

Playing Three-Level Games in the Global Economy

Case Studies from the EU

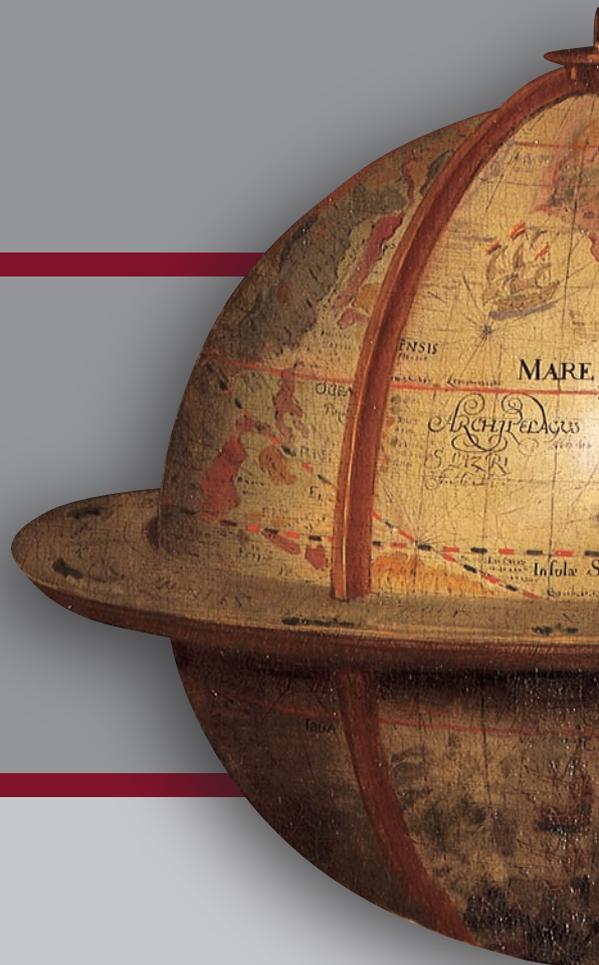
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Davide Bonvicini (ed.)

Department of EU International
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Davide Bonvicini (ed.)

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About the Authors

Davide BONVICINI (Italy) is Academic Assistant in the Department *EU International Relations and Diplomacy Studies* at the College of Europe in Bruges. He holds a BA and an MA in International and Diplomatic Sciences from the University of Bologna and an MA in EU International Relations and Diplomacy Studies from the College of Europe in Bruges (Copernicus promotion). His fields of interests are international and European political economy, trade and economic growth.

The other contributors are current students at the College of Europe in the Master's programme *EU International Relations and Diplomacy Studies* (Politkovskaya and Dink promotion):

Chrysanthos CONSTANTINOU (Cyprus) holds a Bachelor of Arts in Politics and International Relations from Royal Holloway, University of London.

Paula Irene CARELLO MOIX (Argentina/Spain) studied Law at the Catholic University of Rosario, Argentina, and is a fellow of the Spanish Agency for International Development Cooperation.

Michał GLASER (Poland) is an economist who studied at the University of Gdańsk, Poland, where he is also an MA student in political science.

Irina GUSAČENKO (Czech Republic) studied International Relations and European Studies at Charles University in Prague and Political Science at Robert Schuman University in France.

Anne-Claire MARANGONI (France) holds a *Diplôme* from the Institut d'Etudes Politiques de Strasbourg and a Master's degree in Public Administration.

Sandra KOSREMELLI (Lebanon) is a translator who graduated from the Ecole des Traducteurs et des Interprètes de Beyrouth and holds a Master's degree in International Relations from the Université Saint-Joseph, Lebanon.

Ellen Raine LEAVER (United Kingdom) holds a LLB (Hons) in English and European Laws from the Queen Mary University of London.

Alice SERAR (USA) completed her undergraduate studies in International Relations at Azusa Pacific University in Southern California and is currently a US Fulbright Scholar studying at the College.

Editorial Team:

David Bonvicini, Sieglinde Gstöhl, Yannick Hartstein, Fredrick Lee-Ohlsson, Dieter Mahncke

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

Views expressed in the *EU Diplomacy Papers* are those of the authors only and do not necessarily reflect positions of either the series editors or the College of Europe.

Abstract

The case studies in this paper are a selection of essays that have been written in the framework of the compulsory first-semester course *The EU in a Global Political Economy Context*, taught by Professor Sieglinde Gstöhl, in the academic year 2007-2008 in the *EU International Relations and Diplomacy Studies* programme at the College of Europe. They all address recent cases of two- or three-level games played by the European Union in different policy fields of the global economy (reflecting the state of affairs at the end of 2007).

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Introduction: The EU as an International Negotiator in the Global Economy

Davide Bonvicini

While it is certainly true that the European Union (EU) acts as a single actor within the World Trade Organization (WTO) based on its Common Commercial Policy, it should not be forgotten that the EU's 'single voice' is the result of intense internal negotiations, where member states have to agree on positions that are both acceptable to their own domestic constituencies and 'winning' on the international stage.

In the analysis of these processes no individual theoretical approach has a monopoly on wisdom or truth; different perspectives may, under certain circumstances, offer valuable insights. The contributions in this paper use Robert Putnam's approach of two-level games.¹ However, when he wrote his seminal article, he did not have the EU in mind: his case study was the Bonn Summit of the G7 in 1978. Those were times when the international system was characterized by a (simple) bipolar structure, and the theoretical debate was dominated by systemic theories. These theories could hardly explain international negotiations involving multiple actors at different levels, fluid coalitions, and changing national preferences. Two-level games, by contrast, open up the 'black box' of the state and focus on the interaction between various players instead of analyzing only one level or a sequence of levels.

"At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments."²

However, a mere two-level approach lacks the intermediate layer needed for an explanation of the behaviour of the EU in international negotiations. Intra-EU negotiations and compromises take place before the Union 'goes global', and these involve a pyramid of interests ranging from the private sector over domestic politics up to the 'European interest' distilled in the Council of Ministers. In order to reach an international agreement, the 'win-sets' of both sides (that is, all possible agreements that would be ratified in terms of gaining the necessary domestic support) must overlap.

This paper offers intriguing insights on the EU's foreign economic relations, both within and outside of the WTO, as interpreted through a multi-level game approach. The eight case studies provide original analyses of some of the 'hot' issues currently on the table by applying and expanding, but also criticizing Putnam's approach. The contributions first address the EU's bilateral trade relations through the examples of the free trade agreements being negotiated with South Korea and MERCOSUR.

¹ R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

² *Ibid.*, p. 434.

Compared to the 'classical' case of negotiations with a single country, bloc-to-bloc negotiations between two regions increase the analytical and political complexity by adding another level also for the EU's partner. Both sides' win-sets tend to be narrow since they are already the result of intergovernmental negotiations. The paper then explores more in detail the conduct of the EU in three different, highly sensitive issue areas beyond trade: civil aviation, biosafety and energy. These are interesting cases where deep differences in interests, traditions and visions among EU member states may result in tensions at the European level, provoking deadlocks in international negotiations. They are located in different settings: on the one hand bilateral negotiations with other great powers, the United States and Russia respectively, and on the other hand a multilateral context. Finally, the paper turns to three different trade disputes, partly relating to the WTO: the EU's 'textiles war' with China, the transatlantic struggle between Airbus and Boeing regarding subsidies, and an antidumping case concerning fish exports from a small third country – a unilateral trade defence measure against Norway.

Three conclusions can be drawn from the findings. First, the two-level game approach – and its adaptation to three-level games in the case of the EU – is a useful tool to study the EU's policy in the global economy. Second, the approach nevertheless suffers from some shortcomings: for example, the focus on vertical interaction underestimates the sometimes significant presence of horizontal interaction between 'issue-systems' (such as between trade, agricultural and foreign policy and the respective Commission directorates). Moreover, multi-level games limit the parsimony of the approach and the generalizability of the findings, providing rather *ad hoc* explanations.

Third, with regard to the WTO, which is essentially a member state-driven organization, deep regional integration is a powerful tool to gain bargaining leverage *vis-à-vis* other major players, a leverage that would not be available if European member states 'played it alone' in world trade. Yet, when the WTO's system of rules is no longer considered the appropriate forum for regulating trade relations and solving disputes, its members – including the EU – have shown an inclination to settle their conflicts outside its framework. Why and under what conditions this occurs, and what its likely consequences will be, are relevant issues that further studies may wish to address. Future research is also required to investigate the multifaceted role of the EU as a negotiator on the international level. The approach of three-level games offers one promising stand to tackle these questions.

Encountering Unexpected Difficulties: The EU-Korea FTA Negotiations

Chrysanthos Constantinou

Following authorisation by the Council of Ministers in April 2007, the European Commission has embarked on negotiating a Free Trade Agreement (FTA) on behalf of the European Union (EU) with the Republic of Korea.¹ This FTA is part of the Global Europe strategy set up, inter alia, “to boost the EU’s presence in growing emerging markets”.² It is an especially important agreement for the EU since Korea is “the EU’s fourth largest non-European trade partner”,³ and a Korean priority since it is expected to constitute Korea as “a bridge for investment in North-East Asia”.⁴ At the same time, Korea faces difficulties in finalising an FTA with the United States.⁵ Paradoxically, the negotiations between the EU and Korea, which started with great optimism from both sides, are encountering “unexpected difficulties”,⁶ with Korea employing a “defensive approach”.⁷

This essay uses Putnam’s two-level game framework to analyse the progress of the EU-Korea FTA negotiations.⁸ For this purpose, the approach needs to be adapted into a three-level game with the international level, the EU level and the level of the EU member states. In addition, the essay embarks on a brief investigation of the future prospects of the negotiations and asserts that, given the substantial overlap of both the win-sets of the EU and Korea, negotiations between the two are not likely to fail. Finally, certain weaknesses of the theoretical approach are identified.

As conceived by Putnam, “the politics of many international negotiations can usefully be conceived as two-level games” played simultaneously, with Levels I and II corresponding to the international and domestic levels respectively.⁹ The main appeal around the above “metaphor is that it furnishes a way of linking domestic politics and international relations”.¹⁰

¹ “Korea”, *European Commission*, ec.europa.eu/trade/issues/bilateral/countries/korea/index_en.htm (15 November 2007).

² European Union, “Press Release: EU and Korean Negotiators Hold Third Round of FTA Negotiations”, IP/07/1343, Brussels, 17 September 2007, p. 1.

³ “Korea”, *op.cit.*

⁴ “EU and Korea – Major Economic Partners”, *European Commission*, ec.europa.eu/external_relations/south_korea/intro/eco_trade_relat.htm (15 November 2007).

⁵ A. Fifield, “US, South Korea Struggle to Reach Trade Pact”, *Financial Times*, 1 April 2007.

⁶ A. Fifield, “Cars and Food Hold up South Korea-EU Pact”, *Financial Times*, 15 October 2007.

⁷ “FTA Talks with EU Fail to Reach Breakthrough”, *The European Union Chamber of Commerce in Korea*, www.eucck.org/site/news/government_news.htm?mode=view&num=4069&page=1&pCate2=&pPart=&pKeyword= (15 November 2007).

⁸ R. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-level Games”, *International Organization*, vol. 42, no. 3, 1988, p. 434.

⁹ *Ibid.*

¹⁰ A. Young, “What Game? By Which Rules? Adaptation and Flexibility in the EC’s Foreign Economic Policy”, in M. Knodt & S. Princen (eds.), *Understanding the European Union’s External Relations*, London, Routledge, 2003, p. 68.

Analysing the European Union's Win-set

The EU's win-set, which refers to "all the possible negotiating outcomes that are acceptable to the domestic constituencies"¹¹ – hence both the member states and the EU institutions –, has been extensive. The distribution of power among Level II (EU) and Level III (EU member states) and their preferences play a role of enhancing the EU's win-set.¹² Both levels expressed their strong affirmation of strengthening the partnership between the EU and Korea already in 2006 following the EU-Korea Helsinki Summit.¹³

The importance of the Union's relationship with Korea cannot be understated, given that bilateral trade between the EU and Korea reached 61 billion euro in 2006 and that the EU accounts for 45% of total foreign direct investment in Korea.¹⁴ Korea has a trade surplus with the EU of 16 billion dollars,¹⁵ which is also attributed to Korean barriers to trade, especially with regard to services. In the words of the EU Trade Commissioner, the FTA would complement the faltering World Trade Organisation Doha Round negotiations.¹⁶ Therefore, the EU and its member states do not simply desire, but urgently need an FTA with Korea. The costs of 'no agreement' for the European Union are high, thereby greatly enlarging its win-set. An FTA would provide the Union with significant economic benefits according to an independent study,¹⁷ and would allow for the trading power EU to boost its exports to Korea by 47.8%.¹⁸

An FTA is likely to satisfy many sectoral groups and centres of power within the Union. Among others, EU exporters will benefit, including businesses and services-oriented economies such as the UK and nations with an important farming sector like France, which have an interest in worldwide geographic indicator protection.¹⁹ An FTA is also likely to have positive political effects for Europe given the geo-strategic position of Korea and its activities on the world stage, such as its involvement in Iraq. Finally, the EU has a great stake in the FTA as it cannot "afford to sit on the sidelines while other countries gained competitive advantages from bilateral deals"²⁰ with Korea.

