

The tables have turned on the European Commission: the changing nature of the pre-negotiation phase in EU bilateral trade agreements

Markus Gastinger

ABSTRACT We argue that one prime source of Commission autonomy in bilateral trade negotiations was the informational advantage that it acquired during the pre-negotiations, which is the phase preceding the adoption of negotiating directives by the Council. Initially, the Commission was entirely unmonitored due to the lack of Treaty provisions applying to this stage in the negotiations. The Commission used this information asymmetry strategically vis-à-vis the Council to move outcomes closer to its ideal point. Later, Member States have stepped up police-patrol monitoring manifesting itself empirically through two different channels. First, they have shifted the institutional arena for more political aspects to annual ministerial meetings. Second, preparatory works on a technical level are today followed by national experts. We examine this argument by adopting a principal-agent perspective and against the backdrop of EU-India relations.

KEY WORDS Commission autonomy; EU-India relations; external relations; international negotiations; principal-agent approach; trade agreements.

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INTRODUCTION

Who shapes bilateral trade negotiations in the European Union (EU)? Is it the European Commission, which is charged by the Treaty to conduct them? Or the Council, which has the power to conclude them? While some scholars find a significant degree of Commission¹ autonomy (e.g. Conceição-Heldt 2011; Elgström and Larsén 2010; Elsig and Dupont 2012; Larsén 2007), others emphasise Member State control (e.g. Aggarwal and Fogarty 2004: 226–7; Damro 2007; Kerremans 2004; Meunier 2005). This paper lends support to the former camp for earlier negotiations, but shifts into the latter for more contemporary ones.

We argue that in bilateral trade negotiations asymmetric information was a prime source of Commission autonomy, which we define as the ‘successful pursuit of a private agenda’ (Tallberg 2000: 844). The Commission acquired exclusive information in the pre-negotiations, i.e. the phase preceding the official negotiations starting with the adoption of negotiating directives by the Council. As this stage in the negotiations is not covered by the Treaty, the Commission was initially entirely unmonitored by Member States. This gave the Commission a preview of third-party preferences—perhaps even a chance to shape them to some extent—which it could use strategically vis-à-vis the Council to move the negotiations closer to its ‘ideal point’, at which actors attain their most preferred policy outcome (Milner 1997: 33). Member States have later plugged this source of private Commission information through the introduction of new police patrols. First, Member States shifted the arena for more political aspects of the pre-negotiations to annual ministerial meetings. Here Member States are represented either in full or through the Council Presidency and can exert early control on where the third party expects to find room for negotiation. Second, on a more technical level negotiations are today prepared by experts sitting on the ‘133 Committee’² or the joint bodies set up through previous bilateral agreements. Member States initially opposed delegating more powers to these joint bodies but in the 1990s began to use them for their own ends. These two changes have turned around the

nature of the pre-negotiations from near-complete Commission autonomy to tight Council control.

This paper makes a threefold contribution to the extant literature. First, despite numerous studies applying the principal–agent (PA) framework to the EU (e.g. Dür and Elsig 2011; Franchino 2004; Kassim and Menon 2003; Pollack 2003) and bilateral negotiations (e.g. Dür 2007; Elgström and Larsén 2010; Elsig and Dupont 2012; Kostanyan and Orbie 2013), these contributions focus entirely on the official part of the negotiations. This leaves a significant gap in the literature concerning the effect of preceding stages on Commission autonomy. Second, most contributions fail to capture important longer-term dynamics (for an exception, see De Bièvre and Dür 2005). Empirically, this paper makes a contribution by studying the mechanisms of international trade negotiations beyond the better studied 133 Committee (e.g. Johnson 1998; Kerremans 2004; Meunier 2000; Nicolaïdis and Meunier 2002; Niemann 2004). Although other Council bodies have started moving into the focus of scholarly attention (e.g. Conceição 2010 on the Special Committee on Agriculture; or Larsén 2007 for the Southern Africa Working Group), joint bodies set up through previous agreements are so far entirely absent.

The data for this paper were gathered through two very diverse channels. The first two bilateral trade agreements (BTAs) fall outside the EU’s thirty-year rule and can draw from extensive documentation in the Historical Archives of the European Commission (HAEC) and the Archives of the Council of the European Union (ACEU), both based in Brussels. These sources constitute minutes and progress reports drafted by Commission and Council officials for internal use, e.g. in connection with meetings of the 133 Committee or comparable configurations. Generally, we found the Commission sources more useful as they reported more transparently on individual Member State positions (to brief hierarchical superiors such as the director-general or Commissioner). Moreover, we had access to all draft agreements submitted by either India or the EU allowing us to process trace individual aspects of the negotiations (George and Bennett 2005). Our paper thus presents the first comprehensive PA analysis of bilateral EU

trade policy-making based on archival data.³ For the latter two agreements we rely on information derived from specialized news agencies, public documents and a document access request filed with the Commission.

The remainder of this paper is structured as follows: the next section presents the theoretical framework of our argument. The third section examines and expounds it against the backdrop of four bilateral trade negotiations with India from the early 1970s until 2007. Finally, we briefly discuss implications of our findings in the fourth section.

