



Institute for
European Studies
Vrije Universiteit Brussel

The European Commission and International Trade Negotiations: A Principal-Agent Approach

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IES WORKING PAPER 2/2011

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ISSN Number: pending
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ABSTRACT

Starting from the concept of delegation of power in external trade policy, this paper aims to investigate the dynamics surrounding the European Union's position in international trade negotiations. The analysis centres on the role of the European Commission (the agent), which by means of Treaty-based delegation and as mandated by the Council (the principal) acts as the sole trade negotiator in the international sphere on behalf of the European Union (EU). The broader negotiating process is thus conceptualised as a three-level game, where the Commission holds an intermediary position between the European and international levels and also interacts with the Member States in the Council. After an insight into the European decision-making process for external trade, the paper further analyses the Commission's role during the multilateral trade negotiations of the Doha Development Round. By applying the principal-agent theory to international trade negotiations in general, and subsequently to the controversial agricultural negotiations, this paper seeks to investigate some of the potential sources of autonomy that the Commission can draw upon while upholding an EU position at the international level, in addition to the "hardball" job of balancing the interests of the Member States with those of World Trade Organisation (WTO) partners. Along these lines, the paper finally aims to contribute to the literature concerning agency autonomy in EU external trade relations but also to provide a better understanding of inter-institutional relations within the EU as they may unfold in practice.

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An earlier version of this paper was presented at the Garnet Conference "The EU in International Affairs II", 22-24 April 2010, Brussels.

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1. INTRODUCTION

Since the inception of European integration, the founding Member States have delegated substantial powers to the supranational level. In doing so, they also agreed on a considerable loss of sovereignty over one of the most important domestic policies - trade - through the institutionalisation of the Common Commercial Policy (CCP). This step, however, stemmed from the combined market power that the customs union of the European Economic Community (EEC) could project externally. Central to the construction of the CCP was the role entrusted to the European Commission (the agent), which by means of Treaty-based delegation and as mandated by the Council (the principal) has fulfilled the role of EU's international trade negotiator. The broader setting in which the negotiations unfold is captured as a three-level game where the Commission holds an intermediary position between the European and international levels, represents a key participant in both, and also interacts with Member States in the Council. The multi-level view therefore aids in delineating the institutional space in which the negotiations proceed. By applying a principal-agent approach to the role of the Commission in international trade negotiations, this paper seeks to investigate some of the potential sources of autonomy that the Commission can draw upon in its job as sole trade negotiator. Agent autonomy is broadly defined in this case as the Commission's ability to steer the negotiation process, internally as well as externally, and to skilfully handle its intermediary role between the Council (and the Member States) and the WTO. This ability originates from the Commission's contrasting position, as it has to, on the one hand, uphold a European position at the international level, and on the other hand, balance the interests of the Member States with those of WTO partners.

Within this broader context, the paper further analyses the Commission's role during the multilateral trade negotiations of the Doha Development Round. Here, an analysis of agricultural problems was especially selected, given that the subject has been highly sensitive at the WTO, but also in the EU, thus generating tension at both levels. Consequently, agricultural matters overall hold high promise for investigating the agent's potential autonomy during negotiations. Next to exploring the general characteristics of the Commission's handling of the agricultural negotiations, and a few instances in which the Commission was declared in breach of the mandate by individual Member States in the Council, the analysis will look at the cotton negotiations - a selected issue of trade and development, within the overall agricultural discussions. The cotton problem is an interesting avenue to explore as it marks an exceptional change in the way the Commission approached the Doha negotiations until Cancun 2003, when the issue started drawing increased international attention. By calling for a prioritisation of cotton in the agricultural negotiations, this change in policy was reflected by a distancing from the EU's traditional pursuit of an overall balanced result in agriculture, between the three pillars of the negotiations,¹ as well as between agriculture and other sectors.² Therefore, the aim of an analysis of cotton negotiations is to explore whether the Commission could, under certain external circumstances and in the framework of a sensitive subject such as agriculture, enhance its autonomy on matters with a strong development component. At the same time, an insight into instances of alleged crossing of the mandate's red lines can inform about the

¹ The three pillars of the agriculture negotiations are market access, export subsidies and domestic support.

² See European Commission 2005 for the speech of Commissioner Mandelson on cotton and the WTO.

use of control mechanisms at the European level. Finally, both situations could provide conclusions with regard to agent autonomy as well as an insight into inter-institutional relations within the EU. In this respect, the paper finds that the Commission's autonomy to conduct negotiations at the international level may either be enhanced or remain largely unaffected, while the Commission also acquires the role of an informal mediator along the three-level game. The timeframe for the case study focuses on the period 2003-2005, from the Cancun to the Hong Kong Ministerials, when most "advancements" relevant to the empirical framework, and particularly, to the cotton negotiations, have been made.

Against this background, the paper is organised as follows. Following the introduction, Part 2 sets the general background to the conceptual framework, by exploring the notion of delegation through the lens of principal-agent theory. Part 3 focuses on the Treaty foundations of the external representation task of the Commission - as a supranational body - and its designated role as an agent in international trade negotiations. Moreover, in order to shed light on the conduct of multilateral negotiations at a later stage in the analysis, the European decision-making process for external trade policy is explained. Part 4 makes the link between the internal and external dimensions of international trade negotiations by conceptualising the negotiating process as a three-level game. Part 5 includes the empirical application of the theoretical framework, and looks into the Commission's role during the agricultural trade negotiations of the Doha Development Round. Part 6 concludes.

Data collection sources employed for this paper rest on a review of the academic literature, as well as official documents such as treaties, declarations, statements or Council conclusions. Data supporting the empirical part of research is collected from news releases. Where illustratively meaningful, selected information from speeches of relevant Commissioners is included.

2. THE PRINCIPAL-AGENT THEORY: A TALE OF DELEGATION OF POWER

Delegation of power is a concept that has generated extensive attention in the field of European studies. Initially constructed in the context of American politics, it has been adapted to the analysis of the European Union (EU). Here, different types of delegation can be distinguished: delegation from governments to supranational institutions or from governments to private actors and non-majoritarian institutions (e.g. independent regulatory agencies). Scholars, however, primarily sought to explain why Member States chose to delegate power to supranational bodies, how these bodies were crafted, and to explore the relationship between the two. Therefore, much of the focus rests on the "why" and "how" behind this rationale.

In the context of the EU, the principal-agent theory, drawn from the new organisational economics and analysis of United States (US) political environment by rational choice scholars, argues that Member States - as principals - deliberately delegate power to supranational agents - such as the European Commission, the European Court of Justice or the European Parliament - to represent their interests in particular areas. By doing so, "the principal and the agent enter into a contractual arrangement"³ and develop a relationship of interdependence.⁴

³ Tallberg 2002, 25.

⁴ Hawkins et al. 2006.

The main argument behind the logic of delegation lies with rational-choice theory and its functionalist approach.⁵ Delegation in this case is explained by an inversed effect-cause relation and is supposed to happen when “the expected benefits outweigh the expected costs”.⁶ In other words, the potential policy outcomes that could be delivered by the agent motivate the initial course of action, and therefore help to explain the principal’s decision to transfer power. Moreover, the latter acts on the belief that the former will provide policy outcomes that serve its interests. However, for the principal to believe that the agent will always share his preferences may prove “impossible or too costly”⁷ and subsequently, lead to agency losses for the delegating party.⁸ Consequently, principals devise control mechanisms, as a way to insure their interests against potentially rebellious agents who might pursue their own interests, and thus limit their room for manoeuvre. In specialised terms, this type of divergent relation is called “slippage” but there is another aspect of agency loss called “shirking”, which points to a situation where the agent puts insufficient effort into representing the interests of its principal.⁹ The motivation for slippage may arise when there are “differences in interests between the agents and principals” or due to “information asymmetries which come from the fact that agents usually know more about their task than their principals do, while principals usually know more about what they want accomplished”.¹⁰

A second and third argument behind the logic of delegation is that by delegating power, the principal reduces the transaction costs of policy-making and increases the credibility of its commitments.¹¹ In the former case, because of the need to maximise the efficiency of its policies, the delegating party designs a supranational actor that would compensate for the lack of information at the national level. More precisely, this information is provided by expert officials who possess specific knowledge due to their familiarity with a supranational environment.¹² In the latter case, the key issue is the independence of the agent from national political pressures. In Majone’s view, the nascent contrast would provide a high level of credibility. “An agent bound to follow the directions of the delegating politicians could not possibly enhance the credibility of their commitment. Independence means not only that the principal’s and the delegate’s preferences may be different but also, and this is the key point, that in general it is not in the principal’s interest to minimize such difference”.¹³ Majone’s logic can be further complemented by Pollack’s who argues that “principals deliberately insulate their agents [...] so that the agents may implement policies to which their principals could not credibly commit”.¹⁴

A fourth argument for delegation is the so-called “shift the blame” method. Supranational agents can be charged by national politicians for “unpopular decisions and policy failures” that might damage their image with potential voters at home. In the same way, national politicians can take advantage of the contrary situation, in which they can simply free-ride on the benefit by claiming “credit for popular policy developments”.¹⁵

⁵ Pollack 2003.

