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Unexpected Changes? EU Bilateral Trade Negotiations Before and After Lisbon¹

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UNEXPECTED CHANGES? EU BILATERAL TRADE NEGOTIATIONS BEFORE AND AFTER LISBON¹

FIRST DRAFT (04/09/2012)

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Introduction

Since the mid-90s, the external commercial policy of the European Union seems more and more oriented towards trade liberalization. The bilateral free-trade agreements concluded with South Africa (1999), Mexico (2000), Chili (2002) (as part of association or partnership and cooperation agreements) and the region-to-region free-trade negotiations started with Mercosur in 1999 are part of this trend. However, the EU commitment to the multilateral trade negotiations within the World Trade Organization under the Doha Development Round put a halt to the opening of further bilateral trade negotiations from 1999 until 2006. The priority given by the European Union to the multilateral trade agenda has been challenged in 2006, due to the deadlock in multilateral talks and the difficulties to conclude the Doha Round, which pushed the WTO General Council to suspend it indefinitely on July, 26th 2006.

Two months later, on October 4th, 2006 the European Commission adopted a new trade policy, presented in a document called "Global Europe", which was designed to improve the EU international and external competitiveness, in order to support its economic growth and boost employment.² Approved

¹ This paper is prepared for presentation at a conference "Beyond Lisbon Treaty: Re-examining EU Institutions and Governance" at Academia Sinica, Taipeh, Sept 7-8, 2012. It is produced as part of the project 'Politics, Economics and Global Governance: The European Dimensions' (PEGGED) funded by the Theme Socio-economic sciences and humanities of the European Commission's 7th Framework Programme for Research. Grant Agreement no. 217559.

² The main lines of the new trade strategy are described in the European Communication called *Global Europe: competing in the world. A contribution to the EU's Growth and Job Strategy*,

by the Member States and the European Parliament, the new commercial strategy is characterized by a tougher commercial activism, based on bilateralism, although the European Commission still affirms its firm commitment to the completion of Doha Round negotiations at the WTO. Its main goal consists in opening external markets to the European exporters through negotiation of bilateral free-trade agreements with emerging markets. Under the Global Europe strategy, the European Union started to negotiate in 2007 FTAs with Canada, South Korea, India, ASEAN countries, as well as Central America (Costa Rica, Salvador, Guatemala, Honduras, Nicaragua and Panama) and the Andean Community (Bolivia, Colombia, Ecuador, Peru), as part of broader association agreements that include a political chapter. Given the lack of progress in the Doha Round, the European Union has since then restated its commitment to the bilateral level with trade negotiations being a core element of Europe 2020 strategy aiming at "smart, sustainable and inclusive growth." Bilateral free trade agreements should aim at improving market access to EU exporters as well as deepen regulatory cooperation in a series of issues, in particular in services, public procurement, intellectual property rights and social and labor issues. Importantly, the EU clearly stated that bilateral negotiations should be "balanced" in terms of give and take and based on the "recognition that all actors have rights as well as duties."³ At the time of writing, negotiations have been completed with South Korea, Central America and Peru and Colombia, but several are still ongoing or about to begin.

Whereas the question of EU policy change stemming from changing multilateral conditions has already been discussed, there has been so far little work on the potential impact of another change, that is, the modifications introduced in EU trade policy making by the Lisbon treaty. The treaty signed in December 2007 and entered into force in December 2009 introduced three main changes into the policy framework. First, it increases the power of the European Parliament that now has to give its consent to any trade agreement and that should be regularly informed, via its Committee on International Trade (INTA), on the process of negotiations. Second, it extends the scope of

which is addressed to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Council and the European Parliament (European Commission, External Trade, *Global Europe: competing in the world. A contribution to the EU's Growth and Job Strategy* COM(2006) 567 final, available at:

http://europa.eu/legislation_summaries/external_trade/r11022_en.htm.

³ EU Commission, "Trade, Growth and World Affairs. Trade Policy as a core component of EU's 2020 strategy", COM(2010) 612 final, 09.11.2010.

trade policy, with in particular the possible inclusion in free trade agreements, as well as cultural, audiovisual, educational, social and health services. Third, it generalized the use of qualified majority voting in the Council on most issues. Have those changes impacted both the preparation of negotiation mandates and the process of bilateral negotiations so far?

To answer this question we look at the empirical evidence so far based on eight cases (see Table 1 at the end of the paper for a synthetic view of the time line of the processes in those eight cases). To choose our cases, we first decided to consider only post-Uruguay round cases given important changes in the overall context of trade liberalization. Second, we restrict the set of all EU trade agreements signed or ongoing with third parties located outside of Western Europe/North Atlantic or of the scope of the European neighborhood Policy. Given the specific twist of negotiations in the neighborhood – in particular given the perspective of EU membership and/or migration/security concerns – trade relations are always only a subpart of larger set of considerations that may matter more and on which the Lisbon treaty has much less impact. Similarly, we do not consider the special case of relations with ACP countries due their focus on issues going well beyond trade. Within this restricted pool, we first have to define what we mean by a pre-Lisbon or a post-Lisbon case. Given the length of the process that leads from the elaboration of trade negotiations to their conclusion, most of cases concluded after December 2009 or still ongoing originate before the *de jure* application of the Lisbon treaty. We use a different cutting line: we consider a case to be post-Lisbon when its inception started no more than a few months before December 2007 when the final contours of the Lisbon treaty had become quite clear. Applying this criterion, we have two clear pre-Lisbon cases, the processes leading to an agreement with Mexico and Chile, and three clear post-Lisbon cases, the still ongoing processes with three ASEAN countries, Singapore, Malaysia and Vietnam. Three additional cases are harder to classify on either side of Lisbon given that the elaboration phase and discussion of the negotiation mandate began in the second half of 2006 whereas the signature of the agreement (which opens the ratification stage) occurred after December 2009. Given that the most significant change introduced by the Lisbon treaty pertains to that stage and that most of the negotiations took place no earlier than the second half of 2007, we could consider broadly that the free trade agreement with South Korea (KOREU

FTA), the case of the recently signed agreement with Peru and Colombia and the still ongoing process with India are additional post-Lisbon cases.⁴

Those eight cases include most of the cases meeting our selection criteria. We only leave out before Lisbon the process leading to the agreement on Trade, Development and Cooperation (signed in October 1999) with South Africa as well as post-Lisbon the case of the comprehensive Association agreement with Central America initialed in March 2011 and signed in June 2012. We also leave out the case of Mercosur because although discussions started much before Lisbon they have never really reached a level that could mature into any specific agreement.⁵

We structure our analysis of our eight cases along two stages in the bilateral trade negotiations, a phase of policy elaboration/agenda setting and a phase of formal negotiations. This division reflects the distribution of competencies within the EU and allows us to be a bit more nuanced on the classification of cases on both sides of the Lisbon entry into force. We first examine the phase of elaboration that lasts until the adoption of a negotiation mandate and the authorization given by the Council to the Commission to launch negotiations; although the Lisbon treaty did not introduce changes in this first stage, anticipation of EP's reaction during ratification may have induced the Council and the Commission to alter their behavior earlier on; we search for any evidence in that direction. We then examine the negotiation phase strictly speaking and search for any evidence of on the one hand an increased influence of the EP on the conduct of negotiations and on the other hand of increased difficulties at the ratification stage;⁶ we also examine whether greater power of the EP has brought more transparency to the process. From this latter perspective, we have tried to reconstruct the processes mostly based on primary sources (from the Commission, the Council or the European Parliament) or more news agency or journalistic sources. One direct consequence of this choice is that our discussion of the agenda setting phases is currently richer than the stage of negotiations, which is already an interesting finding *per se*. One may object to our choice and would have

⁴ Below we offer a more nuanced distribution of cases in suggesting a "sub-division" of cases into two Policy making phases.

