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SPLENDID ISOLATION?

The Influence of Interest Groups on EU Trade Policy

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Content

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Abstract

This paper explores in how far interest groups can influence EU trade policy. It challenges the view that the delegation of trade policy to the EU level reduced the influence of (special) interest groups on policy outcomes. It finds that the collusive delegation argument has little support in the empirical literature and goes on to argue that this is due to flaws in its theoretical basis. In examining the multiple access points the EU polity offers for special interest groups and conceptualizing lobbying as a resource exchange between decision-makers and interest groups, the paper offers an alternative account of how EU institutions and interest groups interrelate. It concludes that special interest groups, contrary to civil society groups, can have a significant influence on trade policy decisions.

1. Introduction*

The EU is an enormously important actor in international trade. It is the world's largest exporter and the second-largest importer after the US (Eurostat 2009). Its trade power carries particular relevance for developing countries. The EU is the biggest market for imports from the Least Developed Countries (LDCs) and exports more than twice as much to them as the US, Japan and Canada combined (Commission 2008). Trade is characterized as the EU's "oldest and most successfully integrated common policy" (Meunier 2005: 8). At the same time, it is heavily disputed. Development groups for instance criticize EU trade policy as favoring the interests of European business at the expense of developing countries. All this suggests a particular salience for research in this area, but the existing literature is slim and far from clear (Dür/Zimmermann 2007: 775-783).

Let us look at a recent example: In 2006, a shift occurred in the EU trade strategy from a multilateral paradigm to a predominantly bilateral orientation with the *Global Europe* strategy (Abbott 2008: 2; Woolcock 2007: 5).[1] Development groups criticize this strategy a "corporate trade agenda" (Seattle-to-Brussels-Network 2006).[2] The Commission counters these criticisms by presenting it as a "consumer agenda" (European Commission 2006: 9). The former interpretation suggests that special interest groups effectively captured EU trade policy, the latter that the Commission possessed considerable agency and independence from those interests and instead adopted a policy in the interest of the average European.[3]

The literature makes it difficult to assess the validity of such colliding claims, as there is little agreement on which factors drive and determine EU trade policy

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1 This shift is mainly due to the current deadlock of the Doha Development Round and effectively ends a self-imposed moratorium on bilateral trade agreements, which had been in place for 10 years.

2 See also Oxfam et al. (2008) and WEED (2009). The main arguments of Global Europe's critics are that the obligations demanded by the EU are too onerous and detrimental to developing countries' interests and that the EU does not envisage trade concessions in areas vital to developing countries, such as its protectionist Common Agricultural Policy. Some scientists have called for a new moratorium on bilateral Free Trade Agreements, arguing that they undermine the multilateral trading system and result in a power balance between trading partner that is even more unequal than in the WTO (Stieglitz/Griffith-Jones 2007: 9).

3 Arguably, all Europeans except maybe freegans are consumers.

(Dür/Zimmermann 2007: 775f). The influence of interest groups is a particularly contentious issue. A relevant strand of the literature argues that decision-makers can pursue trade policy in "splendid isolation" because the delegation of trade policy competences to the EU insulated decision-makers from interest groups.[4] This view is also known as the "collusive delegation" argument. It is in keeping with the "consumer agenda"-view, but obviously not with the "corporate trade agenda" interpretation.

The purpose of this paper is to clarify the intricate relationships between interest groups and decision-makers in EU trade policy. Specifically, it examines the collusive delegation argument to see how it matches empirical evidence and stands up to theoretical reasoning. The research question that underlies this is: ***In how far do interest groups influence EU trade policy?*** I find that the collusive delegation argument does not capture the reality of trade policymaking in the EU due to flaws in its theoretical basis and that special interest groups can have a significant influence on trade policy decisions due to the access they enjoy in the EU polity and because decision-makers have strong incentives to comply with their demands.

I will begin by presenting the collusive delegation argument as it is commonly stated and identify the causal mechanisms that might cause trade policy to be shielded (2). A brief review of the relevant literature follows which places the collusive delegation argument in context and examines the empirical evidence for and against it (3). The last section offers an alternative account of how the structure of the EU affects the influence that interest groups can have on trade policy. To this end, I will outline the access points for interest groups in EU trade policymaking (4.1) and argue that the relevant decision-makers have strong incentives to respond to the demands of special interest groups (4.2). On this basis, I will criticize the causal mechanisms through which collusive delegation is supposed to work (4.3). The conclusion (5) summarizes the main argument of the paper and outlines some implications for the study of EU trade policy.

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[4] Throughout this paper, "interest group" will designate all kinds of groups who try to influence EU trade policy, "civil society groups" will denote interest groups who lobby for diffuse interests, such as NGOs and "special interest groups" or "business groups" will stand for groups representing concentrated economic interests.

2. Why trade is supposed to be insulated (in theory)

The collusive delegation argument originated in studies of US trade policy-making (Destler 1996; O'Halloran 1994). It basically states that delegating trade policy to a higher level of government reduces the influence of special interests. Proponents of the argument in the context of the EU include Zimmermann (2006), Meunier (2005), Woolcock (2005) and Meunier and Nicolaïdis (2002).

The starting point of the argument is a collective action problem.[5] Political systems are seen as biased towards protectionism which inhibits economically efficient trade liberalization. This is because the costs of liberalization are concentrated to small groups of producers who have to face increased competition. The *benefits*, however, are diffuse because they accrue to consumers – a much larger group. The protectionist producers can mobilize much easier because their relative costs per member are higher than the relative benefits per member for the consumers. The consumers consequently face enormous free-rider problems which inhibit collective action. The result is a tragedy of the commons: what is in the long-term interest of all is not achieved because of the short-term interests of a few.[6]

The Smoot-Hawley Tariff Act of 1930 is often cited as an illustration of this. The rise in US protectionism and the tariff war it caused are widely seen to have exacerbated the Great Depression of the 1930s. To prevent such a tragedy in the future, the reasoning goes, the fast-track authority for trade negotiations was introduced which delegated authority for the negotiation of trade agreements from Congress to the President. This delegation from the principal (Congress) to an agent (President) is supposed to have insulated trade policymaking from the influence of protectionist interest groups, thus making the push towards liberalism in successive General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) Rounds possible.