⁶ Tallberg 2002, 25.

⁷ Majone 2001, 103.

⁸ Pollack 2002; Pollack 2003; Tallberg 2002.

⁹ Hawkins et al. 2006.

¹⁰ Meunier and Nikolaïdis 2000, 327-328.

¹¹ Pollack 2003; Majone 2001; Tallberg 2002.

¹² Pollack 2003; Franchino 2007.

¹³ Majone 2001, 110.

¹⁴ Pollack 2003, 31.

¹⁵ Tallberg 2002, 27.

Once the decision for delegation is taken, the next question that arises is the degree of discretion that can be entrusted to the agent. Differences may appear when there is a conflict of preferences either between multiple principals or between the principal and the agent.¹⁶ In both cases, Member States' willingness to delegate power reduces accordingly, although aspects of discretion "vary systematically across issue areas and over time".¹⁷ As referred to previously, Pollack's view of the principal-agent theory implies that "agents possess distinct policy preferences which they might attempt to pursue at the expense of the collective preferences of the principals". Although this assertion is based on evidence supporting the American model, in the context of the EU it is argued that agents, such as the European Commission, are motivated in their "egotistic quest" by a desire to, firstly, increase their supranational competences and secondly, enhance those of the EU as a whole. By doing so, they positively tipped the balance and acquired the title of, in the phraseology of Pollack, "competence-maximisers" that "seek more Europe".¹⁸ Consequently, they enjoy the reputation of promoting a pro-integrationist agenda.

The arguments of delegation translate into specific functions with which the agents are entrusted.¹⁹ These may be "monitoring compliance with agreements among the principals; solving problems of 'incomplete contracting'; adopting credible, expert regulation of economic activities in areas where the principals would be either ill-informed or biased; and setting the parliamentary agenda so as to avoid the endless 'cycling' of policy alternatives that might otherwise result from the possession of agenda-setting power by the principals themselves".²⁰ Most of these functions apply to the Commission's case such as the exclusive right to propose new legislation, the ability to oversee the correct application of Community law by the Member States while having the power to bring before the European Court of Justice any Member State that fails to comply with its Treaty-based obligations, or the task to represent the European Community towards the "outside world" in the external trade sphere. While the Commission gains discretion at the supranational level, Member States, benefit by credibly committing to their European integration project, as the Commission, in its independent role, upholds the general interest. They also benefit from the expertise employed by the supranational actor as well as from reducing the costs of policy-making in different areas.

Additionally, it is important to note that functions are not allocated randomly, and that Member States can delegate power by means of both primary and secondary legislation. Whereas delegation through primary legislation refers to rules enshrined in the Treaties, secondary legislation, in the form of such legal tools as regulations or directives, is much more flexible by nature and relates to the implementing tasks entrusted to the European Commission and national administrations.²¹ For the purpose of investigating the role of the Commission in international trade negotiations, this paper will further focus on Treaty-based delegation and the institutional framework for external trade arising thereof.

¹⁶ Pollack 2003.

¹⁷ Epstein and O'Halloran 1999a in Pollack 2003, 33.

¹⁸ Pollack 2003.

¹⁹ Tallberg 2002.

²⁰ Pollack 2003, 21.

²¹ For details see Franchino 2007.

3. THE EUROPEAN COMMISSION AS AN AGENT: WHAT ROLE IN INTERNATIONAL TRADE?

Following the Treaty of Paris, that set up the European Coal and Steel Community with its 'supranational and independent' body, the High Authority,²² the Treaty establishing the European Economic Community²³ (1957), or simply - the Treaty of Rome - as it has been referred to practically, further shaped the powers delegated to the European Commission,²⁴ which were also refined over time, along with the development of the Community's²⁵ legal structure. Herein, the functions of the Commission were significant, especially in the fields of competition and the CCP, aside from roles awarded in a few other policy fields. And although some of these functions, particularly in the external relations area, grew beyond the sphere of trade, such as the negotiation of association agreements, management of humanitarian aid interventions or participation in the work of various international organisations,²⁶ the historical responsibility of the Commission remains that of external trade negotiator whether in bilateral, regional or multilateral negotiations. This paper will focus solely on multilateral trade relations.

3.1 External trade negotiator

The Commission negotiates with third parties under the scope of the CCP. Under Article 113 Rome Treaty,²⁷ the Commission was empowered to act as the EEC's²⁸ multilateral trade negotiator.²⁹ This is particularly stated in paragraph 3 (and 4) of the above-mentioned article, which reads as follows:

²² The High Authority, which is evidenced as the precursor of the contemporary European Commission, can be seen as a first attempt in illustrating the process of delegation, largely given that the High Authority's independence was central to its construction.

²³ The Treaty establishing the European Economic Community (EEC Treaty) was one of the two Treaties signed in Rome in 1957 by the six founding Member States, the other being the Treaty establishing the European Atomic Energy Community (Euratom Treaty).

²⁴ At that time, the Commission of the European Economic Community. Only after the 1965 Merger Treaty, which brought together the High Authority of the ECSC, the Commission of the European Economic Community and the Euratom Commission, we can refer in legal terms to the European Commission, as a single body. However, for the fluency of the argument presented here, it is mentioned throughout as "the European Commission" or simply "the Commission".

²⁵ It is important to make the distinction between the different legal terminologies that refer to the supranational European level, and that were used alongside the different stages in the development of European integration. The term "Community" broadly refers to all of the three "Communities" established by the Treaty of Paris (1951) and the Treaties of Rome (1957), but in the above context, the term speaks of the European Economic Community. However, the Treaty of Maastricht (1992) brought the communities under the first pillar of the European Union. The European Economic Community Treaty (TEEC) was then renamed the European Community Treaty (TEC), which represented the economic pillar of the other two pillars of the European Union institutionalised at Maastricht (common foreign and security policy and justice and home affairs). In time, there have been a number of amendments to the EC Treaty (TEC), and the ones addressing the conduct of trade negotiations under the CCP will be explained in this paper. Most recently, the Treaty of Lisbon (2009) renamed the EC Treaty as the Treaty on the Functioning of the European Union (TFEU). The pillar structure was abolished, in order to give the EU legal personality and to enable it to become a party to and conclude international agreements. Before that, legal personality was conferred only to the EC pillar.

²⁶ Nugent 2001.

²⁷ Art. 113 of the Rome Treaty has been amended (and renumbered) by the Maastricht, Amsterdam, Nice and Lisbon Treaties.

²⁸ Except for a historical discussion of the legal, Treaty-based, developments, where reference to the EEC or EC will be maintained, the paper will refer throughout to the EU. This applies to cases where, legally speaking, the Commission was representing the EEC or the EC, at the European level, or the European Communities, as a member of the WTO.

²⁹ Woolcock 2005; Woolcock 2007; Johnson 1998; Meunier and Nikolaïdis 1999; Meunier and Nikolaïdis 2000.

“3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct the negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.”

