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National parliaments and the new contentiousness of trade

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Abstract: Rather than becoming obsolete, national parliaments have come back obstinately in the politics of trade. This article develops this proposition and explores its contribution to the idea of 21\textsuperscript{st}-century trade as contentious market regulation. Contra the Lisbon Treaty, national parliaments’ assertion entrenches the role of domestic actors in the EU trade liberalization policy, and fleshes out its multi-level parliamentary bases. We discuss the role, drivers, and patterns of parliamentary assertion and explore parliamentary assertion using preliminary survey and case study material. We find that the TTIP negotiations represented the tipping-point of parliamentary assertion. Through interpretation and political engagement, national parliaments have forged a role for themselves that was unforeseen in the Lisbon Treaty: weighing in on the policy-making and the ratification processes. In Europe, parliamentary assertion reflected the twin impact of a changing global trade agenda and the centralization of the EU trade policy regime.

Keywords: Parliamentarization, EU multi-level parliamentary field, contentious market regulation, EU FTAs, TTIP

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**Introduction**

Trade policy has never been more politicized and contested. In Europe, the Transatlantic Trade and Investment Partnership (TTIP), which was originally heralded as a ‘once-in-a-lifetime opportunity’ to boost growth and jobs by former UK Prime Minister Cameron, has been caught between, on the one hand, anti-globalization sentiments in several key EU Member States such as France and Germany and, on the other hand, the developing Brexit crisis with ‘Global Britain’ as its protagonist. In the US, President Donald Trump has now fulfilled its presidential campaign pledge to put ‘America First’ and signed an executive order officially withdrawing the USA from the Trans-Pacific Partnership (TPP). He has also promised to put Brexiting UK in ‘front of the queue for a trade deal’ (CNN Report, 23 January 2017, [http://money.cnn.com/2017/01/23/news/economy/uk-us-trade-deal-trump/](http://money.cnn.com/2017/01/23/news/economy/uk-us-trade-deal-trump/)—both actions casting doubts on the future of the TTIP negotiations. In sum, whether resisted or summoned, trade liberalization has become more visibly wedded to political manifestations of national sovereignty in the West.

In this article, we ask to what extent and how national parliaments shape the new contentiousness of trade, focusing on the EU FTAs. With a rare exception (Jančić 2017), national parliaments have not received much attention in trade politics due to their alleged indifference or irrelevance in a process traditionally dominated by executive actors and experts. With the ratification of the Lisbon Treaty in 2009, the role of national parliaments
seemed to fall even more into the background as the amended rules of trade policy-making empowered the European Parliament (EP), in part at the expense of national parliaments. We argue here that national parliaments have become more important in the politics of trade. Our argument modifies the conventional wisdom on trade politics in the literature, and highlights the gap that has developed between the formal institutional setting agreed in the Lisbon Treaty and the practice of trade policy-making as a result of the new trade agenda and national demands for co-ownership of EU trade policy.

Our study starts by setting the stage for the engagement of national parliaments in EU trade policy. It highlights the secular trend towards the centralization of trade competences at the EU level while emphasizing the potential for multi-level parliamentary competition. After mapping out general patterns of parliamentary assertion for the EU as a whole, we focus on two cases for a more intensive study of the motives and the party political constellations underpinning parliamentary assertion. Besides illuminating the role of domestic politics in contemporary trade policy-making, this article contributes to the emerging literature on multi-level parliamentary politics in the EU.

**From the ‘parliamentarization’ to the ‘multi-level parliamentarization’ of EU trade politics**

The EU’s turn to trade bilateralism took place at a time when the EU was redefining not only its trade policy but also its own constitutional framework. While the redefinition of trade policy started well before the Lisbon Treaty, this treaty marked a ‘sea change’ (Devuyst 2013) in the way the Common Commercial Policy (CCP) is made. This sea change can be analyzed as a double constitutional movement towards: on the one hand, the centralization of policy-making competences; and on the other hand, the concurrent empowerment of the EP. In
practice, however, the role of national parliaments remained unsettled in a context of renationalization of EU politics.

