The EU as a Multilateral Rule Exporter: The Global Transfer of European Rules via International Organizations

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Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

WORKING PAPER KFG The Transformative Power of Europe

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No. 48 | November 2012

Freie Universität Berlin

KFG Working Paper Series

Edited by the *Kolleg-Forschergruppe* "The Transformative Power of Europe"

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Editorial assistance and production: Corinna Blutguth and Sarah Rieper

Rousselin, Mathieu 2012: The EU as a Multilateral Rule Exporter. The Global Transfer of European Rules via International Organizations, KFG Working Paper Series, No. 48, November 2012, Kolleg-Forschergruppe (KFG) "The Transformative Power of Europe" Freie Universität Berlin.

ISSN 1868-6834 (Print)
ISSN 1868-7601 (Internet)

This publication has been funded by the German Research Foundation (DFG).

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Deutsche Forschungsgemeinschaft DFG

The EU as a Multilateral Rule Exporter

The Global Transfer of European Rules via International Organizations

Mathieu Rousselin

Abstract

This working paper investigates the conditions which prompt a variety of non-EU states grouped within an international organization to adopt European rules or standards rather than any alternative rule or standard available for selection. The paper reviews the main conceptual frameworks from research on the bilateral transfer of European rules and highlights similarities between these and alternative explanatory models of rule transfer, diffusion or convergence found in the broader IR literature. After identifying the main differences between bilateral and multilateral rule transfer processes, the paper proposes theoretical amendments to capture the original forms and new channels via which the EU can either impose constraint or seek consent at the multilateral level. On this basis, two hypotheses are formulated whose plausibility is subsequently probed by means of four comparative case studies dedicated to the worldwide transfer or non-transfer of European rules via international organizations.

The Author

Mathieu Rousselin graduated from the Institut d'Études Politiques de Paris (2005) and from the College of Europe (2007). Since 2008, he is a PhD candidate in International affairs and Political economy at the University of St. Gallen (Switzerland), where his research focuses on the worldwide transfer of European rules, standards and policies. He is also interested in social movement theory and in territorialization processes. His work has been published in *Émulations*, *Journal of Contemporary European Research* (forthcoming), *Bruges Political Research Papers*, *Security Issues* and *Cuadernos de Yuste* (forthcoming).

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1. Introduction: From Bi- to Multilateral Rule Transfer [1]

The concept of Europeanization has gathered many academic followers, perhaps because the plasticity of the concept (despite its rather restrictive original definition in Ladrech 1994) made it suitable for a wide array of empirical situations. Over time, three main streams came to cohabit within the Europeanization literature (Börzel 2010): First, the original Europeanization-West research agenda, that is to say, the analysis of the impact of membership in the European Union (EU) on individual Member States' public policies and domestic institutional arrangements; Second, the Europeanization-East agenda, which sought to capture the transformative effect of membership prospects on candidate countries engaged in accession negotiations with the European Union, the classical study being Schimmelfennig and Sedelmeier (2005); Third, the Europeanization-South or "Europeanization beyond Europe" agenda (Schimmelfennig 2007), which extended the study of Europe's transformative power to new individual countries deprived of clear membership prospects such as, typically, the countries of the European Neighbourhood Policy (Lavenex/Uçarer 2004; Lavenex et al. 2009).

These studies share one feature in common: They focus on bilateral rule transfer, that is to say, they examine the conditions under which one single non-EU country selects, adopts and eventually implements part of the European legal system. Even in those comparative studies investigating the Europeanization of several non-EU countries (such as, for instance, Freyburg et al. 2009), the level of analysis remains that of the individual state, whose domestic constitutional arrangements, interests and preferences are invoked to account for differences in the degrees of absorption of EU rules. A recent development in the field, for example, consists in explaining the selective and uneven transfer of the same set of European rules towards the various units of a region (Casier 2011; Kleibrink 2011).

In this paper, I suggest to operate a shift in the level of analysis from individual non-EU states to aggregates thereof. Stated otherwise, the paper investigates the *multilateral transfer of European rules* and seeks to identify **the conditions which prompt a large number of states to select and adopt the EU rule rather than any alternative rule available for selection.** In so doing, the paper shall lay particular emphasis on the role of international organizations as vectors for the diffusion or transfer of European rules. The paper will thereby contribute to the reflection on the worldwide transfer of European rules in the global regulatory competition, a reflection which is crucial if one bears in mind the substantial economic, commercial and reputational advantages enjoyed by the global standard setter (Laïdi 2008; Buck 2009).

Section one reviews the main conceptual frameworks and empirical findings from research on the bilateral transfer of the European rules. Section two highlights the existing similarities between these frameworks and the broader International Relations (IR) literature on diffusion, transfer and other related concepts.

1 I would like to thank Dirk Lehmkuhl, Frank Schimmelfennig, Anne Wetzel, Martin Welz, Pawel Frankowski, Alexander Heppt, Andreas von Staden, and faculty colleagues from the School of Economics and Political Science for their useful comments and suggestions on earlier drafts. Preliminary versions of this paper were presented at the workshop "Regional Organisations as Global Players" held at the Freie Universität Berlin in October 2011 and at the annual meeting of the Swiss Political Science Association held in Lucerne in February 2012. I am thankful to the organizers Tanja Börzel, Diana Panke, Dirk Lehmkuhl and Stéphanie Bailer as well as to participants in both workshops for their precious input and for stimulating discussions.

After identifying the main differences between bilateral and multilateral rule transfer processes, section three proposes theoretical amendments to capture the original forms and new channels via which the EU can export its rules multilaterally via international organizations. In the revised model, the adoption of EU rules (dependent variable) is a function of the EU's ability to impose constraint via market power asymmetries or via reward-and-sanction mechanisms or of the EU's effort to seek the consent of potential rule importers by emphasizing the superior problem-solving properties or by conveying the superior legitimacy of the European rule. On that basis, section four formulates two hypotheses whose plausibility is subsequently probed in sections five to eight by means of four comparative case studies dedicated to the worldwide transfer (or non-transfer) of European rules via international organizations. Section nine concludes.

2. The EU as a Bilateral Rule Exporter: What Do We Know?

This section briefly sums up the main conceptual approaches and empirical findings of research undertaken on the behavior of the EU as a bilateral rule exporter.

2.1 How Does the EU Export Its Rules Bilaterally? Power Asymmetries, Functional Dynamics and Domestic Politics

Despite the coexistence of a variety of frameworks investigating the transfer of EU rules beyond EU borders, there exists a conceptual consensus around three main explanatory mechanisms which can account for bilateral rule transfer (see Table 1).