⁵ The latest illustration of the shaky EU-Mercosur process is the decision to freeze any discussion until Spring 2013 after Paraguay's next domestic political elections.

⁶ Up to this date, we have only one completed case of ratification in our data set, that is, the FTA with South Korea.

welcome a systematic resort to interviews with key decision makers, such a strategy would clearly limit the number of case studies. It would also be problematic for cases that are more than 10 years old or for cases that are still ongoing. This would almost restrict the focus on one single case study, the KOREU FTA. For that case, in this paper we rely on previous work for that case that uses both primary sources as well as material based on interviews.⁷

The paper is structured as follows: we first briefly present the trade policy framework of the EU to set the stage for our comparison. We then turn to the stage of agenda setting that includes both a discussion of expected changes from Lisbon and a presentation of what we have observed so far. We adopt a similar approach for the stage of negotiations (and ratification). Next, in conclusion, we broaden the discussion on changes from Lisbon to a comparative perspective on changes from Lisbon and changes from the Global Europe strategy. Which of the two sources of changes seems to matter the most? Do they reinforce each other and if so how? Furthermore to which extent has the *de jure* change introduced by Lisbon been a *de facto* change in contrast to the pre-existing practice.

2) EU trade policy framework

a) Before Lisbon

Under the article 113 of the treaty of Rome (the EEC Treaty of 1957), renumbered as the article 133 of the treaty of Amsterdam (1997), the European Community received exclusive competency from its Member States for trade policy and agriculture. After a twelve-year transitional period (1957-1969), the Member States delegated to the European Institutions the authority to elaborate, negotiate and implement the common trade policy, and to

⁷ Elsig, Manfred and Cédric Dupont (2012). "European Union meets South Korea: Bureaucratic Interests, Exporter Discrimination and the Negotiations of Trade Agreements," *Journal of Common Market Studies*, 50, 3: 492-507.

conclude tariffs and trade agreements.⁸ Since then, the European Community has acted on its own in international trade negotiations.⁹

The Treaty of Rome and the Treaty of Amsterdam allowed the European Commission to be in charge of the agenda setting and the negotiation of the international trade agreements concluded by the European Union. On this legal basis, the Commission makes recommendations to the Council of Ministers, which grants it a negotiation mandate and authorizes the Commission to open trade negotiations (art.133.2 of the treaty of Amsterdam).

The negotiations are conducted by the European Commission representatives, in consultation with a special committee called appointed by the Council to assist the Commission in this task (art.133.3 of the treaty of Amsterdam).¹⁰ The results of the negotiations are discussed by the Council, which approves the trade agreement by qualified majority.

The qualified majority applies to those trade issues that are under the exclusive competency of the European Union: such as trade of goods, common market, competition policy and agriculture.¹¹ However, since the Uruguay Round, some of the commercial issues negotiated on multilateral or bilateral levels, such as services, or intellectual property have been part of the *shared competency of the European Union and the Member States*.¹² This means that the European Commission can negotiate on these subjects only if the State members authorize it unanimously to do so after consultation with the European Parliament (art. 133.5 of the treaty of Amsterdam).

Thus, before the implementation of the treaty of Lisbon (December 1st, 2009), the European Parliament had no decisional power on matters related to the common trade policy or the external trade policy, which were under the exclusive competency of the European Union. The only exception was in cases

⁸ "Common commercial policy", in *The Amsterdam treaty: a comprehensive guide* http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a20000_en.htm.

⁹ See Meunier, Sophie, and Kalypso Nicolaidis. "Who Speaks for Europe? The Delegation of Trade Authority in the EU." *Journal of Common Market Studies* 37, no. 3 (1999): 477-501.

¹⁰ The "133 Committee" (formerly the "113 Committee" under the Treaty of Rome) "comprises senior civil servants and trade experts from the Member States, as well as Commission representatives (Meunier, Sophie, and Kalypso Nicolaidis. "Who Speaks for Europe? The Delegation of Trade Authority in the EU." *Journal of Common Market Studies* 37, no. 3 (1999): 477-501 (note 3, p. 480).

¹¹ Meunier, Sophie. *Trading voices : the European Union in international commercial negotiations*. Princeton etc.: Princeton University Press, 2005 : 106.

¹² Under the treaty of Nice, the services and some commercial aspects of the intellectual property entered under the exclusive competency of the European Union.

where trade considerations were part of a broader association agreement. In that case the Council had to obtain the consent of the European parliament before concluding an agreement (articles 300(3) and 310). In practice, however, the European Commission or the Council could inform the European Parliament of the progress of international negotiations and ask it to approve an international trade agreement, especially when the agreement covered subjects that fell under the mixed competency of the European Union and the Member States.

b) Changes with Lisbon

Under the Lisbon Treaty in force since December 1st, 2009 the powers of the European Parliament with regard to the European Union's trade policy have been increased and the European Parliament has become a co-legislator with the Council on trade matters.¹³ The European Parliament gained increased scrutiny on the conduct of the negotiations, on the article 207 (3) (of ToL): "The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations". Moreover, according to the combination of article 207 (2) that stipulates that the implementation of common commercial policy follows the ordinary legislative procedure and article 218 (6a v) related to the ratification of international agreements for matters subject to the ordinary legislative procedure, the Council must obtain the consent of the European Parliament before concluding any trade agreement.¹⁴ Similarly as the situation before Lisbon, the consent of the Parliament is also required for association agreements (article 218 6a i) However, the internal decision-making procedures within the Commission or the Council, which are related to the agenda setting and the negotiation of the international trade agreements, have not been changed with the Lisbon treaty. Moreover, with the Lisbon treaty, some trade issues that previously fell under the *shared competency* of the European Union and of the Member States or

¹³ European Commission, Trade, *What did the Lisbon Treaty change?*, Factsheet, 14 June 2011, http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_147977.pdf.

¹⁴ For trade matters, the signature of the treaty by the Council amounts to ratification. Only trade agreements that have a supranational character would require ratification at the national level. European Commission, Trade, *Policy Making: How International Trade Agreements Are Signed*, Factsheet, 14 June 2011, http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_147976.pdf; European Commission Directorate-General for Trade, *Trade: Policy making*, <http://ec.europa.eu/trade/about/policy-making/>

See also Woolcook, Stephen, *The Treaty of Lisbon and the European Union as an actor in international trade*, ECIPE Working Paper, No 01/2010.

under the *individual competency* of the Member States became an *exclusive competency* of the European Union. This means that the EU can conclude international agreements related to trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, trade in cultural and audiovisual services, trade in social, education and health services. Nevertheless, the unanimity voting within the Council applies in these cases (art. 207.4 of ToL).¹⁵

3) Agenda setting

a) What should we expect from Lisbon?

