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(Mis)Perceptions in Two- and Three-Level Games: Detachment in Economic Partnership Agreement Negotiations*

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Abstract

This article builds on the literature on trade negotiating constraints to advance a reconceptualization of Putnam's (1988) two-level game that accounts for the possibility of detachment. Limited institutional capacities for collecting and transmitting information about the domestic win-set may prevent domestic constituents from exerting influence on the negotiator. This perspective sheds new light on the outcomes of negotiations in two-level games, as they do not necessarily reflect actual win-sets, but more likely the negotiator's (mis)perceptions or (mis)representations thereof. The article builds on an explorative case study of the Economic Partnership Agreement negotiations between the EU and the West African (2003–14) and the Caribbean (2003–07) regions. It relies on qualitative data, including over 60 interviews. The findings demonstrate that detachment meant that these controversial North–South trade agreements primarily reflected the negotiators' perceptions of the regions' interests or their own preferences, which raises doubts about their developmental impact and complicates their implementation.

Keywords: international negotiations; trade; domestic institutions; perceptions; two-level game

Introduction

Economic Partnership Agreements (EPAs) between the European Union (EU) and African, Caribbean and Pacific (ACP) countries were meant to introduce a new model of North–South free trade agreements that feature reciprocal trade liberalization and far-reaching macroeconomic reforms (Heron and Siles-Brügge, 2012). They were supposed to become the largest economic partnership between developed and developing countries globally.¹ Yet, the originally envisaged negotiating deadline of December 2007 was missed by most regions. Only the Caribbean region signed on to a regional EPA with the EU, portraying the free trade agreements as pathways to development. Others deplored its unfair terms, comparing EPAs to a 'thorn' in the relationship which 'have become a divisive force between Europe and the ACP (African, Caribbean and Pacific countries) and also between African countries' (ECDPM Editorial Team, 2010). Only in 2014 did a majority of the ACP countries initial an agreement.

In this article we take a fresh perspective on the outcome of EPA negotiations by focussing not on the substance of the agreements, but on the negotiating processes which

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¹ Re-negotiating the trade relationship between the ACP countries became necessary because the World Trade Organization (WTO) waiver enabling the preceding Lomé trade preferences for ACP countries was set to expire at the end of 2007, with little support from non-ACP developing countries for renewal.

led to their conclusion. In doing so, we rely on Putnam's (1988) two-level game approach, but argue that it needs to be adjusted: in many contexts – particularly in developing countries – important domestic constituents remain detached from the negotiation process because of institutional constraints. As a result, negotiators' (mis)perceptions of the region's win-set, rather than actual win-sets, shape negotiation outcomes. Building on the literature on trade negotiating constraints (Jones, 2013), we specify the effects of such a situation of detachment on negotiation outcomes in settings with high or low political accountability. Doing so allows us to shed new light on the ways in which negotiators themselves steered EPA negotiations towards conclusion, and helps us to account for the substantial delays in implementation that we have witnessed ever since.

Negotiation processes have long caught the interest of scholars that study international co-operation (Narlikar, 2010; Schelling, 1957); however, they tend to focus on the international level of negotiations rather than on the interaction between negotiators and domestic constituents that feeds back into inter-state negotiations. Putnam's (1988) two-level game analysis that establishes how domestic preferences and institutions influence negotiating partners' bargaining power remains a prominent exception. His framework was applied to and refined in various instances of international negotiations (for an overview see da Conceição-Heldt, 2013) as well as to so-called three-level games that introduce an intermediate regional level (Larsén, 2007; Patterson, 1997; Reslow and Vink, 2015). Yet, the possibility of detachment remains understudied.

We examine the influences of detachment on the basis of two case studies from the recent EPA negotiations between the EU on the one hand, and the West African (2002–14) and Caribbean region (2002–07) on the other hand. Both cases stand for three-level games since regional organizations, rather than Member States, took the lead in the negotiations; consultations and decision-making involved the three levels of regional negotiators, national policy-makers and domestic constituents. In a three-level game, regional negotiators that negotiate at the international level (level I) are not necessarily directly accountable to domestic constituents (level III) but rather to national policy-makers (level II). Accountability for implementing the agreement, on the other hand, lies with national policy-makers (level II) *vis-à-vis* domestic constituents (level III). When examining the effects of detachment on the likelihood of reaching an agreement and its implementation, the more complex interplay between levels at which detachment may occur has to be taken into account.

Conceptualizing the process of decision-making on the African and Caribbean side as a three-level game implies that we do not follow the literature which portrays the outcomes of EPA negotiations primarily as the reflection of power asymmetries. That literature mainly criticizes the EU for not leaving EPA partners much choice by offering them a take-it-or-leave-it deal (Fioramonti, 2014). We assume, however, that even in the light of power asymmetries, weaker negotiating partners hold agency (Jones, 2013; Odell, 2010).

