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**International Institutions and Domestic Coalitions:
The Differential Effects of Negotiations and Judicialisation
in European Trade Policy**

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International Institutions and Domestic Coalitions: The Differential Effects of Negotiations and Judicialisation in European Trade Policy

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Abstract

In this paper I analyse the impact of international trade institutions on domestic coalition formation. I argue that the size of coalitions crucially depends on the degree of institutionalisation and judicialisation of international trade institutions. The traditional political instrument of international trade negotiations fosters broad, sector-wide coalitions on the part of private industry, whereas judicialisation in trade relations leads to a fragmentation of these domestic trade policy coalitions. The reason is that reciprocal trade negotiations – both liberalising or trade restricting – incite government negotiators to strive for package deals, for which they seek to secure political support from sector-wide coalitions, often organised in industry peak associations. Case-by-case judicialised procedures, on the other hand, such as anti-dumping and market access investigations, or international dispute settlement, essentially de-link issues, moving interest representation to the level of intra-sectoral trade associations. In contrast to existing, predominantly economic explanations, this international institutional explanation can account for coalition patterns during both

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GATT (1947-1994), which consisted of a series of trade negotiation Rounds, and the WTO (1995-), which combines the reciprocity of negotiations with the multilateral spread of judicialised trade policy instruments. Comprehensive databases provide evidence related to the predominantly intra-sectoral trade associations that lodge complaints with judicialised instruments, while qualitative analysis of domestic coalitions in the EU reveals how sector-wide peak associations organise during negotiation Rounds and have reshuffled their membership structures in order to better accommodate the interests of their constituent product-specific members. The increasing role of the ‘rule of law’ in international trade relations therefore has a fragmenting and dividing effect on the coalitions that inform contemporary trade policy-making.

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1. Domestic coalitions in trade policy: what?

Understanding how economic interests act collectively in contemporary trade policy matters is the key to understanding how trade policy is presently made in advanced industrialised societies – in an era dominated by globalisation, not only of trade flows, but also of institutions with virtually global membership such as the World Trade Organisation (WTO). Moreover, the contemporary pattern of domestic coalitions that inform trade policy has been a riddle to theorists. The traditional pattern of factors of production in the late 19th century, or more recently, of sector-wide peak associations vying for influence with policy makers, has increasingly made place for narrowly focussed coalitions, i.e. for specialised and product-specific trade associations. Existing explanations have so far only been able to account for factoral coalitions (Rogowski 1989 *Commerce and Coalitions*), sector-wide alliances (Gilligan 1997a *Empowering Exporters*), or intra-sectoral coalition patterns (Gilligan 1997b *Lobbying as a Private Good*), but not for the co-existence of these last two, although the coalition pattern of these can be observed in the last two decades. The reality of burgeoning specialised lobbying in Brussels and Washington and the enduring solidity of sector-wide peak association activity therefore stands out as a challenge to theoretical explanations. Why has the level of interest aggregation in trade policy historically systematically sunk – i.e. from large coalitions to ever-smaller units? And why at the same time have sector-wide trade associations not gone out of business in the face of intra-sectoral specialisation?²

In this paper I present an international institutional explanation for these questions and provide supportive evidence from current coalition patterns in EU trade policy lobbying.³ I argue that two forms of international

² The distinction between cross-sectoral, sectoral and intra-sectoral is meant to capture stages of a continuum ranging from “majoritarian” or “large quorum” coalitions down to the level of individual action (Alt & Gilligan 1994, Verdier 1994, Olson 1971). The definition adopted here is therefore a pragmatic one, directed by the common usage of the term “sectoral”. Food and agriculture, textiles and fabrics, steel, automobiles, chemicals, electronics, etc. qualify as ‘sectoral’, whereas all organisational forms representing products such as salmon, gasoline, shirts, films, semiconductors, and so on, qualify as ‘intra-sectoral’.

³ The theoretical explanation and the empirical evidence are developed in my PhD dissertation “*The WTO and Domestic Coalitions: The Effects of Negotiations and*

institutions, negotiations and judicialisation, set different incentives for industry collective action. In international trade negotiations, executive negotiators try and strengthen their negotiation position in that they put coherent packages of demands or concessions on the table, creating an incentive for private industry to find a unified stand unlikely to get unravelled by the negotiating partners, organised on the level of sectors of industry. Judicialised trade instruments by contrast, treat trade topics case-by-case and thus de-link issues from other sectors and other elements of trade policy. In such an institutional environment, large sector-wide industry coalitions are ill equipped to provide the expertise on trading conditions for specific products. The product-specific constituent parts of every sector-wide trade association therefore systematically are at a comparative advantage in providing expertise to the specialised government agency. Since they do not have to focus on a balanced representation of all the diverging interests within the sector, they are better at concentrating on the compilation of detailed product-specific information needed for legal complaints. The consequence for coalition formation is that ‘intra-sectoral’ or ‘branch’-specific trade associations carry the day under judicialised trade policy instruments. I thus seek to contribute to the analysis of international factors, in particular institutional ones, and to evaluate their impact on domestic political processes.⁴

This paper is structured as follows. I first present the research question: namely, what accounts for current coalition patterns in trade policy lobbying? I then point out why existing theoretical explanations have difficulties accounting for current coalition patterns. I go on to present my own international institutionalist explanation, thereby sketching out the institutional evolution of the world trading system, which has developed from an international bargaining forum to a rule-based system. I subsequently present the empirical data against which I have tested my argument, i.e. new quantitative and qualitative data on EU trade policy lobbying coalitions. I conclude by speculating about the effects of coalition fragmentation on prospects for contemporary trade policy making.

Enforcement in the EU”, Department of Social and Political Sciences, European University Institute, Fiesole, May 2002.

⁴ The analysis is therefore of the ‘second image reversed’ type (see Gourevitch 1978 and Frieden & Rogowski 1996).

2. Existing explanations for domestic coalition patterns

The question I seek to answer is political in nature. Who allies with whom on trade policy, and why? The *explanandum* of the present enquiry is thus not so much the nature of the interests that seek to influence public policy, or the demands they address to public institutions, but the size of their coalitions. Existing explanations of domestic coalitions in trade policy can roughly be divided into two types: economic ones and institutional ones. Figure 1 distinguishes between these different hypotheses. In the following I summarise and review these existing explanations, showing how they have done very well in parsimoniously explaining coalition patterns in the past, and demonstrating how they have difficulties in accounting for contemporary trade policy coalitions.

- (1) Three existing economic explanations based on trade theory:
1. The more trade is based on comparative advantage in factor endowments, the more we find trans-sectoral coalitions in trade policy (party political mobilisation per class; rent-seeking).
 2. The more trade is based on factor specificity, the more we find sectoral coalitions in trade policy.
 3. The more trade is based on increasing returns from economies of scale, the more we observe an intra-sectoral coalition pattern in trade policy (since lobbying virtually becomes a private good for one firm).
- (2) Institutional explanations: The more institutionalised the international environment in trade matters, the smaller the scope of coalitions in trade policy.
1. The less institutionalised the international trade environment, the more we find trans-sectoral coalitions (equivalent to a null-hypothesis).
 2. The more reciprocity in trade negotiations, the more we find sector-wide coalitions.
 3. The more judicialisation in trade relations, the more intra-sectoral coalitions.

