Variation in EU member states’ preferences and the Commission's discretion in the Doha Round

Eugénia da Conceição-Heldt

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ABSTRACT During the period leading up to the 2005 WTO Hong Kong ministerial meeting and the 2006 Geneva informal meeting, European Union member states became even more strongly opposed to any further concessions on agricultural issues in the Doha Trade Round. Despite this opposition, the European Commission made a further offer which included concessions on agricultural issues. Based on data collected from Agence Europe and interviews with officials from the European Commission and the Council of Ministers, this contribution shows that preference heterogeneity with two camps of nearly equal size, a vague mandate and conflicting messages from principals all give the agent more discretion at the international level.

KEY WORDS Discretion; Doha Round; European Commission; EU trade policy; principal–agent approach.

INTRODUCTION

During the current round of multilateral trade negotiations (Doha Round), there have been several situations where conflict has arisen between member states and the European Commission (hereafter the Commission). Before the Hong Kong ministerial meeting in 2005 and the 2006 Geneva informal meeting, there was strong and increasing opposition among member states to further concessions on agricultural issues. Nevertheless, the Commission decided to make an additional further-reaching offer on the reduction of domestic support subsidies and on decreasing tariff rates in order to improve market access. Based on data collected from the European agency news (Agence Europe) and interviews with officials from the 133 Committee, the Special Committee on Agriculture (SCA) as well as the Commission’s Directorates-General (DGs) for Trade and Agriculture, this contribution shows that preference heterogeneity among member states with two camps of nearly equal size, under the condition that one of the camps supports the Commission, a vague negotiating mandate and conflicting messages from principals all give the agent in international trade negotiations more discretion and thus a greater ability to secure package deals.

The majority of the studies applying the principal–agent (PA) approach to the European Union (EU) (Conceição-Heldt 2010; Damro 2007; Delreux...
2008; Elsig 2007; Kassim and Menon 2003; Kerremans 2004a; Meunier and Nicolaïdi 1999; Pollack 1997) fail to assess the impact of variation in principals’ preferences on the agent’s discretion at the international level (for an exception, see Elsig [2010]). In order to address this gap, this contribution begins by assessing principals’ and agents’ preferences. The second section identifies the policy positions of member states and the Commission in the Doha Round. The third section examines how the negotiating mandate of the Commission came into place before the 1999 Seattle meeting. The fourth section analyses the Council– Commission relationship before and during the 2005 Hong Kong ministerial meeting and the 2006 informal meeting in Geneva, with a special focus on the interface between internal EU decision-making and external Word Trade Organization (WTO) negotiations. This section shows how the Commission was able to make tactical use of opportunities to increase its discretion at the international level.

PRINCIPALS’ AND AGENTS’ PREFERENCES

In any given setting, actors prefer some outcomes to others and they pursue strategies to achieve their most preferred outcomes. Actors’ preferences can be defined by assumption, by observation or by deduction. The simplest way of assessing preferences is to assume that states attempt to maximize national welfare. The second method of assessing actors’ preferences is through observation. These ‘revealed’ preferences are then used to explain the interaction among states. National preferences are determined by sub-national interests, especially by those powerful groups, such as interest groups, parties or bureaucrats, which are able to set national priorities. Finally, one can fix the preferences of nation states by deducing them using pre-existing theory (Frieden 1999).

Political economy has analysed in great detail how the characteristics of nations, interest groups and firms affect their interests. One of the basic arguments is that changes in the environmental setting can lead to different preferences (Frieden 1999). For example, Frieden and Rogowski (1996) demonstrate that when technical advances affect the ability of goods and capital to move across borders, this can alter the preferences of states and interest groups. Political economists also explain nations’ preferences towards trade by examining the impact of existing competition between different interest groups. Frieden (1988) shows how the competition between coalitions of business and labour groups had an impact on United States (US) trade policy. More recently, Hiscox (2002) demonstrates that when levels of factor mobility are relatively high, broad-class conflict is more likely, and when levels of mobility are low, narrow industry-based conflict is more likely. In EU studies, Moravcsik (1993, 1997) was one of the first to point out that national governments’ preferences go back to pressures from interest groups and that those groups that stand to lose out from trade liberalization will mobilize to hinder policy change. More recently, Dür (2007) suggests that the EU’s trade policy is a response to the demands put forward by groups of exporters, which mobilize
in response to discrimination from overseas buyers and push the EU to conclude trade agreements that protect their access to foreign markets.

