

**The Role of EU Negotiators in Third Party Trade Negotiations:
One Agent and Two Sets of Principals**

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Abstract

This paper explores the utility of using principal-agent analysis – both at the level of the Commission and the European Union as a whole – to explain the EU agenda-setting process in the negotiations between the EU and South Africa that led to the Trade, Development and Co-operation Agreement of 1999. The paper argues that the internal Commission negotiations, which are often overlooked in analyses of EU trade negotiations, need to be analysed. It demonstrates that both the initial EU agenda and the final agreement with South Africa were influenced by the intra-Commission negotiations, and that the EU negotiators, who had strong developmental interests due to their location within DG Development, were particularly influential.

Introduction

Because of its complex internal structure, the EU is often seen as a rigid trade negotiator, who presents its negotiating opponent with a ‘take it or leave it’ position (Bretherton and Vogler 2006: p. 79). The most common approach when explaining this rigid EU position is to use principal-agent analysis (e.g. Meunier 2000; Nicolaïdis 1999; Pollack 2003; Woolcock 2005) to demonstrate how the preferences of the EU Member States (the principals) have been combined through complex and often lengthy processes into a joint EU position, or a ‘single voice’ (e.g. Meunier 2005), represented by the Commission (the agent), which has been delegated the power to represent the EU and to conclude trade agreements with third parties.

The main focus in these analyses is the extent to which the Member State principals are able to control the negotiating Commission agent during the course of negotiations with a third party, and the extent to which the Commission is able to act autonomously, to stretch its delegated powers, and push through its own preferences and thereby escape controls sought by the Member States (e.g. Bilal 1998; Kerremans 2004; Meunier 2000; Meunier and Nicolaïdis 1999; Pollack 2003; Woolcock 2005). The Commission is thus treated as a rational, unitary, actor with fixed preferences, generally in favour of further integration and liberalisation. While recognising

that the Commission cannot be a unitary actor in reality, these studies argue that the Commission acts with *enough* unity *vis-à-vis* the third party that it is appropriate to treat it as such. Since international trade negotiations are regulated by the EU's Common Commercial Policy, which is one of the oldest and most integrated Community policies, the Commission has come to play a key role as the agenda-setter and EU negotiator *vis-à-vis* third parties in this policy area. This position has allowed the Commission to accumulate extensive political and policy-making experience and expertise, and considerable political influence.

If, however, the focus shifts to the internal workings of the Commission, a second principal-agent relationship may be detected – *inside* the Commission between the Directorate-Generals (DGs) and the Commission negotiating team, who in turn are seen as rational, unitary, actors with fixed preferences. Thus two principal-agent relationships may be hypothesised when the EU is negotiating with a third party; one at the level of the Commission and the other at the level of the EU as a whole, even though, the agent is in fact the same in both relationships. The analytical framework presents a situation in which there is *one* agent (the Commission negotiating team) and *two* sets of principals (the DGs in the Commission and the Member States in the Council).

Although principal-agent analyses have been used in different ways, most make four basic assumptions:

- (1) The principals delegate power to an agent to act on their behalf.
- (2) The relationship between the principals and the agent is characterised by conflicting preferences and information asymmetry.
- (3) The principals are able to control the behaviour of the agent through various control mechanisms.
- (4) The principal control is incomplete which may cause the agent to act upon its own preferences rather than those of its principals.

This paper tests these four assumptions in the context of the EU's trade negotiations with South Africa, which led to the Trade, Development and Co-operation Agreement (TDCA) in 1999. The

central argument of the paper is that the Commission did not act as a unitary actor in the TDCA negotiations; crucial to understanding the EU's position in these negotiations was the relationships between the DGs and the Commission negotiating team. In other words, EU agenda-setting process¹ in this case is better conceptualised as involving two principals and one agent.

Delegation

Commission Level: Normally when the EU initiates negotiations with third parties, a temporary task force is set up within the Commission with overall responsibility for the negotiations, including the tasks of coordinating the interests of the different DGs into a Commission proposal, representing the Commission vis-à-vis the Council, and representing the EU in its negotiations with the third parties. Thus, following South Africa's formal acceptance in November 1994 of the EU invitation to work towards a comprehensive long-term relationship (European Commission: SEC (95) 486), the Commission appointed a negotiating team in DG Development with the overall responsibility for the EU-South Africa negotiations. The Commission negotiating team consisted of the EU chief negotiator, i.e. the Director-General for Development, the Commissioner for Development, and the so called Task Force South Africa (TFSA), which was made up of four officials from DG Development. The Director-General for Development interacted with the other Director-Generals within the Commission, COREPER in the Council, and the South African chief negotiator, i.e. the Ambassador to the EU. The Commissioner for Development interacted with the College of Commissioners, the General Affairs Council and his South African counterpart, the Minister for Trade and Industry. However, both the Director-General and the Commissioner for Development were fully supported by TFSA, which was responsible for the actual running of the negotiations, and interacted with the Commission official from the other DGs, the Working Groups and the Committees in the Council, and the South African negotiating team, which was based within the Department for Trade and Industry. It was the four members of the task force that prepared all the briefing notes, and they were present at all negotiating rounds. In fact, in many of the interviews carried out with Commission officials involved in the negotiations, the members of the task force were referred to as the chief

negotiators (Interviews, Commission officials, DG Development and DG Trade, May-June 2004). Consequently, the 'Commission negotiating team' and 'TFSA' are used alternately in this paper.

