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Abstract[1]

This paper takes stock of the European Union's attempts to 'externalize' its internal market and examines the political dimensions of this strategy. It shows that the policies, polity and politics of third countries' involvement with the internal market vary considerably. The 'export' of internal market norms is most extensive in the EU's neighbourhood such as the European Economic Area, the EU-Turkey customs union, the European Neighbourhood Policy or the Stabilization and Association Process. The author argues that the broader, the more institutionalized and *acquis*-based the relationship between the Union and a third country, the more likely it constitutes a deep, dynamic and tight form of cooperation which, as a consequence, is likely to raise legitimacy concerns for the EU's partners. These concerns for input legitimacy may only partially and in the short to medium term be balanced by increased output legitimacy.

[1] An earlier version of this paper was presented at the conference *The Internal Market in a 'Tri-disciplinary' Perspective*, EU-Consent Network of Excellence, College of Europe, Bruges, 25-26 April 2007. The author would like to thank the participants for their valuable comments.

1. The Internal Market's External Dimension: from Disregard to Active Pursuit

Over the past two decades, the European Union's attitude towards the external dimension of its internal market has changed dramatically. In the mid-1980s the Community focused almost exclusively on internal aspects of completing its common market. Yet, demands from its trading partners and constraints from the international trade regime forced the Community to address the external dimension as well and, inter alia, lead to the conclusion of many bilateral and multilateral agreements with third countries since the 1990s. In recent years, the EU has increasingly taken a proactive stance on the promotion of its internal market norms. One may even speak of an 'externalization' of the internal market, especially in the Union's 'near abroad'.

Whereas the concepts of free trade areas and customs unions have been in use for a very long time (see e.g. Article 24 GATT), the notion of an internal market has largely remained unspecified in international economic law (and political science). Since the Single European Act, Article 14(2) of the Treaty establishing the European Community defines the internal market as "an area without internal frontiers in which the free movement of goods, services, persons and capital is ensured". The creation of such a market involves both national liberalization removing discrimination (negative integration) and (re-)regulation at the European level: "a common market attains the free movement of products, services and factors of production accompanied by the necessary positive integration for the common market to function properly" (Pelkmans 2006: 8).[2]

The White Paper did not directly address the external dimension of the internal market.[3] The Community's general attitude was inward looking as European governments and business had to be convinced that the ambitious '1992 programme' could be realized.[4] It was the Community's main trading partners, especially the United States and the EFTA countries, that placed the external dimension on the political agenda by voicing concerns over the effects that the

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[2] From a legal point of view, the concept of the 'internal market' is often described as being narrower than that of a 'common market' even though this distinction is not always clearly held up even by the European Court of Justice. In particular, the internal market is said not to embrace "a completed external trade policy, a system of undistorted competition within the common market, and the harmonization or co-ordination of legislation for reasons other than the elimination of barriers between national markets" (Gormley 2002: 518).

[3] It only states that "the commercial identity of the Community must be consolidated so that our trading partners will not be given the benefit of a wider market without themselves making similar concessions" and suggests the abolition of residual national or regional import quotas (European Commission 1985: 8, 11).

[4] The Commission deliberately chose to neglect the internal market's external dimension in order to avoid opening a Pandora's box. I thank Jacques Bourgeois for this specification.

completion of the internal market would have on them.[5] In an attempt to dispel their fears, the Hannover European Council in June 1988 declared that "the internal market should not close in on itself" but "be open to third countries" in conformity with GATT provisions and "seek to preserve the balance of advantages accorded, while respecting the unity and the identity of the internal market" (European Council 1988: 165). The Commission subsequently began to examine this external dimension. In October 1988 it set out the principles that '1992' would be of benefit to member states and third countries alike, that it would not mean protectionism, that the Community would meet its international obligations, and that it would help strengthen the multilateral system on a reciprocal basis (European Commission 1988: 1-2). With a view to the Uruguay Round, the Commission concluded that "the Community will seek a greater liberalisation of international trade: the 1992 Europe will not be a fortress Europe but a partnership Europe" (ibid.: 1).

On the one hand, the '1992 programme' thus shifted the internal market regime to the Community's external borders, for instance by abolishing the remaining national quantitative restrictions on third-country imports.[6] On the other hand, the EU increasingly exported the regime beyond its borders (e.g. by prohibiting new quantitative restrictions or measures having equivalent effect on imports in trade agreements). Together with the end of the Cold War that gave rise to a spread of market economies and neoliberal policies, the completion of the internal market triggered a series of preferential EU agreements with third countries as well as efforts of regionalization in other areas of the world (Sapir 2000). The EU negotiated the European Economic Area (EEA) with the EFTA countries, the Euro-Mediterranean Partnership with the southern Mediterranean countries, Europe Agreements with the Central and Eastern European countries, Partnership and Cooperation Agreements with the republics of the Commonwealth of Independent States, a customs union agreement with Turkey and bilateral free trade agreements with non-European emerging markets.

