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DELEGATION OF POWER AND AGENCY LOSSES  
IN EU TRADE POLITICS

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## **Abstract**

This paper addresses the problem of agency losses (agency shirking and agency slippage) in the process of power delegation in EU trade policy. The central question is whether a conflictual situation exists between the interests of the member states and those of the European Commission (*agency shirking*), or whether the structure of delegation in itself stimulates the agent to adopt a different position from the principals (*agency slippage*). Drawing on the principal-agent approach, I argue that agency losses are due to the structure of delegation and that the existence of multiple principals with diverging preferences facilitates agency. I find empirical evidence that the Council-Commission relationship on trade politics has different dynamics depending on the negotiating stage. In the initial negotiating stage, when defining the negotiating mandate of the Commission, the relationship is cooperative. Conflict between the Commission and the Council only breaks out in a latter stage of negotiations, when the Commission makes concessions at the international level.

## **Keywords**

EU Trade Politics; agency losses; principal-agent approach; Council-Commission relationship; agricultural trade liberalization





## Introduction\*

There is now a vast literature on EU trade politics and on the way that 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, Duchesne, and Meunier 2000; Collison 1999; Jølstad 1997; Meunier 2000; van den Hoven 2002; Young 2002; Woolcock 2005b). Within this strand of explanation, some scholars depict EU trade policy as a three-level game between the international and the national levels (Patterson 1997; Paarlberg 1997; Larsén 2007). Second, many studies apply the principal-agent approach to explain how authority has been delegated from member states to the European Commission (de Bièvre and Dür 2005; Nicolaidis 2000; Elsig 2007; Damro 2007; Kerremans 2004a, b; Meunier and Nicolaïdis 1999). Third, some other studies compare the delegation of authority in the EU and the United States (Clark, Duchesne, and Meunier 2000) during the Uruguay-Round negotiations (Woolcock 2005a; Hayes 1993; Baldwin 2006; Johnson 1998; Elsig 2002; Smith 2001; Leal-Arcas 2003; Young 2000; Nicolaïdis and Meunier 2002; 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 (Schöppenthau 1999; Meunier 2005; Meunier and Nicolaïdis 2006; Paemen and Bensch 1995; Messerlin 2001; van den Hoven 2004; Young 2007). Finally, other studies focus on the EU as an actor in multilateral trade negotiations (Nicolaïdis and Meunier 2002; Meunier 2005; 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 cooperation 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 cooperative 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 at the international level. Only by doing this can the Commission be sure that member states will thereafter approve the trade agreements negotiated by the Commission. Based on interviews with European Commission negotiators, and with Belgian and British trade officials, Kerremans concludes that the role of the Commission is more like a balance act between Scylla and Charibdis, in which the Commission is obliged to find an equilibrium between its dependence on member states at the EU level (especially during the ratification process) and its autonomy during negotiations at the international level.

By contrast, some other authors (Young 2006; Woolcock and Hodges 1998) consider the relationship between the Commission and the Council as conflict-ridden. They assert that the reluctance of member states to cede broader competences to the EU, and thus to widen the scope of trade power delegation to the Commission, during the 1997 Amsterdam Intergovernmental Conference can be explained by the distrust of the latter towards the Commission's ability to represent their interests in international negotiations. Woolcock and Hodges (2006) hold that several member states were discontented with the way the Commission had conducted the Uruguay Round negotiations. For example, France rejected the Blair House agreement negotiated between the Commission and the United States because it considered that the Commission went too far without the Council's support in making concessions to the United States on agricultural issues. More recently, Young (2006) argues

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that the problem of multiple principals with different positions on trade liberalization might explain why member states were unable to control the European Commission before and during the Hong Kong ministerial meeting 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*)? In addition, we know little about the structure of delegation and the types of control mechanisms that exist to monitor agents. Finally, there is a limited number of studies focusing on the agent's preferences and on how and under what conditions agents are able to overcome the control of principals. In order to answer these questions, we need to know how the structure of delegation is conceived and how the control mechanisms available to principals work in practice.

In this paper, I will take a closer look at how the horizontal coordination 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 on the EU negotiating position and the Council-Commission relationship is 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 for Trade and Agriculture. Drawing on the principal-agent approach, I will argue that agency losses are due to the structure of delegation and that the existence of multiple principals with diverging preferences facilitates agency. I find evidence that the Council-Commission relationship on trade politics has different dynamics depending on the negotiating stage. In the initial negotiating stage, when defining the negotiating mandate of the Commission, the relationship tends to be cooperative. Conflict between the Commission and the Council comes into being at a later stage of negotiations, when the Commission makes concessions at the international level.

The first section of this paper briefly describes the delegation of power from member states to the European Commission and defines the concepts of agency shirking and agency slippage. The second part focuses on the member states' and the Commission's positions on agricultural trade liberalization. The third section examines the negotiating mandate of the European Commission for the new trade round, as well as the *ex ante* control mechanisms available to member states. The fourth section analyzes the relationship between the Council and Commission during the Doha round negotiations from 2001 to 2006, with a special focus on agency shirking and agency slippage.

## **DELEGATION OF POWER FROM MEMBER STATES TO THE EUROPEAN COMMISSION: AGENCY SHIRKING AND AGENCY SLIPPAGE**

Even though the delegation of power stretches back to the beginning of the European integration process, it was only at the end of the 1990s that Pollack (1997) applied the principal-agent approach to the study of the EU. Using insights from the new economics of organization (Moe 1984; Kiewiet and McCubbins 1991), Pollack has persuasively demonstrated that the delegation of authority involves agency losses. In a classical delegation situation, the agent (the Commission) might have preferences that are systematically different from those of the principals (the member states), 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 (Kiewiet and McCubbins 1991: 108). The agent's interests might not be aligned with those of the principals if, for instance, an agreement matters for the

agent more than its specific content (Nicolaidis 2000: 90). 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: 108).