Whereas in the first part, the task of trade negotiator is simply implied by affirming that the Commission will be authorised to “open the necessary negotiations”, in the second part its status is more clear as “the Commission shall conduct the negotiations”. However, when it comes to the Commission’s room for manoeuvre, this is limited by the fact that it has to work with a “special committee” (known practically as Art. 113 Committee/ later Art. 133 Committee³⁰), which in turn is “appointed by the Council”. Yet, this is rebalanced as the Commission has the exclusive right to make policy proposals³¹ and thus put issues on the agenda. In addition, the same article granted the EEC exclusive competence over the CCP, and hence, the conduct of trade negotiations externally.³²

Art. 113 Rome Treaty is thus a clear example of Treaty-based delegation. At the time of designing the institutional framework of the original Treaties, the Member States transferred power to the supranational level and empowered the Commission to represent the Community. This should be seen as an incipient step in the process of delegation, mostly connected to the initial reasons for delegation. Indeed, Member States did decide to relinquish their sovereignty over trade policy, and to upload this function to the supranational level, but the resulting language of the Rome Treaty shows that power was to be finally channelled through the Council as a whole. The Treaty indicates that in practical terms, it was for the Council to delegate negotiating power to the Commission. This further highlights that the operational distribution of roles in a principal-agent approach to international trade negotiations is shared between the Council - as the principal - and the Commission - as the agent.³³ Moreover, this argument is reinforced given that the Council can formally exercise its delegating power through voting by qualified majority (as opposed to unanimity). The formal requirement for qualified majority voting (QMV) therefore, could not be equal to the voice of all the Member States (as principals), and neither would this

³⁰ The “special committee” became known in practice as Art. 113 Committee, or later, Art. 133 Committee, taking the name of the Treaty article that introduced it. After the entry into force of the Lisbon Treaty, the nominal reference to Treaty articles has been dropped and the Committee has been informally renamed as the Trade Policy Committee. And although the paper acknowledges the new terminology it will continue to mention the “special committee” as Art. 133 Committee, so as to avoid confusions of meaning in discussions that extensively refer to previous periods and rules.

³¹ Johnson 1998.

³² In time, when the trade agenda came to include a wider range of topics, the Member States were not willing to grant the Community the same competence over “new trade issues” such as intellectual property rights or services. The battle between the Commission and the Council has been hard and as a result, the issue was brought before the ECJ. The Court’s final ruling reinforced the Community’s exclusive competence over trade in goods but denied it in relation to “new trade issues”, which was to be an aspect of “mixed competence” meaning that legal rights and responsibilities were shared between the Community and the Member States (Meunier and Nikolaïdis, 1999).

³³ The two-step process of delegation outlined above - from the Member States to the Council and from the Council to the Commission - builds on the previous interpretation of Meunier and Nikolaïdis.

happen later on in the decision-making process, as the ratification of the final negotiated agreement by the Council keeps the QMV rule.³⁴

3.2 The European decision-making process for multilateral trade negotiations

Art. 113 Rome Treaty not only specified the role of the Commission in multilateral trade negotiations but also contained the core of the decision-making process in the field. The first step in the process belongs exclusively to the European Commission, which draws up a proposal for an initial draft mandate.³⁵ In this respect, the Commission tries to reconcile the differing positions that Member States, businesses or civil society may have and also takes into account “resolutions or reports from the European or national parliaments”.³⁶ Together, all these views represent the input that the Commission brings to its mandate, an input that, by its nature, plays a significant role in legitimising the proposal. The next step in the process includes the initial discussion of the Commission’s draft mandate in the Art. 133 Committee, then, in the Committee of Permanent Representatives (COREPER), and finally, in the General Affairs and External Relations Council (GAERC), which ultimately decides on the text of the official mandate.³⁷ The Treaty requires the Council to decide by qualified majority but, in practice, decisions are taken by consensus.^{38,39} In addition, as Johnson remarks, the Treaty does not mention what happens when the Council rejects the Commission’s proposals,⁴⁰ but Woolcock provides the operational answer in that the Commission can predict the success of its proposal by observing how the Art.133 Committee receives it. If signs are negative, it reviews the proposal to the extent that it will be accepted by the Council.⁴¹

Following the imperatives of the Treaty,⁴² the Commission has to conduct the negotiations by respecting the limits set by its mandate.⁴³ These take place in the framework of the WTO. While at the negotiating table, the Commission is the only representative to speak in a multilateral forum, although the Member States, in their capacity as individual WTO members, also sit in these meetings.⁴⁴ Trade negotiations at the WTO are led by the Directorate General for Trade (DG TRADE) with the Directorate General for Agriculture and Rural Development (DG AGRI) negotiating on matters of agricultural trade.⁴⁵ However, “before presenting a draft position to the Member States”, DG Trade consults other DGs

³⁴ QMV remains valid under the Treaty of Lisbon. It continues to apply for both negotiation and conclusions of agreements by the Council, which is specified clearly under Art. 207 TFEU (former Art. 133 TEC).

³⁵ Nugent 2001; Woolcock 2005; Meunier and Nikolaïdis 1999.

³⁶ Woolcock 2005, 383.

³⁷ Meunier and Nikolaïdis 1999; Woolcock 2007.

³⁸ To be noted that “consensus” does not equal “unanimity”. Although Member States may stress their national position in the Council, consensus implies that a political balance can be crafted in a much more fluid manner than in the case of unanimity.

³⁹ Meunier and Nikolaïdis 1999; Woolcock 2007.

⁴⁰ Johnson 1998.

⁴¹ Woolcock 2007.

⁴² Art. 133 (3) mentions that “The Commission shall conduct the negotiations [...] within the framework of such directives as the Council may issue to it”.

⁴³ The Treaty does not speak of a mandate *stricto sensu* but mentions Council directives that the Commission has to follow. Usually, several of these take the form of a mandate but there have been cases where the Commission negotiated without such a text (Kerremans 2006).

⁴⁴ The EU (or the European Communities until the Lisbon Treaty) is also a member of the WTO. Although delegation in trade negotiation was entrusted to the Commission and Member States have a simple right of attendance (and not of expression) in the WTO, they could undoubtedly use their role as WTO members to remain attuned to the performance of the Commission during Ministerial negotiations.

⁴⁵ Woolcock 2007.

that might have an interest in the issue at stake.⁴⁶ During negotiations, Art. 133 Committee is the regular tool employed by the Member States to guide and scrutinize the Commission. However, the Treaty did not mention the composition of the committee, which in practice was formed of senior trade officials from the Member States (“who had the ear of their ministers at home and advised them on the line to be taken on trade matters in the Council”⁴⁷), Commission officials and chaired by the Council’s presidency.⁴⁸ In case a change in the EU’s position becomes necessary, the Commission makes a proposal for a new or more adapted position to the forum of the Art. 133 Committee. The chair will refer the text back to the Commission should it fail to secure the necessary support.⁴⁹ Again, decisions are taken in practice by consensus. Woolcock also notes that the Committee does not have any votes. On that, Johnson finds that utilising consensus is an advantageous practice. It helps the formation of a unified front of Member States’ positions that consequently strengthens the European Union’s credibility in relation to third parties.⁵⁰

After the Commission finalises a deal, the Council (GAERC) has to approve it by ratifying the agreement.⁵¹ The Council may also reject the agreement but the literature does not note such a situation. Ratification is the final step in the decision-making process. The Treaty provides for the ratification of an agreement to occur under QMV,⁵² on a proposal from the Commission, but again, consensus is preferred in practice. This allows Member States who might feel that the agreement does not completely satisfy their national interests, to take on a stronger view on the negotiations.⁵³ Finally, the agreement has to enter into force to become operational and to be implemented.

It can be noted so far that the European Parliament (EP) is absent from this picture. That is because until the Treaty of Lisbon (2009), the EP did not play a major role in trade policy-making. The Treaty of Rome did not include it in the decision-making process and neither did the Treaty of Maastricht, where the Member States did not wish to grant the EP power over trade policy.^{54,55} Despite lacking a formal role in multilateral trade negotiations, the powers of the EP were exercised in relation to bilateral negotiations, where in a few instances,⁵⁶ the EP was required to give its assent.⁵⁷ Therefore, the Treaty of Lisbon represents a revolutionary document when it comes to the new powers of the EP.⁵⁸ Under these new arrangements, the EP can provide its consent to the ratification of not only bilateral agreements but to all concluded trade agreements, and is formally debriefed by

⁴⁶ Woolcock 2007, 229.

⁴⁷ Johnson 1998, 19.

⁴⁸ Johnson 1998; Meunier and Nikolaïdis 1999.

⁴⁹ Woolcock 2005.

⁵⁰ Johnson 1998.

⁵¹ This is in accordance with Art. 228 TEEC (Art. 300 TEC), which states that the Commission negotiates an international agreement that the Council has to conclude.

⁵² Qualified majority voting applies for issues of exclusive Community competence. In contrast, for issues of national or mixed competence, unanimity is the rule. However, in both cases consensus has been institutionalised in practice (Woolcock 2007).

⁵³ Woolcock 1995.

⁵⁴ Johnson provides an insight into this matter. He says that a “crowded” Council believes the decision-making process is already a difficult one and the formal involvement of the EP “could make the Community’s whole international trade policy stance if not unworkable then vastly more cumbersome” (Johnson 1998, 13-14).

⁵⁵ Woolcock 2007.

⁵⁶ The EP could provide its assent for the ratification of association agreements, amendments to an agreement that modified previous legislation adopted by co-decision, or agreements with budgetary implications.

