Who Controls Whom? Dynamics of Power Delegation and Agency Losses in EU Trade Politics*

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Abstract

There has been considerable debate about power delegation in EU trade politics, but few studies explore the question of how and why agency losses occur. Focusing on agricultural issues in the Doha Round, this article analyses the impact of agency losses (agency shirking and agency slippage) in the process of power delegation in EU trade politics. Are agency losses the result of the delegation structure, which stimulates the agent to adopt a different position from the principals (agency slippage), or do conflict situations arise because of conflicting interests between the interests of the Member States and those of the European Commission (agency shirking)? Based on information collected from Agence Europe and interviews with European officials, the main conclusions are that: (1) the Council–Commission relationship can be conflict-laden or co-operative depending on the negotiating stage at the international level; (2) a low degree of interest alignment among Member States increases the Commission’s discretion at the international level; (3) inter-institutional conflict weakens the EU negotiating position at the international level because the other WTO members know that the EU is divided and ask for further concessions.

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Introduction

There is now a vast literature on EU trade politics and on how authority has been delegated to the European Commission. This literature can be divided into five prominent strands of explanations. First, most studies apply the two-level game approach of Robert Putnam (1988) to EU trade policy (Clark et al., 2000; Meunier, 2000; Woolcock, 2005b; Young, 2002). Within this strand of explanation, some scholars depict EU trade policy as a three-level game between the international and the national levels (Larsén, 2007; Patterson, 1997). Second, many studies apply the principal–agent approach to explain how authority has been delegated from Member States to the European Commission (Damro, 2007; De Bièvre and Dür, 2005; Delreux, 2008; Kerremans, 2004a, 2004b; Meunier and Nicolaïdis, 1999; Nicolaïdis, 2000). Third, some other studies compare the delegation of authority in the EU and the United States (Clark et al., 2000; De Bièvre and Dür, 2005) during the Uruguay Round negotiations (Baldwin, 2006; Nicolaïdis and Meunier, 2002; Woolcock, 2005a; Woolcock and Hodges, 1998). Fourth, a vast array of studies describes the EU trade policy process since its inception and its embeddedness in the institutional framework (Meunier, 2005; Meunier and Nicolaïdis, 2006; Young, 2007). Finally, other studies focus on the EU as an actor in multilateral trade negotiations (Nicolaïdis and Meunier, 2002; Woolcock, 2005b).

Proponents of the principal–agent approach to EU trade policy disagree, however, on whether the relationship between the Commission and the Council can be assessed in terms of co-operation or conflict and whether the delegation of power enables the agent (the Commission) to act autonomously from principals (the Member States). Kerremans (2004a), the most vocal proponent of the co-operative view, considers that in multilateral trade negotiations it is not in the Commission’s interest to act autonomously from Member States. On the contrary, he maintains the view that the Commission should use the EU and the WTO system to involve the Member States sufficiently in the negotiation process. By contrast, some other authors (Woolcock and Hodges, 1998; Young, 2007) consider the relationship between the Commission and the Council as conflict-ridden. They assert that the reluctance of Member States to widen the scope of trade power delegation to the Commission can be explained by the distrust of Member States towards the Commission’s ability to represent their interests in international negotiations.

Even though there is a wide range of studies on power delegation in trade policy, scholars have paid little attention to the question of why and how agency losses occur. Are agency losses the result of the delegation structure, which stimulates the agent to adopt a different position from the principals (agency slippage), or do conflict situations arise because of conflicting
interests between the interests of the Member States and those of the European Commission (agency shirking)? The question of conflict vs cooperation between the Council and the Commission matters because I expect the degree of interest alignment between principals and agents to have an impact on the EU negotiating position and thus on the outcome of negotiations at the international level.

In order to assess whether the Commission went beyond its negotiating mandate and acted autonomously from the Member States, one has to take a closer look at how the negotiating guidelines came into place and at the kind of contract established between the principals and the agent. Have the Member States opted for a rule-based delegation that gives the Commission less autonomy at the international level by stipulating exactly how the agent was expected to act or rather for a discretion-based delegation, in which principals simply articulate their goals but leave it to the agent’s discretion to fulfil its assigned mission?

