Principal(s) versus Agent. An Analysis of the Impact of EU Decision-Making on its Role in the WTO Doha Development Agenda

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Paper to be presented at the ECPR Joint Sessions of Workshops
Uppsala Universitet, April 13-18, 2004
Workshop 7: “New Roles for the EU in International Politics?”
1. Introduction

What is the impact of the member states’ ability to control the Commission as negotiator in the WTO on the way in which the Commission behaves in WTO negotiations, and thus, on, the role the EU is able to play in that organisation? That is the question of this article. The question is being raised because the WTO negotiating agenda exposes the Commission to a potentially difficult situation because it needs to negotiate on issues that are politically very sensitive in some, many or all member states on the one hand, but in which it is difficult to avoid such issues, and concessions on them, in the WTO on the other hand. A principal-agent approach may help understand the way in which the Commission copes with this and thus, as a derivative, what role the EU can play in the WTO. It provides tools to clarify the relationship between the Commission as negotiating agent and the member states as controlling principals and the way in which this relationship is affected by the strains of an external negotiating context like the one of the WTO.

This article is structured as follows. Section 1 expounds the problems that the Commission potentially needs to cope with in a negotiating context like the one of the WTO. Section 2 clarifies and elaborates the role principal-agent analysis can play to understand these problems and the ways in which the Commission reacts to them. A number of hypotheses will be formulated in this regard. Section 3 provides for a plausibility probe of these hypotheses by focussing on the Commission’s approach to the Doha Development Agenda (DDA) in the WTO. Section 4 recapitulates the question about the impact of the member states’ ability to control the Commission as negotiator in the WTO on the way in which the Commission behaves in WTO negotiations, and provides a number of conclusions.

2. The EU, the Commission, and the WTO

As is well known, the European Union forms an important trading bloc – with potentially an impressive amount of market power – in the world trading system and a fortiori in the World Trade Organization. Its ability to transform this potential market power in effective power depends on its ability to cope with its (increasing) internal diversity. That ability is affected by the prevailing decision-making rules on international trade issues in the EU itself, the member states’ and the Commission’s preferences on the issues on which the negotiations take place in the WTO, the intensity of their preferences on such issues, and the related question of the political sensitiveness of these in some or all member states. That the EU – despite its market power – cannot completely control the WTO’s agenda is particularly relevant here. It means indeed, that it cannot completely escape from negotiations on sensitive, politically difficult issues. It cannot do so because the WTO, as a multilateral organization, is increasingly affected by the power and influence of a number of large developing countries (such as India, Brazil, the People’s Republic of China, and South Africa), by cooperation among developing countries (cf. the G22, the like-minded group, the Africa Group), and the impact of other groups of developed countries as well (the U.S., Australia, Canada, etc.). That the power and influence of these countries matter for the EU is due to the interest it has in a well-regulated

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1 Note that even if we will be referring to the European Union in the remainder of this paper, legally, whenever it concerns trade policy-making, reference should be made to the EC as contrary to the EU, the EC has legal personality (cf. article 281 TEC), and thus, the legal capacity to negotiate externally.

2 At the time of the Cancun Ministerial, the G22 (or G20+, as it was later called) contained the following members: Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, and Venezuela (El Salvador withdrew, whereas Nigeria and Indonesia only joined at the last minute).
and increasingly open international trade and investment system. The EU is thus – or has largely been – a net *demandeur* of regulation in the WTO, even if it would like to avoid regulation in some sectors (e.g. agriculture), or on some issues (e.g. the elimination of agricultural export subsidies).

The fact that the EU is unable to completely control the WTO-agenda and that it is being exposed, therefore, to issues that it would like to avoid, certainly complicates the internal operation of the EU on trade policy-making and *a fortiori* the negotiating role of the European Commission. Indeed, problems with negotiations in the GATT/WTO have in the past spilled over into problems with the trade policy decision-making system of the EU. Especially the negotiating role of the Commission has been targeted in this regard (cf. Meunier & Nicolaïdis, 1999; Smith, 2001). The Uruguay Round negotiations are a case in mind.

But the WTO not only complicates EU decision-making. It may also facilitate it. It provides opportunities for the EU’s trade policy entrepreneur – the Commission – to use the WTO and its negotiating system to overcome (or to help overcome) divisions inherent to the EU’s internal political, social, and economic diversity. Much depends then on the ability of the Commission as policy entrepreneur to cautiously handle the complexities of simultaneously playing two games: one in the EU, and one in the WTO. Principal-agent analysis helps understand the different components of a strategy to do so.

### 3. Principal-Agent Analysis and the EU’s Decision-Making on External Trade

The added value of the principal-agent analysis largely consists of its focus on the different roles that are played by the principals and the agent. In the context of the EU’s trade policy-making process, the Commission clearly acts as the agent who negotiates on behalf of the member states with third countries, in this case in the WTO. This immediately raises two questions that are central in principal-agent analysis: the question of delegation, and the question of control. The former refers to the act of delegation through which the member states allow the Commission to negotiate on their behalf. The latter refers to the act of control through which the member states supervise the Commission on the one hand, and restrict the room of manoeuvre it enjoys on the other hand. Both the act of delegation and the act(s) of control are directed at enabling the principal to achieve benefits that are larger than the benefits it would reap when acting itself and on its own, given the costs that delegation entails. What is warranted then, is a theory of delegation, and a theory of control. The basis of this is provided by a transaction-cost perspective that stresses the trade-off by each of the principals of the internal production costs of acting separately against the external costs of delegation (slightly adapted from Epstein & O’Halloran, 1999: 7; see also Majone, 2001: 103).

#### A Theory of Delegation

As far as the act of delegation is concerned, the following reasons are referred to, to explain delegation: enabling compliance monitoring, enabling credible regulation, overcoming incomplete contracting, and avoiding cycling problems in coalition-formation on policies. In a slightly adapted way, these reasons provide the building blocks for a theory of delegation on trade policy-making in the EU.
The first building block consists of credible representation, which is the strongest factor explaining delegation here. By delegating a number of trade negotiating powers to an agent like the European Commission, the member states not only provide for their representation in international trade negotiations but for the credibility of that representation too. That credibility is essential for the ability of the member states to enjoy the benefits of the EU’s market power. Indeed, it is only with credible representation that the EU and its member states can credibly wield their joint market power (the sum of the national market powers) as a leverage in negotiations with third countries. Credibility does not mean that a guarantee is required that the EU will always under all circumstances be able to provide for its joint and coherent representation. It requires however, that the probability of it being able to do so is sufficiently high so as to compel its trading partners to act as if the EU would always be able to do so, and to anticipate the concomitant consequences when deciding on their own actions and negotiating strategies.