In line with these studies, the preferences of EU member states will be derived from the main economic interests that member states have in relation to the different issues dealt with in international trade negotiations and thus the demands put forward by interest groups. For some countries, trade liberalization in the industry and financial sectors is a central concern, while other countries are more focussed on the impact of agricultural trade liberalization on their farmers. These different focuses might explain why countries have defensive and offensive interests and prioritize issues differently. Principals’ preferences, which are articulated by national government representatives, are the crucial variable used to establish whether the degree of interest alignment between principals and agents is high or low and how conflict might arise between the two sides. The extent of agreement among principals is expected to have an impact on the way agents behave. Thus, the more are heterogeneous the principals’ preferences, the greater the agents’ discretion at the international level. In line with Hawkins et al. (2006), discretion here refers to the degree of authority granted to agents.

Similarly, the preferences of an agent are a central issue for assessing the PA relationship. Hawkins et al. (2006) expect that variation in agent characteristics (preferences, tasks and strategies) would have an impact upon the way in which principals delegate authority and upon the mechanisms of control adopted by principals. According to Hawkins and Jacoby (2006), states only delegate power to international organizations when they identify agents with preferences similar to their own. Agents accomplish tasks in a manner that satisfies a large number of principals, be it because agents aim to increase their power or to consolidate their reputations. Agents are not simply neutral actors and mere servants of principals, but actors with their own preferences. A supranational organization, such as the Commission, is above all, in the Weberian sense, a bureaucracy defined by three features: continuity; expertise; and informational asymmetry (Conceição-Heldt 2004). Continuity means that unlike national government representatives, who are more concerned with short-term policy effects, the Commission and its officials have a longer-time horizon. Even though Commissioners come and go every five years, the other civil servants (directors general, heads of unit, etc.) remain in office longer than national government representatives, they are not concerned with re-election issues and can take the blame for unpopular policies. Moreover, continuity and a monopoly on expertise gives an agent informational asymmetry vis-à-vis the principals. The asymmetrical information distribution can cause essentially two problems for principals: adverse selection and moral hazard. Whereas ex ante opportunism means that when hiring, principals are not sure of choosing the right agent; moral hazard is the form of ex post opportunism that arises because the agents’ actions cannot be accurately observed by the principals.

Contrary to the popular view that bureaucrats serve the public interest, Niskanen (1971) argues that bureaucrats act so as to increase their resources.
If we transpose this onto agents in general, I expect that agents want to maximize their preferences by increasing their power and influence within a given institutional framework. An actor such as the Commission uses every opportunity to expand the scope of its competences, for example by placing all trade issues under its exclusive competence. In the specific case of trade policy, in which the Commission represents the European Community at the international level, after member states have delegated the negotiating power to the Commission, the main aim of the agent is to successfully conclude a deal. Thus, an agent is not primarily concerned with the impact of concessions upon a specific economic sector, but rather with the overall impact of a trade deal upon the European economy.

Based on data from Van den Hoven (2002) and Conceição-Heldt (2011), the next section gives a short overview of the policy position of principals and agents during the current round of trade negotiations.

POLICY POSITIONS OF PRINCIPALS AND AGENTS IN THE Doha Round

EU member states have different priorities and positions on the different issues at stake in the WTO negotiations. On agricultural trade liberalization, EU member states have defensive and offensive positions. These policy positions can be traced back to the agricultural output of a member state, the total amount of direct payments countries receive from the common agricultural policy (CAP) as well as their competitiveness in this specific economic sector. Accordingly, the less competitive a country is in the agricultural sector, the more it prefers protection. The same is true for the total amount of direct payments countries receive from the CAP. The less direct CAP payments a country receives, the more it prefers trade liberalization.