¹¹ M. Larsén Frennhoff, "Principal-Agent Analysis with One Agent and Two Principals: European Union Trade Negotiations with South Africa", *Politics & Policy*, vol. 35, no. 3, 2007, p. 859.

¹² Putnam, *op.cit.*, p. 442.

¹³ Council of the European Union, "EU-Republic of Korea Summit Joint Statement", 12643/06 (Presse 250), Brussels, 11 September 2006, p. 1.

¹⁴ "Korea", *op.cit.*

¹⁵ T. Pauken, "Korea-EU FTA Promoted at Luncheon", *Bilaterals.org*, www.bilaterals.org/article.php?id_article=5202 (15 November 2007).

¹⁶ S. Jung-a, "South Korea to Start Trade Pact Talks with EU", *Financial Times*, 7 May 2007.

¹⁷ J. François & Copenhagen Economics, *Economic Impact of a Potential Free Trade Agreement between the European Union and South Korea*, Brussels, 2007, p. 50.

¹⁸ European Union, "Press Release: European Commission Welcomes Adoption of Negotiating Mandates for New Free Trade Agreements with India, Korea and ASEAN", IP/07/540, Brussels, 23 April 2007, p. 1.

¹⁹ K. Deuk-Kab, "Geographic Indications Surfacing as Obstacle to Korea-EU FTA Talks", *The Korea Times*, 29 July 2007, p. 1.

²⁰ S. Fleming, "EU Seeks to Complete Trade Deals within Two Years", *European Voice*, 30 November 2006, p. 1.

Level II and III institutions – which through their ratification powers play an important role for the win-set's size²¹ – are expanding the Union's win-set even further. Of particular importance is the fact that the FTA with Korea is not likely to include political areas of cooperation – implying a very limited role for the European Parliament²², which in turn implies a bigger win-set for the Union. It should also be added that the strategies of Level I negotiators cause the Union's win-set to increase, especially following the Commission's ambitious offer of 100% tariff-free market access for Korean exporters – a first in bilateral trade negotiations.²³ This offer may, however, be a strategy of reverberation targeted on expanding the win-set of the Korean negotiators.

Analysing Korea's Win-set

The Korean win-set has also been relatively large as the FTA is expected to have a positive impact on Korea's stagnating economy, in view of the fact that the EU is "Korea's second largest exports destination".²⁴ The Organisation for Economic Cooperation and Development has stated that many of Korea's structural "problems could be alleviated through greater integration into the world economy"²⁵ and Korea's trade minister himself referred to the FTA as "a matter of survival"²⁶ for Korea.

Nevertheless, the Korean win-set remains smaller than the Union's. Possible reasons behind this can be the fact that even in the absence of an FTA, Korean export growth constantly breaks new records and that the President faces weak support in the parliament²⁷ and therefore may find it difficult to ratify an agreement that is harsh on Korea. The parliamentary opposition and the formation of 270 civic groups fighting against Korea's ratification of the negotiated FTA with the USA²⁸ are also shrinking the Korean win-set regarding negotiations with the EU.

Prospects of the FTA Negotiations

The relative discrepancy between the win-sets of the two sides serves to explain the recent events surrounding the negotiations. In contrast to the previous constructive rounds of negotiations, the fourth round in October 2007 has been concluded with

²¹ Putnam, *op.cit.*, p. 448.

²² S. Woolcock, "European Union Policy towards Free Trade Agreements", *ECIPE Working Paper*, no. 3, 2007, p. 10.

²³ European Union, "Press Release: EU and Korean Negotiators Hold Second Round of FTA Negotiations; EU Sets the Bar High with Bold 100% Tariff-free Market Access Offer", IP/07/1098, Brussels, 16 July 2007, p. 1.

²⁴ "Korea", *op.cit.*

²⁵ A. Fifield, "OECD Says South Korea Needs Structural Reform", *Financial Times*, 20 June 2007.

²⁶ "South Korea and EU Begin Trade Talks", *British Broadcasting Corporation*, news.bbc.co.uk/1/hi/business/6631187.stm (15 November 2007).

²⁷ A. Fifield & E. Callan, "US and South Korea in Landmark Trade Deal", *Financial Times*, 2 April 2007.

²⁸ A. Kim & J. Lie, "South Korea in 2006", *Asian Survey*, vol. 47, no. 1, 2007, p. 55.

the EU chief negotiator stating his disappointment about Korea's defensive approach.²⁹ Korean negotiators have been playing on the EU's perceived extensive win-set. The latter can be partially explained by the fact that the Union wished to negotiate the FTA rapidly. Korean negotiators were undoubtedly aided by events and their seemingly smaller win-set. As a result, they used their bargaining power to reject certain EU demands and "push the Union around",³⁰ simultaneously denoting to the Union the "kinky"³¹ win-set that they are facing.

Given that the respective win-sets greatly overlap, however, the costs of 'no agreement' to both sides are high,³² and therefore failure to conclude the negotiations is unlikely. The perceived win-sets may change in the course of the negotiations, especially on the side of the EU, affecting the nature of the concluded agreement. A decrease of both win-sets may result from the politicisation of the FTA negotiations, something already taking place as alliances against the FTA have been created³³ and businesses are lobbying the EU around the issue of the Kaesong industrial complex.³⁴ In addition, a more limited EU win-set, in light of the necessity for an agreement of the Council of Ministers, and the calls from the European Parliament to be given a chance for the expression of "its view on the acceptability of the negotiated text",³⁵ are likely to have the same effects and lead to Korea softening its bargaining position, as it has already done to avoid a stalemate of the negotiations.³⁶

The Limits of Putnam's Approach

It can be concluded that Putnam's two-level game metaphor, extended into a three-level game to deal with the EU, is a useful tool to analyse international negotiations. It allows for general predictions in respect to negotiations and their resulting agreements. However, it cannot provide a tool for predicting the "full picture of international bargaining",³⁷ especially under complex circumstances (e.g. the possible trade-offs between the two sides). This makes it difficult to forecast the exact outcome of the EU-Korea FTA negotiations.

²⁹ "FTA Talks with EU Fail to Reach Breakthrough", *op.cit.*

³⁰ Putnam, *op.cit.*, p. 440.

³¹ *Ibid.*, p. 453.

³² *Ibid.*, p. 442.

³³ "European and Korean Social Movements and Civil Society Unite against the Global Europe Strategy and the South Korea-EU FTA", Brussels, 19 September 2007, p. 1.

³⁴ A. Bounds & A. Fifield, "Business Warns EU on Korea Trade Deal", *Financial Times*, 15 October 2007. In the Kaesong industrial complex in North Korea, just across the demilitarised zone, more than 20'000 North Koreans are working for South Korean companies.

³⁵ European Parliament, *Draft Report on the Trade and Economic Relations with Korea*, Provisional, Brussels, 19 September 2007, p. 6.

³⁶ Putnam, *op.cit.*, p. 440.

³⁷ S. Collinson, "'Issue-Systems', 'Multi-level Games' and the Analysis of the EU's External Commercial and Associated Policies: A Research Agenda", *Journal of European Public Policy*, vol. 6, no. 2, 1999, p. 215.

The Bumpy Road to an Inter-regional Association Agreement between the EU and MERCOSUR

Paula Irene Carello Moix

Formal negotiations on an Inter-Regional Association Agreement (IAA) between the EU and MERCOSUR started in Brussels in April 2000. However, dialogue and cooperation in diverse areas between the two blocs had been increasingly strengthening since 1995, when the Spanish Presidency of the European Union (EU) was coming to an end.¹ If the IAA is signed, it would lead to the formation of the “biggest free trade area in the world and [it would be] the first trade agreement between two customs unions”.² The IAA is based on a three-pillar structure that includes “a chapter on political dialogue, a chapter on trade and economic issues (creating a bi-regional free trade area) and a chapter on co-operation”.³ The EU and MERCOSUR have already reached consensus on the first and third pillars, but “several outstanding issues still need to be resolved in relation to the trade chapter”⁴ in order to come closer to concluding the Agreement.

This essay uses Robert Putnam’s two-level game model⁵ to explain the entanglements and shortcomings of the IAA’s negotiations. By employing the concepts developed by Putnam, it aims to clarify why these two major international actors have failed to reach an agreement for such a long period of time. I argue that the major reason why progress of the IAA has been slow is the small overlap of the two parties’ win-sets on their respective trade policy areas.

Hence, I will first elucidate how the win-sets of these two parties have been shaped over the past few years, secondly I will deal with the major interests of each bloc, and thirdly I will point out how international pressures have reverberated within the domestic politics of the EU and MERCOSUR, before concluding.

¹ In December 1995, Mercosur and the EU members signed an ‘inter-regional’ framework cooperation agreement in Madrid. See A. Klom, “Mercosur and Brazil: A European Perspective”, *International Affairs*, vol. 79, no. 2, 2003, p. 353.

² M. Doctor, “Why Bother with Inter-Regionalism? Negotiations for a European Union-Mercosur Agreement”, *Journal of Common Market Studies*, vol. 45, no. 2, 2007, pp. 281-282.

³ European Commission, External Trade, Trade Issues, Bilateral Trade Relations, Mercosur, ec.europa.eu/trade/issues/bilateral/regions/mercosur/index_en.htm (14 November 2007).

⁴ *Ibid.*

⁵ R. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-level Games”, *International Organization*, vol. 42, no. 3, 1988, pp. 427-460. Extended to three levels according to S. Collinson, “‘Issue-Systems’, ‘Multi-level Games’ and the Analysis of the EU’s External Commercial and Associated Policies: A Research Agenda”, *Journal of European Public Policy*, vol. 6, no. 2, 1999, p. 217.

War of the Win-sets

The size and nature of each regional bloc's win-set been determined by a number of different factors that have so far hindered the conclusion of the IAA. Putnam argues that "[t]he size of the win-set depends on the Level II political institutions".⁶ In this case, on the European side, the nature and content of the IAA is determined by the shared competence⁷ between the Commission and the member states to negotiate with MERCOSUR at the international level (Level I). The conclusion of the IAA, which the Commission negotiates on behalf of the EU, would thus take place when the Council of Ministers approves it by unanimity at the Union level (Level II), after having obtained the assent of the European Parliament. And the ratification of the IAA would occur after all member states' parliaments have achieved agreement at the domestic level (Level III). As the reader can see, the decision-making procedure within the EU itself – especially the need for unanimity in the Council, and the requirement for the European Parliament's assent – complicates the picture a great deal and the risk of political fragmentation reduces the win-set.

Things are no easier in the Southern Cone, where the ratification procedures have also influenced the size of the win-set. MERCOSUR is built on weak foundations of integration. The lack of a supranational coordinating power hinders the establishment of common ground among the chief negotiators, and there is no certainty, even if the IAA is signed at the international level, that it would then be ratified by the national parliaments at Level III.⁸ Therefore, the pro-tempore Presidency of the Council of the Common Market⁹ has to keep each government informed of the evolution of the negotiations of the IAA in order for them to discuss this with their respective national parliaments to assure that the outcome lies within the win-sets. For Brazil's 'dualist' legal approach, which requires translation of international law into national law, ratification of the IAA would not be a problem. But for Argentina, which is inclined towards 'monism', where ratification of international law immediately incorporates it into national law, Level III does present a challenge for its chief negotiators.

Autonomy for the Negotiators?

Putnam states that "[t]he size of the win-set[s also] depends on the strategies of the Level I negotiators".¹⁰ In the IAA case, the chief negotiators of both blocs have

⁶ R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, p. 448. In this respect, Putnam's two-level framework might be adapted to a three-level model for application to the analysis of the EU's external commercial policies.