The second building block consists of incomplete contracting. It refers here to the fact that the member states, when creating the EU and when deciding about its policies, could not take all the external consequences of their actions into account. They needed to provide for a system, then, that enable them to deal with these in a more or less efficient way on the one hand, and in a way that preserves the benefits of the original endeavour, i.e. the commonality of the acquis communautaire and the EU’s legal order, on the other hand. There are two elements here. First, the fact that from a legal point of view, the creation of the EU as it exists today legally incapacitated the member states to act on external trade policy on their own. Second, the fact that EU internal decisions often entail the need to deal with third countries too.

The first element refers to the exclusive nature of a large part of the EU’s competencies on external trade, be it either as a consequence of explicitly attributed powers or of implied powers derived from internal competencies. It is important to notice however – as Young (2000; 2003) did – that variation exists on the extent to which the EC enjoys exclusive powers on trade and that this has serious ramifications for the games that are being played in this area (two-level or three-level games). From the perspective on delegation, it means that variation exists on the relationship between delegating and being able to negotiate externally. In the presence of exclusive competencies, each member state is legally incapacitated to negotiate separately with third countries. In the absence of such competencies, member states can still act separately and do not need to take the decision to act jointly and to delegate. They may feel the need to do so whenever the benefits of cooperation through delegation exceed their costs, but they don’t have to.

In the case of exclusive competencies, be it explicit or implied, the member states have no alternative. They need to act through the community system in which the Commission will be the sole negotiator as provided by the treaties. The only question that remains then, is related to control. To what extent and in which way will the member states attempt to control the way in which the Commission uses its delegated powers. Failure by the member states to resolve this question jointly results in their inability to act. This increases the probability of delegation seriously as the cost of inaction may be higher than the cost of delegating. An additional point is in order here however. A distinction needs to be made between two kinds of delegation: Treaty-based delegation of trade negotiating authority, and issue-specific delegation of trade negotiating ability. In the case of the former, the focus is on the question whether the member states have delegated authority to the EU by way of the treaties. This is the question of exclusive competencies mentioned above.
In the case of the latter, the question arises whether – given trade negotiating authority as provided by the treaties – the member states will be able to decide to authorize the Commission to negotiate in concrete cases and on the eventual conditions attached to that authorization. It is relevant to refer to articles 133 TEC and 300 TEC in this regard. Both articles require that the member states authorize the Commission to negotiate before it can do so. They can – but are not obliged – to attach to such authorization a number of negotiating directives (better known as a mandate) that provide the framework within which the Commission has to negotiate with its external partners.

The importance of the distinction between the treaty-based delegation and the issue-specific delegation for a theory of delegation becomes obvious by looking at the different default options that emerge in both cases. The following table clarifies this point.

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<th>Default</th>
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<tbody>
<tr>
<td>Treaty-based delegation of trade negotiating authority to the EC</td>
<td>Yes - EC authority to negotiate externally, but the inability to do so on concrete issues - Member state incapacity to negotiate externally</td>
</tr>
<tr>
<td>No</td>
<td>- EC incapacity to negotiate externally, unless the member states decide otherwise on an ad hoc basis - Member state capacity to negotiate externally</td>
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In the absence of treaty-based delegation of trade negotiating authority to the EC, the member states need to explicitly decide that they will negotiate jointly through the EU – and thus that they will grant negotiating ability to the Commission – before the EU can do so. In the absence of such a decision, the member states have the ability and authority to act on their own.

In the presence of treaty-based delegation of trade negotiating authority to the EC combined with the absence of any member state decision, the EC has the legal authority to negotiate but does not have the ability in concrete cases. For being able to do so, it needs an explicit authorization from the member states, eventually accompanied by a mandate. But if the member states, for one reason or another, fail or decline to grant that issue-specific authorization, they cannot negotiate on their own. There is no alternative to the EC system in such cases. The more compelling then, the reasons to negotiate externally, the more severe the pressure on the member states to engage in issue-specific delegation by authorizing the Commission to negotiate externally.

Besides the exclusive nature of a large part of trade policy competencies of the EU, a second element of incomplete contracting consists of the fact that EU internal decisions often entail the need to deal with third countries too. This may be the case because of the negative externalities such decisions may engender (and the concomitant risk of retaliation), because internal decisions may negatively affect the EU’s competitive position, or because the member states are being confronted by external demands that they can only meet jointly through the EU.

By bringing together the two elements it becomes clear why incomplete contracting affects delegation. The need to delegate is triggered by the combination of the need to negotiate externally, and the inability of each member state to do so separately. The higher that need, the higher the pressure (and thus probability) to delegate given that the need arises on issues that belong to the EU’s exclusive competencies.
A Theory of Control

Delegating to an agent is one issue, controlling the agent another, and the preparedness to do the former is affected by the ability to do the latter. This is not different in the area of trade. The roots of the control devices that the principals create are located in the information asymmetry between the principal and the agent. As Pollack (2003: 26, emphasis added) observes:

“In any principal-agent relationship, information about the agent and its activities is likely to be asymmetrically distributed in favour of the agent, making control or even evaluation by the principal difficult.”

One could add that it not only makes control by the principal difficult but also necessary. Indeed, the principal has to take into account that the agent will use the policy room provided by the information asymmetry to pursue its self-interest, or at least to balance that self-interest against the interests of the principal and the latter’s ability to sanction shirking (cf. Sloof, 2000: 248-249).3 One may theorize about the agent’s self-interest. In the case of the EU’s external trade policy this would mean that one would focus on the Commission, because of its external negotiating role. It is often assumed that in the case of supranational institutions like the Commission, competence-maximization is a major concern even if it can be translated in several kinds of policies (like EU market liberalization policies, or policies that aim at the (re)regulation at the EU level) (Pollack, 2003: 39). In the case of the EU’s trade policy, there are two dimensions in this regard: the maximization of current competencies (translated into negotiating abilities), and the maximization of future ones. The latter depends on the negotiating legitimacy that the Commission builds up or destroys through its current negotiating behaviour. It is therefore interesting and necessary to look at the relationship between the agent’s preferences on current negotiating competencies and future ones.