The Caribbean case study examines the negotiations of the 'Innovation and Intellectual Property' chapter of the CARIFORUM-EC EPA² and the West African case focuses on

² CARIFORUM stands for the Caribbean Forum of African Caribbean and Pacific states and includes the following 15 countries: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Suriname, and Trinidad and Tobago.

the negotiations over trade in goods in EPA negotiations that the Economic Community of West African States (ECOWAS)³ led with the EU. The Caribbean region concluded a regional EPA in 2007, but has since then delayed its implementation process. The West African region, to the contrary, rejected a regional EPA at the end of 2007, but reached a regional agreement in 2014 (implementation pending). Both regions⁴ thus provide cases in which a regional EPA was reached – contrary to some of the other ACP negotiating regions. Moreover, both regions faced challenges with regard to government effectiveness and financial resources (Kirschner and Stapel, 2012), which leads us to expect that institutional capacity constraints may have affected negotiation dynamics.

Despite these similarities, both regions differ with regard to the level of political accountability of regional negotiators and national policy-makers, which allows us to explore variation with regard to the effects of detachment. Note that this study does not intend to conduct a structured comparison between both cases, but emphasizes their explorative potential to examine different ways in which domestic institutional constraints may affect negotiation outcomes.

The article begins with a review of Putnam's two-level game. It then introduces a new conceptual framework to systematize the institutional sources and effects of detachment in two- or three-level games across different settings of political accountability. Next, it presents the Caribbean case study, before discussing EPA negotiations between West Africa and the EU. In both cases, the main empirical argument presented is that the decision to sign a regional EPA with the EU was primarily driven by the negotiators' perceptions of the region's win-set or their own preferences, rather than actual win-sets, because important constituents remained detached from the negotiation process. We then specify the different effects of detachment that were facilitated by the region's different settings of political accountability. The article concludes with an assessment of the insights of both empirical cases, including theoretical implications.

I. The Missing Link: Detachment between Negotiators and Domestic Constituents in Two- and Three-Level Games

Conceptual Biases in Putnam's Two-Level Game Approach

Putnam's analytical framework can be best illustrated by a metaphor of two separate negotiating tables that symbolize the interaction between domestic politics and international negotiations. When a negotiator bargains at the international table (level I) with her foreign counterparts, she can only give as much as the constituents at the domestic table (level II) will accept. At the same time, any amendment made at the domestic table must be signed by all negotiators at the international table. Therefore, the negotiator's position at the international level is determined by her domestic win-set. The win-set is defined as the set of all possible international agreements that can gain the necessary majority among the domestic constituents (Putnam, 1988). Putnam derives two main hypotheses: first,

³ The ECOWAS EPA negotiating group consists of the following 16 countries: Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo and Mauritania.

⁴ We exclude the domestic negotiations on the European side from the empirical analysis because the well-established institutional structures in trade policy-making make it less likely that uncertainty about domestic win-sets was present to a similar extent. This does not preclude the possibility of principal-agent problems, which, however, have received considerable attention in the literature already.

the smaller the domestic win-set, the greater the negotiator's bargaining power at the international level. Second, the larger the perceived win-set, the greater is the likelihood of reaching an international agreement, *ceteris paribus* (Putnam, 1988).

Yet, Putnam's approach relies on simplified assumptions about the role of domestic political institutions in trade negotiation processes. Putnam – and subsequent research that follows his model – presumes that domestic political institutions enable domestic preferences to shape policy-making. While Putnam acknowledges that participation of domestic constituents may vary across groups and issues (Putnam, 1988), he does not account for the possibility that the overall participation rate may be marginal across all groups, which results in detachment. While his assumptions may hold true in most cases of 'advanced industrial states' (Patterson, 1997),⁵ the same does not necessarily apply in other contexts, such as developing countries. It thus becomes necessary to adjust Putnam's conceptual approach to allow for the possibility of detachment.

Relaxing Putnam's Assumptions about Domestic Political Institutions: The Possibility of Detachment

We conceptualize detachment as the low participation rate of domestic constituents in trade policy-making processes. We understand detachment not in the sense of a binary variable, but as a continuum which allows for different levels of detachment. Our conceptual framework helps us to uncover general obstacles to participating in negotiating processes that apply to all domestic constituents in similar ways.⁶ Existing approaches examine, for instance, if institutional constraints apply to actors with diffuse or concentrated interests (Dür and De Bièvre, 2007). We ask whether domestic institutional capacity impacts at a basic level the provision, collection and transmission of information about the preferences of different kinds of actors in trade policy-making processes. Building on the literature on trade negotiating capacity constraints in developing countries (for an overview see Jones, 2013), we specify how institutional constraints may translate into detachment of domestic constituents from the policy-making level. Note that in contexts of three-level games, institutional capacity constraints can also occur at the level of national policy-makers and regional negotiators, which may magnify the level of detachment.

Firstly, institutional capacity constraints may lead to the availability of limited and poor information, making it difficult for domestic constituents to formulate their preferences in the first place. Jerven's ethnography of national income accounting in Sub-Saharan Africa prominently claims that many statistical offices use outdated data and methods or incomplete datasets, reflecting the 'poor state' of statistical capacities (Jerven, 2013). The lack of technical capacity or problems of under-staffing of domestic constituents may magnify these situational hurdles (Blackhurst *et al.*, 2000). As a result, relevant stakeholders may abstain from participating in trade policy-making processes because institutional constraints render them unaware that their interests could be at stake.

