day of WTO Talks*, BRIDGES DAILY UPDATE, July 22, 2008, <http://ictsd.net/i/wto/englishupdates/13365/>.

79. Joseph Olanyo, *WTO Boss Ready to Call Ministers Back to Geneva*, MONITOR DAILY, Sept. 18, 2008, http://www.monitor.co.ug/artman/publish/business/WTO_boss_ready_to_call_ministers_back_to_Geneva_71679.shtml.

80. A special safeguard mechanism is a system available under the WTO Agreement on Agriculture to WTO members that have converted non-tariff measures to tariff protection. It allows WTO members to impose additional tariffs on agricultural products if import volumes exceed defined trigger levels or if import prices fall below defined trigger prices. See GOODE, *supra* note 8, at 396.

planation for the failure of the multilateral trade talks is that countries such as India want to protect their poor and subsistence farmers, while the United States and the EC negotiators are under pressure from powerful farm lobbies.⁸¹

According to Pascal Lamy, trade ministers that participated in the mini-ministerial conference “were very close to finalizing modalities in agriculture and [non-agricultural market access]”⁸² in the framework of deals governing tariff and subsidy cuts that governments had hoped to strike. “He said that ‘a huge amount of problems which had remained intractable for years have found solutions,’ even though the talks ultimately ran aground on the extent to which developing countries would be able to protect farmers from import surges under a special safeguard mechanism.”⁸³

That said, although the mini-ministerial conference was going to focus on agriculture and industrial goods, trade in services is a central part of any final Doha Agreement. At the mini-ministerial there was a signaling conference, in which WTO members indicated where and how they planned to improve access to their services markets for other WTO members. It was understood that, while the signals exchanged were important in measuring progress, they would not represent the final outcome of the negotiations. They would instead provide comfort to WTO members by reflecting real progress in the services negotiations.⁸⁴ In this sense, officials from several countries expressed satisfaction with the signaling conference on services trade liber-

81. See *WTO Mini-Ministerial Ends in Collapse*, BRIDGES DAILY UPDATE, July 30, 2008, <http://ictsd.net/i/wto/englishupdates/15315/> (describing how India was focused on setting up special safeguards to protect its farmers from the surges of subsidized food imports); Jagdish Bhagwati & Arvind Panagariya, *Doha: Why the Key to its Success Lies in Washington*, VoxEU Centre for Economic Policy Research, (July 9, 2007), <http://www.voxeu.org/index.php?q=ndde/371> (describing how the United States was under pressure from strong U.S. farm lobbies that would not permit reduction in the substantial U.S. subsidies without “sectoral reciprocity,” that is, reciprocity in agriculture rather than manufacturing); see also CNN.com, *French minister: China, India Thwarted WTO Talks*, July 30, 2008, <http://www.cnn.com/2008/BUSINESS/07/30/wto.france.ap/index.html>.

82. *WTO Mini-Ministerial: The Day After*, BRIDGES DAILY UPDATE, July 30, 2008, <http://ictsd.net/downloads/2008/07/daily-update-issue-11.pdf>.

83. *Id.*

84. Coal. of Serv. Indus., *Services Signalling Conference, July 26, 2008, Report by the Chairman of the TNC*, July 30, 2008, JOB(08)/93, <http://www.uscsi.org/press/Report%20by%20the%20chairman%20of%20the%20TNC-30%20July%202008%20JOB.pdf>.

alization held on July 26, 2008, in the framework of the July WTO mini-ministerial conference in Geneva. At this mini-ministerial conference, participating countries—mostly developed and relatively large developing countries—provided indications of the sort of binding market-opening commitments they would be willing to undertake under a Doha Round agreement. Such a signaling conference was just meant to provide a credible signal that the negotiations were moving forward.

WTO members acknowledged that, while they proceeded with services liberalization in their economies, the gap between existing levels of openness and current commitments continued to widen.⁸⁵ Some participants stressed that a satisfactory outcome of the services negotiations could be one of the most significant dividends of the DDA, as a Development Round. Most participants indicated their readiness to improve access conditions for Mode 4.

On Mode 4, Indian commerce minister Kamal Nath was pleased about the “good movement by the U.S. and by the EU”⁸⁶ since both WTO Members were prepared to make concessions on allowing more professionals from India and other developing countries to work temporarily in their markets.⁸⁷ Mr. Nath was also pleased about the concessions on Mode 1, since Modes 1 and 4 are important to India’s information technology sector. “He stressed the importance of the domestic regulation aspect of the services negotiations. An Indian trade official said that the EC had suggested that it may consider lifting ‘economic needs tests,’ a regulatory requirement that can make it nearly impossible to use Mode 4 access.”⁸⁸

Although the exercise of the July 2008 WTO Mini-Ministerial Conference does not represent the final outcome of the services negotiations, it has represented a step forward in the services negotiations.

What can the EU do to support the conclusion of the Doha Round? In the author’s opinion, the EU should try to foster a

85. *Id.*

86. *Members Give Mixed Reactions to Lamy Compromise, Take ‘A Good Step Forward’ on Services*, BRIDGES DAILY UPDATE, July 27, 2008, <http://ictsd.net/downloads/2008/07/daily-update-issue-7-template.pdf> [hereinafter *Mixed Reactions*].

87. See generally Daniel Pruzin, *U.S., EU Cite Moves in “Signaling” Talks On Services; India Likes “Mode 4” Openings*, 25 INT’L TRADE REPORTER 1128 (2008).

88. *Mixed Reactions*, *supra* note 86, para. 25.

new sense of trust with the BRIC countries. However, the problem seems to be a direct conflict of interests as well as pressure on the Commission's Directorate-General for external trade not to be too altruistic. The EU should also refrain from patronizing as a major economic "old" power. Moreover, the EU should accept and foster even more actively the new leadership roles of the BRIC countries.

B. *Is Multilateralism the Panacea?*

As Robert Zoellick, President of the World Bank Group, argues, the events of September and October 2008 could be a tipping point for many developing countries. As always, the poor are the most defenseless. Voices around the world are blaming free markets. Others are asking about the failures of governmental institutions. We cannot turn back the clock on globalization. So, we must learn the lessons from the past, as we build for the future. We must modernize multilateralism and markets for a changing world economy. The new multilateralism, suiting our times, will need to be a flexible network, not a fixed one. It needs to maximize the strengths of interconnecting institutions, public and private. It should be oriented around pragmatic problem-solving that fosters a culture of cooperation.⁸⁹

In the case of trade, in the absence of a global deal to liberalize trade, Robert Zoellick, said that countries should focus on forging regional agreements "linked to global disciplines,"⁹⁰ and that they should try to use trade facilitation measures to decrease the costs of cross-border commerce.

1. A Note on Plurilateralism

The Doha Round is in crisis.⁹¹ If the Doha Round fails or achieves only very little and very late,⁹² then the WTO's reputa-

89. Robert Zoellick, President, World Bank Group, *Modernizing Multilateralism and Markets*, Remarks at the Peterson Institute for International Economics in Washington, D.C. (Oct. 6, 2008), <http://www.petersoninstitute.org/publications/papers/paper.cfm?ResearchID=1012>.

90. *Id.* sec. 5.

91. For a detailed analysis of the Doha Round, see generally LEAL-ARCAS, *EC EXTERNAL TRADE LAW*, *supra* note 57.

92. In the industrial sector in particular, EU trade ministers voiced, in late May 2008, their dissatisfaction with the proposals for a global trade agreement, which they said did not offer sufficient guarantees on opening up new market opportunities for their businesses in third countries. Germany in particular slammed new flexibilities in

tion will be seriously damaged which may translate into an erosion of the WTO's authority and the WTO's Dispute Settlement Understanding.⁹³ With their large export potential, the BRIC countries (apart from Russia, which is not yet a WTO member) should have a very strong interest in the WTO and the functioning rules of world trade, which serve as insurance against protectionism and contain the trade powers of the United States and the EU to quite an important degree.

So how can we prevent the WTO from a deeper crisis? One possibility is a plurilateral approach to trade agreements,⁹⁴ which are optional and not binding to those WTO members who do not engage in the agreement. The idea behind plurilateral agreements is to make the WTO deliver again on progressive liberalization. Emerging economies in general, and the BRIC countries in particular, should take part in it. The EU should try to create an understanding for this and appeal to the leadership of the BRIC countries to keep the WTO alive and moving. Once

the texts that would enable large emerging economies such as China to shelter entire sectors of their industry from outside competition. For *BusinessEurope*, the latest draft text "on industrial goods was a 'step backwards for trade liberalisation' due to a new tariff reduction formula that enables countries like India, Brazil, and Argentina to make fewer cuts in import duties while allowing new WTO members such as China and Taiwan to phase in tariff cuts over up to 15 years." EurActiv.com, Mandelson Encounters Resistance in Trade Talks (May 27, 2008), <http://www.euractiv.com/en/trade/mandelson-encounters-resistance-trade-talks/article-172692>.

93. The Dispute Settlement Understanding ("DSU") is one of the most important new features of the WTO. The DSU established a system of review and procedures for when one of the WTO members complains that the actions or policies of another member have harmed it through a violation of WTO rules. Typically, a complaint would be followed by consultations, possible arbitration, then the formation of a panel of experts, the panel ruling, possible appeal to the Appellate Body, and, based on the outcome of the case, either compliance, compensation to the complaining country, or eventual retaliation. See RAFAEL LEAL-ARCAS, *EC EXTERNAL TRADE LAW*, *supra* note 57, at 418.

94. For the most part, all WTO members subscribe to all WTO Agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as "plurilateral agreements." All other Tokyo Round agreements became multilateral obligations (i.e., obligations for all WTO members) when the WTO was established in 1995. The four were:

- trade in civil aircraft
- government procurement
- dairy products
- bovine meat

The bovine meat and dairy agreements were terminated in 1997. WTO.org, Understanding the WTO: The Agreements, *Plurilaterals: Of Minority Interest*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm (last visited Oct. 22, 2008).

again, establishing more trust and a sense of cooperation is important.

In the plurilateral agreements, members might negotiate on single topics or across a broad agenda. The risk of this plurilateral approach is to marginalize WTO members, typically the weakest and poorest members of the WTO family. To avoid this risk, the world trading system should allow them to participate in the plurilateral negotiations, but provide them with the freedom to opt out of a counter-productive result to the negotiations.

The plurilateral process, akin to the bilateral request and offer mechanism, is informal. It takes place between demandeurs and those from whom they are seeking higher commitments. There are no formal negotiating sessions. There is no formal chairperson. There are no minutes of these informal negotiations. And importantly, there is no critical mass of countries representing 80–90% of world trade in that sector, unless the negotiations draw in such a large number of countries that they effectively make up this “critical mass” (an unlikely situation if it is completely voluntary). That negotiations can take place through a plurilateral request/offer approach is already outlined in Paragraph 11 of the Negotiating Guidelines agreed to by all WTO members before the GATS negotiations commenced in 2001.⁹⁵ At the 2005 Hong Kong Ministerial Conference, developed countries⁹⁶ succeeded in getting language permitting plurilateral negotiations, in addition to the bilateral request/offer negotiating method. This means that a group of countries will issue one request document demanding broad GATS coverage in a particular sector to one country or a group of countries. Rather than negotiating bilaterally, the countries will negotiate as a group. Developing nations were successful in preventing a

95. Paragraph 11 reads: “Liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach.” Council for Trade in Services, *Guidelines and Procedures for the Negotiation on Trade in Services S/L/93* (Mar. 29, 2001), available at http://www.wto.org/english/tratop_e/serv_e/sl93.doc (last visited May 24, 2008).

96. A developed country is a term used to categorize countries with developed economies, ones in which the tertiary and quaternary sectors of industry dominate. This level of economic development usually translates into a high income per capita, and a high Human Development Index (“HDI”). Countries with high gross domestic product (“GDP”) per capita often fit the previous description of a developed economy; however, anomalies exist when determining “developed” status by the factor GDP per capita alone.

text which would have made entering into plurilateral negotiations mandatory, because they were concerned that it would result in developed countries “ganging up” on individual developing countries.

As part of the plurilateral negotiating process, the WTO formed thirteen “Friends Groups” that will develop joint request documents and a list of countries to which these requests will be submitted.⁹⁷ Other Friends Groups may be formed or operate in a less formal manner. Although the Friends Groups will be made up of WTO country representatives, major multinational service businesses have been working closely with each group on both the content of the offer and on a strategy to break into the service markets of countries high on their priority lists.

In the case of services trade, to intensify and expedite services negotiations, Annex C⁹⁸ of the Draft Hong Kong Ministerial Declaration introduced an interesting mode of negotiations, i.e., plurilateral negotiations. Annex C also exhorted members to make new binding market-access commitments across the four modes of services supply stipulated in the GATS, and to give up existing restrictions on granting equal treatment to services providers from all WTO countries. These plurilateral negotiations, unlike conventional bilateral negotiations, “permit a group of members to present ‘collective’ requests to other mem-

97. Below is a list of known Friends Groups, and the country chairing their discussions:

1. Audio-visual services (Chinese Taipei)
2. Air Transport (New Zealand)
3. Computer-related services (Chile)
4. Construction services (Japan)
5. Energy services (EU)
6. Environmental services (EU)
7. Express Delivery services (United States)
8. Financial services (Canada)
9. Legal services (Australia)
10. Logistical services (Switzerland)
11. Maritime services (Japan)
12. Mode 3 (Switzerland)
13. Mode 4 (Canada)
14. Telecommunication (Singapore).

Public Citizen, *WTO General Agreement on Trade Services (GATS) Glossary*, Mar. 23, 2006, http://www.tradewatch.org/documents/glossary_final_03-06.pdf.

98. For a reading of Annex C (annex on services), see Hong Kong WTO Ministerial Conference, *Doha Work Programme, Draft Ministerial Declaration Revision*, WT/MIN(05)/W/3/Rev2 (Dec. 18, 2005), available at http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_text5_e.doc.

bers in any sector or mode of supply.”⁹⁹ Furthermore, “the plurilateral approach has solidified a platform for interested [WTO] members to build upon initial, sector-specific discussions, either through an extended round of negotiations similar to what transpired after the Uruguay Round, or in the context of the next round of services negotiations mandated under the GATS.”¹⁰⁰ That said, Annex C also failed to deliver any timelines for service negotiations, even in a preliminary sense.¹⁰¹

Two weeks of intensive market-access negotiations in services trade started at the WTO in mid-April 2007.¹⁰² These marked the first services meetings to be conducted in formal negotiating mode since the Doha Round talks broke down in July 2006, although there had been informal talks in the interim. This first week was dedicated to plurilateral meetings between groups of demandeur countries seeking new market-opening commitments and the predominantly developing countries to which they submitted collective requests in February 2006. Although many developing countries remain reluctant to further open their markets to foreign services providers until there is more progress in the talks on agriculture and industrial tariffs, some major demandeur members of the WTO such as the EC and the United States identified key breakthrough sectors in which they were especially eager to see new liberalization. These plurilateral negotiations were more focused than in the past, benefiting from more thorough preparation by the requesting WTO members. Each of these sector-specific negotiations was coordinated by one sponsor of the collective request, and each had a structured agenda unlike the more free-wheeling discussions in previous plurilateral WTO discussions. The participating countries were, therefore, “each specifically asked whether they were going to meet the liberalization commitments set out

99. Cho, *supra* note 58, at 177-78 (citing *TNC: Lamy Outlines Doha Round Roadmap for Hong Kong and Beyond*, 9 BRIDGES WEEKLY TRADE NEWS DIGEST, Oct. 19, 2005, at 3 [hereinafter *Lamy Outlines Doha Roadmap*], available at <http://ictsd.net/i/news/bridges-weekly/6207/>).