During this time of delegation it was the geographic position of the third party with which the EU was about to negotiate an agreement that decided within which DG the responsible task force should be established. In 1995 the responsibility for South Africa had recently moved from DG Trade to DG Development during the overall re-structuring of the Commission, and consequently TFSA was set up in DG Development (Interview, Commission official, DG Development, May 2004).

By delegating the task of agenda-setting, the DG principals expected the task force to come up with the initial proposal around which they could then express their preferences. Although TFSA was based within DG Development, it was supposed to act as a neutral entity, representing the Commission as a whole, and preparing a balanced proposal to the Council, incorporating the different interests of the DGs.

The reason for delegating the task of representing the DGs during the negotiations with the Member States in the Council and the negotiations with South Africa was to ensure that any Commission position taken in either negotiation would be acceptable to all DGs. Because, although a negotiating task force has to act within the mandate adopted by the Commission (and later the Council) as a whole, there are constantly new issues appearing during the process of an international trade negotiation, around which common stand points have to be taken within the Commission.

EU Level: The Member States granted the European Community exclusive competence in the area of trade in the Treaty of Rome in 1957. Through this delegation of trade policy the Member States are represented by the Community in international trade negotiations with third parties, and consequently speaks with a 'single voice' (e.g. Meunier 2005). The Common Commercial Policy is an area of exclusive competence, which means that the Member States cannot act individually in this area and enter into separate international agreements with third parties, which

would affect the Community policy (Macleod, Henry and Hyett 1996: p. 61). In addition to the delegation of trade policy to the Community, there is a second level of delegation in which the Council delegates the agenda-setting and the negotiating power in third party negotiations to the Commission (Meunier 2005: p. 22). Thus, in the TDCA negotiations, as in other trade negotiations, the Member State principals in the Council delegated the power to the Commission agent to represent the EU and lead the negotiations with South Africa.

Consequently, the assumption about delegation could be seen both at the level of the Commission and the EU as a whole. The TFSA agent was delegated the power to set the agenda and lead the negotiations with South Africa by both the DG and Member State principals.

Conflicting Preferences and Information Asymmetry

Commission Level: Although TFSA had been delegated the task of setting the agenda for the EU-South Africa negotiations by coordinating the interests of the affected DGs from a neutral position, it did have its own preferences, different from those of its principals. The main dividing lines within the Commission were between TFSA, DG Trade, DG Enterprise and DG Agriculture. In line with the assumption that the preferences of the DGs depend on the sector or function they represent (e.g. Peters 1992: p. 115-6; Egeberg 2002: p. 8), TFSA's own preferences were development oriented, given its location within DG Development. Ideally the members of TFSA would have wanted to offer South Africa full membership of the Lomé Convention² as that would bring in a strong actor into the ACP family and thus strengthen Lomé which was the core area of responsibility of DG Development. In wanting to play a strong developmental role, it was in DG Development's interest to support South Africa (Interviews, Commission officials, DG Development, April-May 2004).

DG Trade is usually seen as adopting a liberal approach and favouring free trade (e.g. Bretherton and Vogler 1999: p. 51). In line with these preferences it wanted to establish a

bilateral agreement with South Africa leading to a Free Trade Area within the framework of the newly established WTO. It wanted the bilateral agreement to be based on the new Article XXIV of GATT, which establishes that a free trade agreement should "...eliminate duties and other restrictive regulations of commerce...on substantially all trade between the constituent territories in products originating in such territories". Although DG Trade realised that the difference in size of the respective economies needed to be taken into account, it was very clear on its commitment to *reciprocal* trade liberalisation. It stressed the need for the EU to adopt an offensive attitude in certain areas, such as textiles and clothing products, and push for a reciprocal and symmetrical liberalisation in the context of a Free Trade Area (Interview, Commission official, DG Development, June 2004).

DG Enterprise's main interest was for South Africa to open up its industrial market in areas such as automotives, chemicals, wood and paper, precious metals, glass, transport equipment, and electrical equipment, as well as protecting certain sectors of the EU industry from competition, for example textiles, aluminium and ferroalloys (Interview, Commission official, DG Enterprise, October 2005).