As Meunier (2005: 8) argues, the founders of the EU, such as Jean Monnet and Paul-Henri Spaak, intentionally replicated this institutional arrangement by transferring some authority in trade policymaking from the member states to the Commission. As she

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5 See Olson's seminal work on collective action theory (1971).

6 This account is repeated all over the literature, not only by proponents of collusive delegation. In Footnote 24, an alternative explanation for the often-observed protectionist bias of trade policy is given.

puts it, the founding states "chose to centralize trade policymaking in order to insulate the process from protectionist pressures and, as a result, promote trade liberalization" with the Treaty of Rome in 1957. To summarize, the collusive delegation argument asserts that the playing field in EU trade policy is not level. Delegation of trade policy-making has increased the autonomy of public actors vis-à-vis interest groups and thus reduced protectionism.[7] Various causal mechanisms are put forth in the literature to explain this.

Zimmermann (2007: 159f, 165f) argues that the Commission is strongly shielded from societal pressures. According to him, interest groups face "high access barriers" (2007: 159, my translation) because the Commission is *financially independent* from them and does not rely on them for *re-election*, as it is appointed by the Council and the European Parliament. Thus, maybe the two most important resources interest groups have at the national level (political support and financial contributions) cannot be used to access the Commission.[8] Furthermore, interest groups face high *information asymmetries* due to insider knowledge the Commission possesses about the positions in the Council and of the third states it negotiates with as well as about its own regulatory agenda.[9]

Meunier (2005: 8f) suggests two further mechanisms for why EU trade policy might be insulated.[10] She argues that the intransparency of EU decision-making enhances possibilities for *blame-shirking*. National governments can credibly blame unpopular decisions on Brussels and thus pretend to (protectionist) interest groups that they fight for special interests without actually doing so. Note that this only works if informational asymmetries in favor of the national executives exist.

Moreover, delegation *enlarges the constituency* for which a policymaker is responsible. In a national context, the gains of protectionism can be reaped while the costs are externalized to other countries. Protectionist interests such as French agriculture thus

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[7] Incidentally, Deutsch (1999: 60f) argues the exact opposite. He posits that "in the case of the European Union, the disequilibrium (towards protectionism) is more pronounced than in a purely national context". In his view, delegation made EU trade policy more susceptible to protectionist influences. See Fritz (2004: 73) for a similar view.

[8] In section 4.2, I will argue that the Commission relies on different resources, which EU-level interest groups provide.

[9] On the role of information asymmetries, see also Moravcsik (1994: 12f, 22f).

[10] She draws those mechanisms directly from studies focusing on US trade policymaking.

have an easy time lobbying their government. In the case of the EU, however, this is seen to apply to a lesser extent. The costs and benefits accrue to actors in the same constituency. British industry has to carry the cost of protectionist French agriculture, for instance. The Commission is thus expected to have more liberal preferences than the respective member states would have absent delegation because it is responsible for a larger constituency that is affected by the costs and benefits of protectionism at the same time. Because of this, it is expected to be able to oppose protectionist interests and pursue consumer-friendly policies. The same should largely hold for the Council, as its aggregated preferences, too, represent a larger constituency than in the case of a single national state. The voting rules are crucial for this, as a single protectionist state could effectively veto legislation under unanimity, but not under Qualified Majority Voting (QMV).

Woolcock (2005: 247) finally argues that the EU system acts as a “double filter” for interest groups. His argument is very similar to that of Meunier (2005) in that it also sees the EU’s enlarged constituency as the key mechanism. He basically posits that officials at the EU-level have a good deal of discretion to find trade-offs between sectors and member-states which results in greater bureaucratic control over trade policy-making.

In conclusion, a strengthening of public actors on the national and EU levels vis-à-vis interest groups could have been caused by (1) making the Commission financially and electorally independent from interest groups, (2) erecting informational asymmetries against those groups, (3) increasing possibilities of national governments for blame-shirking and (4) enlarging the constituency affected by trade policy.[11] These points will be relevant for the discussion in section 4.3.

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11 Moravcsik (1994: 8-14) provides further mechanisms that can strengthen the “state”, i.e. national executives, against societal influences. As proponents of collusive delegation, he cites informational asymmetries and enhanced possibilities for blame-shirking, but the other mechanisms he outlines do not seem particularly relevant for trade policy. He argues, for example, that by transforming domestic policy issues into foreign policy issues, the executives gain greater control over the initiation and amendment of policies. Trade policy, however, is already a foreign policy, so these mechanisms might not be as relevant here as in the case of social policy, for instance. Finally, he points out that ideas (e.g. the “European idea”) can provide new sources of legitimacy to executives. According to him (1994: 14), “ideas tend to have a particularly strong influence where the consequences of materially self-interested behavior are uncertain, indeterminate, or diffusely distributed across a large population”. These conditions do not hold for trade policy, however (Frieden/Rogowski 1996).

3. Collusive delegation in the literature

The field of EU trade policy is characterized as “essential though highly understudied” by Pascal Lamy (Meunier 2005, back cover). The literature on EU trade policy is comparatively slim and theoretically oriented (Dür/Zimmermann 2007: 775).[12] This is surprising, given the EU’s importance in international trade, and the importance of trade policy within the context of European integration. This section will put the collusive delegation argument into context and assess empirical evidence for and against it.

Factors driving EU trade policy

The theoretical literature is far from clear on the factors shaping EU trade policy. Some authors emphasize the role of *ideas* (Kahler 1985; Lüttiken 2006; Niemann 2004; Young 2007). Several others point to *geopolitical considerations* driving EU trade policy, for example in the cases of trade agreements with the former colonies in the late 1950s or more recently with the Gulf Cooperation Council and the EUROMED agreements (Antkiewicz/Momami 2009; Messerlin 2001: 200; Sapir 1998).