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 is not available to the principals due to its prohibitively high costs (Davis 2002: 11). 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 reacts to this. Hidden action is an even trickier issue because member states cannot directly observe 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 at the international level, for example by having member states representatives' follow the negotiations at the international level *in locum* and through a continuous exchange of information between the Commission and the Council.

## **MEMBER STATES' POSITIONS ON AGRICULTURAL TRADE LIBERALIZATION**

The positioning of member states' preferences is a key determinant of the zone of possible agreement (ZOPA) at the international level, even though the latter can be increased by a variety of factors that can be manipulated through the negotiation process.<sup>1</sup> As Nicolaidis (2000: 111) points out, these factors might include internal side-payments, the decision-making rule (qualified majority voting, unanimity or consensus) allowing for the building of different winning coalitions and the degree of certainty about reservation values and the policy positions of member states.

The delegation of power in the EU involves not only bargaining between the principals and their agent, but also negotiation among member states themselves. Before the Commission can represent the EU in multilateral trade negotiations, member states have to agree on the exact content of the negotiating mandate. On agricultural trade liberalization, member states' positions depend on their total share of EU agricultural production and on the total amount of direct payments they will receive from the Common Agricultural Policy (CAP).<sup>2</sup> The opening up of agricultural markets will implicitly lead to further reforms of the CAP and less subsidies. Using these two criteria, I will distinguish between three distinct groups of countries on agricultural issues: opponents, countries with a nuanced position, and supporters of agricultural trade liberalization.

The opponents of agricultural trade liberalization include France, Finland, Ireland, Italy, Greece, Portugal, Spain, Belgium, and Luxembourg. The opponents of agricultural trade liberalization are against further CAP reforms, and support import protection, export subsidies and no limits on

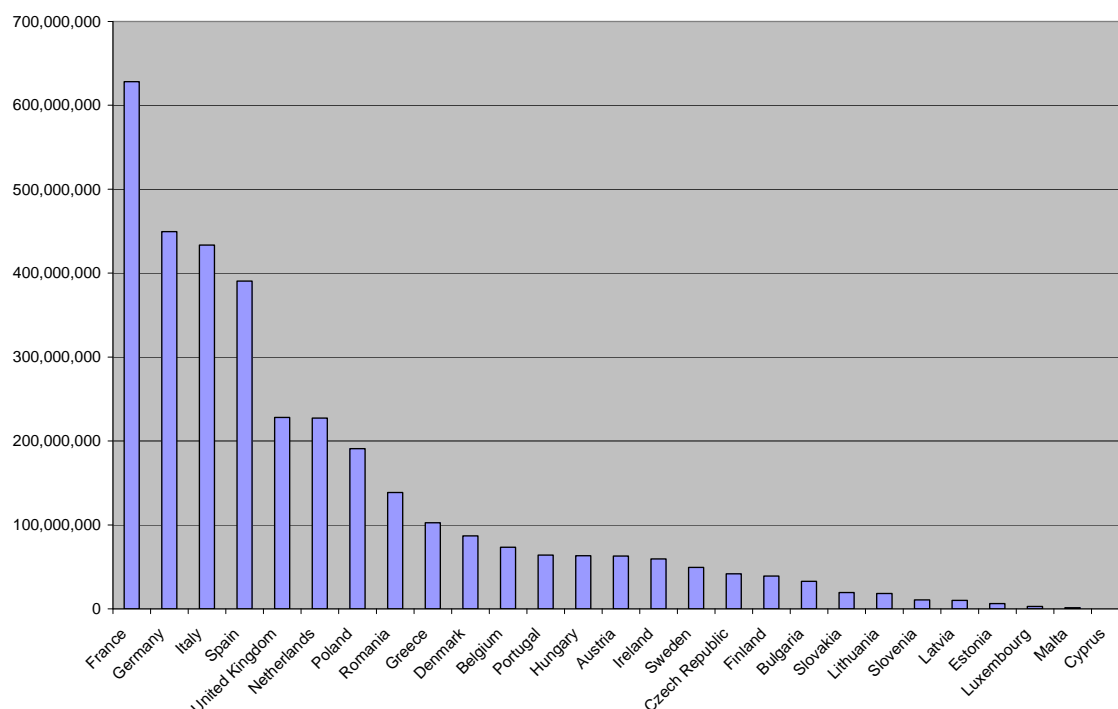
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1 I thank Bart Kerremans for drawing my attention to this issue.

2 There are of course another ways of categorizing the importance of the agricultural sector for the EU member states. Grant (1990) develops a categorization of states according to the importance of agriculture in national economies and levels of agricultural efficiency. Moyer and Josling (1990) contend that member states' positions on agricultural trade liberalization are affected by a combination of three factors: trade balance, farm size and contributions to the EU budget. Concerning trade balance, exporting countries will support import protection, export subsidies and no production restrictions. While importing countries prefer to have high commodity prices in order to bribe their domestic agricultural groups. Second, they expect countries with small average farm size and low levels of farm income to favor high prices for agricultural commodities. Finally, with regard to budgetary contributions EU net budget contributors have a greater interest in reforming the CAP than net budget receivers. This distinction is also problematic because there are countries such as Germany that are net contributors to the EU budget and nevertheless have a nuanced position on agricultural trade liberalization and on the CAP reform. Also the farm size within a country is not the really important issue but rather the agricultural output of a member state in the EU total agricultural production. This is why taking into account the total amount of direct payments each country receives from the CAP as well total agricultural production within the EU helps us to better explain a member state's position on agricultural trade liberalization.

production. These countries justify agricultural support with concerns about food sufficiency, land abandonment, and import competition from lower cost producers. In line with the CAP principles, they consider that agriculture should safeguard and stabilize farmers' incomes through domestic support payments. During the Doha Round negotiations, France was the leader of this group of countries. France is the largest producer and exporter of agricultural commodities within the EU and the second largest after the United States (Ministère de l'Agriculture et de la Pêche 2007).<sup>3</sup> In 2007, French agricultural production represented 20.3% of total European agricultural production, followed by Germany (12.8%), Italy (12.5%), Spain (11.3%), the Netherlands and the United Kingdom (6.4%), and Poland (5.1%) (see table below).