100. Johannes Bernabe & Shuaihua Cheng, *The Doha Round Negotiations on Services: An Overview*, Paper Prepared for ICTSD Seminar Realizing the Doha Development Agenda as if the Future Mattered (Feb. 16-21, 2007).

101. Cho, *supra* note 58, at 177-78 (citing *Lamy Outlines Doha Roadmap*, *supra* note 99).

102. Rafael Leal-Arcas, *The Resumption of the Doha Round and the Future of Services Trade*, 29 LOY. L.A. INT'L & COMP. L. REV. 339, 430 (2007).

in the collective request, and, if not, why they were unable to do so.”¹⁰³ The participating countries were also asked whether they were prepared formally to bind the level of liberalization actually applied in practice in each sector and, if they were unable to do so, why not.¹⁰⁴ The second week was reserved for bilateral negotiations between individual WTO members.¹⁰⁵

IV. BILATERALISM/REGIONALISM

What can the EU offer the BRIC countries to foster trust, sense of cooperation and respectfulness, as well as a better multi-polar framework of global economic governance? EC trade policy uses a pyramidal structure with regard to the various degrees of trade preferences that it offers to different countries and regions. The BRIC countries have by and large been at the bottom of the preference pyramid thus far. An unofficial ranking of the preference pyramid would look as follows starting from the top: new EU Member States and accession candidates, countries with which the EC has a free-trade agreement, countries of the Mediterranean region, the African, Caribbean and Pacific countries, and the BRIC countries in relation to the Generalized System of Preferences.¹⁰⁶ So there appears to be a potential to offer more market access to BRIC countries and embed this in a policy-centered foreign policy approach.

If we look at bilateral free-trade agreements (“FTAs”) as in-

103. *Services Cluster Finishes with New Focus on “Breakthrough Sectors,”* 11 BRIDGES WEEKLY TRADE NEWS DIGEST, May 2, 2007, at 5 [hereinafter *Services Cluster*], available at <http://ictsd.net/downloads/bridgesweekly/bridgesweekly11-15.pdf>.

104. In the past, it had proved easier for countries facing requests to take a defensive approach when they wanted to, by asking the different sponsors a series of technical questions about precisely what they were seeking. See *Services: Demandeurs, Requested Members both Content with Initial Plurilaterals*, 10 BRIDGES WEEKLY TRADE DIGEST, Apr. 12, 2006, at 1, available at <http://ictsd.net/i/news/bridgesweekly/7391/> (last visited Oct. 26, 2008).

105. See generally *Services Cluster*, *supra* note 103.

106. The GSP is a formal system of exemption from the more general rules of the WTO. Specifically, it is a system of exemption from the MFN principle that obligates WTO countries to treat the imports of all other WTO countries no worse than they treat the imports of their most favored trading partner. In essence, MFN requires WTO countries to treat imports coming from all other WTO countries equally, that is, by imposing equal tariffs on them, *inter alia*. For example guides and regulations, see Office of the United States Trade Representative, U.S. Generalized System of Preferences Guidebook (Mar. 2008), http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file666_8359.pdf; EC External Trade, GSP Fact Sheet, http://trade.ec.europa.eu/doclib/docs/2008/july/tradoc_139988.pdf.

struments for liberalizing trade, the “carrot” function is important since FTAs offer preferential market-access, whereas, in the “stick” function, it does not seem to be realistic to withdraw preferences, as the free-trade agreement in question would need to be breached. This situation seems hardly imaginable and thus not a credible threat. From the emerging-markets perspective, another reason for the attractiveness of signing a free-trade agreement with the EC is their competitive advantage. A free-trade agreement can level the playing field, for example for Brazil in relation to Mexico and Chile, both of which already have FTAs with the EC.¹⁰⁷ Moreover, there is insurance against trade defense instruments as these are generally less used against trade partners. Furthermore, the EU could offer additional incentives (and therefore show generosity to build more political trust) by granting larger concessions or demanding fewer concessions than would be the case in a purely reciprocal give-and-take situation. However, even if the EU concessions were possible, what would the EU want to obtain in return? Market access seems to be the evident answer. This is what trade negotiations are about. The EC’s Directorate-General for trade would come under pressure if EU concessions were not used to enhance market access for European exporters in growing and important emerging markets.

However, there are also disadvantages to FTAs, even if FTAs are WTO-compatible according to GATT Article XXIV. Further proliferation of FTAs results in transaction costs that serve to the detriment of multilateral trade liberalization at the WTO level, thereby provoking a fragmentation of multilateralism. In this sense, the author would argue that the EU has responsibilities for the multilateral trading system and therefore should be defensive in bilateralism; in other words, the EU should only react when other countries make the first move with FTAs to EU export markets. That was the case with the United States¹⁰⁸ and

107. See Free Trade Agreement Between the European Communities and Mexico, EC–Mex., July 1, 2000, available at <http://www.worldtradelaw.net/fta/agreements/ecmexfta.pdf>; EC–Chile Interim Agreement, art. 1, Nov. 18, 2002 WT/REG164, available at <http://www.worldtradelaw.net/fta/agreements/ccchiifta.pdf>.

108. See, e.g., US-ASEAN Business Council, Announcement on “Enterprise for ASEAN Initiative” Marks New Chapter in US-ASEAN Relations, (Oct. 26, 2002).

Japan¹⁰⁹ after the suspension of the Doha Round in July 2006, when the European Commission, on behalf of the EC and its Member States, started negotiating FTAs with India, ASEAN, and South Korea.¹¹⁰ The aim was to not lose the opportunities offered by the new emerging markets in Asia.

Since July 2006 (the date of the Doha Round of multilateral trade talks suspension), we have seen the obvious weaknesses and deficiencies of the multilateral trading system and, as a reaction, the proliferation of regionalism—although this has been happening for quite some time now¹¹¹—and bilateralism. What does this mean for the future of global economic governance?

After the suspension of the WTO Doha negotiations, the

109. See Ministry of Foreign Affairs of Japan, Japan's FTA Strategy (Summary) (2002), <http://www.mofa.go.jp/policy/economy/fta/strategy0210.html>.

110. See Marc Maes, The EU Approach to FTA Talks with ASEAN, India, Korea, SUNS No. 6171 (Jan. 18, 2007), available at <http://www.twinside.org.sg/title2/twninfo490c.htm>.

111. See generally Ali M. El-Agraa, A. *Regional Trade Arrangements Worldwide*, in *ECONOMIC INTEGRATION WORLDWIDE* (Ali M. El-Agraa ed., 1997) (discussing major regional trade agreements worldwide on a comprehensive yet basic level); Victor Bulmer-Thomas, *Regional Integration in Latin America Before the Debt Crisis: LAFTA, CACM and the Andean Pact*, in *ECONOMIC INTEGRATION WORLDWIDE* (discussing the evolution of regional trade agreements in Latin America from the 1920s through the mid-1980s); Victor Bulmer-Thomas, *Regional Integration in Latin America since 1985: Open Regionalism and Globalisation*, in *ECONOMIC INTEGRATION WORLDWIDE* (discussing the sea change in trade policies, export-led growth and international cooperation that occurred in Latin America after 1985); Victoria Curzon Price, *The European Free Trade Association*, in *ECONOMIC INTEGRATION* (examining the three phases of European integration beginning in 1960); Ali M. El-Agraa & Shelton M.A. Nicholls, *The Caribbean Community and Common Market*, in *ECONOMIC INTEGRATION WORLDWIDE* (examining economic integration in the Caribbean and its failure to generate growth and success in generating functional cooperation agreements); Ali M. El-Agraa, *Integration Amongst Members of the Arab League*, in *ECONOMIC INTEGRATION WORLDWIDE* (analyzing how the three main integrations agreements in the Arab world are good attempts at integration but fall short of creating a viable long-term economic unit); Richard Pomfret, *The Association of South-East Asian Nations*, in *ECONOMIC INTEGRATION WORLDWIDE* (discussing the longevity of ASEAN and its limited economic achievements); Peter Robson, *Integration in Sub-Saharan Africa*, in *ECONOMIC INTEGRATION WORLDWIDE* (discussing the development of regional economic agreements in Africa); Sidney Weintraub, *The North American Free Trade Agreement*, in *ECONOMIC INTEGRATION WORLDWIDE* (analyzing the content of NAFTA, the motivations behind its creations, and its effects regionally and globally); see also *REGIONAL TRADE BLOCS, MULTILATERALISM, AND THE GATT: COMPLEMENTARY PATHS TO FREE TRADE?* (Till Geiger & Dennis Kennedy eds., 1996) (providing a political economy and policy-analyst's perspective about how regional and multilateral trade agreements coexist) [hereinafter *REGIONAL TRADE BLOCS*]; *REGIONALISM IN WORLD POLITICS: REGIONAL ORGANIZATION AND INTERNATIONAL ORDER*, (Louise Fawcett & Andrew Hurrell eds., Oxford University Press, 1995) (examining the politics and political economy of contemporary regionalism).

European Commission looked ready to refocus its commercial strategy on bilateral free-trade agreements so as to catch up with the United States and Japan.¹¹² Bilateralism/regionalism is the normal consequence of failed multilateralism.¹¹³ This certainly has dangerous repercussions on weak economies.¹¹⁴ Concluding the Doha Round officially remains the EC's number one priority. But, since negotiations were suspended in July 2006¹¹⁵—when last resort talks failed to bring an agreement on reducing farm subsidies and lowering tariffs, leading the WTO chief Pascal Lamy to formally suspend the Doha Round—the EC has been looking for other ways to open up foreign markets¹¹⁶ and keep up with its main trade rival, the United States, which is currently leading the race to conclude FTAs with high-market-potential countries.¹¹⁷

The European Commission's decision¹¹⁸ to launch new bilateral trade negotiations¹¹⁹ with countries such as India, South

112. See Commission Memorandum *Research Shows Big Potential Gains from New EU FTAs* (April 23, 2007), http://trade.ec.europa.eu/doclib/docs/2007/april/tradoc_134543.pdf.

113. See generally GUIDO GLANIA & JURGEN MATTHES, *MULTILATERALISM OR REGIONALISM? TRADE POLICY OPTIONS FOR THE EUROPEAN UNION* (2005) (discussing bilateralism versus multilateralism and the EU by examining the development of regional trade agreements, assessing the advantages and disadvantages, and evaluating other options).

114. Leon Trakman, however, claims that bilateralism can actually help developing countries in the world trading system. See Leon Trakman, *The Proliferation of Free Trade Agreements: Bane or Beauty?* 5-8 (Univ. of New South Wales Faculty of L. Research Series Paper No. 54, 2007).

115. After five years of troubled negotiations, the Doha Development Round, aimed at freeing global trade and at extending the benefits of globalization to developing countries, was suspended following the failure of negotiators to reach a compromise about reducing farming subsidies and lowering import tariffs. The resumption of the Doha talks took place in February 2007. See LEAL-ARCAS, *EC EXTERNAL TRADE LAW*, *supra* note 57, at 564.

116. This has been the case with emerging markets. See Commission Communication, *Global Europe: Competing in the World*, COM (2006) 567 Final § 3.2 (Oct. 4, 2006) (to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions).

117. Nevertheless, it is worth mentioning that this proliferation of bilateral trade agreements outside the WTO process is perceived as betraying the multilateral ideals that underlay the WTO and its forerunner, the General Agreement on Tariffs and Trade ("GATT"). See Stephen Woolcock, *Regional Integration and the Multilateral Trading System*, in *REGIONAL TRADE BLOCS*, *supra* note 111, at 119.

118. See Commission Press Release, IP/07/540 (Apr. 23 2007).

119. See Council Press Release (Apr. 23, 2007) (*Conclusions on the Recommendations to open Negotiations with Countries of ASEAN, India and South Korea, 2795th General Affairs Council Meeting*), available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/93765.pdf.

Korea, and the ten ASEAN¹²⁰ states¹²¹ “could further complicate its trade regime, and divert interest from the multilateral trading system,”¹²² according to a bi-annual report carried out by the WTO on the EC’s trade policies and practices. On the specific case of ASEAN, European and Southeast Asian leaders agreed to step up efforts towards concluding a deal establishing what would be one of the largest free-trade zones in the world, at a bilateral summit in Singapore in November 2007. However, “talks were overshadowed by disagreements about how to deal with the military dictatorship in Myanmar following its bloody crackdown on pro-democracy protesters in September [2007].”¹²³ The Commission also hopes to negotiate more far-reaching agreements than would be possible under the WTO talks, by tackling issues such as investment, competition policy, and public procurement—known as the Singapore issues—which were dropped from the Doha agenda in 2003.¹²⁴ This return to a system of bilateral agreements and FTAs will mean that the large WTO members would be able to strong-arm the small members and that the multiplication of trade rules and tariffs would generate higher transaction costs and damage the trading and investment environment.

However, in a speech to the European Parliament’s International Trade Committee on October 17, 2006, Pascal Lamy warned that bilateral deals could contribute to weakening the multilateral trading system.¹²⁵ Moreover, he argued that the

120. Association of Southeast Asian Nations, Joint Ministerial Statement of the ASEAN Economic Ministers and the European Union Trade Commissioner on the Launch of Negotiations for the ASEAN-EU Free Trade Agreement (FTA) (May 4, 2007), <http://www.aseansec.org/ASEAN-EU-FTA.pdf>; see also EurActiv.com, EU launches Free-Trade Talks with ASEAN (May 4, 2007), <http://www.euractiv.com/en/trade/eu-launches-free-trade-talks-asean/article-163559>.

121. EurActiv.com, EU to Start Free Trade Talks with India, South Korea and ASEAN (Apr. 24, 2007), <http://www.euractiv.com/en/trade/eu-start-free-trade-talks-india-south-korea-asean/article-163321>.

122. Secretariat Report, *Trade Policy Review of the European Communities, Summary Observations*, ¶ 20, WT/TPR/S/177 (Jan. 22, 2007).

123. EurActiv.com, EU, ASEAN to Push for Trade Deal Despite Myanmar Discord (Nov. 23, 2007), <http://www.euractiv.com/en/trade/eu-asean-push-trade-deal-despite-myanmar-discord/article-168629>.

124. See generally Peter J. Lloyd & Donald MacLaren, *The EU’s New Trade Strategy and Regionalisation in the World Economy*, 61 *AUSSENWIRTSCHAFT* 423 (2006).