⁷ Article 300 and Article 310, Treaty establishing the European Community.

⁸ I will also use the three-level game structure proposed by Collinson to understand MERCOSUR's functioning. However, we have to take into account that the incomplete nature of MERCOSUR's integration and its intergovernmental structure makes the interaction between its three levels, have special characteristics.

⁹ Article 9, Treaty of Asunción.

¹⁰ Putnam, *op.cit.*, p. 450.

lacked tact in manipulating their strategies. An example of this was when “the EU presented a historic negotiating offer to MERCOSUR in Montevideo, covering 90 per cent of agricultural trade and 100 per cent of industrial trade”.¹¹ As good as this offer sounded for the EU negotiators, MERCOSUR was not prepared to respond with a counter-offer since its member states were concentrating on dealing with other issues: “Argentina [was] on the verge of collapse, advocating bilateral free trade deals, and Brazil bent on maintaining parallelism between EU and [the Free Trade Area of the Americas] FTAA processes”.¹² Therefore, the EU lost a good opportunity for widening MERCOSUR’s win-sets due to poor strategic management.

It is relevant to highlight at this point that some may argue that MERCOSUR’s negotiators have more autonomy than the EU Commission’s representatives in the IAA negotiation process since they lack a legal instrument such as the EU negotiating mandate, given to the Commission by the Council of Ministers according to Article 133. However, we should not misunderstand the concept of autonomy in the context of the Southern Cone since MERCOSUR negotiators (who are lead by the Ministries of Foreign Affairs) also have to conduct extensive internal coordination within governmental bodies, the private sector, civil society and national Congresses, from where they derive their national positions, which are later coordinated with other MERCOSUR member countries’ negotiators.¹³ This means that in formal terms, a MERCOSUR negotiator could have less strict supervision deriving from a written mandate, but nonetheless they must still handle a great degree of scrutiny from society, economic sectors and governmental bodies at large.

Major Interests and Priorities

MERCOSUR’s “demand for trade liberalization in agriculture [has been] one of its main priorities in the [...] negotiations with the EU”.¹⁴ This claim has reduced the win-sets of the most protectionist countries of the EU, such as Ireland, Italy, Spain, Portugal and France,¹⁵ that want to maintain trade barriers to guard sensitive sectors, within the framework of the Common Agricultural Policy.¹⁶ Moreover, pressure groups (especially farmers’ organizations), “supported by the French government and some other member states, have argued against further concessions”,¹⁷ “obstructed progress in negotiation wherever possible, [and] have successfully delayed the

¹¹ Klom, *op.cit.*, p. 363.

¹² *Ibid.*

¹³ Interview with Councillor Márcia Donner Abreu, Head of the division of MERCOSUR Trade Negotiations II of the Brazilian Ministry for Foreign Affairs, 29 February 2008.

¹⁴ IRELA Special Report, *Prospects for an EU-Mercosur Free Trade Agreement and US Policy Options*, Madrid, IRELA, 1999, p. 11.

¹⁵ S. Woolcock, “Trade Policy: From Uruguay Round to Doha and Beyond”, in Helen Wallace, William Wallace & Mark Pollack (eds.), *Policy-Making in the European Union*, Oxford, Oxford University Press, 2005, p. 390.

¹⁶ On the other hand, countries such as the UK, the Netherlands, Denmark and Finland have tended to adopt liberal positions in this matter. See Woolcock, *op.cit.*, p. 390.

¹⁷ Woolcock, *op.cit.*, p. 392.

signing of any agreement that would give MERCOSUR freer access to the European Market".¹⁸

The EU, for its part, has pushed for access to MERCOSUR's markets regarding investments, industrial products and government procurement. This pressure particularly increased after the failure of the WTO Cancun ministerial conference, when the Singapore Issues¹⁹ were set aside from the agenda. The EU's eagerness to sign the IAA has fluctuated over time for various reasons, thus leading to stagnation of the negotiations. For instance, the collapse of the Argentine economy in December 2001 (the second biggest in the region after Brazil), has altered the EU's opinion about MERCOSUR, which went from being seen as a dynamic region with abundant opportunities for European trade and investment to a much less attractive region.²⁰ In addition, the 2004 and 2007 EU enlargements determined the need for "member states [to first] resolve issues closer to home, such as assimilating [the] new members"²¹ before defining the IAA. Moreover, the rather protectionist preferences of the Council,²² which must approve the IAA by unanimity, has also contributed to the narrowing of the EU's win-sets.

Obstacles to an Agreement

MERCOSUR's protectionist tendencies have also prevailed towards the European Union.²³ "The prize for an agreement – greater access to EU agricultural markets, [increases the win-sets of Argentina and Uruguay – but] would carry the price of providing greater access to MERCOSUR industrial and service sectors for European competitors".²⁴ This consequence would impact positively in the "strong Brazilian agro-business lobby [which would push for the conclusion of the IAA, but on the other hand it will] create[e] pressure on Brazilian companies".²⁵ Given that "Brazilian domestic policies are the real drivers behind the pace of MERCOSUR progress",²⁶ this country carries a big responsibility in the region. Hence, its chief negotiators face a real challenge in having to reconcile these two domestic interests with international imperatives from the EU in order to maximize the chances of ratification.

The will of the US to expand its economic power in the Latin American region with the creation of an FTAA has reverberated in the EU bloc. It has widened the latter's win-set because some European countries feared that "the emergence of a US-led

¹⁸ Doctor, *op.cit.*, pp. 295-296.

¹⁹ Mandated by the Singapore Ministerial Declaration in 1996, they include investment, competition policy, transparency in government procurement and trade facilitation.

²⁰ Doctor, *op.cit.*, p. 290.

²¹ *Ibid.*, p. 286.

²² *Ibid.*, p. 284.

²³ K. Gerber, "The Interregional Association Agreement between the European Union and Mercosur, Stalled or Broken Down?", Master's Thesis, Bruges, College of Europe, 2007, p. 38.

²⁴ Klom, *op.cit.*, p. 367.

²⁵ *Ibid.*

²⁶ *Ibid.*, p. 356.

pan-American bloc"²⁷ would lead to a loss of opportunity in opening access for their products to the Southern Cone markets, and therefore their interest in concluding the IAA with MERCOSUR increased.

US offers have led Uruguay to emphasize its "interest in signing a bilateral agreement with this country [and have led] both Uruguay and Paraguay to suggest that they might consider downgrading their participation in MERCOSUR".²⁸ Moreover, Brazil has realized "the strategic value of playing off the Europeans against the Americans",²⁹ and has used this to obtain better results from bargaining with the EU, while maximizing its win-sets.³⁰

Another factor hindering the negotiating process might be the hydro-political conflict that Argentina and Uruguay face since 2004 over the opening of a pulp mill on the east coast of the river Uruguay. The dispute has arrived before the International Court of Justice, and bilateral political and diplomatic relations have been rough over the past years.³¹

Concluding Remarks

Suffice is to say that the small overlap of the win-sets of these two parties in the trade area, especially regarding agricultural issues, has been the major reason for the slow progress of the IAA, rendering the costs of 'no agreement' for both parties low.

Therefore, if the chief negotiators wish to take this agreement forward, both blocs should make use of what Putnam describes as synergistic issue linkage. This means that a policy option has to be created at the bargaining level to produce a positive spill-over in Level III. Chapter 1 and 3 of the IAA have been agreed, and further economic engagement is clearly attractive for both parties. The EU – through the Commission – should highlight that its room for manoeuvre in the trade area is constricted due to the fact that all 27 member states have to approve it by unanimity and use its small domestic win-set as a bargaining advantage.³²

²⁷ S. Santander, "The European Partnership with Mercosur: A Relationship Based on Strategic and Neo-liberal Principles", *European Integration*, vol. 27, no. 3, 2005, p. 298.

²⁸ Doctor, *op.cit.*, p. 293.

²⁹ *Ibid.*, p. 290.

³⁰ Putnam, *op.cit.*, p. 450.

³¹ The conflict started when Uruguay granted an opening permit to a Finnish pulp mill company (Botnia), without complying with the Statute of the River Uruguay of previously notifying Argentina of any major works on this shared water resource.

³² Putnam, *op.cit.*, p. 440.

The EU-US Air Transport Agreement: A Rough Take-off to 'Open Skies'

Alice Serar

Negotiators on both sides of the Atlantic witnessed a rough take-off to the EU-US 'open skies' agreement in spring 2007 after several years of turbulent negotiations. The EU-US Air Transport Agreement, signed in March 2007, ushers in a new era in transatlantic flights, opening the market and allowing any American or EU airline to fly to any intercontinental destination.¹ Despite the benefits of liberalization awaiting consumers and companies from both the EU and US, talks between parties reached near failure twice throughout the course of negotiations. While the main points of contention – cabotage² rights for EU flights in the US and the issue of ownership and control of airlines – took center stage in discussions between the two parties, a range of factors lingered behind the scenes. These underlying elements greatly affected the dynamics of the negotiations. The final product, described by EU Transportation Commissioner Jacques Barrot as “a centerpiece for today’s reinvigorated transatlantic relationship”,³ has been disregarded by stakeholders within the EU as nothing less than a ‘con-trick’.⁴

This essay will employ Putnam’s two-level game theory as a framework through which to examine in what ways the EU’s bargaining position was hampered throughout the negotiations, why the talks faced two near-collapses and how an arrangement was finally reached.⁵ I argue that the EU-US ‘open skies’ deal, though a revolutionary move in the liberalization of the transatlantic aviation market, does fall short of the mile-high expectations with which the EU initiated the talks.

Bickering in the Cockpit: the Commission Struggles for Credibility

The uncertain mandate of the Commission to pursue an EU-US Air Transport Agreement of this scope was perhaps the most detrimental factor in the EU’s negotiating position from the outset of talks. As Putnam suggests, the credibility of the chief negotiator, in this case the Commission, is crucial to the negotiator’s ability to obtain his or her party’s interests.⁶ The Commission’s bid to expand its competence in

¹ While this contribution focuses on controversies surrounding other important elements of the deal, this provision remained unchallenged throughout the negotiations as the centerpiece of an agreement.

² Cabotage refers to the ability of a foreign carrier to provide domestic services within a country. The agreement consistently offered the US cabotage rights in Europe while those rights were consistently denied for EU carriers in the US. C. Woll, “The Road to External Representation: The European Commission’s Activism in International Air Transport”, *Journal of European Public Policy*, vol. 13, no. 1, 2006, p. 66.

³ N. Clark, “Draft Pact Opens Way for a Drop in Airfares; ‘Decisive Progress’ Made in EU-US Aviation Negotiations”, *The International Herald Tribune*, 3 March 2007, p.1.

⁴ “Open Skies: Bird in Hand”, *The Economist*, 8 March 2007.

⁵ R. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games”, *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

⁶ *Ibid.*

the area of aviation began in December 1998 as it brought cases against the 'open skies' agreements between the US and several member states. After the completion of the internal air transport market in April 1997, which transformed national carriers into 'Community carriers', the previously concluded bilateral agreements between the US and Member States contradicted, the Commission argued, this concept.⁷ When the European Court of Justice delivered rulings in favour of the Commission, Member States reacted with discontent and balked at the Commission's seeming attempt to "grab competences that they are not ready to fill, neither with content nor staff".⁸ Only with much reluctance did the Council deliver a mandate to the Commission in June 2003 to commence negotiations with Washington on an Open Aviation Area between the two entities. Without firm support among constituents at Level II, in this case the member states, the Commission began talks with the US at a disadvantage, as a negotiator clearly uncertain to deliver results on the home front.

Flight Delays

The deficit in the Commission's deliverability became glaringly apparent in June 2004 as the first proposed agreement fell through at the hands of the United Kingdom and other dissenting member states. Though the US had conceded to some access to its domestic market, through chartering of US aircraft for domestic flights, resentful member states hesitated to approve. The UK, with its 40% share in the transatlantic market and as the staunch guardian of London's Heathrow airport,⁹ led the resistance, insisting on cabotage rights, a 'non-starter' for US negotiators.¹⁰ At a moment when US Congressional approval, necessary for the ratification of such an agreement, seemed relatively flexible in considering several European requests, the power and preferences of the major actors at Level II, as Putnam suggests, narrowed the win-set of the Commission and resulted in EU rejection of the June 2004 proposal. With high-set demands, the UK foiled the Commission's efforts to gain the required unanimity among Member State transportation secretaries in the Council to ratify the agreement. John Byerly, American chief negotiator, expressed frustration at internal 'squabbles' and noted that the Member States would not give the Commission "an early win that could only bolster its quest to negotiate [...] with other countries".¹¹

The immediate repercussions of a 'no agreement' in the summer of 2004 were minor for both the US and EU member states, especially the UK, whose 'Bermuda II

⁷ Woll, *op.cit.*, p. 61.

