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Inclusion without Influence? NGOs in European Trade Policy

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ABSTRACT

The actions of nongovernmental organisations (NGOs) concerned with such issues as development, human rights, and the protection of the environment voicing concerns to public authorities raises the questions: Do these newly mobilised societal actors influence EU trade policy outcomes? We answer in the negative, arguing that such groups, which have diffuse costs and benefits from trade policies, do not dispose of resources with which they can threaten or enhance political actors' chances of re-election or re-appointment. A survey of NGOs and business groups as well as two in-depth case studies on the negotiations concerning the EU's Economic Partnership Agreements and the EU's policy on access to medicines in developing countries support our reasoning. The analysis shows that although NGOs have gained access to policy-makers, they have largely failed to shift policy outcomes in their favour.

Introduction

During the first decades of the European Union's (EU) existence, mainly two constituencies, namely exporting and import-competing firms, tried to influence its external trade policies (De Bièvre and Dür 2005).¹ The increased liberalisation of EU trade policy in the 1994 Uruguay Round agreements, and the nearly simultaneous liberalisation of intra-EU trade as part of the Single Market programme, led to the mobilisation of new constituencies – businesses as well as nongovernmental organisations (NGOs) – voicing concerns to public authorities. The NGOs demand that trade policy be conducted to achieve policy objectives such as better international environmental protection, the world-wide respect of minimum labour standards, socio-economic development and public health. The question this article poses is whether this new type of actor has had an impact on trade policy processes and outcomes in the EU.

We expect NGOs' influence on policy outcomes to be heavily circumscribed, even if these groups manage to gain access to public decision makers. Since the general public has diffuse costs and benefits from trade policies, those defending public health, the environment, or development should have less of an incentive to engage in collective action than do firms who experience concentrated costs and benefits. As a result, NGOs should find it difficult to threaten or enhance political actors' chances of re-election or re-appointment. They are unlikely to have the option to threaten withdrawal of investment or employment. NGO representatives are rarely in a position to provide precise and detailed policy information to political actors, because individual NGO supporters mostly remain uninformed about their representatives' activities.

Empirical analysis reveals that the mobilisation of new actors has indeed led to changes in trade policy processes in the EU, such as the creation of a so-called Civil Society Dialogue within the Directorate General (DG) for Trade of the European Commission. This dialogue and related initiatives at the national level have given hitherto excluded societal groups access to decision-makers on European trade policy. Nevertheless, further empirical examination shows that despite being included in the policy-making process, NGOs have gained little influence on policy outcomes.

Little research has been done – from whatever angle – on the role of societal groups in European trade policy, a lacuna that is all the more surprising when compared to a large literature on interest groups in American trade policy. This article also addresses a literature on NGO involvement in the process of European integration (Mahoney 2004; Smismans 2005). The relevant question is whether the Commission's strategy of consultative forums does actually have an impact on policy outcomes, and whether it effectively manages to include groups in policymaking that otherwise are not politically active. Finally, the article speaks to the debate about the relative strength of diffuse and concentrated interests in influencing policy outcomes (Schattschneider 1960; Lohmann 1998; Bailey 2001).

In a first section of this article, we establish a theoretical framework that provides a reason why groups that have only diffuse costs and benefits from trade policy should not be influential. Even if they manage to gain access to decision-makers, the lack of mobilisation of individual members should cause NGO representatives to have recourse to flash campaigns rather than flare up in continuous policy monitoring. Next, we show that in EU trade policy, groups defending diffuse interests have in fact become mobilised and that they have gained access to policy-makers. The main part of the article then assesses the influence of NGOs on EU trade policy outcomes using the results of a survey of actors

involved in trade policy lobbying in the EU and two case studies of the EU's pursuit of Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries and the EU's involvement in the World Trade Organisation (WTO) negotiations concerning access to medicines.

Collective action, the supply of political resources, and influence

A substantial literature has discussed how much influence diffuse interests can have over policy outcomes. For the sceptics, diffuse interests are largely powerless. Crippled by the free rider problem, diffuse interests may not even be able to get organised, a precondition for effective lobbying efforts (Olson 1965). Neither can diffuse interests use elections to get their policies enacted, as they remain rationally ignorant of political processes. With only small groups of concentrated interests monitoring incumbent politicians, these politicians 'have electoral incentives to bias policy toward special interests' (Lohmann 1998: 812). Michael Bailey (2001) challenges this finding of powerless diffuse interests. According to him, incumbent politicians in democracies have to fear that challengers mobilise disaffected voters. Given the constant threat of voter mobilisation, policymakers have an incentive to pre-empt dissent by formulating policies that do not alienate diffuse interests. In still another view, policymakers' preferences are predetermined by the interests of their voters and concentrated interests then only approach those legislators who happen to have a preference close to their own (Hall and Deardorff 2006). As concentrated interests help politicians to achieve their objectives by way of 'legislative subsidies', namely the exchange of resources such as information and time, their lobbying effort actually leads to the implementation of policies that appeal to diffuse interests.

This article largely builds on the sceptical view. Our expectation, consequently, is that in the field of trade policy, diffuse interests should not be able to influence political outcomes to the same extent as concentrated interests. They fail to do so not because the moral principles they defend are illegitimate in the eyes of public opinion or because public authorities are unwilling to engage with their concern, nor because they are unsuccessful in gaining access to public institutions. Rather, they fail to influence political outcomes because they do not dispose of specific resources that would help legislators achieve their own preferences (in the sense of a legislative subsidy) or be useful in affecting a political actor's chances for re-election or re-appointment. By resources we mainly refer to information about constituency preferences and market conditions. Diffuse interests should find it difficult to acquire these resources, because collective action problems keep undermining the

constant flow of resources from the public to these groups. With NGOs having little to exchange, politicians usually have no incentive to heed their demands. In the following, we provide a more detailed elaboration of this argument.