Most relevant for the purpose at hand is a divide in the literature on the role that *societal influences* play. Proponents of the collusive delegation argument see societal influences as little relevant (Meunier 2005: 8-9; Nicolaïdis/Meunier 2002: 175; Woolcock 2005: 247; Zimmermann 2006: 159f, 165f). Others stress the dominance of special interest groups in the formulation of trade policy (De Bièvre/Dür 2007; Dür 2007, 2008a). There is little theoretical consensus whatsoever. The only thing everyone seems to agree on is that interest groups try to influence EU trade policy and that business groups are relatively more successful in this than civil society groups (Dür/Zimmermann 2007: 777).

Empirical evidence on the question of special interest groups’ influence is not wholly conclusive. Only a few case studies address the issue directly, others do so in passing while following a broader research agenda. Overall, however, the empirical evidence does not seem to support the collusive delegation argument, as the following subsections will show.

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[12] See Dür and Zimmermann (2007) for an excellent literature review.

Empirical support for collusive delegation

Zimmermann (2006: 189-91) probably provides the strongest empirical support for the collusive delegation argument. He looks at EU and US negotiations with China on its WTO accession in 2001. He finds that, in contrast to the US, individual firms did not manage to capture the EU position in these negotiations and concludes that industrial lobbies could less easily block and influence negotiation in the EU than in the US. He also stresses, however, that business groups supported the EU's position in these negotiations, so there was no conflict which would have had to be overcome through collusive delegation.

For the case of the Uruguay Round (1986-1994), Lüttiken (2006: 193) finds that the negotiating positions of Germany, France and Spain during the round did not mainly reflect economic interests, but were shaped by public discourse. This finding is maybe not surprising, considering that his method is a constructivist discourse analysis which is better suited to analyze discourses than the actual influence of economic interest groups.[13] Cowles (2001: 167) similarly finds that in the Uruguay Round, the French government was not particularly responsive to French industry. The collusive delegation is argument is not very useful in explaining this, however, as it seems that the French position was heavily influenced by other special interests, like agriculture (Keeler 1996).

Hocking and McGuire (2002: 466) examine a trade dispute about certain US tax refunds which were seen by the EU as an illegal export subsidy. The authors show that the WTO dispute settlement case against the US that was subsequently started (and won) by the EU was only based on casual business consultation. It concludes that the "relative autonomy enjoyed by states deciding which cases to bring and pursue does not support the more extreme arguments that governments are mere messengers at the WTO for corporate preferences". This is a very cautious conclusion and the article does not provide clear evidence for the collusive delegation hypothesis. While business did not directly support the case, neither was there strong opposition. Like in the case

[13] Lüttiken's method is highly unorthodox. Dür (2008c) discusses several approaches to examining the influence of interest groups, but discourse analysis is not even mentioned.

study by Zimmermann (2006), there was no conflict between business and EU institutions which would have had to be overcome by collusive delegation.

Empirical evidence against collusive delegation

A series of case studies of bilateral, interregional and multilateral EU trade agreements as well as interest group surveys indicate that special interest groups have a significant impact on EU trade policy.

Two studies provide insights into the role of interest groups in *bilateral* agreements. Dür (2007) argues that the EU's agreements with Mexico (2000) and Chile (2001) were responses to the lobbying of exporters who faced reduced market access due to Free Trade Agreements (FTAs) these countries had with the US. Coen and Grant (2005) look at the Transatlantic Business Dialogue which provides a framework for cooperation between transatlantic business, the EU and the US. It is an informal process through which US- and EU-based companies and business groups can make joint EU-US trade policy recommendations. The authors find that governments are "increasingly dependent on large firms for (…) information and (…) willing to *delegate public decision-making to private business forums*" (p. 64, emphasis added). This finding is especially relevant here because if governments had purposefully insulated themselves from special interest groups, then why would they be willing to delegate some competences *back* to those groups?

The volume edited by Aggarwal and Fogarty (2004) provides a broad selection of empirical case studies of *interregional* negotiations, e.g. with EUROMED countries, ASEAN and African, Caribbean and Pacific (ACP) countries. They test different hypotheses as to what drove those interregional agreements and find some pointers to the influence of interest groups. They conclude that "over all there is little evidence *against* a pluralist hypothesis: strong interest group support is correlated with the rise of interregional regimes in our case and the decline of this (…) positive support (…) with their failure to move forward (p. 226, original emphasis)".[14] They do not see interest groups as the sole factor in driving interregional agreements, but as one important fac-

[14] A pluralist hypothesis assumes that government preferences are determined by way of competition between different interest groups.

tor. The collusive delegation argument, in contrast, would expect interest group support to be negligible.

Several case studies find significant influence of special interest groups in various *multilateral* agreements and negotiations in the framework of the WTO. For the case of the Uruguay Round, von Schöppenthau (1999: 65-76, 110) finds by conceptualizing the negotiations as a two level game that German and French special interest groups had an important role in national preference formation and that the textile and clothing industry was particularly influential at the EU-level. His findings thus contradict those of Lütticken (2007) and Cowles (2001). Dür (2008) shows that the EU's position in the Kennedy (1964-1967) and Doha (2001-ongoing) Rounds closely correlated with those of economic interest groups and concludes that this is probably due to lobby influence. Van den Hoven (2002) comes to the same conclusion regarding the Doha WTO Ministerial Conference. These findings strongly challenge the collusive delegation argument, as Woolcock (2005: 244) argues that the relative insulation of trade policy should be greatest in multilateral negotiations.

Finally, some surveys of interest groups involved in EU trade policy (Beyers 2002; De Bièvre/Dür 2007; Mohr et al. 2005) come to the conclusion that interest groups spend considerable time and effort lobbying at the national and EU levels. While economic interest groups perceive their activities to have a significant impact on trade policy, this is less so for environmental and development groups (De Bièvre/Dür 2007). Similarly, Mohr et al. (2005: 20f) find that decision-makers in EU trade policy judge the strategies of business groups to have an impact on EU trade policy. Specifically, they see those strategies as more effective than the strategies of civil society groups.

