

A Dialogue of the Deaf? Conflicting Discourses over the EU and Services Liberalisation in the WTO

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Research Highlights and Abstract

- The role of the European Union (EU) in services liberalisation—and the impact thereof on the provision of services of general interest—has been highly contentious both globally and in the EU. Besides other policy issues, services liberalisation contributes to make the EU a ‘conflicted trade power’ (Meunier and Nicolaïdis 2006).
- The study of conflicting discourses and, in particular, the EU’s responsiveness to criticism towards the conduct of its trade policy can help to understand the legitimacy issues the EU has to face better than approaches focused on negotiating positions shaped.
- The study finds that the EU’s trade policy is characterised by continuity in spite of the a) potentially various ideological profiles of EU Trade Commissioners b) in the face of contention by civil society, c) external events such as the global financial crisis and the EU debt crisis.
- However, specific institutional settings can prompt political responsiveness from the Commission in a greater extent. In the European arena, unlike in the more loosely structured global arena, the existence of a parliamentary debate and formal as well as informal contacts with organised civil society (NGOs, interest groups and unions) constrain the EU Commission to more discursive responsiveness and provides for better accountability.

This article examines interactions between two conflicting discourses over the EU, public services and negotiations during the WTO Doha Round (2001–2012): on the one hand, the discourse of the anti-GATS transnational advocacy network, and on the other, that of the two EU Trade Commissioners. Conducting a frame analysis in a discursive institutionalist perspective, the eventfulness of political interactions is found to be more important than Commissioners’ personal views, but differentiated institutional settings are even more crucial: the presence of a parliamentary arena in the EU arena, in particular, constrains Commissioners to engage with the discourse put forward by its critics; whereas in the global arena they tend to stick to their own framing of services liberalisation as a win-win process. The stalling of the Doha Round and the rise of the debt crisis have brought about new ways of framing threats related to the EU’s trade policy.

Keywords: trade policy; liberalisation; discourse; public services

Introduction

The EU has been famously pictured as the ‘Trojan horse’ of neo-liberal globalisation and the radical left in Europe. Meanwhile, its role as an international actor has been debated amongst academics as well. **Manners and his followers have argued that the EU embodies a new kind of normative power (Manners 2000)** seeking to promote a political agenda by soft means such as development aid or trade. Other scholars have criticised this argument for being too idealistic—if not normative itself—and have found that material economic interests play at least as important a role as normative motivations in shaping the EU’s external policies (Hyde-Price 2006; Pollack 2010). The EU’s trade policy, in particular, is known for being strongly shaped by corporate interests (Woll 2006). Contrary to the bulk of the literature about the EU’s trade policy (Meunier 2005; Dür 2008), this article takes a distance from the notions of preferences and interests, whether defined as those of the EU as a whole or of its Member States. In line with the perspective of this special section, a discursive approach is adopted in order to shed light on the political dynamics underpinning the EU’s trade policy. The focus lies on the dark matter of the EU’s trade policy over the last fifteen years, namely the liberalisation of public services, or—in EU language—services of general interest (SGI). **The tension at the heart of the ‘embedded liberalism compromise’, namely the contradictions between market liberalisation abroad and its social impact in the domestic arena, remains a fundamental challenge casting a shadow on the legitimacy of the EU’s trade policy and the EU’s ambition to both protect and promote its distinct social model.** The objective is therefore to analyse the frames and counter-frames that account for the EU being a ‘conflicted trade power’ (Meunier and Nicolaïdis 2006). By analysing discourse by the main anti-liberalization coalition of NGOs, on the one hand, and from the EU Commission, on the other hand, the purpose is to assess to what extent the European Commission is responsive to contestation and to elucidate the ideational and institutional factors shaping the politics of services liberalization.

Parallel to the rise of services in industrialised economies, SGI have been increasingly provided by markets and no longer by public authorities themselves. Correspondingly, they have been increasingly submitted to the rationales of competition and profit-making. While the EU has engaged in the liberalisation of the so-called network industries (electricity, telecommunications, postal services, etc.), the status of services related to healthcare, social assistance, non-mandatory education and culture, remains pending. Since the 1986 Single Market Act that paved the way for a common European market, the EU has been following the policies of liberalisation implemented in a number of Member States (for instance in the UK and Germany), by pursuing the opening of national markets and the subsequent suppression of the traditional monopoly by national operators in a number of sectors (electricity and gas, telecommunications, audio-visual, transport). Since it is mainly framed as an economic or legal problem in literature, the regulation of services markets at the EU level involves crucial political and legitimacy issues for the EU. The Services Directive (206/134 CE) that deregulates and liberalises all services, including some SGI, triggered major protest on a horizontal basis: the so-called Bolkestein Directive became the symbol for the defence of ‘Social Europe’ against the neo-liberal bias of the EU (Crespy 2010, 2012) and contributed to the failure of

the European Constitutional Treaty's ratification in France. The EU's policy on SGI has major implications for the role of the EU in negotiations on services in the WTO. According to the theory of implied competences, the EU enjoys external competences where it enjoys internal competences (a necessary but insufficient condition). A main move has been made with the Lisbon Treaty that puts an end to the exclusion of audio-visual, educational, social and human health services, which are now incorporated into the field of EU exclusive competences (Article 207(1) TFEU). However, it maintains the unanimity rule in the Council for cultural and audio-visual services,

... where these agreements risk prejudicing the Union's cultural and linguistic diversity [...] and in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them (article 207.4 TFEU).

The interactions between internal and external policy over SGI are complex and ambivalent. On the one hand, the Commission is bound to preserve the individual States' regulatory capacities in the fields that enjoy exceptional status internally (such as health and education). On the other hand, the internal liberalisation dynamics within the internal market enlarges the scope of the EU's exclusive competence in trade and acts as a catalyser at the global level (Krajewski 2011).

