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Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 |
E-mail ird.info@coleurop.be | www.coleurope.eu/ird

About the Author

Laura Richardson studied Law and French at Trinity College Dublin (Ireland) and International Relations during an exchange programme at Sciences Po, Paris (France). In addition, she holds an MA in EU International Relations and Diplomacy Studies from the College of Europe in Bruges (Belgium), where she studied in 2011-2012 with a scholarship from the Irish Department of Education. This paper is based on her Master's thesis submitted at the College of Europe (Marie Skłodowska-Curie Promotion).

Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 | E-mail info.ird@coleurope.eu | www.coleurope.eu/ird

Abstract

This paper sets out to conduct an empirical analysis of the post-Lisbon role of the European Parliament (EP) in the EU's Common Commercial Policy through an examination of the 'deep and comprehensive' bilateral Free Trade Agreements (FTAs) currently negotiated as part of the EU's *Global Europe* strategy. The EU-Korea and EU-India FTAs are used as case studies in order to determine the implications of the EP's enhanced trade powers on the processes, actors and outcomes of EU bilateral trade policy. The EP is now endowed with the 'hard power' of consent in the ratification phase of FTAs, acting as a threat to strengthen its 'soft power' to influence negotiations. The EP is developing strategies to influence the mandate and now plays an important role in the implementation of FTAs. The entry of this new player on the Brussels trade policy field has brought about a shift in the institutional balance of power and opened up the EP as a new point of access for trade policy lobbyists. Finally, increased EP involvement in EU trade policy has brought about a politicisation of EU trade policy and greater normative outcomes of FTAs.

Introduction

The Lisbon Treaty, which entered into force on 1 December 2009, has changed the nature of the EU's Common Commercial Policy (CCP) through the introduction of a new player in the field: the European Parliament (EP). Prior to the entry into force of Lisbon, EU trade policy was limited to two actors: the European Commission and the Council of Ministers. The Treaty of Lisbon elevates the powers of the EP in the EU's CCP, which has been granted a power of consent[1] in the negotiation process of international trade agreements. The Commission is now under a legal obligation to "report regularly [...] on the progress of negotiations"[2] to the International Trade Committee of the EP (INTA Committee) and must ensure that "the European Parliament shall be immediately and fully informed at all stages of the procedure".[3] Finally, the EP now also plays a new role alongside the Council in the adoption of "the measures defining the framework for implementation of the Common Commercial Policy".[4]

This paper seeks to establish the implications of the post-Lisbon role of the EP for EU bilateral trade negotiations. An implication can be defined as "the conclusion that can be drawn from something although it is not explicitly stated", such as "likely consequences" or "the action or state of being involved in something".[5] A number of studies have been published on the institutional changes brought about in the field of EU CCP by the Lisbon Treaty,[6] however empirical analyses remain limited.

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[1] European Union, "Consolidated Versions of the Treaty on European Union and of the Treaty on the Functioning of the European Union", *Official Journal of the European Union*, C83/47, 30 May 2010, Art. 218(6) TFEU (European Union 1).

[2] *Ibid*., Art. 207(3) TFEU.

[3] *Ibid.*, Art. 218(10) TFEU.

[4] *Ibid.,* Art. 207(2) TFEU.

[5] Oxford Dictionaries, "Implication", retrieved 30 March 2012, http://oxforddictionaries.com/definition/implication?q=implication

[6] See A. Pollet-Fort, "Implications of the Lisbon Treaty on EU External Trade Policy", *Background Brief,* no. 2, EU Centre Singapore, March 2010 (Pollet-Fort 1); M. Krajewski, "The Reform of the Common Commercial Policy", in A. Biondi and P. Eeckhout (eds.). *European Union Law after the Treaty of Lisbon*, Oxford, Oxford University Press, 2011; S. Woolcock, "The Potential Impact of the Lisbon Treaty on European Union Trade Policy", *SIEPS European Policy Analysis,* no. 8, Stockholm, Swedish Institute for European Policy Studies (SIEPS), 2008 (Woolcock 1); S. Woolcock, "The Treaty of Lisbon and the European Union as an Actor in International Trade", *ECIPE Working Paper*, no.1, Brussels, European Centre for International Political Economy (ECIPE), 2010 (Woolcock 2); S. Woolcock, *European Economic Diplomacy*, Farnham, Ashgate, 2012 (Woolcock 3); S. Woolcock, "EU Trade and Investment Policymaking after the Treaty of Lisbon", Brussels, Centre for European Policy Studies (CEPS), 2010 (Woolcock 4).

Therefore, this paper sets out to investigate the substantial implications which the enhanced post-Lisbon role of the EP has on the processes, actors and outcomes of EU bilateral trade policy.

The EP is now endowed with the 'hard power' of consent in the ratification phase of Free Trade Agreements (FTAs), which acts as a sufficient threat to strengthen the EP's 'soft power' to influence negotiations. While the treaty does not grant the EP any formal powers in the drafting of the negotiating directives, the Parliament is developing strategies to influence the mandate. The EP now also plays an important role in the implementation of FTAs through the ordinary legislative procedure (OLP). The entry of this new player on the trade policy field has brought about a shift in the balance of power between the EP, the Council and the Commission. In addition, the enhanced powers of the EP in the post-Lisbon era have opened it up as a new point of access for trade policy lobbyists. Finally, the post-Lisbon era is characterised by i) a politicisation of EU trade policy whereby the EP defends the interests of European citizens and industries in FTA negotiations, and ii) greater normative outcomes of FTAs as the EP is in possession of greater power and tools to translate the social agenda of the Members of the European Parliament (MEPs), non-governmental organisations (NGOs) and civil society into EU trade agreements.