Based on realist/rationalist assumptions, the first explanatory mechanism emphasizes the mobilization of power asymmetries and is at the core of frameworks such as Schimmelfennig and Sedelmeier's external incentives model (2005:10-17), Knill and Lenschow's coercion model (2005:585-587) or Lavenex and Schimmelfennig's hierarchical governance mode and power-based explanation (2009:797, 803-804). According to this mechanism, the difference in power resources is expected to result from the EU's sheer market size (Drezner 2005) and from the EU's ability to link rule transfer with market access via the principle of conditionality (Schimmelfennig/Sedelmeier 2004).

The second explanatory mechanism borrows from constructivist templates. It highlights the EU's tendency to export internationally policy solutions mirroring its internal institutional arrangements, particularly via networks (Lavenex/Schimmelfennig 2009: 797-799, 802-803), within which socialization and deliberative strategies of persuasion are expected to take place, in ways that "frame domestic beliefs and expectations" (Knill/Lehmkuhl 2002: 259). Similar models based on the logic of appropriateness include social learning (Schimmelfennig/Sedelmeier 2005:18-20) and communication-based Europeanization models (Knill/Lenschow 2005:589-590; Bauer et al. 2007: 414-418).

Table 1: Logical Filiation Between Various Europeanization Explanatory Mechanisms

	POWER ASYMMETRIES	CONSTRUCTIVIST TEMPLATES	DOMESTIC POLITICS
Europeanization *Schimmelfennig and Sedelmeier (2005)*	External Incentives	Social Learning (+/-)	Lesson-Drawing
Trichotomy *Knill and Lehmkuhl (2002); Drezner (2005); Knill and Lenschow (2005); Bauer et al. (2007)*	Coercion / Compliance	Communication (+/-)	Competition
Four pathways *Diez et al. (2006), partly Barnett and Duvall (2005)*	Compulsory Impact	Connective and, partly, Constructive Impacts	Enabling and, partly, Constructive Impacts
European External Governance *Lavenex and Schimmelfennig (2009)*	Hierarchy/ Power-based Explanation	Network / Institutionalist Explanation	Market / Domestic Structures Explanation

Note: Compiled by the author; (+/-) indicates imperfect filiation

The third and last explanatory mechanism stresses that the decision to import the EU rule is taken when there is a demand from the dominant societal players for the EU rule rather than for any other rule. Lesson-drawing (Schimmelfennig/Sedelmeier 2005: 20-25) and other rational models based on the logic of competition (Knill/Lenschow 2005: 587-589; Bauer et al. 2007: 411-414) are found when the EU rule provides the best policy solution to a domestic problem which the rule importer has failed to solve by itself and/or when the EU rule best mirrors constitutional and administrative structures prevailing within the rule-importing country (Lavenex/Schimmelfennig 2009: 804-805).

2.2 When Is the Bilateral Transfer of EU Rules Successful? Domestic Preferences and Power Asymmetries

There are three main lessons to be drawn from existing studies dedicated to the bilateral transfer of EU rules. The first lesson is that rule transfer is best conceptualized as a *rational policy decision* taken by an actor (the "rule importer") on the *basis of a set of domestic interests and preferences*. Ultimately, these domestic preferences guide the decision "to import or not to import" (Casier 2011) European rules or any alternative rules. To create a domestic demand for its rule, the EU must therefore either *impose constraint* by relying on power asymmetries and/or on market conditionality or else it must seek the consent of the rule importer by demonstrating the superior problem-solving prospects and/or the superior legitimacy of the European rule.

The second general conclusion which can be drawn from existing research is that *the EU mostly relies on power asymmetries and on market conditionality* to secure the bilateral transfer of its rules. In their study of the Europeanization of Central and Eastern Europe, Schimmelfennig and Sedelmeier (2005: 210) conclude that "the external incentives provided by the EU can largely account for the impact of the EU on candidate countries." The numerous case studies conducted evidenced that, when facing the choice between importing or not importing a particular European rule, accession countries conduct a cost-benefit analysis and can be expected to oppose rule transfer when the EU is not able to offer a sufficiently powerful incentive. Furthermore, all contributions concur on the fact that the main determinant in the successful transfer of EU rules is the extent to which the latter are a pre-condition for EU accession . Concretely, by altering the rational calculus, the conditionality mechanism is conducive to rule transfer even in cases where rule adoption comes with high domestic costs for governments in power. When occurring "in the shadow of accession negotiations" (Héritier 2005: 204), Europeanization processes therefore take an openly hierarchical and asymmetrical form, leaving a purely binary choice to accession countries (adoption or non-adoption), but excluding the possibility to jointly define common sets of rules. Similarly, most findings in the European external governance approach speak in favor of the hierarchical mode of governance as being the most conducive to effective rule transfer, even though both Youngs (2009) and Freyburg et al. (2009) identified differentiated effects of hierarchical governance on rule transfer in the field of democracy promotion and good governance (most prominently between rule selection/adoption on the one hand and rule application on the other hand).

The third and last conclusion of relevance for the purpose of this paper is that *legitimacy does not appear to play any determinant role* in the transfer of European rules beyond European borders. Indeed, in the presence of conditionality mechanisms (whether democratic or acquis-based), the legitimacy of European rules is deemed causally irrelevant in their adoption by accession countries (Schwellnus 2005; Schimmelfennig/Sedelmeier 2005: 214-217). Nevertheless, Europeanization research also shows that "rules that are adopted through social learning or lesson-drawing are much less contested domestically" and therefore more likely to be effectively implemented after being formally adopted (Grabbe 2005; Epstein 2005; also Schimmelfennig/Sedelmeier 2005:219). Similarly, Knill and Tosun (2009) provide evidence that hierarchy is most likely to lead to effective EU rule transfer in the field of environmental policy but they also show that reluctance from non-EU states can impede the effectiveness of rule transfer and thus predict the increasing reliance on more horizontal forms of external governance (especially networks).

3. Bridging Europeanization and Globalization Studies: Identifying Commonalities in the Explanatory Mechanisms

The increasing popularity of the Europeanization research agenda has raised a number of critical issues in the specialized literature. For instance, Rosamond (2000: 261) described the concept as "rather elusive" and called for more systematic conceptual dialogue between Europeanization and globalization studies. An even more fundamental criticism is that of concept-stretching by extension (Sartori 1970), whereby a concept is voluntarily kept as broad as possible so as to accommodate the widest possible range of empirical situations. According to Radaelli (2000), the stretching of the Europeanization concept led to the situation where differences in kind (that is to say: differences between types of processes) have been replaced by differences of degrees – put differently, researchers stopped questioning *whether* a particular policy field or process is indeed "Europeanized" and eventually restricted their investigation to determining *how much* of a given field or process is "Europeanized".[2]

These criticisms raise the fundamental question of whether Europeanization constitutes an appropriate conceptual framework in the context of this working paper. Indeed, alternative concepts in the broader political science/International Relations literature – in particular diffusion, transfer, convergence or isomorphism – might seem more suitable given the focus on large numbers of actors located far away from European borders. Yet, I argue that these various approaches, which are themselves rather elusive and hardly distinguishable one from another (James/Lodge 2003; Knill 2005), offer to explain slightly different phenomena on the basis of explanatory hypotheses, which are essentially comparable to, and certainly compatible with, those put forward in the Europeanization literature. Stated otherwise, although there is some degree of variation in the dependent variables used in each of these approaches (Knill 2005: 767), there are also striking similarities in the independent variables and explanatory mechanisms proposed to account for Europeanization, transfer, diffusion, convergence or isomorphism.

