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Eguzki Osteikoetxea



DEPARTMENT OF EUROPEAN POLITICAL
AND ADMINISTRATIVE STUDIES

Bruges Political Research Papers

32 / 2013



College of Europe
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Natolin

European Political and Administrative Studies /
Études Politiques et Administratives

Bruges Political Research Papers / Cahiers de recherche politique de Bruges
No 32 / November 2013

EU Trade Actors after Lisbon: Enhanced Negotiations or Business as Usual?

By Eguzki Osteikoetxea

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European Political and Administrative Studies/
Études Politiques et Administratives
Dijver 11, B-8000 Brugge, Belgium
www.coleurope.eu/pol

About the author

Prior to obtaining a Master of Arts in European Political and Administrative Studies from the College of Europe (Václav Havel Promotion), Eguzki Osteikoetxea pursued Law and Economics at the University of Strasbourg (France) and the University of Deusto (Spain). He currently works in the financial sector as a regulatory compliance assistant.

Address for correspondence

eguzki.osteikoetxea@coleurope.eu

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Abstract

As seen by the launching of trade negotiations with Japan and the United States, the European Union has shifted gears in order to achieve amplified benefits in bilateral trade agreements. The entry into force of the Lisbon Treaty brought the European Parliament and the European External Action Service into the picture as new actors in trade negotiations. The question arises if the new framework of trade negotiations is better off than the pre-Lisbon era. By applying Veto Players theory to the Central American Association Agreement and Principal-Agent theory to the Ukrainian Association Agreement, two results were concluded. First, the participation of the European Parliament as a veto player has decreased the effectiveness of trade negotiation. Second, the participation of the European External Action Service has shown the contrary, namely an increase of effectiveness in trade negotiations.

Described as a process of issues, parties, goals and interactions, negotiations¹ play an essential role in the European Union's (EU) policy-making. Through intense bargaining, actors seek to maximize their benefits in order to achieve their individual goals. Eventually, negotiations tend to expand their scope by increasing the number of policy areas and/or actors involved. However, this tendency brings about fears that negotiations become increasingly difficult as more actors defend their own interests.

For EU trade negotiations, the paradigm is far more complex. For one, trade agreements can take many forms,² from the narrowest based on purely economic interests such as Free Trade Agreements (FTA) to the most exhaustive composed of several policy areas such as Association Agreements (AA). In addition, the EU has been urged to reach its full trading potential to alleviate challenges faced at home, such as the economic crisis. If current trade negotiations were to enter into force today, the EU would generate over 2 million jobs and boost its economy by 2.2%³ of its GDP.⁴ With over 45⁵ trade agreements (28 in force, 9 concluded but not yet in force and 9 underway), the EU has taken serious steps towards optimizing its economic benefits.⁶

In parallel, when the Lisbon Treaty (LT) came into force it changed the trade negotiation structure by bringing the European Parliament (EP) and the European External Action Service (EEAS) into the picture. Hence, one can question if the Lisbon Treaty has enhanced trade negotiations or if it remains business as usual. To guide our analysis, the following hypothesis will be tested: *the Lisbon Treaty has hindered the effectiveness of EU trade negotiations by adding the European Parliament and the European External Action Service*. This hypothesis contradicts the current view from academics such as Stephen Woolcock,⁷ who stated that involving new institutions does not alter the 'business as usual' of

¹ D. J. Seminare, & M. C. Campbell, 'Consequences of Principal and Agent', in: Andrea Kupfer Schneider & Christopher Honeyman (eds.), *The Negotiator's Fieldbook*, Washington D.C, American Bar Association, 2006, pp. 498.

² N. Nugent, *The Government and Politics of the European Union*, Basingstoke, Palgrave Macmillan, 2006, 6th edn., p. 372.

³ European Commission, Directorate General for Trade, *Growth and Jobs Commission contribution to the European Council*, Brussels, European Union, February 2013, retrieved 29 April 2013, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151052.pdf, p.1.

⁴ Gross Domestic Product.

⁵ European Commission, Directorate General for Trade, *Memo; The EU's free trade agreements – where are we?*, Brussels, European Union, March 2013, retrieved 21 April 2013, http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf

⁶ S. Woolcock, 'EU trade Policy and the Treaty of Lisbon', in: Julia Lieb, Nicolai von Ondarza & Daniela Schwarzer (eds.), *The European Union in International Fora*, Baden-Baden, Nomos, 2011, p. 96.

⁷ Woolcock, *EU trade Policy and the Treaty of Lisbon*, *op. cit.* p. 95.

trade negotiations.

Throughout this article, Laatikainen's definition⁸ of internal effectiveness as "the process of reaching agreements" through "internal decision-making structures and procedures"⁹ will be used. This definition seems beneficial as our focus aims to discover the impact of the EU's new institutional trade actors on trade negotiations. With regards to the analytical framework, Veto Players Theory (VP theory) will be applied to the EP and Principal-Agent Theory (PA theory) will be applied to the EEAS. As the European Parliament follows a veto player's logic since it possesses the faculty of blocking an agreement if it wishes so, VP theory seems to be the most suitable in order to provide accurate insights. Its added value is the simplification of legislative politics behind decision makers. For the European External Action Service, PA theory seems to be a suitable analytical tool as it clarifies delegations of powers between executive bodies. That is, it describes complex delegation relationships from one actor such as the Council to another such as the EEAS. Two case studies will be analyzed. First, the Central American Association Agreement will be analyzed through VP theory to describe the role of the EP before and after Lisbon. Second, the Ukrainian Association Agreement will be analyzed through PA theory in order to assess the role of the EEAS in trade negotiations.

The outcome of this analysis allows us to validate the hypothesis by highlighting the tipping point where trade negotiations become less effective than during the pre-Lisbon period. Depending on the degree of political elements involved, the EEAS or the EP will have a more significant role, which in turns leads to an impact on effectiveness. The article will be divided as follows: part 1 will provide an overlook of the changes brought by the Lisbon Treaty, and then parts 2 and 3 will analyze in depth the roles of the European Parliament and European External Action Service with their respective case studies and theories.

1. Changes brought by the Lisbon Treaty

In December 2009 the Lisbon Treaty entered into force producing several effects regarding the institutional structure of the EU. As described by Jörg Monar, the new institutional system is characterized by the European Parliament and the Council as the primary poles of power.¹⁰ With regards to foreign policy, the LT was far from being modest. First it created a new role

⁸ K. V. Laatikainen & K. E. Smith, , *The European Union at the United Nations; Intersecting Multilateralisms*, Basingstoke, Palgrave MacMillan, 2006, p. 9.

⁹ *Ibid.*, p. 16.

¹⁰ J. Monar, 'The European Union's institutional balance of power after the Treaty of Lisbon', 2010, retrieved 4 May 2013, http://ec.europa.eu/education/jean-monnet/doc/ecsa10/monarb_en.pdf, p. 20.

called the High Representative for Foreign Affairs and Security Policy (HRVP), responsible for ensuring coherence in the EU's external policy. To fulfill its tasks, the HRVP was granted the European External Action Service as an assisting body. Second, the Lisbon Treaty reinforced the European Parliament by granting it "veto powers"¹¹ over international agreements¹² and enhancing its role as a co-legislator for trade legislation.¹³ When trade agreements were negotiated, the pre-Lisbon system only involved the Commission and the Council; the EP was sidelined since it was perceived as having no "real credibility"¹⁴ and no "formal say in the process".¹⁵ Specifically, the Commission acted as the negotiator and proposed a first draft mandate¹⁶ to the Council. The Council used to be the only veto player as it could agree or refuse the mandate, and when dealing with political elements, it would delegate the responsibility to the rotating presidency.