The problem with perceptions of influence is that they do not constitute proof. The findings cited above are revealing, though, because interest groups are usually very quick to complain if they feel excluded, so they have little incentive to overstate the influence they have. The same goes for decision-makers who – if anything – could be expected to understate the influence of special interest groups, whose insider lobbying might decrease democratic legitimacy. Therefore, the survey findings summarized above *indicate* that special interest groups have a relevant influence on trade policy, but do not prove anything.

In sum, empirical support for the collusive delegation argument seems tenuous at best, as the studies that support it do so very cautiously, rely on dubious methods, or are not able to point out issues where EU decision-makers overruled interest groups. At the same time, several case studies make a strong case for the influence of special interests on trade policy in multilateral, interregional and bilateral trade agreements. The next section aims to explain why the collusive delegation argument does not adequately match the empirical evidence.

4. Why trade is not insulated (in practice)

The easiest way to find out how influential interest groups are within EU would be to measure the influence they had on a given trade policy outcome. This is notoriously difficult, however, and the available methods all have important shortcomings (Dür 2008c). I will offer a more cautious argument instead. First, I outline the "multiple access points" (Pollack 1997) the EU polity offers for interest groups. In a second step, I will argue that the relevant decision-makers in the Commission and the Council both have incentives to respond to interest groups' demands, because these possess valuable resources.[15] Finally, I will see if collusive delegation really works as it is portrayed by drawing out some implications for its causal mechanisms, which were identified in section 2.

4.1. Access to the EU polity

This section looks at where and how interest groups can access EU trade policymaking. I follow Pollack (1997) in arguing that the EU creates "multiple access points" for interest groups, providing them with opportunities they would not have in a purely national setting. He focuses on diffuse interests, but the general argument should be just as valid for concentrated interests.[16] Access in the EU is regulated through a mix of formal and informal rules. Where possible, I point out the relevant foundations in the

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15 While analytically distinct, interest groups' resources and access are highly enmeshed in practice.

16 I would argue that Pollack's (1997) finding that the EU offers increased access for diffuse interests is due to a selection bias, as he only examines environment, women's rights and consumer protection policies. These policies are designed to protect those diffuse interests. This is different for trade policy, which is designed to ensure European competitiveness, i.e. for concentrated interests.

Treaties or in secondary EU law. I also try to show how access varies according to the type of trade policy instrument used (trade agreement or unilateral measure) and the phases in the political life of a trade agreement (initiation, negotiation and ratification).[17] I will first outline the general composition of interest groups who try to influence trade policy. Then, I will examine the three main access points for interest groups in this field: the Council, the Commission and the European Court of Justice (ECJ).[18]

Relevant interest groups

The interest groups that lobby to influence trade policy can be roughly placed in three groups: Concentrated import-competing interests, concentrated export-competing interests and diffuse interests. *Concentrated import-competing interests* face concentrated benefits and costs from trade policy. Because they are competing with imports from third countries, they are in favor of protectionism, i.e. keeping rival products out. In the case of the EU, these are usually farmers, the textiles industry, audiovisual services and steel producers.[19] *Concentrated export-competing interests*, on the other hand, are globally competitive industries, that benefit from market access in third countries. Too much protectionism is damaging for these groups as it reduces the EU's capacity to push for concessions in international trade negotiations. They are thus in favor of liberalization. Examples include much of European industry, financial services providers, etc. *Diffuse interests* in the case of trade policy are development and environment NGOs as well as consumers.

Interest groups have adapted to the changes brought about by European integration and have formed EU level interest groups beside the already existing national interest groups.[20] EU-wide business groups are also called Eurogroups. While those groups

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17 See Woolcock (2000) for a discussion of these phases. On the distinction between different types of measures see Fritz (2004: 63-70).

18 The European Parliament is left out as it can only influence trade policy decisions if a broader association agreement with trade commitments is negotiated. Even then, it cannot change the proposal under the assent procedure, which only requires a simple majority in the Parliament.

19 Some import-competing interests want both: market access abroad and protection at home. Agriculture is an example. As the EU's Common Agricultural Policy increases production and subsidizes exports, market access is also relevant for these interests. I still classify such groups as generally protectionist because protection at home is the prerequisite for benefiting from foreign market access for these groups, as they depend on protection to ensure competitiveness.

20 Nugent (2006: 336) puts it succinctly: "Pressure groups go where power goes."

generally lobby at the EU level, national interest groups concentrate on the national level.[21]

Diffuse groups are viewed as far less influential than the other two groups (De Bièvre/Dür 2007; Kröger 2008: 25; Woolcock 2005: 244). This may be because trade policy is structurally biased in favor of concentrated interest groups as it confers concentrated costs and benefits on organized groups while diffuse costs and benefits accrue to the rest of society (Frieden/Rogowski 1996).[22]

Note that this classification differs from the starting point of the collusive delegation argument in one important respect. The collusive delegation argument leaves export-competing interests out of the picture by assuming that the interests of concentrated import-competing interest groups clash with those of consumers. In the perspective adopted here, import-competing interests clash mainly with export-competing interests.[23] The demands that politicians face from interest groups are thus heterogeneous, while the collusive delegation argument sees a relatively homogeneous interest constellation that is biased towards protectionism.[24]

The Council, the committees and the member states

Trade policy is usually handled by the General Affairs Council of the EU, i.e. by the foreign ministers of the 27 member states. One important exception is the EU's position on trade in agricultural goods which is effectively determined by the Council of agriculture ministers. Ultimate control over much of EU trade policymaking resides in the Council which is generally closed to interest groups (Matyja 2007: 161; Richardson 2006: 262). The Council retains tight control over the Commission's competences. A number of specialized committees, most importantly the Permanent Representatives' Committee (COREPER) and the Art.133-Committee, oversee the Commission's actions and report to the Council. Voting requirements in the Council are another control

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21 This is only a rule of thumb. Especially national interest groups and individual firms lobby at the EU-level as well.
22 But see Gerlach (2006) on the organizational problems that business groups face.
23 Illustratively see UNICE (1999), where the Union of Industrial and Employers' Confederations of Europe (UNICE, now Business Europe) calls for agricultural protection to be significantly scaled back.
24 The often-observed bias of trade policy towards protectionism could be explained though increased uncertainty that exporters face. While protectionist groups know what they stand to gain or lose from a policy because they want to protect their *already existing* business, exporters face uncertainty about the benefits of market access abroad (Dür 2007).