KEEPING THE COMMISSION ON A SHORT(ER) LEASH

Agents hold various sources of autonomy (e.g. formal and informal agenda setting, exploiting preference heterogeneity among principals, or cultivating relations with societal stakeholders). But asymmetric information is certainly among the most important. As Pollack succinctly states, '[t]he importance in this context of information, and of asymmetrically distributed information in particular, can scarcely be overstated' (2003: 26). Kiewiet and McCubbins (1991: 25) also note that situations where agents acquire private information pervade public policy-making. Thinking in more causal terms, Zimmermann (2004: 75) identifies private information as the 'core factor' for Commission autonomy in trade negotiations due to the loss of Member States' ability to follow minute details. Nicolaïdis (1999: 91) argues that the Commission knows preferences of each Member State better than states individually, which opens up scope for autonomous action. Conceição-Heldt (2011: 413) identifies another causal mechanism in the Commission's ability to control, at least to some extent, how much and which information the Council obtains. Finally, Elsig and Dupont (2012: 504) and Ripoll Servent (2014) point at the agent's ability to 'collude' with the third party. We agree that forming a strategic interaction with the EU's negotiating partner can be a powerful source of Commission autonomy.

Any discussion of agent autonomy is incomplete without regard to principal control. Principals introduce elements of control in the delegation design to overcome delegation losses. But all checks on erroneous agent behaviour come at a cost. First, principals face opportunity costs as control mechanisms in one policy field means forgoing their establishment in others, provided the overall resources available are inelastic at least in the short-term (McCubbins *et al.* 1987: 247). Moreover, principals' sanctions are only roughly comparable to 'sanctions' available to agents. Both can negatively influence career perspectives and thwart the other from realizing preferred policy outcomes. In the absence of more drastic mechanisms, monitoring 'should be intensive so that the limits to sanctions can be offset to some degree by higher detection probabilities' (McCubbins *et al.* 1987: 251).

McCubbins and Schwartz (1984: 166) distinguish between police-patrol and fire-alarm monitoring. Police patrols mean constant principal oversight, in the form of reading documents, on-site inspections or hearings. Fire alarms, by contrast, are decentralized and require no direct principal intervention because rules are set that enable affected private interests to influence agent decisions. If the agent acts against stakeholder interests, groups or individuals can seek redress through judicial bodies or alert the political principal by blowing the whistle. Fire-alarm mechanisms are more efficient for principals and should predominate in PA relationships (1984: 171). We note, however, that in certain delegation contexts they may be unavailable because stakeholders need substantial access to information to learn if and when the agent goes against their interests.

The degree of information available to stakeholders during international negotiations is a positive function of the salience of negotiations and the number of parties involved. Salient negotiations are of interest to reporters who have privileged access to information due to their professional networks. Furthermore, the number of parties determines the degree of publicly available information. Multilateral negotiations are attended by a myriad of political decision makers, diplomats, civil servants, experts and conference staff. Only one of these parties has to

disclose information for it to become available. Moreover, the multitude of parties makes finding the culprit difficult. In bilateral negotiations these factors lead to the flow of information being tightly controlled, putting restrictions on the effectiveness of fire-alarm mechanisms.

This resonates well with Elsig's (2007: 940) reported lack of lobbying efforts by business and civil society actors for more BTAs at a time when the 'multilateralism first' paradigm was at its peak between 1999 and 2006. Amongst other things, he traces this back to problems of access to information and participation in a bilateral setting. With fire alarms being largely unavailable, Member States can safeguard their constituencies' interests only through police-patrol monitoring. While in multilateral negotiations the supply of police patrols is limited because of space constraints and institutional rules (e.g. Conceição 2010: 1117; Conceição-Heldt 2013: 29; Delreux and Kerremans 2010: 366–7) in a bilateral setting the question of who attends negotiations when is subject only to the agreement of the parties involved.

Another useful approach to assess Member States' ability to control the Commission in bilateral negotiations is to view the Council as collective and multiple principals. If principals and agents are connected through one contract, we speak of *collective* principals. If organizationally distinct principals have separate contracts with the agent, we face *multiple* principals (Nielson and Tierney 2003: 247–9). This technical definition apart, the analytical distinction underscores Member States' ability to control the Commission either collectively through the Council or individually outside EU structures, e.g. through direct interactions with the third party to reduce information asymmetry. While we cannot control for this factor empirically because we have only consulted Commission and Council archives and not those of Member States, we believe on theoretical grounds that *individual* Member State control is a second-best strategy for the Council *collectively*. Member States with privileged access to the third party (e.g. the UK and India) will share information with the other principals in the Council only where it expects disclosure to move negotiations in the direction of its ideal point. Where the

preferences of Commission, third party and privileged Member State(s) overlap—and we believe based on the insight gleaned from archival material this typically to be the case as all these parties favour comprehensive agreements—no information with the wider Council will be shared. Establishing collective means of control should thus be the Council’s clear priority.

The delegation of authority to negotiate trade agreements in the EU is a two-step process (Meunier and Nicolaïdis 1999: 480). The first step is from sovereign Member States to the EU through the Treaty on the constitutional level (vertical delegation). The second step is from the Council to the Commission through the negotiating directives at the institutional level (horizontal delegation). Focusing on the first step in this paper, we note that article 133 TEC (ex 113, 207 TFEU) is explicit that trade negotiations should be conducted in line with Council directives and in consultation with a special committee. Since the Nice Treaty the Commission is tasked to ‘report regularly’ to this committee. The Treaty is silent, however, on how the pre-negotiations should be managed.