This changed when the LT entered into force. As stated by article 218 TFEU,¹⁷ trade agreements currently undergo the consent procedure whereby the EP has the ability to approve or reject. Consequently, the LT added a new veto player¹⁸ in trade policy since the EP can block agreements if it wishes to do so. With regards to the EEAS, according to article 27 TEU¹⁹ this service assists the HRVP in representing the EU in external policy. As some trade agreements deal with external policy (e.g. political elements), the EEAS intervenes in order to ensure a coherent approach. Specifically the inter-institutional arrangements between the Commission and the EEAS have established that whenever trade interests are discussed, DG Trade would be the one in charge of trade negotiations. In contrast, whenever a political dimension is discussed, the EEAS would step in and lead the negotiations.²⁰

Such changes are illustrated in figure 1. The top diagram represents the situation *before* the entry into force of the LT, and the one at the bottom represent the situation *after* the entry into force of the LT. The actors are illustrated as Commission (COM), Council (C),

¹¹ E. Wisniewski, 'The Influence of the European Parliament on the European External Action Service', *European Foreign Affairs Review*, vol. 18, no.1, 2013, p. 84.

¹² Treaty on the Functioning of the European Union, article 218.

¹³ C. Crombez & W. Van Gestel, 'The Treaty of Lisbon and European Union Trade Policy: A Political-Economic Analysis', September 2011, retrieved 23 March 2013, https://lirias.kuleuven.be/bitstream/123456789/320693/1/MSI_1113.pdf, p. 3.

¹⁴ S. Woolcock, 'The potential impact of the Lisbon Treaty on European Union External Trade Policy', *Swedish Institute for European Policy Studies*, no.8, 2008, p. 4.

¹⁵ S. Meunier, *Trading Voices: The European Union in International Commercial Negotiations*, Princeton, Princeton University Press, 2005, p. 36.

¹⁶ Crombez, *op. cit.*, p. 15.

¹⁷ Treaty on the Functioning of the European Union.

¹⁸ Wisniewski, *loc. cit.*

¹⁹ Treaty Establishing the European Union.

²⁰ Telephone Interview with EU Official 1, Commission, 9 April 2013.

EEAS and the rotating presidency (PRE). The negotiations stages are represented at the top, from the proposal of a mandate (1) to the approval of the trade agreement (4). The circle represents active participation in negotiations whilst the rhomboid shape of the EP illustrates a restricted information role. The shaded area represents the addition of new actors and qualified majority voting at the Council (illustrated by a dashed circle). Lastly the circle with a cross inside represents inter-institutional accountability for negotiators.

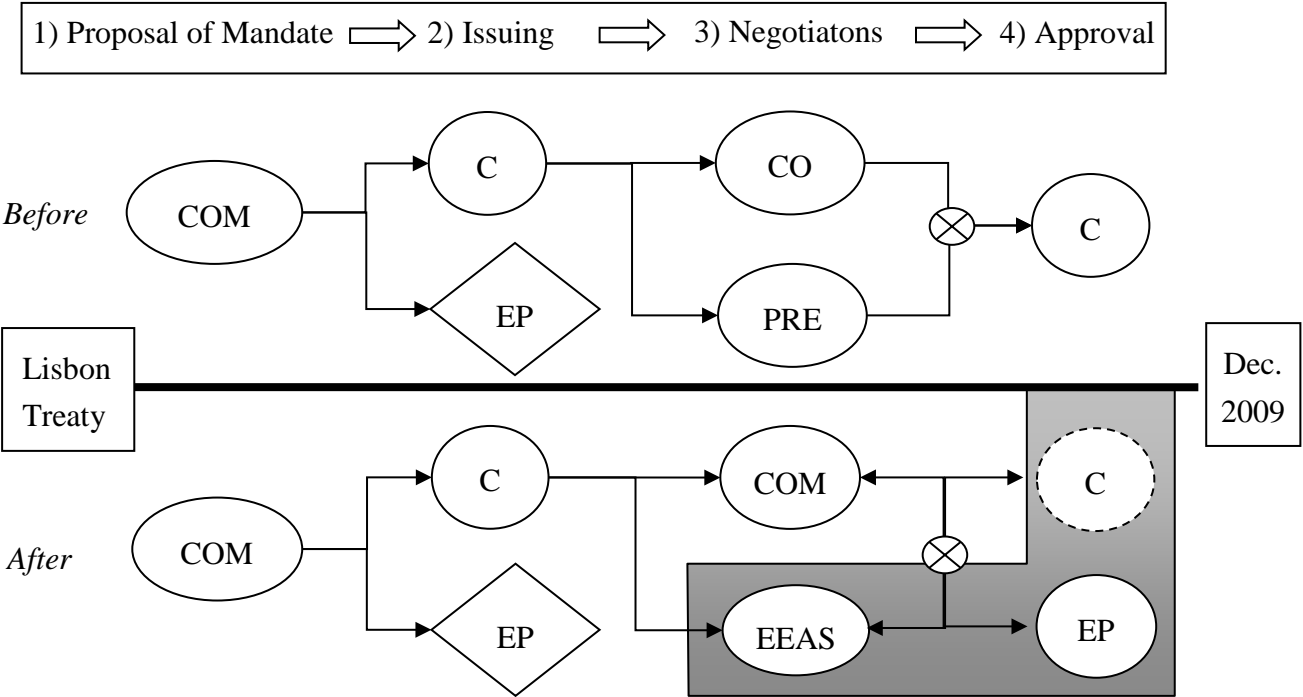


Figure 1: Negotiations Process Pre/Post Lisbon

Consequently, the LT has significantly changed how negotiations are carried out. However, this does not necessarily translate to an impact on effectiveness. To tackle this question and test the hypothesis, the following pages will analyze the EP and the EEAS.

2. The European Parliament: The New Veto Player

In today’s trade negotiations, the EP enjoys an improved status. Yet, the question arises if such involvement has impacted the effectiveness of trade negotiations. The following section will further develop the participation of the EP and then apply Veto Players Theory to the Central American Association Agreement.

Participation in trade negotiations

Beginning with the formal changes brought by the LT, the mandate constitutes the backbone of negotiations of trade agreements. Not only does it embody the main guidelines to be followed, but it also establishes the limits of approval. According to article 207 TFEU,²¹ the Commission proposes negotiation mandates to the Council, which may modify, approve or reject them. At this stage the EP only participates by observing proposed draft mandates.²² On the contrary, final mandates delivered by the Council are not even disclosed to them. To the disadvantage of the EP, draft and final mandates significantly diverge as Member States tend to heavily restrict²³ final mandates in order to protect their national industries. Therefore, the EP's participation in the negotiation mandate is strongly hampered by its observer status and limited access. Looking at the negotiation table, the Lisbon Treaty does not explicitly mention the EP as participant. Indeed, the EP does not enjoy the same competences as the Commission²⁴ to engage in negotiations with third actors. Neither does it enjoy the advantages of the Council to "give its input"²⁵ in negotiations which may modify the strategy completely. Nevertheless, the situation differs when looking at the ability to monitor negotiations. According to article 207 TFEU, the Commission is legally obliged to "report regularly"²⁶ to the EP with regards to the progress of negotiations. That is, the Commission has the obligation to cooperate with the EP's international trade committee (INTA) which may incentivize²⁷ the latter to step up its involvement. Lastly, as stated in article 218 TFEU, the approval of a trade agreement can only be concluded by the Council when the EP has delivered its consent. Since consent only allows a yes or a no decision, the EP enjoys a limited 'take it or leave it'²⁸ approach which characterizes the EP as the new veto player. Even though direct intervention at the negotiation table has not been provided for the EP, its role has been formally enhanced by granting veto and monitoring powers. These formal

²¹ Treaty on the Functioning of the European Union.

²² Interview with Member State Trade Representative 1, Permanent Representation to the EU, Brussels, 10 April 2013.

²³ Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

²⁴ Woolcock, *EU trade Policy and the Treaty of Lisbon*, *op. cit.* p. 95.

²⁵ Interview with Member State Trade Representative 1, Permanent Representation to the EU, Brussels, 10 April 2013.