The group of countries which want to defend the current system includes France, Ireland, Poland, Cyprus, Spain, Slovakia, Slovenia, Belgium, Lithuania, Latvia, Italy, Portugal, Greece, Hungary, Austria and Germany (see Table 1). These countries oppose further reforms of the CAP, want to maintain the protection of the internal market in the agricultural sector, and keep export subsidies and domestic support payments. France is a central player when it comes to agricultural issues as not only is it one of the largest producers and exporters of agricultural commodities with 20 per cent of total European agricultural production, but it is also the main beneficiary of CAP subsidies. French agricultural commodities highly subsidized by the CAP include the wheat, dairy and meat production sectors. In addition, Ireland will be a major loser if there is a change to the status quo in the agricultural policy. Irish farm exports to third countries are only possible with the aid of export subsidies, which makes Irish agriculture vulnerable to any changes in export subsidies (Institute for International Integration Studies 2008). By contrast, even though Germany’s underlying economic preferences have not changed, the German position on agricultural trade liberalization has shifted during the period from the 1999 Seattle
ministerial meeting until the breakdown of negotiations in 2006. During the Social-Democratic–Green coalition government (1998–2005), the German Green Party agriculture minister, Renate Künast, sometimes supported the group of countries with an offensive position on agricultural trade liberalization and at other times aligned herself with states defending the status quo. When the Christian- and Social-Democratic coalition government came to power in 2005, the agriculture portfolio came under the competence of the Bavarian Christian Democratic Party (CSU). This party adopted a more protectionist position on agricultural issues and lent support to the opponents of agricultural trade liberalization (Conceição-Heldt 2011). However, the main priority for Germany remains trade liberalization for industrial products and for the services sector. Germany is not an isolated case of preference switch. Italy, Portugal and Greece also belong to the group of countries which have a more nuanced position on agricultural trade liberalization and on CAP reform. These Southern countries usually oppose agricultural trade liberalization because their agricultural sector is not competitive. On CAP reform issues these countries sometimes support the group of countries with a more pro-reform position because they want to have more agricultural subsidies on ‘southern’ agricultural products (e.g., wine). This can be explained by the role played by intra-sector interests. By contrast, whether a country’s preference shift takes place is a result of government change.

The group of member states with a more offensive position on agricultural trade liberalization includes the United Kingdom (UK), Denmark, Sweden, Finland, the Netherlands, Luxemburg, Malta, Estonia and the Czech Republic (see Table 1). This group of countries which wants to change the current system of agricultural subsidies was formed mainly under the leadership of the UK. The priority of these countries is trade liberalization in the services sector. They consider that the use of CAP support should be strictly limited to rural development. The UK has an industrialized and efficient agricultural sector that makes a relatively minor contribution to the economy as a whole as well as a long tradition of importing agricultural commodities (Marsh 1999). The same is true for Finland and Sweden, which have very small agricultural

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sectors and are merely concerned with the viability of rural areas and the protection of the environment. The Netherlands and Denmark, however, have an export-oriented agricultural sector. These countries would thus clearly benefit from further agricultural trade liberalization.

The Commission’s position on trade liberalization is determined by several factors. These include the desire to increase its power in order to maximize the realization of its interests. In addition, there is competition between the various bureaucrats of the DGs involved in negotiations and the commissioners in charge of trade and agriculture. There is also a desire to defend the interests of member states that appointed the commissioners in charge of the trade and agriculture portfolios (Meunier 2007). Hooghe (2001) also emphasizes that party, country and previous work environment are central to explain commissioners’ preferences.

Above all, given that the Commission represents member states in bilateral and multilateral trade negotiations, the overarching preference of the Commission is to fulfill its assigned mandate by successfully concluding a trade deal. Even if the Commission has exclusive competence on negotiating trade agreements, the Council still needs to provide negotiating guidelines, which lay down the framework within which the Commission negotiates at the international level. Since the agenda-setting power lies with the Commission, it elaborates the draft proposal of the negotiating mandate that is then amended and approved by the Council of Ministers under qualified majority voting. This has the effect that the Commission generally has broad negotiating mandates with some red lines, which usually refer to the CAP reform status or internal legislation.