The ensuing dynamic should be incorporated into the PA framework with respect to its impact on the informational configuration between agent and principal. Agents have incentives to structure the interaction in a way that exacerbates the information asymmetry, using any margin of interpretation in the underlying mandate in their favour (cf. Hawkins and Jacoby 2006: 206–7). Information asymmetry therefore is not exogenously given in the PA relationship, but can be shaped through apposite agent strategies. Widening this asymmetry is particularly promising early on in the interaction, when uncertainty is generally high and actors’ preferences have not yet solidly formed. This behaviour creates a reservoir of private agent information that can be tapped into to move outcomes closer to the agent's ideal point, which in turn increases principals’ incentives to plug this source of delegation losses over time as the agent becomes increasingly skilled at exploiting it. Correspondingly, we argue that the lacuna in the constitutional fundamentals has at first enabled the Commission to acquire exclusive information in the pre-negotiations. Member States have subsequently addressed this source of Commission-as-agent

autonomy by stepping up police-patrol monitoring on both political and technical levels. The next section will examine and expound this argument by comparing four BTAs with India.

In the empirical section we focus on the joint bodies created by these agreements. We describe how they initially sparked off an intense debate between Member States and the Commission. We then turn to their role in trade negotiations today. These bodies bring together representatives from the Commission and the Council alongside representatives from the third party and take a decisive role in the implementation phase, which is centrally important because uncertainty over future actions of other actors make states wary of long-term consequences of international contractual commitments (Koremenos *et al.* 2001: 793–5). Furthermore, boundedly rational actors cannot foresee all future contingencies and anticipate exogenous events. The result is that international agreements are often incomplete, sometimes setting only broad objectives and leaving actors with ample discretion to adjust their positions in the ensuing interaction (Cooley and Spruyt 2009: 8–9). The conclusion of BTAs thus viewed is only a starting point for EU–third party relations, which are hammered out in the joint bodies functioning as extended bargaining arenas. In analogy to EU decision making they can be compared to comitology bodies, which are among the most heavily contested among the EU institutions (e.g. Blom-Hansen 2008; Héritier 2012; Héritier and Moury 2011) and have also been analysed from a PA perspective (e.g. Ballmann *et al.* 2002; Franchino 2000; Pollack 2003: 114–40). To our knowledge, this paper is the first time that they are dealt with in the literature on international negotiations.

FROM AGENT AUTONOMY TO PRINCIPAL CONTROL

In this section we present four trade agreements negotiated between the EU⁴ and India in fairly regular intervals since the 1970s to highlight the changing nature of the pre-negotiations: the

Commercial Co-operation Agreement (CCA) signed in 1973, the Commercial and Economic Co-operation Agreement (CECA) of 1981, the Co-operation Agreement on Partnership and Development (CAPD) of 1993 and the Free Trade Agreement (FTA) for which the Commission received negotiating directives from the Council in 2007. Although the FTA negotiations are still ongoing at the time of writing, all four agreements completed their pre-negotiations. In the first two agreements we focus on the Joint Commission (JC), which was fiercely contested between the Commission and Member States. We then illustrate how this joint EU–India body was turned into a police-patrol monitoring mechanism for technical aspects of trade negotiations. Furthermore, the changing institutional arena in which political aspects have been addressed will be surveyed.

The Commercial Co-operation Agreement

In the CCA the Commission held regular meetings with Indian officials at all levels before receiving negotiating directives from the Council. On a political level the talks opened in October 1969 with the Indian Trade Minister Bhagat visiting the Commission.⁵ Around half a year later the Commission prepared a rough draft of the CCA in preparation of a visit by Indian ambassador K. B. Lall.⁶ The document readily states that Indian officials had promised to comment on it, which indicates that the Commission and India discussed the agreement also on a more technical level. In April 1970 talks continued during Commission President Jean Rey's visit to India at which he met Prime Minister (PM) Indira Gandhi and several Indian ministers.⁷ In September India submitted a written request to open negotiations to the Commission including the broad outlines of the CCA.⁸ Although this outline was forwarded to Member States and discussed in the Committee of Permanent Representatives (COREPER),⁹ it contained so little detail that it did not significantly reduce the informational asymmetry between the Commission and the Council.

In March 1971 Commission representatives met Indian officials from all levels in a meeting lasting several days in New Delhi. The Commissioner for External Relations and Trade Ralf Dahrendorf, who headed the EU delegation, was the first European politician to meet the Indian government after the general election of 1971. Underlining the importance that both the Commission and India accorded to their mutual relations, a ‘regular dialogue’ was established to discuss EU–India relations.¹⁰ After the visit the Council charged the Commission with the preparation of a report on its results, lending additional support to the interpretation that the Commission was unmonitored during these days. The report contained mainly background information and hardly narrowed the informational gap between the Commission and the Council.¹¹ Finally, Commissioner Dahrendorf met Indian Trade Minister L. N. Mishra in Brussels in September 1971.¹² There is nothing in the archival material that suggests that Member States were present at this meeting. Two months later the Commission adopted a reformist position on the joint body, using about half of the entire draft negotiating directives to list its precise competences in no uncertain terms.¹³ The Commission considered a strong joint body essential, arguing that it needed the flexibility to take robust measures after the CCA had come into force.¹⁴ It is fair to assume that Commission and Indian officials discussed this aspect in their meetings. If this is true, then the Commission and India have jointly developed their preferences on the JC in the pre-negotiations, which results in a particularly strong form of strategic interaction between the agent and the third party.

