

# The European Parliament's New Role in Trade Policy: Turning power into impact

*Lore Van den Putte, Ferdi De Ville and Jan Orbie*

**No. 89 / May 2014**

## Key points

- The power of the European Parliament (EP) in EU trade policy has increased significantly with the Lisbon Treaty. Even though it had already acquired a greater informal role, the codification of its involvement enables the EP to have a stronger say in trade policy. Nonetheless, the power of the EP is still more limited than that of the Council.
- The rejection of the ACTA agreement in 2012 enhanced the EP's credibility as a veto actor. It strengthened the influence of the EP in negotiations on trade mandates. It also enabled the EP to be more seriously involved during actual trade negotiations.
- In EU trade legislation the EP now equals the power of the Council to change European Commission proposals, but in the implementation of trade legislation, e.g. anti-dumping decisions, its role is still very limited.
- Substantively, EP trade policy debates have been dominated by left-right divides. The EP generally follows the European Commission's pro-trade agenda although it has sometimes taken a more defensive position.
- Normative principles have been secondary to free trade concerns. The EP has not challenged the Commission's view that human rights-related concerns should be addressed via other channels. Only when the EP fears a direct impact on the rights of EU citizens has it shown its teeth.
- While many opposed the involvement of the EP in EU trade policy on grounds that it would hamper its effectiveness, this fear has proven to be unfounded so far.
- The main challenge for the EP, however, lies in transforming its power into real impact. Whereas its legal and political capacities have been strengthened, the new EP legislature will have to make sure that this also results in tangible influence.
- The real test for the EP's role in EU trade policy will come in the years to follow. With negotiations having recently opened with such important players as the US and Japan, the EP has for the first time been involved at the earliest stages of the discussions about trade agreements. It will be interesting to see if the EP is willing and able to use its informal resolutions on these agreements as a de facto mandate, and to call the Commission to order during negotiations if it dislikes the direction being taken.
- Finally, while it is difficult to speculate about the composition of the next European Parliament and its influence on EU trade policy, an EP with more radical MEPs and a balance-of-power between the S&D and EPP might shift EU trade policy towards a more normatively-oriented stance than under the current Parliament where centre and right-wing views on trade have been dominant.

ISBN 978-94-6138-401-0

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means – electronic, mechanical, photocopying, recording or otherwise – without the prior permission of CEPS.

Available for free downloading from the CEPS website ([www.ceps.eu](http://www.ceps.eu))

© Centre for European Policy Studies 2014

# CONTENTS

---

Lisbon, a giant leap forward .....	1
A growing (in)formal role for the European Parliament.....	2
International agreements: Impacting on all stages of negotiations.....	2
EU trade legislation and day-to-day implementation.....	4
The EP's substantive position.....	6
Protectionist worries within a liberal policy.....	6
Normative concerns of secondary order.....	7
Concluding remarks.....	8
References.....	9

# The European Parliament's New Role in Trade Policy: Turning power into impact

*Lore Van den Putte, Ferdi De Ville & Jan Orbie\**

**CEPS Special Report No. 89 / May 2014**

---

## **Lisbon, a giant leap forward**

With the entry into force of the Lisbon Treaty on 1 December 2009, the power of the European Parliament in EU trade policy has considerably increased, especially when compared to its almost non-existent formal role in the previous decades. For a long time, member states and trade policy experts strongly opposed a stronger role of the EP on grounds that trade policy was too technical and that the involvement of the EP would hinder efficient negotiations. There was also a fear that the legislature would be too sensitive to specific protectionist interests. Over time, however, trade policy affected also non-trade issues, which triggered increasing interest on the part of civil society organisations and citizens. They criticised the undemocratic nature of EU trade policy-making (on the input side) and argued that it was too much focused on liberalisation (on the output side). This politicization of trade policy at the beginning of the millennium paved the way for more parliamentary involvement. The White Paper on Governance in 2001 and the European Convention (2001-03) were the first steps in this direction. Their ideas were codified in the 2009 Lisbon Treaty.

