



The European Union in Commercial Negotiations with Israel

The Influence of France and Germany
within EU Foreign Economic Policy-making

Bachelor Thesis
European Studies

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Author:	Dennis Pump
First Supervisor:	Dr. S. Donnelly
Second Supervisor:	Drs. E. E. de Lange MA
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Table of Contents

1.	Introduction	6
2.	Methodology	7
2.1	Why Israel?	7
2.2	Research question	8
2.3	The cases of France and Germany	8
2.3.1	France	8
2.3.2	Germany	9
2.4	Limitations	9
3.	Theoretical Framework	10
3.1	Supranational governance	10
3.1.1	Neo-functionalism.....	10
3.1.2	The Principle-Agent-Model	11
3.2	Intergovernmental approaches	11
3.2.1	Liberal intergovernmentalism	11
3.2.2	The Committee 133 as an instrument for intergovernmental governance.....	12
4.	Analysis.....	13
4.1	EU foreign economic policy towards Israel	13
4.2	French foreign relationship with Israel	16
4.3	German foreign relationship with Israel	17
4.4	EU vs. Member state foreign policy	18
4.4.1	Is there a conflict among the EU's and Member state approaches?.....	18
4.4.2	Commercial negotiations with Israel	19
4.4.2.1	France and Germany within the EU's common foreign economic policy on Israel	22
4.4.3	France and Germany within the Committee 133	25
4.4.4	Goods from Israeli Settlements – A special dispute	27
5.	Prospects for EU foreign economic policy-making.....	29
6.	Conclusion.....	30
6.1	Introduction.....	30
6.2	Main findings	30
6.3	Outlook	31
	Annex.....	32
	References.....	33

Table of Abbreviations

AA	EU-Israel Association Agreement
ACAA	Agreement on Conformity Assessment and Acceptance of industrial products
AP	EU-Israel Action Plan
CCP	Common Commercial Policy
EC	European Community
ENP	European Neighborhood Policy
EMP	Euro-Mediterranean Partnership
EP	European Parliament
EU	European Union
ROO	Rules of Origin
UfM	Union for the Mediterranean

Table of Figures

Figure 1: *The Principle-Agent-Model applied on commercial negotiations with Israel*

Figure 2: *Mechanisms of member state restrains towards EU foreign economic policy-making*

Figure 3: *Gross Domestic Product per capita in % of EU* (Source: WDI 2002, Worldbank, Commission staff calculation)

Figure 4: *European Union, Trade with Israel* (Source: Eurostat (2013))

Executive Summary

With the increasing importance of the European Union as an external economic actor this study deals with the EU's foreign economic policy towards the State of Israel.

The research question central to this study is:

(a) Is there a conflict between EU and Member State approaches to the foreign relationships with Israel? Are existing EU economic policies undermined by the national EPs of France and Germany?

Furthermore, the following sub question will be elaborated:

(b) What are the resulting prospects for EU-FEP policy-making?

Within this research the existing EU-Israel foreign policy framework is going to be analyzed. Subsequently, this study will outline the foreign relationships of France and Germany towards Israel and will compare its nature and direction indicating whether national and supranational policies are conflicting.

While applying the theories of *neo-functionalism* and *intergovernmentalism* including the influence of the *Principle-Agent-Model* and *Committee 133*, this study will also determine whether the EU's foreign economic policy is undermined by French and German approaches outlining different mechanisms of member state restraints.

Finally, this study shortly addresses the resulting prospects for EU foreign economic policy-making in general.

This study is following a descriptive conceptual research design which is based on the review of qualitative data. The research is carried out through the review of well-known experts of EU foreign policy-making, EU Economic policy, Israeli politics and International relations.

1. Introduction

The European Union (EU) stands out as an important actor for international economic governance as it is far larger than any other economic entity except the United States (US). Since the EU is still far away from being a classic state, but acts on behalf of 28 sovereign member states, foreign policy-making towards third countries is a complicated field of ongoing discussion and conflicts. During the last decades the EU has increasingly started to set itself ever more ambitious targets in common foreign policy-making. Yet, at the same time the member states still remain as independent entities formulating their own foreign policies according to their individual goals, specific regional interest and special relationships towards third countries.

This study focuses on the economic dimension of EU foreign policy meaning it will predominantly deal with EU foreign trade policy. Furthermore, it will deal with association agreements and other frameworks for bilateral co-operation. Regarding the division of competences concerning foreign trade policy, the EU conducts exclusive competences according to its *Common Commercial Policy* (CCP). The CCP implies the common treatment of trade relations towards third countries through uniform custom tariffs and a common import and export regime (Article 4, TFEU)¹. As the privileged actor in this field, the EU negotiates on behalf of the member states on the bilateral and multilateral level. Hence, only the EU and not individual member states can legislate on trade matters and conclude trade agreements towards third countries. Regarding association agreements, the EU has mixed competences sharing decision power with the member states due to a wider range of affected policy fields (Article 217, TFEU)².