⁸ *Ibid.*, p. 51.

⁹ Improved access for US carriers to Heathrow, in the UK view, is the Europe's strongest bargaining chip. T. Buck, "US-EU Open Skies Negotiations Reach Vital Stage", *Financial Times*, 10 June 2004.

¹⁰ J. Mason, "Europe Rejects US 'Open Skies' Overtures", *National Post's Financial Post & FP Investing*, 12 June 2004, p. 4.

¹¹ J. Byerly, Deputy Assistant Secretary for Transportation Affairs, US Department of State, "US-EU Aviation Relations – Charting the Course for Success", International Aviation Club, Washington, DC, 13 July 2004.

agreement'¹² was not among those 'open skies' deals ruled illegal. However, as negotiations slowly progressed after recovering from the turbulence of June 2004, the win-set of the Union gradually widened, adversely affecting the Commission's bargaining position. The costs of a 'no agreement' worsened as the Commission threatened to take action on the illegal bilateral agreements. Failure to conclude an agreement would result in 'an open door for regulatory scrutiny' and the loss of anti-trust protection as provided by the bilateral deals.¹³ This increasing sense of urgency combined with elements of domestic opposition in the US served to narrow the win-set of the US and allowed for negotiators to be less wielding in its concessions and lax in negotiations.

With the resumption of talks in mid-2005, the parties reached another tentative agreement by November. Approval of the deal by the Transport Council, however, hinged on the US Administration's ability to deliver Congressional support for a loosening of limits on foreign ownership of US airlines. Congress, several American airlines and American labour unions rejected the liberalization, insisting on the need to protect workers and weak airlines. The issue, though separate from the 'open skies' deal, was 'bottled up' by the EU with the negotiations in an attempt to counter-balance US domestic opposition.¹⁴ However, the Union's efforts at issue-linkage as a means to enhance its bargaining leverage fell through. While the US Department of Transportation did its part to sway congressional opinion throughout the following year, politicization of the issue and the waning popularity of the Republican party failed to produce support from Congress. US Transportation Secretary, Mary Peters, unwilling to alienate Congress on the eve of mid-term elections, withdrew US support for the deal in late 2006.¹⁵

Preparing for Take-off

After suffering defeat in linking the 'open skies' deal with ambitious demands for US relaxation of foreign investment rules, the Commission found itself rushing quickly back to the negotiating table. The threat of action against illegal bilateral agreements lingered among the member states, expanding the Commission's win-set and leaving it vulnerable to being, as Putnam suggests, 'pushed around' by the US.¹⁶ Lamenting constraints at Level II, US negotiators refused to reconsider increasing foreign ownership and control rules to allow foreign investors 49% voting stakes, up from the existing 25% bar. Chief US negotiator Byerly visited Brussels in early January 2007 as talks renewed, heralding the stern and unwavering message: for those in

¹² 'Bermuda II' is a bilateral air transport agreement between the UK and the US of 1977.

¹³ "An 'Open Skies' Deal between America and Europe Causes Controversy", *The Economist*, 8 March 2007.

¹⁴ D. Phillips, "Easing US-EU Airline Rules is Delayed", *The New York Times*, 3 May 2006, p. 5.

¹⁵ D. Cameron & A. Bounds, "EU-US Open Skies Accord Grounded", *Financial Times*, 6 December 2006.

¹⁶ Putnam, *op. cit.*, pp. 427-460.

Europe still clinging to hope that the ownership issue would be revisited – the issue is dead.¹⁷

In the midst of an ambiguous legal limbo, the possibility of flag carriers such as Lufthansa or Air France losing anti-trust protection increasingly isolated the UK in its campaign against a liberalizing move in transatlantic aviation.¹⁸ As one commentator explained, “there is little appetite among other EU member states to try to force the US to renegotiate even the textual changes, given the history of deadlock”.¹⁹ Recognizing the constraints of the US negotiators’ win-set and the urgency with which its constituents sought a deal, European negotiators accepted that alterations to US foreign ownership regulations and cabotage rights, another point of contention for EU actors, were not on the table. Realizing the unlikelihood of success in its efforts to block a deal in this round of negotiations, the UK reluctantly shifted its position, throwing its support toward EU negotiators but demanding a robust regime of concessions.

Facing the reality of the US’s package of ‘non-negotiable’ issues, the Commission engaged US negotiators and proposed trade-offs, looking to secure elements of an agreement which would appease its Level II constituents and obtain support for a final agreement. The Commission gained its most notable trade-off in a ‘get out’ clause placed in the deal. The clause ensures that the ‘open skies’ deal, a first-stage agreement, would proceed to a second stage in which the issues of foreign ownership and cabotage would be required to be addressed.²⁰ Negotiations for a second agreement are obliged to begin within sixty days of the activation of the first deal and must be concluded by 2010; failure to do so would allow EU members to suspend the agreement. In an effort to appease the UK, the Commission offered a type of side payment, arranging for the starting date of the deal to be delayed until March 2008, allowing for the completion of Heathrow’s fifth terminal.²¹ The US too showed relative flexibility, relaxing regulations obliging US government employees to travel on solely US airlines, allowing European carriers to gain a stake in the market. The Administration also creatively interpreted US laws and found a way to allow for increased non-voting stakes for foreign investors, narrowly escaping Congressional scrutiny.²²

¹⁷ D. Bond & R. Wall, “First Steps: The Newly Ratified US-Europe Aviation Deal Sets a Demanding Agenda for the Second Phase”, *Aviation Week & Space Technology*, 2 April 2007, p. 60.

¹⁸ C. Adams & K. Done, “Blair to Lobby Bush as Vote on Air Pact Looms”, *Financial Times*, 20 March 2007, p. 6.

¹⁹ Germany, one of the few supporters of the UK-led rejection of the deal in 2004, served to benefit from the agreement, after Lufthansa’s acquisition of Swiss International Airlines. *Ibid.*

²⁰ K. Ezard, “Doubts in Congress Will Not Scupper Open Skies”, *Flight International*, 20 March 2007, p. 6.

²¹ Increased competition for terminals at Heathrow would particularly undermine British Airlines’ business, but the future fifth terminal will be owned nearly exclusively by British Airlines.

²² Bond & Wall, *op.cit.*

Though wrought with elements of a 'con-trick', the benefits of the EU-US Air Transport Agreement indeed outweigh the detrimental effects of no agreement. Clearing member states from the legal ambiguity surrounding their illegal bilateral deals will allow for the Commission to regain leverage in negotiations. Despite the significant financial gain in the European aviation market, bitterness at the imbalances of the agreement may reverberate among member states and prompt them to demand too much from American negotiators. A now more competent negotiator, the Commission will assume responsibility in 2008 to effectively engage US officials and produce a second-stage package acceptable on both levels of negotiations.

The Cartagena Protocol on Biosafety: European Leadership Emerging from a Multi-level Game

Michał Glaser

The adoption of the multilateral Protocol on Biosafety in 2000, signed after four years of intense negotiations, established the first binding international rules for the transboundary movement of genetically modified organisms (GMOs).¹ The formal negotiations started in July 1996. At the time, five negotiating coalitions had arisen, but the tone was set by three of them: the group of developing countries, the so-called 'Miami Group' of six agricultural-exporting countries (Argentina, Australia, Canada, Chile, the US and Uruguay) and the EU.² The initial objective of the EU, set by the European Commission, was not entirely coherent, and the chances for its achievement were perceived as slim for several reasons. The most important ones were: a strong resistance from the US-led Miami Group, which was *de facto* defending the status quo, and a lack of support for the Commission's proposal from Germany and France as well as more generally the absence of a coherent attitude towards regulation of trade in GMOs among the EU member states. In the end, however, the EU became the leader of a wide coalition comprising 124 states and managed to overcome the opposition of the US. The outcome of the four years of negotiations was a text that looked 'basically like an EU Protocol'.³

This contribution uses an adapted version of Putnam's two-level game model to analyze the EU's conduct in these negotiations.⁴ I will attempt to explain how it became possible to conclude the negotiations in spite of the divergent positions of the main parties and the initial unlikelihood of consensus. I will demonstrate the usefulness of the three-level game approach in this case, by presenting how the win-sets at the international level are shaped by the national (and EU) level and how international pressures may 'reverberate' within domestic politics.

The essay first presents the adapted version of the three-level game model and how it is applied to the case of the Biosafety Protocol negotiations. Second, it demonstrates the interests of the main actors in the negotiations (that is, the US and the EU) and how they translate into their win-sets. Third, it analyzes the course of the negotiations, highlighting the dynamics of entanglements between domestic politics and international negotiations. I conclude with an assessment of the usefulness of the adapted three-level game model.

¹ M. Rhinard & M. Kaeding, "The International Bargaining Power of the European Union in 'Mixed' Competence Negotiations: The Case of the 2000 Cartagena Protocol on Biosafety", *Journal of Common Market Studies*, vol. 44, no. 5, 2006, p. 1025.

² A. Mittal & P. Rosset, "New Biosafety Treaty is a Positive, though Imperfect, Step", *Ventura County Star*, 11 February 2000, www.biotech-info.net/biosafety_treaty.html (14 November 2007).

³ M. Winfield, "Reflections on the Biosafety Protocol Negotiations in Montreal", *AG BioTech InfoNet*, 2000, www.biotech-info.net/biosafety.html (14 November 2007).

⁴ R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

Setting the Rules of the Game: Analytical Framework for EU Negotiations

Putnam's two-level game model is often used when analyzing international negotiations where the EU is a party.⁵ In such a case, an extension of the model is needed, as the EC plays a role in two parallel games. "In one game the EC is the international level (Level I) at which the member governments representing their domestic interests (Level II) seek to find a common position. In the second game the EC is the domestic level (Level II) and the Commission (or the Council presidency) negotiates at the international level (Level I)".⁶

In the case of the Cartagena Protocol on Biosafety, particular focus is put on the negotiations between the US and the EC, as they were the main counterparts during the talks. The American side can be described by means of two levels only: the US Trade Representative (USTR) negotiates on behalf of his or her country at the first level. His negotiating stance is a product of consensus previously reached at the domestic level, which comprises the US Administration, Congress and interest groups. As for the EU, the distinction of individual levels requires closer scrutiny since the EC's institutional framework varies depending on the policy field. Since the Biosafety Protocol falls into the area of environment, which is a competence shared by the Community with the member states, no sole negotiating body could be distinguished, at least basing upon the legal framework itself. During the negotiations the mandate changed several times. Beginning from the first, very general mandate which "reflected some degree of ambivalence by Member States",⁷ the supranational configuration evolved from a loose cooperation between the Commission, Council presidency and the member states to something that Young refers to as an agreement of 'soft institution'.⁸ The latter accord followed from the fourth mandate given to the Commission in 1999. It structured the participation of the EC and its member states in the negotiation process and strengthened the position of the Commission's negotiators.⁹ Thus, the three-level metaphor in its classic form can be applied only in the final (and crucial) stage of negotiations (that is, in 1999-2000). During that time, the three levels are visible more clearly: Level III involves decision-making in the domestic backgrounds of member states, Level II refers to the Community level, where the common position is forged by the EU institutions, which subsequently mandate the Commission to negotiate at Level I. However, even this final structure differs from Putnam's model of a single agent since member state governments were still closely engaged in the negotiations, as opposed to traditional legislatures.

⁵ For example, M. Larsén Frennhoff, "Principal-Agent Analysis with One Agent and Two Principals: European Union Trade Negotiations with South Africa", *Politics & Policy*, vol. 35, no. 3, 2007, pp. 857-881.

⁶ A. Young, "What Game? By Which Rules? Adaptation and Flexibility in the EC's Foreign Economic Policy", in Michèle Knodt & Sebastiaan Princen (eds.), *Understanding the European Union's External Relations*, London, Routledge, 2003, pp. 55-56.

⁷ Rhinard & Kaeding, *op.cit.*, p. 1034.

⁸ Young, *op.cit.*, p. 59.

⁹ Rhinard & Kaeding, *op.cit.*, p. 1035.