According to these new rules, the EP is now required to give its consent to any trade agreement negotiated (Art. 218 (6) (a) (i)-(v) TFEU) and during negotiations it should be regularly updated on where negotiations are going (Art. 218 (10) TFEU). With regard to EU trade legislation, it is now on an equal footing with the Council under the Ordinary Legislative Procedure (OLP) (Art. 207 (2) TFEU).

Against the background of increased legal competences, this Special Report addresses two questions. The first concerns the extent to which the EP's power in trade has increased: Has the EP effectively played a bigger role since the end of 2009? The second relates to the substance of the EP's trade policy preferences: Does the EP attempt to push EU trade relations into a more or less normative and/or protectionist direction? Our main argument is that the Lisbon Treaty not only heralds a major leap forward in legal terms, but that the current EP legislature has also managed to increase its political clout in trade policy-making.<sup>1</sup> Nevertheless, a major challenge for the new EP legislature 2014-2019 will be to turn this into effective influence.

---

\* Lore Van den Putte is a PhD candidate at the Centre for EU Studies, Ghent University, Ferdi De Ville is assistant professor at the Centre for EU Studies, Ghent University and Jan Orbie is professor at and director of the Centre for EU Studies, Ghent University.

<sup>1</sup> Our claim is supported by interviews with members of staff from the European Commission and the European Parliament and by interventions offered at a debate organised by CEPS, 18 March 2014.

## A growing (in)formal role for the European Parliament

Traditionally, EU trade policy has been dominated by only two actors: the European Commission and the Council. Although the EP has gradually become better informed on trade issues since the 1960s, it was not until adoption of the Treaty of Lisbon that its role was also formally enhanced. It is unclear, however, precisely what this means in terms of the actual power exercised by the EP. Some refer to trade policy as the “most important change” introduced by the Lisbon Treaty (Devuyst, 2013) or as a “Copernican revolution”, owing to the increased legislative role it ascribes to the EP (Eeckhout, 2011), whereas others suggest that the Lisbon Treaty essentially only codifies the EP’s power with regard to multilateral trade agreements (Young, 2011). This paper attempts to clarify these questions by scrutinising the EP’s performance in trade policy during its first post-Lisbon legislative term (2009-14). In so doing, we look separately at the two arenas of EU trade policy: i) negotiations on trade agreements between the EU and third countries, and ii) EU trade legislation and the implementation of trade policy decisions within the EU.

### International agreements: Impacting on all stages of negotiations

The negotiation of international agreements basically advances in three phases. Until the Lisbon Treaty, each of these phases involved a delicate balancing act between the European Commission and the Council, while the Parliament was formally excluded. In the opening phase of negotiations, the Commission, in line with the Community Method, had the right of initiative. It proposed a negotiation mandate to the Council, which had to be approved in order for the Commission to start negotiations. In practice, the EP was involved informally. In the second phase involving the actual negotiations, the Commission functioned as the EU negotiator on the basis of the Council mandate. These negotiating guidelines are not formally binding but are of course key politically. During this stage, the Commission was constantly monitored by representatives of the member states in the ‘Article 113/133 Committee’, called the Trade Policy Committee (TPC) since Lisbon. Since 1995, the EP and the European Commission agreed in inter-institutional agreements that the EP would be informed not only about the negotiation mandate but also during the negotiations. The third phase – ratification – involved the approval of the Council of the negotiated agreement. How has the Lisbon Treaty impacted the EP’s role in the different phases in this process?