The 'Global Europe' Strategy

This paper focuses on the role of the EP in the EU's renewed and vigorous bilateral trade policy. Negotiations of FTAs with 'strategic' Asian partners, notably South Korea and India, are used as case studies in order to evaluate the extent of the EP's role in FTA negotiations. These two trade agreements belong to the new generation of FTAs, set out in the EU's 2006 strategy: *"Global Europe – Competing in the World; A Contribution to the EU's Growth and Jobs Strategy"*, which are "comprehensive and ambitious in coverage"[7] and one of the first areas in which a parliamentary influence is notable in EU trade policy.

The FTA between the EU and the Republic of Korea is the first to be concluded between the EU and a 'strategic partner'. Negotiations were launched in May 2007 in Seoul, initialled by both sides on 15 October 2009, and closed prior to the entry into

[7] European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Global Europe: Competing in the World. A Contribution to the EU's Growth and Jobs Strategy",* COM(2006) 567, Brussels, 4 October 2006, p. 9 (hereafter *Global Europe*).

force of the Lisbon Treaty on 1 December 2009. However, the agreement was only signed by the Council on 6 October 2010 and hence the post-Lisbon legal framework applied. This means that while the EP's role in the pre-Lisbon negotiations of the FTA remained limited, the agreement could only come into force subject to EP ratification,[8] which brought about a whole "new political reality"[9] to the negotiations and proved challenging for the Commission and the Council, as well as the EP. Seeing as it was the first time the EP was exercising its right of consent for a bilateral trade agreement, the FTA proved to be a 'test case', whereby the Parliament had a new veto power and wanted to demonstrate that it could exercise it effectively.

While the role of the EP in the EU-South Korea FTA was limited to the final consent and implementation procedures, the FTA between the EU and India, the negotiations of which were launched in June 2007 but have not yet been concluded, serves as a case study in order to assess the extent of the European Parliament's power in the FTA negotiation phase. The Parliament's involvement remains limited to a right of information and access to documents from the Commission, however, on the basis of these disclosures, the EP is gradually developing strategies to exert pressure on negotiators. Furthermore, while Korea is an industrialised and small country, India has an emerging and increasingly competitive economy, a huge market as well as important development concerns. Thus, the EU-India FTA negotiations have already proved and are likely to be more politically controversial than the EU-Korea FTA, with MEPs facing both greater industry and NGO pressures. Hence, while the EU-South Korea FTA acts as a benchmark demonstrating a "strong footprint of parliamentary influence",[10] the Parliament is likely to leave an even deeper mark on the final outcome of the EU-India FTA, if the agreement is to be concluded.

The Negotiation Process

This section will set the scene by conducting an analysis of the extent of the Lisbon Treaty's institutional changes to the EP for each step of EU bilateral trade negotiations, in order to determine when EP plays the most strategic role.

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[8] European Union 1, *op.cit.*, Art. 218(6) TFEU.

[9] Interview with Commission official, European Commission, Brussels, 20 April 2012.

[10] J. Hillman & D. Kleimann, "Trading Places: The New Dynamics of EU Trade Policy under the Treaty of Lisbon", *GMF Economic Policy Paper*, German Marshall Fund, Washington D.C., October 2010, p. 6.

Mandate

Prior and subsequent to the Lisbon Treaty, the EP's role in delimiting the Commission's negotiation mandate is essentially non-existent. The adoption of the EU negotiating directive remains in the hands of two players: the Commission and the Council. The Commission "shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations".[11] The EP, however, would like to see its role increase in this first stage of trade negotiations because if it cannot play a role in setting the EU's objectives, "it has little prospect of influencing the EU during a negotiation".[12] Hence, in its 2011 Resolution on a *New Trade Policy for Europe under the 2020 Strategy,* the EP "reminds the Commission and the Council to take seriously into account Parliament's views when deciding about the mandates."[13]

In the case of the EU-Korea and EU-India FTAs, the draft negotiating mandates were determined pre-Lisbon; yet copies, classified as 'Restreint UE' documents, were issued to a limited audience in the INTA secretariat. This small group of MEPs could have held a meeting in order to formulate certain suggestions, however, the exclusivity of the group remains controversial and for this reason, INTA has "not been able to agree on a procedure that would give more power to a small number of MEPs as compared to the rest".[14]

A 'window of opportunity' opened up for EP involvement in the determination of the draft negotiating directives of the investment chapters of the EU-India FTA. The Lisbon Treaty brings foreign direct investment under the umbrella of EU exclusive competence[15] and it has subsequently taken some time for the Commission, Council and EP to establish how they want the EU's common investment policy to come into operation. In order to discuss the Parliament's views on the matter, a meeting was held between the Commission and a limited number of INTA Committee members.[16] However, the controversial nature of the exclusive group again posed a problem and meant that it was unable to present a position on these chapters on behalf of the whole Parliament.

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[11] European Union 1, *op.cit*., Art. 207(3) TFEU.

[12] Woolcock 3, *op.cit*., p. 54.

[13] European Parliament, *Resolution of 27 September 2011 on a New Trade Policy for Europe under the 2020 Strategy*, 2010/2152(INI), Brussels, final version 29 April 2012, point 14.

[14] Commission official, *op.cit*.

[15] European Union 1, *op.cit*., Art. 207(1) TFEU.

[16] Commission official, *op.cit.*

The EP may also influence the negotiating mandate by adopting a resolution before the FTA negotiations begin. The EP has not yet managed to issue a resolution in sync with the adoption of a negotiating mandate by the Council; however it seems that this may happen soon in the case of the EU-Japan FTA.[17] In addition, prior to negotiations, all FTAs are subject to a 'scoping exercise' during which the Commission opens discussions with the EP, the Council, concerned businesses, NGOs and civil society, in order to determine the scope, depth and level of ambition of the negotiations. Through this evaluation, the Commission attempts to gage whether the conditions are there for a successful agreement and a win-win situation. During this 'scoping exercise', the EP is consulted and is able to express its views, concerns and red lines to the Commission and Council.

