

## **EU Relations with China and Russia: How to Approach New Superpowers in Trade Matters**

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**Abstract:** This paper analyzes the potential of partnerships of the European Union (EU) with China and Russia. The scope of analysis will be the EU vis-à-vis these two countries, using three types of trade liberalization: unilateralism, bilateralism/regionalism, and multilateralism. The paper argues that the EU's objective of engaging with China and Russia on trade matters is to establish peace, security, and prosperity in the XXI century. Trade creates economic ties and generates more welfare; thus it contributes to peace and security. The paper concludes that, although the EU does want cooperation with both countries, using trade policy as a "carrot" in a policy centered approach does not have much scope beyond current existing efforts. The European Commission's Directorate-General for external trade is already very active. Few new initiatives seem possible. Moreover, a free-trade agreement between the European Community and Russia/China does not seem to be a suitable trade instrument at the moment.

### **1. Introduction**

This paper aims at understanding the potential of partnerships of the European Union (EU) with China and Russia (two major new leading powers (NLP)), focusing on international trade law and policy. Although the power base of Russia and China—the two main BRIC countries<sup>1</sup>—is their respective region, there may be specific policy areas in which their influence might be global.<sup>2</sup> With this in mind, the paper raises interesting questions: is the EU an attractive partner for the new leading powers? Does the EU want cooperation with these two BRIC countries? What can the EU expect from cooperation with these two BRIC countries? What are the characteristics of these partners? What are the EU's priorities in its foreign trade policy? With which partners should the EU cooperate in which policy areas? With which instruments can the EU engage these partners and how can the EU internal coordination be ensured?

The paper argues that the EU's objective of engaging with China and Russia on trade matters is to establish peace, security, and prosperity in the XXI century. Trade creates economic ties and generates more welfare; thus it contributes to peace and security, since nations that trade with each other do not go to war. An example is the EU integration project. The same argument is true multilaterally: before the creation of Doha Round in 2001, developing and least-developed countries had been marginalized in the world trading system,<sup>3</sup> which brought with it, serious economic implications. In 2001 in Doha (Qatar), developing countries were promised inclusion in the world trading system in order to achieve a higher level of justice and equity in the world. That is why the Doha round is called the development agenda.<sup>4</sup> The argument is that a more open and equitable trading system<sup>5</sup> brings

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<sup>1</sup> BRIC is a term used in economics to refer to the combination of Brazil, Russia, India, and China. General thinking is that the term was first prominently used in a thesis of the Goldman Sachs investment bank. Goldman Sachs argues that the economic potential of Brazil, Russia, India, and China is such that they may become among the four most dominant economies by the year 2050. The thesis was proposed by Jim O'Neill, global economist at Goldman Sachs. These countries encompass over twenty-five percent of the world's land coverage and forty percent of the world's population. The BRIC countries have taken steps to increase their political cooperation, mainly as a way of influencing the United States position on major trade accords, or, through the implicit threat of political cooperation, as a way of extracting political concessions from the United States, such as the proposed nuclear cooperation with India. See [http://en.wikipedia.org/wiki/BRIC#cite\\_note-0](http://en.wikipedia.org/wiki/BRIC#cite_note-0)

<sup>2</sup> In 2007, the International Monetary Fund ranked China as the fourth wealthiest nation in the world in absolute terms; Brazil, Russia, and India came in 10th, 11th, and 12th respectively. See [http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_GDP\\_\(nominal\)](http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(nominal))

<sup>3</sup> Ismail, F. "How Can Least-Developed Countries and Other Small, Weak and Vulnerable Economies Also Gain from the Doha Development Agenda on the Road to Hong Kong?" *Journal of World Trade*, Vol. 40, No. 1, pp. 37-68, 2006.

<sup>4</sup> Not everyone agrees with the governmental position that the Doha Round is beneficial to developing and least-developed

peace to the world and, in this sense, the Doha round should not be approached as a zero-sum game—as many developing countries seem to perceive it—but as a win-win situation.<sup>6</sup>

The EU has a long history of promoting regional integration in other parts of the world, especially among developing countries. This is based on its own nature as the oldest and most advanced regional scheme, coupled with the perception among leading European policymakers that the EU does indeed constitute a model for others.<sup>7</sup> The EU has therefore long viewed itself as a “‘natural’ supporter of regional initiatives,”<sup>8</sup> a view that sparked the increasing externalization of its model over time. This policy has become one of the cornerstones of the EU’s development policy, and the incentive of offering market access to the EU’s large internal market in support of such a strategy has gained in salience in recent years. By promoting regional integration, therefore, the EU actively influences emergent forms of regional governance in other parts of the world.

The EU’s main motivation for the promotion of regional integration is predicated on trade and economic gains. According to this view, the EU needs to have important economic interests at stake in order to get involved in the integrative efforts of other countries. These interests are two-fold: first, the EU promotes the integration of national markets into regional economies to benefit from economies of scale when accessing them with their own goods. Second, through the negotiation of bi-regional trade agreements, the Union has a powerful tool to shape the framework of economic governance in counterpart regions.<sup>9</sup>

The Union has a lot to gain from the integration of small, fragmented markets into larger economic units in which EU products can circulate more easily. Market size has become an important criterion for investment and trade decisions by private companies and serves as a strong incentive for European traders and investors: “the whole will grow faster than the sum of its parts, offering outlets for our exports and opportunities for our investors.”<sup>10</sup> This rationale is best reflected in the EU’s new approach to integration in Africa through the negotiation of economic partnership agreements (EPAs)<sup>11</sup>: they “should deal with all factors that constrain business activities in ACP countries”<sup>12</sup> through “the creation of open, integrated regions sufficiently large to trigger economies of scale, support trade and attract foreign investment.”<sup>13</sup> Such a strategy has been evaluated by one commentator as indicating that it “is based upon securing market access for European producers while selling the concept of the European ‘model’ of regional integration.”<sup>14</sup> As the creation of regional markets goes hand in

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countries. For severe criticisms of the Doha Round, see Oxfam Press Release, “New WTO framework doesn’t add up to development,” 22 June 2006, available at [http://www.oxfam.org/en/news/pressreleases2006/pr060622\\_wto](http://www.oxfam.org/en/news/pressreleases2006/pr060622_wto); Hertel, T.W. & Keeney, R. “What is at Stake: The Relative Importance of Import Barriers, Export Subsidies, and Domestic Support,” available at [http://siteresources.worldbank.org/INTTRADERESEARCh/Resources/Ch2AgTradeBook\\_HertelKeeney.pdf](http://siteresources.worldbank.org/INTTRADERESEARCh/Resources/Ch2AgTradeBook_HertelKeeney.pdf); Bouet, A., Orden, D. & Mevel, S. “More or Less Ambition in the Doha Round? Winners and Losers from Trade Liberalization with a Development Perspective,” available at <https://www.gtap.agecon.purdue.edu/resources/download/2508.doc>; Kinnman, S. & Lodefalk, M. “Economic Implications of the Doha Round,” Swedish National Board of Trade, July 2006, available at <https://www.gtap.agecon.purdue.edu/resources/download/2756.pdf>; European Commission Press Release, “Doha Round: Some Recent Economic Analysis,” MEMO/06/247, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/247&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>5</sup> Mr Mandelson, who referred to a development package for least-developed countries (LDCs) as ‘indispensable,’ indicated at the Hong Kong WTO Ministerial Conference that the EU had committed to step up annual spending on aid for trade to EUR 2 billion by 2010. One billion of this will come from EU Member States, which agreed at the Hong Kong Ministerial Conference to the increase (from EUR 400 million per year); the remainder will come from the European Commission. “Europe did not come to Hong Kong empty-handed on aid for trade,” he said. See in this respect, Iorio, M. “The Doha Development Agenda (DDA) and Aid for Trade: Finding the Policy Link,” International Gender and Trade Network, 2007.

<sup>6</sup> For an analysis of the evolution of the world trading system, see Demaret, P. “The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization,” *Columbia Journal of Transnational Law* (1995) Vol. 34, 123-171.

<sup>7</sup> David Miliband, “Europe 2030: Model Power Not Superpower,” Speech Given at the College of Europe, Bruges, 15 November 2007; Romano Prodi, “Europe and Global Governance,” Speech to the 2nd COMECE Congress, Brussels, 31 March 2000: No. 00/115.

<sup>8</sup> European Commission, “Support for Regional Economic Integration Efforts among Developing Countries,” *COM (95), 219 final* (Brussels, 16 June 1995, p. 6).

<sup>9</sup> Meunier, S. and Nicolaidis, K. “The European Union as a Conflicted Trade Power” *Journal of European Public Policy*, September 2006, Vol. 13, No. 6, pp. 906-925.

<sup>10</sup> Lamy, P. “Regionalism and Multilateralism in Latin America” speech delivered at the Federação das Indústrias do Estado de São Paulo, 10 July 2001.

<sup>11</sup> Economic partnership agreements are bilateral or plurilateral agreements. The content of such agreements varies greatly. Some merely promote voluntary economic cooperation between the partners. Others are proper free-trade agreements. See Walter Goode, *Dictionary of Trade Policy Terms*, 5th ed., Cambridge University Press, 2007, p. 145.

<sup>12</sup> European Commission, “EPA Negotiations: Toolbox” (Brussels, 27 January 2003).

<sup>13</sup> European Commission, “Africa, Caribbean, Pacific. EPA Negotiations: Toolbox,” available at [http://ec.europa.eu/trade/issues/bilateral/regions/acp/toolbox\\_en.htm#top](http://ec.europa.eu/trade/issues/bilateral/regions/acp/toolbox_en.htm#top)

<sup>14</sup> Farrell, M. “The EU and Inter-Regional Cooperation: In Search of Global Presence?,” in A. Verdun and E. Jones, *The Political Economy of European Integration*, (Routledge, January 2005), p. 19.

hand with the development of a regional economic governance framework, the Union has an interest in being able to access the enlarged market on terms that are favorable to its own industry. Regional economic integration is an ongoing process that is never complete. The EU has a comparative advantage to other such schemes as the integration process is the most advanced and it can therefore draw on its long experience in formulating common rules to impact the economic integration process of others.<sup>15</sup>

The paper is divided into seven parts: after the introduction and some general remarks, I will present the EU's unilateral approach to international trade law in relation to China and Russia, followed by a multilateral approach when dealing with these two countries in trade issues. A bilateral/regional approach to China and Russia follows, with an examination of both countries, before the conclusion.

## 2. General Remarks

Why is trade important in the political arena? A trade agreement is often considered to belong to a bilateral political agreement, even if the scope might be rather limited (e.g. Asian bilateralism). Trade is about money, and money is a powerful instrument to foster political relations. Trade can be used as a "carrot" or as a "stick." As a "carrot," when preferences for certain countries create competitive advantages versus third parties. This is not possible multilaterally due to the most-favoured-nation (MFN) treatment. The most-favoured-nation treatment (GATT Article I, GATS Article II and TRIPs Article 4), is the principle of not discriminating between one's trading partners. In other words, the MFN principle is about treating other WTO members equally. Under the WTO Agreements, countries cannot normally discriminate between their trading partners. If you grant someone a special favour (such as a lower customs duty rate for one of their products), then you have to do the same for all other WTO members.

This principle, known as MFN treatment, is the core principle of the WTO Agreements. It is so important that it is the first Article of the GATT, which governs trade in goods. MFN is also a priority in the GATS (Article II) and the TRIPs Agreement (Article 4), although in each agreement the principle is handled slightly differently.<sup>16</sup> Some exceptions are allowed, namely the so-called enabling clause<sup>17</sup> and the preferential tariff treatment for least-developed countries.<sup>18</sup> For example, countries can set up a free-trade agreement<sup>19</sup> that applies only to goods traded within the group – discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. In the case of services, countries are allowed, in limited circumstances, to discriminate. The agreements, however, only permit these exceptions under strict conditions. In general, MFN means that every time a WTO country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners – whether rich or poor, weak or strong.

Certain exceptions<sup>20</sup> are, however, envisaged in the context of specific service activities within the framework of a list of exemptions from the MFN requirement. Work on this subject started in 2000. When the GATS came into force in 1995, WTO members were allowed a once-only opportunity to take an exemption from the MFN principle of non-discrimination between a member's trading partners. The measure for which the exemption was taken is described in a member's MFN exemption list, indicating to which member the more favourable treatment applies, and specifying its duration. In principle, these exemptions should not last for more than ten years. As mandated by the GATS, all these exemptions are currently being reviewed to examine whether the conditions which created the need for these exemptions in the first place still exist. And in any case, they are

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<sup>15</sup> Anne-Sophie Claeys and Alice Sindzingre, "Regional Integration as a Transfer of Rules: The Case of the Relationship between the European Union and the West African Economic and Monetary Union (WAEMU)," paper given at Development Studies Association Annual Conference, Glasgow, University of Strathclyde, 10-12 September 2003. Available at <http://www.edpsg.org/Documents/dp26.doc>

<sup>16</sup> Together, those three Agreements cover all three main areas of trade handled by the WTO.