The centralization of the CCP took place during the critical 1999-2009 decade. During these years, the definition of EU competences in trade was significantly enlarged, first to include services and intellectual property in the Amsterdam Treaty (1999), and then foreign direct investment in the Lisbon Treaty (2009). In addition, the Council’s decision procedures were reformed with the extension of qualified majority voting (QMV) to the areas of services and intellectual property (Nice Treaty 2003) (‘cultural and audiovisual services, educational services, and social and human health services’ remained under unanimity, since these areas were considered too sensitive to become exclusive EU competence). Critically, the centralization of the CCP went hand-in-hand with the empowerment of the EP. Traditionally, executive actors in the Commission and the Council made the EU’s CCP according to a simple division of labor where the Commission proposed and negotiated EU trade agreements with third-countries upon a mandate delivered and monitored by the Council. Thus, in EU trade negotiations with third countries, the Commission drafted the negotiating mandate and it conducted negotiations on behalf of the EU while the Council approved the negotiation mandates and closely monitored the negotiation processes through its Article 133 committee. Parliamentary actors at both the EU and the national levels did not have a prominent role. Prior to the Lisbon Treaty, as Devuyst (2013, 282) notes, ‘the [European ] Parliament’s formal role in international trade agreements was nil’; it was not even granted a right of consultation as in other common policies, e.g., the Common Agricultural Policy (CAP). National parliaments, as far as they were concerned, were formally responsible for ratifying trade agreements as most of them took the form of ‘mixed agreements’ given the widespread mix of trade issues pertaining to domains of exclusive EU competences, shared competences,
and exclusive national competences. In practice, however, national parliaments never really challenged the adoption of trade agreements (Van den Putte et al. 2014), and policy decisions remained firmly anchored in executive politics and negotiations of a highly technical nature.

With the Lisbon Treaty, the EP empowerment in trade took three forms: increased information rights; co-decision powers in trade policy-making; and, a central position in the ratification process in virtue of the new simplified ratification procedure. Before going into detail, it is noteworthy that these three forms are interlinked: co-decision as the cornerstone power, triggering the other new acquired EP powers. The rationale is both political and legal: on the one hand, co-decision does not make sense without access to information; furthermore, the Treaty establishes a general link between co-decision and ratification, so that agreements with third-parties taking place in areas where the EP has co-decision powers automatically entail the power of consent for the EP in ratification. Constitutional change further meant that a new committee was established to take care of International Trade issues (INTA).

The EP’s right to full information throughout the negotiations is specified Art. 218(10) TFEU, stating ‘the European Parliament shall be immediately and fully informed at all stages of the procedure.’ In practice, this entails a structured and regular dialogue between the Commission and the EP’s INTA committee. Due to the new rights of information, the INTA committee has become much more active in trying to influence the Commission’s negotiation mandate; it does so through parliamentary resolutions, hearings, opinions and questions to the Commission. Its influence opportunities are however restricted to seeking political commitments from the Commission or the Council as the EP has no formal power over the negotiation mandate (Woolcock 2015). Secondly, in view of Art.207(2) TFEU, the EP has now co-decision rights in CCP legislation. Thus, whereas before the EP only had a right to
assent in association agreements, the EP and the Council must now agree on a joint text when adopting the framework legislation that transforms the trade agreement into EU law. Lastly, in view of Art. 218(6)(a) TFEU, the EU is now obliged to obtain the consent of the EP in order to ratify trade agreements. For all matters falling within EU competences, the ratification procedure is thus considerably simplified: ratification by member-states parliaments is no longer necessary. Under this simplified procedure, agreements are ratified by a QMV vote in the Council and a simple majority vote in the EP. As a result, the EP has thus become a major actor in trade policy-making, and the INTA one of the more prestigious and powerful standing committees in the EP. As one observer puts it, “gone are the days when bureaucrats speak to bureaucrats” … [deciding in] meetings between Commission officials and national officials in former “Article 133 committee” (Passos 2010, 286).

Parallel to the empowerment of the European Parliament, national parliaments have almost become redundant in the EU’s Common Commercial Policy. Two developments have been critical with respect to their institutional standing. First, given the expanded definition of EU competences in the 1999-2009 decade, the need for national ratification of new EU FTAs has diminished, as the method of ratification follows from the mix of policy competences. Second, given the extension of QMV to the areas of services and intellectual property, the ability of national parliaments to provide for parliamentary scrutiny and keep their government to their preferred policy diminishes as governments can be overruled in the Council. Clearly, a main consequence of this process has been to empower the European Parliament in trade policy-making while leaving national parliaments with a diminished formal role.