The Commission’s negotiating guidelines reflect the maximum concessions that member states are prepared to accept vis-à-vis each other at the beginning of the international negotiations (Kerremans 2004b). The opinions of scholars diverge on what the effects of the negotiating mandate are on trade negotiations. Kerremans (2004a) points out that the negotiating mandate simultaneously ties the hands of the Commission and of the member states. This can be counterproductive to the adaptive capacity of the EU in multilateral trade negotiations. Nicolaïdis (2000), in contrast, argues that the Commission has a rather broad and flexible negotiating mandate, without specifying whether there is any variation from issue to issue.

The Commission generally takes a pro-liberalization stance on trade issues. Individual trade commissioners have supported the instigation of a new round of trade liberalization negotiations more strongly than others. For instance, in 1996 the Commissioner for External Economic Relations, Leon Brittan, began a campaign for a Millennium Round with the support of the financial services industry. He even proposed creating a transatlantic free trade area despite opposition from a majority of member states owing to the likely impact such a deal would have on the agricultural sector (Agence Europe, 23 April 1997). During the Doha Round, from 2001 to 2004, two commissioners Pascal Lamy and Franz Fischler, came from countries with a
defensive position and from July 2004 to 2008 Peter Mandelson and Mariann Fischer Boel from two countries with an offensive position on agricultural trade liberalization. With this variation on the Commission’s side, we should be able to assess whether this has an impact on the negotiating position taken by the Commission and on the Council–Commission relationship. As Conceição-Heldt (2010) shows, when commissioners come from countries with an offensive position on trade liberalization, the Council–Commission relationship becomes conflict-laden, if the Commission makes concessions that are considered by those states with a more defensive position on agricultural trade liberalization as going beyond the Council’s negotiating mandate.

With respect to the Commission’s position on agricultural trade liberalization, generally speaking the Commissioner in charge of agriculture has been the central driving force when it comes to generating pressure for CAP reform. For example in the current Doha Round, the Commission linked negotiations within the WTO with calls for reform of the CAP in 2003. Franz Fischler, the agriculture commissioner, 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). This example on Fischler willingness to use the Doha Round to reform the CAP illustrates how the nationality of the Commissioner matters for the position taken by the European Commission on agricultural trade liberalization. In contrast to member states, which are merely concerned with short-term objectives, such as subsidies for their farmers, the Commission has a long-term commitment towards improving the efficiency of the CAP as well as the public acceptance of this policy (Conceição-Heldt 2010).

Moreover, the Commission and member states have differing focuses at WTO negotiations. Whereas member states are especially concerned with the impact of a proposal on a certain economic sector, the Commission is essentially concerned with moving the negotiations forward and successfully fulfilling its negotiating mandate by having an agreement, even if this is linked to losses for some economic sectors, such as agriculture. The Commission, as a non-majoritarian institution that exercises public authority and is neither directly elected by the people (Thatcher and Stone Sweet 2002), nor is it concerned with re-election and thus it is less receptive to interest group demands than are elected representatives. Principals use their authority to establish non-majoritarian institutions that take the blame for unpopular decisions and have long time horizons as they are not dependent on winning the next election. As Pierson (1996) points out, elected officials only have an incentive to pay attention to long-term consequences if these become politically salient.

**THE COMMISSION’S NEGOTIATING MANDATE**

During an informal meeting in May 1999, foreign and trade ministers asked the Commission to present a communication to the Council defining the European
At the end of June 1999, following informal discussions at the level of the 133 Committee and the SCA, the General Affairs and External Relations Council adopted the EU’s general negotiating guidelines, which authorized the Commission to negotiate on behalf of member states. The EU member states agreed on a broad trade agenda that included trade liberalization for agriculture, services and Singapore issues (investment, competition, trade facilitation and public procurement) (Young 2007). The Commission’s negotiating guidelines were based on the principle of ‘single undertaking’ (i.e., nothing is agreed until everything is agreed) (European Commission 1999). This principle of tying progress in one issue to progress in another was also adopted within the WTO context in the Doha ministerial declaration in 2001 by WTO members.