At this stage, a full-fledged and exhaustive review of these alternative concepts to Europeanization greatly exceeds the scope and purpose of this contribution. Instead, I shall identify the explanatory hypotheses underpinning each approach and show that these hypotheses usefully complement and increase the explanatory power of corresponding hypotheses in the Europeanization-beyond-Europe research agenda (Table 2).

In their study of *institutional isomorphism*, DiMaggio and Powell (1983: 150-154) identified three main causal forces behind the similarities observed between various organizational modes: coercion, mimetic behavior and normative pressure. At the core of each model lies one of the three already encountered explanatory mechanisms. In comparative politics, Dolowitz and Marsh (2000: 13-17) conceive of *transfer* as a continuum that runs from the voluntary to the coercive importation of foreign programs, policies or arrangements. Along this continuous line, several types of transfer can be distinguished, emphasizing

2 The point is eloquently made by Radaelli (2000: 5): "The metaphor of Europeanization as a continuum and the notion of domestic political systems being 'increasingly' penetrated by EU policy make the distinction between the cat and the dog difficult. The point is that without boundaries it is impossible to define Europeanization. But the literature is somewhat reluctant to tell us what falls outside Europeanization. If everything is Europeanized to a certain degree, what is not Europeanized?"

either the direct imposition of a policy as a result of constraint (in particular via the use of conditionality in aid mechanisms or as result of legal obligations imposed by one side upon another) or the sovereign and rational decision of an actor to import a foreign legislation when a variety of policy entrepreneurs are dissatisfied with the domestic status quo. These two explanatory hypotheses are obviously reminiscent of the external incentives and lesson-drawing models in the Europeanization literature. In addition, Dolowitz and Marsh propose a third and intermediary situation on the transfer continuum whereby the decision to import a foreign legislation is formally voluntary and taken on rational grounds, but also partly results from normative pressures exerted by peers. This last mechanism is conceptually similar to social learning and to convergence models based on transnational communication and "legitimacy pressures" (Holzinger/Knill 2005: 780-786).

In his classical review article of the convergence literature, Bennett (1991) differentiates between four types of explanatory mechanisms: two power-based models emphasizing either the difference in power resources between two actors (penetration) or the effect of membership in legally-binding international regimes (harmonization); one constructivist model based on socialization within transnational communities (elite networking); and one last rationalist model (emulation) akin in its logic to lesson-drawing and other related models.

Table 2: Logical Filiation Between Europeanization and Alternative Explanatory Mechanisms

	POWER ASYMMETRIES	**CONSTRUCTIVIST TEMPLATES**	**DOMESTIC POLITICS**
Isomorphism *DiMaggio and Powell (1983)*	Coercion	Normative Pressures	Mimetic behaviors (+/-)
Transfer *Dolowitz and Marsh (2000)*	Coercive Transfer and Conditionality	Voluntary Transfer driven by Perceived Necessity, such as the Desire for International Acceptance	Lesson-Drawing under Bounded or Perfect Rationality
Convergence *Bennett (1991)*	Harmonization and Penetration	Elite Networking	Emulation
Diffusion *Simmons and Elkins (2004)*	Altered Payoff Material and +/- Reputational	Learning through Communication and, partly, from Cultural Reference Groups	Learning from Success and, partly, from cultural Reference Groups

Note: Compiled by the author; (+/-) indicates imperfect filiation

Finally, the *diffusion* literature is also structured by explanatory models which are conceptually similar to those put forward in the transfer and convergence literature. In a widely quoted article on the diffusion of liberal policies, Simmons and Elkins (2004) suggested that foreign economic policy decisions affect

domestic policy choices in two main ways: by altering payoffs of the various policy options or by providing new information to be processed. The "altered payoffs" explanatory mechanism highlights the effect of direct economic competition and the reputational costs that an actor has to be willing to accept if it infringes a dominant "normative consensus". Both arguments are linked with the relative power that an actor is able to exert (and resist) by relying on its domestic market. The explanatory mechanism emphasizing the role of new information in domestic policy-making corresponds to three types of learning. The learning-from-success mode is essentially similar to the lesson-drawing model, whereby an actor imports a foreign policy on the basis of its proven efficiency in tackling a policy problem elsewhere. The remaining two learning modes are based on constructivist templates and postulate that learning occurs primarily within informational networks (learning through communication) or, in the absence of a formal institutional relationship based on consideration of cultural similarity (learning from cultural reference groups).

This brief review of the abundant IR literature on transfer, diffusion and related concepts certainly does not do justice to the tremendous diversity which characterizes these approaches. Yet, this conciseness is not prejudicial for this paper's central claim – namely that a sustained conceptual dialogue between Europeanization and globalization research is not only desirable to avoid the excessive fragmentation of research on what is essentially the same phenomenon, but that such a dialogue is also feasible to the extent that both research strands share many assumptions and commonalities in the explanatory hypotheses they propose to account for the spread of certain rules or standards.

4. Theoretical Implications of the Shift from Bilateral to Multilateral Rule Transfer

After identifying the main differences between bilateral and multilateral rule transfer processes, this section suggests ways in which conceptual models of rule transfer could be amended so as to explain the multilateral transfer of European rules.

4.1 How Do Bilateral Transfer Processes Differ from Multilateral Ones?

Bi- and multilateral rule transfer differ in the number of actors involved: bilateral rule transfer processes bring two actors together (*one-to-one transfer*) whereas multilateral rule transfer processes bring together at least three actors (*one-to-many transfer*), one "rule exporter" and two or more "rule importers". This section pinpoints two basic consequences deriving from this simple difference.

First, the presence of a larger number of actors means that there will be *more numerous and arguably more heterogeneous interests* to consider and balance. This is likely to render the formation of a consensus a lengthier, costlier and generally speaking a more challenging undertaking (Axelrod/Keohane 1985: 228, 236). In addition, the decision-making procedures governing the institution within which multilateral rule transfer occurs may further complicate consensus-building. For instance, the legal requirement of unanimous consent is more demanding when it applies to the 153 World Trade Organization (WTO) members than when it does to a bilateral governance network. Multilateral institutions may also have original

decision-making procedures which are seldom if ever seen in bilateral settings, such as simple majority voting (used for instance for most United Nations General Assembly resolutions), qualified majority voting (as is the case for important United Nations General Assembly resolutions, which require a two-thirds majority) or procedures which institutionalize the preeminent role of selected members (for example, the five veto-wielding permanent members of the United Nations Security Council).