²⁶ Treaty on the Functioning of the European Union, article 207(3).

²⁷ Woolcock, *The potential impact of the Lisbon Treaty on European Union External Trade Policy*, *op. cit.*, p. 4.

²⁸ Interview with Member State Trade Representative 1, Permanent Representation to the EU, Brussels, 10 April 2013.

changes give us a first look at the improved position of the EP, yet the second part of the story remains to be told, the informal changes.

From the conception of the LT to today, the EP has been subject to a series of informal changes such as parliamentary diplomacy and INTA's monitoring dexterity. Beginning with the former, the EU's external image is decisive in determining how and when trade agreements take place. The EP has taken the advantage of this concept by engaging into parliamentary diplomacy which consists of building EU's external relations through legislative actors. Specifically, the EP invites ministers and legislators of respective foreign counterparts to closely follow trade relations between their economies. The advantages are quite significant; from ensuring political momentum to restarting negotiations entirely, parliamentary diplomacy may become key to concluding trade agreements. Since the entry into force of the LT, this practice has been used more frequently as institutions and foreign counterparts see the EP as enjoying a real voice in trade policy. An example of this has occurred when the EPP's foreign affairs coordinator, MEP Salafranca, was recently called upon by an official at DG trade to give a high-level boost for the Mercosur negotiations. Such a boost was considered essential as the Commission's trade negotiations cycle would end at the end of this year due to the electoral campaign for the 2014 EU elections. Moreover, the new monitoring power of the EP has encouraged a practical role for the INTA committee. In contrast to national parliaments, the EP enjoys more influence over the negotiation of trade agreements than many national parliaments enjoy over the activities of the executive outside their borders.²⁹ Specifically, an unforeseen monitoring "acquis"³⁰ has emerged. First, with the exception of the final mandate signed by the Council, the INTA committee receives all documents related to trade negotiations communicated to the Trade Policy Committee (TPC) at the Council. Second, the INTA committee invites chief negotiators from DG trade in order to receive updates on negotiations statuses. Even Commissioner for trade³¹ Karel De Gucht is called upon to give updates and answer questions. Third, through the platform named 'Technical Briefings' MEPs, assistants, and advisors for political parties have the chance to participate in dialogues with DG trade officials. Fourth, the INTA committee has created specific monitoring groups where MEPs acting as rapporteurs would regularly follow trade

²⁹ M. Furness, 'Who controls the European External Action Service? Agent Autonomy in EU External Policy', *European Foreign Affairs Review*, vol.18, no. 1, 2013, p. 113.

³⁰ Telephone Interview with EU Official 2, European Commission, 12 April 2013.

³¹ De Sarnez, Marielle, MEP (ALDE) Member of the INTA Committee, Interview with Parliamentary Assistants, European Parliament, Brussels, 10 April 2013.

negotiations. Fifth, the INTA committee invites high level officials to use the EP as a second forum of dialogue for trade-related aspects in a more dynamic and flexible manner than DG trade.

Nonetheless, to the misfortune of the EP, a newcomer's problem exists since the INTA committee does not have the resources, the technical expertise or the adequate time to closely monitor negotiations. INTA committee meetings are held only once a month whilst their new tasks require more time to comprehend complex trade technicalities. Taking into account that there are more than 700 EU trade documents a year,³² the resources that the INTA committee possesses are simply not sufficient to be adequately informed. An example of this was the recent trade negotiations with Canada which involved a novel negotiation technique where a 'negative list' was used to exempt industry sectors. This technique has not been used by the EU before, and the EP was not aware that this technique was implemented.³³

Even though some temporary shortcomings are being felt by the INTA committee, the bottom line is that such shortcomings are due to its exponential influence growth in trade negotiations. Compared to the pre-Lisbon period, the net balance is that the EP enjoys more influence³⁴ in trade negotiation both formally and informally. Taking into account such insight, it seems that the growing power of the EP may significantly affect the effectiveness of trade negotiations. In order to test the veracity of the previous statement, the next paragraphs will follow with an application of a middle range theory to the Central American AA.

Applying Veto Players theory to the Central American Association Agreement

With over €2 billion of trade in goods in 2011,³⁵ bilateral relations between the EU and Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama) had been increasing until the approval of the Association Agreement in December 2012. Even though negotiations were concluded two years ago,³⁶ the AA between the EU and Central America is pending since it comprises mixed competences which require both EU and individual Member States' ratification.³⁷ This trade agreement is useful for analysis since it has been partially negotiated after the entry into force of the LT and has thus reflects the

³² *Ibid.*

³³ *Ibid.*

³⁴ Woolcock, *EU trade Policy and the Treaty of Lisbon*, *op. cit.*, p. 97.

³⁵ European Commission, *Memo The EU's free trade agreements – where are we?*, *loc. cit.*

³⁶ *Ibid.*

³⁷ Salafranca Sánchez-Neyra, José Ignacio, MEP (EPP) Foreign Affairs Coordinator, Member of the AFET Committee, Interview, Brussels, 11 April 2013.

influence of the EP. Before approving the AA, the EP had established an additional roadmap that listed specific engagements by both parties with regards to political dialogue, social cohesion and reduction of poverty.³⁸ This was no coincidence, since the EP was strongly targeted³⁹ by pro-social rights Non-Governmental Organizations to assert a position that would be more suitable to their interests. As a response, MEPs from the INTA and AFET (foreign affairs) committees strongly positioned themselves in favor of the inclusion of such measures. Specifically, the rapporteur of the interim report on the approval of this AA, MEP Salafranca, pushed for a robust positioning of the EP.⁴⁰

In order to interpret the pre-Lisbon situation, the Global Agreement between EU and Mexico was chosen for comparison. The justification for such benchmark agreement goes as follows: First, the Mexican agreement is similarly categorized as an Association Agreement with a comprehensive approach of policy domains such as promotion of civil society. Second, the Mexican agreement was negotiated and ratified before the Lisbon Treaty, thus allowing a useful benchmark to derive preferences of the only trade actors back then, the Commission and the Council. Thus, the Central American AA with a benchmark of the Mexican AA will help us to discover changes in effectiveness. To achieve this, the political science instrument called Veto Players theory will be used.

In a nutshell, VP theory helps us by shedding some light regarding lawmaking decisions and actors' involvement⁴¹ in trade agreements. Two elements are relevant for this study: predictions of actors' behavior and policy outcome.

Starting with the prediction of actor's behavior, VP theory illustrates the behavioral incentives by locating the actors' position with regards to the negotiation process. A Euclidean diagram serves to illustrate the preferences between veto players with regards to policy proposals and alternatives available. Figure 2 has been conceived to illustrate the basics of veto player's interaction. The diagram shows two policy areas (e.g. European Integration and the role of National Parliaments), three veto players (EP, Council and the

³⁸ European Parliament, *Interim Report on the draft Council decision on the conclusion of the Agreement establishing an Association between the European Union and its Member states, on the one hand, and Central America, on the other*, ref. A7-0360/2012, Brussels, European Union, December 2012, retrieved 21 April 2013, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0360&language=EN>

³⁹ De Sarnez, Marielle, MEP (ALDE) Member of the INTA Committee, Interview with Parliamentary Assistants, European Parliament, Brussels, 10 April 2013.

⁴⁰ *Ibid.*

⁴¹ G. Tsebelis, *Veto Players; How Political Institutions work*, Princeton, Princeton University Press, 2002, p. 283.

Commission as COM), their ideal points represented by the black dots, and the status quo illustrated as SQ. The circular forms taken by each veto player represent the “*circular indifference curves*,”⁴² which explains the furthest available alternative that the veto player would still accept. That is, the furthest options that actors are willing to take compared to their ideal preference represented by the black dots. Thus, the closer to the black dots, the better off a specific actor will be.