From the start, the EU had a very defensive position on agriculture. Member states agreed to reduce market access tariff rates if the geographical indications for EU products were included in the negotiating agenda. Moreover, the EU would accept reductions in export subsidies as long as other forms of export support (e.g., export credits or food aid) were included under the category of export subsidies (European Commission 1999). In addition, the EU wished to maintain the system of domestic support and called for the inclusion of the controversial concept of multifunctionality, which refers to environmental protection, food security and rural development, in the negotiating agenda. 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 concerned export subsidies and domestic support. In the area of market access, member states only mentioned that concessions in this pillar should not oblige the EU to change the CAP once negotiations were concluded. They did not specify, however, just how far the concessions should go. Principals gave the agent a higher discretion on market access than on domestic support and export subsidies. In addition, member states also agreed that the Commission should trade agricultural concessions for liberalization in the services and industrial sectors (Interview, DG Trade Official, Brussels, 27 May 2008).

Delegation contracts 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, discretion-based delegation gives agents more discretion on how to fulfil their assigned mission (Hawkins et al. 2006). In EU trade policy, member states opted for the latter type of delegation by giving their agent a broad negotiating mandate leaving it to the agent’s discretion as to how far concessions should go in order to bring trade negotiations to a successful conclusion. Therefore, the Commission’s negotiating guidelines were very general and left much room for interpretation.

At this initial stage of negotiations, during which actors merely selected their position vis-à-vis the issues at stake, preference variation among member states did not lead to conflict between the Council and the Commission. The EU
spoke with a ‘single voice’ (Meunier 2000) because the French trade commis-
ioner, Pascal Lamy, and the Austrian agriculture commissioner, Franz Fischler,
aligned themselves with the member states that were more in favour of the status
quo, such as France. For instance, at an EU–Australia meeting, Fischler reiter-
ated that European farmers interests would not be ‘sacrificed at the altar of free
trade’ (Agence Europe, 14 February 1997). Both commissioners defended the
position that the EU would negotiate further agricultural trade liberalization
on the condition that the other negotiating parties accepted the inclusion of
the multifunctional role of agriculture into the negotiations.

The Seattle ministerial meeting, however, ended in deadlock because trade
ministers of WTO members disagreed on the issues to be included on the
agenda of a new trade round. Two years later, at the 2001 Doha ministerial
meeting, countries agreed on a broad negotiating agenda that included non-
trade concerns on agricultural issues, which corresponded to the concept of mul-
tifunctionality, in order to take the demands of the EU into account. In 2003, at
the Cancun ministerial meeting negotiations ended again in disarray owing to
disagreements on agricultural and Singapore issues and trade talks remained
stalled until the US presented a new negotiating proposal in October 2005,
two months before the Hong Kong ministerial meeting.

THE COUNCIL–COMMISSION RELATIONSHIP IN THE DOHA
ROUND

In October 2005, the US presented a new negotiating stance calling for a com-
plete elimination of all export subsidies over a 15-year period and for the
reduction of blue box domestic support by 50 per cent. The Commission,
now with Peter Mandelson (from the UK) in charge of trade and Marian
Fischer Boel (from Denmark) at agriculture, reacted to this new proposal by cir-
culating a new negotiating proposal of their own. This offered to reduce dom-
estic support by 70 per cent, to accept higher cuts for higher tariff rates and to
remove all export subsidies (Agence Europe, 11 October 2005). However, this
concession led to a virulent reaction from EU member states with a defensive
position on agricultural trade liberalization.

France, supported by Austria, Belgium, Cyprus, Greece, Ireland, Hungary,
Spain, Italy, Poland, Portugal and Lithuania, alleged that the trade and agricul-
ture commissioners were conceding unilaterally and had gone beyond the Coun-
cil’s negotiating mandate. These countries even suggested establishing a new
advisory committee to better monitor the Commission. This manner of shouting
foul at the Commission can also be interpreted as a strategy by member states for
signalling to the other bargaining parties how far the EU is willing to concede. In
contrast, Germany, the UK, Denmark, Sweden and the Netherlands, which were
more interested in liberalization in the industrial products and services sector,
supported the Commission’s offer (Agence Europe, 11 October 2005).

