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EU External Trade and the Treaty of Lisbon: A Revised Neofunctionalist Approach

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Abstract

This article analyses the EU's Common Commercial Policy (CCP) at the level of Treaty revision and particularly focuses on the last Treaty negotiations that led to the Treaty of Lisbon. The analysis is based on a revised neofunctionalist framework that the author developed in previous work. It draws on the following concepts: (i) functional spillover; (ii) cultivated spillover; (iii) social spillover; and (iv) countervailing forces. Insights into the dynamics and countervailing forces driving Treaty revisions considerably deepen our understanding of the Common Commercial Policy, as EU external trade policy-making is substantially affected by the parameters set by the Treaty. The analysis indicates that the revised neofunctionalist framework can broadly account for the changes of the Common Commercial Policy during the last Treaty revision. It is further suggested that integration in the area of trade policy cannot be explained exclusively by rational choice dynamics, such as utility maximizing actors with fixed preferences, but that socialization through deliberation also needs to be taken into account.

Keywords

Common Commercial Policy; Convention on the Future of Europe; EU external trade policy; neofunctionalism; socialisation; spillover; trade; Treaty of Lisbon; Treaty reform

Within the broader scope of this special issue on contending or complementary paradigms for the study of EU trade politics this article analyses the Union's Common Commercial Policy (CCP) at the macro-level, i.e. at the level of Treaty revision. EU external trade policy has featured at the Intergovernmental Conferences (IGCs) leading to the Treaties of Maastricht, Amsterdam, Nice and Lisbon. When looking at the pre-negotiations and negotiations of the Lisbon Treaty, we are confronted with a puzzle: why have negotiations leading to the Treaty of Lisbon managed to achieve something like a break-through concerning the extension of competence to the Community in contested trade areas such as services, intellectual property and investment, which the Maastricht, Amsterdam and (to a lesser degree) Nice IGCs failed to bring about? Given the fact that this puzzle seems to be located at the interface between the last Treaty revision and previous ones, this article particularly focuses on the development leading from the Nice Treaty to the Lisbon Treaty.

Hence, the purpose of this contribution is to explain the outcome of the last Treaty revision with regard to the provisions on the Common Commercial Policy. My analysis is based on a revised neofunctionalist framework. Why make revised neofunctionalism my point of departure? First, as Wiener and Diez (2009) have argued, the theoretical spectrum for answering questions related to this type of research question – explaining outcomes of EU decision-making – is limited. Most approaches devised for the study of the EU or regional integration more generally are not applicable for my purpose.¹ For example, some of the more recent theorising does not share my focus on seeking to *explain* outcomes. Instead, they aim at *describing* or at *providing a normative or critical perspective*, like federalist theory (Pinder 1986), gender/critical perspectives (Mazey 2000) or critical discourse analysis (Derrida 1992). In addition, along the triad of *polity*, *politics* and *policy*, my analysis primarily focuses on the former two, polity and politics. My focus on polity and politics renders policy network analysis (Peterson and Bomberg 1999), and the explanatory variants of discourse analysis (Diez 1999), which are more geared towards policy, less plausible as a theoretical choice. Governance theory (Jachtenfuchs 2001), which is sometimes viewed as a catch-all theory, arguably also does not have its core competencies at explaining outcomes along the polity/politics dimension. New institutionalism – in its rational choice, historical and sociological variants (Aspinwall and Schneider 2001) – does share an interest in the politics

dimension, but less so as regards polity, and thus, although conceivable, does not seem an ideal choice either. Only few theories, such as neofunctionalism (Haas 1958), and (liberal) intergovernmentalism (Hoffmann 1995 [1964]; Moravcsik 1998), operate at the nexus of explaining, on the one hand, and the interface of polity and politics, on the other hand.

Second, when left with the choice of neofunctionalism and intergovernmentalism, it is clear that both have been criticised widely on several accounts. However, (liberal) intergovernmentalism faces severe difficulties to account for any endogenous preference formation on the part of (national) decision-makers who seem to define their interests regardless of (their country's) EU membership, and also discounts the importance of social interaction and learning processes. By contrast, my prior research has indicated the general usefulness of neofunctionalist insights concerning this type of inquiry (Niemann 1998, 2006). Moreover, it suggests that some of the criticisms that were levelled against the theory were either exaggerated or unjustified, that the theory has been misread by a number of authors (Niemann 2000: 13-23), and that it is possible to draw on a wider neofunctionalist theoretical repertoire than the one commonly perceived. In addition, my previous work indicates that neofunctionalism is best understood as a dynamic theory (Rosamond 2005: 247) – due to its inherent propensity for self-reflection as well as the time sensitivity of several neofunctionalist assumptions made almost five decades ago – and that many of the more recent micro-level concepts can sensibly be accommodated within the larger neofunctionalist framework. The apparent possibility of developing and modifying neofunctionalism in a meaningful way was in stark contrast to the general lack of enthusiasm in the scholarly community to use, revive, or revise neofunctionalist theory. This discrepancy puzzled and encouraged me to undertake a more comprehensive investigation into the state and validity of neofunctionalism and the possibility of revising it.

The purpose of this paper is *not* to undertake a revision of neofunctionalist theory. I have done so elsewhere. Instead, this article will present the revised neofunctionalist framework as a point of departure for explaining the Lisbon Treaty changes regarding EU external trade policy. To account for the Lisbon outcome, I use a revised neofunctionalist framework that draws on the factors/concepts of (i) functional spillover; (ii) cultivated spillover; (iii) social spillover; and (iv) countervailing forces. The Common Commercial Policy has thus far escaped analysis from a (revised) neofunctionalist perspective. Since EU trade policy-making is substantially affected by the parameters set by the Treaty, insights into the dynamics and countervailing forces driving Treaty revisions should deepen our understanding of EU external trade policy-making and decision-making. The analysis indicates that integration in the area of trade policy cannot exclusively be explained by rational choice dynamics, such as utility maximizing actors with fixed preferences, but that socialization through deliberation also needs to be taken into account. In order to strengthen the revised neofunctionalist explanation, a rival (alternative) explanation – based on exogenous factors mainly related to the changing international trade agenda – that has been prominently used to account for previous developments of the Common Commercial Policy in the literature (e.g. Meunier and Nicolaïdis 1999) has also been probed briefly. However, the subsequent analysis shows that this alternative explanation fails to persuasively explain the latest Treaty change.

There are several rationales for examining the case of latest EU Treaty revision concerning the CCP. First, the above mentioned puzzle indicates that the Lisbon Treaty revision (including its pre-negotiation) constitutes a case that is particularly worth analysing, given the differing outcome compared to previous CCP Treaty revisions. Second, while this case has been subject to considerable legal analysis (Dimopolous 2008; Cremona 2006), there is a significant lack of theory-driven political science research on this particular topic. Finally, (history-making) decisions at macro-level of Treaty revision are substantially politicised and may thus constitute a hard case for (revised) neofunctionalism.

My analysis starts off from a multiple causality assumption, suggesting that the same outcome can be caused by different combinations of factors. In order to arrive at causal inferences, allowing for some degree of positive causality, a number of methods are employed: comparative analysis, advancing alternative explanations, process tracing and triangulation across multiple data sources, including about 30 interviews.²

The chapter proceeds as follows: first, it outlines the theoretical framework is specified; second, it summarises the development of the Common Commercial Policy, including the outcomes of the last few Treaty revisions, with special emphasis on the Treaty of Lisbon; third, it seeks to explain the outcome of the last Treaty revision on the basis of the revised neofunctionalist framework, while also briefly probing the alternative explanation based on exogenous pressures.

CONCEPTUAL FRAMEWORK: REVISED NEOFUNCTIONALISM

Amongst the earlier theories of regional integration, neofunctionalism is distinguished both in its sophistication and ambition. The theory was first formulated in the late 1950s and early 1960s mainly through the work of Ernst Haas (1958) and Leon Lindberg (1963) in response to the establishment of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC). The theory was in its prime until the mid-1960s, during which time the evolution of European integration seemed to vindicate its assumptions. From the mid-1960s, the theory was increasingly criticised, particularly in the face of several adverse empirical developments (Niemann 2006: 20-23). In the late 1960s and early 1970s neofunctionalists made attempts to revise some of their hypotheses and claims, but in the mid-1970s Haas declared the theory to be "obsolete". With the resurgence of the European integration process in the mid-1980s, however, neofunctionalism made a substantial comeback. Since the 1990s, some endeavours have been made to newly revise the original approach (Schmitter 2004), although not always explicitly under the neofunctionalist label (Stone Sweet and Sandholtz 1997).