The European Position: Modifying the Stance on GMOs

The initiative to join in the negotiations came from the Commission (notably Directorate-General Environment). The action can be perceived as a continuation of the work it had been doing so far, that is, promoting the safety of health and strengthening the EC's international profile in environmental affairs.¹⁰ Having previously developed the precautionary principle in risk assessment in the regulatory framework (Directives 90/219/EC and 90/220/EC), the Commission now sought its adoption in international law.¹¹ However, as mentioned before, the EU started the negotiations with a dose of ambiguity. This resulted mainly from divergent or undefined preferences of the member states. Therefore, the Biosafety Protocol at the time represented a case in which constituents' preferences (at the European level) were heterogeneous.¹² Although the sum of the 15 national win-sets was very broad, the Council did not make an effort to define a common position. As a result, the Commission was authorized to negotiate on the basis of a very general mandate. With a direct application of Putnam's assumption of autonomy of an agent, the Commission's broad mandate could be perceived as an asset, as it could enable a rather wide scope for consensus. In reality, however, the Commission's autonomy was strictly limited by the EU's ratification rules, which would require unanimous agreement of all member states. Accordingly, what mattered more at the Level I negotiations was the negotiator's ability to guarantee ratification. The Commission's 'delivery-ability', however, was fragile. This is the most important factor in explaining why the EU didn't play a major role in the first years of the talks.

The major reason why some of the member states were reluctant towards the Commission's proposal was to be found at the domestic level. Not all the win-sets of the member states did overlap, mostly because of the positions of France and Germany. Both governments had "just finished the battle over biotechnology policy inside the EU", after which they were under strong pressure from their growing biotechnology industries.¹³ Nevertheless, some internal developments both at the national as well as Community levels changed the situation. First of all, both the French and German governments had experienced meaningful political shifts. In the former a new Green minister for environmental policy reversed the country's position on GMOs in 1998, while in Germany the Red/Green coalition came to power. Becoming a new supporter of GMO trade regulation, it strengthened its influence by taking over the Council presidency in January 1999. Secondly, in 1998 the EU tightened its restrictions on GMOs. As a result, it became more difficult for all the EU members to oppose a biosafety treaty.¹⁴

¹⁰ R. Falkner, "The European Union as a 'Green Normative Power'? EU Leadership in International Biotechnology Regulations", *Center for European Studies Working Paper Series*, no. 140, Harvard University, 2006, p. 3.

¹¹ *Ibid.*, p. 6.

¹² *Ibid.*

¹³ Rhinard & Kaeding, *op.cit.*, p. 1038.

¹⁴ D. Kelemen, "Globalizing EU Environmental Regulation", Princeton University, 23 February 2007.

The foregoing shifts had an immediate impact on the other two levels of the negotiations. The win-sets at the member states' level started to overlap. Since the preferences became coherent, there was no greater difficulty in forging a common position in the Council and authorizing the Commission with a strong and coherent mandate. The three main elements of the EU package were: adoption of the precautionary principle, obligatory labelling of products containing GMOs and clarification of rules on trade in GMOs.¹⁵ The win-set became smaller, but any risk of involuntary defection had in fact been eliminated. As it turned out soon afterwards, the EU's win-set strengthened its bargaining leverage in the negotiations, and consequently the Community became a leader of the developing countries group and two other groups that adjusted their positions to that of the EC.

The American Position: Rising Stakes of the Game

As opposed to those of the EU, the American objectives remained almost unchanged until the end of the negotiations. The United States, a major producer of genetically engineered products, had opposed labelling as well as the precautionary principle.¹⁶

The conclusion of the negotiations was foreseen at the early 1999 meeting in Cartagena, Columbia. Since the draft of the protocol was fiercely resisted, the meeting collapsed, with the American party arguing that "no deal is better than a bad one".¹⁷ The latter statement demonstrates that the win-sets did not overlap. Even more clearly, it illustrates the fact that for the US the costs of 'no agreement' were insignificant, while the same cannot be said of the EU, whose position in the negotiation was evidently offensive.

The decisive shift was related to a development external to the Biosafety Protocol negotiations, namely the multilateral negotiations at the WTO ministerial conference in Seattle. On the other hand, the talks in Seattle highlighted the connections between trade and other issues, including the environment. The 'battle in Seattle' evoked both public shock and interest in the international trade, and consequently helped to politicize the protocol negotiations.¹⁸ The emergence of 'civil society' as an important stakeholder in international trade after Seattle had serious implication for the American trade agenda. One may argue that, in the case of the Cartagena Protocol negotiations, this resulted in the enlargement of the American win-set, as the concessions on the part of the USTR were more likely, and the costs of 'no agreement' turned out to be significant. In this way, the international pressure reverberated in the US domestic win-set and made the agreement possible. All in all, since Seattle the Protocol negotiations became publicly known and were soon

¹⁵ Falkner, *op.cit.*, p. 13.

¹⁶ M. Crenson, "Deal Reached on Biotech Foods", *Associated Press*, 29 January 2000, www.ukabc.org/cartagena.htm (14 November 2007).

¹⁷ *Ibid.*

¹⁸ Rhinard & Kaeding, *op.cit.*, p.1041.

afterwards concluded. During the 2000 meeting in Montreal, the EU achieved virtually all of its aims.

Game Over

To conclude, the case study demonstrates the complexity of the international negotiations conducted by the EU. Numerous factors are relevant to the course and outcome of the negotiations. By applying a three-level approach, this essay examined how the EU managed to conclude the negotiations which were not likely to succeed at the beginning. By analyzing the strategic interactions between the three levels of the negotiations, the study highlights their strong interdependence and the crucial role of each of them. By describing phenomena such as win-sets, involuntary defection, and reverberation, the model provides a unique theoretical framework by decomposing an artificial assumption of unitary actors, and helps understand the dynamics of international negotiations.

The example of the Biosafety Protocol, however, reveals some divergences from the original assumptions. For instance, the division between the levels can be less sharp than in theory, as there are direct links between the domestic and international levels. This finding further implies that the coherence between Level II and III is greater, and as a result, the likelihood of situations where changes at the international Level I will reverberate and influence the EU stance is smaller. It also questions the assumption that 'the smaller the win-sets, the greater the risk of involuntary defection'. Finally, in case of long-term negotiations, the win-sets are likely to be shaped by factors that are external to the model. Therefore, the approach has to be adjusted to the circumstances.

Fueling Conflict: Explaining the Stand-off between the EU and Russia over Ratification of the Energy Charter Transit Protocol

Irina Gusačenko

Since the inception of the Energy Charter Organization (ECHO) in 1991, which established the foundations for cooperation in the energy sector, transit issues have been gaining in importance. In 1999 the ECHO member states decided to launch negotiations on an Energy Charter Transit Protocol in order to establish a legal framework defining the rules for cooperation in the transit area. On 10 December 2003, the Energy Charter Conference was convened for the purpose of approving the draft Protocol. Due to disagreement on bilateral questions between the European Union and Russia, the member states could not adopt the Protocol.¹

This essay investigates why the negotiations on the Transit Protocol have been delayed, covering the time period 2002-2007. In order to explain the obstacles in the bilateral EU-Russia negotiations, I will apply the theoretical framework of two-level games, proposed by Putnam.² I argue that by virtue of the non-overlapping win-sets of both actors, the Protocol cannot be signed in its present form unless it is modified. The first part deals with the analysis of the European attitude, whereas the second part examines the Russian stance. The third part focuses on the bilateral negotiations between the two actors.

The National Level of EU Member States

The complexity of the EU governance system requires the use of a modified version of Putnam's model. It must be kept in mind that inside the EU level there are, in fact, two levels present: the first one is the domestic level of the member states and the second one is the level of the EU as such; we therefore speak about three-level games in the case of the EU.³

At the national level, we can identify two main coalitions in relation to the Transit Protocol. The first group promotes a so-called 'resource nationalism',⁴ meaning that their national interests favour direct bilateral cooperation with Russia even in cases where the EU position differs. Here, I refer mainly to Germany and France.⁵ The Northern Stream Pipeline, for instance, which is built in the framework of bilateral

¹ Energy Charter, *Transit Protocol*, Brussels, 2007, www.encharter.org/index.php?id=37 (10 November 2007).

² R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

³ S. Collinson, "'Issue-Systems', 'Multi-level Games' and the Analysis of the EU's External Commercial and Associated Policies: A Research Agenda", *Journal of European Public Policy*, vol. 6, no. 2, 1999, p. 217.

⁴ "The Price of Energy Security", Brussels, Centre for European Policy Studies, 21 December 2006, www.ceps.be/Article.php?article_id=552 (11 November 2007).

⁵ K. Smith, "Security Implications of Russian Energy Policies", *CEPS Policy Brief*, no. 90, Brussels, Centre for European Policy Studies, 2006, p. 1.

cooperation between Germany and Russia, bypasses transit countries such as the Baltic states and Poland, and is thus inconsistent with the interest of the EU as a whole. This factor gives major leverage to Russia over EU affairs and thus increases the EU's vulnerability. This group does not push so hard on Russia to sign the Transit Protocol because it has a kind of 'privileged partnership' with Russia, which enables it to have more alternatives even in case of Russia not signing the Protocol.

The second group is mainly composed of the new EU member states, such as Poland and the Baltic states, which due to historical reasons have a quite problematic relationship with Russia. Owing to the high level of dependence on Russian energy resources,⁶ and without any major alternative option, their position vis-à-vis Russia is much harder than in case of the first group. This was clearly demonstrated by Poland during the EU-Russia summit in November 2006, when it conditioned the launch of the negotiations on an agreement replacing the EU-Russia Partnership and Cooperation Agreement on Russia's ratification of the Transit Protocol.⁷ Applying Putnam's modified model, this is also an example of issue linkage, a strategy used during negotiations in order to change the partner's win-set.

Despite the fact that there is a different level of intensity of preferences between the two groups, there is a common interest, which is the adoption of the Protocol by Russia under its current form. We can thus assume that the interests at the third level are homogeneous. The costs of 'no agreement' are high for the Commission, which does not have alternative partners in terms of a group with different interests. This fact limits the size of the EU's win-set during the negotiations at the International level.

The European Level

The common position of the EU member states is created at the Union level through negotiations between the representatives of the governments in the Council of Ministers and between the Council and the other European institutions.⁸ This position is articulated in the mandate, given to the Commission for the purpose of conducting the negotiations.

According to the principal-agent theory, the Commission represents 'the agent', whereas the Council is 'the principal'.⁹ Despite this fact, the agent can also have its own interests. Accordingly, the Commission is an ardent supporter of the Transit Protocol because it goes hand in hand with its effort to liberalize the energy sector inside the EU and to externalize this approach in the Union's relations with third

⁶ In 2004, 43% of domestic consumption in Poland was covered by Russian gas. See *IEA Statistics 2006*, International Energy Agency, www.iea.org/Textbase/stats/index.asp (11 November 2007).

⁷ "Moscow Accuses Poland of Blackmail", *Euractiv*, 15 November 2006, www.euractiv.com/en/energy/moscow-accuses-poland-blackmail/article-159709 (9 November 2007).

⁸ Collinson, *op.cit.*, p. 217.

⁹ M. Larsén Frennhoff, "Principal-Agent Analysis with One Agent and Two Principals: European Union Trade Negotiations with South Africa", *Politics & Policy*, vol. 35, no. 3, 2007, p. 441.

countries.¹⁰ This policy is opposed by some national energy champions created by the member states, for instance in the case of France (e.g. merger of Suez and Gaz de France). Their main concerns are the efforts of the Commission to 'unbundle' energy companies and to promote short-term contracts.

However, the autonomy of the Commission is constrained by the need of 'ratification' – the approval of the agreement by the Council.¹¹ That is why the Commission is a rather rigid bargaining partner. We can conclude that due to the complexity of the pre-negotiation procedure, the Commission has limited room for manoeuvre during the negotiations, and the win-set of the EU, in this case, is quite small.

The Russian Position

Since Russia is a state, the Russian position can be analyzed with the help of the two-level game approach. On the national level, first and foremost, the interests of gas production and export energy companies are at stake, particularly those of Gazprom. The Protocol enables third parties to get access to the Russian gas transport networks. "As an energy exporter itself [...] by granting transit to producer countries such as Kazakhstan, Uzbekistan and Turkmenistan, Russia would give importing countries new possibilities and, thus, 'feed' its own competition".¹² Furthermore, energy companies are in favour of long-term contracts that guarantee long-term investment into new, expensive projects. This is contrary to what the Commission tries to promote.