125. See Pascal Lamy, Director-General of the WTO, Address to the European Parliament’s Committee on International Trade (Oct. 17, 2006), available at <http://www>.

growing number of bilateral and regional trade talks¹²⁶ risked distracting from attempts to clinch a long-elusive global deal.¹²⁷ Lamy noted that when it came to bilateral talks, some countries appeared to be promising concessions beyond what would be needed to unblock the multilateral negotiations. Before the U.S. Chamber of Commerce, he said:

While bilateral agreements can be a useful complement, I do not believe they can substitute a strong multilateral trading system. Bilateral agreements are by their very nature discriminatory. They have obvious limitations in terms of issues covered since they do not tackle the toughest areas where trade restrictive and distorting measures, such as subsidies, still prevail. They may lead to trade diversion as opposed to trade creation. And they complicate the trading environment of economic operators who have to abide by a spaghetti bowl of different rules. In short, bilateral agreements are not the easy way out.¹²⁸

Patrick Messerlin argues along the same lines by saying that multilateral liberalization of trade should be the center of European trade strategy, and claims that the recent shift in EC trade policy to negotiate bilateral agreements is taking the EC into dangerous waters on the grounds “that the bilateral trade agreements considered by the EC are generally characterised by high tariff and non-tariff barriers in goods, and by restrictive regulations in services and investment.”¹²⁹ Stephen Woolcock, however, argues that the EC’s increased use of FTAs is compatible with its commitment to multilateralism, but only if the bloc rede-

wto.org/english/news_e/sppl_e/sppl44_e.htm (warning that the Doha failure will seriously weaken the trading system).

126. For an analysis of the main trends and characteristics of regional trade agreements, in force and under negotiation, see Roberto V. Fiorentino, Luis Verdeja & Christelle Toqueboeuf, *The Changing Landscape of Regional Trade Agreements: 2006 Update*, WTO Discussion Paper No 12, at 2 (2007), available at http://www.wto.org/english/res_e/booksp_e/discussion_papers8_e.pdf.

127. The same argument is made by a WTO report, which claims that the EC’s decision to seek bilateral free-trade agreements, as well as its rising agricultural tariffs, could be detrimental to the Doha negotiations on a global-trade pact. See Report by the European Communities, *Trade Policy Review*, ¶ 2, WT/TPR/G/177, at 2, 10 (Jan. 22 2007), available at http://www.wto.org/English/tratop_e/tpr_e/g177_e.doc.

128. Pascal Lamy, Director-General of the WTO, *U.S. Leadership Will Be Key to the Fate of the Round*, Address to the U.S. Chamber of Commerce (April 23, 2007), available at http://www.wto.org/english/news_e/sppl_e/sppl61_e.htm.

129. EurActiv.com, *Assessing EU Trade Policy in Goods* (July 31, 2007), <http://www.euractiv.com/en/trade/assessing-eu-trade-policy-goods/article-164278>.

finer its concept of "all trade" as being ninety-five percent of trade and avoids excluding large bands of sensitive products in specific sectors such as agriculture.¹³⁰ While the EC will find that it might be able to address some of its specific concerns through bilateral agreements, it is the author's belief that it will not be able to answer all of them. In addition, the countries that the EC will negotiate with in these bilateral negotiations will want to see some concerns, like subsidies in agriculture, addressed somehow and that will only be through the multilateral, that is, the WTO, process.

In the face of globalization, the EC must remain open. It must also ensure that markets abroad are open to its own exports. European businesses often find it difficult to access foreign markets due to high tariff and non-tariff barriers,¹³¹ as well as discriminatory measures applied against foreign companies. Removing such barriers is particularly important in the services sector, which represents around seventy percent of Europe's jobs and of the EU's gross domestic product ("GDP"),¹³² but which faces higher trade barriers than goods, mostly due to restrictive national regulations, such as technical standards, licensing requirements or national discrimination.¹³³

This proposal of bilateral trade agreements as a result of the suspension of the Doha talks is diametrically opposite to the EC's previous trade strategy, in which the focus was strongly on multilateral negotiations within the WTO, and free trade deals were primarily driven by the logic of development or geopolitics rather than economic interests. That said, U.S. businesses in Europe urged EU and U.S. leaders to stop neglecting the transatlantic relationship in favor of boosting relations with China and

130. Stephen Woolcock, *European Union Policy Towards Free Trade Agreements* 11 (ECIPE Working Paper No. 03/2007), available at <http://www.ecipe.org/publications/ecipe-working-papers/european-union-policy-towards-free-trade-agreements/PDF>.

131. International Financial Services London acknowledges its concerns about various barriers to doing business in India. See International Financial Services London, *EU-India Talks, IFSL to Consult on City Views* (Mar. 5, 2008), <http://www.ifsl.org.uk/output/ReportItem.aspx?NewsID=100> (last visited Oct. 26, 2008).

132. Netherlands Foreign Investment Agency, *EU Accession: Doing Business in an Expanding Europe*, Newsletter No. 18, at 2 (2004), available at http://www.nfia-hongkong.com/en-US/newsletter/e_news_18_2.htm. A region's GDP is one of several measures of the size of its economy. The GDP of a country is defined as the market value of all final goods and services produced within a country in a given period of time.

133. See ROBERT M. MACLEAN, *EU TRADE BARRIER REGULATION: TACKLING UNFAIR FOREIGN TRADE PRACTICES* 43 (2d ed. 2006) (2000).

India.¹³⁴ They argued “that the two transatlantic economies have become so highly interdependent that their future growth and job creation relies not on improving their relations with China and India, nor in completing a successful Doha Round, but in removing existing barriers to trade and investment in order to create a veritable ‘transatlantic single market.’”¹³⁵

As WTO membership has grown, interests have diversified, and negotiations have become more cumbersome, countries have resorted to establishing regional trade agreements (“RTAs”).¹³⁶ RTAs focus on the interests of countries in a particular region or group of regions, and not on global interests.¹³⁷ By 2010, the WTO estimates that nearly 400 RTAs will be in effect.¹³⁸ RTAs allow for more efficient trade negotiations and permit countries greater freedom to choose their trading partners, trade deals and conditions of trade. However, since RTAs operate outside the multilateral WTO system, many questions as to how the transition from a multilateral to a regional trading system will shape the way we think about social, political, and environmental issues arise.¹³⁹ For example, how will trade relations between developed and developing nations change? Will RTAs become a tool for implementing the policy agenda of the powerful? What social, environmental, and political issues will arise under RTAs? Will RTAs hamper attempts to develop global

134. EurActiv.com, US Businesses Call for “Transatlantic Single Market” (Apr. 8, 2007), <http://www.euractiv.com/en/trade/us-businesses-call-transatlantic-single-market/article-159894>.

135. *Id.*

136. See Thomas Cottier, *The Challenge of Regionalization and Preferential Relations in World Trade Law and Policy*, 2 EUR. FOREIGN AFF. REV. 149, 152-53 (1996); Thomas Cottier & Krista Nadakavukaren Schefer, *The Relationship Between World Trade Organization Law, National and Regional Law*, 1 J. INT’L ECON. L. 83 (1998); Gabrielle Marceau & Cornelium Reiman, *When and How Is a Regional Trade Agreement Compatible with the WTO?*, 28 LEGAL ISSUES ECON. INTEGRATION 297-336 (2001); Sung-Hoon Park, *Regionalism, Open Regionalism and Article XXIV GATT: Conflicts and Harmony*, in REGIONAL AND GLOBAL REGULATION OF INTERNATIONAL TRADE, at 267 n.12 (F. Snyder ed., 2002); Joost Pauwelyn, *The Puzzle of WTO Safeguards and Regional Trade Agreements*, 7 J. INT’L ECON. L. 109 (2004); Heinz G. Preusse, *Regional Integration in the Nineties: Stimulation or Threat to the Multinational Trading System?*, 28 J. WORLD TRADE 147, 151 (1994); Joel P. Trachtman, *Toward Open Recognition? Standardization and Regional Integration under Article XXIV of GATT*, 6 J. INT’L ECON. L. 459, 460 (2003).

137. Marceau & Reiman, *supra* note 136, at 299.

138. World Trade Organization, *Regional Trade Agreements*, http://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited Oct. 24, 2008).

139. Marceau & Reiman, *supra* note 136, at 301.

standards on labor rights, women's rights, environmental protection, and other social issues?

The next Section will present a country-by-country examination of bilateral trade relations between the EU and the BRIC countries.

V. *TRADE ANALYSIS OF THE EU VIS-À-VIS THE BRIC COUNTRIES*

Before starting with a trade analysis of the EU vis-à-vis the BRIC countries, it is important to note the differences among these countries. The BRIC countries may be classified in two groups. A first group composed of Brazil and India, which are not yet global economic superpowers, they are only starting to grow into a more powerful role. Therefore, the EU can try to foster this development in a cooperative stance and establish trust with Brazil and India. A second group, composed of China and Russia, which in some areas are more assertive than the first group. It is in this group where we find major problems with the EU. In this sense, the EU could be in a strong position, but is not because of the EU dependence on Russian energy supply, and because of the large Chinese market and the fact that China is a growing economic and political power.

A. *Brazil*

The EU is Brazil's main trading partner, while Brazil represents the EU's main trading partner in Latin America.¹⁴⁰ Brazil is an efficient agricultural producer with strong interest in EU agricultural liberalization. Furthermore, Brazil constitutes 1.5% of EU services trade with the world, with EU exports of services to Brazil totaling EUR 4.4 billion and EU imports of services from Brazil in 2005 totaling EUR 3.9 billion.¹⁴¹ The 1992 EC-Brazil Cooperation Agreement¹⁴² provides the institutional setting for the political ties between the EU and Brazil and a framework for cooperation in trade in services, among other fields. Since the establishment of the 1995 inter-regional Cooperation

140. EurActiv.com, EU, Brazil Join in Strategic Partnership (July 5, 2007), <http://www.euractiv.com/en/trade/eu-brazil-join-strategic-partnership/article-165263>.

141. European Commission, Brazil Trade Statistics 1 (2008), http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113359.pdf (citing to Eurostat).

142. Council Decision No. 95/445/EC, O.J. L 262, 54-65 (1995).

Agreement¹⁴³ between the EC and its Member States, on the European side, and Mercado Común del Sur (“Mercosur”),¹⁴⁴ on the South American side, EU-Brazilian negotiations have mainly been carried out through this framework.¹⁴⁵

Since 2000, the EU and Mercosur have been in the process of negotiating a bi-regional Association Agreement,¹⁴⁶ including a free trade area. This will be the backbone of future bilateral trade relations. Substantial progress in the trade chapter of the agreement allowed both parties to realistically envisage a conclusion of negotiations by the end of October 2004. However, on October 20, 2004, “at the occasion of a Mercosur-EU trade negotiators meeting at ministerial level in Lisbon, [Trade] Ministers concurred that the offers on the table did not reach the degree of ambition that both parties expect from this agreement and decided to give negotiations more time.”¹⁴⁷ Following a number of technical contacts in 2005 to discuss the ways to re-engage the process, trade ministers met again on September 2, 2005, to discuss a way forward.¹⁴⁸

In 2005, Brazil represented eighty percent of Mercosur’s GDP and is critical to Mercosur’s further integration.¹⁴⁹ In my

143. Council Decision No. 96/205/EC, O.J. L 69, 4 (1996).

144. MERCOSUR stands for Mercado Común del Sur (Common Market of the Southern Cone) and is composed of Argentina, Brazil, Paraguay, and Uruguay. It was founded in 1991 by the Treaty of Asunción, which was later amended and updated by the 1994 Treaty of Ouro Preto (December 17, 1994). Its purpose is to promote free trade and the fluid movement of goods, peoples, and currency. Edgardo Rotman, *A Guide to MERCOSUR Legal Research: Sources and Documents*, 1-2 (2005), <http://www.nyu.lawglobal.org/Globalex/Mercosur.htm>. On December 9, 2005, Venezuela was accepted as a new member, but not scheduled to be officialized until later. Simone Baribeau, *Venezuela to Enter MERCOSUR as Full Member*, *Venezuelanalysis.com*, Dec. 9, 2005, <http://www.venezuelanalysis.com/news/1521>.

145. See Benita Ferrero-Waldner, European Commissioner for External Relations and European Neighbourhood Policy, Address to the Instituto Roberto Simonsen and the Federation of the Industries of the State of Sao Paulo: Steering the EU/Brazil-Mercosur Relationship for the Challenges Ahead (July 12, 2005).

146. For an overview of association agreements concluded by the European Communities with third parties, see LEAL-ARCAS, *EC EXTERNAL TRADE LAW*, *supra* note 57, at 282-88.

147. European Commission, *Bilateral Trade Relations: MERCOSUR* (Sept. 2007), http://64.233.169.104/search?q=cache:awNxeHOML4wJ:ec.europa.eu/trade/issues/bilateral/regions/mercosur/index_en.htm+Trade+relations+between+the+EU+and+the+Mercosur.

148. *Id.*

149. See Towards EU-Brazil Partnership, *supra* note 63, at 9 (citing the World Bank).

opinion, in addition to the EU agricultural liberalization issue mentioned earlier, this intra-Mercosur disparity is one of the reasons why the EU-Mercosur negotiations for the conclusion of a bi-regional Association Agreement, including a free-trade area, which began in April 2000, do not seem to come to an end: on the South American end, there is a tremendous imbalance of power within Mercosur; Brazil is an enormous market of 190 million people, whereas Uruguay is of insignificant interest to Brazil, with a total population of 3.5 million people.¹⁵⁰ This asymmetry makes Mercosur's search for a common position vis-à-vis the EU very difficult.

In July 2007, the EU-Brazil Summit, in the framework of a Strategic Partnership,¹⁵¹ reaffirmed both parties' commitment to resolving the EU-Mercosur negotiations between the two blocs (which "have been effectively stalled for more than two years"),¹⁵² the Doha Round of trade negotiations,¹⁵³ as well as initiating a dialogue on the EU and Brazilian shipping market developments.¹⁵⁴ Despite liberalization processes throughout the 1990's, Brazilian goods and services markets still enjoy a relatively high level of protection through various barriers to trade of both a tariff and a non-tariff barrier nature, especially in transport and ports.¹⁵⁵ Furthermore, despite the approval of the Montevideo Protocol on Trade in Services of Mercosur¹⁵⁶ by the Mercosur Council¹⁵⁷ in 1997, Brazil has yet to ratify the Protocol.

150. Central Intelligence Agency, *The World Factbook: Uruguay*, <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html> (last visited Oct. 9, 2008).

151. See *Towards EU-Brazil Partnership*, *supra* note 63, at 20; see also Commission Press Release, IP/07/725 (May 30, 2007), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/725&format=HTML&aged=0&language=EN&guiLanguage=en>.

152. First EU-Brazil Business Summit, Joint Declaration of Brazilian and European Business 3 (July 4 2007), available at http://www.summits.aip.pt/brasil/docs/joint_statement_EN.pdf.

153. *Id.* at 2.

154. *Id.*

155. See generally European Commission, *Brazil*, http://ec.europa.eu/trade/issues/bilateral/countries/brazil/index_en.htm (last visited May 19, 2008).

