The Politics of Trade Preferences:
Business Lobbying on Service Trade
in the United States and the European Union

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LIST OF ABBREVIATIONS

AA	American Airlines
AEA	Association of European Airline
AF	Air France
AIG	American International Group
ALPA	US Airline Pilot Association
APEC	Asian-Pacific Economic Cooperation
AT&T	American Telephone and Telegraph Company
ATA	Air Transport Association
ATW	Air Transport World
AZ	Alitalia
BA	British Airways
BIAC	Business Industry Advisory Committee
BMVBW	*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, German ministry
BMWA	*Bundesministerium für Wirtschaft und Arbeit*, German ministry
BT	British Telecom
CAB	US Civil Aeronautics Board
CAPA	US Coalition of Airline Pilots Association
CCITT	International Consultative Committee for Telephones and Telegraph of ITU
CompTel	Competitive Telecom Association
CRAF	Civil Reserve Air Fleet
CSI	→ USCSI
CT	Continental Airlines
DG	Directorate-General

DG TREN	DG Transport and Energy of the European Commission
DIGITIP	*Direction générale de l'industrie, des technologies de l'information et des postes*, part of MINEFI
DL	Delta Airlines
DoC	US Department of Commerce
DOD	US Department of Defense
DOT	US Department of Transport
DREE	*Direction des relations économiques extérieures*, part of MINEFI
DTAG	Deutsche Telekom AG
ECAC	European Civil Aviation Conference
ECTA	European Competitive Telecommunications Associaton
EEA	European Economic Area
EICTA	European Information and Communication Technology Association
ELFAA	European Low Fares Airline Association
EP	European Parliament
ERAA	European Regional Airline Association
ERT	European Roundtable of Industrials
ESF	European Service Forum
ETNO	European Telecommunications Network Operators' Association
EU	European Union
FAA	Federal Aviation Administration, US regulatory agency
FCC	Federal Communications Commission, US regulatory agency
FT	France Télécom
GATS	General Agreement on the Trade of Services
GATT	General Agreement on Trade and Tariffs
GBT	→ NGBT
GDP	gross domestic product
IATA	International Air Transport Association
IATA	International Air Transport Association
IB	Iberia Airlines
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce

ICT	Information and Communication Technology
INTUG	International Telecommunications Users Group
IPE	international political economy
IT	→ ICT
ITA	International Trade Administration
ITU	International Telecommunication Union
ITUG	International Telecom User Group
KLM	Royal Dutch Airlines
KPN	Dutch Network Operator
LH	Lufthansa
MFN	most-favored nation principle
MINEFI	*Ministère de l'Economie, des Finances et de l'Industrie*, French ministry
MS	Member states of the EU
NCPI	New Commercial Policy Instrument of the EU
NGBT	Negotiating Group on Basic Telecommunication Services, later renamed GBT
NW	Northwest Airlines
OECD	Organization for Economic Co-operation and Development
Oftel	Office of Telecommunications, UK Regulatory Agency
PAC	Political Action Committee
PanAm	Pan American Airlines
PTA	Telekom Austria AG
PTT	Post, telephone and telegraph sector or administration
RBOC	regional bell operating company
RegTP	*Regulierungsbehörde für Telekommunikation und Post*, German regulatory agency
SAS	Scandinavian Airline System
TA96	Federal Telecom Act in the US
TABD	Transatlantic Business Dialogue
TAP	TAP Air Portugal
TCAA	Transatlantic Common Aviation Area

TI	Telecom Italia
TRIPs	trade-related aspects of intellectual property rights
TWA	Trans World Airlines
UAL	United Airlines
US	United States
USCIB	United States Council for International Business
USCSI	Coalition of Service Industries
USTA	United States Telecom Association
USTR	United States Trade Representative
WTO	World Trade Organization

PREFACE

Many institutions and people have contributed to this research and I would like to express my gratitude to them. Any dissertation is an intellectual journey, but this particular one has literally brought me to nine different cities and made me move into six different apartments, a research task that I would have never been able to carry out on my own. Therefore, my most immediate thanks go to all the institutions that have supported me financially. While at the *Institut d'études politiques (IEP) de Paris*, I have benefited from the *Bourse Europe* of the *Fondation Nationale des Sciences Politiques* and the friendly support of the *Centre européen*. In Germany, I had the privilege of working as a doctoral fellow at the Max Planck Institute for the Study of Societies in Cologne under the supervision of Wolfgang Streeck, which enabled me to carry out the extensive field research in Europe. During my stay in Washington D.C. from March through June 2003, I benefited from a *Deutscher Akademischer Austausch Dienst* (DAAD) stipend of the American Institute for Contemporary German Studies (AICGS) at Johns Hopkins University. I thank Cathleen Fisher, Jackson Janes and Stephen Silvia at AICGS for this wonderful opportunity. Jeffrey Anderson and Pascal Delisle furthermore enabled me to stay simultaneously as a visiting scholar at the BMW Center for German and European Studies at Georgetown University. In the early phases of my research, I have also benefited from a EUSSIRF grant to organize my thoughts during a one month stay at the European University Institute in Florence.

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ABSTRACT

In the analysis of international liberalization, there is a sense that incumbent firms with important stakes in their home markets will lobby against the entrance of foreign competitors. This should be especially true in the markets of network services, which were traditionally structured around monopoly provision in most countries. But are incumbents really opposed to the liberalization of their markets? This dissertation studies the lobbying of incumbents concerning the international service trade negotiations in two sectors – telecommunications and air transport – and two countries – the US and the EU. It demonstrates that large service providers have actually lobbied in support of the liberalization of their sectors, with the exception of US airlines, which prefer preserving the current system. It then seeks to explain this support for liberalization by testing four variables that might weigh on the policy stances of large firms: economic incentives, domestic regulatory traditions, international regimes and policy processes. In line with traditional trade policy literature, it finds that economic incentives play an important role, but it also highlights the effect of political processes and institutions on the trade preferences of economic actors. In particular, the multi-level process of EU policy making provides an incentive to lobby in support of liberalization. This conclusion highlights the importance of endogenizing the preferences of economic actors into a theory of the policy process, as preferences evolve over the course of business-government interactions.

INTRODUCTION

In the last 25 years, service markets worldwide transformed profoundly. Not long ago, services were considered in categories quite different from the trade of goods, as "invisibles". Domestically, they were traditionally heavily regulated, either in the pursuit of a universal service objective or to ensure standards for their production, sales and safety that would make them comparable for consumers. At the end of the 20th century, ideas had changed: services had become items appropriate for international trade and governments increasingly chose to withdraw the extensive controls they used to maintain over service provision. The competition paradigm that came to affect service policy debates across industrialized countries first manifested itself in US politics in the mid-1970 (Derthick/Quirk 1985; Peltzman/Winston 2000).[1] In many instances, the US emphasis on consumer benefits and competition in service markets inspired or ran parallel to similar political initiatives elsewhere, most notably in the United Kingdom (UK) and the European Institutions. For the European Union (EU), the Single Market project for 1992 – with its ambitions to ensure the free movement of goods, services, persons and capital[2] – set the stage for the comprehensive integration of a growing list of service markets (Schmidt 2004), an especially difficult task

[1] Continuing well into the 1990s, the deregulation wave covered many important service industries, such as airlines (Kasper 1988; Pickrell 1991), trucking (Robyn 1987; Teske 1994), railroads (Grimm/Winston 2000), banking and telecommunications (Evans 1983; Crandall/Hausman 2000).

[2] On the single market project of the EU more generally, see Sandholtz and Zysman (1989), Moravcsik (1991), Armstrong and Bulmer (1998), or Wallace and Young (2000).

since many of these sectors were formerly public service sectors (Geradin 1999).[3] In parallel, international trade negotiations during the Uruguay Round gave rise to the General Agreement on the Trade of Services (GATS), which is today part of the World Trade Organization (WTO) (Messerlin/Sauvant 1990; Drake/Nicolaïdis 1992; Sauvé/Stern 2000; Stephenson 2000; Mattoo/Sauvé 2003).[4]

These considerable transformations were puzzling for scholars, particularly in the US, because deregulation occurred in sectors with entrenched interests supportive of the status quo. The dominant conceptualization of political exchanges pointed to the rent-seeking of firms as the cause of regulation: special interests benefit from and lobby for regulation, which the government decides to put into place in exchange for votes, support or financial contributions.[5] In the face of pervasive deregulation, political scientists therefore cited ideas and institutions as crucial means of bringing about policy change and shielding politicians from the reach of special interests (Derthick/Quirk 1985; Robyn 1987). In the EU, where integration of service markets required the often extensive dismantling of public or monopoly service provision, scholars highlight the dynamics of the EU integration process and the impressive activism of the European Commission (e.g. Schmidt 1998), which acts both as a norm entrepreneur and a new level of policy production. In the WTO context, the rise of services rests seemingly on the influence of new ideas (Drake/Nicolaïdis 1992), the lobbying

[3] Early achievements of the 1992 program were the facilitation of financial service trade (Molyneux 1996) and the harmonization of horizontal issues affecting services. The internal air transport market was liberalized in three packages in the 1990s (Kassim 1996; Holmes/McGowan 1997; O'Reilly/Stone Sweet 1998), telecommunication markets are fully liberalized since 1998 (Schmidt 1998; Thatcher 2001), agreement on the liberalization of postal services has been reached in 1997 (Geradin 2002), and gas and energy markets are in the process of being liberalized (McGowan 1996; Andersen 2001; Eising/Jabko 2001; Eising 2002), with full liberalization set for 2007. Harmonization or further integration furthermore affected road haulage, inland water transport, rail and maritime transport (Dobbin 2001; Kerwer/Teutsch 2001).

[4] In principle, the GATS applies to all services with the exception of government services and international air transport, but it leaves it up to governments to make offers or take exemption on specific industries or issues, which are negotiated on a sectoral basis.

[5] This argument resumes the central claim of the theory of economic regulation, developed most notably Stigler (1971; 1972), Posner (1974), Peltzman (1976), Becker (1983) with reference to the concept of rent-seeking (Buchanan/Tollison/Tullock 1980).

of user companies and the issue-linkage between different sectors, which enables negotiators to tie service liberalization to demands in the more difficult field of agriculture.

Due to the wealth of these ideational and institutional explanations, an investigation of lobbying of incumbent providers has been somewhat neglected. Implicitly or explicitly, most treatments of service liberalization assume that the incumbent service providers prefer the status quo to increased competition in their markets. The story of liberalization then becomes an account of how these incumbent interests had to cede to the new competition paradigm, imposed either by consumers, users, policy-makers, or supranational and international organizations. But are incumbents really opposed to the liberalization of their markets?

While this assumption is probably accurate for early deregulation of service markets and for national contexts, it is somewhat problematic for international service trade negotiations. As this dissertation will show, large European and American service providers in two sectors – telecommunications and air transport – were not necessarily against the liberalization of their markets; on the contrary, telecom providers in the US and the EU actively supported liberalization through the WTO and EU airlines even designed a blueprint for further transatlantic air transport liberalization outside of the WTO. This observation is curious: why are large service providers in support of liberalization? Especially in the EU, where these firms have had a privileged monopoly position, often even a public one, we would expect firms to seek protection of their home markets. How can we explain that service providers support liberalization in the context of international trade negotiations?

Turning to trade policy studies more generally, we find that firms which actively support liberalization are nothing new to political science theory. It is true that the most common assumption of trade policy analysis supposes that firms commonly lobby for

protectionism.[6] However, Milner (1987; 1988a; see also Milner/Yoffie 1989), Destler and Odell (1987) Gilligan (1997) and Chase (2003) have shown that exporting companies are interested in foreign market opportunities and therefore tend to promote reciprocal free trade arrangements, while import-competing firms are protectionist. Yet these propositions are insufficient for an understanding of the policy stances of the service providers studied. Service providers in support of liberalization do cite foreign market access as an important motivation, but they might nonetheless be income-competing firms, where the home market remains crucial. As we should expect from theory, telecom operators were indeed hesitant, when they first heard about liberalization, but eventually turned to support it.

This dissertation tries to understand this change in the policy stance of large firms by posing as its central question: what affects the decision of firms to support liberalization or protectionism? Put more abstractly, what factors weigh on the policy stances of economic actors? The existing literature on trade policy lobbying privileges the role of *economic conditions*, and this hypothesis will be examined in detail. In addition, other less studied elements are also considered: the role of *regulatory traditions* at the national level, the effect of the *international regime* that governs service trade in the two cases studied, and the role of the trade *policy process* in which firms lobby. The research design responds to these interrogations. With telecommunication services and international air transport, it juxtaposes two sectors governed by very different international regimes. By comparing the US with the EU, it studies two quite different policy processes and allows examining service firms that have been exposed to early deregulation with firms whose domestic markets were only deregulated recently.

[6] For examples of current studies see Colin, Brooks and Carter (1998), Goldberg and Magee (1998), Goldberg and Maggi (1999), or Baldwin and Magee (2000).

The findings of the dissertation largely confirm the hypotheses centered on economic conditions but propose important modifications to it. While the degree of export activities and internationalization of a firm corresponds to the degree of liberalization support between firms of the same sector, it does not indicate how much exporting or international orientation is necessary for firms to lobby actively for liberalization. Indeed, this threshold seems to be quite variable and depends on the other three factors studied. Of the three, regulatory traditions and international regimes can act an initial catalyst or deterrent to trade policy lobbying, but their effect decreases over time. Policy processes, in turn, shape the strategic environment of a firm to the same degree as economic conditions and need to be taken into account. In particular, the multi-level policy process of the EU acts as an incentive to lobby for liberalization even in sectors where firms have only a low degree of internationalization.

At a more general level, the discussion of the different elements highlights that trade policy stances of economic actors are the result of a multi-causal process and evolve over time. By underlining this evolution, the dissertation takes issue with traditional trade policy theory, most particularly with those models that treat economic interests as "input" to governmental decisions. Treating economic interests as given *a priori* impedes a study of the transformation of policy preferences of business actors and therefore leads to flawed assumptions about trade policy dynamics, in particular by obscuring the effect of political institutions on policy preferences.

1. Studying business lobbying: beyond political input

Before returning to the empirical discussion, it is useful to examine this general theoretical argument in some more detail. The interests of economic actors have long been

considered an important element of policy-making, in particular in the field of trade policy,[7] but how should one study them? According to Frieden (1999), there are three common approaches to the study of economic interests: observation, assumption and deduction. While assumption and deduction often go hand in hand, many scholars are mistrustful of observation. Even in the 1960s, when Bauer, Pool and Dexter (1972 (1963)) first presented their project for a study of the attitudes of American firms on trade policy, for which the authors gathered 900 survey responses and undertook over 500 interviews, the audience was skeptical.

> When we inaugurated this study, one prominent economist told us we were wasting our time. "Tell me what a businessman manufactures," he said, "and I will tell you where he stands on foreign trade," (Bauer/Pool/Dexter 1972 (1963): 3).

Beyond the epistemological difficulties a scholar might have in gathering information about policy preferences of firms, so the argument of the economist cited here, observation is not even useful, because economic theory can predict well the attitudes of firms towards foreign trade.

This preference for the deduction of policy stances from economic theory is indeed characteristic of the mainstream literature on trade policy lobbying, rooted mainly in the field of political economy and international political economy (IPE). It is connected to a second common premise of this literature: the idea that economic interests are inputs to the political process. In fact, mainstream political economy is most often interested in another phenomenon, a policy outcome, for example, which it seeks to explain by means of a variety of inputs, of which business interests are one. In this demand-side conceptualization of policy-making, interests are assumed to be fixed, which justifies deducing them from theory. In this dissertation, I question this reasoning by approaching it from the other side. Instead of

[7] Schattschneider's (1935) classic study of the Smoot-Hawley bill is one of the earliest examinations of the role of business interests in trade policy making.

deducing interests, I observe revealed policy preferences and show that they are instable. Since policy preferences and not basic interests inform the policy process, this instability leads me to question that business lobbying should only be considered an input into policy-making. In some cases, I argue, it is more useful to endogenize preferences into the trade policy process.

The following section elaborates these premises of the political economy perspective on business lobbying and highlights its shortcomings for an understanding of business lobbying over time. It then turns to the question of temporality in particular and proposes to adopt a more historical approach to preference evolution.

1.1. The political economy perspective on trade policy lobbying

The demand-side conceptualization of business lobbying has its roots in economic writing and more particularly in the school of economic regulation. Asking why the optimal solution of free trade is so rarely put into place, economists and rational choice theorists argue that regulation is the result of the lobbying of a rent-seeking industry (Tullock 1967; Stigler 1971; Peltzman 1976; Pincus 1977; Buchanan/Tollison/Tullock 1980; Krueger 1995; McChesney 1997). This idea has informed the mainstream literature in international political economy (IPE). As Frieden and Martin (2002: 126) underline, "most IPE scholarship on foreign economic policy-making begins with an explicit or implicit model in which politicians confront a combination of pressures from concentrated interests and the broad public."[8] Since much of the literature on the EU has been undertaken by specialists in international relations theory, the assumptions of business influence even inform integration theory (Grossman

[8] This "demand-side" model of trade policy-making, they point out, is most often derived from the economic theories, but sometimes also from Marxist concerns about the role of capitalists in the economic system (see also Gilpin 1987: 25-41). For an example of the first, see Frey (1984). The works of Wallerstein (1979) and Chase-Dunn (1995; 1998) are illustrative of the second approach.

2004). In liberal intergovernmentalism, economic interests have the most explicit role: they are an important input into national preference formation, which forms the basis for intergovernmental bargaining (Moravcsik 1993; Moravcsik 1998). In all of these models, groups articulate preferences, governments aggregate them (Frieden/Martin 2002: 120). Political institutions enter into consideration only in the translation of economic interests into political outcomes (cf. Hall 2004). They determine the responsibilities of various sets of decision-makers and veto-players, shape the access of actors to the political process or affect the structure of information and therefore determine the weight and consideration given to specific private or public interests.

Over time, the initial assumption of these models turned out to be excessively rigid. If business interests are fixed, and government is just the passive supplier of regulation, then what explain a change in policy outcomes (such as the trend towards deregulation, for example)?[9] Many authors have grappled with this question and have proposed important modifications. While traditional models in the field of political economy are explicitly based on well-specified economic and political institutions, economists have more recently become interested in variations in political institutions and their effects on economic outcomes (Persson/Tabellini 2000; Helpman/Persson 2001; Persson/Tabellini 2003). Attempts to model the effect of different sets of institutions on lobbying have been quite fruitful, showing the impact of the relative strength of the legislative over the executive (Bennedsen/Feldmann 2002), the electoral system (Grossman/Helpman 1996; Besley/Coate 2001) or decision-making rules (Persson/Tabellini 1999). They have furthermore arrived at a more comprehensive vision of lobbying in the political process, moving away from a concentration on campaign contributions only to include the issue of agenda-setting power and

[9] See Peltzman (1989).

informational lobbying (Anderson/Zanardi 2004; Knight 2004). Political contexts also affect the government's interest in the lobbying of special interests (Grossman/Helpman 1994; Grossman/Helpman 2001). Variations in economic and political institutions thus constitute a part of this "endogenous trade policy" theory.[10] However, only political institutions are endogenous, economic interests remain exogenous. Institutions merely affect the ways in which fixed interests of different societal groups can or will be aggregated.

Until the 1980s, the assumption about the nature of business interests was simple: firms are naturally protectionist. When trade policy scholars showed that firms sometimes do support liberalization (Destler/Odell 1987; Milner 1988b; Gilligan 1997), this was accommodated by referring to a different set of economic theories. In the IPE literature today, business demands are not just assumed, they are deduced from models predicting differential benefits from trade. The most common way for scholars in IPE to think about "business interests" is to analyze the production conditions with the help of economic theorems such as the Stolper-Samuelson or the Ricardo-Viner approach, which yield a number of "maps" predicting business preferences.[11] According to the factor endowment model based on the Stolper-Samuelson theorem, capital in capital-rich countries is supportive of free trade, while labor is protectionist (Rogowski 1989). Within the context of similar sectors, the Ricardo-Viner approach is more helpful: specifically, labor and capital in import-competing industries favors protection, while those in export competing industries favor free-trade (Alt/Gilligan 1994). In imperfectly competing industries, small firms, or firms of smaller countries will also be protectionist (Milner/Yoffie 1989).

[10] Endogenous trade policy theory thus elaborates on the theory of economic regulation by considering variations on the political, the aggregation side of the exchange model, within the theory. See Magee, Brock and Young (1989) or for an overview Gawande and Krishna (2002).

[11] The two approaches will be examined in more detail later. See Frieden and Martin (2002) for their application to IPE.

To summarize, the mainstream literature on business lobbying is marked by three related premises: (1) Business lobbying is an input to policy-making, which then becomes aggregated through political institutions. (2) Given a specific set of economic conditions, the preferences of firms will be stable. (3) The content of such lobbying demands can therefore be derived from economic theory, because businesses are rational economic actors which will always pursue the policy alternative that promises the largest profit.

By studying business lobbying through observation, this dissertation explicitly questions the last two premises, which implies raising doubts about the first. It demonstrates that the content of business lobbying is affected by both economic conditions and political considerations, especially when economic incentives are ambiguous. Since political considerations are important for business lobbying, the content of demands may evolve over the course of business government interactions. Treating economic interests as input will then be misleading, because the demands of firms are not always stable over time. Studying business lobbying with a temporal perspective, however, places this research between two theoretical approaches: the mainstream literature on trade policy lobbying and a historical institutionalist approach, which endogenizes the preferences of economic actors into the political process it studies.

1.2. Endogenizing preferences

The aggregation-only vision of institutions dominant in the IPE lobbying literature is similar to the premises of rational choice institutionalism and has in the past has been criticized by the literature on historical institutionalism (see Steinmo/Thelen/Longstreth 1992; Thelen/Steinmo 1992; Thelen 1999; Pierson/Skocpol 2002). The diverse studies in this literature differ in their methodologies and their approaches, but they are all concerned with

the question of temporality and the weight of historical contexts on successive events (cf. Hall/Taylor 1996).[12] Most importantly, these authors investigate the effect of institutional conditions not only on actors' strategies within a given context, but also on the goals actors pursue. Hall (1986: 19) underlines this point in his comparison of economic policy making in Britain and France:

> Institutional factors play two fundamental roles in this model. On the one hand, the organization of policy-making affects the degree of power that any one set of actors has over the policy outcomes. On the other hand, organizational positions also influence an actor's definition of his own interests […]. In this way, organizational factors affect both the degree of pressure an actor can bring to bear on policy and the likely direction of that pressure.

Ellen Immergut (1998: 20) has further explained this attention to the political construction of interests:

> Much confusion has been caused by efforts of historical institutionalists to endogenize the political construction of interests to their models. This does not mean that institutions radically re-socialize citizens in a revived version of social determinism or that norms dictate to actors what should be their behavior […]. Instead, institutions act as filters that selectively favor particular interpretations either of the goals towards which political actors strive or of the best means to achieve these ends.

For trade policy, this means that not only the degree to which firms can lobby their government or obtain concessions is endogenous to the model, but also the content of the demands firms lobby for. From a historical institutionalist perspective, a firm's interest in either protectionism or free trade, for example, cannot be taken for granted.

The importance of a historical institutionalist perspective has gained wide acceptance for the study of political and economic issues such as the welfare state or economic production systems, domestic regime change, European integration or international cooperation.[13] However, only few authors use this approach to analyze trade policy, and those

[12] For a rationalist version of historical institutionalism, see Pierson (2000a), for a sociological perspective Mahoney (2000).

[13] All of these strands are quite extensive. For an overview of the literature on welfare states see Pierson (2000b); on economic policy and production systems (Crouch/Streeck 2000; Hall/Soskice 2001a); on domestic regime

who do are interested primarily in the effects of increasing trade openness on national economic policies and politics (Garrett 1996; 1998; McKeown 1999) rather than trade policy-making itself. Garrett and Lange (1995) are a notable exception, but their game-theoretical perspective shifts the focus away from the evolution of preferences and concentrates on the mediating effect of institutions only.[14]

Applying a historical institutionalist perspective to the study of trade preferences of economic actors, is useful, however, and manifests in a quite different treatment of temporality. For our purpose, the central conceptual difference between the perspective of historical institutionalism and the mainstream IPE literature on business lobbying is the treatment of time. While historical institutionalism seeks to explain policy evolution over time – and the debate continues whether it can do so successfully – IPE attempts to model time as a series of strategic games. Evolution over time, scholars in IPE propose, can be approximated as a sequence of different games, where the items to be explained in one setting – the dependent variable – turns into the independent variable in another. Temporality then becomes a set of boxes which are all packed into each other, and by opening one after another, one can descend to an ever deeper level of variation (Frieden 1999; Lake/Powell 1999). In terms of such boxes, a policy outcome such as trade liberalization would be explained as the result of business lobbying and institutional variation. At a lower level, the content of business lobbying will be the result of a specific strategic setting. Another level below, a specific strategic setting will be the result of something else.

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change see Mahoney (2002); see Pierson (1996) for an application to European integration; and Simmons (1994) concerning international cooperation.

[14] The authors underline this explicitly (Garrett/Lange 1995: 629): "We will not discuss [preference formation] further, because the details of preference formation are not important to our argument. We concentrate on ways preference change can be expected to be filtered through political systems with different institutional attributes. We ask not how will a change in the structure of the international economy affect the preferences of domestic actors, but rather how will governments respond to these changes in preferences?"

There are two main limitations to the conceptualization of time as a series of strategic games. First of all, as the period of investigation increases, this dissection quickly becomes impractical. Second, dividing an analysis into separate games precludes an understanding of how elements between different games are connected. In the cases examined, we will see that nature of the policy process affects the content of business lobbying, which then in turn affects the policy outcome. This feedback loop between politics and business lobbying might simply be overlooked if one only models a game to explain the policy outcome.

1.3. A temporal perspective on business lobbying

As this discussion shows, an understanding of how the preferences of firms on trade evolve engages both international political economy and historical institutionalism, but so far, these two strands of literature have talked past each other. By applying a historical perspective to the empirical home domain of IPE, this dissertation seeks to nuance the assumptions that inform trade policy theories. Most importantly, it seeks to show that the content of trade lobbying evolves in the course of business-government interactions, which makes it difficult to conceptualize temporality as a set of separated strategic games. Furthermore, this preference evolution, I argue, is not only a response of different strategic positioning firms have in the international economy, but also a function of national regulatory traditions, the constraints of the international regimes that governs the firm's sector and the political institutions of its home country. While the preference maps provided by IPE are useful for understanding behavior of individual firms in one particular set of strategic interactions, they are only partially conclusive for an understanding of changing lobbying demands over time or differences in the lobbying of very similar firms in two different political systems.

Problematizing the goals which actors pursue is the central concern of this dissertation, from which the research design follows. Instead of responding to the economic literature directly by reasoning deductively about firm preferences, this research approaches the subject empirically. A study of evolution over time requires situating and analyzing the interactions between political actors and institutions in a temporal and geographical context. "Contextualized comparisons", Locke and Thelen (1995) have underlined, are therefore the most appropriate research strategy.

2. Large firms faced with international liberalization

2.1. Research design

To return now to the empirical research question: what determines the policy stances of economic actors on trade policy? The contextualized comparison pursued in this research concentrates on the four explanatory variables it seeks to examine. The four elements that might affect the policy stance of economic actors are: (1) economic conditions or the degree of international orientation of firms more particularly, (2) regulatory traditions at the national level, (3) the nature of the traditional international regime, and (4) the trade policy process of the government the firm has to lobby. By examining trade policy lobbying of American and European firms in the two service sectors telecommunications and international air transport, we have variation on all four of these dimension. The internationalization of firms varies within each sector, so that we can distinguish highly internationalized firms from home-market oriented firms irrespective of nationality. Domestic regulatory traditions vary between the two countries, since the US has deregulated its domestic markets earlier than the EU, but also within them, for example in telecommunication services, where the US had monopoly

services on local telephony but competition in long-distance telecommunications. We should therefore be able to distinguish the policy stance of "regulated" and "deregulated" firms. The international regime varies between the two service sectors. Even though both are governed by international organizations, service exchange in telecommunications has been firm based, while international air transport is negotiated between governments under the so-called "bilateral system". Since the existence of these bilateral agreements is often cited as the reason for the exclusion of air transport from the GATS, it remains to be seen if policy stances differ between airlines and telecommunication providers. The policy process, finally, differs between the federal US and the multi-level system of the EU.

At a more general level, studying the US and the EU and service sectors as the two dimensions of this investigation has been motivated by the following considerations. Most assumptions in the literature on trade policy lobbying are based on studies of the American policy process (e.g. Bauer/Pool/Dexter 1972 (1963); Baldwin 1985; Gilligan 1997; Grossman/Helpman 2001; Chase 2003). Studies of trade lobbying in Europe are rare and remain most often confined within national or EU boundaries (Bièvre 2002; Van den Hoven 2002; Schabbel/Wolter 2004), so that a study of EU trade lobbying has to rely primarily on US literature. However, it is questionable whether lessons from US trade policy-making are transferable to the complicated EU policy process. The ambition of the US-EU comparison is to examine to what degree one can theorize about corporate lobbying without taking into account country specific characteristics.

In order to contextualize the demands of firms, it is furthermore necessary to focus on a defined policy area. Trade in services offers itself as a framework for this investigation, because it constitutes a relatively new issue in international trade negotiations, having been put on the international agenda only in 1980s. Studying a recent trading issue permits to trace

the evolution of interest representation by considering a limited timeframe of roughly twenty years. Moreover, telecommunication services and international air transport are dominated by large national champions that should have a strong interest in protecting their home markets. Both have a comparable industry structure and the company landscape consists of large firms who used to have monopoly rights in their home market and some new market entrants. Still, both sectors have important international dimensions, which led to the rethinking of their respective international trading regimes in the 1990s. Comparing air transport and telecommunication services allows comparing two similar sectors where the stakes for firms are ambiguous: on the one hand, home markets are particularly important, on the other hand, foreign market opportunities are increasingly attractive. [15]

Since the methodological approach of this research is empirical, the analysis is based on the observation of the lobbying demands and the political strategies of firms in the case studies. This observation rests on primary and secondary literature, press reviews, and most importantly on 74 semi-structured interviews in the US and Europe, carried out between September 2002 and November 2003. Interviews included business and government representatives on both sides of the Atlantic, as well as representatives of a number of international organizations, associations or policy observers that were implicated in the liberalization process of the two service sectors.

The ambition of the research is not to explain variation of lobbying among firms belonging to the same country/sector pair, but rather to compare across countries, sectors and in some cases across time. The empirical information gathered therefore focuses on the most dominant firms in each sector since those are the ones most actively pursuing lobbying with

[15] Peter Hall (2004) has underlined that „every actor has multiple interests, many of which can be engaged by a single issue". In addition, „every action has multiple effects". This observation is particularily visible in the two cases, which thus allows studying how actors evaluate the consequences of their actions and orient their behavior under uncertainty and ambiguity.

their governments.[16] Variation between firms within each sector/country case will nonetheless be considered in the narrative of each case study. A complete list of interviews appears in the annex.

2.2. Empirical observation of lobbying in telecommunication and air transport

Let us now turn to the phenomenon to be explained: the actual policy stances of service firms in the two sectors studied. Multilateral telecommunication service liberalization in telecommunication services happened through the basic telecom agreement of the WTO in 1997. The large US competitors in the long distance market, AT&T, MCI and Sprint, have been very supportive of this agreement, but large network providers, at the time still in control of local monopolies, also backed the agreement, most actively in the case of NYNEX. European network providers were initially more reserved about increased competition. As the liberalization of the internal European market advanced, however, they slowly started rallying behind the negotiating position of the EU Commission and eventually supported the agreement enthusiastically and even more forcefully than the majority of US network providers. Aside from their general support, European operators remained somewhat distant from the multilateral negotiations, while the most interested US firms, most notably the large competitors and satellite communication companies, worked closely with the US negotiating team and insisted on many specifications in the agreement that were pertinent to their business concerns.

[16] Several small companies have been interviewed as well, but they generally prefer not to invest extensive resources into lobbying activities. This inactivity can indicate either "passive resistance", "tacit support", or pure indifference, so that it becomes difficult to deal with these cases systematically. However, since this research does not try to explain outcomes, but analyzes merely the question of preference evolution in trade lobbying, this observation bias does not seem important for the investigation.

In air transport, multilateral liberalization through the WTO has been abandoned, but greater liberalization of the very restrictive bilateral regime governing air transport nonetheless remains an objective for both the US and the EU.[17] The US government, with full support of its international carriers, pursues liberalization bilaterally through so-called "open skies". Open sky agreements liberalize international air transport by replacing a very detailed list of bilateral governmental agreements over service provision between the two countries by one overarching bilateral framework agreement. While US carriers could use the series of open sky agreements the US government has concluded with European countries to move around the intra-European market, the US domestic market remains firmly outside of the service trade agreements. EU carriers therefore seek a more comprehensive liberalization agreement between the US and the EU that would open their internal markets to equal degrees. This "open aviation area" is currently being negotiated by the US government and the EU Commission, a negotiation for which EU carriers have not only actively lobbied, they have even drafted a blueprint for negotiations in the late 1990s by proposing a design for a "transatlantic common aviation area". While US carriers support a continuation of the protection of their domestic market, EU carriers lobby for further reciprocal liberalization.

Table 1-1: Dominant stance of large service providers

	US	*EU*
Telecommunication services	For multilateral liberalization	Eventually for multilateral liberalization
International air transport	Protection of domestic market, liberalization through open skies only	Reciprocal liberalization through open aviation area

[17] The reasons for the exclusion of air transport are not clear and will be dealt with in detail in the empirical sections. The most often cited explanation is the particular nature of air transport, which is better governed through bilateral governmental agreements. Another hypothesis might be a US interest in excluding the sector. For an insiders account, see Loughlin (2001).

Two observations are worth underlining. First, even though service trade is a relatively new trading issue where incumbents most often enjoyed monopoly status prior to domestic regulatory reform, service providers in the two sectors studied explicitly support designs for further international liberalization. In other words, despite the importance of the home market, large firms tend to concentrate on foreign opportunities. Second, while we might have expected recent European monopolies to be more defensive of their home-market than US firms, this is clearly not the case. On the contrary, EU firms are openly in support of liberalization in the two sectors. Moreover, while US firms also support liberalization, they pursue much more detailed strategies in the course of business-government interactions, trying to affect the "how" of liberalization. Consequentially, US firms were able to influence the details of the basic telecom agreement of the WTO and ensured a greater protection of their domestic markets through the open sky designs.

These observations pose several questions: Why do European firms support market opening instead of trying to protect their domestic markets? And why are US firms more protective than their European counterparts, even though they are seemingly more competitive?

Knowing the behavior of the affected firms, it is possible to propose a set of possible explanations for each case from an IPE perspective. First, if firms are supportive of liberalization, they must be interested in foreign market opportunities. Second, security concerns and the external shock of September 11th might not only have been a blow to the competitiveness of US carriers, it might have also led them to behave in a more risk-adverse manner. Finally, the differential support for more comprehensive liberalization in air transport between US and EU carriers might just underline the advantage of unilateral trade instruments over multilateral ones. After all, support for liberalization from firms only happens because

they want to gain access into foreign markets. If this access can already be achieved without the sacrifice of opening one's own market, there is no reason to assume that firms would be in support for more reciprocal liberalization. While all of these arguments are relevant to an understanding of the different case studies, they are incomplete. Since they apply only to some of the observed developments, they constitute ad hoc explanations to account for a known phenomenon.[18] In contrast, what this dissertation tries to achieve, is an articulation of different relevant explanations into a coherent time perspective.

2.3. The argument: contextualizing business interests

I have argued that an understanding of the evolution of business lobbying has to move beyond the idea of business-government interactions as a strategic setting. In contrast to assumptions in political economy, even large firms are not always sufficiently well informed about the stakes of a strategic setting and its potential outcomes to be the agenda-setter of a liberalization process. This is especially visible in the two service sectors, where businesses initially do not have firmly established preferences on international policy choices. At this early point in time, the policy stances of firms divide according to their regulatory experience and are affected by the international regime. Heavily regulated providers such as the US RBOCs or European network operators are initially quite reserved about the prospect of liberalization, while the competitive US service providers support it. In the early 1990s, airlines in both European and the US furthermore opposed liberalization with reference to the constraints of the bilateral regime, which seemingly made the sector incompatible with liberalization, be it through open skies or through a more ambitious design.

[18] For example, if unilateral US power explains the case of international air transport, then why did the US not "go it alone" in international telecommunications? Or more precisely, why did US companies not pressures their government to negotiate unilateral liberalization?

Against the background of these reservations, the preference definition of firms further evolves as negotiations on liberalization designs advance. This implies that liberalization negotiations are a learning process for firms rather than something they only provide "input" for. This learning process is shaped by the interactions of a firm with its relevant government. Trade policy-making in particular, is characterized by a symbiosis between firms and governments: while firms can provide information relevant to the negotiation of a sector, governments have the power to shape policy outcomes by negotiating or blocking specific propositions.

Once preferences become stable, firms can start behaving like we would expect in a strategic setting. Most importantly, we will see that those firms that participate most actively within each country and sector, are the firms with the highest degree of international operations. This analytical second step, however, is constrained by the business-government interactions that have enabled firms to participate in the process in the first place. Put differently, in order to be effective, firms lobbying on international trade negotiations have to take into account the constraints weighing on their respective governments.[19] Even in a strategic game, lobbying demands are thus not completely independent from the political institutions they lobby. In this context, the comparison between the US and the EU highlights the role of the decision-making process. By analyzing the constraints of the multi-tiered system of the EU and the federal system of the US, the dissertation shows how the design of political institutions shapes the ways in which business can represent their interests in both contexts.[20] In particular, the consensus requirement weighing on trade policy formulation in the EU precludes the effectiveness of lobbying for protectionist measures. While large

[19] Even for large firms, lobbying has to be cost-effective. If a firm puts a lot of effort, time and money into an issue that it knows will be completely ignored by policy-makers, this cost-effectiveness objective is not met.

[20] The argument about the differences of decision-making in the US and the EU will be developed in the following chapter and draws from Fritz W. Scharpf's work on joint-decision making (Scharpf 1988) and governance in Europe (Scharpf 1999).

corporations in the US try to lobby for very specific benefits through their interactions with the US government, the complexity of the multi-tiered system prevents the direct translation of corporate interests into measures beneficial to a very specific part of a certain industry. The European Institutions, and especially the Commission, have a very clear integration agenda, which is oftentimes incompatible with demands for sectoral or national fragmentations of markets through protectionism. Cooperation with the Commission therefore necessitates that policy demands be expressed in terms of pan-European welfare. The political structure and process in the EU thus have an impact on the content that can be lobbied for by European businesses. As a consequence, European lobbyists often chose to contribute to the definition of coherent principles, while US lobbies acts in the pursuit of more content-specific goals. More generally speaking, institutional design determines not only the lobbying strategies of businesses, but also the content that can be lobbied for. To illustrate this claim, I will show how businesses adapt their preferences to institutional requirements in the course of the policy process.

To summarize, the dissertation thus makes two separate but related claims. The first one underlines the importance of a historical perspective for the study of business lobbying. In particular, it draws attention to the learning process firms are involved in, which is crucial for the ways in which policy preferences can be defined. To some extent, this is more a cautionary note than a theoretical revelation, because IPE models always specify that they are relevant once preferences are fixed only. I do contend however, that the dissection of time into a series of strategic settings prevents seeing the mutual influence of elements studied in seemingly separate games. The second claim addresses the expected behavior in one strategic setting with clearly defined preferences directly. While lobbying on international trade is assumed to be determined by economic incentives only, I propose that political institutions

also have a lasting impact on the direction of lobbying demands. In particular, the multi-tiered system of the EU makes lobbying for protectionism increasingly difficult. This dissertation thus insists that it is necessary to contextualize business lobbying in order to take into account the effect of a particular political environment and to arrive at meaningful propositions about the orientation of business input into politics.

3. Theoretical implications

Before turning to the heart of the dissertation, this final section will spell out which theoretical or policy debates the findings of this research connect to, even though these far-reaching implications will only be taken up again in the conclusion.

For the sake of clarity, it might be helpful to begin by stating what this dissertation does not try to do. First, I do not pretend to provide an explanation for when, how or why individual service sectors are liberalized at the international level. This question concerns the policy *outcome*, which is significantly different from the pure lobbying of affected companies, in itself only one of a series of elements of the policy process. Moreover, I treat lobbying as endogenous to the political process determining the outcome, making it even harder to deduce a potential outcome from only one of all possible causal elements. Even at the level of lobbying, I do not deal systematically with lobbying of companies outside of the sector that is being liberalized, such as user companies, for example. At the international level, an understanding of liberalization outcomes would necessarily have to include both types of lobbying, as well as technological change, global economic conditions, or the political strength and coalitions of individual negotiating partners, for example.[21] Second, I do not

[21] Simmons and Elkins (2004) systematically deal with the question of how and why countries chose to liberalize markets. For a general review of the literature and the factors of economic policy reform, see Rodrik (1995). For a study of reform in the domain of trade policy, see Irwin and Krozner (1999).

evaluate the strength of business lobbying relative to other non-governmental actors or engage in a normative discussion about the desirability of business lobbying in general. The only element I bring to such a discussion is the claim that business-lobbying is not a uni-directional process resulting in the skewing of government positions. Instead, governments filter business demands and affect firms to a similar degree to which firms affect public officials. Speaking of business-government symbiosis on trade policy issues does not necessarily imply a weakening or a retreat of the state, it simply points to the fact that governments value a given trade policy objective and agree to enter into cooperative relationships in its pursuit. In other words, the success of business lobbying is highly contingent on corresponding government objectives.

If this dissertation does not help to predict the content of trade policy in the future, it does address the question of the position of business in politics more generally. At the heart of this question is the idea of a power elite, an inner circle of men and women with access to governmental decision-making that goes beyond the reach of ordinary citizen. Both Marxist and pluralist traditions of social thought, but also public opinion in general, postulate such a vision of an inner circle. The idea was most famously spelled out by C. Wright Mills in *The Power Elite* (Mills 1951). Following the landmark study on interest representation, *The Hollow Core* (Heinz et al. 1993), which denounces the existence of such a stable inner circle, this dissertation seeks to demystify the work of corporate lobbyists. Businesses do actively participate in the policy process, but they are as much subject to the process as they inform it. In a way, this is a frustrating conclusion, because it means that deducing policy outcomes from the interests of large firms has to take into account a much more complex set of variables. As Allan Cigler (2002: 381) has noted, “no group-based theory can explain the

whole of […] politics," even though companies and organized groups are ubiquitous in the policy process.

Although the study of business-government interactions in international trade is not sufficient to understand trade policy outcomes, it does help to shed light on three different elements of the globalization dynamic: the global, the European and the national level. The positive contribution of a revised understanding of business lobbying is then to nuance some common assumptions about current economic transformations.

3.1. On the nature of international commerce

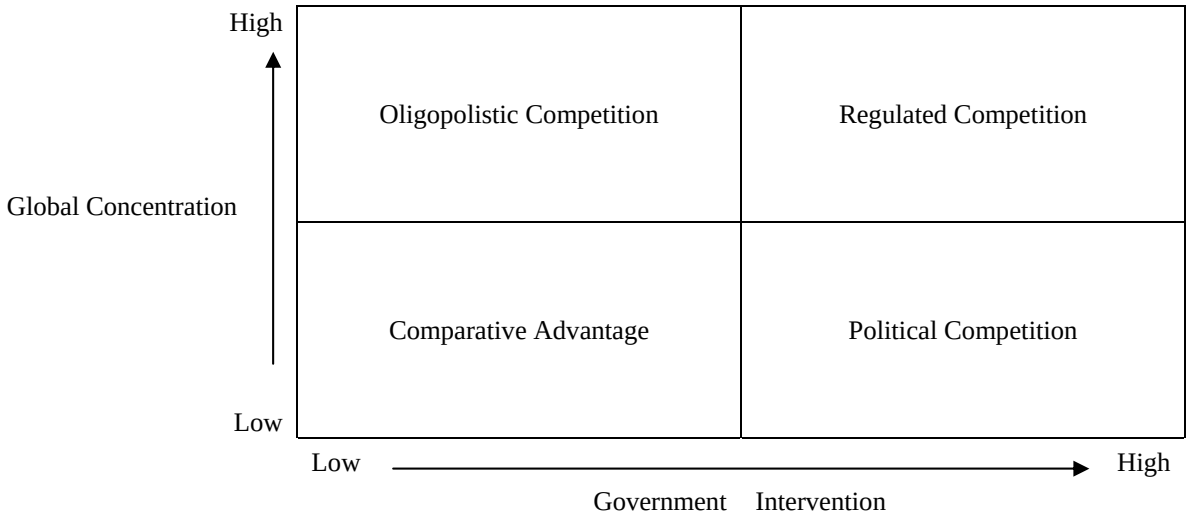
Due to mutual neglect, Underhill (2000) has called the contribution of international relations theory to the study of lobbying a "dialogue of the deaf". This is in large part due to the fact that the insights of the mainstream IPE literature on trade lobbying remain trapped in a dichotomy between free trade and protectionism as possible business demands. Helen Milner and David Yoffie (1989) noted this problem 15 years ago, but their theory of strategic trade demands only suggests that firms do not just hold *a priori* preferences based on their international involvement. They do not, however, transcend a spectrum, where industry preferences are either "for" or "against" open competition at any one given point in time. The problem arises from the IPE focus on power politics, which inevitably revolves around the unitary state as a central actor (Underhill 2000: 27-32).[22] After all, the study of economic interests became an important element in IPE in the context of national preference formation. This corresponded to the classic understanding of foreign trade relations, whose object was the exchange of goods across national borders: open borders enable free trade, closed borders constitute protectionism.

[22] For a historic appreciation, see Strange (1970).

Business or industry-centered studies, however, provide a very different picture. Susan Strange, most notably, showed that firms in the international economy acted not only through their home states (Stopford/Strange 1991; Strange 1996). One of the characteristics noted by a number of authors is the international activity of businesses and their internationalization highlights a set of trade problems that are much more nuanced than the opposition of open borders and protectionism. Research on lobbying strategies in the field of business administration and international business have long moved away from this dichotomy (see Rugman/Verbeke 1990; Dunning 1997). According to these business-centered studies, the stakes in international trade negotiations are foreign investment and market access relevant to the strategic positioning of firms.

Indeed, an empirical investigation of business interests reveals a global trade world that is very different from the classic formulation. In his book, "Beyond Free Trade", David Yoffie (1993) summarizes the divers nature of the global trading system in the following picture.

Figure 1-1: Drivers of International Trade (Yoffie 1993: 19)



For Yoffie, the nature of competition is very different if a) there is a high or a low degree of industry concentration in a particular market and b) government intervention in a sector is intensive or low. According to him, the classic trade model corresponds to the lower left-hand box. National markets have few imperfections and government has a small role, so that a large number of firms compete based on their national advantage once trade barriers are reduced. However, he also identifies three other forms of international competition. For the two sectors studied in this dissertation, the upper right hand corner is most relevant. In both telecommunications and air transport, firms are concentrated and government intervention is high. The two sectors' global competition structure is thus a "regulated competition" rather than a free trade model.

Yoffie's characterization corresponds to Cowhey and Aronson's (1993) analysis of global trade. To them, world trade was structured in a "free trade regime" based on the free movement of goods and national comparative advantage. Today, investment has become coequal with trade, the boundary between services and goods is eroding and consequentially the modes of trading have become more complex. The new regime that is emerging is therefore more accurately described as a "market access regime". For firms, who already maintain business operations in foreign countries, the crucial question become the restrictions on their operations abroad. While the classic literature has tried to include such restrictions in the concept of "non-tariff barriers" to trade, they are more accurately described as differences in domestic policies (either regulatory approaches or competition policy). The stake of a market access regime is therefore the internationalization or the harmonization of domestic policies. As forms of "regulated competition" this is especially true for international service trade.

In this framework, business lobbying in sectors that are characterized by high industry concentration and high government intervention revolves around the definition of larger regulatory regimes rather than simply pushing for or against market-opening (McGuire 1999). Of course, the definition of regulatory regimes has important effects on the competition structures of firms, so one could argue that this is just a round-about way of lobbying for protectionism. As the case studies in this dissertation show, however, the lobbying on regulatory solutions displays a much larger breath of policy solutions, all of which have to be mastered by the affected firms. Many of the insights of preference formations from economists and IPE specialists remain relevant to understanding business demands, but they have to be placed in a precise historical and political context, so that it becomes possible to understand the direction and the intent of business lobbying. For the cases studied, one can affirm quite generally that all business under regulated competition regimes is "in support of liberalization". But this support is a support in principle that is less relevant for an understanding of political outcomes than the question "how to liberalize". It is in the definition of these "conceptions of control" that economic actors participate in the construction of global markets (Fligstein 2002), not through the lobbying for personal advantages through open or closed markets.[23] While a firm's self-interest is central for explaining both the lobbying for personal advantage and the definition of "conceptions of control", lobbying around definitions might lead to outcomes that are quite different from the lobbying for concrete personal benefits.

[23] Fligstein labels as "conceptions of control" market-specific arrangements of firms for internal organization, tactics for competition or cooperation and the status of firms in a given market.

3.2. The EU as a liberalizing machine?

A second insight of this research ties in with the study of the EU in particular. As all industrialized democracies, the EU has to manage a form of symbiotic interdependence between a democratic system of governance and the capitalist economy. In the context of globalization, this balance is especially critical, because capital owners have the choice over their productive investment that is not matched by the bargaining power of unions or governments. These tensions might lead to a crisis of capitalist democracies, either because the state will tend to give in more to economic interests than to other stakeholders (Offe 1972; Habermas 1976), or because an "overloaded government" would intensify taxation and economic regulation which threatens the viability of the economy. For Scharpf (1999), this problem of capitalist democracies is accentuated in the EU, because the EU does not have an "input legitimacy", a legitimacy arising from the shape of its political system or government *by* the people, but instead depends on "output legitimacy", government *for* the people.

> [This means that European decisions] are legitimate only because they do in fact respect the limitations of their legitimacy base – which implies that European public policy is, in principle, only able to deal with a narrow range of problems, and is able to employ only a narrow range of policy choices. More specifically: in order to be effective, European policy must either avoid opposition by remaining below the threshold of political visibility, or it must search for conflict-minimizing solutions […] (Scharpf 1999: 23).

Based on Tinbergen's (1965) distinction between positive and negative integration, Scharpf underlines that the search for conflict-minimizing solutions leads to a bias in the dynamics of European integration towards negative integration. Positive integration refers to the construction of economic regulation at a larger level of economic governance, a process which inevitably opposes defenders of the divergent traditions and different stakeholders. Negative integration refers to the removal of obstacles to integration, such as tariffs or other barriers to trade. Since negative integration has primarily been achieved through supranational

law-making (Weiler 1991), Scharpf argues, it is less visible and less tied to the legitimacy of national governments acting in the Council. Positive integration, in contrast, is constrained by the action consensus requirement that weighs upon the Council. Essentially, this bias implies that the EU advances by liberalization, which at the same time constraints national problem-solving capacities (Scharpf 1999: 84-102).

The tendency towards negative integration poses a series of questions about the future and the dynamics of European integration. If the supranational level is increasingly responsible for different policy areas, what kind of policy choices remain? Is the EU becoming a liberalizing machine due to the fact that market integration can be imposed through competition policy and the European Court of Justice, while market-making requires decision-making in the Council? At a first glance, the findings of this research seem to confirm this vision. It shows that firms accommodate the search for conflict-minimization through lobbying for Europe-wide solutions, which tend to be those solutions that further liberalization. This lobbying strategy is the consequence of the European policy-making system, but at a later point in time it also informs decision-making. Through the adjustment of business lobbies the liberalization tendency of the EU might thus turn into some form of *perpetuum mobile*, a self-perpetuating machine.

However, empirical reality seems to be at odds with such a one-sided prediction. Many observers have noted that the EU has in fact a high record of regulatory policy-making (Majone 1990; 1996). This tendency towards regulation is even relevant for external policy. As Young (2004) points out, while the EU's trade policy stance has always been fairly liberal, it has been the respondent in a number of high profile trade disputes and has had problems complying with WTO judgments, a phenomenon he identifies as "regulatory peaks". Foreign negotiating partners of the EU tend to confirm this observation, accusing the EU to have a

tendency to over-regulate in matters of international trade (Van den Hoven 2004). Still, the vision of a "fortress Europe" that is liberal inside, but protected from the outside does not seem to accurately describe the European stance.[24] Hanson (1998) and Cafruny and Ryner (2003) both show that the protection of the European market from the outside has reduced significantly over time.

How then should we understand the external trade approach the EU pursues? A nuanced answer to this question requires a more detailed discussion of regulation. For both Scharpf (1997) and Majone (1996), regulation can have several effects and both find it useful to distinguish between market-making and market correcting regulation. Jordana and Levi-Faur (2004: 7) distinguish between deregulated markets, regulation-of-competition, regulation-for-competition and meta-regulation, of which only regulation of competition is market-correcting. Regulation for competition is sector-specific regulation that aims at ensuring equal market access to all firms, such as interconnection standards for telecommunications. Indeed, regulation for competition applies to sectors that fall under Yoffie's "regulated competition" regime and it constitutes a typical example of European-style regulatory activity.

From a global perspective, at least with respect to the role of European business lobbying, the European policy stance is thus indeterminate. The only obligation businesses have to abide by when lobbying on external matters is the Europe-wide applicability of their demands. In international negotiations, this can include a "fortress Europe" stance, the creation of a new world-wide regulatory regime, the modifications of an old one, or complete multilateral liberalization. However, concerning the inside of the EU, the implications of our findings are much more definite. Firms cannot lobby for the maintenance of national

[24] The idea of a fortress Europe is reoccurring in public debates. For an example see Wolf and Klaß (1994).

fragmentation of trade, at least not at the supranational level. Nation-specific solutions, as we find in the agricultural sector for example, have to be lobbied for through national governments, which then defend the position in the Council. Interaction with the Commission, who leads international trade negotiations, will therefore lead firms to adopt liberal stances, at least with respect to the internal market. For within Europe, it thus seems fair to say that the integration of trade policy competences in the EU creates an opportunity structure favorable to lobbying which promotes a decrease in intra-EU fragmentation. This is all the more interesting because in most cases, unanimity requirements tend to lead to stagnation.[25] In the EU, the unanimity requirement does the opposite; it creates incentives towards further integration by tying external trade stakes to internal market-making.

3.3. National variations in capitalism

If the lobbying of companies will revolve around market design rather than market opening, the question of a "fortress Europe" becomes a question of the compatibility of different regulatory designs promoted within and outside the European Union. Just like Cowhey and Aronson (1993) postulate, the stake of the new trade regimes is the harmonization or internationalization of domestic regulatory approaches. How should we expect firms to behave under these circumstances? In his economic sociology of markets, Neil Fligstein (2002) suggests that firms as social organizations strive for survival, which they assure by continuously attempting to stabilize their relevant markets. Incumbent firms, which are the ones studied in this dissertation, do so by interacting with governments (among others) in a search for defining and maintaining local control. In this process, "the initial configuration of institutions and the balance of power between government officials,

[25] This is the central point of Scharpf (1988). In a different policy context, Uwe Schimanck (2001) also shows that the inertia of the German university system is rooted in the unanimity requirement on reform proposals.

capitalists, and workers at that moment account for the persistence of, and differences between, national capitalisms," (Fligstein 2002: 40). Essentially, this is an argument about path-dependency. We should expect previous institutional arrangements and balances of power to be decisive for the ways in which firms behave in the face of regulatory change.

The literature of comparative capitalism is the most extensive one on cross-national variation in political economies (Albert 1991; Hollingsworth/Boyer 1997; Crouch/Streeck 2000; Dore 2000; Hall/Soskice 2001b). Certainly, the focus of the literature is somewhat different than the questions examined here. The study of comparative capitalisms does not deal with firm preferences for international trade solutions. Instead it focuses on production systems, welfare arrangements and domestic institutions. However, the field does try to characterize the roles of firms in their national economies, the constraints weighing upon firms and the type of coordination that develops between firms and their government. The different configurations are relevant to the study of lobbying, since most authors agree that no company is truly multinational and that important home country differences remain relevant to the study of corporate behavior (Pauly/Reich 1997).

With respect to trade policy lobbying, the categorization of capitalist economies as "liberal market economies" and "coordinated market economies" is pertinent (Hall/Soskice 2001a). In liberal market economies, of which the Anglo-Saxon countries are a good example, firms' primary concern is a high level of flexibility in order to adapt to the price competition in rapidly changing markets. Firms are thus focused on short term gains. In coordinated market economies, typically equated with countries such as Germany, firms rely on a very intricate institutional network of social relations that shields them from the pressures towards flexibility and therefore makes them concerned about relational stability and coordination.

This makes them less concerned with short term gains and more interested in long term effects of coordination structures.

Applying these lessons to trade policy lobbying might not immediately seem appropriate, because the EU includes an Anglo-Saxon country, Great Britain, alongside a number of coordinated market economies. Nonetheless, the two political economic frameworks identified by the literature characterize well the different lobbying styles of US and EU firms. US firms lobby predominantly on an individual basis, are quite aggressive in their lobbying approach and very focused on concrete short term benefits. In the EU, the role of trade associations is crucial. EU firms are much more consensus-oriented and focus on long term solutions instead of short term benefits.

From the aggregate EU perspective, it is difficult to say how the different business-government relations mix to form a European business representation. In fact, national differences within the EU seemingly do not disappear in lobbying on most European issue areas (Saurugger 2003). Concerning trade, however, interest representation relies quite consistently on Eurogroups or other trade organizations and is geared towards the deliberative elaboration of principles rather than the formulation of concrete demands. Despite the increased liberalization of the internal EU market and several multilateral trade issues, business-government relations thus do not seem to converge towards one “best way” of interest representation.

National or supranational political settings thus matter for business lobbying. They may affect both the form and the content of business lobbying, even in the seemingly “depolitized” realm of international trade.

3.4. A sociological perspective on "corporate globalization"

By examining the relevance of this dissertation for an understanding of the global, the European and the national policy level in the process of globalization, it becomes possible to nuance some of the common assumptions about the process of globalization. At the most general level, the observations in the two sectors studied do not seem to indicate that firms are becoming active as political entrepreneurs outside of the framework of their home state. Even the most active firms assured the representation of their interests through their governments rather than engaging in a form of "triangular diplomacy" (Stopford/Strange 1991). This might not be true for all sectors of the global economy, but it does highlight that the majority of firms operates in the institutional frameworks of their home states when engaging in global trade issues. This is all the more true for those firms operating in forms of "regulated competition". These institutional frameworks therefore have important effects on business interest representation.

Most importantly, business lobbying is not a uni-directional input into government decisions. Rather, business preferences and government objectives define and re-define themselves in the course of business-government cooperation. This is all the more the case in global trade issues that do not fall in the category of the classical trade model, where the stake was simply the removal or augmentation of tariffs. In the complex service sectors, the objective of trade negotiations is the harmonization or the internationalization of domestic regulatory approaches. Business lobbying therefore needs to address potential solutions, so that power takes the form of "definitional power" rather than direct clout over public decision-makers.

In the European context, business-government interactions on global trade issues lead to an increased business lobbying for multilateral liberalization. This tendency might be

rooted in a "neo-liberal turn" of framing economic issues (Jobert 1994; Campbell/Pedersen 2001), but it is reinforced by the institutional configuration of the EU decision-making process. Nonetheless, international liberalization seemingly does not supplant national traditions of business-government interactions. Despite similar constraints weighing on their business operations, airlines and telecommunication providers lobbied in quite distinct way in the US and in Europe. For the two sectors studied, it cannot be confirmed that business representation or business influence converges on an "Anglo-Saxon" model. On the contrary, in the European context, British firms adapted to the continental European approach to business-government cooperation.

4. Terminology

At the core of the political issues examined in this research is the relationship between the state and the market and more particularly the transformation of government control over economic conditions. This transformation has been called a variety of names – globalization, liberalization, deregulation, privatization – depending on the unit of reference and the mechanisms through which the control was exerted. In the context of service trade, the terms liberalization and deregulation are of primary importance. For the clarity of the discussion that will follow, it is thus helpful to define the ways in which they will be used.

Liberalization is the more comprehensive of the two concepts. From an economic perspective, liberalization is viewed as the "freeing of the market place from governmental interference," (Grabowski 2001: 935). Interference, however, carries the normative notion that the market is more efficient when it functions without government intervention.[26] Leaving this debate aside, liberalization is still the most common term denoting a transition

[26] This is core claims of neo-classical economic theory, symbolized in the metaphor of Adam Smith's "invisible hand".

from government control over economic transactions and standards to greater business autonomy. With respect to trade, for example, trade liberalization is characterized by the reduction of government quotas (limitations on the number) or tariffs (taxes which add to the final price) on an imported good. Such government intervention protects domestic producers against foreign competition and generates tax revenue for the state. In the absence of these requirements, foreign firms can decide themselves on the number of goods they want to offer in a foreign market.[27] For the case of international service liberalization, the reduction of government intervention does not hinge on tariffs, which only apply to goods, but on the control of market access more generally. Most importantly, governments can preclude the market access of foreign firms through direct legislation or indirectly through standards and procedures required of competitors in a specific service sector. Liberalization in service trade then refers to the reduction of these obstacles or the changes in national standards more generally when they aim towards a facilitation of business operations of foreign or domestic firms (in the case of international or national liberalization respectively).

Deregulation is often used as a synonym for liberalization. In the neo-classical economic literature, *regulation* is defined quite narrowly as "the imposition of economic controls by government agencies on businesses." Inversely, deregulation is "the elimination of these controls."[28] Economic controls generally aim at controlling the entry and exit of firms into and out of a market and often affect the prices charged to consumers in that market. At a more general level, however, regulation refers to the process of rule-making (Reynaud 1989), and becomes a synonym for governance. If regulation is conceived of as a form of economic governance, however, it is difficult to imagine the total elimination of governance structures.

[27] Assuming the absence of non-tariff barriers.
[28] Based on the New Palgrave Dictionnary of Economics and the Law.

Increasingly, scholars therefore prefer using the terms “re-regulation” or “regulatory reform” instead of “deregulation” (Majone 1990; Vogel 1996).

As has been pointed out earlier, it is helpful to divide the notion of “regulation” into several components. Jordana and Levi-Faur (Levi-Faur 1999; Jordana/Levi-Faur 2004) distinguish between meta-regulation (i.e. Reynaud’s “rules of the game”), regulation-of-competition, and regulation-for-competition. Regulation-of-competition is the domain of competition authorities, while regulation-for-competition tends to be in the hands of specialized regulatory agencies. They thus differ in their degree of intervention: while both require the establishment and the strengthening of governance capacities, regulation-for-competition requires far more intrusive capacities.

As Steven Vogel’s book title “Freer markets, more rules” underlines, the distinction between liberalization and (de-)regulation signals a focus on either outcomes or instruments. While “liberalization” describes an economic setting in which businesses have more access and autonomy, “deregulation” refers to the reduction of *specific rules* made by the government. Indeed, it is questionable, whether one can ever speak of an absolute decrease in governmental rules. “Deregulation” will nonetheless be used in two contexts: first, to denote the economic emphasis on a specific reduction of rules on market access, quantity and price, and second, as a specific historical event in US politics that was characterized by these reductions (Derthick/Quirk 1985). The more general restructuring of market control with the aim of facilitating competition and market access nationally, regionally or internationally will be referred to as liberalization. “Regulation” will be used to describe specific measures of a government to structure competition, either through competition authorities or specialized agencies.

5. Outline of the dissertation

The first two chapters of the dissertation set the stage for the empirical investigation. Chapter 2 anchors the research in the theoretical literature on preference evolution and identifies four alternative hypotheses about the determinants of preference formation and evolution. Their discussion further specifies the argument of the dissertation and justifies the methodological approach chosen for the investigation. Chapter 3 then presents the context of the empirical investigation. A first part looks at lobbying and trade policy processes in the US and the EU to help situate later observations in the more general context of business-lobbying in both countries. A second part then turns to the issue of service liberalization to clarify the stakes businesses are confronted with in the air transport and telecommunications.

The following four chapters present the case studies, with chapters 4 and 5 dedicated to telecommunication services and chapters 6 and 7 to air transport. In order to provide the information relevant to the evaluation of the four working hypotheses, the first chapter of each case study gives an overview of the economic, regulatory and international stakes pertinent for each sector. It then provides a narrative account of the pressures for change which have led to the international liberalization. The second chapter of each case study then investigates the process of international liberalization: the basic telecommunications agreement in the WTO and the transatlantic negotiations on the issue of a common aviation area between the US and the EU. The narrative in chapter 5 and 7 focuses on the business-government interactions in the course of these negotiations and tries to highlight the evolution of policy positions on both sides over time. These actor-focused narratives draw most heavily from the interviews gathered and the primary literature available on the two subjects.

In order to move beyond the lessons of the individual cases, chapter 8 then summarizes the comparison across sectors and countries and synthesizes the argument from

the observations made in the case studies. The concluding chapter discusses the implications of the comparative findings for the theoretical approaches to interest representation and international political economy more generally. While recognizing the ubiquity of lobbyists in the policy processes of large economic transformations, it cautions not to overestimate the role played by these non-governmental actors. The impact lobbyists can have, it argues, is highly contingent on the willingness of their respective governments to integrate their expertise and suggestions into the political debates.

Chapter 2

THE EVOLUTION OF BUSINESS PREFERENCES ON INTERNATIONAL TRADE

Let us turn back to the central question of this investigation: What determines firm preferences on international trade? Economic interests have always been of primary concern to scholars of international politics since they are assumed to have a crucial impact on national interests and therefore political outcomes. Most theories therefore adopt an implicit or explicit model of business preference formation and the variables that are most essential to its understanding. Four variables seem particularly relevant to understanding whether business will lobby for or against multilateral liberalization. Economic incentives first come to mind. A firm that might gain profits from international operations is more likely to support reciprocal liberalization than a firm that is import-competing in its home market. Second, national regulatory traditions can have an impact. Firms in deregulated markets might support liberalization more easily than firm in heavily regulated markets. Third, a highly regulated or segmented international regime can have a similar impact and act as a disincentive to global liberalization. Finally, the policy process and the way business interests are channeled to public officials can determine whether firms will find it useful to defend a particular stance. This chapter examines the literature on business interests and trade preferences in order to elaborate these four hypotheses that will accompany the empirical investigation.

An evaluation of each of the four factors then clarifies the central argument of the dissertation. Instead of categorically privileging any one of the four variables, I argue for a

process-oriented approach to the study of business preferences. Assuming preferences to be fixed *a priori*, i.e. fixed once firms enter into the "game" of multilateral trade liberalization, leads to flawed conclusions about their behavior through the negotiation process. Instead of asking what determines trade policy preferences of businesses, it is necessary to ask which elements affect their preferences at a particular point of the process. In doing so, I join Hall's (2004) understanding of preference formation as a political process, which opposes itself to the classic "materialist political economy" common in the IPE literature.

In other words, business preferences are not the mono-causal reaction to one particular indicator. They are the result of a complex process of interaction with different variables weighing on them at different points in time. An understanding of business interests therefore requires establishing a ranking of variables. While international regimes and national regulatory traditions provide the background setting, economic incentives shape the particular strategic behavior of the firm. Most importantly, the policy process, often neglected as a variable because it only seems to affect lobbying strategies and not its content, can also have a crucial impact on the orientation of political lobbying of firms, by mitigating or channeling how the strategic behavior based on economic incentives plays out.

This chapter begins by investigating the literatures around the four variables identified earlier and established their different working hypotheses. It then discusses the state of knowledge of preference formation, works out a distinction between the notions "interest", "preference" and "strategy", and presents the central analytical approach of the dissertation. Finally, a methodological section justifies the case selections and discusses the epistemological implications of the research approach chosen.

1. Determining business policy preferences on international trade

Four variables will be examined in the course of this research: economic incentives, national regulatory traditions, international regimes and domestic decision-making processes. While the literature on economic incentives is extensive, writings on the other three variables also contain elements that help to specific working hypotheses for the empirical investigation of this research.

1.1. Economic incentives

The largest literature on preferences comes from the field of political economy, and has partially been reviewed in the introduction. The following section therefore elaborates only those propositions that help us to hypothesize about the direction of firms' policy preferences. The wealth of propositions is in reality a quite disparate field, which the heading "economic incentives" captures only approximatively, but they all have in common a strong reliance on economic theory about the expected behavior of individual firms in the political arena. While the more classical view assumed businesses to always favor protectionism, a newer branch in IPE has worked to develop "preference maps" that predict under which circumstances firms will favor new market opportunities instead of protectionism. Let us consider these two in turn.

In the works connected to the "theory of economic regulation" (Stigler 1971; Stigler 1972; Barro 1973; Posner 1974; Peltzman 1976; Becker 1983),[1] firms are traditionally assumed to lobby for protectionism. In their search for private benefits – "rent-seeking" as it is called in this theory – companies aim at prohibiting market entry to new competitors or

[1] For an excellent review, see Mitchell and Munger (1991).

raising obstacles in the form of high tariffs (Buchanan/Tollison/Tullock 1980; Magee/Brock/Young 1989). In the context of increasing free trade agreements, economists started to refine this basic exchange model by elaborating the role of the government, which was seemingly more than just a passive supplier of regulation. Most prominently, Gene Grossman and Elhanan Helpman have re-launched the economic debate about special interest politics (Grossman/Helpman 1994; Goldberg/Maggi 1999; Gawande/Bandyopadhyay 2000; Grossman/Helpman 2001). In their work, Grossman and Helpman (1994; 2001) advance the reflection on preferences by postulating that preferences of the government for "political support" are endogenous to the political process: institutional changes are assumed to affect the government's willingness to protect particular sectoral interests.[2] However, in line with previous theory, the assumption about the policy preferences of business in foreign trade has not changed: firms are necessarily in favor of protectionist measures.

While many authors still rely on the exchange model of the theory of economic regulation to explain business-government interactions, the categorical proposition about protectionist preferences of firms has been put into question by a newer strand of literature, predominantly anchored in the field of IPE. This literature deals explicitly with firm preferences on trade policy instead of simply assuming that firms favor protectionism in order to understand another political phenomenon: regulation. It is true that no scientific author makes the claim that companies will generally support a complete opening of their traditional markets. However, the assumption of protectionist preferences is at odds with the observation that some companies are openly in favor of trade liberalization. If one wants to insist on the

[2] Industry preferences, however, are assumed to be fixed throughout the literature. Because of its focus on the impediments to free trade, the underlying assumption of these studies still is that special interests and organized industries all maximize their utility through import restrictions. For Grossman and Helpman, there are consequently only two special cases in which the free trade is possible. First, if the government does not care about contributions, intuitively it has no incentive to impose trade barriers. Second, if all industries are organized and each citizen is represented by a lobby, then the joint surplus of all lobbies coincides with the well-being of society at large, hence free trade is the equilibrium outcome.

central role of business interests in trade policy, the question then becomes a more subtle one: under what conditions does market opening become attractive to companies?

As mentioned in the introduction, the most developed answers are deduced from economic theory, in particular from the factor endowment theorem (based on the Heckscher-Ohlin model and the Stolper-Samuelson theorem) and the Ricardo-Viner model (cf. Scheve/Slaughter 2001). The factor endowment theorem predicts that owners of factors of production that are scarce in a country will benefit from trade protection, while owners of relatively abundant productive factors will form free-trading coalitions (Rogowski 1989; Midford 1993).[3] Specifically, labor in capital rich countries and capital in labor rich countries should be protectionist. This much cited distinction is useful for a comparison between developed and developing countries but applies less to a comparison between the US and the EU, because they are both capital rich. The second model is based on the Ricardo-Viner or specific factors approach and emphasizes comparative costs of foreign trade. It asserts that factors of production specific to import-competing industries will be most affected by international trade. This assumption is the basic claim of the endogenous theory of protection, which predicts that domestic interests will intensify lobbying for protection in response to increased competition (Brock/Magee 1978; Magee/Brock/Young 1989).

More recently, Michael Gilligan turned this prediction around arguing that by the same logic, factors of production specific to exporting industries will be in support of free trade (Alt/Gilligan 1994; Gilligan 1997). In his account, the combination of reciprocal trading arrangements, delegation of trade authority away from Congress and the coalition of exporters benefiting from free trade explain the reduction of protectionism in US trade policy since 1934. Indeed, the assumption that exporting industries lobby for free trade arrangements

[3] For a detailed discussion of the economic theories the trade preference analyses are based on, see Krugman and Obstfeld (2002: chapter 4).

has empiric validity. As firms became more engaged in the international system, their trade preferences shift. Helen Milner (1987; 1988a; 1988b; see also Milner/Yoffie 1989) was one of the first to study firms in favor of free trade arrangements in the US and France and argued that preferences for open trading regimes are tied to multilateral trading regimes. Companies support free trade in areas where they can benefit from opening new markets. In quid pro quo negotiations, they therefore advocate opening home markets as well. The combination of reciprocal trading arrangements and exporting interests in new economies of scale thus explain why large firms tend to prefer policy proposal for more open trading agreements (Gilligan 1997; Chase 2003).

Hypothesis 1: Import-competing firms will lobby for protectionism; export-competing firms will be interested in foreign market opportunities and therefore support reciprocal trade liberalization.

1.2. National regulatory traditions

The economic discussion of business preferences treats all firms as potentially acting in the same setting. Comparativists, however, are more interested in existing national differences that might affect future policy developments and some of their conclusions can apply to the policy preferences of firms, although they are less explicitly dealt with than in the previous literature. Historical institutionalist approach makes an argument about path-dependent development that is relevant to this study. The literature on comparative capitalisms is interested in firm behavior in different institutional settings that can be extended to lobbying behavior as well.

Historical institutionalism breaks with the focus on one-time events of economics by examining broad patterns of developments across countries and analyzing how the order of events affects outcomes (Steinmo/Thelen/Longstreth 1992; Pierson/Skocpol 2002). Their central interest is in the temporality of events, whose causal importance they try to underline with reference to the notion of path dependence (e.g. Collier/Collier 1991; Ertman 1997; Bartolini 2000).[4] Path-dependence can be used with a variety of meanings, but it always includes the notion of a self-reinforcing dynamic and positive feedback processes in political systems, which can either be based on rational and economic reasoning (Pierson 2000) or a sociological understanding of institutions (Mahoney 2000).[5] In its rational variation, previous events lead to increasing marginal returns under an institutional settting already in place and constrains the alternatives available to actors, since foregone options in one setting will not be available in later settings (Shepsle 1986). From sociological perspective, past outcomes define meanings and cognitive frames and affect ideas about what is appropriate in future choices (March/Olsen 1989; DiMaggio/Powell 1991). In either case, political outcomes at one moment in time shape future developments by reinforcing the reoccurrence of that particular pattern in the future.

These considerations about the importance of historical development paths underlie much of the literature on comparative capitalisms (Albert 1991; Hollingsworth/Boyer 1997; Whitley 1999; Crouch/Streeck 2000; Hall/Soskice 2001). Analyzing national variation in market economic structures, this literature departs from the economic belief in "one best way" of organizing national production systems. Instead, it analyzes the different forms of business-

[4] The argument about path dependence was originally developed by economists, who used the example of the order of letters on type writer keyboards. Originally, the order had the purpose of making typing slow, because the keys would block if a user would type to fast. With advances in technology, this concern is not relevant any longer, but it would be too costly to change the entire typewriter hardware that was already in use (David 1986; Arthur 1988).

[5] For an overview, see Hall and Taylor (1996).

government relations and the institutional structures in which they are embedded. Concerning the making of international economic policy, Hall and Soskice make a quite explicit claim about the economic interests of governments in international negotiations. In their account, trade relations should be understood not as a matter of comparative advantage of the production of a specific good, but of comparative *institutional* advantage more generally. The institutional structure of a country will be favorable or unfavorable to specific types of production and innovation.[6] In international economic policy-making, governments should then be inclined to support initiatives only when they do not threaten the institutions most crucial to the competitive institutional advantage their firms enjoy (Hall/Soskice 2001: 52). It is difficult to evaluate how this framework should affect the policy preferences of firms directly, but it suggests that there is greater complementarity of firms in the US with the project of trade liberalization than in Europe, where several member states have market economies that resemble the coordinated market model.

At a more abstract level, Fligstein's (2002) socio-economic account of the construction of markets indicates why this should be the case. For Fligstein, firms achieve dominant positions through determining conventions that assure their dominance in a specific market, which he labels "conceptions of control". These conceptions of control reflect market-specific arrangements of firms for internal organization, tactics for competition or cooperation and the status of firms in a given market. When they are faced with new market entrants ("invaders"), incumbent firms will try to replicate their conceptions of controls in cooperation with their governments. Incumbent firms that are engaged in international

[6] Liberal market economies favor the development of fast-moving technology sectors and their service analogs (biotechnology, communications and defense systems, airlines, finance and entertainment), while coordinated market economies are better at maintaining high quality capital goods (machine tools, consumer durables, engines and transport equipment) (Hall/Soskice 2001: 39)

activities should therefore be expected to support the reproduction of the market structure of their domestic setting in an international context as well.

This consideration indicates that the affinity for trade liberalization is rooted less in the national setting per se, but rather in the domestic regulatory traditions more generally. This confirms the intuitive conclusion that we should expect a correspondence between preferences for regulatory solutions at the domestic level and international ones. However, it is difficult to pinpoint the exact causal mechanisms. One plausible explanation could be that losers of a previous regulatory solution are gone, so that Fligstein's incumbents can indeed define the "rules of the game". Another explanation might be that actors have accepted the cognitive frameworks implicit in regulatory solutions (Muller 2000). Finally, economic actors might simply fear the transition period of one regulatory solution to another one, because it involves transaction costs and it is tied to high uncertainty about the distributional outcomes. In all cases, however, the following hypotheses can be formulated.

Hypothesis 2: Firms in deregulated markets will have a greater affinity with trade liberalization than firms in heavily regulated markets.

1.3. International regimes

An analysis of the effects of international regimes on trade preferences of firms corresponds to the awareness that international integration has effect on domestic politics (Gourevitch 1978; Gourevitch 1986; Keohane/Milner 1996). A part of this literature is very close to the IPE literature on trade liberalization support, since it is interested in the distributional effects of globalization (Rogowski 1989; Frieden 1991; Eichengreen/Frieden 1994). Rooting his argument in the Ricardo-Viner model on factor specificity, Frieden (1991),

for example, shows that globalization through its increased capital mobility favors those firms that have a diversified set of operations in a variety of countries. Not just exporting, but internationalization more generally leads to an increased support of firms for global trade liberalization.

If this sounds like a very similar conclusion to the one made in the section on economic incentives, it becomes more specific when one grapples further with the notion of "internationalization". Both Cowhey and Aronson (1993) and Yoffie (1993) investigate the consequences of transnational business activities empirically and come to surprisingly similar conclusions. The old trade theory, they argue, is based on a conceptualization of trade as the exchange of goods between nations, based on the concept of comparative advantage. As current trade negotiations testify, however, stakes in international trade increasingly move away from tariff issues. Furthermore, increases in world trade are most notably in the domain of intra-industry trade, not trade in general (International Monetary Fund 2003), so that a differentiation of production on several tradable products – as predicted by the notion of comparative advantage – cannot happen.[7] Instead, trade negotiations now cover the compatibility of production and service regimes, focusing increasingly on domestic regulations and the access of firms to foreign markets. Cowhey and Aronson label this new trade world a "market access regime", while Yoffie identifies a trade world of "regulated competition." Both concepts substitute the idea that markets are internally open and externally closed by tariffs or barriers to entry with the idea that markets are often heavily regulated by their respective governments, but not necessarily closed to outsiders. The stake of international trade thus becomes ensuring access to outsiders by making internal regulation compatible.

[7] Grubel and Lloyd (1975) provide one of the earliest systematic studies of the phenomenon of intra-industry trade.

For both Cowhey/Aronson and Yoffie, the increasingly global activities of transnational actors are the motor for this changing nature of world trade. Through their global business operations multinational firms encounter compatibility problems which they bring to the attention of their governments which then enter into negotiation with each other. These analyses correspond to some of Stopford and Strange's (1991) conclusions which underline that the interests of states no longer revolve around territory and military strength, but rather about the competition for global market shares. In this context, Stopford and Strange have highlighted the role of a "privileged transnational business civilization" as key agenda setters in global politics.