Neofunctionalism's basic theoretical tenets can be summarised as follows: first, integration is understood as a process. Implicit in the notion of process is the assumption that integration processes evolve over time and take on their own dynamic. Second, integration is assumed to be driven by multiple, diverse and changing actors who are not restricted to the domestic political realm but also interact and build coalitions across national frontiers and bureaucracies (Haas 1964: 68). Third, neofunctionalists see the Community primarily as 'a creature of elites'. While Haas (1958) devoted much of his attention to the role of non-governmental elites, Lindberg (1963) largely focused on governmental elites. Neither ascribed much importance to the role of public opinion (Lindberg and Scheingold 1970: 41).

Neofunctionalism is mainly a theory about the dynamics of European integration. Five assumptions encapsulate the driving forces behind its progress: (1) its practitioners assume rational and self-interested actors (Haas 1970: 627), who (nevertheless) have the capacity to learn and change their preferences. Interest-driven national and supranational elites, recognising the limitations of national solutions, provide the key impetus. However, these self-regarding motives are not perceived as constant. They are likely to change during the integration process, as actors learn from the benefits of regional policies and from their experiences in co-operative decision-making (Haas 1958: 291). (2) Once established, institutions can take on a life of their own and progressively escape the control of their creators. Concerned with increasing their own powers, employees of regional institutions become agents of further integration by influencing the perceptions of participating elites (both private and public), and therefore governments' (national) interest. (3) Early reformulations of the theory stressed the primacy of incremental decision-making over grand designs. Moreover, seemingly

marginal adjustments are often driven by the unintended consequences of previous decisions. This effect arises from the incapacity of most political actors to engage in long-term purposive behaviour as they 'stumble' from one decision to the next, especially when engaging in such an innovative task as regional integration. Decisions in this arena are normally taken with very imperfect knowledge of their consequences and frequently under the pressure of deadlines (Haas 1970: 627). (4) Neofunctionalists reject the conventional realist axiom that all games played between actors are necessarily zero-sum in nature. In the Community setting exchanges are often better characterised as positive sum-games and a "supranational" style of decision-making, which Haas defined as 'a cumulative pattern of accommodation in which the participants refrain from unconditionally vetoing proposals and instead seek to attain agreement by means of compromises upgrading common interests' (Haas 1964: 66). (5) Haas agreed with the assumption made by some economists, such as Pierre Uri, who was the chief economist of the ECSC in the 1950s, that emerging functional interdependencies between whole economies and their productive sectors tend inexorably to foster further integration (Haas 1958: 372).

The neofunctionalist conception of change is succinctly encapsulated in the notion of "spillover". The term was first applied in two distinctive manners: (1) it was used as a sort of shorthand for describing the occurrence of (further) integration; and, (2) it was used to identify the driving force and inherent logic of integration via increased functional/economic interdependence (Haas 1958: 383). Later on (and also in this article) the term spillover has been used to explain all the different neofunctionalist dynamics.

The revised neofunctionalist framework presented and used here, which has been derived inductively from prior research (Niemann 1998, 2000, 2006), departs from early neofunctionalism in several ways: first, the ontological scope is slightly broadened – somewhat beyond what Haas (2001) *post hoc* described as 'soft rational choice' for the original neofunctionalist account – towards a wider and more inclusive ontology by encroaching 'soft' constructivism to a larger extent than Haas (2001: 27) attributed to early neofunctionalism. While this revised neofunctionalist account accepts that there is a real (material) world out there, which offers resistance when we acted upon, at the same time it asserts that behaviour is only to some extent shaped by physical reality. Instead, actors' capacity for learning and reflection has an impact on the way in which they attach meaning to the material world. Actors cognitively frame or socially construct the world according to their knowledge, norms, experience and understandings. Hence, actors' interests and identities are moulded and constituted by both material *and* socio-cognitive structures. Their preferences are shaped by social interaction and the evolving structures, norms and rules of the domestic and the EU polity (i.e. membership matters) rather than exogenously given. And because agents are assumed to have the capacity to learn, their preferences are subject to change rather than stable, given evolving social structures and varying actor constellations in the real world.

This extension was undertaken for two reasons: while some elements of (early) neofunctionalism can be solidly located in the rational choice tradition with rational, intentional and self-interested actors (Burley and Mattli 1993: 54-55), other elements were more reminiscent of constructivist thought with actors capable of learning processes (Rosamond 2005: 242, 250). In addition, this account places more explicit emphasis on socialisation, deliberation and learning than did Haas's early neofunctionalism for explaining EU decision outcomes.

Second and closely related, the ontological status of structure and agency has shifted. Early neofunctionalism viewed agents as predominant and paid relatively little attention to structure.³ The revised neofunctionalist account regards the properties of both structure and agency as very significant to explaining social and political processes. It dismisses both structural determinism and agency-centred voluntarism. Instead, this framework embraces the concept of structuration which emphasises the interdependence

of structures and agency (Giddens 1984). Structure and agency mutually constitute each other. Structure has a dual nature. It enters simultaneously into the constitution of the agent and social practices, and exists in the generating moments of this constitution. Agency, however, is not reduced into servants of structure. They have created structural properties in the first place and can potentially change any aspect of structure. Agents act upon both structures and their own preconceived interests. Structures in the revised neofunctionalist framework are, for example, the EU and the international system of states, the EU institutional order, domestic constellations/institutional balances and functional-economic interdependencies and necessities. Agency is manifold, ranging from governmental elites to private and supranational actors. Revised neofunctionalism assigns agency and structure an equal ontological status.

Third, and perhaps most importantly, departing from early neofunctionalists' grand theoretical ambitions and the automaticity of spillover, the revised approach should be understood as a wide-ranging, but partial, theory that is only intended to account for part of the process of regional integration in Europe, namely that of explaining EU decisions and their impact upon integration. The latter is no longer viewed as an automatic and exclusively dynamic process, but rather occurs under certain conditions and is better characterised as a *dialectic* process (Tranholm-Mikkelsen 1991: 18), i.e. the product of both dynamics and countervailing forces. Through such a dialectical account the non-linear, stop-and-go nature of the European integration process is thought to be conceptualised more adequately. In this process, that is now more explicitly subject to both (forward-)dynamics *and* countervailing forces, the strength, variation and interplay of pressures on both sides of the equation thus determine the outcome of a particular decision or sequence of decisions.

Fourth, the revised neofunctionalist framework further develops and specifies the dynamics of integration. Some of the spillover dynamics are also adapted and expanded within this process. Functional spillover is broadened in scope to go beyond merely economic linkages and is freed from its deterministic ontology – implying that functional structures have to be found plausible and compelling by actors in order to be acted upon – thus reflecting a 'soft' functionalis. In addition, cultivated spillover – the concept that originally denoted the role of the Commission/High Authority – is (also) widened to include the integrative roles played by the Council Presidency, the European Parliament and the European Court of Justice. Furthermore, the newly termed notion of "social" spillover is separated from what had been called "political spillover" (Tranholm-Mikkelsen 1991: 5) – formerly broadly denoting the integrative role played by governmental and non-governmental elites – for a more clear-cut explanation of reflexive (elite) learning and socialisation processes. The concept of communicative action is incorporated into social spillover to more adequately describe and explain these processes. Learning and socialisation are no longer regarded as constant (as implied by early neofunctionalists) but as being subject to conditions. The ensuing pressures are intertwined in several ways and cannot always be neatly separated from each other. The first three factors (functional spillover; social spillover; and cultivated spillover) are hypothesised as dynamics, while the fourth factor (countervailing forces) goes against these integrational logics.

