# EUROPEAN COMMISSION IN CETA NEGOTIATIONS: EXPLORING AGENT'S AUTONOMY*

**ESRA UYAR OKCU****

***Abstract***

*As the world trade agenda began to cover "beyond the border" issues in the 1980s, the European Union (EU) gradually broadened the scope of its trade policy and adopted a more complex decision-making mechanism involving multiple actors. In the current EU institutional setting, the European Commission is empowered by the Council of the European Union to start a negotiation process with a trading partner. Once signed, an international trade agreement can only be concluded by the EU if it is approved by both the Council and the European Parliament. Although the Commission is responsible for executing the common commercial policy, its autonomy may be limited by the Council/member states and/or Parliament during trade negotiations. This article investigates the Commission's autonomy in the EU-Canada Comprehensive Economic and Trade Agreement (CETA) negotiations from a principal-agent approach. It analyzes the conflictual dynamics of Council-Commission and Parliament-Commission principal-agent relations, focusing on investment and intellectual property negotiations. The article reveals that EU member states and the European Parliament restricted the European Commission's autonomy and changed its initial position on these two controversial issues.*

***Keywords:*** *European Union, European Commission, EU Trade, CETA, Principal-agent Approach*

* This article is based on the author's PhD dissertation titled "The Role of EU Institutions in Common Trade Policy: An Assessment on EU-Canada Comprehensive Economic and Trade Agreement". An earlier version of this study was presented at the 2nd International Ankara Conference on Scientific Research, Ankara, 6-8 March, 2020. The author is grateful to Prof. Dr. I. Alper Arısoy for his guidance and contributions.

** Dr., e-mail: esrauyar@gmail.com, ORCID ID:0000-0002-5965-9104.

# CETA MÜZAKERELERİNDE AVRUPA KOMİSYONU: VEKİL ÖZERKLİĞİNİN İNCELENMESİ

***Öz***

*Dünya ticaret gündeminin 1980'lerde "sınır ötesi" konuları kapsamaya başlamasıyla birlikte, Avrupa Birliği (AB), ticaret politikasının kapsamını genişletme yoluna gitmiş ve birden çok aktörü içeren daha karmaşık bir karar alma mekanizması benimsemiştir. Mevcut AB kurumsal yapısında; herhangi bir ticari ortakla müzakere sürecini başlatabilmek için, Avrupa Komisyonu, Avrupa Birliği Konseyi tarafından yetkilendirilmektedir. İmzalanan bir uluslararası ticaret anlaşması, ancak hem Konsey hem de Avrupa Parlamentosu tarafından onaylanması halinde AB tarafından sonuçlandırılabilmektedir. Ortak ticaret politikasının yürütülmesinden sorumlu organ olmasına rağmen, Komisyonun özerkliği, ticaret müzakereleri sırasında, Konsey/üye devletler ve/veya Parlamento tarafından sınırlandırılabilmektedir. Bu makale, Komisyonun AB-Kanada Kapsamlı Ekonomik ve Ticaret Anlaşması (CETA) müzakerelerindeki özerkliğini asil-vekil yaklaşımıyla incelemektedir. Konsey-Komisyon ve Parlamento-Komisyon asil-vekil ilişkilerinin çatışmalı dinamiklerini, yatırım ve fikri mülkiyet müzakerelerine odaklanarak analiz etmektedir. Makale, bu iki tartışmalı konuda, AB üye devletleri ve Avrupa Parlamentosunun, Avrupa Komisyonunun özerkliğini kısıtladığını ve baştaki tutumunu değiştirdiğini ortaya koymaktadır.*

***Anahtar Kelimeler:*** *Avrupa Birliği, Avrupa Komisyonu, AB Ticareti, CETA, Asil-vekil Yaklaşımı*

## Introduction

Establishment of a common commercial policy was one of the main objectives of the Treaty of Rome signed by six founding states of the European Economic Community. The treaty established a schedule to gradually eliminate customs duties and quantitative restrictions on trade among member states and aimed to implement a common external tariff. Member states delegated authority to the European Commission for the administration of the common commercial policy. Initially, the Community's external trade policy mainly covered industrial goods and concerned with border-related measures. However, from the 1980s onwards, several changes in the international economy began to influence and

reshape these policies. For example, services, investments, and intellectual property rights appeared as the new subjects on the world trade agenda. In addition, non-tariff barriers to trade like environmental, social and health-related issues began to be negotiated multilaterally. Hence, the EU had to adjust its commercial policy to align with the requirements of the multilateral trade system. With the Treaty of Nice (2003), the Commission was granted exclusive competence over commercial aspects of intellectual property and services, except for politically sensitive areas such as cultural and audio-visual, educational, and health services. The Treaty of Lisbon (2009) further expanded the external competence of the EU to cover foreign direct investment.

