The analysis presented below accounts for various internal and external political factors influencing the creation of Regional Trade Agreements with particular emphasis on Preferential Trade Agreement. The new trade strategy, and institutional arrangements of the European Union have been selected to exemplify the political complexity of the process and its impact on the global Union, in particular, the developing countries. The first section of the article outlines the impact of the recent institutional changes in the Union, implemented with the enforcement of the 2009 Lisbon Treaty, on its new trade policy making. It is followed by the discussion on the aspect of regional integration both within Europe and its trading partners. The penultimate part considers the power struggle between the most influential actors and its effects on the regulatory framework worldwide. Finally, the recommendations for the developing nations are made, which could enhance their bargaining power in bilateral and multilateral negotiations in the light of recent events.

KEYWORDS: Preferential Trade Agreement; Regional Trade Agreements

The existence of Regional Trade Agreements (RTAs), formed bilaterally between the states, is permitted within the WTO legal framework by virtue of GATT Article XXIV, GATS Article V and the Enabling Clause. In recent years the number of such negotiations concluded by the WTO MS have been continuously increasing, and in January 2012, their number reached as many as 319. Preferential Trade Agreements (PTAs) are one of the types of RTAs, implemented to aid developing and least-developed countries through enhanced market access and lower tariffs. The European Union has one of the largest networks of such arrangements, encompassing 34 RTAs and two PTA schemes: WTO+ General System of Preferences and Everything but Arms programme currently in force. The recently published Europe 2020 strategy, however, aims at extending its size further. The primary motivation behind increased efforts in bilateral negotiations is unsuitability of the current trade arrangements, focused mainly on development aims, to pursue commercial objectives of the Union. Alongside this shift in trade policy, the EU is undergoing institutional changes inspired by the 2009 Lisbon Treaty. These two innovations and other specific characteristics of the Union make it a fascinating example of how factors other than pure economic consideration, including: central governance, domestic pressure, regional integration and power relations affect the formation of bilateral agreements between trading nations and regions. In this article,
an analysis of the impact of the political arrangements listed above on formation of the PTAs is conducted. Since the Treaty on the Functioning of the European Union does not provide any special arrangements for negotiating preferential market agreements it has been assumed that the 2009 innovations will affect all EU trade agreements in a similar manner. Where the term RTA is used it includes both PTAs and Free Trade Agreements (FTAs) in its definition.

Further aim of the analysis undertaken herein, is to address the issue of balancing the special requirements of all nations in an equitable manner through formation of bilateral trade relation. It is argued, that with the new commercially oriented direction of the EU strategy and its regulatory power struggle with US the needs of developing nations will be less of a priority for the Union. Nevertheless, the case study of the European Union has been selected also to depict ideas for possible reforms, which could be used by its developing trading partners to enhance their negotiating power, thus being able to defend their trade interests more effectively.

**EU New Trade Strategy and Institutional Arrangements**

The lack of political consensus among the WTO MS, evidenced by the standstill in the Doha Development Round (DDR) negotiations launched in 2001, has been one of the reasons prompting European Union to develop its new strategy for trade.\(^4\) It was officially announced in the Commissions Communication of 2006.\(^5\) Its main innovation is an expressed commitment of the Union to the development and enhancement of its bilateral trade relationships.\(^6\) The slow progress is not the only cause for this change in the EU's international trade direction. The multilateral negotiations do not sufficiently accommodate some of the issues important to the Union in the context of the international trade. These include: investment, public procurement, competition law and intellectual property rights, all strongly opposed by developing WTO MS. The Commission believes that it is capable of achieving a greater success in these areas through RTA negotiations conducted with individual states or regions.\(^8\)

This new approach ends the seven-year\(^9\) "moratorium on launching new free trade agreements," which existed before 2006. One of its impacts on the international scene may potentially be a reduced EU’s contributions to the multilateral developments, where the developing nations are able to defend their interests in the most effective manner due to their collective power. Nevertheless, on paper, the Union remains committed to the WTO negotiations. Progress in global integration is perceived both as EU’s political responsibility and a factor benefiting its own economy. Concluding the ongoing DDR remains the top priority, with the ‘new generation’ of the EU’s FTAs intended to be the ‘building blocks’ for future negotiations at the WTO forum.\(^11\) Nevertheless, in the light of the recent economic and financial crisis, and desperate efforts of all nations, including EU MS, in trying to restore growth and jobs in their domestic markets, no major breakthroughs in the ongoing DDR should be anticipated in the nearest future. On the contrary, new bilateral agenda of the EU arguably sets the new trend in the global world of trade.