mechanism. According to Article 133 of the Nice Treaty (formerly Article 113), the Council can authorize the Commission to conduct trade negotiations and ratify negotiated agreements with a qualified majority.[25] However, since the inception of a common trade policy, unanimity voting has been the norm. This was first by design in the Treaty of Rome (1957), then continued to be so because of the Luxembourg Compromise (1966) and has largely stayed this way until today (Deutsch 1999: 55; Dür 2008a: 31; Zimmermann 2006: 162). The unanimity requirement makes sure that individual member states can veto a trade agreement at the onset of negotiations or by refusing to ratify after negotiations.[26] National interest groups can thus push their government to block a trade agreement that runs counter to their interests (Dür 2008a: 31). Consequently, member states are a focal point of lobbying efforts in EU trade policymaking.[27]

The degree as well as the nature of the access interest groups enjoy at the national level varies. As an examination of access in the 27 member states is beyond the scope of this paper, I will draw some analytical distinctions to illustrate how this access can vary.[28] Patterns of interest intermediation in EU member states are usually characterized as pluralist, corporatist or statist (Bartolini 2005: 293; Deutsch 1999: 77). *Pluralism* denotes a highly open political process, where many interest groups compete for access and representation. Access is generally possible for a large number of interest groups, but which groups gain access depends on their relative power and importance as well as on external factors. Examples include Portugal or Ireland.[29] *Corporatism* describes a more institutionalized form of interest intermediation, in which some interest groups have a monopoly of representation in a given policy area. Consequently, a smaller number of interest groups enjoy access, but the relationship between those interest groups and the state runs deeper. Examples include Germany, Denmark and the Netherlands. *Statism* means that the state is comparatively strong vis-à-vis interest groups. These groups consequently enjoy little access to policy formulation, but the access to policy implementation seems to be better (Schmidt 1999). Examples include

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25 When intellectual property rights and services are involved, unanimity is required as laid out in Art. 133 (5, 6).

26 Through the committees the Commission has to report to, the Council also has some influence during negotiations, even though the Commission is the sole representative of the EU in trade talks.

27 De Bièvre and Dür (2005) argue that this is by design as member states wanted to ensure that they would remain targets of lobbying despite delegation.

28 This is an illustration and in no way exhaustive. Furthermore, it is not directly relevant to criticize the collusive delegation argument, which focuses on the effects of institutions at the EU-level.

29 The examples for pluralism, corporatism and statism are drawn Falkner (2000: 96) and Deutsch (1999: 86). Disagreements exist on how to classify some countries. The UK and Spain, for instance are sometimes characterized as pluralist, sometimes as statist (Falkner 2000: 97).

France and Spain. These idealtypic classifications have to be handled with caution, however, as access varies across issues and interest groups (Falkner 2000: 95-97). Even though France is characterized as statist, for instance, agricultural interest groups are influential to the point of capturing the French position on agricultural trade (Keeler 1996).

In any case, good access at the national level seems to facilitate access at the EU level, as domestically strong interest groups are also stronger at the European level (Beyers 2002; Eising 2004; Kriesi et al. 2007). The reason seems to be that these groups can extend their existing policy networks to the EU level (Beyers 2002: 593).

Apart from lobbying at the national level, interest groups target the permanent representatives of member states in Brussels, who directly participate in trade policy formulation through the COREPER and where access is much easier than in the Council.

As a result, even though the Council as such is generally isolated from direct lobbying, strong indirect access channels exist via the member states and the specialized committees. This access is most useful at the initiation and ratification stages of a given trade agreement, as this is where the competences of the Council are greatest. As Hayes-Renshaw and Wallace (1997: 22) put it: “although (interest) groups have no formalized relationship with the Council, their influencing efforts pervade the atmosphere in which the Council works“.

The Commission

According to the already mentioned article 133, the Commission makes proposals on the initiation of trade negotiations and the content of those negotiations to the Council. It also conducts the negotiations and presents the negotiated agreement to the Council for ratification.

Authority in the Commission is fragmented, as different Directorate-Generals (DG) can be involved in trade negotiations (Johnson 1998: 54). While general responsibility for trade policy lies with the DG Trade, the DGs Competition and Internal Market can become involved as well. The DG Agriculture is especially influential and is usually seated at the negotiating table in WTO-negotiations. By essentially outsourcing trade in agricultural goods to this specialized agent, the impact the protectionist farmers' lobby can have on policy decisions has been amplified (De Bièvre/Dür 2005: 1283).

Overall, the relationship between the Commission and interest groups is very close, even "symbiotic" (Mazey/Richardson 2003: 218). Broadly speaking, the Commission offers access to interest groups in two ways: (1) through large, open gatherings and (2) through more restrictive committees, forums and a "myriad of bilateral meetings" (Mazey/Richardson 2006: 255).

In trade policy the first way is through regular consultations in the Trade Civil Society Dialogue.[30] It is generally directed at civil society groups, whose absence in trade policymaking has long been criticized, but business groups participate, too. While these groups can voice their opinions in this forum, this is not seen to have a significant impact by researchers (Woolcock 2005: 244) and indeed by the participants themselves (Corporate Europe Observatory 2009).

The second access route is more restrictive, but also more promising, as the actual content of policies can be influenced (Mazey/Richardson 2006: 255). In a variety of fora, business groups can voice their concerns, while civil society groups enjoy little to no access. For example, high-level contacts between representatives of Eurogroups and Commission officials are frequent (Nugent 2006: 343) and the Commission actively engages in building networks with those groups (Benington/Harvey 1998). Furthermore, trade policymaking usually engenders a plethora of advisory committees, working parties and expert committees on specific issues, where business interests enjoy excellent access (Johnson 1998: 20f). What is more, the Commission sometimes carries out extensive business surveys, where business groups can voice their concerns before trade negotiations are started (Dür 2008a: 39). The EU's position in a given bilateral, regional or multilateral negotiation is thus drawn up in close consultation with special interest groups. This can lead to situations, where "companies and the Commission present the member states with a negotiating strategy 'pre-approved' by European industry" (Cowles 2001: 171).