The role of the EU within the World Trade Organization (WTO) is key with regard to the 'market liberalism' dimension of the EU's action on the global (Rosamond, 2013). In this respect, the EU has been a main advocate of a new agenda bringing forward services liberalisation during the Uruguay Round. In 1994, the round was concluded with all members of the World Trade Organization (WTO) becoming part of the General Agreement on Trade and Services (GATS). The hope that the Doha Round, launched in 2001, would bring significant progress with regards to services liberalisation, was deceived in the 2000s. While Article I.3 of the GATS formally excludes the liberalisation of services provided by the State, an important number of public services delegated to private providers were covered by the negotiations. The EU has large competitive firms in a number of sectors including telecommunications, energy, so-called environmental services (water distribution, air pollution), etc., where it therefore claims strong 'offensive interests'. As an increasing number of services sectors are being liberalised in the internal market, possibilities for the EU Commission to offer and require reciprocal market openings have increased over time. Although strongly tied to the mandate given by the Member States, the Commission's policy has been the target of criticism and protest by NGOs and various left-wing political actors, both internationally and within the EU. The agenda for services liberalisation never took off, and, as a matter of fact, commitments in these sectors remained very limited. At the same time, a progressive re-configuration of the EU's position between the mid-1990s to the mid-2000s can be observed. Whereas it had displayed bold ambitions for the opening of services markets in the Uruguay Round, the EU eventually renounced going further as far as public services are concerned under the Doha Round. The Commission strategically re-focused on a small number of private services (such as financial services), the opening of public procurement and competition rules.

This article does not seek to prove a direct causal relationship between contestation and the EU negotiating position. In the highly opaque negotiation process that characterises the WTO, contentious politics are one among many factors that potentially affect the EU's position. Rather, the purpose is to examine the interactions between conflicting discourses, namely between the framing by contentious actors (mainly NGOs and unions), on the one hand, and that of the EU Commission, on the other. The question is to what extent the latter has been *responsive* to the former and whether this contentious debate has been a dialogue of the deaf. Departing from this inquiry, two related questions are investigated. First, do individual Commissioners (and their contrasted political views) make a difference? Second, do different institutional settings make a difference? Applying a discursive institutionalist approach that stresses the importance of interactions in institutional settings (Schmidt 2008), it is hypothesised that in order to explain the articulation of preferences through discourse: (1) the eventfulness of political interactions is more important than Commissioners' personal views, but (2) the differentiated institutional settings are crucial in empowering certain actors and ideas over others.

In terms of methods, the argument is supported by a qualitative frame analysis inspired by both social movement literature (Benford and Snow 2000) and public policy analysis (Fischer 2003).² The framing of political issues enables actors to select a portion of the reality that is relevant to a given situation or issue; hence, framing sheds light on some dimensions while leaving other aspects in the dark, outside of the frame. Frame analysis consists of identifying the general ideas that bind other discursive elements together. The study presented here is based on 54 documents and speeches between 2001 and 2012 emanating from both EU Trade Commissioners, on the one hand, and from various NGOs, think tanks and unions, on the other hand.³ This corpus allows comparing discourses over time, across Commissioners' mandates and in two different institutional settings, namely the global and the European arena. The first section presents the value-added of the discursive institutionalist approach. The second section explains why SGI, a minor aspect in the GATS negotiations, has become politically contentious. The third and fourth sections respectively examine frames and counter frames by the contentious actors and the EU Commission.

The EU's Trade Policy in the WTO: Ideas, Institutions and Discourse

The literature on the EU's trade policy has mainly focused on preference formation as a dependant variable and on economic interests and/or institutional variables as independent variables. One main focus has been the peculiarity of governance in the EU and its effects. Meunier (2005) provides a thorough study of the bargaining power of the EU in the GATT since the early days of EU integration. She focuses on institutional rules, and especially on the use of unanimity or qualified majority voting in the Council. She finds that these rules can both strengthen or weaken the EU in international negotiations depending on whether it is pursuing a 'conservative' (or defensive, i.e. in favour of the status quo) or a 'reformist' (or offensive, i.e. pro-liberalisation) agenda. The distribution of the Member States' preferences determines whether the EU's position should be offensive or defensive. Looking at

the 1990s, Hanson has argued that a pro-liberalisation bias of the EU trade policy has crystallised as the unintended consequence of EU integration itself for institutional reasons: while the completion of the internal market has mainly implied negative integration, transposing protectionist preferences to the EU level has met major institutional and collective decision-related obstacles (Hanson 1998). Hence, it is only incidental that the EU has profiled itself as a 'fortress Europe' involved in trade disputes and failing to comply with WTO decisions. Again, according to Young (2004), this is mainly due to institutional factors, primarily because of regulatory divergence among the Member States. In spite of the autonomy of the EU Commission as a supranational agent of the EU's trade policy, it has been argued that Member States' economic interests have remained the main driver of European trade policy in the Doha Round (Dür 2008). Thus, in this literature, the EU's trade policy is conceived of as shaped by disembodied rules and fixed preferences, essentially operationalised as economic interests. However, some insights point to the importance of politics and political conflict over trade policy issues. For instance, dealing with the doctrine of 'managed globalisation' promoted by the EU Commission during the mandate of Pascal Lamy (1999–2004), Meunier (2007, 915–916) mentions the role of non-governmental organisations in the reconfiguration of Member States' preferences over trade issues.

Rooted in constructivist ontology, the approach adopted here rejects the positivist-rationalist conception of a 'material' realm of interests and preferences separated from a discursive realm of ideas. Under the positivist-rationalist conception, discourse and ideas are bound to be either, an *ex-post* justificatory strategy of essentialised preferences, or at best, an *ex-ante* factor having a causal impact on preferences. Rather, discursive institutionalism conceives of interests and ideas as co-constitutive (Hay 2010), as the perception of interests change over time and agents reconfigure their interests in the course of dynamic discursive interactions (Schmidt 2008).