It may be plausible to assume that the agent’s preference for the maximization of its current negotiating competencies entails a preference for more negotiating autonomy. Such autonomy would allow the agent to negotiate in a way that maximizes its own substantive interests on trade, knowing that ratification by the principals’ is essential, and thus taking into account the preference distances between the agent and the principals. The larger that distance, the greater the agent’s interest in negotiating autonomy. In that case, the agent is enabled to carefully dose the way in which it negotiates externally so that, despite the necessary inclusion of the principals’ interests, it can still preserve some of its interests too. Agent slippage will certainly happen, agent shirking eventually too.

Is it equally plausible to assume that the agent’s preference for the maximization of its future negotiating competencies will entail a preference for current negotiating autonomy as well? This question needs to be raised, because articles 133 and 300 TEC provide for case-by-case negotiating authorizations, and for the possibility of negotiating directives to be attached to such authorizations. In addition, treaty revisions that affect the Commission’s negotiating powers remain a possibility too, even if here, the decision-making trap identified by Scharpf benefits the Commission. Indeed, reducing Commission powers in this sense is more difficult as it requires changing the status quo as provided by the currently applicable treaty provisions.

3 Shirking refers to the case where the agent’s pursuit of self-interests runs counter to the principal’s interests.
The answer to this question is – as has been indicated – related to the question of legitimacy. The more legitimate the Commission’s trade negotiating behaviour in the past – all other factors being kept constant (including the political sensitivity of the issues at stake) – the less concerned the member states will be about agent shirking, and the higher the probability that they will grant the Commission a large or a larger negotiating autonomy. This is of course, inversely related to the question of control. The more the Commission engaged – or was perceived to engage – in agent shirking in the past, the more the member states will tend to invest in strict control on the former, both by strictly defining the negotiating directives, and by strictly controlling the Commission’s respect for them during the external negotiations.

A theory of control contains then, the following components. First, the relationship between past Commission behaviour and the extent of current control. The less legitimate such behaviour is considered to be, the stronger the member states’ propensity to engage in strict control.

Second, the relationship between preferences distances and current control. The larger such distance between the Commission and the member states – assuming that preference intensities are equal – the more the member states will tend to engage in strict control. Such propensity will be compounded the larger the preference distance is between the member states and the EU’s external partners because the pressure on the Commission will be higher to make concessions that the member states (or at least some of them) dislike.

Third, the relationship between the principal’s nature and current control. Multiple principals and single principals (cf. Nielson & Tierney, 2003) will have a higher ability to exert control. They only depend on themselves to be able to do so. Collective principals can only act in case their members are able to come to a joint decision. Consequently, their ability to engage in control will be affected by the divergence and distribution of their preferences, and the rules on the basis of which the collective principal takes its joint decisions. In the context of the EU, this is particularly important as a consequence of the collective nature of the Council of Ministers whenever exclusive competencies are at stake, and the combination of collective and multiple principals whenever shared competencies (and thus mixed agreements) are at stake.

Control Devices

Three control devices are available to the member states in the area of trade: negotiating directives, monitoring, and involuntary defection. The first is an *ex ante*, the second an *at locum*, and the third an *ex post* device. The basis of these three is provided by articles 133 and 300 TEC. It has already been noted above that the first device – negotiating directives – is not required by the Treaties. What is required is an authorization. But such authorization can be granted without – as frequently is the case – accompanying negotiating directives (or a mandate as it is often called). Indeed, defining such directives may have benefits in terms of control, it also has pitfalls. By adopting negotiating directives, member states not only create benchmarks on which to assess the Commission’s negotiating work, but also benchmarks to assess each others behaviour vis-à-vis the negotiations and vis-à-vis the possible concessions made in them. A mandate – whenever issued – is a text that not only reflects the limits within which the Commission is supposed to negotiate externally, it also reflects the maximum concessions the member states are prepared to agree to vis-à-vis each other at the start of the external negotiations. Especially in cases where the EU cannot refuse to authorize the
Commission to negotiate as external constraints affect the EU as a whole – which tends to be the case on several WTO issues – the most conservative (or most reluctant) member states cannot exploit a possible refusal to authorize as a bargaining chip to enhance their leverage in the internal EU negotiations on a possible mandate. In such situations, a dilemma emerges for them: either to agree to a mandate that reflects a compromise with the other member states (knowing that the status quo consists of the Commission’s ability to negotiate in the absence of a mandate) but that commits even the conservative member states later in the process, or to relinquish the opportunity to define a mandate altogether. For the more progressive member states – those that hope to achieve trade liberalisation or regulation in the WTO – agreeing to a mandate early in the negotiating process may be counterproductive unless it pins the Commission down to the kinds of regulation or liberalization that they prefer. The outcome is often then, that no mandates (or no mandates that substantially limit the Commission’s room of manoeuvre) are being defined and that the member states rely on other control devices: at locum, and ex post.

The at locum device consists of the opportunity that articles 133 and 300 TEC provide to the member states to closely control the Commission during the external negotiations. A structure of committees (ranging from “titulaires”, and “deputies” to sectoral ones) exists for that purpose. Under article 133 these committees are better known as the Committee 133. They are composed of member states’ representatives with the task of controlling and instructing the Commission. Their abilities to do so depend however, on their abilities to reach agreements among themselves, which is far from evident on highly sensitive issues and concessions. But a distinction needs to be made between the ability to instruct on the one hand, and the ability to have an impact on the other hand. One may well occur without the other. Indeed, it is not because internal diversity may hinder the Committee 133 in its ability to define instructions, that is has no impact in such situations. The Commission needs to take into account that at the end of the day, at least a qualified majority of the member states will need to approve the outcome of its external negotiating work. This means that even in the absence of one clear instruction by the Committee 133, the Commission has an interest in listening to the concerns expressed by each of the member states’ representatives separately. Indeed, it means that the Committee 133 fulfils more than just one function. As a matter of fact, it largely fulfils three of them (later we will add a fourth): an aggregation function, a watchdog function, and a sounding-board function.

Aggregation refers to the Committee’s job to try to come up with one instruction on behalf of all member states if it wants to maximize its impact on the Commission. The Commission’s neglecting such instructions would indeed be tantamount to triggering involuntary defection after the negotiations have been concluded.

The watchdog function refers to the monitoring role that the Committee 133 fulfils for the member states jointly, and for each of them separately. Indeed, through the Committee 133 the member states get direct access to the external negotiating process itself even if they cannot take over the negotiating role from the Commission.

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4 Examples of such sectoral committees are the ad hoc Committees 133 on agriculture, on Mutual Recognition Agreements, on textiles, on telecommunication, on steel, etc.