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30 See http://trade.ec.europa.eu/civilsoc/csd_proc.cfm. In some instances, open consultations are also launched for specific trade negotiations (Dür 2008a: 39).

This access is most relevant in the initiation phase, where the Commission has the greatest competences. Some access exists during negotiations, as the Commission maintains close informal contact with business groups, but since the negotiating mandate is given by the Council in the initiation phase, the general direction of the negotiations cannot be altered anymore. Access during ratification is less relevant, because this competence is in the hands of the Council.

So far, this analysis has focused only on trade agreements, where the Commission has important competences, but is secondary to the Council. It is a different story for unilateral trade measures, where the Commission has far greater powers. One example of such a measure are anti-dumping duties which can be unilaterally levied by the EU against foreign producers if "dumping", i.e. predatory pricing, is perceived to have taken place. As the other available unilateral trade measures, this is a protectionist instrument and thus mainly appeals to import-competing interests.[31]

Import-competing interest groups or individual businesses can complain about dumping on the part of foreign producers to the Commission's Anti-Dumping Unit in order to have protectionist anti-dumping duties approved. The legal basis for this is the EC Regulation 2423/88. The Commission can impose provisionary anti-dumping duties alone, but definitive anti-dumping duties have to be approved through a vote in the Council.[32] This approval threshold was lowered from QMV to a simple majority in the Council in 1994 (EC Regulation 3283/94). In the same year, anti-dumping duties were made more effective by including an additional duty for cases in which the foreign exporter tries to bear the cost of dumping himself and does not increase the price on the EU market (EC Regulation 3283/94). Interest groups are almost always the initiator of anti-dumping proceedings (Deutsch 1999: 54). Furthermore, the provisions are formulated in such a way that "it is generally not too difficult to find dumping" (Woolcock 2005: 242).[33] In 1994 consumers and processing industry[34] were given a voice in these proceeding for the first time, but this has not done much to reduce the strong influence

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31 The following discussion focuses on anti-dumping duties, as it is the most commonly used unilateral trade measure of the EU (Fritz 2004: 66f). Other available measures are anti-subsidy measures, which are directed at foreign countries, not producers, and safeguard measures. For a discussion of those instruments, see Fritz (2004: 63-70).

32 Provisionary anti-dumping duties are imposed for 6 months.

33 Note that Woolcock, who is a proponent of collusive delegation, does not dispute the strong influence that special interest groups have over unilateral trade measures.

34 Processing industry relies on intermediary goods from third states, so anti-dumping duties can be damaging to them as they might raise the price of those goods.

of import-competing interest groups. The Commission also has authority to negotiate voluntary export restraints with third countries in place of anti-dumping duties (Fritz 2004: 68).

A similar access point exists for export-competing interests. The Trade Barriers Regulation Unit and the Market Access Unit of the Commission process export-competing industries' complaints on market access problems in trade in goods, services, or in the application of intellectual property rules. If necessary, the Commission is to process them into a WTO dispute settlement case (EC Regulation 3286/94).[35] Thus, the Commission is entrusted to service import-competing *and* export-competing interests with what they value most: protection at home and market access abroad, respectively.

The European Court of Justice

When interest groups do not gain satisfaction at the national level, the Council or the Commission, the ECJ comes into play.[36] Here, interest groups can pursue a litigation strategy which is costly but can overturn EU policies (Mazey/Richardson 2006: 261). Basically, interest groups can challenge community decisions in two ways: (1) through actions for annulment on the basis of Article 230 EC and (2) through actions for failure to act on the basis of Article 232 EC (Farr 1998: 93).

Through an action for annulment, a direct challenge can be made against a Community measure which is claimed to be illegal. Article 230 is couched in such a way that a private complainant, i.e. a natural or legal person, has to prove that he is *directly affected* by a measure before an action can be brought. In practice, this means that private complainants generally cannot overturn international trade agreements (Arnull 2006: 56f). Judicial review by private complainants is thus limited to unilateral trade measures. The formulation of Article 230 also means that concentrated interests have better access to this mechanism, as they have an easier time proving a direct effect to their business resulting from a given regulation, for example. Diffuse interests like consumer organizations or environment groups usually cannot even bring such cases before the

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35 The Commission cites several "success stories", where market access was gained on behalf of European companies due to a WTO-ruling http://ec.europa.eu/trade/issues/respectrules/tbr/index_en.htm.

36 In 1994, the Council transferred the appeals procedures for private complainants to the Court of First Instance. The Court of First Instance has been created in 1989 to reduce the enormous workload of the ECJ. If a case cannot be resolved there, it is transferred to the ECJ.

Court where trade measures are concerned (Arnull 2006: 74-78; Farr 1998: 97f).[37] To cite two examples, individual companies or business groups can bring a case when the Council decides not to transform a provisionary anti-dumping duty into a definitive one, or processing industry dependent on intermediary products from third countries can bring a case against definitive anti-dumping duties that make these products more expensive.

An action for failure to act provides a remedy when EU Institutions fail to act where they are obliged to do so under the Treaties. In the context of trade policy, this means that a complainant can bring such an action if the Commission refuses to open an anti-dumping or a market access investigation. It should be emphasized that the legal pathway is distinct from lobbying and that the privileged access special interest groups enjoy here is not a result of their capacity for collective action but rather of the procedural requirements of the ECJ.

Summary

Mazey and Richardson (2006: 251) posit that "(the EU) is incredibly open and permeable to interest group lobbying compared with even the more pluralistic member states". As the above has shown, there is no reason to believe that this should be different for trade policy. Table 1 summarizes the different access points for *special* interests. What is maybe most remarkable in trade policy is that member states as principals have delegated trade policymaking authority to a number of specialized agents within the Commission. Some of those agents are designed to service export-competing interests (DG Trade, Market Access and Trade Barriers Regulation Units), others to service import-competing interests (DG Agriculture and Anti-Dumping Unit). Access is merely a necessary condition for influence, however, and not a sufficient one. In the following section, I will examine the incentives of decision-makers at the national and EU levels to respond to the demands of interest groups, i.e. provide them with *influence* on actual policy content.