156. See Thomas Andrew O'Keefe, *Recent Developments Affecting the MERCOSUR Economic Integration Project*, 42 THUNDERBIRD INT'L BUS. REV. 1 (2002), available at <http://www.mercosurconsulting.net/Articles/article6.html>.

157. The [Mercosur] Council consists of the Foreign Relations and Economics Ministers of the four [Mercosur's] member states. Its presidency rotates among the member states, in alphabetical order, every six months. The Coun-

Brazil has not participated in any other preferential treatment agreements in services to date. Moreover, Brazil's specific commitments under the GATS cover the following areas: communication services, business services, construction services, financial services, distribution services, tourism, and transport services. Although it participated in the WTO negotiations on financial services and in the negotiations on basic telecommunications, as of June 2003 Brazil had ratified¹⁵⁸ neither the Fourth Protocol on Basic Telecommunications¹⁵⁹ nor the Fifth Protocol on Financial Services.¹⁶⁰ These numbers show the importance of agriculture for Brazil.

So what is Brazil's interest in EC trade policy? Brazil's main interest is the EU's agricultural liberalization, given that Brazil is considered a highly efficient agricultural producer that is expected to gain tremendously from the EU's liberalization. If this will be the case after the conclusion of the Doha Round, it will certainly be so even more from a potential free-trade agreement between the EC and Brazil. Moreover, Brazilian exports of agricultural products (such as coffee, cocoa, and sugar) to the EU account for forty-one percent of Brazilian exports,¹⁶¹ and ten percent of EU imports.

What can the EU offer Brazil? The EU could grant tariff preferences in agriculture and other goods where Brazil is competitive, such as biofuels and ethanol as environmental goods.

cil is responsible for the political leadership of the integration process [among Mercosur's Member States] and for taking decisions to ensure the implementation of [Mercosur's] objectives. . . . In addition, the Council is the legal representative of Mercosur, entitled to sign agreements with third part[ies].

RAFAEL A. PORRATA-DORIA, JR., MERCOSUR: THE COMMON MARKET OF THE SOUTHERN CONE 27-28 (2005).

158. The reason for non-ratification of the Fourth Protocol on Basic Telecommunications was due to incompatibilities between Brazil's specific commitments and the Brazilian legal and regulatory framework in place since July 1997. See Secretariat Report, *Trade Policy Review—Brazil*, WT/TPR/S/140, ¶ 161 (Nov. 1, 2004), available at http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDdocuments/t/WT/TPR/S140-4.doc.

159. Fourth Protocol to the General Agreement on Trade in Services, Apr. 30, 1996, WTO/S/L/20.

160. Fifth Protocol to the General Agreement on Trade in Services, Dec. 3, 1997, WTO/S/L/45.

161. Organisation for Economic Co-Operation and Development (OECD), *Brazil Would Gain from Freer Agricultural Trade but Small Farms Need to Adjust*, Oct. 31, 2005, http://www.oecd.org/document/62/0,3343,es_2649_34487_35584190_1_1_1_1,00.html.

“Brazil is by far the world’s most important producer of fuels made from plants . . . and [it] has the greatest potential worldwide for affordable biofuels. . . . The country’s traditional sugar cane cultures provide biomass for the production of ethanol, and soy beans are used to make fuel oils.”¹⁶² However, granting tariff preferences in agriculture to Brazil may present difficulties. The main reasons for these difficulties are: 1) The Doha Round of multilateral trade negotiations should have priority over regionalism or bilateralism; 2) It is only reasonable to liberalize agricultural subsidies multilaterally in the context of the Doha Round; hence the strong Brazilian interest in a successful Doha Round; and 3) Agricultural tariff preferences to Brazil would harm the interest of the poorer developing countries. Moreover, a tension between the EU and Brazil exists over biofuels. Europeans are under pressure to develop stronger sustainability criteria for biofuels imports, and may drop the current target of having biofuels account for at least ten percent of vehicle fuel by 2020.¹⁶³ For its part, “Brazil has . . . warned of a potential WTO dispute if EU environmental norms turn out to harm Brazil’s ethanol exports.”¹⁶⁴

B. *India*

According to a communication of the European Commission, “the focus of [EU-India] relations has shifted from trade to wider political issues.”¹⁶⁵ However, trade continues to play a major role between the two parties. EU trade with India has more than doubled since 2000. The EU and India hope to increase their trade in both goods and services through negotiations for a free trade agreement. The current negotiations over an EC-India FTA, whose parameters were set out in the report of the EU-

162. EurActiv.com, EU, Brazil Join in Strategic Partnership (July 5, 2007), <http://www.euractiv.com/en/trade/eu-brazil-join-strategic-partnership/article-165263>.

163. See EurActiv.com, Calls Grow for EU to “Suspend” Biofuels Push (Apr. 14, 2008), <http://www.euractiv.com/en/transport/calls-grow-eu-suspend-biofuels-push/article-171610>.

164. *Problems Loom in EU-LatAm Relations*, BRIDGES (ICTSD), May 2008, at 19, available at <http://ictsd.net/downloads/bridges/bridges12-3.pdf>.

165. Commission Communication COM (2004) 430 Final, 3 (2004) (to the Council, the European Parliament and the European Economic and Social Committee: An EU-India Strategic Partnership) [hereinafter EU-India Strategic Partnership].

India High Level Trade Group,¹⁶⁶ commenced in June 2007,¹⁶⁷ and parallel negotiations include a maritime agreement, since maritime transport accounts for fifty-three percent of the total transportation transactions, being unequivocally the major mode of transportation.¹⁶⁸ The main framework for trade dialogue between the EU and India is, nevertheless, the WTO. There is an India-EU Strategic Partnership¹⁶⁹ as well as its Joint Action Plan¹⁷⁰ that outline commitments to reciprocally tackle existing barriers to trade and increase bilateral trade flows.

The EC-India FTA has been progressing increasingly slowly for some months, but continues to represent a major opportunity for European firms.¹⁷¹ There are still some key barriers to doing business in India and national treatment concerns, which European companies wish to overcome.¹⁷² In fact, in 2008 the World Bank ranked India 114 (out of 181 economies) in terms of the “ease of doing business.”¹⁷³ This is the case of telecoms and courier services, the latter being a service where India has not yet made any offers or commitments within the GATS. Several sectors, including maritime transportation, construction, and telecommunications, require the approval of the Foreign Investment Promotion Board¹⁷⁴ prior to establishment. In distri-

166. See generally European Commission, *Report of the EU-India High Level Trade Group to the EU-India Summit*, Oct. 13, 2006.

167. For further information on this, see generally Jim Rollo, *Spice Route to Europe? Prospects for an India-EU Free Trade Area*, CHATHAM HOUSE, IEP/JEF BP 07/02, October 2007, <http://www.chathamhouse.org.uk/publications/papers/view/-/id/551/>.

168. See generally Eurostat, http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1090,30070682,1090_33076576&_dad=portal&_schema=PORTAL (last visited Nov. 12, 2008).

169. See generally EU-India Strategic Partnership, *supra* note 165.

170. See EU Council, *The India-EU Strategic Partnership: Joint Action Plan*, Sept. 7, 2005, C/05/223, available at europa.eu/rapid/pressReleasesAction.do?reference=PRES/05/223&format=PDF&aged=1&language=EN&guiLanguage=EN.

171. See Ecorys Research & Consulting, Cuts Int'l, & Centad, *Global Analysis Report for the EU-India TSIA*, Draft Version, TRADE07/C1/C01—Lot 1 (May 21, 2008).

172. See International Financial Services London, *EU-India Talks, IFSL to Consult on City Views*, <http://www.ifsl.org.uk/tradepolicy/> (last visited Apr. 3, 2008).

173. See The World Bank Group, *Doing Business in India*, <http://www.doingbusiness.org/ExploreEconomies/?economyid=89> (last visited Oct. 21, 2008).

174. The Foreign Investment Promotion Board is the:

only [governmental Indian] agency dealing with matters relating to [foreign direct investment] FDI as well as promoting investment into the country. . . . Its objective is to promote FDI into India undertaking investment promotion activities in India and abroad by facilitating investment in the country through international companies, non-resident Indians, and other foreign investors.

bution services, where the EU has taken a leading role in advocating the liberalization of market access, there currently exist no retail commitments, and in some sectors including express delivery, draft legislation currently threatens existing market access.

Mode 3 of the GATS (commercial presence) has been most liberalized in India. The Indian Ministry of Commerce increased foreign equity limits to seventy-four percent in all telecom sub-sectors between 2000 and 2006, and to one hundred percent in internet service provision lacking a gateway. This foreign investment comes with a number of non-quantitative restrictions relating to national treatment. Strict guidelines exist on the permitted composition of an Indian company's board, with a majority required to have Indian citizenship.

Moreover, in addition to tariff barriers to imports, India also imposes a number of non-tariff barriers in the form of quantitative restrictions, import licensing, mandatory testing and certification for a large number of products, as well as complicated and lengthy customs procedures. There is a high variety in treatment in the various sectors and among Indian states, which creates confusion and additional costs for foreign companies seeking to establish in India.¹⁷⁵ The postal and courier services have in recent years undergone a period of worldwide liberalization. The EU has advocated further liberalization and an increase in the scope of coverage pertaining to the GATS commitments.¹⁷⁶ In this sense, the EU has been working consistently to eliminate monopolies in the postal and courier services sector.¹⁷⁷

As for the specific case of telecommunications, European service providers looking for growth opportunities are eager to supply to large markets in emerging economies such as India. The current area of coverage in many emerging countries remains low to date. If emerging economies were to further liber-

India Finance & Investment Guide, available at http://finance.indiamart.com/investment_in_india/fipb.html.

175. Controller of Communication Accounts Haryana, *Recommendation on Growth of Telecom Services in Rural India*, 48-49 (Oct. 3, 2005), available at <http://ccaharyana.gov.in/recom3oct05.pdf>.

176. See European Commission, *Summary of the EC's Revised Requests to Third Countries in the Services Negotiations under the DDA 5* (Jan. 24, 2005).

177. European Commission, *The Doha Development Agenda: Summary of the EU's Revised Services Offer in the Doha Negotiations*, June 2, 2005, http://ec.europa.eu/trade/issues/newround/doha_da/memo020605_en.htm.

alize their telecommunications markets, European providers would benefit from large gains. Accordingly, the EC requests that all countries, except for least-developed countries, allow full competition in their telecom markets. At the moment, the competition difficulties include the granting of exclusive rights to suppliers and mandatory economic needs tests for new entrants. In addition, there are oftentimes severe limitations on foreign equity and regulations that render some foreign operators unable to gain establishment by disallowing majority control of their businesses and restricting the types of legal entity permitted. The difficulty in decreasing legislation on these limitations to the national treatment principle has been compounded by the fact that many countries lack an independent telecom regulator.

Since 2002, the telecom industry in India has grown rapidly, with subscribers to wired and wireless service increasing from 44.97 million in March 2002 to 225 million in June 2006, an average annual growth rate of 49.5%.¹⁷⁸ Within this growth, mobile telephony dominates, reaching 185 million subscribers in June 2007, from 13 million in 2003, an average annual growth rate of 94%.¹⁷⁹ During the same period, private participation increased significantly, from a 15.1% market share in March 2002 to 64.1% in November 2006, eroding the share of India's two public sector providers, Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited.¹⁸⁰

Between August 1991 and July 2007, India's telecom sector collected approximately US\$20 billion in foreign direct investment ("FDI"), accounting for nearly ten percent of all foreign direct investment.¹⁸¹ FDI has been particularly high in recent years, in the aftermath of increasingly progressive liberalization, with US\$2.3 billion to the telecom sector in the 2006-07 fiscal year and US\$3.4 billion in the first four months of 2007-08 alone.¹⁸² The growth of India's telecommunications sector has been driven by necessity as well as a trend of autonomous liberal-

178. Planning Commission, Gov't India, Eleventh Five Year Plan, 2007-2012, 425, available at http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v3/11v3_ch12.pdf.

179. *Id.*

180. See generally WTO Secretariat, India Trade Policy Review, WT/TPR/S/182 (Apr. 18, 2007).

181. See generally UNCTAD, World Investment Reports (1991-2008), <http://www.unctad.org/Templates/Page.asp?intItemID=1485>.

182. Indian Ministry of Commerce, Department of Industrial Policy and Promo-

ization since 1991. Telephone density has primarily grown in cities, with 2006 urban rates at 51.5% and rural areas at 1.85%. The Indian government's original plans were to increase rural connections to 50 million by the end of 2007 and to 80 million by 2010 to remedy this development gap, using subsidies that primarily aid the mobile telephony infrastructure.¹⁸³

In the WTO framework, under the current Doha Round of trade negotiations, additional commitments have been offered by India, with the most recent revision in 2005 including broad liberalization of the telecoms sector, with a 49% foreign equity cap in all subsectors besides data and message transmission services (i.e., electronic mail, voice mail, *et cetera*), where 74% foreign investment was allowed.¹⁸⁴ During the approval process, overseen by the Foreign Investment Promotion Board, preference is given to foreign operators willing to transfer technology to Indian joint partners, and upon gaining market access, no subsidies which domestic companies enjoy are afforded to foreign operators.¹⁸⁵ The lack of national treatment in this regard is notable, given the universal service obligation's¹⁸⁶ ambitions to remedy low rural teledensity rates through the use of subsidies.

Telecommunications services are not only important economic drivers, but they are also indispensable for trade and development. A liberalization of the telecommunications services sector assists communication infrastructures for businesses and individuals and reduces costs for industry and private users. The case of Morocco demonstrates how liberal domestic policy measures can deliver impressive results. In June 1997, Morocco im-

tion, *Fact Sheet on Foreign Direct Investment*, July 2007, available at http://www.dipp.nic.in/fdi_statistics/india_fdi_july_2007.pdf.

183. See S.K. Hajela, *India—ICT Development Scenario*, Experts' Group Meeting of the United Nations Economic and Social Commission for Asia and the Pacific/Information, Communication, and Space Technology Division, Bangkok, 30 November-1 December 2006, http://www.unescap.org/icstd/events/EGM_NovDec2006/India.ppt.

184. See generally India Pakistan Trade Unit, *Investing in India* (2002), http://www.ipu.co.uk/content/india_investment.asp.

185. Business.Gov.In, *Joint Ventures*, http://business.gov.in/growing_business/joint_ventures.php (last visited Oct. 29, 2008).