Today, the EU fully acknowledges the external dimension of the internal market. The Commission stresses that globalization "increasingly blurs the distinction between the internal and external markets" and that the challenge was "to respond to the

5 For an of the internal market's external dimension at the time see Eeckhout (1991).

6 The neglect of the external dimension of the internal market also resulted in a lack of coordination between internal and external policies. For instance, the Commission's endeavor in the Lomé IV negotiations to preserve the ACP countries' interests in spite of the replacement of national quotas by common regimes lead to a prolonged dispute over banana imports (McMahon 1993), and the disjuncture between international and internal market norms for air transport services brought about a sub-optimal liberalization (Bernard 2006). Overall, the '1992' agenda did not build a 'Fortress Europe' but had the rather unintended consequence of opening external trade by introducing decisionmaking rules that rendered the maintenance of trade barriers more difficult (Hanson 1998).

dynamism and change that flows directly from Europe's engagement with the world economy" (European Commission 2007b: 4). The internal market "will never be 'finalised' or 'complete'" because it is constantly adapting to new realities and because gaps remain, rules are not always fully implemented and enforced, and new types of barriers emerge as markets evolve (ibid.: 3). Moreover, for the internal market to function properly, the EU must ensure that its principles are adequately reflected in international relations. Together with the member states, the Commission promotes internal market norms when negotiating international agreements or enlargements, in regulatory dialogues with third countries and in the international fora dealing with internal market policies such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) or the Basel Committee on Banking Supervision.

This paper examines the political dimensions of the European Union's attempts to 'externalize' its internal market. I show that the policies, polity and politics of third countries' involvement with the internal market, that is the coverage, degree of institutionalization and of alignment with the *acquis*, vary considerably. The export of internal market norms is most extensive in the EU's neighbourhood. By and large, it can be argued that the broader, the more *acquis*-based and institutionalized the relationship between the Union and a third country, the more likely it constitutes a deep (covering behind-the-border issues), dynamic (taking into account the evolution of the *acquis*) and tight (mirroring EU institutions) form of cooperation which, as a consequence, is likely to raise legitimacy concerns for the country concerned. Conversely, the narrower, the less institutionalized and *acquis*-based the relationship, the more likely it constitutes a shallow, static and loose form of cooperation that should not provoke many worries about its legitimacy.

The EU's motivations to 'export' its internal market norms are manifold: to prepare European countries for accession, to promote goals of foreign and security or development policy, to pursue own commercial interests (e.g. opening new markets, neutralizing trade diversion effects of competing free trade agreements or building strategic links with emerging markets), to further regional integration and region-to-region agreements or to shape the international regulatory framework for trade and investment, including 'WTO+' issues (Woolcock 2007: 3-4). In the Commission's words, the internal market "needs to position itself, by fostering the development of quality rules and standards which shape global norms, to allow European citizens and businesses to take advantage of the opportunities of globalisation" (European Commission 2007b: 4). Externalization thus serves to promote broadly defined EU interests on a regional or global scale.

The next section sets out the analytical framework, the subsequent two chapters examine the current state of 'externalization' on a regional and global level, and the conclusions discuss some implications of the findings.

2. Three Political Dimensions of Externalizing the Internal Market

In order to analyze the political aspects of the internal market's external dimension, I draw on all three dimensions: the institutional dimension or structure (*polity*), the contents or issue areas (*policy*) and the procedural dimension (*politics*). Polity thus relates to the institutional set-up that the EU has established with a third country; the policies may, for instance, cover trade in goods and services, labor migration or foreign direct investment; and politics embraces processes of decision-making or implementation such as the diffusion mechanisms for the EU's internal market norms. The three dimensions are clearly interdependent.

Table 1 combines policies (the internal market issues covered) and polity (the degree of institutionalization) and provides prominent examples in each cell of the matrix. In general, the broader the coverage, the more likely the cooperation constitutes deep integration (covering behind-the-border issues) rather than just shallow integration (measures applied at the border).[7] And the more institutionalized the relationship, the tighter the form of cooperation in terms of emulating the EU's institutional setup. The EEA, the Accession Partnerships that prepare candidates for EU membership and Switzerland's many bilateral agreements with the EU provide the most far-reaching coverage of internal market policies. In terms of institutionalization, the EEA offers the closest internal market association, followed by the EU-Turkey customs union and the sectoral Energy Community Treaty with the Western Balkan countries. The still rather young European Neighbourhood Policy (ENP) builds on the existing Partnership and Cooperation agreements (PCAs) and the Euro-Mediterranean association agreements and adds country-specific 'stakes' in the internal market with the aid of ENP action plans.[8] Among the less intense forms of cooperation are the bilateral (or bi-regional) free trade agreements that the EU has concluded with non-European countries like Mexico, Chile and South Africa, is negotiating with Mercosur or the Gulf Cooperation Council or plans to negotiate with other emerging markets such as South Korea and India. The loosest forms of cooperation are regulatory dialogues or other EU attempts to act as a global

[7] It is interesting to note that there are also internal market norms which the EU is less keen to export such as the free movement of workers or agricultural trade concessions.

[8] This rough classification is variable. Turkey, for instance, is moving down towards broader issue coverage (and an Accession Partnership), as do the ENP action compared to the legal agreements on which they are based.

standard setter by exporting its internal market norms to third countries or international fora.

Table 1: Forms of Internal Market Externalization: Polity and Policies

		Polity – degree of institutionalization		
		low	*medium*	*high*
Policies – coverage of internal market issues	*low*	regulatory dialogues, global standard setting	Partnership and Cooperation Agreements	Energy Community Treaty
	medium	free trade agreements	EuroMed association agreements, Stabilization and Association Agreements, ENP action plans	EU-Turkey customs union
	high	EU-Swiss bilateral agreements	Accession Partnerships	European Economic Area

As a third dimension, politics comprises the processes, tools and mechanisms of internal market externalization (together with the actors' power constellations). The more the internal market alignment is based on the *acquis*, the more likely a dynamic approach that allows for an evolution of the *acquis* (and the more powerful the EU position). Table 2 distinguishes three types of processes according to the degree of alignment with the EU's internal market *acquis*. First, the adoption of the *acquis* constitutes the highest degree of alignment as the partner country unilaterally adapts to given EU norms. This is the case in accession negotiations, internal market association (e.g. EEA) or customs union agreements (e.g. Andorra, San Marino, Turkey). The Stabilization and Association Agreements (SAA) with the Western Balkan countries also involve alignment with the *acquis* in many areas, as do a few sectoral agreements such as the Energy Community Treaty or the EU-Swiss agreements on civil aviation and Schengen/Dublin association.