Peter Mandelson reiterated that the Commission would try to reach a
balanced agreement on all the issues in the Doha Round, but he considered
that all the concessions made to date fell within the Commission’s negotiating mandate. Moreover, he stressed the impossibility of negotiating if every little nuance of the European position needed first to be discussed in the Council. Such a requirement would communicate the EU’s negotiating position to the other negotiators in advance, thereby restricting the Commission’s room for manoeuvre in multilateral trade negotiations (Agence Europe, 18 October 2005).

On 18 October 2005, France decided to convene an extraordinary meeting of the General Affairs Council because it still considered that the unilateral concessions on agriculture went beyond the Commission’s negotiating mandate. France opposed any new unilateral concessions from the EU if other negotiating countries made no move on industry products and services (Agence Europe, 30 June 2006). France’s virulent opposition to the Commission’s offer can be interpreted as a way of reminding the Commission of its priorities, a way to 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 the French position a defensive tone (Paugam 2005). In addition, the French opposition to further concessions on agriculture can also be explained by the threat of farmers’ protests one year before the presidential elections. The French foremost farmers’ organization, the National Federation of Farmers’ Unions (Fédération Nationale des Syndicats des Exploitants Agricoles [FNSEA]), close to the party of the French president Jacques Chirac, had opposed using agriculture as a bargaining chip and considered that the Commission had already gone too far with concessions (Agence Europe, 20 October 2005). The French government’s position was closely aligned with the FNSEA position that supports gradual trade liberalization under the condition of including non-trade concerns in a new trade agreement. In the French political system, as long as the Union for a Popular Movement (UMP) has a majority of seats in the National Assembly and the president also comes from the UMP, France opposes and vetoes agricultural trade liberalization, if there are no major gains in other economic sectors (Conceição-Heldt 2011).

At the end of this extraordinary meeting of the General Affairs Council, member states recalled that the 2003 CAP reform represented the limits of the Commission’s negotiating mandate, but a majority of member states considered that the Commission had not surpassed its negotiating mandate. In order to increase transparency and information flows, it was agreed that the Commission and the 133 Committee representatives would meet before the negotiations. However, the French demand for establishing an advisory committee was rejected by a majority of member states, which included the UK, Germany, Denmark, Sweden and the Netherlands (Agence Europe, 19 October 2005).

Member states agreed that the Commission would make a new offer on agricultural market access, but they 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. This was conditional upon further concessions from other countries on the elimination of other forms of export support (Agence Europe, 29 October 2005). In the area of domestic support, the EU offered to reduce by 70 per cent amber box subsidies, to accept a 60 per cent cut from the US, and to maintain the green box without limits. In addition, the EU proposed a reduction in 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). Major WTO members, such as the US and Brazil, considered the EU offer to be too low and asked for further concessions from the EU before proceeding with the negotiations (Inside US Trade, 4 November 2005).

The situation described above clearly illustrates how preference heterogeneity, a vague mandate and conflicting messages from member states increased the Commission’s discretion at the international level. If principals give the agent a vague mandate, this increases the agent’s discretion and room for manoeuvre at the international level to interpret the negotiating guidelines and to make further concessions and to move closer to the position of third countries. However, this does not mean that principals are unable to control their agents. Principals have basically four major control mechanisms for controlling their agents’ actions. First, principals can screen the agent when hiring (Nielson and Tierney 2003). Second, they can monitor the agent’s actions either directly through ‘police patrol oversight’ or indirectly by inducing third parties (citizens or interest groups) to carry out a ‘fire alarm oversight’ function (McCubbins and Schwartz 1984). Third, principals may use contracting arrangements that include credible threats to punish or reward agent’s behaviour (Nielson and Tierney 2003). Finally, if agents have no incentive to share their information and if direct monitoring is prohibitively expensive (Lupia and McCubbins 1998), then principals can introduce institutional checks and balances that involve co-ordination or competition between two or more agents (Nielson and Tierney 2003).