The main difference between firms and NGOs lies in their different incentives to engage in collective action. Trade policies generate diffuse costs and benefits for the general public, whereas they engender concentrated costs and benefits for exporting and import-competing firms (Frieden and Rogowski 1996). Exporting industries have an interest in greater access to foreign markets, while import-competing sectors prefer protection from foreign goods or services. In many circumstances, these two constituencies thus have clear incentives to engage in lobbying activities. In contrast, diffuse interests, such as consumers, should find it very difficult to mobilise for political action on trade policies. Indeed, until about a decade ago, very few organized groups defended diffuse interests in trade policymaking. One consequence of this constellation of interests was that politicians implemented policies that were largely in line with exporting and import-competing interests. They delegated the provision of foreign market access for exporters to one set of executive agents, and the provision of protection for import-competing interests to another set of agents, while controlling policy output through monitoring and, if necessary, intervention (De Bièvre and Dür 2005). In such an institutional set-up, firms and producers' interest groups, which constituted the prime source of input for public decision makers, could tailor their lobbying strategies to the agency from which they expected the most beneficial policy output.

Even if diffuse interests manage to get organised, the underlying factors that make it difficult for these interests to influence political outcomes should persist. The act of getting organised does not exempt the groups from the need to constantly go back to their constituencies and ask for resources needed for political activity. Since the potential supporters of the groups still can only expect diffuse benefits from trade policy decisions, there will continually be collective action problems, leading to an undersupply of resources. What is more, the public should rationally remain ignorant about the details of political decisions taken as well as about the activities of the groups' representatives.

In this situation, NGOs will see their lobbying activities inhibited in more than one way. First to capture attention representatives of such groups are compelled constantly to appeal to general principles such as equity, social justice, and environmental protection rather than to make concrete policy proposals. Since they have to rely on flash campaigns to mobilise public opinion, they defend extreme positions that are difficult to achieve. Consequently, if lobbying is a legislative subsidy (Hall and

Deardorff 2006), the work of these groups is of little value to legislators who try to satisfy the preferences of voters in the middle of the political spectrum. Moreover, citizen groups often lack electorally relevant resources. They are only rarely able to wield the stick of electoral punishment as long as their constituents lack information about specific policies. With individual supporters lacking the incentive to monitor the policy process closely, NGOs will be unable to convey constituency preferences to decision-makers, leaving them without a carrot to entice decision makers to heed their concerns.

Concentrated interests' starting point is very different. With collective action problems far less severe for them, firms have an incentive directly to monitor trade policies. They can engage in lobbying themselves and/or form part of a trade association that undertakes the lobbying effort for them. Even in the case where a representative does the lobbying for them, the situation is different from the one that NGOs confront as the representative is acquainted with the position of the members and these know what position the representative defends. As a result, they can provide legislators with both legislative subsidies and electorally relevant resources. With regard to the former, their expertise may make it easier for legislators to achieve their own preferences. Concerning the latter, concentrated interests avail themselves of both the stick of electoral punishment and the carrot of detailed information on firm preferences and economic conditions.

In short, we expect NGOs to be less influential than concentrated interests. Beyond this, we expect several other differences in the lobbying efforts of concentrated and diffuse interests. For one thing, firms and their trade associations should provide politicians with much more detailed and precise information than NGOs, with the latter referring to abstract ethical principles. We also expect the two sides to be aware of their relative advantages in influencing political outcomes: when asked, firms should stress their specific resources and NGOs should emphasise diffuse public support for their aims. The hypothesised difference in sticks and carrots that interest groups can bring to bear upon political actors should lead to variation in the degree of involvement during different phases of the policy process. NGOs should be particularly effective in putting new issues on the political agenda, whereas business associations should be particularly active during the stages of policy formulation and implementation. Diffuse interests should also rely more on outside lobbying activities such as public campaigns than concentrated interests (Kollman 1998). Finally, we should see the representatives of NGOs acting in a largely autonomous manner, little constrained and supported by the actors that they are supposed to represent. Groups defending concentrated interests should have far stricter mechanisms of accountability.

The mobilisation and inclusion of NGOs in EU trade policy

How do these theoretical expectations fare when confronted with empirical evidence? For a variety of reasons, a large number of NGOs that represent diffuse interests such as environmental protection, the defence of consumer, human, and labour rights, and support for the economic development of poor countries now engage in trade policy lobbying. Two indicators demonstrate the extent of this mobilisation of new actors in EU trade policy. First, in a survey of a sample of groups registered in the Civil Society Dialogue database of the EU's DG Trade, of 24 NGOs for which we gathered this information, twelve (50%) declared that they started to monitor EU trade policy in 1995 or later. Only seven groups (29%) monitored EU trade policy before 1990, three of which are consumer groups, which in most countries were set up and financed by public actors. The responses from traditional trade constituencies reveal a very different picture: of 20 that we asked, 14 (70%) monitored EU trade policy before 1995 and 11 (55%) before 1990.

Second, an analysis of the attendance of NGOs and business groups at WTO Ministerial Meetings indicates a substantial increase in lobbying activity over time (World Trade Organization, Secretariat various). 108 organisations attended the meeting in Singapore (1996), 130 the one in Geneva (1998), 738 the one in Seattle (1999), 365 the one in Doha (2001), 961 the one in Cancun (2003), and 812 the one in Hong Kong (2005). The number of NGOs coming from Europe also increased. Of all groups lobbying in Seattle, 11 per cent were NGOs from the EU; in 2005, this number increased to nearly 14 per cent.² As a share of all groups coming from EU countries, NGOs also became more prominent: from 45 per cent in 1999 up to 52 per cent in 2005. In short, the number of NGOs active in lobbying on EU trade policy has increased substantially over time. In 2005, they accounted for 50 per cent of the 540 groups registered with the EU's DG for External Trade, with developmental organisations boasting 22 per cent of the total.³ The classical trade constituencies, namely firms, agricultural organisations, and sectoral as well as broad business associations, make up only one third of all registered organisations. The remainder are non-profit organisations, consultancies or law firms, and public authorities.