The second process is 'reciprocal liberalization' in terms of a mutual undertaking among notionally equal partners. Agreements between the EU and third states may reproduce trade liberalization provisions contained in the EC Treaty. Examples are the bilateral free trade agreements that the EU has concluded with countries like Switzerland, Mexico, Chile or South Africa. Moreover, mutual recognition agreements (avoiding unnecessary duplication of certification by accepting each other's conformity assessments) or the recognition of equivalence (recognizing foreign rules with the same regulatory objective as conform to domestic rules) may fall into this category.

Third, 'standard setting' in a broad sense takes place on the international level with the EU in a weaker position, trying to influence its partners' policy. A case in point are regulatory dialogues (e.g. with the US or Japan) that serve to make each other's regulatory system more understandable and compatible, but also efforts at international standardization (elaborating and using international standards for regulation) or international harmonization (drawing up common rules). The European standardization organizations[9] cooperate closely with the EU (and the EFTA states), inter alia, in order "to provide candidate countries and neighbouring countries with a major tool for the facilitation of adaptation of their economies to the Community market" and to encourage the use of European standards "as an instrument of economic and technological integration within and outside the European market" (European Union 2003: 9-10). They also work closely with the international standardization bodies (such as the International Standardization Organization or the International Electrotechnical Commission). Furthermore, the Union since the mid-1990s shows a "propensity to 'export' actively to partner countries its model of regional integration" as a complement to its own relations with a region (Maur 2005: 1567).

Table 2: Forms of Internal Market Externalization: Politics

Politics – degree of internal market alignment	*high*	adoption of the *acquis*	accession process internal market association customs union agreement 'quasi-supranational' sectoral agreement
	medium	'reciprocal liberalization'	bilateral free trade agreement mutual recognition agreement recognition of equivalence
	low	'standard setting'	regulatory dialogue international standardization international harmonization export of 'regional model'

Many instruments, for instance financial aid or technical assistance to support the partner's capacity-building (including the fulfilment of EU requirements), may be found in all three categories. To varying degrees, the different tools rely on incentives – attempting to induce the partners to embark on certain policies out of material

[9] The internal market's 'new approach' twenty years ago limited the regulatory function of the EU institutions to specifying 'essential requirements' that products or services must meet in terms of health, safety, environmental or consumer protection and delegated the task of developing detailed standards to private European standardization organizations such as CEN (Comité européen de normalisation), CENELEC (Comité européen de normalisation électrotechnique) or ETSI (European Telecommunications Standards Institute). Drawing on the input of interested parties, these bodies prepare voluntary standards at the request of industry or the European Commission. Compliance with 'harmonized standards' (that is, standards adopted by CEN, CENELEC or ETSI, following a Commission mandate) provides presumption of conformity to the corresponding 'essential requirements' of EC directives.

self-interest – or on persuasion – aiming at a change of the partners' preferences and collective identities through discourse. In other words, third countries may adopt internal market rules either because they want to obtain the rewards that come with the 'policy import' (or avoid the costs of non-compliance) or because they view these EU norms as appropriate and legitimate. Deliberation and persuasion are particularly important when the *acquis* as such needs to be adopted and implemented, but mutual recognition also requires a high degree of trust on both sides, and 'selling' the regional integration model abroad is likely to involve intense discourse as well. Finally, the export of internal market norms tends to be stronger in the EU's immediate vicinity. "Through the EEA and increasingly through the European neighbourhood policy the rules and standards of the single market stretch beyond the borders of the EU" (European Commission 2007b: 5).

3. The Neighbours' Stake in the Internal Market

Some of the EU's neighbouring countries are taking over the *acquis communautaire* either in its entirety through accession negotiations or partly through an internal market association, a customs union or sectoral agreements.

The **enlargement** process is probably the best example of an externalization of the internal market. Candidate countries must, inter alia, align their regulatory systems with the EU in order to be able to fully participate in the internal market, and they need to develop the necessary administrative capacity to implement the *acquis*.[10] Such an obligation is "difficult to reconcile with the sovereignty requirements" considering that the candidates do not participate in the drafting of the *acquis* "until the eventual future membership has taken place" (Albi 2001: 201). The EU is currently negotiating accession with Croatia and Turkey. Macedonia has obtained candidate status but not yet opened negotiations. Since the mid-1990s the EU uses a 'pre-accession strategy' to prepare candidates for membership. This strategy usually consists of bilateral agreements with the candidate countries (e.g. Europe Agreements), Accession Partnerships, opening of Community programmes and agencies, pre-accession assistance and political dialogue (Maresceau 2003). Accession partnerships determine the short-term priorities and medium-term objectives on the basis of the 'Copenhagen criteria' and the specific needs on which financial assistance should be targeted. The candidate country draws up a national programme for the adoption of the *acquis*, which sets out a timetable for putting the

[10] The approximation of law under the Europe Agreements covered about 80'000 pages of *acquis*, including the Treaties, secondary legislation, case law, soft law and international agreements, as well as some policies which have not been adopted by all the member states (e.g. Schengen, monetary union). The Accession Partnerships added areas beyond EU competences such as judicial reform, prison conditions, social security or civil service reform.

partnership into effect. A regular evaluation of the candidates' progress is carried out by the Commission. The accession process clearly aims at full integration into the policies and polity of the EU. As Grabbe (2001: 1014) points out, studies of Europeanization have mainly focused on EU member states, "yet the EU exerts similar pressures on the applicant countries". This reasoning has to be taken a step further: evidence of 'external Europeanization' – the extension of EU norms to non-member countries – "can be found globally" (Magen 2006: 386).