The Amsterdam School of IPE has elaborated this notion extensively by building on Marxist theory to understand the role of transnational business elites (e.g. Pijl 1998; Apeldoorn 2002). Analyzing the example of the EU, Otto Holman (1992) and Van Apeldoorn (2000; 2002) argue that European business preferences for a neo-liberal conception of Europe are supported by firms belonging to the international business elite, while coalition of smaller firms with operations in Europe only prefer a neo-mercantalistic version of Europe: a fortress Europe protecting domestic producers from the outside (cf. Cafruny/Ryner 2003).

Firms which already have global business operations are thus more supportive of further liberalization. Since the business operations of firms in different sectors are circumscribed by the international regime governing the individual sector, we can reformulate the insight about internationalization into the following hypothesis.

Hypothesis 3: A segmented international regulatory regime will discourage firms to support trade liberalization.

1.4. Political processes

A final determinant of variation in preference formation could be the very different nature of the political systems in the US and the EU. The EU, "less than a federation, more than a regime" (Wallace 1983), has been described with an impressive variety of names, of which the most persisting seems to be "multi-level system".[8] The observation of a multi-level system of governance is less a theoretical concept than an empirical description that has now gained wide acceptance (Bulmer 1994; Marks et al. 1996; Risse-Kappen 1996; Kohler-Koch/Eising 1999; Marks/Hooghe 2001). What are the implications of such a multi-level structure on the representation of interest, compared to the US in particular?

This question has motivated an extensive literature on interest representation in the EU (Greenwood/Grote/Ronit 1993; Pedler/Van Schendelen 1994; Claeys et al. 1998; Greenwood/Aspinwall 1998; Balme/Chabanet/Wright 2002). Systematic studies of lobbying are used as a means of understanding the new political structure that emerge and the system of governance it creates (Streeck/Schmitter 1991; Mazey/Richardson 1993; Kohler-Koch/Eising 1999). This has been done either by looking at the increasing participation and differentiation of national interest groups at the EU level (Kirchner 1981; Van Schendelen 1993; Michel 2002) or by focusing the emergence on new groups and their networks at the EU level (Bindi 1994). Nonetheless, the role of national associations does not seem to be diminishing (Sargent 1987) and most authors agree that non governmental actors simply employ multi-level organization for their interest representation (e.g. Strauch 1993; Teuber 2001). The superposition of different levels of representation thus strengthens the conceptualization of EU politics as a system of multi-level governance.

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[8] Citing different literatures, Wessels (1997) assembles "pluralistic security community", "regime", "Zweckverband", "Staatenverbund", "civitas europea", "concordance system", "federal union", "quasi-state" "regulatory state" "condominio", and "post-modern state".

However, it is not certain what this means from the perspective of a firm interested in affecting international trade negotiations? What contents can be conveyed and what makes lobbying in the EU effective? An answer has to consider not only the new opportunities but also the constraints of multi-level governance. A seminal work on the question of constraints has been Fritz Scharpf's (1988) "*Politikverflechtungsfalle*", a joint-decision trap. Comparing the EU to Germany, Scharpf analyzes the threat of deadlock arising from shared competencies between the federal and the sub-federal levels of government. Even though joint decision-making is a feature of federal states, it is not relevant for the study of the US in this context, because it rests more particularly on two features: a) that member governments (or the US states or German *Länder*) are directly participating in central decision-making and b) that there is a *de facto* requirement for unanimous decisions. While the US states participate directly through the US Senate, they are not bound by a de facto unanimity requirement. Since the federal US government derives its authority from direct elections, it is formally independent from the governments of the American States (Scharpf 1988: 242). In the EU, however, power is *shared* among (and not divided between) the European institutions and the member states, making unanimity an informal rule, even in cases that are formally governed by qualified majority voting.

Since the central role of governments is the aggregation of societal interests, Scharpf compares the capacity of the European and German federal system with the US. For the two former cases, he argues, "the territorial distribution of societal interests is emphasized at the expense of other dimensions of multi-dimensional interests (the Rousseauean ideal of a "general interest")," (Scharpf 1988: 254). While US senators ideally represent the interests of the constituency only, the *Bundesrat* or the Council represents the institutional self-interest of its subunits as well. The policy output of joint-decision systems will therefore be less

responsive to constituency interests and more oriented towards the institutional self-interests of governments and their "bureaucratic convenience".[9]

The implication of these joint-decision models is the risk for deadlock when the different interests of the lower level governments are opposed in a zero-sum bargaining situation. Joint-decision governments therefore have to adopt a "problem-solving" approach to policy-making instead of a bargaining approach in order to be effective.[10] The failure to do so can lead to a series of frustrations and stagnation that has marked the EU during the 1970s. Adrienne Héritier (1999b) has continued Scharpf's reflection. In her analysis, the threat of deadlock in EU policy-making has led actors to develop informal strategies – which she labels "subterfuge" – to circumvent the potential impasses and "make Europe work." Héritier then spells out a number of strategies, which the Commission or other entrepreneurial actors employ to arrive at problem-solving negotiations. Among these, she lists the Commission's tendency to build "co-operative relations with subnational and private actors *before* embarking upon new policy activities," (Héritier 1999a: 278).

Taken together, these two propositions have an important implication for the lobbying strategies of private actors seeking access to the European Commission. Since the Commission functions under the constitutional constraint to achieve problem-solving policy negotiations, it will grant access to private interest *only* insofar as they permit to obtain such a situation. This does not mean that interests need to be harmonious to be represented, but they should not aggravate zero-sum national bargaining situations that might produce on particular policy issues. This constraint is the most important determinant of the political opportunity structure in Europe. Several analysts of lobbying have already underlined that the central tool

[9] Scharpf refers here to Tullock (1965).
[10] The distinction between situations marked by "problem-solving" and "bargaining" reflects a distinction in the French literature between political "forums" and "arenas", where the former is characterized by deliberation and the latter by bargaining (Jobert 1994a; Fouilleux 2000).

for gaining access to the EU institutions is the provision of expertise and that the Commission's decision over the choice of expertise is highly political (Bouwen 2002; Saurugger 2002). While the precise content of the expertise is seemingly under little constraint, the political constraints weighing on the government indicate that only expertise relevant to the construction of a problem-solving situation will be considered.

The political opportunity structure of the EU has another curious feature which Balme and Chabanet (2002) have pointed out in their study of collective action in Europe. Using a rational choice modelation, they demonstrate that opportunity structures at the European level ensure lobbying to be especially effective for those interests that are already influential. When collective action would be the most necessary for the defense of particular interests, however, it is the most ineffective and the most costly, and thus the least likely. This asymmetry already exists at the national level, but it is amplified by the multi-level structure, as Balme and Chabanet show. The EU system thus offers a "bonus to winners", contrary to the pluralistic conception of government which aggregates the general interest out of private demands.[11]

Combining these observations helps to formulate a hypothesis concerning the effect of the European multi-level system might have on interest representation. This requires tying each of the propositions to the stake of multilateral trade liberalization. First, constituency interests are less well represented in joint-decision-making systems than they are in the independent federal system of the US. Special interests, such as demands for protectionism, will thus be channeled less effectively in the EU than in the US. Second, the risk of a joint-decision trap leads to a problem-solving approach to policy-making which is crucial for the opportunity structure of private interests. Trying to avoid bargaining, the EU cannot

[11] In other words, actors that have already been able to benefit from EU politics before and have gained access to the political process earlier are likely to remain active participants. On "winners" and "losers" see Stokman and Thomson (2004).

accommodate interests that call for member-state specific levels of protectionism, since this will lead to zero-sum bargaining. Concerning free trade, only interests representing stakes that contribute to an EU-wide solution will be considered. The possibilities are thus only EU-wide protectionism (a fortress Europe) or multilateral liberalization. Third, since "winners" have a greater rational incentive to lobby than those concerned by EU developments, and since winners in international trade affairs would seem to be those businesses already involved in multinational business operations, we could expect a greater tendency towards multilateral trade liberalization than towards a fortress Europe.

Hypothesis 4: The multilateral system of the EU will encourage lobbying for trade liberalization and preclude protectionist demands based on nationality, whereas the US remains open to a greater variety of business demands.

2. Towards an articulation of the different approaches

The previous discussion has surveyed elements that might affect what firms lobby for in the context of international trade negotiations. However, some of the effects do not seem to be on equal footing. While economists derive "interests" from economic theory, empirical observation of "interests" seemingly refers to a more concrete form, which some label policy preference instead. A discussion of opportunity structures finally seems to highlight "strategies" rather than preferences. Advancing on an understanding of lobbying demands therefore necessitates some analytical clarity about the articulation of these different claims.

2.1. On interests, preferences and strategies

Preferences are widely studied in the research on decision-making and are a central element of rational choice theories. Underlying this approach is the idea that individuals are rational: that their behavior is internally consistent with the objectives they value. Jon Elster (1983) has termed this minimal, transparent conception "thin rationality". The analyst does not make any assumptions about the valued ends, the individual's desires. An actor is rational as long as his behavior is valid and consistent with respect to some desire, even if an observer may not be able to imagine holding the same values personally.[12] In economic theory, this idea is conveyed by the notion of a personal utility function. The behavior of individuals is explained by their attempt to maximize personal utility, in other words to attain most of what is considered useful. "Thin rationality" or the idea of maximizing utility has proven to be very insightful for the study of choices and behavior. It permits to model the desirability of certain outcomes and the behavior of an individual under given constraints as a function of his valued ends. It is based on Kenneth Arrow's (1963 [1951]) General Impossibility Theorem which demonstrates that there is no universally applicable method of generating a coherent social preference ordering for groups larger than two. Much of rational choice theory therefore works with preference-open models.

Replacing such preference open models of social choice with preference-constrained models specifying what actors actually desire necessitates making a set of assumptions. Since thin rationality does not give any indications about behavior or outcomes as long as the valued ends are not known, theorists have relied on assumptions to come to a more complex understanding, to arrive at a model of "thick rationality". With a perspective of thick

[12] A suicide terrorist might thus be rational, if one accepts that his valued end is the defense of his political or religious worldview, if he asserts it to be more important than his personal well-being.

rationality, the analyst makes assumptions about the basic interests of individuals. Economic theory, for example, assumes that the utility of a firm is the maximization of its wealth. All firms are then rational if they behave in a profit-maximizing manner. Another common assumption about interests, in the case of states, or individuals for example, is the desire to survive or the desire to have the most amount of power.

From Milton Friedman (1953) to Kenneth Waltz (1979: 5-6), many have argued that the question about strong assumptions is not whether they are right or wrong, but rather whether they are useful or not useful. Friedman concedes that most individuals do not go through their day thinking about profit-maximization, but he nonetheless claims that they behave "as if" this was the case.

When thinking about these assumed basic interests, it is useful to distinguish between the supposed universal base of the assumption, which I chose to call "universal" or "objective" interest, and its subjective translation. Subjective values apply the objective value to the individual situations of a given actor. For example, let us assume that the universal value is survival, a subjective value would then describe the forms of survival for different units of analysis: the survival of a nation-state is equivalent to the maintenance of sovereignty, the survival of a politician means that he has to remain an actor in the public sphere, the survival of a firms means that they have to be profitable.

The fundamental values are the most basic objectives an actor can hold and are generally labeled "interests". Interests change little, and it has been proven useful to assume that they are fixed (Stigler/Becker 1977). However, in order to be able to make strategic decisions, an actor has to have some set of beliefs as to how this desired end can be obtained. This requires deriving a means preference from the end the actor is interested in. Deriving a means preference is a second subjective translation process, which requires that the actor fixes

an overall strategic goal for obtaining his interest. In the case of the nation-state, sovereignty might best be assured through power, politicians traditionally remain in the public sphere through reelection and firms try to ensure high profits through reducing direct price competition. At the level of strategic goals, one can imagine other alternatives however, even if the basic interest does not change. Nation states might try to maintain sovereignty through new forms of international legalization or firms might try to maximize profits through offensive rather than defensive strategic goals.

A final translation step requires adopting a concrete strategy for obtaining the strategic goal. This contextualized means preference is often labeled "policy preference". Policy preferences are what actually distinguishes actors from each other and permits to form coalitions or oppositions. In many respects, the term "interest group" is a misnomer, and if it would not create semantical difficulties, "policy preference groups" might be more appropriate (Baumgartner/Leech 1998: 22-30). Groups are not defined by their interest in maximizing profits, but rather by the concrete policy choices they adopt or support.

The difference between interest and preferences is widely acknowledged in the literature (e.g. Milner 1997; Lake/Powell 1999b; Vogel 1999). Rational choice theory has furthermore problematized the difference between preferences and choices (cf. Elster 1986).[13] The choices actors make often does not well represent their more fundamental preferences for a number of reasons. Actors might make their choices based on incomplete information or their ignorance of their own future desires (Goodin 1982). Too much information, in turn, can lead actors to "satisfice", to reach an acceptable solution instead of an optimal one in order to save time (Simon 1982). Sometimes, actors adopt a risk-adverse strategy, even if it is

[13] Peter Hall (2004), in turn, distinguishes between fundamental and strategic preferences, which comes close to the distinction above, but it collapses strategic goals and policy strategies into one category of strategic preferences.

suboptimal because they want to avoid the responsible for a potential loss (Tversky/Kahneman 1981). At other times, people's choices merely reflect the framework within which they are set (Dowding/King 1995).

Table 2-1 summarizes the different levels of objectives and illustrates them using common examples in political science research. The first and the second type are most often referred to as "interests". They constitute values the actor is assumed to pursue in their finality. The second, however, is subjective: it is a translation of the universal value to the situation of the individual unit of analysis. By personalizing the most basic interest in this way, the subjective value is thus a first approximation of how to achieve the universal value, in this case survival. Type 2 and 3 are therefore approximations of 1, which might be grouped under the label "preferences". Type 2 is an end preferences, however, and should change little, while type 3 is already a relatively detectable means preference. Both are abstract, unapplied beliefs about how to achieve the basic value, but the second is the goal from which the third step derives. Yet this third step needs to be contextualized in order to become a concrete policy preference. Type 3 and 4 can therefore be grouped under the label "strategy". Type 4 is the most context related strategies, highly dependent on the political context, structural and institutional variation, opportunity structures and resources of the actor in question. Of all four types, it is the most dependent on temporal or geographical variation.

Table 2-1: From interests to preferences to strategy

			Politician	***Nation-state***	***Business***
	Interest	1. Basic interest/ assumed objective value	Survival	Survival	Survival
Preference		2. Subjective value/ ends preference	Staying in public sphere	Maintaining sovereignty	Profitability
	Strategy	3. Means preference/ strategic goal	Re-election	Power	Protection
		4. Context-related policy preference/ strategy	Campaign money, industrial support	Armament or alliance	Tariffs or monopoly status

The overlap of labels is conscious and illustrates why there has been a considerable amount of confusion in the literature. Within each group (interests, preferences or strategies), one step defines the goal and the other one the way to achieve this goal. At different levels of abstractions, different types of goals become visible and the more one gets concrete, the more likely it will be to observe variation in the respective strategies.

2.2. Accounting for variation

Why would is it useful to distinguish between these four different levels? In many cases, a more parsimonious explication might chose to skip a differentiation between one of the different steps. Economists, for example, consider it a logical distinction only to state that profit maximization is necessary for the survival of an economic agent and therefore often equate the two (Frieden 1999: 55, fn 13). This can be valid in many instances, but it risks overlooking the conditions under which the assumptions of a model will change. From an epistemological point of view, the first assumption about basic interest cannot be proven wrong, because it is assumed only. All other preferences depend on specific factors, however, and will change as these factors evolve. Distinguishing between the different translation steps can therefore help to establish a blueprint for change by specifying which elements have an effect on what type of translation.

2.2.1. Defining policy preferences: a three step process

Let us consider the different translation steps in turn. The first translation step (between level 1 and 2) applies the assumed basic interest onto a subject, which has to define itself. If the basic interest is assumed to be survival – and by Milton Friedman's standard, this seems to have proven a useful assumption – then a subjective basic value needs to specify

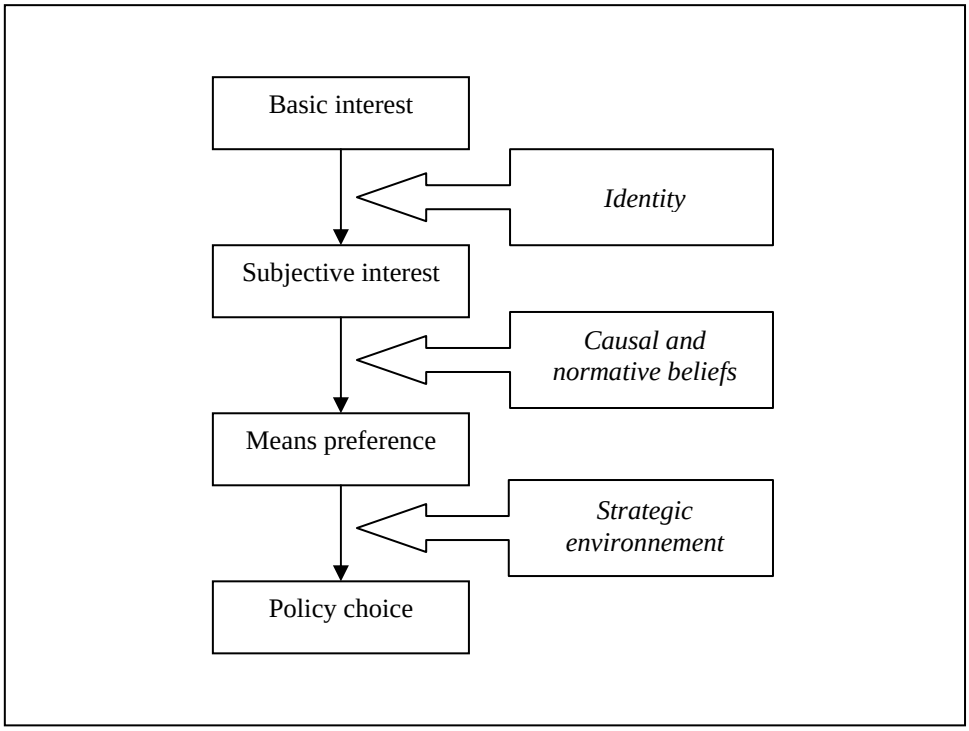
what needs to survive. This subjective basic value is almost as stable as the universal value and will not be affected by changes in the strategic environment. However, it will change, if the subject itself changes, or more precisely, if the identity of the subject changes, simply because this will have an effect on defining what needs to survive. A person who conceives of his primary identity to be a liberal individual will adopt an understanding of survival that applies to his own person. If he conceives of himself as part of a collective identity, however, which is stronger than his individual identity, he might consider giving his life for the survival of the collectivity, to cite an extreme example. For the study of the state, sovereignty is a relevant concept for an independent nation-state that is defined by the offensive alterity ("anarchy") to other states (Wendt 1999). If the identity of a nation-state changes, like one might suggest is happening in the context of close cooperation such as within the European Union, survival might be framed less in terms of sovereignty but more in terms of collective sustainability.

The second translation step (between level 2 and 3) depends on beliefs, more specifically on what Goldstein and Keohane (1993: 10) have termed causal beliefs, beliefs about cause-effect relationships which "provide guides for individuals on how to achieve their objectives," and on normative beliefs about what *should* be done. Corresponding to the literature on the effect of ideas on politics, we would therefore expect means preferences to change once beliefs structures evolve, from potentially small change through learning to large change through a paradigm shift (cf. Hall 1993).

The final step is the one most studied in rational choice theory because it contains the difference between the conscious objective the actor seeks to achieve and the strategic choices he makes in its pursuit. These strategic choices are a function of an actor's strategic context, which naturally might undergo a myriad of variations. They are affected by information,

resources, opportunities and institutions, to name only the most commonly observed variation. Depending on any given strategic context, it then becomes possible to model an appropriate "game" with the tools provided by game theory.

Figure 2-1: Sources of variation in strategic behavior



At a theoretical level, conceiving of interests as a translation process with at least three different steps is useful for conceptualizing the thrust of different families of literature in political science. The final step is the one most studied in rational choice theory because it contains the difference between the conscious objective the actor seeks to achieve and the strategic choices he makes in its pursuit (e.g. Axelrod 1984; Scharpf 1997; Lake/Powell 1999a).[14] These choices are a function of an actor's strategic context, which naturally might undergo a myriad of variations. They are affected by information, resources, opportunities, and institutions, to name only the most commonly observed variation. Depending on any

[14] Different strands of the large rational choice literature include social and public choice theory (Arrow 1963 [1951]; Elster/Hylland 1986), large parts of the field of political economy (see Alt/Alesina 1996), game theory (e.g. Tsebelis 1990; Scharpf 1997) and rational institutionalism (see Weingast 2002), to name only a few.

given strategic context, it then becomes possible to model an appropriate "game" with the tools provided by game theory. If the third step (between level 3 and 4) is the traditional domain of rational choice literature interested in strategic interactions, the literature focusing on the effect of ideas on political evolutions has called attention to the middle step (Goldstein 1988; Goldstein/Keohane 1993; Hall 1993; Jobert 1994b; McNamara 1998; Muller/Surel 2000; Parsons 2003). The impact of identity on goals is the domain of the constructivist literature, which tries to show how individual actors as specific agents are constituted through their interactions in a social setting (see Berger/Luckmann 1990 [1966]; Wendt 1994; 1999; Zehfuss 2002).[15]

2.2.2. The case of economic interests in trade policy

Clarifying these different steps helps to understand when and why firms that are lobbying in the political arena display behavior that might be different to what we would expect from any specific economic theory or IPE models, which hold interests as fixed. To come back to this specific example, let us consider the possible variations that might occur in the different translation processes. For the sake of simplicity, let us assume that there is only one possible universal interest: survival. Traditionally, we would derive that an economic agent can only survive it can assure being profitable, so his utility function will be profit maximization. Neil Fligstein (2002), on the other hand, makes the case that firms are not only producers, but also social organizations, which need to operate in a stable environment in order to survive. For Fligstein (2002: 17), there are four ways a firm's survival can be threatened. First, competitors can engage in price competition, take over market shares and eventually drive a firm out of business. Second, suppliers who control inputs can raise prices

[15] Although a part of this literature would actually deny the assumption that there is such a thing as a universal basic interest.

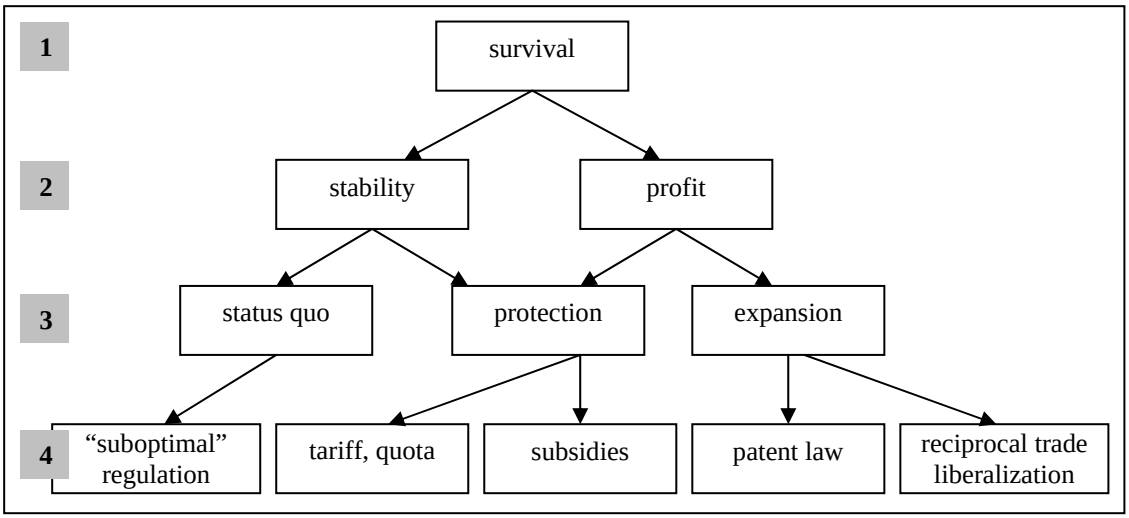
and threaten to make a firm unprofitable if it does not have recourse to different suppliers. Third, conflict within the firm between managers and the workforce can jeopardize the ability to produce goods and services as well. Finally, products may become obsolete. Some of these threats can be captured by the traditional assumption that a firm needs to be profit-maximizing. But the ability to avert strikes (inter-firm conflict) might not depend on the firm's capacities as a producer. While it could be argued that profit and stability are conflicting goals, I propose that they derive from the same basic desire, survival, and represent subjective values of two different sides of a firm. For a firm as a producer, survival means remaining profitable, but for a firm as a social organization, survival means assuring stability.[16]

In any set of situations where these subjective values are stable, we might nonetheless observe variation in the means preferences, the strategic goals the actors determine for themselves in order to assure their subjective value. Profit maximization, for example, might lead the actor to lobby for protection from competition, like the theory of economic regulation and other authors postulate. But another way of achieving profit is by means of expansion into new markets. These two strategic goals can lead to a long series of policy choices businesses might lobby for: tariffs, quotas, monopoly status or subsidies, to cite only a few for the case where the business would like to achieve some form of protectionism. If it wants to expand into foreign markets, it can do so through alliances, reciprocal trade liberalization or other forms of market access agreements, but also by preventing its competitors from having the same global competition opportunities, for example by affecting patent law or achieving an

[16] For empirical research, the principal question becomes then to determine which identity is the dominant one in a specific context. A legal/institutional context that facilitates hiring and firing or measures against strikes would underline the producer identity of a firm, a constraining context the social organization identity. Cf. Peter Hall's (Hall 2004) discussion of multiple identities in the process of preference formation.

agreement on international standards that enshrines the production standards of the firm in question.

Figure 2-2: Variation in business lobbying content on international trade



Without claiming that this is an exhaustive list of possibilities, figure 2-2 represents these possible variations of business demands for international trade graphically.[17]

2.3. On the evolution of "business interests"

Rational choice theories are often criticized for consciously choosing to ignore the formation of preferences in their models. This criticism has given rise to the entire field of historical institutionalism, which has gained dominance in recent years. As Thelen and Steinmo (1992: 9) point out, "the core difference between rational choice institutionalism and historical institutionalism lies in the question of preference formation," which rational choice theory treats as exogenous and historical institutionalism as endogenous. Defenders of the rational institutionalists approach in turn respond that they do care about preference formation, but that they deal with this question by dividing time into a sequence of separate

[17] It is important to note that this figure does not correspond to a game tree. It tries to underline possible evolutionary paths, but not within one strategic game.

games. An exogenous preference in one setting (the independent variable) can be something to be explained in another (i.e. turn into the dependant variable) (e.g. Dowding/King 1995: 5; Lake/Powell 1999b: 33). Institutions might have an impact on individual preferences, but that at any one given point in time, a basic set of preferences is taken as exogenous. Some authors have even undertaken to model to formation of preferences over time (Kapteyn/Wansbeek/Buyze 1980; Hansson 1996). However, most IPE theories on business interests adopt the sequencing perspective, while others assume that preferences will not change over time.

The difference between the sequencing approach and a methodology such as historical institutionalism which takes preferences as endogenous is the time perspective. Temporality has a much greater importance in the latter perspective. Accounting for any event that unfolds over time by means of sequencing quickly necessitates analyzing a very long list of individual interactions. Sequencing time into different strategic settings might works well in theory or for the analysis of relatively stable cases, but it quickly becomes a very complex string of strategic settings that tends to overwhelm most analysts faced with a real life problem that unravels over time.

Sequencing furthermore divides the world into fixed objectives and strategic behavior. However, as the translation model of interests developed above shows, two levels of preferences are sometimes both strategies of obtaining a higher objective and goals to be attained by a more concrete strategy. For any one specific empirical case, this means naming and renaming a particular behavior – e.g. lobbying for protectionism – as a strategy or as a goal depending the individual setting that will be analyzed at the time. This can be done coherently, but it contains a high risk of a common problem in the study of preferences, which Frieden (1999: 49-50) has termed “sins of confusion”. As Frieden highlights, analysts

sometimes confuse preferences and strategies of actors and he cites the example of realism in the field of international relations, which assumes that power is the ultimate objective of states, while at the same time admitting that it is the international anarchic system that forces states to maximize power. Power, Frieden contents, should thus be conceived as a strategy. This is correct at the abstract level, but it is difficult in the analysis of an empirical case in international security, which is why the confusion in the literature arises and why different authors use the labels “interest”, “strategy” and “preferences” in such a variety of ways.

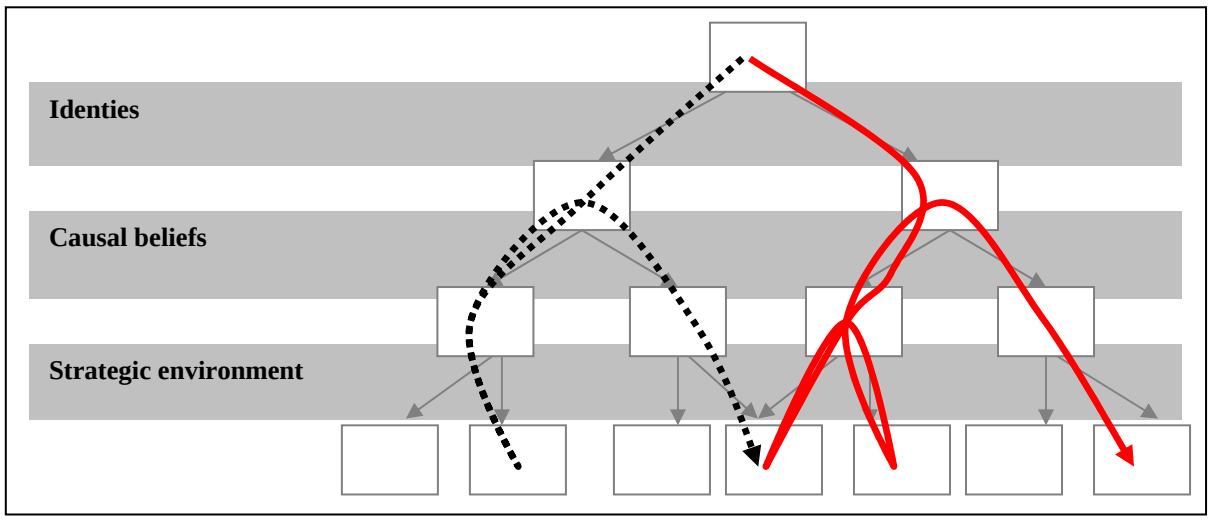
The problem of sequencing is thus not one of logical strength, but of practicality for temporal studies. If one accepts to abandon a rigid division into strategies and objectives, it becomes easier to see the effect of an actor’s environment onto his behavior. Historical institutionalism, for example, maintains that not just strategies, but even goals actors pursue are shaped by the institutional context (Steinmo/Thelen/Longstreth 1992; Pierson/Skocpol 2002). This argument is analogous to the central claim of this paper: that lobbying content and not just lobbying strategies evolve in the course of business-government interaction.

To avoid these problems arising from sequencing, I therefore propose adopting a more long-term perspective of business interests. In essence, this perspective applies the insights of historical institutionalism and actor-centered institutionalism (Mayntz/Scharpf 1995; Scharpf 2000) to the study of business lobbying. In the interactions with their respective governments and other relevant stakeholder, firms constantly test, refine and redefine their hierarchy of preferences. Through the information firms obtain in their interaction with governments, they evaluate the feasibility of their policy strategy and adapt to changes in their strategic environment, which corresponds to a movement between the fourth and the third level in figure 2-2. A challenge to or ambiguity of the belief structures of firms can furthermore make

them go back and fourth between the second, third and fourth level. Depending on the evolution of the variables, the content of business lobbying can be quite different.

The aim of the empirical section will be to show how firms move along the path of possible lobbying choices in the course of international negotiations. By taking up figure 2-2, the different movements might be represented graphically in the following way. The observed lobbying corresponds to the bottom level of this figure, which is equivalent to level 4 in figure 2-2. Even though it is impossible to know which interests or strategic goals firms pursue at a higher level of abstraction (levels 1-3), it is possible to make informed assumptions about how lobbying behavior can follow from a particular goal or not. If a firm prefers stability through status quo arrangements, for example, it would be irrational to lobby for market liberalization. If we observe a variation in lobbying behavior, a map of possible preference-strategy assumptions helps to make propositions about changes in preferences that we cannot observe directly.

Figure 2-3: Different policy preference paths



For the moment, this is a preference-open visualization of the evolution of business interests in international trade. Making assumptions about what type of regimes, traditions, constraints or incentives will lead to a specific policy stance requires considering each of the

variables in turn and connecting them in a multi-causal argument. The basic point of this discussion is merely to caution against oversimplified assumptions about fixed preferences or confusion of low levels of preference definition with fundamental interests. Assuming preferences for protectionism (or foreign market opportunities) as fixed, for example, is simply inappropriate for any analysis of developments over time, which is why the theory of economic regulation, for instance, has aged only with difficulty (Peltzman 1989; Ogus 2004).

On a more fundamental level, the claim of this dissertation is that the lobbying of firms is embedded in the political interactions they engage in. For cognitive and organizational reasons, it is misleading to assume that businesses are always the determinants of trade policy. A firm's policy stances are affected by their interactions with governments to the same degree that governments are affected by the technical expertise that business representatives provide. Policy preferences can therefore only be understood as the result of a complex process of interactions.

3. Comparative findings

If one accepts a temporal perspective focused on business preference evolution, the question becomes: what determines business preferences at which points of the interactive process? In other words, what expectations should we have about the evolution of business preferences as one of the variables discussed above change?

For an empirical investigation, the study of lobbying objectives entails some epistemological difficulties, simply because we cannot know the basic interest that the firms act upon. Scholars have therefore commonly relied on three ways to specify preferences: assumption, observation and deduction (Snidal 1986; Frieden 1999). However, if one considers policy objectives as the result of a three step translation process, these three modes

apply to different levels of the process. At highest level, it is impossible to deduce objective or subjective interests from theory, so they are always assumed.[18] Deduction and observation only apply to the two other steps and go hand in hand, since deduction specifies potential maps of preference-strategy evolution and observation helps to verify these maps or to point to incoherencies. Since observation can only capture the final step of the process, the policy preference, it is often dismissed as inappropriate, because policy preferences are strategies and might therefore not reflect the prior goal (level 3) correctly. However, I content that relying on theory only is equally risky, because it leads to static conclusions. If we derive from theory that firms should be in favor of protectionism, but empirical data confirms that they are increasingly in favor of trade liberalization, then we need to at least specific in which sense lobbying for trade liberalization can be a strategy to ensure protectionism.[19]

3.1. Comparative design

The principal aim of the comparative research design was thus to cover cases that would be able to account for variations one might expect from theory, variation captured by the four variables discussed above. The comparative reasoning of this dissertation employs a combination of John Stuart Mill's method of difference and method of agreement (Mill 1970 (1888)) and crosses it with a most similar system design (Przeworski/Teune 1970; Peters 1998). Mill's method of agreement describes the study of two cases in order to find the cause of a common phenomenon. If only one of several possible explanatory elements is present in both cases, the method argues that must be the cause of the common phenomenon. Mill's method of differences does the opposite: it takes two cases with different outcomes and

[18] The assumption may be guided by theory, though, such as Maslow's "hierarchy of needs", for example.
[19] This sounds polemical, but it is not improbable. In my interviews, several firms have accused their rival of lobbying for full and complete liberalization only because it is politically not feasible and it would thus actually a be strategy for assuring that nothing changes.

examines if the element identified before is indeed absent in one of them. If it is present in both, the element can be discarded as the cause of the phenomenon. The method of difference serves as a check upon the method of agreement by using negative cases to reinforce conclusions drawn from positive cases (Ragin 1987: 41). A most similar system designs finally aim to compare resembling cases to allow identifying the factors responsible for divergent outcomes.[20]

Both the US and the EU and the sectors of air transport and telecommunication services are similar systems, where slight variations are easily identifiable. The comparison of variables is undertaken along three dimensions: across countries and across sectors, but also across time. The time dimension is not relevant in all examples, but it was in the case of European telecommunication services, where service providers only supported multilateral liberalization once the European integration process had moved forward. In order to clarify the relation between variables, let us consider them schematically.

The outcome to be explained in all case studies is the demand of the service providers when they lobby their governments (outcome X). The explanations considered are the economic incentives for producers (A), the domestic regulatory system (B), the international regulatory regime (C), and the policy-making procedure (D). Table 2-5 presents the possible variation of these four elements. A number of other explanatory factors are held constant in the case studies: political contact between firms and governments (firms were always well included) and the industry structure (dominated by large incumbent firms), for example.

[20] Most similar systems stand in contrast to most different systems, where the goal is taking two cases that do not resemble each other but nonetheless produced the same outcome.

Table 2-2: Variables

Element	***Possibility 1***	***Possibility 2***
A: Economic incentives	A1: Exports important	A2: Home market important
B: National regulation	B1: Regulated	B2: Deregulated
C: International regulation	C1: Simple coordination	C2: Segmentation
D: Policy process	D1: Simple	D2: Multi-level process

The outcome to be explained will be considered in three variants. The demands of firms can be X1: for multilateral liberalization, X2: against multilateral liberalization and X3: for another form regulatory solution. As in most categorizations, these labels are somewhat reductionist and do not address the nuances of the actual positions or settings. Variable B, for example, is only a proxy for the political control of governments over international service provision. When the controls of the state over the economic behavior of the firms are high, as in the case of state monopolies, for example, I label the case B1. This does not mean that in cases labeled B2 no controls of the government on the economic agents exist anymore. Variable C tries to capture the difference between the bilateral international regime governing air transport, as opposed to the co-ordination regime governing telecommunication services. A more nuanced description will be the ambition of the case study chapters.

3.2. Findings

In order to spell out the most important observations of the empirical research, it is necessary to summarize the findings by means of these schematic labels. Expanding upon the table presented in the introduction yields six different cases, since telecommunications are divided into two time periods, one roughly around 1994, another one in late 1996. On the basis of the explicitly defended policy stance of the most dominant firms in the two sectors in both countries, I classify the cases as follows:

Table 2-3: Lobbying content across cases

Country	*Sector*	*Time*	*Dominant stance*	*Category*
US	Air Transport		For open sky liberalization	X3
	Telecom	1994	For multilateral liberalization	X1
		1996	For multilateral liberalization	X1
EU	Air Transport		For open aviation area	X1
	Telecom	1994	Against liberalization	X2
		1996	For multilateral liberalization	X1

As with all large categories, this classification requires a considerable degree of simplification of the actual cases and might not do justice to the intricacies of several developments. It is furthermore based on a certain degree of subjective judgment, since few firms are ever explicitly in favor "of liberalization". I argue, for example, that an open aviation area pursued by EU carriers is a much more liberal international regime than the open sky regime supported by US carriers, which effectively shield them from foreign competition in their home market. If one accepts this classification, it yields the following grid.

Table 2-4: Air Transport

US	EU
A1: export	A1: exports
B2: dereg.	B2: dereg.
C2: complex	C2: complex
D1: simple	D2: multi-lev.
X3: other	X1: liberal.

Table 2-5: Telecom in 1994

US	EU
A1: exports	A2: imports
B2: dereg.	B1: regulated
C1: simple	C1: simple
D1: simple	D2: multi-lev.
X1: liberal.	X2: against

Table 2-6: Telecom in 1996

US	EU
A1: exports	A1: exports
B2: dereg.	B2: dereg.
C1: simple	C1: simple
D1: simple	D2: multi-lev.
X1: liberal.	X1: liberal.

The variables of interest are highlighted in grey. The case of air transport seems straight forward. A variation of D seems to be responsible for the divergent outcome X. Put differently, the multi-level policy process in the EU seems to account for the divergent demands of European air carriers. Judging from just this comparison, it seems that the multilevel structure leads to the support of the opening of markets. However, this quick

conclusion is not confirmed by the telecom case study, where we find both X1 (open markets) and X2 (protectionism) in presence of D2 (in the multi-level EU system).

In the telecom case, we find instead that a change in B (domestic regulatory system) and in A (the international involvement of telecom providers) corresponds to a change in X. More precisely, when the EU telecommunications markets were liberalized internally, firms started embracing the project of multilateral liberalization through the GATS as well. But it is also not the case that B2 (deregulated domestic markets) cause X1 (demand for multilateral liberalization), as we have seen by looking at the US air transport case.

The reason for these inconclusive findings is multiple causation (or plural causation) (Ragin 1987: 37-8). Quite simply put, neither domestic regulatory structures, international regimes, economic incentives nor policy processes alone can account for the demands of businesses. Let us juxtapose the cases to look what combination of variables corresponds to a support for liberalization (X1) independent of the case studies.

Table 2-7: Outcome comparison

US Air	**EU Telecom t_1**	**EU Air**	**US Telecom t_1**	**US Telecom t_2**	**EU Telecom t_2**
A1: export B2: dereg. C2: complex D1: simple	A2: imports B1: regulated C1: simple D2: multi-lev.	A1: exports B2: dereg. C2: complex D2: multi-lev.	A1: exports B2: dereg. C1: simple D1: simple	A1: exports B2: dereg. C1: simple D1: simple	A1: exports B2: dereg. C1: simple D2: multi-lev.
X3: other	X2: against	X1: liberal.	X1: liberal.	X1: liberal.	X1: liberal.

Within the limits of this three-fold comparison, we can synthesize the findings the following way:

1. A2 and B1 are present when we find X2. When firms are import-competing and markets heavily regulated, they tend to lobby for protectionism.

2. However, the opposite is not necessarily the case. A1 and B2 do not always cause X1. In the case of US Air Transport, we find X3 as an outcome, despite the presence of both A1 and B2. Even though firms have important international activities and markets are deregulated, US air carriers support open skies only and reject the complete opening of markets through more multilateral designs.
3. When C2 is given, the effect of A1+B2 seems to depend on D. In a segmented international regime the demands of exporting firms in deregulated domestic markets depend on the policy process that the firms are confronted with.

3.3. Towards a process model of preference evolution

How do these findings compare with the theoretical propositions made at the beginning of the chapter? Within the limits of this small-n comparison, several observations emerge. Economic incentives, to begin with, seem to be quite relevant to the policy preference of firms in international trade. Since only the dominant policy stance has been considered, it is difficult to confirm or disconfirm the validity of economic analysis for the differentiated behavior of firms *within* a case study, without a more detailed empirical investigation.[21] But even between case studies, the importance of the home market for European telecom providers in the early 1990s corresponds to their protectionist policy stance. Once firms shift their focus to exporting and foreign markets more generally, the abandon their rigid protectionist stances.

From the macro-perspective of this formalized comparison, it is difficult to distinguish the effect of economic incentives from the weight of national regulatory traditions. Since

[21] As the empirical chapters will indicate, however, economic incentives are one of the factors most relevant to understanding differential mobilization.

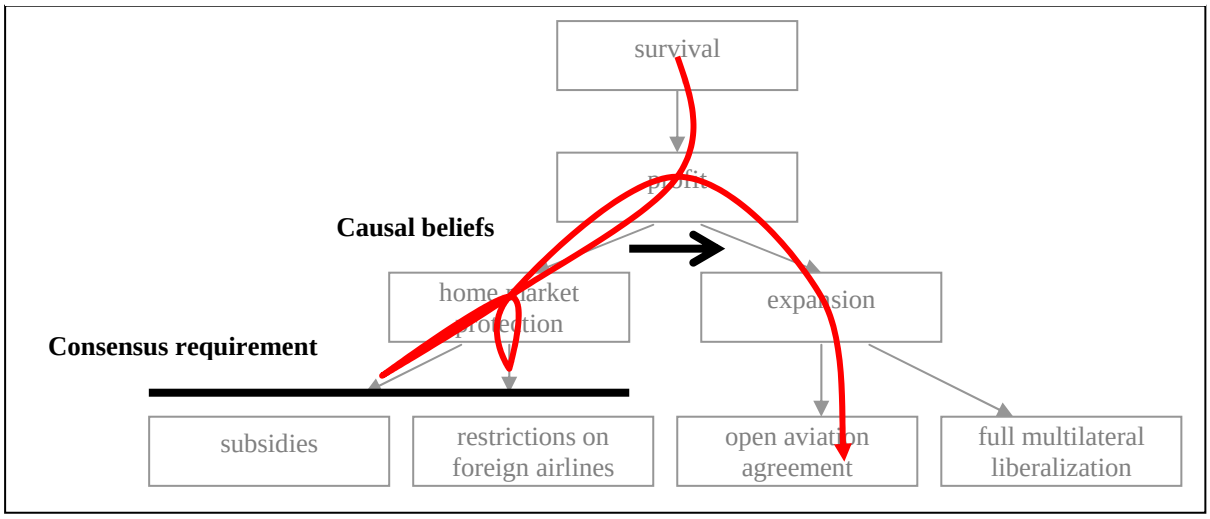
highly regulated sectors tend to organize production and the provision of services within home market, high levels of regulation determine in fact whether or not firms will be inward or outward oriented. With this note of caution, the hypothesis made about regulatory traditions is also confirmed. Firms only support international liberalization once their internal market is deregulated. Responding to the propositions of the separate literature will be the task of a more nuanced comparison following the empirical investigation, but for now we can combine the two hypotheses into the following statement: Home-market oriented firms in highly regulated markets lobby for protectionism, while outward oriented firms in deregulated markets are more likely to lobby for liberalization.

Combining over fifty years of economic studies with the insight of this research permits to state the first observation as a claim. The second, however, is only a probability. Lobbying for liberalization might occur from exporting firms in deregulated markets, but this is not necessarily the case. In the cases studied, it was the case almost everywhere except for US carriers in international air transport. What explains these carriers' reservations about liberalization? Seemingly, it is neither an effect of the international regime (EU carriers are supportive of liberalization), nor the policy process (US telecom carriers were supportive of liberalization). Instead, I argue, it is a combination of the two. As specified by hypothesis 3, the segmented bilateral regime governing international air transport acts as a disincentive to liberalization. In other words, while greater foreign opportunities are a great incentive to carriers, the reform of the international system implies much uncertainty and calls for caution. Carriers in the US and the EU potentially have much to gain *and* much to lose from international liberalization. Faced with these ambiguous preferences, what eventually determines the policy stance of the carriers is the policy process. While US carriers can lobby on an ad-hoc basis for incremental benefits or reservations about reform, EU carriers only

have access to the policy process opened by the European Commission if they speak out explicitly in favor of liberalization.

In its crude form, this is a strategic consideration only. But it explodes the formulation of a single "game" of interactions, because EU carriers need to adapt their means preference (their strategic goal) as well as their policy preference. This implies adopting a new set of causal beliefs about the best way to achieve profit. If EU carriers used construe profit-maximization in terms of home-market dominance, they now employ an ideational framework constructed around expansion and foreign opportunities. A seemingly minor aspect of the strategic setting (the multi-level decision-making process of the EU) has thus profound effects on the goals EU firms pursue through lobbying.

Figure 2-4: The Evolution of EU Airline Preferences



To return to the idea of different levels of objectives, figure 2-4 presents the formation path of lobbying goal of EU airlines graphically. The point made by the example of EU air transport is a simple one: sequencing preference formation into a string of separate pairs of preferences and strategies can lead to an incomplete understanding of the evolution of goals of political actors. It not only risks obstructing a vision of the bigger picture, it also obscures

an understanding of how choices at one level of the business interest translation process are related to conditions at a higher or lower level.

This difficulty can be avoided if one deals with business preferences as evolutionary and one acknowledges that this evolution is highly dependent on the firms strategic interactions, most notably those with its government. An appreciation of the fact that interactions are strategic does not have to preclude an understanding of the constitutive processes that also shape the daily interactions of businesses and governments. First, business-government interactions are daily learning processes, which the cognitive framework and references of both actors and thus goes much beyond the mere transformation of information about the strategic environment. In a much more long-term perspective, interactions are also relevant to the constitutions of identities, which are crucial to the actor's understanding of his ultimate subjective values. In the cases studied, the impact of identity is less visible because service providers are conveyed a similar self-image by their respective governments in the 15 year time frame studied. For the sake of logical complexity, however, this is an important point to keep in mind, even for the cases of air transport and telecommunication services. With an additional time from of only 20 more years, for example, it would be possible to investigate how "interest representation" differs between a European telecom firm that has been created as the government arm of public service provision, with no obligation to be profitable, and a full competitive current telecommunication operator.

4. Methodology

4.1. Between variables and thick description

The formalization of the comparative findings in terms of variables is the basis of my argument in this dissertation, but it is not equivalent to it, because two main considerations caution against accepting the formalization too quickly.

First, the outcomes that I compare, the lobbying demands of companies, are based on observation. I still cannot claim to know what businesses really want; I can only observe their behavior as revealed preferences. It also seems to be that there are no more appropriate ways to design this inquiry – one could think of sending questionnaires – because the political interests of firms are not as easily measurable as their foreign investment, or example. Second, reducing complex economic or political facts into variables poses considerable problems. How should one measure "international activity" of firms or the importance of exports, for example? Especially in service sectors, the task has proven quite difficult. With nationally based network operators, should one consider international phone connections, accounting rate surpluses or foreign direct investment? In the case of airline companies, is the number of international connections, the slots at foreign airports or the involvement with foreign airlines the most important factor? More importantly, when we observe a combination of indicators, how do we know which ones are the ones the CEO values most in making company decisions? One could pose the same questions with respect to domestic regulation, international frameworks or the policy procedures businesses encounter. Evidently, these questions have been tackled in part through the interview process, but this only helps to gain a general sense of the importance of foreign involvement, the role of the home markets, regulatory weight or complicated international frameworks. However, it is very difficult to

determine precisely which one of factors weighs more strongly than others when more than one of them enter into consideration and what about a given category is actually decisive.

Several aspects of the dependent variables are thus relatively vague. However, working with these concepts does not automatically invalidate the findings of this research. The problem with vague concepts is inherent in social sciences and one can think of many. Public interest is one for example. Even though nobody is able to define the concept positively, few people would agree to discard the concept. Similarly, Leif Lewin (1991: 23) cites the idea of "a beautiful woman". Most men would consider themselves experts on the question and within a given cultural context, there is often a remarkable amount of agreement about who should be placed in this category. Yet most attempts to operationalize the concept – the winner of beauty contests, models, or women with a 2 to 3 unit harmony – are insufficient. With beauty, charisma or public interest, the most certain conclusion remains the expression "you know it when you see it."

What this phrase resumes is very simple: much of the vagueness of a concept disappears when it is put into context. Judges can rule that a certain act was against public interests, behavior of a man in question can be attributed to the presence of a beautiful woman and the political activities of firms can be a response to their international activities, complexity in regulatory frameworks or political processes. Reducing social facts to variables takes away a specific context and therefore increases the vagueness of a concept. For scientific purposes, this reduction is very important, because it is the only way to make an observed phenomenon comparable to others. Dissecting elements, their variation and their relation to specific outcomes not only clarifies an argument, it is the essence of any social science method itself. In the context of this study, however, the reduction to variables takes away some of the insights of the investigation, because it severs the connection between

different elements and can therefore not account how they are constituted. In the cases studied, the mutual impact of international activities and domestic liberalization are as important as the ways in which the political process actually informs policy demands instead of just causing them.

To avoid choosing between providing an accurate narrative of the cases studied and making a scientific argument, the case study chapters follow to some extent what Clifford Geertz (1973) has termed "thick description". For each sector, I begin by laying out the politico-economic context and then show how actors behave in this context. For Geertz, the role of an anthropologist was to immerse him- or herself into a cultural context in order to account for the webs of meanings that motivate specific behavior. The ambition of this method is to account for the process by which the significations of economic and political facts are constituted for the corporate actors before they are actually able to act on it. Once meanings become stable, it is possible to compare the behavior of firms across countries, time and sector.

4.2. A qualitative approach

In contrast to the common procedure of deducing "interests", this research approaches the subject both empirically and qualitatively, based principally on the use of semi-structured interviews and the observation of the political involvement of firms on the issues studied. The activities of firms identified in this manner then become the object of a multi-dimensional comparison.

Some epistemological considerations help to clarify the ambition of the methodological approach chosen. According to Gary King, Robert Keohane and Sidney Verba (1994), both quantitative and qualitative research is based on a logic of inference. The

goal of a scientific study in the social sciences is to make descriptive or causal inference on the basis of empirical information about the world. Within the limits of a given uncertainty, a case study is only scientific if it allows understanding something beyond the immediate information collected. In their definitions, "descriptive inference" uses observations from the world in order to learn more about unobserved facts, while "causal inference" implies learning about causal mechanisms from the information gathered. More recently, Alexander Wendt drew attention to the fact that causal mechanisms are furthermore different from constitutive mechanisms, both of which describe relationships between two elements (Wendt 1999, 77-88). Following Wendt, causal relationships exist when an antecedent A generates an effect B. Constitutive relationship imply that Y exists in virtue of X. Water, he cites as an illustration, is "caused" by joining hydrogen and oxygen atoms, but it is constituted by the molecule structure H_2O. H_2O does not "cause" water, because it doesn't exist independently from it. In a more social context, one can think of the effect of cultural traditions on behavior. It would be misleading to say, for example, that the protestant education caused capitalism. Rather, protestant values constitute what Max Weber defines as "the spirit of capitalism". In order to address both causal and constitutive mechanisms, I therefore prefer to talk about "relational inference" rather than "causal inference".

The interviewing process is geared principally towards the descriptive inference. For this research specifically, descriptive inference helps to make suppositions about the actual "opinion" or "preference" of a business by studying its lobbying strategy. Only few business representatives actually tell me if they were "for" or "against" service trade liberalization within their sector. If they did, I would have no means of verifying their claim. Since liberalization has happened or was underway at the time of the interviews, a business might simply proclaim having been in support in order to seem modern or less protectionist. A much

easier way to understand their position is by evaluating the resources the company has put into being represented in the context of these issues as the time. Constructing a narrative thus helps to understand the strategies, the political behavior of businesses. From these strategies, it becomes then possible to draw suppositions about their policy preferences, which I admit not being able to actually know. The descriptive inference I employed is thus a means of gathering data on variables, which I then use to study relationships between different elements (by using relational inference).

Relational inference is then used to analyze the lobbying behavior. This is the central task of the comparative research design focusing on two different countries and two different sectors. Correspondingly, this chapter is divided into two parts. It begins by discussing the interview methodology used and that status of the information gathered by these means. A second part then lays out the comparative research design and identifies the elements that can be studied by looking at US and EU business lobbying in telecommunications and air transport.

4.3. Semi-structured interviews

Even though interviewing has established itself as one of the most commonly used methods of qualitative political science research, there are only few standardized procedures and methods compared to the curriculum in quantitative social science research. Interview techniques vary from standardized questionnaires over semi-structured to non-structured, open question techniques (Bachir 2000; Leech 2002b). Standardized questionnaires are most commonly used when the research goal is to survey political attitudes or values, as well as specific forms of political behaviour, such as voting for example. The standardization permits comparing responses of a relatively large sample size and some degree of statistical analysis.

Although the interview technique is diametrically opposed, non-structured interviews are also often exploited quantitatively through the process of coding the interview text and evaluating the use of words and subject matters (Aberbach/Chesney/Rockman 1975; Aberbach/Rockman 2002). In other cases, non structured interviews can also take the form of simple conversations, where the role of the researcher becomes similar to the work of an ethnographer (cf. Michelat 1975; Kaufmann 1996).

While these two interview techniques are common in sociological analysis and political sociology, the most common interview technique in the study of public policy is the semi-structured interview. More precisely, the interviews conducted can be described as "elite interviews" or "specialized interviews" (Cohen 1999; Leech 2002b). The term "elite" does not necessarily refer to the socio-economic position of the person interviewed, but to his or her access to the knowledge in question.[22] As Lewis Dexter (1970, 6-7) points out,

> In standardized interviewing […] the investigator defines the question and the problem; he is only looking for answers within the bounds set by his presuppositions. In elite interviewing, as here defined, however, the investigator is willing, and often eager to let the interviewee teach him what the problem, the question, the situation, is […]. Partly out of necessity […] this approach has been adopted much more often with the influential, the prominent and the well-informed than with the rank-and-file of a population.

The most immediate purpose of elite interviewing is to get access to information that is not easily available and to gain an "insider's perspective" on the policy issue examined. Talking to policy actors permits to gather information that is not preserved in print, such as informal procedures, the weight of particular actors on the political decision or unpleasant events and errors.

For the study of lobbying, specialized interviewing is a necessity, especially in Europe. Unlike in the US, there are few comprehensive accounts or records of lobbying

[22] Rubin and Rubin (1995) refer to this kind of specialized interviewing as „topical interviewing". Since a "topic" can be defined quite broadly to cover almost anything relating to the research question, I prefer using the term "elite" interview.

activity, most importantly because lobbying does not rely on monetary contributions, which are preserved in publicly available records in the US. In both cases, lobbying is based on a great variety of formal and informal procedures. Because of the negative connotation of lobbying in Europe – which seems to imply the manipulation of politics by powerful interests – writing on lobbying methods in Europe often come from political activists (Belén et al. 1999; Wesselius 2001). Conducting interviews therefore becomes necessary to fill gaps and evaluate biases in the available information. For this specific research project, interviews furthermore help to constitute the narrative of the evolution of the external trade policy in air transport and telecommunications. For both of these purposes, it became necessary to target a relatively large field of policy experts: besides government officials, company representatives, interest associations in telecommunications and air transport, interviews included secretariats of international organizations, employers' organization, legal experts as well as other observers.[23]

To draw a more detailed picture, the tables below breaks down the 74 interviews along country lines and then along sectoral lines to illustrate the balance between the separate parts.

Table 2-8: Regional division of interviews

	EU	**US**	**International**	**Total**
Government	EU Institutions: 10 + Member states: 12 22	10	3	35
Industry	17	17	1	35
Other	4	0	0	4
Total	43	27	4	74

[23] A complete interview list can be found in the annex.

Table 2-9: Sectoral division of interviews

	Air Transport		**Telecommunication**		**Services in general**		**Other**	**Total**
	Government	Industry	Government	Industry	Government	Industry		
EU	10	6	9	10	3	1	4	43
US	6	5	4	9	0	3	0	27
International	2	1	1	0	0	0	0	4
Subtotal	18	12	14	19	3	4		
Total	30		33		7		4	74

To summarize, 35 interviews were done with government officials or public administrations, and 35 with industry representatives. Specifically concentrating on each sector, 30 were with air transport exports and 33 with telecommunication specialists. Overall, 43 took place in the EU and 27 in the US. The difference between EU and US interviews is due to the fact that an initial series of governmental interviews with the EU Institutions was complemented by interviews with the Member State governments in the EU.

4.4. The practice of interviewing

Since the selection of interviews is based on a person's participation in a given political issue, interviewees are most often "not interchangeable" and the rejection of an interview request can have an effect on the outcome of the study (Cohen 1999, 7). Consequentially, one of the most time consuming tasks of this research methodology has been getting the interview (Goldstein 2002). The duration of a meeting depends on the time frame granted by the conversation partner. In business and politics, time is precious and most people block an hour for a meeting in their calendar. Depending on the flow of the conversation, it is possible to stay a little longer, but it might also become necessary to cut a little shorter. The great majority of my interviews have taken between one hour and one and a half hours, with

the exception of lunch invitations or interviews with retired people, which have taken up to two and a half hours. A small number have taken less than 45 minutes, most notable three telephone conversations. For all of my interviews, I used a research questionnaire, for which I adapted the content questions to each conversation partner. A reproduction of a questionnaire can be found in the Annex.

A certain number of errors inevitably happen in earlier stages of the research. Most often, the researcher's uncertainty about the subject matter lead him to prompt or lead the conversation partner into areas that are most familiar. The limitation of time furthermore tends to hasten the researcher into asking new questions too fast. A short period of silence is useful after each question to leave the interviewee the time to add something. Unlike open-ended interviews, however, elite interviews cannot endure too much silence, because the interviewee will get annoyed that precious time is being wasted (Leech 2002a, 666). Whether these initial errors bias the research depends on the use that is later made of the interviews.

Given the fact that the use of elite interviews is not measurable by statistical tools, what is a necessary and what a sufficient number of interviews? It is difficult to answer this question categorically, because every research domain has its specificities. In the context of lobbying in Europe and the United States in the areas of international air transport and air telecommunications, it is possible to determine several indicators. First of all, lobbying seems to happen both nationally and on the supranational level in Europe and through a wide variety of associations and forums. If one wants to gain a balanced understanding of the work of a business representative, it is therefore necessary to talk to associations that work more broadly than the given sector and to talk to government actors from the Member States as well in the EU. On the other hand, the universe of government officials working on international trade in the two service sectors is relatively small and well connected. In both the EU and the US, a

core of about ten people works intensively on these subjects in each sector, and very quickly, my interview partners confirmed that I had talked to the majority of them.

However, the most important constraint on the conduct of interviews is imposed by the available resources. The time of organizing, traveling and transcribing is only one of these resources. The actual costs of meeting with policy actors as dispersed as they are in this particular research area are considerable, implying trips to Brussels and Washington, D.C. and Geneva at least, but preferably also to the main European capitals. The need to work cost-efficiently is therefore omnipresent, all the more after an interviewee I had scheduled to meet at a stop-over in Brussels did not appear, making the stop-over a financial loss. Not including the cost of living, interviewing in two different continents and eight different cities has amounted to about 2500 Euros, or a little more than 30 Euros per interview in transportation costs only.[24]

Besides these practical limitations, the best analytical indicator for concluding an interview series is simply the researcher's knowledge of the content. At the end of an interview series, the researcher can predict an ever greater number of answers given by the interviewee. The best time to stop therefore seems to be when there are no surprises anymore, none withstanding the fact that all interviews add new elements to some degree.

4.5. Use of the interviews

As stated earlier, the primary reason for interviewing is gaining access to information that is not easily available. This does not mean, however, that the transcribed interview conversation "is" this information. The utility of interviews is more complex and can be divided into two categories: 1) helping the researcher structure his inquiry and 2) allowing to

[24] If one were to add the costs of living (including moving apartments with significant starting costs), this figure would be considerably higher.

construct a narrative of the policy issue in question. Even more specifically, the interviews have contributed to four dimensions for this research.

First of all, interviewing permits to understand the relevance of a research topic for the work of the individuals encountered. One can imagine that a theoretically interesting topic is too large to be dealt with through individual interviews, or that the question is too specific.[25] Within my own investigation, I had to realize that my initial question – "Why is air transport exempted from the GATS?" – was too specific to let me understand the details of the business-government relations in international air transport. The question had been negotiated in the early 1990s at the insistence of the US government and many carriers. Instead, my interview partners all let me know that it is much more important to understand how liberalization of international air transport happens through a number of ways not related to the work of the WTO.

A second way in which interviews help to structure one's research is by indicating a hierarchy of importance between different issues. Even though interviews are said to provide "unavailable information", in reality, most information dealt with in these conversations is available in print somewhere. Yet if one doesn't know what to look for, the wealth of paper is not manageable.[26] The same is true for policy actors. In telecommunications, for example, the number of telecom experts on international affairs is striking. Since telecommunication is a very multifaceted business today, it took me quite some time to identify who works exclusively on telecommunication services as they were negotiated in the WTO in the 1990s.

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[25] The former has been the case for Emiliano Grossman (2002), for example, who wanted to find out the lobbying of financial service interest groups with respect to the Economic and Monetary Union. Since EMU was too large to be dealt with through an analysis of lobbying only and too specific to permit further generalizations, he soon decided to concentrate on a set of more concrete EU financial service issues.

[26] To cite an example, the number of specific committees or associations participating in Commission policy at one point or another is very large. Through interviewing, one is very quickly able to identify the forums that companies attend regularly and find relevant to their work. Knowing the name of these committees, it is then possible to find out the list of attendance or even newspaper articles accounting their work.

By the time I was able to pin down the most important non-governmental policy actors in this area, I had had two accidental interviews with international telecom experts who represented equipment manufactures such as Microsoft.[27] Once actors and procedures are identified, it often turns out to be very helpful to do an internet search with the name of the person or committee to find more detailed material on the specific activities.

Thirdly, interviewing is useful for gaining insight to the balance between formal and informal interactions between businesses and their governments, especially in the context of lobbying. In contrast to the somewhat more formal comitology of the European Commission, many interactions with the US government happen by e-mail or over the phone, for example. Although most students of lobbying become aware that their research will not uncover a business-government conspiracy or political secrets, it is important to be able to compare the more transparent procedures of their interactions with the informal every-day contact.

A final use of interviews is to build an analytical narrative (Bates et al. 1998). On this dimension, the work of a political scientist resembles that of a historian, who gathers sources to reconstruct an event for the readers. With respect to this last point, it is important to go beyond a certain number of interviews in order to evaluate the story one person with the perspective of another who participated in the same issues. By weighing a number of accounts and counter-accounts against each other, the researcher is better equipped to decide sensibly how to tell the story, or at least more accurately than he would if he only had several isolated written accounts. Written accounts can be available, but they might not be. The advantage of interviews is that it depends on the researcher to determine who might be able to counter a given narrative and then talk to this person.

[27] It might be quite useful to talk to equipment manufacturers on international telecommunication service liberalization, but there also, they should have a particular experience on service-related work, which was not the case in my two interviews.

While interviews might be useful in and of themselves for the first dimensions, constructing a narrative is facilitated by the transcription of the interviews. The choice of transcribing has important consequences for the research. On the downside, it can turn into a very time consuming and discouraging activity, since one hour of an interview corresponds roughly to six hours of typing. For the 74 interviews of this research, the transcription thus equals at least 444 hours, in terms of a French 35 hour work week, almost 13 weeks or three months of pure typing.[28] On the positive side, transcribing permits to preserve details of a conversation that might not seem important in the beginning, but turn out to add to one's understanding of a situation later on. A researcher always has a selective memory based on how the interview confirms or disconfirms his initial presuppositions. If the research question changes during the interview process – and mine at least changed considerably – transcribing helps to go through earlier interviews with a new question in mind. It furthermore preserves subtleties that enrich the narrative one is able to build in the final stages of writing.

[28] Assuming an average of one hour per interview.

Chapter 3

STUDYING THE US AND THE EU IN MULTILATERAL SERVICE LIBERALIZATION

The "*terrain*" or field of this investigation is US and EU trade policy-making in the context of multilateral liberalization of service exchanges in telecommunications and air transport. Concentrating on the US and the EU was motivated by several considerations. First, if large firms were to have an impact on global politics, they would have to work closely with one of these two governments, who hold a share of about 40% of world trade together.[1] Second, comparing a federal state with a multi-level system can give indications about the impact of political institutions on business-government interactions in world politics. Third, comparing lobbying in the US and the EU permits to evaluate the often-noted differences in lobbying styles between US and EU interest groups.

The investigation was narrowed down to service sectors only in order to reduce the time frame to about fifteen or twenty years. Concentrating on a recent trading issue permits to trace the evolution of policy stances and political interactions. As we will see, businesses have been particularly active in bringing about the issue of service trade, so that we can assume that it represent an important political stake to the companies affected by it. Within services, two sectors are examined in detail: telecommunication services and air transport. Of the two sectors, only international telecommunication services are fully liberalized through the WTO,

[1] The exact numbers depend on whether one counts merchandise, commercial services or both and whether one considers intra-EU trade or only extra-EU trade. For the statistical information, see the trade statistics of the WTO at www.wto.org.

so that juxtaposing the two otherwise similar sectors allows studying the representation of quite different policy preferences of firms.

The following chapter presents the background of the research investigation in order to evaluate the comparability of firm lobbying in the US and the EU and the two service sectors chosen. It divides into two corresponding parts: one focusing on the transatlantic comparison, another on the issue of service trade liberalization. The first part evaluates the differences in trade policy-making in the US and the EU and studies lobbying traditions in the US and the EU. The second part presents the issue of service trade and explains the interest of this particular trade issue for the study of business-government interactions. It then provides a first glance at the central aspects of the telecommunication and the air transport service sectors that structure empirical investigation.

1. US - EU comparison

A first word needs to be said about the idea of "country" comparison, since the EU undoubtedly does not constitute a country.[2] Indeed, one can wonder if there is such a thing as a specific kind of European business-government relation (Saurugger 2003). Although this is a valid objection, a comparison between the US government and the EU institutions is sensible and heuristically useful, because they maintain the authority to negotiate foreign trade matters for the two trading regions. Since all European member countries are represented by the European Commission on external trade matters, businesses wanting to affect trade policy have to direct their demands to the supranational level. Certainly, this might happen through the intermediary of their countries' ministers who vote the negotiating

[2] Instead of referring to "countries", the correct term might be "policy unit comparison". For the sake of simplicity, I will nonetheless employ the description "country comparison" when referring to the US-EU dimension.

mandate in the Council of Ministers, but recent studies confirm that this is not the only canal of access relied on (Cram/Greenwood 1996; Greenwood/Aspinwall 1998; Bouwen 2002; Eising 2004). The comparison between the US and the EU will therefore not neglect business-government relations within single member countries, but only consider them when they are used to try and affect a pan-European policy stance. Two aspects of the politics of international trade are relevant to our investigation: the government side, i.e. the policy process in both countries, and the business side, which includes the different lobbying traditions and the modes of interest representation more generally.

1.1. Trade policy-making in the US and the EU

Comparing trade policy-making in the US and the EU requires examining, first, the division of policy competences within the two governments, and second, the opportunity structure open to business interests to the policy process. Let us consider these in turn.

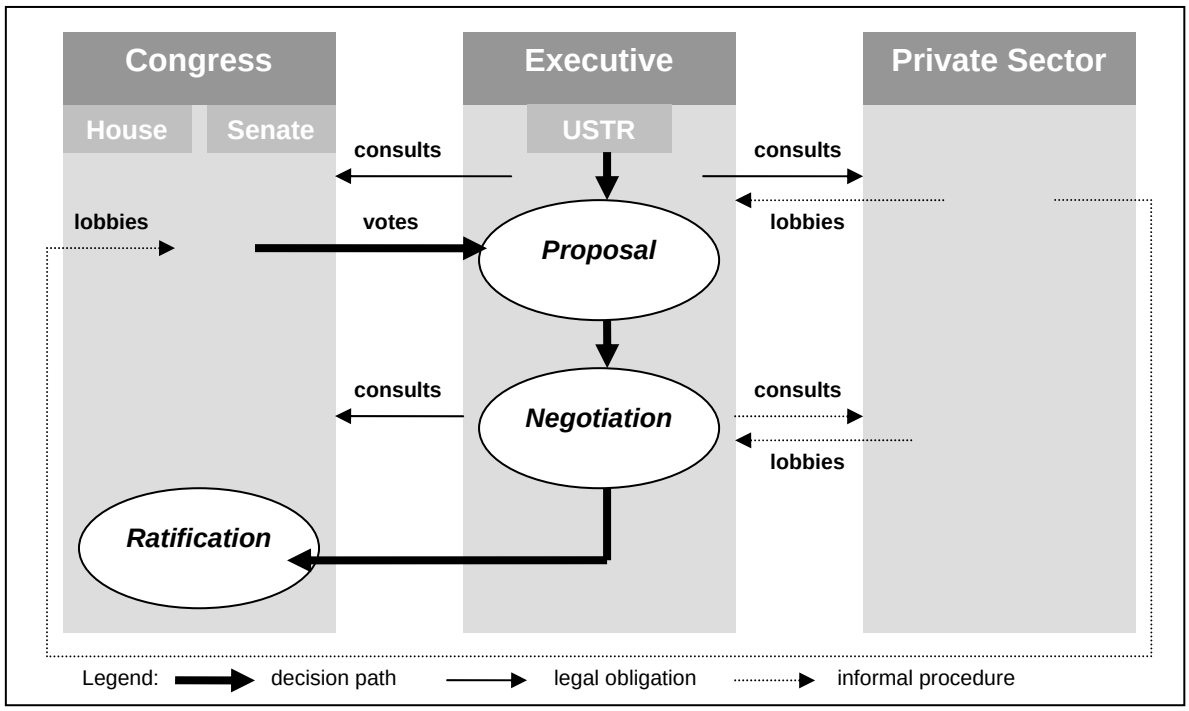
1.1.1. Trade policy competences in the US and the EU

For an understanding of the division of competences in multilateral trade negotiations of the loci of decision-making, it is necessary to break the policy process for multi-lateral negotiations down into three phases.[3] The first phase involves the setting of objectives for negotiations, the second the conduct of negotiations, and the third the adoption of results. In the US, Congress holds the sole power to "regulate commerce with foreign nations", as granted by Article I of the United States Constitution. It is therefore the two houses of Congress that agree on the objectives for negotiations in multilateral trade rounds. However, Congress has delegated a considerable amount of responsibility to the executive branch,

[3] The description follows largely Woolcock (2000).

which is responsible for international negotiation in general.[4] The current institutional competence division was established by the Omnibus Trade Act of 1974, which aimed at establishing a balanced partnership between the Legislative and the Executive, introduced the policy tool of trade promoting fast track authority and created the private sector advisory system.

Figure 3-1: The US policy process for trade agreements since the Omnibus Trade Act of 1974



On trade matters, the president is represented by the United States Trade Representative (USTR), an agency of the Executive Office of the President. It is the USTR that develops the proposal Congress agrees on when deciding on the negotiating authority of the executive. The conduct of negotiations is led by the agency head, the US Trade Representative, who consults regularly with both Congress and representatives of the private sector. Congress furthermore amends and votes on the proposed bills for trade agreements, except in cases where Congress had granted the executive fast track authority to the President,

[4] For a history of the institutional development in the American trade policy process, see Destler (1995).

as has been the case frequently from 1974-1994 and again in 2002.[5] After the signing of a trade agreement, Congress votes on its ratification through a majority vote.

In the EU, another competence question is added, not regarding the phases of the negotiations, but the leverage of the European Union vis-à-vis the member states. Since the very beginning of the EU, it was clear that a customs union could only exist on the basis of a common external tariff, and so the Treaty of Rome granted to the European Economic Community the exclusive competence for a common commercial policy. However, Article 113 (now 133) (ECC) referred to tariff issues, anti-dumping, and subsidies, while other domains, which are now central to international trade, were not mentioned. *De jure*, investment, for example, remains mainly the competence of the member states, whereas trade in goods falls within exclusive competence of the EU. Other areas are considered "mixed competence". As multilateral rounds moved away from simple tariff issues, this division of competencies turned out to be problematic. Needing to speak with one voice, the EU dealt with the question pragmatically by mandating the European Commission to negotiate on all issues (Meunier/Nicolaïdis 1999; Meunier 2000b; Meunier 2000a).[6] Today, it is not too simplified to say that the European Union has the *de facto* authority in all areas of the multilateral negotiations. However, it is not just the European Commission that is competent, it is the EU collectively. During the three decision-making phases, policy power is thus divided between the EU institutions. The setting of objectives phase resembles most to the other areas of EU decision-making. Here, the proposal is made by the European Commission,

[5] Fast-track authority is policy procedure granted to the President by Congress in order to enhance the executive's credibility in multilateral trade negotiations. In exchange for enhanced congressional oversight, Congress gives away the right to amend or delay the executive's proposed bill to implement a trade agreement and is held to a time limit of floor debate on the bill. From 1994 through 2001, reauthorization of the fast track procedure failed over labor or environmental issues.

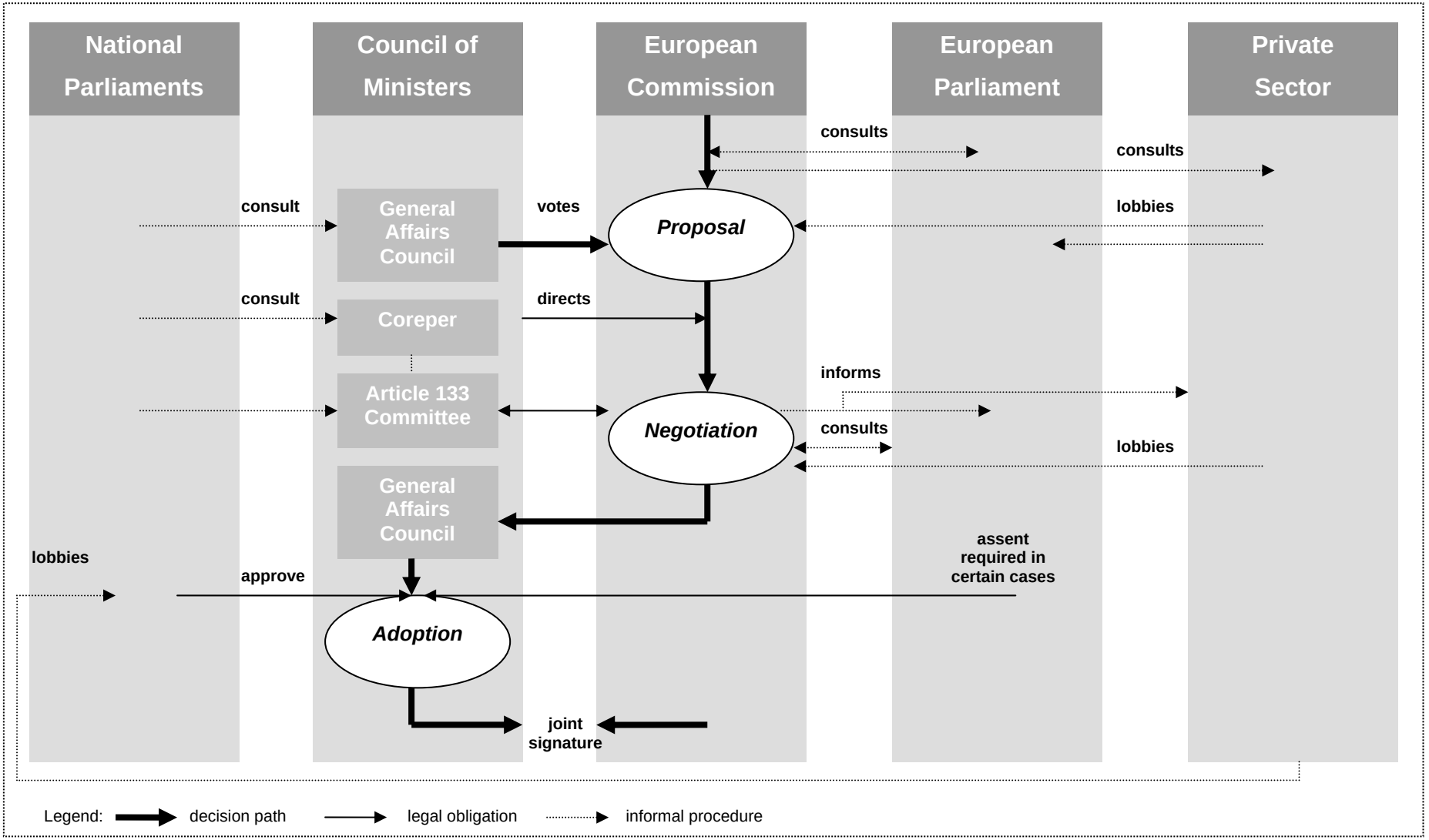
[6] When ratifying the results, the question of legal competencies had to be addressed, however, and a 1980 political agreement stipulated that agreements had to be signed by both the EU and member states. When similar questions arose during the Uruguay Round (1986-1994), the European Commission argued on these grounds for the same single-negotiator right.

and the decision to adopt the proposal is the responsibility of the General Affairs Council of foreign ministers. For areas of exclusive competence, this ratification requires a qualified majority, in areas of mixed competence it requires unanimity. Nonetheless, consensus voting is the *de facto* rule. Between these two steps, the proposal undergoes readings by the European Parliament (EP) and is debated in the national parliaments.

During the conduct of negotiations, the Commission negotiates for the EU. In accordance with Articles 133 and 300 of the Treaty, the Commission negotiates in consultation with the Council.[7] Closer than the consultation between the USTR and Congress, the checks between Commission and Council have sometimes been criticized as foreclosing the Commission's flexibility during negotiations. At important stages of a WTO negotiation, the trade ministers from the member states are generally in attendance, but have no formal role. The External Economic Relations Committee of the EP is an equally present observer, and in recent years the Commission has gone out of its way to keep the REX informed. The adoption of results happens under the exclusive authority of the Council of Ministers (usually the General Affairs Council). Decisions are taken by qualified majority voting in areas of exclusive EU competence and by unanimity for all other cases. However, even where the Treaty provides for qualified majority voting, the practice has been to seek consensus, in order to avoid direct clashes on issues that are sensitive for individual governments. The EP has no formal role in the adoption of the results, except if agreements necessitate the amendment of EC legislation adopted by a co-decision procedure.

[7] The most frequent contact with the Council is maintained through the Article 133 Committee, a committee of senior national trade officials, and Coreper, but the Council of Trade or Foreign Ministers is also consulted on a regular basis.