⁵⁷ Article 300 (3) TEC.

⁵⁸ These find expression to a large extent in Art. 207 TFEU (ex Art. 133 TEU) but also Art. 218 TFEU (ex Art. 300 TEC).

the Commission on the status of the negotiations on an equal footing with the Art.133 Committee. But despite these strong institutional changes, the EP does not gain formal influence over the Commission's initial proposals, which in trade negotiations still remains an issue discussed in the Council.⁵⁹ Admittedly, the new role of the EP under Lisbon will impact on the Commission's room for manoeuvre given that power of consent strengthens the political need to involve the EP throughout the negotiations and perhaps at the more incipient stages as well.

3.2.1 The Agent's Discretion

In acting as international trade negotiator, the Commission enjoys a certain level of discretion.⁶⁰ The Commission's discretion varies in function of the stage of the decision-making process described above: drawing up the mandate, participating in the negotiations, ratifying and implementing the agreement. At the initial mandate stage, the Commission receives a certain degree of flexibility as the Council writes a looser mandate that can afterwards be adapted - through additional negotiating directives - depending on how issues evolve during negotiations. The text of the mandate has been very broad and thus rather flexible, since the practice of consensus in the Council results in a mandate whose form reflects decisions taken at the lowest common denominator.⁶¹ This general language has been beneficial as a looser mandate gives the Commission some room for concessions. A tighter one would bring early discussions around the limits of Member States' acceptance, and thus put pressure on the Commission to make painful concessions. At the actual negotiations stage, the Commission has the liberty to choose the means by which to achieve the scope of its general mandate (for instance, the Commission can choose the negotiating strategies to be used). Here it could be given a "free hand" by the Art. 133 Committee⁶² or even the Council. Still, the Commission's discretion is limited by the fact that it is constrained to its mandate and the requirement to debrief the Committee during the course of negotiations. At the end of the negotiations and in case an agreement has been concluded, the Council checks the work of the Commission and can ratify or reject the negotiated deal. At this final stage, the Council retains the highest control and the Commission's discretion is at a minimum, whereas implementation has no influence over the Commission's discretion as negotiator.

3.2.2 Control mechanisms

For the purpose of international trade negotiations, Member States use three control instruments for monitoring and limiting the agent's discretion: the negotiating mandate, the Art. 133 Committee, and the Council's power of ratification of the final agreement,⁶³ with the first being an ex-ante device, the second, an ad locum and the third, an ex-post device.⁶⁴ The mandate (which can be formed of several negotiating directives) limits the agent's room for manoeuvre in that it sets the negotiating space for the agent and also the

⁵⁹ As the focus of this paper is on pre-Lisbon negotiations, this paper will not analyze the full spectrum of changes in the trade policy area brought by the Lisbon Treaty. However, this subject will be treated briefly, as regards the enhanced powers of the EP. For details see Woolcock 2008.

⁶⁰ Discretion should be understood here as room for manoeuvre generated by the way in which the European decision-making process was designed by the Treaties. Discretion should not be confused with the understanding of "agent autonomy", which is seen as a potential informal function beyond the flexibility inherited via Treaty-based delegation.

⁶¹ Meunier and Nikolaïdis 1999.

⁶² Ibid.

⁶³ Damro 2007; Kerremans 2006.

⁶⁴ Kerremans 2006.

maximum limits for concession that are acceptable for the principal. Still, the mandate is not a burden for the agent. It can also be used as a valuable tool during negotiations. The Commission can, for example, show its partners that it cannot make further concessions as it has reached the upper limit of its mandate.⁶⁵ Another strategy at the Commission's disposal would be to claim, when an undesired proposal arises, that it is not in its mandate to agree on such a topic and thus has to refer the matter back to the Council. The advantage is that for a sensitive issue, the negotiator gains time for a better positioning at a later point in the negotiations. It can, for instance, push for "the green light" of the Member States on a sensitive topic or wait for a more favourable situation between international partners. As depicted so far, the Art. 133 Committee is the regular tool used by the Member States to monitor and maintain a degree of control over the Commission during negotiations. However, the Rome Treaty does not give it concrete oversight functions but mentions just a consultative role. It was for this reason that the Member States amended the article in the Nice Treaty. "The Commission shall report regularly to the special committee on the progress of negotiations" was added at the end of the article to emphasise the control role of the Committee. For that, the Committee meets on a weekly basis but can also have extraordinary meetings in the cities where the negotiations take place.⁶⁶ However, the discussions of the Art. 133 Committee are confidential (a necessary condition for preserving the Commission's authority in WTO negotiations), and it is therefore difficult to provide an insight into these debates. Kerremans argues that the Committee has three main functions: "an aggregate function, a watchdog function and a sounding-board function".⁶⁷ The first refers to the Committee's role in attempting to reconcile the diverse policy perspectives of Member States in order to have a higher impact on the Commission, while the second represents its supervising role. The third function envisages the Committee as a forum where Member States can voice their demands. However, the sounding-board function can also work to the advantage of the Commission, as officials can "test the limits of what ministers in the Council might accept".⁶⁸ Finally, Member States can threaten the Commission with the non-ratification of the trade agreement if they consider that the Commission's actions have exceeded the limits of the mandate. This last control mechanism can be used by voicing concern in the Art. 133 Committee or in the Council itself as well as through the national media.

4. THE MULTI-LEVEL BARGAINING PROCESS: INTERNATIONAL TRADE NEGOTIATIONS AS A THREE-LEVEL GAME

Moving one step further from the initial task of the Commission to lead trade negotiations, it is necessary to discuss the international environment in which the Commission operates. The European decision-making process that characterises the dynamics of negotiations has been explained above, but in order to explore the wider gambit of international trade negotiations, the link between the internal and the external bargaining environments has to be established.

International trade negotiations conducted by the European Commission are characterised by a multi-level process, which can be best conceived as a three-level game. In the context of the EU, the view of the three-level game is inspired by Robert Putnam's

⁶⁵ Damro 2007.

⁶⁶ Johnson 1998.

⁶⁷ Kerremans 2006, 178.

⁶⁸ Johnson 1998, 26.

conceptualisation of international negotiations as a two-level game, notably negotiations between states at the national and international levels.⁶⁹ Putnam considers Level 1 to be the international environment where governments gather to negotiate, and Level 2 the national space where discussions with key players over the ratification of the agreement take place. For an agreement to be concluded, the outcome of Level 1 negotiations must fall within the limits of what the domestic constituents consider acceptable for their interests. Only if this condition is fulfilled they will agree to ratify.⁷⁰ This view, although still valid in practice with regard to the basics of the game, presents a simplified context compared to the current situation in which the degree of European integration in trade matters adds a new layer of interactions. Therefore, this paper reinforces the idea of the three-level game, in addition to finding this approach as being highly compatible with the two-step process of delegation described earlier. However, rather than viewing negotiations within each Member State as the third level,⁷¹ and given the exclusive European competence in trade matters, the paper conceives of Member States as actors with an already formed national position vis-à-vis international trade negotiations, which is expressed and contained largely within the European level through the Council or the Art. 133 Committee. This perspective is thus closer to that of Young's and the linking of two two-level games, pivoting around the European sphere.⁷²

Emphasis in the three-level construction is placed on the Commission as the main player that is present at different stages - mostly at Level 1 (WTO) and Level 2 (Council), but sometimes at Level 3 (in contacts with an individual Member State) as well. The resulting challenge for the Commission will then be how to balance the interests of the Council (and subsequently, the Member States sitting in the Council) with external demands. Or in other words, the challenge for the agent (the Commission) will be how to best fulfil the task of the mandate, which implies constraints at the European level, against other mandates of external partners, and in this way manage to achieve a final acceptable solution for the principal (the Council). The relation between the European and international levels will be inherently interdependent. How the agent will be able to mediate in order to craft deals at the international level that will prove acceptable at the European level, is a key point for the outcome of negotiations. Whether in achieving this task, the agent can benefit from a certain degree of autonomy will be investigated in Part 5.

5. THE EUROPEAN COMMISSION AT WORK: THE CASE OF THE DOHA DEVELOPMENT ROUND

The Commission negotiated during the whole duration of the Doha Round⁷³ on the basis of a mandate adopted by GAERC in 1999 and which was later adapted to meet the ongoing

⁶⁹ Putnam 1988.

⁷⁰ Putnam 1988; Young 2003.

⁷¹ Patterson 1997; Leal-Arcas 2004.

⁷² Young 2003.