Stopping short of EU membership at the time of its conclusion in 1992, the **European Economic Area** covers the free movement of goods, services, capital and persons, competition rules as well as horizontal policies (e.g. environment, social policies, consumer protection, statistics and company law) and flanking policies (e.g. cooperation in research and development or education). The principle of mutual recognition has been extended to goods originating in the EEA; and the national standards bodies of the EFTA states are members of CEN and CENELEC. The EEA constitutes an extended free trade area which is best described as an internal market association between the Community and the countries of the European Free Trade Association, with the exception of Switzerland. It excludes in particular the EU's external relations[11], the common agricultural, fisheries and transport policies[12], budget contributions and regional policy[13], taxation, economic and monetary policy.

The Commission retains the exclusive right to initiative, whereas the EFTA countries have the right to raise a matter of concern at the EEA level at any time (*droit d'évocation*). EFTA experts are consulted by the Commission in the preparatory stage of new measures. The main discussions take place within the EEA Joint Committee in the so-called decision-shaping phase after the Commission transmitted its proposals to the EU Council and to the EFTA states (Reymond 1993). The EEA Joint Committee decides by consensus as closely as possible in time to the adoption of the same rules by the EU Council in order to allow for a simultaneous application. In case of an opt-out, the EFTA countries, which need to speak with one voice, face the threat of a suspension of related parts of the Agreement. In addition, the EEA Council meets at ministerial level twice a year to give political impetus, and an EEA Joint Parliamentary Committee and an EEA Joint Consultative Committee for the economic and social partners act as advisory bodies. On the EFTA side surveillance and enforcement is carried out by the EFTA Surveillance Authority and the EFTA Court. The principles of primacy and direct

11 Nevertheless, EFTA follows a policy of 'shadowing' the EU in concluding trade agreements, Norway and Iceland are closely associated with the EU on foreign, security and defence policies and through the Schengen and Dublin association agreements.

12 The sensitive issues of Alpine transit and Nordic fisheries, like trade in agricultural products, were dealt with separately in bilateral agreements with the EFTA states concerned.

13 However, the EFTA countries had to establish a financial mechanism to contribute to the reduction of social and economic disparities in Europe.

effect of EEA law apply. In order to secure a uniform interpretation of EEA rules, the EEA Joint Committee reviews the development of the case law of the European Court of Justice and the EFTA Court.

The EEA combines a rather comprehensive 'policy integration' into the internal market with a limited participation in terms of 'polity' despite an elaborate two-pillar system. EEA legislation 'mirrors' any relevant new *acquis* but EFTA lacks a real right of co-decision.[14] As a result, most EFTA states joined the EU in 1995, Switzerland opted out of the EEA through a negative referendum in 1992, which also lead to a 'freezing' of its EU membership bid, and the 'EEA EFTA pillar' was reduced to Norway (whose referendum on EU membership failed), Iceland and Liechtenstein. The EEA has most likely set the maximum limits of how the EU deals with third countries' request to participate in its decision-making procedure.

Instead, **Switzerland** pursued a bilateral approach to integration, building mainly on its 1972 free trade agreement, and in two 'package deals' in 1999 and 2004 concluded sixteen sectoral agreements with the EU.[15] Most of the agreements of these 'bilaterals I and II' are based on the notion of equivalence of laws between the two parties (cf. Felder 2001 and 2006).[16] In contrast to the EEA Agreement, the *Cassis de Dijon* principle is not included in the bilateral agreement on technical barriers to trade. The Commission consults with Swiss experts in the fields where Swiss legislation is recognized as equivalent, and in a few EU committees Switzerland has observer status. Typically, the Joint Committee set up by each bilateral agreement may make technical changes to the annexes of the agreement but not add new obligations. However, there are three 'partial integration' agreements where Switzerland has agreed to accept the *acquis*: in the area of air transport (where the European Commission and the European Court of Justice have competences in surveillance and arbitration in specified areas) and in the Schengen and Dublin association agreements, where new *acquis* requires approval from the Swiss legislature (but in case of a refusal, the agreement could be terminated). These associations foresee an adaptation to new *acquis* in the future, and Swiss representatives participate without a vote in the Commission's comitology and informal expert groups and, with regard to Schengen, also in the relevant committees and working groups of the

[14] The idea of mutual recognition of equivalent legislation and common decisionmaking institutions had early on in the negotiations been abandoned, and later on EFTA's hope to be able to have a say on future EEA rules by 'buying the past' and taking over the existing *acquis* was equally frustrated (Gstöhl 1994).

[15] Free movement of persons, technical barriers to trade, public procurement, civil aviation, overland transport, agriculture, research, Schengen/Dublin association, taxation of savings, fight against fraud, processed agricultural products, environment, statistics, media, education, and pensions.

[16] This was facilitated by the fact that since 1988 any new Swiss legislation has systematically been compared to and if possible made compatible with the relevant EU law.

Council (Cornu 2006). Hence, at least in these sectors Switzerland participates in the EU's decision-shaping in addition to the Joint Committees established by the associations (which in contrast to those of the other bilateral agreements discuss also the evolution of the *acquis*).