The incorporation of new "behind the border" issues into the European trade agenda necessitated institutional modifications related to the EU's decision-making mechanism. A significant institutional amendment was the enhanced role of the European Parliament in EU trade policy-making. Following the entry into force of the Treaty of Lisbon, the Parliament assumed the status of co-legislator alongside the Council of the European Union (henceforth, the Council) in trade matters. Whereas commercial policy falls under exclusive Union competence, distribution of competences among EU institutions on various issues continues to be a subject of ongoing debates, as trade policy becomes more extensive and politicized. Within the existing institutional arrangement, the European Commission is authorized by the Council to conduct trade negotiations with external partners. If the negotiations end by signing an agreement between the EU and a trade partner, the agreement must be approved both by the Council and Parliament to enter into force in the EU. When it comes to mixed agreements, i.e., if the agreement covers areas in which the EU and member states have "shared competences", approval by the member states is also required based on their national ratification procedures. Hence, the more comprehensive the trade policy has become, the more complex a decision-making structure has emerged within this field.

Given the multi-level and complicated nature of trade policy-making in the EU, this study explores the European Commission's autonomy in international commercial negotiations where it is the only institution representing the EU on behalf of the member states. The study chooses CETA negotiations as a case for analysis because it is the first comprehensive free trade agreement signed by the EU that covers rules regarding services, investment and public procurement, which go beyond simply removing conventional trade barriers. In other words, CETA negotiations present a politicized, contentious, and at the same time convenient framework for analyzing the conflictual dynamics of relations among EU institutions. As these inter-institutional relations are characterized by delegation and control of power, the study applies a principal-agent approach to

examine the Council-Commission and Parliament-Commission interactions during negotiations.

The article first explains the current trade policy-making structure in the EU. After reviewing the application of the principal-agent approach to EU trade policy, it gives a brief background of the CETA negotiations within an inter-institutional context. The analysis section focuses on two subjects of negotiations, investment and intellectual property rights, that led to the Council-Commission and Parliament-Commission disagreements. Using EU official documents and international and European agency news as guiding resources, the article reveals how the Commission's autonomy was constrained by other EU institutions during negotiations on two contentious commercial issues.

**Trade Policy-Making in the EU**

Within the current institutional framework of the EU, the European Commission has exclusive authority to conduct international trade negotiations on behalf of the member states. Article 218 of the Treaty on the Functioning of the European Union (TFEU) (2009) explains the procedures related to the negotiation and conclusion of such agreements. Accordingly, the Commission regularly communicates with both the Council and Parliament for the preparation of any trade agreement. Before starting formal negotiations, the Commission interacts with the trading partner, consults stakeholders through public consultations, and carries out an impact assessment to evaluate the potential economic, social, and environmental outcomes of the agreement for both the EU and the trading partner.

To start the negotiations, the Commission must obtain formal authorization from the Council. This process starts with the drafting of the negotiating mandate by the Directorate-General for Trade (DG Trade) after consultations with other relevant Directorate-Generals in the Commission. The draft is then submitted to the College of Commissioners and forwarded to the Council where it is examined by the Trade Policy Committee (TPC), comprising senior trade officials from member states and the Commission. Other Council-established working parties may also review the draft. Upon thorough evaluation, the TPC tries to achieve consensus on the proposal[1] and submits the final version to the Committee of Permanent Representatives (COREPER) consisting of representatives of member states. Ultimately, the Foreign Affairs Council approves the mandate and sets the guidelines for negotiations. Once this decision is adopted, the Commission receives formal authorization to start international trade negotiations. The negotiations are led by the DG Trade, while collaboration with other Directorate-

[1] The TPC may also make changes on the proposal.

Generals also continues throughout the rounds of negotiations. After each round, the Commission is obliged to provide updates to both the Council and Parliament.

Once negotiations are complete and trading partners mutually agree on the final text, the Council adopts a decision to authorize the signature of the agreement and sends the signed agreement to the European Parliament for approval. The agreement must be formally approved by both the Council and Parliament. Historically, the Parliament played only a consultative role in trade matters. However, the Treaty of Lisbon significantly strengthened its role by requiring its consent in the conclusion of international trade agreements. The Parliament's decision to approve or not is based on a recommendation from the Committee on International Trade (INTA) and is taken through a simple majority vote. It may approve or reject the agreement but does not have the authority to amend its content (Gstöhl, 2013: 11). After getting the consent of Parliament, the Council adopts the decision to conclude the agreement either through qualified majority voting or unanimity, depending on the competences involved in the agreement. Agreements falling solely within the Union's exclusive competence are concluded by qualified majority voting. If an agreement covers areas with shared competences, it must be signed and ratified by each individual member state together with the EU[2]. In such cases, member states retain their veto power not only within the Council but also via their national legislative processes. All national parliaments within EU member states, apart from Malta, participate in the ratification process (Eschbach, 2015: 36).

In bicameral parliamentary systems, the ratification process is carried out with the participation of the responsible chamber (or chambers) specified in the national constitution. For example, while senates do not participate in Belgium and Ireland, both chambers are involved in countries such as the Czech Republic, Spain, France, Italy, the Netherlands, Poland, and Romania. In Germany and Austria, the upper chambers must approve certain agreements, particularly when the agreement influences regional competences. Regional participation usually takes place through second chambers; however, Belgium constitutes a unique case. Under the Belgian Constitution, the approval of all regional and community parliaments is required for the federal government to sign and ratify any trade

[2] According to Article 207 of the TFEU (2009), unanimous decision-making is required in the following areas:

- trade in services, commercial aspects of intellectual property, and foreign direct investment, where the agreement necessitates unanimity for the domestic implementation of certain provisions;
- trade in cultural and audiovisual services, in cases where the agreement poses a threat to the Union's cultural and linguistic diversity;
- trade in social, educational and health services, where the agreement may adversely affect national regulations in these sectors.

agreement. Additionally, in almost half of the member states, a referendum is also an option for ratification. Nevertheless, the possibility of a referendum is rarely codified in constitutions, with explicit provisions existing only in France and the Netherlands (European Parliament, 2016a: 2-3).