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[37] The ECJ has not always been open for private complainants. The first case in which a company was heard in an anti-dumping case was in 1979. Since then, legal battles have been fought throughout the 1980s and 1990s over the exact conditions under which private parties are able to contest EU regulations (Arnull 2006: 74-81).

Table 1: Access points for special interests

	Council	Commission	ECJ
Trade agreements	Indirect access via member states and committees	Direct access via open fora and informal meetings	No access
Unilateral trade measures	Indirect access to imposition of definitive measures via member states and committees	Direct access to initiation of provisionary measures through complaints	• Litigation through action for annulment if Council does not approve definitive measures or to overturn existing unilateral measures • Litigation through action for failure to act if Commission refuses to initiate investigations
Foreign market access	No access	Direct access to initiation of market access investigations through complaints, possibility to have case transferred to WTO dispute settlement	Litigation trough action for failure to act if Commission refuses to initiate market access investigations

Source: Table by author

4.2. The incentives of decision-makers to conform to the demands interest groups

Here, I depart further from the collusive delegation argument. I lay the groundwork by offering a competing account of how the preferences of decision-makers are formed and then go on to conceptualize public-private relations in the Council and the Commission as a resource exchange between rational actors in which special interest groups enjoy a privileged position. I close by outlining some conditions under which this can translate into influence on policy outcomes.

Preferences in a resource exchange perspective

The collusive delegation argument assumes that politicians delegated trade policy because they had consistently more liberal preferences than their constituencies. According to the collusive delegation argument, protectionist interests exerted a lot of influence before delegation of trade policy because politicians followed a short-term logic.[38] If politicians had sought to maximize welfare in the long term, collusive delegation would not have been necessary, since politicians would automatically have implemented liberal policies. But if politicians only worried about short-term gains, then why would they have had incentives to insulate themselves from special interest groups in the first place? The collusive delegation argument posits that decision-makers in the EU collectively learned to follow a long-term (liberal) logic "with the memory of the international consequences American protectionism still fresh in their minds" (Meunier 2005: 9). This seems implausible, however, if we look at how many access points for protectionist interests the same decision-makers designed into the EU polity. Irrespective of the positions of such prominent figures as Jean Monnet and Paul-Henri Spaak, it is not obvious why politicians should have a clear preference for liberal policies, *independent* of their constituencies' demands (De Bièvre/Dür 2005: 1291).[39]

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38 This assumption is very widespread in the political economy literature, where politics is often characterized as a "political market", where politicians offer electoral programs (goods) to voters, who "buy" those with their votes. Accordingly, politicians' incentives are heavily biased towards the short term – they don't see further than their electoral horizon.

39 Frey and Buhofer (1986) even argue that it can be in the self-interest of an agent to be more protectionist than his constituency.

This becomes clear when we look at lobbying as a rational exchange of resources between public and private actors.[40] In this view, preferences of decision-makers are influenced by the demands voiced by their constituencies. Special interest groups are in a privileged position to be heard as they offer valuable resources to public actors at the national and EU levels, such as information, political support and financial contributions (De Bièvre/Dür 2005: 1275). Bouwen (2002) calls those resources “access goods”, as public actors reward the provision of those goods with access to political institutions. Because public actors are dependent on the resources that interest groups provide, they have incentives to respond to the demands of these groups. Decision-makers in the Council and the Commission, the most relevant bodies in EU trade policymaking, rely on interest groups in different ways.

Public-private resource exchange in the Council and the Commission

The Council consists of the representatives of nationally elected governments and thus has political interests. Politicians can be dependent on the three resources mentioned above which are mainly supplied by national interest groups. As politicians face uncertainty about election results, they want to secure re-election. Accordingly, they have incentives to satisfy the demands of interest groups so as to avoid organized opposition to them or the organized support of a competing candidate. In trade policy, interest groups are in a privileged position to provide the relevant resources (De Bièvre/Dür 2005: 1279). They can lend *political support* to candidates, thereby indirectly increasing their chances of electoral success.[41] Farmer organizations, for example, very clearly possess electoral significance (Nugent 2006: 346), but other economic interest groups do so as well (De Bièvre/Dür 2005). Concentrated interest groups possess structural power as the investment decisions they make have a direct influence on a given member state’s economy. The jobs they provide are a particularly relevant expression of this power, as it can be very damaging for politicians if they are portrayed as having caused a sector of the economy or an individual company to cut back on employment. *Financial contributions* can also play a role, although probably less so than in the US, where election candidates are heavily dependent on private contributions to run their cam-

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[40] A recent application of the exchange approach to the EU can be found in Bouwen (2002, 2004).

[41] This support is indirect because economic interest groups, being concentrated interests, do not represent a majority of voters. Direct support through voting alone is thus not likely to significantly impact election results.

paigns. *Information* about domestic economic interests, finally, also seems important as economic interest groups are in a better position to monitor their gains and losses than national governments. To the extent that this information can be relevant for electoral outcomes and domestic policy, this might play a role as well.

The picture is different for the Commission which pursues bureaucratic interests. It is electorally and financially independent from interest groups which rules out political support and financial contributions, but leaves two kinds of *information* resources on which the Commission is dependent: expert knowledge and information about European economic interests which are mainly supplied by Eurogroups. As the Commission is characterized by an "extensive policy agenda and limited policy resources" (McLaughlin et al. 1993: 201), it needs expert knowledge from economic interest groups to offset those limited resources. "This technical information is indispensable in developing effective EU legislation" (Bouwen 2002: 8). Furthermore, as the Council keeps the Commission on a short leash through its various control mechanisms, the Commission has to anticipate positions in the Council. This is a lot easier with the support of Eurogroups, who can supply information about the aggregated interests of the European private sector. In this way, the Commission gains an edge in negotiations with the Council, who does not possess this information.