Alongside the changes in the overall strategy, the EU has enacted new treaty instruments, which affect the implementation of its trade policy. Firstly, the Treaty on the Functioning of the European Union (TFEU), which came into force in 2009,
extends the scope of the Common Commercial Policy (CCP) -the exclusive competence of the Union by virtue of Article 3 TFEU to include matters relating to intellectual property rights and Foreign Direct Investment.\textsuperscript{12} Secondly, the Article 207 TFEU conveys an obligation to conclude CCP in “the context of the Union’s External Action.” The position of High Repetitive of the Union for Foreign Affairs and Security Policy, who also performs the role of the Vice-President of the Commission, was created together with the institution of European External Action Service in July 2010.\textsuperscript{13} They both can significantly affect the process of concluding any agreements with third countries. Finally, the role of the European Parliament in the foreign policy making has been increased, requiring now its consent (Article 218(6)(a) TFEU) and obliging Commission to supply information (Article 218(10) TFEU) for all contractual arrangements, either negotiated or concluded, with non-EU nations. These structural amendments aim to enable EU trade and foreign policies to be mutually reinforcing, through increasing coherence and consistency of the Union’s external action, thus making it more visible on the international arena.\textsuperscript{14} The following sections of this article examine their direct effect on the format of the RTAs.

These recent developments equipped EU institutions with new legal mechanisms and given new direction for the Union’s external action. The final piece completing the picture of the new EU trade policy are objectives that the Union seeks to pursue in the near future. In this area, a shift in the Union’s attitude can be observed. Firstly, the Commission aims to increase its efforts to gain greater market access in emerging economies, such as China, Brazil, Russia and India as a direct result of the recognition that the “world trade is no longer about OECD countries.” In this context, the FTA negotiations will focus on non-tariffs barriers to EU exports.\textsuperscript{15} Furthermore, the “the key economic criteria for new FTA’s partners”\textsuperscript{16} have been set, which include market potential of a third country, judged based on the size of its economy, and the level of protectionism imposed therein.\textsuperscript{17} These bilateral agreements will also serve the wider regulatory agenda of the EU through transcending human rights and democratic norms\textsuperscript{18}, which add greater political context to their negotiations. Contrasting this approach with the previous agenda, pursue of the development aims through the General System of Preferences (GSP) fell down on the EU list of priorities.\textsuperscript{19} The main goals are to increase the competitiveness of EU Internal Market, secure more jobs and higher growth. Thus to achieve these targets, the Global Europe strategy identifies ASEAN countries, Korea\textsuperscript{20}, Mercosur, India, Russia and Gulf Cooperation Council\textsuperscript{21} as main negotiating partners for EU FTAs. Furthermore, the EU will seek to conclude an agreement with Canada for which the talks were launched in May 2009.\textsuperscript{22}

**Nature of the Union – Internal Challenges to the External Trade Policy Making**

Due to its nature, the European Union, however, is exposed to some of the problems that may affect its negotiating partners to a lesser extent. Over time and with the introduction of the concept of the ‘European Citizenship’\textsuperscript{23} public opinion has started having greater effects on the actions of the Union’s institutions. The Union actively pursues initiatives that aim for greater involvement of its citizens in the decision-making process. The development of the sense of belonging among the
people is an important factor from the perspective of strengthening the democratic legitimacy of the EU. This can have a dual effect on the future of the Union’s trade policy.

Firstly, the devastating effect of the recent financial crisis on economies of the EU MS may affect the degree of openness to exports. Increased competitiveness, due to an inflow of cheaper foreign products, mainly from the developing countries, may force some of the domestic companies out of business, or decrease their profits. As the recovery is progressing slowly the society will demand from the EU institutions' greater degree of protection for the national firms. Therefore, since the role of the European Parliament - the only directly elected body of the EU, in the process of shaping EU trade policy has increased there may be less PTAs concluded in the future, and the tariffs on agricultural products and textiles, some of the primary trade commodities of the developing nations, will most probably remain at their current level.

Secondly, the high standards with regards to human rights, labour and environmental laws enjoyed by the EU citizens, result in greater demand from the society to transport these values internationally through trade instruments. This has a direct effect on the content of EU's PTAs. The public opinion affected negotiations of the Union with Libya and Belarus, both of which did not secure trade agreements with the Union. The primary reasons were the lack of respect for democracy and human rights within the borders of these two countries.