However, there remains a great amount of ambiguity and controversy as to the role of member-states and national parliaments. The Lisbon Treaty does not define FDI, leaving the
scope of EU competences unclear. As well as FDI, the contestation about the scope of EU competences concerns transport services, intellectual property, transparency and sustainable development (Ewert 2016, 3). The Commission asked the Court of Justice of the European Union (CJEU) in 2014 to clarify the scope of EU competences in the context of the EU-Singapore FTA. In its opinion of 16 May 2017, the Court concluded that the Singapore FTA is a mixed agreement, due to the fact that two aspects of the agreement—non-direct investment (portfolio) and investor-state dispute settlement—are not part of the EU’s competences (Laursen and Roederer-Rynning, this volume). Also, the Lisbon Treaty envisioned a stronger role for both national parliaments and the EP in EU policy-making in general. Therefore, whereas the Lisbon Treaty carves up a strong position for the EP, national parliaments, for reasons of institutional standing, may contest this prominent role and enter in a political competition with the EP. This is all the more likely to happen in the current political contest characterized by ‘a new emphasis on the sovereignty of EU member states’, contrasting with ‘an EP that self-confidently claims to represent EU citizens as a whole’ (Eckes 2015, 921). We know that the institutionalization of Europol has been characterized by some degree of multi-level parliamentary competition (Garibay 2013). Likewise, the new agenda of trade liberalization, by raising salient issues for broader segment of European citizenries, puts pressure on national parliamentarians to engage in the politics of trade.

In sum, the intention of the Lisbon Treaty makers was to simplify the law-making and ratification procedures in trade through empowering EU institutions. However, ambiguities in the Lisbon Treaty and the growing role of national sovereignty in European politics have created opportunities for national parliaments to engage.

**Connecting the dots: parliamentary assertion and the new contentiousness of trade**
Our analysis is premised on the idea of an emerging multi-level parliamentary field. In Europe today, ‘no single overarching parliamentary power is able to claim ultimate authority over national parliaments or according to a federal-type specification of power and competencies’: what we have instead is ‘parliamentary sovereignty … dispersed over multiple parliamentary institutions’ (Crum and Fossum 2013, 11; see also Crum and Fossum 2009).

We argue that parliamentary assertion is a key phenomenon enabling us to connect the dots between the new 21st-century agenda and increased trade contentious. Later in this article, we explore the empirical reality of parliamentary assertion using the comparative method. In this section, we present the key concepts and hypotheses, which we rely upon and which are part and parcel of the broader understanding of 21st-century trade as contentious market regulation.

**Parliamentary assertion: parliaments as policy-makers and interpreters**

Analysts of trade liberalization have traditionally not considered national parliaments as relevant or significant actors. By referring to parliamentary assertion, we wish to focus analytic attention on the actions through which national parliaments challenge these widespread views, for example by expressing claims or defending parliamentary rights forcefully. Parliamentary assertion in EU trade affairs is embedded in macro-historical processes of evolution of legislative-executive relations. In the everyday policy-making process, national parliaments may assert themselves in a variety of ways, which are often seen as referring to different parliamentary roles or functions. These include activities aiming at shaping policy, controlling the executive, creating a public forum for debate, and developing expertise. These activities may take place at the domestic level at multiple levels, in which case national parliaments can be viewed as ‘European players’ (Wendler 2016) or even transnational players, if national parliaments link up with parliaments from non-EU
negotiating countries. This range of activities highlight the dual role of parliaments captured by Olsen (1983) as ‘policy-makers’, when parliaments seek to shape the redistributive outcomes of the new trade agenda, and ‘interpreters’, when the aim is to shape the political reality of the negotiations. In both these roles as ‘policy-makers’ and ‘interpreters’, parliaments are likely to serve as the fulcrum of political mobilization by specific constituencies, citizen groups, and organized interests, thereby contributing significantly to the politicization of 21st-century trade policy in general, and EU FTAs in particular. Indeed, while ‘free trade has always been a hard sell’ (Irwin 2016, 95), it is an even harder sell today when the heart of the negotiations deals with eliminating ‘trading costs’ (Pelkmans this special issue) linked to a wide array of technical regulations and standards partly originating in the domestic policy-making process. In line with the framework of contentious market regulation, we therefore expect the shift from tariff-centered trade liberalization to market integration to coincide with a growing level of parliamentary assertion in EU trade policy.

**Paths of parliamentary assertion: extra-institutional and institutional drivers**

We conceive of two main paths linking the shift to market integration and parliamentary assertion. One path originates in the broader polity (extra-institutional driver). It is often claimed that lack of societal interest is one of the key impediments to parliamentary assertion in global affairs since voters are not likely to reward parliamentarians for their work on global issues (Slaughter 2004). Unlike tariff politics, market integration raises policy issues that are more clearly salient for broad segments of the citizenry, rather than just narrow, economic interests. We know that the agenda of the new EU FTAs is prompting interest groups and civil society groups to reconsider their strategies as a result of increased issue salience (Dür and Mateo 2014) and legitimacy concerns (De Ville and Siles-Brügge 2016). By crystallizing societal concerns and raising issues of political appropriateness, we see the new agenda of
trade itself as a powerful motor for parliamentary assertion. Of course, in principle, the newly-mobilized groups can press their claims with executive actors. However, we expect parliaments to be an attractive venue for these new polity actors. As newcomers themselves in trade politics, parliaments are indeed more likely to be free from and available for support; furthermore, as representative organs, there are likely to be particularly sensitive to arguments of representation and accountability. In line with the contentious market regulation framework, we expect the intensity of social pressure on national parliaments to rise with the perceived divergences between the core ideas underpinning the regulatory frames of the negotiating partners.