Figure 1: Two rivalling sets of hypotheses on coalition patterns in trade policy

2.1. Three trade theory explanations

The existing explanations for the size of domestic coalitions in trade policy are based on three trade theories: the Heckscher-Ohlin (HO) model, the Ricardo-Viner (RV) model, and the theory of strategic trade. Each of these theories – although designed to predict effects on welfare – also allows for the deduction of hypotheses on the line of cleavage in trade policy and the type of political action that will follow (Frieden & Rogowski 1996).

The Heckscher-Ohlin model considers three factors of production: land, labour, and capital. An easing of trade increases returns on the factor a country has in abundance, whereas it harms returns on the scarce factor. In a country abundant in labour and scarce in capital, trade liberalisation will benefit workers and harm capitalists. Inversely, a rise in protection will harm the abundant factor, labour, and benefit the scarce factor, capital. This redistribution predicts a line of political cleavage between classes. Trade policy (freer trade or protection) depends on political organisation within a party and the provision of a winning coalition to defend its interests. This factoral approach thus provides a powerful explanation for the politics of trade in the 19th and the early 20th century and its political party mobilisation along class lines on the trade issue. Rogowski (1989) has presented impressive theoretical arguments for this, and illustrated it with rich historical data.

The second model, the Ricardo-Viner, ‘specific factor’, or ‘sectoral’ model, sets out from different assumptions and consequently yields different logical predictions about the cleavage lines along which trade policy will take place. It assumes that factors of production are specific to a sector. This ‘factor specificity’ means that the capital invested in, for example, textile machinery cannot be easily shifted to another sector, such as steel. The same applies to a particular labour skill. Shoemakers do not easily become computer programmers. Therefore, trade liberalisation (a change in return to factors of production) in a sector with an abundant specific factor benefits that sector more than a sector that utilises a scarce specific factor. Both workers and capitalists in a particular sector consequently have similar interests. The struggle over freer trade or protection pits sectors benefiting from openness against those suffering from it. The line of cleavage runs along sectoral lines. Sectors organise politically in sectoral associations to defend their interests. The assumption of sector specificity of capital in the sectoral approach thus fits the coalition pattern of mid-20th century sector-based lobbying.

With the post-1945 rise of intra-industry trade, both of these economic explanations have become less and less satisfactory as accounts of the observed coalition patterns. Intra-industry trade, i.e. trade of different varieties of the same product between countries with similar factor endowments, is the result of far-reaching product differentiation and specialisation. Firms or agglomerations of firms become leading actors in their market niche, where they can reap the benefits of economies of scale. According to this line of reasoning, the costs of adjusting to intra-industry trade may be lower, but they do not fall on a single class, not even on a single sector, but on a single firm. Gilligan has argued that this makes lobbying for protection against intra-industry trade virtually a private good (Gilligan 1997a).

The causal chain of the three existing trade theory-based explanations for coalition patterns in trade policy thus runs from (1) a trade model with (2) a particular underlying assumption that predicts (3) the line of cleavage on trade policy-making. From this (4) a particular type of political action follows. Figure 2 summarises the three trade models and their logical predictions about cleavage lines in trade policy.

(1) Trade model	(2) Assumption	(3) Line of cleavage	(4) Political action
HO: factors	Factor mobility	Class	Party mobilisation
RV: sectors	Factor specificity	Sectoral	Sectoral Lobbying
EoS: firms	Imperfect competition	Intra-sectoral	Firms

Figure 2: Trade models and their predictions about cleavage lines in trade policy

2.2. Some remaining problems

However, the problem with the intra-industry explanation for coalitions is that it can only account for individual firm lobbying, and not for the enduring pattern of coalitions on the level of branches and sectors.⁵ Intra-industry trade has been on the rise since 1945, whereas from 1945 until the 1980s collective action (still) took place predominantly on the sector-wide level. There is no evidence that firms – small, medium-sized or transnational – have abandoned their trade policy activities within branch-specific or sector-wide trade associations and have chosen to lobby individually for their private good. Also, sectors with a high degree of intra-industry trade where single-firm lobbying would seem a realistic option, such as chemicals, automobiles, or machinery, have a well-structured set of peak associations at their disposal.

As a consequence, the jury is still out regarding whether a single explanation can explain the contemporary co-existence of sector-wide *and* intra-sectoral coalitions. At the same time, it has to be noted that intra-industry trade, as an empirical phenomenon, is closely related to a high degree of industry concentration, i.e. a relatively small number of firms in one sector. It is well documented that collective action among a small number of actors is easier to organise than among a large number of small and medium-sized enterprises (Olson 1971). This might make the building of intra-sectoral coalitions easier in any case.

3. An international institutionalist explanation

3.1. The differential effect of negotiations and judicialisation

The explanations reviewed above are based on the assumption that institutions aimed at making trade policy are endogenous, i.e. they are not independent of socio-economic and industrial developments, and are assumed to be a reflection of the reigning economic circumstances, easily and relatively quickly malleable by politicians. In this view, they are at

⁵ Other non-economic accounts have difficulties grasping enduring sector-level activity in the face of increasing lobbying specialisation. Crouch (2003), for instance, argues that the rise of the individual enterprise is making the idea of economic sectors or branches elusive.

most regarded as filters for eventual policy outcomes. Yet, for the question at hand – the level of interest aggregation and coalition patterns in trade policy –, institutions can themselves be regarded as explanatory variables (North 1981), especially if they are ‘sticky’ and relatively stable over time.⁶ The institutional feature of reciprocity in trade relations has indeed been demonstrated to have a significant impact on collective action (Gilligan 1997b). Reciprocity in trade negotiations leads to reasonably ‘balanced’ packages of liberalisation concessions, which in turn create the momentum for stable and open trade, but it also leads to packages of trade restricting measures in tit-for-tat market-closing manner. The GATT-period (1948-1994) consisted of such a series of reciprocal deals, both of a liberalising nature, as in the numerous GATT Rounds, and of a series of sectoral exceptions to non-discriminatory trade, leading to sector-wide protectionist arrangements, as in the sectors of textiles, agriculture, and steel.⁷

More recently, traditional reciprocal diplomatic negotiations in the international trading regime have been complemented with judicialised trade policy instruments. These are instruments administered by executive officials that treat contentious trade issues in a case-by-case manner. This judicialisation means that they are subject to precise procedural rules, which the legislature defines in its act of delegation. They are also often subject to judicial review.⁸ Most common are anti-dumping measures, countervailing duties, market access investigations, and international trade dispute settlement. Although they were originally only systematically used by the US, they have by now become a structural feature of all domestic trade policy institutions: virtually all advanced industrialised countries have them at their disposal – a case of policy diffusion and a “multilateralisation” of domestic trade institutions of its own kind. Historically, judicialised trade policy instruments can be traced back to domestic arrangements in the US in 1974, when the US Congress required

⁶ For further specifications on the use of the term institutions in this article, see next page.

⁷ Since these latter negotiated, protectionist exceptions to GATT non-discrimination are less well known, I will briefly review some of the most important ones later on in this paper.