How did Member States react when confronted with the Commission’s ambitious plans for the JC? In the Working Party on Trade Questions (WPTQ)—a Council body comparable to the 133 Committee albeit more technical—France in particular noted that the envisaged powers went far beyond those accorded to previous joint bodies. Similarly, Belgium and the Netherlands viewed the JC as an administrative body and feared setting an unwanted precedent for future BTAs. National delegations warned that a greater number of more powerful joint bodies could negatively affect the ‘smooth functioning’ of EU institutions.¹⁵ Member States could not

have been blunter in their fear of being marginalized. The Commission argued that without clearly defined powers for the JC the whole agreement would be void and its implementation could not be guaranteed. It even stylized the issue into a *conditio sine qua non* and threatened to put negotiations with India on ice.¹⁶ The importance the Commission attached to this issue could not have been made more explicit. However, in the end it had to budge and all disputed powers of the JC were removed from the negotiating directives.¹⁷ The Council successfully called the Commission's bluff. But negotiations for the CCA were not yet over. In fact, they were just about to begin.

At the onset of the official negotiations, Member States were faced with fresh demands for an empowered JC—this time by India. Before the second negotiating round in July 1973 the Commission seized the opportunity to present a draft agreement to the Council *including* new powers for the JC. France and Italy objected to the provisions in principle.¹⁸ In August India presented its own draft agreement, which used precise terms to describe the joint body. Among the most controversial points was India's request to enable the JC to 'improve' the Generalized System of Preferences (GSP).¹⁹ France and Italy instantly voiced concerns over the far-reaching nature of this proposal and pointed out that the GSP was an autonomous regime that should not be mentioned in any third-party agreement. The Commission drily noted that India's request was not going beyond the Council's negotiating directives.²⁰ Eventually two declarations were annexed to the agreement. The first stated that the EU was prepared to take India's interests into account when developing the GSP; even if not discussing it in the JC. If India requested tariff adjustments outside the GSP these could be discussed in the joint body. The second declaration provided that the EU could also channel its tariff requests through the JC to make the agreement non-preferential.²¹ Even if the joint body fell short of many powers that the Commission originally envisaged, it assumed a more powerful position in EU–India relations than Member States would have preferred at the onset of the negotiations. In this case the Commission-as-agent could exploit the informational asymmetry to form a strategic interaction with the

third party and move the outcome somewhat closer to its ideal point, which overlapped with that of India.

The Commercial and Economic Co-operation Agreement

The CECA saw three rounds of exploratory talks which together constitute the pre-negotiation phase. The political decision to negotiate a follow-up agreement goes back to a visit of Indian PM Morarji Desai to Brussels in June 1978, at which he met Commission President Roy Jenkins and the Commissioner for External Relations Wilhelm Haferkamp.²² This again shows how that high-level meetings between the Commission and India were the exclusive institutional prerogative of the Commission at this time. India informed the EU in a verbal note of October 9 that it wishes to expand the scope of the CCA, again including the broad outlines of the future agreement. This outline recorded India's desire to allow the JC to recommend the use of funds, which caused some confusion within the Commission. In preparation of the exploratory talks it noted that the JC already had the power to recommend expenditure. The Commission therefore presumed that India wanted a more direct financial competence for the joint body, with the power to take binding decisions. As this would mark a radical departure from then-current policy, the Commission considered this outcome unlikely. As an alternative it contemplated the creation of a joint fund sponsored by both the EU and India, which the JC could manage directly.²³ A joint fund with commensurate powers to authorize payments was therefore the Commission's idea, first mooted early in the pre-negotiations.

To which extent the creation of a joint fund was discussed between the Commission and India during the exploratory talks is less clear. We know that going into the first round the Commission was prepared to discuss this issue.²⁴ But in the minutes itself the Commission only briefly noted that it considered a reformulation of the JC's powers to recommend expenditure.²⁵ In the second exploratory round the Commission stressed that the JC could not be given a direct

responsibility for EU development co-operation funds. But the joint body could be involved in determining priorities.²⁶ The final round of exploratory talks only stressed that the Commission and India concurred to strengthen the JC, particularly concerning its role in recommending expenditure.²⁷

Although there is no direct evidence that the Commission and India discussed the creation of a joint fund in the exploratory talks, we consider this the more plausible interpretation for four reasons. First, the Commission itself had a pronounced interest in empowering the JC. Second, India later proposed what amounts to an exact copy of the Commission playbook. First a fund financed only by the EU and then, as a compromise, a joint fund to which New Delhi itself contributed. Third, when discussing the Commission's negotiating directives the UK proposed the creation of a similar fund.²⁸ Although the British proposal was not linked to the JC, the Commission noted that India would not be interested in such a fund if it had to contribute to it itself.²⁹ This is stark indication that the Commission broached the issue in the exploratory talks. Fourth, France insisted on a unilateral note in the negotiating directives that the JC's powers should not expand. Paris clearly anticipated that more in terms of the JC was about to come.³⁰