This article takes a closer look at how the horizontal co-ordination mechanisms between the 133 Committee, the Special Committee on Agriculture (SCA), the Council of Agriculture, the Council of General Affairs and the European Commission worked in practice during the Doha Round negotiations. The empirical data are based on information collected from the European agency news (Agence Europe) from 1997 to 2006, from internal EU documents, as well as from interviews with officials from the SCA, the 133 Committee, and the European Commission’s Directorate-Generals (DGs) for Trade and Agriculture. This article focuses on agricultural trade issues, which have been one of the most contentious issues in the Doha Round. Overall progress on agriculture has been protracted due to significant divergences between developed and developing countries in the market access and domestic support pillars.

The article begins by recalling some of the central claims of the principal–agent approach and explains why agency losses might occur in the process of power delegation from the Council of Ministers to the Commission in EU trade politics. The principal–agent approach requires agents and principals to have different interests. This is why before moving forward and assessing whether, and, if yes, how and why agency losses occur, a closer look will be taken at what is at stake in the present round of trade negotiations and how the main pillars of WTO negotiations affect the common agricultural policy (CAP). This is fundamental to explaining the positions of the Member States and the Commission on WTO agricultural trade negotiations. Section III examines the negotiating mandate of the European Commission as well as the ex ante control mechanisms available to Member States. Sections IV and V analyse the relationship between the Council and Commission during the
Doha Round negotiations from 2001 to 2006. The conclusion summarizes the main findings, discusses the extent to which conflict between the Council and the Commission has an effect on the final outcome of WTO negotiations and outlines tasks for future research.

I. Delegation of Power and Agency Losses

Even though the delegation of power stretches back to the beginnings of the European integration process, it was only at the end of the 1990s that Mark Pollack (1997) applied the principal–agent approach to the study of the EU. Using insights from the new economics of organization (Kiewiet and McCubbins, 1991; Moe, 1984), Pollack has persuasively demonstrated that the delegation of authority involves agency losses. In a classical delegation situation, the agent might have preferences that are systematically different from those of the principals, which might lead to conflict situations between principals and agents. Although agents are expected to act on behalf of the principals in collecting information, preparing draft legislative proposals and representing them in international negotiations, the delegation of power can entail two agency losses for the principals: agency shirking and agency slippage. Agency shirking refers to a conflict situation between the interests of the principals and those of the agents. The agent’s interests might not be aligned with those of the principals if, for instance, to reach an agreement is more important for the agent than its specific content. In contrast, agency slippage takes place when the structure of delegation in itself stimulates the agent to adopt a different position from the principals (Kiewiet and McCubbins, 1991).

In the principal–agent approach, autonomy refers to the range of manoeuvre available to the agent after the principals have delegated power and this range can be used either to benefit or undermine principals, while agency slack is the agent’s actual behaviour that is undesired by principals. The degree of agent autonomy or slack depends on the type of contract established between principals and agents. Contracts can vary along a single dimension of rules or discretion. Under rule-based delegation, principals instruct agents on how the latter is supposed to act. In contrast, a discretion-based type of delegation gives agents more autonomy since principals state their goals but do not specify which actions the agent must take to fulfil its assigned mandate (Hawkins et al., 2006). In order to be able to assess whether agency losses occur in the process of power delegation from Member States to the Commission, we need to know whether principals opted for a rule-based or a discretion-based type of power delegation.
In the particular context of trade negotiations, it is also important to specify whether agency costs occur because of hidden information or hidden action. The hidden information argument means that the agent possesses information that, due to its prohibitively high costs, is not available to the principals. During the negotiations at WTO level, it is important to understand whether the structure of delegation allows the Commission to hide information from Member States and how the latter react to this. Hidden action is an even trickier issue because Member States cannot observe directly whether the Commission is negotiating in their best interest. One way of diminishing this problem is to strengthen the oversight mechanisms during the negotiation process, for example, by having Member States’ representatives follow the negotiations at the international level and through a continuous exchange of information between the Commission and the Council.

II. Member States’ Positions on Trade Negotiations

Before exploring the dynamics of power delegation, it is useful to explain briefly the main elements of WTO agricultural negotiations and how the main pillars of WTO agricultural negotiations affect the reform of the CAP.

After the failure of WTO members at the 1999 Seattle ministerial meeting in agreeing on a negotiating agenda, WTO members decided in Doha in 2001 to launch a new round of trade negotiations. The Doha ministerial declaration consisted of a broad list of negotiating issues, which included agriculture, services, non-agricultural (industrial) market access, Singapore issues (investment, competition, trade facilitation and public procurement) and special and differential treatment for developing countries. In the agricultural sector, trade ministers agreed on improving market access, reducing domestic support which distorted trade, reducing and phasing out export subsidies, as well as including non-trade concerns (such as environmental protection, food security and rural development) into the negotiations (World Trade Organization, 2001). The three main pillars of WTO agricultural negotiations (domestic support, export subsidies and market access) put pressure on the EU to adjust its agricultural policy and led to the 1999 and 2003 CAP reforms that shifted subsidies away from direct payments to income support and rural development (Conceição, 2009).