An international trade agreement enters into force in the EU only after the completion of the full ratification process. However, given the prolonged timelines associated with the ratification of mixed agreements, an interim agreement covering the fields that fall exclusively within the Union's competence may be concluded and implemented (Gstöhl, 2013: 13). Another option is the provisional application of certain parts of the deal before its full entry into force (European Parliament, 2016b: 6).

**The Principal-Agent Approach and EU Trade Policy**

This study uses a principal-agent framework to examine the European Commission's autonomy in CETA negotiations. Originating from American political science literature to analyze the institutional dynamics within the United States (US) Congress, the principal-agent model is grounded in new institutionalism and rational choice theory. It primarily explores the delegation of decision-making authority from one party (the principal) to another (the agent). In the EU's multi-level system in general, and trade policy-making in particular, this delegation process usually takes place from the member states, acting collectively as principals, to the European Commission, which assumes the role of agent. Besides member states, there are other actors in the EU that aim to affect the Commission's position to shape trade policy outcomes. In this context, scholars distinguish between a "collective principal," comprising the member states, and a "multiplicity of principals," including a broader range of actors such as the European Parliament and interest groups (Elsig, 2007: 931–932).

The European Commission has significant discretion in the field of trade policy thanks to its "autonomy by design". This structural autonomy provides the Commission with agenda-setting powers, including the capacity to initiate proposals on potential trading partners and to set the main objectives of trade agreements. Furthermore, the Commission has representational authority as it acts on behalf of the member states in international trade negotiations and implementation-related power through management of various trade policy instruments (Elsig, 2007: 927–948). Nevertheless, member states retain a range of mechanisms to monitor and constrain the Commission's actions throughout the negotiation process. Their control starts by granting a discretion-based delegation mandate to the Commission that defines the scope of its authority. The extent to which member states can influence the Commission's behavior depends on the flexibility of this mandate. Given that the mandate is often defined

broadly, the Commission can have considerable autonomy in determining the extent of concessions during negotiations (Da Conceição-Heldt, 2011: 410). While the Commission may act strictly within the formal limits of the mandate, it may also exercise additional autonomy, especially where the mandate lacks precision or when principal oversight is weak or inconsistent.

Throughout trade negotiations, the Council exercises control over the Commission primarily through the TPC, which fulfills a critical "watchdog" function (Kerremans, 2004: 7). Continuous scrutiny by the TPC is instrumental in enabling the Commission to figure out the preferences and political sensitivities of member states regarding the concessions it makes. To mitigate the risk of ratification failure, the Commission actively interprets signals from member states via multiple channels, including the TPC, media, and speeches delivered in national parliaments (Da Conceição-Heldt, 2008: 19). Furthermore, the Commission carefully observes Parliament's position so as not to jeopardize the ratification process, which requires its consent. Following the amendments introduced by the Treaty of Lisbon, the Commission must keep Parliament regularly informed throughout all stages of the negotiation process (TFEU, 2009, Art. 218). It also provides additional updates upon request when negotiations involve politically sensitive issues. The Parliament expresses its preferences through participation in ad hoc consultations with the Commission and by adopting resolutions. It has become established practice for such decisions to be issued before the Council's authorization of the Commission's negotiation mandate, and they serve as a signal of the Parliament's conditions for approval (Bardou, 2024: 14, 16). These resolutions may include recommendations concerning the direction of negotiations (European Parliament, 2016b: 4), or call for the inclusion of binding provisions on human rights, environmental protections, and social standards (Devuyst, 2013: 299).

The autonomy of the Commission in EU external trade can also be affected by the alignment of policy preferences within and between principals. When member states exhibit heterogeneous preferences, the Commission may strategically use these divisions by employing a "divide and rule" strategy. Thus, a high degree of preference divergence tends to result in more flexible negotiation instructions for the Commission, which, in turn, increases its autonomy (Da Conceição-Heldt, 2011). In contrast, when there is a high level of policy alignment among the principals, either prior to, during, or following negotiations, their collective capacity to control and constrain the Commission rises. The homogeneity of preferences facilitates the interference in the Commission's actions, thereby reducing its autonomy (Heldt, 2021: 578, 580).