EU-27 Agricultural Production in 2007



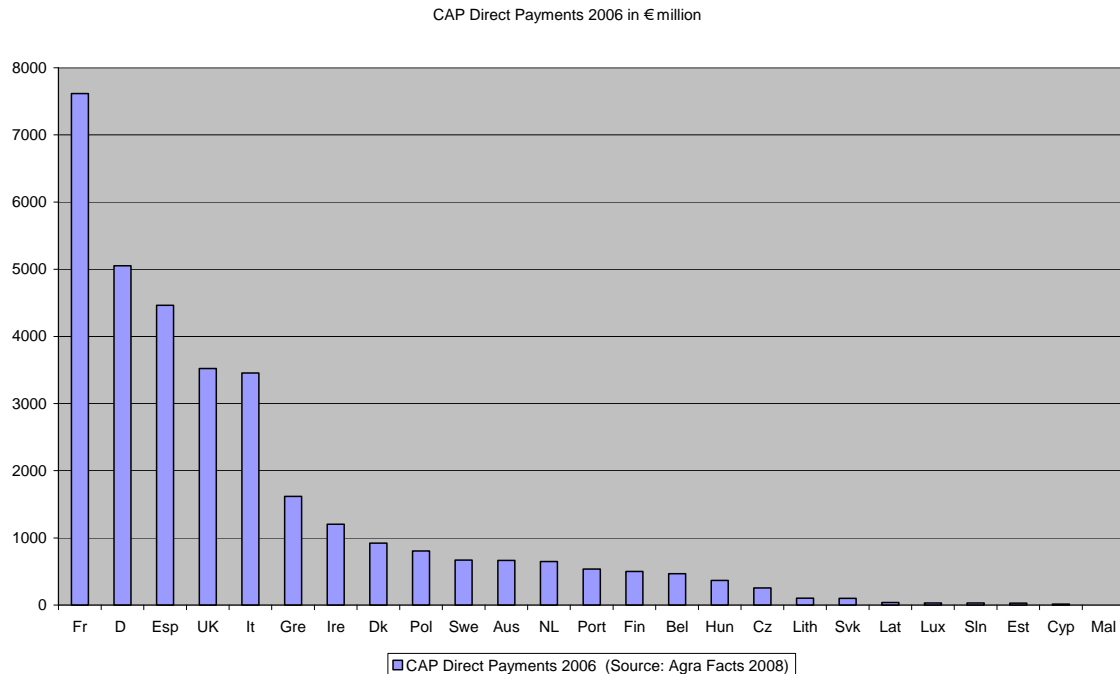
Source: Own Diagram, based on data from Eurostat (2008)

Concerning the distribution of all CAP direct payments, France comes in first place again with 7,6 million € per year, which comprises one quarter of the total direct farm aid from a total of over 33 million €, followed by Germany (5 million €), Spain (4,4 million €), the United Kingdom<sup>4</sup> (UK) (3,5

3 The French agricultural sector be divided into two types of products: agricultural commodities highly subsidized by the CAP (wheat, flour, milk powder, butter) and processed products sold in world markets without export subsidies (Delorme 2004: 31). The most important French crop is soft wheat. Cereal production is very capital-intensive and has a high production per hectare. France remains the leading producer of soft wheat in the EU with a share of 40% of total harvest. Another important sector of French agriculture is livestock farming (dairy and beef production) which is done on 39% of the total number of farm holdings (Hennis 2005: 101). If there are any CAP changes on the wheat and livestock sector, France is expected to oppose it to protect its farmers.3 Processed products with a high value added (like quality wines, cognac, cheese, and foie gras) account for about 40% of agro-food exports and are less subsidised. For the producers and processors concerned agricultural market liberalization would mean outlets for producers and agro-food enterprises in the sector. At the present, the United States and Japan still have very high tariffs and non-tariff barriers (health concerns) on these commodities.

4 The main reason for the UK coming already at the fourth place has to do with the British rebate, which was negotiated by the British Prime Minister Margaret Thatcher in the so-called Fontainebleau agreement. At that time, the main reason for the rebate was that a high proportion of the EC budget (about 80%) was spent in the CAP, which benefits the UK less

million €), Italy (3,4 million €), Greece (1,6 million €) and Ireland (1,2 million €). Almost all the new EU member states lie at the other end of the spectrum. To date, these countries have not been large beneficiaries of the CAP because they are only being integrated gradually into the CAP system of direct payments in a 10-year phase-in system. Since this study focuses on the time period 1999-2006, only after the EU Eastern enlargement on 1 May 2004, the position of the 10 new member states will be included in the groups of countries favoring, opposing or with a more nuanced position on agricultural trade liberalization.<sup>5</sup>



A second group of countries with a more nuanced position on agricultural trade liberalization and on the CAP reform includes Italy, Portugal, Greece, and Germany. Italy, Portugal and Greece 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 reorient the CAP towards “Southern” agricultural products like wine, fruit and vegetables. The CAP primarily benefits the most productive, efficient large farms, whereas these three countries have important but extensive small-scale and technologically underdeveloped agricultural sectors and do not have, like France and Spain, large intensive farms with high agricultural productivity. 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-Democratic-Green Coalition government (1998-2005), the German agriculture minister from the Green Party Renate Künast sometimes supported the British liberal position and sometimes aligned itself with France on the CAP reform. 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), which adopted a more protectionist position on agricultural issues and thus supported the opponents of agricultural trade liberalization.