DG Agriculture wanted to protect the agricultural production of the EU from South African competition. While DG Agriculture did regard South Africa's relatively small agricultural production as a potential threat to EU products, its main reason to take a protectionist approach in these negotiations was the fact that the agreement between the EU and South Africa was seen to be setting a precedent for subsequent negotiations with third parties. Being negotiated in accordance with the rules of the new WTO and Article XXIV of GATT, DG Agriculture was worried that the agreement would be a model for future agreements with other third countries with more competitive agricultural sectors (Interview, Commission official, DG Trade, June 2004).

The informational advantage which principal-agent analysis often ascribes to the agent was also seen, to a certain degree, in the relationship between the TFSA agent and the DG principals. Regarding the developmental dimensions of the negotiations, in particular South Africa's

potential membership of the Lomé Convention, TFSA possessed the technical expertise given that responsibility for the ACP countries has always been with DG Development. However, for the other technical aspects of the trade negotiations, TFSA had to rely on the expertise within the different DGs, in particular DG Trade, DG Enterprise and DG Agriculture. Consequently, it is not possible to attribute technical expertise as one of the reasons for the TFSA agent's informational advantage vis-à-vis its DG principals. However, it did obtain an informational advantage through its coordinating role. Certain DGs had a deeper and more detailed level of technical expertise than TFSA, but the task force had the overall picture of the negotiations and the interests of the different DGs (Interview, Commission official, DG Development, April 2004).

EU Level: In the Council the Commission negotiating team faced some Member States, including Denmark, Finland, the Netherlands, Sweden and the UK, that were supportive of its developmental approach and favoured greater liberalisation and an opening of the EU market for South African products, and others, including France, Spain, Italy, Portugal and Greece, who favoured a more protectionist approach (European Parliament 1997: 223.242). This, which is in line with a general pattern of EU trade policy (e.g. Woolcock 2005, p. 390), was particularly the case in the agricultural field given that the South African agricultural production, with its focus on citrus fruits and wines, in many respects corresponds to that of the Southern European Member States. However, whenever the negotiations focused on products produced in the northern Member States, such as beef, milk powder, and cut flowers, protectionist tendencies were very clear in these states as well (Interview, Commission official, DG Development, April 2004).

The informational advantage of the agent is often seen in the relationship between the Commission and the Council in third party trade negotiations (e.g. Nugent 1997; Hooghe and Marks 2001; Pollack 2003). Given its technical expertise and extensive experience in the area of Common Commercial Policy since 1957, the Commission has an informational advantage over the Council. In addition, while the Commission has fewer financial and human resources than the Member States, it is placed "...at the centre of a wide-ranging network including national governments, subnational governments, and interest groups [which] gives it a unique informational base for independent influence on policy making" (Hooghe and Marks 2001: p. 11).

In the EU-South Africa negotiations this informational advantage of the Commission was seen and further intensified by the long history of Community relations with South Africa. The Community had initiated its policies towards South Africa in 1977, and although the role of the Commission was limited in the beginning, it came to play a leading role once the first moves towards a democratic transition were made in early 1990. In addition, once the negotiations had started, the informational disadvantage of the Member States grew even further as they were not present during the actual negotiations with South Africa, and had to rely on the information conveyed to them by the Commission.

This demonstrates how the assumption about diverging preferences and information asymmetry characterised the principal-agent relationship both at the level of the Commission and the EU as a whole. The diverging preferences were clearer between the TFSA agent and the individual DG principals, than between the task force and the individual Member State principals given that the national positions changed depending on the sector being discussed, and at times the task force had great support from some of the Member States. The informational advantage of the agent *vis-à-vis* the principals was however greater in the relationship between TFSA and the Member States in the Council, than between the task force and the DGs, as the latter often had to provide their TFSA agent with the technical expertise of their respective policy areas.

Principal Control Mechanisms

The assumption about the principals' ability to control the TFSA agent is tested during the two stages of mandates and negotiations. These two stages, together with that of ratification, are often used when looking at the decision-making processes in trade negotiations between the EU and a third party (e.g. Holland 2002; Meunier 2005), to highlight the respective roles played by the Council and the Commission at each stage. Although ratification is one of the main ways in which principals are able to exercise control over the negotiating agent, as the agent knows that any agreement it reaches has to be ratified by the principals (e.g. Meunier and Nicolaïdis 1999; Putnam 1988), it is not included here as it normally is a matter of just 'voting up or down' (Putnam 1988: p. 437), and does not expose any tensions in the relationship between the

principals and the agent. The TDCA agreement was indeed agreed and ratified by both the Commission and the Council.³

Mandates

Commission Level: The initial proposal for the first negotiating mandate was prepared by TFSA as soon as it was appointed in January 1995. However, the structure of the negotiations, i.e. the decision to negotiate a Free Trade Agreement, had to a great extent already been determined by DG Trade, which was responsible for South Africa before 1995. Once it became clear that the apartheid regime would come to an end in early 1990, DG Trade engaged in a number of exploratory missions to South Africa. The preference of DG Trade for a Free Trade Agreement was clearly explained to the South Africans, and there was little scope to change this stance (Interview, Commission official, DG Development, May 2004). This way, DG Trade was able to exercise great control over the task force during this initial agenda-setting phase when the proposal for the first mandate was developed. The task force had to stay within the overall structure proposed by DG Trade, but could develop the developmental aspect of the mandate proposal. In particular, it pushed for making South Africa a qualified member of the Lomé Convention. The participation of DG Enterprise and DG Agriculture was very limited at this initial agenda-setting stage.