Nevertheless, EU foreign policy-making is far away of being fully integrated. Although the EU conducts exclusive competences, the member states remain as a vital part of the decision-making process (Meunier, 2005, p. 2). As a consequence, the EU's external 'voice' is considered as frequently 'fragmented' and 'tentative in its expression' (Tonra & Christiansen, 2004, p. 1). Especially when dealing with conflict-affected countries, the EU and the member states do not have a coherent opinion about the nature and direction of foreign policies and initiatives (Tonra, 2011). The EU's enlargement in 2004 created a fully new neighborhood of states requiring the reconstruction of its external political and economic ties. According to Lavenex (2004), the EU faced the 'unprecedented challenge' to clearly define its foreign relations with its new neighbors playing a crucial role in the maintenance of the EU's stability.

This study will focus on the EU's economic relation to the State of Israel. Regarding the development of EU-Israel ties during the last fifty years, both actors established a considerable framework of bilateral agreements which foster scientific, technological and cultural co-operation (EU External Action Service, 2013). However, Israel remains a country creating political disagreement among the member states' governments which might cause conflicts on EU level in turn.

¹ Treaty of the Functioning of the European Union (TFEU), Art. 4, 2008

² Treaty of the Functioning of the European Union (TFEU), Art 217, 2008

2. Methodology

The following section will deal with this study's methodology elaborating the research question and case selection. Finally, this section will also state this study's limitations.

2.1 Why Israel?

In order to provide a clear introduction to this case, the following section will deal briefly with Israel's economic and political position and its relationship to the EU. The question about the EU's foreign relationship towards Israel is practically interesting. Israel indicates the highest GDP per capita among the countries of the *European Neighborhood Policy* (ENP) and the highest standards of living in the Middle East. According to the World Bank, Israel's Gross Domestic Product per capita of the EU (EU=100) amounts 79.9 reaching the highest score of all countries being part of the ENP (*Figure 3*).

Furthermore, the state provides a stable and functioning market economy. The EU is Israel's major economic partner with total trade amounting approximately € 29.6 billion in 2011. Moreover, the EU is the country's major source of imports (34.5 % of the import market) and the second-largest market for exports (26.1 % of the export market) only excelled by the United States. Considering the EU's trade balance with Israel, one can observe that both imports and exports follow an increasing trend. The import of Israeli goods into the EU increased from € 11.224 in 2008 to € 12.634 million in 2012. Considering exports from the EU to Israel, one observes an increase from € 12.062 to € 17.023 million in the same period (Eurostat, 2013). (*Figure 4*)

In addition, Israel is a leader in certain key technologies and a dynamic catalyzer for R&D, which could be highly relevant for EU-based companies and industries. According to the Israel Central Bureau of Statistics (2008), Israel's expenditure on R&D per capita is the third highest worldwide, following only Finland and Sweden. Hence, the need for a well-defined economic relationship between the EU and Israel seems strategically interesting.

Regarding Israel's foreign policy concerns one has to take the country's isolated political position within the Middle East into account. After the founding of the State of Israel, the country has been unable to trade with its direct neighboring countries due to the *Arab League Boycott to Israel*. Thus, the Israeli government started to focus on the European Community due to its geographical proximity, its large markets and its historical relatedness (Don Harpaz, 2008). As a consequence, Israel and the EU created an increasing network of economic agreements and co-operations .

However, since the end of the last century one observes a significant discrepancy between 'excellent economic ties' which are continuously deepening and increasing political tensions due to the *Arab-Israeli conflict* (Del Sarto, 2011, p.4). In fact, the EU's incoherent voice concerning this conflict has been demonstrated on the UN General Assembly vote on Palestine's status in 2012 when fourteen EU member states voted in favor, twelve abstained and one opposed (Kontorovich, 2013, p. 979).

Hence, the EU seems far away from a common approach to its relationship to the State of Israel. This discrepancy between a vibrant economic development and sensitive political relations emphasizes the distinctive character of these foreign relations.

2.2 Research question

Considering Israel as a conflict-affected country of the *European Neighborhood Policy* the EU's foreign economic relationship is particularly interesting. Due to the strong relation of economic and political interests and Israel's historical relationship to Europe, the EU member states might follow different foreign policies. Hence, this study will analyze foreign policy approaches by the EU, France and Germany in order to determine their direction and whether they are conflicting. Furthermore, the influence of EU member states within EU foreign economic policy-making will be elaborated in order to determine whether EUFP is undermined by national foreign economic policies by France and Germany.