First, the new treaty provisions still do not provide a formal role for the Parliament in the initial phase of the mandate. However, in practice, the EP has managed, since the Lisbon Treaty, to affect the mandate. Although it is difficult to distinguish the Parliament’s influence from that of the Council, there are several indications that the EP exerted a distinctive impact – especially when the Council is internally divided. For example, in the case of the mandate for trade negotiations with Japan, in a resolution of June 2012, the EP asked the Council not to start negotiations before its Committee on International Trade (INTA) had issued its position on the proposed mandate. In October of the same year, it requested in a resolution a binding review clause within one year after the start of the negotiations, in order to assess whether Japan had delivered on its commitment to eliminate non-tariff barriers. This request reflected the position of France and some other member states.

Another example is the Transatlantic Trade and Investment Partnership (TTIP). Here too, the EP supported some members of the Council<sup>2</sup> in the mandate phase, successfully arguing for the exclusion of audiovisual services. So, all in all, the EP has already started to play an important role in the first phase of trade negotiations, even though the Treaty does not

<sup>2</sup> While France was the instigator, it was mostly supported by Greece, Hungary and Belgium.

stipulate this. The explanation for the EP's growing informal impact is as follows: as the EP now has to give its consent at the end of negotiations, the recommendations it issues in non-binding resolutions before the negotiations have a similar political weight as the negotiating guidelines from the Council. They communicate the 'red lines' of the EP in the eventual agreement as conditions for its consent.

Second, in the negotiation phase, the new Treaty for the first time explicitly states that the Commission has to 'report regularly' to the EP (Art. 218 (10) TFEU) as well as to the Trade Policy Committee of the Council 'on the progress of negotiations'. This constitutes a consolidation of an existing practice that goes back for decades (see above). Regarding this disclosure of information, there is some disagreement between the MEPs in the INTA Committee whether the European Commission fully complies with this. Liberal MEPs, who generally have a good relationship with DG Trade (and the liberal Commissioner during this legislature), argue that they are treated in the same way as the TPC, while more left-wing MEPs and the Greens believe that the disclosed information is rather vague and selective (see Richardson, 2012). Sensitive documents (for example, containing detailed Commission negotiating positions), are only distributed to a limited number of INTA members.

It would be wrong to conclude that the EP is now on an equal footing with the Council's TPC during this phase. The Treaty clearly stipulates that this 'special committee' can *assist* the Commission during the negotiations which contrasts with the EP which only needs to be *informed*. Besides its greater role awarded by the treaty, the TPC is also more powerful than the EP (and its INTA Committee) because of its long-standing relationship with the European Commission and because of the expertise it has built up over decades (Kleimann, 2011). The EP is also politically fragmented and lacks sufficient members of staff, who regularly have to shift their attention from one committee to another, and as such it relies largely on information from DG Trade and from NGOs and external studies (Richardson, 2012). Notwithstanding its limited formal power and the above-mentioned constraints to influence the negotiations, the EP is still using various means to get its voice heard. Just like before the Lisbon Treaty, it makes its voice heard through resolutions, opinions, hearings and questions to the Commission.

Importantly, there are indications that in practice the EP has become more effective in influencing trade negotiations. With regard to the TTIP with the US, the EP has managed to convince the European Commission to inform the INTA Committee before and after each round of negotiation. This is a clear enhancement of the EP's role, in contrast to earlier episodes when the EP was only sporadically updated about the progress of negotiations. Now it can give its view on each of the topics of the negotiating rounds.

Third, trade agreements will henceforth be ratified by the EP and in principle no longer by national parliaments. This is because the Lisbon Treaty gave the EU exclusive competences in all trade-related issues.<sup>3</sup> The Treaty makes it crystal clear that the EP needs to give its consent to all trade agreements, thus including FTAs that purely deal with trade flows. While this constitutes a significant increase in the Parliament's power, it should be observed that even before the Lisbon Treaty the EP's assent was already required in a range of cases. As such, the Treaty is again to a large extent formalising existing practice (see Woolcock, 2010).