186. Universal service obligation provides the basis for the public to have access to an affordable basic voice telephony service, as defined by the governing body, and capable of being applied consistently across all Member States. The level of basic service and its evolving definition is reviewed periodically. See Birds-Eye.Net, <http://www.birds-eye.net/definition/acronym.cgi?what+is+USO=Universal+Service+Obligation&id=1153058029> (last visited May 20, 2008).

plemented a broad reform program through its telecom sector law. This law laid the foundations for private participation and competition. This broad-reaching law established the independent regulator and provided for the privatization of the incumbent operator.¹⁸⁷ In 1999, a second license was awarded to a consortium led by Telefónica and Portugal Telecom for license fees amounting to US\$1.1 billion.¹⁸⁸ This figure alone was equal to approximately two years of Morocco's capital inflows.¹⁸⁹ In addition, the competition induced the incumbent to lower tariffs to almost 50% of its former level within one year and to double its number of subscribers within two years.¹⁹⁰ Within two years of issuing the license, Morocco had increased its mobile penetration to 5 million.¹⁹¹ In December 2000, 35% of Maroc Telecom was sold to Vivendi Universal for 23.3 billion Dirhams, a figure which significantly exceeded those from comparator countries.¹⁹²

As for construction services, as they become more globalized, there is a need for large civil engineering companies to export high-quality design as well as engineering and management services. European construction companies are well suited to the globalization trend. The construction activities of most emerging countries are high-volume low-margin, and European companies are in a strong position to take advantage of the increasing need for infrastructure in emerging economies. The main issues to resolve in construction services are lack of openness, lack of market transparency, market access barriers, and national treatment concerns. For example, many countries apply high foreign equity requirements to underwrite the risk of

187. See Mohammed Ibahrine, *Towards a National Telecommunications Strategy in Morocco*, FIRSTMONDAY.ORG, http://www.firstmonday.org/issues/issue9_1/ibahrine/index.html.

188. Björn Wellenius & Carlo Maria Rossotto, *Introducing Telecommunications Competition through a Wireless License: Lessons from Morocco*, PUBLIC POLICY FOR THE PRIVATE SECTOR, Note No. 199, November 1999, at 1.

189. *Id.* at 4.

190. *Id.* at 3, 4.

191. *Id.* at 3; see also Enterprise Ireland, *Areas of Opportunity in Morocco*, <http://www.enterprise-ireland.com/Contact/Overseas+Offices/Areas+of+Opportunity+in+Morocco.htm> (last visited Nov. 4, 2008).

192. See Vivendi Universal, *Vivendi Universal Takes 35% Stake in Maroc Telecom as Part of a Comprehensive Strategic Cooperation Agreement on Content* (Dec. 12, 2000), http://www.vivendiuniversal.com/ir/en/press_2000/20001222_Vivendi_Universal_takes_35_stake_in_Maroc_Telecom_as_part_of_a_comprehensive_str.php.

undertaking construction activities, which discriminates against medium-sized foreign construction companies. There are also many examples of discriminatory licensing and registration procedures. Therefore, an opening of construction markets and government procurement rules in emerging countries would not only benefit EC trade but would also strengthen the capacities of emerging economies.

1. India's Interest in the EC-India Trade Relations

So what is India interested in? The EU is India's largest trading partner with twenty-one percent of Indian exports.¹⁹³ India is interested in more access to the EU service market since India is an efficient service supplier in sectors such as Information Technology ("IT") and software, engineering, and call-centers. There is a tremendous IT human capital in South Indian cities such as Bangalore and Hyderabad.¹⁹⁴ India has also a great interest in the export of textiles as well as in the pharmaceutical industry.¹⁹⁵

Another key issue where India has a great interest is in the so-called Mode 4 of the GATS (temporary migration).¹⁹⁶ Mode 4 commitments allow people to travel to another WTO country to provide services for a short period of time. Mode 4, however, is not about access to local labor markets and should therefore be clearly distinguished from economic immigration. In fact, the GATS Annex on Movement of Natural Persons stipulates that the GATS "shall not apply to measures affecting natural persons seeking access to the employment market of a member, nor shall it apply to measures regarding citizenship, residence or em-

193. See generally European Commission, India, http://ec.europa.eu/trade/issues/bilateral/countries/india/index_en.htm (last visited May 20, 2008).

194. See G. Balatchandirane, *IT Clusters in India* 5 (Institute of Developing Economies Discussion Paper No. 85, January 2007).

195. See EurActiv.com, *India's Pharmaceutical Industry Goes Global* (May 6, 2008), <http://www.euractiv.com/en/health/india-pharmaceutical-industry-goes-global/article-172137>.

196. For the purpose of this Article, a clear semantic and conceptual distinction is acknowledged between temporary migration (i.e., Mode 4 of the WTO General Agreement on Trade Services ("GATS")) and immigration (which implies *permanent* residency in a country to which one is not native). See Hamid Mamdouh, Director, Trade in Services Division, WTO, *Mode 4: Definition, Commitments, State of Play in the Negotiations*, Address Before WTO Symposium "Mode 4 of the GATS—Taking Stock and Moving Forward" (Sept. 22-23, 2008).

ployment on a permanent basis.”¹⁹⁷ Furthermore, the scope of coverage of Mode 4 is limited to the category of “service supplier.”¹⁹⁸ Therefore, a controversy arises because Mode 4 may be associated with immigration policy, since Mode 4 could become the backdoor to immigration and have implications on education, health systems, and other social benefits provided in the EU, for example, that do not exist in other countries. This relationship between the two concepts (Mode 4 and immigration policy), however, does not appear anywhere in the GATS. In this respect, a major success of the Doha Development Agenda would be for the WTO membership to agree conceptually on the scope of Mode 4.

In the United States, members of the U.S. Congress “have warned on several occasions that they will oppose any concessions on Mode 4, arguing that the issue is an immigration issue rather than a trade matter.”¹⁹⁹ The United States has been under pressure from developing countries to improve its commitments on Mode 4. “India in particular wants Washington to allow more of its computer professionals to work temporarily in the United States, but the issue is extremely controversial because of its link to immigration issues, particularly since the September 11, 2001, terrorist attacks and heightened security in the wake of those attacks.”²⁰⁰

Since there is no categorization in Mode 4, the only informal requirements are: 1) That the service be temporary, and 2) That the service provider not seek permanent entry in the labor market of the WTO member where the service takes place. However, the question remains: Which type of service providers will not seek permanent entry in the labor market? Once again, Mode 4 creates a division between developed and developing countries of the WTO in the sense that developed countries do not want Mode 4 to become a substitute for immigration—the argument being that there is already immigration in developed

197. GATS, Annex on Movement of Natural Persons Supplying Services under the Agreement, ¶ 2, available at http://www.wto.org/english/tratop_e/serv_e/8-anmvnt_e.htm.

198. GATT 1947 art. I.2 (d), available at <http://www.worldtradelaw.net/uragreements/gatt.pdf>.

199. See *U.S. Signals Possible Movement on Mode 4 in WTO Services Talks*, 25 ITR 1090 (2008).

200. *Id.*

countries—whereas developing countries want a full practice of Mode 4 as temporary migration.²⁰¹

According to Pascal Lamy, opening Mode 4 may generate benefits for both originating and receiving countries. For originating countries the benefits are in terms of remittances and the development of human capital. Receiving countries also benefit from the increased mobility of services suppliers. Mode 4 can therefore be a win-win game.²⁰² Yet, it is in this Mode 4 where we find the greatest discrepancy among EU Member States in services trade: some EU countries are in favor of liberalizing Mode 4, whereas others are more reluctant in other countries.

With its extensive use of skilled and unskilled labor, the construction sector is strongly affected by limitations on the movement of natural persons in WTO members in general. Nationality and residency requirements or other staffing requirements for persons employed by foreign firms could constitute limitations on market access and national treatment.²⁰³ Requirements to employ and train local staff may place a burden on the supplier. Such requirements, even if imposed on an equal basis to all domestic as well as foreign firms, could still constitute de facto national treatment limitations.²⁰⁴

It is argued that Mode 4 of the GATS remains essentially subject to strict domestic regulations and limitations.²⁰⁵ Yet

201. Interview with Mr. José Plaza, Spanish trade diplomat dealing with international services trade in Madrid, Spain (Mar. 15, 2006) (on file with author).

202. See Pascal Lamy, EU Trade Commissioner, Doha Success Will Need Positive Outcome in Services, Speech delivered at European Services Forum and the London School of Economics conference (Oct. 15, 2007).

203. According to the scheduling guidelines in document MTN.GNS/W/164, nationality requirements are normally considered as limitations on market access (equivalent to a zero quota), whereas a residency requirement would need to be judged on a case-by-case basis whether it constitutes a de facto national treatment limitation or a non-discriminatory measure subject to the disciplines of Article VI.5. See Multilateral Trade Negotiations: The Uruguay Round, MTN.GNS/W/164 (1993).

204. GATS Article XVII.3 states that “*Formally identical* or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.” GATT 1947, *supra* note 198, art. XVII.3 (emphasis added).

205. Similar arguments are made by Pascal Lamy: “[T]errorism is about increasing instability; global trade rules are about promoting stability.” Pascal Lamy, EU Trade Commissioner, Speech to the International Institute for Strategic Studies (Sept. 8, 2007), http://www.wto.org/english/news_e/sppl_e/sppl66_e.htm.

many countries accept the importance of temporary migration as a necessary element to become more competitive in a knowledge-based society in the world.²⁰⁶ In Europe, a new global approach is needed so that migration strikes the right balance among the risk of labor market shortages, economic impacts, negative social consequences, integration policies, and external policy objectives.²⁰⁷ Moreover, “the changing demands of an ageing society and a labour market in constant evolution have challenged established assumptions about migration from outside the EU.”²⁰⁸

However, in the UK, a study published by the House of Lords concluded that immigration has a very small impact on GDP per capita, whether positive or negative. This conclusion is in line with findings of studies of the economic impacts of immigration in other countries including the United States. Furthermore, the report found no systematic empirical evidence to suggest that net immigration creates significant dynamic benefits for the resident population in the UK. Moreover, it is possible that there are also negative dynamic and wider welfare effects.²⁰⁹ These conclusions are, in my opinion, unfortunate as immigrants tend to be better workers than natives, willing to work more for less.

2. What the EU can Offer

What can the EU offer India? The EU is prepared to offer predominantly business services such as financial services or telecommunications, which appear feasible to some extent. Services are critical for any economy. The services sector currently contributes more to economic growth and job creation worldwide than any other sector. In Europe, services account for over seventy-seven percent of the GDP and employment. Despite this,

206. See José Manuel Barroso, President of the European Commission, Press Conference Speech, Speech/07/650 Strasbourg (Oct. 23, 2007).

207. See H. Brücker & J. Von Weizsäcker, *Migration Policy: At The Nexus Of Internal And External Migration*, in A FRAGMENTED POWER: EUROPE AND THE GLOBAL ECONOMY 226, 228 (A. Sapir ed., 2007).

208. Commission, *The European Interest: Succeeding in the Age of Globalisation*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2007) 581 Final, 4-5 (Oct. 3, 2007).

209. HOUSE OF LORDS, SELECT COMMITTEE ON ECONOMIC AFFAIRS, VOLUME I: REPORT, THE ECONOMIC IMPACT OF IMMIGRATION, 2007-08, H.L. 82-1, at 58-59.

services currently still represent less than thirty percent of European external trade.²¹⁰ This demonstrates that trade liberalization in the services sector is of great importance for the EU. Furthermore, in a speech given by Lord Vallance of the European Services Forum to the EU-India Business Summit on 12 October 2006, he said that developed and developing countries will miss out on enormous potential economic gains because services have once again been taken hostage of agriculture even though the latter represents only eight percent of world trade and two percent of developed countries' economies.²¹¹

C. *China*

The EU is currently China's largest trading partner. "China's trade expansion started in 1978, when the country initiated reforms and opening-up policies." For the past decade, its position as a strong player in international trade has been remarkable.²¹² Structural reforms in China, including trade liberalization, have resulted in annual real GDP growth rates in excess of ten percent over the past four years, rising per capita income and poverty reduction. In the process, China has become the world's third largest trader.²¹³

In early 1978, a trade agreement was concluded between the EEC and China, which was replaced by a Trade and Economic Cooperation Agreement between China and the EEC in 1985.²¹⁴ The European Community continues to work towards improving bilateral trade relationships. Commissioners Peter Mandelson and Benita Ferrero-Waldner met with Chinese trade Minister Bo Xilai on November 4, 2005 to discuss the Doha trade round, but also a wide range of issues including the environment, energy and intellectual property.²¹⁵ The first EU-China Strategic Dialogue at Vice Foreign Minister Level was held in

210. European Services Forum, Position Paper on EU Free Trade Agreements 2 (Feb. 28 2008).

211. See Lord Vallance of Tummel, Chairman of the European Services Forum, Speech at the Seventh EU-India Business Summit in Helsinki (Oct. 12, 2006).

212. Renfeng Zhao, *China and India: A comparison of trade, investment and expansion strategies*, 2 CHATHAM HOUSE, June 1, 2007, http://www.chathamhouse.org.uk/files/9201_010607workshop.pdf.

213. See generally Trade Policy Review Body, *Trade Policy Review: Report by China*, WT/TPR/G/199 (May 7, 2008) (reviewing expansion and problems encountered).

214. Council Regulation No. 2616/85, O.J. L 250/1 (1985).

215. Commission Press Release, IP/05/1374 (Nov. 4, 2005).

London in December 2005.²¹⁶ At the Ninth EU-China Summit in September 2006 in Helsinki, the EU and China agreed on opening negotiations for a new comprehensive framework agreement covering topics such as energy, sustainable development, cooperation in Africa, and the protection of intellectual property rights. This was due largely to the mutual agreement by both parties that the current 1985 agreement no longer reflects the scope, depth, or overall nature of their current relationship.²¹⁷

So, negotiations about a more comprehensive Partnership and Cooperation Agreement (“PCA”) started in January 2007. The new PCA will cover all components of the EU-China relationship and provide a comprehensive management framework.

The prospective PCA is expected to lay the foundation for enhanced cooperation, including the enforcement and, where possible, the upgrading of environmental, social, labour and safety standards. It will also hold comprehensive dialogues on over 20 ongoing sectoral dialogues with a view to promote cooperation in all sectors, including on economic and financial matters, in both bilateral and multilateral fora. With regard to these existing sectoral agreements, the PCA will complement rather than replace these agreements.

In general, the PCA will be negotiated on the basis of a commitment to the principles of good governance, the rule of law, effective multilateralism, the fight against corruption and improved transparency. As such the PCA will contain a standard clause on human rights. The PCA will foster cooperation to find international solutions to global issues such as climate change, including energy cooperation, by stimulating energy efficiency and the promotion of renewable energy. Increased cooperation will also be sought in education, culture and science. It is envisaged there will be increased grass-roots level peer-to-peer exchanges of unions, students, academics, business associations, non-governmental organisations and other areas of cooperation.²¹⁸

216. EUROPEAN COMMISSION, *EU-CHINA RELATIONS: CHRONOLOGY 1975—JAN. 2007*, 4, available at ec.europa.eu/external_relations/china/docs/07_chronology_jan-07.pdf.

217. EUROPEAN UNION, *Joint Statement of the Ninth EU-China Summit* (Sept. 9, 2006), http://www.eu2006.fi/news_and_documents/other_documents/vko36/en_GB/1157828673423/.