⁷³ Following the conclusion of the Uruguay Round (1986-1993), a new series of multilateral trade negotiations started with the launch of Doha Round in 2001. Since then, there have been three additional Ministerial rounds, in Cancun (2003), Hong Kong (2005) and Geneva (2009). The scope of the Cancun Ministerial was to take stock of negotiations in light of the 2005 deadline but discussions failed, mainly over the "Singapore issues". In addition, cotton was the bone of contention in agriculture. After the collapse in Cancun, the "July 2004 Framework" aimed to put negotiations back on track. At the Hong Kong Ministerial in 2005, ministers sought to boost agricultural reform and conclude negotiations by 2006, a deadline that was finally missed. Following the Hong Kong Ministerial, negotiations took place in Geneva in 2008 to move closer to an agreement on modalities in agriculture and non-agriculture market access. Yet talks collapsed over the issue of a special

status of the negotiations. The initial mandate was agreed in preparation for the third Ministerial meeting in Seattle (1999).⁷⁴ Since then it was restated on several occasions during the negotiations, for example in the context of the Cancun Ministerial (2003), the 2003 reform of the Common Agricultural Policy (CAP), the Commission's communication "Reviving the DDA Negotiations - the EU perspective", the Hong Kong Ministerial (2005) or the Geneva meeting in 2008.⁷⁵ A common point emphasised by the Council was the need for the Commission to achieve "comprehensive, ambitious and balanced results for all areas of the Doha Agenda".⁷⁶ Today, these general objectives stand valid and represent, all in all, the broad negotiation mandate of the Commission in the Doha Round.

5.1 Setting the general rules

The initial mandate of the Commission contained only general guidelines,⁷⁷ as also did the Doha Ministerial Declaration in order to set the negotiating basis for future rounds. A looser mandate gave the Commission some room for manoeuvre, which it could later use strategically. A significant achievement for the Commission, which strengthened its future position in the negotiations, was that since the Doha Ministerial (2001) agriculture became part of the single undertaking,⁷⁸ which meant that from then on, nothing could be decided until agreement was reached in all areas of the negotiations.⁷⁹ The advantage of the single undertaking was that the Commission could now link potential concessions in agriculture to concessions on other issues and thus minimise Member States' loss. In fact, this approach to the negotiations has been a cornerstone of the Commission's strategy representing a substantial part of its actions throughout the Doha Round.⁸⁰ Equally important, the 2003 reform of the CAP became the outer limit of the mandate.⁸¹

The Commission was in the driving seat for launching a new round of negotiations after the conclusion of the Uruguay Round,⁸² to which it sought to attach a strong development orientation.⁸³ The Commission's emphasis on development at the multilateral level, from the very beginning, but also throughout the Doha Round, explains some of its subsequent actions in international trade negotiations. These actions find expression externally, in relation to others in the WTO, as well as internally, in relation to the Council and the Member States, and would later crystallise into a better positioning towards negotiating

safeguard mechanism. The most recent Ministerial, in Geneva in 2009, did not provide for any major breakthrough, aiming to re-gather momentum for the Doha Round. A fifth Ministerial is planned for the end of 2011, in Geneva, but prospects for the conclusion of a negotiating process now spanning 10 years, remain gloomy.

⁷⁴ Woolcock 2005.

⁷⁵ On the basis of the General Affairs and External Relations Council's conclusions of 18 October 1999, 8 December 2003, 21 July 2003, 18 July 2005, 10 March 2008, 18 July 2008.

⁷⁶ Ibid.

⁷⁷ Also confirmed by the Commissioner for Agriculture, in a speech at GAERC on 18 October 2005.

⁷⁸ This is reflected in the last part of paragraph 14 of the Doha Ministerial Declaration (2001): "The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole" (WTO 2001, Doha Ministerial Declaration).

⁷⁹ See also Council of the European Union Press Release of 21-22 June 1999 for the above understanding of the meaning of the single undertaking.

⁸⁰ The principle of the single undertaking was in accordance with the general mandate of the Commission, as it would facilitate a "comprehensive, ambitious and balanced results for all areas of the Doha Agenda". The Council, in its conclusions from 21-22 June 1999, endorsed this principle.

⁸¹ See European Commission 2005 for the speech of the Agriculture Commissioner Mariann Fischer Boel. Also, see Council of the European Union Press Release of 21 July 2003.

⁸² Kerremans 2006.

⁸³ For an analysis of how the Commission has crafted its development discourse to push for the launch of the Doha Round, see Van Den Hoven 2004.

partners, as well as the Commissions' efforts to forge agreement in the Council and push for internal reform.

5.2 From Cancun to Hong Kong (and beyond)

A very hot topic in Cancun (2003) became an issue that was initially not foreseen on the WTO agenda. Attention redirected towards cotton, which soon became a highly mediated and controversial topic in the agricultural negotiations. The issue was officially raised in the WTO by a group of four West and Central African countries - Benin, Burkina Faso, Chad and Mali (the so-called Cotton-4 or C4) who submitted a proposal on a sectoral approach for cotton.⁸⁴ Consequently, cotton became an official Ministerial document.⁸⁵ Although the subject was debated in Cancun, cotton remained unresolved, also due to the premature collapse of the negotiations. Discussions resumed in 2004 under the July Framework and were put back on track at the Hong Kong Ministerial in 2005, where cotton continued to be a hot topic. Moreover, cotton currently maintains its status as a key negotiating subject for the conclusion of the Doha Round and therefore remains high on the negotiating agenda. The original proposal put forward by the C4 in Cancun drew (international) attention to the special status that cotton holds in the economy of their countries. Next to trade considerations, it emphasised the development side of the issue and pointed out that the reduction of subsidies by developed countries would represent an important step towards aiding their poverty reduction efforts. The C4 called for the elimination of cotton subsidies by developed countries (mainly US, China and the EU), as well as for a transitional financial compensation to rebalance the injury brought on their economies. As a sign of acknowledging the importance of this issue multilaterally, a Cotton Sub-Committee was set up shortly after Cancun (in 2004) under the (Special Session of the) WTO Agriculture Committee.

Following the launch of the African Cotton Initiative at the WTO, the Commission accelerated the internal reform of a package of several Mediterranean products, including cotton, which was nevertheless connected to the broader reform of the CAP. Reactions in the Council regarding the reform were mixed. As cotton was produced in Europe mainly in two Member States, Greece and Spain, most of the other Member States with an interest in agriculture did not have any major reasons to disregard the Commission's initiative on this specific product. The Commission proposed a system of partial decoupling, whereby 60% of Member State expenditure for producer aid would become part of the single farm payment and the remaining 40% would be kept by the Member States and disbursed to producers as a new area payment per hectare of cotton.⁸⁶ At the request of the French delegation, African cotton was discussed in the Council, which, recognising the vital importance of the issue for African countries, invited the Commission to examine the situation and report back.⁸⁷ This in turn opened the possibility for the Commission to choose the way in which to present the issue to the Council as well as to shape the approach to be taken. France, a Member State with a traditional protective position on agriculture, advocated in this case a greater

⁸⁴ This initiative was directed mainly to the US, which pays the biggest amount of cotton subsidies to its farmers (close to 4 billion USD per year), and to a lesser extent to Europe, which although was not a big cotton producer, representing about 2% of world production of cotton, gave subsidies to just two of its Member States that were concentrated and thus quite high.

⁸⁵ WTO 2003.

⁸⁶ Commission Communication on a sustainable agricultural model for Europe 2003.

⁸⁷ Council of the European Union Press Release of 17 November 2003.

opening of the European market to exports from the C4 producers.⁸⁸ Other Member States, such as the Netherlands and Sweden, were in line with the French proposal but the two European producers, Greece and Spain, “were more reserved”.⁸⁹ Indeed, following the launch of the reform of Mediterranean products, the two producing countries fought in the Council to resettle the terms of the Commission’s proposals.⁹⁰ Spain also made its voice heard in the EP, as one of the Spanish Members of the EP (MEPs) drafted a report on the issue. On this basis, members of the EP Agriculture Committee called for the link between aid and production to be fixed at 80%.⁹¹ The EP highlighted this position on several other occasions in addition to pointing out that the starting date for implementation should be delayed from 2005 - which was the date preferred by the Commission - to 2007.⁹² However, 2005 appears to have been set by the Commission in view of several external implications: this year offered the possibility to have internal reform in hand before the Hong Kong Ministerial, as well as to gain the support of the African, Caribbean and Pacific (ACP) countries, who were vehemently calling for the same year. Further in the negotiations for cotton reform, Spain supported the EP’s position in the Council.⁹³ Greece reemphasised its requests for lower decoupling, but these were later rejected by the Northern countries, including the UK and Sweden, who highlighted the concerns developing countries had on cotton.⁹⁴ As the Agriculture Commissioner mentioned to the press, the Commission also supported this particular aspect.⁹⁵ Moreover, during negotiations with the Member States, the Commission showed some flexibility on moving the date for implementation from 2005 to 2006 for the entire Mediterranean package,⁹⁶ an aspect that became part of the final political agreement, as also did a decoupling of aid of 65% for cotton.⁹⁷ As anticipated, “Spain did not like all of the compromise text”.⁹⁸ Additionally, the fact that the Commission showed some flexibility on the date for implementation did not have a big impact on its status at the WTO. It could still use the argument of internal reform during the upcoming series of international negotiations, and connect European advancements with calls for similar moves from others.