Some diffuse interests consequently managed to overcome the collective action problems created by the nature of the costs and benefits of trade for them. The main reason for their success in doing so seems to have been the temporary public concern with the extension of the scope of trade negotiations in the Uruguay Round of multilateral trade negotiations (1986–94) into areas such as services, health, standards, investments, and intellectual property rights (Barton et al. 2006: 16). The

Uruguay Round may have served as a focus event that mobilized the public; temporary public awareness of the issues at stake in turn enabled groups to overcome collective action problems. Other groups were already active as service providers in areas such as developmental aid or health care in developing countries, and only diverted some resources to monitoring and trying to influence trade policy matters. Still others made use of public funds to get organized (Mahoney 2004).

Decision-makers in Europe, both at the national and at the EU level, reacted to the mobilisation of NGOs with the establishment of new mechanisms that provide these actors with access to the political system.⁴ One example for a forum at the national level is the so-called 'Beach Club process' in Denmark, in which both NGOs and business groups meet with officials from different ministries involved in trade negotiations (OECD 2001: 37–38). At the European level, the European Commission initially sought informal consultations with the newly mobilised groups during the negotiations on a multilateral agreement on investments in 1998 (Walter 2001). From November 1998 onwards, the Commissioner for Trade, Sir Leon Brittan, approached NGOs during the preparations for a new trade round. In fact, the European Commission delegation to the WTO ministerial conference in Seattle for the first time included representatives not only from traditional trade constituencies but also from NGOs (WWF 2002).

Because of the strength of the public backlash to the WTO in Seattle, the new Commissioner for Trade, Pascal Lamy, then decided to institutionalise this consultation mechanism. The objectives of the resulting 'Civil Society Dialogue', as stated on the Commission webpage, are 'to develop a confident working relationship between all interested stakeholders in the trade policy field and to ensure that all contributions to EU trade policy can be heard' (European Commission, DG Trade 2005). The forum brings together business representatives, NGOs, and officials from the European Commission. The Commission organises meetings on such issues as public health, services, agriculture, environment and sustainable development, investments, competition, intellectual property and WTO reform and transparency. After the fourth WTO ministerial conference in Doha in November 2001, the structure of the Dialogue was refined to include new groups and issues (WWF 2002). In 2002, the Commission introduced a database with which all parties interested in participation in the Civil Society Dialogue meetings could register. In 2005, a total of 38 Civil Society Dialogue meetings took place, evidence suggesting that this forum has become an important feature of trade policy consultation in the EU.

In our view, the creation of the Civil Society Dialogue – and of other forums at the national level – is evidence of the inclusion of the newly

mobilised NGOs in the policymaking process. Two potential counter-arguments to this conclusion merit discussion. On the one hand, participation in the Dialogue may not be representative of the NGO population. Some groups, which reject the process of trade negotiations in an outright manner, have shown no interest in participating (the ‘rejectionists’, in the terminology of Scholte 2004: 152). Moreover, NGOs seem to find it more difficult to participate in the meetings of the Dialogue than business interests, partly because they often do not have representations in Brussels and partly because they lack the necessary resources to send representatives to meetings in Brussels.

On the other hand, the way the Civil Society Dialogue was implemented soon drew criticism, with NGO representatives arguing that the sessions take the form of briefings rather than of dialogue (Hocking 2004: 24). Business associations, equally, are not particularly fond of the format, referring to it as a monologue rather than a dialogue.⁵ Participants can present statements in these meetings only if they announce that they plan to do so before the session. This system allows for little direct interaction. Consequently, in November 2004 a series of NGOs addressed both Lamy and his successor, Peter Mandelson, criticising the ‘debriefing’ character of the meetings (Amnesty International et al. 2004). The inclusion of new groups in the policymaking process thus may not be as comprehensive as implied by the existence of formal mechanisms. In spite of these caveats, we submit that the conditions for access are achieved given that the Civil Society Dialogue makes sure that decision-makers are well informed about the opinions held by NGOs. In some respects, therefore, the EU trade policy moved from an ‘adaptive club model’, which only includes business consultation, to a ‘multistakeholder model’, in which both business groups and NGOs participate in trade policymaking (for these terms, see Hocking 2004).

Inclusion without influence

Did the provision of access by public authorities translate into more influence for NGOs hitherto not explicitly included in the policy process of European trade policy making? The EU has engaged in a couple of initiatives that may suggest a positive answer to this question. Illustratively, it currently supports the ‘trade and environment’ agenda in the WTO negotiations known as Doha Development Agenda (from 2001 onwards). Moreover, in 2001 it launched the Everything But Arms initiative, which provides for duty-free access for least developed countries to the European market. Other NGO success stories seem to be the EU’s positions on genetically modified organisms and on hormone-treated beef. Yet, none of these cases is definite evidence of NGO

influence: European farmers, a traditionally powerful lobby, happened to defend the same position as consumer groups on genetically modified organisms and hormone-treated beef (see for example Anderson, Damania and Jackson 2004; Young 2003). The Everything But Arms initiative may not least be a strategy intended to facilitate the conclusion of the Doha Development Agenda, of interest to traditional business interests in Europe, by buying off least developed countries. And the 'trade and environment' agenda in the WTO has only very limited aims.