Secondly, even if information is available, domestic constituents may lack the institutional channels for communicating and co-ordinating effectively with trade

⁵ Scholars use Putnam's framework primarily to examine negotiations that involve the United States and – especially in the case of three-level games – the EU.

⁶ Relevant domestic constituents in trade negotiations are local firms, farmers, trade unions, consumer groups or civil society actors.

Table 1: Effects of Detachment on Negotiation Dynamics

	<i>High political accountability of negotiator</i>	<i>Low political accountability of negotiator</i>
Effect on outcomes	Negotiator’s perception of the domestic win-set likely to shape outcomes	Negotiator’s own preferences likely to shape outcomes
Effect on strategy	Defensive strategy becomes more likely	Choice of strategy depends on negotiator’s own preferences

negotiators (Brock and McGee, 2004), due to challenges of inter-ministerial and inter-departmental co-ordination. Such co-ordination processes are important for weighing up specific competing preferences when determining national trade policy objectives (Jones, 2013). In three-level games, national policy-makers in addition might lack effective institutional channels to co-ordinate with regional negotiators, even if domestic preferences reach them.

Note that we conceptualize detachment as independent of regime type. Human and financial constraints as well as low effectiveness of institutional channels may occur across a range of political regimes.⁷ We therefore do not focus on specific types of detachment that may be linked explicitly to authoritarian regimes, such as the deliberate exclusion of domestic constituents from the policy-making process. But we specify the *effects* of detachment based on institutional capacity across different settings of political accountability of negotiators and national policy-makers, which at the national level is likely to vary depending on the (non-)democratic nature of the regime (Adserà *et al.*, 2003, p. 448).⁸

The Effects of Detachment in Two- and Three-Level Games

Detachment from domestic constituents means that ‘negotiators ... often find themselves working in the dark, with little clarity on their country’s interests’ (Jones, 2013), such that they face uncertainty about the domestic win-set. We adjust Putnam’s two-level game framework to specify the effects that apply to the negotiation and to the implementation phase dependent on different contexts of political accountability (summarized in Tables 1 and 2).

Detachment implies that negotiators may be unaware about domestic preferences. If they do not know what the domestic win-set looks like, negotiators play a role that is more independent from the domestic level. In contexts of high accountability of the negotiator, domestic constituents or, in the case of three-level games, national policy-makers can hold negotiators accountable for the outcomes they negotiate. The negotiator therefore faces high incentives to negotiate on their behalf, even if detachment is present.

The negotiator’s perceptions of domestic interests are then formed, firstly, on the basis of the limited information available, which may be complemented by external sources

⁷ On the contested correlation between income – an indicator for financial resources – and democracy (see Acemoglu *et al.*, 2008).

⁸ Note that a two-level game framework only applies to regimes with a minimum level of political accountability, that is to competitive authoritarian regimes (Donno, 2013).

Table 2: Effects of Detachment on Implementation

	<i>High political accountability of national policy-maker</i>	<i>Low political accountability of national policy-maker</i>
Effect on implementation	Delayed implementation because of uninformed constituents and possible misrepresentation of domestic win-sets	Speed of implementation depends primarily on national policy-makers' preferences

(Fioramonti, 2014); secondly, negotiator’s belief systems shape her interpretation thereof. As indicated in Table 1, her perceptions of the domestic win-set – rather than the actual win-set – then influence negotiation outcomes and the likelihood of reaching an agreement (Iida, 1993, p. 419).⁹ What delays reaching an agreement in a situation of detachment is that negotiators are more likely to adopt a defensive negotiating strategy: regardless of the perceptions negotiators have about domestic win-sets, they will engage in time-buying to reduce uncertainty thereon. A defensive – as opposed to an offensive – negotiation strategy comprises tactical elements that make it more difficult to reach an agreement, including defending against losses or making few technical arguments and proposals (Odell, 2010).

In contexts of low accountability of the negotiator, the outcome of negotiations becomes more arbitrary: the negotiator’s own strategic choice for an offensive or defensive strategy does not necessarily correspond closely to perceived domestic preferences. Instead, the negotiator’s own preferences are more likely to guide decision-making (see Table 1). The likelihood of reaching an agreement thus depends less on the compatibility of the counterpart’s win-set with the size of the actual domestic win-set, as Putnam presumes, but more on the compatibility with the negotiator’s own preferences over the allocation of economic rents.

Detachment is likely to affect not only the negotiation and ratification phase – which Putnam’s analytical model focuses on – but also the implementation of any negotiated agreement. In contexts of high accountability of national policy-makers, implementation is likely to be delayed compared to a situation without detachment, as indicated in Table 2. First, the existence of public pressure groups is seen to have a positive effect on implementation (Jacobson and Weiss, 1995), as they are likely to push for implementing legislation. In a situation of detachment, such influence is lacking. Second, in cases where national policy-makers themselves lack administrative or technical capacity, detachment is likely to slow down or impede implementation (Simmons, 1998).