Negotiations

Prior to the Lisbon Treaty, the EP played no official role in the negotiation phase of EU bilateral trade agreements. Under the pre-Lisbon framework, the Commission was to "conduct these negotiations in consultation with [the Council's Trade Policy Committee (TPC)] [... and] report regularly to [it] on the progress of negotiations".[18] To remedy the legal vacuum of EP absence, an informal agreement known as the "Luns-Westerterp" procedure was developed between the Commission and EP, stipulating that the former would inform and consult the latter when negotiating trade agreements.[19] The EP could then issue an opinion or resolution on the matter; however, these were mostly disregarded as they were not backed by any 'hard power'.

In 2005, in anticipation of its enhanced powers, a specialist INTA Committee was established in the EP. Under the provisions of a *2005 Framework Agreement on Relations between the Commission and the European Parliament*, the Commission committed to "provide early and clear information to Parliament both during the phase of preparation of the agreements and during the conduct and conclusion of international negotiations [...] in sufficient time for [the Parliament] to be able to express its point of view if appropriate, and for the Commission to be able to take

[17] *Ibid*.

[18] European Union, "Consolidated Versions of the Treaty on the European Union and of the Treaty Establishing the European Community", *Official Journal of the European Union*, C321 E/1, 29 December 2006, Art. 133(3) TEC, (European Union 2).

[19] Woolcock 3, *op.cit*., p. 56.

Parliament's views as far as possible into account".[20] This flow of information has taken place principally between the Commission and the INTA Committee, in particular its 'apolitical' secretariat as opposed to party groups, on a limited and confidential basis.

In the post-Lisbon era, the Commission is now under a duty to "report [...] to the European Parliament on the progress of negotiations".[21] In addition, the "European Parliament shall be immediately and fully informed at all stages of the procedure"[22] of the negotiations and conclusion of international trade agreement. Dialogue between the Commission and INTA has been stepped up and the latter can "voice its political preferences and flag red lines and preconditions for its final consent early on, [through] the use of non-binding parliamentary resolutions, hearings, opinions, [...] and questions to the Commission".[23] Parliamentary resolutions can now be used by the EP as strategic ultimatums, setting the 'conditions' of parliamentary consent to a particular FTA. Professor V. Moreira, Chairman of the INTA Committee, refers to these EP instruments as the Parliament's "soft power"[24] to influence the direction and content of negotiations.

In order to ensure that the INTA Committee is properly informed and has an overall comprehension of the progress of negotiations, the Commission and Parliament considerably updated their Framework Agreement in 2010. The cooperation document now stipulates that "the Commission guarantees that it will apply the basic principle of *equal treatment* for Parliament and the Council, especially as regards access to meetings and the provision of contributions or other information"[25] and that "Parliament shall be immediately and fully informed at all stages of the negotiation and conclusion of international agreements, including the definition of

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[20] European Communities, "Framework Agreement on the Relations between the European Parliament and the Commission", *Official Journal of the Communities* C117E/123, 18 May 2006, p. 5.

[21] European Union 1, *op.cit.*, Art. 207(3) TFEU.

[22] *Ibid*., Art. 218(10) TFEU.

[23] D. Kleimann, "Taking Stock: EU Common Commercial Policy in the Lisbon Era", *CEPS Working Document*, no. 346, Brussels, Centre for European Policy Studies (CEPS), April 2011, p. 7.

[24] Interview with MEP Professor V. Moreira, Group of the Progressive Alliance of Socialists and Democrats, Chairman of the INTA Committee, European Parliament, Brussels, 27 April 2012.

[25] European Union, "Framework Agreement on Relations between the European Parliament and the European Commission", *Official Journal of the European Union*, L 304/47, 20 November 2010, p. 3.

negotiation directives".[26] In order to comply with the Framework Agreement's provisions, the Trade Commissioner regularly meets with MEPs, attends and speaks before INTA Committee hearings both publicly and in camera, the Director General attends in camera meetings with the INTA Committee every two months to keep its members informed on the progress of various FTA negotiations, and informal sessions are organised between Directorate-General (DG) TRADE and the responsible INTA members to discuss particularly contentious trade issues.

The Chairman of INTA is of the opinion that the legal duty to provide information to the Committee is being fully complied with by the Commission.[27] Liberalist MEPs in favour of DG TRADE's agenda and sharing good relations with the latter declared that they receive all the same documents as the TPC. Green and Left-wing MEPs were more critical of the Commission, as they remain disappointed by the selective and vague nature of the information disclosed to them, which only contains the "broad brushstrokes"[28] of FTA negotiations. As negotiating red lines need to be kept secret from the trading partner, sensitive documents such as draft negotiating guidelines are classified 'Restreint UE' and subject to an agreement between DG TRADE and the INTA Chair whereby they are only granted to a select number of INTA Committee members. While highly comprehensible, this precaution, however, does limit the capacity of the INTA Committee to be cohesively and effectively involved in the EU's bilateral trade negotiation process.

Ratification

Up until the entry into force of the Lisbon Treaty, for political rather than legal reasons, the EP was asked for its assent to all trade agreements, including FTAs. This, however, remained a mere formality as the EP lacked any authority, technical expertise and access to documents to make an informed and credible choice of dissent. As a result, the "Commission and the Council went through the motions of consulting the EP, but were seldom much constrained in their policy options."[29]

The most momentous expansion of the EP's powers in EU bilateral trade negotiations is its newly acquired veto power over FTAs, subsequent to Council signature. EP

[26] *Ibid*., p. 4.

[27] Prof. Moreira, *op.cit*.

[28] Telephone interview with MEP Paul Murphy, Confederal Group of the European United Left-Nordic Green Left, Member of the INTA Committee, 7 March 2012.

[29] Woolcock 1, *op.cit.*, p. 4.

consent is now required for "agreements covering fields to which [...] the ordinary legislative procedure applies"[30] and this includes the CCP.[31] Hence, FTAs negotiated by the Commission are now subject to parliamentary consent by simple majority.