Overall, the scope of the EU-Swiss bilateral agreements falls short of the EEA with respect to both policies and polity. Switzerland's access to the internal market is more limited, perhaps most notably exemplified by the absence of an agreement on services.[17] The 'pick and choose' advantage of the sectoral approach has been countered by the EU by linking Swiss wishes of cooperation to EU preferences (e.g. taxation of savings, fraud, financial contribution[18]) and by a 'guillotine clause' in the 'bilaterals I' that was to ensure that Switzerland would ratify all agreements (in particular the one on the free movement of persons). Finally, the EEA provides greater opportunities for decision-shaping than the bilateral sectoral approach. The lack of "an overarching framework agreement means that there is less institutionalised political dialogue between the EU and Switzerland than between the EU and most other third countries" (Vahl and Grolimund 2006: 112). Opportunities for further bilateral rapprochement seem almost exhausted as it would increasingly touch on politically sensitive sectors, the Swiss lack of influence would further cumulate, and the Union early on made clear that it would offer less than in the EEA.

Pursuant to their 1963 association agreement, the European Union and Turkey in 1996 established a customs union and three years later, Turkey became a candidate country. The **EU-Turkey customs union** covers industrial goods and processed agricultural products, but not (yet) agriculture, services or public procurement. Negotiations to include these areas have been ongoing.[19] Turkey had to adopt the common external tariff and align to the *acquis* in essential internal market areas, notably technical barriers to trade, competition policies and protection of intellectual property rights. The agreement makes use of the pan-European system of (diagonal) cumulation of origin and the principle of mutual recognition has been extended to goods originating in Turkey. Moreover, Turkey has to bring its trade

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17 Negotiations on a bilateral agreement on services were suspended in 2003 because the two sides could not agree on the sectors to be included.

18 The European Commission argued that "the EU-Swiss bilateral agreements overall gave Switzerland access to roughly two-thirds of the internal market" and therefore it should make a financial contribution of two-thirds in per capita terms of the EEA Financial Mechanism (Vahl and Grolimund 2006: 78).

19 In fact, the association agreement had foreseen to include agriculture in the customs union but this was not pursued further; Turkey first needs to align to the Common Agricultural Policy. Moreover, the provisions of the Additional Protocol on the free movement of workers, services and capital were not implemented, and the EU's financial aid commitments were not met mainly due to objections by Greece.

policy into line with the common commercial policy and, for instance, negotiate agreements with many third countries.[20]

The Commission informally consults Turkish experts when drafting new relevant *acquis*, and further consultations may take place in the customs union Joint Committee. Turkey then adopts the necessary national legislation. To some extent, the customs union's consultation mechanism has been taken from the EEA, but "the flaws in the EEA provisions have been compounded by the failure to adjust them to reflect Turkey's involvement in the EC's trade policy" (Peers 1996: 423). Even though the EU and Turkey should act in tandem, Turkey cannot affect the (re)negotiation of trade agreements and is excluded from consultations on trade policy measures. In case of a dispute, the Association Council tries to find an agreement or may unanimously decide to submit the dispute to the European Court of Justice or an arbitration tribunal (Kabaalioglu 1997). In view of the supposedly temporary nature of the customs union, Turkey accepted to apply Community policies and legislation without taking part in the EU's decision-making process. The final goal of the association agreement was not the establishment of a customs union "but the completion of a real common market, thereby removing all barriers to factor movements between Turkey and the EC", including the possibility of a Turkish membership (ibid.: 158).

In the framework of the multilateral **Euro-Mediterranean Partnership**, the EU has negotiated bilateral association agreements with nine Mediterranean countries which in most cases replaced older cooperation agreements from the 1970s (Philippart 2003).[21] The so-called Barcelona Process among other things envisages the establishment of a Euro-Mediterranean free trade area for industrial goods by 2010. In 2006 additional negotiations on liberalizing services, trade in agricultural and fisheries products and on the right of establishment have been launched, and the pan-European cumulation system is being inserted into the association agreements.[22] The association agreements emphasize the necessity to cooperate on standards and envisage mutual recognition agreements as soon as the conditions for them are met.

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[20] In this respect the customs union agreement goes further than the Swiss 'bilaterals', even though in the framework of EFTA Switzerland concludes many trade agreements with third countries almost in parallel with the EU.

[21] Agreements are in force with Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority and Tunisia. The agreement with Syria has been initialled and the one with Algeria is in the process of ratification.

[22] The Pan-EuroMed Protocol allows to diagonally cumulate processing in the region in order to obtain preferential treatment.

In contrast to the Mediterranean neighbours, the EU's bilateral **Partnership and Cooperation Agreements** with the transition countries to the East grant no preferential treatment for trade. The parties basically apply most-favoured nation status to one another with respect to tariffs on industrial goods. The PCAs feature mutual trade liberalization and political dialogue, supervised by the Cooperation Council whose decisions have no binding effects.[23] The EU distinguishes between the 'European' and the 'Asian' partner countries: the PCAs with Russia, Ukraine and Moldova envisage a free trade agreement as soon as circumstances permit, while those with the South Caucasian and Central Asian countries embrace no such perspective (Hillion 1998).[24] Each Partnership and Cooperation Agreement is concluded for ten years, and the EU-Russia PCA is the first one to expire at the end of 2007. Russia and the participants of the European Neighbourhood Policy may, after accession to the WTO, expect to negotiate enhanced 'deep and comprehensive free trade agreements' with the EU (Hillion 2007).