Figure 3-2: The EU decision-making procedure for trade agreements (Article 133)



1.1.2. The political opportunities open to business

If trade policy-making used to be technocratic in nature, there is a consensus in literature and politics that trade policy making has undergone an evolution towards the ambition for greater transparency.[8] The deepening of the WTO agenda means that WTO rules now touch on the interests of new and more diffuse consistencies, such as those seeking the incorporation of environmental objectives in all policy areas, including international trade. This brings with it a pressure to make decision-making more transparent and accountable. In an open letter to the Corporate Europe Observatory, Pascal Lamy, the EU Trade Commissioner, explains that managing trade policy and regulatory decision democratically and under the watchful eye of public scrutiny has been the motivation of the common US and EU declaration at their summit meeting in Madrid in 1995:

> In this declaration, both sides agreed to "build bridges across the Atlantic", in particular by encouraging private actors and policy-makers from both sides to establish links. The Transatlantic Business Dialogue is one of a number of organizations, including the Transatlantic Consumer Dialogue, the Transatlantic Labor Dialogue, and the Transatlantic Environmental Dialogue, which were set up in response to this Declaration. [9]

According to this official statement, the lack of democratic mechanisms in the making of trade policy become then filled by interest group participation. Interest groups are assumed to provide a more varied background than technocrats. They are furthermore assumed to process and distribute information back to their members, assuring thus more transparency and accountability. It is in this context of a seemingly universal opening to interest groups that business interests gain increasing access to the making of international trade policy on both sides of the Atlantic.

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[8] On this evolution in the EU, see Woolcock (2000).
[9] Pascal Lamy (2001) "Open Letter to Olivier Hoedeman," Exchange between EU Trade Commissioner Lamy and CEO concerning the TABD, http.://europa.eu.int/comm/trae/bilateral/usa/answpl.htm.

The most noted mechanism encouraging business interest participation around the issues of multilateral negotiations is the Transatlantic Business Dialogue (TABD) mentioned by Pascal Lamy. Created upon an initiative by US Secretary of Commerce Ron Brown and Sir Leon Brittan of the European Commission in 1995, this dialogue tries to bring together business leaders from both sides of the Atlantic in order to "pre-negotiate" issues of the upcoming transatlantic negotiations. Noted by scholars and dreaded by political activists, the TABD influence rests on the constant presence of governmental representatives at the TABD meetings (Belén et al. 1999; Cowles 2001). In this new framework, foreign business leaders can communicate their messages to a government that is not their own, without having to pass through the channels of traditional diplomacy. In the estimation of some observers, the TABD has had a considerable impact on reducing conflict in multilateral negotiations, by pre-preparing sensitive issues.[10]

However, an equally important part of corporate activity is directed at the relevant political institutions in a particular country, especially since the TABD is open only to the CEOs of large multi-national companies.[11] These activities are often referred to as "corporate lobbying" in Washington D.C. and Brussels, but this term does not do justice to the high institutionalization of some private representatives, which participate in advisory groups of the EU "comitology" (see Wessels 1999).

The US Congress established the private sector advisory committee system in 1974 to ensure that US trade policy and trade negotiations adequately reflect US commercial and economic interests. Congress expanded and enhanced the role of this system in three subsequent acts. The primary objectives of the private sector advisory system are to consult

[10] Interview with a representative of the Medef office in Brussels, June 2000.
[11] It is true that industry associations have gained access to the TABD by taking positions as the working chairs of the TABD meetings. Membership, however, is only open to CEOs.

with the US government on negotiation of trade agreements, to assist in monitoring compliance with the agreements and to provide input and advice on the development of US trade policy. All in all, there are one President's Advisory Committee for Trade Policy and Negotiations, six policy advisory committees and twenty-six technical, sectoral and functional advisory committees.[12] The president appoints representatives for the Presidents Group, while the USTR manages the six policy advisory groups. The other 26 groups' members are appointed jointly by the USTR and the Secretaries of Commerce and Agriculture.

In the EU, the consultation with business representatives in the DG Trade and DG Industry of the Commission is structured in a similar way. However, the information available on the number and composition of working groups is not as easily available as on the US side. In all policy areas, the Commission consults experts and interested parties and considers these consultations an integral part of the policy formulation process.[13] Interestingly, the web site of the Directorate General for Trade of the Commission's has a page dedicated exclusively to its "civil society dialogue" but does not mention the contact with business representatives through a direct link on its home page. This stands in contrast to the USTR's presentation of private sector coordination, which concentrates mainly on industry representatives and is labeled "coordination with the private sector – including civil society".[14] Consultation with business experts on trade issues in the EU are always presented as part of a larger consultation with experts and interested parties, even though it is doubtful whether NGOs will

[12] For a complete list, refer to the USTR's web site on the trade policy advisory committee system, available at: www.ustr.gov/outreach/advise.shtml.

[13] The Commission's philosophy of expert consultation is spelled out in a document called "Communication on the collection and use of expertise by the Commission: Principles and Guidelines," COM 2002 713 final, available at http://www.europa.eu.int/comm/governance/docs/index_en.htm.

[14] The DG Trade's home page is http://www.europa.eu.int/comm/trade/index_en.htm, with an icon linked to the civil society dialogue at http://trade-info.cec.eu.int/civil_soc/intro1.php. For the USTR, see www.ustr.gov/about-ustr/ustrrole.shtml.

continuously appear to working consultation on issues such as broadband communications or computer reservation systems.

The increase of business consultation in the framework of an overall attempt towards greater transparency is noteworthy. However, businesses do have an advantage over other interest groups, because they can provide expert information that aliments the trade policy of the government and makes it more effective. Public officials in both the US and the EU have therefore been very receptive of business groups that organized independently in order to communicate policy demands to their respective governments. In the US, the most important associations are the American Chamber of Commerce and the International Chamber of Commerce. On service trade issues, the United States Council for International Business (USCIB) has been particularly active. An industry group furthermore formed under the name Coalition of Service Industries (CSI, sometimes USCSI). In Europe, the largest trade associations is the European employers union UNICE, the self-proclaimed "voice of European business". In 1983, CEOs from all over European formed the European Roundtable of Industrialists (ERT), which has been highly influential in their support for the integration of the European market (Cowles 1995). However, the ERT only "sporadically" became active on international issues beyond Europe and explicitly did not focus on service sector issues (Richardson 2000: 10). The idea was to represent "industrialists", which a home territory automobiles, steel, engineering, electronics, and chemicals. The most important forum for service trade therefore became the European Service Forum (ESF) created in 1999.

The reliance of public officials on business expertise is also especially visible in the context of contentious trade issues that might eventually lead to a dispute settlement within the WTO. Bilateral or multilateral disputes most often revolve around the desire of one country to enter into another countries market and facilitating this access requires tools for

imposing agreements between the two trading partners. In order to develop these "offensive trade policy instruments", the US has heavily relied on business input and the EU eventually tried to emulate their strategy.[15]

In the US, the base of offensive trade policy making is a law passed in 1974 known as Section 301 of American trade legislation. Section 301 created a channel through which private parties could inform the government of trade barriers encountered abroad. These complaints by private parties augmented with the considerable increase in world trade during the 1980s and subsequent reforms of the Section 301, the so-called Super 301. The USTR was then enabled to follow-up on these complaints. This collaboration between the US government and private actors led to the first full-fledged administered form of offensive trade measures whereby private actors are heavily involved in informing government policies. The Section 301 policy was so successful, that is often cited as the core of "aggressive unilateral" trade policy-making in the US (Bhagwati/Patrick 1991).

Since 1984, the EU has had an equivalent mechanism, the "New Commercial Policy Instrument" (NCPI). In contrast to the Super 301, the NCPI was however week and virtually unused. A first attempt to create an industry constituency that would be its ally in promoting offensive market opening trade measures, the NCPI lacked juridical teeth and did not provide for an administrative structure to collect and centralize systematic data. The European Commission saw itself furthermore confronted with some member states' criticism of being "protectionist" (Molyneux 2001). At the conclusion of the Uruguay Round, the European Commission mobilized to break out of this deadlock. Parallel to the reform of the dispute settlement system of the WTO, the European Commission (1996) put in place its so-called Market Access Strategy between 1994 and 1996. This strategy consisted of three

[15] "Offensive trade policy instruments" refers to mechanisms, by which a country can impose liberalization of certain parts of a foreign market. For a detailed definition, see Goode (1998).

complementary parts. First, the Market Access Unit was installed. Second, the Trade Barriers Regulation Unit was created. And third, with the creation of the WTO, the Commission created its WTO Division. All three new administrative units were explicitly organized in such a way as to ease access for private parties and generate an influx of information to fuel offensive market access action by the EU.

Before 1996, complaints from industries were channeled through the institutions of the member states, their representatives in Brussels, or the sectoral DG's of the Commission. These procedures were centralized in Brussels through the creation of the Market Access Unit, which established a systematic and centralized database. The database can be consulted online and industry is invited to send information to EU officials.[16] The second component of the new strategy is the EU Trade Barrier Regulation, which came into effect in 1995.[17] It creates a formal right to a complaint procedure for industry associations, single enterprises and member states. The TBR functions as the European counterpart to the Section 301 procedure for American exporters and greatly enhances access for non-governmental actors. In particular, it made the complaint procedure a right of individual firms, whereas the NCPI had only been accessible for associations representing a major proportion of the relevant Community industry (Van der Schueren/Luff 1996). In order to make these new tools effective, the Commission went out of its way to encourage industry participation. As De Bièvre (2002:41) points out, previously,

> Lobbying for the creation of offensive instruments had not been very impressive. As a result, the Commission's "offer" of the instrument was more an attempt at the creation of "demand" from industry than vice-versa.

[16] The market access database can be consulted online at http://mkaccdb.eu.int.

[17] European Council (1994), "Council Regulation laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization," EEC/3286/94, 22 December.

Finally, the WTO Division is responsible not only for handling the bulk of WTO relevant drafting, but also for fostering consensus among the Article 133 Committee (i.e. the member states) and the different committees of the DGs.

As the case of offensive trade instruments highlights, governments actively solicit business participation, because it helps them design a more effective trade policy stance vis-à-vis their trading partners. Even though dispute settlement cases are rarely used in the case of service trade, the general consultation patterns are present even in the absence of concrete trade disputes.

Finally, firms do not only become active when they are being asked for comments, they also organize independently of the solicitation of their governments. The network of sectoral and functional trade association on both sides of the Atlantic constitutes the foundation of a firm's opportunity structure. Trade associations enable firms to become active on policy issues "behind the shield of a common organization",[18] with the legitimacy of a collective concern. As a channel for centralizing information, associations can reach out the public officials and act as an interface between firms and the policy actors. On particular commercial issues, firms nonetheless prefer to get in contact directly.

1.1.3. Similarities and Differences

Several similarities should be noted between the two cases. Both political systems have similar sets of checks and balances between their political branches throughout the process of WTO negotiations. The formulation and negotiation of trade policy furthermore rests with the executive branch in the US and the Commission in the EU. This is especially important, because both organs are considerably less sensible to regional constituency

[18] Interview with a US business representative in Washington D.C., 8 April 2003.

interests than Congress or the Council of Ministers.[19] Indeed, we do notice that business-government interactions are based less on pressure than on expert consultations. Business is actively solicited by their respective administrations, which need technical industry knowledge in order to formulate and defend trade issues in a context of increasing complexity of trade negotiations (McGuire 1999). The resources businesses can provide have proven equally important for both the US and the EU administrators.

Nonetheless, the EU does not yet function as a federal structure, not even in this very integrated issue area. Controls between the Council and the Commission are tighter than between Congress and the United States Trade Representative (USTR), and member states follow the negotiations more closely than the individual state representatives of the US. Numerically, the opinion of one of the 15 European member states should also weight more heavily than the opinion of one of the 100 senators or one of the 435 representatives of Congress. Aggravated by the persisting quarrel over the actual reach of competencies of the EU institutions in international trade policies, trade policy in the EU only promises to be successful if it can gather unanimous support from all member states.[20]

Business access is somewhat comparable in form between the two countries, but the US has a longer tradition in private sector consultation and seems to lead a more active exchange with its firms than the EU Institutions. Recent EU efforts to encourage business participation underline how important their input is to the successful negotiations of international trade issues. Questions relating to market access, for example, can only be pursued aggressively by a government if firms supply detailed information about the trade

[19] According to I.M. Destler (1995: 14-5), the delegation of authority from Congress to the executive was made precisely for that reason: "Individual members [of Congress] remained free to make ample protectionist noise, to declaim loudly on behalf of producer interests that were strong in their states, […] secure in the knowledge that most actual decisions were made elsewhere." See also Rowley and Thorbecke (1993).

[20] This does not mean that there are no disagreements on trade issues. The persistent quarrel over agriculture is a case in point. However, a primary goal for policy formulation will nonetheless be to stir around such sensitive areas as far as possible.

barriers they encounter. The solicitation of business is thus a direct function of the transatlantic power game over trade issues and world market shares.

Table 3-1: Summary of the US-EU comparison in foreign trade matters

	United States	**European Union**
Political System	Federal state	Multi-level system
Foreign trade negotiation competence	Executive through USTR on a mandate granted from Congress	European Commission on a mandate granted from Council of Ministers
Further negotiation specificities	Fast track authority possible	Negotiations followed by Member States through Art. 133 Committee
Adoption of results	Ratification in Congress	Ratification in Council of Ministers
Ratification voting procedure	Majority voting	QMV in areas of exclusive competence, unanimity in others; consensus voting is informal rule
Solicitation of business comments	Through private sector committees and regular contact	Through comitology and consultation

1.2. Lobbying in a transatlantic comparison

After identifying similarities and differences on the political-institutional side of trade politics, it is useful to examine differences in the political mobilization traditions of businesses on both sides of the Atlantic. Surprisingly, very few analyses compare EU and US lobbying (Thomas/Hrebenar 2000). As a consequence, little cross-fertilization exists between US and EU studies, despite a considerable amount of studies on lobbying in both countries. The few authors that do provide a comparative perspective, focus on different lobbying styles or examine to what degree one can find a transfer of lobbying traditions across countries (Coen 1999; Thomas 2002).

Since the political opportunity structure for firms is somewhat comparable in the US and the EU, should we expect firms to mobilize in a similar way, or is lobbying fundamentally different in both traditions, independent of the opportunity structure? To answer this question, let us look at the US and the EU in turn.

1.2.1. US lobbying

The United States is generally considered the birthplace of lobbying as a political phenomenon and writing on the involvement of private interest in political processes has produced many classics (Bentley 1908; Truman 1951; Olson 1965; Wilson 1974). Since then, a large number of studies have collected extensive data on various aspects of lobbying, such as occupation basis, lobbying tactics, or the role of groups in campaign finance or in bringing about new issues. Hrebenar and Thomas (1987; 1992; 1993b; 1993a) have even compiled four edited volumes of interest-group activities in each of the fifty states. A number of studies simply content themselves to describe the activities of lobbyists in Washington (Mack 1997; Herrnson/Shaiko/Wilcox 1998; Rozell/Wilcox 1999), and even though they contribute little to a general theory of interest groups, they help identifying the general characteristics of lobbying in the US: how does lobbying work in Washington, D.C.?

Evolution of lobbying in Washington D.C.

The right to communicate special interests is firmly anchored in the US constitution, where the First Amendment protects the right of the people to 'petition the government for redress of grievances.' Lobbying is considered part of such political participation and therefore constitutes an element of free speech. Despite the mistrust of special interest that dates back to Madison's *Federalist Papers*, lobbying is an accepted political tradition in American politics.

> It allows competing points of view to be heard and provides information to those making decisions. It is how the wronged and the needy, as well as the greedy, call attention to their cause. But there is no guarantee that all the voices will be heeded, or even heard (Tarr/O'Connor 1999: 283).

Framed in such a way, lobbying has traditionally been difficult to regulate, because rules might collide with principal of free speech. Rules on lobbying were considered in every

Congress after 1911 but were not approved until 1946. The 1946 law aimed at disclosure, making lobbyists register their name and spending. In 1995, Congress approved a number of changes to the 1946 law, most notably broadening the definition of lobbying and tightening lobbying from foreign interests (Tarr/O'Connor 1999: 268).

Associations representing special interests predate direct representation and their number grew remarkably in the last fifty years. In 1955, there were about 5 000 national associations; in 1975, there were 13 000; today there are more than 23 000 national associations – along with more than 64 000 regional, state and local associations (Herrnson/Shaiko/Wilcox 1998: 7).

A large number of these associations represent economic interests. Nonetheless, companies increasingly choose to have a direct representation as well. Before 1920, only one American corporation, U.S. Steel, had a permanent office in Washington, D.C.. By 1940, the number had climbed to five. By 1968, about 175 corporations had established formal corporate offices in Washington, D.C.. Currently, more than 600 corporations maintain fulltime Washington offices charged with governmental and regulatory affairs (Herrnson/Shaiko/Wilcox 1998: 8-9).

Methods: lawyers and money?

Since the maintenance of government affairs offices is costly, the vast majority of US companies do not maintain offices in Washington, but instead chose to hire a representative from a lobbying firm or a law firm specialized in public affairs. This practice is very common in the US and almost gained mythical status through literature and films.[21] Unlike popular impressions, employing a "hired gun" is only common for companies that do little lobbying

[21] The latest of these is a TV series about the daily life of Washington lawyers named after the street were most legal consulting firms are located: "K-Street".

on a regular basis or companies that want to tackle a particularly difficult legal matter. Companies that interact regularly with the US government tend to have internal representatives, even though they might employ both (Heinz et al. 1993: 65).

Another much noted aspect of US lobbying are financial contributions, which can be divided into three categories: gifts, "soft money" and campaign financing. While gifts, dinners, theatre trips, and vacations used to be common, honoraria for lawmakers have been abolished and all but nominal gifts are prohibited. Private meals with lobbyists are forbidden unless the legislator pays out of his pocket. "Soft money" refers to donations made to political parties, not to the candidates, supposed to be used only for party-building activities, not for direct campaign support. In 1997-8, the four congressional campaign committees have raised a combined 442,7 million in soft money. Direct donations from corporations are allowed. Campaign financing are the most studied. Corporations and labor unions cannot make direct contributions, but instead are allowed to form Political Action Committees (PACs). In 1995-6 all PACs made a total of $124.4 million contributions, 2/3 of which came from corporations.[22] Since 1974, there has been a remarkable growth in the number of PACs, especially of corporate PACs. At the end of 1988, 1 816 corporate PACs (among a total of 4 268) were registered with the Federal Election Commission. Since then, however, the number of corporate PACs has decreased slightly. At the end of 1996, there were 1 642 corporate PACs (among total of 4 079) remaining (Herrnson 1998; Rozell/Wilcox 1999). Financial contributions are well-documented. Not only do PACs need to register according to issues and

[22] There are some restrictions on PACs. Each PAC is allowed to collect donations of up to $5000 per year from an individual or another PAC. An organisation must raise money from at least fifty donors and spend it on five or more federal candidates in order to qualify as a PAC. Each PAC is allowed to contribute a maximum of $5 000 per congressional candidate during each phase of the election cycle and to make contributions up to $15 000 per year to the federal accounts of national party committees.

contributions, there are also several encyclopedias and web-sites who collect and publish this information.[23]

If money and legal affairs are the most noted aspects of lobbying in Washington, D.C., a survey of the allocation of time of government affairs representatives reveals that the most amount of daily work is spent elsewhere.[24] A government affairs official spends about 30 % of their time on organization duties, which include informing the company about activities in the capital and organizing working groups or other activities. 60% of time are actually spent on federal policy issues, but most often, this refers to maintaining the contact with government official, going to meetings, following hearings or the work of subcommittees of Congress (Heinz/Laumann/Nelson/Salisbury 1993: 87-104).[25] The daily work of Washington lobbyists thus seems much less glamorous than one might expect.

Several authors have pointed to this gap between the daily lobbying activities and the focus on financial contributions as the source of stagnation in the study of lobbying (Cigler 1991; Smith 1995; Baumgartner/Leech 1998). With the exception of several well designed surveys (Milbrath 1963; Heinz/Laumann/Nelson/Salisbury 1993), a large part of the writing on lobbying activities remains descriptive or concentrates on specific case studies.

Quantitative studies have often focused on campaign financing, due to the availability of data on financial contributions and voting in Congress. The amount of research is impressive, covering a large number of sectors and policy areas, including trade policy (Hillman/Ursprung 1988; Magee/Brock/Young 1989; Baldwin/Magee 2000).[26] However, the overall results are confusing, or worse, contradictory. In their reviews of this literature, both

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[23] See for example Ness (2000). The website www.opensecrets.org offers a complete list of publications.
[24] This does, of course, not apply to hired legal consultants, who do spend the majority of their time on legal affairs (Heinz/Laumann/Nelson/Salisbury 1993: 88).
[25] CEO will sometimes testify before Congress and government affairs officials then continue to follow the bills in the respective subcommittees.
[26] For a discussion of these studies, see Grossman (2001: 13).

Allan Cigler (1991) and Richard Smith (1995) are very critical. Of over 35 studies published in recent years, eight report that group contributions seem largely unrelated to voting decisions of members of Congress, ten come to mixed results and seventeen find statistically significant relationships. These conflicting findings exist whether one looks at the House or at the Senate, single votes or indexes of votes, single issues or across issues, single interest groups or coalitions, nominal dollar contributions or percentages in a linear or logarithmic form (Smith 1995: 92-93). Very clearly, the wealth of studies over the last decades does not correspond to an increase in the understanding of lobbying impact on US politics.

1.2.2. EU lobbying

In Europe, interest group studies proliferated in the 1980s, most done by comparativists interested in the relations between groups and the government (e.g. Streeck/Schmitter 1985; Richardson 1993).[27] With the emergence of interest group participation at the supranational level in the late 1980s, the most extensive number of studies of lobbying has revolved around new and old forms of lobbying in the EU (Kirchner 1981; Greenwood/Grote/Ronit 1993; Van Schendelen 1993; Bindi 1994; Pedler/Van Schendelen 1994; Claeys et al. 1998 ; Greenwood/Aspinwall 1998; Michel 2002). Systematic studies of lobbying are used as a means of understanding the new political structure that emerges and the system of governance it creates (Streeck/Schmitter 1991; Mazey/Richardson 1993; Kohler-Koch/Eising 1999; Balme/Chabanet/Wright 2002).

Evolution of lobbying in the European Union

While interest groups and lobbying have generally been an accepted part of the political process in the U.S., private interests have traditionally been much more suspect in

[27] An early exception of European research on lobbying are Jean Meynaud (1958) and his co-author Dusan Sidjanski (1967).

Europe. Especially in France and the Southern European countries, interest groups do not fit a political category and seem to represent "a deviation of the proper functioning of the State and the political system" (Offerle 1994; Basso 1997: 39). The representation of economic interests is assured in tightly regulated forms of associations and peak associations, who have a much more central standing in the political system of their home countries than their American equivalents.

In the course of the last fifty years, interest representation evolved and assimilated to American styles of interest representation, most notably at the European level (Coen 1999). Starting with the Single European Act in 1987 and culminating in the Single Market in 1992, the increase of European competences led to a boom in interest representation at the European level. All studies note an explosion of activities between that period (Mazey/Richardson 1993; Greenwood 1997; Balme/Chabanet/Wright 2002). Between 1985 and 1997, more than 350 businesses decide to establish government affairs offices in Brussels (Coen 2002: 268) and national peak associations increase the number of employees working on European affairs. The Commission estimates that more than 3 000 interest groups are active in the mid-1990, of which 1 674 represented economic interests directly or indirectly (Coen 2002: 258).

Methods: expert knowledge and multi-level representation

Despite the assimilation of American lobbying forms, lobbying in the EU remains different from lobbying in the US. Most importantly, nothing comparable to the American campaign or party financing possibilities exists in Brussels. Even with respect to the daily lobbying activities, most scholars note a "European style" or "European strategies" of lobbying (Coen 2002; Thomas 2002; Saurugger 2003).

First, this European style is marked by a less aggressive and more consensual approach to political participation. Few authors write about European "pressure groups" but

prefer to talk about "interest groups" and Dominique Jacomet (2000) even argues that the two labels correspond to the different styles of political engagement. Maria Green Cowles (1997: 128) illustrates this difference well in her account of the US reaction to a social directive proposed by the European Commission.

> [The directive] provoked a great deal of anxiety among American [multinational companies] with no Brussels based representatives and little prior contact with the EU. Instead of calling on the EU Committee to represent their concerns, these US firms took matters in their own hands. Armed with a plane full of Washington lawyers, the companies descended upon Brussels to confront the Eurocrats. […] The Washington approach was a public relations disaster. Appropriate for the confrontational style of lobbying common in the US, but inappropriate for the subtle Brussels approach. From 1981, the EU Committee undertook a great effort to re-establish the image of American businesses in Brussels.

Instead of confronting public officials, European lobbyist gain access through expert consultations. Advising the European Commission on technical policy matters has proven to be the most common and most successful mode of participation of societal actors of all kinds (Bouwen 2002; Saurugger 2002). While representatives have a chance to express their views on policy proposals, Commission officials, but also Members of the European Parliament, benefit from the technical expertise these actors can provide. The symbiosis between public officials and private interests in Europe thus hinges on the latter's constructive and informed participation.

A final element of European lobbying is the multi-level approach lobbyists need to adopt to press for their cause. The competency division between the European Institutions and the difference between high politics – decided by the Council of Ministers or even the heads of government – and low politics – formulated by the European Commission and amended by the European Parliament – require that interest representation employs a multitude of

channels on any one particular issue.[28] Most scholars have noted the complex web of representation and the superposition of regional, national and European levels of interest organization (Greenwood/Grote/Ronit 1993; Strauch 1993; Teuber 2001: 150). Business interests in Brussels today are represented through a multitude of channels: direct representation, national peak associations, sectoral association, their European umbrella organizations or other thematic European or transnational groups.

The acknowledgement of a multi-level approach of interest representation is the most general conclusion of the studies of European lobbying. While this has been of considerable inspiration to theories of European governance (Kohler-Koch 1998; Kohler-Koch/Eising 1999; Marks/Hooghe 2001; Eising 2004), little has been done to evaluate the implications of this approach for the impact of groups on political decisions. As in the US literature, most advances are made in the understanding of group organization and collective action, but few surveys systematically asses the impact of these groups on political outcomes, beyond the findings of individual case studies.

1.2.3. Comparing US and EU lobbying

The country-specific literature permits to highlight several similarities and differences that we should observe in the lobbying of companies from the US and the EU. Lobbying on both sides of the Atlantic has experienced a considerable boom in the last fifty year, which corresponded to the increase in the governmental activity in Washington, D.C. and Brussels. Direct representation of companies co-exists with associational representation in both cases, even though the multitude of channels is somewhat more complex in the EU, where several policy levels are often important for the same issue. The strategies of lobbyists are most

[28] On the distinction between high and low politics, see Peterson/Bromberg (1999).

commonly centered on meetings and personal contact in both cases. In the US, financial contribution and legal tactics might also be a promising political strategy.

However, financial and legal tactics, attributes of the more aggressive lobbying style of so-called "pressure group" lobbying, are most useful for interactions with Congress, where Members are sensible to the demands of their constituents or negative media coverage. In both the US and the EU trade policy-making, however, both the formulation of objectives and the conduct of negotiations are in the hand of the executive. Despite the different lobbying traditions, we should therefore expect firms to rely on informational lobbying throughout the policy process (Bennedsen/Feldmann 2002). The most striking differences between the different lobbying styles might thus not have an effect on trade policy lobbying in particular.

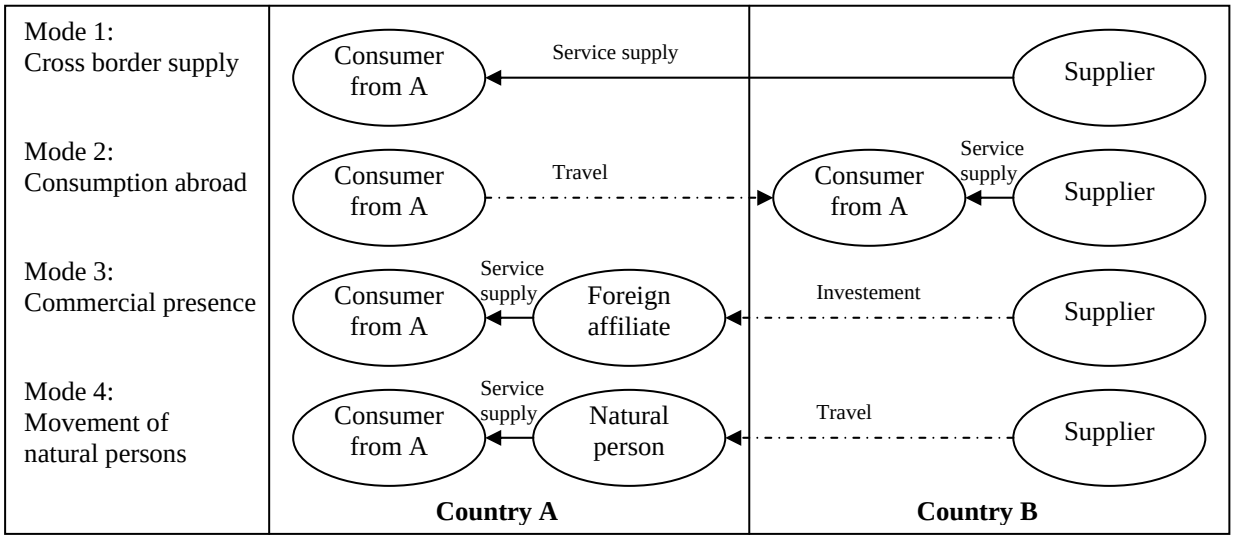
2. Studying services

Studying business activities in trade-policy would be a very abstract undertaking if one wanted to address all trade policy issues or very general interests, such as free trade or protectionism. Firms are more likely to engage themselves into politics when it concerns their industries specifically, and policy stances always address the specific economic, historic and technical environment of a sector. Of the many issues that are negotiated in the WTO, services offered themselves as field of investigation for the reasons cited earlier: the recent emergence of the issue and the time frame. Furthermore, service trade is an issue that has gained considerable attention among political activists concerned about the influence of business groups and has seen the establishment of several powerful business lobby association. Before turning to the two sectors studied in particular, it is therefore helpful to begin with a discussion of the issue of service trade more generally and to underline the role business interests have played in its emergence.

2.1. Trade in services

What does it mean to "trade" services? The specific characteristics of services have important implications for their exchange. Goods are simply sold to foreign nationals, and trade policy traditionally addressed the price, number and product standards of the items sold. In services, one needs to distinguish between different kinds of provision of services. In *active service trade*, the provider moves to the country of the buyer. In *passive service trade*, the buyer moves to the country of the provider, who remains in his home country. *Correspondence services* are traded without any movement of the provider or the buyer, as in the case of telecommunication or radio service, for example (cf. Snape 1990). Finally, the provision of service might require the *temporal movement of persons*. The distinction of types is made in terms of the process through which the service is provided, not the product itself. Similarly, norms applying to the provision of services most often do not address the product; they regulate the production and provision process instead. The trade of alcohol, for example, will be framed in terms of its content, while the exchange of financial services across border will be addressed in terms of liabilities and obligations.

Figure 3-3: Synthetic view of modes of supply (UN et al. 2002: 23)



In the GATS, the different ways of trading services are dealt with as "modes" and four modes of service transactions have been identified. Mode 1 covers the cross-border supply of services, mode 2 foreign consumption, mode 3 the commercial presence of a foreign affiliate in the country of consumption and mode 4 the presence of natural persons. The following table represents these different forms.

The GATS definitions of modes of service supply are significantly broader than the traditional balance of payment approach used for the trade of goods.[29] For a balance of payment account, supply and consumption has to be divided into imports (credits) and exports (debits). In service trade, a service is "exported" if it is traded between residents and non-residents: a hotel renting a room to a foreign national, for example, constitutes an export. With this residence focus, however, the balance of payment approach cannot take into account trade of services between residences, as would happen under mode 3. If the service trade occurs between a foreign affiliate, i.e. a German branch of a US company, and a German resident, it is not considered an export from a balance of payment perspective, but it is a service transaction falling under the coverage of the GATS (Chang et al. 1999; Karsenty 2000; United Nations et al. 2002). Unlike the balance of payments approach, the modes of supply approach does not rely on residence, but on an amalgam of nationality, territorial location and ownership or control. As we will see, this corresponds to the primary interests of firms, who are less concerned with exports and imports than with territorial location or ownership and control.

Two issues are thus at the heart of service trade: access and the diversity of national regulation. Access simply describes the fact that the buyer has the possibility to obtain the services offered by the provider. Barriers to active services trade are then discriminatory

[29] The balance of payment manual of the International Monetary Fund lays out the framework for measuring trade transactions (International Monetary Fund 1993).

measures that prohibit the provision of a service in a foreign country by a national of another country. The diversity of national regulation can also inhibit service trade. If a construction worker needs to meet a specific accreditation requirement in order to work in a specific country, foreign workers will be less likely to have met these requirements than national ones, for example. The first case is generally referred to as *discriminatory barrier* to trade, while the second is called *non-discriminatory barrier* to trade.

The trade of services is thus tightly intertwined with the notion of regulation. Regulation commonly addressed a great variety of standards throughout the provision process: from the accreditation of professional formation, to the supervision of the execution and enforcement of procedural standards. The core challenge of service trade is therefore to address the trade-restricting effects of regulation (Feketekuty 2000; Mattoo/Sauvé 2003).

Different regimes on the trade of services furthermore need to address who determines how to regulate the provision of a service when it is exchanged between two countries? Several regimes are possible: *non-discrimination*, *mutual recognition* and *harmonization*. Under a non discriminatory regime, a service provider has to abide by the regulation of the receiving country B, which nonetheless has to offer equal treatment to all service providers, national or foreign. Under mutual recognition, the home country A regulates the service and country B accepts the service as an equivalent to service coming from a provider in its own country. Under harmonization, both countries negotiate a common standard. As we will see, the WTO employs a regime based on non discrimination, while the European Union employs either mutual recognition or in some cases harmonization (Nicolaïdis/Trachtman 2000; Schmidt 2004).

2.2. The emergence of multilateral service trade

Traditionally the invisibility and temporality of services had contributed to their neglect in trade affairs, which viewed them as derivatives of goods or even entirely unproductive. Service exchanges were difficult to measure and categorize. Most often, governments lumped services into a broad "tertiary" sector which included everything that was not manufacturing or agriculture. Transactions concerning services between countries showed up in national accounts under the broad label "invisibles".

With shifts in the economic structures, the growth of service sectors and the increased international activities of large multinational service companies, this conception began to change. In their account of the transformation, Drake and Nicolaïdis (1992) distinguish three periods: (1) a period of issue identification, which began with a meeting organized by the Organization for Economic Cooperation and Development (OECD) in 1972 on "trade in services", (2) a period of issue consolidation from 1982 to 1986, when services were taken up in the General Agreement on Trade and Tariffs (GATT) meetings as a new trade matter, and (3) a period of multilateral negotiations beginning in 1986 with the launching of the Uruguay Round and arguably lasts until today. Since 1986, participants of the GATT negotiated what was to become the GATS, a new international regime on service trade, of which the details are still being negotiated.

The GATS, one of the Marrakech agreements of the Uruguay Round in 1994, aims to bring service exchanges under the same trade regime as the exchange of goods under the GATT. Often cited as the predecessor of the WTO, the GATT was not formally an international organization. This changed with the establishment of the WTO in 1994, which was created as a formal body administrating the GATT as well as several new agreements: the GATS, trade related aspects of intellectual property rights (TRIPs), and all other agreements

concluded during the Uruguay Round. Before the creation of the WTO, the participating countries were merely called contracting parties. After 1995, they became actual "members" of the WTO.

In order to understand how the GATS works, it is helpful to summarize the GATT rules for trade in goods. Goods are exchanged by transporting them across borders. Trade policy most often came in the form of tariffs which were imposed on the good at the border. The ambition of the GATT was to lower these tariffs through negotiations between countries. An initial multilateral round specifies the agreed targets or formulas, which are then followed by bilateral negotiations on specific requests and offers between countries. The most important principal requires that once country A lowers a tariff for the goods of country B, it has to extend the same offer to all other countries as well. This principle is called the most-favoured nation (MFN) principle and constitutes the first article of the GATT. Under specific conditions, countries may make an exception to the MFN principle.[30]

The GATS agreement of 1994 lays out the rules that govern the application of this procedure to services. Covering all services (with the exception of government services and most air transport services) supplied through the four modes listed above, the GATS specifies that commitments on the trade of services should apply equally to services and service providers from all countries (MFN – Article II), that regulation should not restrict foreign services or service providers ("market access" – Article XVI) or discriminate against them in a manner that is inconsistent with the binding commitments ("national treatment" – Article XVII). Furthermore, the implementation of these principles has to be the subject of negotiations (Article XIX), of which the results have to be bound in national schedules

[30] For more information, see the website of the WTO at http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm.

(Article XX).[31] To make the new framework acceptable to the negotiation partners, the GATS provides a great amount of flexibility in claiming MFN exemptions on specific sectors or items. In contrast to the GATT, even national treatment became a specific commitment that countries were free to take an exemption to. Overall, the GATS is therefore a much softer arrangement than the GATT.

By upholding the principles of market access and national treatment, the GATS framework agreement prohibits the use of discriminatory barriers to the trade in services. However, non discriminatory barriers based on regulatory diversity were much harder to address. The agreement therefore provided for the continuation of negotiations along sectoral lines. The ambition of these negotiations (with deadlines specified for financial services and telecommunications) was to negotiate the implementation of the GATS principles (to reduce the MFN exemptions taken) and to address regulatory issues that went beyond the direct denial of market access and national discrimination.

2.3. Business interests in services

The emergence of service trade as a policy issue was not only an undertaking of international organizations or intergovernmental negotiations; it was also shaped by the continued participation of business interests. Especially in financial and professional services, companies saw important market access opportunities in a service agreement and lobbied heavily towards a strong US proposal (Arkell 1994; Sell 2000; Hoekman/Kostecki 2001: 250). According to David Hartridge, former director of the WTO Service Division, “without the enormous pressure generated by the American financial services sector, particularly

[31] For an in-depth discussion, see Messerlin and Sauvant (1990).

companies like American Express and CitiCorp, there would have been no services agreement."[32]

For large US financial companies, service trade became an issue in the late 1970s. Trying to develop global financial service offers, such as card business or international banking networks, US companies realized that they had considerable difficulties getting into foreign markets. These problems applied in similar ways to the American International Group (AIG), American Express and Citibank, who started working together and got in touch with the US government to talk about these issues (Freeman 1996). The US government and USTR in particular were enthusiastic about the idea of broadening the GATT framework and started working towards a US position on the topic (Feketekuty 1988). For their part, AIG, American Express and CitiCorp founded the Coalition of Service Industries in 1982 under the presidency of American Express Vice President Harry Freeman to continue lobbying on the issue. But the most important contact remained personal contacts. The leaders and government representatives of these financial service companies started working with William E. Brock, USTR from 1981-5, and later with Clayton K. Yeutter, USTR from 1985-1989. Harry Freeman remembers that everybody at USTR was very helpful: "Bill Brock saw this as a great opportunity for himself, and so were the people working with him, so he was quite enthusiastic about it."[33] The companies invested considerable amounts of resources into pressing for this cause and proposed new forums of consultation with the US government. Jim Robinson, CEO of American Express, started chairing a private sector advisory group to William Brock in the mid-1980s and later moved to take the chairmanship of the President's Advisory Committee on Trade. John Reed, CEO of CitiGroup, and Maurice Greenberg of

[32] Quoted in Wesselius (2001).
[33] Interview in Washington D.C. in April 2003.

AIG later followed into the same or similar positions. Further consultative groups advised the US Department of Commerce or existed independently, like the Business Roundtable.

The lobbying of financial service firms was extensive and dominated the nascent service trade discussion in its early years, as many have noted (Sell 2000; Wesselius 2002). Interestingly, however, the concrete benefits of this issue were seemingly less relevant than the effect of the political activity more generally. Yoffie and Bergenstein (1985), for example, suggest that American Express built "political capital" by "developing an issue which had broad political appeal and fit into the agendas of key politicians" even though the significance of the issue for AmEx's business operations was not certain.

The coalition of multinational companies and US government officials benefited from early discussion in the OECD and among economists and contributed to redefining the stakes in terms of trade, which helped to make the demands more pressing both internally and externally (Drake/Nicolaïdis 1992: 46). Even though the coalition of US firms was originally only from the financial sector and parts of the professional services sector, their ambition was from very early on to achieve a more global agreement on services. Financial services, consulting, advertising, data processing, telecommunications and transport were all relevant services to their international operations, so they lobbied both for the benefits of their own service expansion and as user companies of other services. In a variety of multinational business associations, American firms urged their foreign counterparts to take up the cause. The companies most involved in the negotiations even met with representatives of foreign governments, [34] making service trade one of the rare examples of trilateral diplomacy between businesses and governments (Stopford/Strange 1991).

[34] Interview with a US business representative on 8 April 2003 in Washington D.C..

It is difficult to evaluate the precise impact of these activities, but they certainly contributed to the diffusion of ideas on service exchanges and helped to unify the position of American business on the issue. Large companies from all sectors of the economy started conceiving themselves as user companies of services. For Drake and Nicolaïdis (1992: 49) "new ideas helped them to see the potential of networks and information systems and encouraged them to change positions with respect to global markets and government regulation." In 1981, the International Chamber of Commerce (ICC) endorsed GATT negotiations on services. An affiliate of the ICC, the USCIB was later to become an important forum for trans-sectoral lobbying and consulting on international service trade.

The importance of business lobbying in the case of services should not be underestimated, but its success was closely linked to the fact that it corresponded to the interests of the governments and other policy experts working on these issues. With the backing of its industry, the US government defended the strongest proposal for a service agreement during the Uruguay Round, undoubtedly well equipped with a lot of information and expert knowledge on its service economy. The European negotiators soon saw the benefits of the close cooperation with business experts, but those active on service trade were almost exclusively American, as most observers confirm:

> At the close of the Uruguay Round, we lobbied and lobbied. We had about 400 people from the US private sector. There were perhaps four Canadians and nobody from any other private sector.[35]

EU Trade Commissioner Sir Leon Brittan regretted the lacking support from European business organizations throughout the Uruguay Round and started creating a series of associations between 1995-1999, that were meant to encourage the political participation of firms throughout Europe. The most important one of these groups was the TABD, but it was

[35] Harry Freeman, quoted in Wesselius (2002).

not the only one. To break the deadlock in the sectoral negotiations on financial services in the WTO, the US government and the EU Commission agreed to found a similar group for financial services only. They invited Ken Whipple, then President of Ford Financial Services, and Andrew Buxton, then Chairman of Barclays Bank, to form a high-level transatlantic business forum called the "Financial Leaders' Group", of which the USCSI runs the secretariat.

During the preparation for the GATS 2000 negotiation, the continuation of the service agreement, Sir Leon Brittan began to organize his own European service pressure group to provide a counterweight to the force of the USCSI. He again asked Andrew Buxton to form a EU service industry group that would serve as a political forum to service providers through Europe. The European Service Network was launched on 26 January 1999 and later renamed European Service Forum in October.[36] In its first meeting, the EU Trade Commissioner emphasized the role he saw for the ESF,

> I am in your hands to listen to what are your objectives, your priorities for liberalization either on a sectoral, geographical or […] regulatory environment. […] I count on your support and input, […] so that we can refine our strategy and set out clear, priority negotiating objectives which will make a difference in the international expansion of business.[37]

The relationship between DG Trade and the ESF is thus unusually tight. Nonetheless, the ESF is a weaker and less active organization than its American counterpart. While the USCSI secretariat consists of seven people, ESF in Brussels consists of a managing director only.[38] Like the TABD, the ESF suffers from the lack of active participation of CEOs in Europe, who do not treat public relations as a part of their daily work to the same degree that American

[36] www.esf.be
[37] Leon Brittan (1999) "European Service Leaders' Group," Speech at the launching meeting of the ESF, 26 January, available at http://www.esf.be/pdfs/documents/speeches/splb0199.pdf.
[38] Not including secretarial staff.

CEOs.[39] Businesses who do want to get active, however, have a wide choice of channels at the European level. Besides the TABD or the Financial Leaders' Group or the ESF, UNICE also has working groups or staff members concentrating on aspects of service trade.

In sum, the issue of service trade is a policy area, where business interests seem to play a decisive role. The focus of political activists on the issue of GATS is to a large extent motivated by this observation (Wesselius 2001; Wesselius 2002). The newness and the lack of expertise on technical aspects of the exchange of services furthermore provide an important opportunity window for firms wishing to affect the formulation and type of policy proposals. Studying the lobbying of firms affected by the market opening brought about through multilateral service agreements should therefore lead to the observation of some sort of activity.

2.4. Comparing telecommunications and air transport

Yet even services comprise a very diverse list of sectors from electricity supply over financial services to individual services such as hair dressing. The research therefore chose to concentrate on two specific sectors only: telecommunication services and air transport.

2.4.1. Studying sectors

Why is it useful to study sectors if one is interested in business-government interactions more generally? Following Hollingsworth, Schmitter and Streeck (1994), a sector will be defined as "a population of firms producing a specific range of potentially or actually competing products." A meso-level between the micro-level of the individual firm and the macro-level of the whole economy of a nation, the sector seems the most salient unit of analysis of our purpose. This is the case for both theoretical and empirical reasons. First, in an

[39] Interview with an EU business representative on 13 November 2002 in Brussels.

analysis that considers economic interaction as only one specific type of social interactions, the sector is one of the nexuses where exchanges among producers as well as among producers, suppliers, and consumers are constructed.[40] Extensive intra-sectoral networks of both producers and workers often characterize the organization of a sector. Moreover, it is often impossible to speak of certain industrial characteristics of an entire country as organization varies considerable between sectors.[41] Sector organization is most often based on economic or technological requirements. If we then observe that political activities of firms differ within the same sector in the US and the EU, we can assume that the reasons will be socio-political rather than purely economical.

Secondly, sectors constitute one of the principal frameworks within which industry and trade policies are administered.[42] This is true for the WTO, as well as for the US, the EU and for its member states. Lobbying will try to address specific policy propositions, which requires breaking down service liberalization into sectoral concerns rather than horizontal issue areas. By the same logic, we find that firms, especially small and medium size firms, tend to organize their political interest representation in sector-specific organizations. In the EU, business sector associations even account for the overwhelming majority of *all* Euro-groups (Greenwood/Grote/Ronit 1993: 59). Still, comparing different sectors does not imply only considering sectoral business associations. On the contrary, the goal of this study is to understand which forms of collective or individual action are most common in each of the two countries with respect to WTO politics. The interest of comparing sectors lies in the fact that sectors permit to control for some economic conditions affecting the mode of production and the trade of specific sets of goods or services.

[40] Another nexus is locality.
[41] The political and economic structure of the air transport sector is much more similar between the United Kingdom and Korea, for example, than the structure of the air transport sector and the dairy sector within the United Kingdom.
[42] Another framework are issue areas.

2.4.2. Telecommunication and air transport services

The choice of telecommunication and air transport services was motivated by the desire to compare sectors who are very similar, but are governed by different international regimes. While telecommunication services are today governed by the GATS, air transport rests within the control of states which pursue a more cautious approach to liberalization through bilateral agreements. The variation in policy outcomes is important, because of the questions it permits to ask. (1) Were the affected firms for or against the multilateral liberalization of telecommunication services and the refusal to liberalize trade multilaterally in air transport services? (2) If business lobbying corresponds to the outcome, what explains the divergence in the two cases? (3) If business lobbying runs counter to the outcome in one of the two cases, what explains the unified business interest in both cases?

However, the ambition of this research is not to explain the divergent outcomes, since testing hypotheses other than the activities of business interests would go beyond the scope of this paper. A thorough investigation would have to include geopolitical considerations, such as the respective weight of the most dominant states in multilateral negotiations, coalitions between countries or the importance of public and private users of the services.[43] One might hypothesize that the lobbying of the affected businesses alone can explain the divergent outcomes, but this hypothesis has been discarded in the course of the present research.

Despite the different liberalization paths, the two sectors are largely comparable. Both sectors are so-called network services or infrastructure services, which adds to their respective political importance. In defence matters, the control of infrastructure service provision constitutes a particular security issue. Access to these services furthermore facilitates the provision of other goods and services, making them an important element of world trade in

[43] The lobbying of user companies is an important element for understanding the policy development, but it does not help us to understand what companies want with respect to their own field of activities.

their own right. An important criterion for their choice was the fact that companies are firmly rooted in their home markets, so that one can make strong assumptions about their trade preferences. Furthermore, the number of companies affected by these new trading arrangements in both telecommunications and air transport are relatively small, so that the political engagement will not be hampered by collective action problems typical for dispersed or fragmented groups of interest. Since lobbying strategies are the subject of the research, it would have been very frustrating to discover that lobbying has not happened due to organizational problems.

Traditionally, both sectors have been heavily regulated. Domestic deregulation started in the US and then in Europe, where internal liberalization advanced through the activism of the European institutions, most notably the European Commission. The full liberalization of telecommunication services, however, happened somewhat later in telecommunication services. At the international level, regulatory cooperation is coordinated by international organizations, the International Telecommunication Union (ITU) and the International Civil Aviation Organization (ICAO). However, the regime that governs the exchange of services in international air transport is more complicated than in telecommunication services, since governments negotiate bilaterally the conditions of international flights.

Schematically, the aspects that are similar in both cases are the type of service, the implications of the sector for the economy or trade in other sectors, the security concerns, the overall company landscape and the resulting weight of individual companies, the regulatory transition from state-control to market-orientation, and the long tradition of international coordination.

Table 3-2: Elements controlled for by comparison

	Telecommunication Services	***International Air Transport***
Type of industry	Infrastructure service	Infrastructure service
Trade aspects	Trade facilitating	Trade facilitating
Security concerns	Control of network sensitive	Control of access sensitive
Company landscape	Large network or service providers	Large air carriers
Domestic deregulation	US: 1984 long-distance; 1996 local EU: Since 1980s, full liberalization agreed on in 1996	US: 1978 EU: In three packages from 1988 through 1993
International organization	ITU since 1865	ICAO since 1944

These aspects represent the elements that are "controlled for" in the comparison of the two sectors. In other words, variation between lobbying in the two sectors studied cannot result from them, because they are considered either present or absent in both cases. This does not mean that they do not have an effect, but the sectoral comparison simply does not speak to them, and the findings are valid only in a context that controls for these elements as well.

The aspects that vary between the cases are the following.

Table 3-3: Variations in the sectoral comparison

	Telecommunication Services	**International Air Transport**
Importance of foreign activities for companies	*Sector split + US/EU difference* US: international calls important for long distance carriers, foreign investment for network providers EU: companies all involved to some degree abroad, but home market biggest asset	*US/EU similar:* US: important, about 1/3 of revenue for international carriers EU: important, about half for large carriers, regional market more important for smaller ones
Coalition structure of companies	*US/EU difference* US: division between large competitors and network providers EU: former monopolies hold networks, new entrants less important	*US/EU similar* US: international carriers vs. domestic carriers EU: international carriers vs. regional carriers
Time overlap of domestic and international deregulation	EU liberalization overlaps with WTO negotiations	Domestic or regional liberalization prior to multilateral negotiations
International regime	Interconnection and technical standards negotiated between carriers	Bilateral agreement negotiated between governments

The differences listed here take up the variables listed in the previous chapter: economic incentives, domestic regulatory traditions and the complexity of the international regulatory regimes. According to these

3. Conclusion

The two dimensional comparison of this dissertation serves two objectives. The country comparison introduces institutional variation into the study of business-government interactions, while the sectoral focuses contextualizes these interactions in order to evaluate the orientation or reorientation of lobbying in terms of specific trade issues. In this way, the sectoral comparison permits to test the other three variables.

As the survey of the lobbying literature has shown, the US – EU comparison also opposes two different lobbying cultures. While the US has a quite extensive tradition of private actor participation, lobbying only recently gained prominence in the EU and above all at the supranational level. Much is written on the differences between these two traditions, but the opposition between “money and lawyer lobbying” vs. “consultation” is less relevant for our case studies than it would be if one wanted to concentrate on Congress or legislative lobbying more generally. In trade policy negotiations, the respective lobbying traditions should not have a very important effect, since delegation of policy competence towards the executive encourages informational lobbying in both the US and the EU.

The following four chapters now present the empirical studies of lobbying in telecommunication services and international air transport. Chapter 4 and 6 introduce the stakes of international liberalization in both sectors and traces historically how the issue came about. Chapter 5 and 7 then turn to the liberalization negotiations themselves, first by providing a historical overview and then by relating the story from the perspective of the

actors that were involved. The purpose of these empirical chapters, which heavily rely on the interview material, is to provide the thick narrative of business-government cooperation. Unlike the assumptions generally made in political economy, they expose how meanings and understandings of the stakes evolve prior to and during the course of negotiations.

Chapter 4

STAKES IN TELECOMMUNICATION SERVICE TRADE

Telecommunication services today cover a great diversity of services related to the transmission of information over long distances, such as telephone, fax and internet, but consequentially also data transmission, which might include entire audio-visual products. Communication services are sometimes used as a label including postal services, especially since the sector was traditionally know as the Post, Telephone and Telegraph (PTT) sector and was administrated accordingly. Today, it becomes more and more common to include telecommunication services into a broad category of Information and Communication Technology (ICT). The international and national debate about an appropriate definition and limitation of the sectors is still on-going. In the WTO, for example, it is important to know if an agreement on telephone lines covers the audio-visual data transmitted over these lines or not.

In order to focus the research, I propose a somewhat minimal definition of telecommunication services, which relies closely on the definition adopted by the WTO, where telecommunications services are divided into two categories. The first is called “basic telecommunication services” and covers all telecommunication services, “both public and private, that involve end-to-end transmission of customer-supplier information,” such as voice telephone service, telex service, telegraph service, or facsimile services. A second category then assembles so-called “value-added services”. Value-added services are

telecommunication services "for which suppliers 'add value' to the customer's information by enhancing its form or content or by providing storage and retrieval." Examples of value-added services are on-line data processing, electronic mail interchange or voice mail.[1] In other words, the traditional phone call between two people and the network that this phone call employs are included in basic telecommunication services.[2] While the internet and the exchange of e-mail is covered by the label value-added services, the commerce of services or goods over the internet is dealt with in a separate declaration on e-commerce in the WTO framework and will also not be included in our working definition.[3] Finally, telecommunications equipment will not be considered, even though some it is common to refer to both services and good under the broad label "telecommunication industry".

1. Economic conditions

What is the economic context defining the stakes of international service trade for telecommunication service companies? The following section presents the principal telecommunication companies in the US and the EU, focusing on the importance of their domestic markets and their international activities. It also provides an overview of the economic performance of the sector as a whole in order to contextualize the debate about multilateral liberalization that will be presented later on.

1.1. Corporate landscape

The firms that dominate telecommunication service provision are those companies that established and maintained the telecommunication networks, the so-called incumbent network

[1] All citations are taken from the WTO's definition, which can be found on the telecommunication website of the service trade section at http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm.
[2] This applies to local, long distance or international telephony, both wire or radio-based for public or non-public use.
[3] For the WTO's work on electronic commerce, see http://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm.

operators, such as British Telecom, Deutsche Telekom or France Télécom, but also the local network operators in the United States known as regional bell operating companies (RBOCs), such as SBC or Bell South, for example. Competitors, who lease parts of these networks in order to provide similar services, will be referred to as service providers. The most well-known are the early American competitors, AT&T, MCI or Sprint, but European competitive telecommunication service providers rose in importance in Europe as well in the late 1990s and early 2000.

Table 4-1: Largest Telecommunication Companies in the US and the EU (1997)

Company	*Country*	*Home market position*	*Total telecom revenue (US $ million)*	*International telephone revenue (US $ million)*	*International as percentage of total revenue*
AT&T	United States	competitor	51 319	8 351	16 %
MCI	United States	competitor	19 653	4 243	21 %
Sprint	United States	competitor	14 874	1 478	9 %
Worldcom	United States	competitor	7 790	500	6 %
Bell Atlantic	United States	RBOC	30 194	…	0 %
SBC	United States	RBOC	24 856	…	0 %
GTE	United States	RBOC	23 260	…	0 %
Bell South	United States	RBOC	20 561	…	0 %
Ameritech	United States	RBOC	15 998	…	0 %
US West	United States	RBOC	15 235	…	0 %
Deutsche Telekom	Germany	incumbent	37 694	2 734	7 %
France Télécom	France	incumbent	26 174	2 110	8 %
British Telecom	UK	incumbent	26 277	2 609	9 %
Cable & Wireless	UK	competitor	8 940	N/A	N/A
Telecom Italia	Italy	incumbent	24 204	1 412	5 %
Telefónica	Spain	incumbent	15 577	795	5 %
KPN	Netherlands	incumbent	7 671	1 037	13 %
Telia	Sweden	incumbent	4 694*	N/A	N/A
Belgacom	Belgium	incumbent	4 513*	547	12 %
PTA	Austria	incumbent	3 733*	492	13 %

Source: Assembled by the author based on the following publications: ITU (1997), "Top 20 Telecommunication Operators," (http://www.itu.int/ITU-D/ict/statistics/); WTO (1997), "Data on Telecommunication Markets covered by the WTO Negotiations on Basic Telecommunications," (http://www.wto.org/english/news_e/pres97_e/data3.htm); FCC (2001), "Report on International Telecommunications Markets, 2000 Update," Washington, D.C.: International Bureau of the Federal Communications Commission.

Note: The RBOC were prohibited from the long-distance and international markets until the passing of the TA96. It is therefore assumed that their revenue is not yet significant in 1997. * indicates estimates made by the author based on country data; N/A indicates that data was not available.

The most important players in the telecommunication industry have a relatively stable presence in the world's telecommunication markets, even though some companies – one may think of Worldcom, for example – have considerable fluctuations in their revenue over time. Table 4-1 lists the most important American and European companies and cites their total revenue as well as their international revenue for the year 1997.[4]

The associational network of these companies follows the division between network operators and service providers: incumbents represent their interests individually or collectively, while new entrants associate under a label evoking "competitive telecommunication service provision", most often with the explicit goal of reducing the market control of those companies owning the networks. In Europe, the network operators formed the European Telecommunications Network Operators' Association (ETNO)[5] in 1992; new market entrants established the European Competitive Telecommunication Association (ECTA)[6]. In the US, new entrants have formed the Competitive Telecommunication Association (CompTel)[7] in 1981 to promote competition with the monopoly AT&T,[8] while network operators generally speak through the United States Telecom Association (USTA)[9], the oldest trade association in the US, which was originally founded in 1897 against the monopoly of the Bell System, but later admitted the regional bell operators as member in 1984.[10] It is characteristic of business-government relations in all of the countries studied that

[4] Company information is not as easily available prior to this data, where telecommunication revenues in Europe were often listed by countries, rather than companies. 1997 still gives an accurate picture of the company landscape, because the figures do not yet show the reorganization of the industry that followed the multilateral liberalization agreement in 1997, nor the opening up of the European telecommunication markets. To cite an example, Deutsche Telekom held 100% of the German market share in 1997, but only 80.3 % in 1998, when Mannesmann, WorldCom and Viag Interkom had entered the German market (FCC 2001).
[5] For more information, see their website at www.etno.be.
[6] For more information, see www.ectaportal.com
[7] For more information, see http://www.comptel.org
[8] A historical review of CompTel can be found on their website: http://www.comptelascent.org/about/history.htm.
[9] http://www.comptel.org
[10] For a brief history, see http://www.usta.org/index.php?urh=home.about_usta.brief_history.

trade associations only form once the company is separated from the government through a measure of privatization. In the case of ETNO, European network operators decided to organize collectively in Brussels as a response to the activism of the Commission on a European-wide integration of telecommunication markets.

Even though these organizations are the most pertinent trade associations in the context of telecommunication services, a wide variety of other telecommunication associations exist due to the fragmentation of the sector. In the United States, the US Department of Commerce lists 17 US telecom associations, such as the Telecommunications Industry Association, the National Cable & Telecommunications Association or the Personal Communications Industry Association.[11] The European Association ECTA even provides links to 77 different US telecommunication associations. Even though the number is less elevated in Europe, various associations exist for equipment manufactures, wireless operators or other parts of the telecommunication industry. In addition, telecommunication companies in Europe are most often part of a national association and a European-wide one simultaneously.

1.2. Economic performance of the telecommunication service industry

Telecommunication services had established themselves as a sector of considerable economic importance during the 1990s, when it was brought to the multilateral negotiating table. In 1995, global telecom service revenue stood at about US$ 600 billion, a figure that represented 2% of global GDP at the time.[12] In terms of total telecommunication market revenue, telecommunication services made up about 77%, telecommunication equipment

[11] See the trade association list on the Information and Telecommunication Technologies Office of the International Trade Administration at www.ita.doc.gov.

[12] WTO (1997), "Data on Telecommunication Markets covered by the WTO Negotiations on Basic Telecommunications," available at http://www.wto.org/english/news_e/pres97_e/data3.htm.

about 23% throughout the 1990s.[13] Telecommunication was a high growth sector throughout the 1990s, growing at about 6%, a figure well above the average growth rate of global gross domestic product (GDP).[14] The dramatic growth of the sector becomes even more visible when one considers some of the sub-categories. For example, in newer communication services, such as mobile telephones, the annual average growth rate of subscribers grew by 47.7% from 1995 to 2000.[15] A graph representing this evolution over time can be found in the annex. Growth in profits is even more impressive. In the US, the average annual growth rate of profits in the telecommunications industry (from 1995 to 2000) was estimated to be 61.2%, ranking second of all growth industries.[16]

The WTO members contributing to the negotiations on basic telecommunications account for the vast majority of telecommunications markets world-wide. The United States, the European Communities, Canada, Japan and Australia alone account for 77% of the world's market. The EU, US and Japan ranked as the world's largest telecom markets in terms of global share by all main indicators.[17] In 1995, the EU's share of the global telecom market was 28.3 % in terms of revenue, slightly behind the 29.7% share of the US. In terms of main lines, the EU holds 26.1% and the US 23.8% of the global market. Finally, due to the size of their domestic markets EU countries hold 35.2% of international traffic, compared to 25.3% for the US.[18]

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[13] ITU (2001), "Key Global Indicators for World Telecommunication Service Sector," available at www.itu.int/ITU-D/ict/statistics/at_glance/ KeyTelecom99.html.
[14] Ibid. The growth rate refers to revenue from both service and equipment.
[15] ITU (2001), "Mobile cellular, subscribers per 100 people," available at http://www.itu.int/ITU-D/ict/statistics/at_glance/cellular01.pdf.
[16] Fortune 500 (2001), "Fastest growing industries: Growth in Profits", available at http://www.fortune.com.
[17] Outgoing international traffic is the only exception, where Japan ranked behind Canada, Switzerland and Hong Kong.
[18] WTO (1997), "Data on telecommunications markets covered by the WTO negotiations on basic telecommunications," 17 February, available at www.wto.org/english/news_s/ pres97_e/data3.htm. The WTO information is based on ITU data.

Another indictor of economic performance is foreign investment. Under the old system of state-controlled monopoly provision, foreign investment could only take the form of limited coordination. Given the wave of privatization which was to develop during the 1980s and the 1990s, however, many countries have opened their markets to foreign investment. In some countries, such as Jamaica, foreigners have even been allowed to purchase the former national company, but most countries restrict access to minor investments.

As Robert Crandall (1997: 112) points out, the US telephone companies were among the most aggressive of those investing in foreign operations in the 1990s. The RBOCs in particular, have major investments in New Zealand, Australia, Mexico, Chile and Eastern Europe, but European network operators also seemed like "large potential investors". Before the liberalization of the telecom service market in Europe as well as through the WTO, however, these companies tended to organize several joint ventures in order to facilitate international operations. Alongside mergers and acquisitions, alliances also played a major part in the internationalization of large telecom companies, both in the US and Europe. These alliances were not only the product of deregulation and increasing liberalization, they also gave a substantial boost to these processes. In the later half of the 1990s, the four major ones were *Global One*, formed by a Deutsche Telekom/France Télécom venture joint by Sprint in 1996, *Concert*, a joint venture between British Telecom and MCI, *World Partners*, consisting of AT&T, KDD (Japan), Telstra (Australia) and Unitel (Canada) and *Unisource*, an alliance between Telia, Swiss Telekom, KPN, Telefónica, in which AT&T had a 20% stake (Cowhey/Aronson 1993; Clegg/Kamall 1998; Borrmann 2002).[19]

[19] A list of major foreign investments and joint ventures can be found in Annex 3.

These international activities and joint ventures with foreign telephone companies were useful in terms of investment and for the provision of advanced networking services to multinational corporations. Still, before 1998, there was no large phone company, whether from competitive markets or monopoly markets, that had truly global supply and distribution strategies. Cowhey and Richards (2000: 156) suggest that the national base of companies had an important consequence for their approach to internationalization. Even though "they did not earn their largest profit margins by executing global strategies, […] big phone companies believed that user needs would force them to go global." Internationalization thus became a major theme for telecom companies in both the US and Europe through the 1990s.

The optimism triggered by the overall success of the telecommunication sector and the internet business shattered in 2002, when a series of bankruptcy filings of major telecommunication companies and a total dept of $1 trillion accumulated by telecom firms rang in the end of the telecom boom of the 1990s.[20] WorldCom, most notably, which had earlier taken over one of the largest US telecommunication service providers, MCI, became the largest American company ever to file bankruptcy in July 2002.[21] Other US companies filing for bankruptcy in the early 2000s were Global Crossing, Adelphia Communications and 360networks. Others, such as Qwest Communication were subject to criminal investigation for accounting fraud. In Europe, the former monopoly providers suffered similarly from the enormous dept they had incurred. Ron Sommer, the CEO of Deutsche Telekom, and Michel Bon, of France Télécom, had to resign after the share prices of their companies had dropped by up to 90%. The two companies had an announced dept of 70 billion and 65 billion

[20] *The Economist* "The great telecom crash", 20 July 2002, p.11.
[21] *The Economist* "The only way is up, maybe", 27 July 2002, p.58.

respectively in 2002. British Telecom was doing better only by comparison, which about 14 billion pounds dept in 2002.[22]

The overall economic performance of the telecommunication sector has important implications for the lobbying of companies, most immediately because of the availability of resources dedicated to government affairs. With the eruption of the telecom crash in 2002, many telecommunication companies reduced their lobbying expenditures and withdrew representatives from Washington to deal with regulatory affairs from their headquarters only. Inversely, lobbying increases in times of economic optimism, but also in response to important national stakes. In the US, for example, the recent debate about amendments to the US Telecommunications Act of 1996 in the early half of 2003 saw lobbyists return to the stage in Washington D.C..

2. Domestic regulatory traditions

Telecommunication service provision in developed countries has two conflicting characteristics that make it a central issue of regulation. First, telecommunication services are essential to the well-being of a society and most countries share a belief in universal access. Second, a firm engaging in the provision of telecommunication services has to establish a network first, which is a very costly initial investment. Because of high capital intensity of the sector, the provision of telecommunication service was long perceived as a "natural" monopoly.[23] Ensuring that the monopolist could guarantee universal access without abusing its market power led to the regulation of the sector, either through direct government control or through regulatory agencies.

[22] After having drastically reduced their dept by about 16 billion pounds from 30 billion pounds over the past 18 months. *The Economist*, "Too many debts, too few calls", 20 July 2002, p.57-59.

[23] For the economic justifications of national monopolies and their counter-arguments, see Welfens/Yarrow (1996).

However, over time, better technology reduced the capital costs of operating a network. Rural households, for example, can be connected more cheaply via wireless transmission techniques. Starting in the 1960s and 1970s, the accumulation of technological innovations triggered a world-wide paradigm change that led to the transition from public or private monopolies to competition-oriented markets.[24] Although the principal of a natural monopoly in telecommunications was put into question, the idea of regulation continued since a stable regulatory framework was necessary to encourage newcomers to commit the large amounts of capital required to enter the sector. For telecommunication services the transformation of the sector thus constitutes a redefinition of state-control over the providing companies, in some cases the privatization of public companies, which will be referred to as regulatory reform or market liberalization rather than deregulation.

2.1. Market liberalization in the United States

In the US, telecommunication provision was traditionally in the hands of the private monopoly of the American Telephone and Telegraph Company (AT&T) founded in 1877. In 1934, the US government established the Federal Communications Commission (FCC) as an independent agency responsible for the regulation of interstate and international communication directly reporting to Congress.[25] The first major challenge to the monopoly of the giant empire of AT&T came in the early eighties, when MCI, originally a company concentrating on two-way radios for truckers, challenged AT&T's rule and won the anti-trust case in 1982.[26] On January 1st of 1984, the Bell System, as AT&T's regime was called, had to divide into seven regional holding companies, the so-called "baby bells": Ameritech, US

[24] A growing literature exists on this paradigm change and the regulatory reforms in different countries. See for example, Vogel (1996), Thatcher (1999) and Schneider (1999). A good overview is provided in Schneider (2001: 26-7).
[25] For more information, see www.fcc.gov.
[26] An entire website has been dedicated to the history of this landmark decision: www.bellsystemmemorial.com.

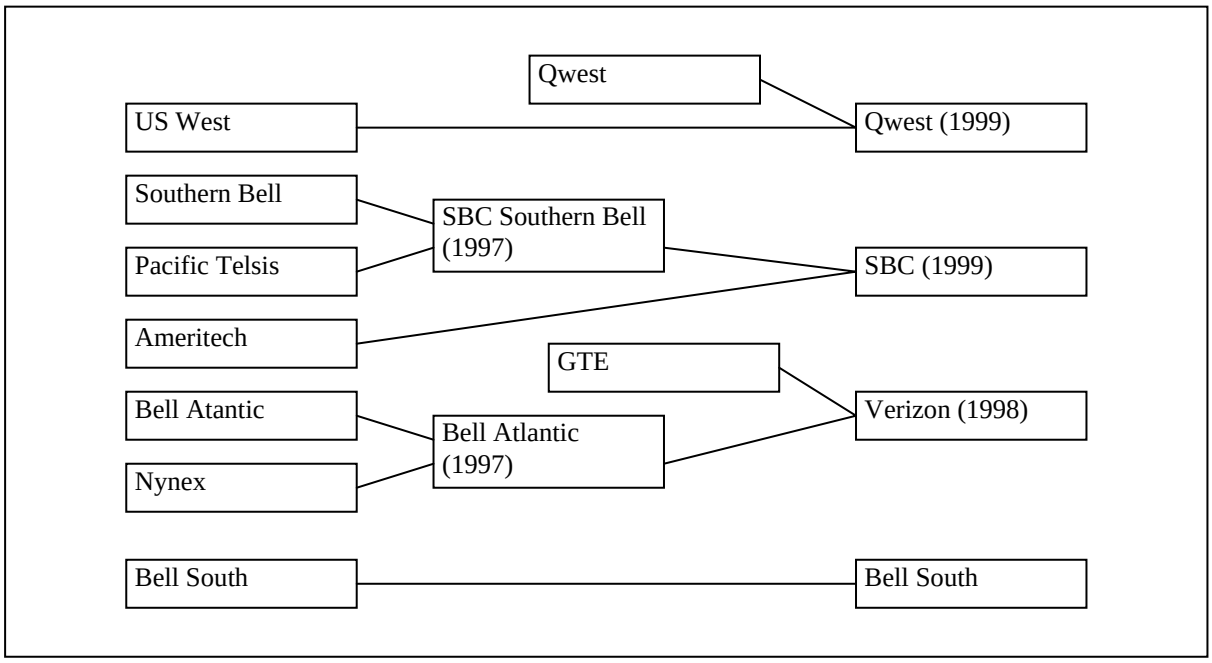
West, Nynex, Pacific Telsis, Southwestern Bell, Bell South and Bell Atlantic. AT&T remained in charge of long distance calls, an area that was now open to new market entrants. At the same time the courts were breaking up AT&T's long-distance monopoly, the FCC was breaking up bell labs' monopoly on cellular phone technology, which enabled Motorola to enter the mobile cellular phone market (cf. Evans 1983; Faulhaber 1987; Cohen 1992).

In the light of the "digital explosion" and the growing importance of the internet, the Federal Telecom Act (TA96) was endorsed in 1996, but it wasn't until 1999 that it was signed into law by President Clinton. In the eyes of most observers, the TA96 constitutes the most important overhaul of telecommunications law in almost 62 years. Even though the divestiture of AT&T is often cited as the event that ended monopoly service in the US, it had only applied to the long-distance market. The TA96, in contrast, removed regulatory barriers between the provision of local and long distance telephone service, and between cable television and telephone service. The main purpose of the law was to let new entrants enter any communications business and to specify the circumstances under which this new access was possible. In Washington D.C., there was a sense that the new law "was the [telecom] industry equivalent of the Berlin Wall being broken down."[27]

In the light of this fundamental change, the RBOCs underwent a merger wave between 1997 and 2000, leading to a reorganization of the regional operators into three "telecom giants" and one regional operator. Figure 4-1 summarizes the changes. The biggest of the new companies is SBC Communications, owning about one third of the US local networks, from Texas to the Midwest. Verizon, the other giant, covers the Eastern states, Qwest the Western part of the country. The remaining pure regional player, BellSouth, owns the local network of the Southeastern states.

[27] Robert Mayer, senior manager of Deloitte Touche, quoted in *The Washington Post,* February 2, 1996, p. A15.

Figure 4-1: Consolidation wave of RBOCs, 1997-2000



Note: On the left are the original baby bells (1984-1997). The dates in parenthesis indicate the year of the merger. On the right are the consolidated telecom companies.

2.2. Market liberalization in Europe

Before the 1980s, telecommunications in most European countries was not only under tight state control, but most often provided through a public monopoly. State-owned companies were in charge of both networks and services. In France and Germany, the administrative units responsible for telecommunication and postal services (PTT) were part of the civil service and operated under ministerial control. The PTTs developed corporatist relationships with a large number of constituencies, including equipment manufacturers, labor unions, political parties and residential consumers – a network Eli Noam (1992) has called the "postal industrial complex".

In Britain, the post office was a government department until 1969 when it became a public corporation. A notable exception to this system was Italy, where several network operators existed. The largest of them, the *Azienda di Stato per i Servizi Telefonici*, was part of the civil service, but others were public corporations. There was no independent regulators

for telecommunications like the FCC in the US, since PTT Ministries combined the function of national regulators, policy-maker and suppliers of networks and services (Noam 1992; Schneider 1999; Thatcher 1999; Schneider 2001).

In the light of exceptional technological and economic changes, the old institutional framework was increasingly put under stress since the late 1960s. In most countries, this led to little more than discussion, with one exception: Britain. Following the election of the Conservative government led by Margaret Thatcher in 1979, Britain first separated telecommunication from postal services and created British Telecom in 1981. In 1984, British Telecom was privatized and a semi-independent regulator (Oftel) was established. Even though the US divestiture of AT&T contributed to the paradigm change leading up to the events in Britain, the reform of British telecommunications was in many ways more radical than the American one (Vogel 1996: 66). The Scandinavian countries were also an exception to the tight state-owned monopoly models in the rest of continental Europe. Finland never had a national monopoly, but instead almost fifty companies in healthy competition with the national monopoly P&T. Sweden introduced competition to the national company Televerket before it entered the European Union in 1995. The Danish system had always resembled the US system after the divestiture of AT&T and was liberalized even further in 1990 (Noam 1992; Smith 1999). In all other European countries, however, domestic reform failed and left a sense of inertia, despite growing transnational pressures.

Although the European Community had played almost no role in telecommunication until the 1980s (Schneider/Werle 1990), it was the desire of the European Commission to overcome the disadvantages of fragmentation that provided the most important momentum for reform. Inspired by the experience of the US and encouraged by several Member States who also followed a more liberal approach, the Commission recurred to its competition

powers under Article 86.3 (ex 90.3) to force liberalization of first telecommunications equipment and later services and networks. The first major step in this process was the publication of the "Green Paper on the Development of the Common Market for Telecommunication Services and Equipment" in 1987. Several Member States attempted to challenge the Commission's competence in this area, but by 1992, the European Court of Justice had upheld the Commission's decisions for both equipment and services. This paved the way for liberalization proposals of telephone services in 1993 and infrastructures in 1994, in the form of both liberalization directives and harmonization of standards for interconnection, licenses and universal service.

In terms of business-government consultation, the Bangemann Report presented at the European Council in Corfu was noteworthy. Martin Bangemann, European Commissioner for Industry, Information Technology and Telecommunications since 1993, had called together a group of "wise men", of leaders from the telecom industry and user companies, in order to prepare a communication on the international competitiveness of European telecommunications. He urged for liberalization and underlined the need for universal service, specifying that financing the information infrastructure should be in the hands of the private sector. With the backing of the leading European telecommunication providers, the report was important for swaying Member States onto the route of liberalization envisioned by the Commission. In 1996, the Council's adopted the "Green Paper on the

Table 4-2: Member state approaches to liberalization[28]

Liberal approach	*Moderate reforms*	*Traditional/ passive*
United Kingdom	Belgium	Greece
Denmark	Netherlands	Italy
Finland	Germany	Portugal
Sweden	France	Spain
	Luxembourg	

[28] Based on Holmes and Young (2002: 121).

Liberalization of Telecommunications Infrastructure and Cable Television Networks", which provided the basis for full liberalization of the infrastructure by January 1st, 1998.

The liberalization design addressed several dimensions. A first step consisted of the separation of regulatory from operational functions in the former telecommunication administrations and the opening up of the operation of networks to competition. In addition, the EU legislation demands the establishment of an independent regulator at the national level, in order to ensure fair competition practices and transparent regulation, especially with regard to interconnection agreements. In crucial areas, such as licensing, interconnection and universal services, the EU framework nonetheless permits considerable scope for interpretation.

However, liberalization did not always ensure a balanced competition structure. Although the UK pioneered competition, British Telecom still held about 85% of the British market in 1995. Similarly, Germany and France were hesitant to move to full privatization, as trade unions and other interested parties resisted heavily. US telecommunications operators interested in entering the EU market have used new joint ventures to press for liberalization. Foreign direct investment in telecommunications increased rapidly in the 1990s when many US companies became active in European mobile telephony or joined EU operators willing to enter neighbouring markets (Welfens 2000). Both BT and France Télécom/Deutsche Telekom joined forces with MCI and Sprint respectively, and AT&T formed a joint venture with a consortium of Swiss, Dutch, Swedish and Spanish operators (see Annex 2).

The EU later unified and simplified regulation of all types of electronic communication through a telecom package in 2001.[29] In its White Paper on European Governance, the Commission cites the "Telecoms Package" as exemplary of consultation

[29] The package consisted of six measures addressing regulatory conditions and regulatory structure, licensing, interconnection and access, universal service, data protection and privacy, and the treatment of radio-frequency.

with non-governmental actors of all types.[30] After a series of studies and workshops in 1998-99, the Commission launched a telecom review in 1999, which it presented in a public hearing with 550 participants. The resulting communication on the review gathered over 200 responses from national regulators, trade associations, consumer groups, industry and individuals. The final draft legislation was equally available for consultation before and during its being debated in the Council and the European Parliament.

The radical transformation of European telecom policy has been the subject of many studies, but analysts still disagree about the most important factors for the development. Sandholtz (1998) and Schmidt (1998) underline the activism of the European Commission, while Thatcher (2001) shows the cooperation between the Member States and the EU Commission. Even though several Member States did not appreciate the Commission's self-empowerment, coordination within the Council pursued the same policy objectives (Holmes/Young 2002).

3. The old international framework

The logic of the international regime governing telecommunication service exchanges arose from the ways the sector was structured domestically. The traditional framework perfectly suited the monopolistic regimes which provided telecom services and products in the majority of industrialized countries (Cowhey 1993). International trade in telecom services in this tradition meant finding a way of interconnecting and pricing phone calls that went from country A to country B. Henry Ergas (1997) has termed the traditional international framework the "cooperative model", since telephone services depended on the cooperation between national providers at three levels: in the joint supply of facilities used for

[30] European Commission (2001), "White Paper on European Governance" COM 2001 428 final, p.16, http://europa.eu.int/comm/governance/white_paper/index_en.htm.

international service, the joint provision of services, and the setting of technical standards and operating procedures. Cooperation was necessary, because other forms of market access were not possible under monopoly provision: no company was able to provided end-to-end telecommunication service between two countries.