The other path originates within institutions themselves (institutional drivers). Market integration arguably affects the balance between political and non-political institutions. Scharpf (2009) has made this argument in relation to market integration in the EU. He claimed that the policy-making processes associated with the creation and operation of the EU single market empowered non-political (non-majoritarian / non-partisan) institutions in the executive and judiciary branch of government—e.g., regulatory agencies and the Court of Justice of the European Union—at the expense of political institutions (majoritarian / partisan)—specifically national governments and parliaments. Similarly, the thrust towards market integration in 21st-century trade negotiations can be expected to affect the balance between majoritarian and non-majoritarian institutions at the expense of the latter, specifically national parliaments. As this happened in the case of the EU, this, in turn, is expected to prompt a counter-response from majoritarian institutions. As the new FTAs focus more centrally on issues of regulatory cooperation, they enter the domain of jurisdiction of parliamentary actors and their capacity, present and future, to shape regulation. We should therefore expect parliaments to engage more actively with the politics of trade to protect their
regulatory space or shape the regulatory provisions of FTAs. Another possible set of issues relate to EU constitutional issues surrounding the new FTAs, specifically the choice of ratification. Rather than referring to substantive policy choices, institutional salience refers to the dynamic relationship between executive and legislative actors in European democracies. National parliaments are all the more likely to spearhead this reaction if they enjoy a high standing in the national political system, and if there are significant differences in regulatory processes (and critically, the role of parliamentarians in these processes) on both sides of the negotiations.

In sum, in contrast with the view that ‘it is increasingly the case that powerful actors compete to set the rules of international market regulation and they do this without the formal consent of national legislatures’ (Farrell and Newman 2010, 611), we expect parliaments to be increasingly assertive in the politics of contemporary trade negotiations. In the following section, we conduct a preliminary assessment of the empirical reality of parliamentary assertion by surveying the role of national parliaments in the new EU FTAs. We rely partly on survey data released by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) (COSAC 2015) and partly on case study material on two diverse cases. Given the exploratory phase of the scholarship on this topic, we consider this empirical exercise as a heuristic tool to advance the research agenda.

The TTIP as a tipping-point

The COSAC 2015 survey provides useful preliminary information about the extent, type, and level of parliamentary engagement in the politics of the new FTAs. The survey includes questions concerning a broad range of aspects, e.g.; general questions on the constitutional powers of national parliaments in trade; the organization of parliamentary debates, impact
assessments, public consultations on trade; as well as specific questions on the Trade in Services Agreement (TISA), the Comprehensive Economic Trade Agreement between the EU and Canada (CETA), and the Transatlantic Trade and Investment Partnership (TTIP). These data are not always directly exploitable, but they nevertheless give us a comparative baseline for national parliaments’ engagement in trade policy. On the basis of this cursory view, we then turn to a more detailed exploration of parliamentary assertion, focusing on two cases—Denmark and France. These cases are selected for the following reasons. First, both cases display a high level of parliamentary assertion as illustrated in Figure 1. Within this parameter, we can explore more systematically aspects related to the path of parliamentary assertion (extra-institutional v. institutional) and the terms of parliamentary assertion (role of different discursive frames). With this respect, it is interesting that Denmark and France differ on a number of points, which are relevant for the analysis: they can be viewed as ‘diverse cases’ (Gerring 2007). First, the two countries also illustrate different forms of market economies, with France illustrating a variety of capitalism where state intervention in the economy is legitimate (Shonfield 1965; Hall and Soskice 2001; Levy 2006) while Denmark is characterized by a relatively liberal model of economic policy where social actors are responsible for coordinating a range of economic activities (Armingeon 2002). It is interesting to see how these different regulatory traditions affect the mobilization of societal interests. Furthermore, the constitutional framework of these countries differ significantly regarding the involvement of the national parliaments in EU affairs. Denmark has a mandate-based system (Denmark); France a report-based control system (France). Measured in terms of formal capabilities and rights, Denmark generally scores higher in terms of strength of parliamentary scrutiny systems in EU affairs (Winzen 2012; Auel et al. 2015). It is interesting to see whether and how these constitutional differences matter for the path of parliamentary assertion,
Finally, the party systems represented in the two legislatures illustrate ‘different degree of polarization on behalf of the EU’, where France has traditionally been discussed as a case of ‘medium’ polarization (Wendler 2014), in contrast to the strong party-political polarization traditionally observed in Denmark on EU issues. It is interesting to see whether and how these partisan constellations matter for the terms of parliamentary assertion.