(Contd.) \_\_\_\_\_

than other countries as it has a relatively small farming sector as a proportion of the GDP. Without the rebate, the UK would pay significantly more than other member state as a proportion of the GDP. Moreover, at that time the UK was also the third poorest member of the EC. The rebate is calculated as approximately 2/3 of the amount by which the UK payments into the EU exceed EU expenditure returning to the UK. These funds are returned essentially through CAP direct payments.

5 Direct payments started in 2004 with 25% and will gradually increase by 10% steps to reach 100% of the then applicable EU level in 2013.

The group supporting agricultural trade liberalization includes the UK, Denmark, Sweden and the Netherlands. This group of countries has mainly formed under the leadership of the UK; they consider that CAP support should be strictly limited to a rural development policy. The UK has an industrialized and efficient agricultural sector that is relatively unimportant within the economy as a whole, and it also has a long tradition of importing agricultural commodities, mainly from the Commonwealth countries (Marsh 1999: 205). Sweden also has a very small agricultural sector and is more concerned with environmental protection and the maintenance of the countryside (Swedish Ministry of Agriculture 2008). However, the Netherlands and Denmark have an export-oriented agricultural sector, which accounts for over 20% of the total Dutch and Danish products exports (Grant 1997: 34). Even though the Netherlands is a net exporter, many raw materials are imported, e.g. soybeans and tapioca for fodder, cacao and coffee. Thus, further agricultural liberalization would allow the Dutch agri-business sector to import raw materials at lower prices (Hennis 2005: 72). This group of countries would thus clearly benefit from further agricultural trade liberalization.

## **THE COMMISSION'S POSITION ON AGRICULTURAL TRADE LIBERALIZATION**

The agency side of the principal-agent relationship has hitherto received little attention in the literature. There is the classical statement made by Williamson (1985: 30) that agents are “self-interest seeking with guile”. Bergman et al. (2000) also note that delegation is problematic because an agent's preferences might be different from those of the principals and because in most cases principals are not able to observe the agent when it is acting on their behalf. More recently, Delreux and Kerremans (2008) argue that agents are not merely puppets in the hands of principals and that principals and agents control each other interchangeably. Until now, however, scholars have paid little attention to agents' preferences or to how and under what conditions they are able to obstruct the control of the principals.

Agents fulfill different functions. They facilitate commitment problems, reduce information asymmetries, enhance the efficiency in coming to decisions, take blame for unpopular decisions (Thatcher and Stone Sweet 2002: 4), carry out third-party conflict resolution, create policy bias (Hawkins et al. 2006: 15-19), represent principals in negotiations with third parties and implement policies. The type of tasks assigned to an agent affects the interpretation of the agent's own role (Hawkins and Jacoby 2006: 200). Some scholars see agents as merely servants of the member states (Moravcsik 1993), other see them as trustees (Majone 2001), as own actors (Pollack 2003; Conceição-Heldt 2006), or as somewhere in between (Elsig 2007; Baldwin 2006).

Agents accomplish tasks in a manner that satisfies a high number of principals, be it because agents aim to increase their power or in order for them to consolidate their reputations. The preferences of an agent are a central issue for assessing the principal-agent relationship. I assume that the European Commission acts not only as the agent of member states, but is also an actor with own preferences. The Commission sees itself as the representative of the European Community (EC) and as the only actor having the legitimacy to speak as an “advocate of the EC interests”. Although it is difficult to assess what “EC interests” are, for the European Commission one might assume that this involves a further deepening of the European integration process. This goes in hand with the expansion of the scope of the EC's competence to new policy fields, which also increases the influence of the Commission within it. In practice, then the Commission must formulate mutually acceptable proposals in that these must contain elements for which each member state can claim some credit. Otherwise, if some member states have the impression that a Commission's proposal favors only some member states and will place them at a disadvantage, they are unlikely to accept it (Conceição-Heldt 2004: 45).

On trade issues, the Commission usually holds more liberal free-trade positions than the majority of its principals, flanked as it is by principals holding protectionist, nuanced and liberal trade positions (Meunier and Nicolaïdis 1999: 479). The degree of interest alignment between principals and agents is

important to explain whether and how conflict might arise between the two sides. If the degree of interest alignment between principals and agents is low, 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 at the international level ( Nicolaïdis 2000: 111). This dimension is also important to determine the range of agreements that are acceptable at Level I (external negotiation) and can be ratified at Level II (European level), the so-called win-set.

## **THE NEGOTATING MANDATE OF THE AGENT AND THE CONTROL MECHANISMS AVAILABLE TO THE PRINCIPALS**

The establishment of a new supranational organization with the European Commission having the authority to elaborate, negotiate and enforce all aspects of trade policy with the rest of the world (Meunier and Nicolaïdis 1999: 480) does not mean that member states totally abdicate from power. Principals have several horizontal coordination 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 closely monitor the Commission. Finally, there are also *ex post* control mechanisms, when member states have to ratify the agreement negotiated by the Commission.<sup>6</sup> Principals, however, are not able to anticipate every contingency, especially when agents are given broad discretion (Hawkins et al. 2006: 6) or when the policy preferences of principals change over time, through, for example, elections (Thatcher and Stone Sweet 2002: 6).