⁸ I use the term ‘judicialisation’ (Stone 1999) rather than ‘legalisation’ (Goldstein, Kahler, Keohane & Slaughter 2001). Semantically, ‘legalization’ is the process of making legal, as in the phrase ‘the legalization of soft drugs’, and would therefore seem to be more appropriate for the legislative process of law-making. The term ‘judicial’ and its derivations is more apt to refer to court-like procedures, such as international dispute settlement or domestic quasi-judicial review procedures.

the administration to install more ample ‘anti-dumping’ and ‘countervailing duty’ (or ‘anti-subsidy’) procedures for industry, and installed a market access investigation procedure for exporters, i.e. ‘Section 301’ of US trade legislation. In Europe, the EC started using the anti-dumping instrument systematically from 1980 onwards. The EC’s first market access investigation procedure dating from 1984 was less successful than the American Section 301 procedure, administered by the US Trade Representative.⁹ Yet in the wake of the creation of WTO dispute settlement, the European Union introduced its Trade Barrier’s Regulation. This allows private industry to file complaints with the European Commission if it thinks market access rights under WTO rules are being violated. The introduction of such investigations on market access conditions in trading partners was greatly fostered by the 1995 creation of the binding 3rd party enforcement of the WTO dispute settlement system. Market access investigations constitute the domestic “anti-chambre” of this multilateral check on compliance. Officials from the executive arm of government use them to check trading partners’ compliance record with previous liberalisation commitments under the WTO. These offensive judicialised trade policy instruments are now part and parcel of every advanced industrialised country’s trade policy toolbox. The WTO Dispute Settlement Body (DSB), composed of representatives from all WTO member states empowers panels to issue binding rulings, refers cases to an ‘Appellate Body’ if the defendant state appeals, and can even multilaterally authorise retaliation in the form of trade sanctions against non-compliant member states. The WTO dispute settlement system can therefore rightly be said to constitute the crowning piece of judicialisation in contemporary international trade relations (WTO 1995). This presence of binding 3rd party enforcement arguably makes the WTO the most judicialised international organisation currently in existence.

For completeness sake, and in order to bring some order in the thicket of trade policy instruments that governments have at their disposal, figure 3

⁹ Section 301 was later extended to include Special and Super Section 301. These regulations introduced mandatory retaliation in cases of perceived enduring foreign trade barriers. They also put the focus also on services and intellectual property as targets for investigations (Hudec 1999). The unsuccessful European market access investigation procedure, called the New Commercial Policy Instrument, was in force from 1984 until 1993 (Bronckers 1996; Zonnekeyn & Van Eeckhaute 1998; Pollack & Shaffer 2001).

gives an overview of the most frequently used trade policy instruments, be they negotiated or judicialised, trade enhancing or trade restricting.¹⁰

	Direction of Trade policy	
<i>Type of instrument</i>	Defensive (Protection)	Offensive (Freer trade)
<i>Negotiated</i>	<ul style="list-style-type: none"> - Tariffs - Quantitative restrictions: <ul style="list-style-type: none"> • Quotas • Voluntary Export Restraints (VERs) • Safeguards ('escape clause') • Waivers 	<ul style="list-style-type: none"> - Reciprocal tariff concessions / binding of tariffs - Prohibition of quota - Prohibition of VERs - Refusal to grant a waiver
<i>Judicialised</i>	<ul style="list-style-type: none"> - (Export) Subsidies - Anti-Dumping measures - Anti-Subsidy measures (Countervailing duties) 	<ul style="list-style-type: none"> - Monitoring and bilateral consultations - Market access investigations - International Dispute Settlement

Figure 3: A typology of trade policy instruments

The central argument of this paper is that the contemporary combination of both negotiated and judicialised trade policy instruments is the reason why two different logics of coalition formation in the domestic trade policy process have taken root. In trade negotiations, executive officials seek to link issues in 'balanced' package deals, in an effort to bring enough clout to the negotiating table to weigh on the negotiation outcome. In order to be able to credibly claim that they are unable to make concessions beyond a particular pain-point for their domestic constituencies, they seek to bring surveyable and sufficiently aggregated demands. In this, they rely on the

¹⁰ For definitions of these trade policy instruments, see Goode 1998. I have omitted monetary policy as an instrument of commercial policy, since independent central banking by the European Central Bank and the American Federal Reserve has to a large extent eliminated the power of governments to directly intervene in the terms of trade by manipulating exchange rates.

backing of sector-wide trade associations. This politicking, which is typical of negotiated trade policy instruments, is rendered impossible in the institutional environment shaped by judicialised trade policy instruments. These case-by-case instruments set less of an incentive for collective action in that they require specialised expertise on trading conditions in particular product markets, a service for which broad sector-based trade associations are ill-equipped. Since judicialised instruments de-link issues, they require much less of a co-ordination effort on the part of private industry, are no incentive for other actors to join, and hence do not create the need for a large coalition. They elicit coalitions on the level of intra-sectoral, product-specific, and specialised trade associations, which are organisationally far better able to provide the required detailed, product- and market-specific information. Under the institutional setting of judicialised instruments, they are not constrained by the diverging interests within broad sector-based trade associations. For sector-wide trade associations, the increased credibility of international trade rules and the ensuing increase in the stability of the trading environment through judicialisation, has consequently come at the price of foregoing control over enforcement. The result is a division of labour between sector-wide and intra-sectoral trade associations on trade policy.

I therefore locate the *explanans* (the independent variable) in the institutional architecture of international trade relations and the *explanandum* (the dependent variable) in the interest aggregation (coalition pattern) that characterises trade policy lobbying. International trade institutions, far from being easily and quickly malleable by economic or political actors, thus acquire the quality of opportunity structures setting incentives and constraints for collective action, shaping behaviour, and structuring interaction. By engaging in reciprocal liberalisation concessions, governments tie their own hands as well as those of future ones in a web of bound tariff levels and common rules governing international trade. The enforcement mechanism of the bilateral withdrawal of concessions as practiced under the GATT, or the multilateral authorisation of retaliation as possible under the WTO thus confers stability on a set of commitments to which governments and their parliaments subscribe. In the present article I propose to look at the international trading regime from this perspective and relate it to its independent effects on coalition building in advanced industrialised societies.

To that purpose, I review evidence (1) on coalition building for multilateral trade negotiations under the GATT framework (1947-1994), and (2) on

coalition patterns when there is a combination of negotiated and judicialised trade policy instruments, such as existed during the late phase of GATT (1980-1994) and the WTO (1995-). I subsequently present comprehensive new qualitative and quantitative data on coalition patterns under EU trade policy instruments. I close by showing how sector-wide peak associations have come under increasing pressure to reshuffle their internal membership arrangements in order to better accommodate the interests of their intra-sectoral, constituent members.

3.2. Negotiations and sectoral coalitions under GATT (1947-1994) and the WTO (1995-)

In trade agreements negotiators strike bargains about the rules of the game. This induces them to seek coherent packages at the sectoral level, whether they be packages of concessions liberalising trade, or of trade-restricting measures. The series of GATT Rounds of multilateral trade negotiations have indeed led to reciprocal liberalisation in most sectors of industry, such as machinery, chemicals, pharmaceuticals, etc. The most important of these Rounds were the Kennedy Round (1963-67), the Tokyo Round (1973-79), the Uruguay Round (1986-94), and now possibly the Doha (2001-) Development Agenda of multilateral trade negotiations. Governments have at the same time sought to negotiate sector-wide exceptions to non-discriminatory trade in other sectors, on the same reciprocal, sector-wide basis. This leeway to negotiate for exceptions to non-discriminatory trade under GATT was enhanced by the lack of a truly binding dispute settlement mechanism to credibly enforce previous commitments and to incur reputation costs on non-compliant members. The institutional mechanism of dispute settlement is a credible enforcement mechanism that binds member states to stand by their commitments, since violations can at any time be challenged on the multilateral level by one of the trading partners. Reneging on previous commitments by re-negotiating trade barriers has thereby been made far more politically costly under the WTO than it used to be under GATT 1947.