Functional spillover

Functional pressures emerge when an original integrative objective can be assured only by taking further integrative actions (Lindberg 1963: 10). The basis for the development of these spillover pressures is the (functional) interdependence of policy sectors and issue areas. Individual sectors and issues tend to be so interdependent in modern politics and economies that it is difficult to isolate them from the rest (Haas 1958: 297, 383). Functional pressures thus encompass the endogenous tensions, contradictions and interdependencies closely related to the European integration project, and its policies,

politics and polity, which induce policy-makers to take additional integrative steps in order to achieve their original common goals. Functional spillover constitutes a structural component in the analytical framework. Functional pressures have a propensity for causing further integration, as intentional actors tend to be persuaded by the functional tensions and contradictions (as well as the costs and benefits arising from them). However, they do not determine actors' behaviour in any mechanical or predictable fashion. Functional structures contain an important element of human agreement. In order to act on such structures, actors also have to *perceive* them to be credible and, to at least some degree, compelling.

As for the operationalisation of functional spillover, the following indicators can be specified for this pressure: first, the basis for functional pressure is that there is the actual existence of an original goal. The salience and urgency of this goal to some extent determines the strength of the functional necessity. Second, another basis is the existence of a functional interdependence between issue A (original goal) and issue B (where further action may potentially be necessary). Further integration in the area of A must have adverse/significant consequences for issue area B and thus foster (additional) collective action there. Third, is further action in a particular issue area necessary to achieve the original objective, or are there alternative solutions for solving this functional dissonance? If the initial objective cannot be sufficiently reached by other means, the functional connection is likely to be a strong one. Finally, functional dynamics are much more likely to unfold, if they are openly discussed and considered during negotiations. If all these mechanisms and aspects are present in the process, there is a strong likelihood that (further) integration occurs in area B (here the EU's external trade policy).

Cultivated spillover

Originally only applied to the role of the High Authority/Commission and its "cultivation" of ties with national elites, one might plausibly broaden the notion of cultivated spillover to the role of supranational institutions more generally. Several factors underpin the plausibility of hypothesising supranational institutions as promoters of intensified integration. Firstly, institutions, once established, tend to take on a life of their own and are difficult to control by those who created them (Pierson 1996). Agent autonomy has been considered particularly pronounced with regard to the Court of Justice (Mattli and Slaughter 1998), but also been stated in the context of the Commission (Nugent 2001: 17), the Council Presidency (Elgström 2003: 44), and the European Parliament (Westlake 1994: 243-44). Secondly, concerned with increasing their own powers, supranational institutions become agents of integration, because they are likely to benefit from the progression of this process. This has above all been witnessed in the case of the Commission and the European Parliament, but also concerning the ECJ (Burley and Mattli 1993). And lastly, institutional structures (of which supranational structures are a part) have an effect on how actors understand and form their interests and identities (Haas 1958).

Being the most visible agent of integration, the *Commission* facilitates and pushes agreements on integrative outcomes in a number of ways. For example, it can act as a promotional broker by upgrading common interests, e.g. through facilitating package deals. Further, it is centrally located within a web of policy networks and relationships, which often results in the Commission functioning as a bourse where problems and interests are traded and through which support for its policies is secured (Mazey and Richardson 1997). The Commission may also exert itself through its often superior expertise (Nugent 1995, 2001: 210).

Over the years, the *Council Presidency* has evolved into an alternative architect of compromise. Governments taking on the six-month role face a number of pressures, such as increased media attention and peer group evaluation, to assume the role of

honest and promotional broker (Elgström 2003: 39). During their Presidency, national officials tend to undergo rapid learning processes about the various national dimensions which induce a more 'European thinking' and facilitate 'European compromises' (Wurzel 1996: 272, 288).

The *European Parliament* (EP) has fought, and in many respects won, a battle to become, from being an unelected body with minor powers, an institution on an equal footing with the Council in the larger part of normal secondary legislation (Maurer 2003). It has clearly become another centre of close interest group attention (Bouwen 2004) and plays a critical, if not wholly successful, role in the Union's legitimization. Even at the IGC level its role has increased significantly.

The primacy of Community law has been asserted by the *European Court of Justice* (ECJ), which also managed to transform the Treaty of Rome into something like a constitution (Weiler 1981: 274). It has furthered the integration process for example by (1) having raised the awareness of subnational actors concerning the opportunities offered to them by giving them a direct stake in Community law through the doctrine of direct effect; (2) by raising the visibility, effectiveness and scope of EC law; (3) by arguing along the lines of functional pressures and by justifying its decisions in light of the common interests of members as enshrined in the general objectives of the EEC Treaty (Burley and Mattli 1993: 43-44, 68-69; Mattli and Slaughter 1998).

The operationalisation of this pressure include: (a) supranational institutions' level of energy devoted to an issue (here CCP reform), including their cultivation of relations with other decision-makers to get support for their objectives; (b) the level of their internal cohesion within the respective institution (Nugent 1995); (c) their choice of an appropriate negotiating strategy and negotiating environment; (d) supranational institutions' background position at the beginning of negotiations, including their standing and level of trust enjoyed by other delegations at the table; and (e) as for the Presidency, the willingness and ability to play the role of honest and promotional broker (Elgström 2003). The final (and most important) indicator focuses on the output, rather than the input dimension of the role played by supranational institutions. What is important here is the extent to which attitudes, interests or positions on the part of decision-makers have changed towards the approach taken by supranational institutions. Having identified such change, it still has to be ascertained, if it was induced by supranational institutions. This brings us back to the first five indicators, but the causal connection between these indicators with the preference change on the part of national decision-makers has to be substantiated. An indicator combining elements of these reference points would be the admittance on the part of national decision-makers and, alternatively, independent insiders involved in the negotiations (such as Council Secretariat officials) that national preferences and positions changed towards those favoured by supranational institutions because of the involvement and reasoning of the latter.

Social spillover

Socialisation, deliberation and learning processes prevalent in the Community environment, here categorised under the umbrella term of social spillover, are postulated to encourage cooperative decision-making and consensus formation, thus leading to more integrative results. The proliferation of working groups and committees has led to an elaborate mosaic of bureaucratic interpenetration at the European level that provides a forum for frequent and recurrent contact between thousands of national and EU civil servants. Thus an arena well suited to foster such processes is provided, through the construction of mutual trust and a certain *esprit de corps* among officials in Community forums. The foundational assumption is that the duration and intensity of

interaction are positively correlated with the significance of socialisation and learning processes (Lindberg 1963; Lewis 1998: 487-488).

It is held here that not only the quantity, but also the *quality* of interaction constitutes a major factor regarding cooperative norm socialisation and learning processes. We can distinguish between (1) incentive-based learning – the adaptation of strategies to reach basically unaltered and unquestioned goals – and (2) more deeply-rooted reflexive learning, i.e. changed behaviour as a result of challenged and scrutinized assumptions, values and objectives (Nye 1987: 380). The latter cannot be sufficiently explained through incentives/interests of egoistic actors (Checkel 2001: 242). Furthermore, if we attempt to thoroughly understand social behaviour and learning, this requires that we take language into greater consideration. It is through speech that actors make sense of the world and attribute meaning to their actions.

Using the notion of communicative action allows us to both attain a more fundamental basis for reflexive learning and to integrate the role of communication more thoroughly. The concept of communicative action, as devised by Jürgen Habermas (1981), refers to the interaction of people whose actions are coordinated not via egocentric calculations of success but through acts of reaching understanding about valid behaviour. Participants are not primarily oriented to achieving their own individual success; they pursue their individual objectives under the condition that they can coordinate or harmonise their plans of action on the basis of shared definitions of the situation. Habermas distinguishes between three validity claims that can be challenged in discourse: first, that a statement is true, i.e. conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful.

Under “communicative” behaviour the force of the better argument counts and actors attempt to convince each other (and are open to persuasion) with regard to these validity claims. By arguing in relation to standards of truth, rightness and sincerity, agents have a basis for judging what constitutes reasonable choices of action, through which they can reach agreement (Habermas 1981: 149). While agents bargain in strategic interaction, they *deliberate, reason, argue* and *persuade* in communicative action and may also undergo more profound learning processes. Rather than merely adapting the means to achieve basically unchanged goals, as in strategic action, they redefine their very priorities and preferences in validity-seeking processes aimed at reaching mutual understanding. However, strategic action and communicative action are only ideal types, and agents combine different (complementary) modes of action in their behaviour (Checkel 2001: 241; Risse 2000: 18). Hence, we cannot expect constant learning. Nor can we expect unidirectional learning, as the EU level is not the single source of learning, with the domestic and international realms also triggering socialisation processes.