In line with other scholars in the field (Damro, 2007; Elsig, 2007; Meunier, 2007), I assume that the EU position in trade negotiations is determined by

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1 Meunier (2007) goes one step further and considers that the EU negotiating position is also a function of the institutional rules and the structure of power in the EU.
the preferences of Member States and the Commission. EU Member States have different priorities and positions on the different issues at stake at the WTO negotiations. In the specific case of agricultural trade issues, Member States have defensive, swing and offensive positions.

The group of countries with a defensive position includes France, Ireland, Poland, Cyprus, Austria, Spain, Belgium and Lithuania. These countries oppose further CAP reforms, want to maintain the protection of the internal market in the agricultural sector, export subsidies and domestic support payments. France plays a central role within this group of countries as the largest producer and exporter of agricultural commodities within the EU and as the main beneficiary of CAP subsidies (Conceição, 2009).

A second group of countries with a swing position on agricultural trade liberalization and on the CAP reform includes Italy, Portugal, Greece, Hungary and Germany. The three Mediterranean countries usually support the group of countries opposing further agricultural trade liberalization, but on CAP reform issues they sometimes support countries with a more pro-reform position because they want to reorientate the CAP towards ‘southern’ agricultural products. Germany’s position on agricultural trade liberalization and on the CAP reform has also shifted over the period from 1999 to 2006. During the Social Democrat and Green Coalition government (1998–2005), the German agriculture minister from the Green Party, Renate Künast, sometimes supported the British liberal position and sometimes aligned with France on the CAP reform. When the Christian Democrat and Social Democrat coalition government came to power in 2005, the agriculture portfolio came under the competence of the Bavarian Christian Democratic Party (CSU), which adopted a more protectionist position on agricultural issues and thus supported the opponents of agricultural trade liberalization (Conceição, 2009). Nevertheless, the main priority for Germany lies in trade liberalization of industrial products and in the services sector.

The group with a more offensive position on agricultural trade liberalization includes the United Kingdom (UK), Denmark, Sweden, Finland, the Netherlands, Luxembourg, Slovenia, Estonia, Latvia, Czech Republic and Slovakia. This group of countries has formed mainly under the leadership of the UK, their main priorities are trade liberalization in the services and financial sectors and they consider that CAP support should be strictly limited to rural development. The UK has an industrialized and efficient agricultural sector that is relatively unimportant within the economy as a whole and a long tradition of importing agricultural commodities. The same is true for Finland and Sweden, which have very small agricultural sectors and are merely concerned with the protection of the environment. The
Netherlands and Denmark have an export-oriented agricultural sector and further agricultural trade liberalization would allow the Dutch agribusiness sector to import raw materials at lower prices (Hennis, 2005). This group of countries would thus clearly benefit from further agricultural trade liberalization.

III. The Commission’s Position on Trade Liberalization

Even though the preferences of an agent are a central issue for assessing the principal–agent relationship, the agency side has hitherto received little attention in the literature. Agents fulfil different functions. They facilitate commitment problems, reduce information asymmetries, enhance the efficiency in coming to decisions, take the blame for unpopular decisions (Thatcher and Stone Sweet, 2002), carry out third-party conflict resolution, create policy bias (Hawkins et al., 2006), represent principals in negotiations with third parties (Meunier and Nicolaidis, 1999) and implement policies (Pollack, 2006). The type of tasks assigned to an agent affects the interpretation of the agent’s own role (Hawkins and Jacoby, 2006). Some scholars see agents as merely servants of the Member States (Moravcsik, 1993), others see them as trustees (Majone, 2001), as own actors (Conceição-Heldt, 2006; Pollack, 2003) or as somewhere in between (Baldwin, 2006; Elsig, 2007).

Agents accomplish tasks in a manner that satisfies a high number of principals, be it because agents aim to increase their power or to consolidate their reputations. The Commission’s main interest is to conclude a trade deal. The Commission’s position is determined by several factors, such as utility maximization through an increase of its power by placing all trade issues under its exclusive competence, bureaucratic competition between the various DGs involved in negotiations, defence of the interests of Member States that appointed the commissioners in charge of the trade and agriculture portfolios and to preserve the support for the European integration process (Meunier, 2007).