Both the Euro-Med association agreements and the PCAs serve as legal basis for the **European Neighbourhood Policy** that the Union developed in the run-up to its 2004 enlargement. After Russia's opt-out in favor of an individual Strategic Partnership and an extension to the three South Caucasian republics the ENP embraces sixteen EU neighbours to the South and East.[25] The ENP does not offer an accession perspective but a deeper political relationship and economic integration based on a mutual commitment to common values (such as democracy, human rights, rule of law, good governance and market economy principles). Tailor-made bilateral action plans define the political and economic reform priorities for the next three to five years. With regard to internal market policies, they include measures to improve the respective regulatory systems on issues such as intellectual and industrial property rights, services, public procurement, free movement of capital, the right of establishment and company law. The Commission unmistakably states that the EU should "extend aspects of single market policy through the neighbourhood policy" (European Commission 2007b: 9). The action plans encourage ENP countries to use EU standards, join European standardization bodies and improve the exchange of information on regulations.

The ENP action plans work with both incentives and discourse-based instruments (Gstöhl forthcoming). They resemble the Accession Partnerships. The incentives

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23 In contrast to an Association Council, it cannot oblige the parties to act or settle disputes. New obligations would require the conclusion of a further agreement.

24 The PCA with Belarus was signed in 1995 but, due to the country's non-democratic regime, not ratified.

25 The eligible members are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

comprise, for instance, financial aid, preferential market access, technical assistance, interconnected infrastructure, but also suspension clauses in the agreements (e.g. deferral of aid or withdrawal of trade preferences in case of human rights abuse). What the promised 'stake in the internal market' means has yet to be clearly defined, but is at least "understood to refer to a substantial reduction of (tariff and non-tariff) barriers across many dimensions of the internal market" (Dodini and Fantini 2006: 511). The Union has in particular left open the perspectives of free trade in agricultural products and of free movement of labor. The deliberative instruments are generally based on arguing and frequent interaction on multiple levels. They include 'joint ownership' of the process with a shared setting of reform priorities and monitoring of their implementation, policy dialogues as well as other interactive tools for the approximation of national economic legislation to the *acquis* such as the twinning of legal experts and targeted expert assistance (e.g. TAIEX). In addition, the EU issues regular reports that would allow it to 'name and shame' foot-draggers and to create a certain peer pressure among the ENP countries. Besides the principle of conditionality (withholding certain 'carrots' and apply certain 'sticks' if crucial conditions are not fulfilled), the principle of differentiation states that the level of common values will affect the degree to which the ambitions are shared. That is to say, the EU does not intend to uniformly deal with the ENP countries as a group but to take individual progress into account.

As an umbrella to the EuroMed association agreements and PCAs, the ENP carries the potential to cover many internal market policies in the future with several politics tools partly borrowed from the accession process. Regarding polity, it relies on the institutions provided by the existing bilateral agreements. Its future shape is still open, but a participation in the EU's decision-shaping is not foreseen – the ENP idea is "sharing everything but institutions" (Prodi 2002: 6).

The countries of South Eastern Europe, in the context of the **Stabilization and Association Process** (SAP) launched in 1999, are also increasingly aligning themselves to the EU *acquis*. Based on strong political conditionality, the SAP offers trade liberalization, financial assistance and new contractual relations in the form of Stabilization and Association Agreements (SAAs), an extensive part of which relate to internal market issues (Pippan 2004). It may be considered a 'pre-pre-accession strategy' since the European Council in 2000 officially recognized the Western Balkan countries' vocation as 'potential candidates' for EU membership. In the same year, the EU has granted autonomous trade preferences to these countries with duty-free and quota-free access to the internal market for almost all goods, including agricultural products (except for wine, certain fisheries products, sugar, baby beef and textiles). The SAAs will gradually replace these measures by asymmetrical

reciprocal obligations and a free trade area for industrial goods. The EU plans to extend the pan-European cumulation system to the Western Balkans (and in a second step an inclusion in the Pan-EuroMed system). Some provisions on the movement of workers, establishment, services and capital as well as a commitment to legal approximation in particular with regard to competition, public procurement and intellectual property rights are enshrined in the SAAs. To date such agreements are in force for Croatia and Macedonia, the agreement with Albania is awaiting ratification (with an interim agreement for trade in force), and negotiations with Serbia, Montenegro and Bosnia Herzegovina have been opened.

The key decision-making bodies are the Stabilization and Association Councils but the process is rather one of unilateral alignment by the 'potential candidates'. In fact, the SAAs resemble the former Europe Agreements and the 'European Partnerships', which identify short- and medium-term priorities for reforms, are modelled after the Accession Partnerships (Phinnemore 2003). The countries are expected to draw up National Plans for the Implementation of the Partnerships which will be monitored by the EU. The SAP countries also benefit from pre-accession assistance, twinning, TAIEX and the opening of Community programmes. In addition, the SAAs entail a commitment to engage in regional cooperation with the other SAP countries. The Western Balkan states (and Moldova) thus have concluded a network of bilateral free trade agreements which in late 2006 was transformed into a single regional trade arrangement, the Central European Free Trade Agreement (CEFTA), which benefit from EU advice and technical assistance through the CARDS programme.