Social spillover processes work as an interface between structure and agency. Functional, exogenous and domestic structures become part of decision-makers’ norms and values throughout processes of socialization and learning. It is important to note that actors, in their quest to arrive at the most “valid” solution, tend to be more open-minded, and are thus more inclined to consider even those arguments derived from the wider structural environment. These processes also have a tendency to open (national) actors up to the arguments provided by other players, such as supranational entrepreneurs.

The operationalisation of social spillover processes is particularly challenging, especially from an extreme positivist viewpoint, as observation and measurement of this pressure are exceptionally difficult. While we have to rely more on context, understanding and interpretation, we can still establish some signposts for empirical research. First, the object of investigation has been narrowed down. While it is conceivable to investigate this factor broadly in terms of various forums and contexts, this study has focused on

negotiators, operating mainly in the Convention. Second, the level of enmeshment among national officials, for example, through their involvement in a certain negotiating group, or in the Brussels framework more generally, can be ascertained. The frequency of formal and informal contact, as well as the duration of interaction can serve as pointers here. Third, as far as the quality, as opposed to the quantity of interaction, is concerned, there are several indicators for communicative behaviour. For example, arguments in deliberation mode are not based on hierarchy or authority. Pointing to status or rank to make an argument, does not qualify as communicative action. In addition, argumentative consistency is a good marker of deliberation. Actors that change their arguments depending on the audience probably engage in rhetorical behaviour. Moreover, characterisations of the interaction process in terms of reasoning and arguing by interviewees who have not been prodded along with structured interviews proposing different characterisations of the policy process can substantiate communicative behaviour (Risse 2000; Niemann 2004).

Countervailing forces

As the process of integration cannot be adequately described as solely dynamic or integrative, it is necessary to account for countervailing forces. For this reason integration is here presented as a *dialectical* process, subject to, and explained through, the interplay of both dynamics *and* countervailing forces, mutually affecting one another. The nature of these countervailing forces may either be stagnating (engineering standstill) or opposing (tending to cause spillback). One can better ascertain the relative strength of the (forward-)dynamics of integration if one also accounts for these forces.

Domestic constraints may substantially circumscribe governments' autonomy to act (Moravcsik 1993: 483-494). Governments may be constrained directly by agents, such as lobby groups, opposition parties, the media/public pressure, or more indirectly by structural limitations, like a country's economy, its geography or its administrative structure, especially when distinct from that of the European mainstream due to adjustment costs of integration (Héritier 1999). Governments' restricted autonomy to act may prove disintegrative, especially when countries face very diverging domestic constraints. This may disrupt emerging integrative outcomes, as domestic constraints may lead to national vetoes or prevent policies above the lowest common denominator. Adverse bureaucratic pressures also partly come under this rubric, when constraints created at this level are not so much ideological in nature (sovereignty-consciousness), but when bureaucrats limit governmental autonomy of action in order to protect their personal interests or to channel the preferences of their "constituencies".

Sovereignty-consciousness – which in its most extreme form can be thought of as nationalism – encompasses actors' lacking disposition to transfer sovereignty to the supranational level and yield competences to EU institutions. Sovereignty-consciousness tends to be linked to national traditions, identities and ideologies and may be cultivated through political culture and symbolisms (Callovi 1992; Meunier and Nicolaïdis 1999: 485). Sovereignty-consciousness has repeatedly impeded the development of the Community, as, for example, during de Gaulle's and Thatcher's terms of office. Less prominent actors such as bureaucrats, especially when working in ministries or policy areas belonging to the last bastions of the nation-state, may also represent sovereignty-conscious agents.

With regard to the operationalisation of countervailing forces there are several aspects worth mentioning: first, although sovereignty consciousness is a rather diffuse notion, (semi-)structured interviews (and cross-interviews) can go some way to reveal the attitudes of decision-makers *vis-à-vis* issues like the delegation of competences to supranational institutions. In addition, when member governments come out against further supranationalisation of a policy sector despite the fact that they would benefit

materially from such a step, this most likely happens for ideological (sovereignty-related) reasons (Meunier and Nicolaïdis 1999). Second, there are several indicators for domestic constraints, such as resistance from important fractions of government. Finally, in terms of (adverse) bureaucratic politics, one can ascertain for instance the extent to which national bureaucrats had access to agenda/decision-making processes and the degree to which they used such access.

Although the revised neofunctionalist account has moved closer to other theories, it can still be distinguished from other accounts. Suffice it here to make the distinction with what perhaps constitutes its closest rival, liberal intergovernmentalism (Moravcsik 1993, 1998). One central difference is that integration is still, crucially, regarded as a "process". While (liberal) intergovernmentalism looks at a single "photograph", neofunctionalism (including the revised account) examines a whole "film" (Pierson 1996: 127). In addition, the revised account contests (liberal) intergovernmentalism's assumption of interest aggregation exclusively at the national level through some hermetic process – that takes interests largely as given. Instead, (revised) neofunctionalism points to endogenous preference formation processes in which ECSC/EC/EU membership and the interaction between the different actors matters, and also affects the way that these actors perceive their interests (Haas 1958: 9-10). Perhaps a final point of distinction, even though Andrew Moravcsik has over time somewhat altered (and augmented) the role played by supranational institutions in the integration process (see Moravcsik 1991 and Moravcsik 1998: 8), is to note that he still suggests that supranational institutions tend 'to be futile and redundant, even sometimes counterproductive', so still viewing their entrepreneurship role in the European integration process as marginal (Moravcsik 1998: 8, 490-494), a view that is rather opposed to that adopted by (revised) neofunctionalism.

THE DEVELOPMENT OF EU EXTERNAL TRADE POLICY

Several authors have noted that, particularly in terms of definition and scope, the drafting of the Community's Common Commercial Policy was far from ideal (Ehlermann 1984). These authors lament the fact that the Treaty of Rome only included a non-exhaustive list of examples of subjects belonging to the CCP and the lack of any clear definition of the boundaries of this policy. As a result, external trade policy has been the subject of recurrent disputes between the Commission, the Council, member states and the Parliament. Disagreement developed (during the Uruguay Round and thereafter) especially concerning the question who was competent on the new trade issues: services, intellectual property rights (IPRs) and investment. The Commission, above all, feared that the Community's capacity to act externally would be substantially hampered if competence was not transferred exclusively to the Community on these issues, as in the area of trade in goods. The Commission failed to achieve progress on these issues during the Maastricht IGC. In addition, the ECJ in its Opinion 1/94 ruled that both the Community and Member States were generally jointly competent on issues of services and intellectual property rights. Against this background, the Commission decided to further pursue the issue of Article 133⁴, the cornerstone of the CCP, at subsequent IGCs.

The Amsterdam IGC produced a very modest outcome. The result of the negotiations was a new paragraph (5) in Article 133, which enabled the Council to extend the application of Article 133 to services and intellectual property rights by unanimity without having to go through another IGC (Sutherland 1997: 30). It has been commonly agreed that the progress made during the IGC 1996-97 negotiations was minimal, whether the benchmark used for assessment was the *status-quo ante* practice, the different options on the table, or the requirements of a changing multilateral trade agenda (Patijn 1997: 39; Ludlow 1997: 39; Woolcock 2005).

Some integrative progress was brought by the Treaty of Nice. Most importantly, qualified majority voting was introduced for trade in services and IPRs. However, several important exceptions to QMV were also established, for example in areas where unanimity was required for the adoption of internal rules or where the Community had yet to exercise its competence. Agreements which relate to trade in cultural and audiovisual services, educational services, human health services and transport service were explicitly excluded from QMV. The Nice provisions featured some further significant shortcomings: (1) FDI was excluded from the scope of Article 133; (2) the negotiation and conclusion of horizontal agreements remained subject to unanimity, if one of the above derogation areas formed part of broader negotiations. Moreover, member state ratification was required in such cases; (3) decision-making pertaining to CCP continued to exclude the European Parliament, which was further deprived even of any formal right of consultation; (4) Member States retained the right to maintain and conclude agreements in the fields of trade in services and commercial aspects of IPRs. Broadly speaking, commentators viewed the progress made at Nice towards enhancing the Community's capacity to act on the international scene, though more substantial than that achieved at Amsterdam, as nonetheless rather modest (Duff 2001: 14; Brok 2001: 88; Krenzler and Pitschas 2001: 312).