Third, detachment makes it more likely that any agreement reached reflects the negotiator’s misperception or misrepresentation of the interests of domestic constituents. *Post-hoc* lobbying can then delay the implementation process, as it reverses the

⁹ We expect that reaching an agreement becomes more likely if the negotiator’s perceptions of the domestic win-set are more compatible with the other side’s win-set compared to the actual domestic win-set. This could be the result of, firstly, a bias in the limited information available that makes the domestic win-set seem more compatible with the other side’s win-set, partly due to reliance on external information sources, or, secondly, because the belief system that shapes the negotiator’s interpretation of the domestic win-set is closer to the other side’s compared to the domestic constituents’ belief system (see Munyi, 2016).

presumably positive effect of public pressure groups: previously uninformed constituents are able to identify their preferences once an agreement is concluded and lobby against implementing legislation that misrepresents their preferences.

In contexts of low accountability of national policymakers, the speed of implementation depends less on pressures from domestic constituents (see Table 2). Whether or not national policymakers go ahead and swiftly draft implementing legislation hinges primarily upon the extent to which they regard the negotiated outcome as beneficial, given their own preferences, and the country's administrative capacities.

We make use of a case study approach to illustrate the added-value of adjusting Putnam's two-level game framework to account for the possibility of detachment. We reconstruct the negotiation strategies that negotiators adopted at the international 'level' and relate them to the levels of detachment present. We differentiate contexts of high and low accountability of negotiators and national policy-makers on the basis of qualitative assessments of the negotiation structure and country-level indicators.¹⁰ To demonstrate the effects of detachment on the likelihood of reaching an agreement, we examine the extent to which it is plausible that the positions adopted reflect domestic preferences, the negotiator's perceptions thereof or her own preferences. As indicators for the pace of implementation, we analyze the steps already taken for implementation and the perceived legitimacy and knowledge of the agreement as indicated in public discourse.

II. Detachment in EPA Negotiations between the EU and the Caribbean Region

The case study on the EPA negotiations between the EU and the Caribbean region relies on data specific to intellectual property (IP) protection in Jamaica, in particular to the type of IP rights available for food products. Thirty-one semi-structured interviews with state and non-state actors were carried out between 2008 and 2012 in the CARIFORUM region and with officials from the EU. Most of the data collected focusses on Jamaica as one of the important and, in matters of IP protection, most advanced countries of the region. Sufficient data on the IP negotiations and consultations at regional level were collected to justify drawing conclusions for the whole region. Official documents and statements as well as press and policy reports on the EPA negotiation process provide additional sources.

Context of the Negotiations

The pressure to conclude an EPA was particularly high in the Caribbean region. With Haiti being the only Least Developed Country (LDC), the vast majority of CARIFORUM countries could not rely on the viable fall-back option of preferential market access to the EU as part of the Everything but Arms (EBA) trading scheme. The CARIFORUM region was thus particularly vulnerable to the threat of losing preferential market access to the EU – unless a new agreement was signed. Exporters of tropical commodities such as bananas and sugar for instance feared the prospect of higher tariff barriers. On the other

¹⁰ We rely on the International Country Risk Guide (ICRG) indicator 'voice and accountability' that includes measures for 'military in politics' and 'democratic accountability' and the Democracy Index that measures the state of democracy in 167 countries (scale 1–10), <http://www.eiu.com>. We use ICRG data from 2007, given that much of the empirical analysis focuses on negotiations prior to the 2007 deadline.

hand, the tourism and service industries saw the EPA negotiations as an opportunity to negotiate a comprehensive agreement, including areas like services and investment (Heron, 2011, p. 342). The region also held incentives in the area of IP protection: it aimed at making better use of technology transfer as well as protecting traditional knowledge, cultural expressions and geographical indications adequately.

The context of political accountability of national policy-makers at level II differed from the accountability of negotiators at level I. In Caribbean countries, the possibility for domestic actors to hold national policymakers accountable for their actions is rather high.¹¹ During the EPA negotiations, this was also visible in the well-established consultation structures.

The level of political accountability of the Caribbean Regional Negotiation Machinery (CRNM),¹² who led the negotiations on behalf of the region, was relatively low. CRNM enjoyed a rather large negotiating autonomy (Girvan, 2009, p. 14), which was facilitated through the governance structure among others. Negotiators had two reporting lines: one to CARIFORUM Council of Ministers and one to the Heads of Government directly, through the Prime Ministerial Sub-Committee on External Negotiations. The latter line was seen as essential when urgent decisions were needed; however, it created a structure that allowed the negotiators to circumvent the CARIFORUM Ministers of Trade (Moerland, 2013, p. 475).

Detachment in the Negotiation Phase: CRNM's Offensive Strategy

Negotiators in the Caribbean faced a situation of detachment as a result of a lack of information or capacity among domestic constituents to formulate specific preferences on the issue of IP protection. Given CRNM's negotiating autonomy, negotiators held considerable space to choose an offensive strategy and push forward its own vision for the region. Since CRNM's perspective on using EPAs to lock-in neoliberal trade reforms was compatible with the EU's interests, detachment made the conclusion of an agreement more likely.

Detachment became apparent in the early stages of the negotiations, as technical negotiators lacked meaningful input as to which preferences constituents at the regional or national level held.¹³ The reasons for detachment were manifold, but were prominently related to a lack of information and understanding as well as poor co-ordination mechanisms.¹⁴ Neither state nor non-state actors formulated specific positions on IP issues. While state actors of CARIFORUM States were more informed about the IP issues under negotiation in the EPA than non-state actors (Moerland, 2013, pp. 533, 549), they faced severe capacity problems. Among the 31 Jamaican and regional non-state actors interviewed, only 12 formulated positions on IP issues regulated through the EPA; only

¹¹ On average, the seven, respectively six, covered Caribbean countries score 0.7 on the ICRG voice and accountability indicator and 6.25 on the Democracy Index.