For a more precise analysis of the strength of NGOs, drawing on the results of a survey of NGOs and traditional trade constituencies, we first explore how the various groups themselves assess their influence. We then undertake an in-depth analysis of two cases to assess whether the preferences of NGOs are reflected in policies implemented, and whether a change in policy outcomes can in fact be attributed to the lobbying activity of these groups. On the one hand, we gauge the influence of developmental NGOs on trade policy making by looking at the case of EPAs. In these agreements, the EU is striving to replace the preferential access to the EU market for the exports of African, Caribbean and Pacific countries with reciprocal trade liberalisation agreements. Classical trade constituencies take relatively little interest in these negotiations, since their export interests in these poor to very poor countries are negligible. As a result, counter-lobbying on their part is particularly weak and we should see substantial influence from the new groups. On the other hand, we closely analyse the case of access to medicines, which due to the strong public backing of NGOs and despite strong intellectual property protection interests in the pharmaceutical sector, also seems to be a very likely case for the influence of NGOs. Both cases thus are 'least likely' ones to support the argument presented above (for the logic of least likely cases, see Eckstein 1975).

Self assessment of influence

We approached 100 groups, chosen randomly from the groups registered in the Civil Society Dialogue database of the European Commission (excluding those which have their base in third countries). After contacting them first by email and then by normal mail and by telephone, we received responses from 48 groups (yielding a response rate of 48%). The resulting sample includes both NGOs (26) and business and agriculture constituencies (22).⁶ As part of a larger questionnaire, we asked them to respond to the following question: *To what extent do you think that your activities affect European trade policy?* The response options given were: large extent (1), some extent (2), not really (3), and not at all (4). The resulting data reveal that business groups see themselves as being more influential

than NGOs (2.00 versus 2.38). The null hypothesis of no difference in the total population could be rejected (t-test statistical significance 0.03, 2-tailed). Still, there were 19 NGOs that indicated that they could influence trade policies 'to some extent'. A series of interviews with both NGOs and traditional trade interests resulted in a very similar impression.⁷ Whereas traditional trade interests referred to the Commission as a 'service provider', NGOs complained about their relative lack of influence.

Our theoretical framework also suggests that the two sides gain influence (to the extent that they do) through different channels. In fact, to the question of where their influence comes from, NGOs mainly referred to backing by public opinion for the positions they take (20 out of 26 answered to a large extent or to some extent). Traditional trade constituencies, by contrast, stress the importance of the number of people that they are representing and of their access to decision-makers. Public opinion, however, is largely seen to work against them (14 of 22 answered not really or not at all). Both sides feel that expertise gives them certain influence, a result that runs counter to our expectation of business interests having more expertise than NGOs. Nevertheless, the self assessment provides some initial support for the argument presented above.

NGOs and the negotiation of EPAs

In the 1990s, the unilateral preferential access that the EU granted to some former colonies, known as the ACP countries, came under increasing attack for not being consistent with WTO law. As a result, in 2000 the EU and the ACP countries signed the Cotonou agreement, which called for the two sides to negotiate WTO compatible agreements (ACP and EU 2000). These agreements should contain three pillars: politics, economics and trade, and development finance. On 17 June 2002, the EU's Council of Ministers bestowed the European Commission with a mandate to start the negotiations for such EPAs (EU Council 2002). Three months later, in September 2002, the negotiations with ACP countries officially started.

An important innovation as compared to earlier agreements with these countries was that the EU would no longer negotiate with all of them as a group, but rather with a series of smaller regional groupings. The composition of these groupings was to be decided by the ACP countries themselves. Once finished this stage, the EU started negotiations with the West African and Central African regions in October 2003, and with Eastern and Southern Africa, the Caribbean, the Southern African Development Community, and the Pacific countries in 2004. The negotiations are scheduled to be finished by late 2007, for the agreements

to enter into force on 1 January 2008, when the old preferential arrangements run out. As of fall 2006, the EU has agreed upon roadmaps with all regions and has engaged in negotiations at a technical level.⁸

The trade policy aspects of the agreements envisaged, which to a large extent were already set out in the Cotonou agreement, are very ambitious. The agreements are expected to lead to a progressive reduction of tariffs, with the liberalization on the side of the ACP countries possibly being phased in over a longer time span and most cuts to be taken late in this period.⁹ Beyond tariffs, EPAs should also lead to the elimination of non-tariff barriers and should include rules on trade facilitation. Furthermore, even if not negotiated immediately, the European Commission pushes for the inclusion of trade in services in an agreement. Particularly important for the EU are maritime transport, and information and communication technologies. Finally, the EU put onto the agenda issues such as competition policy, intellectual property rights, public procurement, standardisation and certification, sanitary and phytosanitary standards, trade and environment, trade and labour standards, and consumer policy. Several of these issues go beyond the agenda of the current Doha Development Agenda. Calls for the progressive liberalisation of procurement policies in the EU's negotiating mandate (EU Council 2002), for example, contrast with the complete absence of this issue from the WTO agenda. The demand for negotiations on investments, public procurement, and technical regulations even go beyond the framework agreed upon in Cotonou.

Initially, the Cotonou agreement did not spark much attention among European NGOs. Only in late 2002, groups such as 11.11.11, ActionAid, AprODEV, Attac Deutschland, Christian Aid, Concord (the European NGO Confederation for Relief and Development, which represents NGOs vis-à-vis the European institutions), Eurostep, Netzwerk Afrika Deutschland, Oxfam, Traidcraft, and WEED (World Economy, Ecology & Development) started to become attentive to these negotiations. Early on, 11.11.11 set up a webpage with information on the progress of the negotiations.¹⁰ Their efforts received a major boost in April 2004, when several groups, mainly from the United Kingdom and Germany, announced the start of a Stop EPA campaign.¹¹ In November 2004, several British groups submitted a memorandum to the UK Parliament International Development Select Committee in which they stated: 'We believe that, in their current form, EPAs will undermine rather than deliver their stated objective of development and poverty reduction' (ActionAid et al. 2004a). On 27 September 2005, a series of groups organized a 'Stop EPAs day'.¹²

The groups' position has been very critical, with the International Civil Society Forum in Dhaka even demanding a halt to the EPA negotiations

(International Civil Society Forum 2005). NGOs assert that the EU's main objective in pursuing these agreements is to increase its exports to and foreign investments in these regions rather than to contribute to equitable and sustainable development. Even Oxfam International, on the less radical end of the spectrum, maintains that EPAs 'are free trade agreements by any other name and are currently designed to get the most for Europe without the necessary consideration of the negative effects on weaker developing country partners' (quoted in Elliott 2005). The extent of the opposition becomes clear from the data of our survey: of 26 NGOs, only three welcomed the move to reciprocal agreements with ACP countries.