Bieler and Morton (2008) have criticised the way scholars have dealt with the role of ideas in international political economy (IPE). They argue that rationalist liberalism, social constructivism and post-structuralism have all tended to reproduce the material-ideational dichotomy by considering ideas as one factor impacting a material reality or by assuming that 'everything is discourse'. Because they insufficiently connect ideas to agents and to the material and social conditions of the production of discourses, they have failed in explaining why some ideas and discourses are more influential than others. As an alternative, the authors advocate a historical materialist approach to change in IPE, yet free of economic determinism. Interestingly, he reminds us that according to Gramsci, changing material conditions, for instance due to economic crises, do not mechanically lead to new ideas, hence to dramatic political and social change (Bieler and Morton 2008, 117). **This is very much in line with the findings of Orbie and de Ville (2013) who stress the continuity of the neoliberal paradigm in the EU's trade policy through the current crisis.** Rather, ideas *are* directly material in the sense that they are mutually constituted by the material and social conditions in which they are produced. The relative power of ideas therefore emerges from the struggles between agents—with intellectuals being an important category in the

Gramscian theory—to consolidate or contest hegemony (understood as the temporary state of power relations).

While this new version of historical materialism seeks to explain the relative power of ideas in the wider economic and social realm, discursive institutionalism focuses on the relative power of ideas in more circumscribed political regimes or polities. Similarly, the purpose is to identify the ways in which ideational agents articulate discourses that reinforce or weaken political hegemony. Rather than a sociological or economic perspective examining the social and material conditions of the production of ideas, the focus lies on institutional settings as the conditions that both enable and constrain agents, thus making possible and effective the articulation of certain discourses over others. Moreover, struggles, or contentious interactions that shape preference formation, are intrinsically characterised by eventfulness, uncertainty and subjective interpretation (Hall 2005). For this reason, the approach does not claim the determination of agency by (institutional) structures. As demonstrated by Schmidt's study of the EU leaders' discourses over the Eurocrisis, inconsistencies arise from agents' endeavours to speak to various audiences in various arenas, on the one hand, and their need to react to events and other players' discourse, on the other.

This article does not seek to prove a direct unidirectional causal impact on contentious ideas over the EU's trade policy. Such a perspective is misleading because during the period under examination, covering the 'rise and fall' of the Doha Round (2001–2012), the EU's negotiating position was opaque by definition (between the Member States' mandate and the room for manoeuvre granted to the supranational negotiator) and sensitive to the broader changing context of the negotiation round. Thus, the objective is rather to shed light on the discursive interactions between frames and counter-frames and to demonstrate to what extent EU Commissioners have been responsive to political contention over services liberalisation. The central argument is that of limited responsiveness from the EU Commission. It is rooted in two more specific hypotheses. First, it is hypothesised that the course of events and the necessity to *respond* to contentious discourses is more important than Commissioners' personal views. It has been demonstrated that structural constraints such as nationality, portfolio and previous career still leave Commissioners ample room for manoeuvre to implement personal strategies aiming at gaining influence and shaping inter-sectoral matters (Smith 2003). This article explores further aspects constraining Commissioners in their endeavours, namely the long-term conception of policy issues by the Commission, e.g. here the idea that liberalization is intrinsically good, and the necessity for Commissioners to interact with (contentious) policy actors in differentiated institutional settings, at the global and European level as far as trade policy is concerned. The overall framing of trade policy is therefore expected to remain stable over time, with peaks of contestation generating discursive engagement of the EU Commission with its critics. Second, the European arena as an institutional setting is expected to impose greater constraints on the Commission, thus fostering responsiveness towards political contention. The presence of parliamentary agency, as well as interactions with civil society, make contentious discourses politically more effective, while de-politicisation might be a current discursive strategy used by the EU Commission, as pointed out by Schmidt and Orbie and de Ville (2013).

The Contentious Framing of Services Liberalisation

The rise of contestation against the GATS can be traced back to 2001. Building on previous campaigns against the North American Free Trade Agreement and the OECD's Multilateral Agreement on Investment, various NGOs and groups, mobilised during the WTO's Ministerial Conference in Seattle, gathered into a transnational advocacy network (TAN): about 1500 organizations joined the platform Our World Is Not For Sale with two 'flagship statements' targeting the WTO. Regarding the issue of services liberalization, the Polaris Institute based in Ottawa, the British NGO World Development Movement, and Public Services International (PSI) were key in providing expertise and coordinating mobilisation transnationally. The 'water war', targeting the GATS negotiations over the opening of water distribution markets in developing countries, played a major role in the crystallisation of mobilisation. However, the multiple 'overlapping networks' consistently conveyed a broader message related to public services in general and connecting several issues and arenas of policy-making, including the European dimension of public services liberalisation with groupings such as the Seattle to Brussels Network (Strange 2011).

The petition *Stop the GATS Attack Now!*, launched in March 2001 (doc. 1), was foundational in defining the framing that characterised the anti-GATS discourse in the subsequent years. It received the support of 596 organisations across 63 countries. Unsurprisingly, global justice has been the master framework structuring this discourse. Fundamentally, three sub-dimensions are paramount in articulating the critique of the GATS. First, according to the anti-GATS TAN, services liberalisation in the WTO is a serious threat to the 'publicness' of the policy response to basic human needs, i.e. it endangers the equal and affordable provision of basic services, from the distribution of water to health and education, through access to energy. The petition claims that after Seattle the new negotiations aim to:

... expand global rules on cross border trade in services in a manner that would [...] newly constrain government action taken in the public interest world wide. These talks would radically restructure the role of government regarding public access to essential social services world wide (doc. 1).