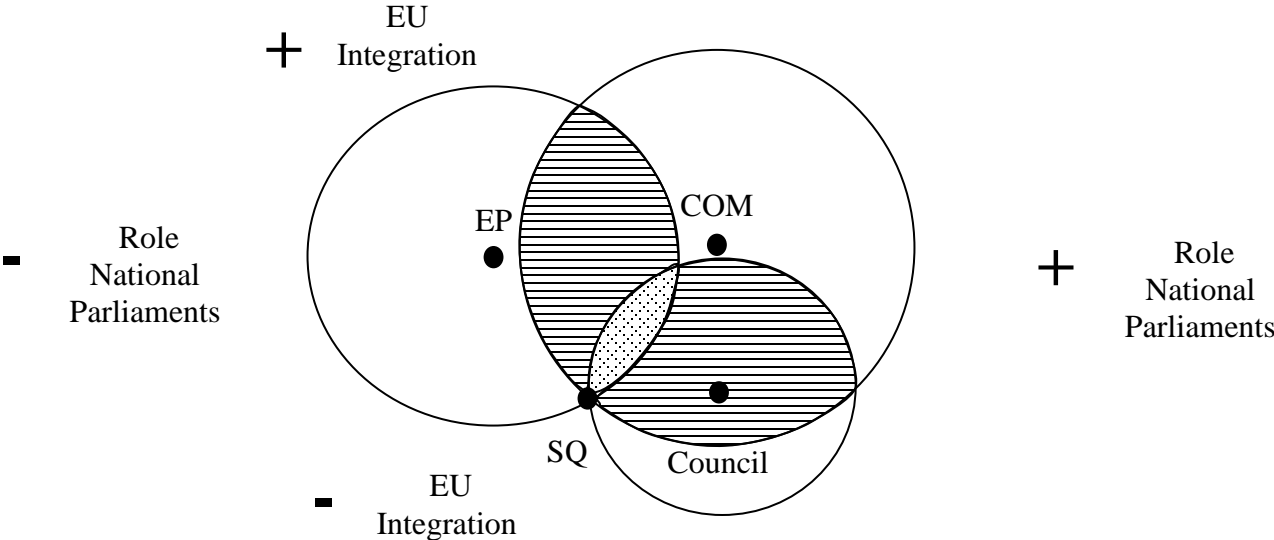


Figure 2: Veto Players Theory and Euclidean diagram

In addition, the shaded area represents the *winset* available. A winset describes the alternative⁴³ policy outcomes that are feasible to approve and can thus “defeat the status quo”.⁴⁴ For EU trade negotiations, the winset is represented by the *dotted* pattern as the decision-making rule is unanimity. If this would be another policy area which would require qualified majority between actors, the winset would expand to the *horizontal* pattern giving more alternative policy outcomes. Policy preferences are based on the theory’s assumption that actors “gave an ideal notion of the outcome”⁴⁵ and can thus decide through statements,

⁴² Tsebelis, *Veto Players; How Political Institutions work*, *op. cit.*, p. 20.
⁴³ T. König & D. Junge, ‘Veto Player and Consensus Behaviour’, in: Daniel Naurig & Helen Wallace (eds.), *Unveiling the Council of the European Union; Governments Play in Brussels*, Basingstoke, Palgrave Macmillan, 2008, p. 83.
⁴⁴ Tsebelis, *Veto Players; How Political Institutions work*, *op. cit.*, p. 21.
⁴⁵ König, *loc. cit.*

position papers, and press releases which preferences are more suitable for them.

Following with VP theory's second element, the prediction of policy outcomes, VP theory's predictions are quite accurate when the identities, positions, and status quo are known. The prediction regarding policy stability brings about the most interest for our purpose. Defined as the "impossibility for significant departures from the status quo",⁴⁶ policy stability describes the situation where actors and their respective position render policy change extremely difficult. An indicator to measure such situation is the size of the winset. The two essential factors in determining winset size are the number of veto players and their distances. With regards to the number of veto players, an addition leads to a reduced winset which in turn increases policy stability. However not all additions lead to a reduction; according to the 'absorption rule', it depends on the position. If the new veto player is added among other veto players, their preferences may be similar and thus a reduction of the winset is not foreseen. With regards to the distance, the positions of the actors' ideal preferences are crucial in determining the winset. By considering all positions together, a "constellation"⁴⁷ of veto players is perceived which enables the reader to accurately understand policy outcomes. When the distance between veto players is increased, a reduction of the winset occurs which leads to higher policy stability. Nevertheless, it is important to corroborate if VP theory's predictions are accurate. König authored a study of Commission's proposals between 1984 and 2004 and concluded that 75%⁴⁸ of the proposals were correctly predicted as EU policy outcomes.

Now that we have set up the basis for VP theory, it is time to apply this theory to the Central American AA. Similarly to figure 2, Euclidean Diagrams were created with the addition of actors' saliencies (elliptical shapes), policy areas of trade interests (Market Liberalization on the X axis), and non-trade interests (social cohesion on the Y axis). The circular indifference curves have been derived from the Mexican AA (Pre-Lisbon) and the Central American AA (Post-Lisbon) through their respective position papers. With this in mind, figure 3 and 4 illustrate the pre-Lisbon and post-Lisbon situations respectively.

⁴⁶ *Ibid.*, p. 2.

⁴⁷ Tsebelis, *Veto Players; How Political Institutions work*, *op. cit.*, p. 5.

⁴⁸ *Ibid.* p. 93.