<sup>17</sup> 'Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties' (Decision of 28 November 1979).

<sup>18</sup> '...[t]he provisions of paragraph 1 of Article I of the GATT 1994 shall be waived until 30 June 2009, to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries.....' (Decision of 15 June 1999).

<sup>19</sup> A free-trade agreement is a contractual arrangement between two or more countries under which they give each other preferential market access, usually called free trade. In practice, free-trade agreements tend to allow for all sorts of exceptions to cover sensitive products. See Walter Goode, *Dictionary of Trade Policy Terms*, 5th ed., Cambridge University Press, 2007, p. 181.

<sup>20</sup> Exceptions are binding provisions on all signatories built into the core text of an agreement that lists the circumstances when a country may violate a term of an agreement without penalty. Exceptions only come into play as a defence when a country's law or policy has been challenged in a dispute resolution as a violation of an agreement.

part of the current services negotiations. In fact, each government has included in its schedule the services for which it guarantees access to its market by setting out the limits it wishes to maintain for such access.

Trade can also be used as a “stick.” For example, 1) to deny preferences to a certain country when granting them to others, thereby creating discrimination and trade diversion; 2) through trade defense instruments<sup>21</sup> such as antidumping and safeguard measures; 3) the WTO-dispute settlement system.

As we will see later, trade agreements often include some non-trade policy objectives. This is the case of cooperation agreements that relate to sustainable development, human rights, good governance et cetera. These agreements are usually aimed at lesser-developed countries. Examples of cooperation agreements<sup>22</sup> are the one signed with the Andean Pact (today Andean Community)<sup>23</sup> as well as with the Association of South-East Asian Nations (ASEAN)<sup>24</sup> in 1980. Agreements were also designed to help some Asian countries address problems arising from the loss of certain preferences from the Commonwealth.<sup>25</sup> This was the case with India,<sup>26</sup> Pakistan,<sup>27</sup> Sri Lanka,<sup>28</sup> and Bangladesh.<sup>29</sup>

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

Let us now tackle the three legal instruments or types of liberalization used by the EU: unilateralism, multilateralism, and bilateralism/regionalism.

### 3. Unilateralism

The focus of attention in this section is to see whether the EU can increase cooperation and establish trust through unilateral liberalization. In purely economic terms, unilateral MFN-liberalization is in the interest of each country. However, trade liberalization in political-economy terms is seen as a concession and is resisted by import substitution<sup>30</sup> industries. This means that unilateral MFN-liberalization on a broad scale is often not very viable for the EU.

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

The EU already uses unilateral preferences; for example, the everything-but-arms initiative,<sup>31</sup> which provides the most favourable treatment of all EU unilateral initiatives, granting the least-developed countries (LDCs)<sup>32</sup> duty-free and quota-free access to the EU market. Another EU unilateral mechanism is the preferential

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<sup>21</sup> Trade defense instruments are protective mechanisms that are legal under the WTO Agreements. They may be triggered to counter the effects of dumping, subsidies and unexpected import surges causing injury to domestic industry. Such mechanisms include antidumping measures, countervailing duties and safeguards. See *Dictionary of Trade Policy Terms*, 5th ed., Cambridge University Press, 2007, p. 101.

<sup>22</sup> Proposal for a Council Decision concerning the conclusion of Framework Agreement for cooperation between the European Economic Community and the Andean Pact [1993] OJ C25/31.

<sup>23</sup> The Andean Community is a trade bloc comprising until recently five South American countries: Venezuela, Colombia, Peru, Ecuador and Bolivia. In 2006, Venezuela announced its withdrawal, reducing the Andean Community to four member states. The trade bloc was called the Andean Pact until 1996, and came into existence with the signing of the Cartagena Agreement in 1969. Its headquarters are located in Lima, Peru.

<sup>24</sup> ASEAN is composed of 10 members. The six Founding Countries of ASEAN are Malaysia, Indonesia, the Philippines, Singapore, Thailand and Brunei. The rest of countries are Vietnam, Laos, Cambodia and Myanmar. The aims and purposes of the Association are to accelerate economic growth, social progress and cultural development, and to promote regional peace and stability.

<sup>25</sup> The implementation of the ‘declaration of intent’ does not require the conclusion of any agreement.

<sup>26</sup> Council Regulation 3113/84 [1984] OJ L292/1, 5 (Agreement in the form of an exchange of letters between the European Economic Community and the Republic of India on the guaranteed prices for cane sugar for the 1984/85 delivery period).

<sup>27</sup> Council Regulation 1196/86 [1986] OJ L108/1 (on the conclusion of the Agreement for commercial, economic and development cooperation between the European Economic Community and the Islamic Republic of Pakistan).

<sup>28</sup> Council Decision 90/537/EEC [1990] OJ L301/1 (concerning the conclusion of the Agreement between the European Economic Community and the Democratic Socialist Republic of Sri Lanka on trade in textile products).

<sup>29</sup> One early agreement with Bangladesh was on commercial cooperation. See Council Regulation 2785/76 [1976] OJ L319/1.

<sup>30</sup> Import substitution is a policy for the development of a domestic productive capacity in goods and services to reduce or displace imports, often with the expectation of increases in employment and reductions in the current account deficit. For further information, see Walter Goode, *Dictionary of Trade Policy Terms*, 5th ed., Cambridge University Press, 2007, p. 222.

<sup>31</sup> Council Regulation (EC) No 416/2001 of 28 February 2001. This regulation grants duty-free access to imports of all products from least developed countries without any quantitative restrictions, except to arms and munitions.

<sup>32</sup> The least-developed countries (LDCs) are the 49 poorest nations in the world, often disproportionately experiencing the

treatment given to the African, Caribbean and Pacific (ACP) countries,<sup>33</sup> although neither one of these programs is applicable to China or Russia. The original Treaty of Rome<sup>34</sup> contained guidelines about external relations. First of all, the treaty established a special regime for development aid and cooperation, which initially aided developing countries that had a long-standing relationship (mostly former colonies) with founding Member States.<sup>35</sup> This regime was further developed through the Yaoundé and Lomé Conventions, which linked 70 developing countries to the EC.

In this sense, we see that one of the main reasons for international negotiations between the then European Economic Community (EEC) and third-parties was the historic link between the various Member States of the EEC and overseas territories or dependencies. Shortly after the establishment of the EEC, there was an important transformation in the links between these countries and the common market, which, according to Part IV of the EEC Treaty, consisted of a two-way free access for each other's products and a special Community aid program. To address the issue of access for these countries, the Yaoundé Convention was held.<sup>36</sup>

The Yaoundé Convention took place with eighteen African States and Madagascar.<sup>37</sup> After the first enlargement of the Community, the whole system was renegotiated (in 1973/1974) with nearly 50 countries (all the former dependencies of the UK in Africa, the Pacific, and the Caribbean). In 1975 the Lomé Convention, between the Community and this group of countries, introduced new ideas such as the organization of commercial and industrial cooperation and the stabilization of export earnings.<sup>38</sup> The Yaoundé Conventions linked the European Community (EC) to African States, providing, *inter alia*, financial and technical assistance for economic development. Two important examples are the Convention of Association between the EEC and Associated African States, of July 20, 1963<sup>39</sup> and the Convention of Association between the EEC and Associated African States, of July 29, 1969.<sup>40</sup> With reference to the Lomé Conventions, there have been four additional agreements negotiated, the European Economic Community-African, Caribbean, and Pacific Countries Convention (EEC-ACP Convention), of February 28, 1975,<sup>41</sup> the second ACP-EEC Convention, of October 31, 1979,<sup>42</sup> the third ACP-EEC Convention, of December 8, 1984,<sup>43</sup> and the fourth ACP-EEC Convention, of December 1, 1989.<sup>44</sup>

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negative effects of corporate globalization. These 49 recognized countries, as defined by the United Nations, are deemed structurally handicapped in their development process, facing more than other developing countries the risk of failing to come out of poverty as a result of these handicaps, and in need of the highest degree of consideration from the international community in support of their development efforts. Numerous indicators can be used to illustrate that these are really the poorest nations on earth, such as their increasing marginalization in the world economy, as reflected in their tiny share of world exports. Although they make up around 10% of the world's population, LDCs account for less than 0.5% of world exports. In 1980, their share was 0.8%. 'LLDC' is sometimes used for 'least-developed countries' in opposition to 'LDC,' which then stands for 'less-developed countries.' An empirical study that explains the difficulties of these nations in the world trading system is: Bowman, C. "The Pacific Island Nations: Towards Shared Representation," in Gallagher, P., Low, P. & Stoler, A.L. (eds.) *Managing the Challenges of WTO Participation: 45 Case Studies*, Case Study 33, December 2005, available at [http://www.wto.org/english/res\\_e/booksp\\_e/casestudies\\_e/case33\\_e.htm#fntext10](http://www.wto.org/english/res_e/booksp_e/casestudies_e/case33_e.htm#fntext10) (last visited May 14, 2006).

<sup>33</sup> Such unilateral measures certainly do not help multilaterally. In July 2008, Ecuador threatened to sidetrack the WTO ministerial conference that took place in July 2008, whose aim was to give a final push to the Doha Round, unless an agreement on banana tariffs is reached to stop the preferential treatment that the EC has been offering the ACP countries. See BNA WTO Reporter, "Ecuador Ready to Block Doha Deal Until Banana Feud Resolved," 23 July 2008.

However, on 26 July 2008, eleven Latin American banana exporters and the U.S. reached an agreement with the EC on the latter's import regime for bananas. Based on a proposal by Pascal Lamy, the EC would cut its MFN tariffs on bananas by the beginning of 2016. The pact would exempt the EC from having to cut banana tariffs under a Doha Round. See Bridges Weekly Trade News Digest, "WTO Members Move Forward on Bananas, Tropical Products, but Major Differences Loom," Issue 8, 28 July 2008.

<sup>34</sup> Treaty Establishing the European Economic Community (TEEC).

<sup>35</sup> B Martenczuk 'Cooperation with Developing and Other Third Countries: Elements of a Community Foreign Policy' in S Griller and B Weidel (eds) *External Economic Relations and Foreign Policy in the European Union* (Springer, 2002) 385-417.

<sup>36</sup> It was on January 1, 1971 that the Second Yaoundé Convention entered into force (18 African countries), as well as the Arusha Convention (three Eastern African countries), Treaty for the establishment of the East African Community, Arusha, 30 November 1999 [UNTS Vol. 2144 I-37437], and the Council Decision concerning the association of the EC Member States' overseas territories.

<sup>37</sup> For example, an agreement between the European Economic Community and the Government of the Democratic Republic of Madagascar regarding fishing off the coast of Madagascar was signed some years later (OJ L 73/86, p. 25).

<sup>38</sup> It was on February 28, 1975 that the signature of the so-called Lomé I took place between the European Community and 46 ACP countries.

<sup>39</sup> (1970) 2 ILM 971.

<sup>40</sup> (1970) 9 ILM 484.

<sup>41</sup> 14 I.L.M. 596 (1985). The African, Caribbean and Pacific countries (ACP) Group was formed when the first Lomé Convention was signed with the EEC in 1975. In 2002, it encompassed 78 states (48 African states, 16 Caribbean states, 14 Pacific states), which all have preferential trading relation with the EC.

<sup>42</sup> (1985) 19 ILM 327.

<sup>43</sup> (1985) 24 ILM 571.

<sup>44</sup> Fourth ACP-EEC Convention signed at Lomé [1991] OJ L229/3.

Thanks to these Conventions,<sup>45</sup> over 99% of these countries' imports enjoy free access to the EU.<sup>46</sup> Recently, though, as a result of re-calculations to reflect the evolution of international trade, preferences for specific product groups will be re-established for six beneficiary countries of the GSP (Algeria, India, Indonesia, Russia, South Africa, and Thailand).

Another unilateral tool used by the EU is the Generalized System of Preferences (GSP),<sup>47</sup> a vital tool of the EC's pro-development trade policy. This is a multilaterally agreed instrument, where both Russia and China are beneficiaries. However, tariff reductions are generally not very meaningful because of preference margins not being very large, because of sensitive goods, graduation for product groups where competitiveness has increased, or restrictive rules of origin. It is interesting to note that, although the EU also offers a special incentive arrangement to foster sustainable development and good governance, called the GSP Plus incentive system,<sup>48</sup> neither China nor Russia wants to be part of it, presumably because they do not like conditionality. So would it make sense to create a new unilateral instrument? Not really, since the political resistance for competition from both countries would probably be strong, particularly with regard to China when it comes to agriculture.