218. EUROPEAN COMMISSION, *TRADE SUSTAINABILITY IMPACT ASSESSMENT OF THE NEGOTIATIONS OF A PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE EU AND*

However, although cooperation dialogues between the EU and China already exist on many levels, a free-trade agreement between the EC and China is not on the horizon since it would alienate other EC trading partners and it would create much resistance from within the EU and from third countries. China is already very competitive without an FTA with the EC. China attempts to establish itself as a gravity center in Asia by concluding many low-quality, politically motivated bilateral FTAs in the region.²¹⁹ One wonders the extent to which China is serious about multilateralism, given China's minimal involvement in it. China is a strong economic power with increasingly sophisticated production in the coastal regions. Peter Sutherland argues that, since joining the WTO in December 2001, China has enjoyed significant economic growth. The rigorous economic regulation requirements needed to join the WTO have worked as a catalyst for Chinese political and economic reform.²²⁰

Yet, China insists on keeping the status of a developing country despite its size both economically (currently, the fourth largest economy in the world) and demographically (the most populated country in the world). Compared to the other BRIC countries which are WTO members,²²¹ China plays a rather timid role both in the Doha Round²²² as well as in the WTO's dispute settlement system.²²³ China has brought only two cases

CHINA—DRAFT GLOBAL ANALYSIS REPORT 2008 10 (2008), available at http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140589.pdf.

219. Recent FTAs signed by China include those with ASEAN countries, Hong Kong, Macao, Pakistan, as well as the Gulf countries. See Trade Policy Review Body, *Trade Policy Review: Report by the People's Republic of China*, ¶¶ 77-82, WT/TPR/G/161 (Mar. 17 2006).

220. Peter Sutherland, *Transforming Nations*, 87 FOREIGN AFF., 125-36 (2008).

221. We are referring here to Brazil and India, the public lobbyists on behalf of the emerging markets, which are much more multilaterally pro-active than is the case of China. For a comparison between China and India in the WTO, see generally, Julia Ya Qin, *China, India, and the Law of the World Trade Organization*, 3 ASIAN J. COMP. L. 1 (2008).

222. When asked by the United States to issue a joint statement in support of the Doha Development Association ("DDA") in 2006, China refused. See *China Balked at Joint Statement of Support for WTO Talks, US Official Says*, BNA WTO REPORTER (Apr. 19, 2006).

223. In the first years right after China's accession to the WTO, China's inclination was to handle trade disputes through negotiation rather than WTO adjudication. When threatened with WTO litigation during its initial years of WTO membership, China opted to compromise to avoid formal WTO complaints. See, e.g., *EC Threatens WTO Suit Against China Unless it Lifts Coking-Coal Restrictions*, BNA WTO REPORTER (May 25, 2004).

before the WTO as complainant,²²⁴ compared to more than fifteen cases brought by India and more than twenty by Brazil. Why? Arguably, because China is a rather young WTO member, it still needs to improve its skills and competences on WTO matters; culturally, it tends to avoid disputes²²⁵ since the country has much influence from Confucius;²²⁶ and it has a rather inefficient bureaucracy.²²⁷ For the Doha negotiations to succeed, greater leadership from China is necessary. China should play a more prominent role in the international economic institutions. In this sense, the EU expects “China to assume a responsibility commensurate with the benefits it derives from the [world] trading system.”²²⁸ Why? Because with greater power and a greater voice comes greater responsibility.

There are many differences and difficulties between the EU and China in the trade field: the protection of intellectual property rights,²²⁹ counterfeiting and product piracy, China’s delay in enforcing WTO rules, China’s competitive advantage from poor social and environmental standards, and unfair subsidies to favored national industries, (which is a manifest violation of one of the fundamental principles of WTO law, that of no unfair trade)²³⁰ to name but a few.²³¹ According to the European Com-

224. Dispute Settlement Body, *United States—Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS252 (May 30, 2008); Dispute Settlement Body, *United States—Preliminary Anti-Dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China*, WT/DS368 (Sept. 18, 2007).

225. On this point, see Henry Gao, *Aggressive Legalism: The East Asian Experience and Lessons for China*, in CHINA’S PARTICIPATION IN THE WTO 315-51 (Henry Gao & Donald Lewis eds., 2005).

226. See, e.g., ZAKARIA, *supra* note 67, at 109-14 (explaining the correlation between the Chinese legal system and Confucianism).

227. This attitude, however, is slowly changing to a more aggressive and proactive role of China in the WTO. See Henry Gao, *China’s Participation in the WTO: A Lawyer’s Perspective*, 11 SINGAPORE Y.B. INT’L L. 1, 34 (2007).

228. European Commission, *Global Europe: EU-China Trade and Investment: Competition and Partnership*, at 14.

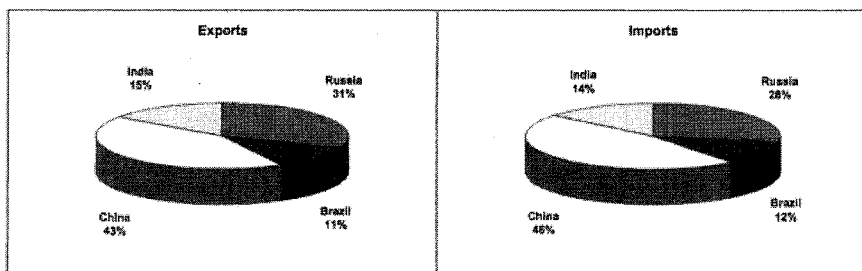
229. See generally, EUROPEAN COMMISSION, *INTELLECTUAL PROPERTY RIGHTS IN CHINA* (June 2, 2008), http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_china_en.htm (describing the activities of the Intellectual Property (“IP”) Working Group).

230. See generally, EUROPEAN COMMISSION, *RESPECTING THE RULES* (July 2007), http://ec.europa.eu/trade/issues/respectrules/index_en.htm (last visited May 21, 2008) (comparing EU trade policy instruments to WTO rules).

231. EUROPEAN COMMISSION, *EU USES WTO CHINA TRADE POLICY REVIEW (TPR) TO RAISE QUESTIONS OF FAIR TREATMENT, INTELLECTUAL PROPERTY PROTECTION*, (May 23, 2008), http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508_en.htm [hereinafter *EU USES TRADE POLICY REVIEW*].

mission, “China is the single most important challenge for EU trade policy.”²³² As argued by former Trade Commissioner Mandelson, “doing business in China remains attractive. However, it is equally clear that much work needs to be done to create a level playing field for European companies, concerning market access, transparency and protection of intellectual property.”²³³ The Chinese market is still relatively closed to the goods Europe seeks to export.²³⁴ China may have lowered its tariffs substantially since 2001, but barriers ‘behind the border’ in the Chinese market are costing European businesses more than EUR 20 billion every year in lost exports.²³⁵ Nevertheless, as can be seen in the chart, when comparing with the rest of the BRIC countries, China is the main partner for both EU imports and exports²³⁶:

Share of EU trade with individual BRIC countries



Source Eurostat

1. Possible Ways to Improve the EC-China Trade Relations

What can the EU do in the trade field to improve its relations with China? Can trade policy be used to improve bilateral relations with China and induce China to be more responsible and multilateral? Cooperation has a priority despite the fact that

232. See Commission of the European Communities, Commission Working Document Accompanying COM (2006) 631 Final; A policy Paper on EU-China Trade and Investment: Competition and Partnership, COM (2006) 632 Final (Oct. 24, 2006) 3.

233. European Commission, *Mandelson Discusses Opportunities, Barriers in China with EU Business* (Sept. 17, 2008) available at http://ec.europa.eu/trade/issues/bilateral/countries/china/pr170908_en.htm (last visited Sep. 18, 2008) [hereinafter *Opportunities, Barriers in China*].

234. *Id.*

235. *Id.*

236. According to the European Commission, the EU “treats China as a normal and important trading partner.” EU Uses Trade Policy Review, *supra* note 231, para. 1.

the European Commission has mentioned in the past the use of tougher measures if China does not rectify some of its actions. Perhaps an extension of a high-level strategic dialogue²³⁷ similar to the U.S.-China Strategic Economic Dialogue would make sense. In this sense, Commission President Barroso and Chinese Prime Minister Wen launched a new EU-China High Level Economic and Trade Dialogue Mechanism in Beijing on April 25, 2008.²³⁸ Proposed by the Chinese authorities and approved at the EU-China Beijing summit in November 2007, this mechanism will strengthen the dialogue between both sides, and will provide a new tool for dealing with the problems confronting European companies trying to establish themselves in China, especially in the fields of investment, market access, and protection of intellectual property rights.²³⁹

Other constructive approaches could be the launch of a cooperation program with China on intellectual property protection, closer cooperation between the EU and the United States on intellectual property rights with a joint action in key markets such as China, or the creation of an intellectual property rights helpdesk for EU businesses in China. However, China has grown very self-confident in recent years and knows that EU businesses depend on access to the Chinese market.

D. *Russia*

There is a Partnership and Cooperation Agreement (“PCA”) between the European Communities and their Member States and the Russian Federation.²⁴⁰ The agreement was signed in 1994 and entered into force on December 1, 1997. The agreement regulates the political, economic, and cultural relations between the EU and Russia and is the legal basis for the

237. In this sense, the favorable views of former Commissioner Mandelson toward dialogue rejected trade boycotts against China, as such moves only damage the interests of ordinary Europeans and Chinese. Peter Mandelson, EU Trade Commissioner, Speech at the China-Britain Business Council, London (Apr. 5, 2008), http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm199_en.htm.

238. EUROPEAN COMMISSION, EU AND CHINA START HIGH-LEVEL ECONOMIC AND TRADE TALKS (Apr. 25, 2008), http://ec.europa.eu/trade/issues/bilateral/countries/china/pr250408_en.htm (last visited May 22, 2008).

239. See generally *Opportunities, Barriers in China*, *supra* note 233.

240. See Council and Commission Decision No. 97/800/EC, O.J. L 327 (1997) (“Partnership and Cooperation Agreement between the European Communities and their Member States.”).

EC's bilateral trade with Russia. One of its main objectives is the promotion of trade and investment as well as the development of harmonious economic relations between the parties. Although trade is growing between the EU and Russia, it remains largely concentrated in the energy and minerals sectors, although trade in services is growing rapidly too.

The EU and the Russian Federation are planning to start negotiations on a new PCA to provide the contractual framework for EU-Russia relations in the years to come, thereby replacing the existing ten-plus-year old PCA.²⁴¹ This new legally binding agreement would provide a sustainable and comprehensive framework for bilateral relations. Although both sides seemed comfortable with each other at the June 2008 EU-Russia summit held in Khanty-Mansiysk (Russia),²⁴² tensions remain. The two sides also diverged as regards the form that the new Partnership Agreement should take, with Russian President Medvedev voicing support for a document that is "short, without too many details,"²⁴³ while the EU wants a more detailed text, with precise wording on energy and security issues in particular. "The new agreement should be inextricably linked with Russia's advancement in democratic standards, rule of law, and human rights. In economy it should incorporate—among others—the principles of the Energy Charter Treaty and its Transit Protocol," said liberal Polish Member of European Parliament ("MEP") Janusz Onyszkiewicz, European Parliament's rapporteur on the EU-Russia agreement.²⁴⁴

"In this context, once Russia has acceded to the WTO, the EU is eager to pursue, a deep and comprehensive economic integration agreement between the EU and Russian [interdependent] economies, building on but going beyond the PCA and

241. See Joint Statement of the EU-Russia Summit on the Launch of Negotiations for a New EU-Russia Agreement, June 27, 2008, http://www.eu2008.si/includes/Downloads/misc/JS_Negotiation_EU-RF_Agreement.pdf.

242. See EurActiv.com, EU-Russia Welcome "New Page" in Relationship (June 30, 2008), <http://www.euractiv.com/en/enlargement/eu-russia-welcome-new-page-relationship/article-173764> [hereinafter EU-Russia Welcome New Page].

243. Stephen Castle, *In a Shift, Medvedev Makes Nice with the EU*, INT'L HERALD TRIBUNE, June 28, 2008, at 4, available at <http://www.iht.com/articles/2008/06/27/europe/union.php>.

244. EU-Russia Welcome New Page, *supra* note 242, para. 7.

WTO provisions.”²⁴⁵ However, negotiations for a new PCA had not started due to objections by Poland because of the Russian ban on Polish meat and vegetables, where Russia claims that the meat contains excessive levels of antibiotics.²⁴⁶ In addition, Lithuania also objected, which the EU’s rotating President at the time (Slovenia) heavily criticized for not withdrawing its objections to initiating talks on a new PCA between the EU and Russia.²⁴⁷ Lithuania wanted to obtain assurances from Russia over certain issues including energy supply and involvement in regional conflicts in Georgia and Moldova.²⁴⁸ These difficulties, however, were solved on May 27, 2008, when EU foreign ministers formally approved launching talks with Russia over a new PCA—an issue that had been deadlocked for almost two years.²⁴⁹ However, due to the disproportionate Russian reaction to the attack of South Ossetia capital by Georgian forces in August 2008, EU leaders decided to postpone the talks conditional on Russian troops withdrawing completely from the positions prior to the August invasion.²⁵⁰

A key feature of the talks will be energy relations, with the EU increasingly concerned by gas disputes between Russia and neighbouring countries such as Ukraine, through which supplies to the twenty-seven-nation bloc must be brought. Brussels is also seeking to diversify its energy supplies in order to overcome the EU’s dependency on Russia.²⁵¹ To this end, the EU offered in September 2008 financial and political support for a EUR 15 bil-

245. EUROPEAN COMMISSION, RUSSIA, http://ec.europa.eu/trade/issues/bilateral/countries/russia/index_en.htm (last visited May 23, 2008).

246. Mark Leonard & Nicu Popescu, *A Power Audit of EU-Russia Relations*, EUROPEAN COUNCIL ON FOREIGN RELATIONS, Nov. 2 2007, at 50.

247. EurActiv.com, EU Presidency Upset Over Lithuanian Veto of EU-Russia Accord (Apr. 30, 2008), <http://www.euractiv.com/en/enlargement/eu-presidency-upset-lithuanian-veto-eu-russia-accord/article-172090>.

248. Press Release Slovenian Presidency of the EU, Agreement on Start of Negotiations for New Partnership and Cooperation Agreement with Russian Federation (May 11, 2008), http://www.eu2008.si/en/News_and_Documents/Press_Releases/May/0511MZZrusija.html (last visited June 1, 2008).

249. For an overview of the backing of the long-awaited launch of negotiations between the EU and Russia, see EurActiv.com, EU to Give Green Light to Russia Talks (May 26, 2008), <http://www.euractiv.com/en/foreign-affairs/eu-give-green-light-russia-talks/article-172659>.

250. See EurActiv.com, EU Contemplates ‘Common Market’ With Russia, (Oct. 22, 2008), <http://www.euractiv.com/en/enlargement/eu-contemplates-common-market-russia/article-176575>.