**Evidence from the COSAC 2015 survey**

When asked about their role in the EU FTAs, a large majority of national parliamentary bodies declare engaging in debating the national impact of EU trade and investment policy. We can distinguish between three groups of national parliaments (Figure 1). A sizeable group (14 chambers) displays a sustained level of engagement in the politics of the EU FTAs: this group includes the dozen of parliamentary chambers scoring 3 and above (Figure 1), ie, the Austrian Bundesrat, the Belgian Chambre des Représentants, Danish Folketing, Estonian Riigikogu, Finnish Eduskunta, French Sénat and Assemblée Nationale, Irish Oireachtas, Latvian Saeima, German Bundestag, Lithuanian Seimas, Luxembourg Chambre des Députés, Slovenian Državni zbor, and the UK House of Lords. At the other end of the spectrum, a small group of national parliamentary chambers (5 chambers) has not engaged at all in EU trade and investment policy: this groups includes Belgian Sénat, the Cypriotic Vouli ton Antiprosopon, Maltese Kamra tad-Deputati, Polish Senat, and Romanian Camera Deputaților (scoring 0 in Figure 1). In between, a substantial group of national parliamentary chambers (18 chambers) have engaged discontinuously: they have scrutinized some negotiations and not others, often focusing on the TTIP negotiations (chambers scoring 1-2 in Figure 1).

*Figure 1 here*
Clearly, the TTIP negotiations stand out by the level of attention they have attracted from national parliaments, receiving twice the level of attention as the CETA negotiations. This observation corresponds well with the evidence from the two case studies presented below. Interestingly, given the fact the national parliaments have at best been viewed as ‘controllers’ of the executive, the national parliaments have developed a range of actions. Besides scrutinizing the TTIP, (as well as TISA and CETA), national parliaments have also occasionally performed own impact assessments, organized public consultations, and, more rarely, participated as stakeholders in EU-level consultation events. Thus, to use the categories developed in the previous sections, the national parliaments collectively mobilized a broad palette of roles involving policy shaping, nurturing the public debate, and developing expertise on trade, even if this palette of roles differs very much from one national parliament to another.

Finally, while the data do not allow us systematically to chart the universe of parliamentary assertion, there are indications that some national parliaments have been asserting themselves at multiple levels (parliaments as ‘European players’) while others are more focused on the national level (parliaments as ‘national gate-keepers’). The most obvious indicator of multi-level entrepreneurialism is parliamentary participation in the 2014 public consultation on ISDS organized by the Commission. Three national parliaments reported having participated in this consultation: the French Assemblée Nationale; the Irish House of Oireachtas; and the Romanian Senat. Measured by this parameter only, these parliaments are not just domestic players but also European players. However crude an indicator of ‘European’ engagement, participation in the Commission consultation on ISDS is nevertheless interesting since these three chambers are very different parliamentary bodies. Naturally, national parliaments have many other ways of acting as European players. For example, in 25 June 2014, national
parliaments from 16 member states addressed a letter to then trade commissioner Karel de Gucht, calling for the TTIP deal to be considered a mixed agreement that would require ratification at national level (EU Observer 2 July 2014, ‘EU-US Trade Deal Must Have National Approval, Says MPs’).

Thus, the COSAC 2015 survey provides *prima facie* evidence that: parliament engagement has grown with the TTIP negotiations; that the nature and form of parliamentary engagement challenges common perceptions of parliamentary indifference or irrelevance, warranting—in a sizeable number of cases—the qualification of parliamentary assertion; and furthermore, that the aims of parliamentary assertion appear to be multiple, involving both weighing in on concrete policy issues (parliaments as policy-makers) but also shaping the political reality of the negotiations (parliaments as interpreters).