The SAP also aims at the gradual re-integration of the region into the European infrastructure networks (e.g. transport, energy, border management). The most successful project in this regard is the Treaty establishing the **Energy Community** which entered into force in July 2006 and creates a single regulatory energy space. It extends the EU's internal market for electricity and gas to the region of South Eastern Europe (Walendy 2004). Albania, Bosnia Herzegovina, Croatia, Kosovo/UNMIK, Macedonia, Montenegro and Serbia agreed to adopt the relevant *acquis* on energy, environment, renewables and competition. Moldova, Norway, Turkey and Ukraine are observers and have applied to join. In view of the EU's emerging external energy policy, the Commission and the High Representative for the Common Foreign and Security Policy even suggest "to extend the EU's internal market, through expansion of the Energy Community Treaty to include relevant EEA and ENP countries" (Council of the European Union 2006: 4). The Energy Community's institutions consist of the Ministerial Council, the Permanent High Level Group, the Regulatory Board, the Fora (composed of representatives of industry, regulators and consumers and chaired by a EU representative) and the Secretariat in Vienna which

assists the European Commission. It thus constitutes a sectoral but highly institutionalized policy area of internal market externalization. Even though the Energy Community has no supranational competences, the Union has successfully reproduced itself. "The Energy Community Treaty is consciously modelled on the European Steel and Coal Community that was the genesis for the European Union" (European Commission 2005b: 1).

An externalization of the internal market on a global level is evidently more difficult and less important for the European Union. Nevertheless, the EU increasingly attempts to export of its norms to more distant third countries and international bodies as well.

4. Promoting Internal Market Norms on a Global Level

Foreign exporters need to ensure that their products comply with the EU's requirements in order to be able to sell them on the internal market. On the one hand, regulations, standards and conformity assessment procedures serve legitimate objectives such as protection of safety and health, the environment or consumers and the promotion of quality. On the other hand, they have a potential to impede trade. Even among the member states the internal market for goods is still not completed. Twenty years ago, the Community introduced the principle of mutual recognition of technical regulations from other member states. However, national rules still constitute important barriers due to the weak application and enforcement of the Treaty rules, in particular in the field of non-harmonized products, and many EU rules are still inconsistent or burdensome. The Commission has therefore recently taken different initiatives which will, inter alia, place the burden of proof on the national authorities denying market access, streamline and facilitate the various conformity assessment procedures and strengthen market surveillance activities (European Commission 2007a).

To improve their market access, third countries may negotiate bilateral agreements with the EU, as many neighbouring countries have done. In the 1990s the EU has concluded agreements with more distant trading partners. For example, the **free trade agreements** with Mexico, Chile and South Africa provide reciprocal but asymmetric liberalization of trade in goods and services, public procurement, competition, intellectual property rights, investment and dispute settlement (Woolcock 2007: 5-9). In addition, the EU has already for a few years been negotiating bi-regional association agreements with MERCOSUR and the Gulf Cooperation Council covering similar issues and is about to launch new negotiations with India, South Korea and ASEAN. While the *acquis* clearly shapes its bargaining

position, the Union has not very aggressively been pushing for harmonization with the *acquis* in the free trade agreements (ibid.: 4). Nevertheless, it has a certain aspiration to 'multilateralize' the internal market by shaping foreign or international standards.

Nicolaïdis and Egan (2001) argue that the success of European regulatory cooperation has had negative 'spill over effects' on outsiders such as the United States, leading to a demand for inter-regional cooperation and international standardization. For foreign partners the precondition for entry into the internal market became either to seek EU-based certification on an ad hoc basis or to negotiate a **mutual recognition agreement** (MRA). The EU thereby benefited from a 'first mover advantage' by exporting core elements of its model (ibid.). Bilateral MRAs covering various industrial sectors are currently in place with Australia, Canada, Israel, Japan, New Zealand and the USA.

Mutual recognition requires the development of a lot of trust. In recent years, the European Commission has therefore developed **regulatory dialogues** with key partners such as the United States, Japan, China, India and Russia. These dialogues serve to enhance the compatibility of policies, mainly in the field of financial services and capital markets, intellectual property rights and public procurement.[26] Since in highly interdependent markets widely differing regulatory systems can create obstacles to trade and investment, "it is essential that the Internal Market legal framework is adequately attuned to the global economic framework in general and to key marketplaces in particular, and vice-versa " (European Commission 2005a: 3). This promotion of convergence does not go as far as harmonization or approximation of rules and regulations within the European Union. Most dialogues start with a process of confidence building and information sharing on domestic regulation before they engage in closer cooperation, including work on fostering convergence and recognizing equivalence of rules. Regulatory dialogues are only successful if they receive sufficient political attention and commitment. A further condition is that "dialogues mainly take place between the regulatory experts themselves, in a non-confrontational climate of expertise and understanding" and that they are kept flexible and informal (European Commission 2005a: 6).

The EU aims at **global standard setting** by promoting "the adoption overseas of standards and regulatory approaches based on, or compatible with, international and European practices" (European Commission 2001: 8). It should be kept in mind that the 'export' of EU norms is not always a one-way street. Feedback effects in terms of 'norm imports' from international organizations might as well cause the EU to

[26] Regulatory work is, of course, also done within multilateral organizations (e.g. WTO, WIPO) or international agreements.

bring its rules in line with, for instance, the relevant WTO agreements.[27] The Commission recently called for more responsiveness to the global context and to "promote greater global regulatory convergence - including where appropriate the adoption of European standards - internationally through international organisations and bilateral agreements" (European Commission 2007b: 9). The internal market is expected to act as a standard setter on the international level:

> "It has spurred the development of rules and standards in areas such as product safety, the environment, securities and corporate governance which inspire global standard setting. It gives the EU the potential to shape global norms and to ensure that fair rules are applied to worldwide trade and investment. The single market of the future should be the launch pad of an ambitious global agenda." (ibid.: 7)