¹² CRNM was established in 1997 in order to use the limited human and financial resources in the region in an effective way.

¹³ Interview with Malcolm Spence, Senior Coordinator Intellectual Property, Science and Technology Issues in the Office of Trade Negotiations, formerly CRNM; 8 April 2010, Bridgetown, Barbados (available on request).

¹⁴ The findings are applicable to the entire CARIFORUM region, even though the data stem mostly from Jamaica. Jamaica is one of the most advanced countries in the region concerning trade negotiation capacity (Montoute, 2009, p. 92); the picture may therefore be even more negative for other CARIFORUM States.

4 out of the 12 non-state actors had specific interests in various fields of IP protection for food products (Moerland, 2013, pp. 531).

That stakeholders did not formulate their preferences, however, does not mean that their interests were not affected. Stricter enforcement standards, the protection of traditional knowledge or the transfer of technology are for example issues relevant to most economic actors. However, many Caribbean countries did not regard IP as a priority, resulting in less attention for such issues in the EPA process.

The CRNM initiated a relatively large number of activities and consultations at both the regional and national levels.¹⁵ They were largely insufficient for counteracting detachment of constituents because of their content and the limited group of non-state actors they targeted. Only a few consultations dealt with IP issues in more detail.¹⁶ Most of the regional activities were geared towards business and industry representatives (Montoute, 2009), leaving civil society organizations with the feeling that they lacked sufficient information and meaningful interaction (PricewaterhouseCoopers, 2006). Therefore, information on IP, understanding its technical aspects and the capacity to address them was almost absent. The picture was similar for other areas under negotiation in the EPA (Silva, 2015; Thomas, 2009).

CRNM negotiators responded to detachment by promoting a trade deal that was in line with their own preferences for the region, which reflected a particular perception of the domestic win-set.¹⁷ They adopted an offensive strategy geared towards concluding a comprehensive EPA – including the issue of IP protection. CRNM's philosophy evolved around the belief that the Caribbean countries need to engage in neoliberal economic reforms to foster more trade (Bishop *et al.*, 2013). The EPA was perceived as an opportunity to commit to reforms and timelines that otherwise would not be popular. This strategy of locking-in domestic reforms was applied to the area of innovation and IP protection, an area in which the Caribbean region did not yet have much capacity.¹⁸

Pushing for reforms that were not backed by (all) CARIFORUM States was possible because negotiators acted with relative autonomy. Reporting structures left some leeway for negotiators to decide whom to consult and very general negotiating mandates (particularly in the area of IP) left room for manoeuvre. In addition, CRNM played an important role in the co-ordination of the regional negotiating position: they disposed of expertise that was far superior to that of national policy-makers (Moerland, 2013).

Staff members of CRNM gained considerable experience in previous negotiations, including at the WTO, World Intellectual Property Organization (WIPO) and in internal Caribbean Community (CARICOM) discussions.¹⁹ CRNM staff members were inclined to negotiate IP protection, not because of actual influence by domestic and regional constituents but rather because of the international networks that negotiators were part of. Malcolm Spence, the negotiator for IP, was for instance educated as a patent examiner and agricultural engineer in the United Kingdom and previously worked among others,

¹⁵ 100 Caribbean TradeBeat and Trade Beat Extra Radio Programmes, 26 Private Sector Trade Briefs, 12 Trade Power Dialogues and two interactive Trade Negotiation Boot Camps.

¹⁶ Three broadcasts of the TradeBeat Radio Programme and two Private Sector Trade Briefs (activities that provided information to businesses and industry associations) (Moerland, 2013).

¹⁷ Interview with Junior Lodge, 3 March 2010, Geneva (available on request).

¹⁸ Interview with Beverley Pereira, 6 April 2010, Kingston (available on request).

¹⁹ Interview with Michelle Walker, 13 April 2010, Kingston (available on request).

for WIPO and the Trinidad and Tobago IP Office – contacts that he resorted to during the negotiations.²⁰ He was also in contact with external consultants, such as Geneva-based international civil society organizations and the Center of International Environmental Law, which advised him on issues such as the technology transfer clause and thereby influenced the final provision in the agreement considerably. Moreover, significant intellectual and technical overlap between the staff members of the European and Caribbean teams existed (Bishop *et al.*, 2013) and the working relationship was familiar and friendly (Weinhardt, 2015).

As a result, CRNM's own perception of the benefits of IP protection was highly compatible with the EU's neo-liberal perspective (Heron and Siles-Brügge, 2012). This, in turn, made it more likely that an agreement was reached. Detachment of domestic and regional constituents who lacked information to formulate preferences and hardly engaged in the negotiation process facilitated the CRNM's crucial role for concluding a comprehensive EPA agreement that included the issue of IP protection.