Even though principals have an interest in extending control over their agent and want to have a permanent information exchange, agents prefer to limit principals’ control and to negotiate without too much interference from the latter. Since the agent often has partial control over the information principals receive about their actions, this information asymmetry can lead to conflict between member states and the Commission. Moral hazard problems, that is the inability to observe actual behaviour after power has been delegated, are part of the contractual relationship (Moe 1984). Principals try to mitigate these problems through different control mechanisms during the negotiations. The 133 Committee, together with the SCA, fulfils a police-patrol oversight role by closely examining the negotiating tactics and moves of the Commission with the aim of detecting and remediying any abuse of power (e.g., by specifically controlling for whether the Commission is going beyond its negotiating mandate).
and through surveillance to discourage such violations (Interview with 133 Committee Official, Brussels, 28 May 2008). Member states come to a consensus on trade agreements without the need for a formal vote. However, if they are dissatisfied with the final agreement, or if their demands are not sufficiently taken into account, there remains the possibility that any agreement can be vetoed at the ratification stage. The Commission knows that if it makes concessions that go beyond its negotiating mandate, it risks involuntary defection. This ‘elephant in the room’ compels the Commission to secure the member state’s backing. Going beyond the negotiating mandate is a way of finding out whether member states still support the concessions it is making at the WTO.

Another control mechanism available to member states is to participate in the meetings held at the WTO level. But this oversight mechanism does not always work in practice owing to the high number of meetings taking place simultaneously and the limited number of places reserved for the EU. The number of seats per WTO member state is restricted from three to seven depending on the size of the meeting room. 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 Commission officials, usually the directors general of trade and agriculture accompanied by officials from their DGs. Secondly, with a high number of meetings — sometimes 50 committees — taking place simultaneously, it is rather difficult for member states to follow in detail what is going on in the different committees (Interview with DG Agriculture and Trade Officials, Brussels, 28 and 29 May 2008). Thus, principals have to rely on the information provided by the Commission.

At the 2005 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 accepted the inclusion of an end date for agricultural 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. This commitment to phase out export subsidies was in line with the timetable established in the 2003 CAP reform. Nevertheless, on the more controversial issues of market access and domestic support, WTO members decided simply to postpone negotiations and agreed merely on a timetable for negotiations in 2006 with specific percentage reductions for tariff cuts in these two issues by the end of April 2006.

From January until the end of April 2006, several informal meetings were held between the US, the EU, Brazil, India, Australia and Japan, but negotiations remained deadlocked because delegations did little more than re-state their well-known negotiating positions. In an informal June 2006 meeting, the EU was the only negotiating party that made small concessions and requested in exchange concessions of comparable value from the other bargaining parties. The EU offered to reduce its amber box subsidies by 75 per cent
(compared with 70 per cent in October 2005), to cap blue box subsidies, to accept alterations to the green box, and to reduce customs duties by 54 per cent. Finally, the EU accepted a reduction in the number of sensitive products to 4 or 5 per cent of tariff lines. At the same time, the Commission openly admitted that this offer would go beyond its negotiating mandate (Agence Europe, 16 June 2006). These small symbolic concessions were a way of signalling to the other bargaining parties that the Commission was willing to bring the negotiations forward even if, at the EU level, countries with a defensive position on agricultural trade liberalization clearly stated before and after the Commission presented this new offer that they opposed it.

The US and Brazil still considered this EU offer to be insufficient to move negotiations forward and reacted by asking for further concessions on market access. At the same time, neither the US nor Brazil presented any new offers. The WTO director-general, Pascal Lamy, suggested on 28 June 2006 a ‘20-20-20’ solution to the triangle of key issues, which would require the US and the EU to reduce domestic agricultural subsidies further and Brazil and India to lower tariffs on industrial products and to offer more liberalization on services (Agence Europe, 29 June 2006). This ‘20-20-20’ compromise formula, however, was rejected by a majority of delegations and the negotiations were then temporarily suspended by Pascal Lamy at the end of July 2006.