251. EurActiv.com, EU-Russia Summit: Medvedev Follows in Putin’s Footsteps

lion trans-Saharan pipeline to carry natural gas from Nigeria to European markets.²⁵² The planned 4300 kilometer pipeline would stretch across Nigeria, Niger, and Algeria, where gas would be shipped to Spain and Italy. A week before the EU's offer for the trans-Saharan project, and to cooperate on gas exploration, production, and transportation, Gazprom, the Russian energy giant, signed a memorandum of understanding with the Nigerian National Petroleum Corporation in Moscow.²⁵³ The simultaneous moves by Brussels and Moscow illustrate the scramble for natural resources as continued growth in the global economy fuels ever-increasing demand for energy.²⁵⁴

Currently, there are large problems in the political sphere between the EU and Russia, based on conflicts and mistrust. In fact, when Peter Mandelson was EU trade commissioner, he used to say that the current phase is the hardest since the late 1990s and that it is a serious test of the EU-Russia relationship. An issue of bilateral tension between Russia and the EU is energy security. Another issue is the trade conflict because of the Russian ban on Polish meat on health grounds discussed earlier, and the fact that on April 1, 2008 Russia increased its duties on exports of wood. According to the European Commission spokesman for trade,

These increased duties will have significant economic impact on the wood processing industry in the EU. It will make it more difficult to source wood from Russia and hinder trade flows in this product. It may also have further negative economic consequences in terms of plant closures and job losses. We therefore regret the decision by the Russian Federation to raise export duties for wood.²⁵⁵

“Sweden and Finland have complained that Moscow’s plans to sharply increase its timber export taxes—from the current 25% of raw timber value to 80% at the beginning of 2009—will hurt

(June 24, 2008), <http://www.euractiv.com/en/enlargement/eu-russia-summit-medvedev-follows-putin-footsteps/article-173595>.

252. EurActiv.com, *EU and Russia in Scramble for Nigerian Gas* (Sept. 18, 2008), <http://www.euractiv.com/en/energy/eu-russia-scramble-nigerian-gas/article-175509> [hereinafter *Nigerian Gas*].

253. *Id.*

254. *Id.*

255. See European Commission, *Trade Issues, EU Response to Increase in Russian Export Duties for Timber*, para. 1 (Apr. 1, 2008), http://ec.europa.eu/trade/issues/bilateral/countries/russia/pr010408_en.htm [hereinafter *Export Duties Timber*].

European paper companies.”²⁵⁶ Helsinki said it was considering taxing Russian goods crossing its territory in retaliation.²⁵⁷ Nevertheless, the European Commission’s position regarding Russia is that of a stronger multilateral engagement of Russia: “We continue strongly to support Russia’s WTO accession, which is not just in Russia’s interest, but in the interest of everyone who trades with Russia. It is important that we make progress in this issue and see Russia firmly anchored in the international trading system.”²⁵⁸ This position, however, is not entirely shared in Moscow as there is some skepticism about Russia’s accession to the WTO because, as a major resource exporter, it might not need to join the WTO and because the WTO bindings and rules are not welcomed.²⁵⁹

1. Possible Ways to Improve EC-Russia Trade Relations

In this context of conflict and mistrust between the EU and Russia, what can the EU do in the trade field to improve its relations with Russia, the largest economy in the world still outside the WTO, which has been pursuing membership in the global trade body for nearly fifteen years? The EC, “which is by far Russia’s biggest trading partner and source of investment, has a vested interest in smoothing out ongoing disagreements [mentioned above] and facilitating Moscow’s entrance into the WTO. Indeed, the twenty-seven-member trading bloc hopes to begin negotiating a free-trade agreement with Russia once its membership in the global trade body has been finalised.”²⁶⁰ Removal of non-tariff barriers, the achievement of regulatory convergence, and openness to investment flows seem necessary to benefit from a real common European economic space.²⁶¹ However, neither

256. *Despite Obstacles, EU Expects Russia to Join WTO This Year*, 12 BRIDGES WEEKLY TRADE NEWS DIGEST 4, June 25, 2008, para. 6, available at <http://www.ictsd.net/i/news/bridgeweekly/12267/> [hereinafter *Russia to Join WTO*].

257. See generally *Russia and Finland at Loggerheads Over Timber Taxation*, BRIDGES, Aug. 2008, 21, available at <http://ictsd.net/i/news/bridges/27601/> (last visited 10/30/08) [hereinafter *Russia and Finland at Loggerheads*].

258. *Export Duties Timber*, *supra* note 255, para. 2 (quoting Peter Power, European Commission spokesman).

259. See generally *Russia and Finland at Loggerheads*, *supra* note 257.

260. *Russia to Join WTO*, *supra* note 256, para. 11.

261. Peter Mandelson, European Commissioner for Trade, Russia and the EU: Building Trust on a Shared Continent, Speech at Conference “Russia in the 21st Century,” (June 19, 2008) http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm208_en.htm [hereinafter Mandelson: Building Trust].

a free-trade agreement nor WTO accession seems overly attractive for Russia, given that Russian energy exports are in good demand in the world and are not subject to restrictions.²⁶²

Notwithstanding this,

Russia has made significant progress in its WTO accession talks, having already signed protocols with more than 60 WTO member states. All applicants for [WTO] membership must negotiate bilateral accords with any WTO member that requests one. As with most WTO decisions, any single Member has the power to block Russian accession. The only bilateral talks that remain unresolved are the negotiations with . . . Ukraine and Georgia. . . . Despite historic strains on trade issues between the two countries . . . , Kiev has indicated that it intends to help facilitate Moscow's membership in the global trade body.²⁶³

As for Georgia, although it completed a bilateral accession deal with Moscow in 2004, it withdrew its signature from that agreement two years later.²⁶⁴ Georgia "again broke off bilateral talks with Russia in April [2008], saying that it would veto Russia's bid unless the country agreed to stop operating customs checkpoints in Georgia's separatist territories of Abkhazia and South Ossetia. [Georgia] also wants [Russia] to lift its ban on imports of Georgian wine and other products."²⁶⁵ In August 2008, Georgian troops invaded the breakaway region of South Ossetia. "South Ossetia and Abkhazia are officially part of the territory of Georgia, but are in fact autonomous and largely under Russian influence. . . . Russia responded with massive military action, invading part of Georgia."²⁶⁶ This incident will certainly not persuade Georgia to facilitate Russia's accession to the WTO. The EU delegation to Russia, led by French President Sarkozy on September 8, 2008, nevertheless succeeded in convincing Russian President Medvedev to agree to a complete withdrawal of troops from Georgia.²⁶⁷

262. *See id.*

263. *See Russia to Join WTO, supra* note 256, para. 13.

264. *End of Road not yet in Sight for Russia's WTO Accession*, 10 BRIDGES WEEKLY TRADE NEWS DIGEST 35, Oct. 25, 2006, <http://ictsd.net/i/news/bridgesweekly/6382/>.

265. *Russia to Join WTO, supra* note 256, para. 14.

266. EurActiv.com, Extraordinary EU summit may be convened over Georgia, (Aug. 18, 2008), <http://www.euractiv.com/en/enlargement/extraordinary-eu-summit-may-convened-georgia/article-174744>.

267. *See* EurActiv.com, EU to Keep Peace After Moscow OKs Georgia Pull-Out

Michael Emerson argues that it would be in the West's interest to include Russia in its political, economic and security plans, as both aim at common objectives.²⁶⁸ "[T]rue partnership between Russia and the EU [seems] essential to security and prosperity on [the European] continent in the twenty-first [century]."²⁶⁹ Furthermore, cooperation seems to be a plausible way to improve relations with Russia.²⁷⁰ This is not always easy since there are contradictory positions of the EU toward Russia.²⁷¹ The new EU Member States do not think in the same way as the old EU Member States vis-à-vis Russia for historical reasons.²⁷² At the St. Petersburg Summit in May 2003, the EU and Russia agreed to reinforce cooperation with a view to creating four EU/Russia common spaces, within the framework of the existing Partnership and Cooperation Agreement. It was decided to create a common economic space; a common space of freedom, security and justice; a space of co-operation in the field of external security; as well as a space of research and education, including cultural aspects.²⁷³

Regarding the common economic space ("CES"), it aims at increasing opportunities for economic operators, a further

(Sept. 9, 2008), <http://www.euractiv.com/en/enlargement/eu-keep-peace-moscow-oks-georgia-pull/article-175198> (last visited Sept. 14, 2008).

268. See Michael Emerson, *Time to Think of a Strategic Bargain with Russia*, CENTRE FOR EUROPEAN POLICY STUDIES, POLICY BRIEF No. 160, May 2008, shop.ceps.eu/download.php?item_id=1649.

269. See generally Mandelson: Building Trust, *supra* note 261.

270. Pami Aalto argues that the difficult question of the EU's responsibilities toward Russia is best approached as a problem of community. Applying a broad notion of the wider European community can make it easier for the Union to be sensitive vis-à-vis its gigantic neighbor to the east and, as a consequence, to define its policies toward it. The issue of belonging and identity are thus fundamental to delineating the EU's responsibilities toward Russia regardless of whether we speak of the EU-Russia strategic partnership or the regional cooperation level. See Pami Aalto, *The EU, Russia and the Problem of Community*, in *A RESPONSIBLE EUROPE? ETHICAL FOUNDATIONS OF EU EXTERNAL AFFAIRS* 98-118 (Hartmut Mayer & Henri Vogt eds., 2006).

271. In Fraser Cameron's view, speaking with one voice vis-à-vis Russia, although it is difficult in some areas, is likely to produce far greater benefits for the EU than trying to cut bilateral deals. See EurActiv.com, EU-Russia Relations "Should Be Bore Positive" (Apr. 9, 2008), <http://www.euractiv.com/en/foreign-affairs/cameron-eu-russia-relations-positive/article-171457>.

272. See *id.*

273. See European Commission Delegation, Joint Statement on the 300th Anniversary of St. Petersburg—Celebrating Three Centuries of Common European History and Culture (May 31, 2003), http://www.delrus.ec.europa.eu/en/p_234.htm (last visited Oct. 21, 2008).

step towards establishing a more open and integrated market between the EU and Russia.²⁷⁴ The main objective of the CES is to put in place the conditions for increased and diversified trade and creat[e] new investment opportunities by pursuing economic integration, elimination of trade barriers, regulatory convergence, market opening, trade facilitation and infrastructure development by closer cooperation, exchange of information, and sharing of best practices.²⁷⁵

The roadmap on the common economic space was adopted at the EU-Russia Summit in Moscow on May 10, 2005 and provides for various dialogue fora.²⁷⁶ The idea behind the common economic space is to prepare the ground for a future and deep free-trade agreement.²⁷⁷ However, there has been little substantial progress so far.

In sum, Russia's economy, although strong, still has structural weaknesses. It needs to diversify its economy into other sectors such as services and investment in critical parts of infrastructure.²⁷⁸ Moreover, education and research are under-resourced.²⁷⁹ In this sense, it is worth noting that Russia has formed a new government body designed to control foreign investment in so-called "strategic" sectors, whereby acquisitions of interest exceeding twenty-five percent of voting shares in Russia's strategic commercial organizations by foreign investors must be approved by a special governmental commission.²⁸⁰ Furthermore, "companies operating in 'strategic' sectors cannot place more than 25% of shares outside Russia Russian companies doing geological exploration and extraction of resources at strategic deposits are not allowed to place more than 5% of shares overseas."²⁸¹

274. European Commission, *Russia: The European Union and the Russian Federation Have a Strong Trade Relationship. Bilateral Trade and Investments Continue to Grow Rapidly*, http://ec.europa.eu/trade/issues/bilateral/countries/russia/index_en.htm (last visited May 23, 2008).

275. *Id.*

276. *See id.*

277. *See id.*

278. *See generally* Mandelson: Building Trust, *supra* note 261.

279. *See id.*

280. Sergei Blagov, *Russia Sets Up New Commission to Control Foreign Investment in 42 Strategic Sectors*, WTO REPORTER, July 17, 2008, <http://ippubs.bna.com/ip/BNA/ITD.NSF/877e5e8077111ce485256b57005bf525/494acb22b1e0040285257482007f99b4?OpenDocument> (last visited Oct. 21, 2008).

281. *Id.*

2. Note on Energy Security²⁸²

As mentioned above, the CES provides for various dialogue fora, the most relevant of which is certainly the energy dialogue.²⁸³ At the Sixth EU-Russia Summit on October 30, 2000, it was agreed to institutionalize an energy dialogue on a regular basis between the EU and Russia to enable progress to be made in the definition and arrangements for an EU-Russia Energy Partnership.²⁸⁴ "Russia has been a reliable supplier of energy into the EU for many years, despite periods of internal difficulties."²⁸⁵ Likewise, the EU continues to be the dominant market for Russian energy exports. This strong mutual interest and interdependence means that energy is an ideal sector in which relations can be progressed significantly . . . for the further development of an EU-Russia strategic partnership."²⁸⁶

EU dependency on Russian gas imports is currently over forty percent and is expected to rise considerably in the coming decades, unless supply sources are diversified and/or greater emphasis is placed on locally generated renewable sources of en-

282. By energy security, we mean the protecting against

[T]hreats of supply and price disruptions arising from risks associated with the sources of [oil and] gas supplies, the transit of [oil and] gas supplies, and the facilities through which oil and gas are delivered. There are two major dimensions of these risks: *short-term* supply availability versus *long-term* adequacy of supply and the infrastructure for delivering this supply to markets; *operational* security of [oil and] gas markets, i.e. daily and seasonal stresses and strains of extreme weather and other operational problems versus *strategic* security, i.e., catastrophic failure of major supply sources and facilities.

Jonathan Stern, *Security of European Natural Gas Supplies: The Impact of Import Dependence and Liberalization*, ROYAL INSTITUTE OF INT'L AFFAIRS, July 2002, at 6.

283. See VICTOR KHRISTENKO, RUSSIAN MINISTER OF INDUSTRY AND ENERGY & FRANÇOIS LAMOUREUX, EUROPEAN COMMISSION DIRECTOR-GENERAL, EU-RUSSIA ENERGY DIALOGUE: SIXTH PROGRESS REPORT, October 2005, http://ec.europa.eu/energy/russia/joint_progress/doc/progress6_en.pdf (last visited Oct. 21, 2008) (addressing security, investment, sustainable development, transportation, energy technology, market development, and nuclear energy).

284. See Charles Grant & Katinka Barysch, *The EU-Russia Energy Dialogue*, Centre for European Reform (May 2003), http://www.cer.org.uk/pdf/briefing_eu_russia.pdf (last visited Oct. 21, 2008) (reporting on the progress of and obstacles to the energy partnership).

285. For an analysis of Russia's exponential macroeconomic success based on energy supply, see LÚCIO VINHAS DE SOUZA, A DIFFERENT COUNTRY, RUSSIA'S ECONOMIC RESURGENCE 73-82 (2008).