Diffuse interests cannot provide the access goods that are demanded by decision-makers and thus have markedly less access to and influence over trade policy (Dür 2008b; Woolcock 2005: 242). This is reflected in their choice of strategy as well. While business groups prefer to work through their informal networks with national and EU institutions, civil society groups generally direct their activities at the general public (Mohr et al. 2005: 13f).[42]

To sum it up, the members of the Council are dependent on the resources of national interest groups to secure re-election, while the Commission is dependent on the resources of Eurogroups to design effective policies and increase its power relative to the Council.

[42] According to a survey of decision makers, network strategies are seen as much more effective than publicity strategies. NGOs cannot use these strategies, as a prerequisite is access (Mohr et al. 2005: 20f).

Does this exchange lead to influence?

If we now assume that special interest groups will sanction decision-makers whose policies run counter to their interests, we can expect decision-makers to give in to the demands of those groups to secure the resources they provide – at least to a certain degree.[43] Blame-shirking would offer a way to reap the benefits of engaging special interest groups without giving them influence over policy content, but possibilities for this seem limited, as I will argue in section 4.3. Anyways, the empirical record as laid out in section 3 strongly suggests that special interest groups were indeed successful in translating access into influence in a broad range of cases.

4.3. What this means for the collusive delegation argument

Decision-makers' incentives and the access interest groups enjoy cast doubt on whether the mechanisms that are supposed to insulate trade policymaking really work as is argued.

Information asymmetries can go both ways, for example, because national governments and the Commission are dependent on informational resources provided by lobby groups. While the Commission and the member states do possess important information that interest groups do not have, the reverse is also true. Furthermore, concentrated interests can be expected to overcome the information asymmetries more easily than diffuse interests, and have advantages over diffuse interests because of the insider information they gain through their privileged access in the EU-polity (Beyers 2004: 588). This should increase the impact of concentrated interests relative to diffuse interests. Moreover, information asymmetries in favor of EU institutions can even enhance the influence of special interest groups. If a decision-maker's ability to implement policies that benefit concentrated interests at the expense of the general public is hampered by electoral scrutiny, information asymmetries (i.e. intransparency) can make it easier to give in to interest groups' demands (Dür 2008a: 31).

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[43] Note, though, that it could be argued that interest groups might be content to have access without any real influence, as this would put them in a privileged position to monitor policy developments and give them an informational advantage.

Deutsch (1999: 61) makes a similar point for *blame-shirking*. According to him, reputational constraints for decision-makers are less severe at the EU-level, as public scrutiny there is reduced. For this reason, delegation of trade policy enables national politicians to blame the EU for protectionist policies. Whereas proponents of collusive delegation argue that blame-shirking enables politicians to pursue liberal policies, Deutsch argues that it enables them to pursue protectionist ones. Overall, the latter argument seems more plausible as blame-shirking should be more effective if directed at the general public than if directed at interest groups, because those can monitor more effectively where ultimate responsibility for a decision lies due to the access they enjoy. What is more, possibilities for repeated blame-shirking are limited as interest groups can be expected to learn from policies that do not serve them well (De Bièvre/Dür 2005: 1276).

The notion of the Commission as a consistently liberal preference outlier due to its *enlarged constituency* can likewise be challenged, as the Commission is internally divided on many issues. This division can appear along national lines, with Commissioners taking “their” country’s position which may be more protectionist or more liberal (Dür 2007: 834). A second division can appear between the different DGs which can be involved in trade negotiations (Damro 2007: 899). Particularly the DG Agriculture tends more towards protectionism. Moreover, as has been shown above, the Commission has clear incentives to engage interest groups which challenges this mechanism when the interest group in question has protectionist preferences.

Finally, seeing the Commission as shielded from lobby influences because it is *financially and electorally independent* from interest groups does not capture the whole truth, as the Commission strongly relies on informational resources these groups offer.

5. Conclusion

This paper has tried to make the case that special interest groups have a significant influence on EU trade policy. Specifically, it has criticized the view that trade policy was shielded from special interests by delegating authority to the EU level, also known as the collusive delegation argument. It has shown that there is little in the empirical literature to support this argument which does not prove, however, that interest groups have an influence over EU trade policy. Instead, I argue that in light of the finding of the last section that special interest groups enjoy excellent access to decision-makers who have strong incentives to comply with their demands, the most likely explanation for the many outcomes cited in section 3 in which close correlations between the positions of the EU and special interest groups were observed is that these groups were able to exert significant influence. The alternative would be luck which is highly improbable. Finally, I have tried to clarify why the collusive delegation argument is little helpful in explaining trade policy outcomes by criticizing the causal mechanisms that proponents of the argument identify.

I want to emphasize one final point here. It seems to me that the shortcomings of the collusive delegation argument stem from a misconception of the interest constellation in trade policy. Without taking into view both export-competing and import-competing interests, we cannot understand why EU trade liberalization is so selective, keeping sectors such as agriculture and textiles protected, while pushing for market opening in others like financial services and high-tech goods. Practices like tariff escalation and various protectionist instruments like anti-dumping duties also seem at odds with the collusive delegation argument, as all this, according to economic theory, is not in the interest of European consumers, because it keeps out cheaper goods from third countries. The picture we see is one of highly selective liberalization that closely mirrors the EU's offensive and defensive trade interests.

The most likely explanation for this pattern seems to be that export-competing interests lobbied for liberalization as Europe's industry developed into a world leader after World War II, while import-competing interest groups successfully managed to keep some issues of particular importance to them off the agenda. In this interpretation, the EU's push for liberalization in many areas only coincided with consumer interests without the EU actively pursuing these interests.

This means that decision-makers were faced with increasingly heterogeneous demands as stronger export-competing interests came into the picture (De Bièvre/Dür 2005: 1291). In this context, the purpose of delegation of trade policy authority to the EU can be interpreted in a manner that is radically different from collusive delegation: Decision-makers delegated not because they sought to insulate themselves from lobbying, but to be better able to service liberal and protectionist interest groups *at the* *same time*. The fragmented authority in the Commission, with specialized protectionist and liberal agents, can be seen as an expression of this.

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