If the EP was to 'say no' to a bilateral trade deal, this would cause great harm to the EU's relations with the concerned third country and its international relations more generally. In the case of FTAs, the EP has not yet exercised this "nuclear option"[32] but has used it as a threat to ensure its concerns are taken into account. Indeed, the threat of veto can play an almost equally important role as the outright voting down of an agreement. This is evident in the case of the EU-Korea FTA. In the final stages of the negotiation process of this agreement, "a consistent fear was voiced by DG TRADE officials that the European Parliament would scupper the agreement".[33] Under fierce lobbying by the European automobile industry, the EP used its veto threat to ensure the Commission included a strong 'safeguard clause' to protect European small car producers.

A key implication of the post-Lisbon EP role in the ratification phase of the EU-Korea FTA was its success in delaying provisional application of the agreement.[34] Like many bilateral trade agreements, the EU-Korea FTA is a mixed agreement which required ratification by national parliaments on aspects falling under national competence (such as cooperation in cultural matters or provisions relating to the criminal enforcement of intellectual property rights[35]). Under the pre- and post-Lisbon legal frameworks, "the Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force".[36] Hence, the Treaty stipulates that the EP is only seized and called to vote on the FTA after it has already been provisionally applied. In the EU-Korea FTA negotiations, the EP successfully secured a guarantee whereby the Commission would ask the Council not to provisionally apply the agreement until it

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[30] European Union 1, *op.cit.*, Art 218(6) TFEU.

[31] *Ibid.*, Art. 207(2) TFEU.

[32] C. Stevens & P. Goodison, "The Lisbon Treaty: Implications for ACP-EU trade and trade negotiations", *Commonwealth Trade Hot Topics Issue 77,* June 2006, p. 3.

[33] G. Siles-Brügge, "Resisting Protectionism after the Crisis: Strategic Economic Discourse and the EU-Korea Free Trade Agreement", *New Political Economy*, vol. 16, no. 5, November 2011, p. 645.

[34] Commission official, *op.cit.*

[35] A. Pollet-Fort, "The EU-Korea FTA and its implications for the future EU-Singapore FTA", *Background Brief No.4*, EU Centre in Singapore, June 2011, p. 14 (Pollet-Fort 2).

[36] European Union 1, *op.cit.*, Art. 218(5) TFEU.

was granted parliamentary approval. This political victory is set to act as a benchmark for all future FTA negotiations.

Interviewed MEPs confirmed that the Parliament's power of consent over FTAs cannot be perceived as a mere 'cosmetic institutional change' and that it is in fact a "substantial"[37] or even "atomic power".[38] Indeed, since the Parliament has been granted this veto power, the Commission "is much keener to discuss with the Parliament"[39] on trade issues and is often "not frightened [...] but quite nervous about the European Parliament's powers".[40] The criticism voiced by all MEPs is that while the EP's veto power acts as a credible threat, in the end it is restricted to saying 'yes or no' and this brings about a degree of frustration.

Implementation and Monitoring

Prior to the Lisbon Treaty, the EP has not vested any powers in the "shaping and adoption of EU legislation defining the framework for implementing trade policy."[41] Such legislation was adopted "using the consultation procedure in which the Commission proposals were adopted by the Council through regulations with only, at best, a brief consultation with the European Parliament".[42] Now, the Lisbon Treaty stipulates that both the Council and EP have legislative powers in this field and shall "in accordance with the ordinary legislative procedure [...] adopt the measures defining the framework for implementing the common commercial policy."[43]

Hence, the EP's role in EU trade policy-making is significantly increased as it is vested with an oversight power in the implementation of trade agreements and trade remedy legislation. Such trade remedies include safeguard clauses such as the one in the EU-Korea FTA, which the EP wanted to see reinforced before it gave its final consent to the agreement. It will be interesting to see how the EP uses its political clout in the implementation phase in order to maximise its influence over the outcome of future FTAs.

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[37] Telephone interview with MEP Franziska Keller, Group of Greens/European Free Alliance, Member of the Development Committee, 15 March 2012.

[38] Prof. Moreira, *op.cit*.

[39] MEP Keller, *op.cit.*

[40] Interview with MEP 1, INTA Committee, European Parliament, 12 April 2012, Brussels.

[41] Pollet-Fort 1, *op.cit*., p. 10.

[42] Woolcock 3, *op.cit*., p. 61.

[43] European Union 1, *op.cit*., Art. 207(2) TFEU.

EU Trade Policy Actors

In this section, the implications of the post-Lisbon role of the EP will be analysed for each of EU trade policy actor, namely the Parliament itself, the Commission and the Council of Ministers.

The European Parliament

"Despite its legal empowerment, Parliament has *a priori* entered the political arena as the weakest of the three institutional players."[44] INTA has not had the chance to forge strong working relations with DG TRADE, the TPC and EU Member State's Economic Affairs Attachés, who over the years have developed a strong relationship and understanding of each-other. While the TPC meets every Friday, the INTA Committee only holds meetings once a month. In trialogue discussions on trade issues and also more generally, the EP often finds itself in a disadvantaged position as compared to the TPC that has a much higher level of expertise and expansive institutional memory. This lack of technical expertise makes it more difficult for INTA to "translate political preferences into credible and well-informed negotiation positions vis-à-vis its institutional competitors".[45]

Moreover, there is a huge difference in the number of staff and experts employed by DG TRADE and the Parliament's INTA Committee, and the two institutions have very different organisational structures. While DG TRADE operates in a thematic unit structure run by around 600 experts, trade issues in the EP are dealt with at several different levels. These include the 31 MEPs sitting on INTA and their assistants, the INTA secretariat (with approximately 19 staff), experts from the Parliament's DG External Policies, as well as the trade policy advisors and secretariats of each party group. While DG TRADE employs "hierarchically organised experts who are well versed and specialised in particular subfields of trade and investment matters",[46] the INTA Committee relies on the trade expertise from all the domains mentioned above, on DG TRADE, as well as clarifications from concerned industries and industry representatives. Hence, INTA Committee members may find themselves at risk of being "vulnerable to the siren calls of special-interest lobbying groups that are willing

[44] Kleimann, *op.cit*., p. 13.