What does this cooperative model imply? Because of the high capital cost, carriers have collectively arranged for the provision of major facilities need for international services, such as submarine cable systems. They have also jointly funded two major global satellite systems – INTELSAT and INMARSAT – within the framework of broader international agreements. The joint supply of services has traditionally taken the form of switched services. In switched services, a telephone call is billed in the home country A, even though a foreign operator agrees to transmit the phone call through its network in country B. This transaction results in a settlement liability of carrier A, who needs to pay the termination cost to carrier B. The amount of this cost is fixed in terms of an accounting rate in a bilateral agreement between the two carriers. The actual settlement rate, payable by the carrier with most outgoing minutes, is a function of the accounting rate multiplied by the number of net outbound minutes. Thus, between two carriers, the carrier sending more calls than it receives incurs a settlement liability on the volume of net traffic. This accounting rate system was a central feature of the traditional international architecture. Moreover, under public monopoly service, it was an important source of revenue for countries with few outgoing international phone calls.

In order for these switched services to be compatible, a more general coordination was needed on technical standards and operating procedures. This problem is as old as telecommunication itself, which is why the ITU predates all other forms of international

cooperation.[31] Founded in Paris in 1865 as the International Telegraph Union, the organization's mission has been since the beginning to ensure cross-border telecommunication by setting standards on equipment, adopting uniform operating instructions, and laying down common international tariffs and accounting rules which are then taken up in the bilateral agreements between carriers (Tegge 1994). In its early years, the ITU was comprised of PTT administrations only, and nationalization or complete control over telegraph was always an unwritten prerequisite for membership (Codding 1952: 42). In absence of a PTT administration and in defiance of international obligations, the US thus refused to join the ITU until 1932, date of the renaming and restructuring of the organization. Under an agreement of the newly created United Nations, ITU became a UN specialized agency in 1947, with headquarters in Geneva, bringing together national administrators and private sector representatives.[32]

The ITU is responsible for developing recommendations about telecommunication standards, developing telecommunication facilities and networks, overseeing the accounting rate system, allocating frequencies on the radio spectrum and coordinating satellite communication. For telecommunications, the key body of the ITU is the International Consultative Committee for Telephones and Telegraph (CCITT). ITU does not possess direct sanctioning powers, except for the rules laid down in international law. It function is rather to provide a forum for discussion and documentation, to co-ordinate technical standards and procedures of inter-operability and to regulate the use of the frequency spectrum. Working by means of recommendations, the ITU does not interfere in telecommunication policy at the national level. However, the assumption that ITU is a "fairly anemic, technical, and dull organization", Cowhey (1990) argues, is wrong:

[31] In the beginning, the name of the ITU stood for "International Telegraph Union".
[32] For more information see http://www.itu.int/aboutitu/overview/role-work.html.

> Under its auspices, the CCITT acted as a virtual telephone cartel for the PTTs. The CCITT rules for international commerce in telecommunication services were almost absolute even though they were not binding international law. They were the anchor of a regime that facilitated bilateral monopolistic bargains, reinforced national monopolies, and limited the rights of private firms in the global market.

Despite its membership, the US was always somewhat mistrustful of the regime for these reasons. Even though the US became well integrated in the post-WWII period and was quite influential on issues such as the management of the radio spectrum, the governance model instituted through the ITU was distinctly European (Cowhey/Aronson 1993: 166). As William Drake (2000) underlines,

> Their control in the telegraph era was absolute, and was only partially attenuated after the telecommunication union was launched and many new members joined. After all, since the vast majority of countries also had PTTs by this point, they shared in the Europeans' basic vision of a non-competitive global market that was split into a series of mutually exclusive monopoly jurisdictions. And the Europeans had the technical expertise and historical connections to provide leadership in setting the tone for the nearly worldwide PTT agenda.

The international regime governed by the ITU was thus logical extension of the monopoly provision of domestic services. In practice, the large membership often required compromises and new solutions to incorporate the needs of the few countries that had either private or multi-carrier regimes. While these countries' partial acceptance of regime obligations required operational adjustments in the organization of international communication and sometimes created frictions, neither the US nor any other player put into question the fundamental design of the ITU regime. As such, the international order that the PTTs designed remained stable for over one hundred years after its conception in 1865.

4. Towards a new international regime

In the latter half of the 20th century, however, pressures for change arose from a variety of sources. Technological change and the evolution of international commercial activities of large companies combined to ring in a paradigm change of international telecommunications, proposed by experts and international organizations such as the OECD and supported by a large coalition of vested interests (cf. Ostry 2000). For the US and the EU as policy-actors, two particular sets of reasons made them embrace this paradigm shift. The US suffered from the different regulatory solutions it had applied in its own country, which created considerable trade deficits in international telecommunications and telecom equipment. For the EU, and especially the European Commission, a reform of the international architecture helped to consolidate and advance its internal liberalization process. After some initial efforts to simply reform of the accounting rate system of the ITU, the combination of these different currants had the effect of transforming a debate about the accounting rate system into a more general debate about multilateral market-opening of telecommunication service provision under the GATS.

4.1. Forces of change

Technological change contributed to making a reform of the old system seem "inevitable". ICT was increasingly less confined within the boundaries of states by which it was regulated. Satellite communications opened up possibilities for American operators to bypass European national networks. The digitalization of networks removed the principal difference between transfer of sound and data, making former legislation particularly vague and unclear. New technology operated as competition to old telecom services and hence spurred on a discussion about new frameworks. William Drake (2000: 141) dates the

beginning of these pressures to the 1950s, when the US Department of Defense demonstrated that mainframe computers could be linked up via telecommunication lines to perform distributed data management. In 1964, IBM released System 360, a network computing system that was able to perform a great variety of tasks. The line between "in-house" computing and communications began to blur.

As these technological advances grew, firms using the new computing technologies began to consider telecommunications as an element relevant to their costs of production, as an item necessary for competitive advantage. These large corporate users came from a great variety of sectors: airlines, financial services, petroleum or the automobile industry. Their demands increased in urgency throughout the 1970s and 1980s and contributed to the rational for reform, first, of domestic regulatory systems and later for international telecommunication as well.

In the US, corporate users complained about the right of AT&T to restrain customers' use of leased circuits for private data networking. They also demanded the right to obtain communication equipment from a greater variety of suppliers and pressured the FCC to reduce AT&T's control of the communication market. Together with a paradigm change in the economic understanding of natural monopolies and network service provision, this coalition was an important background for the divestiture of AT&T in the early 1980s.

In the EU, user coalitions organized predominately at the national level. As was the case with business groups in services more generally, the central association representing telecommunication users at the supranational level, the International Telecommunications Users Group (INTUG) was formed in 1974 at the suggestion of an EC official. In the memory of the association, the European Commission complained that "it was deprived of telecom user input as it could not deal with national user groups without treading on the corns of

member states".[33] No transnational group existed at that time when the Commission started to develop its vision of the future of telecommunications in Europe.

Founded in Brussels, INTUG is an association of national telecom user groups, but it later admitted multinational companies as association members as well. Their membership today goes far beyond Europe, though, with early new members from Australia, Canada and the USA, and later from Hong Kong and New Zealand. Past chairmen have worked for these national associations and companies like Royal Dutch Shell, John Deere & Company, Bank of America, British Petroleum or Reuters.[34] In trying to promote the international interests of user groups, INTUG sought involvement in the ITU from very early on. Traditional PTTs were very much against user participation in their affairs, but the ITU secretariat eventually granted observer status to INTUG in 1979. Other business groups, such as the International Air Transport Association (IATA) interested in telecommunication networks for their own operations also participated as observers to the ITU. However, their status did not permit these members to vote, so participation was reduced to statements and information exchange. To some extent, the ITU observer status was a mixed blessing, because it required a lot of work for initially little influence. Ernst Weiss, a former chairman of INTUG, recalls,

> I was told […] that there was [an ITU] study group meeting discussing some tariff principles and it was felt that users would have something to say, but the INTUG bench was empty. We started to realize that ITU membership was more than pure enjoyment. We had to organize our scarce resources and we learned very fast how to set priorities […].[35]

In 1981, the International Chamber of Commerce (ICC) formed an IT Commission with a Telecom Working Party, which INTUG participated actively in. Another group representing American user companies was the USCIB. The activities in the ICC led these

[33] George McKendrick (2000), "The INTUG story", available at www.intug.net/background/george_story.html.
[34] Cf. http://www.intug.net/background/past_chairmen.html.
[35] Ernst Weiss (2000), "25th Anniversary Reminiscences" INTUG, available at www.intug.net/background/ernst_reminiscences.html.

associations to involvement in the Business Industry Advisory Committee (BIAC), a consultative body of the OECD in the 1980s, which also developed an interest in IT matters.

INTUG started working at several fronts. On the one hand, it actively participated in the EU liberalization process and credit themselves with much of the early development:

> It is not an exaggeration to say that the Green Paper of 1987, which committed member states to deregulation, was largely the work of INTUG and a few other user organizations. There was nowhere else the CEC could go for informed knowledge to support the cause of deregulation. PTOs were diametrically opposed and the suppliers were under PTO control.[36]

On the other hand, INTUG joined forced with the USCIB, the ICC and the OECD to promote a regime for international trade in telecommunication services through the GATT. Internationally, the division between business interests was similar to the European experience. Ernst Weiss remembers that the ICC Secretary General Hans König expressed concerns to him that the representatives of the telecommunication supplier sector (Siemens, Plessy, Alcatel) threatened to withdraw from ICC meetings in 1979 if user groups would continue to dominate the discussions.[37]

In spite of this opposition, user demands gained legitimacy through the OECD's Special Session on "Changing Market Structures in Telecommunications" in 1982 and later through follow up sessions in 1985 and 1990. By the late 1980s, a reform of the international telecommunication regime was supported by a coalition of user groups, business organizations and international organizations. The parallel negotiation of a service agreement in the Uruguay Round made the GATT the most promising organization for reforming the international telecommunications regime. While ITU had traditionally been in charge of

[36] George McKendrick (2000), "The INTUG story", INTUG, available at www.intug.net/background/george_story.html.
[37] Ernst Weiss (2000), "25th Anniversary Reminiscences" INTUG, available at www.intug.net/background/ernst_reminiscences.html.

global telecommunication coordination, it seemed unfit for ambitious plans of liberalizing global telecommunication services.

4.2. US position

From very early on, the US has pushed for a reform of the old international architecture, which it had joined only warily in 1932. As part of its price for joining ITU, the United States insisted that decision-making procedures be amended to ease the participation of countries with private carriers. Previously, international traffic was dominated by the British Empire telecommunication system in the hands of Cable & Wireless. Revenue-sharing procedures and payments for access to the facilities of the British Empire allowed Cable & Wireless to extract a substantial return on investment in this international network. The management of routing within the system all happened through London, so that a call from Australia to California would transit via the UK and cross Canada. Consequentially, the amount paid to the US carrier would not be based on the direct distance from Australia to the US West Coast. The European PTTs largely adjusted to this system, but the US and especially AT&T battled to change it (Ergas/Paterson 1991). After joining the ITU, AT&T succeed in proposing a new way to organize international traffic agreements. First, they insisted that calls be connected by the shortest distance and, second, the instituted a 50:50 division of the revenue collected from service. In 1938, the first agreement was reached between AT&T and the Australian carrier AWA based on these principles. Six years later, AT&T proposed a highly influential World Rate Plan, which specified distance-based accounting rates.

The US and especially AT&T are thus the founding father of the international accounting rate system they set out to reform only 50 years later. This initiative first started as an attempt to ameliorate the conditions for private telecommunication provision within the old

PTT system of international telecommunication. In the 1980s, the debate of a reform in the governance of domestic telecommunication service provision in the US extended to a discussion about international telecommunications. Trying to increase private control of communication circuits, the US created a scandal in 1980 by announcing its intention to extend resale and sharing from domestic circuits to international ones. Following the recommendations of the ITU, almost every PTT administration traditionally prohibits these services. The ITU sent a letter to the FCC noting the "deep disappointment" within the organization and arguing that the US would provoke an "extremely dangerous situation" when one country tries to undermine the work of ITU.[38]

Domestic and regional liberalization not only created an atmosphere of reform, they directly put into question the utility of the traditional model. Based on reciprocal exchanges, the international accounting rate system in particular put stress on countries that had chosen to deregulate their domestic markets. If one country lowered its charges in response to international competition, and a second country remained a monopoly, then traffic flows became distorted. The low-priced country would send more messages than it received. If the high-priced country resisted substantial reduction in the accounting rate, it could reap enormous profits and increasing surpluses over time. The pricing system therefore created an important bias against domestic deregulation. The US, for instance, experienced an annual balance-of-payments deficit on telecommunications services approaching $3 billion by the early 1990s. Faced with such huge payments, it is no surprise that almost all of the most important policy actors all of a sudden became interested in reform (Cowhey 1993: 185-6).[39]

Starting in 1986, the US fought a six year long battle in the ITU to reform the accounting rate system. Most importantly, the US insisted that accounting rates should be

[38] Quoted in Drake (2000: 145).
[39] For a discussion of the growing US discontent with the old accounting rate system, see Alleman, Rappoport and Stanley (1990) or Ergas and Paterson (1991).

cost-oriented, a requirement that implied a fundamental paradigm change in the traditional regime. In March 1992, the US obtained an ITU agreement on accounting rate principles that instituted the need for cost-orientation and the procedures of its application and oversight. In the following years, accounting rates declined relatively speaking, but not far or fast enough in the eyes of US carriers and the FCC. Outbound traffic continued to grow and new US service offers, such as "call back" services, contributed to "reversing" the flow, counting inbound messages as additional outbound messages. The payment deficit continued to grow. When the Clinton Administration came to power in 1993, demands for political action had gotten very loud.

The limited success of the ITU agreement of 1992 added to the US government's belief that a solution has to be found elsewhere, and the Uruguay negotiations became an even more appealing solution. Ever since the Reagan Administration, competition in international telecommunication had become a central element of US trade strategy. The USTR met bilaterally with foreign governments with the objective of ameliorating the possibilities of corporate users, but also of negotiating foreign market access for US suppliers of telecommunication equipment and services. The divestiture of AT&T had proven to be disadvantageous for the trade balance in telecommunication equipment. Other companies gained access to the US market, but US firms had no possibility of reciprocity. The US trade balance in telecommunication equipment had therefore moved from a surplus of $1.5 billion in 1983 to a deficit of $ 1.5 billion in 1985 (Aronson/Cowhey 1988: 32).[40] As Cowhey and Aronson (1993: 187) explain

> USTR saw an opportunity for good trade policy and good politics. It started arguing that the United States had to liberalize foreign telecommunications services markets in order to assist US equipment sales overseas.

[40] At the time, telecommunication equipment was exempt from GATT coverage because it was considered part of government procurement.

It is in this context during the 1980s that USTR established a close working relationship with the industry representatives of the USCSI who demanded that service provision should be covered by the GATT. In the elaboration of a common understanding of service exchanges as trade, the coalition of US business and USTR proposed that the joint provision of telecommunication services in fact constituted trade as well (Aronson/Cowhey 1988; Feketekuty 1988). During the Uruguay Round and in the subsequent sectoral negotiations, the US government thus became the driving force of an agreement on telecommunication service trade – at least in the beginning.

4.3. European position(s)

Although European countries most often represented the archetype of the old PTT model of telecommunication governance, the debate about more market-oriented management of communication services swept over to Europe in the 1980s. While the UK had reformed its domestic market in the early 1980s, most other European countries remained firmly opposed to the Anglo-Saxon approach. European PTTs and their supporters claimed that the new discourse about "restrictive trade barriers", "abuse of dominant positions" and "excessive regulation" simply reflected the interest of large American firms wanting to gain control of foreign markets (Drake 2000: 156). The debate reached an unprecedented level of politicization, and national PTT administration saw themselves measured by new yardsticks of competitiveness and commercial considerations that previously had not played an important role in their activities. They had to rebut the accusation of being undemocratic cartels conspiring against the interests of potential new market entrants and user companies.

Throughout the 1980s, these debates had a limited effect on national legislation. While competitiveness and the facilitation of economic activities through communication

infrastructure did become an issue in European countries as well, the old PTT complexes were too large and powerful to simply be swept aside. As Eliassen and Sjøvaag (1999: 8) point out, the traditional public telecommunication providers had become "enormous institutions with unmistakable dinosaur-like features". The status of employees of civil servants and the tight policy networks with national industries benefiting from a protected status as suppliers to the domestic industry reduced the chances of support for radical reform.

The institutional self-interest of the European Commission was therefore crucial in advancing the paradigm change in Europe. As part of its larger integration program, the Commission had gathered support, encouraged the creation of INTUG to represent user groups at the European level or business participation more generally, and swayed domestic policy actors to support its vision of EU-wide liberalization. When the Commission presented its first policy proposal in 1987, European PTTs found themselves confronted with a pro-liberalization coalition backed by substantial legal and political authority.

The importance of the activism of the Commission does not mean that the European institutions forced liberalization onto unwilling member states. On the contrary, member states had to adopt the proposals made by the European Commission and national policy development therefore played a crucial role for EU liberalization (Eliassen/Sjøvaag 1999; Thatcher 1999; Jordana 2002). As it turns out, for some countries, the transfer of reform initiative from the domestic to the European level was actually helpful in advancing liberalization domestically. In the case of Germany, for example, the German government had undertaken its first effort to reform the traditional PTT system in the mid-1970s but eventually abandoned the project due to domestic opposition (Schmidt 1991). As an official of the former German PTT administration recalls,

> When we introduced the first postal reform in 1989 – the separation of the operator from the government – the postal ministry was very actively involved. This is certainly a very unique case of a ministry which abolished itself. It proves that there was a deep conviction to advance [on this reform].[41]

The Commission helped to create a coalition of liberalization supporters from within the member states and succeeded in advocating a new economic conception of telecommunication service provision. As Dang-Nguyen, Schneider and Werle (1993) show, within member states, the actors' coalitions on the issue of liberalization were highly pluralist. The European deliberation and decision-making process thus contributed to helping actors supportive of liberalization get organized and gain momentum.

The intra-European evolution was more important than anything else for the European position towards multilateral liberalization. As two national public officials put it:

> It was the impetus! Basic telecom negotiations [in the WTO] were somewhat of a parallel strategy, but the impetus came from the EU.
>
> The EU was always a kind of pressure group.[42]

As in the case of the US, international liberalization was a consequence of the internal activities towards reform. For the Commission, a WTO solution was especially appealing. After all, it was the European Commission that negotiated EU trade policy in the GATT framework and later within the WTO. In the ITU, by contrast, the EU member states were represented individually, whereas the EU Commission merely had observer status. Governing international telecommunication service provision through the WTO was thus all the more attractive to the Commission. As a consequence, the Commission pursued a double strategy towards the liberalization of telecommunication services throughout the 1990s. On the one hand, it was negotiating internal liberalization with the member states. On the other hand, it seized the opportunity of WTO negotiations to tie international to European liberalization.

[41] Interview in Bonn.
[42] Interviews on 6 August 2003.

Most importantly, this took the form of coordinating dates between the two levels and pressing for similar solutions (Young 2000).

While the European Commission thus clearly favored a WTO solution, it did not have exclusive competences on this policy issue in the early 1990s. During the Uruguay Round, member states governments and the Commission had agreed to disagree on the competence distribution of international service negotiation. The Commission conceived of agriculture and services as a package that should be negotiated together, whereas the member states insisted that the new issues of services, intellectual property rights, and investment require ratification by the member states. Failing to find a political solution, the Commission, supported by some member states such as Belgium, referred the question to the ECJ. Ruling against the expansion of Commission competence, the ECJ underlined the member states' position.[43] It argued that services were EU competence only when there was a cross-border supply of services or when the provision required the movement of labor. The establishment of a branch or subsidiary in a target market – one of the most common forms of the provision of telecommunication services – does not fall under EU competence (Woolcock 2000: 377). The WTO negotiations on basic telecommunications were thus under mixed competences between the Commission and the member states. This sharing of responsibility illustrates well that the policy position on international telecommunication or services more generally were not completely harmonious at the beginning of negotiations: member states wanted to be able to control the Commission strategy in international trade negotiations.[44]

[43] European Court of Justice (2004), "Competence of the Community to conclude international agreements concerning services and intellectual property" Opinion 1/1994 of 15 November.

[44] This mixed competence solution lasted throughout the basic telecom negotiations in the WTO. A new solution for international service trade negotiations was only introduced in the Treaty of Amsterdam, signed in October 1997, which provided that member states could unanimously extend exclusive EU competence to the Commission.

4.4. Tackling international reform through the GATS

The US government had been the main supporter of a service agreement during the Uruguay Round. When they first proposed the concept to the EU, the member governments were not sure where their interests lay (Drake/Nicolaïdis 1992; Holmes/Young 2002). When an initial assessment revealed that the Community was a net exporter, they backed the inclusion of services in the negotiations, particularly the British and French governments. Although services were an important issue during the Uruguay Round negotiations of the GATT, the issue was so new that the special "Group of Negotiations on Services" spent most of its time defining services, the different sectors that an agreement would apply to, and the ways in which services are delivered (Croome 1995: 123-4). Service negotiations on all aspects advanced slowly from 1986-1988. Within the Group of Negotiation on Services, disagreement grew between countries who wanted to move away from general issues to tackle concrete sectors or questions and a smaller group of developing countries which believed that basic issues need to be explored further. The group complained that they were being rushed into negotiations on issues that were not well understood.

> As they saw it, the Group of Negotiations on Services was, in effect, trying to run not only before it had learned to walk, but also before it had determined whether running was even a desirable objective (Croome 1995: 128).

The US and other countries, such as the EU and the Nordic countries, continued to push for more comprehensive and applied negotiations. The future of a service agreement largely took shape in 1991. Negotiations advanced in parallel on the framework text for the GATS itself, annexes for a number of service sectors and the national schedules on specific commitments. Telecommunications, it was agreed, should be treated in a separate annex, because of the particular problems it presented. Despite its desire for a comprehensive GATS agreement, the US had the strongest view on telecommunications. In particular, it did not

want to undertake specific telecommunication commitments that it felt would not be matched by countries with more rigid public monopoly provision. However, the annex did not aim at excluding telecommunications altogether. Rather, the concern was to reach an agreement allowing reasonable and non-discriminatory access to public networks and services. The special annex drafted in autumn of 1991 set the conditions under which participants would allow services suppliers of other countries to connect to or use the networks of national public telecommunication systems.

After a general standstill of Uruguay Round discussions in 1992, the major players, commonly referred to as the Quad group (the US, the European Community, Canada and Japan), helped to re-launch both the GATT Round and the service talks in Tokyo in July 1993 under the new GATT Director-General Peter Sutherland, former EC Commissioner for competition policy in Brussels. The Tokyo agreement was somewhat vague on services, but fixed in principle that negotiations on basic telecommunications should continue in sectoral negotiations after the conclusion of the Uruguay Round. In the end of 1993, service negotiations made good progress. An increasing number of countries submitted national schedules of service commitments. Even though many of them covered only policy decisions that had already been put into place, over 80 countries had made service sector commitments by 1 November 1993. In the final months of negotiations, disagreement over audio-visual services and a proposed US “carve out” of GATS provision on direct taxation threatened a successful conclusion of the GATS agreement and led to frenzied activity and a special US-EC summit. The bargaining lasted until the very last day of negotiations, 15 December 1993, when the EC finally submitted an offer. With the conclusion of the Uruguay Round at 7:30 p.m. of that same day, agreement had been reached on both the GATS framework agreement and on a large number of individual national commitment schedules in the trade of services.

At a meeting in Marrakech in April 1994, the trade ministers of the signatory countries signed the agreements and thus establish the WTO as an umbrella for the new agreements as of 1 January 1995.[45]

The implications of the Uruguay Round for multilateral telecommunications liberalization were two-fold. Telecommunication liberalization had clearly been a highly contentious issue. At times, it looked like it would not be included or at least require a separate treatment in the GATS. Asymmetries of liberalization preferences between countries were so important that the US did not expect further negotiations to lead to a successful conclusion. However, the GATS fundamentally anchored the principle of telecommunication liberalization in the framework agreement. Furthermore, by the end of the Uruguay Round, 48 schedules, representing 59 of the 125 participating governments, contained commitments in the area of telecommunication. Almost all of them were on value-added services. This was often not surprising, because these high-end services, such as data storage, were traditionally not under the same control as basic telecommunication services. "Value-added services", one telecom representative jokes, "is a euphemism for services with which you cannot make any money."[46] To a large degree, the value-added services thus only put onto paper what was already in place.[47]

[45] For an in-depth treatment of the Uruguay Round negotiations, see Croome (1995) and the four volume treatise of Stewart (1993; 1994).
[46] Interview in Brussels, 3 September 2004.
[47] Such "standstill commitments" nonetheless assure that countries do not backslide in their liberalization process.

On basic telecommunication, the time had not been ripe in 1993. Countries therefore agreed to disagree and provided for further negotiation on a sectoral basis beyond the Uruguay Round. Only one month after its conclusion, basic telecommunication negotiations began in May 1994, initially with the participation of only 33 WTO Member governments and under the auspices of a group called the Negotiating Group on Basic Telecommunication Services (NGBT). The deadline for completing these sectoral negotiations was 30 April 1996.

Chapter 5

BASIC TELECOMMUNICATION NEGOTIATIONS IN THE WTO

1. Historic Overview

Participation in the NGBT talks was voluntary. The attitude of the participants towards the usefulness of these negotiations was thus quite different in this new phase of negotiations. As Carlos A. Primo Braga (1997: 3) points out:

> In part, this simply reflected a better understanding of the potential benefits of liberalizing telecommunications. More fundamentally, however, it reflected the growing recognition that the industry is facing a paradigm shift.

Like discussions before, the NGBT talks were dominated by the developed countries interested in advancing on the concrete issues of telecommunication service liberalization. The debate therefore rapidly moved from "why to liberalize" to "how to liberalize". Most importantly, the participants were to produce a so-called "Reference Paper" that contained specific indications concerning the regulatory framework guiding national liberalization.[1]

However, the enthusiasm of the leading countries was not shared by all other participants. By April 1996, 34 offers from 48 governments were on the table. Yet, there was a general sense, particularly in the view of the US, that these offers were insufficient. The US feared that it would open its market without getting significant market access in return. Moreover, in the final phase of negotiations, the issue of satellite services disturbed the

[1] The Reference Paper is reproduced in Annex 4. It can also be consulted at the WTO's website at http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

discussion: to what extent did explicit provisions for satellite services be made in the offers? By April 30, the negotiations threatened to fail.

Unable to reach the scheduled conclusion, Renato Ruggiero, the WTO Director-General, suggested preserving the proposals in a protocol, the "Fourth Protocol to the General Agreement on Trade in Services."[2] Countries should be given a chance to improve their offers, and February 15, 1997, was established as a new deadline. The negotiating group was renamed as Group on Basic Telecommunications (GBT).

The following negotiations, commonly referred to as GBT talks, were to become the most important period of negotiations. Difficult issues continued to lead to lively discussions: in particular, disputes revolved around satellite service, the "critical mass" of offers to aim for, anti-competitive practices, international accounting and audio-visual services. Gradually, however, technical and political solutions began to emerge. The US unilaterally proposed a new policy towards international settlement rates in December 1996, helping to deflate much of its own fears of asymmetric benefits. There was an agreement that schedules should be technology neutral (i.e. cover all transmission from wire to satellite), and the overall acceptance of the Reference Paper helped to qualm concerns about anti-competitive practices. There was furthermore a real effort to promote the benefits of GBT talks for developing countries by the WTO, national governments and other international organizations such as the World Bank (Primo Braga 1997). In early 1997, it became clear that an agreement would be achieved by the scheduled deadline.

The result of these negotiations, the Basic Telecommunications Agreement, was finally adopted on February 15, 1997 and entered into force on February 5, 1998. 69 countries submitted schedules, which entered into force on the same date as an integral part of the

[2] The Fourth Protocol (WTO Document S/L/20) can be consulted at http://www.wto.org/english/tratop_e/serv_e/4prote_e.htm.

GATS schedules of services commitments already in force since 1994. 63 of these countries had furthermore made specific commitments on regulatory disciplines, the great majority of those (57) by accepting the whole of the Reference Paper, or adding only slight modifications. In April 1996, only 31 countries had inscribed the Reference Paper.

Observers agree that the Basic Telecommunications Agreement was landmark agreement and potentially a "trillion dollar deal", as Petrazzini (1996) has called it.[3] The most certain change, however, was the realization of a new conceptual framework for telecommunication services.

> A new paradigm is emerging for international trade in telecommunications. The old paradigm, which might be loosely described as "inter-national" telecommunications, was based on bilateral relations between countries. […] We are moving from a world of one-to-one relations to a world of many-to-many. It is not nations that trade with other nations, but companies and individuals that conduct trade with each other.[4]

The Basic Telecom Agreement provided the framework for global liberalization of a service sector under the GATS and completely revised the regulatory paradigm of telecom service provision. Yet the implications of the agreement might even affect international trade relations beyond the telecommunications industry, because the agreement also contained the first international attempt at determining a common approach to competition policy in a specific sector through the Reference Paper, which covers matters such as competition safeguards, interconnection guarantees, transparent licensing processes, and the independence of regulators.[5]

[3] This number refers to his estimate of the savings users can make in rich and poor countries over the next 12 years in lower charges, better service and improved technology. However, whether the agreement will achieve what it set out to do, remains to be evaluated. On the potential of the agreement to lead to full liberalization of world markets, see Drake and Noam (1997).
[4] ITU report, cited by Eliassen and Sjøvaag (1999).
[5] A detailed explanations of the elements of the Basic Telecommunication Agreement and the Reference Paper in particular can be found in Tuthill (1997).

2. Business involvement

2.1. Learning trade

One would assume that such an important event was closely followed by the businesses it was affecting. International opportunities were certainly an important issue for telecommunication companies in both the US and the EU. However, the universe of trade policy was traditionally foreign to the technical governance of telecommunication services. When telecommunication companies first got involved in international trade issues, the fundamental stake was therefore to understand what was going on and whether this was important enough to invest their time and resources.

Quite generally, this was true for service companies from all sectors, even when the companies were private and very interested in expanding in foreign markets. One of the pioneers of service trade lobbying recalls first coming in contact with trade issues in the early 1980s, "we had trouble doing business abroad […]. I didn't know the terminology at the time, but basically [we were encountering] trade barriers." Learning about these political stakes implied a whole new terminology. "I went home and got this book called *The GATT* to learn anything there was about this," he added. "I was reading it every night and so was [my CEO] and we would meet in the morning to see who has gotten farther."[6]

Even in the beginning of the 1990s, half-way through the Uruguay Round where services were vividly negotiated, many companies were not well informed about WTO issues and international commerce in general. This was true even for competitive telecommunication companies in the US. A large part of the work for the US government was "trying to inform

[6] Interview in Washington D.C. on 8 April 2003.

them about why we thought this was a good idea."[7] Yet, a lack of knowledge was striking on both sides. As a US company representative put it,

> Most trade representatives had never worked on telecommunications, and most telecom people had never worked on trade. We were extremely concerned about the negotiations, especially when we realized that some of the trade people did not know what a common carrier was.[8]

Some aspect of the issues was new to all of the participants, both from the governments and from the companies. Among US companies that had chosen to follow the developments, there was a sense that the ambitions of the trade agenda were ill-matched with the realities of telecom services. The abandonment of bilateral agreements, and above all MFN, seemed quite threatening.

> So we actually went out and took some initiative to ask what this was about. I mean, we didn't even know what the GATT was until the early 1990s. When we first read a draft version of the GATS, we felt that USTR could just trade off our entire business against another service or agriculture.[9]

Even the most interested telecommunication companies only realized the implications of the Uruguay Round when it was almost close to being completed. Earlier, business lobbies have been mainly large service companies, predominantly from the financial sectors, and user groups. Telecommunication network operators and service providers, however, only slowly realized that the international architecture of telecommunication service provision was about to change. Only AT&T, MCI and Sprint followed the developments already in the late phase of the Uruguay Round.

> They were following it pretty closely. I am not sure how well they followed it, but they certainly followed it closely … but without necessarily understanding all of the implications of what they were doing.[10]

[7] Interview with a US government representative, Washington D.C., 20 June 2003.
[8] Interview, 2 July 2003.
[9] Ibid.
[10] Interview with a Commission official, Brussels, 3 September 2003.

The issue was simply very legalistic and remained obscure to most other telecommunication companies. Quite often, it was therefore the trade representative of the respective governments who tried to bring businesses into the process. A US official explains with reference to telecom services,

> If you want a meeting, you call the companies. We didn't even know who they were, so we started casting the net and bringing them in. We basically had to start at square one and explain trade terminology to them.[11]

To some degree, the mobilization of telecommunication companies has to be understood like the attempt to jump on a train that had visibly started moving. This was true for service negotiations in general and telecommunication liberalization in particular. A member of the service lobby CSI remembers that early mobilization did not always happen out of genuine support for free service trade.

> A lot of companies were skeptical. They were wondering what we were doing, thinking that there were some ulterior motives behind our plans. They asked us, why we wanted a new round. And why does it have to include services? […] But they joined us because they wanted to take part in a process they were afraid of at least to control where it was going.

Concerning telecommunication negotiations in particular, the sentiment was very similar. During early negotiations, the RBOCs were not following trade issues very much, they were merely observing the issue.[12] With time, however, the got increasingly involved, both on their own and within different business associations, such as USCIB

> Our telecoms committee was driven by the business user community […]. As we became successful, the incumbents realized that they had a stake, so they began to emerge and they all joined us … because we were seen as the organization that drove telecom liberalization.[13]

Many business representatives use the image of a moving train to explain the pattern of mobilization, but they are not the only ones. Interestingly, the feeling that the paradigm

[11] Interview, Washington D.C., 18 June 2003.
[12] Interview with a US business representative, 2 July 2003.
[13] Interview with a US business representative, 2 April 2003.

shift and the new political orientation in international telecommunications were driven by a very active center was also shared by government officials. An official of the WTO secretariat remembers:

> A minister of an Asian country came into my office and explained, "I have gotten so many phone calls from different countries concerning [telecom services in my country], that I figured it would be better for me to come see you and find out what we will have to do."[14]

The importance of the telecommunication activities in trade forums only occurred to many policy experts after NGBT talks had already started. At the time, international telephony was discussed through the negotiation of interconnection modalities in the ITU. For many providers, the WTO only entered the picture when it started examining an issue traditionally dealt with by the ITU: accounting rates. As a representative of a former European monopoly recalls,

> I have to admit, I only discovered the WTO at the margin. Initially, people considered the WTO to be something quite abstract: "value-added", "basic services" …? In most countries, you didn't really have a realization that there was a new reality… that you couldn't do anything anymore without paying attention to the WTO.[15]

Several of the European companies did not imagine the impact the WTO negotiations would have in the early 1990s. Even though sector-specific negotiations had been going on since 1994, and despite the fact that value-added services had even been open to competition by the end of the Uruguay Round, many companies affected by the changes were not engaged in the process. Overall in Europe, companies started organizing only after the failure of negotiations in 1996, when the GBT talks started getting serious.

During the 1996-7 negotiations, companies got more used to the basic concepts of trade negotiations, but generally the procedures and terminology remained confusing. A US company representative who participated very actively in Geneva explains:

[14] Interview in Geneva, 24 October 2002.
[15] Interview with a European business representative, 3 July 2003.

> Nobody knew how to read a schedule of commitments. We even had people think that '- none, - none, - none' meant that 'none' had market access.[16]

Naturally, companies did not have the opportunity to ask all the questions they had, especially if they were following a trade-related meeting in Geneva with an already tight schedule.

> We developed a sort of code to talk to one another while government representatives where in the room. We made sure we would start our phrases by saying "Just to review a little bit what has been said…" so that everybody understood what was going on.[17]

Despite these difficulties, most large European operators agree that from 1996 onward, "there was such an empowerment of the WTO that many companies discovered its importance."[18] The same is true for US companies. Early negotiations had been followed only by the companies most actively involved in international telephony, AT&T, MCI, Sprint and ComSat. Yet by 1996, the RBOCs had also become very active: NYNEX, most importantly, but also US West.[19] Within only two to three years, the issue had become clear and salient to almost everybody.

2.2. Getting organized

Once the issues was clear to the affected companies, the question remained how to best participate in the process. For the former monopoly providers, one might assume the contacts were especially close between the company and the negotiating government. As a US lobbyist remembers, "within Washington, for example, the person from Deutsche Telekom was for a long time an attaché at the German embassy."[20] But old traditions had changed by the time telecom services were negotiated in Geneva. British Telecom had been privatized

[16] Interview with a US business representative, 2 July 2003. "None" answers the question about remaining market access restrictions, which is the complete opposite.
[17] Ibid.
[18] Interview with the representative of a European network provider, 3 July 2003.
[19] Interview with a US business representative, 2 July 2003.
[20] Interview in Washington D.C., 23 June 2003.

since 1981. Even for other countries, the nature of contacts transformed rapidly in the course of EU liberalization. As an official from the WTO secretariat put it, by the mid-1990s, "Deutsche Telekom and France Télécom looked very similar to AT&T." The EU had transformed and there was the idea "that this was a company."[21]

However, the status of former public service companies often explains that there was a greater exposure to political stakes within the management of the network providers. France Télécom, for example, was one of the very early companies following the developments in Geneva. The director of international relations of France Télécom explains this with reference to personality. While he had previously worked for the European Commission and followed trade issues on telecommunications, the manager of governmental affairs who put him in charge of the GATS dossier had been exposed to the trade agenda while working in the cabinet of former French Prime Minister Edith Cresson.[22] Indeed, government affairs personnel working on WTO affairs in the private sector often mentioned that they had previous experience in public affairs, which is why they have gotten interested in trade issues.[23] Others cited their university studies, during which they had focused on law or commerce.[24] If these personal trajectories can explain some initial awareness and expertise, there is little evidence that ties between business and government representatives were especially close in Europe during negotiations, especially since biographies at the intersection of the public and the private sector are as common in Washington D.C..[25]

Regular contact with businesses is a priority for trade-policy makers in both the US and the EU. Trade policy, representatives from both sides explain, aims at ameliorating the

[21] Interview in Geneva, 24 October 2003.
[22] Interview with a representative of France Telecom.
[23] Interviews, 14 February 2003 and 3 September 2003.
[24] Interviews, 11 December 2002 and 5 November 2003.
[25] Several of my interviewees in the US had experiences in both the public and the private sector. For the case of air transport services, a list of business representatives with ties to the US government can be found in the article "The Revolving Door," *Miami Herald*, November 11, 2001, available at www.airlineinvestigationunit.com/aiu/mh011001a.htm.

conditions of business operations: "all trade negotiations are done on behalf of our companies, so it is important that there is a continuous back and forth between them and the government."[26]

However, business-government relations seemed much more developed and institutionalized in the US than in Europe. While the most active US companies formed an industry group that followed the US delegation to Geneva and gave the regular feedback in the late Uruguay negotiations and between 1994 and 1997, there was no industry presence on the European side that directly followed the negotiation.[27] "Of course, the operators had their contacts in their respective member states, but they followed from somewhat of a distance," explains a public official from an EU member state.[28] Even in ITU meetings, the impression remains that business-government relations in the US are tighter.

> I could see the way the Americans operated – the delegation of government representatives as well as industry: they really acted as one block. […] In contrast, the EU is not nearly as well organized.[29]

Although organization was certainly important, a significant difference resides in the different government approaches to business consultation. In international negotiations, the US has a long tradition of inviting their companies to come along.

> Largely, for years, the US led taking their companies […]. I remember going to OECD meetings … you would never see any other delegation with private sector folks. And the US private sector delegation would be as large as the government delegation.[30]

To some degree, the activities of individual US firms are oriented by the concrete opportunities the US government provides for their participation.

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[26] Interview with a representative of the US administration, Washington D.C., 20 June 2003. A representative from an EU Institutions also argued that trade policy is on behalf of business operations, so consultation with them is important.
[27] Interview with the chair of this industry group.
[28] Interview with a public official from an EU member state, 9 December 2002.
[29] Interview with a representative of an EU network provider, 14 February 2003.
[30] Interview with the representative of a US network operator, Washington D.C., 25 June 2003.

> If you are a significant American company, a lot of times the government might ask you to be part of the delegation. Then you are more likely to say yes, because they asked you to be there.[31]

In Europe, businesses are not contacted in the same way. A US business representative esteems that this affects the way they can communicate their concerns to the policy-makers.

> The difference is that governments [in Europe] are not used to working with industry. And industry is not used to knocking on the door of government and demanding that they work with them. It is not as regular a process as what we do here. Except for in the UK, where we get asked.[32]

During the late Uruguay negotiations and the early NGBT talks, the Commission realized that they needed further technical information from European operators, but initial contacts were rather frustrating. A Commission official remembers that they were "remarkably uninterested in the whole process."[33] Since feedback from companies reinforces a countries negotiating position, the EU Commission started soliciting the support of companies on trade issues more generally. The creation of a considerable number of business dialogues, forums and associations has its roots in this frustration. The Commission also actively maintains the contact with associations that have formed through their own initiative. A representative of ETNO confirms,

> Quite often, the Commission will approach us to ask us to keep them informed about market barriers encountered: 'If you have a problem, please tell us!'[34]

The differences between business-government contacts in the EU and the US are noted by all observers of the process. While some of them explain them by a lack of interest on the European side, others point to differences in political capacities. Commenting on the difficulties of the TABD and the ESF, a European observer points out,

> The truth is: we are lacking support of CEOs of big companies. In the US, the CEO has in his mandate to be the spokesman for the company. This is not the

[31] Interview with a US network operator, Washington D.C., 25 June 2004.
[32] Interview with a US based service provider, Washington D.C., 25 June 2004.
[33] Interview with a representative of the European Commission in Brussels, 3 September 2003.
[34] Interview in Brussels, 14 February 2003.

> job of a European CEO. They are not responsible for public relations. […] European CEOs depend on the approval of their supervisory board. So when they do attend such large meetings, they want to talk about their specific sectoral issues. An American CEO, who can make a 2 billion dollar decision in two seconds without consulting anybody, cannot understand that.[35]

The way a company comes in contact with public officials is different in the EU and the US. Lobbying in the US seems to put a greater emphasis on direct contact between high levels of decision-making: "companies put money for election, they want to follow up, they want to have discussions and they will always mobilize their CEO to go and speak with them."[36] Even though CEOs of European companies do occasionally enter into contact with public officials and politicians, the heart of policy related work is not their responsibility. In Europe, "we create trade associations and they give guidance and have people responsible for communication: a director of international affairs speaking to somebody in the trade association – and that makes up the view of European business."[37]

2.3. Forms and channels of political participation

How do these different lobbying traditions materialize? Trade associations do exist in the US, but they tend to be only as active as the companies that carry them. Beyond the activities of associations based on broad membership, the USCIB and the CSI in particular, the activities of more specific sectoral associations are negligible. To give an example, when asked about the impact of associations on the trade negotiations, none of the US public officials interviewed mentioned the US association of network providers USTA. As a representative of a US network provider confirms, "we have dragged USTA in the WTO discussion, […] but it is not their first priority."[38] While AT&T and MCI value the activities

[35] Interview in Brussels, 13 November 2003.
[36] Ibid.
[37] Ibid.
[38] Interview in Washington D.C., 24 June 2003.

of the international communications committee of CompTel, there is a sense that the association simply reflects the two companies' views behind the shield of an association name. Even the representatives agree: "our sales people might hate each other, but on regulatory issues, we work very, very closely [together]. We are in lock-step on many issues."[39] If they are not based on broad membership, US associations seem like an extension of the businesses they represent.[40] In many cases, businesses therefore chose to lobby for themselves, as the representative of a US network operator explains:

> We actually go to Geneva. We follow meetings […]. We work directly with the individual ambassadors to the WTO.[41]

Some of them also turned to outside help for following these particular negotiations. Since trade policy was a particularly foreign field, several companies hired trade lawyers as outside consultants to lobby on a short term basis on at least parts of the negotiations.[42] At the working level, all departments of the US administration seem to be in touch to an equal degree with trade associations and individual businesses, but they tend to talk about "speaking with the companies".[43]

The European Commission, in turn, rarely cites individual businesses. Consultation happens "first and foremost with the associations."[44] EU telecommunication firms agree that associations, ESF and ETNO, are the most important ways of voicing their concerns about GATS-related issues.[45] During GBT talks, ETNO was the only telecom company representation that closely followed the negotiations, despite the fact that it represented traditionally public network operators. These operators had organized transnationally in 1992,

[39] Interview in Washington D.C., June 2003.
[40] When I asked who I should contact from CompTel, I was told that it was probably not necessary, because the person organizing the meetings would just put me into contact with the representative from AT&T or MCI, who have more information on the details of the issues dealt with.
[41] Ibid.
[42] Interviews in Washington D.C., 23 June and 2 July 2003
[43] Interviews in Washington D.C., 16 June and 20 June 2003.
[44] Interview in Brussels, 21 October 2002.
[45] Pointed out by all EU companies interviewed.

directly in response to the internal liberalization efforts of the Commission, which they felt applied to all of them to the same degree. Activities on GATT and later WTO-related issues, however, did not start until later. After some initial position papers, a working group on WTO affairs was established and closely followed the GBT talks during its final phase from about 1995-1997. The most active members were those operators that already had experience with liberalization or that simply were large enough to be interested in foreign market access: Telia, British Telecom, France Télécom, Deutsche Telekom and to a somewhat lesser degree Telefónica.

Smaller operators followed and supported the activities, but in some cases out of convenience only. Mobilizing the resources to lobby individually was often not considered worth the effort, all the more since ETNO seemingly did a good job. As the representative of a smaller European operator explains, "I don't really work on WTO affairs; I only participate in the working group of ETNO. We just try to follow what is going on." When asked if the operator was for or against liberalization at the time, he explained that they did not have a position: "Even in 1996, the WTO was not an important issue for us."[46] Other smaller operators underline that the WTO in and of itself was not of real importance to them in the 1990s, but they nonetheless chose to participate in ETNOs working group on WTO affairs.[47] In many cases, this working group was their only WTO activity, though. It is thus no surprise that a member of ETNO describes the working group as a night train: "there was a locomotive, some work cars, and many sleeping-cars."[48]

Even for some larger and later quite active operators, ETNO gave the impetus for their political activity.

[46] Telephone interview on 22 October 2003.
[47] E-mail exchange with a company representative, 28 October 2003.
[48] Interview in Brussels, 3 September 2003.

> We work through ETNO, but also through the ESF. In fact, we are mainly working on the WTO, because we participated in these forums and they started concentrating on WTO related issues. So it is not directly our initiative. [49]

Coordinating their political activities through ETNO does not mean that European companies were not interested or even opposed to the GBT talks, on the contrary, as the representative of an operator that had started to invest heavily abroad in the 1990s explains.

> In a way, the WTO was a very welcome way to seize this opportunity more fully. But the main initiative was the investment, not the political representation. Of course, you always have to do a little bit of everything. In business, I think you first try to open up new markets and then you start thinking about politics. For us, the WTO was an opportunity to assure that what we have put in place would continue in the adequate political framework. Once you get into the market, you start worrying about the conditions.[50]

Interestingly, once operators became involved in ETNO, the associational activity often substitutes for direct relations the operator could have with its own government on international trade issues.

> The only relations we have with [our] government regarding market access is the sending of reflection or position papers that ETNO produces. We telecom operators send these documents to the European Commission and to the national governments in order to state our position regarding those identified situations.[51]

Yet this development only happened in the late 1990s and is representative mainly of smaller companies. The telecom operators closely following the GBT talks from 1996-1997 stayed in contact with all relevant levels of government.

> We had so many conversations with the Commission and national governments. At the time, it wasn't very clear who was responsible for the issue.[52]

This institutional complexity in the trade policy-making process contributed largely to making ETNO such an important forum: few companies had the resources to assure relations

[49] Telephone interview on 5 November 2003.
[50] Ibid.
[51] E-mail exchange with a small European operator, 28 October 2003.
[52] Interview in Brussels, 3 September 2003.

with both levels of government on a wide variety of issues effectively. Nonetheless, large operators and even some smaller ones decided to pursue a multi-level approach. Deutsche Telekom, for example, is a direct member of ETNO, but also an indirect member of the EU employers' association UNICE through the national employers' association BDI or of EICTA through BITKOM. Concerning GATS-related issues, they work through the ESF, but their government affairs branch offices in Bonn and Brussels allows them to keep in direct contact.

However, it is important to make a distinction between formal membership and actual contacts. Concerning trade-related issues, there has been a clear shift towards EU-lobbying, especially in recent years, when the competency division between the EU and the member states was clear. A representative of a European operator explains that the two-level participation was crucial to his activities in the mid-1990s. He followed through the European associations and was almost regular contact with the EU negotiator Karl Falkenberg. Within his own government, he had "an extremely efficient relationship with the former telecom branch of the Ministry of the Economy".[53] Today, the approach seems less diversified. At the working level, the contact between a national public official working on trade policy and a network provider are rare.

> Most contact happens through letters. They do the core of their lobbying at the European Commission and from time to time, they will go see a minster. They have their European structure [ETNO]. I personally only receive about two to three letters a year.[54]

To summarize, European lobbying thus has two dominant features. First, it is predominantly association based. Second, it follows a multilevel approach, even though there is a growing tendency to consider the European Commission the most important policy actor on international trade issues.

[53] Interview, 3 July 2003.
[54] Interview with a government employee of a European member states, 1 July 2004.

The institutional complexity is a less important issue for US telecom companies. It is true that companies doing business abroad tend to establish foreign offices in the countries they were most active in. NYNEX, for example, had established a Brussels-based Europe office as early as 1990 to follow EU internal developments and to lobby for internal EU-liberalization.[55] Large companies generally have similar networks of local offices. Yet in some respect, these offices are not comparable to the multi-level approach of a European operator. They correspond rather to Deutsche Telekom's office in Washington D.C., established in the context of the commercial activities of the company in the US. Unlike lobbying on commercial issues, such as mergers or competition rulings, trade policy lobbying still goes through the national channels.[56] All telecom companies list the State Department, USTR and the FCC as their most important contacts on international trade affairs, on some issues also the Department of Commerce. "It is quite a close knit telecom community in Washington, so we know who handles which issues in the different agencies," explains a government representative[57] and several business representatives: "we work with almost all of the same people for years in the agencies, so everybody knows everybody else."[58] Certainly, formal contacts exist as well and official procedures are used as an important means of expressing an opinion. But regular contacts are crucial for advancing and elaborating a policy stance.

> A lot of the work we do here is very relationship based. And these grow over time […]. When I started [in 1992], it was more formal. We scheduled appointments to go see the government. Now we just talk. So the mode changes based on the depth of the relationship. There has also been less face to face and more e-mailing. Of course, as you go up in the organization the

[55] Interview in Washington D.C., 24 June 2003. The office has recently been closed.
[56] Some companies, such as MCI, have a very elaborate network, with an office in Brussels explicitly for lobbying the European Commission. However, the lobbying relates to competition rulings in particular and market access issues, rather than trade policy negotiations. Interview with a representative from MCI in Washington D.C., June 2003.
[57] Interview in Washington D.C., 18 June 2003.
[58] Interview in Washington D.C., 19 June 2003.

> formality increases. I often bring in my executive to see my normal contact's boss, and that gets a little more formal.[59]

Among the government agencies and with business representatives, the nature of contacts at the working level is commonly informal in the US. The most important part of a company representative's work is keeping in touch with the different government's agencies. Individual activities do get coordinated through trade associations, but the real advocacy work is carried out by individual companies.

3. Evolving policy stances

Understanding how these different forms of lobbying affected the multilateral talks at the WTO requires looking at the evolution of the policy stances defended by the US and the EU and their companies. Especially for European carriers, the context of political activities of transformed radically in these couple of years. Businesses adjusted to the new reality of European liberalization, learned to play the multilevel game of interest representation, and eventually participated as actively as average US companies. The analysis of the evolving policy stances in the US and the EU shows that both governments and businesses defined and redefined their preferences as the negotiations continued in response to what was politically feasible. Nonetheless, differences between the US and the EU remain. While the negotiation stance of the US delegation was explicitly driven by the concerns of large telecommunication companies, the EU delegation pursued a less concrete, more ideological position driven by the European Commission, which telecom operators adjusted to and eventually supported actively.

[59] Interview with a US service provider, Washington D.C., 24 June 2003.

3.1. The stance of the US Delegation

An EU participant in the Uruguay service negotiations esteems, "in every sector, what drives USTR is US companies' agenda."[60] Yet the notion of "US companies' agenda" is somewhat vague. Which companies and which agenda? As we have seen, the US administration consults with a variety of business stakeholders and USTR in particular worked with user companies, financial service companies and telecommunication companies. What was the position of the telecommunication companies in particular? The story of the NGBT and the GBT negotiations helps to answer these questions and underlines two characteristics of US business-government relations. First, all companies who became actively involved and followed the US delegation to Geneva from 1994-1997 supported liberalization, even the network providers. Second, hesitations or fear of liberalization took the form of very concrete policy demands, such as reciprocity and pro-competitive safe-guards, which became intimately tied to the US negotiation position.

3.1.1. Advocating reciprocal multilateral liberalization

Chapter 4 summarized the initial US motivations to support a WTO agreement on telecommunication services, most importantly the economic incentives. Telecommunications was furthermore one of the two sectors that had carried the idea of a service agreement. Advancing on the sectoral talks was therefore crucial to make the GATS framework meaningful. Throughout the Uruguay Round and the sectoral negotiations, the US was the most important driving force for an agreement, alongside the EU. The US delegation in Geneva put an enormous amount of effort into convincing other countries to go along. On one

[60] Interview with an official from the European Commission, 3 September 2003.

occasion, the USTR Charlene Barshevsky and her telecom expert William Corbett stayed up the whole night calling 120 countries to advocate an agreement, an observer recalls.[61]

Telecom service providers supported this approach from very early on in an attempt to modify the constraints that weighted on their international telephone service provision. The net settlement payments US carriers made to other countries continued to rise to $5.4 billion in 1995 and to $6 billion in 1996 (Cowhey/Richards 2000). In a study, the FCC came to the alarming conclusion that about 70% of the total payment represented a subsidy paid to foreign carriers and that the size would grow even larger in the future (Blake/Lande 1997).Yet, even though net settlement payment from US carriers to foreign carriers were very high, the costs of these payments were born by the telephone users, not the companies. In fact, as Cowhey and Richards (2000: 156) argue, the biggest profits for US carriers still came from providing international telephone services under the traditional regulations, in spite of this deficit:

> Thus, an AT&T wanted to expand globally if it could win effective competitive opportunities in the domestic market of foreign countries, but it was not sure that it had an interest in changing the basic rules for providing international telephone services between countries.

Arguably, this rational was tied to a larger reflection about competition and access, at least at a rhetorical level. As a company representative explains, ideology explains some of the zeal of their mobilization.

> MCI would like to think that it created competition […] in the world of telecommunication services. So the view was always: competition is good and incumbents should be denied to prevent competitors from entry. That mantra has definitely carried over to our global vision of trade today, even though Worldcom wasn't as ideological about competition.[62]

Nonetheless, the position of large US service providers can be boiled down to a very basic calculation: market liberalization was interesting, but only if it assured effective market access abroad. On the basis of this support for reciprocal market opening, international US

[61] Ibid.
[62] Interview in Washington D.C., June 2003.

service providers became active on these issues during the Uruguay Round. According to them, their insistence on the need for reciprocity explains the US position at the end of the Uruguay Round, most importantly the division between value-added and basic services:

> Our main concern was to try and get basic telecom services separated out of the Uruguay Round. We felt that there were not offers whatsoever coming from abroad, and we were afraid of the consequences of opening our markets without getting anything in return. Most people don't remember anymore that the separation of basic telecoms from the advanced services happened because companies escalated the issue: we made the free rider problem a real urgency.[63]

Indeed, as Cowhey and Aronson (1993: 189) underline, the pressure of US carriers during the late Uruguay Round was intense. When discussions stalled over basic services, the US declared that it would not permit foreign firms equal rights in the US if American firms did not have the same rights elsewhere. USTR started undertaking a series of bilateral and plurilateral negotiations, first with the United Kingdom and then with other countries, to find alternatives to a GATS agreement on basic telecommunications.

Seeing its negotiating position undermined, the European Community objected vehemently. More importantly, though, the US also felt that bilateral solutions could not achieve as much as a comprehensive WTO agreement, because of the risk of "one-way bypassing".[64] The concept is based on the idea that the US and Mexico for instance, have an open market with low international settlement rates. Mexico, however, might then route South American calls to the US through Mexico and collect the settlement payment from South American carriers for the US call. Within the WTO, the risk of one-way bypassing remained, but it was possible to achieve a more global solution, if all countries agreed to apply the same regime.

[63] Interview with a US company representative, 2 July 2003.
[64] For a discussion, see Cowhey and Richards (2002).

This rational made it crucial for the US to achieve a large number of commitments from other countries. In all government agencies, officials underline how much is at stake in a multilateral agreement based on MFN.

> You open your market to everybody who has signed the agreement, no matter how open their markets are. This lack of reciprocity leaves a large potential for free riders, so an essential component of the US's position throughout the negotiations was to achieve a critical mass of countries making serious commitments.[65]

The fear of a MFN regime with many free-riders is particular accentuated under the GATS, because countries have no obligation to open up anything they do not want. So MFN has to be extended to all parties, regardless of what they scheduled. While the GATT offers measures like anti-dumping to act against unfair competition, comparable tools available in theory under the GATS are very difficult to put into practice. US firms and the US government alike confirmed that the idea of a "critical mass" of countries submitting acceptable schedules was their main concern through the negotiations.

Moreover, the institutional division between the administration, who negotiated, and Congress, who had to authorize and ratify the agreement, underlined the need of this "critical mass". USTR needed a "big deal" to assure congressional backing, since a small deal would not protect it against the entrenched congressional sceptics who are always opposed to opening local markets to foreign competitors (Cowhey/Richards 2000: 158).

3.1.2. Refusing the agreement

In early 1996, US Trade Representative Mickey Kantor had made it clear that the US would not sign an NGBT agreement unless a "critical mass" of other countries did likewise. He deliberately did not define the term, but he did make clear what countries should be included (Petrazzini 1996: 13).

[65] Interviews in Washington D.C., 5 June, 18 June, 27 June, 2 July 2003.

With the deadline approaching in April, there was a sense that such a mass had not been achieved. Yet the US government was divided over the best possible position. While many in the government cautioned against an insufficient agreement, USTR, like all other international negotiators, also had the self-interest of achieving a successful conclusion. The straw that broke the camel's back then turned out to be the previously somewhat neglected issue of satellite transmission, again brought forward by US industry.

> One has to understand that satellites only came to these negotiations relatively late. Before, it had been more traditional telecom companies. When they looked at the offer at that time, they couldn't find the word "satellite" anywhere. It is true that the framework was to be independent of the technology used, but the word wireless appeared very often.[66]

Once they started investigating the issue, US satellite companies got very concerned about the implications of a basic telecom agreement for their international telephony. Like the other international providers, they were worried that their markets would be opened through the US offer, while other countries could then argue that they had never made a commitment for satellite specifically. In an effort to clarify the issue and the wording of the national schedules, the US satellite industry organized a series of meetings, not only with its own delegation, but even with the WTO Secretariat in Geneva, which was probably "the first time ever such a meeting took place."[67]

These new concerns contributed to the 1996 deadlock. The US was discontent with the offer from the other Quad countries, but above all with the absence of commitments, especially from developing Asian economies such as Indonesia or Malaysia. In reaction to what it deemed an insufficient number of commitments, the US withdrew its satellite offer. The deal collapsed.

[66] Interview with a US company representative, 2 July 2003.
[67] Ibid.

The US asserted that the failure was due to insufficient EU and Asian offers. Represented by its head negotiator Sir Leon Brittan, the EU argued that the US had walked away from the deal because of narrow, domestic political interests. To them, it seem like US satellite service firms such as Motorola or Odyssey had calculated that they would be better off without a deal, handicapping foreign companies such as the British ICO Global Communications (cf. Petrazzini 1996: 7). Indeed, five major US satellite companies wrote to the FCC in late April urging the US to withdraw its offer.[68] The failure of the talks in April 1996 is therefore referred to as the satellite issue, or even the "Motorola" issue, much to the disliking of the company in question. An observer remembers the following anecdote.

> On a flight from Geneva back to US after the negotiations blew up, the government affairs representative of Motorola sat next to the representative of AT&T. She told him that the company board was very upset with the outcome of negotiations, because the newspaper presented the clash to be Motorola's fault. As a consequence of such negative newspaper attention, she almost got fired.[69]

However, reducing the US drawback to the satellite issue alone is somewhat oversimplified. The US argued that it had followed a broader reasoning: companies in countries with high barriers might buy a piece of other global satellite systems, without simultaneously opening their own markets. Only about 10 participants had guaranteed US access to their own satellite markets.[70] Again, the issue was one of reciprocity and a critical mass, and the satellite companies had not been the only ones to pressure the US government to refuse an agreement. AT&T had also argued in late April that it may be advisable to downgrade the US offer unless the talks yielded improved market access abroad, notably by refusing to guarantee foreign competitors the right to operate international services from the US. AT&T confirmed that it was in favour of an accord, "but it would rather have no

[68] Frances Williams and Guy de Jonquières, "WTO telecom talks stall over satellites," *Financial Times*, April 27, 1996, p. 2.
[69] Interview with an observer, 25 October 2002.
[70] Frances Williams, "US keeps rest of world hanging on line," *Financial Times*, 2 May 1996, p.2.

agreement at all than a mediocre agreement."[71] To the EU, the pressure on the US delegation from its companies was considerable. "They are playing hardball and I am not sure they will be able to compromise," commented an EU Commission official few days before the deadline.[72] Too almost everybody, the failure in April 1996 proved that the US delegation did not feel that its industry was behind it.[73]

3.1.3. Exporting domestic arrangements

Given the zeal of the US delegation during the NGBT negotiations, the failure was a "paradox". The United States, which had pushed so much for an agreement, "all of a sudden didn't seem to want it anymore."[74] A European Commission representative explains,

> It is true that the US was pushing for telecom liberalization, but only for long-distance. They didn't want to open up their local markets. By 1996, we had liberalized further than the US, which only then introduced their Telecom Act.[75]

Even though the late developments of local liberalization in the US do not really explain the refusal in April 1996, they do help to understand the evolution of the US position. Indeed, the US was grappling with the liberalization of local services at the same time as it was negotiating the WTO agreement. On the domestic front, the question was when and how to introduce competition into local markets. The compromise in the TA96 was to grant the RBOCs entry into the long-distance market for opening their networks to local service

[71] Quoted in Guy de Jonquières, "WTO needs telecom deals for its credibility: US had thrown down the gauntlet," *Financial Times*, 18 March 1996.
[72] Quoted in Frances Williams "US balks at signing global deal on telecoms: EU warns satellite service plan could break up talks," *Financial Times*, 29 April 1996, p.1.
[73] Several EU and national policy-makers underline, however, that a rejection an agreement by EU industry would have led them to do the same. Interview in Paris and Brussels, December 2002.
[74] Interview with an EU business representative, 3 July 2003.
[75] Interview with an EU Commission official, 19 February 2002.

competition. This bargain was bound by a "checklist" of interconnection obligations that aimed at reducing the incumbents control to drive potential competitor out of the market.[76]

The domestic agreement had two important consequences for the WTO negotiations. First, the opening of local markets led to an improved US offer in February 1996. The US threatened, however, that this offer was dependant on similar advances from other participants. The EU, however, was not able to improve its offer in the two months leading up to the deadline, which contributed to the frustration of the US delegation.

Even before the improved US offer, though, the agreement provided the blueprint for the regulatory framework suggested by the Reference Paper (Hoekman/Kostecki 2001: 261; Cowhey/Richards 2002). In many ways, the elaboration of the details or the TA96 and the Reference Paper happened in parallel, most notably with respect to the "checklist" of interconnection obligations. More broadly speaking, the question at the heart of the two processes was how to assure that the company operating a telephone network could not preclude competition. Again, US telecom providers drew attention to this problem both at the domestic level and internationally and contributed to the drafting of the Reference Paper in early 1994.

> When the Reference Paper was first drafted, it was a very large document with almost 10 pages! Even among US companies, we couldn't agree on such a long list of details, so we had to boil it down to get a consensus. In 1994, our discussions revolved mainly around that.[77]

In December 1994, the US delegation convened a meeting of select delegates to discuss regulatory objectives. This group, known as the "Room A Group" after their initial meeting location in the WTO Secretariat building, acknowledged the need to develop a set of competitive safeguards against anti-competitive practices and met regularly thereafter and

[76] Since the RBOCs owned these local networks, such mechanisms were prevalent. To cite just one example, the incumbent can protect its home network by leasing its lines at exorbitant prices or with unacceptable delays.
[77] Interview with a US company representative, 2 July 2003.

developed the Reference Paper. Initial participant were the US, the EU, Australia, New Zealand, Japan and Korea, who were later joined by Brazil, Singapore, Chile, Mexico and the Philippines.[78] Based on these discussions, the US prepared a paper on "Procompetitive Regulatory and Other Measures for Effective Market Access in Basic Telecommunications Services" and submitted it along with its draft offer in July 1995.

The Reference Paper not only replicates some of the framework enshrined domestically in the TA96, it also became the point of contention between US network operators and service providers. In a way, the Reference Paper was specific enough to bring the domestic division between network owners and competitors to the international front.

Several RBOCs, above all NYNEX, had mobilized actively in support for liberalization through a WTO agreement. "When we first started talking about the Reference Paper, we were amazed," a former representative remembers, adding "it seemed like a real lever."[79] The central interest of the regional operators was to follow up on their often extensive foreign investment. "We were very much getting into markets around the world, but we wanted to have clear rules in those markets," explains the representative.[80]

US incumbents and competitors thus agreed on the need for competitive safe-guards, but they did not agree the scope of the Reference Paper and how it might be interpreted. A representative of USTR explains, "this was all the more the case since the Reference Paper has implications for offensive market entry, but also for the structure of the domestic market".[81] The central issue revolves around the cost-orientation of settlement rates. How

[78] For a detailed history of this negotiating group and the following discussion surrounding the Reference Paper, see Sherman (1998). Instrumental in drafting the Reference Paper, Laura B. Sherman was an associate counsel to USTR and the legal advisor to the US delegation during the GBT talks.
[79] Interview in Washington D.C., 25 June 2002.
[80] Ibid
[81] Interview in Washington D.C., 27 June 2002.

much does it actually cost to transmit a phone call? The answer fundamentally depends on whether you include or exclude the costs of building a network.

During the discussion of the Reference Paper, this point was heavily disputed between US incumbents and competitors. A representative from an incumbent remembers,

> Our concern was making sure that there was some balance to the reference paper. AT&T was taking the lead [during these talks]. A lot of discussion was around cost-orientation […]. It is not unlike the discussion these days, where folks at Verizon are concerned about anything international coming back to bite them.[82]

Indeed, Verizon, which includes NYNEX and Bell Atlantic, still opposes the competitors' vision of cost-orientation.

> AT&T believes that you shouldn't reimburse an operator for the costs associated with building a network. But if nobody has an incentive to build a network, then they won't have any access to it.[83]

Competitors confirm this opposition on between local operators and new entrants on international affairs. In their opinion, the opposition is all the more peculiar now that the former local operators actually employ the rights they have been granted under the TA96.

> Verizon will send international long distance calls, lease lines and invest overseas. So it should be the same as for us. But a lot of pro-competitive actions that we want the US government to enforce, they don't want. Why is that? Because they have decided that you need to protect the incumbents in general, because it supports their views here in Washington. […] In my view, they have made a fundamental company decision to protect their incumbent business and in order to do that, they decided to not go after incumbents overseas.[84]

In the end, much of the divergence between the US incumbents and competitor did not need to get resolved, because of the way the Reference Paper evolved in the multilateral discussions between different WTO members. While the initial draft reflected the American

[82] Interview in Washington D.C.
[83] Ibid.
[84] Interview in Washington D.C., 24 June 2002.

"obsession with leased lines,"[85] it later became a much broader framework of regulatory obligations. Based on contributions from Canada, Australia and the EU, Japan drew up a set of regulatory principles with it presented to the Room A Group in October 1995. The paper had become a general document that did not apply automatically to all signatories of the agreement, but rather could be added as a "specific commitment" to national schedules. Negotiators circulated the Reference Paper among all participants between December 1995 and January 1996.

The paper addresses competitive safe-guards, interconnection, universal service, licensing criteria, the independence of regulators and the allocation of scare resources. On interconnection, Paragraph 2.2 (b) specifies that interconnection shall be provided

> in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided.[86]

This wording was consistent with the US Telecommunications Act and the EU Interconnection Directive and addressed the issue of cost-orientation. However, it did not define "cost-oriented rates" or any other criteria cited. The only hope of negotiators would be that the interpretation of these words could rely on the US and EU precedents in the case of a dispute settlement case at the WTO (Sherman 1998: 80).

When American negotiators re-entered into multilateral talks after April 1996, they therefore imposed a US solution that would enable them to control the rates demanded by foreign countries. A condition for the 1997 solution was that the negotiating partners would have to accept a unitary regulatory action designed to further tackle international settlement rates: the so-called FCC benchmarks. The benchmarks were legal limits on maximum prices

[85] Interview with a Commission official in Brussels, 10 September 2003.
[86] See Annex 4.

of international settlement rates that US carriers may pay to terminate their international traffic in other countries. Benchmarks allow the US to act unilaterally against uncompetitive behaviour from foreign operators in a much more efficient way that could be imagined through the WTO dispute settlement system (Cowhey 1998; Cowhey/Richards 2000: 165).

Overall, the position of the US in the year-long GBT talks reflected well the concerns of the US companies that actively participated in Geneva. For US companies, the major concern was that they would not get from other countries want they felt they were offering. The increase in the number of countries that had submitted schedules by February 1997 and that had signed up to the Reference Paper comforted the industry's sentiment that a "critical mass" had been achieved. By the time an agreement was reached in 1997, the US government felt that "the industry was quite positive about the results of these negotiations."[87] On February 13, two days before the negotiations were to conclude, representatives of the private sector in Geneva greeted the US negotiating team at its morning industry briefing with signs affirming that they were "wildly enthusiastic" about the Basic Telecom Agreement (Sherman 1998).

3.2. The policy stance of the EU delegation

The EU, and above all the European delegation led by the Commission, was certainly as instrumental in bringing about the Basic Telecommunications Agreement in 1997, albeit with slightly different motivations. Business lobbying was less central to the negotiating position of the EU position, although the delegation saw to it to have industry support throughout the talks. More decisive for the evolution of the delegation's stance the EU offer were relations between the EU Commission and the member states, who shared the competence for these international trade talks. Business lobbying, which had gotten quite well

[87] Interview with a US government representative in Washington D.C. on 27 June 2003.

organized by 1996, was somewhat secondary to these relations and evolved in direct response to internal EU-liberalization.

3.2.1. Advocating multilateral liberalization

The EU's concern with international telecommunications was less inspired by direct economic incentives as was the case for the US. This was due to the fact that the EU's international traffic was predominantly intra-European. Therefore, the EU as a whole had only very selective and modest net payments outside its boundaries. According to Cowhey and Young (2000: 158)

> The EU thus viewed the global negotiations primarily as an exercise in securing unconditional access to the American market with a secondary objective of getting something close to that in Japan. It did not see the WTO as an avenue to undermine the old global cartel and improve the efficiency of markets for international phone services.

Indeed the concrete efficiency benefits from international liberalization were less dominant in the advocacy work of EU negotiators. A Commission officials remembers,

> At the time, the EU felt that it was more of a giver. The US was the main demander. The EU didn't think of themselves as the beneficiary of the negotiations, which is today the case.[88]

Certainly, this is only true in a narrow sense. The EU had simply less information about international opportunities European businesses might be able to seize, especially during early Uruguay Round discussions. In absence of concrete information, the Commission had to find alternative approaches.

> At the time, we were in regular contact with US companies who were seeking out our views on trade talks. So we figured out what the interests of US companies were and extrapolated from there.[89]

What was more important than concrete information about nominal benefits was the logic of the internal liberalization process, which had already been engaged. For the EU,

[88] Interview in Geneva, 24 October 2002.
[89] Ibid.

WTO talks were a matter of extending its internal arrangement, as Young (2000) argues. The US suggestion to work towards a multilateral agreement on telecommunication services seemed a particularly appropriate form of international cooperation against the context of internal liberalization. "Liberalisation was turned from the inside out," affirms a Commission official.[90]

This approach materialized around the question of reciprocity. The overarching concern for the US delegation had been to achieve reciprocity for it's the market access it offered, at the risk of losing an agreement in 1996. The European delegation did not share this calculation. Both Commission and Council agreed that it was more desirable to achieve market access abroad via multilateral liberalization rather than through the imposition of reciprocal requirements.[91] For the Commission, this was all the more urgent as bilateral agreements, like the earlier ones between the US and the UK, tended to be with individual EU countries only, and undermined its negotiating position. Of course, like the US, the EU did not want to be "the only ones who had opened their markets."[92] But the focus was more directly on large developed countries than on sheer numbers, explains a Commission official: "For the EU, the concern was less the whole of WTO countries. We wanted to see the OECD countries to open up, then expand to others."[93]

From a European perspective, the negotiation of telecom service trade tied together several stakes. After the ambitious intra-European liberalization projects, a central motivation was to align international policy with European objectives. Throughout the 1990s, one can therefore find a temporal concordance between intra-EU timetables and international

[90] Interview in Brussels, 10 September 2003.
[91] Council of the European Union (1993) "Resolution of 22 July 1993 on the Review of the Situation in the Telecommunications Sector and the Need for Further Development in that Market," 93/C 213/01.
[92] Interview with a European business representative, 3 July 2003.
[93] Interview in Brussels, 19 February 2003.

deadlines, which was one of the primary objectives of the Commission (Holmes/Young 2002).[94]

This temporal concordance was crucial for assuring the support of European telecom companies. Under the traditional European telecom regime, network operators had been exposed to different regulatory traditions and the majority of them were suspicious of anything threatening their home market control. Even after the separation of operators and regulators in the EU and the formation of ETNO in 1992, operators could not agree on a common approach to market opening. "1992 was too early", explains one of the founding fathers of ETNO.

> The divergence between the European operators was too great. There was no ideational base for a good cooperative effort to develop common view points and goals.[95]

As a consequence, "ETNO was more protective in its approach in the beginning."[96] Yet the European Commission had been very careful to include European operators in the consultation process for internal liberalization. Most notably, it assembled a top level group around Commissioner Martin Bangemann in the context of the Telecom Review between 1992 and 1993. The telecommunication operators in this group were represented not by their government affairs' personnel, but directly by the heads of the companies.[97] In the eyes of many observers, the top group was essential to advancing on European liberalization. A high ranking Commission official explains, "essentially, we have let the operators decide and they then started driving the process through their political connections."[98] In 1994, Martin Bangemann presented a report prepared by this group at the European Council in Corfu, entitled "Europe and the global information society – Recommendations to the European

[94] A timetable juxtaposing US, EU-wide, and multilateral telecom liberalization can be found in Annex 5.
[95] Interview in Brussels, 3 September 2003.
[96] Interview in Brussels, 14 February 2003.
[97] Consultation later included user companies and other telecommunication companies as well.
[98] Interview with a Commission representative in Brussels, 10 September 2003.

Council", known as the Bangemann Report. Through this report, operators and the European Commission underlined the need to speed up the process of liberalization.

Indeed, what was central to European network operators were international opportunities promised by the boom of the telecommunication industry at the time. The mid-1990s were a time of great expansion throughout the sector. Once operators and regulators had been separated, several of the large operators started realizing that the existing close government tutelage was disadvantageous to their commercial strategies. A government owned company, for example, cannot establish operations abroad in most countries.

> Organizations like France Télécom started pursuing the self-interest of commercial autonomy. In exchange, they were ready to give up their monopoly over service provision. Of course, at the time, they did not know what that would actually mean. In 1993, we made the compromise to open up the monopoly in 1998 only. And everybody thought, 5 years is a long time.[99]

Against the background of growth and expansion of the telecom industry, "every company wanted to became a European or a global leader in a certain number of segments," underlines a business representative.[100]

> That happened during the time of the internet bubble. New markets were potential jackpots. All analysts were advising to go into it. Billions have been invested […].[101]

Consequentially, the political decision to advance on internal market liberalization was the key turning point for European business support for multilateral negotiations. Most immediately, the concordance of dates was central. In 1993 and 1994, the Council unanimously adopted two resolutions establishing the liberalization framework and setting the

[99] Interview with a Commission representative in Brussels, 10 September 2003.
[100] Ibid.
[101] Interview with a business representative in Brussels, 13 November 2003.

deadline of 1 January 1998, with longer transition periods for Greece, Portugal, Spain and Ireland.[102] A member of the WTO working group of ETNO affirms:

> The date: 1 January 1998! That's when we knew liberalization would really happen. When we knew what would come, it became possible to promote a common platform concerning our goals for the international liberalization of telecommunications.[103]

Large European operators were especially enthusiastic about WTO talks, but all national operators supported EU negotiating position. They were confident in their own markets and they wanted to expand. After the end of the Uruguay Round and with the announcement of the 1998 date for EU-wide network liberalization, ETNO started communicating their common views on WTO affairs to the European Commission, who was very responsive. A member of ETNO remembers,

> We had a good working relationship with the Commission, because there was no opposition on this issue. The Commission works for Europe, and we work for Europe. Our objectives are the same. This is not always the case in commercial issues, where there may be conflicts between small and large businesses and the Commission becomes the judge. But on trade with third countries, there is no conflict.[104]

During the period of GBT negotiations, European operators engaged actively in support of WTO talks, led by the WTO working group of ETNO. In any case, explain most operators, protectionism was not politically feasible anymore.

> Of course, an operator wants to defend his home turf. But the [network operator] could not have spoken out against liberalization. It rather comes up through details, like the provision of lines or the exaggeration of technical difficulties in the opening of networks. These issues did not come up during the theoretical discussion, though.[105]

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[102] Council of the European Union (1993) "Resolution of 22 July 1993 on the Review of the Situation in the Telecommunications Sector and the Need for Further Development in that Market," 93/C 213/01; Council of the European Union (1994) "Resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures," 94/C 379/03.
[103] Interview in Brussels, 3 September 2003.
[104] Ibid.
[105] Interview in Bonn, 6 August 2003. Translated from German, "Sicher möchte ein Platzhirsch immer seinen Platz verteidigen. …"

The principle of liberalization had become an accepted maxim, and opposition had to be framed in new terms. The representative of a European operator explains, "the question was always: what does liberalization mean?"[106] As in the US, the issue was no longer the "if", but the "how" of liberalization. Within a very short period of time, EU telecommunication companies had embraced the project of multilateral market opening through a basic telecom agreement. All observers agree that on the principals of telecom service liberalization, there was a sense of "European unity" and a general enthusiasm. The representative from a somewhat reserved member states confirms this: "in 1996, at the time it seemed like the negotiation would fail, the EU was ready to go ahead even without the United States."[107]

3.2.2. Shared competences

Despite this agreement on the overall objectives of negotiations, the most important challenge for the European delegation was to coordinate the policy preferences between the member governments and the European Commission. Negotiations in the WTO were critical for both the Commission and the member governments, especially because the internal process was still underway. Early in the process of WTO negotiations, there was therefore a clear understanding that "external negotiations cannot proceed faster than the internal process."[108] The EU negotiation position in the WTO telecom talks were thus based on a two-tiered consensus, as Holmes and Young (2002: 139) note: "The external negotiation position would be based on the agreed internal framework, and the internal framework had been agreed unanimously." During the entire period of the NGBT and the GBT negotiations,

[106] Interview in Bonn, 6 August 2003.
[107] Interview 9 December 2002.
[108] European Commission (1994) "Report by the Commission on the GATS Negotiations on 'Basic' Telecommunications," Brussels: Commission DG XIII A 6, 16 November 1994; European Council (1995), "Council Resolution of 18 September 1995 on the Implementation of the Future Regulatory Framework for Telecommunications," 95/C 258/01, *Official Journal of the European Communities*, 3 October.

services remained under shared competence, so that offers and statements were authored jointly by the European Commission and the member states.

The initial EU offer presented to the NGBT in October 1995 reflected this division.[109] It was based on the agreed internal framework and illustrated the willingness of the EU member countries to bind their internal liberalization under the MFN regime of the GATS. The central objective was securing "effective and comparable" market access in third countries, but the markets of Quad countries were a particular priority, in particular national ownership restrictions in the US (Bronckers/Larouche 1997). Yet beyond these overarching principles, the EU offer resembled a list of the individual countries' offers. Because of the divergent situation in EU member states, the countries that had been granted an extended deadline for internal liberalization (Ireland, Spain, Portugal and Greece) tabled exceptions on national ownership restrictions and transition periods. On behalf of the French and Belgian governments, the offer furthermore specified that audio-visual services were not included in "basic telecommunication services." Austria, Denmark, Finland, Germany, Netherlands, Sweden, UK tabled no reservations. The Italian government was the only EU country to not seek to exempt the ownership restrictions it had in place.