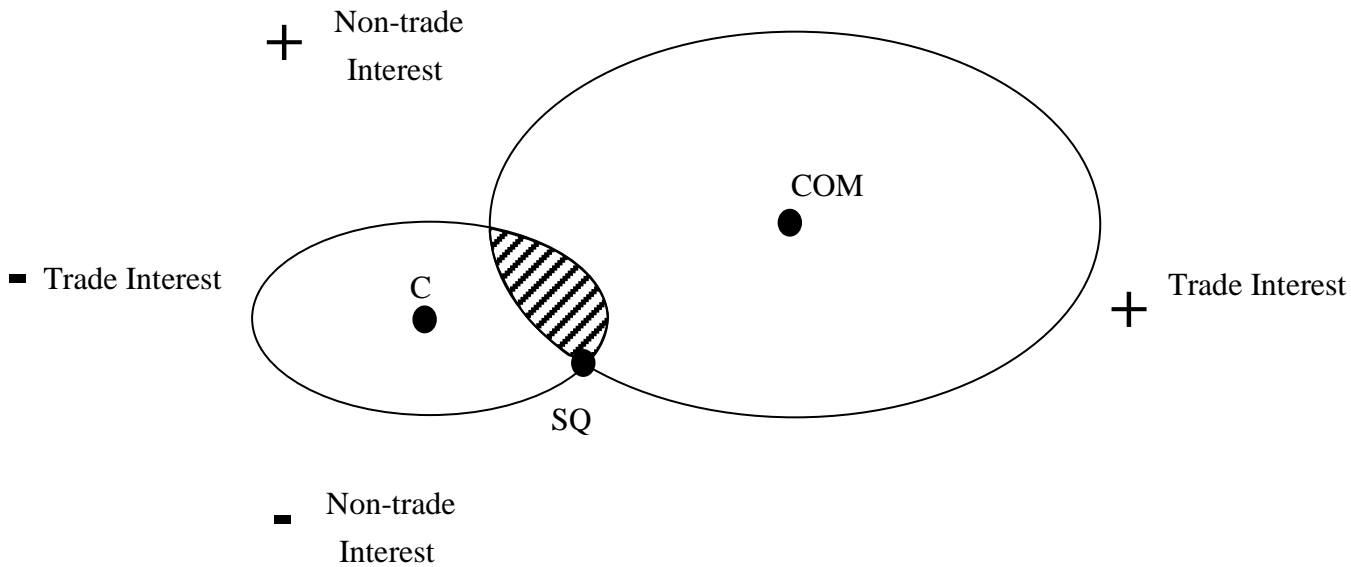


Figure 3: VP theory and Negotiations Pre-Lisbon

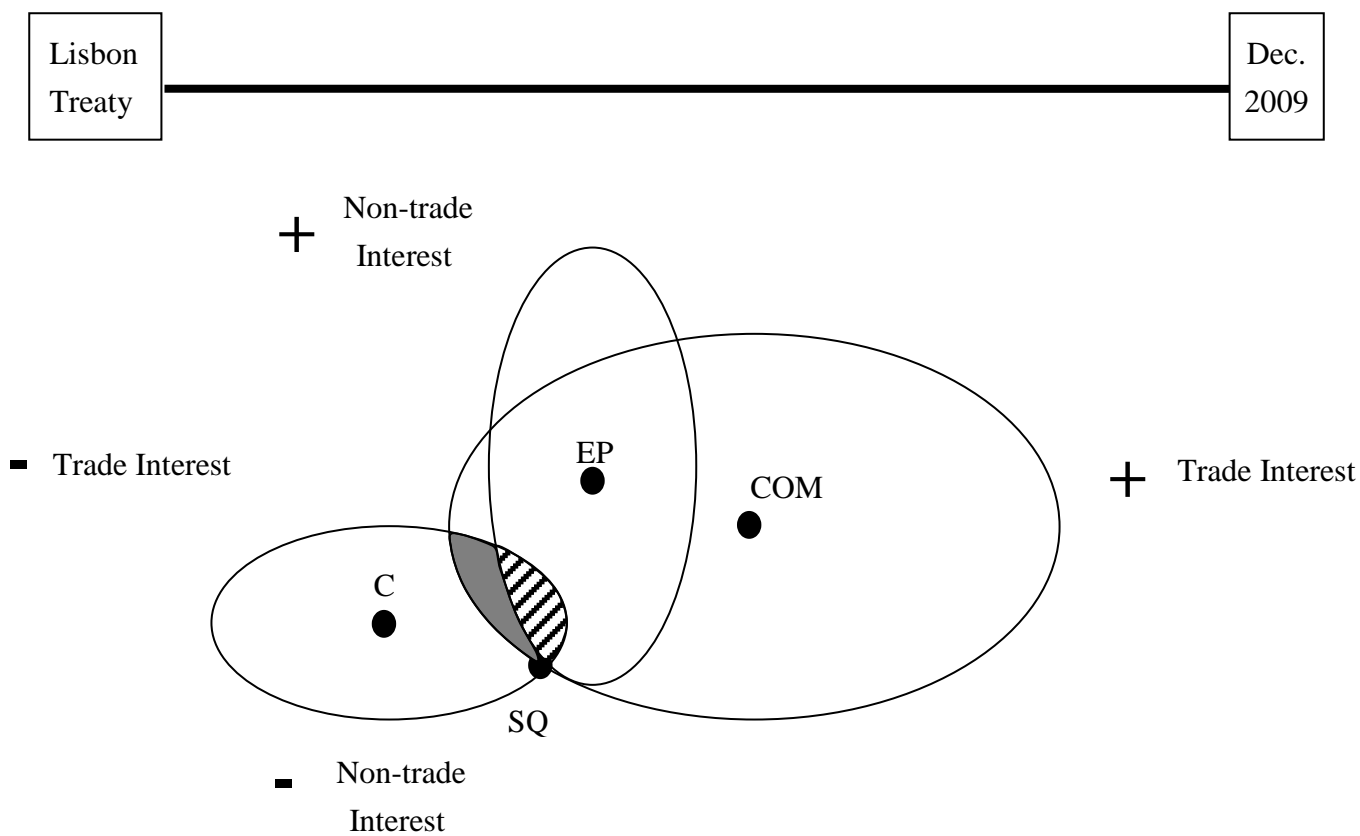


Figure 4: VP theory and Negotiations Post-Lisbon

As showed by figure 4, the winset has decreased by about half after the entry into force of the Lisbon Treaty. The dashed area represents the current winset and the gray area represents the winset lost due to the addition of the EP as a new Veto Player. This loss has been confirmed by authors⁴⁹ arguing that policy options would be constrained as well as the Commission's ability to set the agenda. Moreover, EU officials have corroborated such outcome by raising the worry of "political horse-trading"⁵⁰ between MEPs. Consequently, the loss of winset in negotiations of EU trade agreements hinders⁵¹ available policy options and further hampers the EU's bargaining position. The Commission, acting as the negotiator with trade partners, now has less policy options available to propose. Therefore, the addition of the EP has adversely⁵² affected trade negotiation since it is more difficult⁵³ for the Commission to find available policy options that would be adopted. In terms of the hypothesis, '*the Lisbon Treaty has hindered the effectiveness of EU trade negotiations by adding the European Parliament and the European External Action Service,*' if the negotiation process is more difficult, the *internal* effectiveness which relates to the decision making procedure is reduced. Therefore, the hypothesis was proven to be true with regards to the European Parliament's addition. Nevertheless, this significant change in trade negotiations comes at a stage where the learning process⁵⁴ is still in progress, and other actors such as the EEAS are increasingly playing an important role.

3. The European External Action Service; the Political Negotiator

Responding to the need for more coordination,⁵⁵ the EEAS was conceived to enhance EU's voice. First, the participation of the EEAS in negotiations will be discussed, and then we will apply Principal-Agent theory to the Ukrainian Association Agreement.

⁴⁹ Crombez, *op. cit.*, p. 18.

⁵⁰ Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

⁵¹ *Ibid.*, p. 20.

⁵² Woolcock, *EU trade Policy and the Treaty of Lisbon*, p. 97.

⁵³ Telephone Interview with EU Official 1, European Commission, 12 April 2013.

⁵⁴ Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

⁵⁵ C. Grant, *The European External Action Service*, Centre for European Reform, March 2013, retrieved 29 April 2013, <http://www.cer.org.uk/publications/archive/review-article/2013/european-external-action-service>, p.1.

Participation in trade negotiations

As mandated by the LT in article 27 TEU,⁵⁶ the EEAS aims at assisting the HRVP with its responsibility of ensuring coherence of EU's external policy. This policy embodies⁵⁷ external action policies decided at the Commission and foreign policy decisions taken at the Council. Prior to the LT, the Council relied on the Commission and occasionally the rotating presidency in order to conclude comprehensive trade agreements that touched economic as well as political domains. However, this reliance frustrated trading partners since they perceived the negotiation structure as confusing⁵⁸ with regards to the real identity of negotiators. For this reason, the statute of the EEAS places it "under the authority" of the HRVP in order to ensure a clear role of coordination. With regards to informal changes, the participation at the negotiation table and inter-institutional cooperation come into light. Beginning with the negotiation table, when trade agreements involve political areas due to specific chapters in an FTA or overall objectives of AAs, the EEAS takes the lead⁵⁹ as a political negotiator. When there is a linkage between trade interests and political areas, there is a split⁶⁰ in two negotiation mandates, one being for specific trade matters and the other for political matters. The main benefit of this division of labor is the global awareness⁶¹ that EEAS officials have as opposed to the DG trade officials. When DG trade officials negotiate trade aspects with third actors, they may not perceive the global context of the agreement, the intentions of Member states, and coherence with other policies as well as EEAS officials do. However, it is likely that such division of labor leads to difficulties. As a DG trade official stated,⁶² there is a growing tendency of negotiating political elements before trade chapters. This result in tensions as DG trade prefers not having prior political commitments since they may complicate the process by reducing its leverage. Thus, an issue of competing interest exists where two bodies try to push their intentions to the greatest extent. An example of this has occurred with the political desire for labeling products coming from the Occupied

⁵⁶ Treaty Establishing the European Union.

⁵⁷ *Ibid.*, p. 104.

⁵⁸ P. Messerlin & W. Jinghui, 'Redesigning the European Union's trade policy strategy towards China', *European Centre for International Political Economy*, Working Paper no. 04/2008, retrieved 21 April 2013, http://www.gem.sciences-po.fr/content/publications/pdf/Messerlin_wang_EUchina_long_EN20022008.pdf, p. 26.