In the pre-Lisbon era, however, it was commonly accepted that the EP would never be a credible actor in EU trade policy unless it was formally able to reject trade agreements in

---

<sup>3</sup> Given the EU's exclusive competence in trade issues since Lisbon, only 'mixed' agreements still need to be ratified by the (sub)national level. Agreements are mixed if they contain also issues for which the EU is not exclusively competent (De Ville, 2012).

which it had a real say throughout the negotiating process, much like the practice in the US Congress. EU trade agreements were never threatened with non-ratification after negotiations, not only because trade policy was relatively uncontested but also because the ratification responsibility was with the national parliaments of the member states. The latter felt compelled to agree with a *fait accompli* which had taken the Commission years to negotiate and which they didn't really monitor, and therefore they never seriously challenged trade agreements.

The new EP quickly made it clear that it would be more critical and proactive. Since Lisbon, a new dynamic has emerged whereby threat of a veto by the EP has become more credible, and more so than by national parliaments before, because it is not in a straightjacket of the parliamentary system of government. The EP is well aware of its new role in EU trade policy and is eager to use its newly acquired powers. Already on the occasion of the EU-South Korea agreement, which was mainly negotiated during the previous legislature, the EP warned that its views should be taken seriously. An EPP member of INTA stated: "The notion that it will be a smooth process is naïve; Parliament will not just rubber-stamp the deal." (Fjellner, 2010). This statement, amongst other, instilled fear in the Council that trade policy would be hindered because the EP would have to get used to its new role. This fear proved to be unfounded for the agreement with South Korea. However, the Anti-Counterfeiting Trade Agreement (ACTA)<sup>4</sup> shows that this new context has enhanced the EP's confidence to reject a trade agreement that goes against its preferences, where negotiations were not sufficiently transparent and where it is influenced by a large public campaign. The rejection served as a reality check for the other EU institutions. It has enhanced the EP's power in international trade negotiations, even in the first and second phases, as described above.

## EU trade legislation and day-to-day implementation

Prior to the Lisbon Treaty, the consultation procedure applied to EU trade legislation, meaning that the Council adopted Commission proposals with at best a consultation with the EP. The 2001 'Everything but Arms' Regulation providing duty-free and quota-free market access for the least-developed countries illustrates the Parliament's limited involvement in trade policy-making at that time. Despite the symbolic importance of this initiative as well as its broader ramifications for EU trade and development policies, the EP was never formally involved and only issued its resolution several months after the Council had adopted the regulation.

The Ordinary Legislative Procedure (OLP) has applied since Lisbon, meaning that the EP is now on par with the Council for the essential elements of the EU's Common Commercial Policy (CCP). And it managed to get many of its amendments accepted. For example on the South Korea safeguard regulation, the EP managed to secure more effective protection of European electronic and car industries than was foreseen in the draft from the European Commission. Also for the first time in more than 40 years, the modernisation of the EU's Generalised System of Preferences (GSP) involved negotiations with the EP. The regulation

---

<sup>4</sup> ACTA was an agreement negotiated between the EU and its member states, the US, Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea and Switzerland with the aim to enforce intellectual property rights. Negotiations started in 2006 but only in 2012 the EP had to give its consent. The EP plenary rejected the agreement on 4 July 2012 with a majority of 478 votes against (70%), 39 in favour (6%) and 165 abstentions (24%). This was not only due to the secrecy of the negotiations, but also due to a large public campaign and demonstrations all over Europe against the agreement.



was approved after first reading and incorporates the EP's amendments.<sup>5</sup> It is also expected to play an important role in the modernisation of the Union's trade defence instruments.

While the introduction of OLP enhances the democratic accountability of EU trade *legislation* (see Devuyst, 2013), the question remained what to do in specific cases where a quick reaction is needed (i.e. *implementation*), for example when addressing perceived dumping on the European market. Such issues cannot be decided by the OLP because this procedure is too lengthy, but are dealt with through the exercise of implementing powers conferred on the Commission. The Treaty of Lisbon also changed the regime for delegated<sup>6</sup> and implementing acts, in which the EP instead sided with the Commission against the member states in defending the new institutional balance as foreseen in the Lisbon Treaty while ensuring more influence for itself in implementing powers in the CCP.