Four criticisms are particularly prominent (ActionAid et al. 2004b; Oxfam International 2006). First, the groups criticize the EU for not offering ACP countries a viable alternative to the negotiation of EPAs. They demand that the EU, jointly with the least developed countries, push for the maintenance of the non-reciprocity principle in the WTO rather than negotiate reciprocal agreements (International Civil Society Forum 2005). Even if only individual ACP countries would want to opt out from the EPAs they should be offered viable alternatives. Second, several NGOs criticize the EU's decision to negotiate with regional groupings rather than with all ACP countries at the same time. They argue that this was a negotiating ploy used by the EU to weaken their counterpart, which put in danger existing ACP regional initiatives. It forced least developed countries and developing countries to negotiate together. The EU instead should take better account of existing regional integration efforts (Concord Cotonou Working Group 2004). Third, the broad scope of the envisaged agreements is a particularly contentious issue. European NGOs call upon the EU member states to 'withdraw demands for reciprocity and the negotiation of the Singapore issues [namely competition policy, investment, government procurement and trade facilitation]' (EcoNews Africa and Traidcraft 2005: 50; see also Christian Aid 2004). Agreements on these issues would not only hinder development but also undermine the ACP countries' WTO negotiating position (ActionAid et al. 2004b). Finally, many NGOs argue that the trade liberalization aimed at in the EPAs would have detrimental effects for development. The 'most unequal trade negotiations in history' would lead to 'most disastrous results for development' (ActionAid 2005: 5). The Concord Cotonou Working Group (2004), in particular, argues that EU competition will have devastating consequences for developing countries by imposing high adjustment costs and a loss of government revenues on them.

Throughout the campaign, despite some complaints of lack of transparency, NGOs enjoyed relatively good access to the European

Commission. On 4 July 2002, a series of European NGOs concerned with issues of development and trade justice asked for quarterly meetings with DG Trade on EPAs. DG Trade reacted to this demand with the scheduling of specific meetings of the Civil Society Dialogue dedicated to the question of EPAs. In March 2003, a first such meeting took place. In 2005, three Civil Society Dialogue meetings were completely dedicated to EPAs. Consequently, most NGOs responding to our survey stated that they regularly (7) or at least sometimes (12) had contact with Commission officials and practically all had close contact with their national governments. The Commission's awareness of NGO activities with regard to EPAs is also evidenced by the fact that on the day after these organizations had organized their STOP EPA day, it sent an invitation to journalists for an 'off-the-record technical briefing' on the negotiations. In October 2005, the European Commission further acknowledged the strong mobilization of NGOs when stating: 'Non State Actors (NSA) have also taken an active interest in EPAs. The EC maintains an intense dialogue with all NSA groupings at all levels, political and technical. Member States have also been closely involved in this process' (European Commission, DG Trade 2005).

NGOs thus oppose EPAs and their concerns have been heard by decision-makers. Could these groups translate access into influence in this case? The available evidence indicates that they could not, although a final judgment cannot be made before the negotiations are actually concluded. Initially, the Commission did not swerve at all from its course. Only in January 2004 was there a first indication of a possible change in the EU's negotiating position to appease NGOs, when Mandelson in a speech to the Civil Society Dialogue Group stated: 'EPAs need to change so as their development focus is strengthened. They should become explicitly what they really are: trade and development tools.' (Mandelson 2004). Yet, this change in rhetoric was not followed by any action. ActionAid (2005: 11) thus conceded a 'lack of substantive movement by the European Commission.' Even in rhetoric, Mandelson later sounded far less conciliatory when criticising NGOs for their stance:

NGOs, as campaigning organisations, are always in need of issues to mobilise public opinion – and EPAs are currently high on the list. [. . .] But I want to offer one word of caution to NGOs and those who are supporting them. [. . .] Be careful that your campaigning zeal against EPAs does not lead you to oppose innovation, frustrate change and undermine the case for reform in developing countries because, in this case, you will not be helping these countries and the progressive ministers in their governments (Mandelson 2005).

The lack of movement of the European Commission is witnessed in a paper on the state of the EPA negotiations that it sent to the Council of

Ministers in November 2005. Here, the Commission argued: 'EPAs must be comprehensive, dealing with all the rules and issues that concern private investors and traders'. It continued by stating that competition policy and investment rules are 'no luxury but fundamental factors' (European Commission, DG Trade 2005: 30).