The Commission generally takes a pro-liberalization stance on trade issues. Different trade commissioners have been the strongest promoters of a new round of trade liberalization. For instance, in 1996 the Commissioner for External Economic Relations, Leon Brittan, proposed creating a transatlantic free trade area despite the opposition of a majority of Member States due to its implications upon the agricultural sector. In 2004, the tandem Lamy and Fischler took the initiative of getting WTO negotiations back on track by sending a letter to their WTO counterparts, in which
they listed the issues on which the EU would be willing to make concessions.

In the agriculture sector, it is more difficult to discern the position of the DG Agriculture and the commissioner for agriculture. The Commission plays a central role in the management, regulation and implementation of the CAP, which is the most important European public policy and largest budgetary expenditure. At the EU level, the Commission has been the central driving force in generating pressure for CAP reform. For instance, the Commission linked up negotiations within the WTO with calls for reform of the CAP in 1999 and 2003. During the negotiations on the 2003 CAP reform, the agriculture commissioner, Franz Fischler, underlined that decoupling direct payments from production would help to reduce the pressure on the EU concerning agricultural support and thus also increase the EU’s bargaining power at the international level (Agence Europe, 16 October 2002). In contrast to Member States, which are merely concerned with short-term objectives (subsidies for their farmers), the Commission has a long-term perspective, i.e. enhancing the CAP efficiency and increasing the acceptance for this policy field.

The trade and agriculture commissioners have differing focuses at WTO negotiations. Whereas the DG Agriculture and the agriculture commissioner are only concerned with the impact of a proposal on the agricultural sector, the DG Trade and the trade commissioner have a broader perspective on trade policy and are concerned essentially with the whole package of a trade deal.

The degree of interest alignment between principals and agents is central to explaining whether and how conflict might arise between the two sides. If the degree of interest alignment between principals and agents is low, then the Commission risks conflict with the more protectionist states, which feel that they are less well represented by their agent. By the same token, if the degree of interest alignment among Member States is low, the Commission is expected to have more autonomy and discretion at the international level (Nicolaïdis, 2000).

III. The Negotiating Mandate of the European Commission

Principals have several horizontal co-ordination mechanisms to monitor the European Commission before, during and after negotiations at the international level. Before negotiations take place, Member States define the negotiating mandate of the Commission. During the negotiation process, the 133 Committee and the SCA monitor the Commission closely. Finally, there are
also *ex post* control mechanisms, when Member States have to ratify the agreement negotiated by the Commission.\(^2\) Principals, however, are not able to anticipate every contingency, especially when agents are given broad discretion or when the policy preferences of principals change over time, through, for example, elections.

The first stage of delegation involves the act of transferring power from the Member States to the European Commission, so that the latter can act on their behalf. First of all, Member States have to formulate the instructions for the agent. Since the agenda-setting power lies with the Commission, it elaborates the draft to be discussed at the Council. Before the Seattle meeting, the Council asked the Commission to prepare the general guidelines for the EU negotiating position. Member States agreed on a broad trade agenda based on the principle of ‘single undertaking’ (nothing is agreed until everything is agreed). In this way, the Commission’s negotiating mandate included trade liberalization on agriculture, services and Singapore issues (Young, 2007).

The Commission’s negotiating mandate on agriculture was very defensive from the start. Member States agreed on reducing market access tariff rates, if the geographical indications for EU products were included in the negotiating agenda. The EU would also accept reductions in export subsidies as long as other forms of export support (e.g. food aid) were also included under the category of export subsidies. In addition, the EU wished to maintain the system of domestic support with the blue and green boxes\(^3\) and called for the inclusion of the concept of multifunctionality, which refers to environmental protection, food security and rural development. Finally, the Council also specified that the Commission should inform and consult regularly with the 133 Committee and with the SCA during the negotiations (*Agence Europe*, 1 October 1999).