*Insights from two ‘diverse cases’*

The French parliament has gained more clout in the last decades, in particular with the creation of European Affairs delegations in both chambers of the French parliament (*National Assemblée* and *Sénat*). These delegations now reflect the Parliament’s party and committee composition. They are constitutionally entitled to be informed and to scrutinize any legislation falling within the domestic or EU domain of competences. Only they can decide whether and how to intervene in EU policy-making, for example by tabling resolutions. Despite these changes, the resolutions tabled by parliament do not bind the government; and the government has been said to use domestic parliamentary activism as a tool in their EU negotiating tactics, informing strategically the Council of the views of Parliament (Rizutto 1996, 56-57). Also, the empowerment of the French parliament in EU affairs coincided with the development of Eurosceptical forces in France, meaning that the increasing assertion of
the French parliament in EU affairs has also given more opportunities for Eurosceptical parties to influence France’s EU policy. In Denmark, by contrast, parliament can effectively bind government, based on the 1973 mandating system requiring governments to obtain a parliamentary mandate in the European Affairs Committee (EAC) before attending EU negotiations (Auel and Benz 2005; Damggard and Jensen 2005). However, trade policy has largely stood outside this system, given that trade policy is the European Commission’s prerogative, and that trade policy has not had significant direct impact on already existing national legislation and regulation (precondition for parliamentary mandate). Trade policy has therefore attracted less attention from domestic legislators. This seems to be changing as a result of the entry into force of the Lisbon Treaty in 2009, and in particular the ongoing TTIP negotiations, which have stimulated significant Danish stakeholder interest. TTIP negotiations have attracted also the attention of the Danish media and the public, reflecting broader international trends (De Ville and Siles-Brügge 2016). Several public debates initiated by either Folketinget (EU-oplysningen 2016), the government (i.e. Ministry of Foreign Affairs) or NGO’s and other stakeholders have already taken place.

In spite of these different premises, both parliaments seem to have paid increasing attention to the new trade negotiations, the TTIP negotiations appearing to crystallize parliamentary assertion. In France, by the time of the official launch of the negotiations in July 2013, the Assemblée had already produced three main reports directly relevant for the TTIP negotiations (on procurement; cultural exception; and the negotiating mandate). A second round of debates took place in conjunction with the elections to the EP in May 2014, when Communist MP André Chassaigne, a former campaigner on the ‘no’ side in the 2005 French referendum on the Constitutional Treaty, scheduled a motion of resolution demanding the suspensions of the TTIP negotiations and the organization of a broad public consultation. Finally, in February
2016, the *Assemblée Nationale* produced a well-informed report on investment issues (Dagoma report of February 2016). This report coincided with the final phase of the legal scrubbing of CETA, prior to ratification, and a critical phase of the TTIP negotiations, officially scheduled to be concluded by the end of 2016. Overall, the reports were well-received and their quality praised in the Assembly while M. Chassaigne’s motion of resolution was widely viewed as an opportunistic move to score electoral points. Similarly in Denmark, while trade policy historically has been an overly governmental affair as the government has informed the EAC on a frequency defined by the government, this state of affairs seemed to change with the TTIP negotiations. In the central database of *Folketinget*, TTIP negotiations amount to altogether 92 files (by mid-2016), while CETA negotiations amount to only 7 files (and other FTAs even fewer)—this is in spite of the fact that the CETA negotiations were initiated in 2009 (and negotiated under the Lisbon Treaty regime) and finished in late 2016, while TTIP negotiations were only begun in 2013.

The *paths of parliamentary assertion* appeared to be different in the two countries. In Denmark, we witness a shift from institutional to extra-institutional drivers. Prior to the approval of the TTIP negotiation mandate in May 2013, the EAC occasionally received information from the government regarding the Commission’s and the Council’s preparations of a TTIP negotiation mandate. However, from September 2013 different stakeholder organizations approached the EAC stating a number of salient issues regarding the TTIP negotiations, e.g. requests for transparency in negotiations, protections levels, and national prerogatives for sticking to higher standards. The stakeholder activity led to a significant amount of parliamentary based questions (§20 and committee questions) and eventually to a parliamentary debate in the spring of 2014 resulting in a parliamentary statement to the government focusing in particular on ISDS vs. national sovereignty, environmental
protection, health, consumer protection and worker’s rights. Reflecting the continued active involvement and engagement of stakeholder organizations in the political process regarding the EU’s TTIP negotiations, another parliamentary debate was held a year later, in April 2015. The debate led to another parliamentary statement, this time focusing on the principles of sustainability and protection, ISDS, and civil society involvement in the process. The increase in parliamentary questions to the minister continued throughout the rest of 2015 and 2016. In France, the Assemblée’s 2013 ‘red lines’ highlighted both matters of inter-institutional relations such as the right to ratify the TTIP as a ‘mixed agreement’; and matters of broad public concern and civil society mobilization in the field of the liberalization of public and cultural services, the system of investment arbitration (ISDS), and finally the respect of collective preferences in matters of health, food, and agricultural standards. On these issues, the French Assemblée Nationale highlighted the need for a close cooperation with the EP, and furthermore for the involvement of the national parliaments in the transatlantic legislative dialog (TLD). Besides parliament and society, the government itself sought to shape the Assemblée’s agenda: against the will of the Assemblée, it decided not to include the discussion of the negotiating mandate on the agenda of the Assemblée Nationale, and instead scheduled a debate on the cultural exception, which a member from the center-right wing opposition later described as a proxy debate.