The campaign by NGOs against the EPAs may have had more influence on individual member states. Already in 2002, the EU Council included stronger emphasis on 'poverty eradication' and 'food security' in the draft mandate proposed by the European Commission, a change that was greeted by development groups. In 2005, shortly before the G8 summit in Gleneagles, the Department of Trade and Industry of the British government, together with the Department for International Development, even clearly opposed the Commission's stance when calling for an end to negotiations on investments, competition, and public procurement (DTI/DFID 2005). It also asked for longer transition periods for the tariff cuts, the search for alternatives to reciprocal agreements in the WTO, and the inclusion of safeguards for ACP countries to allow them to react to 'a surge of subsidised EU imports'. In April 2005, the British Parliament's International Development Committee attacked the inclusion of 'new issues' in the negotiations and asked for least developed countries to be excluded from the reciprocity requirement (UK Parliament, House of Commons, International Development Committee 2005). One year later, the European Union Committee of the French Parliament published an extremely critical report on the EPAs, calling them a 'project that constitutes a political, social, economic and strategic error' (Délégation de l'Assemblée Nationale pour l'Union Européenne 2006). The reports did not go down well with the Commission. For the case of Great Britain, Mogens Peter Carl, at that time Director General for Trade at the European Commission, remarked snidely that 'celebrities and NGOs' had caused its changed stance on EPAs (Carl 2005). Nevertheless, no modification of the EU's position followed (Oxfam International 2006).

In sum, NGOs' impact on the EU's approach to EPA negotiations has been limited, although they enjoy relatively good access to decision-makers. More stunningly still, their lack of influence was not a result of strong counter-lobbying by traditional trade interests. Although most business and agricultural interests have a favourable view of the move from non-reciprocal agreements to EPAs (in our survey, only two business and agricultural interests opposed the EU's policy on this issue, with ten being indifferent), they do not have a major stake in the negotiations. UNICE, as peak business association at the European level, has published a position paper in support of the EU position but has hardly engaged in actual lobbying activity.¹³ What is more, many ACP

countries coalesce with European NGOs in opposing the EPA process. NGOs' lack of influence under these conditions thus largely supports the theoretical framework set out above.

Access to medicines

In December 2005, the EU, together with many other WTO member states, approved an amendment to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to regulate access to medicines for developing countries in face of an emergency.¹⁴ The main issue at stake had been the question how developing countries with insufficient or no manufacturing capacities in the pharmaceutical sector could be assured of quick and cheap access to medicines to combat diseases such as HIV/AIDS, malaria, tuberculosis and other diseases raging especially heavily in developing countries. For this group of countries, a problem had arisen since the TRIPS agreement concluded at the end of the Uruguay Round in 1994 had provided for flexibility in the application of intellectual property rights in cases of emergency, among others in the form of compulsory licensing for countries in need. Under a compulsory licensing procedure, a country with a major health crisis is allowed to grant a company the right to produce a particular medicine without the approval of the patent holder, thus waiving the payment of patent dues to the original inventor company. Developing countries without manufacturing capacities, however, pointed out that this flexibility clause foreseen in the TRIPS agreement did not constitute a policy option for them, supported in this position by public health NGOs active in development and emergency aid.

The issue was originally pushed most notably by the Paris-based medical doctors' organisation *Médecins Sans Frontières* (MSF). Other health NGOs reinforced these efforts, among those the Consumer Project on Technology (CPT), Oxfam International in the form of their Cut the Cost Campaign, Third World Network, Essential Action, and Health Global Access Project.¹⁵ The declared political goal of these health and development NGOs was to improve access to life saving drugs in developing countries. At the risk of assigning too much clarity to NGO preferences, it may be fair to generalise that most health NGOs pursued two goals. First, they were of the opinion that the TRIPS agreement should not apply to developing countries. Since the TRIPS agreement was seen as an international treaty developing countries had been lured into accepting in exchange for better market access to OECD markets, they should be exempted from their obligation to implement the stringent domestic intellectual property legislation after the agreements' ten year implementation period would be over. Second, health NGOs opined that

there should be no strict limit on the number of diseases for which intellectual property rights could be waived.

To achieve their goals, MSF and Oxfam International, along with Health Action International (HAI) and CPT, staged a public campaign and secured access to European Commission consultations on trade and public health. Especially MSF gained prominent access to DG Trade of the European Commission.¹⁶ As early as November 2001, DG Trade had started to hold regular so-called stakeholder meetings with civil society on the subject of trade and health, most but not all specifically on the subject of TRIPS and improved access to medicines. In short succession during the initial phase 2000–2001, DG Trade of the European Commission held a series of stakeholder meetings at which MSF and other NGOs prominently figured.¹⁷ On 28 March 2002, these same NGOs equally organised a conference on the topic in Brussels.

Initially, it seemed as if the lobbying activity of NGOs was quite influential. The event focussing the attention of many health and development NGOs as well as public decision makers, was a court case brought by 39 pharmaceutical companies against the South African government over its 1997 Medicines Act. In this case, the pharmaceutical industry had tried to insist on a restrictive interpretation of South Africa's TRIPS obligations. After heavy NGO protests, a public outcry, and an adamant South African government reaction, the pharmaceutical industry dropped its case in April 2001. Later on, the industry informally recognised it had not made a legal, yet a hefty political and public relations mistake in bringing the case to court in the first place. Also within the EU, the NGOs were successful in alerting the European Commission to the problem. Especially the Trade Commissioner Pascal Lamy was at the forefront of getting the Doha Declaration on the TRIPS Agreement and Public Health passed by the WTO Ministerial Council (World Trade Organization 2001).

Nevertheless, after this partial success of setting the agenda, especially as of early 2003, NGO activism stagnated during the policy formulation and implementation phase. MSF and some others kept participating in Civil Society Dialogue meetings, but this activity did not keep pace with the development of a wider strategy on the part of pharmaceutical companies and their associations. What is more, many of the smaller NGO representatives reduced their involvement and concentrated on other issues or other campaigns, as interest in the issue waned among their membership.¹⁸

By contrast, the reaction of the pharmaceutical industry to the NGO campaign for better access to medicines in developing countries was a renewed resolve to defend intellectual property rights protection rules. As evident from our survey of participants in the DG Trade Civil Society

Dialogue, they were clearly in favour of a better implementation and enforcement of the TRIPS agreement. NGOs were opposed, even if not unanimously so (12 disagreed or strongly disagreed versus 7 agreed or strongly agreed to the statement that better enforcement was necessary). With regard to flexibility in the application of general TRIPS rules, almost all NGOs wanted such exceptions (20; only one did not), whereas only 4 business or agricultural groups favoured them. A clear line of conflict thus divided the political spectrum of participants in the policy process on improved access to medicines.