Most of the Council negotiating directives were about export subsidies and domestic support. Concerning market access, Member States only mentioned that concessions in this pillar should not oblige the EU to change the CAP

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2 To be sure, some other authors (Kerremans, 2004b; Meunier and Nicolaïdis, 2000; Nicolaïdis, 2000) have established useful distinctions between different control mechanisms available to principals to control agents. Kerremans (2004b) differentiates between three control mechanisms: negotiating directives (an *ex ante* control mechanism), *at locum* (during the negotiations) and *ex post* control mechanisms (at the ratification stage). Meunier and Nicolaïdis (2000) distinguish four different stages: the design of the negotiating mandate; the representation of the parties during the negotiations; the ratification of the agreement; and the implementation and enforcement of the agreement after its entry into force. Finally, Nicolaïdis (2000) distinguishes between three different stages: flexibility (authorization stage); autonomy (representation stage); and authority (ratification stage).

3 In the agreement on agriculture of the Gatt/WTO agricultural policies are subjected to different rules depending on their degree of trade distortion, in WTO parlance referred to as ‘boxes’. Green box subsidies are exempted from reductions as they have no or minimal trade-distorting effects. In contrast, blue box subsidies are linked to production and have to be reduced under production-limiting programmes. Finally, amber box subsidies have an impact on trade and are subjected to a 20 per cent reduction over a six-year period.
after the conclusion of negotiations. They did not specify, however, just how far the concessions should go. Principals gave the agent a higher discretion on this pillar than on domestic support and export subsidies. In addition, Member States also agreed that the Commission should trade agricultural concessions with liberalization in the services and industrial sectors.\(^4\) Hence, principals opted for a wide negotiating mandate that granted the agent broad discretion on how to fulfil its assigned mission.

The amount of discretion given to agents is a sum of the delegated powers granted by principals to the agents minus the control mechanisms available to principals to control what the agent is doing at the international level (Thatcher and Stone Sweet, 2002). The precise nature of the negotiating mandate is a reflection of many considerations, but it varies with regard to the specific mechanisms and procedures that the agent should follow versus discretion given to agents. Principals can specify detailed rules for their agents in carrying out their tasks or they can simply articulate their policy preferences in a broader way and leave it to agents to work out the best way of fulfilling their assignment. Discretion can be helpful in two different situations. Firstly, if uncertainty is high or if the undertaking requires specialized knowledge possessed only by the agent, principals should give agents a flexible mandate. Secondly, discretion in the sense described above is also helpful when principals have heterogeneous preferences (Hawkins et al., 2006). Multiple principals may leave it to the agent’s discretion when to set up a compromise agreement in order to avoid rejection by a group of principals. This, however, also clearly implies that discretion on independent action gives agents greater opportunities for opportunistic behaviour.

IV. Control Mechanisms Available to Principals

Even though the Commission has the exclusive right to conduct trade negotiations on behalf of the Member States, it has to conduct these negotiations in close consultation with the 133 Committee and the SCA; both committees fulfil a police-patrol oversight role on the Commission. While the 133 Committee is in charge of all the trade issues, the SCA is a forum for Member States to discuss their specific concerns about agriculture and is an important platform for the Commission to find out whether Member States still support the concessions it is making at the international level.\(^5\) In order to avoid involuntary defection at the ratification stage, the Commission has to anticipate the likelihood of such a defection when negotiating at the international level.

\(^{4}\) Interview, DG Trade officials, Brussels, 27 May 2008.

\(^{5}\) Interview, General Secretary of the Council SCA official, Brussels, 27 May 2008.
The presence of Member States at the Seattle meeting was a central and direct way to have control over the Commission. However, Member States were only allowed to participate in the general informal sessions of the different committee meetings. In practice, it was rather difficult for them to gain access to the meetings because the number of seats per WTO member state was restricted to between three and seven depending on the size of the meeting room. But also in meetings with, for example, 35 members (the so-called Room D or Room E meetings), there is a maximum of four places for the EU. These are reserved for officials of the European Commission, usually the general directors of trade and agriculture accompanied by officials from their general directions. In addition, with a high number of meetings – sometimes 50 committees – taking place simultaneously, it was rather difficult for Member States to follow in detail what was going on in the different committees. In agriculture, due to the complexity of the issues, each EU Member State has a trade representative in their permanent delegations to the WTO. These representatives have more technical knowledge of what takes place at the WTO level than the national representatives of the Member States in the 133 Committee. It is easier for the Commission to work with officials from the 133 Committee as they are not so well informed on the state of the negotiations as the national representatives to the WTO.6

V. The Council–Commission Relationship during the Negotiations: Agency Shirking or Agency Slippage?

Before the Doha ministerial conference, the Council of Agriculture met to discuss the EU’s agricultural position, confirming the mandate granted to the European Commission in 1999. Within the Commission, the trade and the agriculture commissioners, Pascal Lamy and Franz Fischler, generally agreed that the EU would negotiate further agricultural liberalization, on the condition that the other negotiating parties would accept the inclusion of the multifunctional role of agriculture into the negotiations (Agence Europe, 3 October 2001). This position of the two commissioners was therefore in line with the Member States with a defensive position on agricultural trade liberalization, such as France and Austria, the countries that appointed these two commissioners. Thus, at this stage of negotiations, the Council–Commission relationship was primarily co-operative.