[45] *Ibid*.

[46] *Ibid*., p. 15.

to provide 'counsel' and 'technical expertise' at the high cost of placing protectionist items on MEP's agendas".[47]

The European Commission

Prior to the Lisbon Treaty, the Commission, acting as sole negotiator at the international level on behalf of the Union, was endowed with a strong degree of autonomy. With the EP entering the trade policy field in the post-Lisbon era, the Commission has lost a degree of its independence, however, this can also serve to strengthen its bargaining position at the international level. A public EP resolution adopted in plenary outlining the conditions for consent can "help the Commission in its negotiating position"[48] at the international level as the Commission has to explain to its negotiating counterpart that the agreement must contain certain EP demands.

DG TRADE has been "proactive in the establishment of direct inter-institutional relations with the INTA Committee"[49] and has adopted a "'charm offensive' strategy"[50] to ensure its agenda continues to be supported by the Parliament. Having a supportive EP can be useful in the event of inter-institutional competition on a particular dossier between the Commission and the Council or if the Commission wishes to crowd out trade policy lobbyists against its agenda from the INTA Committee. In this sense, it is in the interest of the Commission that the INTA Committee is provided with sufficient documents in order to make factually accurate recommendations on how the EP should vote as a whole on FTAs in the plenary. Hence, it is vital that the Commission continues and steps up its efforts to provide the INTA Committee with all the relevant information and with no delays.

The Council of Ministers

In the pre-Lisbon institutional framework, the Council was the only institution with the power to decide on trade agreements. Hence, the "lisbonisation of the Council was a shock for them and was very demanding as they were used to deciding on their own".[51] The Council is likely to be the institution least satisfied with the EP's enhanced trade powers and has shown relatively little flexibility in adapting to Lisbon-era

[47] *Ibid*., p. 14.
[48] Commission official, *op.cit.*
[49] Kleimann, *op.cit*., p. 16.
[50] *Ibid*.
[51] Prof. Moreira, *op.cit*.

realities.[52] Relations between the EP and the Council are governed through trialogues, chaired by the Council Presidency, where both institutions negotiate with the Commission acting as a mediator or conciliator. In general, relations between the Council and the EP have been under strain and the two institutions have not succeeded in negotiating a Framework Agreement to facilitate their post-Lisbon relations. However, they are heading towards improvement: since the EP acts as a co-legislator in the implementation of the CCP, the Council is now obliged to listen to it in order to reach any form of agreement.

The Council Presidencies play a key role in fostering the relationship between the EP and the Council. The first Presidency of the Council after the entry into force of the Lisbon Treaty (Spanish) invited the INTA Chair to address the TPC at a working lunch. Moreira recalls that "this was a premiere: for a number [of TPC members] it was as if they were listening to the impact of the Lisbon Treaty for the first time".[53] Two and a half years on, relations between both institutions are normalising, the invitation of the INTA Chair to working lunches has become a rule, and both sides can only positively speak of improvements in their relationship. A culture of Council/EP relations has developed, both at a formal and informal level. Notably, "the Council is increasingly speaking [to the EP] with one voice: the voice of the Presidency."[54] While previously some Member States attempted to influence the INTA Committee unilaterally, the 'single voice' culture has gained traction in the post-Lisbon era, as the Council and EP have developed efficient and transparent channels of communication.

EU Trade Policy Lobbyists

It is widely understood that "interest representation takes place where decisions are made".[55] Up until the Lisbon Treaty, trade policy lobbyists turned to the Commission and Council and many perceived the EP as a "phantom Parliament",[56] destitute of any real power or influence in external trade matters. The Lisbon Treaty's inclusion of the EP in the EU's CCP "provides a 'bully pulpit' to speak directly to the people of Europe" on trade issues.[57] Parliamentary engagement in the negotiation of FTAs has

[52] Kleimann, *op.cit,* p. 17.

[53] Prof. Moreira, *op.cit*.

[54] *Ibid*.

[55] W. Lehmann, "The European Parliament", in D. Coen & J. Richardson (eds.), *Lobbying in the European Union: Institutions, Actors and Issues*, Oxford, Oxford University Press, 2009, p. 50.

[56] *Ibid.*

[57] Hillman, *op.cit*., p. 7.

the potential of narrowing the gap between "public political preferences and perceptions, on the one hand, and actual EU trade policy on the other".[58] Trade policy lobbyists in the EU, whether they be private sector companies, industry representatives, trade unions, NGOs or civil society groups, seem to have understood the significance of the new opportunity which the Lisbon Treaty has opened to them in enhancing the EP's role in the CCP.

Lobbying the EP is challenging due to its political fragmentation and multiple access points. Hence, "effective interest representation in the Parliament [...] requires wider coalitions, better networking, non-technical approaches, combined with an acute sense for regional or even local political priorities".[59] MEPs are receptive to different trade policy lobbyists depending on their political affiliation and nationality: while NGOs usually approach the Greens, trade unions lobby the Socialists and businesses focus their efforts on centre-right and right-wing party groups.

Special interest groups welcome the enhanced role of the EP and understand the opportunities this new venue presents for their lobbying strategies. Nevertheless, the EP remains the weakest of the three institutional players involved in the negotiation of FTAs. The Council therefore remains the 'best friend' of many industry representations because Member States understand very clearly issues such as 'fewer jobs' and 'plant closure'.[60] While Member States usually consider the impact of an FTA at the national level in terms of strengthening jobs and industries, MEPs, whether they be 'free-traders' at heart or anti-trade, are often predisposed to hold more 'local' views. These nuances require industry representations to be very fined-tuned to the local and regional priorities of individual MEPs in order to lead a successful lobbying campaign in the EP. For these reasons, despite the empowerment of the EP in FTA negotiations, it seems that business groups will continue to focus most of their lobbying efforts on the Council.