In sum, preliminary evidence on France’s Assemblée Nationale shows how a national parliament traditionally considered as an irrelevant actor in EU affairs has developed an activistic role in trade policy, making an opportunistic use of the multi-level parliamentary field to upload societal and governmental preferences in the TTIP. Likewise, in Denmark, where trade policy historically has been an overly governmental affair, empirical evidence from the TTIP negotiations suggests that Folketinget has become very active in trade policy
issues. In contrast with France, however, where extra-institutional grassroot mobilization and the government itself had a stake in parliamentary assertion, the main driver behind parliamentary assertion in Denmark was stakeholder organizations approaching parliamentarians via classic, institutionalized corporatist channels. In addition, the Danish Folketinget seems to have mostly pursued an overly national strategy of engagement. In both countries, parliamentary attention appears to be increasingly oriented towards the role of national parliaments in the EU process of ratification.

**So what? Significance of parliamentary assertion**

We have provided evidence that national parliaments are asserting themselves in the new politics of trade in Europe; that this phenomenon most likely tends to follow different paths in different countries, reflecting the enduring power of domestic relations and institutions (e.g., patterns of interest intermediation and executive-legislative relations); and that in some cases, it involves multi-level parliamentary coordination. Provided these observations are correct and are confirmed by future research, what is the significance of this phenomenon for trade liberalization in the 21st-century? We see at least two ways in which parliamentary assertion is already significant.

First, national parliaments are becoming actors of trade policy, forging for themselves a role that was unforeseen in the Lisbon Treaty. As the culmination of a secular trend of rationalization and centralization of trade policy-making, the Lisbon Treaty did not leave much to national parliaments, as we have seen above. The Treaty embodied the conviction that a balance between efficiency and legitimacy could be found by the joint increase of Commission and European Parliament power. National parliaments were vested with residual powers of ratification in the event of the EU signing a mixed agreement—but this was not
deemed a realistic scenario given the expansion of the competences of the European Commission to nearly all aspects of modern trade and investment policy. Perhaps the greatest significance of parliamentary assertion is to prove this expectation wrong. National parliaments have successfully constructed a political reality of the FTA negotiations necessitating their intervention at the ratification process on grounds of democratic appropriateness. Demands for national ratification were a leitmotiv in the COSAC 2015 survey. In Denmark, parliamentary demands for national ratification of the TTIP emerged gradually. In France, the majority in the Assemblée considéré from the beginning of the negotiations in May 2013 that the eventual agreement would be mixed, necessitating its intervention at the stage of ratification. However, this interpretation was not shared unanimously. Opposition deputies, in particular, doubted of the realism of this interpretation owing to the federal character of the CCP and the absence of references to this point in the negotiating mandate of the Commission. When these doubts surfaced in May 2014, majority deputy recalled a technique used in the EU FTA negotiations with Korea and consisting in inserting a cultural clause in the agreement to make sure it would be ratified as a mixed agreement (Debates in the Assemblée Nationale, 14 May 2014, intervention by MP Guigou). Maybe this political interpretation could have been anticipated after all: the EU is replete with instances of ‘false’ mixed agreements, ratified as such even though EU Treaties do not require it—for concerns over national sovereignty (Hillion and Koutrakos 2010). Thus, perhaps the greatest achievement of national parliaments is to have forced the Commission to abandon plans to ratify the new FTAs through the simplified procedure. This achievement is not just testimony to the significance of national parliaments as ‘interpreters’, it has also policy-making implications since it obliges EU trade negotiators to negotiate in the shadow of national ratification (Young this volume). The risk of failure could no longer be dismissed as
theoretical, after Belgium’s regional parliament for Wallonia voted (temporarily) against the
Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada in
October 2016.