As we have seen, the institutional changes introduced by the Lisbon Treaty have no incidence on the agenda setting of the EU trade policy. The European Commission and the Council of Ministers continue to play the main role in this regard. Therefore, in theory, we do not expect to see any difference in the role of the European Parliament during the pre-negotiation phase.

Nevertheless, in practice, the situation could be different and the European Parliament could have a word to say in the shaping of the agenda of the international commercial agreements concluded by the European Union.

On the legal basis introduced by the Lisbon Treaty, the European Commission must inform the European Parliament's INTA committee (Committee on International Trade) on the status of trade negotiations.¹⁶ Moreover, the European Parliament has to give its consent before the "full" signature of international trade agreements.¹⁷ Thus, the European Commission could be obliged to take into account the preferences of the European Parliament when it sets the agenda and when it conducts the negotiations; otherwise, the European Parliament could, at least in theory, sanction the Commission's work and refuse to endorse an agreement which does not conform to its preferences, or the EP could ask the Commission to review some clauses of the agreement.

¹⁵ See also Woolcook, Stephen, 2010.

¹⁶ European Commission, Trade, *What did the Lisbon Treaty change?*, Factsheet, 14 June 2011, http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_147977.pdf.

¹⁷ European Commission, Trade, *Policy Making: How International Trade Agreements Are Signed*, Factsheet, 14 June 2011, http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_147976.pdf.

Moreover, the new co-decisional powers of the European Parliament on trade policy could lead to an increased scrutiny of the pre-negotiation and the negotiation phases of the international commercial agreements concluded by the Union. For example, in its resolution adopted on June 17th, 2012 the European Parliament asked the Council to wait for its proposals on the Commission negotiating mandate, before authorizing the opening of trade negotiations with Japan.¹⁸ In a similar case, on April 6th, 2011 the European Parliament criticized the European Commission for failing to wait for its opinion before asking for a negotiating brief from the Council of Ministers for the negotiation of foreign trade investment agreements with Canada, India and Singapore.¹⁹

Under these circumstances, it could become more cumbersome for the Commission to come up with a negotiation mandate, especially when there is no convergence of preferences with regard to the commercial policy of the Union between the three main European institutions: the European Commission, the Council and the Parliament.

¹⁸ European Parliament resolution of 13 June 2012 on EU trade negotiations with Japan (2012/2651(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0246+0+DOC+XML+V0//EN>; see also Agence Europe (Emmanuel Hagry), (AE) Japan: Parliament puts the brakes on free trade, *Europe Daily Bulletins* 10634 (15/06/2012).

¹⁹ Agence Europe (Emmanuel Hagry), (EU) EP/Trade: EP takes a stand on investment policy, *Europe Daily Bulletins* 10354 (08/04/2011).

According to the MEP Kader Arif's report on the future of the European international investment policy, "[f]oreign direct investment (fdi) was made the exclusive power of the European Union under the Lisbon Treaty". Adopted by the European Parliament on April 6th, 2011, Arif's report called for a more important role of the EP during the elaboration of the agenda of negotiation: "European Parliament [...] Urges Parliament's position to be taken fully into account by the Commission and the Member States before investment negotiations are initiated, as well as during such negotiations; recalls the content of the Framework Agreement on relations between the European Parliament and the Commission and calls on the Commission to consult Parliament on draft negotiating mandates in good time to enable it to state its position, which must, in turn, be properly taken into account by the Commission and the Council." (Committee on International Trade, Rapporteur: Kader Arif, *REPORT on the future European international investment policy* (2010/2203(INI)), A7-0070/2011, 22.3.2011)

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0070+0+DOC+PDF+V0//EN&language=EN>

b) What have we observed so far?

i) Pre-Lisbon

Strictly speaking, for the period before the entering into force of the Lisbon Treaty (1995 to 2009), we conducted six (sub) case studies based on international free-trade agreements negotiated by the European Union with third parties: (1) The EC-Mexico Global Cooperation Agreement (“Economic Partnership, Political Coordination and Cooperation Agreement”); (2) EC-Chile Association Agreement; (3) The Association and trade agreement with the Andean Community (Bolivia, Columbia, Peru, Ecuador); (4) The EU–South Korea trade agreement (KOREU); (5) The Bilateral investment and trade agreement (BITA) between the EU and India; (6) The bilateral free trade agreement (FTA) between the European Union and the Association of South East Asian Nations.

The first two cases, which we studied, were the EC-Mexico Global Cooperation Agreement signed by the two parties on December 8th, 1997 and the EC-Chile Association Agreement of November 18th, 2002. Both agreements cover several fields, such as political dialogue and cooperation, as well as trade liberalization of goods and services. These were the first bilateral preferential economic agreements concluded by the European Union with Latin American countries. Both agreements have been described by Pascal Lamy, the European Commissioner in charge of the trade policy under The Prodi Commission, as « the most ambitious free-trade agreements the EU has ever negotiated ».

These two agreements are part of the new EU economic strategy that started in 1995, after the conclusion of the Uruguay Round in 1994 and the creation of the World Trade Organization (WTO). This commercial policy was favorable to trade liberalization and the negotiation of “new generation” free-trade deals with non-European countries, which are not part of the EU neighborhood policy.

The pre-negotiation phase of these agreements was a long and difficult multi stage-process which lasted in the case of Mexico from January 1995 to June 1996 (the first agenda-setting), and from December 1997 to May 1998 (the second agenda-setting) and, in the case of Chili from January 1995 to January 1996 (the first agenda-setting) and from May 1998 to September 1999 (the second agenda-setting). The difficulties in the adoption of the negotiating mandates were due to internal divisions within the Commission and the Council on the form and the scope of the agreements, which led to deadlocks and internal negotiations, especially at the Council level.

In the case of Mexico, the first stage of the agenda setting of the Global Agreement lasted from January 1995 to June 1996. Within the Commission the drafting of a negotiation mandate proceeded relatively quickly (April to October 2005) and smoothly. Some internal divisions within the services of the Commission on the scope of the negotiating brief were nevertheless reported by Agence Europe, the European Union Press Agency. Yet, the most difficult part of the agenda setting followed at the Council level, where the draft negotiating directives proposed by the European Commission had been discussed from November 1995 to June 1996. The procedure of adoption of the negotiating mandate by the Council failed to be blocked as most of the Member States including France, Germany, Netherlands, Portugal, Austria and Denmark were opposed to the initial draft of the Commission that clearly mentioned the conclusion of a free-trade agreement. After three months of discussions between the Member States within the COREPER²⁰ and the Council (from February to May 1996) and two compromise solutions proposed by the Italian Presidency, the mandate was finally adopted unanimously by the Council of the European Union on June 26th, 1996.²¹ The unanimity voting had been required by some of the member States as the agreement included provisions under the shared competency of the EU and

²⁰ The Permanent Representatives Committee or Coreper (Article 240 of the Treaty on the Functioning of the European Union – TFEU) is responsible for preparing the work of the Council of the European Union. It consists of representatives from the Member States with the rank of Member States' ambassadors to the European Union and is chaired by the Member State which holds the Council Presidency (EUROPA > Summaries of EU legislation > Glossary, http://europa.eu/legislation_summaries/glossary/coreper_en.htm).