When NGOs and civil society organisations become aware that the EP is to issue a resolution, they will attempt to draw its attention to their concerns through speaking directly with MEPs and writing letters. Interviewed Green/Left-wing MEPs stressed the value of the information which NGOs bring to them, through FTA analyses and impact assessment reports on particular industrial and societal sectors, which they

[58] *Ibid*.

[59] Lehmann*, op.cit.,* p. 40.

[60] Telephone interview with ACEA Representative 1, 6 March 2012.

"can then really use [...] to try to push their case within the Parliament".[61] While NGOs "enjoy relatively good access to decision-makers"[62], their "impact on the EU's approach to [...] negotiations [of the EU-India FTA] has been limited".[63] Green and Left-wing MEPs in the EP are receptive to their concerns; however these party groups represent a minority within the EP and their voices tend to be drowned in the plenary sessions.

FTA Outcomes

This section will i) examine how EP involvement in FTA negotiations politicises the trade policy-making process and ii) assess the extent to which the inclusion of the EP results in the negotiation of FTAs with more 'normative' outcomes.

The Politicisation of EU Trade Policy

In its *Global Europe* strategy, the EU sets out to negotiate FTAs "aiming at the highest possible degree of trade liberalisation including far-reaching liberalisation of services and investment".[64] In achieving this aim through FTA negotiations, the Commission "is faced with trade-offs across different issues":[65] gaining market access in these competitive sectors implies making concessions which may harm other sectors in the EU. In the post-Lisbon era, the EP has proved receptive and has established itself as the guardian of vulnerable groups who oppose the conclusion of harmful FTAs. As MEP Pablo Zalba Bidegain (EPP) stated, "the will of the European Parliament is to defend the interests of our citizens and industries, especially those more affected by these agreements. We are open to everybody to share their concerns with us; this is our job as the democratic institution of the Union".[66]

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[61] Interview with Parliamentary Assistance following the INTA Committee on behalf of the Confederal Group of the European United Left-Nordic Green Left, European Parliament, Brussels, 30 March 2012.

[62] A. Dür & D. de Bièvre, "Inclusion without influence, NGOs in European Trade Policy", *Journal of Public Policy*, vol. 27, no. 1, 2007, p. 92.

[63] *Ibid.*

[64] European Commission, *Global Europe*, *op.cit*., p. 9.

[65] R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, p. 446.

[66] P. Zalba Bidegain, MEP (EEP), Member of the INTA Committee, "Trade and Investment Challenges for European Business", Third Bruges European Business Conference, College of Europe, Bruges, 20 March 2012.

In order to reach its offensive targets for services and investment, DG TRADE granted significant concessions to Korean negotiators in the automobile sector. For the first time in FTA negotiations, the Commission gave in to what was traditionally one of its 'red lines': the Korean demand for a 'duty drawback' clause, "which authorises Korean producers to sell to Europe at highly competitive prices cars made with cheap components [...] in third countries like China".[67]

*A*rguing that the motor industry was sacrificed in exchange for access to the Korean services market, the European Automobile Manufacturers' Association (ACEA) launched a fierce lobbying campaign towards the EP to protect small-car manufacturers. Many MEPs, receptive to these concerns, echoed the industry's rhetoric and succeeded in ratifying the safeguard regulation before it cast its final vote on the agreement. In particular, the majority of amendments to protect European small-car manufacturers adopted by the INTA Committee when the text of the EU-Korea FTA came before it were "proposed by German and Italian INTA members, irrespective of party group affiliation",[68] as it is their industries, along with the French, that are due to suffer the most from the opening up of their markets to Korean automobile imports.

Essentially, the Korea Safeguard Regulation stipulates that "a safeguard measure may be imposed [...] where a product originating in Korea [... is] imported into the Union [...] under such conditions as to cause or threaten to cause serious injury to the Union industry producing a like or directly competitive product".[69] The real 'political victory' of the EP against the Commission and Council is contained within the details of this Regulation. Here, the EP negotiated under the OLP alongside the Council the conditions to be followed in order to invoke the safeguard clause. As many issues were already settled in the text of the FTA, "the EP used the safeguard regulation as a means to integrate specific provisions to protect concerned interests while at the same time staying in compliance with the FTA text".[70]

The Regulation contains provisions which go quite a degree beyond the mere implementation of the safeguard clause. For example, Article 3 on Commission

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[67] "EU-South Korea trade deal under attack", *Euractiv*, 8 September 2010.

[68] Kleimann, *op.cit*., p. 22.

[69] European Union, "Regulation (EU) No 511/2011 of the European Union Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the free trade agreement between the European Union and its Member States and the Republic of Korea", *Official Journal of the European Union*, L 145/10, 31 May 2011, Art. 2 ("Regulation").

[70] Interview with DG TRADE Official 1, European Commission, Brussels, 24 April 2012.

monitoring extends to "the evolution of import and export statistics of Korean products in sensitive sectors [cars, textiles and consumer electronics[71]] potentially affected by *duty drawback* [... and] the Commission may consider extending the scope of the monitoring *to other sectors*".[72] The EP also managed to include for the first time that investigations "shall be initiated upon request by a Member State, by any legal person, or any association not having legal personality, acting on behalf of the Union *industry*"[73] whereas previously only the Council had such a power.