⁵⁹ Telephone Interview with EU Official 1, European Commission, 9 April 2013.

⁶⁰ Telephone Interview with Member State Trade Representative 2, Permanent Representation to the EU, 11 April 2013..

⁶¹ Grant, *op. cit.*, p. 2.

⁶² Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

Territories in Israel,⁶³ which in turn affected trade relations with Israel.

Following up with inter-institutional cooperation, depending on the institution, diverging tendencies are showcased. Starting with the Commission, as legally mandated by article 3 of the Council Decision establishing the service, the EEAS and the Commission have the obligation of regularly consulting each other in “all matters”⁶⁴ related to the external action of the Union. In practice the EEAS participates in preparatory work of external action competences remaining at the Commission such as trade. This mechanism has been conceived in order to avoid multiplicity of action and blockage of the EU legislative machinery. In particular, the worries of “turf battles”⁶⁵ were at the origin of such coordination mechanisms. Besides, it was common knowledge that after decades of enjoying the mastering of policies such as trade, Commission officials would not be eager to give up their power and be coordinated.⁶⁶ Thus, a strong emphasis was seen in order to force the two actors to cooperate with each other and avoid mistakes. The Commission has indeed taken steps to appease the above fears by inviting a representative from the EEAS to weekly meetings named ‘groupe des relations interinstitutionnelles (GRI)’ where representatives of several directorate generals meet in order to coordinate portfolios of external action. Moreover, an interesting example of cooperation has been the EU delegations abroad. Before the entry into force of the LT, EU delegations served as a one-stop shop in order to contact relevant departments of the Commission. Roughly, more than half of the personnel in such delegations were officials from the Commission, paid by the Commission, and mandated by the Commission. Now, EU delegations play a bigger role as article 221 TFUE establishes that they represent the entire Union, even though their staff is maintained at pre-Lisbon levels.⁶⁷ EU ambassadors are responsible for actions of the delegation as whole, even for the Commission’s activities such as trade. For this reason, coordination is legally mandated to the extent that the Commission’s instructions sent to its officials in EU delegations have to be sent as well to respective EU ambassadors. A clear case of this close coordination occurred in the negotiation of a mixed agreement between the EU and New Zealand where a chief negotiator from DG trade was not available to carry out trade negotiations. To solve this, the head of the EU delegation in New

⁶³ *Ibid.*

⁶⁴ Council of the European Union, *Council’s decision establishing the organisation and functioning of the European External Action Service*, *loc. cit.*

⁶⁵ Furness, *op. cit.*, p. 111.

⁶⁶ Grant, *op. cit.*, p. 2.

⁶⁷ T. Renard, ‘The EU and its Strategic Partners; A critical assessment of the EU’s strategic partnerships’, in: Sven Biscop and Richard G. Whitman, *The Routledge Handbook of European Security*, London, Routledge, 2013, p. 310.

Zealand, an EEAS official, received a mandate⁶⁸ from DG trade to carry out the negotiation instead.

With regards to the Council and the EP, the EEAS has shown mixed results. For the Council, the situation is not as fluid and dynamic as for the Commission. The EEAS has only one observer⁶⁹ dealing with multilateral matters who attends meetings at the Trade Policy Committee every Friday. However, no meaningful participation⁷⁰ is expected. For the EP, through a content analysis of inter-institutional documents, data suggests that the EEAS and the HRVP recognize⁷¹ the EP as an important actor for compromise-building rather than consultation. The EP has achieved this recognition since it has extended its budgetary powers to influence⁷² the HRVP in its role as a Vice president of the Commission. As witnessed by EU delegations welcoming MEPs⁷³ and the creation of an EP's liaison office in Washington D.C.,⁷⁴ it seems that the EEAS aims for favorable cooperation.⁷⁵

In sum, the previous paragraphs have demonstrated how informal changes have extended the foreseen limits of the formal changes created by the inclusion of the EEAS. Thus, we can now move on to the application of Principal-Agent's theory to the Ukrainian AA.

Applying Principal-Agent's theory to the Ukrainian AA

Ukraine is no stranger to European policy-making and its trade policy. To improve relations and boost the previous Partnership and Cooperation agreement, the EU has decided to go forward and deepen relations. As an integral part of the new Association Agreement, the negotiations of the Deep and Comprehensive Free Trade Agreement (DCFTA) have already concluded.⁷⁶ Such trade agreement was incentivized by the volume of trade which amounted

⁶⁸ Interview with EU Official, European External Action Service, Bruges, 18 April 2013.

⁶⁹ Telephone Interview with EU Official 1, European Commission, 9 April 2013.

⁷⁰ Telephone Interview with Member State Trade Representative 2, Permanent Representation to the EU, 11 April 2013.

⁷¹ Wisniewski, *op. cit.*, p. 100.

⁷² Interview with EU Official, European External Action Service, Bruges, 18 April 2013.

⁷³ De Sarnez, Marielle, MEP (ALDE) Member of the INTA Committee, Interview with Parliamentary Assistants, European Parliament, Brussels, 10 April 2013.

⁷⁴ Interview with EU Official, European External Action Service, Bruges, 18 April 2013.

⁷⁵ Telephone Interview with Member State Trade Representative 2, Permanent Representation to the EU, 11 April 2013.

⁷⁶ European Commission, Directorate General for Trade, *Memo; The EU's free trade agreements – where are we?*,

to over €8 billion euros in 2008⁷⁷ and represented a third part of Ukraine's trade. In contrast to other FTAs, the Ukrainian one deals with classical trade matters as well as sustainable development. It has even been described as the "first FTA to include specific provisions on trade- related energy issues".⁷⁸

Nevertheless, even if highly attractive to neighboring countries, the Ukrainian AA is on hold. The main causes⁷⁹ holding the signing are the imprisonment of the previous Prime Minister Yulia Tymoshenko and doubts about the 2012 elections. With regards to the prime minister, the HRVP made a declaration on October 2011 describing Tymoshenko's trial as one that did "not respect the international standards as regards fair, transparent and independent legal process".⁸⁰ Furthermore the HRVP amplified its rhetoric by adding the AA variable on the table. Notably, the HRVP stated that the issue of selective justice against Tymoshenko "risks having profound implications for the EU Ukraine bilateral relationship, including for the conclusion of the Association Agreement".⁸¹ That is, the conclusion of the AA is conditioned to the improvement of the challenges faced in Ukraine. Furthermore, in light of the recent ruling of the European Court of Human Rights in Strasbourg regarding the illegality of the imprisonment of Tymoshenko, the HRVP and the Commissioner for Enlargement have drafted a common declaration where they urge Ukraine to "take urgent steps"⁸² in order to resolve the situation. With regards to the 2012 elections, a negative perspective has been taken over the parliamentary elections. Specifically, the prohibition for opposition parties to run for elections has seriously worried the Council.⁸³

The rationale for choosing the Ukrainian AA is due to the fact that it is the first

⁷⁷ European Commission, Directorate General for Trade, *Statistics Ukraine; EU Bilateral Trade and Trade with the World*, Brussels, European Union, 26 April 2013, retrieved 2 May 2013, http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf

⁷⁸ *Ibid.*

⁷⁹ European External Action Service, *Factsheet; The European Union and Ukraine*, Brussels, European Union, 10 December 2012, retrieved 1 May 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134147.pdf

⁸⁰ European External Action Service, *EU statement on the verdict in the case of Ms Yulia Tymoshenko*, Permanent Council no. 882, Brussels, European Union, 13 October 2011, retrieved 1 May 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134147.pdf

⁸¹ *Ibid.*

⁸² European External Action Service, *Joint Statement by EU High Representative, Catherine Ashton, and Commissioner Stefan Füle on today's judgement by the European Court of Human Rights in the case of Tymoshenko v. Ukraine*, Brussels, European Union, 30 April 2013, retrieved 2 May 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/136966.pdf

⁸³ Council of the European Union, *Council conclusions on Ukraine; 3209th Foreign Affairs Council meeting*, Brussels, European Union, 10 December 2012, retrieved 2 May 2013, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134136.pdf

example of the EEAS' strong positioning affecting a trade agreement. In contrast to the EP, the EEAS is new and cannot be compared to a pre-Lisbon situation on its own. However, the pre-Lisbon situation was characterized by Member States' ad hoc delegation to the rotating presidency which was confusing for third partners. Thus, the EEAS acting as the new political negotiator in trade agreements has already affirmed its power by freezing the signing of the Ukraine AA until political conditions are met. This allows us to look at our instrument of analysis, Principal-Agent theory.