Gazprom exercises a monopoly on the Russian gas market. Since it is a company owned by the state, it has a big influence on the negotiations with direct access to them. Thus, the preferences advanced by Gazprom can be considered as Russian 'national interest' because of the dependence of the state budget on the revenues from the export of energy. For instance, the efforts of the previous Minister for Economic Development and Trade Greff to liberalize the Russian energy market were unsuccessful. The new minister Khristenko fully supports the position of Gazprom.

Concerning the degree of autonomy of the agent, there are substantial differences between both entities. When speaking about the EU we have to take into consideration the rather limited room for manoeuvre of the Commission because of the precise mandate. In case of an overstepping of the mandate, since the Council has a final say on the ratification of the agreement, there is a potential for failure of the process. As far as Russia is concerned, the negotiator is in a better position to give concessions due to the fact that he negotiates on behalf of a single state.

¹⁰ J. Dempsey, "Russia Gets Tough on Energy Sales to Europe: No Foreign Access to Pipelines, Official Says", *International Herald Tribune*, 12 December 2006.

¹¹ Precise information about the legal basis of the Transit Protocol was not available, which creates uncertainty concerning the precise procedure of ratification.

¹² M. Balmaceda, "EU Energy Policy and Future European Energy Markets: Consequences for the Central and East European States", *Mannheimer Zentrum für Europäische Sozialforschung, Working Papers*, no. 42, 2002, p. 23.

At this point, Putnam's approach shows its limits because it does not take into consideration that state interests may coincide with the interests of publicly owned monopolies. In addition, there is a consensus between the political parties supporting the Gazprom position. This has been proved already back in 2001, when due to lobbying by Gazprom, the State Duma did not ratify the Energy Charter.

Two provisional conclusions can be drawn: firstly, that the Russian interest at the national level is quite homogeneous; secondly, at present we cannot speak about the existence of a lobby favouring the signing of the Transit Protocol. Thus, the win-set of the Russian negotiator is quite small.

The International Level

At the international level, the negotiators bargain in order to strike a deal. The EU is represented by the Commission and Russia by the Ministry for Energy. According to Putnam, the negotiators try to expand the 'win-set' of the partner through side payments or issue linkage. For instance, from 2002 to 2004 the EU tried to 'sell' its support for Russian membership in the WTO in exchange, inter alia, for ratification by Russia of the Energy Charter. Russia, for its part, tried to link the question of the 'regional economic organization clause' in the Transit Protocol with its ratification of the Energy Charter. In fact, this clause was inserted into the text of the Protocol under pressure from the EU, and it would *de facto* mean that the internal market legal provisions will prevail over the provisions of the Transit Protocol.¹³

From a broader point of view, there are some factors which may influence the overall negotiation process. The Transit Protocol is a part of the multilateral framework of the Energy Charter Organization. The Secretary General of ECHO tries to persuade both the EU and Russia to solve the contentious issues in order to unblock the whole process. However, the organization as such has very limited powers to force both sides to come to an agreement. The Ukrainian-Russian gas dispute of 2006 has increased European fears over the perceived asymmetrical dependence on Russian energy resources. This perception was reflected by the intensified efforts of the Commission to find a solution.

However, the Russian position has a tendency to harden. This can be partly explained by the decreasing costs of 'no agreement' for Russia. Numerous frameworks permit both actors to treat energy-related aspects, for instance the Energy Dialogue or the Common Economic Space under the bilateral Strategic Partnership. In addition, the question is highly politicized on both sides, which in turn diminishes the win-sets.

¹³ "Interview with Michael Emerson of CEPS on Russia's Relations with the EU 25", *Euractiv*, 12 March 2004, www.euractiv.com/en/enlargement/full-interview-michael-emerson-ceps-russia-relations-eu-25/article-117372?_print (12 November 2007).

Conclusion

This essay tried to explain the obstacles leading to the delay of the signing of the Transit Protocol by both Russia and the EU. With the help of the two- and three-level games approach, I have showed that the win-sets on both sides are rather small. Thus, there is no overlapping between them, which reflects the diverging preferences of the both actors. Despite the fact that the negotiations continue at the expert level, the prospect for a signing of the Transit Protocol is quite limited, unless there is a modification in its provisions, particularly with regard to the 'regional economic organization clause'.

EU-China Textiles & Clothing Trade: Uncovering the 'Bra War' of Summer 2005

Anne-Claire Marangoni

With the reintegration of textiles and clothing into WTO rules, the European Community (EC) loses an important tool to “manage change and adjustment”.¹ From 1 January 1995 onwards, the Agreement on Textiles and Clothing, which replaced the long-standing Multi-Fibre Agreement, opened a transitional period aimed at phasing out quotas.² Whereas textiles and clothing had traditionally been a highly protected sector, all quotas lapsed on 31 December 2004. Nevertheless, the importance of that sector for major countries justified the introduction of a textile-specific safeguard clause in China’s Protocol of Accession to the WTO: in a sense, it recognises the EU a special right to further derogate from full liberalisation.³

Beyond the “propensity of the EU to strike bilateral agreements targeted against the most competitive foreign suppliers”,⁴ it is interesting to ask why the EU negotiated the agreement over textiles and clothing trade with China in 2005. Building on Putnam’s two-level game theory, I will show how various actors and different institutional frameworks explain such a paradoxical outcome. Despite the opportunity to strike an agreement in June, the need for further adjustment and stronger commitment led to a renewed agreement in September 2005.

Actors, Interests and Win-sets

As part of the EC’s exclusive competence in trade policy, textiles and clothing trade gives the key role to the European Commission. Its Directorate-General for Trade (DG Trade) believes that global competitive discipline – after the removal of quotas – increases productivity and decreases prices for consumers.⁵ This position was backed by a strong pro-free trade stance of Commissioner Mandelson, whose interventions reflect the increasing willingness to put forward liberalisation in general and relations with China in particular. However, other considerations were also important: European competitiveness, industrial policy, regional policy and development concerns counterbalanced the liberalisation trend. Thus, the Commission’s objective was “to ensure a smooth transition to liberalisation of quotas that [should] take place

¹ P. Mandelson, Speech to Textile Producers, Florence, 6 June 2005.

² EC:Com 91/399, cited in F. Wehnert, *European Textile and Clothing Policy – Conflicts, Complexity and Compromise*, Master’s Thesis, Bruges, College of Europe, 1996, p. 26.

³ Article 242 of China’s Protocol of Accession to the WTO gives the EU a special right to agree with China on a transitional arrangement, in the name of a sectoral interest.

⁴ C. Milner & D. Allen, “The External Implications of 1992”, in D. Swann (ed.), *The Single European Market and Beyond: A Study of the Wider Implications of the Single European Act*, London, Routledge, 1992, p. 167.

⁵ *Textile and Footwear Sector*, ec.europa.eu/trade/issues/sectoral/industry/textile/index_en.htm (15 November 2007).

on 1 January 2005 and to react in a proportionate and WTO-compatible manner in case of serious market disruptions".⁶

For EU member states, the textiles and clothing industry remains associated with key economic and social interests. Besides, import penetration is higher for this sector than for manufactures as a whole.⁷ The inclusion of a textile-specific safeguard clause in China's Protocol of Accession to the WTO provides the EU with a potential loophole, where industrial policies are not efficient enough.⁸ Member states can voice their concerns through several institutional channels (e.g. Article 133 committee, textile-specific working groups and the Council), intervening at different phases of the negotiations.⁹

Textiles and clothing actors are able to pursue their sectoral interests through a strategy of issue-linkage at both the national and European levels. First, they use general EU objectives (such as job creation and growth) to legitimise their demands and to achieve their own protection. Second, they denounce the excess of full liberalisation – namely unemployment and socio-economic difficulties – to strike public opinion. Third, they hinder a general trade agreement but want to benefit from reciprocal market access.¹⁰ Sectoral interests may become very vocal. Although the Commission has the power to negotiate the agreement, the latter shall be concluded by the Council (Article 300 TEC): when the agreement does not match the expectations, there is a risk of non-ratification, which would in turn weaken the EU's position in international negotiations in general. That is why Community actors are willing to demonstrate that they do take into account sectoral interests.¹¹

The First Agreement: Seizing an International Window of Opportunity

Despite all the pressures which put the Commission in an uncomfortable position, the long road toward the Shanghai agreement of 10 June 2005 was facilitated by an international 'window of opportunity'. On the one hand, the reintegration of textiles and clothing trade into WTO rules did not mean a full-scale liberalisation: rather, it created a possibility to escape its own rules. Even if all quotas lapsed on 31 December 2004, the textile-specific safeguard clause allows for adjustment measures. On the other hand, the guidelines issued by the Commission set alarm

⁶ European Commission, *DG Trade 2005 Annual Activity Report*, Brussels, 13 March 2006, p. 13.

⁷ *Trade Policy*, ec.europa.eu/enterprise/textile/trade.htm (15 November 2007).

⁸ For instance, France is trying to develop several 'pôles de compétitivité' whereby it pushes for structural adaptation of the textiles and clothing industry, after the failure of successive 'plans textile' in the northern and eastern regions. Yet, this sector has difficulty to manage any change.

⁹ Wehnert, *op.cit.*, p. 20.

¹⁰ Euratex Press Release, *EU TC Industry Seeks China Safeguards, Criticises Commission and Member States*, Brussels, 8 April 2005.

¹¹ This explains why Commissioner Mandelson explicitly specified that the agreement achieved respects the demands of Euratex. See *Statement to the Press following EU-China Negotiations on Textiles*, Shanghai, 10 June 2005.

levels for Chinese imports, beyond which 'market disruption investigations' may be launched and ultimately temporary safeguards may be agreed upon.¹² This procedure shall be settled through consultation, and there is thus a risk of less binding decisions. However, the process is heavily dependent on member states since they hold the responsibility for the monitoring system. Both dimensions build an international 'window of opportunity' for the Commission's intervention. Yet, Putnam did not foresee this three-tier reverberation.¹³

States are not the only actors which try to influence the negotiations. It is worth mentioning that the textiles and clothing trade negotiations have been triggered by lobbies. They criticised the inability of member states to monitor actual imports and the Commission's failure to use the textile-specific safeguard clause.¹⁴ This weakens the image of the EU, both internally – because it is considered as "surrendering companies and jobs without fighting"¹⁵ – and externally because its commitment to liberalisation is put into question by particular interests. State and lobby pressures have hampered the policy choices made by the Commission. For instance, it took a full month for the Commission to request emergency procedure on two particular product categories whose imports had sharply risen as highlighted by Euratex. The decision was immediately approved by the member states in order to prevent further injury to European industry.¹⁶

This plurilateral bargaining machinery puts the European Commission in an uncomfortable position, allowing China to achieve a better position vis-à-vis the EU. Obviously, the heterogeneous interests of the member states and the resulting dispute over the strategy weakens the EC's external position: the necessity and the difficulty to accommodate different interests give an advantage to the trading partner, which is able to play actors off against one another. It further exacerbates positions taken internally, while the Commission tries to avoid protectionist backlash. Negotiations are an open process in which several actors operate in an often contradicting way: the problem is the mutually reinforcing character of the most extreme elements, which may even threaten the final approval of member states over the agreement, despite the fact that they are kept informed. Indeed, the Memorandum of Understanding of 10 June 2005 could have been more favourable to the EU. The EU had to restrain itself from the use of safeguard mechanisms.

¹² Official Journal of the EU, *Notice on the Application of Article 10a of Council Regulation (EEC) No 3030/93 Concerning a Textiles-specific Safeguard Clause*, 2005/C101/02.

¹³ He develops the concept of 'reverberation' but misses its three-tier character: reverberation of the international context on the Commission, of the international context on the member states and of the Commission on the member states. See R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 454-456.

¹⁴ Euratex Press Release, *EU TC Industry Seeks China Safeguards*, *op.cit.*

¹⁵ *Ibid.*

¹⁶ *Textile chinois – que peut faire l'UE?*, Eurogersinfo, 12 September 2005.

Nevertheless, the Commission achieved the solution it preferred,¹⁷ reflecting the ability of the member states to reach a compromise and show European solidarity on sensitive issues. The narrowness of the EU's win-set could have been a greater strength in the negotiations (e.g. 'take it or leave it' proposal), if the costs of 'no agreement' with China had not been so high for the textiles and clothing industry.¹⁸

The Second Agreement: Reacting to Unforeseen Consequences

The Agreement on Textiles and Clothing should have resulted in the application of WTO rules in the sector but the reintroduction of quotas reflected the importance of protecting the sector from liberalisation. Yet, the transitional system soon revealed the need for further adjustment and stronger commitment.