Secondly, the basic motivation behind services liberalisation is privatisation and profit making: 'The chief beneficiaries of this new GATS regime are a breed of corporate service providers determined to expand their global commercial reach and to turn public services into private markets all over the world' (idem).

Thirdly, both the way the negotiations are conducted and the resulting privatisation of public services are a threat to democracy insofar as they confiscate decision power on the distribution of fundamental resources to citizens and their representative institutions. The legitimacy of the WTO itself is being contested:

Initiated in February 2000, these far-reaching negotiations are aimed at expanding the WTO's General Agreement on Trade in Services [GATS] regime so as to subordinate democratic governance in countries throughout the world to global trade rules established and enforced by the WTO

as the supreme body of global economic governance. What's more, these GATS 2000 negotiations are taking place behind closed doors based on collusion with global corporations and their extensive lobbying machinery (doc. 1).

This petition triggered a contentious dialogue with authorities of the WTO. A few weeks later, the international organisation issued a counter report entitled 'The GATS—Fact and Fiction',⁴ which dismissed the concerns of global civil society as not well-grounded. The anti-GATS TAN was quick to counter-attack with a press release (doc. 2) that pointed out the reason why such interactions were likely to be a dialogue of the deaf: while civil society pointed to the *potential* dangers related to possible interpretations of vague rules and the consequences of services liberalisation in the long run, experts of the WTO stressed the limited scope of the rules enshrined in the agreement signed in 1995. In the following years, the network produced expertise in order to substantiate its original framing, namely that the GATS restrains governments' rights to regulate, 'leaving the ambitions of commercial ministries—and the corporate lobbyists driving them on—unchecked by broader public scrutiny and debate' (doc. 3).

Despite endeavours towards credibility in policy analysis, the open aim of the TAN was also to politicise the issue among the wider public. For example, in 2004, the Polaris Institute issued a 'Classroom Guide to the GATS', explaining how services liberalisation in the WTO benefits large companies at the expense of public services, especially in developing countries.

The campaign went on along the same lines in the following years. The anti-GATS TAN addressed open letters to the WTO, to Heads of WTO delegations, to the Chair of the services negotiations, to the Chair of the General Council and to WTO Director Generals Supachai Panitchpakdi and, from 2005, Pascal Lamy (docs. 4 and 5). Trade unions, through the PSI, profiled themselves as a major player early on in the campaign, with a seminal report in 2000 (doc. 12) and various declarations and resolutions by its bodies. It expressed similar concerns that 'the GATS agreement serves as a window of opportunity for strong business interests without necessary regard for general human needs and development' (doc. 13; also doc. 16).

From 2002 onward, the EU became the main target of the 'water war'. The European Commission was framed as the main actor pushing for the so-called new issues in the WTO agenda. In the EU arena, the democratic frame became much more salient in relation to discursive interactions with Commissioner Lamy:

The European Commission, in an attempt to steer free of public opposition in Europe, has recently announced that the EU does not intend to make any (additional) GATS commitments itself in public service sectors like culture, education, health and water. Trade Commissioner Pascal Lamy explained that 'services of collective interest in the EU are preserved. In this way we ensure that the WTO is used to defend and promote the European model'. At the same time, the leaked requests make clear just how aggressively the EU is promoting the offensive interests of European water giants, corporations that have proved unable to fulfil the drinking water needs of the world's poorest (doc. 6).

The negotiating position of the EU Commission, as well as collusion with large services corporations, remained a major object of scrutiny by the anti-GATS TAN (doc. 8). Meanwhile, the European Social Forum had become an important arena for articulating discourses against the EU's role in the GATS. In Paris and London in 2003 and 2004, workshops were dedicated to the GATS (doc. 7), and in the aftermath of the 2006 meeting in Athens, a network on public services was founded. The network's declaration makes a strong connection between the GATS and mobilisation against the EU Services (or 'Bolkestein') directive and makes similar claims that 'public goods and services have been undergoing an offensive aiming at transforming them into economic assets and goods that must obey market rules' (doc. 9).

Whereas they should be 'commonly decided, set out from a number of unrenounceable characteristics, such as: universality, accessibility, equal access, continuity and quality of service, solidarity, democratic control, fiscal justice in financing public services, social participation, quality employment/labour rights' (*idem*).

One major difference with mobilisation in the global arena is the stronger presence of trade unions in the European arena. Whereas the PSI is a loose transnational organisation, the European Trade Union Confederation (ETUC) and its member Public Services Union Confederation are very well structured and active in Brussels. In the anti-GATS campaign, the ETUC played the role of mediator involving the PSI in meetings with the EU Trade Commissioner in 2003 (doc. 17), and connected various issues related to water across various levels of mobilisation (doc. 18). Due to the neo-corporatist dimension of EU governance, ETUC systematically targets the EU Commission (doc. 21) even by engaging with protest action, such as for instance the demonstration held in front of the Commission's DG Trade headquarters on 19 March 2007 (doc. 26). Again, besides policy implications related to the erosion of the public provision of services, a great concern is expressed that 'the current round of GATS negotiations is being conducted in virtual secrecy in most member states' (doc. 18). This, however, does not mean that the anti-GATS TAN is monolithic. As an organization engaged in neo-corporatist dialogue with the EU institutions, the ETUC has actually proved less critical to the Global Europe agenda insofar as it provides jobs for workers of the 'North' while including the protection of social rights in the various trade agreements between the EU (Bieler 2012).

After 2007, transnational mobilisation against the GATS clearly lost momentum, notably because the negotiations themselves were stalling. No specific communication over services liberalisation can be found on the web and the loosely coordinated anti-GATS TAN seems to have disaggregated. In fact, the various organisations in the network went back to their 'core business' and articulated a new discourse about the financial crisis as a threat. The PSI, for instance, denounced widening cuts to public services and attacks on the rights of public sector workers around the world' (doc. 15). In its 2010 Annual Report it sought to mobilise on the World public services day (23 June) initiated by the United Nations (doc. 16).