## **EX ANTE CONTROL MECHANISMS: THE NEGOTIATING MANDATE OF THE COMMISSION FOR THE NEW TRADE ROUND**

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. Even if the European Commission has exclusive competences on negotiating agricultural issues at the international level, the Council of Ministers still needs to issue 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 to be discussed at the Council, defining the EU negotiating position in international trade negotiations. In theory, the mandate is approved under qualified majority voting. In practice, however, the Council approves the Commission's negotiating mandate through consensus (Kerremans 2004a: 49-50). Before the 1999 Seattle ministerial meeting, the Council asked the Commission to prepare the general guidelines for the EU negotiating position. At this initial stage of negotiations, the focus was on which issues should be included in the negotiating agenda and member states agreed on the inclusion of the

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6 To be sure, some other authors (Epstein and O'Halloran 1999; Kerremans 2004b; Meunier and Nicolaïdis 2000; Nicolaïdis 2000) have established useful distinctions between different control mechanisms available to principals to control agents. Epstein and O'Halloran (1999) distinguished between *ex ante* and *ex post* control mechanisms. Kerremans (2004b), in turn, differentiates between three control devices available to member states in the area of trade: 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). In this paper, the focus is only on the Council-Commission relationship before and during the negotiations.

principle of “single undertaking” (nothing is agreed until everything is agreed), the concept of multifunctionality in agriculture, Singapore issues (investment, competition, trade facilitation, and public procurement), and duty-free access for developing countries (*Agence Europe*, 23 June 1999).

On agricultural issues, 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 so long other forms of export support, such as export credits, state-trading enterprises or 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” and called for the recognition of the “multifunctional” role of agriculture which refers to non-trade concerns of agriculture such as environmental protection, food security and rural development. Finally, the Council also specified that the Commission should inform and consult with the 133 Committee and with the SCA regularly during the negotiations (*Agence Europe*, 1 October 1999).<sup>7</sup> The General Affairs Council consensually adopted the EU’s general negotiating position in September 1999 (*Agence Europe*, 1 October 1999).

This broad negotiating mandate given to the Commission delineated the limits within which the Commission should negotiate on behalf of the member states. The negotiating mandate mirrors the maximum concessions that the member states are prepared to accept *vis-à-vis* each other at the beginning of the international negotiations (Kerremans 2004b: 6); it also specifies the scope of authority delegated to the agent and the control mechanisms allowing principals to monitor the actions of the agent at the international level. Kerremans (2004b: 49-50) points out that the negotiating mandate ties the hands of the Commission and of the member states, which can be counterproductive to the adaptive capacity of the EU in multilateral trade negotiations. In contrast, Nicolaïdis (2000: 101-102) argues that the Commission has a rather broad flexible negotiating mandate, without specifying whether there is any variation from issue to issue.

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: 5). 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 to their agents for carrying out its task or they can simply articulate their policy preferences in a broader way and leave it to the agent to work out a best way of fulfilling its assigned delegation. 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: 27). Multiple principals may leave the point at which to set up a compromise agreement in order to avoid it being rejected by a group of principals up to the agent’s discretion (McCubbins and Page 1987: 418). However, this clearly also implies that discretion over independent action gives agents greater opportunities for opportunistic behavior (Hawkins et al. 2006: 28).

In the specific case of the Doha Round negotiations, the Council of Ministers gave the Commission a broad negotiating mandate on agriculture issues; this assured the flexibility of the EU negotiating position. The 1999 Seattle meeting corresponded to the initial stage of negotiations, in which the Commission and the Council agreed widely on the general EU negotiating position. The absence of divisions between the Council and the Commission led to a unified position at the international level

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7 The reinforcement of the horizontal coordination between the Council and the Commission goes back to the proposal made by the trade commissioner Leon Brittan in 1997 on the creation of a Euro-American free trade area, which was promptly opposed by France – with support of Germany, Finland, Ireland, the Netherlands, Luxembourg, Austria, and all the four Mediterranean states – because of the effects that it would have had on the agricultural sector (*Agence Europe*, 23 April 1997).



without having single member states calling the Commission back to inform all of them about the ongoing negotiation process. At this initial negotiating stage, there was thus no conflict situation between the interests of agents and principals (agency shirking): the delegation of power to the European Commission did not entail any agency loss for the principals. This can be explained in several ways. First, the agriculture Commissioner Franz Fischler declared that in the forthcoming WTO negotiations he would support direct payments to farmers and the multifunctional role of agriculture (*Agence Europe*, 17 November 1997). The position adopted by the Austrian agriculture commissioner was therefore in line with the more protectionist member states, like France. Second, at this initial stage of the bargaining process, negotiators' merely signal their preferences on the various issues of the negotiating agenda that need to be settled. Third, this convergence of policy positions between member states and the Commission can also be explained with the need to re-establish confidence between the Council and the Commission, which had been considerably shaken during the Uruguay-Round negotiations, especially when the Commission signed the Blair House I agreement without the backing of all the member states.

The Seattle ministerial meeting ended, however, without WTO members agreeing on a negotiating agenda for the new round of trade negotiations, due to the inability of the major trading nations to make symbolic concessions on the content of the draft declaration.

## **CONTROL MECHANISMS AVAILABLE TO PRINCIPALS DURING THE NEGOTIATIONS**

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. At the 133 Committee and the SCA, member states can express their concerns and demands on specific negotiating issues.<sup>8</sup> During the negotiations at the international level, the 133 Committee, together with the SCA, fulfills a police-patrol oversight role by examining the activities of the Commission with the aim of detecting and remedying any abuse of power by specifically controlling whether the Commission is going beyond its negotiating mandate. 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,<sup>9</sup> or to express their disagreement on a certain issue.<sup>10</sup> Even though the Commission reports directly to the 133 Committee, the SCA can urge the Commission to be very prudent on the concessions it is making and also signal, if necessary, that member states do not accept an agreement at any price. After member states have signaled their reservation on a certain issue, the 133 Committee is the next level on which the Council and the Commission coordinate on trade issues.<sup>11</sup> This is why we will now turn to the specific role that the 133 Committee plays as an oversight committee before and during the negotiations.