As can be seen from the overview given, a significant body of literature using the principal-agent model in the context of EU trade policy has focused mainly on the relationship between the Council and the Commission (Billiet, 2006; Da

Conceição-Heldt, 2011; Elsig, 2007; Kerremans, 2004; Meunier and Nicolaidis, 1999). In this context, the European Parliament has recently begun to attract academic attention, especially after its empowerment in EU decision-making by the Lisbon Treaty. In addition to the analysis of the Parliament-Commission relationship (Heldt, 2021), several studies have further expanded the literature by investigating different principal-agent configurations in EU trade policy. For instance, Reichert and Jungblut (2007) explored numerous other principal-agent relationships, including those between national parliaments and their respective governments and between member state publics and the European Parliament. In their empirical assessment of the Commission's discretionary power in external trade, Gastinger and Adriaensen (2018) examined European citizens, alongside the Council and Parliament, as principals. The current study contributes to existing literature by analyzing the principal-agent dynamics between the Council and Commission, as well as between the Parliament and Commission within the specific context of the CETA negotiations. By investigating the controversial aspects of these relations through two politicized issues, investment and intellectual property rights, it seeks to demonstrate how principals constrain the agent's autonomy in EU trade policy.

**Background of CETA Negotiations and Inter-institutional Context**

Prior to the CETA negotiations, the EU and Canada jointly analyzed the potential benefits and risks of a comprehensive economic integration agreement. This was followed by a joint scoping exercise determining the agreement's boundaries and main objectives. On the EU side, the European Commission organized public consultations via online surveys in February and March 2008 to gather stakeholders' views on CETA. In addition, it carried out an impact assessment to evaluate the potential economic, social, and environmental impacts of CETA on both the EU and Canada.

To launch formal negotiations, the Commission submitted a draft negotiating mandate to the Council, which subsequently adopted the negotiating directives and authorized the Commission to start negotiations. These directives were later revised to incorporate provisions related to investment protection. Formal negotiations between the EU and Canada began at the Prague Summit on 6 May 2009 and were concluded in Ottawa on 26 September 2014. Upon the conclusion of negotiations, the finalized text was published for public review. Throughout the negotiation process, the European Parliament maintained close oversight and adopted a resolution on 8 June 2011 presenting its expectations regarding the agreement's outcomes.

In July 2016, the Commission submitted the agreement to the Council for its signature and conclusion. After the Council adopted the decision to sign the agreement, the CETA was officially signed by both parties on 30 October 2016.

The Council then transmitted the agreement to Parliament, which approved it on 15 February 2017.

In the initial phases of the CETA negotiations, there was considerable ambiguity regarding whether the agreement fell exclusively within the EU's competence or not. The Commission initially adopted the position that CETA constituted an EU-only agreement, thereby envisioning a ratification process that would not require approval by national parliaments. Therefore, then Commission President Jean-Claude Juncker was in favor of a simple approval procedure. However, most member states opposed this view, arguing that CETA should be classified as a mixed agreement, given its inclusion of provisions falling under both EU and member state competences.

In 2014, the German Federal Ministry for Economic Affairs formally called for the recognition of CETA as a mixed agreement. That same year, numerous national parliaments communicated their position to then Trade Commissioner Karel De Gucht, urging the Commission to adopt the mixed agreement classification (Letter in the Framework of the Political Dialogue, 2014). Besides, German Chancellor Angela Merkel and French President François Hollande publicly stated that the national parliaments should be involved in the ratification process. In response to increasing political pressures, the Commission ultimately submitted CETA to the Council as a mixed agreement so that its full implementation would require ratification by all member states in accordance with their respective constitutional procedures.

As mixed agreements may be applied provisionally prior to the completion of the ratification process (TFEU, 2009, Art. 218), CETA came into force provisionally in September 2017. As of now, the ratification process is ongoing and the vast majority of CETA provisions are in force, except for those specifically related to investment protection.

**Controversial Issues and Inter-institutional Conflicts**

The CETA has been described by the European Commission as the "most progressive and ambitious trade agreement that the EU has ever concluded" (European Commission, 2016a). The agreement eliminates almost all the tariffs between the EU and Canada and comprises regulatory provisions concerning services, investment, and intellectual property rights. Due to its deep and comprehensive scope, CETA has significant implications for regulatory policies of states and fundamental rights of citizens. This feature led to the politicization of the agreement, generating widespread public debates and inter-institutional conflicts within the EU. This section analyzes two particularly contentious aspects of negotiations: investment and intellectual property rights. They triggered the use of control mechanisms by principals to restrict the agent's autonomy and influence its negotiation position.

*Debates on Investment Provisions*

One of the focal points of inter-institutional conflicts during CETA negotiations was the investment chapter. Following the entry into force of the Treaty of Lisbon, the EU gained the authority to negotiate bilateral investment treaties and comprehensive trade agreements that include investment-related provisions. CETA represents the first agreement concluded by the EU that covers not only investment liberalization measures but also provisions on investment protection. The agreement envisaged the establishment of an investor-state dispute settlement mechanism (ISDS) that would allow investors to sue states in cases of violations of investment rules.

The investment chapter of CETA gave rise to two kinds of controversy, the first of which concerned the question of whether the regulation of investment was the exclusive competence of the EU. According to Article 207 of the TFEU (2009), foreign direct investment is included under the common commercial policy, an area of exclusive EU competence. However, the article does not explicitly address other forms of investment, such as portfolio investment. While the European Commission claimed that EU competence over portfolio investment could be derived from internal market provisions regarding free movement of capital, several member states contested this view (European Parliament, 2016b: 5). Hence, the unclear categorization of the concept and the inconsistencies in its application have led to significant legal ambiguity.