From the Treaty of Nice via the Convention to the Treaty of Lisbon

The Draft Treaty that emerged from the Convention⁵ was very close to the Constitutional Treaty that resulted from the 2003-04 IGC. The CCP only played a subordinate role at the 2003-04 and 2007 IGCs where the provisions of the Draft Constitutional Treaty were watered down only insubstantially.⁶ The vast majority of the CCP provisions found in the Lisbon Treaty had already been agreed during the Convention. The CCP Treaty provisions have evolved significantly: (1) the role of the European Parliament has been expanded considerably: it has been granted co-decision on legislative acts, most types of international agreements (including all trade agreements) require parliamentary approval, and its role in the process of trade negotiations has been strengthened; (2) services, intellectual property and also investment now fall within the *exclusive* competence of the Community; (3) exceptions to unanimity (such as for areas of cultural and audiovisual services as well as social, education and health services) have been more narrowly circumscribed; (4) national parliaments are no longer needed for the ratification of future WTO agreements (involving the new issues). Broadly speaking, observers agree that this latest CCP Treaty revision constitutes considerable progress, certainly when compared to earlier Treaty revisions (Antoniadis 2004; Commission 2004: 25; Cremona 2006: 29; Krenzler and Pitschas 2006; Dimopoulos 2010).

THE TREATY OF LISBON: A REVISED NEOFUNCTIONALIST ACCOUNT

Before probing the revised neofunctionalist framework, the most important alternative explanation for this Treaty change will be considered and refuted. While (revised) neofunctionalism (largely) focuses on pressures that are endogenous to the European integration process, some scholars have emphasised the importance of exogenous/external factors as the driving force for change.⁷

Alternative explanation: exogenous pressures

Several authors have previously pointed to exogenous pressures as important factors impacting on the development of the Common Commercial Policy (Billiet 2006; see also Meunier and Nicolaidis 1999). Exogenous pressures encompass those factors that

originate outside the integration process itself, i.e. that are exogenous to it. Emphasis is placed here on the external political and economic environment that affects the behaviour of national and supranational actors and also influences EU policy-making. Such accounts also tend to point out that the Community and its development need to be viewed in the global context, especially when it comes to its external policies. The aspect that has been referred to most often in this context is the changing multilateral trade agenda: the increasing importance of trade in services, intellectual property rights and foreign direct investment in the WTO context.

These issues began to feature much more prominently on the multilateral trade agenda since the Uruguay Round (UR). A number of actors have argued that the scope of Article 113/133 needs to be interpreted in a dynamic way. As trade policy changes and trade in goods loses in importance, the Community powers under the CCP become gradually eroded: as the enlarged trade agenda increased the number of occasions that decisions had to be taken under mixed competences, which applied to the newer trade issues, decision rules and the mode of external representation seemed no longer appropriate. Mixed competence implied unanimity in the Council and thus potentially lowest common denominator outcomes and the potential abuse of the veto option. Cases in which the trade partner is closer to the status quo, the EU's bargaining power tends to be low and it is susceptible to "divide-and-rule" games.⁸ Hence, it has been argued that the EU's external trade policy needed to be supranationalised with regard to these newer trade issues, such as trade in services, intellectual property rights, and investment.

It can and has been argued that the broadened international trade agenda increased the number of instances that shared competence applied to EU external trade negotiations (Krenzler and da Fonseca-Wollheim 1998). Explanations focusing on this exogenous factor place emphasis on the fact that important future trade negotiations thus exert pressure towards a reform of the CCP. It is acknowledged here that such exogenous dynamic constitutes a substantial dynamic for revision. However, I argue that variation on the strength of this pressure has been fairly minor since the mid-1990s, so that it cannot (in itself) convincingly explain change from the Amsterdam IGC to the Convention/Lisbon Treaty.

Although trade in services, the importance of intellectual property rights (IPRs) and investment increased in economic terms after the 1996-97 IGC,⁹ all of these issues were squarely and prominently on the table since the UR and were also considered during the Amsterdam IGC talks (Krenzler 1996; Young 2002; Kuyper 1995). My series of interviews in Brussels and several national capitals suggests that the perception of the above-mentioned exogenous pressure did not increase over time. With regard to the evolving multilateral trade agenda and the strengthening of the institutional framework of the WTO, interviewees mostly/predominantly emphasised that, 'this was clear since the Uruguay Round' (interview 2002), 'the nature and significance of these issue remained basically unaltered over time' (interview 2004), and that 'increases in services and investment had been expected and did not really push us more at a later stage [than during the 1996/1997 IGC]' (interview 2004). In addition, judged on the basis of official documents and media reports, the transformation of the multilateral trade agenda, if anything, featured more highly in the discourse during the Amsterdam IGC than in the two subsequent Treaty revisions (Niemann 2006).

Closely related, prior to the conclusion of the Amsterdam IGC, the Commission and the Member States had already gained substantial experience with negotiating under mixed competence in the post-UR services negotiations on basic telecommunications services and the movement of natural persons. Important negotiations on financial services were to be advanced and concluded shortly after the 1996/97 IGC. It was also clear from the General Agreement of Trade in Services that the GATS agreement would be revised after five years at the beginning of 2000, eight months after the coming into effect of the Amsterdam Treaty. Also, from 1996, the EU took the lead within the WTO to argue for a comprehensive new (millennium) round of trade negotiations (Woolcock 2005: 241).

Hence, considerable experience with negotiating under mixed competence was present, and important additional trade negotiations under shared competence were already on the (immediate) agenda during the 1996/97 Intergovernmental Conference.

Third, the changing international trade agenda also cannot sufficiently explain why the issue of 'trade and investment' became a Community competence with the Treaty of Lisbon. Perhaps most revealing in that respect, reduced exogenous FDI pressures coincided with an increase of competence on investment during the Convention and 2003/2004 IGC (when the CCP provisions that appear in the Lisbon Treaty were settled). Before and during that period annual FDI decreased, both worldwide and also concerning EU FDI capital flows. In addition, negotiation of investment during the Doha Round became increasingly questionable, if not unlikely, after considerable resistance to negotiate on this issue was encountered at the Doha Ministerial Conference of 2001, before the issue was formally abandoned by the EU at the Cancun Ministerial Conference in September 2003 (Dür 2007). Thus, exogenous dynamics (based on the shifting international trade agenda) do not shed sufficient light on why investment became one of the issues on which Community competence was augmented during the Convention and subsequent IGC leading to the Lisbon Treaty, as actual investment flows pointed in another direction.

More generally speaking, exogenous dynamics cannot convincingly explain the changes in the area of EU external trade policy that came about through the last Treaty revision. Hence, we must look to endogenous factors, and thus consider the revised neofunctionalism to gain a fuller understanding of this development. The subsequent analysis will make use of (and probe) the four factors of the revised neofunctionalist framework for an explanation of the Lisbon Treaty CCP outcome.

Functional spillover

The most important functional pressure during the past Treaty revision was the pressure of enlargement. Despite being an ostensibly exogenous event, as enlargement became set as an internal policy goal it became an endogenous source of pressure for reform of EU decision-making rules. Once enlargement became an internal objective problems/tensions were created (anticipated) in terms of decision-making and co-ordination among the Member States under unanimity (exerting pressure for an extension of QMV in trade matters). Unanimity was already regarded as problematic with 15 delegations by some players. This logic of anticipated problems was argued in various Commission papers on the modernization of Article 113 already during the Amsterdam IGC (Commission 1996; Krenzler 1996: 6). However, at the time, this argument never gained much strength. As was pointed out, there was a 'lack of urgency' since 'no enlargement is foreseen before 2003–2005' (Patijn 1997: 38; also Devuyt 1998: 626; Moravcsik and Nicolaidis 1999: 78, 82).