There is a great deal of discussion in the literature about the role of the 133 Committee during multilateral trade negotiations. For Kerremans (2004b: 7), the 133 Committee fulfills a "watchdog function", enabling member states to scrutinize what the European Commission is doing. For Houben (1995: 309), the basic function of the 133 Committee is to keep the Commission fully abreast of positions in the Council. Elsig (2002: 33) goes one step further and contends that in practice the 133

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8 In contrast to the 133 Committee, whose members come from the permanent representations in Brussels, the SCA is made up of senior permanent officials from the agriculture ministries of member states plus a commission representative (Culley 1995: 201). The SCA reports directly to the Council of Agriculture in the same way as COREPER reports to all other councils. Although COREPER has in theory right to intervene on agricultural questions, in practice it almost never uses this right leaving the SCA to prepare the items on the agenda of the Agriculture Council.

9 Interview with an official from the General Secretary of the Council dealing with SCA matters.

10 Interview with an official from the Commission's Directorate-General of Agriculture.

11 Interview with an official from the General Secretary of the Council dealing with SCA matters.

Committee does not have any decision-making power, since it can only modify minor technical points of the Commission's negotiating mandate. Paemen and Bensch (1995) consider the EU trade policy-making process to have been a major handicap during the Uruguay Round negotiations because different national positions watered down Commission proposals to the lowest common denominator. Other authors (Vahl 1997; Baldwin 2006) take a more differentiated and interactive view of the effects of the EU trade policy-making process on the Uruguay Round negotiations. Vahl (1997: 259), for example, defines the relationship between the Council and the Commission as one of "mutual constraint". Even though member states controlled and limited the Commission's options because they sanctioned the Commission's negotiating moves, the Commission did not restrict itself to being an agent of member states by simply carrying out Council instructions; quite the contrary, the Commission took its own initiatives and negotiated agreements. In contrast, Baldwin (2006: 930) argues that the EU trade policy-making process provides an effective framework with the Commission in the driving seat, but which has at the same time to take into account the demands made by member states.

The 133 Committee and the SCA are, in turn, an important information platform in order for the Commission to understand whether member states still support the concessions it is making at the international level. Member states can send signals directly or indirectly to the Commission on whether they plan to accept further concessions at the international level: for example, directly through the 133 Committee or indirectly through their domestic media or through speeches in their national parliaments. 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. This consultation process between the Commission and the Council does not always flow smoothly. Whereas the Commission prefers a loose form of consultation, member states favor close cooperation and permanent information exchange.

Another central and direct way for member states to control the Commission in Seattle was by their presence during the negotiations. The EU delegation taking part in the Seattle conference was made up of about one hundred people. The European Commission was represented by a large delegation headed by Pascal Lamy, accompanied by the Commissioners responsible for agriculture (Franz Fischler) and other Directorate-Generals concerned (including environment, competition, health and consumers, employment and social affairs, culture and audiovisual policy), but also senior commission officials and officials from the permanent delegations to Washington and Geneva, as well as representatives from the NGOs. Under the chairmanship of the Finnish Council presidency, the Council was represented by the ministers of trade and economy and secretaries of state for trade. In addition, the European Parliament sent a large delegation from different parliamentary committees (*Agence Europe*, 30 November 1999).

One of the central issues was, however, that 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 three to 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 at 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 a more technical knowledge of what takes place at the WTO level than the national representatives of the member states in the 133 committee.<sup>12</sup> Thus, even though in theory member states are allowed to participate in the meetings, in practice it is rather

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12 Interviews with officials from the Commission's Directorate-General of Agriculture and Trade.

difficult for them to be present in the meetings due to the restricted number of places reserved for the EU and the high number of meetings taking place at the same time.

### **THE RELATIONSHIP BETWEEN THE COUNCIL AND THE COMMISSION DURING THE DOHA-ROUND NEGOTIATIONS: AGENCY SHIRKING OR AGENCY SLIPPAGE?**

How do we know whether the agent complies with the negotiating mandate given by its principals, since the principals are not able to participate in the negotiations, but are reliant upon the information provided by the European Commission? The information problem is why one of the crucial issues for member states is to be constantly informed on the extent of concessions the agent makes at the international level.

Before the Doha ministerial conference, in September 2000, the Council of Agriculture met to discuss the EU's agricultural position for the next ministerial conference, confirming the mandate granted to the European Commission in 1999 (*Agence Europe*, 8 September 2001). At this stage, the relationship between Council and Commission was primarily cooperative. Within the Commission, there were no differences between the trade and agriculture commissioners on the EU's negotiating position. The French trade commissioner, Pascal Lamy, broadly agreed with the agriculture commissioner, Franz Fischler, 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).

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 production through the single farm payment, which was linked to respect for the environment, food safety and quality, and animal welfare standards. The main concern for EU member states at this point in time was thus 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 2003 reform (*Agence Europe*, 8 May 2004).

The EU and the other major trading nations assumed a maximalist position of trying to obtain the maximum number of concessions from the others, while not moving from their initial demands. This explains why the Cancún ministerial meeting, ended abruptly with no other official result than an instruction to trade officials to continue the negotiations. After this meeting, it took WTO members several months to agree on how to proceed. One attempt to take negotiations forward was made in January 2004 by the United States trade representative Robert Zoellick, who took the initiative of sending a letter to all the trade ministers to resume negotiations. He proposed that these should focus on improved market access for agriculture, industrial goods and services. On agriculture, a date should be set for the complete elimination of export subsidies. After several informal meetings of the Five Interested Parties (the US, the EU, Australia, Brazil, and India) in March and April which did not reach any concrete results, in May 2004 Pascal Lamy and Franz Fischler 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 a package on concessions for the poorest developing countries (European Commission 2005).