In the September 2003 Cancún ministerial meeting, the EU position remained basically the same. In the meantime, the 15 EU Member States had agreed on a new CAP reform that decoupled direct payments from

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production. The main concern for EU Member States at this point in time was to communicate the 2003 CAP reform in a positive way to the other members of the WTO, so that the EU would not be put under pressure to offer further concessions which would go beyond the reform enacted in 2003 (Agence Europe, 8 May 2004).

The Cancún ministerial meeting, however, ended abruptly due to disagreements among WTO members on agriculture and Singapore issues, with no official result other than instructions to trade officials to continue the negotiations. One attempt to resume negotiations was made in May 2004 by Pascal Lamy and Franz Fischler, who sent a letter to their WTO counterparts outlining the three areas in which the EU would make concessions: elimination of all export subsidies, under the condition of full parallelism in addressing all forms of export support; greater flexibility on the Singapore issues; and duty-free access for the poorest developing countries (European Union, 2004).

The initiative of the two European commissioners was not, however, supported by all Member States. Under French leadership, several Member States opposed the Commission’s concessions at this stage of negotiations since they signalled a certain degree of flexibility, while the other countries were not moving from their initial negotiating positions. Moreover, the French agriculture minister, Hervé Gaymard, accused the Commission of having overstepped its negotiating mandate with its offer to eliminate export subsidies. At the same time, a large number of Member States – which included Germany, the UK, Denmark, Sweden and the Netherlands – backed the Commission’s proposal (Agence Europe, 12 May 2004).

Negotiations remained stalled at the international level until the US presented a new proposal on the reduction of domestic support in October 2005. In response to this proposal, the European Commission, now with Peter Mandelson (from the UK) in charge of trade and Marian Fischer Boel (from Denmark) of agriculture, circulated a new negotiating proposal offering to reduce domestic support by 70 per cent, to accept higher cuts for higher tariffs and to remove all export subsidies within the phasing-out period. At the Agriculture Council meeting, however, once more under French leadership, 13 Member States openly criticized the Commission’s negotiating tactics of offering more concessions on agriculture as long as the other bargaining parties were not conceding on better market access for industrial products and services. These countries even suggested establishing a new advisory committee in order better to monitor the Commission (Agence Europe, 11 October 2005). Peter Mandelson reiterated that the Commission would of course attempt to reach a balanced agreement on all the Doha Round issues, but he considered that all the concessions made or announced to date had been perfectly covered by the Council’s negotiating mandate and were within the
CAP reform. Mandelson also emphasized that there was no problem in keeping Member States fully informed (Agence Europe, 15 October 2005). At the same time, he stressed the impossibility of negotiating if every little nuance of the European position needed first to be discussed in the Council. This would communicate to the other negotiators in advance what the EU’s negotiating position was, thereby restricting the Commission’s room for tactical flexibility at the international level (Agence Europe, 18 October 2005).

While the negotiations were taking place at the WTO Committee on Agriculture, France convened an extraordinary meeting of the General Affairs Council on 18 October 2005 because it still considered that the unilateral concessions on agriculture went beyond the Commission’s negotiating mandate. At the end of this meeting, a majority of Member States agreed that the Commission had not surpassed its negotiating mandate. The Council recalled that the 2003 CAP reform was the EU’s contribution to agricultural issues in the Doha Round and that it represented the limits of the Commission’s negotiating mandate. The French demand for getting a priori control over any new moves and for establishing an advisory committee was rejected by a majority of Member States, which included Germany, Denmark, Sweden, the Netherlands and the UK (Agence Europe, 19 October 2005). These Member States backed the Commission’s negotiating strategy of making concessions in agriculture in order to obtain concessions on industrial products and services. They considered that the Commission needed some agency discretion to bring the negotiations to a successful end.