From a bilateral perspective, cotton had strong implications for the EU’s relations with the ACP group. In the aftermath of Cancun and among discussions at the WTO to relaunch the Doha Round, the ACP countries emphasised that they “did not want to deal with new subjects”⁹⁹ whilst agreement was outstanding on the Doha questions, and that a solution to the problem of cotton remained valid for them”.¹⁰⁰ Moreover, ACP countries wanted to see cotton discussed separately and not under the umbrella of the overall agricultural negotiations,¹⁰¹ and continued to insist on this particular matter during the Doha

⁸⁸ See Agence Europe 2003 for the Council Conclusions on Africa and the implementation of EU Development Policy.

⁸⁹ Ibid.

⁹⁰ See Agence Europe 2003 on CAP reform.

⁹¹ See Agence Europe 2004 on the EP Agriculture Committee and the reform for Mediterranean products.

⁹² See Agence Europe 2004 on EP’s position on Mediterranean product reform.

⁹³ See Agence Europe 2004 on EU and the reform of Mediterranean products.

⁹⁴ See Agence Europe 2004 on the political agreement on reforming aid to Mediterranean production.

⁹⁵ Ibid.

⁹⁶ See Agence Europe 2004 on a potential compromise for Mediterranean products.

⁹⁷ The decoupling percentage was slightly above the Commission’s initial proposal of 60% but below the two Member State’s demands.

⁹⁸ See Agence Europe 2004 on the political agreement in the Council on reforming aid to Mediterranean production.

⁹⁹ Related to the revision of the Cotonou agreement in 2004, as well as the relaunch of the Doha Round.

¹⁰⁰ See Agence Europe 2003 on negotiations at the WTO and the revision of Cotonou Agreement.

¹⁰¹ See Agence Europe 2003 on ACP countries and the relaunch of WTO negotiations.

negotiations. Slightly different, the Commission's position within the WTO was to treat cotton as part of the negotiations on agriculture, although emphasising the need for finding a specific solution "including an accelerated timetable, the offer of market access without customs duties or quotas from imports from the least developed countries, substantial reduction in domestic subsidies with a trade distorting effect and the elimination of export subsidies".¹⁰² Speaking at the EU-Africa Forum on Cotton in Paris, Pascal Lamy, the then Trade Commissioner of the EU, emphasised that "if cotton is isolated from a wider negotiation in which a global balance is found, it seems illusory to expect to reach a solution. We must find ways to encourage other parties, notably the US, to modify and change their policies".¹⁰³ On occasions, the ACP group highlighted the connection between negotiations with the EU, in the framework of European Partnership Agreements (EPAs), and negotiations at the WTO. They also pointed to the difficulty of conducting parallel negotiations in both forums,¹⁰⁴ but nevertheless acknowledged the "very positive position" the EU took on the issue.¹⁰⁵ Therefore, the use of two-track diplomacy, between bilateral and international discussions, has helped the Commission attract the support of the ACP countries at the international level, in turn a prerequisite for a successful outcome, not only regarding cotton and agricultural negotiations but also regarding the Doha negotiations as a whole.¹⁰⁶

Additionally, the EU's insistence on cotton both at the WTO and other (external) forums,¹⁰⁷ contributed to keeping the issue high on the WTO negotiating agenda. As evidenced, cotton is currently the only commodity specifically elaborated in a multilateral text, such as the July framework or the Hong Kong Ministerial declaration. In addition, it is important to note that the Commission reacted quickly to the African Cotton Initiative, issuing communications to help the ACP countries deal with price fluctuations on the world market for their basic agricultural products, and for a EU-Africa partnership for the development of the cotton sector.¹⁰⁸ As opposed to previous lack of action from others at the WTO, a fast reaction on cotton seemed beneficial for the Commission. At the multilateral level, it could now push for a response to the cotton problem from the US, and additionally, against the background of the EU's previous agriculture negotiating proposals and reform of the CAP, ask further compromises from partners at a later stage in the negotiations. In other words, by showing leadership and implementing solutions, the EU reinforced its strong attachment to the Doha Round. Moreover, an addition of all previous EU actions could create momentum to ask for commensurate concessions, whether in agriculture or on other issues, and could also legitimise a refusal for further nonreciprocal compromises if potentially pressured by others in the future. In fact, an important part of the Commission's discourse in WTO negotiations both in general terms as well as applied to agriculture, has been concentrated on the importance of seeing similar ambitious responses from WTO partners to those of Europe. Regarding the cotton problem, Pascal Lamy stressed that "the EU is open, but others should do as much", pointing thus to the US, to which he said African

¹⁰² See Agence Europe 2003 on the presentation of the Commission's Strategy Paper by Pascal Lamy.

¹⁰³ See Europa Press Release 2004 for Pascal Lamy's speech on a EU-Africa cotton partnership.

¹⁰⁴ See Agence Europe 2004 on the discussions at the Fourth ACP summit.

¹⁰⁵ Ibid.

¹⁰⁶ Decisions in the WTO are taken by consensus. This means that ACP countries have an important say in the conclusion of negotiations.

¹⁰⁷ The EU Trade Commissioner reaffirmed the EU's support for a multilateral solution for cotton on several occasions, such as the EU-Africa forum for cotton (Paris, 5-6 July 2006) or in the framework of UN conferences dedicated to poverty reduction and achievement of the Millennium Development Goals (MDGs).

¹⁰⁸ The two communications were jointly prepared by the Commissioners for Trade and Development, and represent a reply to an earlier request of the External Relations Council to the Commission for investigating the cotton problem.

demands were 100 per cent directed. Furthermore, a stand-alone reaction from the EU towards opening of the European market to African cotton would not suffice to solve the problem.¹⁰⁹ As the EU is already to a large extent open to products from least developed countries (LDCs), offering duty- and quota-free access in the framework of the Everything but Arms (EBA) initiative, the Commissioner called for the US to follow-up with comparable actions.¹¹⁰

In addition, although the Commission attached vital importance to its claim for complementary offers throughout the Doha Round, it has found itself under criticism at the European level, generally from France, during the negotiations between Geneva in 2004, and Hong Kong in 2005.

Preceding the discussions on the July Framework (2004) there was considerable debate in the Council, initiated by France at the COREPER level (and supported by Belgium, Ireland, Greece and Hungary) who criticised the Commission for being “too unilateralist” in the negotiations. The Commission’s proposals for Geneva, mainly focused on agriculture, were judged as limiting the EU’s room for manoeuvre, by giving in to external demands without receiving any guarantees in return. Consequently, France asked for an extraordinary Council meeting at the end of the month and ahead of a WTO agreement on the July framework, in which the Member States could evaluate the Commission’s approach in the negotiations.¹¹¹ Within this context, the Commission’s response was “that it is not going to disarm unilaterally [...] and that everyone must make a move”.¹¹² However, the Council further expressed its support for the Commission,¹¹³ and recalled what broadly seems to represent the Commission’s negotiating directive: the importance of “a satisfactory” framework agreement between agriculture, non-agricultural market access (NAMA), the Singapore issues and development, synergy among the three pillars of the agriculture package, as well as “parallelism” on the EU’s offer of abolishing agricultural subsidies.¹¹⁴ According to the Presidency, “the framework agreement on these subjects should reflect the key EU objectives and interests in the Doha negotiations”.¹¹⁵ Nonetheless, the Commission was put under higher scrutiny through more “regular” consultations with the Art. 133 Committee during the course of WTO negotiations.¹¹⁶ The Council agreed on this additional control measure although some Member States did not see it as absolutely necessary, and were in favour of “maximum freedom for the Commission to continue its negotiations”.¹¹⁷ Highly suggestive regarding the Commission’s conduct of international trade negotiations was an excerpt from a press declaration of the Trade Commissioner in the aftermath of France’s criticism and subsequent debate in the Council:

“It is entirely understandable for each Member State to have its own particular political sensitivity [...]. Textiles are extremely important to Portugal, as is intellectual property to Italy, and specialist steel is to Sweden. And agriculture to France. [Given that trade negotiations in Geneva are focused mainly on

¹⁰⁹ See Agence Europe 2004 on the Commission’s proposal for a global EU action plan in support of LDCs.