Coordination between the different countries and the Commission was not always easy. As sectoral negotiations continued throughout the 1995-7 period in financial services, telecommunications, and transport, the European Council and the Commission had agreed upon a code of conduct, assuring that the Commission be the sole negotiator for the EU (Woolcock 2000). In practice, this meant that Commission and member states jointly negotiate and co-author their statements. During negotiation, though, the Commission is the spokesman, assisted by the member states. This was necessary in order to be credible, but it

[109] European Commission and the Member States (1995) "Draft Offer on Basic Telecommunications," 16 October, S/NGBT/W/12/Add. 100.

did not propose a way in which the member states "assist" exactly. Since the two still acted jointly, there was no Article 113 Committee. Instead, member states formed an "Ad hoc 113 Service Committee" to meet and follow discussion. The main characteristic was that the ad hoc committee decides by unanimity, while the real decides by qualified majority. The Ad hoc 113 Service Committee met practically every day during negotiations. The Commission had a meeting by itself, but the Committee would meet before or after. For important subjects, it met several times a day. Member states considered the WTO talks an important priority. In the final phase of negotiations, they even organized a Council meeting in Geneva. "This is quite extraordinary," underlines a member state representative, "a European Institution which meets outside the borders of the European Union!"[110]

Furthermore, the EU delegation was quite large throughout the negotiations. Apart from 5-6 people of the Commission, there were at least two representatives of each Member States: the delegation quickly had about 40 people. Despite the agreed code of conduct, the competence division often led to confusion.

> We didn't know very well what was within Community competence and what was within the competence of the member states. When the meetings were well prepared, there was no problem. But the objective wasn't clear or when the Commission went beyond its mandate, it became much more complicated. In the same meeting, you would have first the EU and then the member states speak up, and they didn't say the same thing. This was not the general rule, but it happened.[111]

While the Commission does not confirm this observation, members of the US delegation tend to smile and nod.[112] One US officials explains,

[110] Interview, 9 December 2002.
[111] Ibid.
[112] Interviews, 19 February 2003 in Brussels and 5 June and 18 June 2003 in Washington D.C..

> We were constantly observing that. Before every meeting, the EU delegation met in the morning in order to try a hammer out a position. If they weren't successful, the meeting we had with them afterwards would be like treading water.[113]

Agreement among European member states was a necessary prerequisite for coherent international negotiations. Although the European Commission did not pressures its member states into a particular set of concessions, much of the elaboration of how basic telecom service provision should be understood happened within these forums. A member states representative remembers that during the GBT round, "the Commission had the annoying tendency to negotiate more with the Member States than with the rest of the world."[114]

The divergent standpoint of the European Commission and some of its member states contributed to the deadlock of talks in April 1996. Part the US discontent was directed at the EU offers in particular. The US had submitted an improved offer in February 1996 and considered that the EU should do likewise. Internally, the Commission sought to convince the Belgian, French, Italian, Portuguese and Spanish governments to withdraw their foreign ownership restrictions; the Spanish government to accelerate liberalization; and the Belgian government to abandon certain requirements for granting a radio licences (Holmes/Young 2002: 143). They refused, accusing the Commission of wanting to give ground before it is sure of receiving anything in return – the opposite of the US strategy, who had made it clear that its offer was conditional. The Financial Times reports in March 1996:

> Member states were furthermore surprised at the unorthodox way in which the Commission made its proposals. They circulated as a draft negotiating offer, faxed to national capitals by Mr. Karl Falkenberg, the EU's chief negotiator in the WTO talks.[115]

Other WTO members tried to schedule improved offers by the proposed deadline, with limited success. By April 30, 1996, the EU could not do anything but restate its original offer.

[113] Interview on 18 June 2003.
[114] Interview on 9 December 2002.
[115] Guy de Jonquières, „EU split over liberalising telecoms" *Financial Times*, 13 March 1996, p.5.

During the later half of 1996, the coordination between the European Commission's objectives and the member states interests ameliorated considerably. A representative of the European Commission explains,

> We took US pressures, competition law, and a rhetoric of the internal market to add coherence. […] We combined the three into a cocktail. Essentially, the entire transition periods have been shorted by means of competition policy.

Indeed, the Commission relied on its role in merger policy and its oversight of the implementation of national transition deadlines. When Telefónica tried to join the Dutch-Swedish-Alliance Unisource, the Commission agreed on the condition that Spain drop its foreign ownership restrictions and accept a transition period for full liberalization of only 11 months.[116] It was able to assert similar pressures on Germany and France in the context of the Global One Alliance (Borrmann 2002). The Commission used the context of this alliance to underline that liberalization – both internally and externally – was to the advantage of the telecom providers that could then seize these new historic opportunities.

> In that sense, France has been liberalized in order to promote France Télécom and not the other way around. The same was true for Germany. Liberalization did not happened due to an abstract belief.[117]

The Commission also used the right to approve specific durations of transition periods for internal liberalization, granted in March 1996, to work towards improved WTO offers from countries that had previously tabled exceptions. Furthermore, the Commission persuaded Belgium to reformulate its reservations about the public ownership of Belgacom as a general statement that public ownership did not constitute a market access barrier (Holmes/Young 2002: 145). The new EU offer was tabled on 12 November 1996 and reinvigorate the negotiations together with the US offer.

[116] Commission Competition Ruling IP/96/1231 (20 December 1996).
[117] Interview with a Commission official in Brussels, 10 September 2003.

3.2.3. The Reference Paper

The evolution of the EU delegation's position clearly depended to a much larger degree on the coordination of the two EU levels of governance than on lobbying coming from European telecom operators. This becomes all the more evident when one considers the European stance towards the Reference Paper. An important point of contention between incumbents and competitors in the US, the Reference Paper did not stimulate the same degree of activity among European operators. Again, it was the Commission and the member states, who lightly confronted each other over the drafting of the document.

"By the time the member states got introduced to the reference paper," remembers a member state representative, "it had already been under discussion for 3 or 4 months." The first contact was somewhat surprising, he recalls.

> We weren't even told that it was being discussed. The Commission negotiator, Karl Falkenberg, suddenly brought it to a meeting and said "Oh, look what I found just lying around on a street corner".[118]

With such a tongue-in-cheek introduction, many national representatives were suspicious. Why draw up a specific set of regulatory commitments?

> I remember doing an analysis of it, and I found that basically all the details were already covered by the GATS provisions […]. So why do we need to duplicate it? When I brought this to the Commission, they answered, "well you are right, it does duplicate a lot of things in the GATS. So therefore, if we do have it, it is not going to be harmful."[119]

As NGBT talks evolved, it became clear that many participants of the Room A Group and especially the US felt that an agreement without the Reference Paper was useless. "So we came around to supporting it," explains the sceptic representative. "If the cost of rejecting it is losing the agreement, then we are better off supporting it."[120]

[118] Interview on 4 October 2003.
[119] Ibid.
[120] Ibid.

In fact, the EU quite liked the Reference Paper, because it was a way of securing an agreement on the EU's type of regulatory vision at the multilateral level. "When the Americans proposed the Reference Paper to us, it was essentially about leased lines," recalls an official from the European Commission, "but we took it and we rewrote it."[121] The Reference Paper in its final version is a compromise: it resembles the European framework in some aspects and establishes detailed categories and definitions used in the US TA96 (Holmes/Young 2002: 142).

A representative of a European network operator who had been quite active at the time argues that the Reference Paper had not been pushed for or modified significantly by EU industry.

> The Commission quickly realized that it wanted to give an official format to the framework that allowed for European liberalization. So it needed to preserve the coherence of this framework at the time the rules were debated globally.[122]

The defence of the framework of the EU directive on interconnection was a preoccupation of the European Commission, all the more since European industry had nothing to say that would have opposed the Reference Paper. "Today," the business representative adds, "all has gotten more sophisticated, and businesses increasingly draw attention to a certain number of details."[123] Overall, however, it is fair to say that it was not industry who pressed to advance on the Reference Paper in Europe, it was the Commission.

4. Understanding the patterns of business mobilization

Looking at the interests of telecommunication companies through the prism of the WTO's basic telecom negotiations gives a very surprising picture. Very generally speaking all

[121] Interview with a Commission representative in Brussels, 10 September 2003.
[122] Interview on 3 July 2004.
[123] Ibid.

relevant telecom companies supported liberalization through the WTO, even if some had reservations about the details of the agreement. US companies especially tied their support to the obligation of reciprocity and US network providers had qualms about the conceptualization of cost-orientation integrated in the Reference Paper. European telecom companies were much less active than their American counterparts, but they nonetheless engaged in favor of an agreement through the European association ETNO. Even the network operators of small European countries, who admit not having had a position on WTO liberalization at the time, passively supported the EU delegation through their presence in the WTO working group.

The reasons for this support are two-fold. First, it represents only companies that were actively involved in the international trade policy-making of their governments. Telecom companies that were too small to be able to seize the benefits of liberalization might have been less enthusiastic about an agreement, but they also did not mobilize to voice their potential opposition. Second, even large companies with reservations about the process of liberalization did not frame their political activities in a way that would have opposed liberalization. In fact, liberalization was too broad a concept to give clear indications about what's at stake for telecommunication companies. Let us consider these two points.

4.1. Cleavages and constituencies

In both the US and the EU, different parts of the governmental institutions have different constituencies of business interests. After identifying the relevant constituencies, an analysis of lobbying in trade affairs therefore needs to take into account which instance has most agenda-making power or veto-power.

Within the US government, the Department of Commerce (DoC) has the explicit mission of representing industry in the US government, no matter what size or activity individual firms might have. The DoC most important constituency is therefore smaller and medium-sized firms. "A lot of large multinational companies don't need to come to Commerce anymore to represent them, because they have their own lawyers and representatives," explains a DoC official.[124] Given the difficulties to become a knowledgeable participant in trade affairs for large companies, small companies are most often not well informed about international affairs. A large part of DoC's work is therefore "outreach programs," where representative travel to commerce district offices, so-called Export Assistance Centers, in order to speak to individual companies. Through publications, public speaking and meetings, the DoC tries to keep in close contact with this constituency and to represent their interests in the interagency process of US trade policy-making.

Of course, companies can also get in contact with the DoC directly, participate in the industry advisory committee structure, the ISAC and IFAC committees established by the Omnibus Trade Act in 1974 or file their comments through a number of other formal procedures. Given the cost of staying informed and keeping in contact, however, even DoC notices that smaller companies often do not mobilize.

> The companies that are most active are those that have large export activities. To work closely with us also requires having a Washington office, so we hear less from companies that do not have a representative in D.C.. This includes smaller companies, "beyond the beltway" as we call them.[125]

Large companies interested in international trade have direct contacts with the USTR. The USTR is always assisted by representatives from other government agencies. Depending on the issue, international telecom issues might involve officials from the State Department,

[124] Interview in Washington D.C., June 2003.
[125] Interview with a DoC representative, Washington, D.C., June 2003. The "beltway" refers to the greater Washington D.C. area.

the Department of Commerce, the Treasury or the Department of Justice, even sometimes the Department of Defense, and in most cases, the FCC. The interagency process is a clear indication how many different objectives are pursued at the same time, and the goal is necessary to arrive at a common position. This necessarily drowns out hesitant or potential opposition of less informed smaller companies. It also explains the success of industry associations based on broad membership, such as the USCIB and the CSI.

> We are not a sectoral association, but a sectoral association doesn't solve the issues for the US government. They just present an opinion. The US government's goal is to try and represent the consensus position. So we can try and do a lot of work for them.[126]

The most important institution acting as a veto-player in the US trade policy-making process is Congress. Representing smaller and more local constituencies through the Representatives in the House and the Senate, Congress is known to have a tendency to oppose trade liberalization that might threaten the working conditions of local companies (Lohmann/O'Halloran 1994; O'Halloran 1994; Gilligan 1997). But lobbying against the basic telecom agreement did not happen, so the only obligation emanating from Congress was that an agreement would have to be sufficiently encompassing to warrant the opening of the US market to foreign competitors – showing the agreement between Congress stances and business interests. At the conclusion of the GBT talks, the administration was very careful to underline the support of Congress for an agreement.

> The global adoption of these pro-competitive principles, embodied in a binding Reference Paper, is an extraordinary testimony to the compelling nature of Congress' vision in this area.[127]

In this respect, the US decision-making process is thus comparable to the coordination of different parts of the EU institutions. The European decision-making process equally

[126] Interview, 2 April 2003.
[127] USTR (1997), "Statement of Ambassador Charlene Barshefsky on the Basic Telecom Negotiations" 15 February, available at www.ustr.gov/html/barshefsky.html.

favors the most active companies. In the EU, DG Trade writes a draft offer by consulting the DG responsible for telecommunications (today called DG Information Society), DG Competition and other relevant branches such as DG Enterprise, for example. Throughout this process, DG Trade consults with business representatives. While smaller and medium-sized businesses are represented through DG Enterprise, businesses wanting to affect the drafting thus need to keep in direct contact with DG Trade. Outright opposition could only be expressed through the channel of the member states, which review the initial offer, grant a mandate and jointly negotiate. This is the most important difference between the veto-power of Congress and the veto-power of the European member governments. Congress was not part of the US delegation, did not hold daily meetings in Geneva through the 1994-1997 period and thus did not have the obligation to work towards a negotiating consensus. The necessity to maintain a common position during negotiations has very concrete implications on the ways in which the member states can weight against stances of the European Commission. Opposition either has to be voiced early in order to affect the mandate or be based on compelling and clearly defined member state interests, as was the case with audio-visual services.

4.2. Defining interests

The problem is that business interests – even those potentially opposed to liberalization – are much more difficult to identify than one would imagine, and are thus not always clearly defined. This is true for both the US and the EU. How does a business evaluate its interests in the context of international trade liberalization?

The case of the large US long-distance carriers is probably the most straightforward: their interest can be evaluated based on their international ambitions. Most US long-distance

carriers were primarily interested in cross-border basic and value-added services in order to organize the networks more efficiently (Cowhey/Richards 2002). Their objective was thus to get access to foreign markets, a goal for which they were willing to accept increased competition in their home market, in which they were already highly competitive. So they supported liberalization, but insisted that liberalization was only useful if it was reciprocal.

The case of the US regional bells is more complicated. The international ambitions they had pursued were not international telephony, as in the case of the long-distance carriers, it was investment. They did thus not worry as much about being able deliver end-to-end international phone calls through elaborate networks, but rather to protect and expand their investments. Now, it is true that their foreign investment during the 1990s led to their internationalization and one might assume that internationalization will lead them to support market opening more generally. Yet the RBOCs had mainly invested into incumbent telephone operators abroad, who were in a similar position that the RBOCs were in the US. The lack of competition in those countries tends to drive up margins for the operators they had a share in. A WTO agreement, Cowhey and Richards (2002: 104) argue, was likely to expand the number of competitors in those markets and reduce their profitability. According to this calculation, the RBOCs should simply have been opposed to the GBT negotiations.

As we have seen, they were not opposed. Especially NYNEX, which had the most extensive network of foreign investment, supported the WTO talks actively. Evidently, the size of foreign investment is not a clear indicator of interest formation. However, it is quite helpful for explaining the absence of activity: companies with no foreign investment or international activities tend to not be interested in WTO affairs. An US competitor confirms this:

> Quest is invisible in international affairs. I don't think they even have international business at all. I see a little, but not much of SBC and Bell South, but mostly Verizon […]. All of them have investments in mobiles or fixed lines overseas.[128]

Companies affected by the proposed policy changes thus seem to mobilize. Interestingly, mobilizing required supporting the general direction of US and EU policy. Since network operators in both the US and Europe were late-comers to the policy definition, they did not have sufficient agenda-setting power to draw up an alternative to liberalization. This does not mean that they enthusiastically abandoned their monopoly rights. As the representative of a former monopolist puts it:

> The word comes down that there will be competition and you absolutely hate it […]. When you get right down to it, the thought of competition is a scary thing. But over time, you kind of get over it.

Even the most active proponents of service liberalization agree that businesses have simple self-interests: "I mean, everybody is in favor of national treatment."[129] Only, national treatment is not always politically feasible, as telecom companies learned in the 1990s. Reservations about liberalization therefore got attached to the ways in which liberalization was pursued. Most importantly, the regulatory obligations became crucial. This is still true for the new WTO round, which aims at reviewing the old agreement and expanding it to other countries. The representative of a US business organization explains:

> One of the reasons why we can't open up the Reference Paper is because there is no agreement once you start drilling down into details. There are different regulatory approaches to implementing the Reference Paper. When you get into the regulatory debate, fights start to emerge.[130]

In the present debate around the Reference Paper, an important question is whether the Reference Paper should apply to value-added services as well. US and EU are of different opinions. The US argues that value-added services are best kept outside of regulatory control;

[128] Interview in Washington D.C., June 2003.
[129] Interview in Washington D.C., 8 April 2003.
[130] Interview on 2 April 2003.

after all, they point out, the internet had developed quite well without government interference. The EU, on the other hand, believes that the Reference Paper cannot do any harm to value-added services, because it contains only "pro-competitive safeguards". Essentially, the two positions reflect the same patterns that have been present during the basic telecom negotiations. While Europeans argues that the US position is simply a translation of companies wanting to protect their rights in value-added services, the US accuses the European Commission of "wanting to regulate the internet". Business interests are supposed to drive the US position, and the zeal of the Commission to increase its field of competences seemingly explains the EU position. Interestingly, European companies, which have eventually have gotten quite active on trade issues, support the US stance. A public official from the French government explains:

> The US wouldn't like the Reference Paper apply to the value added services. On this position, they are supported by France Télécom. France Télécom writes us arguing the same thing. That's normal, because they have a monopoly interest in value-added services. The Community position implies being open to competition.[131]

Indeed, European telecom companies tend to be critical of the European approach:

> In my opinion, there is a different approach in the [US and the EU] to the question 'How should one make regulation?' Europeans seem to follow a very abstract idea of the holy cow 'competition'. Perversely, many decisions have recently shown that this strategy actually hurt the consumer instead of benefiting him.[132]

ETNO also opposed an application of the Reference Paper to value-added services, even though they enthusiastically support the continuation of liberalization under the GATS.[133]

[131] Interview in Paris, July 2003.
[132] Interview with a European telecom company, 16 May 2003.
[133] ETNO (2001) "General Framework 2001-3" Brussels, and ENTO (2001) "ETNO Expert Contribution" EC036 2001/07, available at www.etno.be.

Quite clearly, reservations about liberalization play out in the details of regulatory decisions, not in the political framing of the issue.[134] In regular reviews of international telecom markets, most notably the 1377 Review of the US government and less frequent EU publication on barriers to trade in the US, the two trading partners complain about existing regulatory barriers to complete market access. Operators in several EU countries are accused of not leasing lines in a timely or justified fashion, while Europeans complain about the resistance of the EU to allow partly government owned companies into the US market.[135]

4.3. Perspectives

When considering the regulatory implications of the Basic Telecommunications Agreement, many companies today are critical. Even with the Reference Paper, it is very difficult to rely on the WTO agreement only in order to ameliorate market access in a country that does not live up to the agreement. The WTO dispute settlement system seems not well adapted to the needs of the fast moving telecommunications world. In the six years the agreement has been effective, only one dispute settlement panel was called for telecommunications specifically. At the insistence of AT&T and MCI, USTR filed a complaint against Mexico, arguing that Telmex, the incumbent operator, failed to provide cross-border interconnection at cost-based rates.[136] Both US competitors have invested a considerable amount of time and resources in convincing USTR to bring this case in the name of the US government, considered to be "a litmus test for the Reference Paper and a dispute panel in this field."[137] Even without knowing the outcome of the panel, most other companies

[134] For an example, see Kristina Spiller and Timm Krägenow, "Telefonanbieter laufen Sturm gegen schnelle Ortsnetz-Öffnung" *Financial Times Deutschland*, 10 September 2002, p.3.
[135] The USTR publishes the 1377 Review conclusions online annually at http://www.ustr.gov/sectors/industry/Telecom1377/.
[136] WTO (2000) "Mexico - Measures Affecting Telecommunications Services - Request for Consultations by the United States," WT/DS204/1.
[137] Interview in Washington D.C., 24 June 2003

are skeptical of the potential of the WTO system as a commercial tool. A US business representative remembers hearing a discussion between the US government officials, who calculated that bringing a case will take about 18 months. She explains, "I started imagining explaining this to my CEO. 18 months, how many financial quarters is that?"[138] Even in the eyes of the US government, dispute settlement cases are very difficult and time consuming. As an official explains, all other solutions are preferable: "people shouldn't look at us as their lawyers."[139]

A second problem of the agreement also arises from the lengthy decision-making process of a multilateral organization like the WTO. In a fast-moving industry like telecommunication services, "technology sometimes just completely overwhelms the industry."[140] To many business representatives, the classifications of the GATS are completely outdated. Much of the current debate therefore continues to revolve around newer or better definitions of sectors, sub-sectors and appropriate measures. The WTO negotiations thus sometimes become a classification exercise rather than bringing about any immediate policy change.[141]

The following anecdote illustrates well how much of the outcome of negotiations can be put into question by changes in technology.

> I remember sitting in a negotiating session in the fall of 1996. We had failed to conclude the initial deadline. We were now going to the conclusion, talking about basic services. "By the way," somebody asked, "has anyone other than me heard that it might become possible to offer voice services over the internet – not just over a circuit switched network, but over a packet switched network?" To all persons around the room, the experts and the neophytes like myself, the answer was: "God, you got to be crazy. No, we don't have to worry about that!"[142]

[138] Interview in Washington D.C., 25 June 2003.
[139] Interview in Washington D.C., 27 June 2003.
[140] Interview with a US government official, 5 June 2003.
[141] Interview with a European member states official, 3 July 2003.
[142] Interview with a member of the US delegation to Geneva, 5 June 2003.

Only few years afterwards, these telecom experts were to be proven wrong. The categories of value-added, basic telecom services and audio-visual services were to blend into each other within not even half a decade. Today, the same official continues, "you could download *Finding Nemo* over the internet the day after it came out in the US."[143] With quality improving, there will soon be no means of distinguishing formally separate industry sectors. The negotiations that formally focused on voice telephony are now about audio-visual services, and they are far from being resolved.

When the US negotiated the liberalization of value-added services, the question of content rules over audio-visual services was already an issue, especially for the French government. For value-added service, an US representative explains, the EU offer has no restrictions whatsoever. At an audio-visual meeting between the US and the EU in 1993, the US therefore tried to tie the two stakes together. The US proposed to accept the EU content rules for audio-visual data transmitted over the air, if the Europeans were to accept that their value-added offer might apply to audio-visual services, if that ever became a technological possibility. Yet eventually, this negotiating strategy was dropped.

> It was US industry that killed it. The industry told me that this would never happen: "You couldn't possibly compress a movie to be transmitted over a phone line. Maybe a song … maybe a song, but never an entire movie!" This was in 1993.[144]

The challenge for European trade policy is now to assure that technological change does not imply any unexpected opening of film or radio restrictions. Naturally, these issues draw businesses to the topic of telecommunications trade that had formally largely been absent. A US government official, who had started working on the topic in the 1980s underlines this evolution.

[143] Ibid.
[144] Ibid.

> In the early years, you would simply talk to AT&T and then seven RBOCs, increasingly MCI. There was a relatively limited universe. As competition developed, there is a far, far greater number of companies to talk to […]. We no longer talk to telecom companies; we talk to every kind of IT companies, media companies. Also, we might have to talk to the airlines, occasionally, because there might be communication or spectrum issues involved that are sort of the other side of running an airline. Airline reservation systems and computer networks might bring up issues. So we deal with industry issues far beyond communication issues.[145]

European regulators and trade official confirm this trend.[146] The telecommunications industry was dominated by incumbent operators and very large and powerful competitors only 10 years ago. Interest representation today has become much more pluralistic, in parts as a direct consequence of world wide liberalization, but also because of significant technological change in the ICT sector as a whole.

4.4. Conclusion

As a glance at these recent developments shows, policy preferences are difficult to define in a sector that is changing as rapidly as telecommunications, because consequences are difficult to evaluate. A large part of the policy preferences of telecommunication companies therefore has to build upon beliefs about the future rather than precise pay-off calculations. This foundation makes the preferences of firms malleable, as different estimations will confirm different business strategies. Policy preferences are then somewhat ambiguous: a conservative estimation might highlight the importance of the home market, while experimental analysts will push towards opportunities in global markets.

[145] Interview in Washington D.C., 18 June 2003.
[146] Interview in Bonn, 14 July 2003.

Chapter 6

INTERNATIONAL AIR TRANSPORT SERVICES

Air transport services comprise all non-military air transport, both passenger and mail or cargo transport. The primary focus of this analysis will be on passenger transport, but it is sometimes difficult to separate passenger from mail and cargo transport, so that the three will be considered together at times. The sector can furthermore be divided between international air transport and regional air transport, which remains within the boundaries of one single country. The real stakes of air transport service trade are located at the international level, so that the discussion will concentrate less on regional air transport.

In the context of air service negotiations, the provision of air transport divides into so-called “hard rights” and “soft rights”. Hard rights, which are also referred to as “traffic rights”, cover the actual movement of an air carrier in or between foreign countries. These movements are categorized into “freedoms of the air”, which list all possible ways to move from different departure points to destinations. A list of these freedoms can be found in Annex 7. Soft rights are auxiliary services related to the exercise of traffic rights. These include ground-handling services such as passenger, baggage, oil and freight handling, aircraft maintenance or repair, catering services, airport management services, leasing or rental services, and marketing and reservation services.

1. Economic context

This section tries to lay out the economic context of firms operating in the air transport sector. It begins by presenting the principal corporate actors and their associational forums by focusing on their domestic and international activities. A second part then summarizes the economic performance of the sector as a whole in order to provide a more general overview of the sector.

1.1. Corporate landscape

Although most people can often quickly name the largest air carriers in the world, it is wrong to think that there are only few. In 2003, about 280 passenger carriers operated international flights, and if one includes small local carriers offering scheduled passenger services, the total number rises to almost 800, even if one does not include charter service or cargo carriers.[1] The most dominant players are the large international carriers. In the US, the major airlines established themselves firmly after the deregulation of the U.S. air transport sector in 1978. The increased competition for "hubs" (i.e. home airports) had led to an industry reorganization that lasted until the early 1990s. By 1992, seven US airlines offered scheduled services on North Atlantic routes. After the demise of TWA, the remaining six are American, United, Delta, Northwest, Continental, and US Airways.

Prior to liberalization, the European market was comprised by discrete national airlines, sometimes called "flag carriers". Each country had its own state-sponsored airline, with the exception of Denmark, Norway and Sweden, which jointly owned the Scandinavian Airline System (SAS). The most important companies in Europe today are still the flag

[1] The number of international air carriers is based on the membership in the International Air Transport Association, which contains almost all international carriers offering scheduled international flights. The membership of IATA in 2003 was 273, according to its website: http://www.iata.org/about/index.

carriers, with some exceptions, such as Britain, where international air transport is served by the former flag carrier British Airways, but also British Midlands and Virgin.

The following table lists the most important American and European carriers for international passenger travel. Pure cargo carriers are not included, even though cargo transport does contribute to the operating revenue of most carriers listed. The largest cargo carriers are FedEx, Lufthansa Cargo, UPS, Air France, Cargolux and British Airways.[2]

Table 6-1: Largest international airlines in US and EU (2002)

Carrier	*Country*	*Operating Revenue (US$, million)*	*% of International Operating Revenue to Total**
American	United States	17 403	29.0 %
United	United States	14 286	34.8 % (a)(b)
Delta	United States	13 305	21.3 % (a)(b)
Northwest	United States	9 489	30.1 % (b)
Continental	United States	8 402	33.7 %
US Airways	United States	6 977	13.1 %
Lufthansa	Germany	18 057	49.0 % (b)
Air France	France	13 702	53.8 % (b)
British Airways	United Kingdom	12 166	61.5 %
SAS	Scandinavia	7 429	14.3 % (c)
KLM	Netherlands	7 004	62.9 %
Iberia	Spain	4 925	32.6 % (b)
Alitalia	Italy	4 868	7.9 % (d)
TAP	Portugal	1 524	51.1 %

Source: Assembled by the author from Annual 10 K Report of US carriers; Annual Reports of EU carriers; ATW (2002) World Airline Report, available at www.atwonline.com/stats_traffic.cfm.

Notes: * International will be defined as non-domestic for US carriers and as outside the European Aviation Area for European carriers. (a) Canada and Mexico not counted as international service; (b) Percentage accounts for passenger operating revenue only; (c) The percentage refers to intercontinental flights only. The remaining 78% include domestic, inter-Scandinavian and European flights. (d) Indications are in terms of passengers carried. 7.9 % refers to intercontinental routes only. Alitalia carried 54.4 % of its passengers on purely domestic routes and 37.7 on European or Mediterranean routes.

International air transport – defined as non-domestic for US carriers and outside of Europe for European carriers – is generally a more important part of the revenue of European carriers. The most important market for US carriers is the domestic market, although the international market accounts for about 30% of the revenue of international US airlines. For European carriers, the distribution varies more widely. Even though most large European

[2] Measured in freight tons per kilometer, ATW (2002), "World Airline Report," available at www.atwonline.com/stats_traffic.cfm.

carriers concentrate their operations in international markets, the largest part of international flights actually consists of European flights. When one considers European and domestic flights together, the remaining international market still presents a considerable fraction of the total revenue, from about 10% for some of the smaller European carriers to around 50% for Lufthansa and Air France and up to 63% for British Airways and KLM. Measured differently, in terms of revenue passenger kilometers, for example, international flights even make up around 80% of the total schedule revenue passenger kilometers of most European carriers.[3]

Besides the large international carriers, air transport within the United States or within Europe is increasingly served by new competitors offering considerably reduced fares on destinations within a continent: the so-called "low-cost" or "no-frills" airlines. The pioneer of this business model was the American domestic carrier Southwest, today the sixth largest US airline. Since the integration of the European aviation area, the concept has been successfully imported to Europe, by carriers such as Ryanair, Virgin Express or Easyjet.

Another important trend in the industry is the tendency to enter into alliances in order to assure world-wide service. The most important alliances are Star Alliance (US$ 69.3 billion total revenue in 2000), Oneworld (US$ 49.17 billion), SkyTeam (US$ 31.04 billion) and Wings (US$ 27.43 billion).[4]

Interest groups promoting inter-airline cooperation and maintaining government contacts exist both internationally and nationally. The International Air Transport Associations (IATA) was set up in 1945 as part of a more general agreement to represents

[3] Revenue passenger kilometers are the traditional way of measuring an airlines performance. It indicates the number of paying customers times the distance traveled. The measure gives no indication of the revenue gathered by these customers, however, which differs according to the length of the travel. Data on revenue passenger kilometers for European carriers can be found in AEA (2003), "Summary of Traffic and Airline Results," available at http://www.aea.be/aeawebsite/datafiles/star-03.pdf.

[4] ATW (2002), "The World's Top 25 Airlines," available at http://www.atwonline.com/Pdf/tables.pdf. Star Alliance includes Air Canada, Air New Zealand, All Nippon, Ansett, Austrian, British Midland, Lufthansa, Mexicana, SAS, Singapore, Thai, United & Varig. Oneworld includes Aer Lingus, American, British Airways, Cathy Pacific, Finnair, Liberia, LanChile and Qantas. SkyTeam is made up of Aeromexico, Air France, Czech, Delta and Korean Air. Wings include Continental, KLM and Northwest.

almost all international airlines at the international level and works closely with the ICAO.[5] The most important industry group in the US is the Air Transport Association (ATA), which maintains close ties with Congress, state legislature and the Federal Aviation Authority.[6] In the EU, national flag carriers are grouped together by the Association of European Airlines (AEA).[7] An expert for regional airlines, the European Regional Airline Association (ERAA) represents the interest regional EU carriers, and very recently, 10 European low cost carriers founded the European Low Fares Airline Association (ELFAA).[8] The associational field on both sides of the Atlantic is furthermore complemented by a myriad of more specific interest groups, representing, for example, cargo carriers, the world's 1200 airports, the traffic control systems, or the aircraft owners and pilots, or the new low-cost carriers.

1.2. Economic performance of the air transport sector

Air transport plays an important role in world economic activities, moving about 1 600 million passengers and 40% of the world's manufactured exports (by value). One of the fasted growing sectors of the world economy, passenger and freight traffic are expected to increase at an average annual rate of around 4-5% until 2010, a growth rate significantly greater than that of global gross domestic GDP.[9] Europe holds the largest share of world passengers with 58.9 % in 1998 against 25.5 % for North America and 32.1 % for Asia and the Pacific

[5] The IATA is both an industry association and an institutional actor of the international regime governing air transport. A more complete discussion will therefore follow in the discussion of the international regulatory regime.
[6] For more information, see www.airlines.org.
[7] For more information, see www.aea.be
[8] For more information, see www.elfaa.com.
[9] ATAG (2000) "The Economic Benefits of Air Transport," available at http://www.atag.org/files/EconomicBenefitsAirTransport.pdf.

region.[10] Of all internationally scheduled traffic to, from and within Europe, intra-European flights make up 62.4 %, while 20.6 % are Europe-American flights.[11]

It is important to note, however, that the net profits of US airlines during this most recent period of economic prosperity account for upwards of 60% of the world industry total, despite the fact that that US airlines carry only one third of world airline traffic. Different studies come up with slightly varying percentages and geographical focus, but the main observation remains the same. The AEA, for example, estimated that intra-European flight accounted for 70% of international passengers flown by carriers belonging to the AEA in 1995, but only 40% of the revenue (Mawson 1997). In the late 1990s, it had become clear that intra-European flights do not lead to a large profit for European airlines. In 2000, net profits for the 12 main EU airlines are in the region of US$ 800 million, which is in itself remarkable when compared to the net overall loss on the same scale in 1994 (Button/Stough 2001: 3). The disproportionate profitability of US carriers can be explained at least in part by their greater experience with deregulated and highly competitive airline markets, compared to most non-US airlines.[12] North America and the Europe are the most important regions in the sector. Even though the Europe-US connection is the largest market with about 19 million annual passengers, intra-EU flights and domestic US flights continue to make up the largest share of each region's air traffic.[13]

[10] Note that the percentages of each region cannot be added together, as it would imply double counting of traffic between these regions.
[11] Source: IATA Analysis, reproduced by ATAG (2000), "European Traffic Forecasts 1985-2015," Geneva: ATAG Publication.
[12] MIT Airline Industry Study Project, "The Airline Industry", available at http://web.mit.edu/airlines/industry.html.
[13] ATAG (2002), "European Traffic Forecasts 1985-2015," Geneva: ATAG Publication, p. 19-20.

2. Domestic regulatory traditions

With only few exceptions, aviation developed under the oversight of governments for a number of reasons. Like other areas of transport, aviation was seen as a very sensible domain, which was best put under political control. For the administration of economical and technical questions as well as security issues, the governments of most countries tried to control the industry either directly or through regulatory agencies.

2.1. Domestic deregulation in the US

When the aviation industry started developing in the US in the 1920, there was almost no government regulation. Yet eventually, the government started realizing the potential of air services as a way of providing airmail service and as a means of connecting the vast territory of the US. To assure some degree of universal service, airline companies were issued contracts on specific routes. While airlines were obliged to offer fixed prices, the government provided subsidies to ensure service on unprofitable routes. When new entrants underbid the prices fixed by the government contract, the need for a more comprehensive system of regulation imposed itself, so that this “unfair” competition could no longer put into question the government network and subsidy system. In 1938, the Civil Aeronautics Act created a government agency called the Civil Aeronautics Board (CAB) to control entry, exit, rates, route allocation, mergers and subsidies of airlines in the domestic markets. The CAB had to approve all price changes requested by carriers and decided which airlines would fly which routes. The system rested on the implicit bargain that unprofitable routes would be served in exchange for profitable routes also allocated to the same company (Yergin/Stansilaw 1999:

348).[14] Twenty years later, the Federal Aviation Administration (FAA) was created for the oversight of security standards, but the CAB remained in place for economic regulation. Since air services were under the exclusive control of a governmental agency, even general competition policy – i.e. antitrust law – did not apply to the sector.

During the late 1960s and early 1970s, critiques concerning the rigidity and the inefficiency of the system began to grow, drawing from an unusual coalition of consumerist liberals such as Ralph Nader and pro-business economists such as Alfred Kahn, who was the chairman of the CAB in the late 1970s. In 1977, Jimmy Carter made the deregulation of air transport subject of his presidential campaign. Using his influential position, Alfred Kahn started dismantling the elaborate rules and protocols that had made up government regulation until then (Kahn 1988). After several studies and despite many skeptics, the Airline Deregulation Act was enacted in 1978 providing for a phasing out of all of the CAB's activities by the end of 1984.

The quick domestic deregulation has led to virulent re-organization of the American airline service industry. The most important development during this transition period was the reorganization of the US airline industry in a so-called "hubs and spokes" system: a central "hub" allows channeling passenger from many points to a great variety of destinations (cf. Kasper 1988: 30-34). But the pace and impact of this reorganization was "chaotic and even frightening" to some observers describe as (Peterson/Glab 1994; Tarry 2000: 287).[15] Especially during the recession years of 1979 and 1980, airlines and the communities they served were no longer guaranteed anything. Within the fifteen years that followed deregulation, the two most important international carriers, Pan American Airlines (PanAm)

[14] This bargain was referred to as "plums" and "dogs", where the former refers to profitable routes and the later to unprofitable, smaller city service, most often in the West.

[15] For a comprehensive list of consolidation and bankruptcies of US airlines in the deregulation period, see Pickrell (1991: 18-19).

und Trans World Airlines (TWA), had disappeared. PanAm, TWA, and Eastern Airlines had suffered considerably during the 1980s and sold the international routes to what became collectively known as the "big three": United, Delta and American Airlines. Despite the difficult transition period, the 1978 Act has proven to be a success: it opened the domestic market to new market entrants, increased the number of routes served and lowered the fares. At the time, it was the first thorough dismantling of an entire system of government control of an industry since WWII (Wilson 1980).

2.2. Liberalization in the EU

Eager to apply the new solutions to its own air service industry, the United Kingdom deregulated the sector in a similar manner under the Thatcher government in 1979. Both the UK and the Netherlands had always had a somewhat less restrictive air transport policy than the rest of Europe. In particular, both followed a multi-airline policy, negotiating rights for more than just one national airline on international routes. With a strong consumer lobby, the UK pioneered low cost air travel in the 1960s and 1970s and was the only country in Europe to establish an independent regulatory authority for aviation in 1971 (Kassim 1996: 112). In most other European countries, by contrast, national control over the airlines was deeply rooted. While the flag carriers of each country are the best known ones, Europe had about 100 airline companies by 1980, most of them offering regional services only. Of these, the UK had about 17, Germany 7, Italy, Spain and France 5 each, and Belgium, Denmark and Austria 4 each (Yergin/Vietor/Evans 2000: 49). This large number of airlines and the maintenance of the national flag carrier was the result of heavily subsidized and regulated national aviation systems. Although the specific models varied, most European countries had established air

transport as a public service sector monopoly (Gönenç/Nicoletti 2001). Throughout Europe, the government held a majority stake or had total control of their national flag carrier.

The US experience did little to change this, even though European carriers were operating at a loss. However, it did spark the interest of EU officials and of several national officials from the more liberal member states, who wanted to apply the principles of a common market to intra-European aviation as well. The first two Commission memoranda on aviation in 1979 and 1984 received a frosty reception from most national governments and airline alike. Despite this lack of interest in a EU wide solution, a 1984 agreement between the UK and the Netherlands allowed any airline in either country to operate between the two without the need to seek further government approval. With the two countries in favor of further liberalization, the Commission continued pursuing the idea of an EU-wide approach through what has been called a "carrot and stick approach," (O'Reilly/Stone Sweet 1998).

Table 6-2: Member state approaches to liberalization, 1980s

Liberal approach	*Hesitant*	*Opposed*
United Kingdom Netherlands	France Germany	Italy Greece Denmark Spain

On the one hand, the Commission exploited an ECJ ruling, the *Nouvelles Frontières* decision, to gain a greater clout in its relationship with reluctant member states. The *Nouvelles Frontières* decision of 1986 annulled a French judgment against a number of private airlines and travel agencies operating in France. These had been accused of violating the French Civil Aviation Code by selling cheap, non-approved tickets. The ECJ ruled in favor of these agencies, arguing that the price-fixing mechanisms of the French Civil Aviation Code distorted competition within the EU and were therefore incompatible with the competition law in the EC. Based on this decision, the Commission called upon all European airlines following similar procedures to abandon their activities.

Even though this would have been impossible, the pressure that was put onto governments augmented the political weight of pro-liberalization forces in France and Germany.

Be that as it may, positive incentives were necessary as well, as the firm opposition of Italy, Greece, Denmark and Spain threatened to block a unanimous Council decision. While the Southern countries argued that they did not have the capacities to adjust to the increased regional air traffic proposed by the Commission package, Denmark feared that the changes would unbalance its regional development policies. Brokered by the Commission, the governments in favor of the proposal suggested a compromise. The regional airports in question in the four countries were to be excluded from liberalization during a first stage on liberalization, but further measure could not be retarded after the mid-1990. On the basis of this compromise, EU-wide agreement on the air transport package was reached in late 1987.

The 1987 package began the transfer of EC authority over EU-wide air transport service trade and set off a gradual liberalization. Under qualified majority voting introduced by the Single European Act, two further packages were adopted in July 1990 and July 1992. By April 1, 1997, the internal EU aviation market among the states of the European Economic Area (EEA) was completed.[16] By far the most important one, the third package transformed national carriers into "community airlines," (Mawson 1997: 808). It opened up all traffic rights to Community airlines, including the freedom to provide cabotage, the right to carry passengers or cargo between two points of a country, which is not the home country of the airline. The system created by the EU was based on the idea of a Community license. Any airlines whose capital is held mostly by a member state or its nationals can obtain this license and has automatic access to the Community market. Within the EEA market, traffic on all

[16] The EEA, a 1992 agreement between EU and EFTA countries which Switzerland refused to sign, includes the 15 member states of the EU as well as Lichtenstein, Iceland and Norway. Since Lichtenstein does not have an air transport industry, the internal EU aviation area includes Iceland and Norway only. It was later extended in a bilateral agreement to Switzerland. With EU enlargement in May 2004, the internal aviation market now has 28 member states.

international routes is unrestricted and fares are no longer submitted to the national authorities for approval, although some control mechanisms persist in special instances and some public service obligations remain.

Originally an international market, the EEA market resembled the US market from 1997 on. However, the integration package did not include air traffic control or external air transport negotiations, which remained in the hands of member states.

3. International regulatory regime

3.1. The old system

Since the beginning of air transport history, aviation had international aspects and it soon became evident that this new mode of transport would not remain within strictly national confines. Because of its security implications, international regulation even preceded national and local regulation. On the invitation of France, the first important conference on an international air law code took place in Paris as early as 1910 and laid out a number of basic principles governing aviation. By 1919, civil air transport enterprises had been created in many European states and in North America, the first West-East crossing of the Atlantic had successfully taken place, and World War I had shown the important military potential of air transport. For this reason, aviation was a matter of debate at the Paris Peace Conference in 1919. Based on a French proposal, 26 out of the 32 allied and associated powers agreed on an International Air Convention, ultimately ratified by 38 states. Neither the US nor Russia had signed the initial agreement. Instead of reducing aviation to a military issue, the Convention dealt with all technical, operational and organizational aspects of civil aviation and foresaw the creation of a secretariat based in Paris. Meanwhile, the US government began

independently to develop agreements on landing rights with one country at a time. Trying to develop international routes, Pan Am furthermore negotiated landing rights on its own in this early period, covering 38 countries by 1939 (Dutheil de la Rochère 1971: 30-31; Milner 1997: 168). Indeed, in the interwar period, international air transport had grown considerably in importance, which had led most notably to an agreement on passenger rights in Warsaw in 1929. As a result of this considerable growth, technical advances in aviation and the reshuffling of the political world order during World War II, a revision of the existing structure became necessary for the post-war period.

In 1944, the US government extended an invitation to 54 states to attend an International Civil Aviation Conference in Chicago. The objectives were both technical and political. Aiming to achieve a greater degree of uniformity in procedures and standards, the conference succeeded in agreeing on arrangements for licensing pilots, certifying aircraft security and harmonizing air traffic control procedures. More importantly, however, countries agreed on which basis to grant access to foreign airlines. The bargaining between the different countries which took place at this Conference set the foundation for the current architecture of international aviation and has been widely studied (Gidwitz 1980; Jönsson 1987; Sochor 1991; Milner 1997: 168-178; Richards 1999; Richards 2001).

In essence, the discussion boiled down to an opposition between the two most important aerial powers at the time: the US and the UK. The US, whose airlines have been left unscathed by the war, accounted for 72 % of all aviation traffic and was confident in the opportunities that might be offered under a competitive international structure (Richards 1999: 14). However, US government and airlines were opposed to creating international institutions for either the control or operation of international aviation. This was precisely the proposition of the UK, backed by Canada, Australia and New Zealand, who preferred a more

multilateral design.[17] Moreover, Great Britain made efforts to create a cartel based on the network of its empire, which would have effectively closed the Commonwealth market to US carriers. The compromise struck between the two positions privileged national control of airlines and regulation favored by the United States, but established a multilateral framework favored by the United Kingdom.[18]

Through the Convention on International Civil Aviation, signed in Chicago on December 7, 1944, and commonly referred to as the Chicago Convention,[19] the agreement established that access rights should be granted through bilateral agreements between governments. The access rights that could be negotiated were labeled "freedoms" and included the right of an airline to overfly another country (first freedom) and the right to land in another country for maintenance or refueling (second freedom). The delegates were not able to reach an agreement on additional freedoms, but the first two freedoms were established in the International Air Service Transit Agreement, a standardized agreement, which no longer required states to demand overflight rights in the negotiation of new routes.[20]

It furthermore set up a permanent organization, the International Civil Aviation Organization (ICAO), whose mission is to oversee and assure cooperation in and standardization of international aviation.[21] Besides the permanent secretariat, ICAO has a sovereign body, the Assembly, and a governing body, the Council. The Assembly, made up by representatives from the national transport ministries of each country, meets at least once

[17] Some internationalists even envisioned a World Airlines under the control of the United Nations, but those ideas seemed more like an exception (Sochor 1991: 3).
[18] For a discussion about the weight of each countries preferences in the final outcome, see Nayar (1995) and Richards (1999).
[19] ICAO Doc. 7300/8 (8th edition 2000).
[20] This US government refused to sign this agreement because of a disagreement over the wording of "cabotage".
[21] The first secretary general of the provisional and later the official ICAO was the Frenchmen Albert Roper, who had already been intimately involved with the Paris Peace Conference in 1919 and the international commission that preceded ICAO. See http://www.icao.int/cgi/goto.pl?icao/en/history.htm.

every three years and is convened by the Council.[22] As of January 1st 2003, ICAO counts 188 member countries. In response to the creation of this intergovernmental forum, the airline industry organized itself in a separate forum, the IATA, founded out of a smaller association in Havana, Cuba, in 1945.[23]

In a 1946, the US and the UK decided to meet bilaterally to resolve the questions left unanswered at the Chicago Convention two years earlier. The agreement signed between these two countries, the Bermuda agreement, was the most decisive agreement for post-war international aviation. First of all, it was the first bilateral air service agreement negotiated since Chicago and later became the model for all subsequent air service agreement. Moreover, the US and the UK agreed to broaden the list of traffic rights from the two freedoms established at Chicago to a total of five. The third and fourth freedoms grant the right to carry passengers or cargo between its home country and another country, and the fifth addresses the right to carry passengers between two countries by an airline of a third on a route with origin/ destination in its home country.[24] Most importantly, however, the Bermuda agreement designated IATA as the organization supposed to fix fare prices on UK-US flights. Even though such producer price-fixing was illegal in the US, subsequent bilateral agreements between other countries specified similar procedures and made IATA a machinery for agreeing fares and rates among international airlines.[25] For the purpose of price-setting, IATA was divided into three geographical areas, each with their own fare-setting conference at the annual IATA conferences. All fares required the approval of all voting airlines before a fare

[22] A comprehensive history of ICAO can be found on its web site www.icao.int.
[23] Six European airlines had formed the International Air *Traffic* Association in 1919 in order to standardize their technical procedures and to agree on common rights for passengers. Since the two associations are distinctly different, though, it is sensible to cite IATA's birth year as 1945. For more information, see the official history of IATA on its website http://www.iata.org/about/history.htm.
[24] These five freedoms established in 1944 were later extended to seven freedoms recognized today plus two special freedoms to serve fly between two domestic points in a foreign country, which are generally labeled "cabotage". See Annex 7.
[25] The fares were nonetheless subject to government approval.

schedule became effective. In order to prevent airlines from cheating, IATA furthermore maintained a compliance department with oversaw adherence to IATA agreements (Richards 2001).

Eugene Sochor (1991: 15) has called the architecture of international aviation created between 1944 and 1947 a "regulatory triangle" consisting of the intergovernmental ICAO, a bilateral regime for the exchange of commercial rights and a multilateral mechanism which allowed airlines to agree on rates subject to government approval. For the business of international air transport, the tight network of air service agreements is decisive, so that the regime is commonly referred to as the "bilateral system" of international aviation.[26]

By the end of 2002, 2 054 bilateral agreements have been registered with ICAO.[27] Counting all informal exchanges, additions and writing, one observer has even estimated the total number of bilateral agreements to be as high as 10 000.[28] The traffic rights negotiated between governments in the bilateral air service agreements cover a large number of details, including points to be served, routes to be operated, types of traffic to be carried, capacity, tariffs and tariff conditions, designation of airlines as well as their ownership and control. This last item is one of the most important ones, because it traditionally requires an airline designated by a country to be effectively owned or controlled by it. In other words, the US government can only designated US carriers and the German government only German carriers. Effective ownership is defined in the US as less than 25% foreign ownership, across the EU as less than 49%. Furthermore, almost all bilateral agreements allow only one single national carrier to enter any given international route, a concept called the "single-destination" condition. Within the bilateral framework, no airline can make seemingly simple business

[26] In reference to the US-UK bilateral, the system is sometimes also called the "Bermuda regime". The later label emphasizes the price cartel of IATA, while "bilateral system" refers to the bilateral element of the regulatory triangle.
[27] According to the registration record of ICAO, available upon request from the author.
[28] Interview in Brussels, 26 November 2002.

decisions common in other industries, such as increasing its flight offer, targeting a new destination, soliciting foreign investment or relocating its operating hub to a destination abroad.

4. Towards a new international regime?

The straight-jacket imposed on business operations did not pose any problems in the early post-war period. On the contrary, the 1950s and 1960s were a period of dramatic growth. International air transport developed from a small, specialized industry into a core element of the global economy in the second half of the 20th century. Yet by the late 1970s, the traditional architecture revealed to be severely constraining for international carriers that sought to adjust to new technological developments and changing demands for international air travel. Despite these difficulties and the interests of air transport users in lower fares, the liberalization of air transport has not been pursued multilaterally, as had been the case for telecommunication services. Until today, important aspects of the bilateral system of 1944 remain in place.

4.1. Forces of change

At the time the Chicago architecture was put into place, the market for international aviation has been comparably small and consisted of mainly government and business travelers. Towards the late 1960s, however, fixed prices and flight obligations were increasingly seen as an impediment to growth and technological advance. Under IATA agreements, carriers were supposed to provide identical services at identical prices, but airlines were always faced with incentives to get around very strict obligations. This had effects on very different aspects of air travel, even on the form of in-flight services. As

Richards (2001: 1000) accounts, TWA's introduction of in-flight entertainment in the 1960s triggered a series of international disputes and TWA was ultimately asked to delay introducing its new technology.

An even more important technological development was the introduction of jet technology in the 1960s. Jet airplane dramatically decreased the real costs of airline travel, and affected capacity and flight times (Zacher/Sutton 1996: 82). The declining prices in turn increased the number of international leisure travelers. During these years the number of passengers on scheduled international flights increased from 14 million in 1956 to 23 million in 1960 and 74 million in 1970. Only 50% of these passengers were business travelers in 1970, having dropped from almost 70% in 1960 (Richards 1999: 23).

This high increase in the demand for international air travel was matched by the increased capacities of jet and jumbo jet planes – but obstructed by restrictions imposed by the IATA price cartel. The high ticket prices fixed by IATA simply prevented airlines to fill their new planes. Many airlines, especially in the US, hoped that lower prices would stimulate more sales, allowing them to fly with full capacity. The introduction of the Boeing 747 in 1970, which offered about 400 seats instead of the traditional 140-180, made this problem a real urgency.

This was underlined by a second development: the growth in charter operations, which started competing with scheduled airlines at about the same time. Traditionally, large airlines had sold packages of seats to consolidators who sold vacation packages, but increasingly airlines set up their own subsidiaries and charter airline services blossomed in the 1960s. In both Europe and the US, charter airlines had mostly remained outside the regulatory framework, because they simply did not exist at the time of the Chicago Conference in 1944. Similar to current "low-cost carriers", charter carriers were able to attract a large number of

travelers and created new leisure travel markets. Most famously, Sir Freddie Laker offered "Skytrain" flights from New York to London at unusually low prices, effectively transforming "air transport from a luxury to a mass-market product" (Dutheil de la Rochère 1971; Banks 1982; Sochor 1991: 34). Charter services accounted for a negligible percentage of international air traffic before the 1960s, but during the 1960s they increased dramatically accounting for 40% of international air service by the early 1970s (Zacher/Sutton 1996: 83).

The fuel crisis of the 1970s exacerbated the financial pressures on international airlines. The deadweight loss imposed by the IATA price cartel became a heavy burden for international airlines, especially those in competitive markets. In the year 1975, the unused capacity on the North Atlantic was equivalent to 15 000 empty Boeing 747 round trips, or more than 10 million unsold seats.[29] Still, none of the airlines were willing to abandon operations or even just specific frequencies. Since the designation of frequencies by bilateral government negotiations was a fairly lengthy process, losing a specific route often threatened to have real effects on long-term shares in the international aviation market.

4.2. US bilateral reform efforts

The US set out to reduce international regulation in the late 1970s, motivated by the same logic that eventually led to domestic deregulation. The change in the US policy towards international aviation was brought about by the Carter administration which took over the White House in 1977. "Consumerism" had been a key element of Carter's election campaign. A growing economic literature on the disadvantages of regulation contributed to this political objective. Airline regulation in particular became a target of economic analyses, who underlined that consumers were paying much higher fares than the cost-oriented fares that

[29] This metaphor was used by Knut Hammarskjöld in a public speech in 1977 and is cited by Jönsson (1987: 43) and Sochor (1991: 34).

would be possible under a competitive system (Caves 1962; Jordan 1970; Douglas/Miller 1974). The appointment of the Cornell economics professor Alfred Kahn as the chairman of the CAB in 1977 indicates how much of this thinking has actually influenced the orientation of US aviation policy.

In October 1977, the White House produced guidelines on international aviation policy, further developed by DOT and published in May 1978. Following public hearing that summer, a statement on International Air Transport Negotiations was signed in August 1978 enshrining the idea that "maximum consumer benefits" can only be obtained through "the extension of competition between airlines in a fair market place."[30]

4.2.1. Revising bilaterals and attacking the price cartel

The US government tried to implement these policy objectives through multiple routes. A first consisted in the renegotiation of existing bilateral agreements, initially predominantly with European countries. US negotiation objectives were to obtain multiple designation (assigning more than one carrier on an international route), break of gauge rights (changing the size of an aircraft for the short leg of a connecting flight), unilateral low-fare pricing (obtained through a "double disapproval" mechanism) and the right of the "country of origin" to determine regulation and prices for traffic originating in its home territory (cf. Jönsson 1987: 37).

The United States started negotiating with one country at a time to advance their new international policy. Since the British had opened negotiations in 1976 before the various objectives of the US had been clarified, however, "the British got more and gave away less than their European counterparts did a year or so later" (Doganis 1991: 57). The UK-US

[30] Office of the Federal Registrar (1978), *Weekly Compilation of Presidential Documents,* Washington D.C.: 14/34, 2 August.

bilateral signed in July 1977 was named Bermuda II. The UK achieved important gains on traffic rights, i.e. access to the US market, and restricted the US wish for multiple designation to two routes only: New York - London and Los Angeles - London. On several issues, Bermuda II was much less liberal than the US would have liked.[31]

Bermuda II was nonetheless the first break with traditional form air service agreements. However, subsequent agreements were to be more comprehensive. The most important impetus was created by the US-Netherlands agreement, signed in March 1978. The Dutch administration shared the US belief in the benefits of competition-oriented aviation and the final agreement was therefore much less restrictive than Bermuda II. The US government also started negotiations with Belgium and Germany, who then could not afford to be less liberal than the Dutch, because of the close geographical proximity. Indeed, the US negotiating team could now argue that traffic can simply be diverted through Amsterdam if countries close-by offered conditions that were too restrictive. Several European countries negotiated more liberal agreements with the US, which then continued beyond Europe and started negotiating with Israel, the mid-Pacific and several Asian markets. However, the American negotiation offensive was met with resistance by some of the most important aviation nations, such as Britain, France, Italy, Australia and Japan.[32]

A second route through which the US was pursuing its policy objective of greater liberalization was through a direct attack of the price-setting capacity of IATA. Previously the price cartel operated by IATA had been exempted from anti-trust legislation in the US.[33] In June 1978, the US CAB issued an order requiring IATA to "show cause" why this exemption should exist. If IATA failed to do so, the anti-trust exemption would be withdrawn, which

[31] Within a year, it was attacked as being too protectionist. Early in 1990, the two governments agreed to set up a joint working party to deal with the fundamental problems arising out of Bermuda II (Doganis 1991).
[32] On the failure of negotiations with Japan, see Richards (1999: 30-31).
[33] The immunity, which had been fixed by the Bermuda I agreement, was periodically renewed until 1955, when the CAB decided to grant anti-trust immunity for an indefinite period.

implied that all airlines flying to and from the US would be subject to a legal proceeding if they applied IATA tariff agreements. In numbers, this threat applied to 40% of IATA airlines (Doganis 1991: 62)

The CAB's show cause order resulted in virulent protest from IATA, foreign airlines and governments, which organized to put pressure on the US Department of State to ask the CAB to withdraw its order (Jönsson 1987: 127-151). The CAB, which had already been ordered to cease its own operations by the end of 1984, continued to press for less economic regulation in international aviation as well. On April 20th 1980, the CAB concluded that IATA tariff agreements substantially reduced competition, withdrew US airlines from IATA pricing agreements, but granted US approval for a transition period of two years.

The US show cause order contributed to eroding the IATA price cartel. The immediate effect was the withdrawal of US airlines, some of which returned to participate in trade association activities only. Following the abandonment of the show cause order, some US airlines began to participate again in the tariff process. But by 1990, only Flying Tigers, American, Pan American, TWA and United were again full members of IATA, of which three have merged or ceased operations today. Other US airlines were members of only the IATA trade organization, while some remained outside IATA altogether (Doganis 1991).

The CAB order had furthermore required a tariff experiment to be pursued in the North Atlantic area. In practice, however, such a policy cannot be instituted unilaterally. The US Department of Transport therefore sought to replace the show cause order with a multilateral agreement on pricing with it European partners. A major breakthrough came in May 1982 when the US government signed a pan-European deal with the regional European branch of ICAO, the European Civil Aviation Conference (ECAC). The agreement removed

IATA from setting fares on North Atlantic routes and agreed on fare floors and ceilings, which it called “zones of reasonableness”.

4.2.2. Strategic alliances and open skies

Despite these attempts to make the bilateral system less rigid, many of the fundamental elements of the international architecture remained in place. The attempts of airlines and the US government to adapt their strategies to the constraints of the bilateral system therefore led to the interconnected developments of strategic alliances and the US policy of “open skies” in the 1990s.

Experiences in the US domestic market consolidation during the 1980s showed that the airlines most likely to survive were those that exploited economies of scale. Since consolidation beyond national boundaries was impeded by the very strict nationality clauses fixed in the bilateral agreements, the seminal response of airlines was to pool their resources through alliances. With this pooling strategy, airlines can add destinations to a route network and offer increased frequency of services to customers by using its partner’s flight entitlement without having to acquire resources.

While the mid-1980s was the high time for merger, acquisitions and alliances within the domestic US market, cross-border alliances only started in the late 1980s, notably with a joint-marketing initiative of Delta, Swissair and Singapore Airlines. More ambitious mergers seemed virtually impossibly because of the tight specifications of the bilateral air service agreements. However, the financial difficulties of two American carriers, Northwest Airlines and USAir, marked an important turning point, as foreign investment into the ailing airlines seemed one of the few feasible solutions. At the buyout of Northwest Airlines in 1989, KLM proposed to become an equity partner offering $400 million as part of the total buyout of Northwest of $3.7 billion. KLM was the world’s twelfth largest airline but it came from a

very small country and was therefore eager to extend its activities beyond the Dutch borders in order to strengthen its position (Dierikx 1998). In the US, foreign ownership restrictions made such investment highly controversial, all the more since the financial weakness of US carriers indicated that similar deal would then take place in the future. Indeed, British Airways was interested in investing in USAir, which had comparable problems at the time. Political leaders in Minnesota and Michigan lobbied the federal government to support a deal of Northwest with the KLM Royal Dutch Airways, while leaders in Pennsylvania and New York worked to help secure USAir investment from British Airways (Tarry 2000). In order to dampen concerns of foreign takeovers, the financial investment agreements were tied to restrictions in the voting rights of foreign shareholders, which had to remain under the 25% limit.

The European interest in merging with ailing US carriers opened up an unexpected opportunity for US policy-makers. Since strategic alliances required an approval by both governments, most notably anti-trust immunity in the US, the US government held a bargaining leverage in its hands that it employed to open up foreign markets for its air carriers. Especially United, Delta and American Airlines, who had bought the majority of international routes from the traditional international carriers TWA, Pan American and Eastern Airlines, were in an excellent position to expand aggressively into foreign markets. However, with the exception of a very liberal-minded few countries, most foreign governments were not keen on the idea of opening their markets to the US predators. When the financial difficulties of Northwest and US Airways made cross-border alliances into the US market attractive to foreign carriers, the US government made the facilitation of alliances an integral part of its efforts to gain access into the European market.

This rational was at the base of their "open sky" policy. An open sky agreement is a liberal bilateral agreement that replaces the traditional air service agreements between the two countries. Under an open sky agreement, both countries accept open entry on all routes, unrestricted capacity and frequency, flexibility in setting fares, liberal charter and cargo arrangements, open code-sharing opportunities, and operation of computer reservation systems on a non-discriminatory basis. The only restrictions that remained concerned foreign ownership and the right to operate domestic services in the other countries, the so-called "cabotage".

Since alliances were made with countries that had only one international airline, the calculation worked out: what was good for KLM was good for the Netherlands, and so the government considered the trade-off a fair one. The first open-sky agreement was signed between the US and the Netherlands in September 1992. After a package of open sky agreements with smaller European countries, the next important step was an open sky agreement with Germany in May 1996, with antitrust immunity being granted to an alliance between United Airlines and Lufthansa (Bartkowski/Byerly 1997). By the end of the year 2002, 86 open sky agreement had been signed, 59 of them with the United States.[34]

4.3. Avoiding multilateralism

The bilateral reforms of the US government have largely remained with the old architecture of the Chicago system, which required that governments negotiate the business conditions of its airlines, remained in place. This is all the more surprising, since both the US and the EU agreed on the fundamental flaws of the international architecture. Neil Kinnock (1997), the former EU Commission for Transport, has argued:

[34] To date, the only plurilateral open sky agreement remains the APEC agreement. For further information, see http://usinfo.state.gov/regional/ea/apec/opensky.htm.

> International air transport is, by some measures, the most technologically advanced industry in the world. And yet, it is still ruled by an archaic patchwork of restrictive bilateral treaties that puts government negotiators at the forefront of airline corporate planning.

This assessment echoes what Jeffrey Shane, the current Under Secretary for Policy at the US Department of Transport, has pointed out ten years earlier:

> What we have is the strangest of paradoxes: a global enterprise boasting some of the world's most advanced science and engineering that operates according to anachronistic, mercantilistic rules consciously crafted to impede efficiency and opportunity.[35]

Such critical analyses became common in Western countries in the late 1980s and the 1990s and economists have insisted on the welfare benefits of a more complete liberalization (Kasper 1988; Dresner/Tretheway 1992; Maillebiau/Hansen 1995; Gudmundsson/Oum 2002). The perceived imbalances of the present system, but also a general market-oriented framing of services exchanges, have led several countries and international institutions to start thinking about new approaches to liberalization. The OECD (1997; 2002) has become especially active in the late 1990s through a number of conferences and publications.

While the trade facilitating aspects of aviation are comparable to those of telecommunication services, user groups have been less active visible on the issue of international air transport. Even though they major business users agreed with the analyses proposed by air transport economists, they did not rally behind a particular global solution proposal (Young 2002: 112).[36] Instead, user groups concentrated on the promotion of regional arrangements, especially with respect to the European context in the late 1980s and 1990s.

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[35] At the time, Jeffrey Shane was Deputy Assistant Secretary for Transportation Affairs at the State Department, the central position for the negotiation of international air traffic agreements in the US administration. Jeffrey Shane (1988), "Challenges in International Civil Aviation Negotiations," Speech before the Wings Club, New York City, February 26, reprinted in Public Information Series, US Department of State, 1988.

[36] User groups include general business and consumer associations and the British Air Transport Users' Council (ATUC). In response to current event, ATUC has undertaken research on the question of a US-EU agreement very recently. For a list of user comments on the topic, see www.auc.org.uk and http://www.chambersireland.ie/index.asp?locID=241&docID=-1.

4.3.1. Concentrating on regional liberalization

One of the central priorities of the European Roundtable of Industrialists during the late 1980s and early 1990s had been the transport infrastructure in Europe (Richardson 2000). The working group on transport infrastructure of the ERT shared the critical analysis, characterizing the air transport regime as "approaching […] crisis".[37] Similarly, the ICC organized a Committee on Air Transport, which works to promote the liberalization of international air transport, arguing that it is "time to move beyond the bilateral system" (International Chamber of Commerce 2000). Since regional liberalization was much more feasible than a complete revision of the international system, however, these transnational lobbying groups tended to concentrate on European liberalization (O'Reilly/Stone Sweet 1998: 447-9).

Besides the integration of international aviation within the EU, several other regional agreements have helped to advance liberalization plurilaterally for specific regions. Led by US effort, five countries from the Asian Pacific region have signed the first truly multilateral open sky agreement in November 2000, known as the APEC open sky agreement. The signatory countries are the US, New Zealand, Singapore, Brunei and Chile, but the APEC agreement is open to further entrants.[38] Two other agreements on the principles of liberalization have been signed by six South American states in 1997 and African states in 2000.

Yet the real challenges seem to lie in a more encompassing multilateral agreement. Ideas about potential liberalization scenarios do not seem to be lacking (Kasper 1988: 113-121; Mifsud 1988; Findlay/Hooper/Warren 1998; Abeyratne 2001; Hübner/Sauvé 2001;

[37] European Roundtable of Industrialists (1989), "High Priority: Need for Renewing Infrastructure in Europe," Brussels: European Roundtable Secretariat, p.11.
[38] For further information, see http://usinfo.state.gov/regional/ea/apec/opensky.htm.

Janda 2002), but the difficulties occur when putting them into practice. In essence, the proposed solutions boil down to two options. Air transport could be integrated in the WTO framework or ICAO could assume a more substantial role in economic regulation. However, with respect to hard traffic rights neither one of these possibilities has been particularly viable, as the last fifteen years have shown.

4.3.2. Air transport in the GATS

As early as 1980, Dutch aviation experts made a proposal for a plurilateral agreement on international air transport, a "type of super GATT for air services" (Kasper 1988: 56). The proposal foresaw selective liberalization of air services among signatory countries that would agree to liberalize significant aspects of international air transport, but could also maintain specific measures of sovereign control. Similar to the GATT design, the proposal foresaw market access on a non-discriminatory MFN basis. It furthermore dealt with air transport explicitly as "trade in services", a new born concept that had then been advanced by the expert community in the US. The Dutch government made vigorous promotion efforts for the concept proposed by KLM's Henri A. Wassenbergh and Kees Veenstra, but with very limited success.[39] Neither the European neighbors, nor the US government were very receptive to the ideas proposed by the Netherlands.

The question nonetheless surfaced again during the Uruguay Round in 1988, because it needed to be determined if an agreement on services should apply to all service sectors or only selectively listed one.[40] Several countries had preferences to exclude one or another sector, while other warned that this exceptionalism would lead to a weakening of the GATS.

[39] Henri Wassenbergh published a manuscript entitled "International Air Transport: A Trade in Services", which is in essence reproduced in Cheng (2000). The ideas are furthermore laid out in Wassenbergh and van Fenema (1981) and Veenstra (1981).

[40] These two possibilities are referred to as a negative list approach, where the GATS covers all sectors except for those explicitly exempted, and a positive list approach, under the which the GATS only applies to sectors specifically listed.

Sectors whose coverage remained in doubt were land, sea and air transport, financial and audiovisual services.[41] The spokesman for an exclusion of air transport from the provisions of the GATS was the US, who argued that the governance of this sensible military and infrastructure service should remain within the hands of states. A representative of the US government explains that the GATS did not seem like a viable alternative to the existing architecture:

> When the GATS was set up, there was no system that covered trade in services whatsoever. Except in air transport. So including air transport in the GATS would lead to a lowest common denominator of the least liberal country. That was contrary to our interests, because we were already very liberal.[42]

The US position quickly won the support of other countries.

> For transport services, many countries wanted to see a move from bilateral agreements on sea transport towards a more multilateral opening up of markets; in contrast, most countries accepted that air transport would for the foreseeable future remain dominated by bilateral agreements (Croome 1995: 248).

An Annex to the GATS specifically excluded hard traffic rights from the provisions of the agreement, based on the argument that one cannot simply replace over 2 000 bilateral air agreements with one single multilateral one. Several soft rights, however, are covered by the GATS: (1) aircraft repair and maintenance services, (2) the selling and marketing of air transport services and (3) computer reservation systems.[43] The Annex provided furthermore for a periodical review of at least every five years.[44] Accordingly, the WTO launched a review process of the GATS Annex on Air Transport in 2000 with a possible focus on expansion of the Annex, notably on both soft rights and hard rights.[45] Even for the soft rights already

[41] The different nature of service sectors also led to discussions about how to treat financial services and whether there was a need for special annexes for financial services, telecommunications, transport and audio-visual services.
[42] Interview in Washington D.C. on 16 April 2003.
[43] The GATS Annex on Air Transport Services is reproduced in Annex 8 of this dissertation.
[44] Article 5 of GATS Annex on Air Transport Services.
[45] See Frances Williams, "WTO seeks to spread its wings over air services: But there is little support among members for giving the organization a role in passenger traffic," *Financial Times*, 29 September 2000, p.2.

included, ambivalence had pervaded the interpretation of their exact meaning: less than 35 WTO Members had made commitments on the first two activities (repair/maintenance and selling/marketing) by 2000, and only five have committed to participating on computer reservation systems.[46]

The EU and several other countries have tried to include other soft rights, most notably ground handling, into the Annex, but the US government opposed all widening of the provisions, insisting "if something is not broken, do not fix it," (Loughlin 2001). With the agreement of most signatory countries of the GATS, the US continues to argue that that the MFN principle is not appropriate for air transport. In their view, "the current system of exchanging rights reciprocally, through bilateral, plurilateral and regional agreements between like-minded countries has been successful and continues to work well," (Loughlin 2001). The GATS framework simply cannot assure reciprocity in air transport market opening.

4.3.3. The difficult role of ICAO

Although not all participants in the present system agree that the current approach works well, there is a general sense that the bilateral negotiation practice and the intergovernmental structure provided by ICAO are appropriate for international air transport. But in the face of persisting rigidities, ICAO would have to assume a more dominant role in international economic regulation in order to allow liberalization to move beyond bilateral or regional agreements. Indeed, ICAO realized that they had become active if it did not want to be marginalized on the issue. When the US set out unilaterally to reform the international constraints on its airlines, ICAO organized a Special Air Transport Conference in April 1977. ICAO had not been active on economic regulatory questions since the Chicago conference in

[46] An overview of the GATS coverage of air transport can be found on the WTO's web site http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_air_e.htm. See also WTO (1998).

1944, but nonetheless proposed to discuss the rate situation and the frequent violation of IATA price agreements, charter operations and capacity regulation. Within ICAO, the US was very much isolated in their search for more competition in international aviation even though some countries agreed with the short-comings of the Bermuda system. By the time ICAO held a Second Air Transport Conference in 1980, however, opposition was slowly weakening. At the Third Air Transport Conference in 1985, regulatory reform had become accepted by most important member countries "albeit more out of necessity than conviction" (Sochor 1991: 37).

Through its three initial world wide air transport conferences in 1977, 1980 and 1985, ICAO had sought to establish itself as the body responsible for the design or reform of the international aviation architecture. During these years, the US had been particularly active at trying to reform the restrictive system unilaterally and dismantling the price-setting power of IATA. For almost ten years, no further conference took place, but the early 1990s saw the conclusion of the Uruguay Round, the GATS discussion and the first open sky agreements negotiated by the US government. A Fourth Worldwide Air Transport Conference was therefore convened to discuss the future direction and stability of the international regime. The conference concluded that national sovereignty was essential to the organization of international air transport. Any regulatory changes should be evolutionary, with each state determining the pace and path of change in international regulation. Since the 1994 ICAO Conference, this individualistic approach has led to an asymmetric liberalization, with considerable advances in some markets and none in others.

This asymmetry precisely illustrates the problem of ICAO's role in international regulation. With its very wide membership, ICAO has difficulties to formulate a policy stance that all parties can agree to. Over time, the gap widened between countries interested in international liberalization and those feeling threatened by it, mostly smaller developing

countries but also some larger developed ones. Bilateral and regional development and propositions made in the context of the GATS Review seemingly threatened ICAO's role in international economic regulation. Indeed ICAO had been lagging behind its time. The Organization's position on the regulation of air transport services was formally adopted at its 7th Assembly held in the summer of 1953, where the Assembly resolved that the achievement of multilateralism in commercial rights remained an objective of the Organization, but there was at the time no prospect of achieving a universal multilateral agreement. In March 2003, ICAO tried to catch up by holding its Fifth Worldwide Conference with the title "Worldwide Air Transport Conference: Challenges and Opportunities of Liberalization". However, the large number of very divers member countries makes an innovative approach through ICAO improbable.

> ICAO is everybody in the world. Every country is a party, so the documents that come out are going to reflect this multitude of views. I mean, it is like sausage being made. And the declaration that came out was a bit like that.[47]

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In the 1970s and 1980s, the traditional regime of international air transport has been put into question by technological and economic developments that are largely comparable to the changes in telecommunication services. In both cases, the US has had a strong interest in reforming the system and pushing for more competitive international markets. For the case of air transport, however, this has not led to a multilateral solution, either through the GATS or through ICAO. In fact, it was the US who precluded multilateralism on international air transport, defending the international architecture that it had set out to reform unilaterally and bilaterally between the late 1970s and the 1990s.

[47] Interview with a US government representative, Washington D.C., 10 April 2003. The analogy with sausage is drawn from a common citation: "There are two things you should never watch being bad: law and sausage." Nonetheless, even critical observers agree that the ICAO conferences are an important forum for advancing the ideas of liberalization, even though they are not sure what this means in "dollars and cents".

Chapter 7

NEGOTIATING THE LIBERALIZATION OF INTERNATIONAL AIR TRANSPORT

The liberalization of air transport thus did not happen as part of the GATS in the 1990s as was the case for telecommunication services. Nonetheless, the traditional state-centered architecture continues to be under pressure. While the US has bilaterally achieved a degree of liberalization that it considers satisfactory, the EU continues to press for a more comprehensive reform of global aviation markets. In the early 2000s, this EU activism has led to the negotiation of a transatlantic aviation area which would not be subject to the traditional restrictions anymore. Since these negotiations constitutes a setting during which market structures for both trading partners are defined, their study offer itself for a comparison with the GBT talks on telecommunication (see also Warren/Findlay 1998; Larouche 2000; Young 2000)

The following chapter accounts why and how the negotiation of an US-EU aviation area came about and what is at stake in these talks, which still continue at the time of writing. After examining the evolution of contacts and cooperation between air carriers and governments in both the US and the EU, it traces the evolution of the two negotiation positions. A fourth section then summarizes the preferences and political strategies of businesses and governments on both sides of the Atlantic.

1. Historic overview of US-EU negotiations

Open sky agreements are the most liberal air service agreements to date, because they effectively remove the obligation to renegotiate specific flight conditions once the agreement is signed. Within an open sky, airlines operate like normal businesses, so the air service markets resemble more and more markets in other sectors. However, the liberalization has fallen short of creating truly *global* markets. Governments remain firmly in control of who they grant the right to operate flights, how to regulate the provision of these services and which kind of obligations they chose to put on carriers. Most importantly, governments continue to restrict operations to national carriers, which are defined by ownership restrictions and conditions on the right of establishment of a carrier in a foreign country.

European observers have therefore argued that open sky agreements are an important step in the pursuit of liberalization, but global liberalization would need to move beyond the open sky framework. The perceived imbalances have led industry within Europe to start thinking about new approaches to liberalization. In the mid-1990s, European flag carriers started organizing for reform beyond the US open sky policy. After some initial discussion within the EU, the Association of European Airlines proposed a plan for a so-called Transatlantic Common Aviation Area (TCAA).[1] The European Commission enthusiastically supported the AEA project and made it its own policy objective for international aviation relations.

However, the European Commission had no competency on external aviation relations, not even after the completion of the European aviation area in 1997. External negotiations over traffic rights, which the TCAA would necessarily include, were still under

[1] Association of European Airlines (1995), "EU External Aviation Relations," Policy Statement, Brussels: Association of European Airlines; and (1999), "Towards a Transatlantic Common Aviation Area," Policy Statement, Brussels: Association of European Airlines.

firm control of the member states. An EU delegation nonetheless went to Washington, D.C. in December 1999 and proposed the TCAA to the US government and its major airlines on behalf of the Member States. Even though the US side was quite intrigued by the proposal, they found it "overly ambitious" and "very European".[2] With the lack of a real negotiating power on the European side, the US therefore just shrugged their shoulders and told the Europeans to come back when they had a comprehensive mandate for external relations.

Indeed, the European Commission had worked towards a mandate by both trying to convince Member States of the benefits to negotiate a common agreement and seizing the ECJ to decide on the competence question. The first Commission proposals on external competences date back to February 1990 and March 1992, which the Council refused in 1993. In April 1995, the Commission raised the matter once more and gained a limited negotiation mandate under which it has been able to negotiate agreements with countries such as Norway, Sweden, and Switzerland, and which provided the basis for first contacts with the US. In December 1998, the European Commission then brought seven cases against the open sky agreements of the Austria, Belgium, Denmark, Finland, Germany, Luxembourg and Sweden and an eighth against the UK-US "Bermuda II" agreement in December 1998.[3] A second batch was later brought to the ECJ against countries that had concluded open sky agreements with the US after that date. In particular, the Commission has argued, first, that the body of law applying to aviation has evolved so substantially, that the Community should have exclusive competence over external aviation, and second, that elements of the bilateral agreements were already covered by Community legislation. Meanwhile, DG TREN commissioned a study on the benefits of an open aviation area between the EU and the US

[2] Interviews in Washington D.C., April 2 and 10, 2003.
[3] In October 1999, the Netherlands decided to join the Court cases in support of the other member states.

from an American consultancy, the Brattle Group, to gather positive arguments for an EU-wide negotiation with the US.

On November 5, 2002, the ECJ ruled largely in favor of the European Commission, but underlined that the negotiation of traffic rights with third countries remained in the hands of the member states.[4] The Commission was nonetheless able to employ the ruling to create a real urgency on the question. In a first communication dated November 19, 2002, it called upon the member states to denounce existing operations under the agreements in question.[5] The request was clearly too radical to be put into practice, but the European Commission sought to underline that it would necessarily have to be part of a new solution.

The US government did not necessarily see why this would be the case. To them, the ECJ ruling had underlined that the Commission was *not* competent for external aviation negotiations (Dean 2003). If the nationality clause of the open sky agreements and the Bermuda II agreement would have to be changed, to include the notion of a European or "community" carriers, then this would logically have to be negotiated between the member states and the US government. Since the US government was very open to reconsidering the nationality clauses, it proposed a meeting with its traditional negotiation partners in Paris in February 2004.