5 Article 133 TEC, as amended by the Nice Treaty, refers to this committee as follows (emphasis added): “The Commission shall conduct these [external] negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives that the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.”
The sounding-board function stresses the fact that the Committee 133 provides the framework within which the member states can individually express their concerns and demands on specific negotiating issues. This enables the Commission to anticipate member state reactions to concessions or demands it intends to make, and to act pre-emptively in this regard. This brings us to the *ex post* control device.

Involuntary defection is indeed an *ex post* (and ultimate) control device available to the member states. Depending on the required majority in the Council – once again when it concerns exclusive EU competencies – member states will be able to wield this device individually (in the case of unanimity), or in collaboration with the number of member states needed to reach a blocking minority (in the case of QMV). It is a control device, because as long as the Commission wants to avoid involuntary defection, it needs to anticipate the probability of such defection given the way in which it is negotiating externally. Member states can send (and often send) signals in this regard, either directly (in the Committee 133, through their permanent representations in Brussels or otherwise) or indirectly (through their domestic media, speeches in their national parliament, etc.), and may thus have an indirect impact on what the Commission is doing. This impact will of course depend on the majority requirement mentioned above, on the voting weight of the member state concerned, on the expected number of member states that share the positions expressed, and on the expected distance between what the Commission was intending to negotiate, and what is being defended by the member state concerned.

In sum, how control is being exerted depends on a number of factors. *Ex ante* control depends on the compelling nature of the external negotiations, on the question whether such negotiations put pressure on the EU to reform its trade policies there where it wants to resist such reforms (cf. Meunier’s conservative model, cf. Meunier, 2000), or whether the EU wants to push through reforms against the resistance of its external partners, and on the preference distances among the member states. *At locum* control is affected by the compelling nature of the external negotiations, and by the member states’ ability to overcome their preference differences. And *ex post* control is influenced by the decision-making rules in the EU, and, once again, by the compelling nature of the external negotiations because that affects the member states’ ability to engage in, or to credibly wield the threat of, involuntary defection.

**How Beneficial Are Agency Losses for the Agent?**

The assumptions about delegation and about control as presented above largely assume that principals and agents entertain a relationship of opposition. The agent – with its competence-maximization concerns – acts in a way that inevitably leads to agency losses for the principals. These are losses (or costs) due to delegation to an agent and to the fact that agents use the autonomy that stems from it to engage in slippage or even worse, in shirking. Consequently, principals will do whatever they can to rein in the agent so as to limit these agency losses. It is questionable however, whether agents always benefit from agency losses, and thus whether they always prefer to minimize control and to maximize autonomy. As Pollack has observed (2003: 44), much depends on the capacity of the principals to sanction the agent for agency losses they had to face in the past. That capacity is affected by the terms that rule the act of delegation, and more precisely whether the delegated powers have been granted indefinitely or for a limited time span only. In case of the former, the risks of agency losses for the agent are much lower than in case of the latter because the principals’ ability to sanction is much lower in the former than in the latter. In the context of the EU’s external trade policies, this is a particularly important point to make. To clarify this, reference has to
be made again to the distinction that has been made above between treaty-based and issue-specific delegation, as the following table indicates.

<table>
<thead>
<tr>
<th>Type of Delegation</th>
<th>Time Span of the Delegation</th>
<th>Default</th>
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<tbody>
<tr>
<td>Treaty-based delegation of trade negotiating authority to the EC</td>
<td>Indefinite, unless changed by Treaty revisions</td>
<td>Negotiating authority</td>
</tr>
<tr>
<td>Issue-specific delegation of trade negotiating ability to the Commission</td>
<td>Limited in time and substance to the negotiations for which the authorization has been granted</td>
<td>Negotiating inability</td>
</tr>
</tbody>
</table>

Whereas the ability of the member states-as-principals to sanction the Commission-as-agent is restricted as far as the treaty-based delegation of trade negotiating authority is concerned it is relatively large whenever it concerns issue-specific delegation of trade negotiating ability. The need to engage in such delegation from case to case in the area of trade, makes it easy for a limited number of member states to sanction the Commission by refusing to delegate in the future or to attach a number of strings to such delegation. It remains the case however, that this ability to sanction is affected as well by the extent to which the EU is free to choose whether to engage itself in external negotiations or not. The more compelling the external negotiating environment is, the less the member states-as-principals will benefit from enhanced sanction abilities due to issue-specific delegation.

The need to engage in issue-specific delegation in the area of trade policy-making in the EU means that delegation in this sector may be characterized as iterated delegation. Again and again, whenever new negotiations come up, the Commission needs to get new negotiating authorizations from the Council. Consequently, the member states do have the tools to punish the Commission for past behaviour. This makes it plausible to expect the latter to anticipate the possibility of such actions by the former. This observation is the key to understand the Commission’s handling of its relations with the member states in the EU’s external trade negotiations in general, and in the WTO Doha negotiations in specific. Four hypotheses in relation to iterated delegation may clarify this point. A central aspect in them consists of the uncertainty that comes with the decision to delegate. Uncertainty may be a factor in triggering the delegation, as is the case with delegation due to incomplete contracting, but it may provide an impediment to delegation as well. As the principal(s) don’t know how the agent is going to use the autonomy it acquires due to delegation, it is rational for them to be concerned about that uncertainty. It is equally rational for the prospective agent however, supposed as it is to be concerned about competence-maximization, to be concerned about the impact of uncertainty on the principals’ preparedness to delegate (cf. Tirole, 2002: 58). The prospective agent has an interest therefore, to show to the principals that no moral hazard will take place on the basis of the delegated authority. The more the agent’s competencies depend on the delegation decision – as is the case with iterated delegation – the more its behaviour will be affected by this concern. In the first place, this will affect its preferences on the autonomy that it wants the principals to delegate to it. It is indeed in the interest of an agent that is anxious to get delegated authority to find an equilibrium on the uncertainty that comes with delegation. It needs to be sufficiently small so as not to deter the principals from delegating, but sufficiently

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6 Even if the 1996-97 IGC and the 2000 IGC have showed that it is not impossible.
7 Tirole derives this observation from borrowers’ behaviour vis-à-vis potential lenders of capital. The borrower (supposed to be the agent) tries to convince the lender (the supposed principal) to lend capital, that is, to relinquish control on the usage of part of his capital. He does so by behaving in such a way so as to convince the lenders that no moral hazard will take place.
large so as to allow the agent to act in a way that maximizes its competence. The first hypothesis is then that iterated delegation increases the impact of the principals’ assessment of uncertainty on the extent of the agent’s autonomy.