In Europe, NGOs continued to monitor the EU's trade policy and Commissioners' stance (doc. 10) but no longer focused specifically on services liberalisation. Rather, the global justice movement identified the austerity policy responding to the debt crisis as a new threat for public services and put forward the motto 'Make them pay

for their crisis' (doc. 11). As for the ETUC, it concentrated on new issues connected to both the GATS and the internal market. It criticised the Commission proposal for dealing with the rights of workers posted in an EU country by companies established in third countries, the labour movement being a corollary to services liberalisation. With regard to public procurement, the ETUC only dealt with the EU internal framework and failed to establish the connection with the liberalisation of public procurement that is massively promoted by the EU Commission in the WTO (doc. 25).

In a nutshell, the anti-GATS TAN that formed in the aftermath of the WTO summit in Seattle established a framing of services liberalisation, which was consistently used by all actors over the ten subsequent years. At the global level, discourse mainly targeted WTO authorities who reacted in the early days of the Doha Round. At the European level, the EU Commission was more systematically targeted by NGOs and particularly by trade unions. Both the structuring of collective action, for instance in the European Social Forum, and the direct interactions with decision makers, were easier in the institutionalised European arena. Connections with services liberalisation in the internal market provided further discursive leverage for denouncing the commitment of the EU Commission to a neo-liberal policy agenda. From 2008 onward, with the GATS negotiations stalling, civil society progressively reframed their discourse on public services in connection with the debt crisis or associated the GATS with other issues such as workers' mobility. The following section examines to what extent the EU Trade Commissioners were responsive to the critical framing of services liberalisation in the WTO.

The Framing of Services Liberalisation by the EU Commission

The first striking fact about the framing of the issue by EU Commissioners Lamy and Mandelson is the very low salience of public services. Generally speaking, the EU Commission *does not* frame services liberalisation in the WTO as an issue related to public services. It has been acknowledged that trade policy and the corresponding Commission DG are widely permeable to business lobbying (Woll 2006). The set up of the European Services Forum, the main interest group representing the services industry in Brussels, in 1999 was strongly encouraged by the EU Trade Commissioner Leon Brittan, who then headed a group representing financial services. More generally, most European Trade Commissioners have strong links to business. In the period under study, services—and in the global arena—are mostly referred to in standard formulations adding services to 'trade in agriculture and goods'. In tune with the label 'Doha *development* round', development is the main frame associated with services liberalisation. This is true throughout the period under examination for Pascal Lamy (doc. 19) as for Peter Mandelson, as he claims, for instance, that 'it is in some G90 countries' interest to tap into the developmental benefits of services trade', (doc. 38) or that the EU has been committed to 'helping others who are lower on the development ladder' (doc. 36).

On the one hand, Pascal Lamy states that public services are an important element for development policy in the South (doc. 26). On the other hand, he does not conceal that 'the EU has its own offensive interests in these negotiations, since

about 70 million Europeans are employed in commercial services' (doc. 27), and that political backing to this negotiation is also crucial for EU services companies' (doc. 29). While trade policy is a means for 'propagation and spread of market order', the normative and the strategic dimensions of the market liberalism promoted by the EU are never disentangled, as Rosamond points out in his contribution to the issue.

Rather, the framing through the EU's commercial interests contributes to giving ground to the critical discourse articulated by the anti-GATS TAN. At the same time, the EU Commissioner acknowledged that the opening of public services markets to EU firms is not only a solution to development issues, but may also bring about problems:

... progressive liberalization is inherently good for development. I emphasize the progressive nature liberalization at a rate that each country can handle in terms of its domestic and international competitiveness etc. Contrary to popular belief, the WTO does not propose free trade, whatever that rather abstract notion is (doc. 31, also doc. 30).

The implicit disqualification of the anti-GATS discourse as a badly informed *doxa* conveying myths is typical for the discourse of EU Commissioners. They prefer a discourse presented as more reliable, rooted in expertise and cognitive—rather than normative—arguments. This discursive stance echoes the reaction of the WTO with the above-mentioned report 'The GATS—Facts and Fiction'.

While Pascal Lamy was placing hopes in the 2002–2003 negotiations, Peter Mandelson expressed disappointment about the foreseeable failure of the talks in 2005 and 2006. His discourse was very similar to that of his predecessor though, as he used a similar framing through development, the EU's offensive interests and incremental liberalisation: 'In services, meanwhile, where in Europe we might expect benefit from incremental liberalisation, there is a concerted attempt to dilute proposals that already lack ambition' (doc. 37). 'To lose even a modest deal on services trade would mean foregoing the developmental benefits of foreign investment and the global flow of skills and experience to the developing world' (doc. 32).

Overall, the specific issue of public services is hardly specifically addressed but rather diluted in the framing of trade in services as a process of economic development.⁵ In the global arena, only Pascal Lamy proved to once be responsive to the anti-GATS contentious discourse, at the peak of the water campaign and in a specific setting, namely at the Global Unions Conference held in Cancun in 2003. There, he put forward his more personal conception of 'managed globalisation' (Meunier 2007) by fair rules set in the multilateral framework of the WTO. At the same time, from a European perspective, he stressed the potential counter-productive effect of specific rules over public services in the WTO:

Opening trade in services such as telecoms, banking, distribution or tourism, as well as the temporary entry of foreign professionals are thus key to modern and efficient economies. But we in Europe are adamant that further opening trade in services must not undermine the provision of public services. I know that this is an issue of great concern to trade

unions, and I have had the opportunity to discuss this with many of you over the last few months. Let me recall that the GATS' flexibility leaves WTO Members with considerable freedom to design their commitments: the GATS does not enter into the definition of public services, their mission, their organisation or the way they are financed. I'd like to keep it that way. That's why I am not in favour of creating a carve-out for public services in the GATS: a carve-out would require 146 WTO members to agree on a definition of public services. Such a definition would necessarily be too limited for Europe which tends to have a rather more expansive view of the notion of public service than many other WTO Members do (doc. 28).