Second, as arenas of institutionalized political conflict, national parliaments are expressing
the rising influence of political radicalism in trade affairs. In Denmark, EU affairs—including trade—have always been structured by a mainstream-radical cleavage: almost every
Danish government during the Danish EU membership period from 1973 has been dependent
on opposition parties in order to obtain mandates in the EAC. Government-opposition and
left-right cooperation on EU policy issues has been a prerequisite for any government
wishing to receive negotiation mandates in the EAC, no matter what individual party was in
government or opposition. In France, clearly, the new EU FTAs have raised issues of
legitimacy and identity, which have tended to cluster along the mainstream-radical divide, as
predicted by Wendler (2016). This divide became particularly visible during the EP elections
of 2014 which gave radical political movements increased opportunities for debating TTIP
and the new EU FTAs, as mentioned above. Against government and mainstream opposition
parties, Communists, members of Front National (Marine Le Pen) and souverainistes
(Dupont-Aignan) were united in viewing the TTIP as a threat to democracy (‘[TTIP] is not a
simple free-trade agreement or a tariff agreement which you can modify.’). In turn, pressure
from these parties in the Assemblée and outside parliament prompted the French Socialist
government to demand the launch of a broad EU-level public consultation on ISDS. If the
negotiations could not be stopped, as radical political parties and grassroot movements
demanded, at least the government could put the negotiations temporary on standby by
demanding an ISDS consultation.

Conclusion
Contemporary trade politics has a plot, and national parliaments are a part of it. Three forces shape the role of national parliaments in contemporary trade liberalization. The first is the long-term thrust towards constitutional simplification and rationalization, culminating in the Lisbon Treaty with the centralization of trade policy-making in the hands of the Commission (monitored by the Member States) and the parallel empowerment of the EP by way of providing for democratic legitimacy at the EU level. The second is the more recent awakening of national parliaments in EU politics, as evidenced by strengthened EU institutional provisions for parliamentary information and national provisions for parliamentary control. The last is the 21st-century trade agenda, centered on market integration. Deep integration is deeply political contentious, investment arbitration and the liberalization of services being among the most contentious issues. In sum, borrowing the expression from Hooghe and Marks (2009), the ‘permissive consensus’ surrounding trade policy has been replaced by a ‘constraining dissensus’; and this dissensus is fuelled by interlaced shifts in the (global) 21st-century trade agenda and the (European) trading state.

Few national parliaments today leave it for national executives and technical experts to conduct trade and investment policy; few leave it for members of the EP to scrutinize the EU FTAs; and fewer even are ready to give up their powers of ratification in favor of the EP. Not only do national parliaments enter the new trade agenda in their traditional role as scrutinizer, they also weigh in on concrete policy questions such as the ISDS, and they have been largely successful as ‘interpreters’ in constructing an interpretation of the EU trading state in which their powers of ratification are preserved (see Opinion 2/15 of Advocate-General Sharpston on EU-Singapore Free Trade Agreement, published on the site of the Court of Justice of the EU, Wednesday 21 December 2016).
In countries as diverse as Denmark and France, parliamentarians can no longer be described as ignorant, indifferent, or passive actors in EU affairs (Frears 1975). Although they remain ambivalent as to the role of the EP, French MPs have engaged their counterparts in the EP in order to shape the agenda of the EU FTAs, especially the TTIP negotiations. The French parliament asserted itself in the new politics of trade under a set of conflicting pressure from: civil society groups acting through radical parties or outside the framework of conventional politics; government seeing in the EP a venue for influence supplementing the Council; and of course its own members, acting to represent the concern of their constituencies as well as the institutional prerogatives of the Assemblée in rule-making and ratifying trade treaties. Likewise in Denmark, while trade policy historically has been an overly governmental affair, Folketinget has become very active in trade policy. However, while in France, emerging multi-level parliamentary coordination appears to be particularly geared towards uploading governmental preferences, in Denmark we see corporatist stakeholder organizations driving parliamentary engagement geared towards the national government. Beyond these differences, however, it is equally interesting that parliamentary assertion in two such diverse cases encompass both policy and procedural issues, highlighting the importance of both constituency salience and institutional salience in the new politics of trade.

Is the parliamentarization of trade good or bad for democracy?—for trade liberalization? Does it reflect a new phase in trade liberalization? Or is it a sign of a deeper crisis of (EU) legitimacy? These are the big questions facing trade scholars today and for the many years to come. The good news is that Europeans show an interest in shaping the choices that affect their daily life. This is a precondition of democratic governance. The bad news is that a gap has emerged between the discourse of EU elites and citizen interest groups, as illustrated by the importance of radical parties from both the left and the right, in issues of trade. If until
recently, there was a fear that the new EU FTAs were negotiated in isolation from society, today in post-Brexit Europe, there is a risk that trade policy might become prey to powerful catchword, political manipulation, and populism. More than ever, there is a need to strengthen the popular pillar of EU democracy. The assertion of national parliaments can help, but it is certainly no panacea: it can lead to political disintegration as well as democratic renewal.

References


Figure 1 – National parliaments and trade, COSAC survey 2015

Source: data are from COSAC (2015); own compilation.