The first proposal for a negotiating mandate to be presented to the Council thus represented a compromise mainly between DG Trade and DG Development. It proposed a twin-track approach aimed at, on the one hand, making South Africa a qualified member of the Lomé Convention, allowing it to fully participate in the political institutions of the Convention and to benefit from a limited number of financial provisions, and on the other, establishing a bilateral agreement with provisions for a future Free Trade Area between the EU and South Africa (European Commission: SEC (95) 486).

While it was relatively easy for the TFSA agent to get its proposal for the first mandate approved by the DGs, the second mandate proved more difficult. At this point DG Agriculture and DG Enterprise became seriously involved in the negotiations. Given the overall aim of ensuring that

the agreement would be in line with Article XXIV of GATT, i.e. that the coverage of the Free Trade Area should be at least 90%⁴ of all trade between the parties after a transitional period of a maximum of 10 years, DG Agriculture pushed for a percentage as low as possible – around 50% – of South African agricultural products to enter the EU market duty free. It also wanted to completely exclude a number of sensitive agricultural products, such as certain fresh fruits and vegetables, from the Free Trade Area, as it knew that the offer made to South Africa could also be offered to others, such as Chile and Mexico, and was consequently unwilling to set a precedent of an ‘extensive’ opening of the EU agricultural market. On the other hand, DG Agriculture expected South Africa to open up *its* agricultural market to EU products at a level higher than 90%, as South Africa’s sensitivities were in the non-agricultural, rather than the agricultural, sector (Interview, Commission official, DG Trade, June 2004).

Given DG Agriculture’s wish to open up the EU market as little as possible in the area of Agricultural products, DG Enterprise knew that the EU market would have to be open up at almost 100% in the area of non-agricultural products, in order to meet the WTO requirement of 90% trade liberalisation overall. Its main emphasis was rather on making South Africa open up *its* industrial market.

Following three months of intra-Commission consultations, TFSA presented a proposal for the complementary negotiating directives, which was adopted by the Commission in October 1995. The proposal outlined the objective of the Free Trade Area, stating that it should “be gradually established, over a reasonable period of time, covering substantially all trade, without excluding any specific sector”. It further specified that at least 97% of all non-agricultural imports, and at least 55% of all agricultural imports from South Africa should enter the EU market duty free (European Commission: SEC (95) 1748). The low figure of 55% reflected the protectionist interest of DG Agriculture.

EU Level: In the Council there was general agreement among the Member states about the need to support South Africa’s democratic transition, and the Commission proposal for the first mandate was adopted without any major changes by the General Affairs Council in June 1995.

However, the Member State principals became more engaged in the discussions around the second mandate outlining the trade aspects of the agreement. They had strong views about the future trade agreement to be negotiated with South Africa, and were consequently keen to ensure that the mandate would steer the task force to act in accordance with their interests. The Member States expressed their general support for the strengthening of trade relations with South Africa, but underlined the need for caution when discussing the complementary directives, as the negotiations with South Africa would set a precedent for future agreements (Council of the EU: 12116/95).

The main issue which caused debate within the Council was the coverage and exclusions of the Free Trade Area. Regarding the suggested figure of 55% of South African agricultural products to enter the EU duty free, Sweden and the Netherlands thought 55% was too low, while Spain considered it to be excessive (Council of the EU 12116/95). Others, such as Finland, France and the UK, argued against sticking to specific percentage figures at this stage, and in response to these latter Member States it was agreed that the percentages in the Commission proposal should only serve as reference points and not be "...interpreted as criteria for defining the concept of an FTA" (Council of the EU: 5310/96). This meant that the Member States did not, through the mandate, restrict the task force further in this area than the Commission DGs had already done. However, given the diverging interests between the Member States, with mainly the Mediterranean countries being reluctant to open up the EU market, and the Northern Member States favouring greater liberalisation than that suggested in the Commission proposal, it was clear that the decision not to specify specific figures of liberalisation did not offer the task force greater autonomy in its negotiations with South Africa. Instead, the decision not to specify the degree of liberalisation at this stage, just meant that intense negotiations within the Council around this issue would continue in parallel with the negotiations between the EU and South Africa.