286. European Commission, European Union—Russia Energy Dialogue, http://ec.europa.eu/energy/russia/overview/why_en.htm (last visited Oct. 21, 2008).

ergy.²⁸⁷ Unlike oil, which can be transported easily in tankers, gas is still transported mainly via pipelines, making Europe dependent on existing supply and transit routes. The need for the EU to diversify supplies was underlined by a dispute between Ukraine and Russia in January 2006, which led to interruptions to supplies of Russian gas for some EU Member States.²⁸⁸ The EU was understandably alarmed since about twenty-five percent of all gas consumed in the EU originates from Russia, and eighty percent of it is shipped via pipelines crossing Ukraine.²⁸⁹ “The dispute [between Ukraine and Russia] recalled a quarrel in 2006 when deliveries to Western Europe were briefly interrupted, highlighting the EU’s dependency on Russian gas and prompting it to seek new supply routes.”²⁹⁰ One wonders how reliable Russia is as an energy supplier.²⁹¹

Despite the need for the EU to diversify supplies of gas, Greece and Russia signed an agreement on April 29, 2008, to start construction on the South Stream Pipeline.²⁹² “South Stream was launched in 2007 by Italy’s Eni and Russia’s Gazprom. It is designed to pump 30 billion cubic meters of Russian gas a year to Europe, under the Black Sea via Bulgaria, Greece, Serbia, and Croatia to Italy. Under the plans, one of its branches will go through Hungary, which recently joined the project, and reach Austria.”²⁹³ However, some European officials seem to have doubts about the intentions of Gazprom. Europe’s perception of Gazprom as “a political weapon of the

287. Former Spanish Prime Minister Felipe González voiced the importance of tackling the issue of Europe’s energy dependency at a reflection group launched by EU leaders at a summit in December 2007. At the summit, González asked EU leaders to reconsider their position on nuclear power. See EurActiv.com, González Voices Bold Ambitions for EU Reflection Group (Jan. 15, 2008), <http://www.euractiv.com/en/future-eu/gonzalez-voices-bold-ambitions-eu-reflection-group/article-169552>.

288. See EurActiv.com, EU Seeks New Supply Routes in Wake of Russia-Ukraine Gas Row, (June 29, 2007), <http://www.euractiv.com/en/energy/eu-seeks-new-supply-routes-wake-russia-ukraine-gas-row/article-151692>.

289. *Id.*

290. Vytautas Landsbergis, *Why we must learn to say No to Russia*, EUROPE’S WORLD (Summer 2008), <http://www.europesworld.org/Francais/EWSsettings/Article/tabid/190/ArticleType/ArticleView/ArticleID/20437/Default.aspx>.

291. See *id.* (noting that Russia has guaranteed future supplies to the EU, possibly as a ploy to discourage development of future competing sources).

292. See EurActiv.com, Greece Seals Pipeline Agreement with Russia (Apr. 30, 2008), <http://www.euractiv.com/en/energy/greece-seals-pipeline-agreement-russia/article-172044> [hereinafter Greece Seals Agreement].

293. *Id.*

Kremlin” is wrong, according to top Gazprom executive Alexander Medvedev,²⁹⁴ who claims that Gazprom is perceived by the EU as “an instrument of Russian foreign policy.”²⁹⁵ Medvedev finds statements that an increase in Gazprom’s gas deliveries constitutes a threat to the EU’s security puzzling. According to him, “[t]he suggestion that Gazprom would invest billions of dollars in expensive gas export pipelines so that [the Russians] could then disrupt them for political reasons looks absurd, especially in view of the substantial contribution these gas exports make to Russia’s budget and the country’s economy.”²⁹⁶

Another project is the so-called Nord Stream project which is a German-Russian plan of a Baltic Sea gas-pipeline. The “project has come under attack from central and eastern European countries, which fear that Russia might use the pipeline, which bypasses their territories, to impose higher energy prices on them.”²⁹⁷ Furthermore, the European Parliament is concerned about the geopolitical implications and environmental impact of the project.²⁹⁸ It is nevertheless paradoxical to note that some EU Member States have signed agreements with Russia for the creation of gas pipeline projects, although the aim of the EU is to minimize its dependence on Russian energy supply.

By contrast to these two projects, another natural gas pipeline called Nabucco, although endangered because of the Russia-Georgia conflict in August 2008,²⁹⁹ would bring gas from the Middle East and Central Asia to Europe via Turkey, Bulgaria, Romania, Hungary, and Austria.³⁰⁰ The project, scheduled to be completed by 2013, is geopolitically significant on energy-security grounds because it will bypass Russia, but has encountered financial problems and a lack of political will from some EU

294. See Alexander Medvedev, *Is Gazprom’s Strategy Political?*, EUROPE’S WORLD (Summer 2008), <http://www.europesworld.org/EWSettings/Article/tabid/191/ArticleType/ArticleView/ArticleID/21177/Default.aspx>.

295. *Id.*

296. *Id.*

297. EU-Russia Welcome New Page, *supra* note 242, para. 9.

298. See EurActiv.com, *Baltic Pipeline Under Fire Despite Industry Assurances* (July 9, 2008), <http://www.euractiv.com/en/energy/baltic-pipeline-fire-despite-industry-assurances/article-174087>.

299. See EurActiv.com, *Nabucco: “Pie in the Sky” after Georgia Crisis?* (Aug. 25 2008), <http://www.euractiv.com/en/energy/nabucco-pie-sky-georgia-crisis/article-174855> (last visited Aug. 25, 2008).

300. See generally *Greece Seals Agreement*, *supra* note 292.

Member States.³⁰¹ Russian Ambassador to the EU Vladimir Chizhov dismissed the potential of the Nabucco project, especially the plans to bring gas from Turkmenistan or Azerbaijan, arguing that the resources of the two Central Asian countries would be insufficient. The only way to fill the Nabucco pipeline is with Iranian gas, he said.³⁰² However, with an embargo currently on Iran, there is no gas.³⁰³ Others such as Wolfgang Ruttenstorfer, the CEO of Österreichische Mineralölverwaltung, claim that there is enough gas to make Nabucco happen.³⁰⁴ On this note, Iraq has shown interest in selling gas to Nabucco, and discussions have already taken place about the transfer of substantial amounts of Iraqi gas via Syria and the trans-Arabian gas pipeline, or directly via a link between Iraq and Turkey.³⁰⁵

The following map shows the current pipelines projects of Russian oil and natural gas:³⁰⁶

301. *Id.*

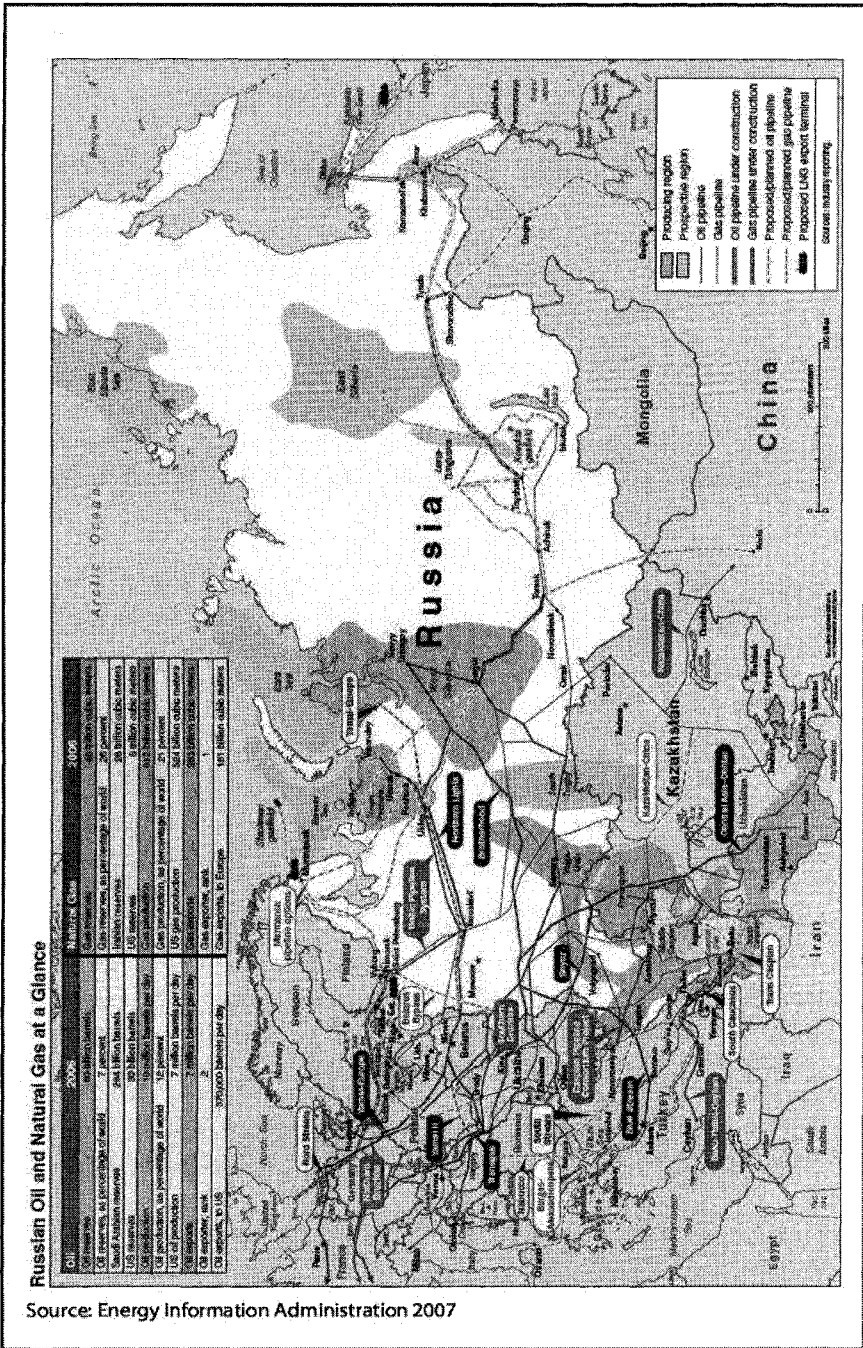
302. *Id.*

303. Iran, which holds fifteen percent of the world's estimated gas reserves, is not on the list of countries that would participate in Nabucco due to the uranium enrichment row between Western countries and Tehran, which prevents the EU from developing the project with Iran.

304. See EurActiv.com, Business and Commission in Plea for Nabucco Pipeline (July 4, 2008), <http://www.euractiv.com/en/energy/business-commission-plea-nabucco-pipeline/article-173941>.

305. See EurActiv.com, EU's Piebalgs on 'Nabucco tour' for gas supplies, (Nov. 4, 2008), <http://www.euractiv.com/en/energy/eu-piebalgs-nabucco-tour-gas-supplies/article-176913>.

306. Energy Information Administration, Russian Oil and Natural Gas at a Glance, <http://www.eia.doe.gov/emeu/cabs/Russia/images/Russian%20Energy%20at%20a%20Glance%202007.pdf> (last visited Nov. 13, 2008).



Generally, the EU is in a weak position vis-à-vis Russia since it needs energy security. Russia has been making an autocratic use of its energy policy. The EU continues to have considerable dependence on Russian energy supply: The share of EU imports from Russia is thirty percent in the case of oil and forty-four percent in the case of natural gas.³⁰⁷ So the EU should diversify its energy supply sources by dealing with alternative markets such as the Middle East, Norway,³⁰⁸ Nigeria,³⁰⁹ or Algeria.³¹⁰ By the same token, Russia is dependent on its energy exports. One major economic issue for Russia is the failure to diversify its economy. If the EU is diversifying, Russia also needs to think about diversifying its exports to other regions of the world. Furthermore, the construction of pipelines is not cheap, and Russia needs to secure its sources of tax revenue.³¹¹

CONCLUSION

The EU is definitely an attractive partner for the BRIC countries as it provides much in its trade relations. In fact, the EU is Brazil's, Russia's, India's, and China's largest trading partner. Although the EU does want cooperation with the BRIC countries, in my opinion using trade policy as a "carrot" in a policy-centered approach does not have much scope beyond current existing efforts. The European Commission's Directorate-General for external trade is already very active. So, few new initiatives seem possible. Nevertheless, there is some, although limited, room for trade policy concessions at the multilateral level: with Brazil, in the case of agriculture and the Doha Round; with India, the resistance with Mode 4 of the GATS. As expressed earlier, the EU could offer additional incentives to the

307. See EUROPEAN COMMISSION, *THE EUROPEAN UNION AND RUSSIA: CLOSE NEIGHBOURS, GLOBAL PLAYERS, STRATEGIC PARTNERS* 13 (Oct. 18, 2007), http://ec.europa.eu/external_relations/library/publications/russia_brochure07_en.pdf.

308. That said, North Sea oil and gas fields have already been exploited beyond their peak. See EurActiv.com, *Geopolitics of EU Energy Supply* (July 18, 2005), <http://www.euractiv.com/en/energy/geopolitics-eu-energy-supply/article-142665>.

309. See *Nigerian Gas*, *supra* note 252.

310. See EurActiv.com, *EU Manoeuvring for Non-Russian Gas Supplies* (Apr. 15, 2008), <http://www.euractiv.com/en/energy/eu-manoeuvring-non-russian-gas-supplies/article-171622>.

311. See EurActiv.com, *EU 'Wrong' to Prioritise Energy Diversification*, (Oct. 15, 2008), <http://www.euractiv.com/en/energy/eu-wrong-prioritise-energy-diversification/article-176380>.

BRIC countries by granting larger concessions at the multilateral level or demanding fewer concessions than would be the case in a purely reciprocal give-and-take situation.

However, even if the EU concessions were possible, what would the EU want to obtain in return? Market access seems to be the evident answer. This is what trade negotiations are about. The European Commission's Directorate-General for external trade would come under pressure if EU concessions were not used to enhance market access for European exporters in growing and important emerging markets. When it comes to bilateralism with Russia and China, an FTA with the EC does not seem to be a suitable trade instrument at the moment. Nevertheless, the EU can expect a mutual benefit as well as greater economic and political ties.

What remains to be done? It is not about what, but how one negotiates: The European Commission should negotiate more constructively, without patronizing, and instead accept the BRIC countries as equal players in the current multipolar framework of global economic governance. This is difficult to achieve as there are differences among the BRIC countries: Brazil and India are not yet economic superpowers; they are only starting to grow into a more powerful role. The EU should try to foster this positive development in a cooperative stance and establish trust.

China and Russia, however, are in some areas more assertive than Brazil and India. So EU partnership with China and Russia is more difficult than with Brazil and India. The EU is not in a stronger position vis-à-vis China and Russia due to the large Chinese market and China's growing economic and political power. In this sense, the EU expects China to assume a multilateral responsibility commensurate with the benefits it derives from the world trading system because with greater power and a greater voice comes greater responsibility. Compared to India or Brazil, China's role in the world trading system is rather passive both at the WTO's dispute settlement system as well as in the Doha Round of multilateral trade negotiations.

In Russia's case, the renaissance of the country's self-confidence seems evident thanks to its vast energy supply. Nevertheless, I maintain my point that Russia should have as a priority the conclusion of negotiations to enter the WTO in order to fully integrate into the global trading system and protect its growing

interests on world markets. WTO membership will certainly help eliminate any discrimination against Russia in its trade and investment. Moreover, in regard to energy, Brussels should diversify its supply in order to overcome the EU's dependency on Russia, and greater emphasis should be placed on locally generated renewable sources of energy.