In the negotiated institutional environment of GATT 1947, the USA obtained a 'waiver' from GATT obligations as early as 1955. This exempted their entire agricultural sector from GATT rules, e.g. rules regarding the bound tariff levels, non-discrimination, and the prohibition of quotas (GATT 1955). The EC Common Agricultural Policy created between 1958 and 1968 can easily be regarded as the reciprocation of this

US move. In the steel sector, a similar reciprocal market closing exercise took place. Witness the 1968 'Voluntary Export Restraint' agreement between US and European steel producers, the European reaction, amongst others to American restrictive practices, in the form of the Davignon plans of 1979 and 1980, and the subsequent US reaction with the 1982 US-EC steel Voluntary Export Restraint agreements. A similar pattern developed in the textiles sector, if with other defensive negotiated trade policy instruments. It focused mainly on limited import quotas, as in the 1961-62 Short-term Arrangement on Cotton Textiles, and its prolongation and extension in the form of the 1972 Multi-fibre Arrangement (MFA), which was in force until 1995, when the WTO Agreement on Textiles and Clothing abrogated the MFA.

The industry coalitions demanding and backing these reciprocal trade-restricting deals were organised in a straightforward sectoral manner, if also with greatly varying dependence on their local, national constituent parts. The two European agricultural peak associations, the *Committee of Agricultural Organisations in the European Union* (COPA), and the *General committee for Agricultural Cooperation in the European union* (COGECA), were indeed among the first European peak associations to be formed, although their national members clearly dominated the policy process due to the predominantly national channels through which the EC's Common Agricultural Policy was implemented. Nevertheless, they were formed even before the establishment of the European Common Market, and became a privileged channel through which national agricultural peak associations weighed on European trade policy decision-making. The creation and activities of the European peak association in the steel sector, the *European Confederation of Iron and Steel Industries* (EUROFER), were directly linked to the reciprocal market-closing negotiations of the major trading partners (Messerlin 1986). EUROFER was the European Commission's privileged interlocutor in its efforts to allocate internal and international market shares, measures that amounted to a state-sponsored European-wide cartel in the steel sector. The same applies to COMITEXTIL, the European peak-association for the textiles sector, later called the *European Apparel and Textile Organisation* (EURATEX). This was the Commission's key ally in allocating the trade restricting MFA import quotas among national textiles producers and their branch-specific component parts.

Lobbying during the subsequent trade-liberalising GATT and WTO Rounds also involved a major co-ordination effort on the part of sector-wide peak associations. Apart from being the forum for the exchange of reciprocal concessions, these Rounds are the forum where more ‘constitutional’ questions and general rule-making in the world trading system are agreed upon. The sector-based logic of collective action during these Rounds is thus coupled with the peak-associations pre-occupation with matters of regulation. Typically, they seek common agreement among their members on broad-ranging issues such as institutional design, the regulation of health, safety, environmental or social standards. During the Uruguay Round sectoral coalitions regularly co-ordinated opinions and posted position papers on the institutional design of the Dispute Settlement Mechanism, on the approach to the negotiations taken (‘comprehensive’ or per sector), on whether or not to include negotiations on foreign direct investment, or on the rules governing the conduct of domestic AD investigations. Prominent sector-wide trade associations in Europe took the lead in formulating industry-wide positions about which they briefed the European Commission during negotiations. Besides the sectoral peak associations mentioned above, examples of such sector-wide coalitions include the *European Chemical Industry Council* (CEFIC), the *European Federation of Pharmaceutical Industries and Associations* (EFPIA), or the *European Automobile Manufacturers Association* (ACEA). In some, albeit rather rare, cases, these sector-wide peak associations in turn co-ordinate some of their endeavours in all-encompassing business associations such as the *Union of Industrial and Employers’ Confederations of Europe* (UNICE).

This short summary overview has sought to illustrate how negotiated trade policy instruments set the incentives for sector-wide coalitions and provides support for the thesis that the international institutional environment structures industry collective action. In the next paragraph, I illustrate how judicialised trade policy instruments have a wholly different structuring effect on the way private industry allies.

3.2. Judicialisation and coalition fragmentation during late GATT (1980-1994) and the WTO (1995-)

Judicialised instruments set entirely different incentives for private industry involvement in trade policy. They are precise rules with which the legislature generally gives the administration a mandate to conduct case-

specific investigations, be they to restrict the access of goods and services to the domestic market, or to enhance market access for export goods and services. Formulated as a slight overstatement, judicialised instruments cut large coalitions into smaller pieces, regardless of whether these coalitions are protectionist lobbies or a mobilisation channel for exporter's interests.

Throughout the 1980s, and especially with the institutionalisation of the GATT system into the World Trade Organization in 1995, judicialised trade policy instruments were consistently on the rise. Arguably, they arose out of a reaction to the domestic instruments that were put in place in the US. The effect of the aggressive and tactical use of the Section 301 procedure by the US caused fears of major externalities from these unilateral determinations of 'unfair' trade practices and of the ensuing retaliatory measures unilaterally enacted by the US. Other advanced industrialised GATT contracting parties, such as the EU and Canada, started to ask for what could be called the *multilateralisation* of market-access investigations, in the form of binding international dispute settlement. Such an ultimate check on what constitutes GATT/WTO-illegal behaviour would no longer be determined unilaterally by the US Trade Representative's lawyers and policymakers, but would instead lay (1) in the hands of a multilateral organisation with independent panels and (2) in judicial review by an Appellate Body at the WTO in Geneva. The creation of the binding WTO dispute settlement system spurred those WTO member states who had enough administrative clout, to conduct case-by-case market access investigations. Such investigations are able to lead to the filing of a dispute settlement case at the WTO. The EU indeed not only installed its market investigation instrument, TBR; it also organised a Market Access Database (MADB) at the European Commission. Both the American and the European market access investigation instruments now supply information, which is fed into trade complaints sent to the judicial machinery in Geneva (De Bièvre 2002c).

In the remainder of this paper I present data in support of this intra-sectoral hypothesis: coalitions for EC Anti-Dumping (AD) measures, coalitions for the initiation of market access investigations under the EU Trade Barrier Regulation (TBR), and coalitions for the provision of information to the EU's Market Access Database (MADB). I explain the workings of each instrument separately and assess their impact on coalition formation. Finally, I present a coding of all GATT/WTO dispute settlement cases in terms of their product coverage. Here I suggest that, for most cases, the origin of the lobbying is in product- or branch-specific lobbying action. If

the following sections are therefore of a rather technical nature, less amenable to the non-trade expert, that is partially deliberate, because it provides some empirical insight into the increasingly legalistic and judicialised nature of trade policy-making in the WTO era, and into the ensuing effects on coalition formation.