²¹ Agence Europe. "EU/Mexico: Differences between the EU15 on the nature and contents of the agreement to propose to Mexico." *Europe Daily Bulletins* 6666 (14/02/1996); Agence Europe. "EU/Mexico: Council Presidency Defines a Proposal of Compromise on the Trade Aspect of the Agreement to Be Negotiated." *Europe Daily Bulletins* 6673 (23/02/1996); Agence Europe. "EU/Mexico: The Council Returns the Issue of the New Agreement to the Permanent Representatives, the Differences Over the Possibility of a Free-Trade Area Having Been to a Great Extent Confirmed." *Europe Daily Bulletins* 6675 (26/02/1996); Agence Europe. "EU/Mexico: Differences Between Member States on the Nature of Agreement To Be Negotiated Still Not Overcome." *Europe Daily Bulletins* 6694 (23/03/1996); Agence Europe. "EU/Mexico: General Affairs Council Gives Go-Ahead to Opening Negotiations With a View to Reaching Reciprocal and Progressive Liberalisation of Trade Between the EU and Mexico." *Europe Daily Bulletins* 6727 (13/05/1996); Agence Europe. "EU/Council: Adoption of About Fifty Decisions Concerning Russia, Mexico, the Andean Pact, etc." *Europe Daily Bulletins* 6758 (27/06/1996).

the Member States.²² As a consequence, Michel Barnier, French minister for European affairs, considered the mandate to be rather restrictive, not as open as the European Commission would have liked.²³

The second stage of the agenda setting of the free-trade agreement with Mexico, as part of the Global Agreement, lasted from December 1997 to May 1998. It was characterized by a smooth process inside the Commission, which drafted the proposal of the negotiating brief from December 1997 to March 1998, followed by a swift decision of the Council pushed by Spain and the United Kingdom (April 1998-May 1998). The rapidity of the procedure was due to the fact that the problematic issues had been decided during the first agenda setting (1995-1996) of the Global Agreement, which had been signed by the parties in 1997. According to Agence Europe, "the Member States gave the Commission a broad enough brief to allow it some room to maneuver, but have tightened their control over the conduct and conclusion of negotiations"; a flexible negotiating brief was necessary to prevent the negotiations from being deadlocked.²⁴

The setting of the agenda of the EC-Chile Association Agreement shared some similarities with the Mexican case: the shaping of the agenda was a two-stage process driven by the same internal decision-making procedures. However, the EU decided in this case to negotiate two different agreements: first, a framework cooperation agreement on the model of the agreement which was signed with Mercosur on December 16th, 1995; and second, an association agreement including clauses related to trade liberalization.

The first agenda-setting of the Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, on one hand, and

²² Agence Europe. "EU/Mexico: Council Proposes to Define Its Position in May on Agreement To Be Negotiated - Procedures for Moving to Trade Liberalization Still Poses Problems." *Europe Daily Bulletins* 6714 (24/04/1996).

²³ Agence Europe. "EU/Mexico: General Affairs Council Gives Go-Ahead to Opening Negotiations With a View to Reaching Reciprocal and Progressive Liberalisation of Trade Between the EU and Mexico." *Europe Daily Bulletins* 6727 (13/05/1996); see also Szymanski, Marcela, and Michael E. Smith. "Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement." *Journal of Common Market Studies* 43, no. 1 (2005): 171-192, p. 180.

²⁴ Agence Europe. "EU/Mexico: Council Grants Commission a Brief to Begin Trade Liberalisation Discussions with Mexico." *Europe Daily Bulletins* 7228 (25/05/1998); see also, Agence Europe. "EU/Mexico: Commission Calls for Quite Flexible Negotiating Brief for Trade Liberalisation When the Time Comes." *Europe Daily Bulletins* 7173 (05/03/1998).

the Republic of Chile, on the other, was characterized by a smooth process within the Commission (July 1995-November 1995) and no difficulties within the Council of Ministers (November 1995-January 1996). This is clearly due to the unanimity of preferences of the Commission and of the Council, which chose to apply to the Chilean case the same framework, which had been already decided with Mercosur, and to make no commitments on trade liberalization.²⁵

On the contrary, the second stage of the agenda setting with regard to the association agreement lasted from May 1998 to September 1999 and was characterized by a very difficult process with the Commission (May 1998 – July 1998). The Commission did not settle internal divisions and adopted the mandate draft despite opposition by four commissioners especially on agricultural issues: Franz Fischler, Austrian commissioner responsible for Agriculture, Rural Development and Fisheries; Yves-Thibault de Silguy, French commissioner in charge of Economic and Financial Affairs; Edith Cresson, French commissioner for Research, Science and Technology; and Pádraig Flynn, Ireland's European Commissioner for Employment and Social Affairs.²⁶ There was also a series of difficulties and deadlocks in the Council where discussions on the draft negotiation brief lasted from July 1998 to June 1999. The majority of the member States (including France, Belgium, Luxembourg, Portugal, Greece, Austria) were divided on the aim of liberalization, the timetable of negotiations and if the agreement with Chile should be concluded or not before the Doha round. After a strong push by the German Presidency (from April to June 1999), which came up with three proposals, and a compromise solution bilaterally negotiated between France (the EU Member State the most opposed to the deal) and Spain (the most favorable) in June 1999, the Council was able to take a decision on the opening of the association and trade negotiations with Chile on June 21st, 1999, before the first EU-Latin America Summit (June 28-29th, 1999) and to vote the

²⁵ This decision was also due to the fact that the European Union entered into talks with Mercosur for a framework inter-regional cooperation agreement on September 14th, 1995. Moreover, in 1995 Chile negotiated with Argentina, Brazil, Paraguay and Uruguay, its membership or association in Mercosur, which led to an association agreement signed on June 25th, 1996 (Agence Europe. "(EU) EP/Latin America: European Parliament delegation to visit Brazil, Chile and Argentina from 2 to 9 September - Visit by Brazilian President in Brussels on 14-15 September." *Europe Daily Bulletins* 6554 (02/09/1995); Agence Europe. "(EU) EU/Mercosur/Chile: Mr Marin to attend signing of the Mercosur/Chile free trade agreement." *Europe Daily Bulletins* 6756 (24/06/1996).

²⁶ Agence Europe. "EU/Mercosur/Chile: Commission Recommendation to Council for Approval To Negotiate Association Comprising Free Trade Area, Enhanced Cooperation, Political and Security Partnership." *Europe Daily Bulletins* 7268 (23/07/1998).

mandate on September 15th, 1999. The negotiating mandate was rather restrictive and allowed the beginning of talks on non-tariff issues first (rules of origin, phyto-sanitary measures, certificate of conformity), leaving the tariff negotiations to start in July 2001 and be completed only after the conclusion of the WTO multilateral negotiations of the Doha Development Round.

The Mexican and the Chilean cases empirically reflect the *de jure* competencies of the Commission and the Council in terms of trade policy with the Parliament having to struggle to keep track of the processes. Nevertheless, in both cases, at the beginning of the first stage of the agenda, the European Commission informed both the Council and the European Parliament of its intention to open negotiations with Mexico and Chile. The EP replied to the Commission's Communication, which described its proposal for an agreement with Mexico and Chile, discussed the Commission's strategy and asked in both cases for the gradual and reciprocal liberalization of trade. The preferences of the European Parliament were the most liberal of the three European institutions. The European Commission defended a moderate liberal position, while the Council of the European Union had the most conservative stance.