Thereafter, these pressures further increased with the launch and confirmation of the enlargement process at the Luxemburg European Council of 1997 and the Helsinki European Council of 1999 respectively (Commission 1999; Galloway 2001: 108). However, integrative rationales stemming from enlargement only became really pressing, urgent and unavoidable at the time of the Convention. The Seville European Council of June 2002 expected the Accession Treaty to be signed in spring 2003 and anticipated the participation of new member states in the 2004 EP elections. Therefore, decision-making in the Council with 25 member states – and the corresponding diversification of interests and increased heterogeneity of political cultures – was now an imminent reality, which put substantial pressure on those trade policy issues subject to unanimity (and thus prone to paralysis). Enlargement became a frequent rationale used to substantiate the need for further CCP reform (see Lamy 2002).

Moderate additional functional pressures were created by the Laeken European Council Declaration on the Future of Europe. Herein, the Heads of State and Government reinforced a number of aims, which increased the rationale for a deepening of the external trade policy. The first objective stated in the Laeken Declaration was the strengthening of the Union's role in the world. Here the declarations had high expectations (Norman 2003: 110). To achieve this collective goal, improvements in the decision rules of the CCP was 'at least a logical corollary, if not a necessity' (interview, 2004). The second set of aims concerned greater simplification and efficiency. Given the complexity of the Nice provisions on Article 133, the CCP was an obvious candidate for improvements along these lines. Streamlining and rationalisation of external trade policy provisions can, of course, go both ways: re-nationalisation or supranationalisation. However, given the various other dynamics, the bias was clearly in favour of the Community method. Finally, Laeken also called for greater democracy and transparency. The two most likely solutions – greater involvement of national parliaments or a more substantial role for the EP – were not equal competitors, given the overall tendency towards more Commission competence and more QMV which is well complimented by stronger EP involvement under the tried and tested Community method. The functional tensions created by these aims should not be exaggerated, as they had been formulated at various European Councils before without having much impact. The difference this time was two-fold. These objectives were arguably emphasised more strongly than in previous Presidency conclusions¹⁰ and the members of the Convention took them more seriously than officials preparing previous IGCs (interview 2004), not least because they were largely unbound by (governmental) briefs (Maurer 2003: 134).

Social spillover

With regard to this factor I will focus here on the negotiations taking place in the IGC Representative Group¹¹ and the Convention. During the Amsterdam and Nice Treaty revisions the conditions for social spillover were rather disadvantageous: (A) the fact that the Representatives Group, which constituted the principal forum for the Nice IGC negotiations, only met about 30 times and had a life span of less than a year did not afford sufficient space for very intense socialisation processes to develop (interview 2004). The Representative Group during the Amsterdam IGC existed for a year and a half. While there is some evidence for the development of a certain *esprit de corps* in that negotiating forum, on balance it does not compare to that in other (more permanent) Council fora (interview 1997; Niemann 2006). (B) In part due to the expansive nature of the IGC agendas in 1996/97 and 2000, delegates simply lacked the time to engage in any extensive reasoned debate on external trade policy (Gray and Stubb 2001: 20). As one official has noted, 'when we discussed external policy for an hour, we spent 55 minutes on CFSP and five minutes on Article 113' (interview 1999). (C) The nature of the subject area, together with the background of negotiators, worked against the prospect of progress through argumentative debate. Neither the IGC Representatives, nor Foreign Ministers, nor Heads of State and Government, who dealt with the CCP issue at Amsterdam and Nice, had the requisite knowledge and expertise to fully engage in a sensible discussion of what is a fairly complex subject (Beach 2005: 201). (D) Tight, inflexible and sometimes competing instructions deriving from the demands of various national ministries in the IGC context hampered genuine exchange on the pros and cons of increased Community competence. As one official put it, 'any emerging consensus achieved on the merits of the problem of unanimity in services was to be destroyed by yet another "input" of some national ministry' (interview 2004). (E) Also related to the negotiation infrastructure in a broader sense, 'underlying the debate about thin dividing lines between Community and national competencies was a basic distrust by some member states of the role of the Commission in representing the Community in international negotiations and keeping the member states abreast of what is going on' (Patijn 1997: 39; also Ludlow 1997: 52; Meunier and Nicolaidis 1999). The

roots of this suspicion of the Commission lie in past instances where the Commission negotiated without the due transparency *vis-à-vis* member states, as happened for example in the negotiations leading to the "Blair House Agreement" in 1992 during the Uruguay Round. Thus, as the above analysis suggests, the negotiation infrastructure at the Amsterdam and Nice IGCs structurally favoured those actors that sought to preserve the status quo and militated against a (substantially) more progressive outcome.

One of the more significant deviations from the trend set by previous two Treaty revisions was the greater favourable impact of socialisation, deliberation and learning processes in the *Convention*, which in turn influenced the *IGC 2003-04* outcome. This impact was brought about by several favourable conditions: (1) the inclusion of an initial listening and reflection phase at the Convention, during which expectations and visions could be freely shared. This fostered a deeper understanding of other members' ideas and softened pre-conceived opinions (Kleine and Risse 2005, 2010). (2) In the plenary and especially in the Working Group on External Action unlike at the IGC 1996-97 and 2000 IGC negotiations, sufficient time was available for substantial debate and a more thorough exchange of arguments and counterarguments concerning the merits of CCP reform (interview 2004). (3) The quantity of interaction – with Plenary and the Praesidium both holding more than 50 sessions over a period of 18 months – produced an 'esprit de corps' (Göler 2003: 9; see also Maurer 2005), where most participants 'had or developed substantial responsibility for the success of the project' (interview 2004; also interview with Klaus Hänsch, 2004). (4) Convention member's freedom of action was not significantly circumscribed by governmental briefs (Maurer 2003: 134). Unlike at IGCs, bureaucratic resistances hardly impinged on the deliberation process because government representatives could largely avoid entrapment in the processes of inter-ministerial coordination for the formation of national positions (Maurer 2003: 136; Closa 2004: 202). (5) The atmosphere, spirit and negotiating structure prevented delegates from easily opposing proposals without being drawn into a reasoned discussion where ones arguments would become subject to scrutiny (Closa 2004: 201).

In such an environment strong arguments, built on the foundation of mutually agreed criteria, could register more easily, and were thus more likely to prevail in the discussion. Hence the strong functional and exogenous rationales for an extension of Community competence now had a better chance to be taken up by actors and unfold their logic. As one official put it, 'we had had good arguments for the extension of Article 133 all along. However, for the first time, we had the feeling that people were really considering these points and their implications' (interview 2004). In such deliberative process, negotiators tended to concur more fully in the common results. A reasoned consensus rather than compromise was reached. My interviewing suggests that the CCP Convention outcome was largely perceived as such a reasoned consensus (interviews 2004, 2005). This same principal can be seen at work (albeit to a lesser extent) in the Draft Constitutional Treaty as a whole, which lent weight and authority to the Convention text and made it difficult for negotiators at the subsequent IGCs to depart significantly from this consensus (Closa 2004; Maurer 2003; Göler and Marhold 2005), not least because member states were very much part of it. Moreover, the job the Convention had done was generally held to have been a good one. The dominant discourse suggested that as much of the Draft Constitutional Treaty as possible should be preserved (Frankfurter Allgemeine Zeitung 16 and 18 June 2003; Guardian 14 June 2003). The substantial bonding strength of the Convention text, being used at the subsequent IGCs, is the starting point for further negotiations on most issues (including external trade). In a way, the text turned into the default setting (Beach 2005: 199). As a result, the 2003-04 and 2007 IGCs hardly reopened debate on the CCP.