Yet the Commission was not willing to be sidelined. Without invitation, a representative from DG TREN appeared at the Paris meeting and reminded the member states of the ECJ judgment, which stated that ownership and control was under Community

[4] Following the Commission's arguments, the ECJ rulings can be divided into two parts. It first evaluated whether the evolution of EU law necessitates a Community competence. With respect to licensing and access, i.e. the negotiation of traffic rights, it could not find such coverage. The Community is therefore not competent for traffic right negotiations. It did however find Community competence with respect to slots, intra-European fares and computer reservation systems. The ECJ also upheld the second argument of the Commission: ownership and control were indeed covered by EU legislation applied to ownership and control. Member states are thus in breach of their Treaty obligations when it comes to the bilateral ownership and control clause.

[5] European Commission (2002), "Communication from the Commission on the Consequences of the Court judgment of 5 November 2002 for European Air Transport Policy," COM 2002 649 final, p.15

competence through Article 43 (ex. 52) of the Treaty. Indeed, the ECJ ruling had left a real competence question for the future of air transport negotiations. While traffic right negotiations were outside of Community competence, several aspects negotiated within the agreements were within it. This paradox blocked member states from negotiating alone with the US, but did not provide a legal base for the Commission entering into negotiations with the US.

In a second communication on February 26, 2003, the Commission reiterated the need for a negotiation mandate, but modified its initially somewhat aggressive position, by arguing that it was necessary to distinguish between the infringements and the need for a wider mandate.[6] The Council of Ministers finally granted a negotiating mandate for external aviation talks with the United States on June 5, 2003.

Immediately afterwards, the Commission scheduled appointments with the US government to negotiate a transatlantic aviation agreement between the two parties. By 2004, the Brattle Group had furthermore issued its report on the project under the name "open aviation area" to mark a break with the old TCAA (Moselle et al. 2002). Negotiations over an US – EU open aviation area have led to a series of different meetings in Brussels and Washington between September 2003 and the time of writing and have not led to a conclusion as of yet.

Essentially, the EU negotiating team is trying to agree on the European blueprint for an open aviation area, while the US would like to transform the nationality clause into a "European clause" and then achieve a US-EU open sky according to the traditional open sky model. The principal difference between the two designs lies in the restrictions on ownership and control and cabotage rights. In the scenario preferred by the European negotiators, both

[6] European Commission (2003), "Communication from the Commission on relations between the Community and third countries in the field of air transport," COM (2003) 0094 final.

markets would be opened up to carriers from the trading partner, even for intra-European and US domestic traffic. In an US-EU open sky, the domestic market would remain accessible to "US carriers" only.

2. Business Interests

The relationships between international airlines and governments is different that regular business-government interactions, simply because of the size and weight of the individual companies and the national interest in having a successful aviation industry. Nonetheless, differences exist between the US and Europe, where flag carriers were often maintained a tight symbiosis with their respective governments. The following section examines how the different traditions play out in the business-government contacts in the US and the EU and then turns to the evolution of airline preferences on external aviation issues.

2.1. Relations between airlines and governments in international affairs

2.1.1. In the United States

The mobilization of airlines in the US depends on the issue that presents a political stake. The principal issue in international affairs is the negotiation of bilateral air service agreements with foreign countries. Frequently, these bilateral negotiations may touch upon commercial interests, above all in the case of open sky agreements. Some issues are transversal and affect the industry as a whole, but these are most often domestic. Only few issues, such as the review of the GATS Annex on Air Transport, are purely international, transversal issues. Even though the organization of business advocacy varies between these four different issue areas, all four areas have in common that the principle way of representing

the airlines interests happens informally, through direct and close contacts between government and airline representatives.

The State Department and the Department of Transport (DOT) are in charge of negotiating bilateral agreements. The State Departments is the government branch responsible for contacts with foreign governments and therefore leads the negotiations, while DOT has the policy experts. In fact, DOT inherited all international responsibilities and portfolios from the CAB, when it ceased operations in 1985. DOT is therefore also the regulatory agency that grants economic authority and approves anti-trust immunity. Only safety and environmental regulation is in the hands of the FAA. The regulatory function of DOT is immediately important for the US open sky policy, because DOT negotiators have both their airline interest in mind and the authority to grant immunity.[7] The bilateral negotiating team is furthermore complemented by a representative from the Department of Commerce, who has the responsibility of keeping in mind the industry's view. Furthermore, the Justice Department might be present for specific anti-trust issues, the DOD, when the negotiations touch upon security concerns, and sometimes even the Treasury Department might come for custom issues, which have recently been transferred to the Home and Security Department. A US government representative summarizes, "there is no custom set other than State and DOT, who are always there."[8] Indeed, all airlines cite these two departments as the most important contacts.

All government representatives explain that they maintain their ties with airlines through regular phone calls and e-mails. All international airlines have at least one person, who is responsible for international affairs in the government affairs department of the company, which is based in Washington D.C.. "The airlines are not the bashful types:

[7] Interview with an official from the European Commission, Brussels, 10 September 2003.
[8] Interview with a US government representative, Washington D.C., 10 April 2003.

whatever the negotiation, you would generally hear from them."[9] However, for actual negotiations, there is also a formal written procedure which gives all relevant stakeholders the opportunity to comment. But even without the formal procedure, a government official underlines, most stakeholders are already well informed.

> Everybody knows what is going on. We usually have a preparatory meeting to frame the issues and discuss things with them. During those meetings, when they all sit in front of each other, they do not say a lot. What they really think, they will tell us privately, though calls and mails.[10]

During negotiations, US carriers are equally present and have a change to express their opinion. The representative of an airline explains:

> We take a seat at the table and the US government seeks our council in areas that they know affects a respective carrier. And we might be invited to speak up. The US government does a very good job in assuring that they are not negotiating away opportunities for US corporate interests.[11]

Carriers need the US government to assure the business opportunities, but the US government also has to rely on the information of the carriers for which it tries to create new opportunities. This makes co-operation between the government and the airlines very close. One airline representative even consistently refers to the US delegation as "we", underlining the fusion between airline representatives and government negotiators.

The objective of bilateral negotiations is to assure the best possible conditions for the operation of US carriers, so the initiative for a specific agreement can come from different sources. A US government representative explains that the administration has an explicit policy to seek open skies everywhere, but in other cases, the industry is behind a new agreement:

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[9] Interview with a US official in Washington D.C., 19 May 2003.
[10] Interview with a US government representative, Washington D.C., 24 April 2003.
[11] Interview with a US airline representative, Washington D.C., 3 April 2003.

> For example, Hong Kong. The government was interested to get a better agreement, but we were very much pressed by American Airlines and UPS, which wanted to get into a market where FedEx already was. So they pressed us very hard to get an agreement, and that's why we got what we did.[12]

Air carriers attend most negotiations that they are interested in, but they do not always come along. Their association, ATA, however, is sure to be present. In fact, air carriers only gained the right to sit in on negotiations in 1992. Before that, ATA was the representative for all major carriers collectively. ATA was allowed to sit in at negotiations, and would then report back to the airlines. Some airline representatives might come along to foreign negotiations, but they waited outside the door until ATA gave them an update.[13] Interestingly, while it is generally the US which exports its model of business-government contacts, the inclusion of US carriers came about in response to the presence of foreign carriers at bilateral negotiations.

> We would have the airline of the partner country there as well, because it was often owned by the government. So the reasoning was that if the foreign airline was allowed to be at the table, our airlines should be allowed to be at the table as well.[14]

Even today, ATA is still responsible for taking the unofficial minutes of bilateral meetings for the US side, which are then circulated among the US government and member carriers. Over time, ATA has developed into a tight liaison with the government. The group evolved from being a commercial airline promotion group to being an important source of expertise on air service provision.[15]

On commercial issues, the contact between airlines and the US government is somewhat less tight, simply because US carriers are in competition with each other and the government is responsible for finding the best possible solution for all stakeholders. In

[12] Interviews with US government representatives, Washington D.C., 10 and 16 April 2003.
[13] Interview with US government and airlines representatives, Washington D.C., 27 March, 3 and 10 April 2003.
[14] Interview in Washington D.C., 27 March 2003.
[15] Interview with an airline representative, Washington D.C., 27 March 2003.

bilateral negotiations, commercial concerns arise when it comes to designation, the allocation of frequencies or slots. In fact, airlines were disputed over the question of direct airline participation in bilateral meetings for that reason. While Delta and American insisted that carriers should be at the negotiating table, United and TWA opposed it, arguing that this might disrupt the bilateral negotiations, since carriers would try to scramble for their individual benefits.

> What happened is that there was less activity at the table and a lot more in separate meetings where nobody would have access to it. […] When everybody was at the table – 25 to 30 people – pleasantries were exchanged and sort of prescriptive discussions. But the real negotiations moved into a behind closed doors situation. […] We do send somebody to all of these negotiations. It's just that most information doesn't come from the actual negotiations, but more from the cocktail parties and all of the events that go on around the negotiations.[16]

Commercial disputes may also arise in open sky agreements, where the issue might be the alliance of a competitor. In 2000, for example, Delta and Continental Airlines lobbied and even testified before the British parliament against an alliance between British Airways and American Airlines, which they argued would drive them out of the market.[17]

These individual concerns explain why airlines cannot pool their resources through ATA in order to work effectively on international commercial issues. The personal contact between representatives and public officials becomes crucial in these contexts. On specific legal issues, airlines might also hire outside consultants.[18] Furthermore, airlines who have invested heavily into their opportunities abroad sometimes chose to maintain a representative directly in Brussels. Yet generally, lobbying concentrates on the US government. Only American Airlines has had a full time person in Brussels for about a decade. United Airlines

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[16] Interview with an airline representative, Washington D.C., 2 April 2003.
[17] House of Commons (2000), "Environment, Transport and Regional Affairs – Minutes of Evidence," Session 1999-2000, 14 June, available online at http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmenvtra/532/0061401.htm.
[18] Interview with US airline representatives, Washington D.C., 27 March and 3 April 2003.

also has a European representative based in Dublin. Other carriers argue that such representation is not worth its costs, asking "what did American Airlines achieve that we didn't get?"[19] Cargo carriers are more affected by European legislation and therefore both FedEx and UPS have full time staff in Europe.

In some cases, carriers might form a coalition of like-minded companies that pool their resources, but without relying on ATA. Such an *ad hoc* coalition formed between Delta Airlines, Continental and Northwest Airlines, for example, who sought to defend their code-sharing alliance. ATA cannot speak out in favor or against such a topic, because it benefits too few of its members.[20]

On transversal issues, however, ATA is crucial for its airlines. Transversal issues are general policy issues. Even though most of them are domestic, they often also affect international services. "ATA plays when there is a common concern," agree all US carriers, and cite taxation or other forms of cost imposed on airlines.[21] ATA has therefore established a very well organized network of contact with the legislature on Capitol Hill. The association has been instrumental in organizing the demands of US carriers for government support in the aftermath of 9/11. The crisis has demanded the most amount of attention of government affairs representatives of all airlines, irrespective of whether they are normally in charge of international or bilateral affairs.[22] Individual airline CEOs back the collective effort through intensive visits to Washington, D.C..[23] After a first package of government aid in September 2001, ATA has gathered industry-wide information of the long-term effects and the overall difficulties of the industry and prepared a policy statement on the need further aid with the

[19] Interview with a US airline representative, Washington D.C., 25 April 2003.
[20] Interviews with US airline representatives, Washington D.C., 3 April and 24 April 2003.
[21] Interviews with US airline representatives, Washington D.C., 27 March and 3 April 2003.
[22] Interview with a US airline representative, Washington D.C., 3 April 2003.
[23] For the example of Delta Airlines, see Marilyn Adams, "Delta CEO Mullin navigates a complex, turbulent course: 'Last six months or so have been tough'," *USA Today*, 28 August 2003, p. 1B.

title "Airlines in Crisis: the Perfect Economic Storm".[24] A public official confirms the effectiveness of the airline lobbying efforts,

> They came out with their little glossy papers and charts. […] Ultimately, they did a very good job lobbying Congress and talking to Members [of the House of Representatives and the Senate] and convincing everybody.[25]

Even for coordination within ATA, informal contacts dominate and are maintained by electronic means. This is probably all the more true, when issues are not as pressing as the economic crisis in 2002 and 2003. A member of ATA's international affairs committee, which assembles representatives from all international US carriers, explains:

> To be honest with you, it meets about once a year […]. Works is done more through the intranet website and e-mail. It is very coordinated and outgoing statements are closely monitored.[26]

Besides cost issues and transversal domestic issues, ATA also deals with GATS related issues. Within the US government, the GATS is the responsibility of USTR and the traditional departments in charge of aviation. The Department of Commerce plays a more important role, however, because it has an already existing competency for service trade affairs, which the DOT does not have. ATA participates in the ISAC advisory committee structure, specifically in committee no. 13 on services, maintained by the Commerce Department. However, these formal procedures are not considered as being very important, as an airline representative explains:

> The benefits of [the ISAC committee No. 13 on services] is questionable because we are together with 500 other services, such as nursing and education. So it is not as useful as our direct contacts.[27]

In general, airlines mobilize individually and through their direct contacts once an issue becomes important. This is simply not the case for the GATS Review. The US

[24] Air Transport Association (2003), "Airlines in Crisis: the Perfect Economic Storm," Washington D.C.: ATA.
[25] Interview in Washington D.C., 19 May 2003.
[26] Interview in Washington D.C., 27 March 2003.
[27] Interview in Washington D.C..

government firmly insists that it will not advance any further on GATS coverage of air transport. For the negotiations of an open aviation area between the US and the EU, the pattern of government contacts follows the traditional bilateral air service agreement one. The US delegation comprises the usual departments of the administration and is led by the Department of State. All major stakeholders have been invited to join the negotiations. This includes the major associations: ATA, the National Air Carrier Association, the Airport Council International – North America and two union representatives from the Airline Pilot Association (ALPA) and the Coalition of Airline Pilots Association (CAPA). Individual airlines, airports, community representatives other stakeholders may also follow the negotiation. The US delegation thus has about 50 people, a size which they expect the EU delegation to have as well. [28]

John Byerly, Deputy Assistant Secretary of State for Transportation Affairs, who leads the negotiations for the US, underlines the importance of close consultation with airlines: "We think it is good to have industry very intimately involved in the talks because they are involved in the substance and you learn a lot if you perk up your ears."[29] Indeed, all airlines underline how important these talks might be and assured that they will follow them closely.

2.1.2. In the European Union

The interactions between airlines and government in the EU divide between contacts to their national administration and contacts with the European Commission. Traditionally, airline contacts with the air transport departments of their national governments are very tight. Flag carriers, who used to be part of the government in most cases, have always accompanied

[28] John Byerly (2003), "US Aims for Comprehensive Accord in Air Service Talks with EU," Speech delivered at the United States Mission to the European Union," 29 September, available at www.useu.be/Categories/Transportation/Sept2903ByerlyOpenSkies.html.
[29] Ibid.

their countries negotiators in bilateral negotiations and assist in all air political matters. The initiative for negotiating modifications to existing agreements now often comes from the carriers directly, although national aviation associations might mobilize as well.[30] National government are careful to take into account the interest of their flag carrier and in cases where there is only one international carrier, the national government acts somewhat as a direct negotiating division for the flag carrier. In many cases, it is therefore quite difficult to distinguish the interest of a national government and a flag carrier (Kassim 1996; Young 2002: 112).

Against the background of such tight relations, airline contacts with the European Institutions are much more distanced. An official from the European Commission explains:

> The CEO of a flag carrier can always get the relevant public official of his national government on the phone. They know us less well. […] The European carriers do not have the same level of intimacy with the Commission that they have with their member states.[31]

EU affairs are a strange task for government affairs representatives, who are used to having very close contacts with their national governments. With the growing importance of European legislation for aviation affairs, a number of European carriers have established Brussels-based offices. British Airways, KLM, Lufthansa, Air Lingus, SAS and Air France have in-house representation in the European capital. These small offices work in cooperation with the airline's government affairs department, which is generally based in the flag carrier's home capital or hub. However, some large European carriers, such as Alitalia, have not opened a Brussels branch.

Furthermore, several carriers, such as British Airways, also rely on outside consultancy, which monitors European legal affairs for the carrier and helps to organize

[30] Interview with a government official from an EU member state, 27 November 2002.
[31] Interview with an official from the European Commission, 21 October 2003.

specific events. Once issues become important, however, companies try to get into direct contact or rely on their association AEA.[32] Generally speaking, outsourcing to consultants happens most often on an ad hoc basis.[33]

Even with respect to European affairs, carriers underline the importance of the ties with their home government and their country's permanent representation in Brussels: "We always try to be in unison with our national government. It is never useful to not be in unison with our government."[34] This is especially the case for commercial issues. Like American carriers, European airlines do not work through their association when they are pursuing competition-related issues or try to defend their commercial interests.[35]

AEA is becoming increasingly important, however, especially now that the Community has been granted the competence to negotiate hard traffic rights with the United States.[36] Besides the monitoring of this new competence, AEA has also been the central organization for airline representation in Brussels for several decades. "AEA is certainly the most important one," agree airline representatives.[37] Other organizations exist and might be helpful for specific things. The European Aviation Club, for instance, facilitates dialogue between airlines and other stakeholders in the aviation business. More general business organization can also be useful, but they are limited by the fact that they do not deal with air transport matters only.[38]

Since AEA represents the former flag carriers, other airlines, such as Virgin or Atlantic, go through ERAA or the charter organization ICAA. Indeed, Virgin and British

[32] Interview with a European airline, Brussels, 13 November 2002.
[33] Interview in Brussels, 22 October 2002.
[34] Interview with a European airline, 18 November 2002.
[35] Interview with a European airline, 2 December 2002.
[36] Interview in Brussels, 21 October 2002
[37] Interview with a European airline in Brussels, 13 November 2002.
[38] Ibid. Most carriers are members of their country's industry association or chambers of commerce. Jürgen Weber of Lufthansa is also one of the rare service sector CEOs to be a member of the European Roundtable of Industrialists.

Midland are very interested international issues and the negotiations between the US and the EU, which touch upon one of their primary interests: Heathrow Airport. Besides the British stakeholder, however, few small airlines lobby actively on international affairs.[39] A Commission official underlines:

> The low cost carriers are interested, but from a distance. They follow, we see them, but they are not militant. Their interest are more in European regulation.[40]

Low cost carriers have only organized very recently at the European level. It was not until January 2004 that they founded their own lobbying association, ELFAA. However, the focus of this association has not been on transatlantic affairs. Rather, the formation of the ELFAA was a direct consequence of two European proposals that profoundly affected the operations of low cost carriers: the first was a Commission proposal on denied boarding compensation for airline passengers and the second was an investigation by DG Competition into the practices of Ryanair to receive airport subsidies for offering specific destinations.[41] Lobbying pertaining to international affairs thus comes from the airlines directly or from AEA, which in turn cooperates loosely with ERAA, the Charter Organization, IATA and ACA Europe.[42]

Only few airlines have decided to send representatives to Washington and most airlines are withdrawing their US-based representation in order to save costs. British Airways has withdrawn its representative in 2002 and the only airline that was left with in-house

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[39] Interview with a government official from an EU member state, 27 November 2002.
[40] Interview with a Commission official, Brussels, 21 October 2003.
[41] European Commission (2001), "Proposal for a regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights," COM 2001 784 final, http://europa.eu.int/eur-lex/en/com/pdf/2001/en_501PC0784.pdf. The press release on the Ryanair competition case C 76/2002 is available at http://europa.eu.int/comm/competition/older_headlines_en.html. See ELFAA's reaction to both at http://www.elfaa.com/press.htm. Of the 10 press reports released in the first six months of existence, 2 are on the launch of EFLAA, 1 on the passenger compensation directive, and 7 on the Ryanair-Charleroi ruling.
[42] Interview in Brussels, 21 October 2002. IATA even has its Brussels-based office in the same building as AEA.

representation in Washington in 2003 was KLM. KLM was also the only European airline that became a member in the American ATA. Yet the presence of these European carriers in Washington D.C. is a direct consequence of their commercial interests, not of their lobbying efforts on transatlantic issues.

Since contacts between the airlines individually and the Commission have not been very common, the Commission has been less sure how to constitute its delegation for the US-EU talks. At the first negotiating meeting in the fall of 2003, the Commission had therefore not yet established a final decision of the presence of European carriers. A Commission official explains:

> It's above all the member states that come with their carriers. Certainly, the idea is to work with them, but we have not yet agreed on a formal procedure. In October, they were there. But everybody say "Careful, this might be a precedent!" [43]

Indeed, the Commission is not used to having business representatives accompany the EU negotiators in any other sector. If air transport was to follow the standard of Commission-led trade negotiations, carriers would thus not be allowed a seat on the table. However, if the talks would follow the pattern of bilateral air traffic agreements, carriers would accompany their government. While member states tend to bring their carriers along to the negotiations, airlines and other European stakeholder have complained vigorously in the final phase of the first year of negotiations that they "were left with very little information during and after negotiations and were not fully debriefed on the outcome, unlike their US counterparts."[44]

[43] Ibid.
[44] *Air Transport World*, "European groups seek urgent meeting with EC on open aviation area talls," 28 May 2004, and Kevin Done, "European air industry angry about US talks," *Financial Times*, 27 May 2004, p.11.

2.2. Policy stance on external aviation relations

2.2.1. American carriers

The position of US carriers has evolved considerably, and it is certainly difficult to subsume the policy preferences of all international carriers in one statement. However, looking at the political activities of airlines over time shows that they tended to be more reserved about the liberalization of international air transport in the past than what they are now. Corresponding to the gradual reform of the bilateral system undertaken by their government, US airlines used to judge international policy with the bilateral understanding of strict reciprocity. Today, most carriers have adopted a more liberal mindset, even though the benefits of the new political agreements are often more difficult to quantify.

Early resistances to liberalization

When the US set out to undermine the price setting cartel of IATA in the late 1970s, it did so with the interests of its carriers in mind, who would then have the possibility to set more flexible fares. However, not all US carriers favored the US-ECAC solution. The leading traditional carriers, Pan Am and TWA, preferred to retain the opportunity of IATA tariff coordination, which provided greater price stability at a time when the two influential airlines were "bleeding red ink" (Jönsson 1987: 145). New international competitors, on the other hand, had insisted on a less restrictive system in order to maintain the ability to offer low fares.

In the early 1990s, the traditional international carriers protested against the US government's move towards more "liberal" bilateral agreement, which they felt were "giving away real, hard, intrinsic, measurable values – our geography, if you will – for value that is

only nominal at worst and short term at best."[45] They were worried that the US government offered new market access to American gateways in return for liberal treatments of fares or capacity only. This concern was shared by other international carriers, which were used to reciprocal exchanges and had a hard time understanding the benefits of these new negotiations. At the time, the rallying cry of the US industry became "hard rights for hard rights," (Yergin/Vietor/Evans 2000: 46).

The first agreement was negotiated with the Netherlands in 1991, signed in 1992. A US government official who participated remembers:

> Some airlines asked us, "Why are we are giving away rights to small countries, like the Netherlands? We don't want to fly through Amsterdam." They had want they wanted. PanAm used to fly into Frankfurt and had their hub there. TWA was set up in Paris and Italy, Greece, Spain. So why should we do this?[46]

The negotiations that followed hardly contributed to convincing doubtful carriers. Because large countries still resisted the US led liberalization, the government started approaching small European countries and tried to secure a package of smaller countries.

> We started negotiating air service agreements with Iceland. Iceland has one national airport and no US carrier flies there. We knew that. We also negotiated with Luxembourg. So their carriers go access to the US market, but what does the US get from a strict air service perspective? […] So there were carriers that objected.[47]

American carriers were indeed quite critical of the lack of reciprocity, but they very intrigued by the new commercial possibilities these agreements offered through the possibilities of alliances. In fact, in the years after the Dutch open sky agreement, the KLM/Northwest alliance revealed very beneficial to the carriers involved and the Amsterdam and Detroit/Minneapolis hub became a model for other carriers.

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[45] Former Pan Am executive Willis Player, cited in Jönsson (1987: 126).
[46] Interview with a US government representative, Washington D.C., 10 April 2003.
[47] Interview with a representative of the US government, Washington D.C., 16 April 2003.

> They had this huge demand, beyond the people that were flying from Detroit to Amsterdam, because people then connected. It was extraordinary; the carriers were making a lot of money and providing a good service. So other carriers said: "We have got to go do this!"[48]

Furthermore, when the US succeeded in signing an open sky agreement with Germany in 1996, the critiques centered on the argument of insufficiently small countries silenced.[49] Naturally, carriers were worried about the shape of things to come. The new agreements had important consequences for the business operations of US carriers. PanAm and Delta, who had well established hubs in Frankfurt, had to withdraw from this location once the Lufthansa-United alliance was put into place. But the US-Germany bilateral nonetheless marked a change in the mindset of most US companies. Carriers who had initially opposed the KLM/Northwest alliance because they did not have the same ability realized that there was no use resisting this development:

> We had to change our thinking. We had to realize that it doesn't matter that there is a very precise exchange as long as we can create this environment where we are allowed to create global entities in strategic positions.[50]

The obvious success of the early alliances set off "a race for everybody to find a suitable alliance partner," explains a US airline representative. The maxim of these years was: "go get a partner and get their government to open their market."[51] Eventually, all international carriers had developed "bad cases of alliance envy."[52] This motivation explains the overall airline support the open sky policy enjoys today.

> Anti-trust immunity is the biggest thing you can get, because it allows you to become a de facto merged entity.[…] It is a very valuable tool, because you can sit in a room and talk about thing you otherwise couldn't talk about.[53]

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[48] Interview with a US government representative, Washington D.C., 10 April 2003.
[49] Ibid.
[50] Interview with a US airline representative, Washington D.C., 25 April 2003
[51] Ibid.
[52] Interviews with US airline and government representatives, Washington D.C., 24 and 25 April 2003.
[53] Interview with a US airline representative, Washington D.C., 25 April 2003

With the dangling carrot of alliances, US carriers rallied behind the open skies policy and overcame their initial reservations. All international carriers agree today that the open sky approach has served their interests well.[54]

Ambiguous preferences

Interestingly, while some carriers used to defend the reciprocal bilateral system vehemently, others have proposed quite early that the future of air transport was to move beyond the bilateral system. In the context of the British Airways bailout of US Air in the early 1990s, American Airline's former CEO Robert Crandall persistently called for the dismantling of the bilateral system and complained that the current trend towards global alliances was not good for the industry or competition (Tarry 2000: 290).[55] Gerald Greenwald, former CEO of United Airlines, argued similarly that alliances were the strategy of the day, but they might not suit his airline's interests in the future. Alliances are only a second best strategy to genuinely open competition (Tarry 2000: ft 291). Leo Mullin, CEO of Delta Airlines, reportedly had a hard time understanding the benefits of the bilateral system. When he joined Delta Airlines, his previous experience had been with First Chicago bank and Conrail. With his background in banks, the international architecture of air transport seemed especially archaic to Mullin, who supposedly was a little astonished that you could not buy a foreign airline. Furthermore, large cargo carriers press for further liberalization to be able to extend their operations, but traditional passenger carriers also share the sentiment that the future of air transport will be in a larger, multilateral agreement.[56]

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[54] Interviews with US government and airline representatives, Washington D.C., 10, 24 and 25 April 2003.

[55] Robert Crandall is a very outspoken figure of the US airline industry, who has argued both in favor of competition and underlined the specific interests carriers have to hold on to their assets. Despite his critique of the BA/US Air investment, it was also Crandall who conceived of the most controversial alliance to date between American and British Airways.

[56] Interviews with airline representatives, 2, 24 and 25 April 2003.

> If we are going to be treated like businesses, we need to start operating like businesses. For years, we wanted to be special. […] We are special. But do you know what "special education" is or "special Olympics"? It is for people who have problems. And that is how we are treated with investment. We are not in the big leagues and can't play with the big boys.[57]

For the more competitive airlines, the current framework is somewhat constraining. As Tarry (2000: 290-1) underlines,

> Airlines are not entirely convinced that strategic alliances are the optimal strategy. The stronger airlines, such as United […] and American, wonder whether they would be better off going it alone in a more open and competitive market, but remain aware of the potential downside of not securing alliance membership in the current political environment.

Further liberalization, which might be achieved by a US-EU agreement, has two benefits that US carriers are particularly interested in: consolidation and foreign investment opportunities.

"Consolidation is needed on both sides," underlines an airline representative, and several colleagues seem to agree.[58] Michael Whitaker, Vice President for International and Regulatory Affairs, recently underlined this diagnosis in a speech to the American Bar Association.

> There are 41 carriers providing scheduled service between the US and Europe. Forty-one! Of the 41 carriers […] only six are US carriers. The US market has experienced consolidation. 23 are European carriers. The European market is badly in need of consolidation. A US-EU agreement would assist in achieving that.[59]

The reasons for the large number of European carriers providing transatlantic services are tied to the mechanisms of bilateral negotiations. Frequencies negotiated by small countries are often too small to adjust them adequately to demand in times of economic downturn. A

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[57] Interview with a US airline representative, Washington D.C., 25 April 2003.
[58] Ibid.
[59] Michael Whitaker (2003), "Aviation in Hard Times: Restructuring and Recovery," Speech delivered at the Forum on Air and Space Law, American Bar Association, 3 April. The remaining 12 transatlantic carriers come from countries such as New Zealand, Singapore, India or Pakistan.

small airline, which has two flights to the US per day, for example, can simply not reduce their supply by 15%. So European carriers hang on to their frequencies, even in times of economic recession.

Foreign investment, the second advantage of greater liberalization is also underlined by the current crisis in aviation. Now that several leading international carriers in the US have filed for Chapter 11 bankruptcy proceedings, might foreign investment not be as attractive as it had been for NW and USAir ten years ago?[60] "Today is a modern economy, where we allow capital to flow freely," underlines an airline representative, "foreign investment is a tool that should be available freely."[61] Most observers agree that "there are many in the airline industry that would welcome a relaxation of foreign ownership […]. Especially now."[62] The question of foreigners owning US carriers does not really pose a problem to the airlines themselves, it seems. In response to Richard Branson's proposal to establish a Virgin America, Fred Reid, executive vice president for marketing for Delta Airlines, asserts that "a British owner of an American airline would be just as good an owner as an American one."[63] But the real stake for existing US airlines is to obtain foreign investment into their own operations and without concrete proposals, these considerations remain hypothetical. When United entered into bankruptcy proceedings, there have been some speculations about financial support from its alliance partner Lufthansa, but they have so far been refuted.[64] Quantas has reportedly talked about wanting to invest in American Airlines, but again, no concrete proposal has ever been made.[65]

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[60] See *The Economist*, "America's airlines: Pilot's cap in hand," 29 June 2002, p.68-9.
[61] Interviews with US airline representatives, Washington D.C., 2 and 25 April 2003
[62] Interview with a US airline representative, Washington D.C., 3 April 2003.
[63] Cited in Holly Hegeman, "More Open Arms for Open Skies," *TheStreet.com*, 8 May 1999, available at www.planebusiness.com/tscolumns/ts050899.html.
[64] Matthias Eberle and Carsten Herz, "Lufthansa läßt den Partner nicht fallen," *Handelsblatt*, 7 December 2002, p.236, and "United fliegt weiter – trotz Pleite," *Handelsblatt*, 10 December 2002.
[65] Interview with an airline representative, Washington D.C., 2 April 2003.

These hypothetical considerations therefore do not weigh strong enough to convince doubtful carriers that a new solution will necessarily be better than the current situation. With respect to the current requirements of air transport operations, the prospects remain ambiguous.

> From a business standpoint, liberalization is welcomed by any free marketer. And the airlines definitely are in that champ. But there are some obstacles. Airlines are treated differently. We are the most regulated, deregulated industry in the world. It is hard to operate purely economically free, when you are so constrained.[66]

In the eyes of more hesitant observers, an US-EU agreement might have the advantage of facilitating code-sharing and alliances, but they do not necessarily feel the need to move beyond the bilateral system.[67] In many aspects, the current system has worked well for US carriers. Against the background of huge losses for US airline operation, transatlantic route has always been the most stable. Traditionally, international routes had been the business where US airlines could reap the largest profits. In times of economic crisis, they are now the ones where they can at least narrow their losses. In the first three quarters of 2002, major airlines in the US had an operating loss of $5.9 billion on domestic flights, but only $ 905 million on international flights. On the transatlantic route, US airlines have even been able to make a profit during this time: 5.7 million in the second financial quarter of 2002 and 75.4 million in the third. Ticket yield – a measure of pricing power – dropped 15.5 % on domestic routes from 2000 to 2002, but only 5.1 % on international routes.[68]

Considering these figures makes experimenting with the transatlantic framework less convincing. US carriers also point out that their dominance of international markets is generally exaggerated.

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[66] Interview with a US airline representative, Washington D.C., 3 April 2003.
[67] Ibid.
[68] Edward Wong and Micheline Maynard, "Airlines Look for Profits in Overseas Routes," *New York Times*, 29 January 2003.

> The largest carrier in the world is American Airlines with a market share between 6% and 7%. Not exactly dominance, even though American, like United and Delta, is often referred to as a "mega-carrier."[69]

For liberal minded carriers, this observation is an argument for European consolidation, but for more conservative ones, it is an argument against more comprehensive European competition. The economic downturn of the early 2000 especially underlines the need for caution. More liberal designs are simply "not a priority right now," explains the representative of a US carrier:

> When you are in a hospital, you are not worried about the shape of your garden. We don't know if we will still exist in three years. So once we are no longer concerned with survival, there might be more movement.[70]

US carriers might be interested in the prospects of a more liberal international architecture, but they are almost certainly not going to drive the process, at least not in the current context.

2.2.2. EU

European carriers are currently much more vocal about international reform than their American counterparts. This is all the more surprising since a new international architecture would sever the tight relationship between national carriers and their home governments. For a long time, European carriers have benefited from their privileged position in their home country – both in terms of influence and often in terms of subsidies. Why then would these former flag carriers be supportive of reforming aviation relations? The reasons lie in the perceived imbalances of the open skies regime the US put into place in the 1990s (Doganis 1991: 56-57). While European carriers were largely reserved about new competition or a

[69] Michael Whitaker, "Aviation in Hard Times: Restructuring and Recovery," Speech delivered at the Forum on Air and Space Law, American Bar Association, 3 April 2003.
[70] Interview with a US airline representative, Washington D.C., 25 April 2003. Note that the airline he represented had not filed for bankruptcy after 9/11.

transfer of competences over external traffic rights to the European level, their attitude had changed by the late 1990s. The preferences of airlines for a more balanced approach to transatlantic relations have therefore made them an ideal partner for the European Commission, which also sought to advance on a pan-European solution.

Evolving support for external aviation reform

In the early 1990s, many European carriers were not keen on competition from the US. European carriers had maintained unprofitable service, sustained by subsidies from their governments, and many felt threatened by the new US international carriers to which PanAm and TWA had sold considerable portions of their international routes. Germany and France in particular resented US airline competition and complained about the capacity that they were able to operate in the European market because of fifth freedom rights the US government had been able to negotiate in their respective bilaterals. Feeling strongly about the matter, the French government had even denounced its bilateral with the US in 1992 and Germany insisted on a capacity freeze. European carriers made considerable losses in the early 1990s. Air France, for example, had a first half loss of $680 million in 1993, and Sabena was close to bankruptcy. In order to prevent the disappearance of the flag carrier, the Belgian President of the EU called an emergency meeting of transport ministers in September 1993 in order to find measures to help the airlines. Sabena, was backed by Air France in its call for state aid, and Aer Lingus, Iberia, TAP Portugal and Olympic were all in worrying financial situations. This "protectionist lobby" called for a freezing of capacity and fares until 1996 and demanded an EU fund that would help their restructuring (Dobson 1995: 228). This position was not unlike the position of the European airline ten years earlier, when the Commission published its first series of memoranda on internal liberalization. At the time, the majority of industry sought to

obtain exemptions from competition rules and AEA's response to the Commission's proposals was at best considered "unresponsive" (Holmes/McGowan 1997: 173).

With different background in privatization and competition, not all European carriers supported these positions. Only British Airways had sought to distance itself from the conservative AEA policy statements in 1985, but in the mid-1990s, the coalition of supporters of liberalization had grown. The call for state aid in some countries would have severely constrained the expansion of the more successful European airlines, such as KLM, BA, Virgin Atlantic or Finnair. On the road to privatization, Lufthansa also moved away from its earlier reservations about granting market access, when Germany was making progress in its talks for a new bilateral with the US. The revision of the US-German bilateral, which became one the most important early open sky agreements in 1995, incited Lufthansa to deepen its cooperative alliance with United.

The problem of state aid to airlines was a difficult question for the European Union. Between 1991 and 1993, the Commission had approved state aid to Sabena, Air France, Air Lingus, Alitalia, Iberia, TAP and Olympic, in some cases with the reservation that this would "last chance" restructuring aid only (cf. Young 2002: 114). British Airways chairman Sir Colin Marshall argued vigorously against ceding to the state aid demands: "as long as the European Commission continues to approve aid, there will be no sensible preparation to get Europe's airlines ready for world competition."[71]

Indeed, narrow protectionist demands were incompatible with the mission of EC aviation policy.[72] Neither Karl Van Miert, who was Transport Commissioner at the time, nor Abel Matutes, who followed him, were particularly lenient to these demands or pleas for a

[71] Quoted in Dobson (1995: 229).
[72] David Gardner, "No backtracking on 'open skies' policy, says Brussels," *Financial Times*, 28 September 1993, p.20.

return to fixed prices or capacity sharing.[73] Moreover, the European Commission saw the maintenance of national control as problematic now that is was successfully integrating intra-European aviation. To the European Commission it became clear that "EC interests will be undermined if individual members try to safeguard their positions through bilaterals with the USA, which run contrary to the emerging common airline policy," simply because these agreements continue to lock in old standards (Dobson 1995: 227).

With these problems in mind, the Commission established the Comité de Sages in June 1993. The committee was composed of 10 members and chaired by Herman de Croo, a former Belgian transport minister. Its mission was to look at structural problems afflicting European airlines and to consider to what extend the existing airline policy of the EU needed to be extended. The hearings in front of this committee and the airline lobbying of the Transport Minister Council in September of that year crystallized the opposing positions of several European flag carriers and the European Commission. While the ailing flag carriers underlined their need for state aid, others insisted on the need for re-regulation. However, as Dobson (1995: 227) underlines, "EC officialdom claimed that the committee would not propose protectionism." The Commission's was interested in further liberalization, not the opposite. DG TREN's aviation division insisted that the existing bilateral agreements were no longer compatible with EU integration. Nonetheless, the difficulties of European airlines were pressing and the recommendations of the committee eventually supported the idea of limited "last chance" financial packages, but underlined the need for further liberalization and market-orientation or air transport operations.

The turning point came in the late 1990s through the highly successful US open sky agreements. Like their American counterparts, European carriers started feeling an "alliance

[73] *The Economist*, "European airlines: Winged," 2 October 1993, p.2.

fever" and by 2001, almost all European carriers have American partners. The US partnerships and the open sky agreements that many of them were tied to raised the interest in the US market and made European carriers familiar with more competitive conditions. But on the other hand, they also underlined the advantages US carriers enjoyed under the bilateral liberalization process of open skies. European airlines agree that alliances have been of great benefit to the airline industry in Europe, but they call it the "crutch" of the existing system, which becomes more and more outdated and inappropriate to global airline business operations.[74]

Table 7-1: US-EU Alliances

	US partners	
European airline	1995	2001
Aer Lingus		American
Air France		*Delta*
		Continental
Alitalia	Continental	*Delta*
		Continental
Austrian	Delta	United
British Airways	US Air	*American*
		America West
British Midland	United	*United*
	American	Continental
Finnair		American
Iberia	United	American
KLM	Northwest	*Northwest*
		Continental
Lufthansa	United	*United*
Luxair		
Olympic		
Sabena	Delta	*American*
SAS	Continental	*United*
TAP		*American*
Virgin	Delta	Continental

Source: Young (2002: 116).
Note: Underline denotes an equity stake by the European carrier in the US partner airline, italic indicates the application for anti-trust immunity in the US.

[74] Interviews with EU airline representatives on November 27 and December 2, 2002.

Moreover, open skies seemed fundamentally biased towards the US, which has "the political clout to negotiate anything they want."[75] A European airline representative insists that the European industry needs a more comprehensive liberalization,

> … as opposed to the very unbalanced agreements that have been negotiated under the so-called "open sky" label. It is an American label, which they use to describe their version of a liberalized agreement, which is actually extremely unleveled.[76]

In particular, foreign entities cannot own and control more than 25% of a US carrier ("ownership and control") or establish a new carrier within the US ("right of establishment"). A foreign carrier cannot provide "cabotage" services within the US or lease an aircraft with a crew to a US company ("wet-leasing"). Foreign carriers are also excluded from a government program, which assigns US government personal on flights operated by US carriers, the "Fly America" program. Several of these conditions, Europeans argue, are not restricted to the same degree in the European market. Foreign ownership in the EU allowed up to 49%, for example, and US wet-leasing is common. As a report from the UK House of Lords (2003) shows, the US is the world's biggest lessor of aircrafts for cargo-operations, generating more than 1 billion a year from contracts from wet-lease contracts within Europe.

The fragmentation of the European market seemingly creates an advantage for US carriers. While European carriers can only fly to the US from their home country, US carriers can fly from any "open skies" EU country to any US point. US carriers have also been ceded the right to fly from one open skies country in the EU to another (5^{th} freedom right), which in the eyes of European analysts represents a form of cabotage within the EU. While it is true that this right is little used by passenger airlines, it does facilitate cargo operation of US cargo airlines within Europe.

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[75] Interview with an airline representative, 21 October 2002.
[76] Interview with a European airline in Brussels, 13 November 2002.

Most importantly, carriers within the EU can only merge if the US does no refuse to grant the same traffic rights to the new company. To cite an example, British Airways and KLM have talked repeatedly about merging over the past decades. Since BA is considerably larger than KLM, the merger would have been primarily British. The open-sky agreement with the US, however, specified that the Netherlands could only designate a company that was 51% Dutch. The necessary re-negotiation of these agreements would then mean that the merger would take place if the US approves it, which often involves other concessions.[77] Like their US counterparts, EU carriers deplore this obstacle to consolidation.

> It is very important for the European industry to consolidate, because at the moment, we are all locked into our little countries, unable to grow through acquisitions in a way that other industries have. It is ridiculous: we re supposed to be the industry that allows people to move around the world, but we are also stuck in this time warp, this spider's web of bilateral agreements.[78]

Consolidation is thus desirable for US and EU carriers alike.[79] For EU carriers, however, it is more immediately tied to the system of bilateral agreements through the constraints imposed in bilateral agreements. Within Europe, carriers already have the rights to consolidate, but they simply cannot fly out of their new hubs, because the bilaterals do not take into account the European notion of a community carrier.

> KLM can fly only from Amsterdam. And in its alliance efforts with Alitalia, one of the things that it would like to do is to be more flexible and operate from Milan as well. But under the present system that is not possible. That's the name of the game: operate a multi-hub alliance.[80]

The open sky agreements maintain European fragmentation, despite the integration of the intra-European market. It thus prevents the expansion of business operations, which many

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[77] In this particular case, the US wanted to use the occasion to renegotiate its access into Heathrow airport in London. The merger finally did not happen because of other problems, but the US did declare that it would oppose a transfer of the traffic rights.
[78] Interview with a European airline in Brussels, 13 November 2002.
[79] See also *The Economist*, "Now is the time to set the world's airlines free," 2 October 2003, and "Open skies and flights of fancy," 4 October 2003, p.69-71.
[80] Interview with a European airline, 2 December 2002.

European airlines are interested in. Unlike the situation in the US, this has not changed much in the last two years, explains the representative of a large EU carrier: "the objective and the policy of [our airline] has always been growth. […] Even 9/11 has not change this much."[81] But even smaller European carriers, such as TAP Portugal, rally behind the calls for regulatory reform. Despite a very small stake in the transatlantic market in particular (Young 2002: 113), TAP supports comprehensive liberalization "to end monopolistic situations, where insufficient number of operators […] provide less than satisfactory level of service and to allow more flexibility in terms of resource utilization."[82] The need for reform arises for large and small airlines, either because the want to expand or because they would like to have the opportunity of seizing foreign investment. US ownership restrictions weight twice on European carriers. European carriers cannot merge, because of the restrictions in bilateral agreements, but they also cannot operate in the US market.

Richard Branson, CEO of Virgin Atlantic and Virgin Express, has problematized this second issue, when he announced that he would like to establish an airline based in the US.[83] Under present regulation, such an airline could have no more than 49% of equity and 25% of voting rights. Richard Branson went ahead with his Virgin USA plans in early 2004, nominating Fred Reid of Delta Airlines as future CEO. But he is still looking for a US partner who would hold the 75% of the voting rights and complains that he is "sensitive about giving away the brand without control."[84]

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[81] Interview with a European airline, 18 November 2002.
[82] Presentation of José Guedes Dias, TAP Air Portugal, at a preparatory seminar on "The Future of Liberalization" to the ICAO Conference in Montreal, 23 March 2003.
[83] Branson's proposal was the hypothetical test case of a debate between US and EU officials, airlines and labor unions at the 8th Annual International Airline Symposium, held in Phoenix, Arizona in 1999. See Holly Hegeman, "More Open Arms for Open Skies," *TheStreet.com*, 8 May 1999, available at www.planebusiness.com/tscolumns/ts050899.html.
[84] *Business Week*, "Richard Branson's Next Big Adventure," 8 March 2004.

The many restrictions that apply to international operations constrain European airlines, and contribute to the sentiment that the current liberalization process is balanced in favor of the US.

Approaching the Commission

Although national governments were paying attention to the needs of their airlines, they also felt that they were the best solution that could be negotiated, explains a public official from an EU member state:

> Bilateral agreements are quite useful, because they allow finding country-specific solutions. […] We are quite happy about our bilateral agreements, especially with the US, and find that they have worked very well. Industry tends to judge this somewhat differently, because large carriers would like to expand.[85]

To these large carriers, the US had employed European fragmentation to cement its economic position. Liberalization through open skies will always be limited by the constraints of the bilateral system, Kees Veenstra, public policy manager of AEA, argues at a US visit:

> It's trade-facilitating effect is limited, as it varies from one bilateral agreement to another, depending on the trade interests and negotiating power of each of the two countries involved. It is therefore not surprising that the US, as an economic superpower, has been able to conclude more than 50 open sky bilaterals but smaller countries have not. This means that a true 'level playing field' can never be established under a bilateral system. [86]

In the eyes of European airlines, the challenge is thus twofold. First, the bilateral system is in need of reform in order to permit more liberal business operations. Second, individual European governments are too weak to negotiate the appropriate conditions bilaterally with the US. Despite the close relations with their member state governments,

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[85] Interview with a government official from an EU member state, 27 November 2002.

[86] Kees Veenstra (2001), "Global Growth Opportunities for the New Millennium," Speech at the 26th Annual FAA Commercial Aviation Forecasting Conference, 14 March, Washington, D.C., available at http://www.aea.be/AEAWebsite/datafiles/faa_cafc.pdf.

European flag carriers therefore started approach the EU Institutions with their request for a reform of the current restrictions.

> EU industry has always been externally looking. For us, those bilateral agreements are of the highest importance, and so we see that the system of bilateral agreements is very limited. […] That's when you want to bring it to a higher level. And we hope that at least at the EU level, it will bring more, because then we will be like the US.[87]

Organized by its European association, AEA, European flag carriers started deliberating about solutions to the problems they encountered in the mid-1990s. The found an open ear in the European Commission, which was trying to gather support for a European mandate on external aviation relations. AEA reacted to this request by submitting comments to the EU member states and the Commission in 1995. By October, AEA had written a very detailed proposal on what they felt should be negotiated through an EU-US aviation agreement, which they called a transatlantic common aviation area.[88] The Commission was enthusiastic. Less than a year later, the Council of Ministers identified the establishment of a TCAA as an important objective for the European Union. AEA set out to develop a more detailed proposal, which it published in 1999.[89] AEA was perfect ally for the Commission. Both organized with the objective to overcome the obstacle of European fragmentation. Concerning air traffic management, for example, AEA had been pushing for a European integration of air traffic management and the coordination of civil and military air space in Europe since the late 1980s.[90]

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[87] Interview in Brussels, 21 October 2002

[88] Association of European Airlines (1995), "EU External Aviation Relations," Policy Statement, Brussels: Association of European Airlines.

[89] Association of European Airlines (1999), "Towards a Transatlantic Common Aviation Area," Policy Statement, Brussels: Association of European Airlines.

[90] Association of European Airlines (1989), "Towards a Single System for Air Traffic Control in Europe," Policy Statement, Brussels: Association of European Airlines. The Commission eventually took up the idea in 1999 with its proposal for a Single European Sky, which has passed EP and Parliament approval in December 2003.

Especially carriers interested in expanding became very supportive of a Commission mandate for external negotiations, hoping "that countries, that the Council will be persuaded to realize that the best interest for all of the EU is for the Commission to start negotiating with the US."[91]

> We want to see the Commission to be able to exercise this mandate. We believe it is in the best interest, not just for [us], but European aviation. They can add value by bring represented as a whole rather than being picked up country by country.[92]

The support is uniform, for large and small flag carriers alike, irrespective of whether they have or they have not yet concluded an open sky agreement with the US. For those who have not concluded one, most importantly Great Britain, an EU mandate promises to lead to more successful negotiations. For those, who already have one, the benefits are similar.

> The logic is simple. We have an open sky agreement with the Americans and we won't achieve a more ambitious negotiation with them, because anything we had to give, we have given. So, we can only win; we have nothing to lose. This is egotistical, but it is pragmatic. It's not an ideological approach.[93]

Consequentially, most European carriers welcomed the ECJ ruling in the fall of 2003, because it helped to gather momentum on the question of a European mandate for EU-US talks. This is especially true for British carriers, who felt that their government could not achieve a balanced agreement by negotiating individually with the US. Andrew Cahn, director of government affairs at British Airways, announced: "In the fullness of time, the great thing is that this opens up the way to liberalizing air travel. It is pro-competitive and pro-liberalization and we are very much in favor of those things."[94] British Midlands, which has been fighting for access to Heathrow airport that it has so far been denied, also welcomed the

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[91] Interviews with European airlines, 13 November and 2 December 2002.
[92] Interview with a European airline in Brussels, 13 November 2002.
[93] Interview with a European airline, 18 November 2002.
[94] Andrew Osborn and Andrew Clark, "European court of justice rules bilateral air agreements illegal," *The Guardian*, 5 November 2002.

agreement cautiously.[95] Sir Richard Branson, CEO of Virgin Atlantic, called the ruling a "historic opportunity" which would "forever change the landscape of the US and European aviation industry."[96]

However, few carriers support an EU mandate *per se*, but only specifically with respect to the US, where they see an added value of a pan-European negotiation position.

> For us, and for all other carriers, it is not evident that external competences necessarily have to be in the hands of the Commission. […]. A transfer of competences is only acceptable when the EU Commission negotiates open skies. We support it when there is a clear added value. That's also the reasoning of AEA. In our opinion, this added value is not the case for [traditional] bilateral negotiation. [97]

For US negotiations, on the other hand, the support of a Commission mandate is close to unanimous. On US-EU aviation relations, AEA has therefore developed a tight symbiosis with DG TREN, where it is not always clear who initiates which idea. After initial talks with the US, Europeans had realized that they had to provide a clear proof of benefits for the US market in the case of a solution. Trying to defend its TCAA proposal, AEA therefore decided to commission a study to quantify such benefits from a consultancy. A member of the working group remembers, "AEA was on the verge of selecting a firm, when the Commission decided that they, rather than the industry, should move ahead on this."[98] DG TREN thus commissioned the study by itself in 2001.

Despite the effectiveness of the AEA-Commission cooperation, the prospect of new Community competences is somewhat disconcerting to the former flag carriers. While they support an US negotiating mandate, they are afraid of an unlimited competency transfer to the European Commission, which is far more distant from them then their national governments.

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[95] Ibid.
[96] Daniel Dombey and Kevin Done, "Open skies deals hit by court ruling," *Financial Times*, 5 November 2002.
[97] Interview with a European airline in Brussels, 5 December 2002.
[98] Interview with an aviation expert, 16 April 2003.

The Brussels procedures seem lengthy and complicated and might simply result in the Commission negotiating away the larger carrier's interest in bilateral agreements.

> If we wanted more frequencies with Brazil, we would have to pass through the Commission. It would probably take 2 years only to find out that we have to split the frequencies that have been negotiated with the Austrians! […] How do you divide the cake? You have 20 frequencies to distribute among the 15 member states: how do you proceed? If you give a share to all 15, we risk having the same size share as any other small European country. That's quite a problem.[99]

The concern is shared by all large European carriers. A second representative insists that "it is unacceptable that the Commission negotiates 20 frequencies to India and then distributes them according to nationality, given that we already may have about 10 now."[100] EU carriers are concerned about their privileged relationships and underline that there are certain issues that they prefer to bring to their home government only.

> In the end, it is about results. Our government has done this very well in many aspects, especially since we have more influence there. Public officials face fewer stakeholders. On the other hand, the Commission deals well with certain issues where it already has competences: safety, the environment […]. For us, it is important that the competition quarrels, the lobbying around EU Institutions, will be held to a minimum.[101]

European airlines are not supportive of liberalization in abstract terms. As one European observer notes "everybody is for 'opening up, but…'."[102] They are interested in working with the Commission, but only to achieve results that they could not achieve otherwise. The risk of working at the Community level is to be on equal footing with other carriers, a sentiment that is quite new to many flag carriers. So in many aspects, the prospect of US-EU negotiations is "a big jump into the unknown."[103]

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[99] Interview with a European airline, 18 November 2002.
[100] Interview with a European airline, Brussels, 5 December 2002.
[101] Ibid.
[102] Interview in Brussels, 21 October 2002
[103] Interview with an official from the European Commission, 21 October 2003.

3. Government strategies

How did these business preferences manifest in the negotiating proposals of the US and the EU? Understanding how government positions evolved over time requires looking at the particular constraints that the US and the EU negotiators had to face. The domestic stakes and the disputes affecting the current negotiation are an important key to understanding the degree and the timing of cooperation of both governments with their airlines.

3.1. US constraints and issues

By negotiating the executive open sky agreements in the 1990s, the US administration has been more innovative and liberal minded than any other country in the world. Even today, the US administration is in many aspects very interested in furthering global liberalization and reforming the international architecture. However, it is held back by a more conservative legislature, which is very concerned to protect national defense interest, national labor interests and the maintenance of national ownership rules. Understanding the US negotiating position requires thus, first, to look at the ambitions of the US administration, and second, to consider the opposition that comes from Congress.

3.1.1. The US administration

As with most new policy decisions, the open sky initiative was somewhat disputed when it was first developed. Many airlines were doubtful and even within the US government, there was both support and opposition, often within one and the same department. The State Department and DOT under Secretary of Transportation Federico Peña and Assistant Secretary for International Policy Jeffrey Shane were key agencies for drawing up the open skies policy. However, “there were a lot of people in the DOT that were against this policy,” explains a former official of the US government, given that “they had spent 20 years and

more defending the old tradition."[104] Like their carriers, many officials argued that it is hard to understand why the US should all of a sudden try to replace the idea of reciprocity with a move towards open skies.

Key officials, however, supported the new policy, which combined several objectives. On the one hand, it followed from the "consumerism" that had triggered many of the internal deregulation efforts. But is also helped to pursue a policy of unilateral expansion of air traffic operations in the long term. A government representative explains:

> The reasons were the following. One, we felt, why should we deny the consumers the benefits? If KLM wants to fly to Atlanta, why should we deny Atlanta this traffic? Also, our ability to get from others what we want is limited if we don't give up something.[105]

The US government wanted to open new opportunities for its carriers and esteemed that it could only do so if it abandoned to traditional logic of strict reciprocity.

> If you give Singapore free access to the US, they have one airport we can then fly to. We have literally dozens. They have 3 million people. We have 260 million. So how about equal trade? I think it was important to get away from that equal trade idea, because nobody has the number of international airlines that we do.[106]

Indeed, strict reciprocity had shown its limitations and the US administration adopted a more innovative mindset. By tying open skies agreements to alliances it assured the support of its own airlines and of airlines abroad. Besides the airlines themselves, open sky agreements also benefited other stakeholders, which underlined the importance of the new policy.

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[104] Interview with a representative of the US government, Washington D.C., 16 April 2003.
[105] Interview with a US government representative, Washington D.C., 10 April 2003.
[106] Interview with a representative of the US government, Washington D.C., 16 April 2003.

> From a commercial perspective, we think it is dandy […] because it facilitates trade. Cargo Lux is an important carrier of high value air cargo goods. That gets US exports an additional access to European markets. So […] we thought it was the greatest thing we have ever signed.[107]

The US government's support for liberalization also translated into a general interest in the TCAA, when it was first proposed by the Europeans. A former US official remembers, "when I first heard about the TCAA and I thought it was a great idea." Several officials in the State Department felt the same and wanted to look more into it. "But the Commission didn't have a mandate and there was strong labor opposition. So the idea was to keep a low profile." The administration met with the Commission, but tried to not send very high ranking officials, so that it would not get too much attention and raise early opposition.

> We really believed in greater liberalization of markets. […] So I knew there was a lot of support for these ideas. […] But a major problem is Congress, because labor is a big impediment.[108]

Of course, there was disagreement on the details of the proposal, all the more since the original TCAA was a particularly dense document, which even foresaw the harmonization of competition law, for example. While the US administration was interested in the prospect of a liberal US-EU agreement, they were thus critical of the TCAA proposal in its original version.

> When the US read the document, we just saw the word "regulation" over and over and over again. It seemed like a multilateral regulation project rather than multilateral deregulation. And there was too much emphasis on supranational bodies and dispute resolution, all these things that we don't like and that we don't care for.[109]

Several US observers point to the use of the word "regulation", which appeared almost 15 times on the first pages.

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[107] Ibid.
[108] All quotes from an interview with a former US government representative, 16 April 2003.
[109] Interview with a US airline representative, Washington D.C., 2 April 2003.

> We are not really looking for a commonly regulated area. And that issue relates to how focused you are on the levelness of the playing field. Nobody wants an unleveled playing field. But there are degrees to which you can trim the grass, and the European just want a really close, perfect cut. The reality in most other aviation relations is lots of lumpiness. […] We really want to do an open agreement, where we don't want to micromanage everything.[110]

The so-called "micro-management" proposed in the TCAA felt like a very European-style regulatory solution. Jokingly, US observers point out that such regulatory solutions to balance out rigorous competition might lead carriers to start thinking, "Ah, I will better not do this, because they might take me to the US-EU arbitrary body that has been established in Iceland!"[111] In fact, the TCAA felt more like "an invitation to the US to join the European aviation area."[112] With respect to all of these concerns, explains a US observer, the TCAA proposal "landed with a thud."[113]

Yet the general idea of liberalization through a joint US-EU effort was very appealing to the US administration, which continues to describe the TCAA proposal as "interesting" or "intriguing" and "stimulating lots of good discussions." Representatives from the US government have therefore been in constant contact with the EU since the late 1990s. Until 9/11, they met almost every six months to cover the positions of the parties and to further develop what a TCAA might look like.[114]

However, these frequent discussions stalled over the lack of a real negotiating mandate of the European Commission. Even though the Commission had received a soft mandate to discuss CRS and code of conduct, they were not competent to negotiate traffic rights and the US was not willing to offer any serious items if the EU could not do the same. So the discussion eventually fizzled out, with negotiators waiting until the Commission would have a

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[110] Interview with a US government representative, Washington D.C., 10 April 2003.
[111] Ibid.
[112] Ibid.
[113] Interview, 2 April 2003.
[114] Interview with a US government representative, Washington D.C., 10 April 2003.

mandate. Michael Whitaker of United Airlines remembers, "it has become somewhat of a tradition […] to predict that a mandate would be forthcoming by the end of the year […] for at least four years."[115] Irrespective of the timing, US government representatives confirm that they "are happy to sit down and negotiate with whatever group they set before us."[116] Similarly, their first reaction to the ECJ ruling was to declare that they are happy to renegotiate the clauses of the European open sky agreements that had posed problem to the ECJ.[117]

An important caveat in the US interest in negotiating a more liberal US-EU agreement with the Europeans is the scope of such an agreement. Bilateral air service agreements are executive agreements, both traditional ones and open skies, so only the US administration negotiates them. Yet the proposal of the EU includes items that would require a change in US law. Statutory change, however, is the responsibility of the legislative and Congress has a somewhat different agenda than the US administration.

3.1.2. Congress

A central difference between the US administration and Congress revolves around the question of ownership and control, which has traditionally been defined through nationality restrictions. In the US, the current standard allows foreign ownership of 25% only and one of the central demands of the EU negotiators is to raise the percentage of admitted foreign ownership. In the EU, it is at 49%. However, precisely this question requires an act of Congress and past discussion have already indicated that such a statutory change will be

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[115] Michael Whitaker (2003), "Aviation in Hard Times: Restructuring and Recovery," Speech delivered at the Forum on Air and Space Law, American Bar Association, 3 April.
[116] Interviews with public officials from the US and the EU, 10 and 24 April and 21 October 2003.
[117] Jeffrey N. Shane (2002), "US Official Comments on EU "Open Skies" Ruling," Speech delivered to American Bar Association. Florida. 8 November. The text can be found as in the Annex of House of Lords (2003).

difficult. Under the Clinton administration in spring 1998, DOT worked on a proposal that would have moved ownership from 25% to 49% as part of a FAA reauthorization bill. The proposition was circulated inside DOT.

> It never made it out. Somebody leaked it to Capitol Hill. I got a call from the leading democratic staff saying, if you do this provision, no democrat will introduce your bill. It is totally unacceptable.[118]

As a consequence, the proposition was withdrawn.

Yet the administration continues to think about revising the traditional conceptions of ownership and control. Defining ownership in national terms is important because it permits assuring that the carriers designated by a country in a bilateral agreement are effectively controlled by that country. This is necessary for a series of political consideration, but not the least for safety as well. The security of different carriers is evaluated according to categories. Most European carriers are in the same category as US carriers, but some airlines, such as Olympic airlines, are a category below. Traditionally, US negotiators could simply control the designation of such carriers through less liberal agreements with its home country. In the case of a liberal agreement with the EU, however, in which all "Community carriers" fly to the US, this would no longer be the case.

However, the State Department has always been supportive of loosening its stance on a control requirement based on nationality, even though DOT generally tended to prefer national control. Recently, the US administration has introduced a new concept of control into its multilateral APEC agreement. In the eyes of the US negotiators, what was important was not the possibility to block the designation of foreign carriers, but to block undesired designation and free riders (Mendelsohn 2003a; Mendelsohn 2003c). The difference is that

[118] Interview with a former US government representative, 16 April 2003.

this control is over the acceptance of foreign designation not in the designation itself, a concept labeled "effective control".[119]

Just prior to entering into the negotiations with the EU over an open aviation area, the US administration has again tried to tackle the foreign ownership limitation in the spring of 2003. In a proposal submitted to Congress, DOT suggests raising the 25% restriction to 49%. Testifying in Congress, US Transport Secretary Norman Mineta urged Congress to include the provision in aviation reauthorization legislation.[120] Congress has not yet acted on this suggestion and remains reluctant. Old reservations about foreign ownership surfaced in spring 2003, when Deutsche Post AG's cargo carrier DHL proposed to take over the Seattle-based Airborne Inc. While DHL Airways is a Chicago-based company with a majority US ownership, UPS and FedEx argue that Deutsche Post, as owner of DHL International exerts de facto control of DHL Airways. What is more, they fear that Deutsche Post will be able to funnel proceeds from its German monopoly into the US and funnel a price war.[121] While this particular debate might just be another competition issue, it is indicative of the feelings of many members of Congress that opening up their home market will lead to unfair competition for American companies.

In the eyes of most analysts, however, the central opposition to changing the foreign ownership restriction comes from labor concerns. Labor concerns in aviation are traditionally expressed by the trade union ALPA, which represents 45 airlines in the US and Canada.[122] ALPA has repeated argued against a liberalization of the traditional nationality restrictions, because it fears that there would be a labor substitution problem. If Lufthansa could operate

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[119] Interview with a US government representative, Washington D.C., 12 March 2003.
[120] John Crawley, "US urges Congress to ease airline ownership limits," *Reuters*, 2 June 2003.
[121] *Wall Street Journal*, "Patriot Games," 8 April 2003 and "Package Delivery Battle Hinges on DHL Ruling," 13 May 2003.
[122] The most important ones not included are American Airlines, who split away from ALPA in 1962, Southwest and UPS, who have always been independent.

flights between New York and Los Angeles, these flights would no longer be served by US workers. What is more, since such flights would then compete with US carriers, the airline that has least labor costs could offer the cheapest fares and drive the US carrier out of the market. As a consequence, ALPA opposes everything that creates this kind of competition and thus put pressure on wages and working standards.[123] This includes direct foreign ownership, seventh freedom rights and cabotage, but also wet-leasing. Generally speaking, democrats in Congress tend to side with labor, republicans with management. However, a clash over this issue is not likely to happen, because both sides stand unified on their opposition to foreign ownership and cabotage. The reason for this unity comes from the fact that national control over aviation is also important for security and safety reason, both of which are highly relevant in political debates in the US in the early 2000s.

Safety relates to controlling the designation of foreign carriers. In the case of liberalization, many US observers fear that it will be more difficult to restrict what type of airplane flies where and is under what type of regulatory control they are. This is important for preventing accidents, but it is also relevant in the context of the threat of terrorism that the US faces.

Another security problem posed by an open aviation area is the reliance on civil aircrafts in times of war. For these cases, the US has put into a program called Civil Reserve Air Fleet (CRAF). Under this program, US airlines have the obligation to provide some of their aircrafts for the transport of troops and material in times of war. American Airlines, to cite just one example, has provided 5 of their planes during the Gulf War in 2003.[124] In return for their participation in CRAF, US carriers obtain additional business through the so-called "Fly America" program, which obliges US government representatives to fly US carriers or

[123] ALPA is not opposed to the TCAA agreement in principle, but insists that it includes labor law.
[124] Interview in Washington D.C..

their code-sharing partners on their travel abroad. These airline-government agreements have worked well for both parties and allow the Department of Defense to maintain a reserve fleet without additional expenses. For patriotic reasons, the DOD and many members of Congress are very opposed to the idea of foreign carriers serving the US army in times of crisis. In addition, this would mean decoupling the CRAF program from Fly America, and nobody in Congress will be likely to defend a new additional expense put on the taxpayer in this context.[125]

These three reasons – labor, safety, and security – make Congress particularly reserved about the subject. More importantly, though, the liberalization of international aviation is the least of their priorities. Congress is only now coming back to regular transport issues, after having spent "the last eighteen months focused on security and money."[126] Despite the attempt of the Brattle Report to express the benefits of an open aviation area in dollars and cents, most nominal benefits fall on the European side. According to an observer, member of Congress tends to focus on "what's in it for me?", and the answer is not clear for the case of air transport.[127] A public official explains the opinion of most members of Congress: "nobody has made the case that the ownership requirements inhibited the flow of capital into the industry."[128] As the examples of Northwest and USAir show, foreign investment solutions had been found that did not pose the same security and control issues that the new proposals do. In the absence of concrete benefits, the discussion remains an academic one. "Some members of Congress just want to open up borders and see what happens. Others are a lot less

[125] Interview with an aviation expert, 16 April 2003.
[126] Interview in Washington D.C., 19 May 2003.
[127] Interview in Washington D.C., 16 May 2003.
[128] Interview in Washington D.C..

experimental."[129] With 9/11 being the most important issue in aviation in world affairs, experimental members will arguably be hard to find.

3.1.3. The US negotiation stance

The ambitions of the administration and the reservations of Congress determine the central negotiating position of the US negotiators. In a speech delivered at the eve of US-EU talks, the US negotiator John Byerly underlines:

> I think it is wrong to contrast on the one hand an ambitious European agenda with a not ambitious US agenda. Quite the contrary […], we look forward to these negotiations. We see them as a huge opportunity to do something that could change the world of aviation.[130]

Indeed, the US would like to achieve a more liberal agreement with the EU, which would most notably resolve the restrictions on access to the UK market, in particularly to Heathrow airport. The British market is considered one of the last remaining "jewels" in international aviations, where the US has not yet been successful in negotiating an open sky agreement. They would also like to obtain unlimited 5th freedom rights within all of the EU.

The US would furthermore like to seize the occasion to tackle commercial issues it has not been able to address previously. Several of these relate to impediments to air transport operations in Europe due to European environmental legislation. Most European countries have restrictions on nights flights, which constitute a noise nuisance to the households placed in proximity of airports. [131] Such night flight restrictions are not common in the US and many cargo operations rely on night flights in order to deliver their goods early in the morning. US negotiators are furthermore mistrustful of other EU environmental or technical legislation that

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[129] Interview in Washington D.C., 19 May 2003.
[130] John Byerly (2003), "US Aims for Comprehensive Accord in Air Service Talks with EU," Speech delivered at the United States Mission to the European Union," 29 September, available at www.useu.be/Categories/Transportation/Sept2903ByerlyOpenSkies.html.
[131] The question of night flights was recently debated vigorously for the case of Heathrow airport. See *The Guardian*, "Heathrow night flights to continue," 8 July 2003.

in their eyes deliberately pose restrictions on US operations. This mistrust is based on a previous dispute around noise regulation, referred to as the Hushkit case, which strained US-EU aviation relations between 1997 and 2002. The dispute revolved around noise regulation, to which ICAO standards apply. US airplanes adapted the ICAO standards that all countries had agreed on and nonetheless faced EU legislation that prohibited them from operating in the EU market.

> Just after, a European regulation was adopted that moved away from the [ICAO standard], saying that it was not strict enough. So suddenly, a number of US planes couldn't fly in the EU anymore […]. Interestingly enough, this European regulation only affected American built engines, who used so-called Hushkit mufflers. European engines were not affected, […] because the standard was so technical, [even though] you had Airbus aircrafts that were actually noisier than hushkitted engines. Not by a lot, but even still.[132]

The issue eventually got resolved, but left US observers with a sentiment of distrust. Members of Congress were especially upset and two representatives of the House and the Senate's aviation committee even proposed a ban on the Concorde landing in the US unless the Europeans withdrew their noise rule.

However, US negotiators would like to address all of these issues through a comprehensive open sky agreement. The open sky model would be an executive agreement only, which does not require statutory change.[133] Such an agreement would then not include a change in ownership restrictions, it would not include cabotage within the US and it would not change the CRAF program or the Fly America program. "Our feeling is: let us not be too ambitious. […] 'The best' is the enemy of 'good enough'," explains a representative of the US government.[134] Only, for the European negotiators, these items are the most interesting ones that they would like to achieve.

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[132] Interview with a US government representative, Washington D.C., 16 April 2003.
[133] Interview with a US observer, Washington D.C., 27 March 2003.
[134] Interview with a US government representative, Washington D.C., 10 April 2003.

3.2. EU constraints and issues

Despite the assurance of US negotiator John Byerly, the EU agenda is indeed more ambitious than just negotiating a multilateral open sky agreement favored by the US. It is precisely this open sky model that the EU negotiating team wants to overcome, be it bilateral or multilateral. In many speeches and writings, the European Commission has underlined this point.

> We believe that open skies agreements are completely insufficient for our industries. […] The US is mostly domestic-ward oriented, the EU international. With open-sky agreements, how much further can the EU go? The expansion possibilities are almost exhausted, most so for the US.[135]

What the US negotiating team has in mind is an agreement that transcends the traditional framework.

> Liberalized bilateralism is not enough – it would not be enough for telecom companies or for banks – and it should not be enough for air transport. The traditional concept (bilateral or multilateral open skies) cannot provide fair competition conditions because it does not address competition issues in any depth. It doesn't offer the industry the investment capital that airlines need or permit international consolidation. It brings no further liberalization benefits to domestic transport because the door is kept firmly locked to foreign carriers (Sørensen 2001).

What explains this ambitious agenda? The handwriting of airlines and AEA in particular is certainly reflected in the Commission proposals. Yet the close symbiosis between AEA and the European Commission has its roots in turn in the Commission's interest to further European integration of aviation affairs and to extend the Community competences in this area. Understanding the reasons for airline influence therefore requires examining the long-lasting tensions between the European Commission and the member states. As a result of these tensions, the negotiating mandate that was finally granted hinges on the Commission's ability to negotiate something better than member states could have done individually.

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[135] Interview with a representative from the EU Commission, 21 October 2002.

3.2.1. The Commission and the member states

As early as 1984, the European Commission identified external aviation relations as a major aspect of a potential Community air transport policy.[136] As the internal air transport market was put into place, the Commission started a number of initiatives to obtain an external negotiation mandate, which were rejected by the Council, so that the negotiation of air service agreements remained firmly in the hands of member states after the establishment of the internal air transport market on January 1993. Since bilateral agreements precluded airlines from benefiting from several aspects of an internal market, the Commission started focusing on the negative impact of bilateral agreements on the internal situation, arguing that the negotiation of such agreements could be carried out effectively, and in a legally valid manner, only at the Community level.

A Commission official remembers that these attempts encountered a frosty reception from the member states. When the Commission first demanded a mandate for external negotiations for the US, "everybody was very much against it [and] quite shocked."[137] Since the Council refused all direct requests, the Commission tried to seize Article 133, which grants the Commission the right to negotiate on trade matters. This door was closed by the Council meeting in Nice: the Nice Treaty specifies that service trade competences do not apply to air transport.[138] However, the Council eventually granted the Commission a limited mandate for the negotiation of soft rights on the basis of Article 80.[139]

Throughout the 1990s, there was little movement on hard traffic rights. National administration had established large units that were in charge of these bilateral negotiations.

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[136] European Commission (1984), "Progress towards the development of a community air transport policy," COM 84 72 final.
[137] Interview with a representative from the European Commission, 21 October 2003.
[138] Ibid.
[139] Article 226-7 (ex. 169-170).

Their long experience and their legal expertise seemed much more valuable than the Commissions' integration ambitions, seemingly an attempt "to grab competences that they are not ready to fill, neither with content nor with staff."[140] Indeed, in the absence of competences, the Commission was understaffed for bilateral negotiations. In response to receiving the soft mandate DG TREN established an office that would handle bilateral negotiations under the direction of Ludolf van Hasselt called "air service agreements and economic regulation". In the year 2000, about 6 people worked in this unit.[141] Furthermore, there is little interaction between the traditional national air transport units and the European Commissions.

> The national ministry maintains its contacts with Brussels mainly through the permanent representation. The contact with the Commission is rather poor. For us, the Council and its committees are most important. In our area, there is a committee on aviation, which meets twice a week […]. You also have the Article 133 committee, which deals with trade issues. The Commission inevitably tries to deal with air transport in the later committee, because trade is where the EU is competent.[142]

Faced with the resistance of the member states, the Commission started concentrating on partial negotiating mandates. During the period of US-led unilateral liberalization, the Commission began to focus on the US in particular and found an ally in the AEA. While continuing to work with AEA on a TCAA, the Commission undertook a new approach in its quarrel with the member states: it started judicial procedures against the open sky agreements. While several member states are supportive of further liberalization and of the TCAA project more generally, they remain mistrustful of the Commission's activism, even after the ECJ ruling on 5 November 2002:

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[140] Interviews with representatives from national governments and airlines, 27 November and 2 December 2002.
[141] Interview with a representative from the European Commission, 21 October 2003.
[142] Interview with a government official from an EU member state, 27 November 2002.

> It is questionable whether [we] will grant a negotiating mandate to the EU for talks with the US. This has been discussed repeatedly and until today, the Commission has not been able to prove the added value of a Community competence in this area.[143]

Sensing this opposition, the Commission decided to exploit the ECJ ruling in a somewhat aggressive manner. Even though the ruling maintained that traffic rights remained in the hands of the member states, the Commission welcomes ECJ ruling, which did show that several of the clauses in the bilateral agreements were in conflict with EU law.[144] Announcing victory in its struggle against reluctant member states, Transport Commission Loyola di Palacio went even further, declaring the existing open sky agreements "null and void."[145]

Loyola di Palacio's declaration sent a shockwave through the aviation community in both Europe and the US. In the eyes of all practioners, the declaration was not only dangerous for business operations, it was also useless. A European airline representative summarizes the opinion of all carriers: "they should slow down a little and especially stop pushing, because what they ask us to do is impossible."[146] Moreover, like US carriers underlined, billions of dollars were at stake in the open sky agreements. Feeling that she had alienated her own carriers, Loyola di Palacio met privately with the president of AEA to underline that this was merely a political statement to underline the urgency of the issue.[147] Even within the

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[143] Ibid.
[144] European Commission (2002), "Open sky agreements: Commission welcomes European Court of Justice ruling," Press release IP/02/1609, 5 November.
[145] Daniel Dombey and Kevin Done, "EU throws doubt on 'open skies' deals," *Financial Times*, 6 November 2002, p.1, and Daniel Dombey, "Long haul ahead in 'open skies' struggle: A European court ruling siding with the Commission in its fight with member states will not be the final word in the long dispute," *Financial Times*, 6 November 2002, p.7.
[146] Interview in Brussels, 5 December 2002.
[147] Ibid.

Commission, the announcement is now considered an unlucky move, since there was simply no alternative to continuing with the existing agreements at the time being.[148]

3.2.2. Playing the US card

While European governments and airlines rolled their eyes at the Commission posturing, US governments and airlines were equally surprised by the aggressive tone DG TREN adopted shortly after the ruling. They responded publicly arguing that this was a very bad idea.[149] In fact, the EU Delegation in Washington worked hard to make the US understand that the Commission's statements were not a hostile act towards the US. Nonetheless, the Commission played off the opposition to US interests to unite a European position. Until today, Loyola di Palacio uses harsh words to describe the position of the US. According to her, the US is "in the sclerotic trappings of a bygone protectionist age," with a policy approach benefiting inefficient air carriers at the expense of US consumers and taxpayers.[150]

Immediately following the ECJ decision, this Commission posing against the US was alimented by the fact that experts in both countries disagreed as to the exact implications of the ruling (Dean 2003; Fennes 2003; Mendelsohn 2003a; Wassenbergh 2003). Furthermore, the ruling quite simply did not specify the format of proceedings that would need to follow. And the US government did not interpret the ECJ ruling to mean that it would now negotiate with the Commission. Instead the US government started working with its traditional partners, the member states, and especially Germany, over the Christmas period to find a more

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[148] Interview with a representative from the European Commission, 21 October 2003.
[149] US carriers were especially irritated. To them, what seemed to be turf war between the European Commission and the member states threatened to ruin the operation of a business with at high stakes: "Every day you have hundreds of flights and billions of dollars at stake. We need to keep that functioning." Interview, 25 April 2003.
[150] Loyola de Palacio, "Jurassic Flight," *The Wall Street Journal*, 10 May 2004.

appropriate formulation of nationality restrictions that would take into account the notion of community carriers.

The Commission observed these initial meetings with great displeasure. In January 2003, the director general of DG TREN, François Lamoureux, sent a letter to the national administrations, threatening proceedings against member states "should any member state decide to make unilateral amendments of their agreements with the US." He accused the US of making a "minimalist proposal that fails to recognize the fundamental rights" in the EU treaty.[151] The language and content angered US observers, who felt that they had been accommodating to the requirements of the ECJ ruling by trying to reformulate the nationality clause.[152] In late February, US negotiators invited all European countries affected by the ECJ ruling to join a bilateral meeting they had scheduled with France in Paris to revise the clauses in question.

Trying to assure being part of negotiations, an official from DG TRENs aviation unit decided to join the negotiations, which had already started by the time he arrived. About 8 of the 11 open sky EU member states were present. And then, "the Commission crashed the party and was terribly uncomfortable about the whole thing."[153] With the US attempting to move on with business as usual, the Commission needed to impose its presence to remind the member states that the legal position for negotiating amendments was not certain.[154] The situation was difficult, because competences were clearly divided between the Commission, who needed to be consulted on questions of community competences and the member states, which held the right to negotiate bilateral air service agreements. So the appearance of a

[151] The confidential letter was later published in parts in the *Financial Times*, "Brussels escalates dispute on open skies," 31 January 2003, p.10.
[152] Interview in Washington, D.C., 12 March 2003.
[153] Interviews with several US observers, Washington D.C., 27 March, 16 and 25 April 2003.
[154] Interview with a European official, 15 May 2003.