Although, the legislative changes which resulted in the increased role of the European Parliament in the implementation and negotiating procedures of EU’s PTA strengthened the voice of the European society in trade policy making, it has also added the complexity to the process. In the context of this Lisbon Treaty innovation, the Commission has not only to take into account the demands of the negotiating partners, but also wishes of particular electoral groups within the EU. In the opinion of some commentators such as Miksa and Meunier this may reduce the probability of certain trade agreements materialising. It could also directly impact the content of the GSP scheme burdening the developing nations even to a greater extent with onerous WTO-Plus and WTO-Extra provision. Thus, although the new institutional order strengthens the democratic character of the Union it may undermine its efforts in extending EU’s network of RTAs.

The process of trade policy making within the European Union takes place in multiple dimensions. In addition to reconciling between domestic and external demands in concluding its RTAs, as outlined above, the Commission also needs to take account of often contradicting positions taken by the EU MS. One of the weaknesses of the Union in concluding its trade deals may derive from its heterogenic character. Twenty-seven MS differ in terms of the level of development, economic growth, approach they take to liberalisation and attitude they have towards EU trading partners. Internal divisions are visible, for example, in the context of Common Agricultural Policy, which supported by France, however, facing strong opposition from Sweden. The 2004 enlargement may result in increasing number of similar disagreements to emerge in the future. Moreover, from the administrate point of view the decision making within the Council, now consisting of twenty-seven MS, proves to be more difficult.
Nevertheless, by virtue of Art 3 TFEU, all states have transferred the power of trade policy making to the institutions of the Union. Furthermore, there appears to be a general agreement as to one important issue, i.e. that the collective action of the Union is more beneficial to each of the members, as opposed to their individual efforts to conclude the bilateral trade agreements with third countries. The size of the EU market gives it a great bargaining power. Furthermore, long established institutions combined with effective delegation of power result in a visible unity in the trade policy conducted. Finally, varied interests of the EU MS may actually be advantageous to its trade negotiations, as noted by Meunier and Nicolaidis “the power of a negotiator often rests on a manifest inability to make concessions and meet demands”.

The efficiency gains in the EU trade policy implementation derive not only from its regional integration, but also from increased efforts to negotiate RTAs with entire trading blocks. Region-to-region, negotiations bring benefits of economies of scale and offer greater market access at lower transaction costs. To date, however, EU has managed to successfully conclude a limited number of such trade deals. The existing agreements have been mainly signed with the African countries in the global development context. There are two main difficulties with block-to-block negotiation. The first one stems from the equalising bargaining power of the trading partners, which makes the agreement between the parties harder to achieve. Secondly, none of the regions in the world have yet achieved the level of integration similar to one observed in Europe. Thus, the talks are often broken down as the EU third-country partners are unable to agree on the common position. In the above context, the Commission has made a slow progress in talks with some of the strategic regions, such as; ASEAN, Merscour and Latin America.

**Maintaining Status of Trade Super Power**

As outlined above, the new direction of the EU’s trade policy poses a greater negotiating challenge in front of the Commission to conclude future FTAs on the best possible terms for the Union. This will require greater commitment of resources, which is likely to occur at the expense of multilateral talks. Nevertheless, it has been recognised that the chosen strategy, is most suited to pursue the economic objectives of the Union. These were arguably unachievable with existing network of RTAs, mainly motivated by factors such as: development, security and regional integration. Europe 2020 manifests the evolution of the EU bilateral negotiations into more commercially oriented policymaking. The new generation of the RTAs also appears to take a more offensive course, being a strategic response to the recent activities of the EU’s main trade competitors, i.e. US and Japan. The former has enforced FTAs with South Korea before the EU managed to conclude its own negotiations with the same. The latter, on the other hand, has commenced talks with ASEAN countries, when EU was still focusing its main efforts on Doha negotiations. From the economic perspective, the main concern of the Commission was the growing threat of trade diversion caused by the increased activity of US and Japan in the sphere of bilateral negotiations. On the political side, this shift in strategy is aimed at preventing marginalisation of the EU and maintaining its status as a major trade power on the international scene. This power struggle in the world of trade is not only visible in the EU’s policy making. The 2011 report commissioned
for the US Congress indicates that the EU's trade strategy has recently moved up on the priorities list of factors affecting the US bilateral negotiations, aiming to respond more proactively to the European actions.\textsuperscript{41} Therefore, in the years to come the global network of RTAs is expected to grow in size and complexity, potentially burdening developing nations with high regulatory demands by both EU and US.