In both cases, specific commercial interests had been the most important factors that drove the process. In Mexico's case, the entry into force of NAFTA (North American Free Trade Agreement) on January 1st, 1994 risked eroding the EU economic relations with Mexico, by exposing European exports to competition from United States. In the case of Chile, the prospect of Chile's accession to NAFTA and US President George Bush's proposal for a Free Trade Area of Americas (FTAA), as well as the Chile's association with MERCOSUR were the key economic factors influencing the European Union's trade policy.

The trade deals with Mexico and Chile were part of the pre-Doha commercial strategy of the European Union. The beginning of the Doha Development Round in 2001 and the Union's commitment to multilateral talks within the World Trade Organization put a halt on the opening of further bilateral free-trade negotiations until 2006. Faced with deadlocks in the multilateral talks, which led to a suspension of the Doha round in July 2006, the European Union changed its external commercial strategy and started to focus on the conclusion of bilateral free-trade agreements as a way to move the multilateral talks forward. However, the new trade strategy presented in the "Global Europe" document of October 4th, 2006 was also a way to get better

market access for European exporters, especially on the Asian new emerging markets, and to boost the Union's economy, which in the face of American and Chinese competition.²⁷

For the period from 2000 to 2009, we conducted four case-studies of free-trade deals, which had been decided in 2006, under the "Global Europe" strategy (1) The Association and trade agreement with the Andean Community (Bolivia, Columbia, Peru, Ecuador); (2) The EU-South Korea trade agreement (KOREU); (3) The Bilateral investment and trade agreement (BITA) between the EU and India; (4) The bilateral free trade agreement (FTA) between the European Union and the Association of South East Asian Nations. Of these deals, only two trade agreements had already been concluded with South Korea in 2009, and with Columbia and Peru in 2011. The region-to-region trade negotiations with ASEAN had been held up in May 2009, due to lack of progress, and the commercial negotiations with India are still going on.

These four case studies present similar features with regard to the pre-negotiation phase. The agenda setting of these agreements started with the adoption of the "Global Europe" document by the European Commission on October 4th, 2006. On December 6th, 2006, the Commission had asked the Council for negotiating mandates, which were obtained on April 23rd, 2007. The shaping of the agenda was a smooth process, characterized by a swift decision taken by the Council. The internal decision-making procedures were the same as those for Mexico and Chile, and we did not find any sign of important divisions or deadlocks. This meant that the preferences of the European Commission and those of the EU Member States had evolved towards a more liberal position and a more aggressive commercial activism, which permitted them to act more efficiently. We did not find any opposition from the European Parliament either, even though in September 2006, it expressed its concerns about the deadlocks in multilateral talks and the multiplication of bilateral deals.²⁸ In the case of India, however, European Parliament seemed to have taken the lead in the shaping of the agenda, asking in September 2006 for the opening of bilateral trade negotiations with this

²⁷ European Commission, *External Trade, Global Europe: competing in the world. A contribution to the EU's Growth and Job Strategy*, COM(2006) 567 final.

²⁸ See *European Parliament resolution on the suspension of negotiations on the Doha Development Agenda* of 7 September 2006,

P6_TA(2006)0350, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0350+0+DOC+XML+V0//EN>; Agence Europe. "(EU) EP/WTO/Doha: Parliament expresses concern about risk of explosion of bilateral agreements and loss of assets for developing countries." *Europe Daily Bulletins* 9258 (06/09/2006).

country.²⁹ This seems to have been a rather special initiative, which started on May 4th, 2006 with the preparations organized by the European Parliament's Committee on External Trade at a public hearing on the future of trade relations between the EU and India.³⁰ This was followed inside the same EP's Committee by the approval of an own-initiative report by British Liberal Democrat Saj Karim who proposed the negotiation of a free trade-agreement with India.³¹

The initiative of the European Parliament with regard to agenda-setting of the trade relations with India shows that the evolution of preferences of the European institutions could lead to a more specific involvement and an adjustment of the internal procedures, even in the absence of a legal basis.

ii. Post-Lisbon

Our analysis of the way the negotiation agenda for future regional and bilateral trade agreements is set within Europe in the post-Lisbon period focuses on three case studies: (1) The EU-Singapore FTA (EUSFTA); (2) The EU-Malaysia FTA; (3) The EU-Vietnam FTA.

The EU started to discuss the prospect of a free-trade deal with Singapore soon after the region-to-region negotiations with ASEAN countries (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam) had been frozen in May 2009. The agenda-setting of the European Union's FTA with Singapore was concluded very rapidly after only two months, when on December 22nd, 2009 the EU Member States allowed the European Commission to pursue trade negotiations with individual ASEAN countries, starting with Singapore.³² We

²⁹ European Parliament resolution on the EU's economic and trade relations with India of 28 September 2006, (2006/2034(INI)),

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0388+0+DOC+XML+V0//EN>.

³⁰ Agence Europe. "(EU) EP/India/Trade: Parliament raises question of future trade relations with India." *Europe Daily Bulletins* 9185 (05/05/2006).

³¹ Agence Europe. "(EU) EP/India." *Europe Daily Bulletins* 9231 (13/07/2006).

³² Agence Europe (Emmanuel Hagry). "(EU) EU/Trade: Council gives go-ahead to individual free trade agreements with certain ASEAN countries." *Europe Daily Bulletins* 10046 (23/12/2009);

European Commission, Directorate-General for Trade, Countries: Singapore, 3 April 2012, <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/singapore/>.

The conclusion of individual FTAs with the South-Eastern Asian Countries is described as part of the EU's trade strategy to get to a region-to-region trade agreement (*Co-Chairs'*

have not found any proof of internal divisions within the European Commission or the Council of Ministers on the form or the content of the agreement. Both institutions share the same preferences and interests that are expressed in the Global Europe strategy of October 2006: strengthening EU competitiveness through increased market access in Asia. Moreover, Singapore is one of the most advanced and dynamic economies of ASEAN with an active FTA-oriented trade policy³³ and one of the most important EU economic partners of the European Union in the region. Thus, the consensus between the two European actors allowed the European Commission to act efficiently in shaping the agenda of commercial talks with the Southeast-Asian city-state on March 3rd, 2010.

The elaboration phase of the free-trade agreement between the European Union and the Republic of Malaysia lasted few months longer than the previous case (from February to September 2010), as Malaysia had refused initially to enter bilateral commercial talks with the EU, as part of its strategy to revive the region-to-region negotiations.³⁴ However, the agenda setting did not seem problematic in this case either and the European Commission proved again to be the most important actor of the pre-negotiation phase. After exploratory talks were conducted between the European Commission (DG Trade high-rank representatives) and the Malaysian government (officials from the International Trade and Industry Ministry) from March to June 2010, the Council approved the beginning of the negotiations on September 10th, 2010.³⁵

Our third case study of the post-Lisbon period focuses on the EU-Vietnam free-trade agreement. It seems to be characterized by the longest and the most difficult agenda setting that lasted from March 2nd, 2010 to March 31st, 2012. The length of the pre-negotiation phase is not due to difficulties at European level, as there was a consensus from the beginning between the Commission and the Council on the launch of a bilateral commercial deal with Vietnam,

Statement of the 19th ASEAN-EU Ministerial Meeting, Bandar Seri Begawan, Brunei Darussalam, 26-27 April 2012, http://eeas.europa.eu/brunei_darussalam/news/index_en.htm.