To clarify the issue of competences, the Commission requested an opinion from the Court of Justice of the European Union (CJEU) regarding the EU-Singapore Free Trade Agreement, which also contained provisions on investment protection. The objective was to determine which sections of the agreement fell under the EU's exclusive competence and which required shared competence with member states. Following an evaluation period of nearly three years, the CJEU ruled that the EU does not have exclusive competence over portfolio investment or investor-state dispute settlement mechanisms (Euractiv, 2017).

The ISDS issue constitutes another important aspect of the discussions in this context. This mechanism proposes a non-judicial arbitration framework through which private investors can initiate legal action against host countries and seek compensation for government measures that have a negative effect on their investments. Critics of ISDS defined several problems related to the system, such as inconsistent rulings, limited transparency, procedural shortcomings, and an imbalance between ISDS and domestic judicial systems (European Parliament, 2015: 20). Additionally, concerns were raised regarding the potential negative impact of allowing private entities to litigate against sovereign states, especially regarding environmental protection and fundamental citizen rights.

The European Parliament stated its disapproval of the ISDS through a resolution, asserting that it poses risks to sensitive policy areas such as environmental regulation (European Parliament, 2011). Within the Parliament, the Socialists and Democrats (S&D) group has indicated its intention to reject the final deal unless substantive changes are made to investment provisions. With the support of other left and green parties, the opposition bloc formed a majority and significantly reduced the CETA's chance of being approved (Heldt, 2021: 587). Among EU member states, Germany expressed its opposition to CETA due to the inclusion of ISDS provisions. In a joint statement, Germany and France called on the European Commission to explore all alternatives to replace the ISDS (Barbière, 2015).

The European Commission defended the ISDS mechanism by citing the existence of over 1000 bilateral investment treaties between EU member states and other trading partners that already include similar provisions (Euractiv, 2014). Nevertheless, as the CETA negotiations became more politicized, aided by a heightened civil society mobilization across Europe, the Commission has launched an online public consultation on investment protection and ISDS. This consultation, conducted within the broader context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US and referring to certain clauses of CETA, resulted in predominantly negative feedback. Respondents voiced concerns about investment protection measures and advocated for the removal of the ISDS provisions or the abandonment of the entire agreement (European Commission, 2015a: 14).

In response to widespread criticism of the ISDS mechanism, the European Commission proposed the establishment of an Investment Court System (ICS) in September 2015 to replace ISDS in all ongoing and future EU investment agreements. The ICS framework comprises a tribunal and appellate body. Unlike the ISDS arbitration model, parties to a dispute are no longer permitted to choose their own arbitrators; instead, tribunal members are jointly appointed by the parties to the agreement. Although initially proposed for the TTIP and future trade arrangements, the European Parliament advocated for the incorporation of ICS into CETA as well. Despite the formal conclusion of CETA negotiations in 2014, Canadian and EU representatives agreed to amend the investment chapter during the legal review phase. Consequently, the principal elements of the Commission's ICS proposal were integrated into the finalized CETA text. This move was driven primarily by constant political pressure from both EU member states and the European Parliament. "We've met the expectations of both the Member States and the European Parliament," said then EU Trade Commissioner Cecilia Malmström (European Commission, 2016b). A press release made by the Commission highlights the same issue by stating "The proposal for an Investment Court System builds on the substantial input received from the European

Parliament, Member States, national parliaments and stakeholders through the public consultation held on ISDS" (European Commission, 2015b). The Chair of European Parliament's INTA Committee, Bernd Lange, also emphasized the importance of the Commission's responsiveness to Parliament's concerns on the matter (European Parliament, 2016c). While some MEPs argued that the changes were merely language corrections, the S&D group, which had actively supported the incorporation of the ICS to CETA, welcomed the decision and defined it as a success for their group (S&D, 2016).

Despite the generally positive response to the agreement, the Walloon regional government of Belgium denied giving consent to the federal government to sign the CETA, citing several concerns, including the new investment chapter. Following a series of negotiations, a compromise was reached between the Belgian Federal Government and the governments of the federated entities. As part of this solution, Belgium made the signing of CETA conditional on CJEU opinion confirming the compatibility of the proposed ICS with EU law. [3] The compromise resolved the deadlock but caused a four-day delay in the official signing of the agreement.

*Debates on Intellectual Property Provisions*

Intellectual property rights constituted another major point of contention of inter-institutional relations during CETA negotiations. Simultaneously with the CETA negotiations, the EU, several EU member states, and non-EU countries signed the Anti-Counterfeiting Trade Agreement (ACTA), a multilateral treaty, setting international standards for intellectual property rights. However, the agreement failed to receive approval from the European Parliament. This veto had direct consequences for the negotiations of relevant intellectual property provisions in CETA.