The initiative of the two European commissioners was not supported, however, by all the member states. Under a French leadership, several member states (Belgium, Hungary, Ireland, Italy, Slovakia, and Cyprus) on the 133 Committee level criticized the negotiating strategy of the European Commission. They considered the Commission's concessions at this stage of negotiations to be a tactical error since they signalled a certain degree of flexibility, while the other countries were not moving from their initial negotiating positions (*Agence Europe*, 11 May 2004). Moreover, the French

agriculture minister, Hervé Gaymard, even accused the Commission of having overstepped its negotiating mandate due to its offer of the elimination of export subsidies. At the same time, a large number of member states, which included Germany, Great Britain, Denmark, Sweden, Finland and the Netherlands, supported the Commission's initiative to resume WTO negotiations (*Agence Europe*, 12 May 2004).

In July 2004, there was a first breakthrough in the negotiations, when WTO member states agreed on setting out the parameters for further negotiations and extended the deadline for the completion of the Doha Round to at least the end of 2005. At the beginning of October 2005, the US presented its negotiating proposal calling for a complete elimination of all export subsidies over a fifteen-year period, proposing in exchange to reduce 50% of its blue box domestic support, on the condition that other countries would do the same. In response to the US proposal on domestic support, the European Commission, now with Peter Mandelson in charge of trade and Marian Fischer Boel of agriculture, circulated a new negotiating proposal offering to reduce domestic support by 70%, to accept the banded formula (higher cuts for higher tariffs), and to remove all export subsidies within the phasing-out period (*Agence Europe*, 11 October 2005). At the Agriculture Council meeting, however, under French leadership once more, thirteen member states (Belgium, Austria, Cyprus, Spain, Finland, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg and Poland) openly criticized the Commission's offer because the concessions that it was offering had not received any concessions from the United States. In a letter to Fischer Boel, these member states wanted the Commission to consult closely with the member states before offering concessions at the international level. They also urged the Commission to push harder for progress in industrial products and services before making any concessions on agriculture and to keep the Community preference principle (*Agence Europe*, 11 October 2005), which gives preference to EU products over imported products.

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 and even called Peter Mandelson back from the WTO meeting because the unilateral concessions on agriculture went beyond the Council's negotiating mandate. President Chirac also sent a letter to the president of the Commission, criticizing Peter Mandelson's negotiating tactics. France, backed by Greece, Hungary, Cyprus, Ireland, Spain, Italy, Poland, Portugal and Lithuania, even suggested establishing a new advisory committee in order to better monitor the Commission (*Agence Europe*, 19 October 2005).

The European trade commissioner 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 of keeping member states fully informed and that the Commission could brief ministers at any time (*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).

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 at the international level, the agent's discretionary means or room for maneuver 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. Moreover, specialization also prevents principals from threatening contracting with other agents as a way of punishing a deviant agent's behavior. The greater the specialization, that is the greater the opportunities for agency slack are (Hawkins et al. 2006: 25). Agency costs occur because agents, which represent principals in international negotiations, 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. If the Commission behaves in an opportunistic way, what can member states do to discipline their agent?

Principals can theoretically increase the oversight mechanisms. In practice, this measure is rather difficult to implement, since all member states must agree on it. The Commission is, of course, aware that member states have different preferences on agricultural trade liberalization and that the more liberal member states support the concessions it is making at the international level.

At the end of the extraordinary meeting convened by France in mid-October 2005, a majority of member states reiterated its support for the Commission's negotiating strategy. The Council recalled that the 2003 CAP reform was the EU's contribution to agricultural reform in the Doha round and that it represented the limits of the Commission's negotiating mandate. In order to increase transparency and information flows now that the most intense phase of negotiations had begun, the Commission and the 133 Committee representatives would meet before the negotiations to examine the Commission's offer of reducing customs duties to ensure that the Commission remained within the confines of its mandate. But the French demand of getting *a priori* control over any new moves and of establishing an advisory committee with the function of controlling the Commission was rejected by a majority of member states, which included Germany, Denmark, Sweden, the Netherlands, the UK, Estonia, and Malta. Mandelson was pleased with the results of the meeting, which confirmed that the mandate belongs to the Council but that the negotiating tactics belong to the Commission (*Agence Europe*, 19 October 2005).

After the meeting between the Commission and the 133 Committee took place, the French Foreign Minister Philippe Douste-Blazy stated that though trust had been restored, France would closely monitor the development of discussions (*Agence Europe*, 8 November 2005). At the Agriculture Council meeting at the end of October 2005, France accepted that the European Commission would make a new and better offer on market access for agricultural products. Following this, on 28 October the European Commission presented the EU's new agricultural offer, which was discussed on 7 November at the General Affairs Council. The new EU proposal made concessions on agricultural market access conditional on better market access to industrial products and services. The EU proposal foresaw a 60% reduction in the EU's highest agricultural tariffs and the elimination of all agricultural export subsidies by an agreed date, 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 proposed reducing by 70% its ceiling amount for amber box subsidies and accepting a 60% cut from the US and 50% 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% of tariff lines, which would cover some 170 of the 2,200 EU agricultural products. Shortly after the presentation of this new offer at the international level, the member states met with the Commission at the 133 Committee level. France called for greater clarity on the number of sensitive products, the special safeguard clauses, and on the timetable for the removal of export refunds. It also stressed that if the other countries did not put equivalent offers on the table, then the European Commission should reduce its own offer (*Agence Europe*, 8 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. Peter Mandelson was able to agree on the elimination of export subsidies because no member state objected to the inclusion of an end date for agricultural export subsidies. The EU member states accepted a commitment 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. This commitment to phase out export subsidies was in line with the timetable established in the 2003 CAP reform. After the conclusion of the Hong Kong

ministerial conference, French trade Minister Christine Lagarde considered that for the first time the European Commission had “fully respected” its negotiating mandate (*Inside U.S. Trade*, 19 December 2005).

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 a deadline set for agreeing on specific numerical values and formulae for tariff cuts on agricultural support, market access and non-agricultural market access by the end of April 2006. Even though several informal meetings were held between the major trading nations (US-EU-Brazil-India-Australia-Japan) from January until the end of the April 2006, the negotiations did not move forward because delegations did little more than re-state their well-known negotiating positions.