Agent specialization in the kind of situation described above intensifies the problems of hidden action and hidden information. If the principals must learn everything that the agent knows and observe everything the agent is doing, the agent’s discretional means or room for manoeuvre is virtually non-existent. In such a situation, the gains of specialization shrink. That is, if Member States have a perfect knowledge and monitoring of the Commission, it is almost as if the principals perform the task themselves. If specialization is part of the rationale behind the delegation of power, the agent can behave opportunistically by failing to reveal important information to the principals. The greater the specialization, the greater the opportunities are for agency slack (Hawkins et al., 2006). Agency costs occur because agents know more about the external negotiations and thus about the external zone of a possible agreement. In contrast, principals know more about their reservation price.

At the Agriculture Council meeting at the end of October 2005, Member States agreed that the European Commission would make a new offer on agricultural market access, but Member States linked concessions on agriculture to better market access for industrial products and services. The EU proposal foresaw a 60 per cent reduction in the EU’s highest agricultural tariffs.
and the elimination of all agricultural export subsidies, conditional upon further concessions from other countries on the elimination of other forms of export support (Agence Europe, 29 October 2005). On domestic support, the EU offered to reduce by 70 per cent amber box subsidies and accept a 60 per cent cut from the US and 50 per cent reduction for the rest of the world and to maintain the green box without limits. In addition, the EU proposed reducing the number of sensitive products to 8 per cent of tariff lines, which would cover about 170 of the 2,200 EU agricultural products (Agence Europe, 8 November 2005). But the US, Brazil and Australia considered this offer as minimal and asked instead for further concessions from the EU before proceeding with the negotiations (Inside US Trade, 4 November 2005).

At the Hong Kong ministerial meeting, WTO members agreed on the elimination of export subsidies by 2013 and committed themselves to completing the Doha Round by the end of 2006. The EU Member States accepted to eliminate export subsidies given that the Hong Kong ministerial declaration did not specify whether export subsidies would be reduced in value or in volume terms. Since the EU reduces export subsidies in value terms, the implementation period allows for flexibility in the allocation of export subsidies to different commodities.

WTO members decided simply to postpone negotiations on the more controversial issues of market access and domestic support by agreeing merely on a timetable for negotiations in 2006. Even though several informal meetings were held between the major trading nations (US, EU, Brazil, India, Australia and Japan) from January until the end of April 2006, the negotiations did not move forward because delegations did little more than restate their well-known negotiating positions.

At an informal June 2006 meeting, the EU offered to reduce its amber box subsidies by 75 per cent, to cap blue box subsidies at 2.5 per cent, to accept alterations to the green box and to reduce customs duties by 54 per cent. Finally, the EU accepted the reduction of the number of sensitive products to 4 or 5 per cent of tariff lines. At the same time, the European Commission openly admitted that this offer would go beyond its negotiating mandate (Agence Europe, 16 June 2006). The US and Brazil still considered the EU offer to be insufficient to bring negotiations forward and presented no new offer. According to the Commission’s representatives, the Commission makes concessions at the international level because it expects to be able to deliver something. In the end, this does not happen because other trading partners do not reciprocate.7

7 Interview, DG Trade official, 27 May 2008.
The European Commission made this new offer because Member States were divided on how far-reaching concessions should go. This division within the Council of Ministers allowed the trade commissioner to take the position of speaking on behalf of the promotion of European interests, not only in agriculture, but also in industry and services. Sweden, the UK, Denmark, the Netherlands, Belgium, Finland and Luxembourg encouraged the Commission to make further concessions in agriculture in order to obtain concessions on industrial products and services in exchange. In contrast, France, Germany, Italy, Ireland, Poland, Portugal, Greece, Austria and Spain rejected this new offer (Agence Europe, 30 June 2006). France’s virulent opposition to the Commission’s concessions can be interpreted as a way of reminding the Commission of priorities, signal red lines and to make sure that the French voice was heard. For instance, a diplomatic adviser to the French agriculture minister observed that France does not have an overall defensive position on the WTO. But since a major part of the negotiating time is spent on agriculture, the French government is forced to intervene more, which gives a defensive tone to the French position (Paugam, 2005).

What was the impact of this division within the Council on the EU negotiating position and the Council–Commission conflict on the final outcome of negotiations? Inter-institutional conflict weakens the position of the Commission in international negotiations and increases the institutional weight of the Council vis-à-vis the Commission. This has two consequences. First, with this dissonance within the EU, the other trading partners sometimes do not know what the EU negotiating position actually is. Second, this division encourages the other trading partners to demand further concessions. In addition, Member States themselves try informally to bring negotiations forward on those issues of central importance to them by lobbying directly with other WTO members. This weakens the Commission’s bargaining power at the international level as the other WTO members know that if the Commission does not concede they can simply negotiate informally with single EU Member States. Therefore, the agent’s credibility can be eroded in international trade negotiations, if the Council–Commission divisions are visible to the other trading partners.