A clear indication of the reluctance on the part of the Mediterranean Member States, including France, Greece, Italy, Portugal and Spain, to open up the EU market, was their suggestion of a so called exclusion list, identifying sensitive products to be excluded from the agreement. TFSA,

which had resisted DG Agriculture's demand for specific products to be excluded for the agreement, highlighted the importance of engaging in an open negotiation with South Africa, in which details about specific products would be determined as the negotiations proceeded. However, the insistence by the Mediterranean countries was such that the TFSA in the end had to agree to an exclusion list involving 39% of South Africa's agricultural exports to the EU (European Parliament 1997: 223.242).

Negotiations

Commission Level: The negotiating directives – once adopted by the Council – provided the broad guidelines for TFSA. However, the actual details of the trade agreement had to be worked out by the task force and the South African negotiation team during the course of the international negotiations. In order for the task force to seek advice from the different DGs about the details and new issues appearing during the negotiations with South Africa, GINAS (Group Inter Service pour les Négociations avec l'Afrique du Sud) was set up. It consisted of all the DGs affected by the negotiations with South Africa, and given the extensive scope of the agreement, most of the Commission DGs eventually became part of this group. Through this inter-service group the DG principals were able to monitor the performance of their task force agent. It met on a monthly basis with TFSA to review progress of the negotiations, and to offer their advice or objections.

In addition to GINAS, the core group, consisting of those DGs most closely involved in the negotiations (DG Trade, DG Enterprise and DG Agriculture), met more frequently to ensure that their interests were taken into account by TFSA, and to assist the task force in formulating a Commission position. Their representatives were always present during the actual negotiation rounds with South Africa, and they also led the more technical aspects of their respective parts of the negotiations with South Africa. This presence of the core group during the negotiations with South Africa, allowed the DG principals to closely monitor the actions of TFSA, as well as controlling the outcome of the negotiated agreement by handling parts of the negotiations themselves.

EU Level: The most common way in which the Member States in the Council are able to control the Commission during a trade negotiation is through the 133 Committee, which consists of senior trade officials from the Member States. The 133 Committee maintains a regular dialogue with the Commission to ensure that it does not act outside of the mandate, and to agree on negotiating positions as new issues emerge in the international negotiation (Woolcock 2000: p. 382). The 133 Committee played an important role in the EU-South Africa negotiations. The task force briefed the Committee on a regular basis about the developments of the negotiations, and consulted with it about responses to issues raised by South Africa. However, the bulk of the discussions between the Commission and the Council took place in the Southern Africa Working Group (Council of the EU: 5310/96). The Working Group offered a way for the Member States to closely monitor and control the behaviour of the task force, as it met more frequently than the 133 Committee.

An example of an issue that played a significant role in the Southern Africa Working Group and the 133 Committee, as well as in COREPER and the General Affairs Council, was the protection of geographical denominations. In 1998 Spain and Portugal made a demand in the Southern Africa Working Group that South Africa stopped the usage of the terms 'Port' and 'Sherry' for its fortified wines. They argued that the terms were geographical indications of Jerez in Spain and Oporto in Portugal. South Africa, wanting to protect its production of Port and Sherry, disputed that these terms should be offered protection, and argued that they have become common to the English language, and thus were not necessarily associated with the regions of Jerez and Oporto (Links 1998). Although the task force understood these concerns of South Africa, it could not resist the pressure from the Member States to protect Port and Sherry as geographical indications. Spain and Portugal were supported by France, Greece and Italy on this issue. Although the other Member States did not have strong interests in protecting certain wines or spirits as geographical indications, there was no resistance to these demands made by Spain and Portugal. As one Commission official highlighted, there is a general agreement between the Member States within the Council to respect each other's sensitivities in international trade negotiations, given that these sensitivities change depending on the strengths of the third party. Consequently, although a majority of the Member States were unaffected by the Port and Sherry

issue, they did not object to Spain's and Portugal's demands given that they knew that in the future *their* sensitive products may be under discussion, and then they would not want to be met by resistance from the other Member States (Interview, Commission official, DG Competition, October 2005).

The Southern Africa Working Group and the 133 Committee thus worked as control mechanisms for the Member State principals. The Member States were able to raise new issues in these fora and ensure that TFSA acted upon their instructions vis-à-vis South Africa.

This section demonstrates how the assumption about principal control was seen both at the level of the Commission and the EU as a whole. The two mandates provided ways for the DGs and the Member States to control and set the parameters for the TFSA agent in its negotiations with South Africa in order to ensure that their functional and national interests respectively were represented. It is also clear that it was in the intra-Commission negotiations that most of the structure and content of the mandates were developed, and the Member State principals then responded to these proposals and sometimes further restricted the autonomy given to TFSA by the DG principals. During the negotiations with South Africa the TFSA agent then continued to be monitored by the DG principals, through GINAS and the core group, and by the Member State principals, through the Southern Africa Working Group and the 133 Committee. Here the ability of the DGs to control the task force was greater than that of the Member States as the DGs of the core group were present, and participated, in the negotiation rounds with South Africa. This is different from most principal-agent relationships, in which the principals are not able to directly observe the agent's actions (Arrow 1985).