Nothing suggests that Member States have at any point been involved in the pre-negotiations, neither at a political nor technical level. After the exploratory talks the Commission informed the Council, which is consistent with this interpretation. Member States therefore depended on the Commission to obtain information on this stage in the negotiations. Moreover, the Commission had considerable leeway in presenting the results. In the case of the CECA it did not include any reference to the JC receiving proper funds with commensurate powers to authorize expenditure. Was the Commission avoiding the issue at a phase in the negotiations where India was not involved? Has it learnt its lesson from the CCA? Here Member States blocked most of the powers proposed by the Commission when discussing the directives; leaving the Commission unable to re-insert them at a later stage in the face of thickened Council

opposition. This interpretation is to some degree speculative. But considering that the negotiators of the CECA have probably consulted the documents of the CCA in preparation of the negotiations we consider it plausible. This is some support that agents also use information asymmetry by controlling, at least to some extent, how much and which information principals obtain.

India made proper funds for the JC and the power to authorize expenditure a key demand from the start.³¹ As this point was not broached when debating the negotiating directives, the Commission consulted the 133 Committee which was against the proposition.³² The third negotiating round was a repetition of the second in front of Member States' representatives. India reiterated its wish to endow the JC with funds to implement the CECA. After the Commission explained that this was against EU policy, India offered to contribute to the fund itself.³³ At an informal Commission–India meeting, the Commission made a compromise proposal including funds for the JC.³⁴

In April 1981 negotiations entered their final stages. By this time Member States agreed that a small fund drawn from existing EU resources could be made available to the JC. But France was against commensurate powers to authorize payments, which it argued ran afoul of the EU's budgetary procedure. The Commission replied that this procedure would be fully complied with when the funds are first made available. Moreover, it was inconceivable that anybody but the JC administered the fund because of India's own contribution.³⁵ In an unprecedented move the Commission initialled the agreement against French reservations, including the JC's powers to 'decide' (a synonym of 'authorize') the use of any funds put at its disposal.³⁶

The Co-operation Agreement on Partnership and Development

The turning point in terms of the Commission's ability to derive private information during the pre-negotiations came with the CAPD. India feared for its position on the EU market following

the completion of the Single Market and the increasing competition from emerging market economies in Central and Eastern Europe. A host of third countries approached the EU to conclude co-operation agreements. But the Commission selected India for the first agreement reflecting the EU's increased competences in the wake of the Maastricht Treaty.

In October 1991 Commission Vice-President for External Relations and Trade Frans Andriessen visited India—still without Member States' representatives—to talk with Indian government representatives mainly about the GATT Uruguay Round.³⁷ The JC meeting in mid-November in New Delhi prepared the ground for deeper EU–India relations.³⁸ Although the EU delegation was chaired by Director-General for North-South relations Juan Prat of the Commission, national representatives were of course present at the meeting of the joint body. Eventually a Technical Working Group was set up to explore options for upgrading co-operation.³⁹ Exploratory talks continued in March 1992 when another EU delegation arrived in New Delhi for a four-day visit to discuss several issues, including the kind of agreement to replace the CECA.⁴⁰ The delegation was led by the Commissioner for North-South relations Abel Matutes; but for the first time Member States were represented by the troika in the pre-negotiations. The Foreign Minister of Portugal (Presidency-in-office) as well as the deputy ministers from the Netherlands (preceding Portugal as Council Presidency) and the UK (following Portugal) joined the delegation.⁴¹ Member States shifted the pre-negotiations into arenas where the Commission no longer enjoyed the monopoly of defining the EU's position early in the negotiations and plugged an important source of agent autonomy through the expansion of police patrols.

In September the Commission forwarded its draft negotiating directives to the Council. Adoption of the directives plus the negotiation of the agreement took only four months, which makes the CAPD one of the most rapidly negotiated BTAs ever. The JC's functions were essentially carried over from the CECA. But the CAPD expanded co-operation into a host of new issue areas that could henceforth be tackled within the joint body. In fact, the CAPD is best known for the ensuing judicial conflict that reflects this expansion. The Commission and most

Member States used the development co-operation Art. 130y TEC for ratification, which was inserted into the Treaty at Maastricht. Portugal and Greece contested this legal basis arguing that issues such as human rights or money laundering, which were also included, required unanimity. But the ECJ eventually upheld the conclusion of co-operation agreements by qualified majority voting (Peers 1998).

The Free Trade Agreement

Member States assuming a greater role in the pre-negotiations continued with the FTA. The CAPD was signed in December 1993 together with a joint political statement fixing annual ministerial meetings.⁴² The EU troika led by the French Foreign Minister Alain Juppé met Indian Foreign Minister Pranab Mukherjee in April 1995 in Paris (not Brussels) for the first such meeting with an Asian country. Although the Commission was represented by the External Relations Commissioner Manuel Marín,⁴³ high-level political dialogue between the EU and India has been wedded to this broader framework ever since. This provided Member States with an opportunity to keep a firm grip on EU–India relations.