The second hypothesis links the first one with the agent’s behaviour vis-à-vis its delegated autonomy. The iteration of delegation (as opposed to a default where delegation continues indefinitely unless explicitly decided to the opposite) increases the agent’s eagerness to anticipate the principals’ future behaviour on delegation in response to its current actions.

The third hypothesis links the second one to the characteristics of the issues on which authority has been delegated. The more politicized such issues are, the stronger the restricting impact of anticipation will be on the agent’s usage of its autonomy.

The fourth hypothesis extends this reasoning to the difference between multiple and collective principals. The nature of the principal affects the scope of the anticipatory behaviour by the agent. In case of a collective principal, the agent will be able to restrict such behaviour to the number of actors inside that principal that is required to grant delegated authority in the future. In case of a multiple principal, the agent will need to anticipate the reactions of each of the principals to its current behaviour, assuming that each principal’s acquiescence is required to enable delegation to the agent.

In what follows, a plausibility probe of these hypotheses will be conducted on the basis of the Commission’s negotiating behaviour in the ongoing Doha Development Agenda (DDA). The central element in this probe consists of the way in which the Commission anticipates the way in which its authority is going to be affected by the inevitability – due to the WTO context in which the negotiations take place – of negotiations on issues that are politically highly sensitive for some member states, by far and foremost, agriculture. The Commission’s anticipatory approach consists of two pillars: procedural and substantive. Space allows us only to focus on the latter one – the impact on the substantive issues the Commission wants to have on the negotiating table – rather than on the former where it concerns the way in which the Commission handles and calibrates its interaction with the member states. The focus is also restricted to the negotiations up to and at the WTO Ministerial Conference in Cancun (September 2003).

4. Anticipation by Pre-emption: The Commission and the DDA

A central component in the Commission’s anticipatory behaviour in what became the Doha Development Agenda consisted of the outcome of the agricultural negotiations of the Uruguay Round. That Round – which had lasted for more than seven years (1986-1993) – resulted in a wide range of multilateral trade agreements covered by the newly-created World Trade Organization (WTO), including a so-called built-in agenda (cf. Patterson, 1997, Coleman & Tangermann, 1999). This agenda provided for an agenda of ongoing negotiations on a number of topics. The idea was that through this agenda, the WTO would fulfil its role as a member-driven organisation that would provide a permanent forum for the regulation and liberalization of international trade. On some issues, the built-in agenda provided an important element of the compromises reached in the Uruguay Round. In exchange for concessions received on the reduction or dismantling of trade barriers, countries had to accept to reopen negotiations on such issues within a predetermined time span. One of the areas for which this was the case, was agriculture. Indeed, article 20 of the Uruguay Round Agreement on Agriculture (AoA) provided for the reopening of the agricultural negotiations by 2000. In
addition, the agreement also contained a provision in which the members would lose their protection against dispute settlement cases on agricultural subsidies after a period of nine years. That protection shielded the members from complaints about subsidies allowed by the agreement.\(^8\) Upon the expiry of that clause by the end of 2003,\(^9\) members risked to be exposed to numerous cases on such subsidies. There were thus two sources of pressure on the EU as far as its agricultural subsidies were concerned: the start of new negotiations by 2000, and the expiry of the peace clause by the end of 2003. For market access on agricultural products, the peace clause would not matter, but the built-in agenda would.

It is clear that these elements created problems for at least some member states of the EU. There was no escape from new negotiations on agricultural trade – a price the EU had to pay at the end of the Uruguay Round – and thus, from the acrimonious internal debates and painful concessions that this would probably entail.\(^10\) This prospect would even be more problematic for the Commission. The Commission would have to negotiate on those concessions both under the close and suspicious scrutiny of several member states, and the pressure of its external negotiating partners. And as the Uruguay Round negotiations had learned, three consequences would come out of it. First, that such a process could drag on for years. Second, that the EU risked to be seen as the major culprit of problems that certainly would emerge in such negotiations. Third, that, as at the end of the day concessions will have to be made, the Commission and its authority will be questioned, if not attacked, by those member states resistant to such concessions, even to such negotiations.

There was thus a serious reason for the Commission to be concerned. The Uruguay Round had shown how far that concern should go. Indeed, as part of these negotiations, the Commission tried to unblock the gridlock in the agricultural negotiations by concluding a bilateral deal with the United States first, and then to confront the member states with the accomplished fact of such a deal. To a large extent, this approach – which given the difficulties with the agricultural issue may have been inevitable – backfired on the Commission’s negotiating authority both during and after the Uruguay Round. One could even argue that it caused a Blair House syndrome about Commission’s abuse of negotiating competencies among several member states,\(^11\) as became visible in the years following the conclusion of the round, including in the 1996-97 and 2000-IGC’s. It was reasonable for the

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\(^8\) Article 13 AoA, the article that provides for this shield, is better known as the “peace clause”, but is referred to in the AoA as the provision on “due restraint”.  
\(^9\) Debate exists on the exact date by which the clause expires (cf. Steinberg & Josling, 2003). Some claim that it expires at the end of December 2003, given that the AoA entered into force on January 1, 1995. Others claim that as the AoA refers to nine years after the start of the implementation period, the peace clause will expire differently for different sectors depending on the moment at which for each of these sectors, the members submitted their schedules of commitments. The point is however, that the peace clause will certainly have expired completely by the second semester of 2004.  
\(^10\) This is strikingly different from the GATS negotiations that were planned to run parallel to the agricultural ones (article XIX GATS). In the first place because the EU was more of a net demandeur for trade liberalization, than a net demandeur for protection, like in agriculture. Second, because the ambition on services – certainly among developing countries – is lower than on agriculture, which makes it less difficult for the EU to exclude difficult issues as it did on audiovisual services, water distribution, education, and health care. The only exception here consists of mode 4 of services provision, which caused the four weeks exceeding by the EU of the deadline for the submission of services’ offers in the WTO. The member states reached a compromise here by allowing each of them to set numerical ceilings on the number of persons allowed with the purpose of providing services for periods of six months. See the Commission’s services offer of February 6, 2003, and the member states’ reaction to it (Agence Europe, February-April 2003 & Tweede Kamer der Staten-Generaal, 2003, 25 074, nr. 58 & nr. 64).  
\(^11\) Blair House refers to the place, close to the White House in Washington DC, where the bilateral deal was struck in November 1992.
Commission to anticipate similar or analogous problems in new agricultural negotiations. In addition, however, compared with the Uruguay Round negotiations, the problem was compounded by the fact that agricultural negotiations would be conducted on their own, as stand-alone negotiations, not as part of a large and broad negotiating agenda.\textsuperscript{12} This would make it impossible to link painful agricultural concessions and their concomitant costs to the benefits of concessions granted by other countries in other sectors, so as to soften the pain and to make the agricultural concessions politically more acceptable. Likewise, it would make it impossible to limit the agricultural concessions by offering the EU’s negotiating partners concessions (and thus benefits) in other sectors. In other words, the stand-alone nature of the agricultural negotiations would make it impossible to construct a broad cross-sectoral package deal, something the Commission considered to be a \textit{condition sine qua none} for the conclusion of an agricultural agreement and, more importantly, for its ability to pre-empt the inevitable member states’ attacks on the way in which it wields its negotiating authority.