#### 4. Multilateralism

The question to ask is how to foster more constructive multilateralism by using a trade policy approach. The Doha Round<sup>49</sup> was the result of widespread agreement among delegates at the 4th WTO Ministerial Conference in Doha that it was time to address the imbalances of previous rounds and to offer developing countries the prospect of trade talks which they could see were to their benefit.<sup>50</sup> Although wealth redistribution seems to be vital to truly help the poor nations of the world, I would agree with WTO Director-General Lamy that the WTO's role is not about redistribution of wealth. So a new Round was necessary to include poor countries in the world trading system, and to promote economic development, as well as to alleviate poverty.<sup>51</sup>

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<sup>45</sup> Not everyone is of the view that Economic Partnership Agreements are fair or beneficial for ACP countries. See Sanders, R. "A New Colonialism? EU Trade Demands and ACP Countries," *Huntington News*, 16 June 2007, available at <http://www.huntingtonnews.net/columns/070616-sanders-columnseutrade.html>; Orengho, P. "East Africa: EPA Controversy Continues," *Trade Law Centre for Southern Africa*, 29 May 2007, available at <http://www.tralac.org/scripts/content.php?id=6488>

<sup>46</sup> It is worth noting that there are future Economic Partnership Agreements. These agreements were done in the framework of the so-called Economic Partnership Agreements. For instance, the ACP countries and the EC have agreed to enter into economic integration agreements –concluding new WTO-compatible trading arrangements, progressively removing barriers to trade among them, and enhancing cooperation in all areas related to trade. To this end, Economic Partnership Agreements will be negotiated with ACP regions, engaged in a regional economic integration process. Economic Partnership Agreements (EPAs) are thus intended to consolidate regional integration initiatives within the ACP. They are also aimed at providing an open, transparent and predictable framework for goods and services to circulate freely, thus increasing competitiveness of the ACP and ultimately facilitating the transition towards their full participation in a liberalising world economy – thereby complementing any initiative taken in the multilateral context. Formal negotiations started in September 2002 and EPAs entered into force on 1 January 2008 at the latest. The non-reciprocal Lomé IV trade preferences continued to be applied during the interim period (2000–2007).

<sup>47</sup> The idea of granting developing countries preferential tariff rates in the markets of industrialized countries was originally presented by Raul Prebisch, the first Secretary-General of UNCTAD, at the first UNCTAD conference in 1964. The Generalized System of Preferences was adopted at UNCTAD II in New Delhi in 1968.

<sup>48</sup> To benefit from the from the GSP Plus scheme, countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. They also need to have ratified and effectively implemented the 16 core conventions on human and labour rights and 7 (out of 11) of the conventions related to good governance and the protection of the environment. At the same time, beneficiary countries must commit themselves to ratifying and effectively implementing the international conventions which they have not yet ratified. In any case, the 27 conventions have to be ratified by the beneficiary countries by 31 December 2008. For the list of conventions to qualify for the GSP Plus scheme, see [http://ec.europa.eu/trade/issues/global/gsp/memo230605\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/memo230605_en.htm)

<sup>49</sup> For a summary of the current Doha round of trade negotiations, see Leal-Arcas, R. *Theory and Practice of EC External Trade Law and Policy*, Cameron May, 2008, pp. 486-500.

<sup>50</sup> For an overview of the Doha Round, see S Cho 'Doha's Development' (2006) 24 *Berkeley Journal of International Law*.

<sup>51</sup> This is certainly the position of European trade commissioner Peter Mandelson, who said at a Party of European Socialists conference in Brussels on Decent Work that far from being responsible for poor labour conditions, free trade could be a ladder out of poverty and 'an engine of the very prosperity that helps societies put poor labour conditions behind them for good'. 'Free trade is not the enemy of decent work', he concluded: 'The enemy of decent work is our willingness to turn a blind eye to it. Free trade does not mean trade indifferent to fair conditions of production'. See the speaking points on 'Free Trade is not the Enemy of Decent Work', given by commissioner Mandelson at a Party of European Socialists conference in Brussels on 10 May 2006 available at [http://ec.europa.eu/comm/commission\\_barroso/mandelson/speeches\\_articles/temp\\_icentre.cfm?temp=sppm098\\_en](http://ec.europa.eu/comm/commission_barroso/mandelson/speeches_articles/temp_icentre.cfm?temp=sppm098_en)

The WTO members are currently negotiating the Doha Development Agenda (DDA).<sup>52</sup> A successful result of the DDA will mean more growth and development in the world trading system. A *sensu contrario*, failure of the DDA will imply no growth or development for the world, especially the poorest countries on the planet. In addition, the failure of the DDA will be regarded as a missed historic opportunity to eliminate export subsidies, to put an end to trade distortion. Consequently, all countries of the world trading system will lose, especially developing countries. With a successful result, the biggest gains to development will certainly be in the core areas of goods, services and agriculture, and so liberalising trade among developing countries is an essential part of the Doha exercise.<sup>53</sup> That is why the international community cannot miss the opportunity offered by the DDA, which can set a vision for the global economy for the next decades and make a major contribution to development.

The EU pushes for a successful and ambitious Doha Round since it believes that it is both in the interests of the EU and the wider global economy. Moreover, the EU believes that a deal in which all WTO members contribute based on their capacities would strengthen the multilateral trading system and the WTO by bringing the new leading powers into a trade deal as core contributors for the first time; it would provide a shot of confidence in a highly uncertain global economy; it would create valuable new economic growth in the global economy, which can contribute to new trade for EU companies, job creation and greater competitiveness; and finally, it would remove important distortions in global farm trade that in many cases currently create unfair pressure on farming in the developing world.<sup>54</sup>

In this context, what role do China and Russia play multilaterally? How can the EU engage with them to foster the DDA? As for China in the WTO, it seems to have a strong interest, but is active only behind the scenes. Russia is not yet a member of the WTO. What is required from the EU to conclude the DDA? Agricultural liberalisation seems to be the key issue.<sup>55</sup> Efforts to reach a preliminary agreement on the crucial Doha trade round have been stalled on the issue of agricultural subsidies and tariffs. The big trading blocs in the WTO (the U.S., Brazil, and Australia on one side, and the EC on the other) had been engaged in a tit-for-tat struggle,<sup>56</sup> each refusing to accept that offers of subsidy cuts from the other had gone far enough. The group of 20 developing nations (G-20) is demanding heavier cuts from both sides. It is interesting to see the differences of opinion between the G-20's strong stance on eliminating agricultural subsidies and the EU trade commissioner Peter Mandelson's statement that while there was a need for an ambitious Doha Round outcome, focusing on agriculture alone would be counter-productive. Brazil's foreign minister, Celso Amorim, argued that "positive and concrete indications, on the part of the developed countries, early on, about the key elements of the agricultural negotiations are indispensable to set the tone for a positive dynamic on all areas of [the] negotiations."<sup>57</sup> He pointed to unresolved issues beyond the gaps on trade-distorting subsidies, such as the speed with which tariff cuts would be phased in, tariff capping, and a potential provision in the draft agriculture text (Paragraph 80) that would allow countries to create tariff quotas for products for which none currently exists, which he said would create a zone of indetermination.

In response to a U.S. offer to cut farming subsidies by 60 per cent, the EC had offered to reduce its tariffs on agricultural goods by, on average, 38 per cent – an insufficient figure in the eyes of the U.S. and the developing countries. The EC, however, was driven by internal conflict, with France accusing commissioner Mandelson of exceeding his mandate to negotiate on behalf of the EU.<sup>58</sup> To prove the lack of trust that EU Member States tend to have toward the Commission, let us remember that on the 18 February 2008, after rejecting the revised draft proposals for agriculture, industry, and services trade in the framework of the Doha round, France's minister for agriculture, along with 19 other EU ministers for agriculture, showed once again his lack of trust toward the

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<sup>52</sup> Interestingly, rich countries call this agenda of negotiations the "Doha Development Agenda," whereas poor countries refer to it as the "Everything but Development Round." It has certainly been a mistake to call this round the "development round," since the DDA is a multilateral trade negotiation with very little input on development. This rather vague distinction between rich and poor countries is based on the World Bank's country classification. See The World Bank, "Country Classification," available at <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>

<sup>53</sup> As we saw in the pre-Hong Kong Ministerial Conference period of negotiations, the agriculture negotiations are considered key to the success of the overall Doha Round of WTO talks.

<sup>54</sup> European Commission, "Special EU Trade News: Geneva WTO Ministerial," 18 July 2008.

<sup>55</sup> Pascal Lamy, on 29 May 2008, told the Committee of International Trade of the European Parliament that the world, and in particular the European Union, has a major stake in the conclusion of the Doha Round. In his view, the solution in the current situation in the world does not lie in protectionism. See speech by Pascal Lamy, available at [http://www.wto.org/english/news\\_e/sppl90\\_e.htm](http://www.wto.org/english/news_e/sppl90_e.htm)

<sup>56</sup> Tit-for-tat is the *modus operandi* in international trade. For example, country A raises barriers on product X because country B did it to product Y.

<sup>57</sup> Bridges Weekly Trade News, "Political Positioning Dominates Opening Day of WTO Talks," Issue 2, 22 July 2008.

<sup>58</sup> It is interesting to observe the French fixation on agriculture, given the small percentage that it represents on France's GDP. The argument of a French political obligation to look after France's farmers seems evident, but is it macroeconomically justified?

European Commission in trade negotiations. Whereas for EU trade commissioner Mandelson the agricultural proposal forms “a good basis for further negotiations,”<sup>59</sup> the views of Mr Barnier were that the text in agriculture was “totally unbalanced between concessions and other issues like services, industry or geographical indications, where we see no progress.”<sup>60</sup> France’s rejection of the draft comes as no real surprise after years of intense lobbying against any large tariff and subsidy cuts, since France fears that it could destroy its farming sector. However, the fact that the rejection of the draft has the backing of so many other EU Members States could signal bad news for the Doha talks.

Turning now to China,<sup>61</sup> what is required from China to conclude the Doha round? An immediate reaction would be that China should be prepared to accept more responsibility for the multilateral system, i.e., hiding less behind the status of a developing country and stand up to its own ambition to new leadership. However, the term ‘development’ is not clearly defined in the Doha round. If the Doha round is concluded, certainly China will greatly benefit from a better access to developed countries’ markets. However, this may happen partly at the expense of other poorer developing countries.

In recent months, the U.S. and the EU have by and large stopped criticizing each other on agricultural trade. Instead, they have turned their fire on developing countries like Brazil, India, and China, blaming their resistance on industrial tariff cuts for the impasse in the negotiations.<sup>62</sup> To prove this point, in his statement to the Trade Negotiations Committee during the July 2008 mini-ministerial WTO Conference, David Shark, a U.S. trade official, took aim at India and China for “insisting on the ability to raise agricultural tariffs in violation of their current WTO commitments,”<sup>63</sup> and “firmly refusing”<sup>64</sup> to take part in sector-specific liberalization initiatives for industrial machinery, electronics, and chemicals.<sup>65</sup>

China should also accept greater differentiation among developing countries in the WTO and lower market barriers vis-à-vis poorer developing countries. In this sense, the EU trade chief expects a proactive role of the New Leading Powers: “a limited number of developing countries must accept tariff cuts imposed by a NAMA coefficient,”<sup>66</sup> Peter Mandelson told the Trade Negotiations Committee at the WTO, referring to Brazil, China, India, and the rest of the 30-odd relatively larger developing countries required to use the standard tariff reduction formula. “They must be real. These cuts must provide some new market access in practice. That is the political bottom line. Nothing else will work for us. Nothing else will close the deal.”<sup>67</sup>

### WTO Mini-Ministerial Conference of July 2008

Governments’ latest attempt to salvage a deal in the Doha round broke down on 29 July 2008, as ministers acknowledged that they were unable to reach a compromise after nine days of a WTO mini-ministerial summit. This was due to an increase in tariffs by developing countries to protect farmers from import surges under a special safeguard mechanism.<sup>68</sup> Import-sensitive China and India were pitted against the US’s demands for predictable market access for farm products. A rational explanation for the failure of the multilateral trade talks is that countries such as India want to protect its poor and subsistence farmers, while the U.S. and the EC negotiators are under pressure from powerful farm lobbies.

According to Pascal Lamy, trade ministers that participated in the mini-ministerial conference “were very close to finalizing modalities in agriculture and [non-agricultural market access]”<sup>69</sup> in the framework of deals governing tariff and subsidy cuts that governments had hoped to strike. He said that “a huge amount of problems which had remained intractable for years have found solutions,”<sup>70</sup> even though the talks ultimately failed on the extent to which developing countries would be able to protect farmers from import surges under a special safeguard mechanism. In his statement to the Trade Negotiations Committee during the July 2008 WTO mini-

<sup>59</sup> FarmPolicy.com, “Twenty EU Members Cool to Latest WTO Farm Text,” available at <http://www.farmpolicy.com/?p=628>

<sup>60</sup> EurActiv, “France rallies EU partners against world trade pact,” 19 February 2008, available at <http://www.euractiv.com/en/trade/france-rallies-eu-partners-world-trade-pact/article-170401>

<sup>61</sup> Russia is expected to join the WTO in the near future.