The Regulation imposes many reporting obligations on the Commission that would never have been required in a pre-Lisbon setting. Article 13 declares that "the Commission shall make public an annual report on the application and implementation of the Agreement [... which] shall present a summary of statistics and the evolution of trade with Korea. Specific mention shall be made of the results of the monitoring of *duty drawback*."[74] Within one month from the Commission issuing the report, the EP may "invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of the Agreement".[75] Finally, "upon request by the responsible committee of the European Parliament, the Commission shall report to it on any specific concerns relating to the implementation by Korea of its commitments on non-tariff measures".[76]

The EU-Korea FTA demonstrates that after ratifying the agreement on condition of a strong bilateral safeguard clause, the EP tried its best to include as many of the issues of concern which had been raised to it by particular sectors into the Regulation designed to implement the safeguard clause. One such concern was 'duty drawback', which – while unrelated to safeguards – has found its way into the text of the Regulation on two occasions. With the EP involved at earlier stages in the negotiations of current and future FTAs, it is hoped that such an outcome can be avoided, whereby the EP crowds a regulation designed to implement a trade remedy with connected and unrelated issues. Increasing involvement of the EP in the FTA negotiation stage and influence over setting the negotiating directive could

[71] European Union, "Regulation", *op.cit.,* Annex I.
[72] *Ibid*., Art. 3(1) & (2) [emphasis added].
[73] *Ibid*., Art. 4(1) [emphasis added].
[74] *Ibid.,* Art. 13(1) & (3) [emphasis added].
[75] *Ibid.,* Art. 13(5).
[76] *Ibid.,* Annex II.

enable the concerns which the EP wishes to protect to be taken into account at an earlier stage and hence reflected in the actual text of the FTA.

The entry into force of the EU-India FTA could have more severe consequences on the European automotive industry than the concluded EU-Korea FTA because of arbitrary increases in tariffs by the Indian authorities, the sheer size of the Indian market and the lower costs of production and labour in the subcontinent. The EP has taken on board and echoed these concerns. In its May 2011 resolution on the EU-India FTA, the EP stresses that "the objective for industrial trade should be reciprocal full duty elimination, with asymmetry in timing, and that any possible exception to this objective should be limited and subject to review and should not involve the exclusion of sectors that are of importance to both sides, such as *passenger cars*"[77] and that the agreement should include an "effective safeguard clause".[78] Furthermore, in its 2011 Resolution on a *New Trade Policy for Europe under the Europe 2020 Strategy*, the EP also emphasises "that FTAs [...] should respect key principles such as reciprocity, zero for zero tariff dismantling, removal of non-tariff barriers, prohibition of duty drawback regimes, and uniform application of a high rules-of-origin threshold".[79]

The bilateral safeguard clause negotiated in the EU-Korea FTA has been established as an example for future agreements. However, while the Commission and EP devised some way to take into account the concerns of the motor industry, hence solving the political debate in the EU-Korea FTA through this safeguard mechanism, the case of India is more complex. For DG TRADE, "the real issue in the EU-India negotiations is going to be managing the expectations of our industry"[80] in negotiating a sufficiently ambitious FTA for some sectors, which will inevitably be asymmetrical and detrimental to others. With India's status as an emerging and increasingly competitive economy, an EU-India FTA "which is not fully reciprocal is politically difficult"[81] because it will face opposition from the European car and other industries, the concerns of which are likely to yet again be taken on board and defended by the Parliament. With parliamentary involvement throughout the post-

[77] European Parliament, *Resolution of 11 May 2011 on the state of play in the EU-India Free Trade Agreement negotiations*, P7_TA-PROV(2011)0224, Brussels, Final Version 29, April 2012, point 9.

[78] *Ibid*., point 14.

[79] European Parliament, *Resolution of 27 September 2011, op.cit*., point 14.

[80] Interview with DG TRADE Official 2, European Commission, Brussels, 20 April 2012.

[81] *Ibid*.

Lisbon negotiation process, it will be interesting to see whether specific sector concerns are reflected in the text of the FTA or whether the EP succeeds in better guaranteeing their protection during the implementation phase, as was the case with the EU-Korea FTA.

More Normative FTAs : Sustainable Development and Core Labour Standards

The EU's "aspiration of acting as a normative power through trade has further been reinforced by the Lisbon Treaty provisions".[82] Article 21 TFEU subjects EU trade and investment policy to the EU's External Action principles, notably "democracy, the rule of law, [...] human rights and fundamental freedoms, [...] sustainable economic development, social and environmental development of developing countries".[83] Article 3 TEU holds that the EU's CCP must contribute "to the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights".[84]

The EP could, "in its role as a political actor endowed with democratic legitimacy, become an active promoter of the consistency of CCP content with the principles and objectives of EU External Action".[85] Nevertheless, within the Parliament and the INTA Committee, the MEPs' level of attachment to these issues varies significantly. While the Green/Left-wing groups believe that policy coherence in development (PCD) in trade "is key if the EU really wants to foster development in third countries",[86] the majority of the EP "only pays lip-services to human rights"[87] and some MEPs are of the opinion that "trade policy is not a panacea"[88] and thus should not be utilised as a tool for all EU external relations objectives. Despite these cleavages, it seems that there are some PCD issues in the EP that have majority support and find their way into the EU's bilateral trade agreements, notably sustainable development and core labour standards.

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[82] S. Gstöhl, "The Common Commercial Policy and Political Conditionality: 'Normative Power Europe' through Trade?", *Studia Diplomatica*, vol. LXIII, nos. 3-4, 2010, p. 24.

[83] European Union 1, *op.cit*., Art. 21 TEU.

[84] *Ibid*., Art. 3 TEU.

[85] Kleimann, *op.cit*., p. 27.

[86] Parliamentary Assistant following the INTA Committee on behalf of the GUE, *op.cit*.

[87] MEP Murphy, *op.cit*.

[88] Telephone Interview with MEP Iuliu Winkler, European People's Party (EPP), Member of the INTA Committee, 29 March 2012.