4. Judicialisation and the rise of intra-sectoral coalitions in the EU¹¹

4.1. Coalitions for EC Anti-Dumping measures (1980-2000)

The anti-dumping instrument is a typical ‘contingent protection’ instrument. Producers can allege that foreign traders are dumping a particular product and ask the administration to impose anti-dumping duties. If accorded, it is a temporary, case- and product-specific measure, the benefits of which can only be appropriated by producers of the product in question – whereas the costs are diffused to consumers or those using the product in question as their input. By its very nature the instrument attracts the attention of product-specific economic actors, like the producers of TV screens, polyethylene, pocket lighters, or their likes. On the other hand, the legal and economic technicalities of gathering data, calculating dumping-margins and injury, and compounding a legal case, require specialist expertise. This calls for external help from lawyers or consultants, or it requires the delegation of this task to a specialised industry agency, most commonly a branch-specific trade association. An additional institutional barrier raises the coalition formation requirements for a complaint. The WTO Anti-Dumping Agreement requires domestic authorities to take only those petitions into account that are supported by 50% of the domestic production companies producing similar products.¹² This legal requirement, internationally enforceable through the WTO dispute settlement mechanism, makes it obligatory for domestic producers to engage in coalition building, except in cases of oligopolies or monopolies, where one single producer or a very small number of producers suffice to make the

¹¹ The databases upon which the results presented here are based can all be consulted online at <http://www.mpp-rdg.mpg.de/debdata.html>.

¹² ‘Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-dumping agreement)’ in: WTO 1995, *The Legal Texts. The Results of the Uruguay Round of Multilateral Trade Negotiations*, Cambridge, Cambridge University Press.

complaint admissible. The instruments' pull towards intra-sectoral interest aggregation is therefore combined with a need for collective action in an organisation that can muster up the required support and that has the expertise to lodge a full-fledged complaint. Importantly, the last two decades have seen a rise of anti-dumping investigations in all GATT/WTO member states. This rise goes hand in hand with the increasingly high threshold to get negotiated protection deals accepted by the WTO membership. Renegotiation, i.e. renegeing on previous liberalisation commitments, has become more difficult because these commitments are now subject to the stricter 3rd party enforcement of the WTO Dispute Settlement system.¹³

Of all anti-dumping investigation requests lodged with the European Commission between 1980 and 2000, 296 of 350 indeed came from intra-sectoral coalitions, be they trade associations, ad hoc coalitions, or individual firms. Figure 4 gives an overview of the coalitions for EC AD measures from 1980 until 2000. The unit of observation is the initiation of an AD procedure, since each act of initiation is an observable lobbying act. The data consists of a complete list of all AD petitions that mention the targeted countries, the relevant products, its ISIC product classification, and the number of the Official Journal of the EC in which the initiation of the procedure was published.

¹³ For an overview of the increase in anti-dumping legislation and the imposition of anti-dumping duties, see Maurizio Zanardi, 'Antidumping: What are the Numbers to Discuss at Doha?', forthcoming in: *The World Economy*, Vol. 27, 2004.

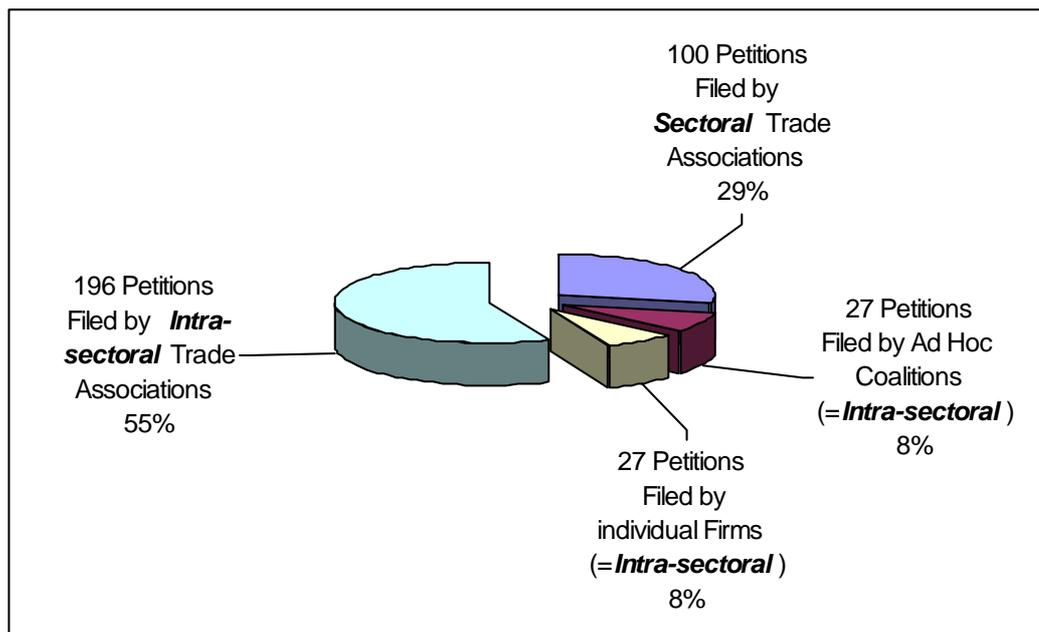


Figure 4: Coalitions for EC AD measures 1980-2000

Complaints from industry that allege dumping by foreign firms typically come from domestic product-specific trade associations like the *Committee for European Copier Manufacturers*, the *European Association for Textile Polyolefins*, or the *European Bicycle Manufacturers Association*. Ad hoc coalitions are a rather rare phenomenon in EC AD lobbying. They are often committees within a particular product market, not created with the goal of achieving longevity, and carrying fanciful names such as *ALARM* (car radio receivers), *Camera* (TV cameras), *Poetic* (Televisions), or *TUBE* (seamless steel tubes and pipes). As a matter of fact, they are frequently only covers for one individual firm with a dominant position in the specific product market, and they disappear into oblivion once the complaint has been lodged. Firms going at it alone are also relatively rare. Of a total of 350, only 27 EC AD actions were initiated by individual firms. For several reasons, firms tend to delegate the task of actually filing a case to specialised private bureaus, mostly intra-sectoral trade associations. The requirement that the petitioner represent at least 50% of total production raises the barrier for admissibility. Moreover, filing an AD case requires technical expertise and a co-ordination effort in order to gather supportive evidence of dumping practices. Finally, firms often prefer to hide behind the representative screen of a trade association in order not to be publicly recognised as the only beneficiary of potential anti-dumping measures.

Industries with a high degree of industry concentration generally file AD complaints through sector-wide trade associations, a finding that runs counter to my hypothesis that judicialised instruments foster intra-sectoral coalition building. The two sectors of industry that display this characteristic, delegating product-specific AD complaints to the sector-wide peak association, are the chemical and the steel industry. The *European Chemical Industry Council* (CEFIC) and the *European Confederation of Iron and Steel Industries* (EUROFER) respectively filed 61 and 23 AD complaints on behalf of their members. A high degree of industry concentration and collective action in the filing of AD cases thus seem to be highly related, and they are exceptions to the general pattern of intra-sectoral coalition formation known from the filing of anti-dumping complaints in the European Union.