Discourse by EU Trade Commissioners was thus consistent during the period from 2001 to 2012, and in the global arena, the contestation related to public services was poorly addressed. Discursive interactions in the EU arena, in contrast, account for a greater salience of the issue. From a discursive institutionalism point of view, it is striking that the overwhelming majority of Commissioners' speeches addressing this question are given in the European Parliament. Indeed, MePs—especially from the radical left, the Greens and the Social Democrats, have become major mediators for the concerns of civil society in the realm of politics. Pascal Lamy was first forced to formulate a political response after documents about the EU's negotiating position—including some requests about water distribution—were leaked to the press by the Polaris Institute in early 2002. Beyond the GATS itself, the democratic nature of the negotiations became a main frame:

These leaks, because that is what they are, are regrettable, as they are disrupting our own internal preparation for the negotiations; the consultation process within the Community is not yet complete; we are merely at the initial discussion stage and we have by no means reached a final position at European Union level with regard to the drafts [...] The leaks are also regrettable in that they are damaging to our own negotiating position. [...] I would remind you that, within the constraints of the Treaty, which clearly gives priority to the Council, we have together adopted informal information and consultation procedures that have worked well so far. [...] the broad lines of these proposals are public, having been posted on our web site at the end of the year 2000, and there have been no changes to the political principles since then. All negotiations comprise an initial stage for reflection, a second stage for transparency and a third stage for negotiation, out of the spotlight. [...] I can assure you that, with regard to Parliament's positions on the services negotiations, in which it has repeatedly emphasised the need to ensure that public services are respected, a concern, what is more, which is also shared by the Commission and which we have incorporated into our proposals, these positions are exactly the same as those initially indicated (doc. 31).

While MePs, NGOs and unions call for more political accountability because of the crucial nature of collective choices potentially affected, Commissioner Lamy responded by stressing the diplomatic and strategic nature of WTO negotiations as

well as the legal procedures agreed on within the EU for preference formation. After this episode, the eventual position of the Commission excluded new commitments in public services, including restrained requests in the water sector. Although not systematically (doc. 33), Pascal Lamy often had to engage in a justificatory and defensive discourse when heard and questioned in the European Parliament (doc. 28). Interestingly, consistency with its mandate was valued over political responsiveness to protests and his discourse was rather confrontational:

Contrary to received wisdom, the WTO serves as a necessary and effective bulwark against 'savage' liberalisation [...] No commitments are being proposed in the area of education and health. And we are not proposing commitments in the area of audio-visual services. (I am pleased that even ATTAC is now recognising that at least in this respect, the Commission has actually done what it said all along it would do! What is rather ironic, though, is that they cry victory over the fact that we actually stuck to our mandate ...) (doc. 34).

Furthermore, he also had to respond to engage in direct communication with the ETUC. As in the EP, he had to adopt the framing from civil society by denying any threat to the national authorities' ability to regulate public services (doc. 32).

In 2004, Peter Mandelson inherited the debate about public services and the WTO, which he already had to confront in his audition by the EP for his designation as Trade Commissioner. While Pascal Lamy's justificatory discourse was accompanied by a personal vision of 'managed globalisation' by multilateral rules and a claim to consultation with civil society, Peter Mandelson embodied a rather neo-liberal conception of the EU trade policy: 'Experience has proved that competition can be a tool to improve the performance of certain public services and that there are often other ways than restricting competition to achieve legitimate policy objectives' (doc. 40).

However, as the EU issued its revised offers and requests for the Doha negotiations in 2005, he was nevertheless careful to be responsive to criticism while addressing both the framing in terms of policy issues and in terms of democratic process:

The offer is also tailored in a way that ensures that public services within the EU are fully safeguarded and no commitments are proposed in the areas of education, health and audiovisual services. It has been prepared in close consultation with the European Parliament, the Member States and EU civil society (doc. 41).

But of course countries must remain free to pursue national policy objectives and fully safeguard their right to regulate. What we seek is equal treatment for foreign service suppliers in some sectors, not a commitment to deregulate markets or privatise existing operators. And here again our proposal excludes weak and vulnerable countries, and gives flexibilities to other developing countries (doc. 42).

Again, it was crucially in the parliamentary arena that such discourse was articulated (docs. 40, 41, 42, 43), whereas the British Commissioner proved much less engaged with civil society and trade unions. Interestingly, internal protest against services liberalisation by the 'Bolkestein' directive was loud during Peter

Mandelson's mandate. The original draft of the directive foresaw far-reaching deregulation of services activities, including many SGI, along similar lines than legal mechanisms used in the WTO agreements. It was hardly fought—with some success⁶—by the global justice movement, left-wing political parties, trade unions and the so-called organized civil society at large (Crespy 2010, 2012).

In this respect, he articulated a rather confrontational discourse:

When respectable Left wing politicians take the streets against the EU Services Directive, and fuel unjustifiable fears of the Polish Plumber; or when leaders take up the cause of economic patriotism and imply that the EU's fundamental freedoms and competition rules shouldn't apply to their country, they are playing with fire. They not only undermine the openness of markets that should be the driver of innovation, growth and jobs. They also put in doubt the very basis on which European integration has been built (doc. 44).