However, for the most important implementing power – anti-dumping decisions – the examination procedure under implementing acts applies. This means that for the implementation of this most-used trade defence instrument, the Commission is assisted by a committee of representatives of the member states (called the anti-dumping committee), while the EP only has the right of scrutiny. So in the implementation of important trade policy decisions, such as anti-dumping measures, the EP is involved in a limited fashion and can only oversee the Commission's implementation, together with the Council whose ability to reject trade defence measures is still more elaborate. In some other cases where executive powers of the Commission have been defined as 'delegated acts', the EP has gained more power.

From the above discussion, it can be concluded that the EP's influence in international trade has increased. Even if it remains less involved than the Council and its TPC (e.g. in phases 1 and 2 of negotiations), and even if some provisions of the Lisbon Treaty are a consolidation of existing practices (e.g. in phases 2 and 3), the growing role of the EP in EU trade policy cannot be denied. The most visible example of this has been the rejection of the Anti-Counterfeiting Trade Agreement, which has subsequently further strengthened the EP's position in all phases of trade negotiations. Of course, the EP's impact cannot be seen in isolation from other actors. The EP has often supported the Council, or at least some members of the Council, thereby going against the Commission's preferences. First, in the case of audiovisual services in the TTIP negotiating mandate, it supported France and other member states in a resolution to exclude these issues from the talks. Second, in the case of the safeguard clause for the South Korea agreement, the EP urged stronger protection for the automobile sector, as was demanded by Italy and to a lesser extent by Germany. In each case, the EP took sides with a minority within the Council that is also more protectionist than the Commission. This brings us to the next question: What is the EP's substantive position in EU trade policy – and does it indeed have a more protectionist impact?

---

<sup>5</sup> The EP introduced amendments calling for greater transparency and more scrutiny rights for Parliament, tougher tariffs against environmental and social dumping and against dumping assisted by third-country export subsidies. The EP also voted to reject a proposal from the Commission to give importers and exporters two weeks prior notification of plans to impose provisional anti-dumping duties. At the time of writing, the EP and the Council would enter into legislative negotiations in order to reach a first-reading agreement.

<sup>6</sup> An important example of a delegated act is all changes concerning the list of GSP beneficiaries. Under delegated acts, the EP has the right to object to an act proposed by the Commission. The S&D, Greens and GUE Group in January 2014 objected to a Commission delegated regulation on the list of GSP+ beneficiaries because it argued that the EP should not be forced to vote on the complete list of GSP+ beneficiaries but should be able to vote on a separate delegated act for each country, but the resolution was rejected.

## The EP's substantive position

For what purposes is the EP using its newly acquired powers? EP votes on international trade have typically followed a left-right division. In most of the cases, GUE<sup>7</sup> and the Greens (the left side of the ideological spectrum) vote against trade agreements proposed by the Commission or legislative work done by the EP on Commission proposals. ALDE, the EPP and the ECR are mostly in favour. Leaving aside ACTA, all these groups display a high voting cohesion. An important exception is the S&D group, whose members are mostly aligned with the centre-right groups on trade issues but where in most cases a significant proportion of non-loyal members can be found. However, our findings generally confirm the Hix & Noury (2009) argument that voting in the EP has evolved from national lines to political group lines. What these results cannot answer is whether the EP's involvement makes EU trade policy more protectionist and/or whether it makes trade policy more normative than before Lisbon.