<sup>62</sup> Bridges Weekly Trade News, “Geneva Mini-Ministerial: ‘Now or Never’ for Real this Time?” Issue 1, 21 July 2008

<sup>63</sup> Bridges Weekly Trade News, “G-7 Talks on Special Safeguard Mechanism Inconclusive as Blame Game Heats Up,” Issue 9, 29 July 2008.

<sup>64</sup> *Ibid.*

<sup>65</sup> BNA International Trade Daily, “U.S. Ups Pressure on China, India to Participate in Sectoral Tariff-Cutting,” 29 July 2008.

<sup>66</sup> Bridges Weekly Trade News, “Political Positioning Dominates Opening Day of WTO Talks,” Issue 2, 22 July 2008.

<sup>67</sup> *Ibid.*

<sup>68</sup> Special safeguard mechanism is a system available under the WTO Agreement on Agriculture to WTO members that have converted non-tariff measures to tariff protection. It allows WTO members to impose additional tariffs on agricultural products if import volumes exceed defined trigger levels or if import prices fall below defined trigger prices. See Walter Goode, *Dictionary of Trade Policy Terms*, 5th ed., Cambridge University Press, 2007, p. 396.

<sup>69</sup> Bridges Weekly Trade News Digest, “WTO Mini-Ministerial: The Day After,” Issue 11, 30 July 2008.

<sup>70</sup> *Ibid.*



ministerial Conference, David Shark, a U.S. trade official, took aim at India and China for “insisting on the ability to raise agricultural tariffs in violation of their current WTO commitments,”<sup>71</sup> and “firmly refusing”<sup>72</sup> to take part in sector-specific liberalization initiatives for industrial machinery, electronics, and chemicals.<sup>73</sup>

That said, although the mini-ministerial conference was going to focus on agriculture and industrial goods, trade in services is a central part of any final Doha Agreement. At the mini-ministerial conference there was a signaling conference, in which WTO Members signaled where and how they plan to improve access to their services markets for other WTO Members. It was understood that, while the signals exchanged were important in measuring progress, they would not represent the final outcome of the negotiations. They would instead provide comfort to WTO Members by reflecting real progress in the services negotiations. In this sense, officials from several countries expressed satisfaction with the signaling conference on services trade liberalization held on 26 July 2008 in the framework of the July WTO mini-ministerial conference in Geneva, at which participating countries—mostly developed and relatively large developing countries—provided indications of the sort of binding market-opening commitments they would be willing to undertake under a Doha Round agreement. Such a signaling conference was just meant to provide a credible signal that the negotiations were moving forward.

WTO Members acknowledged that, while they proceeded with services liberalization in their economies, the gap between existing levels of openness and current commitments continued to widen.<sup>74</sup> Some participants stressed that a satisfactory outcome of the services negotiations could be one of the most significant dividends of the DDA, as a development Round. Most participants indicated their readiness to improve access conditions for Mode 4.

On Mode 4, Indian commerce minister Kamal Nath was pleased about the “good movement by the U.S. and by the EU”<sup>75</sup> since both WTO Members were prepared to make concessions on allowing more professionals from India and other developing countries to work temporarily in their markets.<sup>76</sup> Mr Nath was also pleased about the concessions on Mode 1, since Modes 1 and 4 are important to India’s information technology sector. He stressed the importance of the domestic regulation aspect of the services negotiations. An Indian trade official said that the EC had suggested that it might consider lifting economic needs tests, a regulatory requirement that can make it nearly impossible to use Mode 4 access.

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

What can the EU do to support the conclusion of the Doha round? In my opinion, the EU should try to foster a new sense of trust with China and Russia. However, the problem seems to be a direct conflict of interests as well as pressure on the Commission’s Directorate-General for external trade not to be too altruistic. The EU should also refrain from patronizing as a major economic “old” power. Moreover, the EU should accept and foster even more actively the new leadership roles of China and Russia. Since lack of trust seems to be an important impediment toward progress in the Doha round, bilateral dialogues as well as more intensive and broader political cooperation between the EU and China may establish new trust.

### A Note on Plurilateralism

As we all know, the Doha round is in crisis.<sup>77</sup> If the Doha round fails or achieves only very little and very late,<sup>78</sup> then the WTO reputation will be seriously damaged and this may translate into an erosion of the WTO’s authority and the WTO’s Dispute Settlement Understanding.<sup>79</sup> With their large export potential, China (and Russia, soon to

<sup>71</sup> Bridges Weekly Trade News, “G-7 Talks on Special Safeguard Mechanism Inconclusive as Blame Game Heats Up,” Issue 9, 29 July 2008.

<sup>72</sup> *Ibid.*

<sup>73</sup> BNA International Trade Daily, “U.S. Ups Pressure on China, India to Participate in Sectoral Tariff-Cutting,” 29 July 2008.

<sup>74</sup> Lamy, P. “Services Signalling Conference,” JOB(08)/93, 30 July 2008.

<sup>75</sup> Bridges Weekly Trade News Digest, “Members Give Mixed Reactions to Lamy Compromise, Take ‘A Good Step Forward’ on Services,” Issue 7, 27 July 2008.

<sup>76</sup> International Trade Reporter, “U.S., EU Cite Moves in ‘Signaling’ Talks On Services; India Likes ‘Mode 4’ Openings,” Vol. 25, No. 31, 31 July 2008, p. 1128.

<sup>77</sup> For a detailed analysis of the Doha round, see Leal-Arcas, R. *Theory and Practice of EC External Trade Law and Policy*, Cameron May, 2008, chapters 8 and 9.

<sup>78</sup> In the industrial sector in particular, EU trade ministers voiced in late May 2008 their dissatisfaction with the proposals for a global trade agreement, which they said did not offer sufficient guarantees on opening up new market opportunities for their businesses in third countries. Germany in particular slammed new flexibilities in the texts that would enable large emerging economies such as China to shelter entire sectors of their industry from outside competition. For BusinessEurope, the latest draft text on industrial goods was a step backwards for trade liberalization due to a new tariff reduction formula that enables countries like India, Brazil, and Argentina to make fewer cuts in import duties while allowing new WTO members such as China and Taiwan to phase in tariff cuts over up to 15 years. See EurActiv, “Mandelson encounters resistance in trade talks,” 27 May 2008, available at <http://www.euractiv.com/en/trade/mandelson-encounters-resistance-trade-talks/article-172692>

<sup>79</sup> The Dispute Settlement Understanding (DSU) is one of the most important new features of the WTO. The DSU established a

join the WTO) should have a very strong interest in the WTO and the functioning rules of world trade, which are an insurance against protectionism and contain the trade powers of the U.S. and the EU to quite an important degree.

So how can we prevent the WTO from a deeper crisis? One possibility are the plurilateral approaches to trade agreements,<sup>80</sup> which are optional and not binding to those WTO Members who do not engage in the agreement. The idea behind it is to make the WTO deliver again on progressive liberalization. Emerging economies in general, and China in particular, should take part in it. The EU should try to create an understanding for this and appeal to the leadership of China to keep the WTO alive and moving. Once again, establishing more trust and a sense of cooperation is important.

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

The plurilateral process, akin to the bilateral request and offer mechanism, is informal. It takes place between demandeurs and those from whom they are seeking higher commitments. There are no formal negotiating sessions. There is no formal chair. There are no minutes of these informal negotiations. And importantly, there is no critical mass of countries representing 80–90 per cent of world trade in that sector, unless the negotiations draw in such a large number of countries that they effectively make up this ‘critical mass’ (an unlikely situation if it were completely voluntary). That negotiations can take place through a plurilateral request/offer approach is already outlined in paragraph 11 of the Negotiating Guidelines agreed to by all WTO members before the GATS negotiations commenced in 2001.<sup>81</sup> At the 2005 Hong Kong Ministerial Conference, developed countries<sup>82</sup> succeeded in getting language permitting plurilateral negotiations, in addition to the bilateral request/offer negotiating method. This means that a group of countries will issue one request document demanding broad GATS coverage in a particular sector to one country or a group of countries. Rather than negotiating bilaterally, the countries would negotiate as a group. Developing nations were successful in preventing a text which would have made entering into plurilateral negotiations mandatory, because they were concerned that it would result in developed countries ‘ganging up’ on individual developing countries.

As part of the plurilateral negotiating process, the WTO formed 13 ‘Friends Groups’ that will develop joint request documents and a list of countries to which these requests will be submitted.<sup>83</sup> Other Friends Groups may be formed or operate in a less formal manner. Although the Friends Groups will be made up of WTO country representatives, major multinational service businesses have been working closely with each group on both content of the offer and strategy to break into the service markets of countries high on their priority lists.

In the case of services trade, to intensify and expedite services negotiations, Annex C<sup>84</sup> of the Draft Hong Kong Ministerial Declaration introduced an interesting mode of negotiations, i.e., plurilateral negotiations. Annex C also exhorted Members to make new binding market-access commitments across the four modes of services

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system of review and procedures for when one of the WTO members complains that the actions or policies of another member have harmed it through a violation of WTO rules. Typically, a complaint would be followed by consultations, possible arbitration, then the formation of a panel of experts, the panel ruling, possible appeal to the Appellate Body, and, based on the outcome of the case, either compliance, compensation to the complaining country, or eventual retaliation. See Leal-Arcas, R. *Theory and Practice of EC External Trade Law and Policy*, Cameron May, 2008, at p. 418.

<sup>80</sup> For the most part, all WTO members subscribe to all WTO Agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as “plurilateral agreements.” All other Tokyo Round agreements became multilateral obligations (i.e., obligations for all WTO members) when the World Trade Organization was established in 1995. The four were: Trade in civil aircraft, Government procurement; Dairy products; and Bovine meat. The bovine meat and dairy agreements were terminated in 1997.

<sup>81</sup> Paragraph 11 of the Guidelines and Procedures for the Negotiation on Trade in Services reads: ‘Liberalisation shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach’. Available at <http://odin.dep.no/ud/english/doc/handbooks/032061-120002/dok-bn.html>

<sup>82</sup> A developed country is a term used to categorise countries with developed economies, ones in which the tertiary and quaternary sectors of industry dominate. This level of economic development usually translates into a high income per capita, and a high Human Development Index (HDI). Countries with high gross domestic product (GDP) per capita often fit the previous description of a developed economy; however, anomalies exist when determining ‘developed’ status by the factor GDP/cap alone.

<sup>83</sup> Below is a list of known Friends Groups, and the country chairing their discussions:

Audio-visual services (Chinese Taipei); Air Transport (New Zealand); Computer-related services (Chile)  
Construction services (Japan); Energy services (EU); Environmental services (EU); Express Delivery services (USA); Financial services (Canada); Legal services (Australia); Logistical services (Switzerland)  
Maritime services (Japan); Mode 3 (Switzerland); Mode 4 (Canada); Telecommunication (Singapore).

<sup>84</sup> For a reading of Annex C (annex on services), see the Revision of the Draft Ministerial Declaration in the framework of the Doha Work Program, Hong Kong WTO Ministerial Conference, Sixth Session on 18 December 2005) WT/MIN(05)/W/3/Rev2 available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/draft\\_text5\\_e.doc](http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_text5_e.doc)

supply stipulated in the GATS, and to give up existing restrictions on granting equal treatment to services providers from all WTO countries. These plurilateral negotiations, unlike conventional bilateral negotiations, permit a group of members to present collective requests to other members in any sector or mode of supply.<sup>85</sup> Furthermore, the plurilateral approach has solidified a platform for interested WTO members to build upon initial, sector-specific discussions, either through an extended round of negotiations similar to what transpired after the Uruguay Round or in the context of the next round of services negotiations mandated under the GATS.<sup>86</sup> That said, Annex C also failed to deliver any timelines for service negotiations, even in a preliminary sense.<sup>87</sup>

Two weeks of intensive market-access negotiations in services trade started at the WTO in mid-April 2007.<sup>88</sup> These marked the first services meetings to be conducted in formal negotiating mode since the Doha Round talks broke down in July 2006, although there had been informal talks in the interim. This first week was dedicated to plurilateral meetings between groups of demandeur countries seeking new market-opening commitments and the predominantly developing countries to which they submitted collective requests in February 2006. Although many developing countries remain reluctant to further open their markets to foreign services providers until there is more progress in the talks on agriculture and industrial tariffs, some major demandeur Members of the WTO such as the EC and the US identified key breakthrough sectors in which they were especially eager to see new liberalisation. These plurilateral negotiations were more focused than in the past, benefiting from more thorough preparation by the requesting WTO members. Each of these sector-specific negotiations was coordinated by one sponsor of the collective request, and each had a structured agenda unlike the more free-wheeling discussions in previous plurilateral WTO discussions. The participating countries were, therefore, each specifically asked whether they were going to meet the liberalisation commitments set out in the collective request, and, if not, why they were unable to do so.<sup>89</sup> They were also asked whether they were prepared formally to bind the level of liberalisation actually applied in practice in each sector and, if they were unable to do so, why so.<sup>90</sup> The second week was reserved for bilateral negotiations between individual WTO countries.<sup>91</sup>

## 5. Bilateralism/Regionalism

The question to ask is: what can the EU offer China and Russia to foster trust, sense of cooperation and respectfulness, as well as a better multipolar global governance framework? EC trade policy uses a pyramidal structure with regard to the various degrees of trade preferences that it offers to different countries and regions. China and Russia have by and large been at the bottom of the preference pyramid thus far. An unofficial ranking of the preference pyramid would look as follows starting from the top: new EU Member States and accession candidates, countries with which the EC has a free-trade agreement, countries of the Mediterranean region, the African, Caribbean and Pacific countries, and China and Russia in relation to the Generalized System of Preferences.<sup>92</sup> So there appears to be a potential to offer more market access to China and Russia and embed this in a policy-centered foreign policy approach.