Second, multilateral institutions **potentially** constitute *more horizontal settings* in which the mobilization of power asymmetries is frequently more legally constrained and more open to public scrutiny than in bilateral settings. For instance, multilateral settings provide opportunities to compensate an unfavorable geopolitical/sectoral power differential with coalitional power. Weaker states may thus join forces within multilateral institutions and constitute blocking minorities in ways that would not be possible bilaterally (coalition-building). The same countries may also lend their support to a powerful actor whose position they share (bandwagoning). Consequently, the use of power is not a necessary and sufficient guarantee for successful rule transfer and may even turn out to be counterproductive if it prompts scattered weak actors to unify in response.

By the same token, a weak actor can hardly hope to hold a more powerful actor accountable if compliance is assessed by a joint (bilateral) implementation body, within which power asymmetries are reproduced. However, the same is not true of multilateral institutions which have developed independent and non-partisan judicial compliance mechanisms. For example, Antigua and Barbuda, with its 170 square miles and a permanent population of 85,000 appealed to the WTO dispute settlement body and forced the United States to lift restrictions to the cross-border supply of gambling and betting services. Another element which contributes to dampening the intensity of power asymmetries is the far-reaching requirement of transparency imposed on most international organizations (particularly on the United Nations and its specialized agencies), which greatly exceeds the publicity given to debates held within bilateral settings, the very existence of which is often unknown to the broader public. As a result, the activities of multilateral institutions are the object of intense public screening with a high level of involvement of the media, non-governmental organizations (NGOs) and various advocacy groups which can be very vocal in the promotion of their interests. This does not mean that power cannot be mobilized at all, but it certainly implies that the actor which is seen arm-twisting another needs to be willing to pay the price and see its public image tarnished (Laïdi 2008).

4.2 Determining the Collective Preference of Rule Importers

The shift from bi- to multilateral rule transfer processes adds a further analytical layer and requires that the researcher investigates the process and the outcome of preference formation/aggregation at the level of the international organization considered. Understanding the *process of preference formation* necessitates identifying the individual units which are likely to influence the definition of the rule importer's preference. For bilateral rule transfer, the domestic preference of the rule importer can be determined by aggregating the individual preferences of influential political, administrative and civil societal players, such as private companies and economic lobbies, competent departments of the state administration, political parties, NGOs and other advocacy groups, the media and public opinions (Moravcsik 1993, 1997). For multilateral

rule transfer, the collective preference of the rule importers can be determined by aggregating the national preferences of member states as well as the preferences of bureaucracies and of influential civil societal players at the level of the international organization concerned. However, if the member states have a ternary choice between, for example, adopting the European rule in its current state, adopting a revised version thereof or adopting no rule at all, we are in presence of a situation in which the ranked preferences of individuals cannot be expected to translate into an aggregated ranking while simultaneously meeting basic fairness criteria (Arrow 1951).[3]

This methodological difficulty can be circumvented by looking at the *outcome of preference aggregation* which is frequently laid down in primary sources such as strategic documents, reports, national position papers and which can also be inferred from interviews. Via process-tracing and textual/discourse analysis, the researcher has access to the (revealed) collective preference of the rule.

The collective preference prevailing within an international organization can take four different forms, which I propose to categorize in two types. First, there can be no collective demand at all for any particular rule on the part of the rule importers (*absence of demand)*. Second, rule importers may import a specific rule so as to benefit from a reward or to avoid a sanction associated with that rule (*reward-driven demand*). In the Europeanization literature, this type of preference is associated with external incentives and related models. For these two forms of policy demand, the collective preference of the rule importers will be treated analytically as *extrinsic*, that is to say that the collective demand for a particular rule originates, at best, in a property which is associated with the rule (its compliance mechanism) rather than in an inherent property of that rule.

By contrast, the collective preference prevailing within an international organization can be analytically treated as intrinsic, that is to say as resulting from the inherent properties of the rule, in two distinct cases. First, rule importers may import a rule if it provides an effective solution to a policy problem for which there exists no collective policy answer (*solution-driven demand*). This type of policy demand is typically found in lesson-drawing and in governance modes based on competition. Finally, the preference of the rule importers may derive from their willingness to import the most legitimate rule available for selection (*value-driven demand*). Policy demand emphasizing the logic of appropriateness is a typical feature of constructivist models such as social learning and communication-based governance modes.

3 Arrow's impossibility theorem demonstrated that no voting system in which voters have three or more options can aggregate a set of transitively-ranked individual preferences in a way that would not violate three fairness principles: First, that if all voters favor X over Y, then the aggregated preference should also place X before Y; second, that if all voters have an unchanged preference for X over Y (irrespective of their ranking of the third option available to them), then the aggregated preference will remain equally unchanged with X placed before Y; third and last, that no dictator can impose its preference to the group in an authoritarian fashion.

4.3 Imposing Constraint at the Multilateral Level

Even though I have noticed that multilateral institutions tend to constitute more horizontal settings given the multiplicity of actors and interests, it would be an illusion to believe that power plays no role at all in the global regulatory competition.

First, the variety of institutional arrangements and decision-making procedures will crucially affect the extent to which power can be used – and resisted. In this context, particular attention should be dedicated to the *absence or presence of veto players* and to the *size and composition of blocking minorities*. For instance, the known opposition of a powerful veto player which has the possibility to withstand power constraints exercised by other powerful players is sufficient to virtually prevent any rule from being adopted, as verified on an almost daily basis within the United Nations Security Council. In cases of majority (whether simple or qualified) voting, the decisive parameter is the size and composition of blocking minorities. The opposition of a blocking minority composed of many different actors, some of whom are geopolitically powerful, will be more difficult to overcome than that of a smaller minority constituted of states with a limited power base.

Second, power within multilateral institutions is likely to depend on different and perhaps subtler parameters than merely the population and country size, the economic weight and market size, the natural resources endowment, the military budget, size of the army and possession of nuclear capabilities (to name but only a few of the most frequently invoked indicators of geopolitical power). In particular, specialized domestic institutions and well developed regulatory capacities may influence the outcome of rule transfer processes if they result in information/expertise asymmetries (Meunier 2005; Bach/Newman 2007). In this context, the availability of a skilled labor force (well-trained sectorial experts) and the ability to collect, process and act upon information are important levers of power at the international level (Gilardi 2002).

4.4 Seeking Consent at the Multilateral Level

The existence of a strong power differential between two actors engaged in bilateral rule transfer negotiations may result in one side exporting its rules by mobilization of power asymmetries even in the absence of any domestic demand from the rule importer. Such a scenario is less likely to occur in a more balanced multilateral setting in which no player is able to force the transfer of its domestic norms over other players: Under these conditions, the genuine consent of rule importers must be sought before any rule can be transferred.