Finally, a special form of 'standard setting' in a broad sense is the **promotion of regional integration** in other areas of the world, with the EU as a sponsor but not a partner in the new grouping. In the 1990s the EU first sought to persuade neighbouring countries to pursue regional integration among themselves. Examples include the Visegrad countries, the Baltic Free Trade Area, the Agadir Agreement in the Mediterranean region[28], the customs union of the Gulf Cooperation Council and the new CEFTA in the Balkans. This policy has recently been extended to non-European partner countries as well, for instance in the negotiations with the Central American or the ACP countries (Maur 2005). In view of the successful completion of the internal market, the EU has thereby increasingly emphasized its own example as a model to follow. This strategy complements the EU's bilateral trade and association agreements, which to varying degrees 'export' EU trade rules, for example its product classification, the pan-European rules of origin, trade facilitation measures (e.g. Single Administrative Document), EU standards (e.g. technical barriers to trade, sanitary and phytosanitary measures) and regulations (e.g. competition policy, intellectual property rights).

> "First, the EU is using its bargaining power to win over partner countries into regional agreements among themselves. Secondly, Europe is becoming more directive: (a) using, in a series of recent agreements, conditionality to ensure that partner countries comply with the objective of South-South integration, and (b) offering prescriptions as to the format and content of the promoted South-South RTAs." (Maur 2005: 1567)

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[27] The WTO itself does not set standards but 'imports' the standards of other international bodies either through reference in its agreements (e.g. Agreement on Technical Barriers to Trade, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Trade-Related Aspects of Intellectual Property Rights) or through its dispute settlement rulings (cf. Gstöhl and Kaiser 2004).

[28] It entered into force in 2006 and foresees free trade between Egypt, Jordan, Morocco and Tunisia, but any Arab country, member of the Arab League and the Greater Arab Free Trade Area and linked to the EU through an association agreement, can adhere to it.

5. Conclusions: Implications for Legitimacy

In view of the fact that "the extraterritorial projection of EU rules and their impact on third country systems remains under-theorized" (Magen 2006: 387), this paper has taken a first step and examined how the Union attempts to 'externalize' its internal market by outlining the policies, polity and politics of third countries' involvement with the internal market. These three dimensions vary considerably, leading to different depths and dynamics of externalization. A shallow, static and loose form of cooperation does not provoke many worries about its implications for legitimacy. Yet the broader the coverage of internal market issues, the higher the degree of institutionalization and the closer the alignment with the *acquis*, the more likely is a deep, dynamic and tight relationship with the EU that may raise legitimacy concerns for the third country, which is affected by internal market decisions but not represented in their making.

Whereas on the global level a diffusion of internal market norms is limited, the situation of the EU's closely integrated neighbouring countries deserves closer attention. An externalization of the internal market confines their policy options without recreating opportunities for rule-making at the European level. This poses a problem in particular for the more dynamic relationships which require an almost 'automatic' alignment with the *acquis*, thus leaving little room for parliamentary control and the protection of the individual. Both the ENP and the SAP rely closely on the enlargement model which the EU developed for Central and Eastern Europe. Whereas this strong path dependency can arguably be justified with reference to the 'potential candidate' status of the Western Balkans, it is more striking in the ENP context. "EU demands for pre-accession legal and institutional alignment – however onerous, one-sided, and asymmetrical they may be – are legitimized by the prospect of full inclusion and the promise of future equality of participation" (Magen 2006: 422). This membership perspective is absent in the European Neighbourhood Policy.

By contrast, the EEA offers the EFTA countries at least a say in the decision-shaping phase of new legislation as well as own surveillance and enforcement mechanisms and – if they wanted to – the possibility to join the EU. For Switzerland three of its many bilateral agreements are directly based on an adoption of the *acquis*, but the cumulative effect of all treaties might nonetheless raise sovereignty concerns. Kux and Sverdrup (2002: 264) conclude with regard to both Switzerland and the EEA member Norway that "the process they are involved in remains formally intergovernmental, but the effects they experience are supranational". Turkey has not much influence in Brussels either, even with regard to economic and trade issues. "The Customs Union is thus undemocratic insofar as Turkey had to cede important

parts of its national sovereignty without being represented in the EU's political decision-making mechanism and without having any influence on the multinational decision-making process" (Karakas 2006: 325). The EU decision makers are generally out of reach for third country nationals and cannot be held accountable by them; they can only vote their own national representatives out of office who might eventually have accepted a decision in an association council or similar body, facing the potential consequences of a refusal (e.g. suspension of agreements).

A distinction is often made between input legitimacy (government by the people) and output legitimacy (government for the people) in the EU (Scharpf 1999). Even if the Union has deficiencies in input legitimacy, it may in some policy areas deliver output legitimacy through effective problem solving. Menon and Weatherill (2002) argue that the EU institutions may also contribute to input legitimacy compared to nation-states by taking into account interests (e.g. consumers, foreign exporters) that are often affected by decisions but excluded or underrepresented on the national level. With regard to the external dimension of the internal market, the input legitimacy is obviously very low given the non-members' lack of influence in the EU decision-making process, but to a certain extent "the realization of a more efficient market for Europe offers itself as a factor of output legitimation that can be taken as a justification for an apparent absence of orthodox input legitimacy" (ibid.: 120). The real question therefore is under what conditions economic (and political) gains, in particular in areas which surpass the governments' problem-solving capacity, may justify an adoption of the *acquis* and whether a membership perspective is on hand. In the long run, output legitimacy is not sufficient to balance a deficit of input legitimacy.

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