Despite increased efforts in negotiating trade agreements outside the multilateral framework, the two powers remain competitors rather than partners, with no signs of the EU-US FTA materialising in the near future.\textsuperscript{42} Although such agreement and arrangements with other major international trade actors, such as: China, Japan, Australia, would yield the highest commercial gains for the Union, in the short term they appear to be unattainable. The difficulties derive, again, from equalizing bargaining powers and high level of ambition of the negotiating parties. This is evidenced in the recent negotiations of EU-Canada FTA, which success hinges on higher level of liberalisation in areas other than trade in goods, including services, investment and government procurement.\textsuperscript{43} After nine negotiating rounds, finalised in Ottawa on 21 October 2011\textsuperscript{44}, the Commission appears to be making a good progress towards the “comprehensive economic and trade agreement”\textsuperscript{45} with the Europe’s second largest trading partner. This, however, does not necessarily put the Union in the advantageous positions with the US, its largest trading partner. It is expected that the talks between the two powers will embark on the issue of opening EU's agricultural sector\textsuperscript{46}, over which the Union is very protective and subsidises it heavily through the Common Agricultural Policy (CAP), to ensure global competitiveness. Another source of potential problems could be non-tariff barriers, with the two powers being titled 'regulators of the world' in the recent study of their network of bilateral trade agreements.\textsuperscript{47}

Both the EU and the US have been actively exporting their regulatory standards worldwide through their RTAs making 'WTO Plus' and 'WTO Extra' provisions an indivisible part of their trade negotiations. In the past, EU's objectives behind the non-tariff commitments were seldom motivated by commercial gains, the main objectives included: development (European Partnership Agreements), economic integration and democratic reform (Euro-Med Agreements), stabilisation (PTA with Ukraine) and peace and Stability (Western Balkans).\textsuperscript{48} The new generation of the RTAs is also strongly directed at the removal of non-tariff barriers. However, on this occasion, it will be pursued as a goal to increase the volume of trade. Thus, the regulatory areas targeted by the EU are: investment, competition and public procurement Regulations, technical, sanitary and phytosanitary standards, labour standards. Moreover, due to the failure of the multilateral negotiations concerning these issues, firstly, at Singapore and followed by the Doha stalemate, the Union considers its current bilateral developments as 'stepping stones' for future talks at the WTO forum. The approach taken by the Commission utilises the leverage power it derives from the size of combined economies of the twenty seven MS to bring the desired regulatory outcomes and institutional arrangements in the countries considered as EU's trading partners. This can increase Union's trade volumes through improved market access and competitiveness of EU firms. However, demands of the European Union in the sphere of non-tariff barriers to trade significantly increase costs of compliance and can be detrimental to the developing nations conducting trade with the Union through PTAs. High labour and human right standards imposed raise costs of production making the goods
originating in developing countries less competitive on the global markets. Often absent institutional capacity makes it difficult to implement complex competition rules and technical standards. Moreover, insistence on Regulations of governmental procurement, limit the capacity of the state to favour domestic producers have a potential of negatively impacting infant industries in the emerging economies. For those reasons, the ‘WTO plus’ and ‘WTO extra’ provisions face a resistance from the developing states on the multilateral forum. Nevertheless, in the sphere of bilateral negotiations, the incentive of gaining preferential access to world’s largest market remains high, this makes countries commit to agreements detrimental to their economies at early stages of development. Meunier describes the approach adopted by the EU as reliance “less on getting others to do what they would not do otherwise than on getting others to want to do what is in the EU’s interests,” which can be achieved more effectively through the bilateral rather than multilateral negotiation.

Towards More Equitable Global Market Place - Recommendations

The analysis conducted above of the recent developments in the EU trade policy, suggests that in the near future the global trade powers will be prioritising their own commercial interests to secure the highest possible market access, mainly through removal of non-tariff barriers. This goal is perceived as one of the factors essential for successful recovery from the 2008 financial crisis. The special circumstances of the developing countries will be less effectively addressed by both the bilateral and the multilateral negotiations. Thus in order to ensure that the needs of all nations are addressed in an equitable manner the developing countries will have to concentrate their efforts on building greater negotiating capacity. The case study of the European Union presented above, aims not only to account for different factors affecting the formation of PTAs, but also to provide possible recommendations of reforms for the EU trading partners to increase their ability to effectively defend their trade interests.