What about the elevated Commission position as far as more technical aspects are concerned? The new JC met for the first time in October 1994 in Brussels. Not only were new working groups formed which met more frequently than the JC itself. The joint body adopted the broad principles of EU–India relations until the year 2000.⁴⁴ Member States made a complete U-turn and now endorsed the same body whose empowerment they so fiercely opposed in the 1970s and 1980s. In a spectacular revision of previous policy, the Council concluded in 1996 that the JC should be given a ‘bigger role’.⁴⁵ Freed from the shackles of an inter-institutional power struggle, the joint body saw an unprecedented wave of institutionalization in subsequent years. At a strategic JC meeting in 1999, for example, working groups on telecommunications, air and maritime transport, the environment (proposed by the EU) and on agricultural

and marine products, textiles, customs co-operation and the free movement of managers (proposed by India) were examined.⁴⁶ Member States moved discussions to an arena where their place at the table was uncontested.

Meanwhile ministerial meetings were similarly encouraged as a form of bilateral co-ordination. At a joint ministerial summit in Luxembourg in 1997 the EU and India decided that the meetings should be prepared by senior officials.⁴⁷ In 2000 the high-level talks were upgraded to fully-fledged 'EU–India summits' on the level of Heads of State and Government (HoSG). The first summit was held in Lisbon, bringing together the Indian PM Atal Bahari Vajpayee, Portuguese PM Antonio Guterres (Presidency-in-office), Commission President Romano Prodi and the High Representative for Common Foreign and Security Policy (CFSP) Javier Solana. The leaders agreed on a 22-point action plan, inter alia resolving to enhance bilateral dialogue at all levels: HoSG, ministers, senior officials and experts.⁴⁸

Having been awarded the label 'strategic partner' of the EU and with the conclusion of the Doha Development Agenda becoming increasingly elusive,⁴⁹ the EU and India set up a High Level Trade Group (HLTG) at the sixth EU–India summit in September 2005 in New Delhi. The HLTG was charged to examine the prospects of concluding a FTA.⁵⁰ The following month the JC decided that the first meeting should be convened quickly.⁵¹ The HLTG met for a first preliminary meeting in Brussels in November but the first formal meeting took place in New Delhi in February 2006, led by Indian Commerce Secretary S. N. Menon and the Director-General for Trade David O'Sullivan.⁵² Although the group was called *High Level* Trade Group, the most senior EU representatives were at the level of Director-General and the talks were technical in nature. At their core, these were exploratory talks as found in the earlier agreements. In the HLTG, the EU was represented by DG Trade officials active in the JC. No Member States' representatives were allowed to participate in the meetings after the decision to convene the HLTG was taken in the JC. But Member States 'were regularly informed and consulted on the issues through the 133 Committee. Furthermore, a draft report was shared with Member

States prior to its finalisation and discussed in the 133 Committee'.⁵³ This is in stark contrast to previous practice, where the Commission was free to advance talks in the pre-negotiations without interference until it presented draft directives to the Council. Member States have thus completely turned around the nature of the pre-negotiations.

After four meetings the HLTG tabled its report to the EU–India summit in Helsinki, recommending the negotiation of a broad-based trade and investment agreement.⁵⁴ The idea was well received by the summit participants in October. Two months later the Commission sent its draft negotiating directives to the Council and,⁵⁵ after only four more months, the Council adopted the directives in April 2007.⁵⁶ The short time frame—all the more remarkable as FTAs with ASEAN and South Korea were discussed concurrently—also indicates that Member States were involved in the pre-negotiations. In June the first official negotiating round with India was held and the normal Treaty provisions applied.⁵⁷ The 133 Committee could monitor the Commission in the conduct of bilateral trade negotiations—as has always been the case.

CONCLUSIONS

In this paper we have argued that the nature of the pre-negotiations leading to BTAs has changed from near-complete Commission autonomy to tight Council control. We show that in the case of two agreements with India in the 1970s and 1980s the Commission was entirely unmonitored by Member States during the exploratory talks, owing to a lacuna in the Treaty applying to this stage in the negotiations. This gave the Commission an informational edge that it could use strategically vis-à-vis the Council to move the outcome closer to its ideal point through two causal mechanisms: the timing of how private information was released to principals and the forming of a strategic interaction ('collusion') with India. If the latter constitutes agent autonomy—or is exogenous to the PA relationship and merely a result of the bargaining

dynamics—depends crucially on the question if India’s preferences for a powerful joint body were, at least partly, shaped by the Commission. The question of whether India would have taken a similarly active approach towards expanded powers for the JC without the Commission—and thereby simply formed one of its intrinsic preferences—may never be established beyond doubt. But the importance that the Commission attached to this point provides some compelling evidence in this direction. Furthermore, the role of joint bodies in EU agreements was clearly the expertise of the Commission rather than India. This lends additional support to the interpretation that the Commission wielded enormous influence over India on this issue.

Starting with the CAPD this source of information asymmetry has dried up. Member States have stepped up police-patrol monitoring by shifting the institutional arena to annual ministerial meetings for political aspects of the pre-negotiations. Regarding more technical aspects, Member States today rely on the JC and the 133 Committee to follow the negotiations earlier and to reduce the informational gap. Particularly the role of the JC has expanded considerably and its imprint on bilateral relations with India is all-pervasive nowadays. In the FTA the Commission regularly briefed Member States through the 133 Committee and prepared a draft report as a basis for discussions during the exploratory talks. Member States have thus incorporated the pre-negotiations into the same procedural template provided by the Treaty for the official part of the negotiations. The Commission could no longer rely on asymmetric information as a major source of autonomy in the negotiation of BTAs.