The ACTA aimed to enforce international anti-counterfeiting law through the establishment of intellectual property standards. It was negotiated among the EU, several of its member states, Canada, the US, Japan, Australia, and some other countries. In January 2012, the EU and 22 of its member states formally signed the agreement. Subsequently, the European Commission referred ACTA to the CJEU to receive an opinion regarding its compatibility with EU law, particularly in relation to the Charter of Fundamental Rights of the European Union. Despite the Commission's request to the European Parliament to postpone its vote until the Court issues its opinion, Parliament proceeded with its own examination of the agreement. The Parliament had previously expressed its concerns regarding the deal in two resolutions adopted on 11 March 2009 and 10 March 2010. It

[3] On 30 April 2019, the CJEU ruled that CETA's ICS provisions are compatible with EU law.

mainly criticized the lack of transparency in the negotiations and raised significant concerns about the agreement's potential impact on fundamental rights and data protection (European Parliament, 2010; 2012a). Other concerns addressed the agreement's ambiguous language and content, which could undermine civil liberties (European Parliament, 2012b). These controversial features of ACTA also resulted in widespread public demonstrations across Europe. As pressure from civil society intensified, even Members of the European Parliament who had previously supported the agreement have turned against it (Peffenköver and Adriaensen, 2021: 79). After ACTA's signature, the Parliament's rapporteur for the agreement, Kader Arif (S&D), resigned, criticizing the exclusion of civil society, the lack of transparency in the negotiations, and the disregard of the European Parliament's recommendations (Lee, 2012).

Political differences were evident in the ACTA vote in the European Parliament. While the Socialists, Liberals, Greens, and GUE/NGL groups opposed the agreement, the European People's Party (EPP) and the European Conservatives and Reformists (ECR) supported for scheduling the plenary vote after the communication of CJEU decision (Gotev, 2012). ACTA was examined and subsequently declined by four parliamentary committees. The lead committee, INTA, recommended rejecting the treaty following its own vote of disapproval. In addition, a petition against ACTA signed by nearly three million individuals was submitted to the Parliament's Committee on Petitions (European Parliament, 2012a). In the plenary vote held in July 2012, the European Parliament rejected to give its consent to the treaty, with 478 votes against, 39 in favor, and 165 abstentions. Consequently, ACTA failed to enter into force. This was the first instance where the European Parliament formally rejected an international agreement that had already been signed by the EU (European Parliament, 2012b). Commenting on the outcome, Hannes Swoboda, President of the S&D group, said: "The Commission and the Council will now be aware that they cannot overrun the Parliament" (Arthur, 2012).

In the aftermath of the European Parliament's rejection of ACTA, Canadian law professor Michael Geist published a report comparing the intellectual property provisions of ACTA and CETA. His assessment was based on a leaked draft of CETA dated February 2012, when negotiations were still ongoing and the official text had not yet been published. Geist argued that numerous provisions from ACTA were copied to CETA (Geist, 2012a). This assertion attracted great attention from the European media and the wider public. In response, the European Commission clarified that the leaked text was not up to date and noted that two contentious provisions regarding internet service providers had already been omitted from the CETA. Nevertheless, other controversial provisions such as those related to digital locks, damages, border

rules and criminal measures, remained subject of debate (Geist, 2012b). Subsequently, the Commission issued an official communication confirming that CETA would not include ACTA-related provisions concerning internet service providers or criminal enforcement, which it identified as among the most controversial elements of ACTA. The Commission acknowledged that previous CETA drafts may have had similarities with ACTA, as both the EU and Canada were parties to the ACTA. It further emphasized that the European Parliament's rejection of ACTA was taken into account during the CETA negotiations (Geist, 2013).

**Conclusion**

Within the institutional framework of the EU, the European Commission is the core executive body responsible for the implementation of trade policy, whereas legislative power is shared by the Council and the European Parliament. For an international trade agreement to enter into force in the EU, both legislative institutions' approval is required. In case of a "mixed agreement" comprising competences shared between the EU and its member states, the agreement must also be ratified by individual member states. Within this multi-level trade policy-making structure, this study examined the Council-Commission and Parliament-Commission relations during CETA negotiations based on two empirical cases, investment and intellectual property rights. To analyze the inter-institutional dynamics regarding EU commercial policy, the study used principal-agent approach. According to this approach, the Commission acts as an agent within the mandate granted by a principal, which is the Council. The Council and the European Parliament, another principal within the EU institutional context, control the Commission's actions during trade negotiations through various mechanisms. While the Commission keeps a considerable degree of autonomy due to its technical expertise and information advantage, its discretion during negotiations can be constrained when one or both principals attempt to influence the outcome in accordance with their policy preferences. Although the Commission holds an executive authority in international trade, this study revealed how its discretion was restricted by the Council and Parliament in the framework of CETA negotiations.

The analysis of the conflictual dynamics of inter-institutional relationships in the negotiations of the investment and intellectual property rights showed how both principals imposed constraints on the Commission's autonomy in several ways. First, the Commission intended to propose CETA as an EU-exclusive agreement. However, the CETA's inclusion of "behind-the-border" issues affecting national regulatory policies and citizens' fundamental rights resulted in the politicization of agreement. Thus, under significant pressure from member states, particularly Germany and France, the Commission was compelled to classify the agreement as "mixed."