How can one explain the Commission’s decision to make this new offer that went beyond its negotiating mandate? First of all, the Commission made this new offer because member states were divided on how far-reaching concessions should be. These divisions within the Council of Ministers allowed the trade commissioner to speak on behalf of the promotion of European interests, not only in agriculture but also in industry and services. Mandelson considered that a majority of member states were behind his new proposal and that the main issue was to create new jobs in the industrial and services sectors. Member states with an offensive position on agricultural trade liberalization encouraged the Commission to make further concessions in agriculture in order to obtain concessions on industrial products and services in exchange. In contrast, countries with a defensive position rejected the Commission’s new offer. Germany’s position had now shifted towards a more defensive one on agricultural trade liberalization because the German Agriculture Minister, Horst Seehofer, from the CSU has a strong link to farmers (Conceição-Heldt 2011). Finally, the fact that the British trade and the Danish agriculture commissioners came from countries with an offensive position on agricultural trade liberalization gave those member states with a defensive position the impression that their interests were not sufficiently taken into account.

CONCLUSION

This contribution shows that preference heterogeneity with two camps of nearly equal size with one group of countries supporting the Commission, a vague negotiating mandate and conflicting messages from principals gave the
Commission a higher level of discretion in multilateral trade negotiations and greater potential to negotiate package deals. Before the 2005 Hong Kong ministerial conference, member states were divided on how far concessions should go and whether the Commission had gone beyond its negotiating mandate. Countries with a more defensive position on agriculture, such as France, considered that the Commission had surpassed the Council’s negotiating mandate and was conceding unilaterally on agriculture without getting any concessions on industrial products and services from the negotiating counterparts. In contrast, member states more interested in liberalization in the industrial products and services sector, such as Germany and the UK, supported the Commission’s concessions. In June 2006, the Commission also made a new offer in the area of domestic support and tariff reduction that went beyond its negotiating mandate because it knew that member states had different priorities in trade policy. Thus, preference heterogeneity and conflicting messages from member states helped the Commission to use its discretion at the international level and to buffer against sanctioning from member states.

In the initial negotiating stage, when defining the Commission’s negotiating mandate, preference variation within the Council of Ministers did not lead to conflict between the two institutions. This can be explained with the alignment of the trade and agriculture commissioners with the position of the more defensive member states. At a late stage of negotiations, preference variation within the Council and specifically divergences on whether agriculture could be used as a bargaining chip by the Commission led to virulent opposition by more status quo-oriented member states. In this way, whether trade and agriculture commissioners come from countries with offensive or defensive positions has an impact on the Council–Commission relationship. At the same time, a vague and general negotiating mandate left the Commission with a lot of room for interpretation and increased its discretion in international trade negotiations. Although the Council defines the content of the negotiating mandate, the Commission is able to use its tactical opportunities effectively at the international level. Over time the preference of the Commission to concluding a deal increases and counterbalances other arguments (e.g., defensive position of some member states).

Finally, information asymmetries are also an important instrument available to the agent since principals have to rely on the information provided by the Commission. Even if, in theory, member states are allowed to participate in the meetings at the international level, in practice it is rather difficult for them to gain access to the negotiations owing to the restricted number of places reserved for the EU and owing to the high number of meetings taking place at the same time. This gives the Commission partial control over the information member states receive.

This contribution shows how the inter-institutional dynamics of power delegation affect the EU negotiating position in multilateral trade negotiations. At the beginning of negotiations, the agent’s negotiating guidelines were stated in such a vague way that it was hard to decide whether any violation of
the negotiating mandate has occurred unless a member state complained. Before the Hong Kong ministerial meeting, a large portion of the Commission’s time was spent in co-ordinating and bargaining with the member states. In this way, inter-institutional conflict weakens the EU negotiating position at the international level because the other WTO members know that the EU is divided and they then ask for further concessions.

Biographical note: Eugénia da Conceição-Heldt is Guest Professor at the Free University Berlin, Otto-Suhr Institute for Political Science.

Address for correspondence: Eugénia da Conceição-Heldt, Free University Berlin, Otto-Suhr Institute for Political Science, Center for Transnational Relations, Foreign and Security Policy, Ihnestr. 22, D-14194 Berlin, Germany. email: eugenia.conceicao@fu-berlin.de

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REFERENCES