### *Protectionist worries within a liberal policy*

A first substantive question is whether the EP generally follows the pro-liberalisation agenda of DG Trade in the European Commission. Certainly, the EP is not opposing the conclusion of trade agreements. Since Lisbon, the EP has rather smoothly approved trade agreements, except for ACTA, which was not really focused on trade liberalisation per se. On the contrary, as witnessed in the case of the EU-Japan FTA, the EP has insisted on sufficient market opening for EU businesses in third countries. However, on specific issues, the EP has sometimes sided with the most conservative<sup>8</sup> members of the Council. Looking again at the South Korea agreement, the importance of strong safeguards for the protection of the European automotive industry was already stressed in its resolution of 2007. It managed to delay the provisional application of the agreement. In the meantime, it secured a stronger safeguard clause for car producers than was proposed by the Commission. Furthermore, together with the industry, the EP has the right to call for an investigation by the European Commission. So the defensive automotive industry was more successful in influencing the EP than the Council. The same pattern holds for the mandate for negotiations with the US in the TTIP. While the EP in general expressed itself very much in favour of the negotiations, it supported France (and a few other member states) in keeping audiovisual services outside the scope of negotiations.

Another example is the Commission's proposal for a new GSP regulation, which already was a compromise hammered out between free traders, protectionists and developmentalists. The exclusion of economically stronger developing countries could be welcomed by free traders as an incentive to conclude FTAs, while protectionists were happy with the less preferential treatment of competitive economies, and developmentalists could understand that the GSP should focus on the poorest countries. The EP largely agreed with this delicate balance between different trade preferences. Trade Commissioner Karel De Gucht also suggested this in his report to the EP: "Our internal discussions in the Commission were as complex as yours, and our proposal was the result of very careful reflection and a detailed

<sup>7</sup> GUE/NGL is the Confederal Group of the European United Left - Nordic Green Left. With the Greens we mean the Group of the European Greens/European Free Alliance in the EP. ALDE is the Group of the Alliance of Liberals and Democrats for Europe. The EPP is the European Peoples' Party, currently the largest group in the EP. ECR stands for the group of the European Conservatives and Reformists in the EP. S&D or the Group of the Progressive Alliance of Socialists and Democrats is the second largest political group in the EP.

<sup>8</sup> In this analysis 'conservative' is not understood as an ideological, right-wing tendency, but rather as the defence of the status quo and an opposition to change.



impact assessment.”<sup>9</sup> On the one hand, the EP made the GSP regulation more protectionist by lowering the threshold for safeguard measures, and on the other hand it slightly broadened the scope of liberalised products.

We can conclude in general that the EP supports the EU’s liberalisation agenda, but within this liberal framework it gives some more support to special protectionist interests than the other institutions.

### *Normative concerns of secondary order*

A second substantive question relates to the normative position of the EP. Does it serve as a new gateway for societal interests such as trade unions and NGOs? It was commonly expected that the EP’s upgraded role would make the CCP more normative, meaning that it would take social, environmental, human rights and democracy-related concerns more into account. This expectation is rather logical since the EP is the only institution that has a direct connection with its constituents, including civil society and NGOs. Apart from that, the new stipulation that the CCP should be conducted in accordance with the principles and objectives of the EU’s external action (Art. 207 TFEU) makes it easier for the EP to argue for linkages between trade and broader external policy objectives such as sustainable development and human rights.

South Korea was the first trade agreement that the EP had to approve under the new Treaty. Already in the beginning of the negotiations in 2007 the EP had stipulated its conditions for consent in a resolution. The EP basically aimed to copy the demands laid down by the US Congress on environmental and social clauses. However, the EP’s success in this regard is mixed. To be sure, the agreement does include a sustainable development chapter with social and environmental provisions, but these are not enforceable. Moreover, also the Commission and the Council have also been in favour of sustainability provisions in trade agreements, so the EP cannot claim that this is its own victory.