The EU-Korea FTA contains the strongest sustainable development chapter yet to be negotiated by the EU in an FTA, which is "broad in scope, containing comprehensive commitments regarding labour standards and environmental agreements, including an innovative monitoring mechanism with strong civil society involvement".[89] The FTA calls upon both negotiating parties to establish 'Domestic Advisory Groups', whose members "will meet at a Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the parties".[90] In addition, the EU-Korea FTA is the first bilateral agreement between the EU and a third state, which makes reference to their joint commitment "to reaching the ultimate objective of the United Nations Framework Convention on Climate Change and its Kyoto Protocol".[91]

While Korea, an industrialised country with the same level of engagement as the EU was forthcoming with regard a strong sustainable development chapter, an issue which proved controversial in Korea was the ratification of the International Labour Organisation's (ILO) Conventions and commitment to its core labour standards.[92] The Socialist group in the EP was particularly keen to see these standards included in the agreement. As a result, the principles of the *ILO Declaration on Fundamental Principles and Right at Work 1998* are enshrined in the FTA.

As it was excluded from the negotiations, the EP is not mentioned and was not granted any oversight power for sustainable development in the text of the EU-Korea FTA. Nevertheless, it succeeded in asserting itself through its new implementation powers. The EP managed to include in the Safeguard Regulation a provision stipulating that the Commission's implementation report shall contain 'special sections', which "deal with the fulfilment of obligations under Chapter 13 (Sustainable Development) of the Agreement and with the activities of the Domestic Advisory Group and the Civil Society Forum".[93] What is more, in Annex I of the Regulation, the Commission's Statement declares that the latter will attach

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[89] European Parliament, "Recommendation of 9th February 2011 on the draft Council decision on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea of the other part" (08505/2010 – C7 – 0320/2010), Brussels, 9 February 2011, p. 10.

[90] European Union, "Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, on the other part", *Official Journal of the European Union*, L127/62, 14 May 2011, Art. 13(13)(1).

[91] *Ibid*., Art. 13(5)(3).

[92] DG TRADE Official 2, *op.cit*.

[93] European Union, "Regulation", Art. 13(2).

"particular importance to the effective implementation of commitments on labour and environmental standards of Chapter 13 of the FTA",[94] the implementation of which "shall be duly documented and reported to the European Parliament and Council".[95]

Parliamentary dissatisfaction with the findings of the report on sustainable development stands as grounds whereby the EP can "invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of the agreement".[96] The widening of the Safeguard Regulation to include a sustainable development reporting mechanism is a real political win for the EP as a result of its enhanced powers in the implementation phase and enforcement of bilateral FTAs.

While the Commission faced little obstacles with regard to sustainable development in the EU-Korea FTA negotiations, the situation is very different in the case of India, which has severe development concerns at stake. The Indian government, not wanting to compromise its country's economic growth, fiercely opposes the negotiation of a strong sustainable development chapter. In a pre-Lisbon situation, it is more likely that the Commission and the Council would have given in to their Indian counterparts and settled for a weak and symbolic sustainable development chapter. However, the EP recognises that such a chapter "is an essential part of any EU FTA and calls on both sides to agree to an ambitious chapter which reflects the common commitment to promoting sustainable development and inclusive growth".[97] The EP wants to see this chapter to cover, "as a minimum, compliance with the ILO's eight core conventions and four priority conventions and internationally agreed environmental standards, and also provide incentives to enterprises to enter into CSR [corporate social responsibility] commitments".[98]

Whereas the Commission would have been more flexible and settled for the Indian demand of a watered-down version in the pre-Lisbon era, it "has become crystal clear" [99] with the EP in the game that the Commission must make its Indian counterparts understand that they are obliged to accept a strong sustainable

[94] *Ibid.,* Annex I.

[95] *Ibid.*

[96] *Ibid,* Art. 13(5).

[97] European Parliament, *Resolution of 11 May 2011, op.cit.,* point 29.

[98] *Ibid*., point 30.

[99] Commission official, *op.cit.*

development chapter unless they want to see the agreement voted down by the European Parliament.

Conclusions

In the post-Lisbon era, the EP is endowed with strong new powers and "there is a risk to overshoot or undershoot".[100] Two and a half years on, all actors engaged in FTA negotiations remain in the midst of discovering what the inclusion of the EP on the playing field means for the EU's CCP. Nevertheless, a few preliminary conclusions can be drawn relating to the implications of the post-Lisbon role of the EP for EU bilateral trade negotiations.

With regard to *processes*, the EP is now endowed with the 'hard power' of consent in the ratification phase of FTAs, and this acts as a sufficient threat to strengthen the EP's 'soft power' to influence the negotiation phase. While the treaty does not grant the EP any formal powers in the drafting of the negotiating directive, it seems the EP may develop strategies to influence the mandate. Finally, the EP now plays an important role in the implementation of FTAs under the OLP.

The post-Lisbon enhanced role of the EP has significant implications for EU trade policy *actors*. The Commission has lost a degree of autonomy as chief negotiator and must engage effectively with the EP in order to avoid parliamentary dissent at the ratification stage. The Council, initially reluctant to share its trade powers with the EP, has realised that EU trade policy, in particular its implementation, cannot advance without cooperation between both institutions. In addition, the enhanced powers of the EP in the post-Lisbon era have opened it up as a new point of access for trade policy lobbyists.

Finally, the increased involvement of the EP in the negotiation of FTAs has significant implications for the *outcome* of EU bilateral trade agreements. The post-Lisbon era is characterised by i) a politicisation of EU trade policy whereby the EP defends the interests of European citizens and industries in FTA negotiations, and ii) greater normative outcomes of FTAs as the EP is in possession of greater power and tools to translate the social agenda of MEPs and NGOs into EU trade agreements.

[100] Prof. Moreira, *op.cit*.

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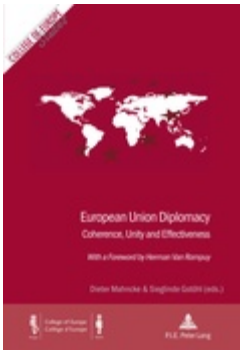

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