³³ Since 1993, Singapore have concluded 18 regional and bilateral free-trade agreements with 24 trading parties, including one with the United States (USSFTA) in 2003 (Singapore Government, International Enterprise (IE) Singapore, www.fta.gov.sg/sg_fta.asp).

³⁴ Habibu, Sira, « Najib: Malaysia will not hold separate talks with EU », in *The Star Online*, 13 November 2009, <http://thestar.com.my/news/story.asp?file=/2009/11/13/nation/5101676&sec=nation>).

³⁵ This preliminary phase focused on the feasibility of the agreement, as well as the most sensitive negotiating issues for both parties (Agence Europe (Emmanuel Hagry). "(EU) EP/Trade: De Gucht's first visit to Asia." *Europe Daily Bulletins* 10086 (26/02/2010).

one of the most promising economies in South-East Asia.³⁶ The delay in the launch of talks was caused by Vietnam's domestic economic and political problems, as well as fears that the deal could weaken the country.³⁷

On the basis of these three case studies, we can conclude that after the entry in force of the Lisbon treaty in 2009, there seems to be no change either in the balance of power between the European institutions, or in the process of decision-making. The setting of the agenda is still conducted by the European Commission and controlled by the Council, which studies the Commission's proposals, makes recommendations and gives the green light for the start of talks. The modest role of the European Parliament could be a proof that its role in shaping the external trade agenda of the European Union is still limited, although the European Parliament has been active on some selective issues, such as political and human rights issues. This could also be interpreted as a tacit approval of the European Commission's agenda, especially since the commercial preferences of the European Parliament are clearly expressed in favor of the liberalization of trade.³⁸ Furthermore, in the "Resolution on trade and economic relations with the Association of South East Asian Nations" of 8th May 2008, the European Parliament clearly expressed its support for a "high quality" and "ambitious" free-trade agreement with ASEAN countries that "will greatly benefit both sides".³⁹

4) Formal negotiations

a) What change should we expect from Lisbon?

As mentioned earlier, the major change introduced in trade policy making by the Lisbon treaty pertains to the negotiation phase of the process. The Commission must regularly inform the European Parliament either during sessions of the Committee of international trade or in Plenary sessions

³⁶ *Idem.*

³⁷ Agence Europe (Emmanuel Hagry). "(EU) EU/Vietnam: No discussions on Free-Trade agreement in short term." *Europe Daily Bulletins* 10382 (20/05/2011).

³⁸ « The European Parliament is calling for free trade and co-operation agreements with all countries, even with Algeria, which is not asking for one and does not even have the intention of joining the WTO. » Agence Europe (Ferdinando Riccardi). "(EU) A look behind the news: Conditions for achieving a positive but limited result in Doha round." *Europe Daily Bulletins* 10119 (16/04/2010).

³⁹ *European Parliament resolution of 8 May 2008 on trade and economic relations with the Association of South East Asian Nations (ASEAN) (2007/2265(INI)).*

(responding to written or oral questions), and the Council cannot conclude any agreement without the consent of the Parliament. According to most analysts and observers, those changes should on the one hand bring legitimacy via a greater transparency to a previously very technocratic policy domain but on the other hand negatively affect the efficiency of the process. Indeed, economic interest groups as well as civil society at large can use the Parliament to have their views or interests addressed by the Commission all along the negotiations. Members of Parliament can channel these demands but also submit their own concern through a systematic use of questions or even organize hearings. This should become more and more visible as the negotiations approach to a conclusion given that the Commission would like to avoid to initial an agreement that would then fail to get the approval of either the Parliament or the Council. As a result, reduced efficiency may come out from the carving out of exceptions in the scope of liberalization and/or from additional delays in the entry into force of agreements. More precisely on the latter, one could also expect an increase of the time lag between the conclusion of the negotiations (initialed agreement) and the formal adoption by the EU. Indeed, the Parliament may use its consent to extract additional concessions that may come through the adoption of additional EU legislation (such as a new safeguard mechanism) or through the reopening of discussions with third parties. To address the two possible sources of reduced efficiency, the Commission can be expected to develop standard templates and clear principles for the scope of agreement, to gather strong backing for its position all over the process and to buffer against possible opposition. Regarding additional delays that could come from difficulties within the Parliament, the Commission can insert in agreements clauses that permit the provisional entry into force of agreements, which would permit the Council to sign without the consent of the Parliament. The agreement would lapse in case such consent is not obtained in a reasonable period of time.

b) What have we observed so far?

ii. Pre-Lisbon

In contrast to the stage of agenda setting, negotiations over the commercial/trade issues of the association agreements with Mexico and Chile were relatively smooth. It took one year and 9 rounds of negotiation to finalize a trade agreement with Mexico, which can be considered to be a fast process. In contrast negotiations with Chile appear to have been much more difficult since almost two and a half years elapsed between the first round of talks in November 1999 to the conclusion of the discussions in April 2002. Yet,

one should be misled by that first impression. In terms of number of rounds, first, there was only one additional round compared to the Mexican case. Second, delay was mostly due to the fact that the negotiation mandate conditioned progress in bilateral talks with progress in multilateral talks. The Commission wanted to wait for a better assessment of the prospects for a quick progress in a new set of multilateral agreements. After the failure to launch a new round in Seattle in 1999, the EU did not want to jeopardize further multilateral talks in committing too strongly to bilateral talks. It is only after the agreement found in Doha for a new round of talks that there was a new momentum in talks with Chile. Yet to reach an agreement it still required a modification of the Commission negotiation mandate, which occurred in March 2002.

Relatively smooth processes can still include some bones of contention. In both cases, tough issues included agriculture (and wine for Chile). With Mexico, automobiles, textile, footwear as well as increased access to services and public markets led to some serious disagreements as the EU was trying to offset negative discrimination for its exporters in the context of the North American Free Trade Area (NAFTA). For Chile, offensive EU demands on industrial tariffs, on public procurement and foreign direct investments make it difficult to obtain defensive demands in the domain of agriculture and wines and spirits. Yet given that the talks between Chile and the USA were not getting very fast, the EU could secure both its offensive and defensive claims.⁴⁰

The Parliament was hardly more present during the negotiation phase than during the phase of elaboration, despite the fact that in both cases trade discussions were conducted as a part of broader Association agreements that required the assent of the Parliament. Getting that assent did not prove problematic in any of the two cases probably because as we said above the Parliament had a more liberal position than the Council. In the case of Chile the Parliament gave its overall assent before the start of the commercial negotiations, whereas in the case of Mexico it gave its green light less than two months after the conclusion of the talks by the Commission. The Parliament only came to the forefront during the winter 2000-2001 regarding negotiations with Chile suggesting that the Commission should seek a modification of its negotiation brief to decouple the talks from the prospects of multilateral talks. It did not have much influence given that it took an

⁴⁰ Dür, Andreas (2007) "EU Trade Policy as Protection for Exporters: The Agreements with Mexico and Chile". *Journal of Common Market Studies*, Vol. 45, No. 4: 833-55.

additional year before the Commission eventually submitted such a request to the Council.