The effects presented above as socialisation, deliberation and learning are difficult to further substantiate within given space limitations.¹² However, the following evidence is suggestive: (1) Interviewees characterised the negotiations in terms of arguing and reasoning, both unprompted, and/or when offered different potential characterisations of

the predominant policy style during different phases. (2) Convention members largely avoided appeals to hierarchy, status, qualification or other sources of power when making their statements and thus did not add non-discursive authority to their arguments (interview with Hänsch 2004; interview 2005). (3) Speakers' utterances in the plenary (and working group sessions) seem to be very consistent with their statements in other forums, which may be held as indicative of truthful arguing (Risse 2000: 18-19; Checkel 2001: 241; Niemann 2004: 385).¹³ (4) "Powerful" actors were not disproportionately successful at the Convention when their arguments were not persuasive. For example, the French cultural exception, which had the backing of the French government representative and others, was already provided for in a general passage about unanimity rule for external policy where unanimity was required internally. Therefore an explicit derogation was neither necessary nor desirable for the sake of simplicity. Consequently, this derogation, which made no sense to the vast majority of members, was not accepted during the Convention and was therefore kept out of the text (interview 2004). Only at the very end, after the Thessaloniki European Council, the Praesidium took the cultural exception on board, and then largely for strategic reasons, as to win the support of the French on the overall package. This stage has been called 'IGC-pre-negotiations', and not without reason; it was no longer characterised by the deliberative spirit of the Convention (Dinan 2004: 31). (5) The Convention spirit did not allow (or at least made it very difficult for) Convention members, unlike IGC Representatives, to reject something without justification and explanation (Closa 2004: 201). Consequently, those delegates preferring derogations on the Community method for the CCP were drawn into a (reasoned) debate (interview 2004). (6) Finally, in cases where attempts to address an issue in a bargaining-like setting, such as during the Nice and especially Amsterdam IGCs, did not lead to significant progress, yet advances were made in a more discursive setting, a process of deliberation and arguing is likely to have played a role (Kleine and Risse 2005, 2010).

Cultivated spillover

During the Convention, in the decisive phase for the determining the CCP contents of the Lisbon Treaty, supranational actors successfully managed to cultivate spillover. My analysis here will confine itself to the role of the Commission and the European Parliament. Their role was enhanced to that of previous IGCs, where the Commission was somewhat distrusted by member governments, partly due to events where the Commission overplayed its hand (Niemann 2006) and also mainly concerned with putting its own house in order (Monar 2001: 115-116). In addition, the Commission and Parliament were at times not sufficiently supporting each other's demands at the IGCs (interview 1999).

For the *Commission* the Convention provided significantly more favourable conditions for engagement and proactivity than IGCs. Its two representatives enjoyed informational advantages – in no small part due to their very substantial infrastructural backing – and were considered "first-tier" members of the Praesidium (Beach 2005: 200). Despite some coherence discrepancies between the official opinion of the Commission and the so-called "Penelope" paper initiated by Romano Prodi (Norman 2003) – which nonetheless contained no contradictions on external trade policy – the Commission played a leading role during the Convention (Goulard 2003: 381). This is certainly the case for the CCP, mainly for two reasons: first, the Commission enjoyed strong support in the Praesidium, with ten out of twelve members at least sympathetic to its views (Norman 2003: 161-162). The Commission also successfully cultivated contacts, most importantly with Jean-Luc Dehaene who chaired the Working Group on External Action, and members of the Praesidium, but also by providing background information for interested conventionnels (Norman 2003: 162). Secondly, as previously mentioned, the deliberative decision style at the Convention meant that the well-founded arguments of the Commission – for example on the changing trade agenda – were afforded time and

due consideration. As one Commission official put it, 'as opposed to the last IGCs, people at the Convention were eager to really discuss the pros and cons of more Community competence. [In this kind of environment,] we could finally influence the debate because the best arguments made the biggest impact' (interview 2004; Commission 2004: 25). For these reasons, along with the superior expertise of the Commission on the CCP, observers judged that the Commission played a leading role securing the progressive CCP outcome in the External Action Working Group, and in defending its essence later in the Praesidium and Plenary (interviews 2004, 2006).

The *European Parliament*, was able to exert more influence than during previous Treaty revisions. EP representatives, no longer second class participants as at an IGC, were influential for a number of reasons. Firstly, with the exception of the small Commission delegation, the 16 representatives from the EP formed the most coherent and the best organised fraction of the Convention. This can be attributed in large part to the fact that EP Convention members were pre-equipped with the requisite institutionalised and functioning working structures to prepare for meetings in the framework of the Convention (Maurer 2003: 137). As a result, amendments by one EP member were often backed by more than ten MEPs. Secondly, EP representatives constituted the most active fraction in the Convention in terms of making proposals, participating in the debate and liaising with other Convention members (Duff 2003: 3). The principal objectives of the mainstream of the EP delegation were a far-reaching extension of Community competences and a substantial increase in Parliamentary involvement. On the latter issue the EP's success can be attributed to a number of factors: in an open and reasoned debate, Parliaments' arguments were bound to make an impact. External trade was the sole policy area in which the European Parliament had hardly any role. The Laeken declaration's emphasis on legitimacy lent further weight to the EP's case (interview 2004; Presidency Conclusions 2001). Moreover, in view of the fact that public health and consumer issues were increasingly discussed at WTO level, the EP's exclusion became harder to defend. Moreover, despite its side-lining from the making of the CCP, Parliament had shown an active interest in trade policy over many years and generally taken a constructive approach (Bender 2002). When the Convention President, Valéry Giscard d'Estaing, sought to redraft the progressive CCP provisions of the Working Group report, it was the chairman of the Working Group Dehaene, decisively backed by the EP representatives in the Praesidium (Elmar Brok and Iñigo Méndez de Vigo) as well as Commissioner António Vitorino who prevented the external trade provisions from being (decisively) watered down (interview 2004). In the final days of the Convention, the EP emerged as the strongest supporter of the Convention text and thus contributed to its bonding strength with regard to the subsequent IGC negotiations (Beach 2005: 209).

Due to the bonding strength of the Convention provisions (and the dynamics behind the extension of Article 133), the IGC negotiating infrastructure which facilitates defending the *status quo* and hampers enforcing change, for once, worked in the Commission's (and EP's) favour. To effect any changes to the provisions on the table would require substantial political impetus. Any such impetus was successfully diffused by the Commission, which cultivated relations with the German and Dutch governments in particular, who became allies in opposing the watering down of the CCP during the IGCs (interview 2004, 2009). The progressive outcome concerning the Common Commercial Policy in the Treaty of Lisbon is thus attributable in significant part to the contribution of supranational actors.

Countervailing forces

Having examined the potential dynamics of integration, we now turn to other side of the equation; the countervailing forces impacting the decision-making process. Before coming to the last Treaty revision, we will take a brief look at the Amsterdam and Nice IGCs (together, because the countervailing forces at play were very similar, both

substantively and in terms of intensity). Firstly, the (relatively) restrictive IGC outcomes can be partly explained by reference to domestic constraints. The new trade issues do not stop at the borders, such as issues of tariffs and quotas, but extend behind borders into the state and thus concern domestic laws (Smith and Woolcock 1999: 440-441; Rollo and Holmes 2001). As a result, these issues also tend to be more politicised, and the transfer of competences to the Community evokes greater resistance. For example, during both IGC negotiations France sought derogation on cultural services to safeguard the cultural diversity policy, behind which there is both significant public support and strong lobbies (Lequesne 2001; Le Monde 18 November 2000). Domestic constraints regarding some goods issues also affected the debate on the extension of Article 133. One way of avoiding QMV on agriculture or textiles – which are substantially politicised issues in France and Portugal respectively – in horizontal trade negotiations was to keep unanimity for the new trade issues, as one aspect decided by unanimity in horizontal trade negotiations leads to unanimity on the whole package (interview 1997, Krenzler 1996).

Secondly, there is the more diffuse issue of sovereignty-consciousness which constituted another strong countervailing pressure during the IGCs 1996-97 and 2000. The intrusion of the new trade issues into domestic spheres close to the heart of national sovereignty had increased the sensitivity in terms of delegating powers to the Community on these issues. Sophie Meunier and Kalypso Nicolaïdis (1999: 485-87) have shown that several countries, including France and the UK, came out against an extension of Community competence, contrary to their national interest, and joined the “sovereignty camp”, largely on ideological grounds. Both France and the UK are very competitive internationally in terms of trade in commercial services and have a positive trade balance in this sector. Their interest would have been best served by an exclusive Community competence for trade in services, since its collective negotiating position cannot be held up by the member state least ready to confront international competition (Meunier and Nicolaïdis 2000). The phenomenon of bureaucratic politics is also relevant here as officials in national ministries became agents of sovereignty-consciousness. This ideological basis for opposing a progressive reform of Article 133 has been strongly spurred by the distrust *vis-à-vis* the Commission (interview 2004).