We draw four general lessons from our contribution. First, future research should address if the Commission was able to compensate its loss of influence over the negotiation of BTAs through other channels—or if its level of autonomy has been permanently lowered. Second, if the EU benefits from the ensuing dialogue with third countries on political and more technical levels through the establishment of institutional frameworks in the implementation phase deserves closer attention. Focusing on strategic partnerships with the BRICS, Keukeleire and Hooijmaaijers (2014: 593–4) find only a limited impact on multilateral negotiations. But the

effect with regard to other third countries and in plurilateral, regional or bilateral settings could well be different. This line of research is clearly only at its beginning. Third, we see ample scope to fruitfully include a longitudinal perspective and archival sources in many contemporary research agendas. Archival material enables scholars more sophisticated applications of the process-tracing methodology and allows the testing of theoretical propositions with higher levels of confidence. With this contribution we have also shown that archival research is not limited to certain theoretical angles such as historical institutionalism (cf. Fioretos 2011). Moreover, archives provide scholars with unique insight into the inner dynamics of institutions which should reflect positively on our ability to explain present-day phenomena.

Fourth, our research yields some insight into the negotiation of multilateral trade agreements by contrasting it with the bilateral case. Multilateral negotiations unfold in a very different manner and without pre-negotiations comparable to those encountered in BTAs. Nevertheless, it is striking that Commission interactions with third-party states *before* the Council issues its negotiating directives are entirely disregarded (e.g. Woolcock 2015: 394). Moreover, while the support of certain third parties is crucial, the multiplicity of involved actors makes forming durable strategic interaction(s) increasingly difficult. While agreement between the EU and US used to be a largely sufficient condition to conclude rounds, since Uruguay the multilateral trading system has become multipolar owing to the rise of emerging powers such as Brazil, India or China (Young and Peterson 2006: 802–3). This trend could help explain why analysts of bilateral negotiations seem more sanguine about the Commission’s ability to shape outcomes than experts on multilateral negotiations. Whether the EU’s recent turn away from the multilateral venue towards a more bilateral approach plays into the Commission’s hands depends on its level of autonomy in bilateral negotiations *today*. Our conjecture is that—in spite of the longer-term dynamics captured by our paper—the Commission still enjoys more leeway bilaterally than multilaterally because of relatively higher levels of private information and greater oppor-

tunities for strategic interactions. Generally, scholars should seek to systematically identify differences and similarities of bilateral and multilateral (trade) negotiations from an EU policy-making perspective.

Biographical note: Markus Gastinger is research associate at the Chair of International Politics of the Technische Universität Dresden, Germany.

Address for correspondence: Markus Gastinger, Department of Political Science, Chair of International Politics, Technische Universität Dresden, 01062 Dresden, Germany. email: Markus.Gastinger@tu-dresden.de

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NOTES

¹ When used alone ‘Commission’ refers to the Commission of the European Union. ‘Joint Commission’ (JC) refers to the joint EU–India body set up through their bilateral agreements.

² The committee is named after Art. 133 TEC and comprises trade experts from the Member States and representatives of the Commission. Before Amsterdam it was known as the ‘113 Committee’, since Lisbon it is the Trade Policy Committee (TPC). For reasons of consistency we refer to it as 133 Committee throughout this paper.

³ We owe this point to an anonymous referee.

⁴ We use ‘EU’ throughout this section also to refer to its predecessors, such as the European Economic Community (EEC) or the European Communities (EC).

⁵ Directorate-General (DG) I, 9 March 1970: ‘Note d’information succincte sur l’Inde’, HAEC: BAC 3/1978/133, 160–75.

⁶ DG XI, 18 March 1970: ‘Note à l’attention de Monsieur Wellenstein’, HAEC: BAC 48/1984/753, 4–6.

⁷ DG I, 10 March 1971: ‘Note à l’attention de Monsieur Dahrendorf’, HAEC: BAC 3/1978/880, 20–41.

⁸ European Commission, 30 September 1970: *SEC(70) 3475*, ACEU: CM2/1973/1123.

⁹ COREPER, 16 October 1970: *Doc. 1914/70*, ACEU: CM2/1973/1123.

¹⁰ European Commission, 23 March 1971: *SA(71) 2325*, HAEC: BAC 3/1978/880, 42–3. European Commission, 7 May 1971: *SEC (71) 1747*. , HAEC: BAC 48/1984/753, 26–36.

¹¹ European Commission, 22 July 1971: *SEC(71) 2922*, HAEC: BAC 48/1984/753, 106–25.

¹² DG I, 12 April 1973: ‘Note à l’attention de Monsieur le Président’, HAEC: BAC 3/1978/880, 359–65.

¹³ DG XI, 13 November 1971: ‘Note pour la Direction Générale des Relations Extérieur’, HAEC: BAC 3/1978/880, 157–79.

¹⁴ European Commission, 18 July 1972: *KOM(72) 888*, ACEU: CM2/1973/1124.

¹⁵ WPTQ, 13 February 1973: *Doc. T/75/73*, ACEU: CM2/1973/1125.

¹⁶ DG XI, 22 November 1972: ‘Note à l’attention de Monsieur’, HAEC: BAC 48/1984/754, 41–6.

¹⁷ COREPER, 30 March 1973: *Doc. S/420/73*, ACEU: CM2/1973/1125.