Agent Autonomy

Despite this ability of the two sets of principals to control and monitor the TFSA agent, the task force was, in line with the principal-agent assumption that the control mechanisms of the principals are incomplete, at certain times able to pursue its own interests, rather than those of its principals. This section explores this ability of TFSA to act autonomously during the same stages as those used above, i.e. mandates and negotiation.

Mandates

Commission Level: The mandate proposals offered a way for the DG principals to set the parameters for the behaviour of TFSA in the negotiations with South Africa. However, it was the responsibility of the task force to come up with the initial proposal for the mandate around which the DG principals then expressed their views. This gave the task force a considerable amount of autonomy to develop the mandate proposal according to its own interests, and given its location within DG Development, TFSA was able to ensure that its developmental interests were included in the mandate proposals. As argued by Holland (1995: p. 88), the DG that controls the South Africa question has a great impact on how it is defined, and how it is pushed through in the policy making process. Consequently the agenda-setting right of TFSA offered it a considerable amount of autonomy to push its own interests.

The way in which TFSA put together the initial proposal for the first mandate, and managed to get it adopted by the Commission, highlights three ways in which the task force used its autonomy and obtained an advantage *vis-à-vis* its DG principals. First, the fact that the trade aspect of the negotiations, which was expected to cause more tensions and debates both within the Commission and the Council, was left to be worked out in an additional mandate, ensured that the TFSA could get its key development issues adopted relatively quickly by the DG principals. The proposal for the first mandate mainly represented the developmental interests of TFSA and South Africa, and although these issues were relatively uncontroversial given the general agreement among all DGs about the need to support South Africa following its transition to a democratic society, it meant that TFSA managed to obtain approval for these issues by its DG principals prior to the negotiations about the more controversial trade issues, and consequently ensured that these development issues would not be used as trade-offs against certain trade interests strongly advocated by the DGs.

Second, by preparing the proposal for the first mandate quickly, with the argument that it wanted to show its commitment to South Africa, TFSA offered its DG principals little time to debate the issue, which limited their engagement in the agenda-setting process. In addition, by preparing

the proposal quickly it limited the number of DGs that would express their view on the agreement. In line with the hypothesis that the involvement of principals, or domestic constituencies, increase over time (e.g. Evans 1993: p. 404), it was possible to detect progressively increased mobilisation among the DG principals, which increased the difficulty of coordinating the different interests for TFSA. At the time when the proposal for the first mandate was adopted by the Commission in March 1995, 13 out of the total 26 DGs were identified as 'associated' to the proposal, which meant that in addition to DG Development, which was the primary responsible for the proposal, they were part of the intra-Commission negotiations (European Commission: SEC (1995) 486). At the time of the conclusion of the agreement in 1999, this number of associated DGs had increased to 23 (European Commission: COM (1999) 245). Thus, by acting quickly TFSA limited the number of potential objections to its proposal.

Third, by proposing the use of the twin-track approach of making South Africa a qualified member of the Lomé Convention on the one hand, and negotiating a bilateral trade agreement on the other, TFSA embarked on a new format of third party negotiations. Given the requirement for the two sets of negotiations to proceed in parallel, the task force ensured that a vast number of issues would be discussed, and thus that there would be significant opportunities for issue linkages. In addition, the new approach offered the task force a lead in suggesting how it would be carried out. In a way, they were setting the agenda for the *structure* of the negotiations, which, in line with Peters (2001: p. 82) agenda-setting argument that whoever controls the initial definition of the agenda is likely to be successful throughout the policy-making process, offered TFSA a great amount of autonomy.

Consequently, the task force was able to exercise a significant amount of autonomy and push through its own developmental preferences during the preparation of the first mandate proposal. Its autonomy did however decrease during the development of the second mandate. At this stage the TFSA agenda was, as demonstrated above, compromised by the more protectionist and less developmental demands made by DG Agriculture and DG Enterprise.

EU Level: Although it is the Council that provides the Commission with the mandate, the Council *responds* to a proposal presented to it by the Commission. In general, the final proposal adopted by the Council contains at least 80% of the original Commission draft (Hull 1993: p. 83).