Firstly, the power of the EU derives from the size of its market, comprising economies of twenty seven sovereign states. It is recognised that the process of regional integration is both time and money consuming; nevertheless, it yields high trade benefits in the longer term and has a positive spill over effects on the region, as a whole. The recent crisis forced high proportion of the developing world to concentrate recourses on rebuilding and strengthening their domestic market structures, thus with lesser multilateral activity anticipated and in preparation for the new generation of RTAs it appears to be the perfect moment for the developing countries to tightened relationships with their neighbours. The resources previously committed to the WTO activities could be relocated to effectively pursue these aims. The size of the market, however, goes hand in hand with effective delegation of power. Although, prior to the Lisbon Treaty, the Commission enjoyed high level of discretion, which could have been criticised from the perspective of democratic legitimacy of the institution, it concluded the trade deals in a consistent and effective manner, ensuring that this vast market place speak with one strong voice. Despite the fact that building institutional capacity for the region could be regarded as too ambitious for some of the developing parts of the world, the EU arrangements could also be utilised a model for the internal governance of individual states.
Such institutional capacity building and enhanced regional integration could help the developing countries to put a greater pressure on the EU through bilateral and multilateral negotiations to consider implementation of policy changes, which address the needs of their trading partners in a more equitable manner. The Oxfam report identifies two crucial areas, which require immediate attention. Firstly, the particular circumstances of each trading partner should be taken into account. High speed of liberalisation may not be beneficial for all nations, especially if their competitiveness is undermined through low capacity in manufacturing, infrastructure and governance. To improve their situations developing economies seek financial assistance from the Bretton Woods Institutions. However, these are often conditional upon increasing the level of trade openness and reduction of tariff barriers, driven by the EU’s influence. Thus to assist the sustainable growth of the other members of the WTO, the Union should refrain from demanding IMF and World Bank loans to be dependent upon such conditions. Moreover, highly subsidised EU agricultural sector reduces competitiveness of the agricultural products from the developing world, which in some parts remains a major source of income for local communities. Abolition of CAP, which devotes approximately $41 billion annually to assist European farmers, could significantly improve trading conditions for all nations and additionally increase prospects of EU-US PTA materialising.

Finally, although in the years to come the importance of the multilateral negotiations may be diminishing, the developing countries can still effectively secure their interests through the WTO Dispute Settlement Body. In the past, the EU PTAs have been criticised mainly on two grounds, firstly burdening their developing trade partners with onerous non-tariff based provision, in return for preferential marker access, secondly discriminatory treatment manifested in the GSP schemes. Although, the former issue still remains to be addressed on the grounds of its compatibility with the requirement, of non-reciprocity conveyed through the WTO Enabling Clause, the latter has been successfully challenged by India in the EC-Preference Case. In its judgment, the Appellate Body required the Union to develop objective criteria for granting preferential access to the EU market. This decision may have positive effects on reducing negative trade diversion effects on the economies of the developing countries which before were not eligible to receive this option on the arbitrary ground.

**Conclusion**

In sum, the analysis conducted above unravelled the multitude of factors affecting bilateral negotiations and formation of PTAs between the trading nations of the world. The example of the recent changes in the EU’s policy manifests the new global direction, which prioritises commercial interests of individual actors, rather than development of a more equitable multilateral trading system. Thus, in the future it is crucial for the developing nations to appropriately devote their resources and build greater institutional capacity, as well as, strengthened regional ties, which in turn would result in their greater negotiating power. The fate of the emerging economies lies mainly in their own hands and a greater understanding of the trade policy-making process by the main trading powers may enhance the position of developing states in bilateral talks, as well as inspire internal reform. Major shifts in
the distribution of global power may be observed post 2008 financial and economic crisis, thus it could be a perfect time for developing part of the world to increase the pressure for effective enforcement of their own trade interests.

Notes

7 Communication Staff Working Document, n 4, 14.
10 Communication Staff Working Document, n 4, 7.
11 Ibid, 8.
12 Treaty on the Functioning of the European Union, (C 83/47, 30 March 2010), Art. 207.
14 Communication from the Commission, p. 15.
15 Communication from the Commission, p. 8.
16 Communication from the Commission, p. 16.
17 Communication from the Commission, p. 16.
18 Communication from the Commission, p. 17.
19 Communication from the Commission, n5, p. 4.
20 The Agreement with South Korea has been signed on 16 September 2006. See: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/korea/> (accessed on 26 May 2012)
21 Communication Staff Working Document, n4, p. 16.
22 Communication from the Commission, n8, p. 9.
24 Boris Rigod, n9, 63.
27 Miksa J, p. 86.
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30 Baldwin M, p. 940.
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34 Sophie Meunier, Kalypso Nicolaïdis n 36, p. 911.
35 Commission Staff Working Document, n3,8-12.
36 Rigod, B. p. 64.
38 Rigod, B. p. 68.
45 Ibid.
46 Raymond J Ahearn, n 45, 2.
48 Boris Rigod n 9, 65.
49 Sophie Meunier, Kalypso Nicolaïdis, n 36, 920.
54 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, GATT Document L/4903, 28 November 1979.
56 Meunier S, Nicolaïdis K, n 32, 918.