Two elements were thus important for the Commission. First, it needed to expand the negotiating WTO’s agenda beyond agriculture to sectors attractive to member states that would suffer from agricultural concessions, or where such member states would be prepared to make concessions in exchange for a softer treatment on agriculture. Such sectors needed to be sufficiently appealing to attract wider support among the WTO membership as well.

Second, it needed to get the WTO members to accept the principle of a single undertaking on those issues. Only a single undertaking would provide the ability to engage in broad package deals. Allowing the unravelling of such an undertaking by accepting so-called early harvests would be out of the question, or at least be severely restricted.

\textbf{Getting the Member States on Board}

On the first element, the fact that parallel to the agricultural negotiations service negotiations were planned to take place helped a lot. It provided a first, but important opportunity for the Commission to propose a linkage between agriculture and a range of sectors more important for EU employment. In addition, it concerned sectors with a high (partly underused) export potential due to EU competitiveness and to the fact that the GATS agreement had only provided for a first modest step in the direction of trade liberalization.

In addition, the Commission hoped to trigger pressure in favour of a new negotiating round in the WTO – because that was ultimately the objective – by including issues in the negotiating agenda that would mobilize domestic business support within the member states in favour of a new round. The inclusion of non-agricultural market access, investment, and trade facilitation\textsuperscript{13} are cases in mind as well as competition and, as a first step, transparency in government procurement.\textsuperscript{14}

\textsuperscript{12} Note however, that parallel to the agricultural negotiations, new negotiations on services would also be launched on the basis of Uruguay Round commitments (see article XIX GATS).

\textsuperscript{13} Trade facilitation is related to the facilitation of customs procedures so as to reduce the administrative price of importing a product in a country. It includes \textit{inter alia} fees and formalities, the publication and administration of trade regulations, and issues related to transit. Among the WTO members, the United States stressed the importance of talks on this topic in the months before Cancun (while it pleaded for “care” on competition negotiations)\textit{(Inside U.S. Trade, May 17, 2002, p. 25)}.

\textsuperscript{14} The Uruguay Round negotiations on government procurement – with its plurilateral Government Procurement Agreement (GPA) – had learned that more could not be asked from most developing countries.
Ultimately, most member states accepted the idea of a new round in March 1998 because they realized how problematic stand-alone negotiations on agriculture would be, not only for the Commission, but for the EU, and in some cases, for themselves (Kerremans, 2000: 182-183). For some of them, the consideration certainly played a role that by agreeing with a new round, new negotiations on agriculture would at least get somewhere despite recalcitrance among some other member states, thereby increasing the pressure on the EU to reform the CAP and to reduce its cost, especially in the perspective of the EU’s new southern and eastern enlargements.

Getting the WTO on Board

Convincing the other WTO members to accept a new round of multilateral trade negotiations (MTNs) was far from evident however. Two major problems consisted of convincing a United States government suspicious of the EU’s intentions and a U.S. Congress faced with increasing opposition to trade liberalization on the one hand, and convincing the developing countries that a new round would benefit them too on the other hand. The latter was not easy as most developing countries concluded that as the Uruguay Round negotiations had not brought them the promised benefits, there was no use to start a new one, rather the contrary (cf. Panagariya, 2002: 1219-1223). Resistance from the U.S. and many developing countries – or at least their ambivalence on a new round – in combination with the pressure engendered by street manifestations in Seattle culminated in the collapse of the first attempt to launch one at the Seattle Ministerial Conference of November 30 – December 3, 1999.

After Seattle, the Commission was quickly in the driver’s seat again to push forward the idea of a new attempt to launch a round. To appease the developing countries, the Commission intensified internal EU decision-making on Everything but Arms (EBA) – thereby implementing a commitment that was made at the WTO Ministerial in Singapore in December 1996 with regard to market access for the least-developed countries.15 Everything but Arms – a decision adopted on February 28, 2001 – provided for the tariff- and quota-free import of all products except weapons and ammunition,16 originating in (at that time) forty-nine least-developed countries to the EU market with transitional periods provided for bananas, rice, and sugar.17 The EU equally started to show more support for the demand of the developing countries to adopt an implementation agenda in which deficiencies of the Uruguay Round agreements for these countries, including their implementation, would be dealt with. One of the politically most visible parts of this consisted of compulsory licensing for trade in generic medicines, an issue that was especially important for countries that did not benefit from EBA or were even hurt by it,18 but that have a strong production capacity of generic medicines (such as India and Brazil).

On the U.S. side, two important changes took place that facilitated the Commission’s efforts. First, the fact that the Bush Administration’s – that entered into office in January 2001 – assessment of the Commission’s strategy on a new round resulted in the conclusion that the

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15 See document WT/MIN(96)/DEC, point XIV, December 13, 1996.
16 CN chapter 93.
probability of agricultural concessions by the EU – extremely important for president Bush in electoral terms – would be higher with a new round than with stand-alone negotiations. At the same time, the U.S. Congress engaged in the process that would result in the Farm Act, thereby changing U.S. interests on agricultural subsidies somewhat (cf. infra). Still, the Bush Administration had to walk a thin line as congressional resistance to WTO-negotiations on anti-dumping and countervailing measures (the so-called trade remedies) increased tremendously, and as the president was looking for congressional delegation of trade negotiating authority to him knowing that his predecessor had failed in this endeavour and that resistance against trade liberalization and regulation was running high in Congress (largely the House) and beyond (cf. Kerremans, 1999; 2003). The result was a remaining U.S. ambivalence on the need to launch a new round and on the agenda to be pursued in it. This was especially the case with the so-called Singapore issues: investment, competition, trade facilitation, and transparency in government procurement. Whereas the US was originally not enthusiastic about the first, it nonetheless pushed for a negotiation as wide in scope as possible (including portfolio investment). About the second, the US never really supported the EU’s attempts to launch negotiations here. The third and the fourth certainly interested the U.S. even if it accepted to drop the latter surprisingly quickly at the 2003 WTO Ministerial in Cancun. (cf. infra).