4.2. Coalitions for EU Trade Barrier Regulation market access investigations (1996-2002)

The European instrument for market access investigations, the EU Trade Barriers Regulation (in shorthand TBR), is the most formalised procedure with which private industry can ask the European Commission to investigate barriers to trade in foreign countries.¹⁴ As is the case under the older and better known American Section 301 procedure, the administration investigates on the part of industry whether a trading partner is violating GATT/WTO commitments or not. Since only governments can bring complaints to the WTO dispute settlement mechanism, and since it is not governments but firms that suffer the direct damages from foreign trade barriers, this judicialised instrument helps to correct the information asymmetry by giving private parties *indirect* access to WTO procedures. The new TBR procedure bypasses the more cumbersome route via the so-called Art. 133 Committee, the Council of Ministers standing committee on external trade matters. This option, which is still available to exporters, requires a trade association or firm in order to acquire the political clout and organise the type of concerted lobbying effort necessary to convince a qualified majority of the permanent representatives of the 15 EU member states that their rights under the WTO agreements are being violated. The TBR, by contrast, allows a trade association or a single firm to identify one

¹⁴ For an extensive treatment of the European TBR instrument in a comparative perspective with the American Section 301, see Gregory C. Shaffer 2003, *Defending Interests: Public-Private Partnerships in W.T.O. Litigation*, Washington DC, Brookings Institution Press.

single WTO-illegal trade barrier and to delegate all further enforcement steps to the Commission, provided that the complaint is not overturned by a qualified majority in the Art. 133 Committee.

In the period from 1996 to 2002, European industry filed 20 complaints with the European Commission's Trade Barrier Unit. In the same reference period, American industry filed 23 complaints under the equivalent Section 301 of American trade law, eliciting a panoply of product specific collective action on the part of American industry.¹⁵ Figure 5 gives an overview of the coalitions that filed TBR complaints between 1996, the year the instrument became effective, and 2002.

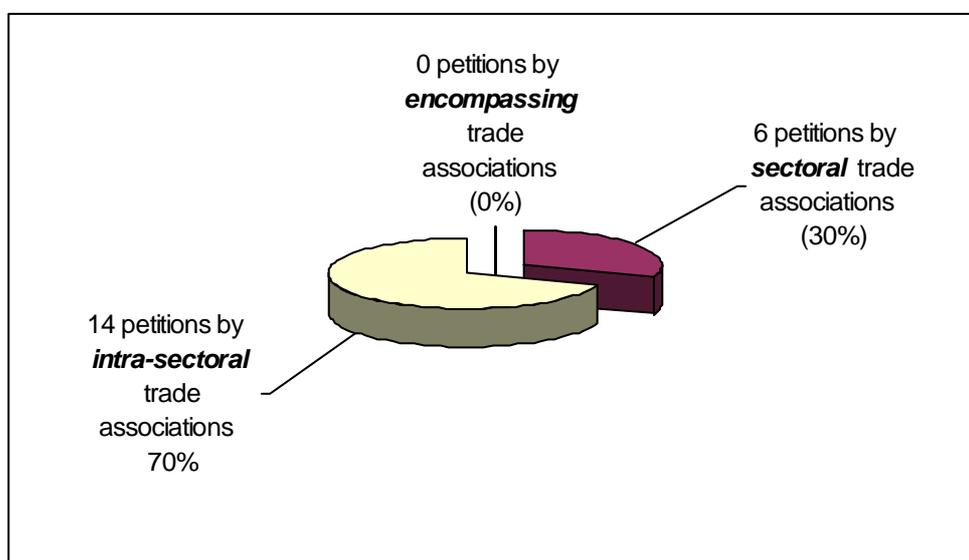


Figure 5: Coalitions for EU TBR investigations 1996-2002

In line with expectations raised by the theoretical argument in this paper, complaints did not come from encompassing, 'cross-sectoral' European business associations, but predominantly from more specialised organisations.¹⁶ Judicialised enforcement instruments require case-by-case

¹⁵ Bayard & Elliott 1994 have examined all Section 301 cases filed before 1994 and provide evidence that the US Trade Representative (USTR) conducted most American market access investigations on behalf of product-specific coalitions.

¹⁶ Encompassing business associations in the EU include the Union of Industrial and Employers' Confederations of Europe (UNICE), the Foreign Trade Association (FTA), or the Association of European Chambers of Commerce and Industry (Eurochambers), though these had been widely consulted and had been widely supportive while the legislation was under consideration.

expertise, for which these broad-based organisations are ill-equipped. Rather, 14 of the 20 cases are of intra-sectoral origin, with branch-specific trade associations filing 11 cases and 3 firms going at it alone. Typically, trade associations representing small and medium-sized enterprises, which are not politically powerful industries, have seized the opportunity to enhance their foreign market share. Among those were, for instance, the *Confederation of National Associations of Tanners and Dressers of the EC* (COTANCE), the *Bureau National Interprofessionnel du Cognac* (BNIC), the *Consorzio del Prosciutto di Parma*, or the *Irish Music Rights Organisation* (IMRO). Six petitions were launched by sector-wide peak associations, such as the EUROFER and EURATEX. This exemplifies how some cases do get bound up in sector-wide complaints about market access.

4.3. Coalitions for EU Market Access Database (1996-2002)

The EU Market Access Database (MADB) could be called the European ‘anti-chambre’ for complaints at the WTO. The WTO allows for the credible enforcement of previous liberalisation commitments. It thus gives the administration an incentive to gather systematic information on potential dispute settlement cases. An extensive system was therefore put in place to ease the flow of information between exporters and the European Commission services. This had the goal of encouraging private industry to provide information on trade barriers, especially on non-compliance with WTO rules. Together with the TBR, the MADB generates the information, which can be processed to a fully-fledged legal complaint at the WTO. The MADB centralises all the information signalled to the Commission on foreign trade barriers. 319 of the roughly 1200 of these confidential ‘*fiches*’ mention the firm or trade association that signalled the barrier in question. My sample is based on a coding of these 319 complaints, constituting the most representative sample of exporters’ lobbying activity under a judicialised trade policy instrument in the EU.

The results are in line with the intra-sectoral hypothesis. Figure 6 gives an overview of the coalitions that provided information on trade barriers to the European Commission’s Market Access Database.

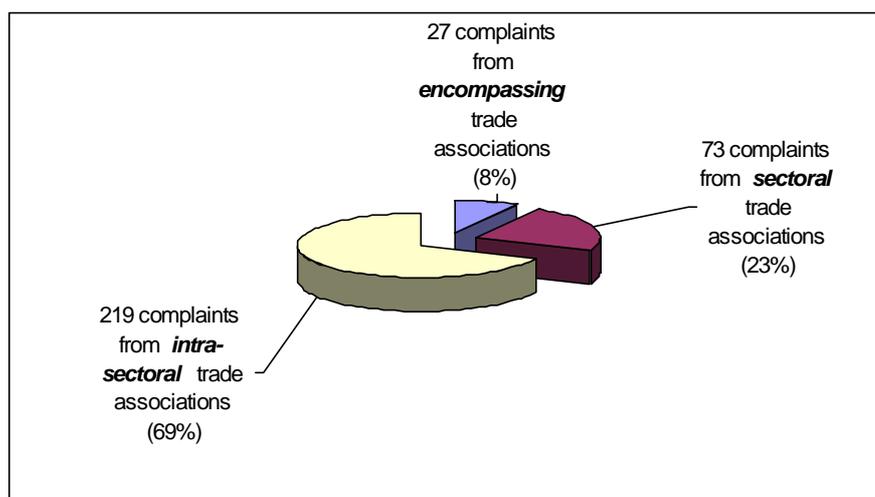


Figure 6: Coalitions for EU Market Access Database (MADB) 1996-2002

Product-specific trade associations are those that feed the most information on foreign trade barriers into the Commission's database, and thus increase pressure on the administration to exercise its rights under the WTO dispute settlement mechanism. Formerly – i.e. before the existence of the TBR, the MADB, or the WTO DS – the enforcement of these market access rights had to be negotiated bilaterally in packages that took into account the interests of fellow domestic industries and the margin of manoeuvre of the foreign government. By way of conclusion it is therefore fair to say that judicialised trade policy instruments and the information gathering effort they require systematically select for collective action that is based on branch-specific interests.