If we look at bilateral free-trade agreements (FTAs) as instruments for liberalizing trade, the “carrot” function is important since FTAs offer preferential market-access, whereas in the “stick” function it does not seem to be realistic to withdraw preferences, as the free-trade agreement in question would need to be breached. This situation seems hardly imaginable and thus not a credible threat. From the emerging-markets perspective, another reason for the attractiveness of signing a free-trade agreement with the EC is their competitive advantage. A free-trade agreement can level the playing field. Moreover, there is an insurance against trade defense instruments as

<sup>85</sup> See ‘TNC: Lamy Outlines Doha Round Roadmap for Hong Kong and Beyond’ (2005) 9(35) *Bridges Weekly Trade New Digest* C-3.

<sup>86</sup> J Bernabe and S Cheng ‘The Doha Round Negotiations on Services: An Overview’ p 2. Paper prepared for a seminar entitled *Realizing the Doha Development Agenda as if the Future Mattered* at the Salzburg Seminar, Salzburg, Austria (16–21 February 2007).

<sup>87</sup> See ‘TNC: Lamy Outlines Doha Round Roadmap for Hong Kong and Beyond’ (2005) 9(35) *Bridges Weekly Trade New Digest* C-4.

<sup>88</sup> International Financial Services London ‘Ongoing discussions in WTO Round: raising the profile on services’ *Trade Policy News* available at [http://www.ifsl.org.uk/tradepolicy/news\\_index.cfm?NewsItem=274](http://www.ifsl.org.uk/tradepolicy/news_index.cfm?NewsItem=274)

<sup>89</sup> *Bridges Weekly* ‘Services Cluster Finishes with new Focus on ‘Breakthrough Sectors’’ vol 11 No 15 (3 May 2007).

<sup>90</sup> In the past, it had proved easier for countries facing requests to take a defensive approach when they wanted to, by asking the different sponsors a series of technical questions about precisely what they were seeking. See *Bridges Weekly* ‘Services: Demandeurs, Requested Members both Content with Initial Plurilaterals’ vol 10 No 13 (12 April 2006) available at <http://www.ictsd.org/weekly/06-04-12/story1.htm>

<sup>91</sup> *Bridges Weekly* ‘Services Cluster Finishes with new Focus on “Breakthrough Sectors”’ vol 11 No 15 (3 May 2007).

<sup>92</sup> The Generalized System of Preferences, or GSP, is a formal system of exemption from the more general rules of the WTO. Specifically, it is a system of exemption from the most-favored-nation (MFN) principle that obligates WTO countries to treat the imports of all other WTO countries no worse than they treat the imports of their most favored trading partner. In essence, MFN requires WTO countries to treat imports coming from all other WTO countries equally, that is, by imposing equal tariffs on them, *inter alia*. See Wikipedia, available at [http://en.wikipedia.org/wiki/Generalized\\_System\\_of\\_Preferences](http://en.wikipedia.org/wiki/Generalized_System_of_Preferences)

these are generally less used against trade partners. Furthermore, the EU could offer additional incentives (and therefore show generosity to build more political trust) by granting larger concessions or demanding fewer concessions than would be the case in a purely reciprocal give-and-take situation. However, even if the EU concessions were possible, what would the EU want to obtain in return? Market access seems to be the evident answer. This is what trade negotiations are about. The Commission's Directorate-General for trade would come under pressure if EU concessions were not used to enhance market access for European exporters in growing and important emerging markets.

However, there are also disadvantages to FTAs. There are transaction costs such as the danger of further proliferation of FTAs to the detriment of multilateral trade liberalization at the WTO level. In this sense, I would argue that the EU has responsibilities for the multilateral trading system and therefore should be defensive in bilateralism; in other words, the EU should only react when other countries move first with FTAs to EU export markets. That was the case with the U.S. and Japan after the suspension of the Doha round in July 2006 and the European Commission started negotiating FTAs with India, ASEAN, and South Korea.

Since July 2006 (the date of the Doha round of multilateral trade talks suspension), we have seen the obvious weaknesses and deficiencies of the multilateral trading system and, as a reaction, the proliferation of regionalism – although this has been happening for quite some time now<sup>93</sup> – and bilateralism. After the suspension of the WTO Doha negotiations, the European Commission looked ready to refocus its commercial strategy on bilateral free-trade agreements so as to catch up with the U.S. and Japan.<sup>94</sup> Bilateralism/regionalism is the normal consequence of failed multilateralism.<sup>95</sup> This has certainly dangerous repercussions on weak economies.<sup>96</sup> Officially, concluding the Doha Round remains the EC's number-one priority, but, since negotiations were suspended in July 2006<sup>97</sup> – when last resort talks failed to bring an agreement on reducing farm subsidies and lowering tariffs, leading therefore the WTO chief Pascal Lamy formally to suspend the Doha Round – the EC has been looking for other ways to open up foreign markets<sup>98</sup> and keep up with its main trade rival, the US, which is currently leading the race to conclude free-trade agreements (FTAs) with high-market-potential countries.<sup>99</sup>

The Commission's decision<sup>100</sup> to launch new bilateral trade negotiations<sup>101</sup> with countries such as India, South Korea, and the 10 ASEAN<sup>102</sup> states<sup>103</sup> 'could further complicate its trade regime, and divert interest from the

<sup>93</sup> See El-Agraa, A. "Regional Trade Arrangements Worldwide," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Curzon Price, V. "The European Free Trade Association," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Weintraub, S. "The North American Free Trade Agreement," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Bulmer-Thomas, V. "Regional Integration in Latin America Before the Debt Crisis: LAFTA, CACM and the Andean Pact," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Bulmer-Thomas, V. "Regional Integration in Latin America since 1985: Open Regionalism and Globalisation," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; El-Agraa, A. "The Caribbean Community and Common Market," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Pomfret, R. "The Association of South-East Asian Nations," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; El-Agraa, A. "Integration Amongst Members of the Arab League," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997; Robson, P. "Integration in Sub-Saharan Africa," in El-Agraa, A. (ed.) *Economic Integration Worldwide*, Macmillan Press, 1997. See also generally, Geiger, T & Kennedy, D. (eds.) *Regional Trade Blocs, Multilateralism, and the GATT: Complementary Paths to Free Trade?*, Pinter, 1996; Fawcett, L. & Hurrell, A. (eds.) *Regionalism in World Politics. Regional Organization and International Order*, Oxford University Press, 1995.

<sup>94</sup> European Commission 'Research shows big potential gains from new EU FTAs' Memo (23 April 2007).

<sup>95</sup> On the dilemma of bilateralism versus multilateralism, see G Glania and J Matthes *Multilateralism or Regionalism? Trade Policy Options for the European Union* (Centre for European Policy Studies, 2005).

<sup>96</sup> Trakman, however, claims that bilateralism can actually help developing countries in the world trading system. See L Trakman 'The Proliferation of Free Trade Agreements: Bane or Beauty?' University of New South Wales Faculty of Law Research Series Paper 54 (2007).

<sup>97</sup> After five years of troubled negotiations, the Doha Development Round, aimed at freeing global trade and at extending the benefits of globalisation to developing countries, was suspended following the failure of negotiators to reach a compromise about reducing farming subsidies and lowering import tariffs. The resumption of the Doha talks took place in February 2007.

<sup>98</sup> This has been the case with emerging markets. See European Commission, "Global Europe: Competing in the World," COM(2006) 567 final, 4 October 2006, p. 5.

<sup>99</sup> Nevertheless, it is worth mentioning that this proliferation of bilateral trade agreements outside the WTO process is perceived as betraying the multilateral ideals that underlay the WTO and its forerunner, the GATT.

<sup>100</sup> European Commission 'European Commission welcomes adoption of negotiating mandates for new Free Trade Agreements with India, Korea and ASEAN' IP/07/540 (23 April 2007) available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/540&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>101</sup> Council of the European Union 'Conclusions on the Recommendations to open Negotiations with Countries of ASEAN, India and South Korea' 2795 General Affairs Council meeting (23 April 2007).

<sup>102</sup> Joint Ministerial Statement of the ASEAN Economic Ministers and the European Union Trade Commissioner on the Launch of Negotiations for the ASEAN-EU Free Trade Agreement (FTA) (4 May 2007); See also EurActiv 'EU launches free-trade talks with ASEAN' (4 May 2007) available at <http://www.euractiv.com/en/trade/eu-launches-free-trade-talks->

multilateral trading system',<sup>104</sup> according to a bi-annual report carried out by the WTO on the EC's trade policies and practices. On the specific case of ASEAN, European and Southeast Asian leaders agreed to step up efforts towards concluding a deal establishing what would be one of the largest free-trade zones in the world, at a bilateral summit in Singapore in November 2007. However, talks were overshadowed by disagreements about how to deal with the military dictatorship in Myanmar following its bloody crackdown on pro-democracy protesters in September 2007.<sup>105</sup> The Commission also hopes to negotiate more far-reaching agreements than would be possible under the WTO talks, by tackling issues such as investment, competition policy, and public procurement – known as the Singapore issues – which were dropped from the Doha agenda in 2003.<sup>106</sup> This return to a system of bilateral agreements and FTAs will mean that the large WTO members would be able to strong-arm the small members and where the multiplication of trade rules and tariffs would generate higher transaction costs and damage the trading and investment environment.

Lamy warned, however, that bilateral deals could contribute to weakening the multilateral trading system, in a speech to the European Parliament's International Trade Committee on 17 October 2006.<sup>107</sup> Moreover, he argued that growing number of bilateral and regional trade talks<sup>108</sup> risked distracting from attempts to clinch a long-elusive global deal.<sup>109</sup> He noted that when it came to bilateral talks, some countries appeared to be promising concessions beyond what would be needed to unblock the multilateral negotiations. Before the US Chamber of Commerce, he said:

While bilateral agreements can be a useful complement, I do not believe they can substitute a strong multilateral trading system. Bilateral agreements are by their very nature discriminatory. They have obvious limitations in terms of issues covered since they do not tackle the toughest areas where trade restrictive and distorting measures, such as subsidies, still prevail. They may lead to trade diversion as opposed to trade creation. And they complicate the trading environment of economic operators who have to abide by a spaghetti bowl of different rules. In short, bilateral agreements are not the easy way out.<sup>110</sup>

Patrick Messerlin argues along the same lines by saying that multilateral liberalisation of trade should be the center of European trade strategy, and claims that the recent shift in EC trade policy to negotiate bilateral agreements is taking the EC into dangerous waters on the grounds that the bilateral trade agreements considered by the EC are generally characterised by high tariff and non-tariff barriers<sup>111</sup> in goods, as well as by restrictive regulations in services and investment.<sup>112</sup> Woolcock, however, argues that the EC's increased use of FTAs is compatible with its commitment to multilateralism, but only if the bloc redefines its concept of 'all trade' as being 95 per cent of trade and avoids excluding large bands of sensitive products in specific sectors such as agriculture.<sup>113</sup> While the EC will find that it might be able to address some of its specific concerns through bilateral agreements, I believe that it will not be able to answer all of them. In addition, the countries that the EC will negotiate with in these bilateral negotiations will want to see some concerns, like subsidies in agriculture, addressed somehow and that will only be through the multilateral, that is, WTO, process.