The reluctance, even resistance, of most developing countries to a new round, combined with lukewarm U.S. support, made it necessary for the EU, especially the Commission, to put itself in the driver’s seat in the WTO, so as to keep the agenda of the negotiations as large and integrated as possible. This means that the Commission wanted to safeguard the single undertaking throughout the negotiations, both before and after the Doha Ministerial of November 2001 (cf. Kerremans, 2004).

Preserving the Single Undertaking Before and After Doha

The biggest challenge for the Commission was to preserve the single undertaking vis-à-vis scepticism from both some member states, and some of its WTO partners. The Commission’s handling of the negotiations between November 2001 (the Doha Ministerial), and September 2003 (the Cancun Ministerial), provides plenty of evidence of such efforts. At the Doha Ministerial itself, the Commission made a large effort to include the Singapore issues into the negotiating agenda even if several member states were not convinced of the need to include issues such as investment and competition. In addition, up to the last minute of the Ministerial, the Commission attempted to include ecolabelling, the precautionary principle, and the relationship between the WTO and multilateral environmental agreements (MEAs) in the agenda as well. At the end of the day, a decision on the launching of negotiations on the

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Singapore issues was postponed until 2003, whereas ecolabelling was being referred – without any commitment to negotiations – to the WTO Committee on Trade and Environment (CTE). For the remainder however, a large negotiating agenda – the Doha Development Agenda (DDA) – was being adopted with the objective of concluding a comprehensive agreement by the end of 2004. That outcome was largely reached because of the usage of vague and equivocal language in the Ministerial Declaration so that everybody could be satisfied. The price of this way of working was however, that many problems were being postponed and would show up later, sometimes more intensely.

From the perspective of the Commission, an important concern about the outcome of Doha was to maintain the linkages between the different parts of that agenda with the objective of enlarging its scope with the inclusion of the Singapore issues by September 2003. This concern manifested itself on two elements: the question of the modalities’ deadlines, and the linkage between the agricultural negotiating process and the other issues. The modalities’ deadline question – a highly technical issue the political importance of which was not immediately obvious to everyone involved in the DDA – was basically – at least from the perspective of the Commission – a question of linking the deadlines (moments against which sensitive concessions need to be negotiated) for the agricultural negotiations with those of the other issues. In Doha, no deadline on non-agricultural market access had been agreed to. So the Commission’s objective was to put one on the same date as the deadline for the agricultural modalities negotiations: March 31, 2003. This would enable it to trade concessions on agricultural modalities against concessions made by others in other areas, or vice versa. The point was however, that some developing countries favoured a non-agricultural modalities’ deadline a couple of weeks later than the one for agriculture, namely on May 31, 2003. This would enable them to carefully assess the EU’s (and other WTO members) agricultural concessions and to see whether such concessions warranted non-agricultural concessions in return. The Commission adamantly opposed such an approach, as it would undermine its ability to make concessions in the first place. The idea was indeed that with a similar deadline, the Commission would be able to present agricultural and non-agricultural modalities’ concessions as one package to the member states, thereby reducing the probability of internal EU gridlock on the agricultural part of the negotiations. It took the Commission a while to convince its WTO partners, up to the point where it indicated to be prepared to block the whole negotiating process because of the modalities’ deadline. Ultimately, a Salomon’s judgement of working with an informal and a formal deadline enabled an agreement. By March 31, 2003 – the agricultural modalities deadline – the WTO members committed to reach a “common understanding on a possible outline on modalities with a view to reaching agreement on modalities by May 31, 2003.” At the end of the day, both deadlines were missed.

The linkage between agriculture and the other issues became a real concern after the failure to respect the modalities deadline. It seems that from then on, the Commission’s strategy

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21 Still, the decision to do preparatory work on these issues in the perspective of the decision that needed to be taken “by explicit consensus” in September 2003 was interpreted by the Commission as a fact that made these issues part of the single undertaking. This was certainly a position not shared by most other WTO members.

22 Even then, the work of the CTE was being restricted by the requirement that the outcome of its work “shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries” (The text in italic was added to the draft declaration in the final hours of the negotiations in Doha).
consisted of working towards the final negotiation of a package containing all issues at the Cancun Ministerial in September 2003, including the modalities on agriculture and non-agricultural market access, the inclusion of the Singapore issues in the DDA, and the inclusion of geographical indications (GIs) in the talks. It must be added however, that the Commission’s work was being facilitated by three developments. First, by the internal EU deals on agricultural spending between 2007 and 2013, and the concomitant question of the decoupling between subsidization and production (cf. Koester & Brümmer, 2003: 247); Second, by the resistance of farm constituencies in the United States against any possible unravelling of the subsidy benefits granted to them by the 2002 Farm Bill; Third, by the conviction of an increasing number of WTO members that the US and the EU needed to reach an agricultural deal among themselves before the DDA could proceed on agriculture, and on the other issues as several developing countries had refused to allow for any progress on the other issues before the agriculture modalities gridlock had been resolved.

The agricultural deals reached by the EU member states certainly helped the Commission in pursuing its linkages approach in the WTO. On the one hand, the deals provided the Commission some breathing space in the agricultural negotiations on domestic support (much less, or even not on export subsidies) in the WTO. On the other hand however, they required the Commission to watch its back even more than before, as some member states believed that all the necessary concessions now had been made, and consequently, that no new concessions should be accepted or negotiated by the Commission in the WTO.

The U.S. Farm Bill opened a window of opportunity for the Commission. Because of it, the U.S. had an interest in being more forthcoming on the question of domestic support in the WTO, which increased the probability that it would agree with at least the preservation of the so-called blue box. This is a category of domestic support created by the Uruguay Round Agreement on Agriculture (AoA), that allows for such support measures on the assumption that they have a limited impact on productivity levels. It is a box specifically created for the EU, as it only contains EU direct payments to farmers, a support measure that emerged as a consequence of the 1992 CAP reform (cf. Tangermann, 1999). In the course of 1999-2002, the U.S. had made no secret of its intention to dismantle the blue box. But due to the 2002 Farm Bill, the U.S. suddenly started to show interest in its preservation on the condition that it would become a tool to shield U.S. domestic support from reduction commitments as well.