¹¹⁰ Ibid.

¹¹¹ See Agence Europe 2004 on the Council’s discussion of WTO talks.

¹¹² Ibid.

¹¹³ See Agence Europe 2004 on Member States support to Commission’s negotiating tactics and Pascal Lamy’s explanation of the Commission’s negotiating stance.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

agriculture], it is natural that France's voice should be louder than that of the other countries whose topography of priority subjects is not the same. [...] [The Commission is well aware of the existence of these national priorities], and we take account of them [as far as possible in a Union of 25 members]".¹¹⁸

Later in the Agriculture Council, France called for the rejection of the draft text of the July framework (2004), on grounds that the WTO included EU's offer on the elimination of agricultural export subsidies, without parallelism from the US on the end of export credits.¹¹⁹ Therefore, it asked the Council to increase its scrutiny of the Commission in Geneva, and together with the Art. 133 Committee, to stand ready to meet with the Commission at any moment.¹²⁰ Furthermore, national positions in the Council were differing between largely two opposing camps: on one hand, Member States that fully supported the Commission's position in the Geneva talks (UK, Germany, Sweden, Italy), and on the other hand, Member States that were rather reserved if not "openly critical" (France, Belgium, Poland, Hungary).¹²¹

But despite internal diverging opinions over the Commission's negotiation strategies and the draft text proposed by the WTO, all Member States re-emphasised the EU's commitment towards achieving a balanced framework agreement, reiterating in this way the Commission's initial broad negotiation mandate. Additionally, the Council backed the Commission's negotiating strategy for Geneva and even emphasised to the press that its decision represents a clear political message in support of the Commission's actions.¹²² This approach shows that the Council in the end agreed to at least maintain the Commission's room for manoeuvre, which, keeping in mind the European interest and Member State sensitivities, could adapt along the way.

Thus, a strong resulting message is that when Member States in the Council are divided over the "right" negotiating strategy, the Commission's autonomy is not affected by any further negotiating constraints imposed by the Council - other than the limits of the general mandate. Moreover, the Commission's status quo in conducting the negotiations plus the Council's decision in spite of the divergence of views among the Member States has to be seen against the background of the related international context. Given that WTO negotiations are highly charged with political energy, adopting France's demands would attract international criticisms vis-à-vis the EU for jeopardising the Round. In fact, such an outcome would also run counter to the Commission's cautiousness of avoiding that the political blame for Ministerial failure falls on EU's shoulders. Within this context, the Council decided to meet in an extraordinary format, in Geneva, so as to brush up on the EU's position on the final text of the July Framework.¹²³ Permanence in terms of control over the Commission was to be kept by the Art. 133 Committee, through regular on-the-spot contacts.¹²⁴ In addition, the Commission's mandate was complemented with the imperative to keep "momentum up for the Doha Development Agenda, without, however, prejudging the position that the Union will adopt in completing negotiations on the Doha

¹¹⁸ Ibid.

¹¹⁹ See Agence Europe 2004 on the French position regarding the July deadline.

¹²⁰ See Agence Europe 2004 for the discussion among Foreign Affairs Ministers on EU's Geneva negotiating position.

¹²¹ See Agence Europe 2004 regarding several discussions on the agenda of the Council.

¹²² See Agence Europe 2004 on Member States' decision for a balanced framework agreement in Geneva.

¹²³ Ibid.

¹²⁴ Council of the European Union Press Release of 26 July 2004.

Round as a whole”.¹²⁵ In a fragile international political environment, “keeping momentum up” was highly relevant if the Commission was to continue to show leadership and maintain a strong position in the WTO. At the same time, the Commission was tasked to negotiate “without rebalancing the text on the table”.¹²⁶ According to then EU Trade Commissioner, Pascal Lamy, potential improvements on the text included US’ reform of agricultural policy - itself a sought after equivalent to Europe’s CAP reform - NAMA, services, and facilitation of trade and development, all of which were already on the negotiating table. On agriculture, the Commission aimed to rebalance its offer to completely eliminate agriculture subsidies with equivalent offers. This strategy proved to reap some results, on the one hand, as the US agreed, following an informal G5 meeting on agriculture, to reduce its domestic support within the next reform of the Farm Bill, and on the other hand, as France strongly supported the result.¹²⁷ The Commission managed in this way to put the EU in a better position at the international level, while easing tensions in the Council. In the words of the Agriculture Commissioner:

“Today we got a deal which will boost the world economy, farm trade and the opportunities for poorer countries. This agreement also ensures that other rich countries will follow the EU on its reform path. The EU’s reformed farm policy will not be called into question. Now, EU farmers have a clear perspective, developing countries will see better market access and less unfair competition”.¹²⁸

In other words, the Commission was capable of showing that it defended the EU’s position well, opening a window of opportunity for further compromises, and most of all, respecting the outer limits of the mandate posed by the CAP reform. Moreover, as the final text of the July framework was well received by the Council,¹²⁹ no Member State was tempted to ask for additional negotiating directives to guide the Commission, which felt that these would not be necessary as it will stay within the limits of the mandate.¹³⁰

However, despite this (short) success, France questioned once again the Commission’s conduct in the negotiations, this time on the background of the Hong Kong Ministerial, and in light of additional pressure from other WTO members who were asking for additional improvements on the EU’s previous agricultural offer. In the negotiations preceding Hong Kong and after an exchange of offers between the US and the Commission, in which the US proposed to reduce farm subsidies by 60%, and the Commission responded with a new reduction figure of 70% - above its previous offer of 65%, France declared that EU’s Trade Commissioner, Peter Mandelson, overstepped his mandate. Consequently, it asked the Council to control his actions¹³¹ or otherwise threatened (as previously) to reject the WTO agreement. However, there was no consensus on this matter in the Council, which saw the French request as a catastrophic scenario before Hong Kong. Moreover, Commissioner Mandelson reported to a meeting of foreign affairs ministers, in which he explained the Commission’s position on the agricultural proposal and how this fits within the limits of the mandate.¹³² He committed to full transparency from both in relation to the Council as well

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ See Agence Europe 2004 on the views of WTO members and the framework agreement.

¹²⁸ Ibid.

¹²⁹ Council of the European Union Press Release of 30 July 2004.

¹³⁰ Ibid.

¹³¹ Wright 2005.

¹³² Dairyreporter.com 2005.

as to the technical meetings of the Art. 133 Committee in Geneva.¹³³ France in return emphasised that the EU's offer must be conditional on others' and asked the Commission to reduce the substance of its proposal should WTO members not follow suit.¹³⁴ Notwithstanding French firmness of position and claims for a potential deviation from the lines of the mandate, Commissioner Mandelson promised during an informal visit in Paris, with French Prime-Minister Dominique de Villepin, to "do his best to put forward the interests of France and Europe" while in Hong Kong.¹³⁵ However, if finding a compromise with the French failed, the Commission would have tried to gain the support of other Member States.¹³⁶

Coming back to the issue of cotton, it is useful to recall that the July 2004 Framework agreed to deal with the trade related aspects of cotton "ambitiously, expeditiously and specifically, within the agriculture negotiations",¹³⁷ which was an outcome the Commission strove for. Work in the Agriculture committee on this topic was linked to all three pillars of the agriculture negotiations. The Special Session of the Committee on Agriculture was to ensure that cotton is a priority, which will be addressed independently from other sectoral initiatives,¹³⁸ whereas the Cotton Sub-Committee was set-up to discuss both trade and development aspects of cotton. Including cotton under the umbrella of agricultural negotiations was a way of balancing the interests of the Member States externally, in light of previous African demands for cotton discussions as a stand-alone subject, which, as with any subject that may be treated individually, would have opened the door for deeper compromises. The Council noted in this respect: "the Council and the Commission underline the importance of the cotton sector for a number of rural areas in the Community. In this regard they note with satisfaction that, in the framework agreement, cotton is treated within the agriculture negotiations".¹³⁹ For the Hong Kong Ministerial, the Commission reinforced the approach of the July framework, and decided to focus on the development side of cotton, by including it in a "development package"¹⁴⁰ which it then supported strongly.