In 2006, as contestation against the GATS and the EU Services directive flowed back, the EU Commissioner issued a policy report entitled 'Global Europe' that set the new direction for the EU's trade policy in the post-Doha context. The document framed trade liberalisation, and services liberalisation in particular, as the main driver for increasing the EU's competitiveness; this discourse tied together trade policy with the internal market policy and the Lisbon strategy (Hay 2007).

Since 2008–2009, the Doha Round has known a serious slow down. As a consequence, the Belgian Commissioner Karel de Gucht has pursued the EU agenda related to services liberalisation through Economic Partnerships Agreements—for instance with the African, Caribbean and Pacific countries—or bilateral regional agreements with Canada, South Korea or Mercosur (doc. 52). While some SGI remained major items in the negotiations (especially telecommunications and transport) (doc. 45), public procurement has become the new public-private frontier of tradable services and it is now a major theme addressed by the EU Commission (docs. 46, 47, 48, 49, 52, 54). The endeavours of the EU towards opening government procurement globally are closely connected with the already far-reaching liberalisation of public procurement within the EU internal market and the Plurilateral Government Procurement Agreement signed in 2011 by 42 WTO members, which was negotiated by both Karel de Gucht and the Commissioner for the Internal Market Michel Barnier (doc. 47). In the European arena, de Gucht has used a new discourse framing the international financial crisis as a threat to free trade (docs. 50, 51, 53). In this respect, the Commission's discourse relies on two main arguments: first, the traditional claim that 'growth is the objective, trade is the tool'; second, the need to face the 'erosion [...] of the broad political consensus on the benefits of open markets' (doc. 53) and 'people's legitimate concerns about globalisation' (doc. 51).

To conclude, the analysis of the discourse articulated by EU Trade Commissioners' between 2001 and 2012 provides evidence of limited responsiveness and persisting conflicting frames about services liberalisation in the WTO. Nevertheless, the institutional setting of the EU arena makes a difference while constraining the Commission to more political responsiveness.

Conclusion

Since the Uruguay Round, the EU's push for a new agenda focused on services liberalisation, including a number of public services, triggered a highly contentious debate involving major civil society mobilisation. Through a frame analysis based on a substantial corpus of documents, this article has looked at the main discursive interactions related to this issue since 2001. The debate features two sets of conflicting discourses, which have remained quite stable over time, hence often resembling a dialogue of the deaf. On the one hand, the TAN rooted in the global justice movement has framed the GATS as an agreement undermining the public authorities' ability to regulate services markets in the public interest, thus serving the interests of large corporations of the 'North' and removing collective decision-making away from the realm of democratic politics. On the other hand, EU Commissioners have primarily and consistently framed services liberalisation as a win-win process benefiting development in the 'South', while at the same time addressing the EU's major offensive commercial interests. Although they were 'packaged' into two different visions of international trade ('managed globalisation' versus free market), the same frames constituted the core of the discourse articulated by Commissioners Lamy, Mandelson and de Gucht. Since 2008, the global and European crisis have brought about new conflicting discourses, which are not talking to each other: for civil society, responses to the crisis and major cuts in public spending are a threat to the provision of public services; for the EU Commission, the crisis fuels protectionism but free trade remains the only answer for boosting growth both globally and within the EU. In tune with discursive institutionalism, the institutional setting in the European arena—the presence of a parliamentary arena and consultation with trade unions in particular—nevertheless brought some variation in the Commission's discourse. Because the EU's political arena provides both resonance for contentious discourses and a space requiring direct discursive interactions, EU Commissioners were constrained to respond to contentious frames and discursively reconfigure the negotiating position of the EU.

These findings have two sets of wider implications. From a theoretical point of view, it contributes to the discussion about *why* and *when* some ideas matter more than others, a question that has generated much debate across theoretical schools in international relations and comparative politics. This article provides support to theoretical and analytical frameworks holding that the power of ideas is inseparable from the social, material and institutional conditions in which they are discursively articulated by agents. In other words, the power of ideas is strongly tied to power relations, but various institutional settings can differently empower some actors and their ideas. From a normative point of view, the analysis leads to the conclusion that the institutionalisation of politics, when geared towards political accountability, can open discursive spaces for debating not only the nature of public policy, but also the (democratic) nature of the very process through which collective decisions are achieved.

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Notes

1. European Commission, Reflections paper on services of general interest in bilateral FTAs, TRADE.B.1/SJ D(2011), 28 February 2011.
2. The interpretive technique used here for frame analysis does not consist in counting word occurrences, like in lexicometric analysis, but in selecting groups of words or sentences whose meaning can be assigned to specific frames. For a more detailed explanation, see Crespy, forthcoming.
3. Speeches from Lamy, Mandelson and de Gucht were retrieved from three different databases: the EU@UN website, DG Trade's website and the website of the European Parliament. NGOs' documents were retrieved from the websites of individual organisations that had previously been identified as central in the coordination of mobilisation. Key words used for the search were 'public services', and as an alternative, 'services'. Up to 30 documents per category of actors (civil society or Commission) were selected, equally distributed for each sub-category of actor (NGOs or unions, individual Commissioners) in the two arenas considered (global and European). There were not many documents and in some sub-categories it was even difficult to find enough material.
4. Available online at http://www.wto.org/english/tratop_e/serv_e/gatsfacts1004_e.pdf
5. For example, no document came out while searching the UN and Commission's databases with 'public services' and 'Mandelson' as key words.
6. The final draft of the EU Services Directive (2006/123/EC) reflects a compromise with a majority of members of the European Parliament which have been responsive to protest and lobbying by many organizations of the organized civil society.