As several developing countries refused to accept any progress on the other negotiating issues before the agriculture modalities gridlock had been resolved, pressure started to abound on the EU and the U.S. to unblock the negotiations by an agreement among themselves. The combination of U.S. interest in the blue box’s preservation with the Commission’s newly found self-confidence as a consequence of the EU internal deal on agricultural subsidies, paved the way to a U.S.-EU agreement that would not run the risk of becoming a Blair House scenario for the Commission. Rather than pinning down the Commission to major concessions – like the Blair House agreement had done – this agreement was believed to smoothen the U.S.’ approach to the agricultural negotiations, something the Commission hoped to benefit from in the final marathon negotiating session in Cancun to which it aspired.

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23 Relevant in this regard is the analysis that several WTO members made about the lack of EU-U.S. coordination as one of several important factors in the collapse of the 1999 Seattle Ministerial. Such coordination was a necessary but not sufficient condition for a successful outcome. Not sufficient, because Seattle also learned – as Cancun later did – that its was essential to coordinate with a group of large developing countries too, especially with China, Brazil, India, and South Africa.
The problem was however, that the agreement – the EC-EU Joint Text of August 13, 2003 – made matters worse, rather than that it facilitated the WTO negotiating process. One part of the agreement played a particularly large role in this: The expansion of the definition of the blue box so as to allow for the inclusion of U.S. countercyclical payments. It triggered a developing country response that proved to become of paramount importance for the outcome in Cancun: the creation of what became the G22. It came in addition to developing country irritation about the lack of significant progress – including three missed deadlines – on the issue of their Special and Differential Treatment (SDT) in the WTO, and on the lack of responsiveness – especially but not exclusively from the U.S. – to the request by four least developing countries to dismantle domestic support and export subsidies for cotton.24

Despite the fact that right before the start of the Cancun Ministerial, an agreement was being reached on the issue of the export and import of generic medicines (compulsory licensing), the atmosphere in Cancun was poisoned from the start. There was a heavy agenda (largely due to the fact that many issues were not ripe for a deal). There were unclear objectives as the ambitions for the Ministerial had been downgraded to such an extent that it became unclear what kinds of modalities’ agreements would be aimed at, something that made the negotiators keep their cards up their sleeves, rather than putting them on the table in a game of concession and counterconcession. In sum, the context of Cancun was certainly not conducive to allow for a situation that would serve the Commission’s interests best: a large final but feasible marathon negotiating session in which a large modalities package would be negotiated and finalized. In addition, the Commission’s strategy of trying to do so was being unravelled by the decision, taken by the chairman of the Ministerial, to end the negotiations before such a final session had started. Particularly painful for the Commission was the fact that this decision was being taken midcourse its attempts to convince recalcitrant developing countries – especially the G22 – that such a final session could serve their interests. It was painful because the Commission had started to make a number of concessions – on the question of the Singapore issues – and had to return to the member states now before it had been able to reap the benefits of doing so, something that would have been possible in case a final package agreement would have been agreed to. But now, the Commission had conceded on dropping investment and competition (at least from the multilateral negotiations) in the hope of adding trade facilitation and government procurement transparency to the single undertaking, and of enabling an agreement on the different modalities too, preferably including the geographical indications on more than wines and spirits. Because the negotiating process was being interrupted, it had made the concessions without getting something in return, and this was being exposed to the member states. This partly explains the irritation, even the bitterness, inside the Commission about the way in which the Mexican foreign minister had handled the Cancun Ministerial.25 Indeed, the single undertaking approach – the central component in the Commission’s strategy to reconcile the pressure for concessions on agriculture with the preservation of its future negotiating authority – was being unravelled now. Anticipation of future delegation by pre-emptive behaviour vis-à-vis a final agreement too narrowly geared to the question of agriculture, had not worked, at least for now. One can expect however, and developments since the Cancun Ministerial suggest this, that the Commission will continue to

24 Chad, Burkina Faso, Mali, and Benin.
25 Besides Commission complaints about the decision to stop the negotiations midcourse, there were also Commission complaints on the ways in which the Cancun Ministerial had been organized by Mexico. The alleged bad organization of Cancun meant “four days of waiting and fifteen hours of negotiation” (dixit Pierre Defraigne, KU Leuven Cancun debate, October 23, 2003). Indicative of that was that the talks in Cancun only concerned agriculture, cotton, and the Singapore issues, and that no talks had taken place on services or non-agricultural market access.
pursue this approach by remaining in the driver’s seat of the DDA. As a matter of fact, its role as a negotiator that is dependent on member state delegation of case-by-case negotiating authority in a compelling negotiating environment such as the WTO built-in agenda, not really leaves it an alternative.

5. Principal(s) versus Agent, and the EU in the WTO

What is the impact of the member states’ ability to control the Commission as negotiator in the WTO on the way in which the Commission behaves in WTO negotiations, and thus, on the role the EU is able to play in that organisation? This question can be answered through three steps. First, by a focus on the question of delegation and control in the EU’s external trade policies inside the WTO, taking into account the compelling nature of the WTO’s built-in agenda. This focus results in the conclusion that as far as it concerns the EU’s exclusive competencies on trade, delegation is affected by the lack of negotiating authority for the member states, the need for the explicit granting of trade negotiating ability to the Commission by them, and by the iterated nature of such delegation. The second step consists of the impact of iterated delegation on the way in which the Commission behaves as negotiator, and more precisely on the way in which it tries to handle the possible future ramifications of its current behaviour on its future ability to maximize its competencies (or at least to avoid a reduction of such competencies), thus on future delegation and control. The third step connects this question with the problem of negotiations on politically sensitive issues in the WTO, and the concomitant rising risk that current negotiating behaviour on such issues will backfire on future negotiating autonomy. The conclusion is here that the Commission anticipates this risk through its current behaviour. In doing so, it acts preemptively in the WTO negotiations by creating a negotiating context in which concessions on sensitive issues can be linked to counter-concessions by other WTO-members, and in which sensitive concessions can be avoided or reduced in number and significance, by linking them to more significant concessions in less sensitive sectors or areas. In both cases, package deals – negotiated by the Commission and presented as a deal to-take-or-to-leave to the member states – that balance the costs and benefits for each of, or most member states are an absolute necessity. In the WTO, this means that by necessity, the Commission – and ipso facto the EU – needed to be in the driver’s seat on the one hand, and to use that role in order to get and to preserve a single and expansive undertaking, on the other hand.
References