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[asean/article-163559](http://www.euractiv.com/en/trade/eu-start-free-trade-talks-india-south-korea-asean/article-163559)

<sup>103</sup> EurActiv 'EU to start free trade talks with India, South Korea and Asean' (24 April 2007) available at <http://www.euractiv.com/en/trade/eu-start-free-trade-talks-india-south-korea-asean/article-163321>

<sup>104</sup> World Trade Organization, 'Trade Policy Review of the European Communities' WT/TPR/S/177 (22 January 2007) xii.

<sup>105</sup> Euractiv 'EU, ASEAN to push for trade deal despite Myanmar' (23 November 2007) available at <http://www.euractiv.com/en/trade/eu-asean-push-trade-deal-despite-myanmar-discord/article-168629>

<sup>106</sup> PJ Lloyd and D MacLaren 'The EU's New Trade Strategy and Regionalisation in the World Economy' (2006) 61(4) *Aussenwirtschaft* 423–36.

<sup>107</sup> See speech given by Pascal Lamy to the European Parliament's International Trade Committee, where he warned that the Doha failure will seriously weaken the trading system. Available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl44\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl44_e.htm)

<sup>108</sup> For an analysis of the main trends and characteristics of regional trade agreements, in force and under negotiation, see R Fiorentino, L Verdeja and C Toqueboeuf 'The Changing Landscape of Regional Trade Agreements: 2006 Update' WTO Discussion Paper No 12 (2007).

<sup>109</sup> The same argument is made by a WTO report, which claims that the EC's decision to seek bilateral free-trade agreements, as well as its rising agricultural tariffs, could be detrimental to the Doha negotiations on a global-trade pact. See World Trade Organization 'Trade Policy Review. Report by the European Communities' WT/TPR/G/177 (22 January 2007).

<sup>110</sup> P Lamy 'US leadership will be key to the fate of the Round' (23 April 2007) available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl61\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl61_e.htm)

<sup>111</sup> Non-tariff barriers or non-tariff measures are measures other than tariffs applied by governments at the border that determine the extent to which a good or service has access to the import market.

<sup>112</sup> EurActiv 'Assessing EU trade policy in goods' (5 June 2007) available at <http://www.euractiv.com/en/trade/assessing-eu-trade-policy-goods/article-164278>

<sup>113</sup> S Woolcock 'European Union policy towards Free Trade Agreements' ECIPE Working Paper No 03/2007 p 11.

In the face of globalisation, the EC must remain open. It must also ensure that markets abroad are open to its own exports. European businesses often find it difficult to access foreign markets due to high tariff and non-tariff barriers,<sup>114</sup> as well as discriminatory measures applied against foreign companies. Removing such barriers is particularly important in the services sector, which represents around 70 per cent of Europe's jobs and of the EU's gross domestic product (GDP),<sup>115</sup> but which faces higher trade barriers than goods, mostly due to restrictive national regulations, such as technical standards, licensing requirements or national discrimination.

This proposal of bilateral trade agreements as a result of the suspension of the Doha talks is diametrically opposite to the EC's previous trade strategy, in which the focus was strongly on multilateral negotiations within the WTO, and free trade deals were primarily driven by the logic of development or geopolitics rather than economic interests. That said, U.S. businesses in Europe urged EU and U.S. leaders to stop neglecting the transatlantic relationship in favour of boosting relations with China and India. They argued that the two transatlantic economies have become so highly interdependent that their future growth and job creation relies not on improving their relations with China and India, nor in completing a successful Doha Round, but in removing existing barriers to trade and investment in order to create a veritable transatlantic single market.<sup>116</sup>

As WTO membership has grown, interests have diversified, and negotiations have become more cumbersome, countries have resorted to establishing regional trade agreements (RTAs).<sup>117</sup> RTAs focus on the interests of countries in a particular region or group of regions, and not on global interests. By 2010, the WTO estimates that nearly 400 RTAs will be in effect. RTAs allow for more efficient trade negotiations and permit countries greater freedom to choose their trading partners, trade deals and conditions of trade. However, since RTAs operate outside the multilateral WTO system, many questions as to how the transition from a multilateral to a regional trading system will shape the way we think about social, political, and environmental issues arise. For example, how will trade relations between developed and developing nations change? Will RTAs become a tool for implementing the policy agenda of the powerful? What social, environmental, and political issues will arise under RTAs? Will RTAs hamper attempts to develop global standards on labor rights, women's rights, environmental protection, and other social issues?

Let us now present a country-by-country examination of bilateral trade relations between the EU and China/Russia.

## 6. Trade Analysis of the EU vis-à-vis China and Russia

### 6.1. China

China's trade expansion started in 1978, when the country initiated reforms and opening-up policies. For the past decade, its position as a strong player in international trade has been remarkable.<sup>118</sup> Structural reforms in China, including trade liberalization, have resulted in annual real GDP growth rates in excess of 10% over the past 4 years, rising per capita income and poverty reduction. In the process, China has become the world's third largest trader.<sup>119</sup>

In early 1978, a trade agreement was concluded between the European Economic Community (EEC) and China, which was replaced by a Trade and Economic Cooperation Agreement between China and the EEC in

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<sup>114</sup> International Financial Services London acknowledges its concerns about various barriers to doing business in India. See International Financial Services London, "EU-India talks, IFSL to consult on City views," <http://www.ifsl.org.uk/tradepolicy/>

<sup>115</sup> A region's gross domestic product, or GDP, is one of several measures of the size of its economy. The GDP of a country is defined as the market value of all final goods and services produced within a country in a given period of time.

<sup>116</sup> EurActiv 'US business call for "transatlantic single market"' (21 November 2006) available at <http://www.euractiv.com/en/trade/us-businesses-call-transatlantic-single-market/article-159894>

<sup>117</sup> See Preusse 'Regional Integration in the Nineties: Stimulation or Threat to the Multinational Trading System?' (1994) 28 *Journal of World Trade* 147; Zahrt 'How Regionalisation can be a Pillar of a More Effective World Trade Organization' (2005) 39(4) *Journal of World Trade* 671; Marceau and Reiman 'When and How Is a Regional Trade Agreement Compatible with the WTO?' (2001) 28(3) *Legal Issues of Economic Integration* 297-336; T Cottier 'The Challenge of Regionalisation and Preferential Relations in World Trade Law and Policy' (1996) 2 *European Foreign Affairs Rev* 149; T Cottier and Schefer 'The Relationship Between World Trade Organisation Law, National and Regional Law' (1998) 1 *Journal of International Economic Law* 83; J Pauwelyn 'The Puzzle of WTO Safeguards and RTAs' (2004) 7 *Journal of International Economic Law* 109; Sung-Hoon Park 'Regionalism, Open Regionalism and Article XXIV GATT: Conflicts and Harmony' in F Snyder (ed) *Regional and Global Regulation of International Trade* (Hart Publishing, 2002); Trachtman 'Toward Open Recognition? Standardisation and Regional Integration under Article XXIV of GATT' (2003) 6 *Journal of International Economic Law* 459; Hsu 'Non-violation Complaints: WTO Issues and Recent Free Trade Agreements' (2005) 39 *Journal of World Trade* 205.

<sup>118</sup> Zhao, Renfeng "China and India: A comparison of trade, investment and expansion strategies," Chatham House, 1 June 2007, p. 2.

<sup>119</sup> See generally World Trade Organization, "Trade Policy Review: China," 2008.

1985.<sup>120</sup> The European Community continues to work towards improving bilateral trade relationships. Commissioners Peter Mandelson and Benita Ferrero-Waldner met with Chinese trade Minister Bo Xilai on 4 November 2005 to discuss the Doha trade round, but also a wide range of issues including the environment, energy and intellectual property. The first EU-China Strategic Dialogue at Vice Foreign Minister Level was held in London in December 2005. At the 9th EU-China Summit in September 2006 in Helsinki, the EU and China agreed on opening negotiations for a new comprehensive framework agreement covering topics such as energy, sustainable development, cooperation in Africa, and the protection of intellectual property rights. This was due largely to the mutual agreement by both parties that the current 1985 agreement no longer reflects the scope, depth, or overall nature of their current relationship.

So negotiations about a more comprehensive Partnership and Cooperation Agreement (PCA) started in January 2007. The new PCA will cover all components of the EU-China relationship and provide a comprehensive management framework. The prospective PCA is expected to lay the foundation for enhanced cooperation, including the enforcement and, where possible, the upgrading of environmental, social, labour and safety standards. It will also hold comprehensive dialogues on over 20 ongoing sectoral dialogues with a view to promote cooperation in all sectors, including on economic and financial matters, in both bilateral and multilateral fora. With regard to these existing sectoral agreements, the PCA will complement rather than replace these agreements.<sup>121</sup>

In general, the PCA will be negotiated on the basis of a commitment to the principles of good governance, the rule of law, effective multilateralism, the fight against corruption and improved transparency. As such the PCA will contain a standard clause on human rights. The PCA will foster cooperation to find international solutions to global issues such as climate change, including energy cooperation, by stimulating energy efficiency and the promotion of renewable energy. Increased cooperation will also be sought in education, culture and science. It is envisaged there will be increased grass-roots level peer-to-peer exchanges of unions, students, academics, business associations, non-governmental organizations and other areas of cooperation.<sup>122</sup>

However, although cooperation dialogues between the EU and China already exist on many levels, a free-trade agreement between the EC and China is not on the horizon since it would alienate other EC trading partners and it would create much resistance from within the EU and from third countries. China is already very competitive without an FTA with the EC. China attempts to establish itself as a gravity center in Asia by concluding many bilateral FTAs in the region.<sup>123</sup> China is a strong economic power with increasingly sophisticated production in the coastal regions. Peter Sutherland argues that, since joining the WTO in December 2001, China has enjoyed significant economic growth. The rigorous economic regulation requirements needed to join the WTO have worked as a catalyst for Chinese political and economic reform.<sup>124</sup>

Yet, China insists on keeping the status of a developing country despite its size both economically (the fourth largest economy in the world) and demographically (the most populated country in the world). Compared to the other BRIC countries which are WTO members,<sup>125</sup> China plays a rather timid role both in the Doha round<sup>126</sup> as well as in the WTO's dispute settlement system.<sup>127</sup> Why? Arguably, because China is a rather young WTO member, it still needs to improve its skills and competences on WTO matters, culturally it tends to avoid disputes,<sup>128</sup> and it has a rather inefficient bureaucracy.<sup>129</sup> For the Doha negotiations to succeed, greater leadership

<sup>120</sup> Council Regulation 2616/85 [1985] OJ L 250/1, 19 September 1985.

<sup>121</sup> Emerging Markets Group & Development Solutions, "Trade sustainability Impact Assessment of the Negotiations of a Partnership and Cooperation Agreement between the EU and China – Draft Global Analysis Report, p. 8, August 2007.

<sup>122</sup> Ibid.

<sup>123</sup> Recent FTAs signed by China include those with ASEAN countries, Hong Kong, Macao, Pakistan, as well as the Gulf countries. See "WTO Trade Policy Review, Report by the People's Republic of China," WT/TPR/G/161, 17 March 2006, paras. 77-82.

<sup>124</sup> Peter Sutherland, "Transforming Nations," *Foreign Affairs*, Vol. 87, Issue 2, March/April 2008, pp. 125-136.

<sup>125</sup> For a comparison between China and India in the WTO, see Julia Ya Qin, "China, India, and the Law of the World Trade Organization," *Asian Journal of Comparative Law*, Vol. 3, Issue 1, 2008.

<sup>126</sup> When asked by the U.S. to issue a joint statement in support of the DDA in 2006, China refused. See BNA WTO Reporter, "China Balked at Joint Statement of Support for WTO Talks, US Official Says," 19 April 2006.

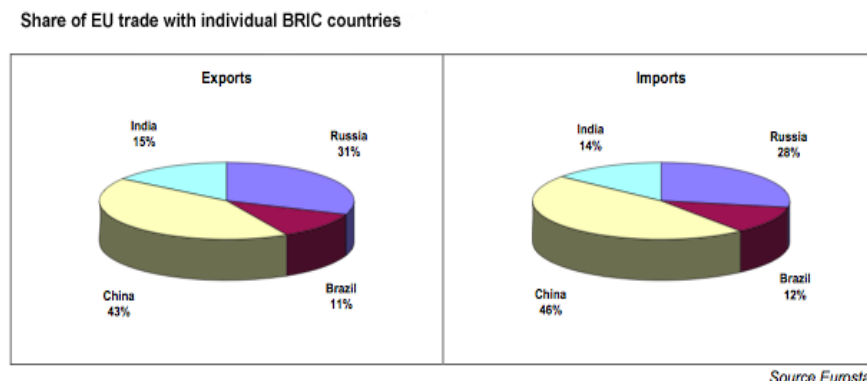
<sup>127</sup> In the first years right after China's accession to the WTO, China's inclination was to handle trade disputes through negotiation rather than WTO adjudication. When threatened with WTO litigation during its initial years of WTO membership, China opted to compromise to avoid formal WTO complaints. See, for example, BNA WTO Reporter, "EC Threatens WTO Suit Against China Unless it Lifts Coking-Coal Restrictions," 25 May 2004.