4.4. Product coverage of GATT & WTO dispute settlement cases (1947-2000)

A final indicator for the plausibility of the intra-sectoral effect of judicialised trade policy instruments consists of an analysis of the product coverage of all GATT/WTO dispute settlement cases lodged between 1947 and 2000. Since it is governments that lodge complaints with an international organisation like GATT or the WTO, there is no systematic data on the origin of the trade complaints and the size of the domestic coalition that are behind complaints lodged in Geneva. To construct an indirect indicator of the lobbying origin of complaints, the following questions can be considered: Do these complaints about the violation of previous commitments cover broad issues of trade regulation that affect all economic actors in a country (i.e. are they 'systemic' complaints)? Are the

contested measures rather concerned with a particular part of the economy (i.e. are they ‘*sectoral*’)? Or are they so specific and detailed as to be only of relevance to one branch of industry (i.e. are they of an *intra-sectoral* nature)?¹⁷

Figure 7 plots the product coverage of the 464 GATT and WTO dispute settlement cases filed between 1947 and 2000. In the graph, I have also included the frequent sector-wide exceptions during the GATT period that were discussed earlier and that indicate how previous commitments were able to be suspended by sectoral re-negotiation. Under the binding WTO dispute settlement mechanism, such renegeing on previous commitments has become much harder, and no such sector-wide exceptions have yet been renegotiated under the WTO. Instead, they have met strong protests, as exemplified by the recent political rows over the imposition of protectionist measures in the steel sector by the Bush administration or the continuous challenges to the EC’s agricultural policy, with member states systematically invoking the dispute settlement procedures to prevent the protectionist deals from being considered viable on a sector-wide scale. Such official complaints at the WTO then take the form of product- and case-specific legal complaints. They single out one particular measure that is thought to be in violation of WTO law. Behind the 462 complaints lodged in Geneva from 1947 until 2000, 332 complaints cover specific products. This finding gives indirect support to the findings on judicialised EU trade policy instruments. Figure 8 gives an overview of the product coverage of dispute settlement cases at GATT and the WTO in that timeframe.

¹⁷ Of course, such an analysis does not take into account the possibility that WTO jurisprudence has a regulatory impact on trading conditions for *all* industry actors in the economy. Such an analysis however, would have to be able to rely on an established set of fields where WTO jurisprudence does have such an effect – a subject of major discussion in the legal profession.

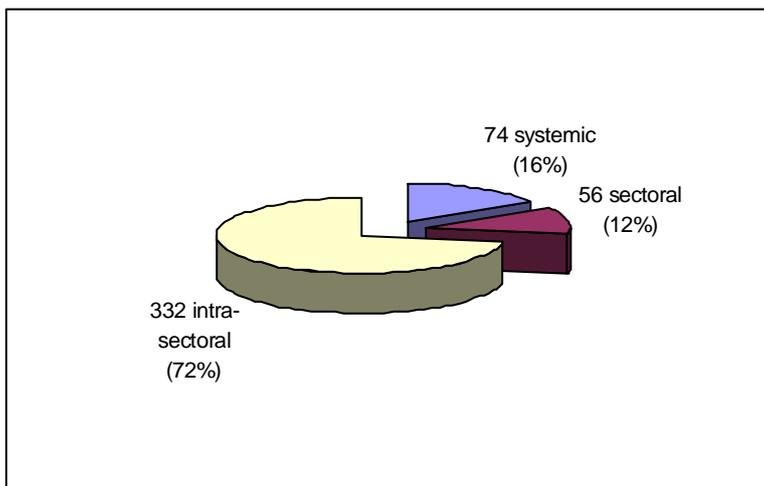
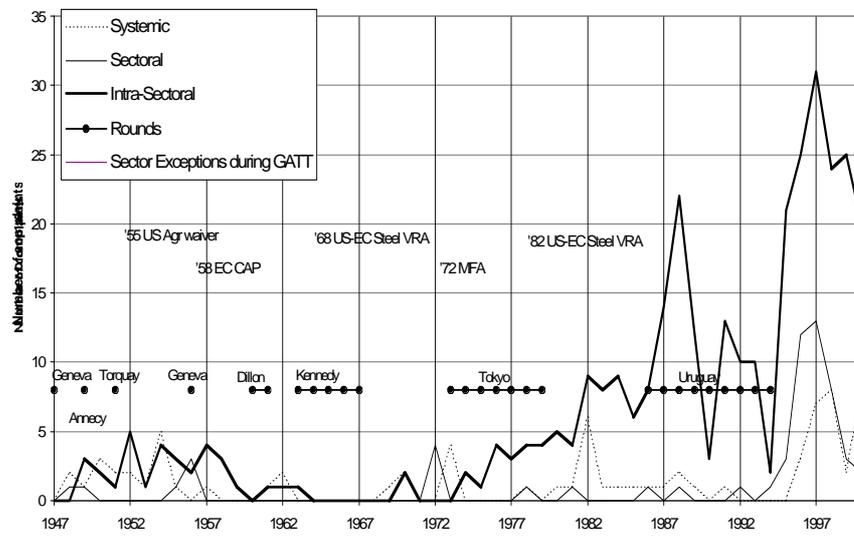


Figure 7 & 8: GATT & WTO dispute settlement cases and their product coverage 1947-2000

4.5. The decline of the sector-wide peak association in Europe (1980-2000)

The increasing importance of branch specific trade associations due to the judicialised institutional environment of trade policy-making has not remained without consequences for the internal organisation of sector-wide peak associations. In the last decade, sector-wide coalitions in Europe have reshuffled their membership in order to accommodate the interests of their constituent, product-related members. The rise of product groups and individual company members has been accompanied by the shrinking power of the peak association over its members. This development certainly reflects broader changes in market environments, regulatory reforms, and reorganisations within firms – small, medium-sized and transnational corporations alike. Yet, this fragmentation of interest representation was also intricately linked to judicialisation in trade policy-making during the 1990s. Only an extensive narrative account of this evolution could really do justice to the complexities of collective action on such a high level of aggregation. In the following paragraph, I therefore limit myself to briefly reviewing four sectors of European industry in this light: chemicals, pharmaceuticals, steel, and textiles. I show how each of them has reorganised its internal membership structure in the wake of judicialisation to give more weight and leeway to intra-sectoral interests.