¹⁸ 133 Committee, 27 July 1973: *Doc. S/932/73*, ACEU: CM2/1973/1126.

¹⁹ DG I, 13 August 1973: ‘Note à l’attention de Monsieur Dubois’, HAEC: BAC 48/1984/754, 97–113.

²⁰ 133 Committee, 16 October 1973: *Doc. S/1098/73*, ACEU: CM2/1973/1126.

²¹ See Annexes III and IV of the ‘Commercial Cooperation Agreement between the European Economic Community and the Republic of India’, *published in OJ L 82 (27.03.1974)*, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:21973A1217%2801%29> (accessed February 2015).

²² European Commission, 18 October 1978: *SEC(78) 4125*, ACEU: Code -1.824.52 (54).

²³ DG I, 24 November 1978: ‘Exploratory discussions with India’, HAEC: BAC 367/1991/76, 214–20.

²⁴ DG I, 4 December 1978: ‘Speaking notes for Mr Caspari’, HAEC: BAC 367/1991/76, 200–4.

²⁵ DG I, 8 December 1978: ‘Exploratory discussions with India’, HAEC: BAC 367/1991/76, 198–9.

²⁶ DG I, 12 December 1978: ‘Speaking notes for Mr Caspari’, HAEC: BAC 367/1991/76, 191–4.

²⁷ DG I, 26 January 1979: ‘Speaking notes for Mr Caspari’, HAEC: BAC 367/1991/76, 185–7.

²⁸ This is also some indication that the UK talked with India directly. But the UK, India and the Commission were all remarkably close in their preferences, leading us to conclude that London had no reasons to share its information with the Council and reduce the information asymmetry. In the case of the CCA, the pre-negotiations were largely conducted in the period *before* the UK had entered the common market.

²⁹ WPTQ, 29 May 1979: *Doc. 7191/79*, ACEU: Code -1.824.52 (54).

³⁰ COREPER, 18 April 1980: *Doc. 6478/80*, ACEU: Code -1.824.52 (54).

³¹ DG I, 11 September 1980: ‘Substantial differences between the Indian draft and our approach for a new Agreement’, HAEC: BAC 367/1991/77, 124–33.

³² 133 Committee, 1 July 1980: *Doc. 8354/80*, HAEC: BAC 367/1991/77.

³³ DG III, 21 October 1980: ‘EEC/India Agreement Negotiations’, HAEC: BAC 367/1991/77, 106–8.

³⁴ DG I, 7 November 1980: ‘Note for the file’, HAEC: BAC 367/1991/78, 314.

³⁵ DG I, 13 April 1981: ‘Note for the attention of Sir Roy Denman’, HAEC: BAC 367/1991/78, 203–4.

³⁶ See Art. 10 (d) of the ‘Agreement for commercial and economic cooperation between the European Economic Community and India’, *published in OJ L 328 (16.11.1981)*, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:21981A0623%2801%29> (accessed February 2015).

³⁷ European Report, 1 November 1991: ‘Andriessen pays an official visit’. *Agence Europe*, 4 November 1991: EC/India.

³⁸ *Agence Europe*, 14 November 1991: EC/India.

- ³⁹ European Report, 23 November 1991: ‘Joint Committee boosts cooperation’.
- ⁴⁰ European Report, 7 March 1992: ‘Matutes and EEC Troika pay a visit’.
- ⁴¹ Inter Press Service, 28 February 1992: ‘European delegation to discuss trade and human rights’.
- ⁴² *Agence Europe*, 20 December 1993: EU/India.
- ⁴³ *Agence Europe*, 6 April 1995: EU/India. European Commission, June 1995: *Bulletin of the European Union*, No. 4, Luxembourg: Publications Office, p. 69.
- ⁴⁴ European Report, 15 October 1994: ‘Joint Commission plans trade and aid strategy for 1994–2000’.
- ⁴⁵ *Agence Europe*, 9 December 1996: EU/India.
- ⁴⁶ *Agence Europe*, 20 January 1999: EU/India.
- ⁴⁷ *Agence Europe*, 8 September 1997: EU/India.
- ⁴⁸ *Agence Europe*, 30 June 2000: EU/India.
- ⁴⁹ *Agence Europe*, 13 October 2004: EU/India.
- ⁵⁰ *Agence Europe*, 8 September 2005: EU/India.
- ⁵¹ Indian Department of Commerce, 26 October 2005: ‘High Level India-EU Trade Group to meet shortly’, available at http://commerce.nic.in/PressRelease/pressrelease_detail.asp?id=1081 (accessed February 2015).
- ⁵² *Agence France Presse*, 13 February 2006: ‘India, EU begin two days of trade talks in New Delhi’.
- ⁵³ European Commission, 16 September 2013: *Gestdem 2013-4334* [document access request], received per e-mail.
- ⁵⁴ HLTG, 13 October 2006: ‘Report of the EU-India High Level Trade Group to The EU-India Summit’, available at <http://trade.ec.europa.eu/doclib/html/130306.htm> (accessed February 2015).
- ⁵⁵ *Agence Europe*, 2 December 2006: EU/Trade.
- ⁵⁶ *Agence Europe*, 24 April 2007: EU/Trade.
- ⁵⁷ *Agence Europe*, 29 June 2007: EU/India/Trade.

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