NGOs thus faced considerable countervailing lobbying from the pharmaceutical industry. Among the business interests, the European Federation of Pharmaceutical Industries and Associations (EFPIA) as well as the individual pharmaceutical firms figured as the most active. Of particular concern to them were rules to forestall the re-importation of lower priced products from developing countries into the high priced EU market. Not all business interests, however, were opposed to the NGOs' objectives. The European Generics Associations' preferences were different from those of the Research & Development based producers of patented medicinal products represented in Brussels by EFPIA. They could be expected to have a clear interest in better regulatory conditions for the production of cheaper so-called generics, i.e. medicinal products marketed without a brand name. In theory, this should have provided health NGOs scope for coalition building with the generic manufacturers to enhance their political clout.

The strategy of the patent-based industry was to draw attention to other causes of the humanitarian crises in least developed countries. They pointed to the lacking health infrastructure and distribution channels in those countries most stricken by severe communicable diseases, advocating public efforts to boost EU and member states public funding for health infrastructure programmes within the World Health Organisation, the World Bank, and the United Nations AIDS Programme. Through their efforts, they managed to instigate a shift of attention to other international venues.¹⁹ Their position was also largely reflected in the Commission's Programme for Accelerated Action on HIV/AIDS, Malaria and Tuberculosis (European Commission 2003). Individual pharmaceutical companies equally stepped up their efforts to offer low priced or free medicines in many African countries, arguably prodded by the public pressure of NGOs.

After this initial success in shifting attention away from the WTO-related aspects of the question, EFPIA and individual pharmaceutical companies decided to work not so much with DG Trade but rather with the division within DG Market dealing with intellectual property rights, as well as the patents working group of the Council of Ministers.²⁰ Both

groups of public officials are by task alone more disposed to think along lines of the defence of intellectual property. Through these strategies, the pharmaceutical industry managed to keep the high ground on their core interest of not lowering intellectual property protection standards, while subjecting the exact modalities of flexibility in the form of compulsory licensing, tiered pricing and the prevention of re-importation to detailed attention. In fact, on 30 August 2003, the WTO General Council approved a Provisional Decision on Compulsory Licensing (World Trade Organization 2003), which went a long way in satisfying the interests of the pharmaceutical industry. On 6 December 2005, this amendment was made permanent, a WTO decision implemented with additional regulatory detail in EU law early 2006 (World Trade Organization 2005; EU Council 2006).

NGOs almost unanimously agreed that the arrangement set out in this decision was a step in the wrong direction. They criticised the solution as too cumbersome, impracticable and beside the point. Hence, the outcome is far from NGO preferences, if not even clearly in favour of the European pharmaceutical industry.²¹ Summarising feelings prevalent across many NGOs, the Stop AIDS Campaign identified the following drawbacks of the amendment to the TRIPS agreement on compulsory licensing that was made permanent on 6 December 2005.²² For one, the application of compulsory licensing by a poor country wishing to import generic medicines is dependent on a government decision in the exporting country. According to the campaigners, governments may think twice to engage in such an authorisation for fear of future trade retaliation or political harassment by Western states. Furthermore, this two-tiered process would hinder the establishment of economies of scale for generics manufacturers as markets remain segmented and dependent on political decisions. Finally, the agreement does not address the lack of research and development in medicines for developing countries and foresees no legal or technical assistance for countries in need. Oxfam International also comes to the conclusion that although its 'Cut the Cost Campaign' had achieved some successes, the final agreement reached in the WTO 'could make the situation even worse'.²³

In short, viewed within the context of world wide policy making on AIDS, malaria, tuberculosis and other diseases endangering large parts of developing countries populations, NGOs seem to have been effective in raising awareness. They put things on the agenda, and even weighed onto the policy process in that public actors as well as pharmaceutical companies stepped up their efforts through other national and international venues for disease control. Viewed within the confines of EU trade policy making, however, the pharmaceutical industry has won its battle for not weakening the protection of intellectual property. The EU

ended up supporting the industry's demand for stipulating in greater detail the flexibility options the TRIPS agreement had already foreseen from the outset, rather than easing access to medicines. The development and health NGOs thus failed to reach their goal. Business lobbying had forced the NGOs onto the defensive, leading to feelings of disgust, frustration, or even radicalisation among their members.²⁴

Conclusion

The evidence presented in this article has demonstrated that so far, despite their multiplication in numbers, the impact of NGOs on trade policy outcomes has been limited. Why, given that they are pretty active, do they have so little influence on actual trade policy outcomes? In response to this question, we have suggested that the large number of groups active in trade policy lobbying likely exaggerates the actual breadth of the movement. The trade policy advisors that some of these groups have, and who do the actual lobbying, often do not act upon a mandate. Donors contributing to these groups may not even be aware of their organisations' lobbying activities, because they donate money for humanitarian projects rather than because they are interested in trade policy debates. This is very different from the situation of trade associations, which act upon the desire of actors with a direct and sometimes substantial stake in the policies enacted. This is plain to politicians, who are unimpressed by individuals as long as they do not have strong public backing. To a certain extent, however, the lack of influence is also due to the fact that the aims that these groups are striving for may simply be difficult to achieve. In the case of EPAs, asking the EU for a stop to the negotiations is a very ambitious goal. In the case of access to medicines, NGOs originally started out with the far-reaching aim of having the TRIPS obligations fully waived for developing countries. Measured against such bold objectives, actual trade policy changes achieved will always appear to be minimal.