As demonstrated above, TFSA's proposal for the first mandate was mainly a combination of the preferences of DG Development and DG Trade. Given the relative indifference among the Member States regarding South Africa's Lomé membership, the task force had no problem in pushing through its two-track proposal of making South Africa a qualified member of the Lomé Convention and establishing a bilateral trade agreement between the two parties. There were, however, a few areas where the Member States in the Council tried to push through their own preferences. One example was how Germany, supported by Austria, Belgium and Denmark, made a request to include a 'readmission clause' that would commit South Africa to take full responsibility for its 'illegal immigrants' to the EU (Interview, Commission official, DG Development, April 2004). However, although there was a joint declaration in the final TDCA emphasising 'the importance of co-operating together for the prevention and control of illegal immigration', the task force successfully managed to postpone the decision around this issue to the very end of the negotiations with South Africa, so that it would not form part of the negotiating mandates, and thus, given the Member States' competence in the area of immigration, prevent a situation in which it would have had to involve the Member States in the negotiations with South Africa (*ibid.*). Even if it was clear that the final Agreement would be defined as a 'mixed agreement', TFSA managed to obtain a mandate which foresaw a Community agreement, which then allowed the task force to lead the negotiations as if it were a Community agreement rather than a mixed one, and thus restricted the involvement of the Member States.

While the first mandate was characterised by flexibility and a great amount of autonomy for the Commission negotiators, the second mandate was much more rigid. The Council discussions around this mandate went on for almost five months because of the difficulty of putting together a proposal that would be attractive to South Africa and at the same time take all the Member States' wish-lists of products to be excluded from the agreement into account. Although the end

result was a protectionist mandate, with 39% of South Africa's agricultural exports excluded from the envisaged agreement, the task force had still managed to get the Member States to make certain concessions. For example, initially the combined wish-lists of the Member States had represented significantly more than 39% of South Africa's agricultural exports.

Negotiations

Commission Level: During the TDCA negotiations there was a general perception among the DG principals that, despite their ability to monitor the performance of TFSA both before and during the international negotiations with South Africa, the task force had a significant amount of autonomy. After all, the representatives of the DG principals understood that at certain points they had to compromise in order to be able to reach a common Commission position (Interview, Commission official, DG Trade, June 2004).

Given the convergence of preferences between TFSA and South Africa, the task force was able to use the South African arguments and demands in its negotiations with the DGs. Although it was representing the EU as a whole during the formal negotiating rounds with South Africa, and consequently could not argue the case of South Africa there, the task force then used South Africa's arguments in the intra-Commission negotiations vis-à-vis its DG principals. In the words of one of the South African negotiators: "At every point when we made our argument, we were offering ammunition [to TFSA] to take back in their fight in the Commission" (Interview, South African government official of DTI, May 2005). For example, TFSA put pressure on DG Enterprise to ensure greater access for South African non-agricultural products to the EU market. Although DG Enterprise had agreed to open up the EU market for 97% of South African non-agricultural products in the first mandate proposal, it got pushed by TFSA during the course of the negotiations to accept a 99.98% liberalisation for the industrial sector. The argument used by the task force was that South Africa had already reluctantly accepted a limited opening of the EU agricultural market, and consequently the EU had to liberalise in other sectors to show its commitment to support South Africa (Interview, Commission official, DG Development, May 2004).

Because of their similar interests, the task force would also encourage South Africa to put direct pressure on the DGs during the official negotiation rounds between the EU and South Africa. It was generally recognised that although DG Agriculture had strong protectionist preferences, its South African counterpart, the National Department for Agriculture, managed to convince it to open up the EU market more than it had initially wished (Interview, South African government official, DNA, June 2005). This is an important point to make as the great control being exercised by the DG principals over their TFSA agent, due to their presence during the negotiations with South Africa, to a certain extent was balanced by this direct pressure from South Africa. Consequently, the preferences of TFSA (and South Africa) gained greater influence in the negotiation process as they were pushed by *both* TFSA and South Africa in their interactions with the DGs. South Africa thus benefited from negotiating with a Commission negotiating team based within DG Development, as it in this case facilitated third party influence on the EU agenda-setting process.

EU Level: Despite the rigid nature of the second mandate, and the control exercised by the Member States through the Southern Africa Working Group and the 133 Committee, the TFSA agent was at times able to exercise its autonomy *vis-à-vis* the Council. One example of how the task force used its autonomy to push through its own, and South Africa's, interests in the Council, was by aiming for 'balanced burden sharing' between the Member States in the Council (Interview, Commission official, DG Development, Brussels, April 2004). Although the future agreement between the EU and South Africa was of limited economic importance to the EU, as South Africa accounted for only 1.9% of EU imports and 1.3% of its exports (Sudworth and Van Hove 1998), the Member States attached great importance to the negotiations because of the potential of the EU-South Africa agreement to set a precedent for future agreements between the EU and third parties, especially in the area of agriculture. This area was mostly affecting the Southern European Member States as their agricultural production, with a focus on wine and citrus fruits, is very similar to that of South Africa's. However, the task force managed to maintain a balanced burden sharing between the Member States by ensuring that significant concessions were also required by the EU for products such as beef, cheese, milk, and cut flowers, which are

produced in the Northern Member States (Interview, Commission official, DG Development, Brussels, 26/5/04).