<sup>128</sup> On this point, see Gao, H. "Aggressive Legalism: The East Asian Experience and Lessons for China," in Gao, H. & Lewis, D. (eds.) *China's Participation in the WTO*, Cameron May, London, 2005, pp. 315-351.

<sup>129</sup> This attitude, however, is slowly changing to a more aggressive and proactive role of China in the WTO. See Gao, H. "China's Participation in the WTO: A Lawyer's Perspective," 11 *Singapore Yearbook of International Law*, pp. 1-34, at p. 34, 2007.

from China is necessary. In this sense, the EU expects China to assume a responsibility commensurate with the benefits it derives from the world trading system.<sup>130</sup>

There are many differences and difficulties between the EU and China in the trade field: the protection of intellectual property rights,<sup>131</sup> counterfeiting and product piracy, China's delay in enforcing WTO rules, China's competitive advantage from poor social and environmental standards, or unfair subsidies to favoured national industries,<sup>132</sup> to name but a few.<sup>133</sup> According to the European Commission, "China is the single most important challenge for EU trade policy."<sup>134</sup> Nevertheless, as can be seen in the chart, when comparing with the rest of the BRIC countries, China is the main partner for both EU imports and exports:<sup>135</sup>



### Possible Ways to Improve the EC-China Trade Relations

So what can the EU do in the trade field to improve its relations with China? Can trade policy be used to improve bilateral relations with China and induce China to be more responsible and multilateral? Cooperation has a priority despite the fact that the European Commission has mentioned in the past the use of tougher measures if China does not rectify some of its actions. Perhaps an extension of a high-level strategic dialogue<sup>136</sup> similar to the U.S.-China Strategic Economic Dialogue would make sense. In this sense, Commission President Barroso and Chinese Prime Minister Wen launched a new EU-China High Level Economic and Trade Dialogue Mechanism in Beijing on 25 April 2008.<sup>137</sup> Proposed by the Chinese authorities and approved at the EU-China Beijing summit in November 2007, this mechanism will provide a new tool for dealing with the problems confronting European companies trying to establish themselves in China, especially in the fields of investment, market access, and protection of intellectual property rights.

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

<sup>130</sup> European Commission, "Global Europe. EU-China Trade and Investment: Competition and Partnership," p. 14.

<sup>131</sup> See generally, European Commission, "Intellectual Property Rights in China," available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/ipr\\_china\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_china_en.htm)

<sup>132</sup> See generally, European Commission, "Respecting the Rules," available at [http://ec.europa.eu/trade/issues/respectrules/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/index_en.htm)

<sup>133</sup> European Commission, "EU uses WTO China Trade Policy Review (TPR) to raise questions of fair treatment, intellectual property protection," 23 May 2008, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508_en.htm)

<sup>134</sup> European Commission, "Accompanying COM(2006) 631 final: Closer Partners, Growing Responsibilities. A policy paper on EU-China trade and investment: Competition and Partnership," COM(2006) 632 final, 24 October 2006, p. 3.

<sup>135</sup> According to the European Commission, the EU "treats China as a normal and important trading partner." See European Commission, "EU uses WTO China Trade Policy Review (TPR) to raise questions of fair treatment, intellectual property protection," 23 May 2008, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508_en.htm)

<sup>136</sup> See in this sense the favourable views of Commissioner Mandelson toward dialogue, rejecting thereby trade boycotts against China, as such moves only damage the interests of ordinary Europeans and Chinese. European Commission, "Mandelson says new high level economic group can help EU and China weather political storms," 15 April 2008, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr150408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr150408_en.htm)

<sup>137</sup> European Commission, "EU and China start high-level economic and trade talks," available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr250408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr250408_en.htm)



## 6.2. Russia

There is a Partnership and Cooperation Agreement between the European Communities and their Member States and the Russian Federation.<sup>138</sup> The agreement was signed in 1994 and entered into force on 1st December 1997. The agreement regulates the political, economic, and cultural relations between the EU and Russia and is the legal basis for the EC's bilateral trade with Russia. One of its main objectives is the promotion of trade and investment as well as the development of harmonious economic relations between the parties. Although trade is growing between the EU and Russia, it remains largely concentrated in the energy and minerals sectors.

The EU and the Russian Federation are planning to start negotiations on a new PCA to provide the contractual framework for EU-Russia relations in the years to come, thereby replacing the existing 10-plus-year old PCA.<sup>139</sup> This new legally binding agreement would provide a sustainable and comprehensive framework for bilateral relations. The two sides also diverged as regards the form that the new Partnership Agreement should take, with Russian President Medvedev voicing support for a document that is "short, without too many details,"<sup>140</sup> while the EU wants a more detailed text, with precise wording on energy and security issues in particular. "The new agreement should be inextricably linked with Russia's advancement in democratic standards, rule of law, and human rights. In economy it should incorporate – among others – the principles of the Energy Charter Treaty and its Transit Protocol,"<sup>141</sup> said liberal Polish MEP Janusz Onyszkiewicz, European Parliament's rapporteur on the EU-Russia agreement.

In this context, the EU is eager to pursue, once Russia has acceded to the WTO, a deep and comprehensive economic integration agreement between the EC's and Russia's interdependent economies, building on and going beyond the PCA and WTO provisions.<sup>142</sup> However, negotiations for a new PCA had not started due to objections by Poland because of the Russian ban on Polish meat and vegetables, where Russia claims that the meat contains excessive levels of antibiotics.<sup>143</sup> In addition, Lithuania also objected, which the EU's rotating presidency at the time (Slovenia) heavily criticized for not withdrawing its objections to initiating talks on a new PCA between the EU and Russia.<sup>144</sup> Lithuania wanted to obtain assurances from Russia over certain issues including energy supply and involvement in regional conflicts in Georgia and Moldova.<sup>145</sup> These difficulties, however, were solved on 27 May 2008 when EU foreign ministers formally approved launching talks with Russia over a new PCA - an issue that had been deadlocked for almost two years.<sup>146</sup> The talks commenced at the end of June 2008.<sup>147</sup> A key feature of the talks will be energy relations, with the EU increasingly concerned by gas disputes between Russia and neighbouring countries such as Ukraine, through which supplies to the 27-nation bloc must be brought. Brussels is also seeking to diversify its energy supplies in order to overcome the EU's dependency on Russia.<sup>148</sup>

An issue of bilateral tension between the two parties is that on April 1, 2008 Russia increased its duties on exports of wood. According to the European Commission spokesman for trade, "[t]hese increased duties will have significant economic impact on the wood processing industry in the EU. It will make it more difficult to source wood from Russia and hinder trade flows in this product. It may also have further negative economic consequences in terms of plant closures and job losses. We therefore regret the decision by the Russian Federation to raise export duties for wood."<sup>149</sup> Sweden and Finland have complained that Moscow's plans to sharply increase

138 Council and Commission Decision 97/800/EC, ECSC, Euratom, 1997 O.J. (L 327) 1.

139 See Joint Statement of the EU-Russia Summit on the Launch of Negotiations for a New EU-Russia Agreement, 27 June 2008.

140 International Herald Tribune, "Medvedev makes nice with the EU," 27 June 2008, available at

<http://www.iht.com/articles/2008/06/27/europe/union.php>

141 EurActiv, "EU-Russia welcome 'new page' in relationship," 30 June 2008, available at

<http://www.euractiv.com/en/enlargement/eu-russia-welcome-new-page-relationship/article-173764>

142 European Commission, "Russia," available at [http://ec.europa.eu/trade/issues/bilateral/countries/russia/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/russia/index_en.htm)

143 Mark Leonard & Nicu Popescu, "A Power Audit of EU-Russia Relations," *European Council on Foreign Relations*, 2 November 2007, p. 50.

144 Slovenian Presidency of the EU, "Agreement on start of negotiations for new Partnership and Cooperation Agreement with Russian Federation," Press release, 11 May 2008, available at

[http://www.eu2008.si/en/News\\_and\\_Documents/Press\\_Releases/May/0511MZZrusija.html](http://www.eu2008.si/en/News_and_Documents/Press_Releases/May/0511MZZrusija.html) (last visited June 1, 2008).

145 EurActiv, "EU Presidency upset over Lithuanian veto of EU-Russia accord," 30 April 2008, available at

<http://www.euractiv.com/en/enlargement/eu-presidency-upset-lithuanian-veto-eu-russia-accord/article-172090>

146 For an overview of the backing of the long-awaited launch of negotiations between the EU and Russia, see EurActiv, "EU to give green light to Russia talks," 26 May 2008, available at <http://www.euractiv.com/en/foreign-affairs/eu-give-green-light-russia-talks/article-172659>

147 Lithuania in the European Union, "EU-approved mandate serves as solid grounds for future talks with Russia," available at <http://www.euro.lt/en/news/lithuanias-membership-in-the-eu/news/3415/>

148 EurActiv, "Russian Ambassador: 'You will not live to see Putin and Medvedev in conflict'," 8 May 2008, available at

<http://www.euractiv.com/en/foreign-affairs/russian-ambassador-live-see-putin-medvedev-conflict/article-172227>

149 See European Commission, "EU response to increase in Russian export duties for timber," available at

[http://ec.europa.eu/trade/issues/bilateral/countries/russia/pr010408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/russia/pr010408_en.htm)

its timber export taxes - from the current 25 per cent of raw timber value to 80 per cent at the beginning of 2009 - will hurt European paper companies.<sup>150</sup> Helsinki said it was considering taxing Russian goods crossing its territory in retaliation. Nevertheless, the European Commission's position regarding Russia is quite clear: "We continue strongly to support Russia's WTO accession, which is not just in Russia's interest, but in the interest of everyone who trades with Russia. It is important that we make progress in this issue and see Russia firmly anchored in the international trading system."<sup>151</sup> This position, however, is not entirely shared in Moscow as there is some skepticism about Russia's accession to the WTO because, as a major resource exporter, it might not need it and because the WTO bindings and rules are not welcomed.

### Possible Ways to Improve the EC-Russia Trade Relations

So what can the EU do in the trade field to improve its relations with Russia, the largest economy in the world still outside the WTO, which has been pursuing membership in the global trade body for nearly 15 years? The EU, which is by far Russia's biggest trading partner and source of investment, has a vested interest in smoothing out ongoing disagreements mentioned above and facilitating Moscow's entrance into the WTO. Indeed, the 27-member trading bloc hopes to begin negotiating a free-trade agreement with Russia once its membership in the global trade body has been finalized.<sup>152</sup> Removal of non-tariff barriers, the achievement of regulatory convergence, and openness to investment flows seem necessary to benefit from a real common European economic space.<sup>153</sup> However, neither a free-trade agreement nor WTO accession seems overly attractive for Russia, given that Russian energy exports are in good demand in the world and are not subject to restrictions.

Notwithstanding this, Russia has made significant progress in its WTO accession talks, having already signed protocols with more than 60 WTO member states. All applicants for WTO membership must negotiate bilateral accords with any WTO member that requests one. As with most WTO decisions, any single Member has the power to block Russian accession. The only bilateral talks that remain unresolved are the negotiations with Ukraine and Georgia. Despite historic strains on trade issues between the two countries, Kiev has indicated that it intends to help facilitate Moscow's membership in the global trade body.<sup>154</sup> As for Georgia, although it completed a bilateral accession deal with Moscow in 2004, it withdrew its signature from that agreement two years later.<sup>155</sup> Georgia again broke off bilateral talks with Russia in April 2008, saying that it would veto Russia's bid unless the country agreed to stop operating customs checkpoints in Georgia's separatist territories of Abkhazia and South Ossetia. Georgia also wants Russia to lift its ban on imports of Georgian wine and other products.<sup>156</sup>

Michael Emerson argues that it would be in the West's interest to include Russia in its political, economic and security plans, as both aim at common objectives.<sup>157</sup> True partnership between Russia and the EU seems essential to security and prosperity on the European continent in the XXI century.<sup>158</sup> Furthermore, cooperation seems to be a plausible way to improve relations with Russia.<sup>159</sup> This is not always easy since there are contradictory positions of the EU toward Russia.<sup>160</sup> The new EU Member States do not think in the same way as

<sup>150</sup> Bridges Weekly, "Amid new Talks, Russia Could Complete WTO Accession this Year," Vol. 12, No. 6, 20 February 2008, available at <http://www.ictsd.org/weekly/08-02-20/inbrief.htm>

<sup>151</sup> See the statement made by European Commission spokesman for trade Peter Power, available at [http://ec.europa.eu/trade/issues/bilateral/countries/russia/pr010408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/russia/pr010408_en.htm)

<sup>152</sup> Bridges Weekly, "Despite Obstacles, EU Expects Russia to Join WTO This Year," Vol. 12, No. 23, 25 June 2008.