A first possibility to seek consent within international organizations is by persuading rule importers that the rule under discussion constitutes the *most effective solution* to a policy problem common to most members of the institution but for which no common solution has been found so far. The problem-solving prospects of a rule can be operationalized by taking a look at the rule's stringency, its track records in tackling the policy problem in question, the conditions under which the rule can deliver the expected results and the associated adoption costs. By the same token, consent can be obtained if rule importers are convinced that the transfer of a particular rule necessitates only minor domestic changes in their existing administrative practices (Knill 2001).

A second possibility to seek the consent of rule importers is to convince them that the rule under discussion is the most legitimate option of all rules in competition. The difficulty with the concept of legitimacy is that it is defined and operationalized in such a way that it is less a property of the rule itself than a characterization of the relationship between an object (the rule to be transferred) and a subject (the rule importer). This means that one cannot assess the legitimacy of the rule independently from the rule importer. Yet, the other two aforementioned rule properties (incentives and effectiveness) can be partly or wholly derived from the observation of the rule itself.[4]

To solve this problem, I propose to operationalize legitimacy on the basis of two criteria. The first, subject-related criterion is the *resonance* of the rule (Schimmelfennig/Sedelmeier 2005: 20; also labeled "cultural match" by Checkel 1999), understood in terms of compatibility with the structures and practices in place within the international organization. The second criterion, which is independent from the subject considered, is the *universality or singularity of the problem-solving mechanism*, meaning the extent to which the rule aims at solving a problem in a general and potentially universal way or the extent to which the solution advocated is tailored to the needs of the country where the rule was first developed. The underlying idea is that the more general and universal the rule, the less it can be suspected of serving the particular interests of the country where the rule was first developed.

5. Hypotheses, Methodology and Case Selection

On the basis of the theoretical adjustments articulated in section 4, the following hypotheses can be formulated:

Constraint hypothesis: International organizations select and adopt the European rule rather than any alternative rule:

- if the European Union enjoys the most favorable power position of all potential rule exporters, either through its market size or through its regulatory capacities;
- and/or if the European rule is associated with the strongest incentives of all rules available for selection.

Consent hypothesis: International organizations select and adopt the European rule rather than any alternative rule:

- if the European rule constitutes, of all rules available for selection, the most effective solution to a collective policy problem for which no satisfying policy answer exists within the international organization;
- and/or if the European rule constitutes, of all rules available for selection, the most universal policy

4 Stated otherwise, rule X is associated with certain rewards or sanctions irrespective of whether it is imported by actor A or actor B. Similarly, the stringency, track record and scope conditions under which rule X can solve a given policy problem do not vary with the actor considered (A or B) – only the adoption costs will change depending on the particular domestic situation of the rule importer.

offer which best "resonates" with the structures and practices prevailing within the international organization.

The following section provides an initial plausibility probe of these two hypotheses on the basis of a specific type of comparative research design "mirror-imaging" most similar and most dissimilar systems designs (Lijphart 1971, 1975; Murray-Faure 1994: 316-318) by applying Mill's method of agreement within the framework of a most different system design. This methodology allows identifying similarities in the explanatory variables between cases which differ in their outcome. To use the distinction elaborated by Fritz Scharpf (1997: 25-27), this research strategy is "backward-looking" because it does not aim at the confirmation or disconfirmation of a single-factor explanatory hypotheses – rather, its aim is to explain a particular policy choice (i.e., to import or not to import the EU rule) starting from the hypothetical chain of causation.[5]

The use of this methodology therefore requires the selection of both positive and negative cases, that is to say, of cases where the European rules were transferred as well as of cases where another rule (or none) was transferred. Given the fact that the dependent variable takes binary truth values[6], quantitative comparative analysis (Ragin 1987) and Boolean algebra (Caramani 2009) would seemingly provide helpful instruments – yet, their use has been ruled out on the grounds that the pertinent information on the independent variable is a *relation between the properties of various rules* in competition (for instance: "EU rule more legitimate than US rule" or "US rule more effective than EU rule") rather than merely the juxtaposed truth value for each rule (for instance: "EU rule legitimate" and "US rule legitimate").

To this end, cases were selected on the basis of three criteria. First, cases ought to offer some degree of variation in the dependent variable, so as to be able to compare factors leading to the transfer of EU rules with factors leading to their non-transfer. Second, rule transfer must occur within a policy area where there exists a competition between the European rule and, at best, one alternative rule promoted by another

5 The other research strategy, which Scharpf calls "forward-looking", typically follows the standard recommendations of King, Verba and Keohane (1994) and seeks to measure the effects of a single explanatory variable (i.e. how much of the variation in the dependent variable can be explained by one independent variable). Importantly, this is not possible with a backward-looking strategy which operates with longer causation chains as is the case in this paper. Yet, the backward-looking strategy has several methodological advantages – in particular, the method "can handle or reduce relatively large sets of independent variables; and by focusing on combinations of variables, it not only accommodates multicausality but also has no need to assume that variables are independent one from another" (Scharpf 1997: 27).

6 In the model proposed by Lavenex and Schimmelfennig (2009: 800-801), the dependent variable "effectiveness of EU external governance" has three dimensions: rule selection, rule adoption and rule application. The degree of compliance can only be measured on the basis of a scale (from the perfect application of the EU rule to the complete absence of application thereof with a wide array of intermediary situations) and, therefore, cannot be operationalized with Boolean algebra. By contrast, this paper focuses exclusively on the selection and adoption of European rules, both of which can be expressed in dichotomous terms: The EU rule is either selected for multilateral negotiations or it is not; subsequently, it is either formally adopted by the community of states, or it is not. It should be noted that the binary operationalization of the dependent variable has an important consequence: It excludes hybrid solutions from the model, i.e. cases where only some parts of the EU rule are selected/adopted, whereas other parts of the same rule are not selected/adopted. In order to deal with such situations (which necessarily occur when rules are designed to solve complex policy problems), the empirical analysis specifies which part of the EU rule is the relevant object of analysis – for instance, the gases covered and thresholds defined per vehicle type in the UNECE case.

governance-provider.[7] Third, cases had to be located within a policy area where there exists an international organization with sectoral competence, in order to be able to assess the role of membership in that international organization on the decision of a large number of states to adopt the EU rule rather than any other policy option available.

On that basis, four cases were identified. Two of these cases are positive, meaning that the European rule is effectively adopted by a large number of states as a result of its multilateral promotion via an international organization. The third study is conducted on a negative but deviant case, whereby the European rule was effectively transferred globally, despite its non-selection by the relevant international organization. The fourth and last (negative) case study concerns a European rule which failed to be transferred globally and was not even selected by the relevant international organization. The qualitative data is gained through the analysis of primary legislation and from other official sources (such as reports) as well as through the consultation of opinion pieces and of open sources (such as websites).