These countervailing forces were considerably less potent during the *Convention* than during an IGC. In the absence of any substantial inter-departmental coordination, government representatives were generally unconstrained by the influence of various functional ministries. Bureaucrats, who have been described as crucial agents of sovereignty consciousness and a principal source of domestic constraints, were thus largely excluded from the process. Secondly, although those arriving at the Convention doubtless brought with them certain domestic or institutional socialisations and frames guiding their behaviour, they were nonetheless largely able to negotiate freely without significant restrictions (Maurer 2003: 134-37). As a result, domestic factors – despite constituting important sources of information and feedback mechanisms – were considerably less of a hindrance to members of the Convention than for negotiators in an IGC.

The consequences of this attenuation of countervailing pressures extended beyond the Convention itself, and could be recognised throughout Treaty revision exercise. Due to the above described bonding effects of the Convention, the results thereof carried a greater significance than normal IGC preparation exercises. They turned the Draft Constitutional Treaty into the default setting, which was easier to defend than to change (Beach 2005: 199). When the IGC formally began in October 2003, countervailing forces, for example through national ministries, gathered greater strength. In the case of the CCP however, these were of little consequence as the Convention text on external trade was, generally speaking, the result of a strong and genuine consensus, of which either Foreign Ministers (themselves) or representatives of Heads of State and Government had been part. Moreover, bureaucratic resistances were also less intense,

as the IGC was largely conducted on the political level and partly because of its relative short duration. Departments thus had little opportunity to shape national positions (interview 2004), and consequently the CCP package was not reopened during the IGC 2007, which laid the groundwork for the Treaty of Lisbon (interview 2009).

CONCLUSION

Broadly speaking, the revised neofunctionalist framework seems to have provided a robust account for an analysis of the Treaty revision on the reform of the Common Commercial Policy leading to the Treaty of Lisbon. During the last Treaty revision the various spillover dynamics were considerably stronger than during the previous IGCs. The functional rationales, especially that stemming from the pressure of enlargement had gradually increased over time (with enlargement coming ever closer) and thus constituted a significant structural pressure. Stronger social spillover pressures in the form of socialisation, deliberation and learning processes ensured that the logic of such structural pressures would not be lost on actors. Such processes, which produced consensus among actors and agreement on outcomes, can also largely explain the bonding strength of the Convention text. The increased proactivity and assertiveness of supranational institutions in cultivating spillover reinforced these dynamics. Largely due to the Convention framework, countervailing forces were (substantially) weaker than at the Amsterdam and Nice IGCs. This facilitated the stronger ignition and dissemination of integrational dynamics. This explanation based on the largely endogenous (revised) neofunctionalist account gains even more plausibility due to the fact that the most prominent alternative explanation based on exogenous dynamics related to changing multilateral trade agenda does not make sense here, as explained in the analysis.

This analysis shows that integrative developments in the area of EU commercial policy cannot exclusively be accounted for by rational choice dynamics, such as utility maximising actors with fixed preferences, but that socialisation through deliberative processes also needs to be taken seriously.¹⁴ In addition, the above inquiry suggests that it is not only the Treaty revision negotiations themselves that matter, but the broader EU (trade) policy-making process that impacts on, and feeds back into, the EU trade "polity" and thus into EU trade policy-making. Functional pressures and the roles that can be played by supranational institutions develop over time, as do socialisation and learning processes (conditioned by several contextual factors).

The revised neofunctionalist framework is likely to enhance our understanding of EU politics and policy-making more generally, i.e. beyond the explanation of the Lisbon Treaty changes with regard to the CCP. Arguably, due to the incorporation of countervailing factors and the shift from a dynamic to a dialectical account of integration the revised neofunctionalist account is more broadly generalizable than early neofunctionalism. The original neofunctionalist theory struggled to explain periods of stagnation or processes that did not lead to far-reaching integration. Hence, it is argued here that while predictive *claims* have been modified, extrapolative *ability* has been increased through the revisions. In that context, it is worth mentioning that the revised framework has been (successfully) employed to shed light on decision outcomes in other policy areas, such as EU migration policy or the PHARE programme (Niemann 2006).

Although it is too early to definitively judge the effect of the Lisbon provisions on EU actorness in the field of trade policy (given how recently the Treaty came into force), it seems that the new arrangements will bolster the EU's role as an actor in trade policy-making, given that trade in services, commercial aspects of intellectual property rights, and foreign direct investment have become an exclusive Community competence (Dimopoulos 2008; see also Niemann 2012). However, much depends on the implementation of the Lisbon provisions, and especially the manner in which the European Parliament will choose to exercise its new powers. The EP's traditionally

stronger concerns (relative to the Commission, and especially the Council) with regard to non-economic goals such as human rights or environmental and social standards, could contribute to a greater politicisation of EU external trade policy (Pollet-Fort 2010). It is difficult to foresee what impact this may have on the effectiveness of the CCP. On the one hand, such politicisation could lead to uncertainties and delays and more generally hamper policy-making processes within the EU (Fairbrother and Quisthoud-Rowohl 2009). While withholding its consent for a large multilateral agreement, like that concluding the Doha Round, can be considered rather unlikely, the EP's willingness and ability to do so has been considered a realistic scenario for bilateral agreements (Woolcock 2008: 5–6). On the other hand, the European Parliament could be conveniently used as a bargaining chip in two- or three-level games (Putnam 1988). The EU could strengthen its bargaining position in international negotiations by referring to the requirement of EP consent, as practiced by US negotiators with regard to Congress.

¹ The next paragraph draws on Wiener and Diez (2004: 241).

² On the above methods, see George and Bennett (2005) and Ragin (1987).

³ However, structure was arguably more important in (early) neofunctionalism than acknowledged by Haas (Haas 2001: 29), given the emphasis on functional-economic interdependencies.

⁴ Article 113, after the renumbering of the Treaty of Amsterdam, became Article 133. With the Treaty of Lisbon this then became Article 207. I will refer to Article 113 for the time until the entering into force of the Treaty of Amsterdam, and to Article 133 for the period during which the Treaties of Amsterdam and Nice applied, and also when referring to this Article more generally (in a less time-specific manner).

⁵ The Laeken European Council of December 2001, departing from the standard method of preparing EU Treaty reforms, decided to form a Convention on the Future of Europe. Its purpose was to comprise the main stakeholders in order to examine key questions about the future direction of the European integration. The Convention produced a draft constitution, which became the basis for discussions/negotiations in the subsequent IGC.

⁶ Most substantially, a rather narrow derogation on social, education and health services was (re)introduced.

⁷ For a more detailed debate on exogenous pressures, also cf. Niemann (2011).

⁸ However, in cases where the collective EU position is closer to the status quo than that of the negotiating partner, unanimity tends to increase the Community's negotiating power (Meunier 2000).

⁹ For example, the share of services as part of overall EU trade increased from approximately 26 per cent in 1995 to 30 per cent in 2002 (Krenzler 1996, Lamy 2002).

¹⁰ Presidency Conclusions of the following European Councils: Cannes (point IV), Madrid (pages 1, 3), Helsinki (point I), Feira (point I) and Laeken.

¹¹ The IGC Representatives Group prepared and discussed IGC issues before they went to Foreign Ministers and/or Heads of State and Government for further discussion and negotiation.

¹² Also accounts of deliberation and socialisation characterising the Convention (Göler 2003; Maurer 2003; Closa 2004).

¹³ One example where this could be traced perhaps most thoroughly is the case of Pascal Lamy, who was not a member of the Convention, but was heard in the Working Group on External Action as an expert and participated in the discussion. See Lamy's (2002) account in the Working Group and speeches in other forums (Lamy 2003).

¹⁴ As a result, the revised neofunctionalist account has been situated about half-way between rationalism and reflectivism.

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