At the EU-Latin America Summit in May 2006, Peter Mandelson took the initiative of improving the EU's offer by increasing the average reduction in EU customs duty on imports of agricultural products from 39% to nearly 50% (G-20 countries were demanding a reduction of 54%) conditional upon a reduction in internal subsidies from the United States and a reduction on customs duty on manufactured goods from the Brazil and India (*Agence Europe*, 23 May 2006). The structure of power delegation on trade policy (agency slippage) leads to flawed mandates allowing the agent to take actions that cannot be perfectly monitored by the principals: in the principal-agent literature this is called moral hazard or hidden action.

When reporting back to the Council, Mariann Fischer Boel reassured member states that the EU would not make a new unilateral offer on agriculture, unless the United States reciprocated with a reduction on internal subsidies. At the same time, she considered that the EU still had a small margin of maneuver for making concessions on agriculture. This position was not, however, shared by the French agricultural minister, Dominique Bussereau, who opposed any new unilateral concessions from the EU without a move from the other countries on industry products and services (*Agence Europe*, 20 June 2006). He held that the EU offer of 28 October was already “France's limit” and that France would prefer negotiations to break down rather than a bad agreement calling the CAP into question (*Agence Europe*, 30 May 2006). French European Affairs Minister Catherine Colonna also supported this view and stated that the European Commission was at the end of its negotiating mandate and that the Commission would be put under the close surveillance of member states, which met in parallel to the discussions underway at the WTO, at trade and agriculture minister level (*Agence Europe*, 29 June 2006). France considered that the move from the US over internal subsidies was insignificant and was now supported by Italy, Germany, Spain, Poland, Greece, Portugal, Lithuania, Ireland, Cyprus and Malta (*Agence Europe*, 30 June 2006). Germany's position had now shifted towards a more defensive position on agricultural trade liberalization because the German Agriculture Minister, Horst Seehofer from the Bavarian conservative party (CSU) has a strong linkage to farmers (*Agence Europe*, 30 May 2006).

While the Council was divided over whether the Commission had already gone beyond its negotiating mandate, Peter Mandelson considered that there was a majority of member states behind his new proposal and that the main issue was to create new jobs in the industry and services sectors (*Agence Europe*, 30 June 2006).

At the same time at the WTO 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 further reduce domestic agricultural subsidies, the EU to further reduce agricultural tariffs, and Brazil and India to lower tariffs on industry products and to offer more liberalization on services. This “20-20-20” compromise formula was, however, rejected by a majority of delegations. The Brazilian and Japanese ministers considered the proposed reduction of the US domestic subsidies as too low and unrealistic given that Washington had yet not made a concrete proposal on this issue. The EU considered Lamy's proposal on market access for manufactured products as insufficient because a coefficient below 15% for customs duties reductions in emergent and developed countries would not provide additional market access (*Agence Europe*, 29 June 2006). The United States Trade Representative, Susan

Schwab, emphasized once more that the agriculture negotiations were conditional and could be improved or scaled back depending on other countries' willingness to make new concessions on market access (*Delta Farm Press*, 30 June 2006). Because the major trade nations did not move from their negotiating positions, Pascal Lamy decided officially to suspend the trade negotiations at the 27-28 July 2006 General Council meeting.

## CONCLUSION

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 when there is a conflict situation between the interests of the more protectionist member states and the concessions the Commission is making at the international level, the Commission tends to assume a more liberal position that is closer to those member states favoring further agricultural trade liberalization. During the negotiations the agent was closely controlled by member states through the 133 Committee and the SCA. The structure of power delegation stimulated the agent to adopt a position that was closer to the more liberal member states. The Commission sees itself as having a general view of a trade issue in the overall Community interest. In contrast, member states are more concerned with the effects of a proposal on a specific sector. This is why a particular member state might have the impression that its interests are being overridden. The mere existence of 25 principals with different positions on trade issues explains why member states do not always completely control the Commission's negotiating tactics and concessions during the bargaining process at the international level. That is to say, the Council defines the content of the negotiating mandate, but the negotiating tactics belong to the Commission.

The second main finding is that the relationship between the Council and the Commission has different dynamics depending on the negotiating stage. At the initial stage of negotiation, when member states defined the negotiating guidelines of the Commission, all member states and the Commission widely agreed on the negotiating mandate. During the negotiations, the Council-Commission relationship became more conflictual, when the Commission started making concessions at the international level without consulting closely with member states. This led to a conflict situation with member states with a more protectionist position on agriculture. France, with the support of several other member states (Greece, Hungary, Cyprus, Ireland, Spain, Italy, Poland, Portugal and Lithuania) reacted by calling the trade commissioner back from negotiations at the international level and openly criticized the offer made by the Commission because member states never had approved it. Moreover, France also called an extraordinary meeting of the General Affairs Council, alleging that the trade and agriculture commissioners were conceding unilaterally and had gone beyond the Council's negotiating mandate. France suggested creating a new advisory committee to monitor the Commission at the international level during the negotiations. Even though a majority of states under the British and German leadership opposed against this initiative, a purely advisory meeting took place to assess whether the Commission had gone beyond its negotiating mandate.

This study demonstrates how the institutional characteristics of the delegation of power to the European Commission can affect multilateral trade negotiations. At the beginning of negotiations, the agent's negotiating guidelines are stated in such a vague way that it is hard to decide whether any violation of the negotiating mandate has occurred unless a member state complains. Before and after the Hong Kong ministerial meeting, which corresponds to a later stage of negotiations, a large proportion of the time of the Commission was spent in coordinating and bargaining with the member states. Member states decreased the flexibility of the negotiating mandate of the Commission during the negotiations. Narrowing agency autonomy in this way tied the hands of the agent at the international level.

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