At the international level, the WTO general-director, Pascal Lamy, suggested on 28 June 2006 a ‘20-20-20’ solution to the triangle of key issues, which would require the US to reduce domestic agricultural subsidies further, the EU to reduce agricultural tariffs further as well as Brazil and India to lower tariffs on industry products and to offer more liberalization on services.

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8 Interview, DG Trade official, Brussels, 27 May 2008.
9 Interview, DG Agriculture official, Brussels, 28 May 2008.
This ‘20-20-20’ compromise formula, however, was rejected by a majority of delegations. For instance, the EU regarded Lamy’s proposal on market access for manufactured products as insufficient because it would not provide additional market access in emerging countries, and the US opposed further reduction on domestic support (Agence Europe, 29 June 2006). Because the major trade nations did not move from their negotiating positions, Pascal Lamy decided to suspend the negotiations officially at the 27–28 July 2006 General Council meeting.

Conclusions

What does this study tell us about the relationship between the Council and the Commission in EU trade politics? Was the agent really able to bypass the control of the principals and to manipulate the negotiating mandate?

One major finding is that the Council–Commission relationship on trade politics is more complex and nuanced than is commonly recognized in the literature. It has different dynamics depending on the negotiating stage at the international level. At the Seattle, Doha and Cancún ministerial meetings, Member States and the Commission widely agreed on the issues to be included in negotiations. These three ministerial meetings fell under the Lamy–Fischler tandem. At the Hong Kong and Geneva meetings, under the Mandelson–Fischer Boel tandem, who came from countries with an offensive position on trade liberalization, the Council–Commission relationship became conflict-laden, when the Commission made concessions on agricultural issues, which some Member States considered as going beyond the Council’s negotiating mandate.

The second main finding is that agency losses occur because principals and agents have different preferences (agency shirking) and due to the structure of power delegation (agency slippage). Agents and principals do not desire precisely the same policy outcome. Whereas the Commission is more interested first and foremost in concluding a trade deal than with its specific content, Member States are more concerned with the effects of a proposal on a specific sector. The mere existence of multiple principals with different positions on trade issues gives the Commission room of manoeuvre to interpret the negotiating mandate differently from Member States. At the same time, agency losses are due to the structure of power delegation. EU Member States opted for a discretion-based type of power delegation, in which they simply articulated the goals but left it to the agent’s discretion on how to fulfil its assigned mission. Such a contract gives an agent more autonomy at the international level and leads to flawed mandates instead of a rule-based type of contract.
The third main finding is that conflict between the Commission and the Council weakens the EU negotiating position at the international level because the other trading partners know that the EU is divided and ask for further concessions. In contrast to Schelling’s (1960) conjecture that negotiators might be able to use domestic constraints to their advantage at the international level by pointing to a hawkish legislature, this study demonstrates quite the contrary. The European Commission was pushed around by other WTO partners to concede more because they knew that there was a division within the Council of Ministers on how far the concessions should go. This finding is in line with Meunier and Nicolaïdis’ (1999) argument that divisions at the European level weaken the negotiating position of the Commission reducing the Commission to an unreliable negotiator.

To what extent can generalizations about EU trade negotiations be drawn from this study? In other words, is there anything specific to WTO negotiations or would the Council–Commission relationship be carried out in a different manner in bilateral and regional trade agreements? This study demonstrates that the inter-institutional dynamics between the Council and the Commission were central for the position adopted by the EU at the international level. Since the Commission also negotiates on behalf of Member States in bilateral and regional trade agreements, the findings of this study are likely to be seen in other negotiations. It remains, however, puzzling that in the last ten years the EU has completed several bilateral trade agreements, for example with Mexico (1998), South Africa (1999), Croatia (2001) and Chile (2002), while agreements at the regional and multilateral level remained at deadlock. We need further studies that compare different types of trade agreements and which include different policy issues, such as textiles, industrial products and the services sector to find out whether there is anything specific to agriculture or whether these observations apply to all areas of EU trade and different types of trade agreements. One way of doing this could be to focus on an actor’s bargaining power, e.g. the size of one’s market, the dependency on the economy of the negotiating trade partners or on best alternatives to a negotiated agreement.

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