<sup>153</sup> Mandelson, P. "Russia and the EU: Building Trust on a Shared Continent," Speech at conference "Russia in the 21<sup>st</sup> Century," Moscow, 19 June 2008, available at

[http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/sppm208\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm208_en.htm)

<sup>154</sup> Ibid.

<sup>155</sup> Bridges Weekly, "End of Road not yet in Sight for Russia's WTO Accession," Vol. 10, No. 35, 25 October 2006, available at <http://www.ictsd.org/weekly/06-10-25/story2.htm>

<sup>156</sup> Bridges Weekly, "Despite Obstacles, EU Expects Russia to Join WTO This Year," Vol. 12, No. 23, 25 June 2008.

<sup>157</sup> Michael Emerson, "Time to think of a strategic bargain with Russia," *Centre for European Policy Studies, Policy Brief No. 160*, May 2008.

<sup>158</sup> Mandelson, P. "Russia and the EU: Building Trust on a Shared Continent," Speech at conference "Russia in the 21<sup>st</sup> Century," Moscow, 19 June 2008, available at

[http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/sppm208\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm208_en.htm)

<sup>159</sup> Paami Aalto argues that the difficult question of the EU's responsibilities toward Russia is best approached as a problem of community. Applying a broad notion of the wider European community can make it easier for the Union to be sensitive vis-à-vis its gigantic neighbour to the east and, as a consequence, to define its policies toward it. The issue of belonging and identity are thus fundamental to delineating the EU's responsibilities toward Russia regardless of whether we speak of the EU-Russia strategic partnership or the regional cooperation level. See Aalto, P. "The EU, Russia and the Problem of Community," in Mayer, H. & Vogt, H. (eds.) *A Responsible Europe? Ethical Foundations of EU External Affairs*, Palgrave, 2006, pp. 98-118.

<sup>160</sup> In Fraser Cameron's view, speaking with one voice vis-à-vis Russia, although it is difficult in some areas, is likely to produce far greater benefits for the EU than trying to cut bilateral deals. See EurActiv, "EU-Russia relations 'should be more positive'," 9 April 2008, at <http://www.euractiv.com/en/foreign-affairs/cameron-eu-russia-relations-positive/article-171457>

the old EU Member States vis-à-vis Russia for historical reasons. At the St Petersburg Summit in May 2003, the EU and Russia agreed to reinforce cooperation with a view to creating four EU/Russia common spaces, within the framework of the existing Partnership and Cooperation Agreement. It was decided to create a common economic space; a common space of freedom, security and justice; a space of co-operation in the field of external security; as well as a space of research and education, including cultural aspects.

Regarding the common economic space, it aims at increasing opportunities for economic operators, a further step towards establishing a more open and integrated market between the EU and Russia. The main objective of the common economic space is to put in place the conditions for increased and diversified trade and create new investment opportunities by pursuing economic integration, elimination of trade barriers, regulatory convergence, market opening, trade facilitation and infrastructure development by closer cooperation, exchange of information, and sharing of best practices.<sup>161</sup> The roadmap on the common economic space was adopted at the EU-Russia Summit in Moscow on 10 May 2005 and provides for various dialogue *fora*. The idea behind the common economic space is to prepare the ground for a future and deep free-trade agreement. However, there has been little substantial progress so far.

In sum, Russia's economy, although strong, still has structural weaknesses. It needs to diversify its economy into other sectors such as services and investment in critical parts of infrastructure. Moreover, education and research are under-resourced.<sup>162</sup> In this sense, it is worth noting that Russia has formed a new government body designed to control foreign investment in so-called "strategic" sectors, whereby acquisitions of interest exceeding 25 per cent of voting shares in Russia's strategic commercial organizations by foreign investors must be approved by the special governmental commission. Furthermore, companies operating in "strategic" sectors cannot place more than 25 per cent of shares outside Russia. Russian companies doing geological exploration and extraction of resources at strategic deposits are not allowed to place more than 5 per cent of shares overseas.<sup>163</sup>

### A Note on Energy Security<sup>164</sup>

As mentioned earlier, the common economic space provides for various dialogue fora, the most relevant of which is certainly the energy dialogue.<sup>165</sup> At the Sixth EU-Russia Summit on 30 October 2000, it was agreed to institutionalize an energy dialogue on a regular basis between the EU and Russia to enable progress to be made in the definition and arrangements for an EU-Russia Energy Partnership. Russia has been a reliable supplier of energy into the EU for many years, despite periods of internal difficulties.<sup>166</sup> Likewise, the EU continues to be the dominant market for Russian energy exports. This strong mutual interest and interdependence means that energy is an ideal sector in which relations can be progressed significantly for the further development of an EU-Russia strategic partnership.<sup>167</sup>

EU dependency on Russian gas imports is currently over 40% and is expected to rise considerably in the coming decades, unless supply sources are diversified and/or greater emphasis is placed on locally generated renewable sources of energy.<sup>168</sup> Unlike oil, which can be transported easily in tankers, gas is still transported

<sup>161</sup> European Commission, "Russia," available at [http://ec.europa.eu/trade/issues/bilateral/countries/russia/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/russia/index_en.htm)

<sup>162</sup> Mandelson, P. "Russia and the EU: Building Trust on a Shared Continent," Speech at conference "Russia in the 21<sup>st</sup> Century," Moscow, 19 June 2008, available at

[http://ec.europa.eu/commission\\_barroso/mandelson/speeches\\_articles/sppm208\\_en.htm](http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm208_en.htm)

<sup>163</sup> Blagov, S. "Russia Sets Up New Commission to Control Foreign Investment in 42 Strategic Sectors," BNA International Trade Reporter, 17 July 2008.

<sup>164</sup> By energy security, we mean the threats of supply and price disruptions arising from risks associated with the sources of oil and gas supplies, the transit of oil and gas supplies, and the facilities through which oil and gas are delivered. There are two major dimensions of these risks:

- *short-term* supply availability versus *long-term* adequacy of supply and the infrastructure for delivering this supply to markets;

- *operational* security of oil and gas markets, i.e., daily and seasonal stresses and strains of extreme weather and other operational problems versus *strategic* security, i.e., catastrophic failure of major supply sources and facilities.

For further details on the definition of energy security, see Stern, Jonathan, "Security of European Natural Gas Supplies. The Impact of Import Dependence and Liberalization," July 2002, The Royal Institute of International Affairs, p. 6.

<sup>165</sup> See the European Commission's report "EU-Russia Energy Dialogue, Sixth Progress Report," October 2005; Grant, C. & Barysch, K. "The EU-Russia Energy Dialogue," Centre for European Reform, May 2003.

<sup>166</sup> For an analysis of Russia's exponential macroeconomic success based on energy supply, see Vinhas de Souza, Lúcio, *A Different Country. Russia's Economic Resurgence*, Centre for European Policy Studies, Brussels, 2008, pp. 73-82.

<sup>167</sup> EU Commission., "European Union – Russia Energy Dialogue," at [http://ec.europa.eu/energy/russia/overview/why\\_en.htm](http://ec.europa.eu/energy/russia/overview/why_en.htm)

<sup>168</sup> Former Spanish Prime Minister Felipe González voiced the importance of tackling the issue of Europe's energy dependency at a reflection group launched by EU leaders at a summit in December 2007. At the summit, González asked EU leaders to reconsider their position on nuclear power. See EurActiv, "González voices bold ambitions for EU 'reflection group'," 15 January 2008, available at <http://www.euractiv.com/en/future-eu/gonzalez-voices-bold-ambitions-eu-reflection-group/article-169552>

mainly via pipelines, making Europe dependent on existing supply and transit routes. The need for the EU to diversify supplies was underlined by a dispute between Ukraine and Russia in January 2006, which led to interruptions to supplies of Russian gas for some EU Member States.<sup>169</sup> The EU was understandably alarmed since about 25% of all gas consumed in the EU originates from Russia, and 80% of it is shipped via pipelines crossing Ukraine. The dispute between Ukraine and Russia recalled a quarrel in 2006 when deliveries to Western Europe were briefly interrupted, highlighting the EU's dependency on Russian gas and prompting it to seek new supply routes.<sup>170</sup> One wonders how reliable Russia is as an energy supplier.

Despite the need for the EU to diversify supplies of gas, Greece and Russia signed an agreement on 29 April 2008 to start construction on the South Stream pipeline. South Stream was launched in 2007 by Italy's Eni and Russia's Gazprom. It is designed to pump 30 billion cubic meters of Russian gas a year to Europe, under the Black Sea via Bulgaria, Greece, Serbia and Croatia to Italy. Under the plans, one of its branches will go through Hungary, which recently joined the project, and reach Austria.<sup>171</sup>

By contrast to this project, another natural gas pipeline called Nabucco would bring gas from the Middle East and Central Asia to Europe via Turkey, Bulgaria, Romania, Hungary, and Austria.<sup>172</sup> The project, scheduled to be completed by 2013, is geopolitically significant because it will bypass Russia, but has encountered financial problems and a lack of political will from some EU Member States.<sup>173</sup> Recently, Russian Ambassador to the EU Vladimir Chizhov dismissed the potential of the Nabucco project, especially the plans to bring gas from Turkmenistan or Azerbaijan, arguing that the resources of the two Central Asian countries would be insufficient. The only way to fill the Nabucco pipeline is with Iranian gas, he said.<sup>174</sup>

Generally, the EU is in a weak position since it needs energy security. Russia has been making an autocratic use of its energy policy. The EU continues to have considerable dependence on Russian energy supply: the share of EU imports from Russia is 30% in the case of oil and 44% in the case of natural gas.<sup>175</sup> So the EU should diversify its energy supply sources by dealing with alternative markets such as the Middle East, Norway,<sup>176</sup> or Algeria.<sup>177</sup>

## 7. Conclusion

The EU is definitely an attractive partner for China and Russia as it provides much in its trade relations. Although the EU does want cooperation with both countries, in my opinion using trade policy as a "carrot" in a policy centered approach does not have much scope beyond current existing efforts. The European Commission's Directorate-General for external trade is already very active and so few new initiatives seem possible. As expressed earlier, with Russia and China, an FTA with the EC does not seem to be a suitable trade instrument at the moment. Nevertheless, the EU can expect a mutual benefit as well as greater economic and political ties.

What remains to be done? In my opinion, it is not about what, but how you negotiate: the European Commission should negotiate more constructively, without patronizing, and instead accepting China and Russia as equal players. The EU is not in a stronger position vis-à-vis China and Russia due to the large Chinese market and China's growing economic and political power. In Russia's case, the renaissance of the country's self-confidence seems evident thanks to its vast energy supply. Nevertheless, I maintain my point that Russia should have as a priority the conclusion of negotiations to enter the WTO in order to fully integrate into the global trading system and protect its growing interests on world markets. WTO membership will certainly help eliminate any discrimination against Russia in its trade and investment. Moreover, on energy Brussels should diversify its energy supplies in order to overcome the EU's dependency on Russia, and greater emphasis should be placed on locally generated renewable sources of energy.

<sup>169</sup> EurActiv, "EU seeks new supply routes in wake of Russia-Ukraine gas row," 29 June 2007, available at <http://www.euractiv.com/en/energy/eu-seeks-new-supply-routes-wake-russia-ukraine-gas-row/article-151692>

<sup>170</sup> Landsbergis, V. "Why we must learn to say No to Russia," *Europe's World*, 24 July 2008.

<sup>171</sup> EurActiv, "Greece seals pipeline agreement with Russia," 30 April 2008, available at <http://www.euractiv.com/en/energy/greece-seals-pipeline-agreement-russia/article-172044>

<sup>172</sup> EurActiv, "EU in quest to secure Middle East gas supplies," 6 May 2008, available at <http://www.euractiv.com/en/energy/eu-quest-secure-middle-east-gas-supplies/article-172163>

<sup>173</sup> EurActiv, "Greece seals pipeline agreement with Russia," 30 April 2008, available at <http://www.euractiv.com/en/energy/greece-seals-pipeline-agreement-russia/article-172044>

<sup>174</sup> Ibid.

<sup>175</sup> See European Commission, "The European Union and Russia: Close Neighbours, Global Players, Strategic Partners," Office for Official Publications of the European Communities, Belgium, 2007, p. 13.

<sup>176</sup> That said, North Sea oil and gas fields have already been exploited beyond their peak. See EurActiv, "Geopolitics of EU energy supply," 18 July 2005, available at <http://www.euractiv.com/en/energy/geopolitics-eu-energy-supply/article-142665>

<sup>177</sup> EurActiv, "EU manoeuvring for non-Russian gas supplies," 15 April 2008, available at <http://www.euractiv.com/en/energy/eu-manoeuvring-non-russian-gas-supplies/article-171622>