6. The IMO Ban on Single-Hull Oil Tankers

Until recently, oil products and derivatives were being transported on a special type of merchant ships (oil tankers) most of which were equipped with a single hull, meaning that a single outer shell separated the product transported from the ocean. In case of collision or stranding resulting in hull damages, the vessel's content risked being spilled into the open sea, potentially wreaking havoc on marine environment. Double-hull designs, by placing a second internal plate at a sufficient distance from the outer shell, were known to provide an effective, though costly, way to address this risk and decrease pollution (Committee on Oil Pollution Act 1998: 115-141).

International hull requirements are specified in the International Convention for the Prevention of Pollution from Ships (MARPOL), whose implementation is left up to the International Maritime Organization (IMO), a United Nations specialized agency with the mandate of improving the safety and security on international shipping and of preventing marine pollution from ships. Given the consensual nature of decision-making within the IMO and the heterogeneous interests of its 169 member states, the IMO has been repeatedly criticized for its slow procedures and low degree of reactivity, including by the EU Commissioner for Climate Change Connie Hedegaard (IMO 2010: 2). In particular, the presence of member states whose national economies are heavily dependent on shipping makes it difficult for the IMO to adopt far-reaching environmental standards placing additional burden on the industry.

In the wake of the *Exxon Valdez* oil spill (1989), the United States faced tremendous domestic pressure to be seen tackling marine pollution issues quickly and resolutely. Although the oil spill was mostly due to

7 The IMO case offers a particular case in the sense that there exists competition between governance-providers (the EU versus the US), but not between their rules (both the EU and US rules foresaw the ban on single-hull oil tankers).

human error[8], the US administration pushed forward a plan demanding the progressive shift from single to double hulls for oil tankers with a 2005 to 2015 horizon depending on the tanker tonnage, a preference that the United States was unable, arguably also unwilling, to transfer to the IMO. Consequently, the United States adopted a unilateral ban on single hull in the Oil Pollution Act (1990).

The American decision prompted the IMO to introduce in 1992 the first MARPOL amendment requesting the phase-out of single hulls for oil tankers from certain deadweight tonnage categories – yet, the MARPOL phase-out foresaw a less constraining time scale than in the United States. The Europeans understood that the discrepancy between both pieces of legislation meant that, from 2005 onwards, single-hull oil tankers banned from US waters would be massively redirected towards the large European transport market, from which they were not yet banned. Since the accident rate is notoriously correlated with the age of the vessels, this would have resulted in a significant increase in pollution risks for the Europeans.

In parallel, the European Union faced two major oil spills in 1999 (*Erika*) and 2002 (*Prestige*) which put tremendous pressure on national governments and on the European Commission to react. Following the Erika disaster, the Commission announced a first response package (European Commission 2000a) which foresaw the progressive abandonment of single-hull tankers on the basis of the same timetable as the Americans. Shortly after, a second response package (European Commission 2000b) established the Maritime Safety Agency advocated a "joint approach within the IMO" (p. 2) in order to push for a quicker phase-out, which was agreed upon by the IMO in April 2001 (MARPOL regulation 13G) and entered into force in September 2003.

With the sinking of the *Prestige* in November 2002 (another single-hull vessel), the European Union renewed and increased its call upon IMO member states to accept the proposed acceleration of the oil tanker single-hull phase-out. About a year later (a surprisingly short period according to IMO standards), the Marine Environment Protection Committee further amended the revised MARPOL regulation 13G and adopted a phase-out schedule identical to that foreseen by the American Oil Pollution Act and the relevant EU legislation.

Lessons from the IMO Case

Though often portrayed as an example of European influence (Buck 2009), the case is actually a tribute to the unilateral US strategy, since convergence eventually occurred around the standard they initially set. After noticing that spending resources would not deliver the desired outcome (multilateral transfer of their domestic rule) quickly enough, given the public pressure for immediate action after the *Exxon Valdez* spill, the United States chose the unilateral path and let market dynamics redirect the externalities towards EU member states, whose burden it became to convince other IMO members.

When it comes to accounting for the successful transfer of the EU/US rule, power asymmetries offer some but limited explanatory power. Indeed, the decision-making procedures did not allow the EU (nor the

8 The crew was subsequently declared too small in number, insufficiently trained and insufficiently rested.

United States for that matter) to force the adoption of the single-hull ban upon IMO members, which successfully resisted several attempts by forming blocking minorities. Although that rule was both highly legitimate (since it did provide a universal solution to the particular problem) and highly effective in reducing the risk of oil spills, it took a combination of public pressure and of European investment in the IMO to obtain its transfer.

First, with the public outcry that followed spectacular policy failures in the United States and in Europe (*Exxon Valdez*, *Erika* and *Prestige* oil spills), reluctant IMO member states found it increasingly difficult to oppose a measure which significantly reduced pollution risks. The EU was also able to use the threat of unilaterally denying access to its ports in case the ban decision was not adopted. Second, the EU's institutional linkage with the IMO is longstanding[9] and eventually led to the creation of a specific committee[10] with the explicit objective of facilitating the integration of IMO legislation within the EU and of fostering exchanges of experience and of views between both organizations. This Committee was instrumental in conveying the effectiveness and appropriateness of the single-hull ban.

7. The UNECE-Sponsored Spread of the European Emission Control System

Motor vehicles worldwide are subject to emissions control systems, with the aim of controlling and progressively reducing the quantities of gaseous pollutants emitted by internal combustion engines. The main justification behind such control systems is to decrease the levels of atmospheric pollution, which are known to produce significant negative externalities

There are currently two main emissions control systems emulated worldwide[11]: the EURO standards developed from 1970 onwards and the US Tiers inaugurated by the 1990 amendments to the Clean Air Act. Based on the proposed operationalization of the effectiveness criterion, it is possible to say that, although both emissions control systems provide an effective policy solution to air pollution, the US Tiers standard has a slight comparative advantage over its European counterpart, which however did not lead to its worldwide expansion. Similarly, considerations of market access and of sectoral power asymmetries do not account for the selection of the EU rather than of the US standards, since the European and North American markets have a broadly similar power of attraction.[12]

9 It dates back to the very first Community document in the area of maritime safety, a Commission communication (European Commission 1993) which was released after the extraordinary Environment and Transport Council's call upon the Commission to support the IMO action to reduce the safety gap between the various types of ships navigating on European waters.

10 Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation EC 2099/2002.

11 As a major car producer, Japan introduced its own national emission control system in the 1980s, which remained relaxed until the late 1990s. In 2003, Japan adopted far more stringent standard which became, upon entering into force in 2005, the world's tightest emission control system. From 2009 onwards, these limits are further tightened to a level in-between the US 2010 and EURO V requirements. Yet, these standards never reached out beyond the Japanese territory (See: www.dieselnet.com).