As the current “dominant approach”⁸⁴ in international politics' studies of delegations, PA theory originated as a “microeconomics concept”⁸⁵ to demonstrate particular characteristics embodied in delegation relationships. To put it simply, a principal (one or more actors that *drafted* a mandate) enters into an “agreement”⁸⁶ with an agent (one or more actors that *receives* a mandate) to perform delegated tasks. PA theory has become useful regarding the “complex inter-institutional interactions”⁸⁷ such as EU trade negotiations. The added value of this theory is its ability to predict an agent's behavior and its illustration of the delegation relationship. Starting with the ability of predicting an agent's behavior, this theory sheds some light as it describes the agent's tendency for autonomy and its strategy while performing the mandate. The central assumption of PA theory is that agents have the “incentive to act independently, potentially in ways that run counter to the principal's preferences”.⁸⁸ That is, agents will be tempted to insulate their internal structure from the influence of the principal. With less scrutiny, agents enjoy more room for maneuvering to carry out their tasks. Agents derive such autonomy by pushing the limits of their mandate, persuading the principal through experts, and modifying their oversight scheme in order to avoid principal's scrutiny. Moreover, there are key moments where agents think one step further and develop strategies to execute their mandated goals. Namely, a leading agent strategy is to build support with influential institutions/lobbies in order to buffer itself against

⁸⁴ M. Pollack, 'Principal-Agent Analysis and International Delegation: Red Herrings, Theoretical Clarifications, and Empirical Disputes', *Bruges Political Research Papers*, no. 2, February 2007, retrieved 24 April 2013, <http://www.coleurope.eu/website/study/european-political-and-administrative-studies/research-activities/bruges-political>, p. 2.

⁸⁵ Furness, *op. cit.*, p. 105.

⁸⁶ H. Kassim, & A. Menon, 'The principal-agent approach and the study of the European Union: promise unfulfilled?', *Journal of European Public Policy*, vol. 10, no.1, 2003, p. 123.

⁸⁷ Kassim, *op. cit.*, p. 125.

⁸⁸ Furness, *op. cit.*, p. 105.

the principal's reactions.⁸⁹ Does agent autonomy translate to difficulties? PA theory clarifies this by distinguishing the category of autonomy that might result in difficulties. This category is commonly known as 'drifts' and can be defined as engaging in tangential behavior with regards to an agreed mandate. Drifts can be performed not only by the agent but also by the principal and can lead to adverse results from the ones intended. Starting with an agent's drift, there is an inherent "incentive incompatibility"⁹⁰ where the assumption is made that agents will engage into tangential behavior. In the long term, an agent's drifts can lead to an overall divergence from the desirable outcome which incentivized the delegation in the first place. Following with principal drift, this issue entails the situation where the principal itself is engaged into tangential behavior in comparison to the agreement with the agent. To put it simply, the principal either performs actions not foreseen or abstains from performing its duties as principals. Such drift results in important costs in terms of "efficiency"⁹¹ that can further hinder the agent's performance to the point of rendering delegations unsuccessful. As Kassim⁹² reaffirms, there is an inherent paradox of control mechanisms and effectiveness since robust mechanisms can reduce the ability of agents to carry out their tasks.

Lastly, PA theory simplifies the complexity of delegation relationships. Figure 5 shows the interconnected negotiations diagram of Seminare⁹³ adapted to EU trade negotiations. In particular it clarifies the complexity of the principal-agent relationship and further facilitates the identification of sources that drive issues such as policy drift.

⁸⁹ M. Elsig, & C. Dupont, 'European Union Meets South Korea: Bureaucratic Interests, Exporter Discrimination and the Negotiations of Trade Agreements', *Journal of Common Market Studies*, vol. 50, no. 3, 2012, p. 494.

⁹⁰ Kassim, *op. cit.*, p. 124.

⁹¹ *Ibid.*, p. 134.

⁹² Kassim, *op. cit.*, p. 125.

⁹³ Seminare, *op. cit.*, p. 499.

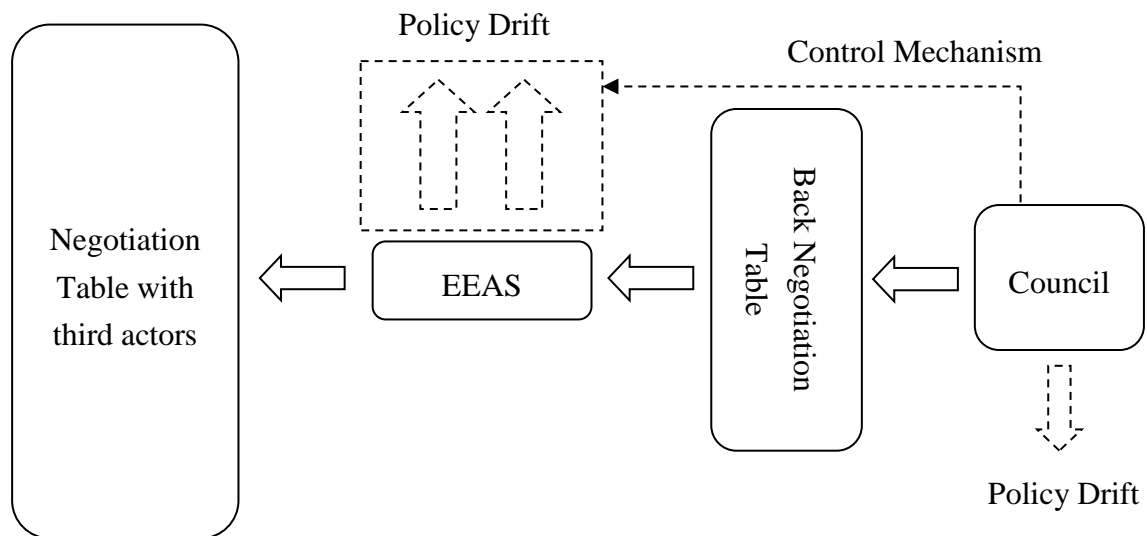


Figure 5: Principal-Agent Theory and Interconnected Negotiations

Diving into more detail, the diagram shows a political mandate for trade negotiations from the Council to the EEAS. It shows the location of the back table negotiation where accountability is enforced by the Council. The dashed arrows represent the sources of policy drift which can start at the beginning or at the middle between negotiation tables. Regarding the control mechanisms, the dashed box surrounding the EEAS illustrates such mechanisms. It should be noted that criticisms have emerged arguing the oversimplification of this theory. A major criticism⁹⁴ is that PA theory does not grasp the real complexity of delegation relationships and further oversimplifies their internal workings. Nevertheless, using a careful holistic approach that combines all institutional actors involved, their statutes, and their specific interests, we can safely apply such a theory to the Ukraine AA.