The causal mechanism that we spelt out also allowed us to specify additional implications of our argument, to be corroborated by empirical research. In fact, most of them were borne out in our case studies. As expected, in the context of the ongoing negotiations of EPAs with developing countries and the drive for better access to medicines, NGOs did very well in dominating the agenda-setting stage by organising outside lobbying strategies such as public campaigns that appeal to general principles of justice. Business interests in contrast, were most effective in taking the stage during later phases of the policy cycle and provided detailed and precise information through inside lobbying during the policy formulation and implementation phase. During these

phases, NGO representatives find it difficult to keep their membership focused and many find themselves abandoning the issue. Representatives in business associations can more easily stick to the topic as their membership have clearer incentives to monitor the process and provide them with policy relevant information. Overall, therefore, the article made clear that a clear-cut theoretical argument in combination with a detailed empirical analysis can allow researchers to come to reasoned judgments about the relative influence of different societal groups on policy outcomes.

NOTES

1. We would like to thank the participants in the workshop in Vienna for useful comments, and Elisabeth Botzky, Sebastian Burghoff, and Rafaela Rahmig for helpful research assistance.
2. This is based on our own counting of groups as based on World Trade Organization, Secretariat (various). Detailed lists for Geneva and Singapore are not available.
3. A list of organizations registered with the Civil Society Dialogue is available online at <http://trade-info.cec.eu.int/civilsoc/search.cfm?action=form> [last accessed on 11/10/2006].
4. Also outside the EU, within the WTO itself (Scholte 2004; Knodt 2005; Williams 2005) and within other WTO members (Hocking 2004: 10), civil society forums on trade policy were introduced.
5. Interview with Reinhard Quick, Liaison Office of the Vereinigung der Chemischen Industrie, Brussels, 10 January 2006.
6. A certain bias in the sample results from the fact that NGOs were far less likely to respond to the survey (two thirds of those that did not respond are NGOs). This may be a reflection of a lower degree of organisational capacity.
7. We conducted ten interviews in Brussels, 10–14 January 2006: five with traditional trade lobbies (the European Federation of Pharmaceutical Industries and Associations [EFPIA], the European Services Forum [ESF], the Foreign Trade Association [FTA], UNICE, and the Vereinigung der Chemischen Industrie [VCI]), two with civil society groups (the peak association of Flemish development NGOs 11.11.11. and the Coopération Internationale pour le Développement et la Solidarité [CIDSE]), and three with Commission officials.
8. See http://ec.europa.eu/trade/issues/bilateral/regions/acp/regneg_en.htm [last accessed on 11/10/2006] for more information on the roadmaps.
9. Most ACP exports (93%) already enter the EU duty free and 40 countries enjoy completely duty and quota free access under the ‘Everything but Arms’ initiative. The new agreements would, however, further facilitate imports from ACP countries by easing the strict rules of origin included in the Everything but Arms initiative. Everything but Arms is open to all least developed countries and not only the ACP countries.
10. See <http://server2.matematici.com/epawatch/> [last accessed on 11/10/2006].
11. The webpage of the campaign can be accessed under <http://www.stopepa.org> [last accessed on 11/10/2006].
12. This day was organized by ActionAid, Action for Southern Africa, Christian Aid, Tearfund, and Traidcraft. See <http://www.epawatch.net/general/text.php?itemID=307&menuID=28> [last accessed on 11/10/2006].
13. Interview with Adrian van den Hoven, international relations staff member at UNICE, Brussels, 12 January 2006.
14. See http://ec.europa.eu/comm/trade/issues/global/medecine/index_en.htm [last accessed on 11/10/2006] for general background documents on this issue. For documents on civil society consultations on access to medicines, <http://trade-info.cec.eu.int/civilsoc/doclist.cfm> [last accessed on 11/10/2006].
15. See for instance the letter by these NGOs to the TRIPS Council of 28 January 2002, available at <http://www.essentialaction.org/access/index.php?archives/25-NGO-Letter-on-the-Paragraph-Six-Issue.html> [last accessed on 11/10/2006].
16. Illustrative of this great willingness to engage with the MSF is Pascal Lamy’s public admiration as well as the fact that, on the day of our interview with him (13 January 2006), the official responsible

for this issue in DG Trade of the European Commission until June 2001, Jean-Charles Van Eeckhaute, had a large MSF poster on his office wall.

17. See for instance the Statement by Ellen 't Hoen, Co-ordinator Globalisation Project Médecins Sans Frontières MSF Campaign for Access to Essential Medicines, at the Health Issues Group DG Trade, Brussels 26 June 2000. http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122212.pdf [last accessed on 11/06/2006]. At the same meeting, also Baby Milk Action/International Baby Food Action Network (IBFAN), Health Action International (HAI), and the European Health Management Association (EHMA) gave testimony.
18. Interview with Marc Maes, European policy officer of '11.11.11.', 11 January 2006, Brussels.
19. See <http://www.unaids.org/en/>, <http://www.worldbank.org/aids>, <http://www.who.int/hiv/en/> [all last accessed on 11/10/2006].
20. Interview with Jean-Charles Van Eeckhaute, DG Trade Commission official, Brussels, 13 January 2006; and interview with Brendan Barnes, manager EU enlargement and WTO, EFPIA, 12 January 2006, Brussels.
21. For a similar assessment based on research on the American side of the process, see Drezner 2005.
22. See http://www.stopaidscampaign.org.uk/downloads/SAC_paper.pdf [last accessed on 11/10/2006].
23. See <http://www.maketradeair.com/en/index.php?file=05092003140550.htm> [last accessed on 11/10/2006].
24. Interview with Marc Maes, European policy officer, 11.11.11., January 2006, Brussels.

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