Beyond Ratification: Effects of Detachment on the Implementation Phase

Almost 10 years after the conclusion of the EPA, implementation by CARIFORUM countries is still relatively low: the obligations have been implemented only partially, and only by some countries. When assessing the list of multilateral IP treaties that CARIFORUM countries need to comply with or shall endeavour to accede to, only a handful of CARIFORUM countries have acceded to them (B&S Europe and LINPICO, 2014). Beyond IP, the EPA has also not yet been ratified by 8 out of the 15 CARIFORUM countries. Substantive operations in EPA-related projects 'on-the ground' have only begun in 2013 (Greene, 2015). Taking into account the possibility of detachment in countries with overall high political accountability helps us to better understand why implementation is delayed. Both causal pathways presented – lack of information and understanding among domestic constituents as well as *post-hoc* lobbying as the result of misrepresented preferences – contributed to the delay in implementation.

Detachment means that a serious information deficit exists among public and private actors, which remains one of the biggest hurdles for implementation (Humphrey and Cossy, 2011). Domestic actors still are hardly informed about the content of the EPA²¹ and therefore are often not in a position to grasp the technicalities and specificities of the obligations and rights (B&S Europe and LINPICO, 2014). Private actors do not engage in lobbying efforts for implementing legislation on issues – including IP – they still fail to understand fully; only regarding a few exceptions where lack of information and understanding were less of a problem, for instance on geographical indications, do private sector actors actively push for implementation. Second, weaknesses in communicating and co-ordination structures led to a partial misrepresentation of domestic preferences. This in turn affected the perceived legitimacy of the agreement/IP chapter and its ownership, giving rise to *post-hoc* lobbying against implementation. The negotiators' autonomy in pursuing an offensive negotiating strategy in different areas led to a notable conflict between CRNM staff and CARIFORUM States who felt they were

²⁰ Interview with Malcolm Spence, 6 April 2010, Bridgetown (available on request).

²¹ Email correspondence with Norman Girvan, 22 April 2010 (available on request).

pushed beyond their capacity with respect to various negotiating areas (Bishop *et al.*, 2013). Where domestic actors perceive the agreement to lack legitimacy, implementation is unlikely to be smooth, in particular in systems of high political accountability where national policy-makers are dependent on responding to domestic constituents' needs.

III. EPA Negotiations between the EU and the West African Region

The West African case study relies on interviews with 30 state and non-state actors conducted between January 2009 and December 2011 in Brussels, in Abuja and over the phone. Most interviewees were trade officials working at the ECOWAS Commission or national ministries. In addition, West African private sector and civil society representatives and trade experts were interviewed. With regard to the time period 2012 until 2016, the study relies on the analysis of official documents and statements, complemented by reports on the EPA negotiation process in the press or in policy circles.

Context of the Negotiations

In contrast to the Caribbean case, the incentives for negotiating an EPA were not spread evenly across the West African region. Eleven out of the fifteen ECOWAS countries were LDCs which enjoyed unilateral preferential market access to the EU under the EBA trading scheme. LDCs thus held fewer incentives to sign an EPA, which as a reciprocal free trade agreement would require them to open their markets to the EU. The region's non-LDC countries at the time (Nigeria, Ghana, Cote d'Ivoire), on the other hand, did not have the EBA as a fall-back option. This meant that if no EPA agreement was signed prior to the 2007 deadline, exporters from these countries would lose their preferential market access to the EU. Exporters of agricultural goods from Ghana and Cote d'Ivoire, for instance, held strong offensive interests in maintaining such preferences by negotiating an EPA agreement. In addition, the EU was the region's most important trading partner at the time: 21 per cent of all ECOWAS exports went to the EU and 38 per cent of ECOWAS imports came from the EU.²²

The context of political accountability across the three levels of negotiations differed in the West African compared to the Caribbean case. National policy-makers on average faced much lower levels of political accountability towards domestic constituents (level III) in a region characterized by high political instability and neopatrimonial state structures (Kirschner and Stapel, 2012). To the contrary, the Secretariat²³ of the ECOWAS region (in 2008 ECOWAS converted its Executive Secretariat into a Commission) that led the negotiations with the EU (level I) remained highly accountable to its Member States throughout the negotiations. The Ministerial Monitoring Committee (MMC) (level II) that comprised the national trade and finance ministers constrained the autonomy of the ECOWAS Secretariat by providing overall strategic direction for the negotiations. Especially when negotiations reached a political impasse, this set-up constrained the autonomy of ECOWAS negotiators because they depended upon the MMC for giving them further directives.

²² Data from 2008 EUROSTAT (quoted in Wildner, 2011, p. 12).

²³ The ECOWAS Secretariat was supported by the UEMOA Commission that represented the French-speaking ECOWAS countries, but developed a leading function in the negotiations.

Detachment in the Negotiating Phase: Steering Negotiations without a Clear Compass

Lack of information and other institutional constraints meant that many stakeholders at the domestic and regional level remained detached from EPA negotiations. The ECOWAS Secretariat took the lead in the negotiations (Hulse, 2014), but given its constrained autonomy, it was initially forced to adopt a defensive negotiation strategy. Its defensive approach –coupled with much lower buy-in amongst negotiators into the EU's vision of EPAs– made it unlikely that an agreement could be reached prior to the 2007 deadline. A regional EPA was only reached in the subsequent negotiating process, as the subsequent regional split meant that negotiators, now with a gradually extended mandate, perceived a greater need and were more able to push for a regional agreement.