First and foremost was the problem of coordination of self-interested behaviour in the three-tier game. The European level faced two criticisms: it was too slow to intervene – while the textiles and clothing industry had already undergone injury – and too interventionist at the same time, thus jeopardising other sectoral interests. Retail business bore the adjustment costs of the new rules applicable to imports. The key problem was at the national level, where politicians were unwilling to undertake structural reforms to back the positive effects of the trade agreement, while their delay for implementing the Memorandum of Understanding weakened the agreement itself.¹⁹ Sectoral interests became more vocal than previously: the opportunistic performance of the distribution sector made it necessary to renegotiate the quotas because they were exceeded. The situation was unsustainable since the retail business demanded the same privileged treatment as the textiles and clothing industry.

Second, these collective pressures led to a paradoxical, renegotiated agreement. The Commission faced a dilemma: it had to draw a line between the different sectoral interests, while seeking to preserve the framework of the 10 June agreement. Pushed for by member states, the initiative came from the Trade Commissioner in a broader context – the EU-China summit of September 2005. The Memorandum of Understanding was redrawn and the new agreement introduced flexibility mechanisms to normalise the import situation. What a paradox that the Commission asked China to soften the measures it was able to impose on it in June!²⁰

Nevertheless, the revised agreement was deemed acceptable because the preferences had changed by September: the integration of side-objectives made

¹⁷ In particular compared to the possibility of an action being brought before the Court of Justice and a temporary suspension of the contested act based on Article 242.

¹⁸ P. Mandelson called the Memorandum of Understanding a 'win-win-win agreement' with regard to the three-tier game. See Statement to the Press, *Statement to the Press Following EU-China Negotiations on Textiles*, Shanghai, 10 June 2005.

¹⁹ For both axes of criticism: P. Mandelson, *Challenges and Opportunities for EU and China*, Beijing, 6 September 2005.

²⁰ The Memorandum of Understanding of June 2005 gave the EU textiles and clothing industry three years to adapt through agreed import quotas. The agreement of September loosened these quotas, providing 'breathing space' for Chinese imports.

the EU reconsider its position in the negotiations. Given the fact that “China [had] a right to benefit from [trade liberalisation]”,²¹ the main concern was to preserve the trading relationship with China, especially to secure market access in China for EU business.²² The mistakes of June were not repeated: member states quickly approved the new agreement and the Commission proposed regulation to make sure that every actor fully commits itself.

Conclusion

The first round of textiles and clothing trade negotiations is striking with regard to the capacity of the EU to delay the effects of an international agreement as a consequence of the mobilisation of sectoral interests. The second round shows the negative impact of an internally protracted negotiating process on the advantages that the EU could have secured.

Even though Putnam’s analysis helps to understand the intra-EU negotiating process, further explanations are necessary as to the three-tier reverberation in trade negotiations as well as on the capacity of partners to improve their position relative to the EU due to this type of weakness.

²¹ Mandelson, *Statement to the Press Following EU-China Negotiations on Textiles*, *op.cit.*
²² EU-China Summit, *Joint Statement*, 5 September 2005.

Taking Wings in a Cloudy Sky: A Transatlantic Struggle over Aircraft Subsidies

Sandra Kosremelli

The European Union (EU) and the United States (US) are both major international traders, closely linked by various agreements, but also distanced from each other by several trade disputes. Presently, Airbus and Boeing are the two biggest producers of civil aircrafts in the world and their competition appears to be hard and aggressive, and the question of subsidies is at the core of a long-standing dispute between them. Indeed, in 1992 the European Community (EC) and the US concluded a bilateral Agreement on Trade in Civil Aircraft aiming at limiting public support to the aircraft industry. However, in 2004 the US withdrew from this agreement and launched a complaint at the World Trade Organization (WTO) against the EC and some member states¹ whom it accused of providing subsidies to the European Airbus company incompatible with the WTO Subsidies and Countervailing Measures.² In turn, the EC complained against the US, some federal states, the National Air and Space Administration (NASA) and the Department of Defence for providing actionable³ subsidies to the American Boeing company. The Panels are not yet completed for both complaints. Nonetheless, the interesting point is that both parties have tried to resolve the issue away from the WTO Dispute Settlement Body and have in January 2005 reached an Agreement on Terms for Negotiation to End Subsidies for Large Civil Aircraft.⁴

However, the negotiations that were supposed to take place three months later did not lead the 'win-sets' to overlap.⁵ In June 2005 another complaint was initiated by the EC against the US for the same matter. Considering this context, why did the negotiations aimed at eliminating the different types of subsidies not reach the level of 'ratification'? I argue that specific obstacles are in this case of high importance. Taking into account Putnam's theory of two-level games as well as its shortcomings, I will firstly show the different stakes faced by each actor in the aircraft trade and will secondly analyze their behaviour during the negotiations.

Partners or Rivals?

The two key actors concerned by the negotiations are the transatlantic partners. Each party involved in the struggle over the world market for civil aircrafts has its

¹ France, Germany, Spain, and the UK are shareholders in Airbus.

² World Trade Organization, "Agreement on Subsidies and Countervailing Measures", www.wto.org/english/docs_e/legal_e/24-scm.pdf (15 November 2007).

³ Subsidies that have an effect on the interests of the domestic industry and here that hurt the EC as a rival exporter when it comes to compete with the US in third markets.

⁴ "EU/US Agreement on Terms for Negotiation to end Subsidies for Large Civil Aircraft", Brussels, 11 January 2005, trade.ec.europa.eu/doclib/docs/2005/january/tradoc_120976.pdf (15 November 2007).

⁵ See R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 454-456.

proper interests at stake. In terms of actors, the US Trade Representative is the chief negotiator, while the Boeing aircraft company is to be considered as the local constituent. The European Commissioner for Trade is the negotiator at the international level, the EU member states constitute the Union level and the Airbus aircraft company can be considered as the 'domestic' level. Focusing on the aircraft companies, their economic situation in terms of gains and losses is crucial as the costs for developing a new product are enormous and the costs of launching difficult and risky technology can be high if some defaults are detected after the product's entry in the market. Boeing is the largest exporter of the US, while Airbus is a real symbol of the EU presence in the international industry field, and is often considered as a strategic sector in Europe. It is thus important for both sides to keep the lead and to try to meet the demands of the aircraft global market. In Europe, the success of Airbus has direct repercussions on economic and social development⁶ – jobs creation for instance – while in the US, it is first and foremost another proof of its power at the international level and a question of pride at the national level.

The situation in 2005 is at the advantage of Airbus as after having dragged its feet for decades behind Boeing, Airbus succeeded since 2003 to catch up with its rival. The fundamental point at the start of the negotiations is the objective of Airbus to launch the A350 model to compete with the Boeing's 787 Dreamliner, that could give the former the opportunity to be again ranked first.

Insufficient Common Ground

Looking at the EU side, the shareholders of Airbus – the governments of France, Germany, Spain and the UK – have granted loans to the European company to launch the new model. Considering those member states as the Union level, it seems that the costs of 'no agreement' on the limitation of subsidies is low, in the sense that both parties will only maximize their potential gains if they do not agree because it is beneficial for both of them to maintain the subsidies. Thus, the outcome of no agreement is likely to be the status quo, meaning the beginning of the launch of the new aircraft, while waiting for the WTO Panel Report. Thus, the win-set is most probably small.

The subsidies given by the Department of Defence and NASA to Boeing show the very close link between US national interests and industrial interests. In this case, Levels I and II are most likely to 'speak with one voice' and here also the costs of 'no agreement' would be mostly low as the success of the 787 model has relied on large financial support and reducing the subsidies aiming at the next products could affect the competitiveness of Boeing later on. Given the huge amount of money involved on both sides, it is difficult to discern a clear winner, be it in the dispute

⁶ "Le Différend Boeing/Airbus sur les aides publiques, Les armes d'une guerre économique US/UE", www-iep.u-strasbg.fr/assoc/dessppes/activiteassoc/fiches/Promo12/-DIFFEREND%20BOEING-AIRBUS%20sur%20les%20AIDES%20PUBLIQUES.pdf (15 November 2007).

results or in the negotiation outcomes. Consequently, the size of the win-sets in general is small and the odds for the ratification of an Agreement to End Subsidies for Large Civil Aircraft are low, as without homogeneous interests in both parties, no package-deal is possible.

The interests and the 'win-set' hypothesis show that trying to solve the transatlantic dispute by dialogue and cooperation will most likely fail to succeed, thus the progress of the whole negotiation process.

There are two main reasons that pushed the parties to start negotiations and that affected their attitudes all along. Indeed, in 2004 it was clear that Airbus was taking the lead, while Boeing was facing some difficulties. The measures taken at the WTO quickly appeared to be weak as it was obvious that both sides were concerned by subsidies issues. So at a certain point it was necessary to try to reach an agreement with "[t]he objective [...] to secure a comprehensive agreement to end subsidies to large civil aircraft producers in a way that establishes fair market competition for all development and production of LCA [large civil aircrafts] in the European Union and the United States".⁷

Doomed to Fail?

Two issues are of crucial importance to succeed: first, to launch such negotiations it is important not to start them with unsuitable preconditions. Second, after the failure of the 1992 bilateral Agreement, finding a *lasting* solution for the reduction of subsidies remains the ultimate aim in order to avoid future withdrawal or dispute. The strategy adopted by both sides was based on the question of time but in opposite ways. The US was keen on seeing quick limitation of European subsidies to try to stop Airbus' success and to benefit from the weakness of the American currency to enhance its exports. The EU strategy was to bet on the length of time, especially since a strong euro was more likely to hurt its exports; thus, financial support was an essential need to maintain the level of jobs and trade. This situation contradicts the two pre-cited ideas and therefore leads also to conclude that there was a 'voluntary defection' by both sides as it was previously known that the EU and the US could not keep their promises. The stakes, be it political or economic, were very complex since the beginning. Furthermore, the 'reverberation' from the WTO pushing both sides to find a common ground was in the opposite direction of the one at the scale of the Union.⁸ Indeed, the reverberation from precisely the Union level on the one side and the domestic level on the other side to the international level – because of the interests of the EU member states and the need for subsidies – has limited the space for an eventual ratification. Therefore, the bargaining positions of the International

⁷ "U.S.-EU Agreement on Terms for Negotiation to End Subsidies for Large Civil Aircraft", www.ustr.gov/Document_Library/Press_Releases/2005/January/January_11,_2005_Statement_of_US_Trade_Representative_Robert_B_Zoellick_Regarding_US-EU_Agreement_on_Terms_for_Negotiation.html?ht= (15 November 2007).

⁸ It is assumed here that the US domestic and international levels are one regarding interests. So there is no need to talk about a US 'reverberation'.

level negotiators were weak and no one was likely to maximize the other side's win-set. In reality, the very need for subsidies on both sides has distorted the positions at an anterior level leading in a very short period of time to a failure of negotiations.

Conclusion

Given the characteristics of the aircraft market and the influence of the states, be it for the EU or the US, and the booming Asian market, it is difficult to foresee an eventual significant decline in the financial support to the aircraft industries. It is first and foremost a question of strategic sectors and political interests on both sides. Moreover, because of the difficulty to expect the transatlantic partners to abide by a decision touching their strategic sectors, the dispute at the WTO seems more likely to harm the authority of the WTO Panel decisions, adding to the fact that the attempt to solve the dispute is transferred outside the WTO institutional framework. Yet, the EU-US relationship is not likely to be damaged as the aircraft sector is evenly strategic for both sides. They are in fact both in need of those subsidies which they use on an equal footing. Instantaneous frictions at the time of the announcement of new launching, delivering or ranking are only the most probable tensions that the transatlantic partners may encounter.

Coming back to Putnam's theory, the main shortcomings appear at the level of the EU, as it is more relevant to analyze this case in a perspective of a three-level game, including the Commission, the member states and the local constituent. However, the concepts of the costs of 'no agreement', 'win-set' and 'defection' are key elements which serve the analysis of the failure of the negotiations to End Subsidies for Large Civil Aircraft. Today, the American aircraft company Boeing stands again at the first place before its European rival Airbus, changing once more the setting of the game.