12 For a timeline of the standards' adoption, a comparison between both standards and an analysis of market dynamics and sectoral power asymmetries, see Rousselin (forthcoming).

Instead, the EURO standards were successfully transferred to all European countries (including to non-EU states) and neighboring countries (such as Russia and Turkey) via the United Nations Economic Commission for Europe (UNECE). More interestingly, a variety of non-European countries which are not even members of the UNECE decided to become part of the relevant UNECE legislation (China, India, Thailand, Argentina, Brazil or Peru). A handful of countries (Australia, Chile or Mexico) have a double system in which both EU and US standards are recognized. So far, the US Tiers system has only been adopted by the immediate North American neighbor Canada – and, even so, the Canadian standard differs to a certain extent from the original US standard so as to take into consideration the important differences existing between the US and Canadian automotive markets.

The reason behind the successful global spread of the European standards is twofold. First, the European rule itself, when compared with its North American equivalent, appears to be a particularly legitimate policy option, designed as a potentially universal mechanism to the policy problem considered. Indeed, the EU rule sets a rigid emission cap, to be respected by all vehicles attached to a weight category. By contrast, the US Tiers 2 system has been conceived in the specific context of the US automotive market, which has a certain number of idiosyncrasies. For instance, the US Tiers set a flexible average to be met for the entire fleet. This flexibility allows carmakers to continue selling large and dirty vehicles as long as these sales are offset by the sale of smaller and greener vehicles. Such a mechanism is particularly suitable in the US environment, where a significant fraction of the domestic demand concerns large and powerful cars. In countries where the consumers hold more traditional preferences (vehicle price and fuel consumption), such flexibility may well be detrimental to the objective pursued.

Second, the global spread of the EURO standards occurred via a network governance institution which allowed discussing and conveying the properties of the European rule. Indeed, the UNECE hosts a transport unit which provided secretarial assistance to the functioning of the so-called Working Party 29, also labeled the World Forum for Harmonization of Vehicle Regulations. Created in 1952 and with a membership going well beyond Europe, the WP29 acted for half a century as the main platform for about 120 national experts to discuss global harmonization issues, especially mutual recognition. The WP29 administers three main multilateral agreements and establishes Global Technical Regulations (under the 1998 Global Agreement – see United Nations Economic Commission for Europe/Inland Transport Committee 1998) and UNECE Regulations (under the 1958 Agreement – see United Nations Economic Commission for Europe/Inland Transport Committee 1958). Global Technical Regulations consist of tests, procedures and requirements that can be transposed into national or regional legislation on a voluntary and non-binding basis. This agreement gathers 33 contracting parties, including Canada, China, India, Japan, Korea, South Africa, Tunisia or the United States. UNECE Regulations cover the same issues, but they also contain a series of administrative specifications which serve as a basis for the system of mutual recognition of approvals between contracting parties.[13]

13 Since UNECE regulations need to comply with GTR specifications, in practice the two types of regulations are mostly pursued simultaneously.

Lessons from the UNECE Case

The transfer of the European emission control system presents us with a broadly similar case, in which power asymmetries do not intervene decisively. In addition, market conditionality also played a limited role, since there are few nations within the UNECE which export cars towards the EU. Interestingly, the European system, though effective, is not the most effective policy answer available internationally to reduce gaseous pollutants from car engines – yet, it is the EU and not the US system which was transferred.

This can be explained by considering the legitimacy of both rules: Whereas the EU rule provides a potentially universal policy solution, the US Tiers are a system tailored to the idiosyncrasies of the North American market, where consumer preferences differ significantly from the world demand. Furthermore, the UNECE, a United Nations regional commission grouping mostly European countries, has strong historical ties with other predominantly European institutions within which the EU system is promoted (particularly the European Commission). Lastly, the UNECE hosts a very inclusive network, the World Forum for the Harmonization of Vehicle Regulations, which discusses and adopts global technical regulations. This network is a horizontal discussion platform at expert level, within which the European rule serves as a starting point but may be re-defined during the process.

8. The Spread of GSM Standards for Mobile Telephony Despite the ITU Neutrality

Establishing communication between two mobile sources requires allocating the spectrum of radio frequency among the users. With the increasing number of users, mere allocation becomes insufficient: The radio frequency spectrum must be divided so as to allow many users to communicate simultaneously. This technical problem can be solved in two ways: Time Division Multiple Access (TDMA) and Code Division Multiple Access (CDMA). TDMA functions as a time-sharing system, dividing the main signal into time sequences, thereby allowing the users to transmit in rapid succession, but never simultaneously. By contrast, the CDMA technology is based on a digital modulation which randomly spreads the sender's data over a very wide spectrum; the receiver then uses the same coding scheme to undo the randomization and collect the data.

In Europe, the prevailing second generation standard was the GSM, which worked according to the TDMA technology. By contrast, the main standard in the United States was the IS-95, using CDMA technology. When comparing both standards' effectiveness in solving the aforementioned problem, there seems to be a rather unambiguous advantage in favor of the US technology[14] (Andersen Consulting et al. 1998; for a slightly biased judgment, see also CDMA Development Group 2005). Yet, the superior technical effectiveness of the US technology did not result in its worldwide transfer; on the contrary, the EU-based GSM standard serves about 80 percent of the global mobile communication market (GSM Association 2009).

14 The technical advantage of the CDMA over the TDMA technology can also be inferred from the fact that subsequent (third and fourth generations) European standards switched from TDMA to CDMA.

The global transfer of an efficient, but comparatively suboptimal standard can be accounted for by the combination of two factors: first entrant/mover premium and market power. Indeed, Europeans used to be equipped with a wide array of mutually incompatible national standards, resulting in high inefficiencies and market fragmentation. Under the joint leadership of France and Germany, the European Conference of Postal and Telecommunications Administrations (ECPTA), a coordination body of 48 European telecommunications agencies, decided to create the *Groupe Spécial Mobile* (GSM) in 1982, with the aim of defining a common European standard. By 1987, a Memorandum of Understanding was signed between 13 countries and the supervision of the GSM standard was transferred in 1989 from the ECPTA to the European Telecommunications Standards Institute. By contrast, in the United States, GSM-equivalent standards came about comparatively later – in 1995 for the IS-95 and five years later for the CDMA-2000 (third generation).

