How far is it from Rome to Lisbon? EU trade policy and bargaining power from 1958 until today

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The road from Rome to Lisbon...

- Treaty of Rome (1957)
  EC-6 rise to trade policy power
- From GATT Kennedy Round (1964) to Uruguay Round, creating the WTO (1995)
  EU shapes multilateral trade regime with US
  - Failure of Doha Development Round (2006)
  - Bilateral trade negotiations (S-Korea, CETA, TTIP, Japan, etc.)
Two sources of trade policy bargaining power

a) Attractiveness of internal market, relative to other trading entities in the world: *varies over time*...

b) Consensus decision rule in Council: *a constant*

- Reinforces bargaining power when attractive
- Reduces bargaining when *relative* attractiveness is lower: a paradox of weakness
  - Large autonomy of negotiator, small bargaining power
  - Small autonomy of negotiator, large bargaining power

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EU as co-shaper of multilateral trade regime with US 1958-1994 (1)

Obtaining transatlantic trade liberalization, whilst protecting agriculture & textiles

- Kennedy Round & USA liberalization:
  - US as *demanding* market access to EC
  - US having to accept absence of liberalization in agriculture

- Developing countries:
  - subject to quota for tariff free market access, flanked with development aid
  - blocks long-term trade development
  - locks-in oligopolistic reliance on primary products, often consolidating autocratic political systems
- Expansion of WTO’s regulatory reach
  - Rules limiting abuse of antidumping & subsidies (Tokyo/Uruguay Round)
  - Agreements with large adjustment costs for others: services, IPR, public procurement, TBTs, rules of origin, SPS, investment (Uruguay Round)

- Institutionalization of these policy preferences through stronger dispute settlement in WTO

Why?
- Threat of exclusion from GATT liberalization
- Issue linkage in ‘Single Undertaking’ (with US)
Status quo power: 1997-2020 (1)

- Why no longer in driving seat?
  - Threat of exclusion no longer available
  - UR obligation to re-open agriculture negotiations
  - Political rise of emerging economies
  - Bindingness of rules turns against EU, esp. in agriculture

→ For 1st time, EU is *demandeur* for a Round

→ EU attempts but fails to broaden agenda & functional scope of WTO
  - Services, IPR & geographical indications, trade-and-environment
  - Government procurement, competition, investment
  - ‘Millennium Round’ becomes ‘Doha Development Agenda’

→ EU turns to bilateral & regional negotiations in 2005 (with Korea, Japan, Canada, US, Mercosur, ...)

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Constraining effect of EU decision-rules under Lisbon Treaty of 2009

- **Consensus** practice
  - under the shadow of a QMV vote for ‘exclusive’ competences’
  - broad interpretation since ECJ Singapore Opinion (May 2017): including environment, labor, intellectual property, outward investment

- **Unanimity** for:
  - ‘mixed’ agreements: e.g. with investment arbitration
  - Agreements that take the legal form of association agreements (= a strategic choice of EU member states, not the Commission)

- Largely remained constant over time
Effects on EU bargaining power

• A ‘paradox of weakness’ in negotiations
  1. If other side wants a deal, small margin of manoeuvre of Commission negotiator = large EU bargaining power → surprise / frustration in negotiation partner
  2. If not: collapse → recriminations EU cannot get its act together

• Strength in enforcement: quasi automatic
  - Threat of retaliation in response to WTO violations → EU Reg of 2014: reverse majority!!
  - Reaction to WTO panel rulings, now without AB rulings

• Weakness:
  - Investment arbitration; association agreement
  - Inward investment (only screening)

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References