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Appendix: Corpus of Documents

NGOs

Global Arena

- 1 Stop the GATS Attack Now!, March 2001
- 2 A Civil Society Response to the WTO's Publication 'GATS—Fact and Fiction', 25 May 2001.
- 3 Facing the Facts: A Guide to the GATS, Canadian Center for Policy Alternatives, Scott Sinclair and Jim Grieshaber-Otto, 2002.
- 4 Stop the GATS power play against citizens of the world!, Open letter by 148 NGOs, Geneva, 15 June 2005.
- 5 Civil society organizations sign letter protesting GATS negotiation rules, 1 June 2008.

European Arena

- 6 WTO and Water: The EU's Crusade for corporate Expansion, Corporate Europe Observatory, 2003.
- 7 Report from the WTO Campaigning Assembly, European Social Forum London, 24 January 2004.
- 8 Water almost out of GATS?, Corporate Europe Observatory briefing, March 2006.

- 9 Another Europe with Public Services for all, common declaration of the Public Services Network, European Social Forum Athens, 12 October 2007.
- 10 European parliamentary hearing of Europe's new trade commissioner, World Development Movement, 18 January 2010.
- 11 Minutes from the EPA in Istanbul, European Social Forum, 20–23 May 2010.

Trade Unions

Global Arena

- 12 Great Expectations—The future of trade in services, Public Services International, July 2000.
- 13 Resolution adopted by the European Regional Executive Committee of Public Services International, Geneva, 12 June 2001.
- 14 Trade unions' final statement on the agenda for the Sixth Ministerial Conference of the WTO in Hong Kong, December 2005.
- 15 Annual Report 2010, Public Services International, 3 April 2011.
- 16 Our Challenge for World Services Day 2012 and beyond: Commemorate 23 June with Action!, Public Services International, 18 June 2012.

European Arena

- 17 GATS, PSI-EPSU and Pascal Lamy, 17 February 2003.
- 18 Building resistance against water privatisation, 2004.
- 19 World Trade Organization (WTO) negotiations on services: ETUC calls on the Commission to reconsider its position, 27 June 2005.
- 20 Position of ETUC on the 6th WTO Ministerial conference
- 21 Resolution adopted by the ETUC Executive Committee, Brussels, 19–20 October 2005.
- 22 Unions and NGOs demonstrate in front of European Commission Trade Department, 19 March 2007.
- 23 Resolution on equal treatment and non-discrimination for migrant workers, ETUC, 1–2 December 2010.
- 24 Equal treatment must apply to all, ETUC, 28 January 2011.
- 25 ETUC position on EU public procurement framework, 6–7 March 2012.

Pascal Lamy

Global Arena

- 26 The EU Trade & Development Agenda: From Doha via Johannesburg to Cancun, London, 27 June 2002.
- 27 EU Thailand relations: challenges and opportunities ahead, Bangkok, 1 April 2003.
- 28 Making globalisation work for people, Cancun, 9 September 2003.
- 29 Doha back on track, Geneva, 31 July 2004.
- 30 Trade and negotiations with LDCs, Brussels, 10 December 2002.

European Arena

- 31 Hearing of Commissioner Lamy, Plenary session of the European Parliament, 2 May 2002
- 32 Pascal Lamy responds to Trade Union concerns on public services, letter, 7 June 2002.
- 33 Commissioner Lamy's Speech on the relaunching of negotiations under the Doha Development Agenda, Plenary session of the European Parliament, 13 January 2003.
- 34 Public Hearing on Trade in Services and Investment, Heinrich Böll Foundation, European Parliament, 3 March 2006
- 35 Débat sur l'Accord général sur le commerce des services (AGCS) dans le cadre de l'OMC, y compris la diversité culturelle, Plenary session of the European Parliament, 10 March 2003.

Peter Mandelson

Global Arena

- 36 Latin America and the Doha Round, London, 13 October 2005.
- 37 Press Conference given by EU Trade Commissioner Peter Mandelson on Day 4, Hong Kong Inter-Ministerial Conference, 16 December 2005.
- 38 Re-Claiming Development in the Doha Round, Mauritius, 9 February 2006.
- 39 Doha: What is at Stake?, London, 23 June 2006.

European Arena

- 40 Answer to questionnaire for Commissioner Designate Mr Peter Mandelson, European Parliament hearings, 4 October 2004.
- 41 EU tables revised services offer in Doha Round negotiations, Press release, European Commission, 2 June 2005.
- 42 Doha and Development, Speech by EU Commissioner Mandelson—Mini plenary session of the European Parliament, 30 November 2005 (Brussels)
- 43 Answer by Commissioner Mandelson to the written question by Jonas Sjöstedt (GUE/NGL) to the Commission, 24 January 2006.
- 44 Ambition and Realism: Europe's Approach to the Doha Round, European Commission Representation, Helsinki, 21 April 2006.

Karel De Gucht

Global Arena

- 45 'A Partnership of Equals'—Speech by EU Commissioner De Gucht at the ACP-EU Joint Parliamentary Assembly, Kinshasa, 4 December 2010.
- 46 EU Trade Commissioner to discuss Mercosur negotiations in Paraguay and Uruguay, Brussels, 4 February 2011.
- 47 WTO Press conference, Geneva, 15 December 2011.

- 48 EU highlights trade-led growth as central to modern development agenda, Brussels, 27 January 2012.
- 49 EU-ASEAN Trade and Investment, Phnom Penh, 1 April 2012.

European Arena

- 50 Commissioner Karel De Gucht in a plenary session of the European Parliament regarding the effects of the economic crisis on world trade, Strasburg, 10 February 2010.
- 51 Open Trade, Open Minds, Civil Society Trade Seminar, Prague, 24 March 2010.
- 52 Work Programme for 2010/2011, European Parliament, Brussels, 5 May 2010.
- 53 Growth is the objective, trade is the tool, Center for European Reform Round Table, London, 19 November 2010.
- 54 EU trade policy in times of protectionism, Roundtable with the Centre for European Political Practical Excellence, Brussels, 28 March 2012.