As CETA negotiations became politically salient among institutional and public stakeholders, both the Council and the Parliament actively engaged in the negotiation process, exerting oversight through various control mechanisms to shape the Commission's negotiating stance. Particularly, the CETA's investment and intellectual property provisions have led to considerable institutional involvement. On the investment chapter, the European Parliament and several member states shared similar concerns related to the design of dispute settlement mechanism. The Parliament announced its opinion via a resolution, while the public opinion was presented through a widespread online consultation. Additionally, several member states openly criticized the Commission's support of the ISDS. Germany even considered not signing the agreement, and, together with France, it called for substantial revisions to the ISDS provisions. Consequently, this concerted pressure from both institutional and public actors compelled the Commission to revise its approach, leading to the proposal of ICS as a replacement for ISDS in future agreements. Although CETA negotiations had formally concluded, the ICS was incorporated into the finalized text. Hence, in the context of investment negotiations of CETA, the convergence of principal preferences restricted the agent's autonomy and led it to change its initial position.

With respect to the negotiation of intellectual property provisions, the European Parliament played a significant role in affecting the Commission's position. Its veto of ACTA, a multilateral treaty on intellectual property rights, signed by the EU and several member states, considerably influenced the CETA negotiations. The Parliament's rejection was mainly related to the agreement's potential threat to the right of privacy and other civil liberties. Although CETA provisions were still under negotiation and the official text had not yet been published, leaked drafts indicated that several contentious elements from ACTA had been incorporated into CETA's intellectual property chapter. In response, the Commission was compelled to reassure the Parliament that the leaked version did not reflect the final CETA text. It argued that substantial revisions had since been made to exclude the most controversial provisions associated with ACTA, aligning the agreement more closely with fundamental freedoms. Thus, intellectual property negotiations of CETA provided another case where the agent's position was affected by a principal.

To conclude, this study applied the principal-agent model to the EU's external trade policy. It showed how the Council and Parliament use various control mechanisms to constrain the Commission's autonomy in international trade negotiations, such as defining the scope of the negotiation mandate, making official statements or speeches, and adopting resolutions. One significant result of the analysis is that member states tend to increase their control over the Commission's position and to ensure that it is compatible with their own policy

preferences, especially when trade agreements become politicized and more publicly salient. Another finding concerns the increasing influence of the European Parliament in shaping EU trade policy outcomes. This is a key contribution to the EU trade policy literature, as the Parliament's role has been relatively underexplored due to its historically limited power in this policy area. While the findings of this study may have limited generalizability to other EU policy fields because of the peculiar characteristics of trade policy-making, they offer a meaningful contribution to the academic literature on EU multi-level governance and institutional delegation. Future research could extend this analytical framework to examine similar or alternative principal-agent configurations across different trade or development cooperation contexts.

## References

Arthur, C. (2012) "ACTA Down, but not out, as Europe Votes against Controversial Treaty", 04 July, <https://www.theguardian.com/technology/2012/jul/04/acta-european-parliament-votes-against> (13 August 2018).

Barbière, C. (2015) "Paris and Berlin Call for Review of EU-Canada Trade Deal", 27 January, <https://www.euractiv.com/section/trade-society/news/paris-and-berlin-call-for-review-of-eu-canada-trade-deal/> (12 June 2018).

Bardou, M. (2024) "European Parliament-Commission Relations and International Agreements", *European Foreign Affairs Review*, 29(4): 405-426.

Billiet, S. (2006) "From GATT to the WTO: The Internal Struggle for External Competences in the EU", *Journal of Common Market Studies*, 44(5): 899–919.

Da Conceição-Heldt, E. (2008) "Who Controls Whom: Dynamics of Power Delegation and Agency Losses in EU Trade Politics", ECPR Joint Sessions - Workshop 19, University of Rennes, 2008.

Da Conceição-Heldt, E. (2011) "Variation in EU Member States' Preferences and the Commission's Discretion in the Doha Round", *Journal of European Public Policy*, 18(3): 403-419.

Devuyst, Y. (2013) "European Union Law and Practice in the Negotiation and Conclusion of International Trade Agreements", *Journal of International Business and Law*, 12(2): 259-316.

Elsig, M. (2007) "The EU's Choice of Regulatory Venues for Trade Negotiations: A Tale of Agency Power?", JCMS*: Journal of Common Market Studies*, 45(4): 927-948.

Eschbach, A. (2015) "The Ratification Process in EU Member States", <https://www.sven-giegold.de/wp-content/uploads/2015/11/Eschbach_Ratification-TTIP-CETA-in-EU-MS-EN.docx> (20 February 2025).

Euractiv (2014), "Germany Wants Investment Clause Scrapped in EU-Canada Trade Deal", 25 September, <https://www.euractiv.com/section/trade-society/news/germany-wants-investment-clause-scrapped-in-eu-canada-trade-deal/> (12 June 2018).

Euractiv (2017), "The Free Trade Agreement with Singapore Cannot, in its Current Form, be Concluded by the EU Alone", 16 May, <https://euractiv.eu/wp-content/uploads/sites/2/2017/05/CP170052EN.pdf> (21 June 2018).

European Commission (2015a), "Online Public Consultation on Investment Protection and Investor-to-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)", 13 January, <https://www.europarl.europa.eu/meetdocs/2014_2019/documents/inta/dv/swd(2015)0003final_/swd(2015)0003final_en.pdf> (12 December 2024).

European Commission (2015b), "Commission Proposes New Investment Court System for TTIP and Other EU Trade and Investment Negotiations", 16 September, <http://europa.eu/rapid/press-release_IP-15-5651_en.htm> (21 September 2018).