Institutional constraints at the domestic and national level meant that regional negotiators received little input on domestic preferences. A first obstacle was insufficient institutional channels for communication between the different levels. National EPA committees were intended to co-ordinate the involvement of domestic constituents at level III. Yet, the ECOWAS/UECMOA report on the mid-term review carried out in November 2006 deplored the 'non-existence of National EPA Committees in most ECOWAS Member States despite the efforts made to sensitise them on the importance of such a structure'. The report also claimed that 'where they exist, the committees do not fully carry out their duties due to the inadequate capacity and organizational deficiencies' (ECOWAS and CEDEAO, 2006).

Difficulties in inter-ministerial co-ordination further compounded the consultation of relevant constituents in several West African countries (EAFF *et al.*, 2006). National policy-makers, moreover, complained that the flow of information between Member States and the ECOWAS Secretariat (level II) was insufficient, partly because of the human and financial capacity constraints that the Secretariat itself faced as 'meetings and missions overwhelm them' (ATPC, 2007, p. 60).

Another obstacle that led to uncertainty about the win-set among ECOWAS negotiators related to the low availability of information. The 'lack of information about contents and impact of EPA' (Kwa *et al.*, 2014) for instance meant that the private sector in West Africa showed low levels of engagement in the negotiations (Trommer, 2014). While international and regional transnational actors networks lobbied against signing an agreement (Del Felice, 2014; Trommer, 2014), civil society actors themselves complained that not enough impact studies were available, leading to a situation in which 'we were going without a compass'.²⁴ Some LDC countries had to rely primarily on impact assessments provided by the European side (Fioramonti, 2014, p. 191) or hired external trade policy consultants to devise an 'EPA strategy'. For those consultants alone, however, it was hardly possible to prepare for the negotiations, or to formulate specific national interests.²⁵

As a result of high levels of detachment, the ECOWAS Secretariat led the negotiations with the EU (level I). As the *African Trade Policy Centre* noted in its 2007 review:

'one can note the lack of involvement of all the national stakeholders (Administration, Private Sector and Civil society) although they are involved in the process. They rely

²⁴ Interview with civil society representative based in West Africa, 8 December 2011.

²⁵ Phone interview with trade policy consultant based in West Africa, 21 October 2011.

solely on the ECOWAS Secretariat and the UEMOA Commission for handling all the issues related to the EPA including needs assessment' (ATPC, 2007).

In contrast to the Caribbean case, however, the ECOWAS Secretariat did not hold a far-reaching mandate to pursue its own preferences. Most importantly, it was bound to the MMC's limited market access offer of opening up 60 per cent of trade volumes to the EU. In combination with the disengagement and disinterest by a majority of national policy-makers, and a lack of impact assessments, regional negotiators had little choice but to adopt a defensive negotiation position. Moreover, in contrast to the Caribbean case, regional negotiators themselves were much more sceptical about the developmental effects of the EPA's neo-liberal reform agenda that the EU proposed (ICTSD, 2007/2008). As far as external sources of information were consulted, there is no evidence that they led to a 'pro-EPA bias'.²⁶ This made it unlikely that a regional agreement could be reached, given the EU's preference for a comprehensive EPA with at least 80 per cent market opening commitments on the West African side.

When no regional deal was sealed at the end of 2007, the non-LDC countries Ghana and Côte d'Ivoire went ahead and signed hastily drawn up individual interim agreements to avoid losing preferential market access to the EU.²⁷ This outcome undermined not only the ECOWAS negotiator's defensive position, but threatened the economic integration process the region had embarked upon, including the implementation of a common external tariff. This costly outcome shaped subsequent negotiations, as ECOWAS – and its Member States – had to react to the regional split between Ghana and Côte d'Ivoire as signatory and the majority of non-signatory countries. If detachment had been less pronounced, it may have made it possible for the ECOWAS Secretariat to develop a regional trade strategy that would have enabled it to avoid the regional split.²⁸

Greater pressure to conclude a regional EPA in the face of the costly outcome meant that the MMC gradually widened the region's mandate in the subsequent negotiations, extending for instance its market access offer from 60 per cent initially to 75 per cent. This enabled the ECOWAS negotiators to adopt a more pro-active negotiating approach that ultimately facilitated the conclusion of a regional agreement on 10 July 2014. Yet, in contrast to Putnam's assumptions, this does not mean that the negotiated outcome necessarily corresponds to actual win-sets. With detachment in mind, it reflected primarily the ECOWAS negotiators' perception that – caught between a rock and a hard place – concluding an agreement had become necessary to safeguard regional economic integration.

Beyond Ratification: Implementation Yet to Come?

While it is still too early to tell to what extent detachment will affect the implementation phase, there are already first signs of delay. Preferences of national policy-makers are likely to be key, given that they face on average lower levels of political accountability as compared to the Caribbean region. As of February 2017, however, Nigeria, The

²⁶ Interview with ECOWAS official, Abuja, 8 December 2011.

²⁷ Nigeria, the region's third non-LDC country, did not signal any interest in signing a regional or interim EPA. This is because Nigeria mainly exports crude oil and gas to the EU – both of which are duty free in any case.