Trouble Downstream: The Celts vs Norway on Salmon Farming

Ellen Raine Leaver

Robert Putnam has provided a means of analysis of negotiations at different levels in the international arena.¹ His approach considers the negotiations underway at the different levels of play. The international level (Level I) is directly affected by the negotiations that have taken place and are ongoing at the domestic level (Level II). Within the European Union (EU) this is further complicated by the imposition of a third level between the domestic and the international, creating a three level game. The different interests at each level converge to form a 'win-set' or those conditions under which any agreement reached will be acceptable. We can use this theory to examine how the EU arrives at decisions to act in an international capacity, and the results of its negotiations on the international level. This essay will do this in the context of the dispute between the EU and Norway concerning the imposition of anti-dumping measures on Norwegian farmed salmon.² It firstly asks how the EU position is formed on the basis of domestic interests. Secondly, it considers why this led to a dispute in the World Trade Organisation (WTO) and how both sides can claim to have 'won'. Through this analysis we can show how EU member states remain important actors in the game and therefore the EU adds another layer rather than supplanting the domestic level. I argue that domestic interests within individual member states are powerful enough to lead the EU into international negotiations to fight on behalf of narrow win-sets developed at a national and even local level. Thus we ought to speak of a multi-level game, not simply a two or three-level game.

The Celts Set Sail for Battle

Within the EU there are twenty-seven member states which each have their own national interests that can become part of a European programme. The EU provides a clear case of a two-level game, whereby the domestic level creates the basis of government action at the EU level. This is often made very clear at times of Treaty revisions or negotiations over the Common Agricultural Policy or the setting of Total Allowable Catches under the Common Fisheries Policy; in these circumstances, national domestic interests play a strong role with Ministers going off to 'do battle' in Brussels and returning claiming 'victory'.

The EU's imposition of an anti-dumping measure on Norwegian farmed salmon was similarly constructed. The decision to investigate whether the product was being dumped on the EU market was taken following a complaint from the United

¹ R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol.42, no.3, 1988, pp. 427-460.

² Dumping occurs when a manufacturer in one country exports to another, but sells his or her products in that other country below the real costs of production. Anti-dumping measures are duties which are imposed by the EU if the dumping has caused injury to the European industry and thereby normalise the situation and ensure that the real costs are maintained.

Kingdom (UK) and Ireland. This complaint is the result of the importance of the salmon industry in these two countries and the domestic pressure they were facing. In Scotland, for example, figures for 2006 demonstrated that the salmon farming industry provides jobs for over 8,500 people, 4,500 of those in remote rural communities.³ The Scottish Salmon Producers' Organisation (SSPO) has called the industry "a life support system for hundreds of communities and thousands of livelihoods across the country".⁴ Within the UK the salmon farming industry is exclusively concentrated in Scotland, which adds a further layer, potentially another game or level to the game, in that the Scottish government (formerly Executive) has power in this sphere domestically but relies upon the UK government to represent the resulting policies externally. In fact, in the EU-Norway resolution meeting of 12 May 2006, Scottish Executive officials were present, indicating the importance of this industry domestically. One of the current Scottish government's 'EU priorities' is the maintenance of the anti-dumping measures against Norwegian farmed salmon.⁵

The EU Salmon Producers' Group (EUSPG) has directly linked the flooding of the market with Norwegian farmed salmon to the closure of several small and medium sized producers in Scotland, especially in the Shetland Isles.⁶ This was the injury claimed by the industry. The SSPO attributes the closures in Scotland, compared with the boom in production in Norway, to lower production costs in Norway because of "a more accommodating financial environment in Norway".⁷ In fact, Scotland is the third largest salmon farming country in the world with ten percent of the market share.⁸ Norway is the world's biggest producer of farmed salmon and accounts for sixty percent of the EU's fish imports.⁹ The EU is heavily dependant on imports of fish as it has one of the world's highest deficits in fish.¹⁰

The EU therefore had to grapple with several heterogeneous interests such as those of the 'Community industry', namely Scottish and Irish producers, the interests of processing industries which import Norwegian salmon, generally based in France, Germany and Denmark,¹¹ the interests of consumers, and the interests of continued trade with Norway. In 1996 the president of the Norwegian National Federation of Fish and Aquaculture Industries, Jostein Refsnes, stated that going ahead with anti-dumping measures could jeopardise the "whole basis of EU-Norway trade

³ www.scottishsalmon.co.uk/economics/economics.asp (11 November 2007).

⁴ *Ibid.*

⁵ www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Priorities (11 November 2007).

⁶ J. Fields, "Salmon Farms Are Failing to Meet Demand", *Sunday Herald*, December 17 2006.

⁷ *Ibid.*

⁸ K. Symon, "Salmon Industry Calls for Easing of Farming Restrictions", *Sunday Herald*, 8 April 2007.

⁹ www.foodproductiondaily.com/news/ng.asp?id=65990-salmon-norway (11 November 2007).

¹⁰ *Ibid.*

¹¹ M. Mann, "Salmon Market Has Room Enough for All", *European Voice*, 10 October 1996.

relations”¹² In the end, the Commission agreed to investigate the claims of dumping and found them to be substantiated.¹³ The damage to the Scottish and Irish salmon farming industry outweighed other considerations, including a request in September 2006 from other member states that the Commission suspend the measures.¹⁴

This case study provides an interesting illustration of a two and three-level game because it arguably involves four levels. At the domestic level in the UK, we see regional interests influencing the devolved government in Scotland and shaping policy; however, in so far as that policy requires external action, the Scottish administration is forced to negotiate a position within the UK national level of government. From there the UK government, acting in cooperation with the Irish government, negotiates within the European context to gain support for anti-dumping measures vis-à-vis Norwegian farmed salmon. In doing so, they face two principal hurdles: firstly, proving that there is a case of dumping and secondly, that it is in the Community interest to impose anti-dumping duties.¹⁵ Once the position at the European level has been decided upon, the effects then have to be imposed upon the external actor which risks provoking another level of negotiations, which was indeed the case in this instance.

Norway Strikes Back: the EU Takes the Helm

The Commission has remained convinced of its ‘cast iron case’ against Norway throughout the dispute over dumping.¹⁶ Since the early 1990s Norway has classified the salmon farming industry as of ‘strategic economic importance’ and the industry has since received financial support from the Norwegian state.¹⁷ The EU is an important market for Norwegian salmon farmers, and as Refsnes pointed out, Norway is heavily reliant upon the fisheries sector and therefore the anti-dumping measure has much political importance.¹⁸ The Norwegian government then came under heavy pressure to negotiate with the EU to suspend the anti-dumping measures. When the issue is one of vital importance to powerful domestic pressure

¹² *Ibid.*

¹³ Commission of the European Communities, *Regulation (EC) No 628/2005 of 22 April 2005 Imposing a Provisional Anti-dumping Duty on Imports of Farmed Salmon Originating in Norway*, OJ L 104/5; Council of the European Union, *Regulation (EC) No 85/2006 of 17 January 2006 Imposing a Definitive Anti-dumping Duty and Collecting Definitively the Provisional Duty Imposed on Imports of Farmed Salmon Originating in Norway*, OJ L 15/1.

¹⁴ Request from Italy, Lithuania, Poland, Portugal and Spain. Scottish Government, *op.cit.*

¹⁵ The ‘Basic Regulation’ Article 21(1) [Council of the European Union, *Regulation (EC) No 384/96 of 22 December 1995 on Protection against Dumped Imports from Countries Not Members of the European Community*, OJ L 056.] requires a Community Interest Test.

¹⁶ “EC Official Sick and Tired of Norway Salmon Issue”, *Fish Farmer Magazine*, 14 April 2005. www.fishfarmer-magazine.com/news/fullstory.php/aid/134/EC_official_sick_and_tired_of_Norway_salmon_issue.html (10 November 2007).

¹⁷ Commission of the European Communities, Press Release, *Norwegian Salmon*, MEMO/06/87, Brussels, 21 February 2006.

¹⁸ Mann, *op.cit.*

groups, the government's 'wobble room' is reduced, making for a smaller win-set and less opportunity to create 'package deals'. The Norwegian Foreign Minister in 2005 made clear the efforts that his government was making to create dialogue with the Commission.¹⁹ The salmon farming industry is a powerful lobby in Norway and therefore forced the Government to confront the EU in this dispute.²⁰ This was a brave move considering Norway's history of WTO disputes involving its own protectionist policies,²¹ but demonstrates the importance of the industry in defining the national interest.

At the negotiating table, both sides claimed the intransigence of the other. It is evident using the game analysis that agreement would be very difficult to achieve as both sides have strong domestic lobbies which have constructed very narrow win-sets. Thus the negotiators are placed between a rock and a hard place, there are fewer possibilities for agreement at the international level, which would also satisfy the actors at the regional and local levels, their room for manoeuvre in negotiations. Norway requires the suspension of anti-dumping duties and the EU cannot agree to that unless there is proof that there is no continuation of dumping. Norway for its part denied that there ever was any dumping of farmed salmon products on the EU market. In such circumstances where the facts themselves are disputed, the likelihood of reaching an agreement within the win-set of both parties is minimal. Norway declared that consultations had failed and requested the establishment of a Dispute Settlement Panel in the WTO. The results of that panel were transmitted to the parties in August 2007, whereupon both sides claimed to have 'won'. The Norway Post declared that Norway was the victor,²² while the EU insisted that Norway had only 'won' on some minor technical points but the substance of the dumping case was found in the EU's favour.²³ Since the WTO delayed publication of the panel report,²⁴ it is impossible to make an objective determination at this time, although using Putnam's win-set analysis it is conceivable that both sides 'won' in some respects. That is to say that although both sides needed to achieve specific results those results may have been overlapping to a degree significant enough to result in simultaneous victories, perhaps requiring the concession of certain points of less importance to one party than the other in a process of horse-trading.

¹⁹ Norwegian Ministry of Foreign Affairs Press Release No. 65/05 of 22 April 2005, "The European Commission to Introduce a Provisional Anti-dumping Duty".

²⁰ Norwegian Ministry of Foreign Affairs Press Release 69/06 29 May 2006, "Norway Requests WTO Panel in Salmon Dispute with the EU".

²¹ See www.fishupdate.com/news/fullstory.php/aid/8376/Salmon_issue__still_unclear_as__Norway__sticks_to_victory_claims.html (11 November 2007).

²² R. Solholm, "Norway Wins Salmon Dispute with EU", *The Norway Post*, 17 August 2007, www.norwaypost.no/cgi-bin/norwaypost/imaker?id=96537 (10 November 2007).

²³ N. Berglund, "Norway Claims Salmon Victory", *Aftenposten* English Web Desk, 17 August 2007, www.aftenposten.no/english/local/article1942829.ece (10 November 2007).

²⁴ Associated Press WorldStream Via Thomson Dialog NewsEdge, "WTO Delays Release of Verdict in EC-Norway Salmon Dispute", 10 September 2007, www.tmcnet.com/usubmit/2007/09/10/2924998.htm (11 November 2007).

Navigating the National and International: the Place of the EU

Using Putnam's game analysis we can identify the various levels where the win-set is defined and used. In this case the only convergence in win-sets is the need by both partners to maintain trade relations, particularly in fish products. However, both sides needed to be seen to have won to maintain domestic support as the industry in question is of vital importance in both Norway and in Scotland and Ireland. Using Putnam's model, we can argue that it is possible that both sides can claim to have won, but it cannot at this moment be objectively ascertained.

The two- and three-level game analysis is a useful tool and helps account for the formulation of policy within the EU, and negotiations resulting from the externalisation of that policy, very effectively. It is clear that even within a supranational organisation with the competence to act, individual member states and their domestic constituencies remain important actors in this game. There is a multiplication of levels possible in any analysis of such a situation from forming a consensus in the domestic sphere, the European arena and then on the international level. One should rather speak of a multi-level game than solely a two- or three-level game.

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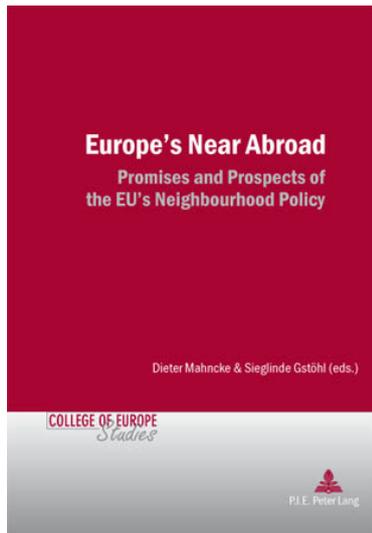
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