Last, in terms of transparency, there was a relatively rich set of information as to the state of play along the 9/10 rounds of discussion. One possible explanation may be the need for the Commission to show that its conduct of the commercial discussions was respecting the canvass agreed during the discussions for the broader association frameworks.

ii. Post-Lisbon

Turing to formal negotiations that were conducted at least with the perspective of the need for the Council to obtain the consent of the Parliament before the official signature of an agreement, we present synthetic evidence on five cases: i) one case, KOREU FTA, with both the negotiations between the parties concluded and the agreement endorsed by the Council with the consent of the Parliament; ii) one case, the "multi-bilateral" agreement with Peru and Colombia, with negotiations concluded but ratification for a permanent entry into force by the EU still pending; iii) three cases, India, Singapore, and Malaysia with ongoing negotiations.⁴¹ Given that KOREU FTA is the only "full" case of the negotiation phase, we give it more emphasis in this section drawing upon previous work.⁴²

A first observation from those cases is that the negotiation phase has been significantly longer than the elaboration phase. It took a bit more than two effective years to reach an initialed agreement for KOREU FTA and the agreement with Peru and Colombia,⁴³ whereas discussions have been ongoing for more than five years with India, two years and a half with Singapore and two years with Malaysia. In the case of KOREU FTA, it took an additional year to reach the signature of the Council leading to a provisional entry into force pending the consent of the Parliament that took four additional months. In the case of Peru-Colombia, the Council signed the agreement fifteen months after the initialed text and the consent of the Parliament is still to be obtained. *Prima facie*, thus, it may appear that things have become slower at the negotiation phase. Some of the delay can clearly be attributed to the new

⁴¹ Although we examine the case of EU-Vietnam for the phase of agenda setting above in section 3, there is no material ground for a study of the negotiation phase given that the official negotiations were launched on June 26, 2012.

⁴² Elsig and Dupont (2012), see above footnote 7.

⁴³ Not counting the suspension period for the case of Colombia and Peru.

role of the Parliament. Negotiations with South Korea stumbled over the demand aired by the members of Parliament for a general safeguard clause to protect specific interests (in particular the automobile producers) against major import surges. The Council and the Parliament had to enact a EU regulation that defines a specific mechanism consistent with the terms of the initialed text and following the ordinary legislative procedure. Similarly, they were demands from both the Council and the Parliament for a specific safeguard mechanism on bananas for the agreement with Colombia and Peru (13.3.2012), which delayed the signature of the agreement. Given the resolution adopted on June 13, 2012, it is unclear whether that early movement is going to make the ratification quicker. Indeed, in that Resolution, the EUP emits a series of regrets and also request the Commission to add some paragraphs to the initialed text, in particular on sustainable development, on human rights and on political dialogue mechanism.⁴⁴ The Parliament had raised most of those concerns at several occasions during the negotiations without much impact on the content of the agreed text.

But longer processes not only stem from the new role of the Parliament. A difficult world economic context, domestic political difficulties in the partner countries as well as the "new" emphasis on deep beyond the border issues have brought considerable strain on negotiations. Leaving aside the first two sources, the "new" strategy for bilateral agreements as defined in the document "Trade as a core element of EU 2020 strategy,"⁴⁵ emphasized the need to reach "balanced free trade agreements" including "mutual benefits," negotiated under the general principle of reciprocity and calling for a less "naïve" EU. Bilateral agreements should lead to increased access to service markets, should open more opportunities to bid for public procurement and raw material markets, as well as stimulate FDI. They also should generally push for a deepening of regulatory cooperation. This new strategy has the merit to provide a kind of template for agreements, and thus to help buffer the position of the Commission against the emergence of new opposition at home. But it has also created strains both with negotiation partners and within the EU. It did not win a unanimous support within the Commission. In particular, Agriculture Commissioner Dacian Ciolos regretted the insufficient attention given to the impact of FTAs on sensitive economic sectors such as agriculture. He also considered that they run counter to the EU's multilateral agenda.⁴⁶

⁴⁴ EP, Res 2012/2688(RSP), 13.06.2012.

⁴⁵ See above footnote 3.

⁴⁶ Agence Europe, 05.11.2010.

Returning to the role and place of the Parliament during the negotiation phase, it has not only been on the braking side but also been active in pushing the Commission to make progress in the negotiations. This has been particularly the case for the negotiations with Singapore, but also with other ASEAN countries (as early as May 2008 when it clearly anticipated the entry into force of the Lisbon Treaty), and with India (May 2011, March 2009). Yet, this push has often been double-edged as the Parliament has been keen to remind the Commission of key issues that should be preserved or achieved (human rights, social standards) and the absolute need for a "balanced" agreement with significant market opening in the third party. On that note, the Parliament has been taking some initiative and notably established a list of principles that it wants to see in trade agreements particularly on human rights and social and labor standards.⁴⁷

Last, regarding transparency, the post-Lisbon cases bring a mixed picture. On the one hand, there have been an increasing number of questions raised in Parliament and more debates about pros and cons of different agreements. To buffer against this, the Commission has had to clearly state its recurrent objectives in a strategic paper. On the other hand, it is still very difficult to trace the negotiation processes without any insider's knowledge. Some of the difficulty is clearly due to the higher than ever number of parallel ongoing negotiations. But other developments have also impacted the transparency of the processes. On the Commission's side, the insistence of reaching broad partnership and economic agreements between free trade agreements has multiplied the number of ongoing processes without a careful communication about the respective objectives of various instruments as well as the respective role of Parliament.⁴⁸ Neither the Commission nor the Council has been very systematic in communicating about the state of play in various processes, something that the Parliament implicitly regrets in its recent Resolution regarding the agreement with Peru and Colombia.⁴⁹ This lack of communication has been quite salient regarding the long negotiations with India. It is only since 2011 that statements have become somehow more detailed on the state of play but previously it was even hard to be sure about the number of trade talks. Last, but not least, Members of Parliament have

⁴⁷ Res 2009/2219 (INI), 25.11.2010.

⁴⁸ Trade commissioner De Gucht in a press conference stated that "any negotiation of a free trade deal with a third country is preceded by a partnership and cooperation agreement with the EU which included standards of human rights, political progress, and social and labor rights." Agence Europe, 07.05.2011.

⁴⁹ EP, Res 2012/2688(RSP), 13.06.2012.

themselves behaved somehow erratically if one considers the written questions submitted on trade issues in the latest legislature. According to our quick estimate of about 600 questions submitted to the Plenary with the keyword "trade," less than 20% deal directly or indirectly with bilateral trade negotiations.⁵⁰ More than half of those stem from 2-4 MP members who have a tendency to sporadically submit bundles of questions that either address the relationship with a battery of partners or address a battery of very narrow questions about one partner. Clearly such questions are unlikely to give positive incentive to the Commission for any constructive answers.

5) Conclusion: A red herring? Lisbon treaty and changes in EU bilateral trade negotiations

We provide in this paper a first series of early lessons – contingent on the small empirical evidence of the EU practice in the last 3-4 years for the post-Lisbon period-- from the analysis of EU efforts to reach bilateral trade agreements with third parties located outside of the European region and not falling under the ACP old or new schemes. Those lessons are answers to two key questions:

a) Has there been any clear-cut empirical change(s) between processes located before and after the Lisbon treaty?