Another interesting case is the trade agreement with Colombia and Peru, because here the EP explicitly pursued foreign policy aims. The agreement was controversial for many reasons, but mostly because of the grave violations of trade union rights in Colombia, the country with the highest murder rate of trade unionists worldwide. While the biggest proponents of the agreement – the EPP and Spain – wanted to reward Colombia for its progress on human rights issues, the opponents mostly from the Greens and GUE argued that an FTA would mean condoning these practices. A lot of protest, both from within the EP and from outside organisations, obliged the EP to ask for a binding action plan on human rights. As such, it could compromise the aim of free trade on the one hand and the EU’s normative obligation to ensure respect for human rights globally on the other hand. While this might seem a strong normative commitment, the Action Plan was fiercely criticized because of the lack of clearly identifiable benchmarks with regard to human rights, labour rights and the environment. As such, normatively, the EP did not try to change the agreement in any meaningful way.

The GSP case discussed above also illustrates that the EP’s preferences do not differ considerably from the Commission’s position. The EP basically accepted the GSP-plus incentive system as proposed by the Commission, which provides more market access for developing countries that comply with a number of international conventions on sustainable development and human rights. The EP only made the criteria slightly stricter by adding

<sup>9</sup> European Parliament (2012). Debate on the Scheme of Generalised Tariff Preferences. Consulted on 24 July 2013 on <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120611&secondRef=ITEM-019&language=EN>.

that “the country in question must not have formulated a reservation in relation to any of the conventions ... which is prohibited by the convention or which is considered to be incompatible with its object and purpose”. The EP also made it more explicit that the Commission should monitor the implementation of the relevant conventions, and added that findings of third parties such as the EP and civil society groups should be taken into account. A more fundamental change was proposed by the Committee on Development and by the Greens who insisted that the EU should look at the Human Development Index instead of the GDP in order to determine which countries are eligible for trade preferences. But they were outvoted on this point by the INTA Committee and the majority of the plenary.

Another example is when the EP, after having rejected the one-year extension of the fisheries protocol with Morocco in December 2012,<sup>10</sup> managed to make some normative improvements in the agreement. However, in the final analysis, the most fundamental normative concerns did not constitute make-or-break points. The reasons for its rejection were mainly the sustainability of the fish population, the incompatibility of the agreement with international law because it was not proven that local people would benefit from it and the fact that the EU would have to pay too much in exchange for only a few benefits. After a revision of the protocol with a better cost-benefit ratio and more protection for the sustainability of fish stocks, the EP gave its consent for a new four-year agreement with Morocco. Several members of different political groups were disappointed, however, that the new agreement still did not contain a strong human rights clause and that the Western Sahara was not excluded from the agreement.

To summarise, none of the above-mentioned cases involving normative issues constituted a red line for the EP. Nor did it take a normative position that was fundamentally different from the Commission or the Council. Similarly, human rights concerns were never a breaking point. The only cases where normative considerations proved to be a fundamental point for the EP concerned situations where the rights of EU citizens might be infringed. The rejection of ACTA proved this point very clearly. The EP mentioned several reasons for its rejection of ACTA, such as the secrecy of the negotiations, the fear for reduced access to generic medicines in developing countries and the legal uncertainties of the treaty. However, the most important objection was the possible infringement of individual freedoms, the freedom of expression and privacy on the internet.

## Concluding remarks

This CEPS Special Report has shown that the EP has gained power in trade policy since the Lisbon Treaty, but in a more subtle and ‘political’ way than a purely legal reading would suggest. With regard to international agreements, the Lisbon Treaty has mostly formalised existing practice. However, with the rejection of ACTA the EP has managed to use its formally increased power in the third phase of negotiations to increase its standing in the other phases of the negotiations. This precedent has been an eye-opener for both the European Commission and the Council. Nonetheless, the power of the EP is still more limited than that of the Council. With regard to EU trade legislation the EP is now on par with the Council, which is a significant enhancement of power compared to its previous situation. Also in this legislative dimension of trade policy, it has already shown that it is willing to use its new powers. While the EP remains rather sidelined in implementing trade policy acts, it has left its mark on the new regime for delegating and implementing acts, thereby enhancing its own role and ensuring the supranational character of the regime.