Commission representative "really put a chill on the discussion."[155] A European observer remembers:

> The Americans were furious. [The Commission official] was practically silent during the session, but his presence evidently had an effect on what was said.[156]

In the same week, the Commission issued its second communication following the ECJ ruling in which is proposed a more constructive approach to external competences (European Commission 2003). By the beginning of the year 2003, the Brattle Group had furthermore published its study on the effects of an "open aviation agreement", as they called it, between the US and the EU (Moselle/Reitz/Robyn/Horn 2002). For the Commission, the purpose of this study was twofold. On the one hand, it was meant to quantify in dollars and cents the benefits of an EU-US agreement, which would help to get reluctant member states behind the proposal who were still insisting that the Commission prove the "added value" of their competences. But it also addressed the concerns of the US government specifically. It is therefore no surprise that the consultancy was US based and had US government experts working on the study during the year 2002. Nonetheless, the study used Euros to express the results and used the English spelling.

The combination of the report, the urgency created immediately after the ECJ ruling and a more general sense that European industry could in fact benefit from a more liberal agreement eventually led to the Transport Council granting a mandate for air transport negotiations with the US and agreeing on a procedural format for cooperation between the Commission and the member states on June 5, 2003.

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[155] Interview with a US observer, 25 April 2003.
[156] Interview with a European official, Brussels, 21 October 2003.

3.2.3. The EU negotiating stance

The position defended by the EU negotiating team logically follows from the struggle the Commission had fought with the member states in order to obtain the mandate. It is based, first of all, on the need to negotiate something more comprehensive than mere open sky agreements, and second, on the argument that the current situation is not fair, that the EU needs to join forces in order to achieve a level playing field with the US.

To US observers, the EU demands seem to be made up by a long series of items that they refer to as a "laundry list".[157] First of all, the EU would like to resolve the issue that prevents consolidation in Europe: the nationality clause in bilateral agreements. Second, it tries to achieve the abolition of restricted access in the US that does not exist in the EU: the prohibition on wet-leasing, the Fly America program, and the low limit on foreign ownership restrictions, which they would like to be at 49%. Third, they would like to tackle the issue of cabotage and through it the right of establishment restrictions in the US that would allow European carriers to operate flights in the US. In their eyes, fifth freedom flights within Europe, i.e. the right for a US flight to Paris to continue to Stockholm, are equivalent to cabotage in the US, because both mean operations within the partners market.

All observers agree that cabotage is the central in these negotiations and the European negotiators work hard to achieve an agreement. US Secretary of Transportation Norman Mineta explains that EU Transport Commissioner Loyola de Palacio keeps insisting on the issue.

> She said, "What about doing it this way?" and I said, "No, Loyola, that's cabotage." Then she said, "What about doing it that way then?" and I said, "No, Loyola, that's still cabotage."[158]

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[157] Interviews with US government representatives, Washington D.C., 10 and 16 April 2003.
[158] Cited in Victoria Knight, "EU Transport Czar Shakes Up Aviation," *Wall Street Journal*, 13 May 2004.

The US has repeatedly underlined that it is unwilling to cede on cabotage and finds it curious that the EU insists so much on what seems to them "more of a symbolic thing."[159] They ask what good it would do if European carriers had this right; they probably would not use it anyway? Richard Branson does not know anything that David Neelmen, CEO of Jet Air does not know, and it would be very hard for European carriers to establish successful subsidiaries in the US. They point out that US carriers also do not use the fifth freedom rights they might have in Europe. United, for example, has not interest to fly into Paris and then continue to Frankfurt. To American observers, the EU demand for cabotage "is a lot more rhetoric than it is a real need on behalf of the stake holders. […] It is more of an abstract calculation of what an open market is, an academic consideration."[160] Seemingly, the EU insists on it, because they feel that the unequal rights "are not fair."[161]

Many US observers also find it inappropriate to argue that it is the US that prevents an integrated market in Europe. Indeed, they are concerned that carriers of countries that do not have an open sky agreement with the US – the UK, Ireland, Spain and Greece – fly from an airport of an open sky country, i.e. that "the UK [would] piggy bag on an EU agreement," and create a free rider problem.[162] However, they do not feel that they are responsible for the lack of less nationality-based operations elsewhere (Mendelsohn 2003b).

> The fact that Lufthansa cannot operate from Paris depends on the French, not on us. Even if you are code-sharing. Lufthansa wanted to put its codes on United flights from Brussels to the US and the Belgians turned it down. Same thing between Paris and the US and the French turned it down.[163]

[159] Interview with a US observer, 16 April 2003.
[160] Interview with a US airline representative, Washington D.C., 25 April 2003
[161] Interview with a US observer, 16 April 2003.
[162] Interview with a US airline representative, Washington D.C., 3 April 2003.
[163] Interview with a US government representative, Washington D.C., 24 April 2003.

Since individual European countries impede the smooth operation of alliances, the EU needs to solve its own resistance to cross-border operations first.[164] The EU Commission rolls their eyes at this argument. For them, this problem is not an issue, because Community competences are clear on this. Member states might refuse designations, but the jurisprudence is "crystal clear on rights of establishment. […] So it doesn't really matter what the member states think. Obviously, they may have their concerns, but the jurisprudence is quite extensive."[165] In previous cases, the Commission has already started investigating into the issue.

On the positive side, the EU hold one trump card in its hands: the UK market. For decades, the UK and the US have not be able to agree on a liberal agreement, because the UK was not willing to give up the privileged access of UK carriers to Heathrow airport, where slots are quite limited. So far, only two US and two UK carriers are designated to serve on US-Heathrow flights: British Airways, Virgin Atlantic, United and American Airlines. In frustration over the stubborn position of their negotiating partners, the UK government has underlined: "we have been unable to reach an agreement with the US for several decades now, so the EU can only do better."[166] Correspondingly, the US says the same about the UK government.

The long list of European demands is most likely to be more difficult to negotiate than the US position. AEA has therefore repeatedly called upon the European Commission not to accept an early agreement that would merely apply the US open sky model across Europe.[167] Such an agreement would leave the US domestic aviation market protected from foreign

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[164] Interview with an airline representative, Washington D.C., 2 April 2003.
[165] Interview with an official from the European Commission, 15 May 2003.
[166] Interview with a British observer, 19 May 2003.
[167] Association of European Airlines, "EU-US Aviation Talks – A good agreement far more important than a quick agreement," Press Release, 11 March 2004, available at http://www.aea.be/AEAWebsite/DataFiles/Pr04-024.pdf.

competition through the foreign ownership provision and the lack of cabotage being addressed by open sky agreements. To AEA the US proposal that essentially aimed at opening Heathrow in exchange for a revised nationality clause provides little added value for the European airline industry. On a visit to Washington in March 2004, UK Transport Secretary Alistair Darling told US Transport Secretary Norman Mineta that US proposals damage British interests.[168]

The fear of the European industry and most British stakeholders is thus that the European Commisison accepts an "early harvest" as negotiators have called it. "History teaches us that there would be no incentive for the US to come back to the table once they have got their model of open skies in place," warned Rob Eddington, CEO of British Airways.[169] Only carriers from countries that do not have open sky agreements are somewhat interested in an early agreement, which would already provide them with added value: either granting them new access to US destinations (Air Lingus and Iberia) or the possibility to fly out of Heathrow airport (British Midland).[170]

Yet the European agenda is ambitious and the timing of negotiating falls onto a busy political agenda: the election period has already started in the US, and the European Commission also arrives at the end of this term this summer. Norman Mineta has already announced that he would like to conclude an agreement before Loyola di Palacio's departure in October 2004. But the Commissioner has assured her negotiating team that "she is not there to enter into history with this agreement before her departure," thus alleviating the time pressure on the shoulder of the EU delegation.[171] An American observer summarizes the US

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[168] *Air Transport World*, "EU Transport Council to discuss progress in talks with US," 8 March 2004, available online at http://www.atwonline.com/archives/news/archive_news_mar0804.cfm.
[169] Cited in Kevin Done, "US-EU air service talks set to end in deadlock," *Financial Times*, 12 May 2004.
[170] Kevin Done, "European air industry angry about US talks," *Financial Times*, p. 11.
[171] Interview with an official from the European Commission, Brussels, 21 October 2003.

position towards the long list of European demands: "It just depends on what the Commission really wants. If they insist on everything, we will wish them a pleasant trip back to Brussels."[172] With negotiations threatening to fall short of European expectations in the spring of 2004, European Commission Vice President announced that she would be ready to ask EU member states to denounce their bilateral agreements with the U.S. if current negotiations fail to bring about a broader agreement this year.[173] So far, an agreement on more than a revised nationality clause will be difficult to achieve.

4. Understanding business – government symbiosis

A quick glance at airline mobilization in the context of international reform reveals that European carriers are much more in support of international reform as their American counterparts. Through their European association AEA, they have even developed an ambitious new regulatory framework the TCAA, which provided the foundation for current US-EU negotiations over a liberal regional agreement. Large international carriers share some of the reflections of their European counterparts on the appropriateness of the bilateral system, but still have not mobilized in support of liberalization beyond the US policy of open skies and alliances.

The reason for this differential mobilization lies in the fact that airlines do not pursue their interest in the abstract, but in a given political setting, which a specific set of competitors. While hypothetical preferences might converge between US and EU carriers, actual mobilization was triggered by perceived disadvantages of EU carriers *relative* to their US competitors. This attention to relative disadvantages under the bilateral system led EU

[172] Interview with a representative of the US government, Washington D.C., 16 April 2003.
[173] Angela Kim, "De Palacio Issues Ultimatum for US-EU Negotiations," *Aviation Now*, 11 May 2004. See also Loyola De Palacio, "Jurassic Flights," *Wall Street Journal*, 10 May 2004.

carriers to start mobilizing for change, even though this change severed the privileged connection they had with their home governments.

4.1. Relative disadvantage

In many ways, European carriers are not as comfortable in their new working relationship with the Commission as they were in the ones they had with their national administration. Even large carriers that cooperate quite successfully with the Commission on a number of issues complain about difficulties.

> The American interest is American industry. There is no ideology. They are for the opening of markets when it suits them only. Their discourse and their practices are two different things. We would really like the see the European Commission adopt the same intelligent attitude. In Europe, the Commission not only holds a liberal discourse, it also applies it! […] They systematically play against their own camp! The Commission does not have a policy that corresponds to our interests.[174]

In comparison with the US situation, European airlines have their individual interest less attended to than the interests of their American counterparts. This applies more than everything else to the granting of government subsidies that used to be quite common in Europe not even fifteen years ago. The context of the airline crisis following 9/11 underlined the differences between the US and the EU approach. While US airlines have received a total of about $15 billion in subsidies to remedy the crisis after September 11th, the EU Commission has argued from the beginning that EU carriers should not expect similar aid. According to EU Transport Commissioner, Loyola de Palacio, the terrorist attacks only highlighted the "structural problems" of Europe's aviation industry. "I am not ready to accept any changes to the rules on state aid because the need for restructuring the sector came before

[174] Interview with a European airline, 18 November 2002.

September 11," said the Commissioner in November 2001.[175] A Commission official explains the approach:

> The Commission is not opposed to reimbursement of the airlines for the direct costs associated to the closure of air space following 9/11. The Commission also authorized money to EU carriers for that purpose. That has not been the main issue. The issue is that in our view, the amount of money that has been made available goes beyond direct compensation.[176]

Of course, ailing airlines tried asking for financial aid, but the Commission resolutely defended its position all the more since Sabena already went bankrupt after the Commission refused to approve further aid packages. Loyola di Palacio underlined that she would adopt the same policy with Aer Lingus, Olympic Airways, Alitalia and Iberia that it had adopted with Sabena and that she was prepared to see many of Europe's flag carriers go rather than relay its rules on state aid.[177] On this one issue, national governments agree with EU position, underlining that national governments have refused direct subsidies and instead helped airlines through insurances at the price of losing several national flag carriers.[178]

The US, in turn, has not only granted a first bail out directly after 9/11, it has also agreed on a second aid package in the spring of 2003 with a much larger scope: "we originally didn't want to give them as much money as we did, but they convinced us to reimburse them for their foregone revenue."[179] These divergent approaches lead again to unbalance between US airlines and Europe.

> Bankruptcy policy is very different in the US. In the EU, Sabena disappeared. A flag carrier! It is dead. It's gone. [In the US] you can be in bankruptcy for extended, long periods of time. That doesn't exist in Europe.[180]

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[175] Cited in Victoria Knight, "EU Transport Czar Shakes Up Aviation," *Wall Street Journal*, 13 May 2004.
[176] Interview with an official from the European Commission, 15 May 2003.
[177] Alistair Osborne, "EU firm line on state-aid – even if top airlines fail," *Daily Telegraph*, 23 November 2001, p. 35.
[178] Interview with a government official from an EU member state, 27 November 2002.
[179] Interview in Washington D.C., 19 May 2003.
[180] Interview with an official from the European Commission, 15 May 2003.

While the EU drafted legislation to sanction US (and Swiss) government subsidies, airlines continue to underline the disadvantages that arise from the two different approaches. Rod Eddington, CEO of British Airways and a recent president of AEA, for example, argued in a speech to the European Aviation Club in Brussels that the heavy subsidies paid by the US government "clearly distorted" the international market.[181] In the early 2000s, the status of airline-government relations in the US and the EU is thus a somewhat curious one. While the EU has tried to develop its former flag carriers into independent business-oriented airlines, the US government has increased its proximity to airlines.

4.2. Judging government constraints

Furthermore, the cooperation of airlines with their governments necessarily depends on the constraints that weigh on political decision-makers and that airlines take into account. If US carriers had wanted to win over Congress for a more ambitious policy stance, they would have to address the three main concerns, safety, security and labor. Indeed, William Ris, Vice President for Government Affairs at American Airlines has argued:

> Civilian aircraft do not have to be ready for troop transportation at all times. There are plenty of willing airlines at home and abroad, which would help out if needed. In the Gulf War, the Dutch KLM and Martinair flew, in Kosovo, Russian Antonows were used.[182]

Similarly, the Brattle Group report shows that a civil reserve fleet in maritime transport successful continues despite the fact that the US-owned vessels have disappeared (Moselle/Reitz/Robyn/Horn 2002). As Mary Lou Hugh from the US DOD affirms, "patriotism is definitely a factor for the CRAF."[183]

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[181] Cited in Kevin Done, "Brussels urged to reject US aviation offer," *Financial Times*, 12 February 2004.
[182] Cited in Andreas Spaeth, "Will Airlines Go Beyond Alliances?" *Flug Revue*, November 1999, p.28.
[183] Ibid.

But safety and security are not as central an issue as is labor, at least from the perspective of American carriers. With negotiations between airline management and labor in full course, either prior to or within chapter 11, this "is already a prickly issue for most carriers."[184] The reason why labor is such an important issue is not because of the lobbying of labor all by itself. Labor had also opposed the multilateral APEC open sky, which included a lessening of ownership and control restrictions, which still did not prevent it from being concluded.[185] With Republicans in power and many carriers in dire financial situation, the clout of unions has become weaker over time.

> The union leverage isn't nearly what it was a few years ago. The financial strength of the carriers is so poor that the unions aren't really in a position to use their leverage to gain anything. They can't go on strike, because that would just eliminate the carrier.[186]

But labor is quite important for airline management, which is currently asking considerable concessions from its workforce: "US carriers are not willing to spend their political clout to argue for liberalization which they know will antagonize labor."[187] US carriers have sufficient market access abroad to maintain their current situation. Pressing for further liberalization, even if large carriers concede that it might have certain benefits, will thus only be disadvantageous for its internal stability.

For EU carriers, government constraints enter quite differently into the organization of their political mobilization. European airlines have the choice of cooperating with their national governments and the European Commission. While national governments are particularly attentive to the needs of their former flag carriers, they are constrained in their individual capacities to expand beyond the current state of bilateral negotiations. As a

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[184] Interview with a US observer, 27 March 2003.
[185] Interview with a US government representative in Washington, D.C., 24 April 2003.
[186] Interview with an airlines representative, Washington D.C., 2 April 2003.
[187] Interview with a US observer, 27 March 2003.

representative of the EU as a whole, the Commission is much more likely to negotiate a more innovate agreement, but it has its own agenda: European integration, tied to an increase in community competences if necessary. Working with the Commission thus requires to keep this objective in mind.

This might not have been particularly difficult for AEA. Two of the general managers of public policy at AEA had both been especially open to the Commission objective. The person who oversaw and promoted the initial draft of the TCAA was Kees Veenstra, one of the authors of the 1980s Dutch proposal of a "super GATT" for air transport services. The current public policy manager, René Fennes, had been at the European Commission's DG TREN, when it decided to take up the TCAA proposal and promote it in the US.[188] But even beyond these two biographical elements, AEA has organizational reasons to move beyond the representation of individual carrier interests. A Commission official explains the innovative nature of AEA proposals.

> AEA represents very divers interests. The only agreement that they can find is liberalization. In Europe, what is possible is finding the common good. That's the reason why the position papers of AEA are almost "extremist" – I say this without any negative connotation. They are radical, they push the logic to their very end. That's understandable. When you demand very specific thing, you cannot always chose what you cannot obtain [in the end]. And they do not want to give birth to a Frankenstein.[189]

US associations certainly represent divers interests as well, but they simply chose to remain silent, when they cannot find a common denominator. In the EU, moving beyond individual benefits is advantageous, however, because it assures a good working relationship with the European Commission. Combined with a feeling of relative disadvantage, this fact has helped large, outward oriented EU airlines to gather the support of smaller and more reluctant flag carriers, which now all support liberalization unanimously. A US observer

[188] See Andreas Spaeth, "Common Air Transport Markets?" *Flug Revue*, September 2000, p.40.
[189] Interview with an official from the European Commission, 21 October 2003.

commented on this development: "you get this interesting situation of the EU being more for liberalization than the US."[190]

4.3. Perspectives

Through this strong motivation, the EU's external aviation policy might become very important for the future of the international architecture in air transport more generally (Wassenbergh 1990; Sørensen/Van Weert/Cheng-Jui Lu 2003). But a closer look at the case of aviation also clarifies that more liberal international designs are about more than market opening or market closing. They are about the definition of global regulatory frameworks more generally.

The case of the TCAA illustrates that "deregulation" had very different meanings for European airlines and their American counterparts. For the European participants the TCAA was "liberal" because it created a transatlantic market, for the US it was a pure case of regulation, because it foresaw a list of control mechanisms that they did not appreciate. This difference had important effects for coalition building on such transatlantic project. In the EU, the relevant labor association, the European Cockpit Association, supported the TCAA and still supports current US-EU negotiations. A US observer suggests that this way due to the regulatory framework proposed by EU negotiators: "the very thing that the European Cockpit Association liked about [the TCAA proposal] made the US not like it."[191]

A look at the negotiations of air transport in the WTO also clarifies the struggle over the definition of liberalization. For the US government,

[190] Interview with a US observer, 16 April 2003.
[191] Interview with a former US government representative, 16 April 2003.

> the reason for the exclusion was deliberate: to promote the development and liberalization of the air transport sector. […] As in the Uruguay Round, the central question remains which option will best facilitate liberalization of the air transport sector (World Trade Organization 2001b).

By the time the Uruguay Round tackled the GATS question, "the open sky bandwagon was already moving."[192] For US negotiators, the benefits of bilateral liberalization were much more certain than multilateral liberalization through the GATS. Consequentially, the US government has repeatedly argued that,

> there is little to suggest that comparable – let alone greater – liberalization would have occurred had the GATS applied to air transport services, and there therefore is no reason to believe that future liberalization could best occur under GATS auspices (World Trade Organization 2001b).

Liberalization, in these US statements, because equivalent to anything that is less constraining than the traditional bilateral agreements, despite the fact that a GATS solution and the open sky policy are very different regulatory framework.

The EU position on air transport in the WTO is quite different. Officially, the EU speaks out against a general carve-out and supports a better integration of the sector into the multilateral framework of the GATS. They push for an extension of WTO competences, suggesting that "the Annex might be shifted to promote trade in all supporting services that facilitate the exercise of existing commercial traffic rights […],".[193] In documents that are not part of the official WTO process, the Commission even calls for inclusion of hard traffic rights in the GATS in the long term.[194] In the eyes of European observers, this pro-liberalization stance follows from the Commission's own agenda.

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[192] Interview with a US government representative, Washington D.C., 24 April 2003.

[193] World Trade Organization (2001), "Communication for the European Communities and their Member States: Review of the GATS Annex on Air Transport Services," S/C/W/198, Geneva, 3 October.
For an overview of other propositions towards a more liberal treatment of air transport under the GATS, see Hübner (2001: 981).

[194] European Commission (2002), "Communication from the Commission on the Consequences of the Court Judgement of 5 November 2002 for European Air Transport Policy," COM 2002 649 final, 19 November, p.12.

> The Commission saw in the WTO a way of forcing discussion on the TCAA. In the WTO, the Commission speaks with one voice […]. In ICAO, the EU has no voice. The US can use this fragmentation to divide and break an EU position. This is why the EU prefers the WTO to ICAO.[195]

Yet, while the EU stance on WTO affairs is comparable in telecommunication services and air transport, the US government stance is not. In the case of telecommunications, they have supported multilateral liberalization, in the case of air transport they have not.

This difference is justified with reference to the specificities of the sector. Like in telecommunications, defenders of the old regime insist that trade specialists have little knowledge of aviation affairs. A US negotiator remembers his initial reaction to the GATS initiative:

> To bring closure to the Uruguay Round, 1991, was made the deadline for agreeing to a Draft Final Act or "Dunkel Text" including all the major agreements of the WTO. Thereafter, negotiators generally were limited to making minor changes […]. When the Dunkel text appeared, we at DOT had not yet organized ourselves effectively to follow the developments of the Air Annex, and I think that was true of many countries' aviation departments. Most work had been done by generalists, or by trade officials specializing in services as a whole. The principal author of the Dunkel Air Annex was a talented, good-natured Canadian who brought to the project enthusiasm, patience and decades of experience in international trade. In wheat! When time permitted, trade specialists would fax the successive drafts back to their capitals for review of transport colleagues. Often this was not possible. Given all these considerations, the DFA version of the Air Annex was a remarkably good start. (Loughlin 2001: 2)

Almost all airlines agree with this concern, arguing like businesses in other sectors that they do not want to be "traded against bananas."[196] Like their counterparts in telecommunication services, many government representatives do not even keep well informed about a potential inclusion in the GATS when it does not seem a tangible political issue.

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[195] Interview with European observers, 23 October 2003.
[196] Interviews with a European airline in Brussels and a US airline in Washington, D.C., 13 November 2002 and 24 April 2003.

> The what? Oh, honestly that came up yesterday, actually. A government official from Shanghai asked the exact same question. They did a tour, a training in the US to learn how we handle air transport. And he was confused how we support the WTO and liberalization but refuse to bring air transport into the agreement. I had to answer to him that I didn't know why that was. And I have to research it myself.[197]

A European representative summarizes: "it is not in our interest to replace a long series of agreements with [the MFN] principle. 'We' refers to all European countries and the Americans as well."[198] By consequence, not even AEA is supportive of a full inclusion. Nonetheless, some very innovative airlines can conceive of the MFN concept applying to air transport, which indicates that it is not an issue of structural incompatibility.

> I think MFN is a fantastic principle, but I must say that I don't know much about the GATS. I think that the MFN clause is exactly what we need. That's my personal opinion. Because if you have a MFN clause, […] you can do away with the bilateral system. It would be marvelous. But […] nobody is ready for it. […] Countries will say: "If we have the MFN principle, that means that all the others can come and profit from our market? And what happens to our national carriers then?" It is an issue of wanting to protect the national carriers. I can think of no other reason. If it works for the rest of the world, why shouldn't it work for the airline industry?[199]

Maybe air transport is too sensitive and too complex to allow it being governed by the WTO? But the propositions of liberal-minded countries and the statement above indicate that it might also be that the current state of affairs is simply the stalemate over the definition of a regulatory regime that the US is not interested in.

4.4. Conclusion

More generally, the case of air transport liberalization indicates that the precise content of firm lobbying is a curious mix of self-interested strategies and an adaptation to governmental constraints. The preferences of US carriers follow from their position in the

[197] Interview with a US airline representative, Washington D.C., 3 April 2003.
[198] Interview with a European airline, 18 November 2002.
[199] Interview with a European airline, 2 December 2002.

current system and since the US government is concerned about protecting its carriers, both government and airlines remain reserved about the ambitious EU open aviation area project. EU carriers, in turn, feel the disadvantage of the asymmetric open sky liberalization and seek to reform the international regulatory regime. Complaining that the EU Commission is not pragmatic enough to deal with these demands directly, they decided to propose general principles for reform instead. By collaborating with the Commission on the formulation of these principles, EU carriers were able to affect the EU policy process on external aviation relations. The lobbying of European airlines thus reflects their own interests as well as the constraints weighing on the EU Commission in its relations with the member states.

Chapter 8

COMPARATIVE ANALYSIS

The previous chapters have situated business-government interactions in a specific economic and historic context and have traced the evolution of business lobbying over time. Seemingly, the lessons from these two cases are quite sector specific. The purpose of this chapter is to move beyond an examination of the individual cases in order to analyze how business preferences on international trade evolve. Chapter 2 has identified four elements weighing upon the lobbying of firms – economic conditions, national regulatory traditions, and the international regulatory regime and the policy process – of which the first three vary in each sector. Pursuing them throughout the empirical discussion, lays the groundwork for an evaluation of their effect across countries, sectors and time. The central argument is that none of the four elements can explain the evolution of political strategies all by itself. However, the study of business-government interactions over time helps to establish a hierarchy between the four elements, which highlights the often neglected importance of the policy process in the US and the EU.

This chapter begins by discussing and comparing the four variables. In a second section, it then returns to the four central case studies – US telecom services, EU telecom services, US air transport and EU air transport – to propose a more dynamic account of the evolution of business lobbying throughout the multilateral liberalization discussions. For doing so, I establish an order of relevance of each of the four elements so as to show at which

point during the process which one became pertinent and how it affected later outcomes. A final section then returns to the US – EU dimension more generally and summarizes the lessons and qualifications of the lobbying comparison.

1. Alternative explanations

It is helpful to recall the hypotheses made about each of the four elements. Concerning economic incentives, we expect import-competing, home-market oriented firms to be opposed to further liberalization, while internationalized businesses should be more interested in foreign opportunities and therefore support reciprocal trade liberalization. According to an argument of path-dependence, firms in heavily regulated sectors are less likely to support international trade liberalization than firms in deregulated sectors. International regime can act as a disincentive to liberalization if they create market segments impeding firms to achieve true internationalization. Finally, the complexity of the political system is relevant for the process of trade policy-making. Since trade negotiations are in the hands of the executive and not the legislative branch of the government in both the US and the EU, lobbying is most importantly affected by the access firms have to the negotiators and the preference aggregation mechanisms weighing on decision-makers. Since protectionism for individual European member states is difficult to defend in the supranational institutions, we should expect the multi-level system of the EU to be less accommodating to protectionist demands than the unified federal system of the US.

Table 8-1: Summary of hypotheses

	Protectionist lobbying	***Supporting liberalization***
Economic incentives	import-competiting	export-competiting
Domestic regulatory traditions	heavily regulated	deregulated
International regime	complex	simple coordination
Policy-making structure	simple	multi-level

Table 8-1 summarizes these propositions, which we will now look at in turn.

1.1. Economic incentives

A first question relevant to the evaluation of economic incentives is how to deal with the broad notions of competitivity or the international activities of a firm. What measure should we use as an indicator in order to test the hypotheses coming from the political economy literature? The most concrete formulation, the one taken up in this dissertation, refers to export and import-competing firms. But as the discussion of service trade has underlined, determining service exports and imports is not a simple task. Even at the aggregate level, it is complicated to establish measures on service trade, which take into account the modes of supply relevant to the trade of services and identified in the GATS (Chang et al. 1999).[1] Another problem is the impact of alliances on service trade, and more specifically on the ways in which services are consumed. If a non-resident of the US books a flight on a US airline, this constitutes an export in the US balance of payments, but what about a flight booked with Lufthansa that is operated by United Airlines? Independent of the

[1] Since the agreement on service trade, there has been an ongoing effort to improve the use of statistics for service trade. Recently, the UN, the European Commission, the IMF, the OECD, UNCTAD and the WTO published a joint manual on statistical measurement of international service trade (United Nations et al. 2002). The OECD furthermore publishes a comprehensive survey of service trade statistics. In the US, the Mark Twain Institute, founded by Harry Freeman, also works towards the improvement of statistical data on service trade: see www.sitrends.org.

solutions that have been found for statistical aggregates, how do these forms of consumption affect a firm's preferences?

It would be injudicious to reject the propositions of the political economy literature due to the lack of available data and the difficulties of translating the classical trade propositions to the case of service trade. Instead, it might be helpful to relax the assumptions a little bit, in order to capture the core of the propositions. In essence, the propositions about the importance of export and import competition have been made at the sector level, rather than the level of the firm, because the theoretical claim is based on the notion of factor-specificity, which generally applies to an industry as a whole. Alt et al. (1996:692), for example, suggest "if the United States is abundant in software producing capital, but scarce in up-to-date auto-producing capital, and if shifts between these uses are costly and slow, then software manufactures will embrace free trade and automakers will be protectionist." Within an industrial sector in similarly endowed countries – which is arguably the case for telecommunication services and air transport in the US and the EU – the question is less one of import or export competition, but rather of internationalization more generally. Helen Milner, for example, proposes that "international orientation" is the key to understanding firm preferences. The American manufacturing firms she studied resisted asking for protectionism when they were faced with increased competition at home for fear of retaliation from other countries, most importantly, because these firms had the possibility of investing abroad if markets remained open, since their capital was mobile (Milner 1988; Milner/Yoffie 1989: 124). A more meaningful way to evaluate the economic incentive hypothesis would then be to look at the international orientation of firms.

However, this does not necessarily make the search for comparable data much either: what makes a firm outward-oriented? Its international operations, its foreign direct

investment, or its alliances? As has been pointed out earlier, balance of payment measures on service trade do not take into account sales by foreign affiliates of a supplier firm. However, despite the costly and large number of mergers and acquisitions reported in the telecommunications industry in the 1990s, these types of services only account for less than 5% of services sold by US multinationals in foreign markets in the late 1990s, even though the percentage has been growing fast since 1995 (Mann/Brokenbaugh/Bargas 2000).

A good approximation of outward-orientation might simply be the size of the international activity as a percentage of a firm's total. This is the measure supplied in chapters 4 and 6. While it is insightful for the case of air transport, it is somewhat problematic in the case of telecommunication services. The international telephone revenue listed in chapter 4 refers only to calls. This might be a good indicator of the degree to which the company is affected by the accounting rate system in the ITU should thus seek to reform it, but it does not give any indications concerning the firm's preference for foreign market access. Even if sales by foreign affiliates account for only 5% of a big multinational's turn-over, we should expect foreign direct investment to play an important role as well.

However, the relative size of international telephone revenue as a first indicator for outward orientation in the 1990s is nonetheless useful, because international telephone revenue might have an indirect effect: a provider that connects many international calls might feel that his clients, even if they are residents from its home country, will be increasingly interested in foreign connections and will push towards the establishment of a global telecommunication network. Through this mechanism, international telephone revenue might be an indicator of interest in foreign market access, even if the company in question has not yet established itself abroad. Table 8-2 lists the international telephone revenue as a percentage of the total revenue of US and EU companies. Identifying international

involvement of airlines is more straightforward, since it is reflected in the number of international destinations served and therefore relatively well accounted for by international operating revenue listed in chapter 6. Table 8-3 lists these percentages for air transport. It should be noted that the percentages of both tables do not denote exactly the same degree of internationalization. While the percentage of international telecommunication revenue indicates revenue from operations outside of the operator's home country, the international air transport operations refer to extra-EU operations for European operators.

Table 8-2: Importance of international revenue in telecommunication services (based on 1997)

Company	*International as % of total revenue*
MCI * ++	21 %
AT&T * ++	16 %
KPN * +	13 %
PTA	13 %
Belgacom	12 %
British Telecom * ++	9 %
Sprint * ++	9 %
France Télécom * ++	8 %
Deutsche Telekom * +	7 %
Worldcom	6 %
Telecom Italia	5 %
Telefónica ++	5 %
Bell Atlantic ++	0 %
SBC +	0 %
GTE	0 %
Bell South ++	0 %
Ameritech ++	0 %
US West ++	0 %
Cable & Wireless ++	N/A
Telia *	N/A

Note: Taken from table 4-1 on page 157. * indicate major joint ventures, + indicates a case of foreign investment, ++ indicates several investments, as listed in annex 3.

Table 8-3: Importance of international operations in international air transport (based on 2002)

Airline	*International as % of total operating revenue*
KLM *++	63 %
British Airways *++	61 %
Air France +	53 %
TAP Portugal +	51 %
Lufthansa ++	49 %
United ++	over 34 %
Continental ++	33 %
Iberia ++	33 %
Northwest *++	30 %
American ++	29 %
Delta ++	over 21%
SAS ++	14 %
US Air *+	13 %
Alitalia ++	8 %

Note: Percentages are copied and rounded from table 6-1 on page 245. Symbols refer to alliances: * denotes an alliance with equity stake, + signals early or late alliance, ++ signals alliance partners through the period from 1995-2001, as listed in table 7-1 on page 303. Both tables only list the largest service providers in each sector.

As a first cut, these two tables provide a provisionary ranking of the importance of international activities in the operations of US and EU companies. Naturally, the table reflects the size of the home country of firms. In both sectors, firms of small countries, such as the

Netherlands, Portugal or Austria, have more international operations that the majority of firms in a large country like the US. Nonetheless, the comparison of firms of similar sized countries and the overall order underline two observations:

First, the firms that have engaged most explicitly in support of further liberalization – companies such as AT&T, MCI, Sprint, France Telecom or Deutsche Telekom or KLM, British Airways, Air France and Lufthansa – have comparably large international activities, at least with respect to other firms in their sector. Second, those that have been conspicuously absent from the liberalization discussion – Bell South, SBC, Ameritech or SAS, US Air and Alitalia, for example – have comparably small international activities.

If one was able to quantify foreign investment as a part of international revenue, these lists might become even more precise and could give indications about the differences between the US RBOCs, for example. In the absence of information about the size of foreign direct investment, the table indicates nonetheless the existence of international alliances or foreign direct investments through the symbols + and *. Again, the presence of symbols corresponds roughly to the lobbying presence of the service providers. Firms that have long-lasting or important international engagement through alliances or investment tend to be those that were particularly present during political discussions. Taking these engagements into account helps to nuance the difference between Belgacom (12%) and France Télécom (8%), for example. Even though Belgacom, has a higher numerical percentage of international revenue, due to the size of its home country, France Télécom took part in the "Global One" joint venture and had several foreign investments, which explains why France Télécom was more interested in the GBT negotiations than Belgacom. A similar argument applies to Telefónica and Telecom Italia, even though both have 5% international revenue. However, the presence of alliance partners is less insightful for the mobilization of airlines. On the one hand, international airlines tend to all have alliance partners, with the exception of Olympic

and Luxair. Furthermore, the percentage of international operations is in fact a quite precise indicator of the degree to which an airline is dependent on international regulation and should seek to reform it.

Although the approximate quantification of outward orientation is insightful in many respects, it also poses several questions. First of all, the ranking only becomes meaningful once we already know what the general stance of the sector was. If we considered an industry with little information about past developments, we would probably not expect firms to be in support of for multilateral liberalization with only 10% of international revenue. On the other hand, 33% of international operations, like in the case of Continental Airlines, would seem considerable. To some extent, comparing the statistical measures of telecommunications services and air transport resembles comparing apples and oranges and should not be taken too far. But the airlines listed have quite large international operations, even larger if one considers the international percentage within the EU as well for European carriers. Should we not expect international air carriers as a whole to embrace liberalization more fully than telecommunication providers as a whole? Yet empirically, the opposite was the case.

Second, the percentages within one sector give no indication as to whether an individual firm will actually chose to act on its expected preferences. The US RBOCs are seemingly in similar positions, but only Bell Atlantic (then Nynex) and to some degree US West followed the GBT discussion actively. Across countries, the ranking is even less conclusive. Statistically speaking, there is no reason, why the Dutch KPN should not have formed an advocacy coalition with AT&T and MCI or why British Telecom and Sprint should lobby differently. Even if one wants to keep within a group of network operators from the EU only, KPN should have comparable preferences to Deutsche Telekom, but all accounts of ETNO confirm that the operators of large European countries were more active than the operators of small European countries. One “preference map” from the IPE literature

addresses this problem, arguing that firms of small countries tend to be more protectionist than those from large countries, but we would then have to answer why KLM airlines was a pioneer of pressing for liberalization since the 1980s.

Considering economic incentives nonetheless has two advantages. As the first glance has demonstrated, the degree of internationalization roughly corresponds to the degree of mobilization for liberalization within a sector. Although we find firms that do not lobby where we would expect them, firms do not seem to lobby *contrary* to the preferences one can predict by comparing concrete economic stakes. Furthermore, those firms that are largely absent from a political discussion are essentially those that have the smallest degree of internationalization, although they are not necessarily protectionist. Economic incentives thus help to explain the different degrees of mobilization between firms within one sector once the overall context is defined.

1.2. Domestic regulatory traditions

Our second hypothesis suggested that firms in deregulated markets will be more likely to support multilateral deregulation than firms in heavily regulated markets. The prediction relies on the notion of path-dependency, but it is a relatively broad and underdetermined hypothesis, because it does not propose a causal mechanism. Several potential causal mechanisms are worth considering, even though they might not be independent or exclusive, but instead work together to produce a path-dependent effect. First, those firms that are dominant in a given regulatory setting will have contributed to its shape and benefit from it, while the losers of a regulatory solution have already lost once and are less likely to become important actors in the international discussion. Second, the transition to international liberalization will be less costly and less uncertain to companies who already operate in deregulated domestic markets. In deregulated domestic markets, firms' behavior is usually

determined to a large degree by demand and supply, so that firms are better equipped to adjust to an international market governed by the same principles. In regulated markets, by contrast, the behavior of firms is determined by the very specific regulatory context, which might be very different than the supply and demand logic of deregulated markets. Third, different regulatory styles contain different cognitive frameworks or "*référentiels*" that guide the behavior of the individual actors with existing meanings. This mechanism relies on the study of ideas in public policy, which has gained attention in public policy analysis since the 1990.[2]

Before evaluating the usefulness of these three propositions, how does the general hypothesis fare for the empirical cases studied? In telecommunication services, deregulation occurred in several steps. The US moved from a private monopoly to competition in long-distance services in 1984. Despite the divestiture of AT&T, however, seven regional bells continued to provide monopoly services until the TA 96, endorsed in 1996 and signed into law in 1999. European telecommunication networks were as part of European telecommunication liberalization in the 1990s through a Green Paper adopted in 1996, effective on January 1st 1998. While European long-distance liberalization happened thus over ten years after the US example, local networks were liberalized one year earlier in the EU, although the political processes evolved almost simultaneously. It is thus not very useful to speak about national regulatory traditions, but rather about regulatory traditions only. This allows us to divide telecom companies into long distance providers and local network operators, rather than dividing by country.[3] Long distance service providers – AT&T, MCI or Sprint – should thus be in support of liberalization, while network operators in both the US

[2] See Surel (2000) for an overview or Muller (2004) for the notion of a "referential" in particular.

[3] By doing so, this choice emphasizes the „regulatory tradition" part of the hypothesis over the „national traditions" part. This corresponds to a general critic of the reification of national categories (used since Ricardo's writings on national specialization), which underlines that simplistic assumptions about national "models" have proven to be of little use for the understanding of global trade dynamics (Watson 2003).

and the EU should be supportive of regulation or protectionism that reproduces the relational position they had negotiated historically in their respective countries.

In air transport, domestic deregulation in the US was introduced in 1978, in the EU flag carriers continued operating monopoly service on international flights in most European countries until the integration of the European air transport market in three packages from 1987 until 1992, which completed the internal EU market by April 1, 1997. International competition on domestic routes is precluded until today, with the exception of the EU market, where all licensed European carriers can operate flights anywhere, even within an individual country, and where US carriers can operate flights between EU member states. Since today's international carriers in the US have had to adapt to increasing competition since 1978, they would have to be more supportive of further international liberalization, while EU carriers should be more hesitant before 1997. After 1997, EU carriers might arguably be more supportive of increasing international competition than their US counterparts, since they have had to accept international competition on their domestic and international routes from other European carriers already.

For telecommunication companies, the propositions seem relatively accurate at a first glance, for air transport they are more problematic. Let us consider each in turn. Telecommunication companies do indeed lobby according to the regulatory division identified above. Heavily regulated network operators form associations – USTA and ETNO – separate from the more competitive providers, which in turn form their coalitions specifically with the goal to introduce even further competition into telecommunication service markets – CompTel in the US, which has less important equivalents in the EU, such as the European Competitive Telecommunications Association. Until this day, network providers are particularly concerned about liberalization, which always aims at the resolution of their network control, and thus at the returns on the principal investment of these

companies. In the US, all telecom companies affirm that this dividing line still runs through their business advocacy work today: while competitive providers accuse networks operators of being protectionist, network operators accuse competitors to not take into account that investment needs to be encouraged with financial incentives. If the returns on the investment into networks is not certain, nobody will built or maintain them anymore. In Europe, the dividing line is less visible, since many network operators are also the competitors in other countries, but the concerns are the same. Several years after the introduction of competition, regulators and new entrants still accuse the network operators to be unwilling to cede complete control over their lines through a myriad of tricks and tactics. Anybody looking at the details of these disputes would quickly conclude that network operators fight direly for a continuation of their traditional dominance.

However, and this is quite puzzling, this intuitively understandable resistance to ceding control did not translate into lobbying against multilateral liberalization through the GATS. While network operators are protective of their assets, they are not protectionist when it comes to trade policy. On the contrary, ETNO saw the GBT talks as a way of furthering the integration of Europe, which it supported. On the US side, reactions were a little more differentiated. First of all, the overarching association of network operators, USTA, does not get involved on the multilateral trading issue and neither do a several of the regional bells. This lack of mobilization can be understood as indifference, at best, or as passive resistance, at worst. Maybe regional bells would have liked to mobilize with a protectionist coalition if this would have been feasible, but such a coalition simply did not form. Other regional bells did follow and support the multilateral liberalization efforts, though. They came to the table later than the competitive players, to be sure, but they nonetheless travelled to Geneva and followed the negotiations as actively as their competitive colleagues by 1996.

In air transport, the empirical findings are even more in discordance with the hypothesis. Air transport was one of the first major sectors to be thoroughly deregulated in the US. Still, the highly competitive carriers were not supportive of further liberalization, not even those that won the industry shake-out against carriers such as PanAm or TWA. European carriers conform somewhat better to the predictions of the hypothesis. While they clearly value the traditional government coordination on matters of their home market, they turn especially supportive of liberalization in the late 1990s, once the integration of the European aviation market has reached near completion. The first draft of a TCAA was written in 1995 and by 1999, when discussions really took off the ground, the majority of European flag carriers were resolutely for a reform of the regulatory framework of transatlantic relations, even if this meant opening their home markets to US carriers. Consolidation had become the major objective even of those carriers that risk being "consolidated away".[4]

Of course, one could nuance the regulatory traditions hypothesis and make it less optimistic. Heavily regulated firms should be against liberalization, but firms in deregulated markets will only be supportive of liberalization if they have something to gain from it. As Milner (1988) and Gilligan (1997) have underlined, *reciprocal* market access is key to understanding support of liberalization. It would be pretty naïve to think that any firm would be in support of liberalization if they already have unilateral access to the foreign markets, which is arguably the case for US carriers. While this adjustment helps to understand the case of air transport and succeeds in making it match with the expectations from the regulatory traditions hypothesis, it does respond to the puzzle of the telecommunication sector: why did EU network operators not lobby against liberalization?

Before examining if the remaining two alternative hypotheses can respond to the lacunae of the first two, let us go back to the three causal mechanisms identified in the

[4] One may think of KLM or speculate about TAP Portugal.

beginning to see if the empirical discussion can help us evaluate their contributions. The first two causal mechanisms provide a sociological and a strategic perspective on a similar observation: those firms that successfully provide services in either a regulated or deregulated market tend to prefer keeping the status quo. From a strategic perspective, this should be the case, because firms will be risk adverse and concerned about the costs of adaptation. Firms in regulated markets will be especially reserved about global liberalization, because they will bear much higher costs during the transition, since they have to restructure in order to become sufficiently flexible to operate by the logic of demand and supply. From a sociological perspective, dominant firms will try to reproduce the "rules of the game" that have worked well for them in their domestic markets (Fligstein 2002). Both propositions are reflected in the empirical behavior of firms. European airlines underlined that they have very precious relationships with their governments and that their principal concern about working with the Commission is the lack of equally tight set-ups at the supranational level. They repeatedly insist that the Commission will not take their individual needs into account as well as their national governments do, which would make them pay a high price once the Commission took over the area of external aviation. The lobbying during the course of the international discussion in both sectors furthermore reveals how firms are trying to reproduce "conceptions of control" or regulatory solutions similar to their home traditions. European airlines proposed an initial TCAA that US airlines considered "very European", heavily insisting on the need of regulation, the harmonization of competition policy and even supranational dispute settlement. These are very non-entrepreneurial concepts in the eyes of US firms, which lobby for a minimalist institutional framework. In telecommunications, by contrast, it was US firms, who insisted on a general obligation to abide by regulatory standards, which were eventually taken up in the Reference Paper and exported the idea of regulatory agencies onto the multilateral scene.

These different elements explain well, why and how firms have a preference for regulatory stability and tend to favor those solutions that resemble their domestic regulatory traditions. But neither one helps to understand when a shift occurs in a particular regulatory path. The proposition of cognitive frameworks might be able to address the question of shifts, but it is somewhat underdetermined. For the EU case, it seems that national regulatory traditions became obsolete once the European Commission had established a competing policy framework that successfully replaced the national one. The public service paradigm that had governed telecommunication services until the 1980s, for example, was replaced by a market-oriented service provision paradigm, which explains why international liberalization became a possibility. But this does not indicate why and when a policy framework can successfully replace an old one. In many cases, the adoption of a new framework, especially on the part of a firm, might be a strategy. For US airlines, the reliance on the "bilateral framework for air transport" could be considered a strategy of maintaining the status quo, just like EU telecom providers might have employed the "market framework" to circumvent their governments in an attempt to enter into new markets abroad. The ideational explanation thus gets caught in a chicken-and-egg problem: do firm preferences change because cognitive frameworks change or do cognitive frameworks change due to firm preferences?

To summarize, while the hypothesis about national regulatory traditions or merely regulatory traditions sheds light on the details of firm mobilization, it does not provide an accurate description of the "big picture". In the short run, firms tend to defend the status quo solutions and they generally attempt to reproduce the market structures that they are used to in the international realm. But in the long run, they can be willing to accept and even drive path shifts that we would not expect by considering their regulatory traditions only. In other words, while national regulatory traditions determine the initial policy stance of a firm towards liberalization, firms do adapt these policy stance in the course of the political process. In the

case studies presented here, hesitant network providers and airlines with tight national government connections eventually turned around to support international liberalization projects that were contrary to their status quo preference. Other case studies confirm this tendency. Jenny Fairbrass (2002; 2003), for example, studied the support of British and French firms for EU service liberalization. Yet in both the telecommunications and the energy sector, British firms were supportive of EU market liberalization since the beginning, while French firms were initially opposed. In both cases, French firms eventually rallied behind the EU liberalization plans and even worked towards convincing their government to do the same.

A consideration of this hypothesis therefore joins analyses that caution against the reification of the "national" arena as the single most relevant sphere of social-economic relations, especially in the context of international trade (cf. Watson 2003), while it agrees that it is equally misleading to imagine a global economic arena as the only circumscription of firm strategies.[5] Instead, we can observe in the two sectors studied that domestic frameworks, European ones and multilateral solutions mix to provide a combination of policy alternatives to firms that is much greater than simply maintaining or losing the regulatory status quo or opening or closing domestic markets.

1.3. International regulatory regime

Concerning international regimes, our hypothesis suggested that segmented international regimes discourage firms from supporting liberalization. Indeed, for the small sectoral comparison of telecommunication services and international air transport the international regime is quite explicitly a major element of firms' trade policy stances. All

[5] This is one of the central points by all authors belonging to the literature of comparative capitalism.

airlines cite the bilateral system as the reason why air transport is not included in the GATS and agree that the way in which the bilateral system governs air transport is more appropriate to their business operations than the MFN principle.[6]

But how exactly does an international regime create this preference? As with regulatory traditions at the domestic level, the hypothesis is somewhat underdetermined. The theoretical discussion referred to the literature on international business elites, on the driving role of global alliances or multinational companies, which simply cannot develop under a segmented regime. But the empirical discussion highlighted another element of the international regime that seems more immediately relevant to the political strategies of airlines: the importance of strict reciprocity. Airlines do not want to engage in multilateral liberalization through the GATS and are even hesitant about the benefits of an open aviation area, because it does not ensure them the strict reciprocity that the bilateral service agreements enshrine.

Since both telecommunication services and international air transport are subject to an international regime, it becomes important to understand why the international regime is so central to the policy stance of airlines, but has not been essential in the policy stance of telecommunication providers. At first consideration, the ITU regime would seem to be somewhat similar to the ICAO regime. In air transport, many airlines and policy-makers argue that a WTO service agreement in their sector would insufficiently replace the comprehensive network of bilateral agreements, for example, but telecommunication services were also coordinated through bilateral agreements. In the early service negotiations during the Uruguay Round, ITU and ICAO were nonetheless considered as having equal functions and were both consulted by the WTO negotiators (Croome 1995: 127). Like ICAO, ITU had an institutional self-interest that should seemingly incite it to try and deal with economic

[6] With one exception cited on page 343.

liberalization without a new WTO regime. However, this was not the case, as an observer remembers.

> Within ITU, there was an old and a new guard. The old guard never thought liberalization would happen and if it did, it would have been under their auspices. The new guard was more open. The president at the time thought the two organizations were complementary.[7]

Despite similar organizations and the use of bilateral agreements, something remains different in telecommunications and air transport: as the comparison underlines, it is not the existence or absence of international organizations that define the nature of an international regime, but the economic role assigned to governments. Bilateral air service agreements, after all, are negotiated and signed by governments on behalf of their flag carriers, while bilateral agreements in telecommunications were inter-firm agreements.

Considering the role of governments as economic players helps to understand the connection between the absence of an internationalized business elite and the need for strict reciprocity. In fact, the insistence on strict reciprocity and the lack of an internationalized business elite are two sides of the same observation: by endowing national governments with the authority over economic agreements, the bilateral air transport regime segments the world market for air transport into national markets. Even those airlines that are highly internationalized are tied to their hubs, which are necessarily in their home country, with frequencies and slots allocated by their national governments. On the one hand, the importance of national markets thus impedes the formation of global business elites, since alliances are only limited forms of cooperation that permit the connecting of routes, not the concertation of business strategies. On the other hand, it is in defense of these national markets that strict reciprocity becomes so important. Within most countries, slots at airports, for example, are a relatively scare good. An airline that wants to establish itself as an international airline in Great Britain will find very quickly how valuable it is to hold on to the

[7] Interview in Geneva, 24 October 2002.

slots it has in the London area, simply because losing a good place in London means losing the British market. Since airlines cannot just relocate or focus their strategies on other markets abroad, their mantra became "giving hard rights for hard rights only".

Taking into account the nature of the international regime is thus crucial for understanding whether firms will be supportive or not of international trade liberalization. This confirms David Yoffie's (1993: 449) analysis about firm strategies on international trade: "to make the right strategic choices, successful firms […] must identify [what type of game] they are playing and how the game is changing." An international regime defines the nature of the stakes involved in international trade liberalization and thus circumscribes what individual firms will be willing to support. On the downside, it does not give any indications about differences between firms governed by one particular regime and we have seen that differences exist both between countries and among firms belonging to the same sector within a specific country. International regimes thus seem to have a influence comparable to domestic regulatory traditions: they weigh on initial policy stances but they cannot account for variation within on sector or regime or shifts over time.

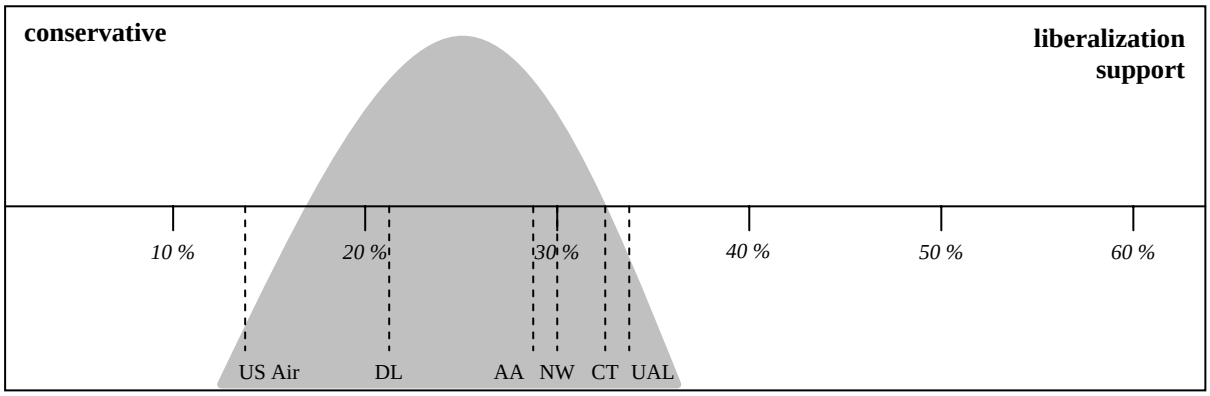
1.4. Policy process

While economic incentives and domestic regulatory traditions help to shed light on differences of firm preferences within a sector, an examination of the policy process can help to explain differences between countries. Focusing on the multi-level decision-making process in the EU, our hypothesis suggested that firms in a multi-level system with a de facto unanimity requirement will tend to support liberalization, while firms with contacts to their government should have a more explicitly differentiated view. Specifically, lobbying in the EU needs to address pan-European concerns and since the EU opportunity structure favors

"winners" this pan-European framing will most likely lead to support for liberalization rather than the construction of a "fortress Europe".

In the two sectors studied, the requirements of the political opportunity structure do indeed seem to have an effect, which becomes especially clear when one compares the observed policy stances of firms directly to the predictions of the economic hypothesis. In order to do so, it is helpful to consider the position of individual firms graphically. For visualizing the derived stances of individual companies I rely on the calculated degree of internationalization (taken from table 8-2 and 8-3 in this chapter) to determine an order of the supposed "original" policy preferences on a spectrum ranging from conservatism to support for further multilateral liberalization. The grey area signals the observed dominant policy stance of firms within the sector, making it possible to compare the actual policy stance with the assumed preference we have derived from the degree of internationalization.[8]

Figure 8-1: Preference on trade liberalization - US air transport

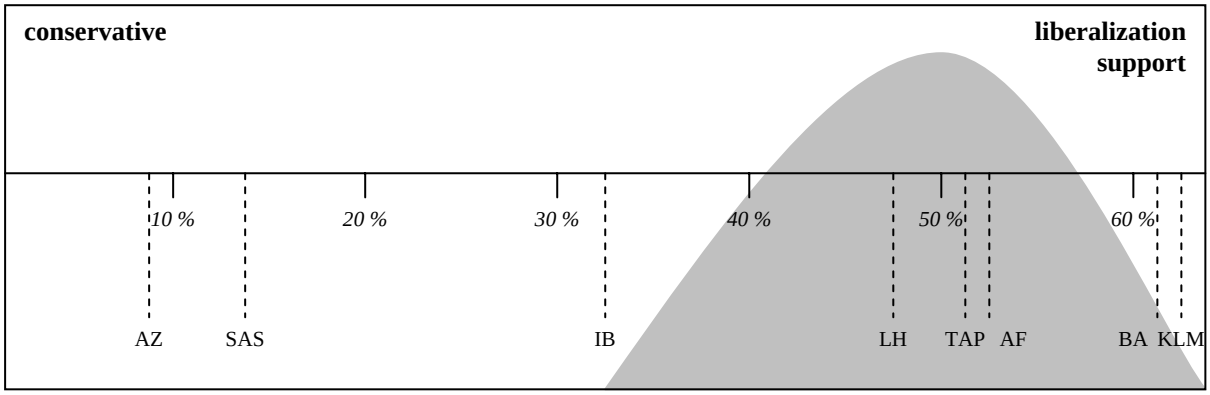


For US airlines, the explicit collective policy preference corresponds well to the assumed policy preferences. It represents the aggregate of the individual preferences. At the base, it covers the opinion of all airlines, while the official stance that is most dominant at the political level lies somewhere in the middle. It is less explicitly in support of liberalization

[8] The placement of the individual firms thus does not reflect interview data, but only the numerical values taken from table 8-2 and 8-3, which I have argued to be a relatively good approximation of the explicit preferences of firms.

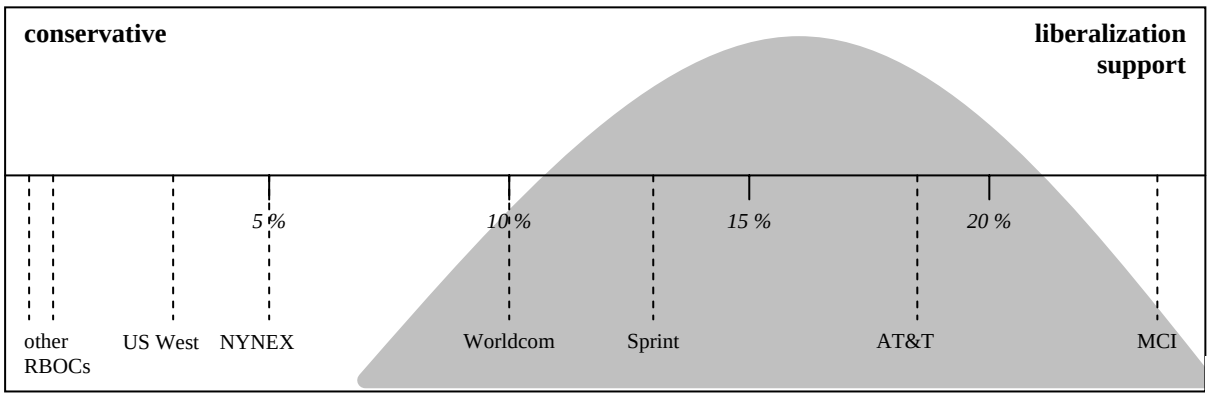
than what we would expect from an airline like United Airlines, for example, but more than what we would expect from US Air, which only has 13% of international operating revenue.

Figure 8-2: Preference on trade liberalization - EU air transport



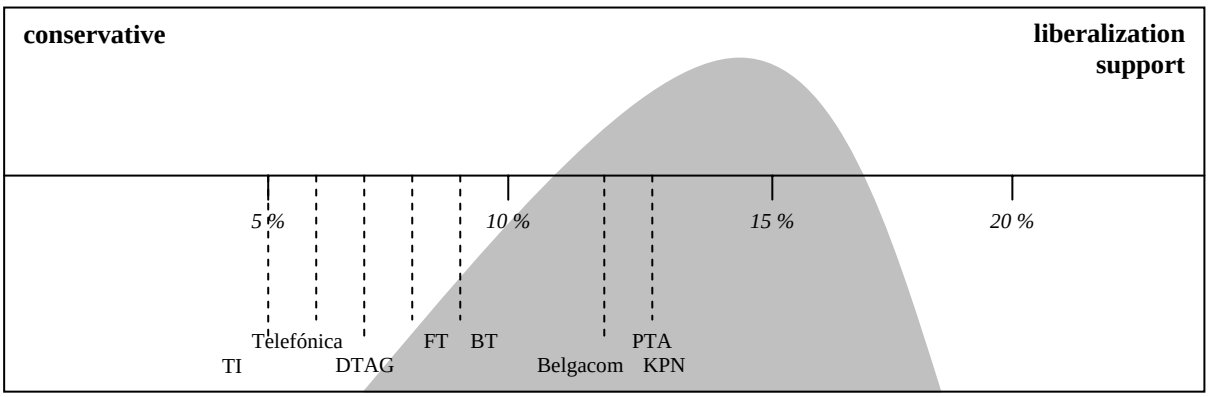
In the case of European airlines, the dominant policy stance does not reflect all of the derived individual stances, which are much less homogenous than in the case of US airlines. However, the European stance approximately reflects the median of all assumed company stances listed here and corresponds well to the positions of those airlines that we would expect to have a significant political clout at the European level.

Figure 8-3: Preference on trade liberalization - US telecom*



The same leaning towards the right can be observed in the explicit policy preference of US telecom companies. While the dominant policy stance expresses well the aggregate of the competitive service providers, it seemingly does not reflect the derived policy preference of the RBOCs, of which at least some where explicitly in support of multilateral liberalization.

Figure 8-4: Preference on trade liberalization - EU telecom*



* The positions of telecom firms rely on the percentages of internationalization listed in table 8-2, but have been adjusted in order to take into account the effect of foreign direct investment.

However, the difference between the explicit policy stance and the derived preferences is most striking in the case of EU telecom firms. Despite the fact that preferences should be quite homogenous and are concentrated like in the case of US air transport, the explicit collective preference does not cover all of the EU telecom companies and even goes beyond the stance of the supposedly most supportive firms in the group. In figure 8-4, the observed policy preferences is represented as slightly skewed, which tries to capture the fact that the observed policy stance must cover at least some companies assumed position, but is much more oriented towards liberalization than their aggregate would suggest.

By looking at the four cases, we can make several observations. First, in the case of US air transport, where firms' derived preferences were homogenous, the observed policy stance actually corresponded to what we would expect as a cumulative outcome of the individual positions. Second, when the derived firm preferences are spread out, as in the case of EU air transport and US telecom services, the observed policy stance only covered some of derived preferences. In the two cases studied, it covered the preferences of those firms that we would expect to be supportive of liberalization, which are also the largest firms in their respective sectors. At first consideration, this could simply represent a classical case of "capture", as public choice theory would suggest. In a pluralist conception of interest group

politics, many interests are assumed to compete for political intervention and the strongest ones eventually succeed in assuring their desired outcomes (Stigler 1972; Becker 1983; Frey 1984). But empirically, the case is not so simple. Those firms whose preferences are seemingly not represented by the majority position do not lobby differently or against the dominant stance. After initial hesitation, in the case of NYNEX and US West, for example, several simply joined the majority position in order to participate in the process underway: in the empirical narrative, the image of a moving train is therefore reoccurring. Several of those whose preferences were supposedly at a great distance from the majority position, such as the remaining RBOCs or Alitalia, for example, chose instead to remain passive, but they did not lobby against the majority stance. Finally, in the case of EU telecom services, the observed policy stance of the majority does not represent the aggregate of the individual derived preferences, even though those are as concentrated as in the case of US air transport. Instead, the observed policy stance shift considerably to the right of the derived preferences, which is all the more surprising since the dominant firms, British Telecom, France Télécom or Deutsche Telekom, for example, are at the left of the spectrum. Hence this cannot be a case of capture. Moreover, empirically, we have seen that these dominant firms have been very supportive of the liberalization process, so figure 8-4 is not a case were the collective does not represent the actual individual stances. Rather, the derived individual stances are in fact incorrect.[9] In fact, the numerical calculation of internationalization does not take into account two things that are quite relevant to the policy stances of firms: a) beliefs about the future and b) constraints on interest representation imposed by the political system in which they operate.

[9] A counter hypothesis would be that those firms have in fact been "lying" when they proclaimed their policy stances, both in public and in interviews. However, such dishonesty with policy-makers will have important consequences on the institutional framework that will be put in place, since it would only support the change that these firms are actually against. Such behavior would therefore be irrational, which leads me to disregard this hypothesis.

Beliefs about the future are highly relevant to the preferences of firms, especially in the case of the telecommunication industry. During the telecom boom of the 1990s, growth rates for the industry were very high (see Annex 3) and all experts advised to invest into the future. Companies were experimental and confident with respect to their business strategies, as the interview data shows. The policy stances of telecom companies in both the US and the EU thus reflected not only their present position, but also their confidence in future developments and the desire of large companies to be a leader in new these new trends. The relatively "conservative" preferences derived for companies like NYNEX, Telefónica, Deutsche Telekom, France Télécom or British Telecom are therefore more to the left than the actual individual preferences of the companies would be.

Secondly, what the four figures do not reveal are the preferences of the political actors with which the firms have to interact in order to lobby effectively. In the cases studied, the European Commission was supportive of multilateral liberalization in telecom and of further liberalization in air transport because it helped it to further integrate the internal European market in these two areas (see also Young 2002). Member states (MS) were also supportive of liberalization, but to a somewhat lesser extent. In the US, USTR and to a lesser degree the State Department and the Department of Commerce are generally supportive of trade liberalization, because it is their institutional role to negotiate trade agreements and to further commercial relations from which consumers can benefit. The US Congress has less of a general welfare perspective, representing instead the more specific interests from individual constituencies (Lohmann/O'Halloran 1994; O'Halloran 1994). Leaving aside the question of the correct individual preferences, it is helpful to match the governmental position with the dominant policy stance. [10]

[10] The figures take up the scale used previously, but use it more abstractly as a possible spectrum, where governmental positions are only approximated in order to clarify the degree of correspondence.

Figure 8-5: Government and business preferences on trade liberalization - US air transport

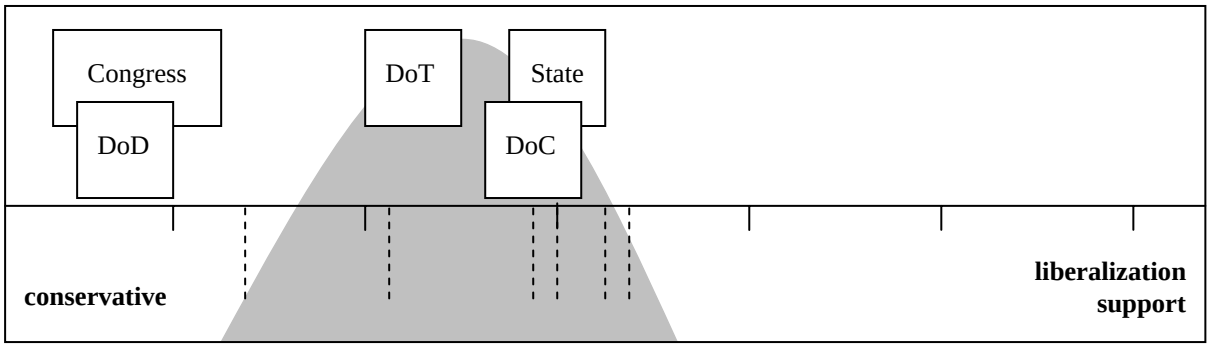


Figure 8-6: Government and business preferences on trade liberalization - EU air transport

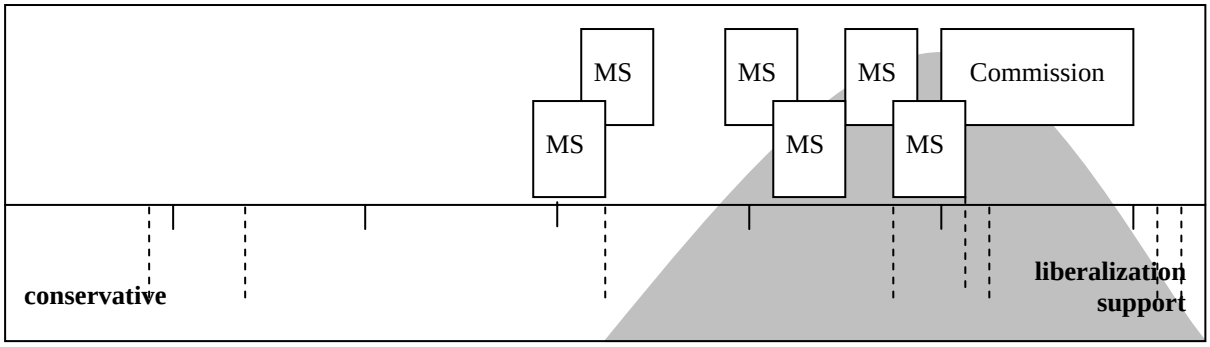


Figure 8-7: Government and business preferences on trade liberalization - US telecom services

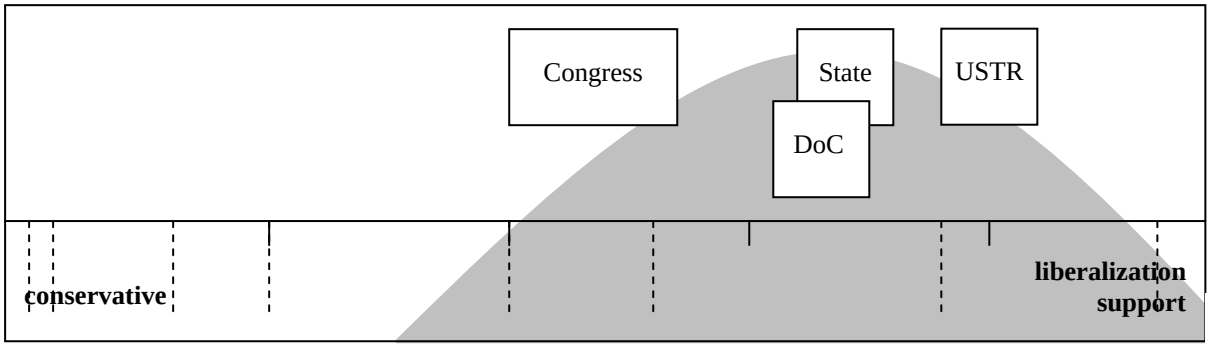
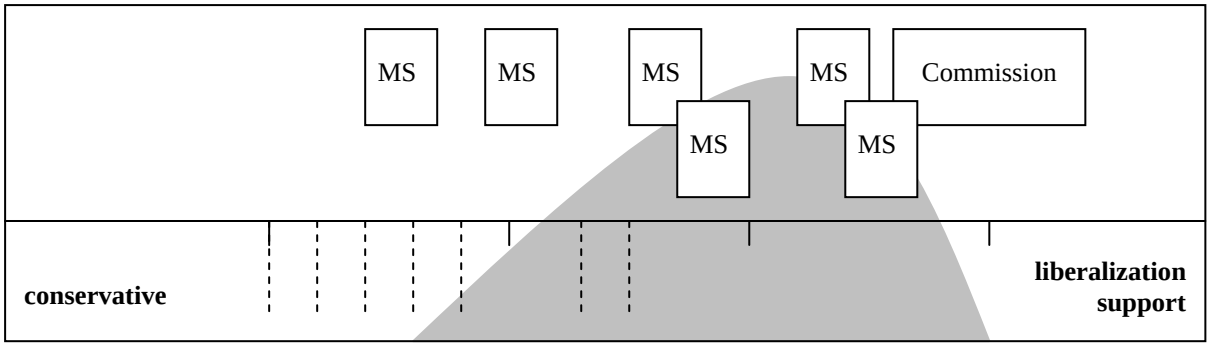


Figure 8-8: Government and business preferences on trade liberalization - EU telecom services



These graphic interpretations are visual approximations only, but they illustrate well that the observed policy stance not only follows from individual preferences of firms, but also orient towards the preferences of the governments the firms seek to address. Interactions between business and government representatives are crucial to the policy stance of the firms in question because firm need to adjust their demands to latent or explicit preferences of the actors and institutions they have to work through in order to be effective. Certainly, governments behave similarly, but the adjustment of political stances in response to different coalitions of economic and societal interest is well studied in the public policy literature.[11] This dissertation underlines that economic actors do the same.

This is generally the case for both the US and the EU, although it is true that the policy position of US airlines evolves little and that their collective policy stance seemingly represents their "pure" economic interests, which they then communicate to their government. But this is only possible, because the US governments position is already in line with the airlines position. While the US government has been interested in liberalizing other service sectors, it has many reasons to be quite conservative in the air transport sector: unilateral clout, security concerns and classic protectionism. In telecommunications, however, the position of the US government was affected by several factors that contributed to a political preference for multilateral liberalization. For one, the US had been the driving force behind the GATS and needed to advance on individual sectors in order to be credible. Furthermore, the high costs of the asymmetric accounting rate system and the pressure coming from telecom user companies underlined the need for a reform of the sector. With a general government tendency towards greater global liberalization, the dominant competitive providers were thus able to lobby quite effectively. Faced with this dynamic, even companies

[11] To cite just one possible example, Anthony Downs' (1957) *Economic Theory of Democracy* has opened up a whole literature on the ways in which parties or candidates adjust to coalitions of societal interests, the literature on political alignment.

which were less likely to be interested in liberalization turned to embrace the new political project in order to be able to work with their governments on the shape of the new international regime.

In the EU, the behavior of airlines was similar, but the interactions with the two relevant levels of government were somewhat more complex. Initially, the "pure" economic preferences of some companies made them favor liberalization to a greater degree than their national governments. Instead of adjusting to them, however, these airlines started targeting the European Commission, which they knew had a strong preference for liberalization. The cooperation between airlines and the European Commission in turn, made the member states move closer to the Commission position. As the working relationship between the Commission and AEA proved to be effective other airlines, which were initially more reserved joined the majority policy stance and eventually actively supported it. The most surprising adjustment occurred in the case of EU telecommunications. Not only did companies move towards the right of the spectrum to adjust their position to the preferences of the European Commission, they even did this despite the fact that the "pure" economic interest of the dominant European network operators – assuming that these represent in fact the actual individual positions – have not have been in correspondence with the new majority position.

To summarize, knowledge about the policy process does not help us to know the direct economic preferences of firms, but it does help us to evaluate what firms will chose to lobby for once their economic preferences are known. However, labeling these two moments "preference" and "strategy" would be incorrect, since the adjustment of preferences to the political opportunity structure transforms the original preference. Firms do not lobby for something that is contrary to their most fundamental interests, but they can adjust their perceived preferences by adopting new beliefs about how to achieve a desired end.

1.5. Summarizing the contribution of the four elements

As the previous discussion has sought to clarify, each of the different elements is relevant for a particular aspect of firm preferences on international trade, but none is sufficient to account for the evolution of preferences over time. Regulatory traditions, both at the domestic level and at the international level, define the overall framework of the business-government interactions. At the domestic level, these traditions define the status quo equilibrium and firms that have benefited from a given tradition are likely to initially want to reproduce it in the international arena. International regimes contribution to a definition of the "game" to be played, i.e. the form of competition which is possible. Initial policy stances of firms most often correspond to these two variables, especially if future developments are still somewhat vague.

Once a particular game is defined, firms generally act in correspondence to their immediate economic interest, which in the case of trade policy can be derived from their exports or the degree of internationalization of their business operations. Clarifying these economic incentives helps to understand differential mobilization of different firms as well as coalition potential among different sets of firms. However, the political process affects whether the lobbying on such immediate economic preferences is actually feasible or not. On trade issues in particular, EU policy-making is bound by a consensus requirement that is quite particular to all federal or multi-level systems in which competences are shared, not divided. Firms seeking to cooperate with the European Commission on trade policy formulation therefore need orient their lobbying towards support of liberalization, since conservative approaches would not help to Commission in trying to construct a problem-solving policy approach rather than a bargaining situation.

2. Re-examining the case studies

Analyzing the evolution of preferences over time thus requires considering the four different elements at the moment in which they become relevant to the lobbying of the firms concerned. As the theoretical discussion of preference formation in chapter 2 highlighted, an understanding of preferences requires dividing preferences into different levels of abstraction. Since firms have to translate their ultimate interest into subjective interests, means preferences and policy preferences, we can also study the effect of the four elements discussed above as they relate to these different translation steps, which helps us to make a more concrete claims about the mechanisms by which these elements affect preferences.

Table 8-4: Matching preference translation with different variables

Source of variation	*Variation affected by…*	*Example of possible variation*
Identity	International regime	Flag carrier or competitive airline
	Domestic regulatory traditions	Government service provider or competitive telecom firm
Beliefs	International regime	Extensive route network through alliances or mergers
	Domestic regulatory traditions	Best way to obtain profit through monopoly or competition
	Political process	Effective lobbying through work with national governments or with European Commission
	Economic incentives	Expansion or protection as a way to achieve profitability
Strategic environment	Political process	Which demand will bring the biggest policy change as return on lobbying investment?
	Economic incentives	Which policy objective ensures greatest individual benefit relative to competitors?

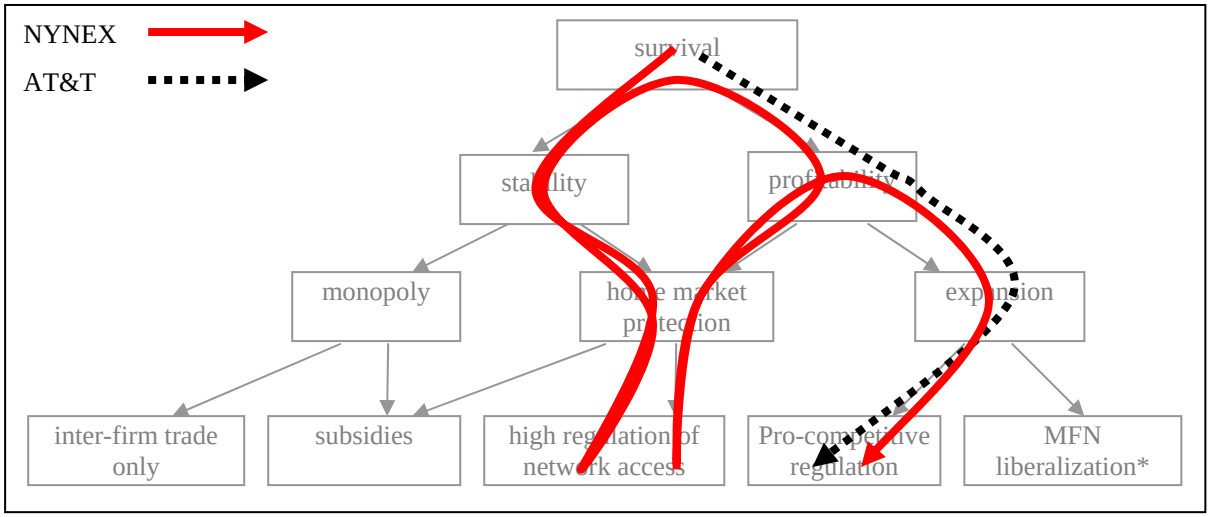
Figure 2-1 in chapter 2 underlined that identity was important for the translation process form basic interests to subjective interests. Causal and normative beliefs affect the means preferences an actor will develop for obtaining his subjective interest. The strategic environment, finally, determines the policy choice the actor will lobby for in order to ensure the objective identified by the means preference. Generally speaking, while the international and the national regulatory framework affects the policy formation at a early and more abstract level, economic incentives and the political process constitute the strategic

environment of firms. All four elements can affect beliefs, however, which make up the intermediate step in the translation process. This section now returns to the cases studied one by one and analyzes the evolution of policy preferences as a movement along the definitional path proposed in Chapter 1.

2.1. US telecom

The trade policy preference evolution of US telecom companies is considerably different for competitive service providers and for the network operators that took monopoly control over local networks in 1984. We know little about the precise "trade" stance of the private monopoly AT&T prior to its divestiture, simply because there was no trade in telecommunication services. Interconnection of international service provision was governed by the ITU, which had instituted a non-competitive global market based on the PTT models of European countries. Within this international regime, AT&T was traditionally an odd actor, which contributed considerably to reforming the international framework in the first half of the 20th century. The RBOCs, in turn, never appeared on the international scene, because they did not operate international phone calls. When trade in telecommunication services became an issue, the initially remained quite passive due to a general concern for their networks. Verizon, then NYNEX, however, started adjusting its business strategy to the new opportunities from their access to the long distance market through the TA96 and their foreign direct investment abroad.

Figure 8-9: Preference evolution in US telecoms



Note: * MFN liberalization is a short-hand for complete liberalization without competitive safeguards.