The only robust result so far has been a significant extension of the time lag between the final negotiation text as initialed by the Commission and the "full" signature of the Council that completes the ratification phase in the European Union. There is no doubt that the source of that delay is the need to obtain the consent of the Parliament. The Parliament has asked for clarifications or, most importantly, for additional guarantees before giving its consent. This has taken the form of a general safeguard mechanism in the case of the agreement with Korea or a specific one on bananas for the agreement with Peru and Colombia. Regarding the latter, there has also been discussion about setting up special monitoring schemes, including regular hearings, regarding human rights. So clearly the Commission has not been able or willing to sufficiently anticipate requests from the Parliament and address

⁵⁰ Our own account based on the Register of the Plenary sessions accessible at <http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html>.

them in the negotiated text. For the case of Korea, we argue elsewhere that it is a deliberate strategy to avoid being bogged down by powerful deal breakers earlier in the process.⁵¹

On other accounts, changes have not been as consistent or significant. There has not been so far any stunning difference in the involvement and influence of the Parliament early in the process of agenda setting. Clearly this can come from a selection bias for the cases before Lisbon given that they both aimed at establishing association agreements. Such schemes required already before Lisbon the consent of the Parliament, and thus the need for the Commission to incorporate its views early on in the processes. But this may also be due to new developments in the world context after Lisbon. We did not find either a clear-cut increase in transparency thanks to more prerogatives given to the Parliament.

b) Misplaced expectations about change?

The second key issue is whether analysts have misplaced expectations of change and chased a red herring in looking at a potential strong impact of the Lisbon treaty. We would be tempted to respond both positively and negatively to that question. The positive response builds upon the fact that in the pre-Lisbon era key bilateral trade negotiations were conducted as part of a broader effort to develop cooperation with third parties. The results were included into association agreements that required already before Lisbon the consent of the European Parliament. So we should not have expected significant changes.

But on the negative side, one could argue that it is not so much that we should not have expected change from Lisbon but that there is multi causality problem with the dividing line of pre and post Lisbon. The evolution of EU practice has been strongly influenced by the adoption of the Global Europe strategy in 2006 and subsequent adoption of clear negotiation templates for bilateral agreements. Given that the Parliament has not objected to those templates, agenda setting phases have become very smooth and essentially dependent on the willingness of the third parties to really engage in discussions. Furthermore, during the negotiation phases, the new strategy provides a strong focal point – the need to reduce discrimination or create it in key markets abroad – that the Commission has used to build up a strong

⁵¹ Elsig and Dupont (2012), see footnote 7 above.

convergence of interests thus reducing the windows of action for the Parliament. That strategy has been particularly effective in the case of the agreement with South Korea due to the parallel negotiations between South Korea and the USA, which put pressure on the Europeans. The downside of this picture is that the Commission may have put itself in a corner particularly with the inclusion in the templates of sensitive issues, such as human, social and labor rights or environmental concerns that the Parliament has always been keen to promote or defend. From this perspective, it will be instructive to see when and under which conditions the Parliament eventually give its full consent to the agreement with Peru and Colombia

Table I : Case studies

<i>Case study</i>	<i>Agreement</i>	<i>Elaboration phase</i>	<i>Agenda-setting</i>	<i>Negotiation</i>	<i>Agreement initialled on</i>	<i>Signature</i>	<i>Ratification by the EP</i>	<i>Entry into force</i>
Mexico	FTA <i>(part of)</i> Global Agreement (“Economic Partnership, Political Coordination and Cooperation Agreement”)	October 31st, 1994- February 8th, 1995	(1) December 8th, 1997- (2) March 4th, 1998 (3) May 25th, 1998 ¹	November 9th, 1998- November 24th, 1999 (9 rounds of negotiations)	?	March 23rd, 2000	<i>(approved by)</i> March 16th, 2000	July 1st, 2000
			(1) February 8th, 1995- (2) October 25th, 1995- (3) June 26th, 1996	October 14th, 1996- June 12th, 1997	July 23rd, 1997	December 8th, 1997	May 6th, 1999 <i>(ratified also by the State members)</i>	March 1st, 2001
Chile	FTA <i>(part of)</i> Association agreement	June 16th, 1997- May 14th, 1998	May 14th, 1998- September 13th, 1999	November 24th, 1999- April 26th, 2002 (10 rounds of negotiations)	June 10th, 2002	November 18th, 2002	<i>(as part of the Association agreement)</i> February 13th, 2003 <i>(ratified also by the State members)</i>	February 1st, 2003 March 1st, 2005
Andean Community (Columbia and Peru)	Multipartite FTA <i>(initially part of a region-to-region association agreement))</i>	May 24th, 2004- October 4th, 2006	(1) October 4th, 2006- (2) December 6th, 2006- (3) April 23rd, 2007	June 14th, 2007-June 2008 (suspended)/ January 2009 (restarted with Columbia and Peru)-March 1st, 2010 (8 rounds of negotiations)	March 23rd, 2011	June 26th, 2012	<i>(begins on June 26th, 2012)</i>	<i>(provisionally applied)</i>
Andean Community (Bolivia, Columbia, Peru, Ecuador)	Association Agreement (“Association and trade agreement”) (suspended)			June 14th, 2007- June 2008 (suspended)	—	—	—	—
South Korea	EU–South Korea trade agreement (KOREU)	May 19th, 2006- September 9th, 2006	(1) October 4th, 2006- (2) December 6th, 2006- (3) April 23rd, 2007	May 6th, 2007- September 2009	October 15th, 2009	October 18th, 2010	February 17th, 2011	July 1st, 2011
India	Bilateral investment and trade agreement (BITA) between the EU and India	September 7th, 2005- September 2006	(1) October 4th, 2006- (2) December 6th, 2006- (3) April 23rd, 2007	June 28/29th, 2007 - <i>ongoing</i>				
ASEAN	Bilateral free trade agreement (FTA) between the European Union and the Association of South East Asian Nations	April 4th, 2003/ April 30th, 2005- May 15th, 2006	(1) October 4th, 2006- (2) December 6th, 2006- (3) April 23rd, 2007	May 3rd, 2007- May 2009 (paused ; “continued” with bilateral negotiations)	—	—	—	—
Singapore	The EU-Singapore FTA (EUSFTA)	May 2009- October 2009	(1) October 6th, 2009- (2) ? (3) December 22nd, 2009	March 3rd, 2010 - <i>ongoing</i>				
Malaysia	The EU-Malaysia FTA	May 2009- February 27th, 2010	(1) February 27th, 2010- (2) ? - (3) September 10th, 2010	October 5th, 2010- <i>ongoing</i>				
Vietnam	The EU-Vietnam FTA	May 2009- March 2nd, 2010	(1) March 2nd, 2010- (2) ?- (3) March 31st, 2012	June 26th, 2012- <i>ongoing</i>				

¹ (1) The European Commission announces its intention to negotiate an international trade agreement; (2) The European Commission approves the draft of the negotiating mandate, which will be submitted to the Council’s approval; (3) The Council of Ministers gives the negotiating briefs to the Commission, allowing it to start the negotiations.