European Commission (2016a), "European Commission Proposes Signature and Conclusion of EU-Canada Trade Deal", 5 July, <https://ec.europa.eu/commission/presscorner/detail/en/ip_16_2371> (14 December 2024).

European Commission (2016b), "CETA: EU and Canada Agree on New Approach on Investment in Trade Agreement", 29 February, <https://ec.europa.eu/commission/presscorner/detail/sk/ip_16_399> (15 December 2024).

European Parliament (2010), "European Parliament Resolution of 10 March 2010 on the Transparency and State of Play of the ACTA Negotiations", 10 March, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0058&language=EN&ring=P7-RC-2010-0154> (08 October 2018)

European Parliament (2011), "European Parliament Resolution of 8 June 2011 on EU-Canada Trade Relations", 8 June,

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-257> (04 June 2018).

European Parliament (2012a), "Everything You Need to Know about ACTA", <http://www.europarl.europa.eu/sides/getDoc.do?type=IM-PRESS&reference=20120220FCS38611&format=XML&language=EN#title2> (08 October 2018).

European Parliament (2012b), "European Parliament Rejects ACTA", 4 July, <http://www.europarl.europa.eu/news/en/press-room/20120703IPR48247/european-parliament-rejects-acta> (12 October 2018).

European Parliament (2015), "The Investment Chapters of the EU's International Trade and Investment Agreements in a Comparative Perspective", 29 September, <https://www.europarl.europa.eu/RegData/etudes/STUD/2015/534998/EXPO_STU(2015)534998_EN.pdf> (03 June 2018).

European Parliament (2016a), "Ratification of International Agreements by EU Member States", November, < https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593513/EPRS_BRI(2016)593513_EN.pdf > (08 December 2018).

European Parliament (2016b), "A Guide to EU Procedures for the Conclusion of International Trade Agreements", October, <http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593489/EPRS_BRI(2016)593489_EN.pdf> (16 September 2018).

European Parliament (2016c), "EU-Canada Comprehensive Economic and Trade Agreement", January, <https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573929/EPRS_BRI(2016)573929_EN.pdf> (15 January 2025)

Gastinger, M. and Adriaensen, J. (2018) "Of Principal(S') Interest? A Disaggregated, Multiple Principals' Approach to Commission Discretion", *JCMS: Journal of Common Market Studies*, 57(2): 353-370.

Geist, M. (2012a) "ACTA Lives: How the EU & Canada Are Using CETA as Backdoor Mechanism to Revive ACTA", 09 July, <http://www.michaelgeist.ca/2012/07/ceta-acta-column/> (19 August 2018).

Geist, M. (2012b) “EC Says ACTA ISP Provisions Dropped from CETA, Yet Most of ACTA Likely Remains Intact”, 11 July, <http://www.michaelgeist.ca/2012/07/ec-response-to-ceta/> (19 August 2018).

Geist, M. (2013) “EU Assures that CETA does not Contain ACTA Copyright Rules”, 21 October, < http://www.michaelgeist.ca/2013/10/eu-ceta/> (21 August 2018).

Gotev, G. (2012) “MEPs to ‘Finish off’ ACTA on 4 July”, 22 June, <https://www.euractiv.com/section/digital/news/meps-to-finish-off-acta-on-4-july/> (18 August 2018).

Gstöhl, S. (2013) “The European Union’s Trade Policy”, *Ritsumeikan International Affairs*, 11: 1-22.

Heldt, E. C. (2021), "A New Delegation Design for EU Governance: How Preference Cohesiveness of Multiple Principals Shapes the European Commission’s Discretion in Trade Negotiations", *Comparative European Politics*, 19(5): 576-593.

Kerremans, B. (2004), “Principal(s) versus Agent. An Analysis of the Impact of Member States’ Control on the Commission’s Behaviour as Trade Policy Entrepreneur in WTO Negotiations”, *IIEB Working Papers*, 3.

Lee, D. (2012), “European Parliament Rapporteur Quits in ACTA Protest”, 8 March, <https://www.bbc.com/news/technology-16757142> (12 October 2018).

Letter in the Framework of the Political Dialogue: The Role of National Parliaments in Free Trade Agreements (2014), 25 June, <https://secure.ipex.eu/IPEXL-WEB/document/COM-2014-0153/huors> (02 February 2025)

Meunier, S. and Nicolaidis, K. (1999), “Who Speaks for Europe? The Delegation of Trade

Authority in the European Union”, *Journal of Common Market Studies*, 37(3): 477-501.

Peffenkover, M. and Adriaensen, J. (2021), "Detecting Looming Vetoes: Getting the European Parliament's Consent in Trade Agreements", *Politics and Governance*, 9(3): 74-84.

Reichert, M. S. and Jungblut, B. ME (2007), "European Union External Trade Policy: Multilevel Principal–Agent Relationships", *Policy Studies Journal*, 35(3): 395-418.

S&D (2016), "S&Ds Push through the New Investment Protection System in the Canada Trade Agreement Operation", 29 February, <https://pr.euractiv.com/pr/sds-push-through-new-investment-protection-system-canada-trade-agreement-operation-138213> (15 January 2025).

Treaty on the Functioning of the European Union (2009), Art. 207, 218.