²⁸ Conceivable options included setting up a fund to compensate the non-LDC countries for losing preferential market access or concluding a partial but regional agreement that satisfies the WTO requirements.

Gambia and Mauritania refused to officially sign the agreement, despite the fact that it was initialled by the Heads of State in July 2014. They argued that the regional EPA does not sufficiently take their national preferences into account, which indicates low levels of ownership. Without the signature of all countries of the region, however, the EPA cannot be ratified and hence not implemented. At the very least, limited administrative capacities are likely to delay its implementation. West African civil society actors declared jointly that:

‘the lack of effective regional trade policy articulated to agricultural and industrial policies is a major obstacle which can impede the implementation of the agreement and affect the development dynamics’ (West African Civil Society Declaration on forthcoming EPA signing, 2014, 4 February).

If the regional EPA enters the ratification stage in the future, we also expect to see a delay in its implementation in countries with relatively higher levels of political accountability. This could be already seen with regard to the interim EPAs of Ghana and Cote d’Ivoire, where signature was delayed in Ghana – the ‘model’ democracy within the region – in response to domestic pressures and *post-hoc* lobbying but not in the more authoritarian Cote d’Ivoire.

Conclusion

This article has conceptualized the positions adopted by the Caribbean and the West African region in the EPA negotiations with the EU as part of a three-level game. In particular, we examined how the possibility of detachment between domestic or regional constituents and the negotiators influenced the negotiating process in different contexts of political accountability. In doing so, we developed Putnam’s original two-level game approach further because it does not account for the possibility of detachment. Building on the literature on trade negotiation capacity constraints in developing countries, we argued that limited institutional capacities for collecting and transmitting information about the win-set can lead to a weak link between domestic constituents and the negotiator.

Using the explorative cases of the CARIFORUM-EC and the ECOWAS-EU EPAs, we show that such a weak link had two major effects. First, detachment affected the likelihood of reaching an agreement, which depended on the level of political accountability of negotiators and the strategies they chose. In both regions, the outcome reflected to a greater extent the negotiators’ perceptions or preferences regarding the EPA rather than the actual domestic win-set. But the lower levels of political accountability of the Caribbean as compared to the West African regional negotiators meant that it was easier for them to respond to detachment by devising an offensive negotiating strategy. Reaching an agreement became more likely because negotiators – similar to the European side – believed in the benefits of further trade liberalization and because they were part of external networks.

The ECOWAS Secretariat that held a much narrower negotiating mandate, on the other hand, initially adopted a very defensive approach as a reaction to lingering uncertainty about the region’s win-set. Moreover, the lower buy-in amongst negotiators into the EPA’s neoliberal reform agenda made reaching a comprehensive agreement such as in the Caribbean case less likely. Only when negotiators perceived that concluding an

agreement had become necessary to safeguard regional economic integration, did they eventually conclude a regional EPA.

Secondly, detachment is likely to further complicate the implementation of the agreements. The Caribbean negotiating team pushed for a comprehensive free trade agreement – including the issue of IP protection – even where few domestic actors voiced their preferences, let alone knew about its content. The biggest hurdle for implementation is thus the information deficit and the lack of ownership among domestic actors. In West Africa, detachment may even undermine the implementation of the regional EPA altogether, especially given Nigeria's resistance that emerged partly in response to *post-hoc* lobbying.

On a theoretical level, examining the case of Economic Partnership Agreements through the lens of a three-level game shows that it becomes necessary to adjust Putnam's model. Firstly, the possibility of detachment has implications for how to study negotiation processes. Instead of being able to deduce the size of win-sets from a political economy analysis alone, it is crucial to make use of a qualitative approach to uncover the negotiator's own (mis)perceptions or (mis)representation of the win-set.

Second, understanding detachment as based on institutional constraints complements the existing literature on interest group mobilization, which focuses on variation across the level of participation of different actor groups (Dür and De Bièvre, 2007). Focussing on general institutional constraints – such as the availability of information about the economy – helps us to uncover some of the more fundamental constraints that private sector actors, civil society groups, national policy-makers or other constituents face when engaging in free trade negotiations. Our findings highlight the importance of proper consultation mechanisms and democratic scrutiny during the process of a trade negotiation, and emphasize the importance of overcoming democratic deficits that plague not only regional, but also international institutions (Nye, 2001).

Third, the focus on detachment provides us with a conceptual tool to understand the frequent delays in the implementation of agreement – even if they are concluded and ratified. Such delays are particularly likely if national policy-makers can be held politically accountable. Further research is needed not only to explore the implementation of EPAs over time and to systematize the effects of different reasons for detachment on negotiation outcomes, but also to examine whether detachment is present in other cases, not only in other regions of the world, but also outside the realm of trade co-operation.

The focus on detachment, finally, helps us to evaluate the developmental impact of EPAs. Our findings raise serious doubts about whether EPAs will contribute to economic development and poverty reduction in the ACP regions. To the contrary, locking in reforms before domestic or regional constituents thoroughly assessed their interests at stake could prevent necessary policy changes in the future. Uncertainty about the domestic win-set certainly is not the best starting point for negotiating a free trade agreement.

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