This section demonstrates how the assumption about agent autonomy was seen both at the level of the Commission and the EU as a whole. As the main agenda-setter, the TFSA agent managed to get its developmental preferences reflected in the first mandate in particular. This developmental aspect of the agreement would have been difficult to explain if not exploring the intra-Commission negotiations and the fact that the Commission negotiating team was based within DG Development. During the negotiation stage the task force was also able to exercise a significant amount of autonomy. In the intra-Commission negotiations, it could use the support of South Africa to push its preferences *vis-à-vis* the DGs as South Africa interacted directly with these principals during the official negotiating rounds between the EU and South Africa. On the other hand, in the Council discussions the task force took advantage of the absence of the Member States during the negotiations between the EU and South Africa, and acted strategically by choosing when and in what format to present the demands made by South Africa in order to ensure issue-linkages and a balanced burden sharing between the Member States.

Conclusions

By testing the four assumptions of delegation, conflicting preferences and information asymmetry, principal control mechanisms, and agent autonomy, this paper has demonstrated that principal-agent analysis is of great utility when explaining the EU agenda-setting process in the TDCA negotiations. In particular it has shown how principal-agent analysis can be used to explain the internal Commission negotiations, which are often overlooked in analyses of EU Trade negotiations. This innovative use of principal-agent analysis highlights that the Commission did not act as a unitary actor in the negotiations with South Africa, and that the difference in preferences between the DGs and the Commission negotiating team were reflected in the initial EU agenda and the final agreement with South Africa.

The conceptual framework of one agent and two principals not only helped to theoretically explain the EU agenda-setting process, but also corresponded to the perceptions of both the

European and South African negotiators involved in the TDCA negotiations. For example, one of the South African negotiators highlighted how “the Commission for its part is itself not a unified force, but in some departments a strong reflection of powerful vested interests. The negotiation team of the Commission then has the arduous task of negotiating within itself, and with its opposite number, the Council, and its various substructures in Brussels” (Smalberger 2000: p. 49). Another South African negotiator described how the Commission negotiators, before they could initiate negotiations with South Africa, had to seek their mandate “...working through [both] the Commission and the Member States” (Interview, South African government official, DTI, May 2005). The members of TFSA also expressed how they saw themselves involved in a ‘two-step race’ in which they had to work through both the Commission and the Council before being able to agree anything with South Africa (Interview, Commission official, DG Development, May 2004).

A problem with traditional principal-agent analysis of EU trade negotiations is its difficulty in accounting for the influence exercised by third parties. Nicolaidis (1999: p. 88) recognises this problem, but argues that the lack of third party influence on principal-agent analyses is a result of researchers’ aim to offer theoretical and empirical clarity. However, by placing the level of analysis at the Commission, it is, as demonstrated in this paper, possible to account for some of the influence by the third party. When focusing on the actual negotiating team as the agent, it became clear that TFSA used the arguments made by South Africa internally vis-à-vis its principals both in the Commission and the Council, and when exploring the ability of the DG principals to control the TFSA agent, it was clear that South Africa was able to put direct pressure on the DG principals, thus balancing the reduction in autonomy of the TFSA agent caused by the presence of its principals at the actual negotiating rounds with South Africa. Consequently it can be argued that South Africa at times helped the task force to stretch its delegated powers, and that the principal-agent relationship did not take place in isolation from the third party. The case study thus demonstrates that the EU negotiating team, despite being restricted in its autonomy by two sets of principals, did not present South Africa with a ‘take it or leave it’ offer.

This case study has highlighted some interesting characteristics of the EU-South Africa negotiations. To determine whether these are specific to the TDCA negotiations or of a more general nature, more case studies need to be carried out. Similarly, to explore whether the conceptual framework of one agent and two of principals is useful beyond the case of EU-South Africa negotiations, it needs to be applied to other EU trade negotiations. Since 1999 when the TDCA was concluded, the agreement has served as a model for other trade agreements between the EU and third parties, including Chile, Mexico, Mercosur, and the current Economic Partnership Agreements with the ACP countries. There is consequently a vast research agenda to be explored.

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¹ In this paper the 'EU agenda-setting process' comprises both the development of the initial agenda for the negotiations and the subsequent development of EU positions throughout the negotiations with South Africa.

² The Lomé Convention was a trade and aid agreement which regulated the relations between the EU and the African, Caribbean and Pacific (ACP) countries between 1975 and 2000. In 2000 the Lomé Convention was replaced by the Cotonou Agreement, which is a new trade and aid agreement between the EU and 71 ACP countries (including South Africa's qualified membership).

³ Given that the agreement turned out to be classified as an Association Agreement of a 'mixed' nature including competences of both the Community and the Member States, it also had to be ratified domestically within the fifteen Member States.

⁴ The requirement laid out in Art XXIV of GATT that any Free Trade Area between two or more customs territories should cover "substantially all trade", has been subject to numerous interpretations. However, most interpretations agree that liberalisation of 90% of all trade is an acceptable amount, as long as no entire sector is excluded.