Against this background, it is worthwhile to observe that the Commission's initiative on the "development package", which the US also favoured, offered an international opportunity to reinforce the role of development at the heart of the Doha Round. It called for other WTO members to respond and implement their own version of the EBA initiative, and opened the possibility for the US to cushion African claims for compensatory payments that further intensified in Hong Kong. In addition, the development package was to be agreed "independently of other areas of the negotiations", following a model closely resembling the EU's approach towards the African cotton problem. All in all, these were initiatives that could push the round forward and create new impetus in the negotiations".¹⁴¹ Resulting from the Hong Kong Ministerial was a text that reconfirmed cotton's importance along the lines of the July framework. The text states that all forms of export subsidies applied to

¹³³ See Agence Europe 2005 on French demands to European negotiators for more clarity on the agricultural offer.

¹³⁴ Ibid.

¹³⁵ See Agence Europe 2005 on post-Hong Kong discussions (Brazil and the emerging countries).

¹³⁶ Financial Times 2005.

¹³⁷ WTO 2004.

¹³⁸ Ibid.

¹³⁹ Council of the European Union Press Release of 30 July 2004.

¹⁴⁰ The development package offered to remove all forms of export subsidies for cotton, and offer duty-free customs duty to cotton exports coming from the poorest countries, and substantially reduce internal support, while implementing these commitments once the Doha Round has been concluded. See Agence Europe 2005 on the EU's wish to make Doha a development round.

¹⁴¹ See Agence Europe 2005 on Peter Mandelson's view on further farm concessions at Hong Kong.

cotton would be eliminated by developed countries in 2006, that they would offer duty free and quota free access for cotton coming from LDCs from the moment Doha is implemented, and that following overall agreement in the negotiations, internal support for cotton would be reduced more ambitiously than the general formula in agriculture, and implemented faster than general commitments.¹⁴² The final wording of the Hong Kong Ministerial Declaration reflected European views, but had limitations as regards a fast decision on internal support due to the US' inability to tackle this issue.¹⁴³ However, it provided a basis that prevented African countries from obstructing an agreement. Under Hong Kong arrangements, it becomes less likely that African countries would reject the final Doha deal in case an acceptable solution is found. At the same time, African representatives could be more inclined to agree with the resulting agricultural package, given the link between cotton and agriculture, as well as US insistence on a meaningful final deal on agriculture as a prerequisite for settling the African cotton problem.

6. CONCLUSIONS

This paper has provided an insight into the dynamics surrounding the EU's position in international trade negotiations, and focused in particular on the role of the European Commission in this process. By taking a principal-agent approach, the paper has ultimately sought to investigate some of the potential sources of autonomy that the Commission can draw upon while upholding an EU position at the international level. The practice of international trade negotiations is best captured as a three-level game. How the Commission handles its intermediary role along the three-level game will determine the degree of autonomy it can capitalise on. Agent autonomy will find expression informally, and will possess different facets according to the politics surrounding particular moments in trade talks. Therefore, a few instances within the agricultural negotiations, such as general concepts in negotiating strategies, the case of cotton as a trade and development subject and moments in which the Commission was criticised by individual Member States for overstepping the mandate, were analysed.

A significant part of the Commission's overall stance in the Doha Development Round, has been to show leadership at the European level in order to institutionalise the rules of the multilateral game (Kerremans 2006). After the Uruguay Round, the Commission tried to institutionalise principles such as the single undertaking and parallelism of offers that would secure the EU's interests in the long run. It also placed emphasis on development to create momentum for the beginning of a new round of talks, and followed this approach throughout. It is in this context that the cotton problem, although initially not foreseen on the negotiating agenda, saw a significant change in the Commission's approach to the negotiations. The development linkages of the round, that the Commission itself initially pushed for, as well as the EU's strong development focus outside of the multilateral context, seem valid attributes that contributed to the decision to call for a prioritisation of cotton in the agriculture negotiations. Thus, reacting quickly on cotton became a genuine test of the EU's development stance, and therefore its credibility in the world.

Moreover, leadership on this matter had greater benefits at the international level, vis-à-vis developing and developed country players alike. The Commission could push for a response to the cotton problem from the US (which would be required to reform its own

¹⁴² WTO 2005.

¹⁴³ The US affirmed that agreeing on internal support would involve the competence of the Congress.

subsidies programmes), and additionally, on the background of EU's previous agricultural negotiating proposals and reform of the CAP, ask further commensurate compromises from partners at a later stage in the negotiations. At the European level, the Commission intensified the reform of the Mediterranean package, which included cotton. Despite opposition from Greece and Spain, the two main cotton producers in the EU, support from France and greater economic stakes at the international level created an enabling political environment that inclined the balance towards reform. Therefore, strong development implications coupled with extensive attention at the international level enhanced the Commission's autonomy in the negotiations at the EU level. In the same vein, internal reform provided for more leverage vis-à-vis other WTO members, who were still to implement their equivalent share of commitments. Furthermore, the Commission sought to advance matters at the international level by gaining the support of developing countries, using also bilateral channels. Including cotton in the development package, hence making a broader, moral connection to the higher stakes of the Doha Development Round, facilitated a response from the US, along the lines proposed by the Commission but leaving open the question of reductions in domestic support.

In addition, the fact that the mandate was broad and had a non-binding nature to begin with, offered the Commission flexibility in the negotiations. This flexibility was mutually beneficial - for both the principal and the agent: the Council could better control the Commission without a fixed legally binding mandate, and adapt faster negotiating directives along the way, and the Commission could have some room for manoeuvre necessary to give it credibility in relation to its counterparts. Control was kept through regular scrutiny in the Art. 133 Committee and by the Council itself, who followed the Commission on the spot during Ministerial negotiations in Geneva. This was a more suitable and flexible option, since the procedure for granting a new mandate to the Commission at regular periods would have been a complicated and time-consuming process.

Although criticised for going beyond the mandate, the Commission's room for manoeuvre was not reined in at the negotiations table. Instead, the Council slightly increased observance over the Commission during the negotiations. This shows that the Commission's autonomy to conduct negotiations at the international level remains largely unaffected when Member States in the Council are divided over the "right" negotiation position. Moreover, the analysis has revealed that it is not that easy for a few Member States or for one powerful Member State to restrain the Commission's autonomy by asking the Council to provide extra negotiating directives in cases where they claim that the mandate was not respected. However, drastic control measures have not been pressing for the Council either, as at the end of the day, the Commission is judged to deliver in line with Member States' expectations.

Furthermore, if one thinks that the Commission, in pursuing the European interest, works on the basis of a broad mandate, but also needs to keep in mind what are Member States' national sensitivities, as Pascal Lamy suggested in an interview, French criticism may well be part of a blame shifting exercise, but it may also be a move to push its interests to the fore. Therefore, as a general rule, if the Commission manages to strike a balance between national sensitivities and the general European mandate (or directives) when negotiating at the international level, it generally remains on the "safe" side, minimising the chances for further criticism, as well as assuring an acceptable final deal for the Council. Nonetheless, on the background of a broad mandate, Member State claims are bound to be subjective.

In sum, looking at the Commission's approach to both cotton discussions and agriculture negotiations has indicated so far that a highly mediated subject with a strong development component in international negotiations may enhance the autonomy of the Commission, whereas Member State claims for overstepping the mandate result in preserving the Commission's status quo of action. Additionally, these findings are further stressed as they come against the background of a sensitive subject, namely agriculture negotiations. In light of the Council's decision not to jeopardise the EU's position internationally, it could be affirmed that the highly political nature of agricultural negotiations (and even of trade negotiation in the Doha Round more generally) works in favour of the Commission's autonomy. Moreover, this idea is in line with the reasons for delegation such as the expertise of the agent, as the Council acknowledges that the Commission remains the most equipped and knowledgeable player to carry on the EU's stance in international trade negotiations.

Regarding the implications for the principal-agent relation, the paper finally argues that the agent acquires in practice an informal function of mediator - between the general EU aim and national sensitivities, and between the EU and the multilateral level. This function requires a certain degree of autonomy at the international level in order to obtain the best final result. Member States in turn, seem to accept that the Commission needs to fulfil this mediating role. So rather than considering that the agent is tempted to go beyond the mandate to pursue its own interests as the principal-agent theory might predict, it appears from the analysis that the way in which delegation was thought of in the first place as well as the highly political nature of the institutional environment at the European and international levels, influence to a large extent the agent's autonomy as well as its behaviour as a trade negotiator.

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