To begin with policy drift, the robust stand of the EEAS regarding the imprisonment of Tymoshenko results in an interesting policy drift explanation. Specifically, the HRVP and the EEAS built coalitions in order to isolate Member States at the Council. By explicitly tying the conclusion of the AA to the improvement of the situation in Ukraine, namely its selective justice and doubts about past elections, the EEAS was propelled towards an autonomous position with regards to Member States' positions. A number of Member States were indifferent⁹⁵ to the situation of Tymoshenko and wanted the signing of the AA since it benefited them. In light of this, the HRVP pushed through the EEAS a coalition-building approach with the foreign ministries of the United Kingdom, France and Germany and the

⁹⁴ Furness, *op. cit.*, p. 108.

⁹⁵ Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

Commission (through the Directorate General for Enlargement) in order to build support for Tymoshenko. The result of this strategy was twofold. First, joint approaches were delivered between the EEAS and the Commission as seen by the recent joint statement⁹⁶ between the HRVP and the Commissioner for Enlargement. Second, the notorious football championship Euro 2012 partially hosted in Ukraine suffered from the effects of coalition building since Commissioners⁹⁷ planning to attend the championship were persuaded to take a harder stance and boycott the event. Later on, through more comprehensive consultations, German Prime Minister Angela Merkel emerged as a coalition leader in favor of a harsh stand against the situation in Ukraine. As a result, Angela Merkel helped boost even further the boycott⁹⁸ of the Euro 2012 championship.

Hence, from the Council's perspective, it was clear that the EEAS was in conflict with a number of Member States' preferences, since the HRVP wanted tangible results⁹⁹ for the resolution of the Tymoshenko imprisonment. The EEAS has thus performed a policy drift with the Ukrainian case since it held off the signing of the AA by arguing that its delegated authority should ensure the EU's external policy goals. At first glance, this policy drift negatively impacts trade negotiations since the main objective of an agreement, its entry into force, has been blocked. Notwithstanding such drift, to adequately assess the effectiveness of negotiations we shall look closer at the behavior of the principals and not the agent. It is obvious that holding off the signing of a trade agreement blocks entirely the effectiveness of negotiations. However, we cannot forget that negotiations are quite dynamic and can make use of controversial methods, to say the least. By allowing the agent to appear to take a policy drift, principals may have strengthened the EEAS' position. In other words, a strategy was used in order to take an important political stand without harming the principal's image. Principals did indeed back the EEAS but at a later stage, which in turn enhanced the credibility of the EEAS without affecting national ties with Ukraine. Thus, by using a 'Brussels made me do it approach', the principals actually enhanced the agent's credibility

⁹⁶ European External Action Service, *Joint Statement by EU High Representative, Catherine Ashton, and Commissioner Stefan Füle on today's judgement by the European Court of Human Rights in the case of Tymoshenko v. Ukraine*, *loc. cit.*

⁹⁷ 'Shunning the Championships: European Commission Gives Ukraine the Cold Shoulder', *Der Spiegel*, 3 May 2012, retrieved 2 May 2013, <http://www.spiegel.de/international/europe/european-commission-to-shun-ukraine-during-european-championship-a-831232.html>

⁹⁸ 'Campaign to Free Tymoshenko: Merkel Wants Mass Boycott of Euro 2012 in Ukraine', *Der Spiegel*, 7 May 2012, retrieved 2 May 2013, <http://www.spiegel.de/international/europe/merkel-campaigning-for-eu-wide-boycott-of-euro-2012-a-831772.html>

⁹⁹ Interview with Member State Trade Representative 3, Permanent Representation to the EU, Brussels, 11 April 2013.

from the back door. Consequently, by enhancing the credibility of the political negotiator, trade negotiations are more effective. Figure 6 illustrates such outcome. Point B is characterized by the enhanced cooperation between the Commission and the HRVP as seen in their joint declaration. Point A is characterized by Merkel’s delayed response for the backing of the EEAS. Thus, points A and B suggest that effectiveness of trade negotiations has been enhanced by inter-institutional cooperation and the endorsing of the EEAS’s as the new political negotiator.

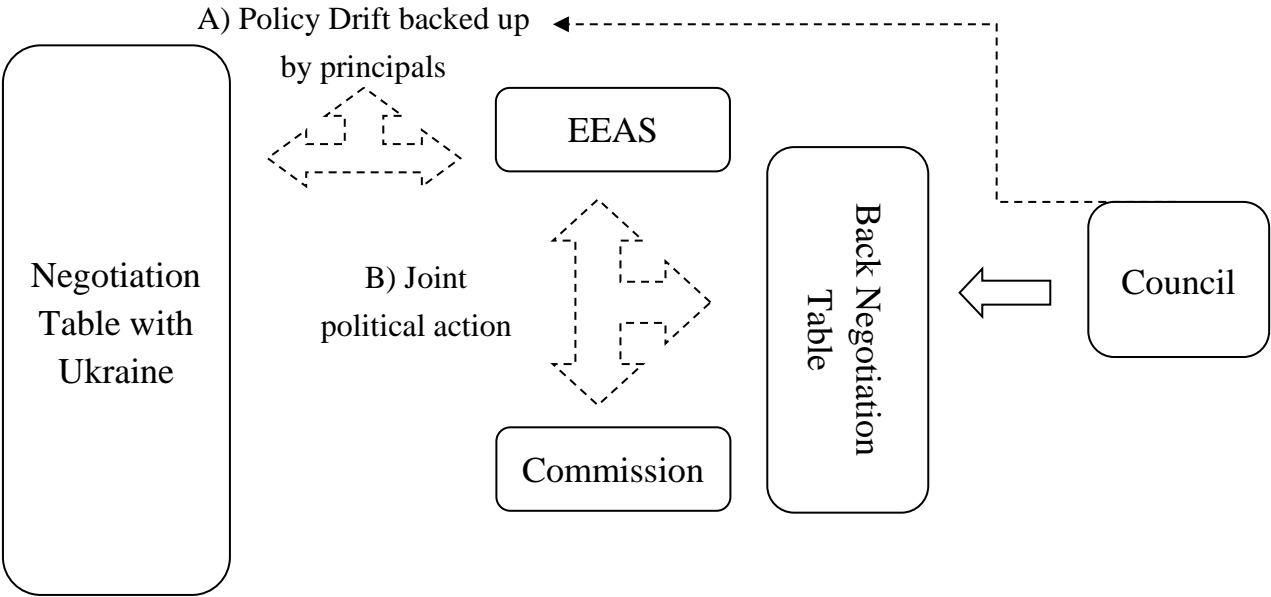


Figure 6: Negotiation Diagram Ukrainian AA

Linking it to the hypothesis ‘the Lisbon Treaty has hindered the effectiveness of EU trade negotiations by adding the European Parliament and the European External Action Service,’ the principal’s behavior in the Ukrainian case invalidates it with regards to the EEAS. Therefore, trade negotiations that deal with political elements are more effective than the pre-Lisbon era.

Conclusion

Recalling Jörg Monar’s caution with regards to the Lisbon Treaty, the new institutional structure has “no guarantee”¹⁰⁰ of being more effective in terms of policy result. Through this article, we analyzed the effectiveness of trade negotiations to determine if the Lisbon Treaty

¹⁰⁰ Monar, *op. cit.* p. 22.

did alter the status quo. By using instruments such as Veto Players and Principal-Agent theory, the Central American and Ukrainian Association Agreements were tested. Using Euclidean diagrams for the EP, we demonstrated that policy options were reduced, which in turn increased the difficulty of negotiations. With regards to EEAS, the contrary was proven as a delay (backed by Member States) increased the credibility of the new political negotiator. Combining such results, we can foresee that depending on the degree of political elements of a trade agreement, trade negotiations would be more or less effective than the pre-Lisbon period. If political elements are included, the EEAS steps in resulting in an enhanced negotiation. However if only economic interests are foreseen, the EEAS does not step in and the EP is the only novelty in trade negotiations which has been shown to decrease effectiveness. With all this in mind, this article can conclude that even though the Commission is still at the driving seat of trade negotiations, the EU has newly shifted gears in favor of the EP as the direction-setter and the EEAS as the political driver in the dynamic trade negotiations' highway.

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