<sup>10</sup> In December 2011 the EP already dissolved the protocol to the EU-Morocco agreement which had been applied temporarily since 28 February 2011.

Substantively, the EP seems to have changed Commission policy less in a normative way than was sometimes expected, while only in a limited number of cases were minority conservative positions in the Council supported by the EP. As an overall conclusion, we argue that fears that the EP's involvement would hamper an efficient EU trade policy have proved to be unfounded.

Given that the EP has only been enjoying its increased competences for four and a half years, no definite conclusions can be drawn. While in the case of ACTA and the other cases discussed above the EP was only involved at the end of the process, in the recently opened negotiations the EP will have been fully involved in all three phases of the agreement. New negotiations such as the EU-Japan agreement and the TTIP will undoubtedly add colour and depth to the picture we have drawn here. These will show how the EP is further transforming its legal and political power into real substantial influence.

Of utmost importance in this regard will be the parliamentary context in which trade policy is shaped. If the far left and far right indeed gain seats and if the EPP and the S&D will be of equal size, as is predicted in the polls, the already strong left-right divide might be exacerbated. While this will lead to more diverse perspectives on EU trade, it will not make it easier to negotiate trade policy in the EU. An EP that is more divided might have an impact in at least three ways. Firstly, it can have an effect on the willingness of the EP to ensure efficient EU trade policy-making. In this scenario, the European Commission and the member states cannot take it for granted that the EP will rubber-stamp their decisions. Secondly, and related to this, the new composition will have an effect on the credibility of the EU in general and the EP in particular. While the current legislature has left its footprint on mandates for negotiations with Japan and the US, the next EP might change its mind on certain aspects thereby undermining the EU's trustworthiness with its negotiating partners. Thirdly, a European Parliament with more radical representatives that are against free trade agreements for socio-economic (radical left) or anti-integrationist (radical right) reasons, and a socialist group that is more under pressure from contenders on the left, might move in a more protectionist direction. We believe that the position of the S&D group, which has been relatively divided on trade issues in the first legislature after Lisbon and is projected to grow in power, will be of crucial importance for the outcome of these questions.

## References

- Devuyst, J. (2013), "European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements", *Journal of International Business and Law*, 12 (2), pp. 259-316.
- De Ville, F. (2012), "Subsidiarity and EU Trade Policy: Overview of the Complex Discussion, Treaty of Lisbon, and Implications for Trade", in J. Loisen and F. De Ville (eds), *Subsidiarity and Multilevel Governance*, Brussels: KVAB.
- Eeckhout, P. (2011), *EU External Relations Law* (2<sup>nd</sup> edition), Oxford: Oxford University Press.
- European Parliament (2012), Debate on the Scheme of Generalised Tariff Preferences ([www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120611&secondRef=ITEM-019&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120611&secondRef=ITEM-019&language=EN)).
- Fjellner, C. (2010), "Korean trade deal could fall under Lisbon rules", EUObserver (<http://euobserver.com/economic/29268>).
- Hix, S. and A. Noury (2009), "After Enlargement: Voting Patterns in the Sixth European Parliament", *Legislative Studies Quarterly*, XXXIV (2), pp. 159-174.

- Kleimann, D. (2011), "Taking Stock: EU Common Commercial Policy in the Lisbon Era", CEPS Working Document No. 345, Centre for European Policy Studies, Brussels.
- Richardson, L. (2012), "The Post-Lisbon Role of the European Parliament in the EU's Common Commercial Policy: Implications for Bilateral Trade Negotiations", EU Diplomacy Paper No. 5, College of Europe, Bruges.
- Woolcock, S. (2010a), "EU Trade and Investment Policymaking after the Lisbon Treaty", *Intereconomics*, 45 (1), pp. 22-25.
- Young, A.R. (2011), "The Rise (and Fall?) of the EU's Performance in the Multilateral Trading System", *Journal of European Integration*, 33 (6), pp. 715-739.