With the close association of European telecommunications companies, the GSM standard became technically operational in 1991 and had already hit over a million users in 1994 (mostly in Europe) and 100 million four years later.[15] The GSM *Association*, a business and interest group promoting the interest of over 800 GSM-related companies, was created in 1995 and has played a major role in lobbying foreign governments and advancing European interests worldwide. To a large extent, the involvement of a European standardization agency (the European Telecommunications Standards Institute – ETSI) and the subsequent creation of a dedicated business union (the GSM Association) allowed to mitigate the absence of commitment from the relevant United Nations specialized agency, the International Telecommunication Union, whose recommendations in the field of telecommunication standardization have been characterized by the absence of commitment in favor of one technology and to the detriment of another.

Lessons from the GSM Case

The worldwide transfer of the European mobile telephony standards is a useful reminder that the multilateral transfer of a rule via a United Nations specialized agency is not a necessary condition for the successful global transfer of the same rule. The reason for the worldwide transfer of the EU standard despite the absence of commitment from the International Telecommunication Union is to be found in a combination of two market dynamics: First, Europeans enjoyed a first-mover advantage, which was made possible by the early and continuous public backing provided by European institutions (via an ambitious EU-sponsored research program) and national governments; second, by committing to a common standard for all member states, Europeans quickly gained a critical mass which helped them to export their standards internationally, by relying on the power of attraction of their market, on scale economies for their domestic producers as well as on two business and expert networks, the GSM Association and the ETSI, which organized many congresses and workshops in Europe and worldwide to advertise and promote the European solution.

15 Factual pieces of information in this paragraph are taken from the "history" section of the GSM Association website, available online at: http://www.gsmworld.com/about-us/history.htm.

9. The Failure to Integrate the Singapore Issues into WTO Negotiations

In 1996, the WTO Ministerial Meeting in Singapore reached an agreement regarding the opportunity to study the inclusion of four new items on the WTO agenda. Collectively labeled "Singapore issues", these four items are: investment, competition, transparency in government procurement and trade facilitation. This decision was seen as a victory for developed countries, especially the European Union, which had been making the case for inclusion. Developing countries, on the other hand, showed great reluctance to integrate the Singapore issues, partly out of "fear that even modest provisions represent the thin end of the wedge that would lead to more intrusive, costly and inappropriate rules at a later stage" (Woolcock 2003: 255). A compromise was found by agreeing that the inclusion decision would be taken on the basis of the explicit consensus procedure, which gives a de facto veto power to all WTO member states.

Five years later at the launch of the Doha development round, no consensus had been found to include the Singapore issues within the WTO and member states decided to leave the decision for the Cancún Ministerial Meeting (2003), where the developed versus developing countries dissensions came out into the open and caused the spectacular collapse of negotiations. The Singapore issues played their part in this failure, as they were one of the three issues (next to agriculture and market access for goods) discussed within the half-secrecy of the "green room" among a smaller group of countries supposed to represent the interests of all member states. During the green room negotiations, the European Commission made some limited concessions regarding the de-linking of the Singapore issues by accepting to treat less controversial items first and to keep competition and investment for later. The European move caused a break up within the pro-inclusion alliance, since neither Japan nor South Korea was ready to accept a partial inclusion of the Singapore issues.

In addition, developing countries were able to form a rather heterogeneous but very powerful blocking minority, the G20, whose fierce opposition largely accounts for the failure to integrate the Singapore issues within the perimeter of WTO activities. The G20 brought together China, India, Brazil and South Africa, plus a fluctuating number of countries depending on the time and on the issues discussed. Accounting for about 60 percent of the world's population and with major interests in agriculture (although noticeable differences exist between the agricultural profiles of member countries), the G20 succeeded in becoming "the voice of the poor" and adopted a resolutely vindictive tone against developed countries even prior to the Cancún summit.[16] A few hours after the Cancún Ministerial meeting started, G20 ministers issued the following statement, which prompted the rejection of the Singapore issues:

> *"We express concerns about the* impact of multilateral rules […] on our domestic policies and are yet to fully understand *the implications of having WTO rules on these issues. The issues are* technical and complex *and some of them are quite unrelated to trade. Many developing countries* do not have the capacity to implement obligations *arising out of commitments such multilateral rules will entail."* (Khor 2004: 8-9; emphasis added by the author)

16 See for instance the Brasilia Declaration signed in June 2003 by the Foreign Ministers of Brazil, India and South Africa.

Lessons from the WTO Case

The failure to integrate the four Singapore issues into the WTO's perimeter of activities illustrates the centrality of the domestic and collective preferences of rule importers and the importance of coalitional power relations. The case study illustrates the argument according to which multilateral settings are potentially more balanced than bilateral ones, particularly if decision-making procedures provide small and weak players with the ability to group and jointly oppose more powerful players, whom they could not have been able to oppose bilaterally. The WTO case also shows that rules whose legitimacy is highly contested, as was the case for the European preferences in the areas of competition and investment, have a much lesser chance of being transferred.

10. Conclusion: Constraint and Consent in the Transfer of EU Rules

This working paper investigated the conditions under which the European rule is selected and adopted by a large number of non-EU states. It paid particular attention to the role of international organizations in multilateral rule transfer processes. Starting from conceptual models developed to understand the bilateral transfer of European rules and after highlighting similarities between Europeanization and globalization explanatory mechanisms, the paper proposed a series of theoretical amendments to account for the transfer of European rules at the multilateral level. On this basis, two hypotheses were formulated, each of which emphasized a different logic of rule transfer (consent versus constraint).

The case studies conducted provide a first and helpful plausibility probe of the hypotheses formulated in section 5. Both the IMO and UNECE cases show that consent can be sought and secured when rule exporters use international organizations as platforms to convey via deliberative processes the effectiveness and/or legitimacy of their rules. Such processes were found within functional networks where technical expertise and socialization prevail over national affiliations (IMO's Maritime Environment Protection Committee; UNECE's World Forum for the Harmonization of Vehicle Regulations). Thus regarded, the reliance on international organizations, although a time-consuming and costly endeavor, has undeniable advantages upon the depth of rule transfer: A rule exported on the basis of network governance is more likely to be fully transferred (and implemented) than a rule exported hierarchically, with little consideration for the domestic preferences and interests of the rule importers.

Yet, it would be erroneous to consider that the reliance on international organizations is a necessary or sufficient condition for effective multilateral rule transfer. Indeed, an actor may spare itself the expense of conveying the effectiveness and legitimacy of its rule via the relevant UN body if it enjoys a favorable power position, resulting for instance from market dynamics or from developed regulatory capacities. As evidenced by the GSM case, the actor seeking to export its rules may also create its own institutions and networks rather than relying on pre-existing international organizations. In this context, another lesson of the GSM case is that market/network governance can take very asymmetrical forms when occurring in policy areas characterized by high levels of informational and expertise asymmetries (in particular when combined with technology ownership). Finally, the WTO case teaches us that the consent-seeking strategy,

which requires substantial investment in time, money, reputation and staff, may fail to pay out if the effectiveness and legitimacy of the rule to be transferred is not credibly established within the governance institution.

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