The European peak association of the chemical industry, the *European Chemical Industry Council* (CEFIC), reorganised its membership structure twice throughout the 1990s. Founded in 1972, CEFIC was a confederation of national chemical industry federations in an industry characterised by a high degree of industry concentration (Grant 1993). Yet, only as late as 1990 did 39 large companies become direct members of CEFIC, transforming the organisation into a two-fold structure including national federations and company members. This membership change took place in the light of the creation of the EC internal market, with its expansion of EU regulatory competences, and the concurrent development on the world stage, including the conclusion of the Uruguay Round, which sanctioned the move to a more binding system of international trade rules. The membership of the organisation was overhauled once again in 1998 as the “product families”, comprising a total of 108 affiliated product specific trade associations, were included as full members. Although mainly triggered by firm-level changes, such as the creation of business units within chemical companies, the overall organisation now has its product-

related branches well-anchored in the Brussels sector-wide interest representation body responsible for the follow-up of international trade negotiations, but also for the specialist and product-specific activity of filing anti-dumping, market access investigations, and international dispute settlement.

A similar shift towards intra-sectoral membership took place in the pharmaceutical industry. Also in 1998, 40 large pharmaceutical producers in Europe became direct members of the *European Federation of Pharmaceutical Industry Associations*, in short EFPIA.¹⁸ These large companies joined the peak association under the explicit condition that the agency would develop a new case-by-base mechanism to monitor foreign compliance and assure the enforcement of international trading rules in non-EU countries, especially the rules on the protection of intellectual property rights contained in the WTO TRIPs Agreement.¹⁹

The sectors of steel and textiles experienced a similar development, but in these sectors it had a much greater effect. Both industries have witnessed a drastic decline in the influence of their peak associations on trade policy. Founded as a state-sponsored cartel in 1977, the *European Confederation of Iron and Steel Industries*, EUROFER, all but lost its role as privileged partner of the European Commission and broker of market shares, import quota, and voluntary export restraints (especially with the US in 1968 and 1982), and it has currently taken its place as merely one of the many construction material trade associations vying for influence in trade policy-making in Brussels. At the end of 1997, after a drastic consolidation movement in the European steel industry in the course of the 1990s, the organisation was transformed to include direct company members. In the field of trade policy, EUROFER now functions as the European steel industry's service provider. Using judicialised trade policy instruments such as anti-dumping, TBR-investigations, and WTO dispute settlement, it monitors and files cases with the European Commission. A similar fate is befalling the *European Apparel and Clothing Organisation*, EURATEX. Under the so-called Multi-Fibre Agreement (MFA) of 1973, its forerunner, COMITEXIL, played the privileged role of brokering the distribution of

¹⁸ EFPIA kept its acronym, yet significantly changed its name into '... Pharmaceutical Industries and Associations'.

¹⁹ TRIPs stands for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

the national import quota. With the WTO Agreement on Textiles on Clothing, which is to dismantle the MFA by 2005, EURATEX is likely to face a fate similar to EUROFER's, in effect becoming the industry's bureau for filing product-related cases to the Commission's services.

5. Conclusion

In this paper I have argued that the size of domestic coalitions is a function of the constraints and incentives set by international trade institutions. International trade negotiations elicit domestic interest representation on the level of sectors of industry, whereas judicialisation tends to incite firms to seek collective action on the level of product-specific, intra-sectoral trade associations. In support of this argument, I have presented original data on EU trade policy lobbying coalitions in both institutional contexts. Although I have only sporadically referred to literature on American trade policy, existing evidence on domestic coalitions in the US corroborate my findings.²⁰

So far, existing accounts have only been able to provide partial explanations, i.e. why interest representation would take place on the sectoral level to the exclusion of the intra-sectoral, or vice versa. The international institutional explanation presented here effortlessly accounts for the co-existence of both contemporary coalition patterns. The distinction obviously bears resemblance to the pattern often found *within* advanced liberal democracies. In the domestic realm, rule generation and law making – the legislative function – calls for political organisations that are able to aggregate interests, whereas rule application and enforcement – the adjudicative function – call for case-by-case treatment and the mobilisation of specialist expertise. The remarkable finding of this paper lies in the fact that this distinction equally holds in cases where states, or their executives, are the gatekeepers of adjudication, as is the case in the inter-state dispute settlement system of the WTO, and other judicialised procedures in the field of international trade.

I have shown how the judicialisation of the World Trade Organisation and the international trading system at large has systemic consequences for its member countries. The WTO's dispute settlement system may have made it the most judicialised or 'legalised' global international organisation in existence. International treaties concluded within its framework can be

²⁰ On American defensive judicialised instruments, see Destler 1992. On American offensive judicialised instruments until 1994, see Bayard and Elliott 1994. On American defensive negotiated instruments, see Aggarwal, Keohane & Yoffie 1987. On American offensive negotiated instruments, see Gilligan 1997a.

credibly enforced through 3rd party adjudication that is triggered by just one of the member states. Moreover, member states can multilaterally, i.e. collectively, authorise the complainant state to retaliate against an offending member that is not willing to remove its WTO-violating practice. States are therefore the enforcers of the contract. Yet, the fragmenting effect of judicialisation on coalition patterns is by no means homogenous across countries. Size is absolutely key to the capability of members to enforce the deals they have struck with their partners. Smaller countries and especially developing and least-developed countries, are in no position to participate in the policy cycles of finding non-compliance, consulting with trading partners, conducting judicial investigations, implement rulings, and/or exercise pressure through retaliation. Small member states not only lack the administrative capacities and the legal expertise necessary to process a full-blown legal complaint in the DSB in Geneva. More importantly, they lack the trade association structures that are able to provide detailed and legally accurate information to their administration. In contrast to the advanced industrialised countries, which have a network of specialised trade associations at their disposal, developing countries are not in a position to enforce OECD countries' market access commitments. Last but not least, small and relatively unattractive markets are not in a position to credibly threaten governments of developing countries with retaliation by closing their market to goods and services from a country not abiding by its obligations.

As a result of the increase in judicialised trade policy instruments, private industry in advanced industrialised countries has increasingly been organised in the form of narrow, branch-based trade associations, predominantly staffed with specialised legal experts rather than all-round industry representatives. The Uruguay Round agreements have thus led both to greater reliability of international trade rules through the more credible enforcement system of the WTO, and to a dynamic towards greater fragmentation of coalitions and a strengthening of the institutional standing of *specialised* trade associations. Generalist trade policy experts in the large sector-wide trade associations slowly seem to be becoming "dinosaurs", since they may be threatened with extinction by their intra-sectoral constituent members. It is therefore more a matter of speculation than of empirically grounded research, that this might lead to a relative decline in the power of peak associations and to their willingness to agree to common positions binding to all constituent members of the sector. If this were so, governments conducting future multilateral trade negotiations, may find it increasingly difficult to formulate coherent packages of

concessions that can be ‘packaged’ around sectors. The fragmenting effect of judicialised trade policy instruments on collective action might just as well be countered by the increasing importance of regulation in other fields of public policy within the framework of the WTO, such as intellectual property, health rules, international standards, and investment. This move towards ‘positive integration’ under the WTO institutional framework has led to binding legal obligations to adopt common policies and change domestic regulation. Moreover, political pressure has been mounting, but it has not yet lead to results that would include more non-trade regulation under the jurisdiction of the WTO in the field of environmental rules, or that would create social minimum standards and common rules on domestic competition policy. The significance of these broad-ranging issues, sometimes called the “Trade *And*”-Agenda, may well bring broad-based coalition formation back to the fore. It might induce collective action on a cross-sectoral level, since all sectors of industry are concerned with regulation that leads to positive integration.

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