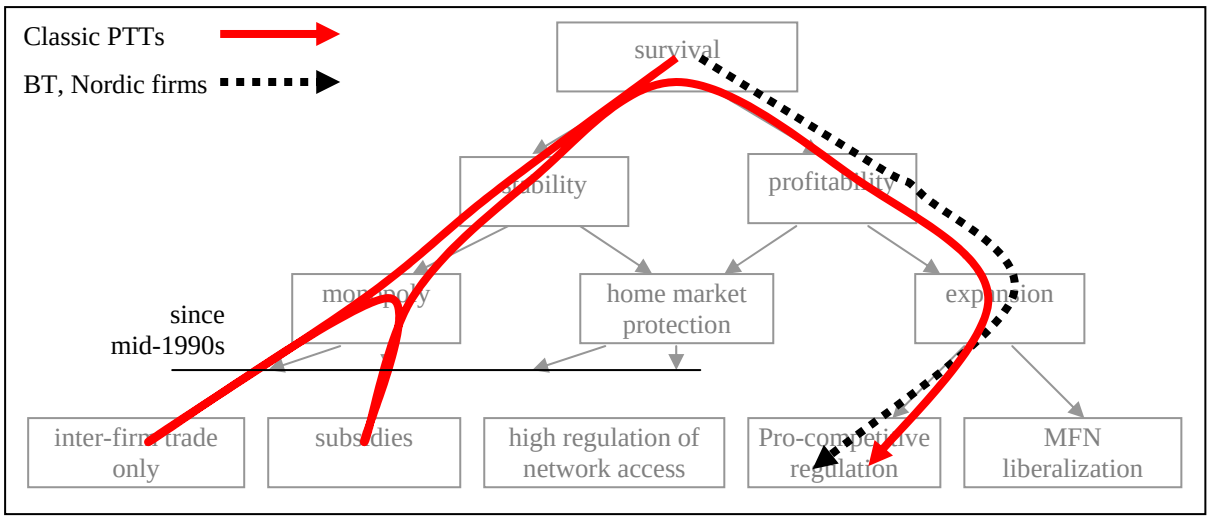
At the level of identity, telecom firms have very different notions of survival depending on whether they are public or private network operators under a universal service obligation fixed by the government or whether they are competitive firms. For AT&T, this question does not pose itself, because trade matters only become relevant after its divestiture and thus its establishment as a competitive long-distance carrier. For all US competitive providers, the identity is thus stable and underlines the necessity of profitability as a form of economic survival. Likewise a choice between home market protection and expansion doesn't pose itself for these companies, because their home market has already been opened to competition. Home market control is relevant for local network operators, however, which continue to maintain their monopolies until the mid-1990s. However, through the preparation of the TA96, something fundamental happened for the RBOCs, even though it did not immediately have an impact on their trade policy stance. In 1996, the gained access to long distance markets and had to open their network to new entrants, making them a competitive player in the long distance market and a privileged, but constrained actor in local markets. For all RBOCs, profitability became a major factor in the 1990s, testified by the intense merger

wave among telecom companies in the 1990s. While this change did not have an effect on the implicit trade policy stance of most RBOCs, it was crucial for permitting the innovative adjustment of a company like NYNEX or US West, which tried to valorize its foreign direct investment and act as a global player in the new global marketplace. In the figure above, these former monopolies thus underwent another evolution, not at the level of identity, but at the level of framing its business strategy in terms of expansion and not home market control, which led active RBOCs like NYNEX to adopt a policy preference for multilateral liberalization with pro-competitive safeguards. Other RBOCs, one could argue, did not follow this last loop in figure 8-9 and remained in support of more protection or at least not actively in support of further liberalization.

2.2. EU telecom

The story of most European telecom companies is similar to that of the US RBOCs, but it is nonetheless distinct due to the particularities of the EU policy process. Furthermore unlike the US RBOCs, European PTTs were internationally involved, even if they did not act as “companies” but rather as administrative units represented through their governments in those cases where telecommunication was a government owned public service provision. For the ITU regime, this “pre-trade” involvement manifested through an insistence on inter-firm cooperation for the provision of international connections. This inter-firm cooperation was a natural complement to the strictly national definition and control of telecommunication markets and worked to reinforce it.

Figure 8-10: Preference evolution in EU telecoms



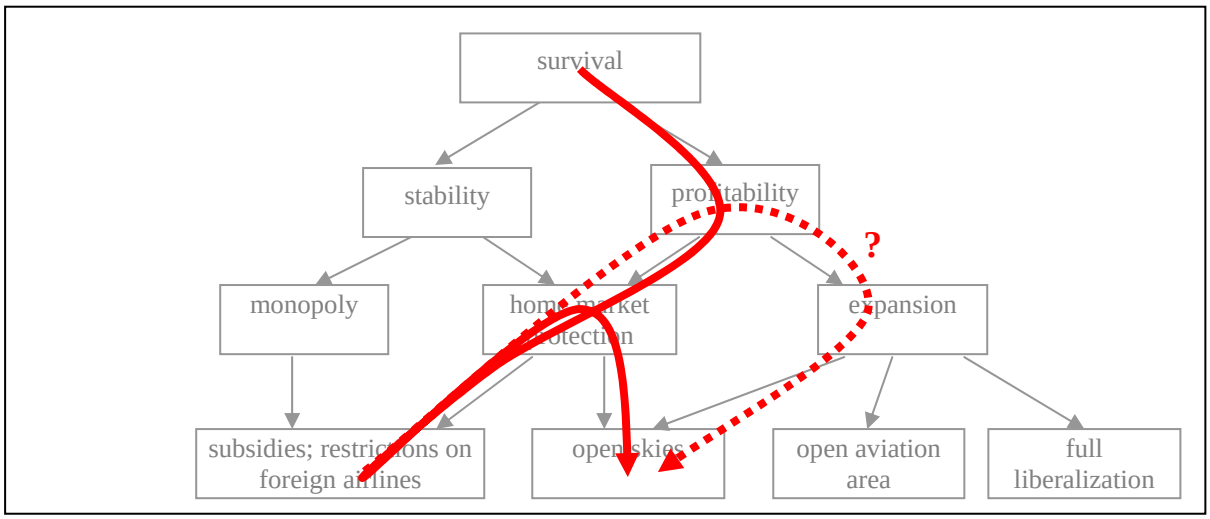
However, the internal European telecom liberalization entirely removed this national demarcation of telecom markets and prevented other forms of national support to individual firms, such as subsidies, for example. In contrast to the US RBOCs, former PTTs could therefore not even insist on home-market protection because it was the idea of a home market itself that was being put into question. With the European Commission in charge of both internal and multilateral liberalization, European firms not only had to reinvent themselves as competitive players who followed the objective of profitability, they also had to adopt an expansionist understanding of their business strategy, since a protectionist stance was precluded. This movement was a particular task for the formally state-owned PTTs, while the network operators in the UK or the Nordic countries had already re-defined themselves as competitive players as a consequences of national privatization and liberalization once European and multilateral liberalization became important.

2.3. US air transport

The evolution of preferences of US airlines is less easy to identify than in the case of US telecom services, because policy has changed less and the international regime is not yet

fully reformed, so that airlines could chose to remain relatively passive. It is thus difficult to evaluate the difference between actual preferences or discourse. What can be said for sure is that US airlines have been competitive players since the 1980s and those that have established themselves as important international players had to prove a sustained capacity to be profitable. This general competitivity did not prevent these airlines from trying to protect their domestic markets from new foreign entrants. Like all airlines in the world, US airlines benefited from restrictions on cabotage and foreign ownership, which assured them US competition only on national routes.

Figure 8-11: Preference evolution in US air transport



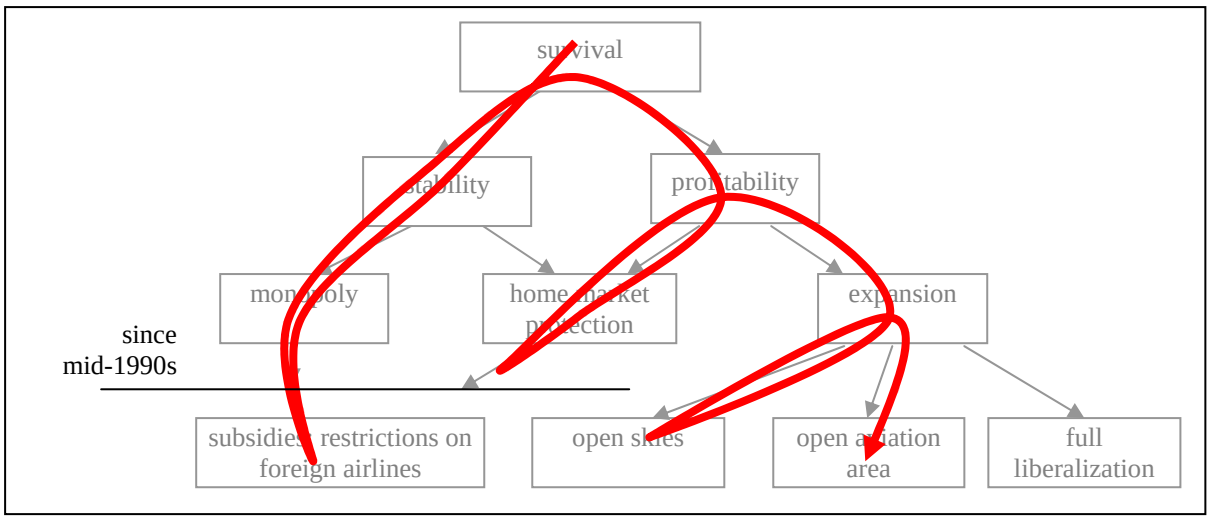
Now, it is difficult to pinpoint what exactly happened when the US government introduced its policy of open skies. Most probably, the story is not the same for all US airlines. While restrictions on foreign airlines were traditionally fixed through strictly reciprocal agreements, open sky agreements do ensure a certain number of restrictions, but undo the concept of strict reciprocity. After initial hesitation, most international US airlines nonetheless started actively supporting the open skies policy framework. For some airlines, this might have been the case because the government was simply determined to institute a more user friendly framework that was beneficial to commercial activity in general and

sufficiently compatible with home market protection nonetheless. For other airlines, however, it is more probable that they adjusted their strategic beliefs and embraced open skies as a tool for expanding business operations. Since both expansion and home market protection are obtainable through open skies, however, it is difficult to evaluate which one of the two belief structures is actually determining the US airline support for open skies.

2.4. EU air transport

The case of EU air transport was already used as an illustration in chapter 2, but it is helpful to return to it and to expand upon the simplified figure 2-4 on page 98. What has been left out in the earlier graphic is the period prior to European liberalization, where international airlines in Europe were national flag carriers which provided monopoly services to foreign destinations, at least in most European countries. As in the case of EU telecommunications, the boundaries of these national markets were eliminated through the three packages of EU air transport liberalization from 1987 to 1992, effectively creating a pan-European market by 1997. At the same time, all other means of protecting their home market dominance, most notably financial support for their national governments, were precluded. During these changes, EU carriers had to redefine themselves as competitive airlines in the European market, but also on the international scene. Lacking the political and economic clout of the US government, European countries did not have the possibility to negotiate open sky agreements that effectively protected their respective domestic markets or the European market. EU carriers nonetheless embraced the open skies model as a useful tool for expanding their operations. Very quickly, however, they grew unsatisfied with the perceived asymmetry of this solution and started developing a new regulatory framework.

Figure 8-12: Preference evolution in EU air transport



EU airlines embraced the ambitious project of transatlantic liberalization for several reasons, despite the fact that it was diametrically opposed to their previous stance as national flag carriers. On the one hand, most of them had little to lose compared to their situation under open sky agreements, with the notable exception of British air carriers with a stronghold in Heathrow, British Airways and Virgin Atlantic. But even these two carriers enthusiastically supported the project. The reason for this support was the logic by which carriers had to construct their political preferences. They were no longer national service providers with little obligation to be profitable. On the contrary, as the experience in the early 2000s would show, flag carriers could simply go bankrupt and disappear. As profitable competitive players, however, EU carriers could not rely on a strategy of home market protection. Their initial home base had been opened up to European competition, their privileged government ties were put into question by Community legislation and their governments were increasingly hampered in their ability to negotiate satisfactory external agreements. The strategic environment of EU carriers was severely constrained by US aviation policy and effectively responding to this challenge meant abandoning the secure

governmental relationship in order to work with the Commission. This decision, in turn, made lobbying around the concept of national markets impossible.

As in the case of EU telecommunications, firms were pushed into an explicitly expansionist strategy for remaining profitable, which was quite different form the earlier protective stance they had as national monopolies. The trigger for this development is the working relationship with EU institutions. First, internal EU liberalization in both cases affected the providers' corporate identity and made them into competitive enterprises for which survival translated into profitability. Second, the multi-level political system of the EU precluded home market protection as a strategy for profitability, pushing the new competitive players to emphasize expansion as the most convincing approach to profitability.

2.5. Summary

To return to the four variables discussed in the beginning of this chapter, the examination of the case studies clarifies when and how each of them becomes important. The international regime and the regulatory traditions at the domestic level combine to determine the identity of firms in service markets. The regulatory framework at the domestic level has a more immediate impact on the constitution of firms as competitive players or public service providers, but the international regime can reinforce a non-competitive service trade regime, even when certain national markets are already deregulated. The weight of these two demarcation lines of the strategic games to be played – the form of competition that can develop – also affects belief structures about the most appropriate or the most effective way to obtain a subjective interest once it is determined. Judging from the cases studied, we would expect firms that only recently emerged out of highly regulated markets to have a greater familiarity with home market control and than with expansion, for example. On the other hand, economic incentives also affect beliefs by indicating potential future trends that firms

might want to invest in. In the case of telecommunications, a high level of growth for the sector as a whole has contributed to increasing confidence of firms in the future, which in turn has incited them to abandon their means preference of home market protection for a more aggressive strategy of expansion. The policy process can give similar indications about future developments. Even in the absence of precise legislation, firms will judge the overall policy objectives of their governments for the future and favor those solutions that are most likely to be compatible. The precise mix of the impact of these four variables is difficult to determine, however, and remains one of the central challenges of the study of ideational change in politics. What this dissertation seeks to argue is simply that firms are subject to these processes to the same extent as other policy actors. In a precise strategic environment, both economic incentives and political opportunities and constraints are relevant to understanding the lobbying stances of firms. While economic incentives circumscribe the overall tendencies of economic interest lobbying, firms nonetheless adjust their demands to the interests of the governments they seek to address.

Finally, I have tried to demonstrate that these three translation steps are connected and should ultimately not be separated by sequencing them into different sets of strategic games. As the discussion of lobbying in the EU in particular has shown, if none of the policy preferences that correspond to a particular means preference are politically feasable, a firm can readjust their means preference – in the case of EU firms from protection to expansion – which ultimately leads to a completely new policy stance. Assuming that home market protection is a fixed preference, even for firms such as former service monopolies for which this seems a highly relevant assumption, will obscure an understanding of how lobbying demands change. Since protectionist policy stances were entirely precluded by EU policy-making, EU firms had the choice between maintaining their home market control preference and becoming irrelevant as political entities, or modifying their means preference to accept

their new roles as competitive players more fully by embracing expansion as a new political goal. By doing the latter, they were able to establish a successful working relationship with the European Commission, thus lobbying more effectively than in the previous situation which would have implied passive resistance only.

3. A transatlantic lobbying comparison

Of final comparative interest are the lobbying methods in the US and the EU, independently of the sectors studied. The comparison of lobbying started with the assumption that lobbying on trade policy in Washington D.C. and Brussels is sufficiently similar to be comparable, all the more since trade authority has been delegated to the executive in the US. How well has this assumption fared in the empirical cases and what differences persist between lobbying in the US and the EU? The following section will summarize the lessons from the trade policy case for lobbying in the US and the EU more generally. It starts by pointing to the similarities between US and EU lobbying and then turns to persistent differences. I argue that lobbying on multilateral trade negotiations in both the US and the EU is essentially informational lobbying, so that differences in methods – lawyers and money vs. expertise – diminish. However, differences between the two cases persist and manifest in different logics of informational lobbying and governmental consultation. Who gets consulted, what form of cooperation can develop and what kind of expertise is valued varies between Washington, D.C. and Brussels.

3.1. Similarities

Observers of lobbying in the US most often emphasize the particularly aggressive nature of “pressure groups” in US politics, the ways in which special interest groups use

campaign financing and lawyer to advance the objectives.[12] Despite this vision of the aggressive Washington lobbyists and the impressive number of quantitative studies on campaign financing and voting in Congress, many empirical studies actually paint a much more benign picture of business representation in the American capital. Lester Milbrath's (1963) much cited study on Washington lobbyists depicts them as a patient contributor to politics, Bauer, Pool and Dexter (1972 (1963)) find businesses largely incapable of influencing Congress on trade policy, Heinz et al. (1993) demonstrate that lobbyists do not actually constitute an integral part of a power network and Cigler and Loomis (2002) conclude that interest groups are ubiquitous but by no means central to American politics. While earlier studies have tended to focus on direct means of exerting pressure on politicians, more recent studies of lobbying in the US call attention to the lobbying addressed towards the agenda-setter, which aims to affect the definition and the framing of a policy question (Leech et al. 2002; McKissick forthcoming). This informational lobbying is especially relevant in trade policy-making, and even more so in multilateral issues negotiated by USTR or the Department of State, because authority has been delegated away from Congress towards the executive.

"Informational lobbying" then refers to the attempt of firms and economic interest groups to participate in the choice, the definition and the framing of policy issues, and thus to contribute the agenda and the objectives of their government. The existence of informational lobbying explains why groups are so ubiquitous but seemingly so ineffective in their lobbying. Not only is informational lobbying a very lengthy process, it is also one where it is very difficult to identify who suggested what when and to evaluate if the government did not want to pursue a certain objective anyway. This is all the more true if there are no

[12] A joke about Washington D.C. underlines this sentiment: „If you throw a stone in Washington D.C., it will be sure to fall on a lawyer."

concentrated group of "losers" of a definitional power bargain, who can point their finger at their political adversaries.

In the study of telecommunication services and air transport, informational lobbying clearly occupies a central place in the work of government affairs personnel of large companies. All interviewees underline the importance of their personal relationships with government officials, which enable them to "just talk" when an issue arises and underline that their most of their work consists of e-mail exchanges and phone calls. Only on special occasions do government affairs representatives organize a meeting between their CEOs and the relevant US public official in order to put some clout behind their general position. The fact that government affairs representatives conceive of their main task as informing policy-makers of the situation and needs of their firms rather than pressing for specific decisions is also reflected in their preferred job description as "advocacy work" rather than lobbying.[13] Heinz et al. (1993: 381-386) describe the constant presence and informational tasks of business representatives as "typified response to uncertainty" and add that "the wild card of presidential politics" is an especially important source of policy variation in the US. The delegation of trade authority to the executive has thus two effects on lobbying in the US. First, it underlines the importance of the agenda-setter rather than the decision-maker who in this case "only" ratifies the final agreement. Firms seemingly do not have full agenda-setting power, but do seek to participate in the political framing of issues that concern them. Second, it augments the uncertainty about policy outcomes, making interest representation all the more necessary, even though the effects of it are less certain.

The importance of information lobbying has been underlined by most empirical studies of the EU interest representation (e.g. Mazey/Richardson 1999; Grossman 2002;

[13] If one wants to admit that this label contains more than a simple euphemism of potential or actual policy manipulation.

Mazey/Richardson 2002; Saurugger 2002). The Commission solicits actively the expertise of societal actors, which in return gain access to the political process (Bouwen 2002). Although lobbying does happen around the European Parliament (Kohler-Koch 1998) or the Council of Ministers – notably through the structure of permanent representatives, the lion's share of lobbying happens around the European Commission and its consultative committees (Balme/Chabanet 2002: 53; Eising 2004). Indeed, on the two policy issues studied, business representatives referred almost exclusively to the European Commission and to their national governments, i.e. the Council of Ministers at the European level. In air transport in particular, the role of the European Parliament simply consisted in following the developments and possibly issuing an informative report.

As for US business representatives, the role of EU government affairs managers is monitoring the EU process and providing "two-way information" on policy developments: on the one hand, they represent their firms' interest in EU policy deliberation, on the other hand, the keep their firm updated on EU developments. Emiliano Grossman (2003) has underlined the high level of uncertainty in which even the most powerful economic interests – financial service firms in his case – have to act, which considerably reduces their actual influence on policy outcomes. Indeed, a central challenge of interest representation at the European level is the policy learning business representatives have to manage in order to be able to participate at the elaboration of policy formulation, as we have seen in the case of multilateral telecom negotiations. The principle strategy in these uncertain political environments consists, as for US firms, in typified actions of communication.

3.2. Differences

Although informational lobbying constitutes the central task of lobbyists on both sides of the Atlantic, the forms and strategies of this activity vary. Three interconnected elements in

particular determine the different logics of informational lobbying in the US and the EU and lead to quite different forms of consultation and interest representation: the history and routinization of public-private cooperation on policy issues, the legitimacy of consultation and the role of trade associations in interest representation.

Against the general mistrust in of "big government", the US has had a long history of trying to enshrine the idea of "government of the people, by the people and for the people" in its political practices.[14] On the one hand, this has led to a great attention to transparency of political decision-making through the publication of hearing, statements and all other forms of political activity, as through the Federal Register, for example.[15] On the other hand, it explains the great importance given to private sector consultation, which the Omnibus Trade Act of 1978 enshrined for trade policy matters. Interviewees confirm that the US trade negotiation delegation was traditionally the only one accompanied by a private sector delegation, often as large as the government delegation itself. With the exception of the UK, European countries did not invite private representatives to join them and inversely, firms were not accustomed to "knocking on the door of the government". Both the reticence of government representatives to cooperate freely with private interest representatives and the difficulties of the latter to mobilize and participate effectively have hampered attempts of the European Commission to create a working partnership between economic interests and the Commission on international trade matters. While there is an increasing recognition that countering American economic and political clout would require such cooperation on trade matters, most observers confirm that the US delegation and their private sectors partners "really operate like a block" while their EU homologues are not nearly as well organized. Despite a tendency of private-public cooperation in the EU to emulate US styles of

[14] The quote is taken from Abraham Lincoln's „Gettysburg Address".
[15] See http://www.gpoaccess.gov/.

consultation – one may think of the creation of various business forums at the European level in the 1990s – the two thus remain distinctly different.

The obstacles to US style cooperation in the EU are intimately tied to the legitimacy of European policy-making. The EU, and above all the non-elected European Commission, has a difficult balance to strict between input and output legitimacy (Scharpf 1999). In the absence of direct democratic elections, the credibility of the European Commission critically depends on its ability to produce "good" policies. Without insufficient information about the technical details of specific industry sectors, however, the formulation of specific trade objectives is rather difficult. However, the claim that the Commission cooperates extensively with business interests only further hurts its image as an illegitimate political institutions from an input perspective (Belén et al. 1999). The Commission thus actively solicits input into policy formulation, for businesses just as much as from other societal actors, while at the same time avoiding to integrate private interests to closely in its daily work. This fear of setting a dangerous precedent has motivated the Commission to break with national traditions of government-airline cooperation on external aviation agreements. European airlines expressed deep concerns about the lack of transparency of the OAA negotiations, to which their national governments would have taken them along, but the Commission responded that firms do not accompany other trade negotiations as well.

Indeed, the forms through which firms lobby critically depend on this ambiguity on the part of the European Commission. The Commission underlines that it makes sure to consult with the relative associations for specific industrial sectors, but rarely cites individual companies. EU lobbying on telecommunication services was channeled through ETNO, on air transport through AEA. Other comprehensive associations, such as UNICE or the ESF are also cited as particularly relevant from both the firm and the government perspective. For firms, associations have the benefit of pooling lobbying resources, especially for the task of

monitoring EU affairs. For the government, associations promise to represent a more general mass of stakeholder than the very private interest of one individual business. Even in the US, successful association depend on their ability to "pre-negotiate" contentious issues among a large membership base, so that the government can rely on the association's information and consider it "representative" as in the case of the USCIB. US government representatives, however, do not hesitate to enter into direct contact with firms as well. Hence, American firms most often employ a double strategy: they maintain individual contacts for specific issues and work through trade associations on larger horizontal issues. In many cases, lobbyists nonetheless refer to associations as a mere "shield" for expressing their individual concerns. In the EU, by contrast, associations are often the only way in which firms express their opinion on EU politics. Through the complexity and uncertainty of the EU policy process, an association such as ETNO can even transform the opinion of an individual member, because it centralizes the information of the relevant policy and contributes to a harmonization of the political framing of the issue.

3.3. Reinforcing the search for problem-solving

These different styles of informational lobbying embed the two different lobbying objectives identified earlier. I have underlined that lobbying in the European Commission needs to create problem-solving policy situations, since bargaining contains the risk of stagnation. In order to be successful, lobbying therefore has to address pan-European issues. Since the federal system of the US is not characterized by shared competences, lobbying can be more concrete and bargaining situations are common. If European lobbying furthermore depends on comprehensive trade associations, the European search for problem-solving policy approaches becomes anchored at the political as well as the associational level. Like the EU institutions, Eurogroups can also not act if they are not in agreement. An association

that wishes to be active therefore has to seek consensus among its members first. Once this task is mastered, it automatically becomes compatible with the objectives of the European Commission. In the US, firms can act collectively through associations once they are in agreement, but they can also abandon the collectivity and lobby individually against their former partners. As long as European firms will rely on Eurogroups to represent their interests in EU affairs – and given the complexity of the multi-level policy system, this is likely to be the case for quite some time – the will thus undergo a two step harmonization of their individual policy preferences, which eventually leads to principle-based lobbying rather than the expression of concrete demands. As an interviewee cited on page 339 has put it well, a firm cannot know which part of its demands it will actually obtain and which part it will have to abandon. Instead of "giving birth to Frankenstein", firms therefore chose to participate on the creation of general frameworks only.

Chapter 9

CONCLUSION

An understanding of the lobbying of large firms on trade policy is relevant to a number of theoretical and normative debates which have been discussed in the introductory chapter. This conclusion returns to these debates and lays out in how far the findings of this investigation can contribute to them. After summarizing the argument of the dissertation, the conclusion evaluates its importance in the light of contemporary debates around the phenomenon of globalization. In particular, I examine the issues of global trade, European integration and national settings with the insights gathered about trade policy lobbying. A final section discusses the role of lobbying in economic transformations. It takes issue with the assumption that businesses are drivers of economic change, increasingly capable of evading national political institutions in the pursuit of their policy goals.

1. Summarizing the argument

A comparison between trade policy lobbying in the two service sectors in the US and the EU reveals many similarities in firm behavior in the two trading blocks, but it also highlights differences. Three differences are particularly striking, a first concerning the form of lobbying, a second concerning the nature of advise given and a third concerning the content of trade policy lobbying. A summary of these three will clarify the central ambition of the analysis.

1.1. Direct contacts vs. associations

Concerning the form of lobbying, it is noteworthy how much more European firms rely on associations to assure their regular contact with EU policy-makers. Direct firm lobbying has increasingly gained importance in Europe – over 350 firms have a government affairs office in Brussels – and many have speculated about a transfer of lobbying styles from the United States to Europe (Coen 1999; Thomas 2002). Still, in the context of trade policy, the regular pursuit of issues that are negotiated over a long period of time remained in the hands of ETNO and AEA in Europe, while firms directly worked with public officials in the US on these issues and associations only became active subsequently to pool some of the resources. It is difficult to say from our case studies whether this "associational lobbying" is rooted in the different forms of state-society relations or political cultures in Europe and the US. However, the multi-level policy process seems to reinforce the role of European associations, because national firms do not have the resources to act on all different levels simultaneously and therefore delegate a considerable amount of monitoring and advocacy work to the European associations, especially when a particular policy issue is still nascent.

1.2. Concrete lobbying vs. principle-based lobbying

Concerning the nature of advice that is given, there seems to be a strong incentive in the EU to reformulate specific demands in terms of general policy principles. Even though expert advice required in complicated trade negotiations always contain technical information as well, the lobbying that is explicitly policy-oriented in Europe tries to inform policy frameworks, while US lobbying can be more openly distributive. This is most evident in the case of AEA, which even tries to design the new regulatory framework for international aviation, but it is confirmed by the telecom comparison, where US firms affected the content

of the reference paper, the satellite status and the withdrawal of US support in 1996, while EU firms "only" expressed themselves favorable to the negotiations and subsequently insisted on the need for a critical mass of countries. Lobbying in the EU quite clearly abides by the obligation to construct a broad political profile, a "European credibility" as Coen (2002) has called it, which institutes the search for problem-solving rather than bargaining at the associative level.

1.3. On the content and substance of trade lobbying

Finally, this obligation affects the content of trade policy lobbying. Traditionally, large European firms quite naturally lobbied for various forms of protectionism, most notably government subsidies or entry restrictions on foreign firms. Protectionism based on national boundaries, however, is equivalent to distributive bargaining, because government aid to Sabena disadvantages KLM, to cite just one possible example. This became increasingly evident in the late 1980s and 1990s, when concrete benefits to one national firm seemingly slowed down the integration of the internal markets the EU Commission has sought to create. At least this was the precise rhetoric used by former BA chairman Sir Colin Marshall against state aid to other airlines and it motivated a large part of the competition policy of the Commission. In the years that followed, it became evident that a "European credibility" would not be achieved if companies continued to insist on national benefits. By contrast, those associations which had succeeded in establishing a pan-European stance found themselves able to establish successful working relationships with the Commission. As the Commission gained more competences on foreign trade issues, many firms seemingly started preferring cooperation on the details of liberalization to a stalemate that would arise if they continued to press for protection. In this way, the search for a European credibility and the

promising access to EU policy-making acted as an incentive to lobby in support of liberalization rather than against it. Concretely, this implied that firms simultaneously adapted their strategic goals from protection to expansion into foreign markets. The discussion of the evolution of policy preferences in the preceding chapter has tried to show in detail how firms adapted their lobbying demands to the context of their political institutions.

In its simplified form, this conclusion states that the EU encourages lobbying for market liberalization, while the US allows a greater variety of demands, including lobbying for protectionist measures. However, this conclusion should not be understood as an optimistic belief in the self-less political positions of European firms which will help to achieve the neo-classical economic ideal of free trade. The fact that a European firm supports market opening does not mean that it willingly cedes all of its assets to potential competitors. The difference here is between form of content and substance of content of the political positions of European firms. Announcing a support of liberalization is a necessary step for participation in the political elaboration of the regulatory reform that will be introduced. In complicated sectors such as service trade, however, the actual shape of liberalization is the result of political deliberation and international negotiations. Participation in these processes is thus highly relevant for firms that seek to affect *how* their markets will be liberalized and it is in the debate of these how-questions that the self-interest of firms will play out. The difficult present negotiations between the US and the EU over an open aviation area are as much as testimony to this observation as was the battle over the reference paper in the GBT negotiations. Furthermore, the fact that firms support international liberalization does not mean that they will not employ a wide variety of tactics to oppose or lengthen the implementation of the project, as we can observe in the network politics of former European monopolies.

The fact that individual self-interests can be defended in the details of liberalization thus reinforces a firm's willingness to support liberalization. However, this possibility is a feature of highly regulated sectors and exists less in perfectly competitive goods sectors that function according to the principles of comparative advantage. This points to a caveat of our conclusion. In sectors were firms cannot use regulation to assure their self-interests under market liberalization, they will be much less likely to support market opening, even in the EU. Sectors, were the trade issue is simply the raising or lowering of a tariff barrier, will therefore be marked much less by US – EU differences in the trade policy lobbying of the affected firms.

1.4. Moving beyond materialist political economy

Despite these caveats, the conclusion that variables such as the political process can lead firms to readjust their lobbying demands is quite pertinent. At a practical level, it makes a significant difference to a politician who is trying to negotiate market liberalization to be able to say "our industry is behind me", even if the support of firms is not substantial. At a theoretical level, the adaptation of lobbying demands is important, because it runs counter to the assumption of the majority of American trade policy analyses: the idea that the preferences of economic actors are fixed. The study of European service lobbying has highlighted that it is problematic to assume that the pressure of economic actors, even of large national providers, will continuously go into the same direction. Furthermore, the evolution of policy preferences over time seems to be dependant on a variety of factors, and not just economic incentives that drive or do not drive a firm towards foreign operations. In the highly regulated service sectors, domestic and international regulatory traditions play an important role in determining initial policy stances. As trade negotiations continue, however, firms

reorient their behavior in function of economic and political opportunities. Differential degrees of lobbying in support of liberalization correspond to different degrees of internationalization, as we have seen. However, the *overall* tendency to remain conservative or to lobby openly in support of liberalization can be a response to political opportunities or constraints, as in the case of the European telecommunications sectors. EU telecoms companies – a fairly homogenous group of only partially internationalized service providers – have decided to support liberalization, while US carriers – an equally homogenous group with a low degree of internationalization – remain reserved about the prospects of international regime change.

At a conceptual level, the idea of preference change has required several epistemological clarifications. Much confusion in the literature and a certain degree of sterile debates arise from the fact that interests, preferences and strategic behavior are not always clearly separated and that only behavior can truly be examined by a scientific observer. To deal with these issues systematically, I have proposed to conceive of interests as a three-step translation process from an abstract universal interest to a concrete strategic behavior. Interests are fixed but preferences and strategies are not. The translation of interests into behavior explains variation and helps to specify the sources of observed variation in policy preferences lobbied for by firms. The explicit articulation of plausible translation paths then helps to make an argument about an adaptation of strategic goals when we observe a change in strategic behavior. In the cases studied, telecom firms moved from supporting inter-firm trade (in the EU) or high regulation of market access (US RBOCs) to supporting multilateral liberalization under a regime of pro-competitive regulation. From the interest paths proposed in this dissertation, this indicates that network operators must have abandoned the strategic goal of home market protection and embraced expansion. European firms have furthermore

moved from being non-profitable public providers interested in stability to competitive firms interested in profitability. The same is true for EU airlines. Both US and EU airlines have moved from lobbying for severe access restrictions on foreign airlines to a more liberal position. In the US, the solution they supported was the open skies regime, in the EU the even more comprehensive liberalization of an open aviation area. While this evolution might entirely be explained by a preference for home market protection in the US, it requires accommodating the ideas of expansion and profitable service provision for the formerly public European airlines. With reference to the translation paths, it is thus possible to make a reasoned argument about preference change, even if one only observes changes in behavior.

Our research thus joins Peter Hall (2004), who has called for a study of preference formation as a political process in order to move beyond the "neo-materialism even more reductionist than that of the Marxist analyses of the 1960s and 1970s," which has gripped current studies in political economy. Material interests, which certainly exist, are subject to evaluation and interpretation, which can have profound effects on the lobbying which finally results for a given set of material conditions.

2. Revisiting the theoretical implications

Besides the direct conclusions relating to preferences of firms in international trade, the findings of this dissertation join the theoretical debate around the phenomenon of globalization, as has been indicated in the introduction. At the international level, it highlights that trade policy analysis needs to move beyond the classical conceptualization of the trade world based on comparative advantage and focus more directly on the issue of international regulation. At the European level, it shows how the connection between foreign trade and internal integration augments the momentum for liberalization within the EU. For the study of

national variation, finally, the study underlines that the behavior of firms on international policy issues can only partially be explained with reference to national traditions. The strategic behavior of large firms within their national institutional frameworks, it argues remains an important research agenda for the literature on the varieties of capitalism.

2.1. On the nature of trade

Scholars working on the content of lobbying demands most commonly suggest that firms are either protectionist or in favor of reciprocal liberalization. This dichotomy, however, is unnecessarily rigid and fails to capture the nuances of business lobbying on trade, as the discussion has repeatedly underlined. The conceptual opposition between free trade and protectionism has its roots in the Ricardian vision of international trade (Ricardo 1817 [1992]), based on the principle of comparative advantage. In Ricardo's world, countries have internally competitive markets that they may decide to open to international competition as well.[1] Firms within these competitive markets can thus evaluate whether they are prepared to operate with new foreign competition in exchange for market opportunities abroad. However, as Yoffie (1993) and Cowhey and Aronson (1993) have argued, this trade world does not apply to all sectors of the global economy and fails to capture the nature of current trading issues. In the course of this examination, it has become evident that service sectors clearly do not fit the Ricardian model. They are more accurately as "regulated competition" (Yoffie 1993) or "market access regimes" (Cowhey/Aronson 1993). Service sectors are highly regulated internally and market access is imperfect. Trade liberalization, however, is not equivalent to simply abandoning domestic regulation, since all countries esteem that some

[1] Ricardo's discussion of foreign trade focuses exclusively on markets with many producers, such as agricultural production or textiles.

degree of regulation of standards and processes is necessary: air transport without safety regulation or telecom services without available information about costs, for example, may not be desirable even if one is interested in foreign competition. The liberalization of services therefore becomes a matter of harmonizing or internationalizing domestic regulation. The trade game of regulated competition thus implies that firms need to participate in the definition of regulatory frameworks if they want to shape the conditions under which they will have to operate in the future.

> The must successful firms and governments will ultimately be those which adapt quickly to their shifting industry and political environments as well as those which seek to change the rules by overcoming historical inertia and even altering the global structures of the industries in which they compete (Yoffie 1993: 449).

This is precisely what has guided firm lobbying in the two sectors studied. Lobbying in support of liberalization has become especially attractive for large firms, because it ensures access to the political negotiations and thus to the definition of new regulatory frameworks. In this context, first movers have a particular advantage, because they can participate in the definition of new policies at an early stage.

In concrete policy terms, the trade world of regulated competition is much more complicated than the classical trade world, which explains why the new trading issues opened up during the Uruguay Round have led to negotiation cycles that are much longer and laborious than those cycles that simply dealt with the reduction of tariffs and other import restrictions. Policy alternatives are hard to define and consequences are more difficult to evaluate. These difficulties apply to business actors and government representatives alike and are aggravated by quite different conceptions of the notion “regulation”. Indeed, regulation becomes central to trade negotiations in services, but understandings of regulation diverge in academic writing (see Jordana/Levi-Faur 2004; Woll 2004) and in practice. For US policy-makers, regulation often has the connotation of “costly governmental intervention” it has

gained in economic writing (see Keeler/Foreman 1998). The EU, in turn, tends to favor regulation as necessary component of market-oriented policy-making (Van den Hoven 2004). As we have seen, these divergent views have led to clashes over the design of a transatlantic aviation agreement and the continuation of telecom policy in the WTO. Defending the European position, a policy-maker brings this conceptual disagreement to the point:

> The US says that it won't apply the reference paper [to the internet], because this will led to excessive regulation. We say, "yes, but it is pro-competitive regulation." […] It prohibits monopolies and anti-discriminatory practices. It is not excessive; it merely applies pro-competitive principles. Instead of being anti-liberal, such regulation is more liberal. Is a market without regulation necessarily more liberal? Look at the market in Russia: it is not marked by liberalism, it is a wild market. Between the strongest and the week. In order to preserve efficient liberal markets, we need pro-competitive regulation.[2]

Regulation and the "making compatible" of domestic regulatory regimes are at the heart of service trade negotiations. Due to the vagueness of this task, however, the very issue of regulation becomes a rhetoric cover for the respective self-interests of the US and the EU government and their companies. Where the self-interests of different countries and different economic actors lie is difficult to say categorically. What remains certain, however, is that the struggle over regulatory regimes for trade within different service sectors will continue. For both governments and economic actors, power in international service trade is therefore definitional power.

2.2. The connection between foreign trade and internal integration

For the EU studies, the tendency to lobby for liberalization rather than protectionism is particularly interesting. At first consideration, this observation seems to indicate that the EU might be "a liberalizing machine". As Scharpf (1996; 1999) has elaborated, the EU already has a tendency towards liberalization, since positive integration is more difficult to achieve

[2] Interview with a representative of an EU member state, July 1st, 2003.

than negative integration. If business lobbying also goes in the direction of liberalization, what does this mean for the future of the European Union?

A nuanced answer to this question needs to distinguish between external trade liberalization and internal liberalization. As I have argued in the introduction, external policy objectives that firms can lobby for are less constrained than internal ones. I have argued in this dissertation that the EU provides an incentive to lobby for liberalization, but this is based on the more fundamental observation that the EU provides an incentive to lobby for pan-European solutions. Pan-European solutions contribute to the construction of conflict-minimizing, problem-solving policy debates rather than bargaining. The Commission will therefore privilege cooperation with firms and associations that lobby for such solutions. The question now becomes: what is a pan-European solution? The answer, it seems, varies according to policy areas.

For external trade policy, pan-European solutions include multilateral liberalization, bilateral liberalization between the EU as a whole and another country, multilateral or bilateral regulatory regimes which cover the EU as a whole or even pan-European protectionism, a „fortress Europe“. Indeed, the policy objectives of the EU as an external actors include a mix of these solutions and EU policy is marked by both liberalization and “regulatory peaks” (Young 2004).

Concerning the internal market, however, trade policy lobbying clearly tends to sustain the integration of European markets, or in this case, the liberalization of European service markets. Since the Commission represents the EU as a whole in international negotiations, lobbying the supranational level requires dealing with the EU as a whole as well. For service markets, this meant accepting the end of national fragmentation in order to participate in external trade discussions, since lobbying for protectionism based on national

boundaries would have created an EU bargaining situation. In both telecommunications and air transport, service providers realized that embracing the European integration process enabled them to participate in the international trade negotiations of their sector. Furthermore, firms who have turned towards supporting internal integration and international liberalization then sometimes worked towards convincing their governments to accept European integration (Fairbrass 2002). The Commission seems to employ these feedback mechanisms quite consciously, when it links international negotiations to internal market liberalization, as was done in the case of the basic telecom negotiations (Holmes/Young 2002). The trade negotiation authority of the European Commission has thus an indirect effect on the integration of internal markets: through orienting the content of firm preferences, it helps to sustain the momentum for market integration of sectors that are negotiated externally.

2.3. National variation in business-government relations?

Finally, what is the importance of national settings for the activities of large firms in international trade negotiations? The lessons of the field of varieties of capitalisms for our case studies are vague or ambiguous, but to some degree this should be expected, since the EU is a conglomerate of national systems rather than any one of the idea types the literature has traditionally attempted to describe. Even though this dissertation looks at individual national companies, it concentrates on supra- and international phenomena and cannot account for the intricate details of cross-national variation that would be at the heart of the study of the literature of comparative capitalisms.

Still, two predictions have proven relevant to the analysis of service sector lobbying. First, the general division between liberal market economies and coordinated economies contain some potential explanation for the different lobbying styles and objectives in the EU

and the US. European firms tend to lobby predominately through trade associations and try to affect long-term developments, while US firms lobby directly and seek to achieve short-term benefits. However, the causal mechanisms that would tie national economic traditions to this behavior at the supranational level in the EU are less than certain. At this point in the analysis, it should therefore suffice to simply note the correspondence between lobbying forms and content of US and EU firms to the suspected behavior of firms in liberal and coordinated market economies.

Second, as the more concrete hypothesis about domestic regulatory traditions shows, institutional settings can determine the business strategies of firms in an initial phase, but they have little predictive power over the long term. This observation corresponds to a recent trend in the literature of comparative capitalism: a focus on the strategic behavior of firms within their national business systems (Hancké 2002; Morgan/Whitley/Moen forthcoming). As several case studies of national business systems have demonstrated, institutional frameworks are important for understanding the evolutions of national market arrangements, "but they do not condemn," (Hancké 2002: 2). In his study of the French economy, Hancké shows, for example, that the statist tradition of the French government has not prevented large French firms, such as Renault or EDF, to construct new institutional conditions to be more capable to adjust to a changing international market context. Similarly, Knut Lange's (Lange forthcoming) study of German bio-technology firms underlines that German firms working in a sector marked by high-innovation – and thus generally a sector where Germany has no comparative institutional advantage – have been able to impose themselves as competitive players comparable to their UK counterparts. Consequentially, a new research agenda for the school of comparative capitalism becomes to understand how firms act strategically within

and beyond the structure of their national settings (Morgan/Kristensen/Whitley 2001; Morgan/Whitley/Moen forthcoming).

The small contribution this dissertation can make to such a debate is to highlight the creativity of firms in their respective interpretations of national traditions. National institutional differences and regulatory frameworks, just like other economic or material incentives, have to be interpreted by the firms that act within them. As the case studies illustrate, the domain of trade policy seems especially fruitful for encouraging interpretative creativity because it connects the constraints and opportunities of three levels: the international and the national, as well as the European for firms within the EU. In the combination of these two or three levels, firms can develop a more divers set of strategies that one would expect by looking at any one of the levels in isolation. An exclusive focus on the effect of new economic conditions at the international level will lead to flawed assumptions – an excessive fear of capital flight or outsourcing, for example – just like an exclusive concentration on national conditions will fail to understand the changing conditions firms have to face in their political and economic activities. By combining national and international opportunities under different sources of constraint firms can develop a wide variety of business-government relations and economic policy solutions that they will judge advantageous. With this conclusion, the dissertation joins a central claim of the comparative capitalisms literature: internationalization does not necessarily lead to convergence. However, the lack of convergence is not necessarily rooted in the institutional reproduction of different existing frameworks, as this literature proposes, but in the creative response of firms to the changing conditions on the different levels of economic policy-making.

3. On lobbying and economic change

On a final note, the conclusions of this dissertation also address a more specific aspect of the globalization dynamic: the role of lobbying in economic transformations. In the context of globalization, many analysts have grown interested in the role of large firms as the new actors of economic policy adjustment (Harrison 1994; Hall/Soskice 2001; Hancké 2002). While it seems exaggerated to suggest that states are really retreating from international affairs, firms seem to be in new positions that enable them to be the drivers of policy change. The anti-globalization movement speaks of "corporate globalization" (Wallach/Sforza 1999), Strange (1988; 1996) notes that firms become diplomatic actors in a "triangular diplomacy" between each other and their own and foreign governments, and Cowles (1994) speaks of "supragovernmentalism" to describe the way firms contribute to European integration.

The case studies examined in this dissertation paint a slightly more nuanced picture. European air carriers can certainly be called the drivers of the open aviation area project of the European Commission, by helping to formulate its initial ideas and accompanying the policy transfer from the member states to the community level as well as the current negotiations between the EU and the US. Without being at the origins of the WTO agreement, competitive US telecom companies were also quite influential in shaping the content of the basic telecom agreement of 1997. In other cases, however, large service providers were more or less caught off-guard by the liberalization projects of their governments. US airlines had to face the open sky policy in the 1990s, which several carriers met with considerable reservation. Similarly, network providers in both the US and the EU learned about the multilateral telecom talks only after the decision to advance on the topic was already made. Even though US carriers embraced the open sky policy and US and EU network providers eventually turned to supporting it quite enthusiastically, it would be wrong to call them the

drivers of this process. Finally, US carriers continue to remain entirely reserved about the open aviation area currently negotiated between the US and the EU and this absence of mobilization is probably as clear an indicator to the US government as lobbying against it might be. Interestingly, in all but the last cases, we have evidence of concerted lobbying efforts, but this does not mean that lobbying explains the direction of the policy process, even if their demands correspond to the policy outcome, as the case studies illustrate. The array of lobbying in the two sectoral studies include variations from "agenda-setting lobbying", "agenda-shaping lobbying", "jumping-on-the-train lobbying" to "half-hearted support". It is thus misleading to attribute a central role to firms merely because one can observe that firms are participating in a given policy process.

Instead the cases presented here seem to indicate that the success or failure of lobbying is highly contingent on a government's willingness to consider it. The most successful example mentioned in this dissertation is the GATS itself. In the eyes of many observers, the extensive lobbying of financial service firms in the US was crucial to the service trade agenda of the US government which eventually led to the WTO agreement (Drake/Nicolaïdis 1992; Sell 2000; Wesselius 2001). Insiders remember, however, that the US government was especially interested in the ideas of these firms, because they corresponded to the US government's ambition for a new round of GATT talks. The tight business-government working relationship was then the consequence of these mutually sustaining goals. In the European context, testimonies confirm this impression. On page 223, a member of ETNO points out that the cooperation with the Commission depended on the concurrence of public and private sector goals: "The Commission works for Europe and we work for Europe: our objectives are the same." The open aviation area also advanced airline interests and the Commission integration agenda simultaneously.

The most general conclusion of this dissertation can therefore be summarized as follows: politics matter in the dynamics of international service trade liberalization. The international policy realm does not seem to dissolve the importance of governments, be they national as in the US or spread over multiple levels as in the EU.

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Annex 1

LIST OF INTERVIEWS

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1. International organizations and associations

Aviation			
Pierre Latrille	WTO	Trade in Services Division - Aviation	Geneva
Wolfgang Hübner	OECD	Head Transport Unit	Paris
Richard Smithies	IATA	Government Affairs	Geneva

Telecommunications			
Lee Tuthill	WTO	Trade in Services Division - Telecoms	Geneva

2. European Union

2.1. European Institutions

Service Trade			
Dirk Hellwig	Council Secretariat	WTO - Commercial policy	Brussels

Air Transport			
Hubert Beuve-Mèry	DG TREN	International Aviation	Brussels
Soren Jakobsen	DG Trade	Air transport	Brussels
Joos Stragier	DG Competition	Head of Transport Unit	Brussels
Lars-Olof Hollner	European Commission Delegation to US	Head of Transport, Energy & Environment	Washington, D.C.
Christopher Ross	European Commission Delegation to US	Special Advisor on Air Transport Policy	Washington, D.C.

Telecommunications			
Philippe Chauve	DG Trade	Telecommunications	Brussels
Alison Birkett	DG Info Society	International Telecom Affairs	Brussels
Svend Kraemer	DG Info Society	International Telecom Affairs	Brussels
Dr. Herbert Ungerer	DG Competition	Head of Telecom and Media Unit	Brussels

2.2. European Associations

Service Trade			
Pascal Kerneis	ESF	Managing Director, Service Representative in TABD	Brussels

Air Transport			
Dr. René Fennes	AEA, previously DG TREN	General Manager of Public Policy	Brussels

Telecommunications			
Fiona Taylor	ETNO	Public Affairs	Brussels
Ana Garcia	EICTA	EU Affairs Manager	Brussels

2.3. National Governments

Service Trade			
Frank Supplisson	France MINEFI – DREE	Deputy Head of Unit for Service Trade	Paris
Malcolm McKinnon	British Delegation in Geneva	Head of Trade in Services	London

Air Transport			
Marina Köster	Germany BMVBW	Senior Executive Officer on Multilateral Affairs	Bonn
Dieter Bartowski	Germany BMVBW	Former Chief Negotiator	Bonn
Sabine Dannelke	Germany BMVBW	Chief Negotiator Air Transport	Bonn
Tony Baker	UK Dept. for Transport	Director of International Aviation Negotiations	London
Simon Knight	British Embassy US	Transport	Washington, D.C.

Telecommunications			
Christophe Ravier	France MINEFI - DIGITIP	Head of Subunit on Telecom Regulation	Paris

Dr. Wilhelm Eschweiler	Germany BMWi und A	Head of Division, International Telecom Policy	Bonn
Eckart Lieser	Germany BMWi und A	Deputy Head, Intern'l Telecom Policy	Bonn
Dr. Annegret Gröbel	Germany RegTP	International Affairs	Bonn
Vincent Affleck	UK Oftel	International Affairs	London

2.4. Companies

Air Transport			
Arnaud Camus	Air France	Government Affairs	Paris
John Wood	British Airways	Exec VP ext relations	Brussels
Rutger Jan toe Laer	KLM	Director Government and Industry Affairs	Amsterdam
Jan Philipp Görtz	Lufthansa	Government Affairs	Brussels
Chris Humphrey	Virgin Atlantic	Director of Government Affairs	London

Telecommunications			
Dr. Jan Krancke	Deutsche Telekom	Regulatory Affairs	Bonn
Wolfgang Jakubek	Deutsche Telekom	Head of D.C. Office	D.C.
Alain-Louis Mie	France Telecom	Senior Vice-President, International Affairs	Paris
Jean-Louis Burillon	France Telecom	International Affairs	Paris
Tilmann Kupfer	British Telecom	European Regulatory Manager, EU office	Brussels
Olof Nordling	TeliaSonera	Former ETNO WG chair, Head of Brussels office	Brussels
Carlos Rodríguez Cocina	Telefónica S.A.	Manager Regulatory Affairs Brussels	Brussels
Allan Bartroff	TDC (Denmark)	Regulatory Affairs	Copenhagen

2.5. Other

Marc Taquet-Graziani	Weber Shandwick	Consultant, Transport & Defense Practice	Brussels
Erik Wesselius	Corporate Europe Observatory	Founder of Gatswatch.org	Amsterdam
Dominique Jacomet	Union des Industries Textiles	Lobbyist	Paris
Didier Jacquot	French Civil Aviation	Employee	Paris

3. United States

3.1. Government

Air Transport			
Allan I. Mendelsohn	State Department	Former Deputy Assistant Secretary of State for Transportation Affairs	Washington, D.C.
John Byerly	State Department	Deputy Assistant Secretary of State for Transportation Affairs	Washington, D.C.
John Kiser	Department of Transportation	Chief, Pricing and Multilateral Affairs; Office of Int'l Aviation	Washington, D.C.
Eugene Alford	Commerce Department	International Trade Administration, Aviation services	Washington, D.C.
Dorothy Robyn	Former White House Advisor on Aviation	now Brattle Group consultant	Washington, D.C.
Sam Whitehorn	Senate (Democratic Senior Council), White House and CAB earlier	Commerce on Aviation	Washington, D.C.

Telecommunications			
Ken Schagrin	USTR / Dept. of Commerce, MCI and FCC earlier	Telecom Expert	Washington, D.C.
Don Abelson	FCC / USTR earlier	International Bureau	Washington, D.C.
Tim Finton	State Department	Senior Counselor for Telecommunications Trade	Washington, D.C.
Dan Edwards	Department of Commerce	Industry Specialist, Telecoms, International Trade Administration,	Washington, D.C.

3.2. Associations

Service Trade			
J. Robert Vastine	USCSI	President	Washington, D.C.
Harry L. Freeman	USCSI	Former president	Chevy Chase, M.D.
Gert Gerecht	RGIT-USA	German industry representative	Washington, D.C.

Air Transport			
Rhett D. Workman	ATA	Director, International Programs	Washington, D.C.
Russ Bailey	ALPA	Senior Attorney, Legal Department	Washington, D.C.

Telecommunications			
David Fares	USCIB	Director, Electronic Commerce	New York
Jason Leuck	TIA/ Department of Commerce earlier	Director, International Affairs	Washington, D.C.

3.3. Companies

Air Transport			
Dan Elwell	American Airlines	Managing Director, International and Government Affairs	Washington, D.C.
John Moloney	Delta Airlines, formerly DOT	General Manager, Government Affairs	Washington, D.C.
Michael G. Whitaker	United Airlines, TWA earlier	Vice President of International and Regulatory Affairs	Washington, D.C.
Cecilia Bethke	Northwest Airlines	Director of International Affairs	Washington, D.C.

Telecommunications			
Doug Schoenberger	AT&T	International Affairs	Washington, D.C.
Scott Shefferman	MCI/ FCC earlier	Associate Counsel International Affairs	Washington, D.C.
Karen Corbett-Sanders	Verizon / NYNEX earlier	Vice President, International Public Policy and Regulatory Affairs	Washington, D.C.
Cathy Slesinger	Cable & Wireless USA / NYNEX earlier	Senior Vice President, Public Policy	Washington, D.C.
Joanne Lowry	Cable & Wireless USA	Governmental Affairs	Washington, D.C.
Bev Andrews	Former Comsat representative	Used to chair the industry group during the GBT negotiations	Washington, D.C.
Herb Marks	Squire, Sanders & Dempsey	Attorney/ Lobbyist	Washington, D.C.

4. Contacts without interviews:

Magda Boulos	ICAO	Economic Policy Section	Montreal
Pedro V. Goncalves	Portugal Telecom	Regulatory Affairs	Lisabon

Annex 2

INTERVIEWING

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1. A note on the practice of interviewing

Several "non-academic" considerations are quite relevant to the practice of interviewing, and it might be helpful to account for how they were being dealt with. A first concerns the ways in which interview can be obtained, a second the behavior I adopted during the course of my interviews.

As has been indicated earlier, the most time consuming task of an interview methodology is obtaining an interview in the first place. Not only is it necessary to follow up an initial demand with several phone calls, the format of the interview request can also have an important role. Depending on the formality of the work environment, a letter or a fax can be a good way to present the research. For my specific project, I have found that in almost all contexts, writing an e-mail has worked well, simply because they are the easiest to respond to quickly. However, if the e-mail seems vague or is addressed to the wrong person, it will be left unanswered. In the initial phases of my research, I therefore contacted the superiors of a given hierarchical structure who passed on my request to the person in charge. Later on, I made sure the e-mail made reference to very specific parts of the person's work – or better, some specific achievements – in order to underline my need to talk with her or him. Very often it is more convincing to write a detailed e-mail testifying to my knowledge of the subject and the interest I have in this particular conversation. However, in several cases, these

details have scared the addressee, because he or she felt that she would not be able to respond to my questions.1 Similarly, following up too persistently on a non-response – which is the polite way to refuse an interview – can turn out to be a mistake. On one particular occasion, after e-mailing and calling repeatedly, I had been granted an interview with the head of an influential business association. Quite discontent with my disturbance, he allowed me to ask my "most important question" and then walked me out the door after less than ten minutes of conversation. But this anecdote is an exception. The great majority of my interview partners has been prompt in their responses and very accommodating and several have even invited me for a working lunch.

It is true, however, that certain working environments are more difficult to gain access to than others. Half way through my research, I had concluded that European business was very accessible, while talking to officials of the European Commission was quite difficult. Inversely, even high-placed officials of the US government were always happy to receive me, while US business was much more hesitant. However, the longer I continued, the more I gathered counter-examples, and I realized that timing plays an important role for interviewing as well: At the time I interviewed in the US, most airlines were in a several financial crisis and telecommunication providers had restructured in response to their own difficulties. Similarly, the Commission had been very busy in matters of air transport, and indeed experts on telecommunication were more accessible.2

As for the interview request, preparation is essential for the interview as well. Concerning appearance, it is always best to fit in with the working environment of the interview partner. In business affairs, this means among other things being equipped with a

[1] This happened above all in business associations or government affairs offices or a company, where the person responsible for a given committee might be relatively new in the position and is often not familiar with the details of individual policy issues.

[2] It is therefore not surprising to read of very different experiences. Emiliano Grossman (2002: 88), for example, describes the Commission as the most accessible interview environment he has worked with.

name card.3 More important even is a sound knowledge of the subject matter. This does not mean that one needs to know all the possible answers already, but one should "speak" "telecommunications" or "international air transport". Every working context has their own language and one should not need to stall the conversation by asking information about job specific jargon, such as "first freedom rights", "common carriers" or "G3 licenses". Inversely, it is not useful to know too much, because the conversation partners want to teach the researcher something new. After all, the situation requires that the interviewee be "the monopoly of legitimate expertise", which is why the interview takes place (Cohen 1999, 190). Furthermore, he or she should be able to lead the researcher into new subject matters, without feeling that this will be redundant or superfluous. In summary, it is best to appear to know the "language" without knowing the content.

2. Examples of personalized questionnaires:

The following research questionnaire is tailored to the stakes relevant for a US airline representative. For comparison, a questionnaire for a EU government representative follows

Example A

1. **Government Affairs Unit:**
    a. *How long have you been working as for XYZ?*
    b. *How long have you been in your current position?*
    c. *How many people work with you on these issues?*

2. **Interest Representation:**
    a. *What are your most important tasks?*

[3] The fact that I did not have a cell phone that worked in several countries simultaneously or an MP3 recorder was also noticed.

b. *How has since changed since the beginning of the crisis in the airline industry?*
c. *In what cases does XYZ work individually? When do you work through your association?*
d. *Where do you consider to be the most important contacts you might have with the government?*

3. Liberalization in Air Transport:

a. *Do you assist to the negotiations of open-sky agreements that affect you?*
b. *Do you feel that the options giving by code-sharing alliances and open-sky agreements are sufficient?*
c. *Would XYZ ever be interested to have one of their alliance partners, invest into them financially during the aviation crisis?*
d. *Has XYZ ever been interested in buying or merging with a foreign company, if there was no ownership restriction?*
e. *Are there internal differences on international aviation between labor and the airline management?*
f. *What are the disadvantages of expanding the GATS or reviewing the Annex?*
g. *What is your opinion of the 5th ICAO conference on air transport?*

4. EU-US relations:

a. *Does the ECJ ruling on community competences for open sky agreements affect you?*
b. *Is there anything, you would like to see changed in transatlantic aviation?*
c. *What do you think of a common EU-US aviation area, such as proposed by the TCAA?*
d. *Do you consider a Europe-wide agreement with the EU a useful means to deal with problems of individual EU countries such as the UK?*
e. *Is there anything in transatlantic aviation that XYZ would like to see changed?*
f. *Would you like to see the Commission have a mandate for external aviation negotiations?*

5. **Others:**
    a. *Is there any important issue I forgot to address:*

6. **Further contacts:**
    a. *Who else would you advise me to contact?*

Example B

1. **Responsibilities:**
    a. *How long have you been working for XXX? On aviation?*
    b. *What are your main responsibilities during a typical day?*
    c. *Which have been the most important issues during your time here?*
    d. *Do you mainly represent the XXX only, or do you sometimes work with your European counterparts?*

2. **EU-US relations:**
    a. *Does the ECJ ruling on open skies between the US and several other EU member states affect your work?*
    b. *When the EU Commission presented the Brattle Group report on a common aviation area to the US industry and later the government, did you attend?*
    c. *What is your opinion of the proposals?*
    d. *Would XXX like to see the US have an external negotiation mandate? Why?*

3. **The XXX market:**
    a. *For the US, a common aviation area would have to look like a multilateral open sky with all countries that already have open skies with them. They are afraid of free riders. Do they voice these concerns to you?*
    b. *What are the reasons for not entering into an open sky agreement with the US?*
    c. *XXX has been very supportive of the intra-European liberalisation of air transport. Why the hesitation with respect to international agreements?*
    d. *Does the US have an interest in the EU market (only 20% international flights – the inverse in Europe)?*

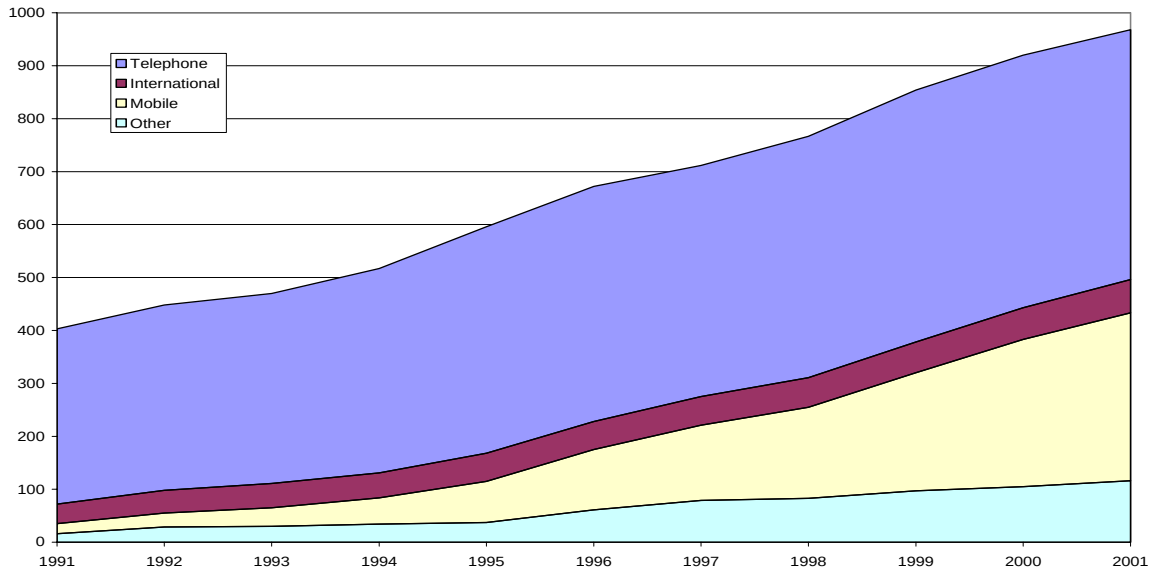
4. **Others:**
    a. *What is your opinion on other discussions on international liberalization such as the recent ICAO conference or the WTO?*
    b. *Is there any important issue I forgot to address:*

5. **Further contacts:**
    a. *Who else would you advise me to contact?*

Annex 3

ADDITIONAL INFORMATION ON TELECOMMUNICATION SERVICES

Figure A3-1: Global service revenue in US$ billions



Source: International Telecommunication's Union (ITU), "Key Global Indicators for World Telecommunication Service Sector", 2001, (www.itu.int/ITU-D/ict/statistics/at_glance/ KeyTelecom99.html), data reproduced with permission.

Notes: Telephone includes revenue from installation, subscription and call charges for fixed telephone lines. International refers to the retail revenue.

Table A3-1: Major joint ventures among large international carriers between 1996-2000

Companies	*Type of venture*
"AT&T/World Partners": AT&T, KDD, Telstra, Unitel	Marketing arrangement
"Concert": British Telecom/MCI	Joint venture, British Telecom first purchased 20% of MCI, later purchased remaining 80%
"Global One": France Télécom, Deutsche Telecom and Sprint	Joint venture; France Télécom and Deutsche Telekom purchase 20% of Sprint
"Unisource": Telia, Swiss Telecom, KPN, Telefonica	Alliance/ Joint Venture, AT&T owns 20% stake

Source: Adapted from Crandall {, 1997 #891: 111}

Table A3-2: Major foreign investments by traditional telephone companies by 1997

Companies	*Type of business*
Europe	
British Telecom/ Viag (German)	Voice and data for corporate subscribers
Ameritech/ Deutsche Bundespost/ Matav	Telephone service in Hungary
Ameritech/ France Télécom/ Polish PTT	Telephone service in Poland
Bell South/ Thyssen	Telecommunications services in Germany
Ameritech/ Netcom GSM	Cellular service in Norway
US West/ Olivetti Spa.	Regional cable networks in Italy
US West/ EDS / France Télécom	Transactional and banking services
AT&T/ Unisource	Uniworld
US West/ Cable & Wireless	One 2 One – cellular service in UK
US West/ TCI	Cable service in the UK
US West/ DT/ France Télécom/ Rostelkom	Telecommunciation service in Russia
US West	Cellular service in Moscow
Sprint/ Bulgarian government	Packet-switched networks in Bulgaria
Air Touch/ Mannesmann Mobilfunk	Cellular service in Germany
Sprint	Plessey Telnet
AT&T/ Ukrainian Telephone Ministry/ Deutsche Telekom/ PTT Telecom (Netherlands)	Telecommunications service in the Ukraine
Bell South/ Thyssen/ Vodafone	Cellular service in Germany
British Telecom/ Viag	Telecommunications services in Germany
SBC/ Vodafone/CGE	Telecommunications services in France
British Telecom/ Banca Nacional del Lavoro	Italian telecommunication services – Albacom
Bell Atlantic/ Air Touch/ Mannesmann/ Olivetti	Cellular services in Italy
US West/ Time Warner/ Multimedia Cable	Cable television in Spain
Air Touch/ British Telecom	Cellular service in Spain
Air Touch/ Telecel	Cellular service in Portugal
Americas	
Cable& Wireless	Telephone service in Jamaica
MCI/ Grupo Financiero Banamex Accival	Telephone service in Mexico
GTE/ Grupo Financiero Bancomer	Telephone service in Mexico
SBC/ France Telecom	Telmex - telephone service in Mexico
Bell Atlantic	Iusacell – cellular service in Mexico
Bell South	Cellular service in Guadalajara, Mexico
Sprint/ Telmex	Long distance service in Mexico
AT&T/ Grupo Industrial Alfa	Telephone service in Mexico
GTE/ AT&T/ two Argentine companies	Cellular service in Argentina
Bell South	Cellular service in Venezuela
Bell South	Cellular service in Chile
France Télécom	Telecom Argentina
Telefónica	CTC and Entel in Chile
Telefónica	Telefónica de Argentina
Telefónica	Partial stake in Venezuelan operator CANTV
Telefónica	Telefónica Larga Distancia of Puerto Rico

Asia/Australia/New Zealand	
US West/ Time Warner/ Toshiba/ Itochu	Cable television in Japan
Air Touch/ Cable & Wireless	Wireless service in Japan
Air Touch / TDP	Wireless service in Tokyo
NTT/ Cable & Wireless	Personal communications services in Japan
Bell Atlantic/ Ameritech	Telephone service in New Zealand
MCI/ Bell Communications Enterprises	Telephone service in New Zealand
Bell South	Cellular service in New Zealand
Telstra	Cellular service in New Zealand
Bell South/ Cable & Wireless	Telephone service in Australia
Vodafone	Cellular service in Australia

Source: Adapted from Crandall {, 1997 #891: 113-4}. This listing is only partial and might include proposed joint ventures that have later been abandoned. Ventures undertaken after 1997 are not included.

Annex 4

THE REFERENCE PAPER

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service.

A *major supplier* is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay

for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

(a) at any time or

(b) after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are

administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Note:
The Reference Paper was adopted by the Negotiating Group on Basic Telecommunication Services on 24 April 1996. It was never formally issued as a WTO document, but is available on the WTO website at http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel23_e.htm.

Annex 5

TIMELINE OF BASIC TELECOM LIBERALIZATION

Figure 1: Liberalization in the US, the EU and through the WTO

	USA	EU	GATT-WTO
1984	Disinvesture of AT&T		
1985		ECJ rules that competition applies to telecom	
1986			Uruguay Cycle opened
1987	Omnibus Trade Act	Common Market Green Paper	
1988		Terminal equipment directive	
1989			
1990		Open provision and service directive	
1991			
1992		ECJ upholds ECC competence	
1993		Council resolution approves liberalization intentions	Value-added telecom services negotiated
1994		Mobile Green Paper Bangemann Report	Uruguay Cycle concluded ; NGBT negotiations launched
1995		Green Paper on Infrastructure Liberalization	
1996	TA96 endorsed	Council adopts infrastructure liberalization	Failure to conclude; GBT negotiations extended
1997			Basic Telecom Agreement and Reference Paper signed
1998		Full liberalization	Basic Telecom Agreement effective
1999	TA96 signed into law		
2000			

Annex 6

ADDITIONAL INFORMATION ON INTERNATIONAL AIR TRANSPORT

Table 1: Antitrust Cases Investigated by Commission

Date of Decision	*Companies*	*No.*	*Initiation*	*Decision*
	Skyteam: Air Franc, Delta, Aeromexican, Korean Air	COMP/37.984	Commission initiative 27.03.2002	Pending
	British Midlands, United Airlines	COMP/38.234	Notification 13.12.2001	Pending
10.12.2003	British Airways, Iberia, GB Airways	COMP/38.479	Notification 19.07.2002	Cleared
09.12.2003	Air France, Alitalia	COMP/38.284	Notification 13.11.2001	Exemption with conditions/ obligations
10.03.2003	British Airways, SN Brussels	COMP/38.477	Notification 25.07.2002	Cleared
30.10.2002	*Star Alliance*: United, Lufthansa, SAS	COMP/36.076 COMP/36.078 COMP/36.201	Commission initiative July 1996	Exemption with conditions/ obligations
28.10.2002	*Wings Alliance:* KLM, Northwest	COMP/36.111	Commission initiative July 1996	Cleared
05.07.2002	Austrian Airlines (AuA) – SAS; AuA - Lufthansa	COMP/37.749 COMP/37.730	Notification 13.10.1999	Exemption with conditions, after objection 15.5.2001
18.07.2001	SAS, Maersk	COMP/37.444 COMP/37.386	Notification Oct. 1998	Prohibition with fines
13.06.2001	Lufthansa, SAS British Midland	COMP/37.812	Notification 1.3.2000	Exemption
15.05.2001	IATA Cargo Tariff Consultations	COMP/36.563	Opened by Commission initiative	Preliminary view that infringes on competition rules
13.12.1999	Virgin Atlantic complaint against British Airways	COMP/34.780	Complaint lodged by Virgin on 9.7.1993, Commission starts investigation 20.12. 1996	Prohibition with fines
26.02.1992	British Midland vs. Aer Lingus	COMP/33.544	Complaint lodged by British Midland on 26.4. 1990, Commission starts investigation 4.6. 1991	Prohibition with fines

Source: Assembled by the author from the database of the European Commission's DG Competition, available at http://www.europa.eu.int/comm/competition/index_en.html.

Notes: The following cases include only cooperation agreements, alliances, joint ventures and mergers of air carriers providing passenger or cargo transport services. Airports or air traffic control, aeronautic manufacturers, auxiliary service providers, sales and marketing or other tourist services are not listed.

The cooperation between American Airlines and British Airways does not appear, because the first two more ambitious agreements have been withdrawn, the final cooperation agreement is simply an extended form of code-sharing.

Table 2: Merger and joint venture cases investigated by the European Commission

Date	***Companies***	***No.***	***Initiation***	***Decision***
25.10.2002	Lufthansa Cargo, Air France Finance, British Airways, Global Freight Exchange	M.2830	Notification on 26.09.2002	Cleared
30.05.2002	Preussag AG (TUI), Neos JV	M.2788	Notified on 25.04.2002	Cleared
05.03.2002	SAS, Spanair	M.2672	Notified on 04.02.2002	Cleared
12.01.2001	United Airlines, US Airways	M.2041	Notified on 20.11.2000	Cleared with commitments
20.12.2000	REWE, Sair Group, LTU	M.2156	Notified on 20.11.2000	Cleared
10.08.2000	Swiss Air, Portugalia	M.1646	Notified on 05.05.2000	Aborted/ withdrawn
28.07.2000	AOM, Air Liberté, Air Littoral	M.2008	Notified on 23.06.2000	Cleared
23.03.2000	Singapore Airlines, Virgin Atlantic	M.1855	Notified on 23.02.2000	Cleared
18.11.1999	Onex, Air Canada, Canadian Airlines	M.1696	Notified on 16.09.1999	Aborted/ withdrawn
15.11.1999	Swiss Air, South African Airlines	M.1626	Notified on 08.10.1999	Cleared
11.08.1999	KLM, Alitalia	M/JV.19	Notified on 28.06.1999	Cleared with commitments
03.08.1999	Marine-Wendel, Sair Group, AOM	M.1494	Notified on 30.06.1999	Cleared
25.05.1999	KLM, Martinair (II)	M.1328	Notified on 21.12.1998	Aborted/ withdrawn
21.12.1998	Sair Group, LTU	M.1354	Notified on 20.11.1998	Cleared
22.09.1998	KLM, Martinair	M.1128	Notified on 01.09.1998	Aborted/ withdrawn
06.07.1998	Maersk Air, LFV Holdings	M.1124	Notified on 03.06.1998	Cleared
22.09.1997	KLM, Air UK	M.967	Notified on 21.08.1997	Cleared
26.08.1997	Lufthansa Cityline, Bombardier, EBJS	M.968	Notified on 23.07.1997	Cleared
28.02.1997	British Airways, Air Liberté	M.857	Notified on 29.01.1997	Cleared
26.08.1996	British Airways, TAT (II)	M.806	Notified on 22.07.1996	Cleared
20.07.1995	Swissair, Sabena (II)	M.616	Notified on 23.06.1995	Cleared with commitments
20.06.1995	Swissair, Sabena	M.562	Notified on 17.05.1995	Aborted/ withdrawn
17.02.1993	British Airways, Dan Air	M.278	Notified on 18.01.1993	Cleared
27.11.1992	British Airways, TAT	M.259	Notified on 23.10.1992	Cleared with commitments
05.10.1992	Air France, Sabena	M.157	Notified on 07.09.1992	Cleared with commitments
13.09.1991	Delta Airlines, Pan American	M.130	Notified on 09.08.1991	Cleared

Source: Assembled by the author from the database of the European Commission's DG Competition, available at http://www.europa.eu.int/comm/competition/index_en.html.

Notes: Before the Merger Regulation of the European Communities came into effect in 1990, three air transport operations were treated under Article 86 of the EEC Treaty: British Airways buying British Caledonian (1988), Air France's takeover of UTA (1989), and KLM's absorption of Transavia. The Commission gave its conditional approval to all three.

Annex 7

FREEDOMS OF THE AIR

1st freedom: to overfly one country en-route to another.

Ex: A flight from France to Poland overflying Germany.

2nd freedom: to make a technical stop in another country.

Ex: A flight from Frankfurt to Australia stopping in India.

3rd freedom: to carry passengers from the home country to another country.

Ex: A US flight to France.

4th freedom: to carry passengers to the home country from another country.

Ex: A US flight carrying passengers from France back to the US.

5th freedom: to carry passengers between two countries by an airline of a third on a route with origin/ destination in its home country.

Ex: A US flight taking on passengers or cargo in Amsterdam for a flight continuing to Munich.

6th freedom: to carry passengers between two countries by an airline of a third country on two routes connecting in its home country.

Ex: A Dutch flight flying from Denver over Amsterdam to Munich.

7th freedom: to carry passengers between two countries by an airline of a third on a route without origin/ destination in its home country.

Ex: A US flight beginning in France and destined to Italy.

8th freedom or cabotage: to carry passengers between two domestic points within a country by an airline of another country on a route with origin/ destination in its home country.

Ex: A French flight coming from Paris with a layover in Frankfurt continuing to Munich.

9th freedom of stand-alone cabotage: to carry passengers within a country by an airline of another country.

Ex: A US airline flying from Paris to Nice.

True domestic: to carry passengers by an airline in its home country.

The first five freedoms are traditionally the subject of bilateral air agreement. Sixth freedom rights are considered a set of third and fourth freedom rights and are therefore rarely dealt with specifically. Seventh, eighth and ninth freedom rights are only granted in very rare cases. True domestic flights are by definition excluded from bilateral negotiations.

Annex 8

GATS ANNEX ON AIR TRANSPORT SERVICES

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1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

(a) traffic rights, however granted; or

(b) services directly related to the exercise of traffic rights, except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "*Aircraft repair and maintenance services*" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "*Selling and marketing of air transport services*" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "*Computer reservation system (CRS) services*" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "*Traffic rights*" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

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B.A. in Politikwissenschaft "With Honors"
B.A. Arbeit: "Issue Area Asymmetry in the European Union" unter Leitung von Gary Herrigel
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M.A. in Internationale Beziehungen
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Juni – Sept. 1998 — **Europäisches Parlament** — Brüssel, Belgien
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10/01 – 01/02	**École Normale Supérieure** *Forschungsassistentin der Groupe d'Analyse des Politiques Publiques (GAPP)*	Cachan (Paris), France
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KONFERENZORGANISATION

27.-28. 2. 2003	Organisationsleitung (mit Sophie Jacquot)der Konferenz „Sociologie politique des usages de l'integration européenne", Ecole doctorale des IEP de Paris
13. 2. 2004	Organisationsteilnahme für die Konferenz „Européanisation des politiques publiques et intégration européenne", Ecole doctorale des IEP de Paris
21. 6. 2004	Organisationsleitung (mit Alvaro Artigas) eines Workshops zum Thema „Commerce international, régulation et acteurs non étatiques", CERI und Forum européen des IEP de Paris

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1999 – 2000 :	Postgraduate fellowship der University of Chicago
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Bücher

Mit Sophie Jacquot (Hrsg.) (2004): *Usages de l'Europe: acteurs et transformations européennes.* Paris: L'Harmattan.

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Tulmets, Elsa (2004): Book Review: The Integration of References to the European Union by EU Actors, *European Political Economy Review*, Vol. 2, No.1, 109-113.

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(2003): Transatlantic Relations as a Catalyst to European Integration - The Activism of the European Commission in the Case of International Aviation, AICGS Policy Paper, Washington D.C., 11. July.

Konferenzbeiträge

(2004): Learning trade: Large firm lobbying on international service liberalization. Beitrag zur Konferenz „Les Groupes d'intérêt au XXIe siècle" am Institut d'Etudes Politique, Paris, 24.-25. September.

(2004): Beyond preference aggregation: the effect of the multi-level system on trade policy lobbying of large firms. 100th Annual Meeting of the American Political Science Association, Chicago, 1-5 September.

(2004): Europe and the Transformation of French Policy-Making: an intersectoral approach. Arbeitsgruppe zum Thema Frankreich und Europa der Association française de science politique, Paris, 16 April.

(2004): Interest Politics or Foreign Trade Policy? Lobbying on International Service Trade in the United States and the European Union. 21st Annual Graduate Student Conference of the Institute for the Study of Europe, Columbia University, New York, 26.-27. Februar.

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(2003): Lobbying for global telecommunication markets. The political activities of dominant providers in the EU and the US during the telecommunication negotiations of the GATS. ECPR Conference, Marburg, 18.-21. September.

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(2002): Vers un modèle universel des relations entre enterprises et pouvoirs publics? 12th International Conference of the Journal Politiques et Management Public, Paris, 15. November.

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(2002): Business-Government Relations in the WTO Service Negotiations. Zweites Symposium zum Thema "Corporate Political Strategies", HEC, Paris, June 2002.

Sonstiges

(2003): The United States and the Franco-German Couple. Commentary Series, American Institute for Contemporary German, Washington D.C., http://www.aicgs.org/c/wollc.shtml.