Finally, this study will briefly outline the prospects of EU foreign economic policy-making in general.

This study addresses this particular topic and poses the following research questions:

- (a) *Is there a conflict between EU and Member State approaches to the foreign relationships with Israel? Are existing EU economic policies undermined by national foreign economic policies of France and Germany?*

Besides, this study also addresses the following sub question:

- (c) *What are the resulting prospects for EU-FEP policy-making?*

2.3 The cases of France and Germany

Next to the EU's foreign policy approach, this study will give attention to the French and German approaches. This choice represents two cases of member state foreign policy while involving the economic leaders of the *European Economic Area*. Moreover, France and Germany have not been chosen simply due to their economic influence within the EU, yet for their significant political motivations (Müller, 2011). France and Germany are supposed to differ within their political positions towards Israel which are briefly elaborated in the following:

2.3.1 France

Due to the historically close relation of France to the Middle East and its 'politique arabe', the country is considered as a rather Israel-critical member state (Moïsi, 1982, p. 395). Müller argues that the French government is acting rather 'sensitive to Arab concerns and Palestinian rights' (Müller, 2011, p. 391). In general, the French position towards Israel is characterized through two contradictory trends: On the one hand, there is a 'gradual process of improving bilateral relations', on the other hand, there are deep 'political divergences' of opinion creating political tensions among these two nations (Hershco, 2008). Especially, incidents such as the outbreak of the *Second Intifada*³ in September 2000 created 'severe deteriorations in Franco-Israel relations, essentially due to a French pro-Palestinian attitude' (Hershco, 2008). Also, during the last decades different French political parties called for economic and sanctions meaning to boycott Israeli products and universities (Gerstenfeld, 2003). Concluding, France can be considered as an EU member state following a rather critical foreign policy towards Israel.

³ Second Palestinian Uprising against Israeli occupation, 2000-2005

2.3.2 Germany

Germany's foreign policy towards Israel is characterized through reconciliation (Feldman, 1999, p. 333). As Israel's most important economic partner within the EU, the country is presumed to accentuate Israel's economic and social well-being (Müller, 2010). According to Cole (2011), Germany views its benevolent attitude as 'moral obligation' and 'historical responsibility for the Holocaust' (Cole, 2011, p. 59-70) which is a cornerstone of German-Israel relations. Germany is not solely paying economic compensations as mutually agreed in the *Luxembourg Restitution Agreement* in 1952, the German public and private sphere is known to be comparatively benevolent (Müller, 2010).

2.4 Limitations

The study's external validity is limited by the choice of a rather unique case. The EU's external relations towards Israel are comparably distinct which makes a comparison with other neighboring countries in the Middle East rather difficult. In addition, the case selection with regard to the member states' foreign relationship Israel is limited on two EU member states out of 28 possible cases.

The reliability of this study is limited through the focus on qualitative data. Moreover, qualitative data dealing with international relations may hold unobjective statements leaving room for interpretation.

3. Theoretical Framework

The purpose of this study is to determine whether there is a conflict between EU and member state foreign policy towards Israel and whether EU foreign economic policy is undermined by French and German economic policies. The following section considers theories and models conceptualizing the EU's and the member state's competencies to decide on foreign policy concerns.

Hence, this study is going to apply aspects of the *neo-functionalism* theory in order to provide a theoretical background for EU governance on the supranational level. As an addition to *neo-functionalism*, the *Principle-Agent-Model* is going to be elaborated. Next to these, it includes the *intergovernmentalism* theory in order to explain intergovernmental competences dedicating decision-making competences to the EU member states. Finally, this section will deal with the *Committee 133* as an intergovernmental instrument.

3.1 Supranational governance

3.1.1 Neo-functionalism

The first theory to be considered in this study is neo-functionalism. As the first attempt at theorizing regional cooperation between European states in the beginning of the European integration process, *neo-functionalism* remains as the most important theory when talking about supranational competences of the EU (Cini, 2010, p.81).

With the conclusion of the *Single European Act* and the creation of the *Single Market* in the 1980s economic and political cooperation became increasingly characterized through supranational governance. This study considers the renewed version of neo-functionalism meaning to apply the theory as a partial and not a grand theory explaining European integration (Cini, 2010, p.82). According to Stone Sweet and Sandholtz (1998), both supranational and intergovernmental tendencies are represented 'in the real world of European politics, they appear differently in different policy areas within the Union, so that some are characterized by intergovernmentalism, others by supranationalism.'

The same scholars argue about neo-functionalism as a 'transaction-based' theory focusing on an increasing level of transactions between the Member state, for instance in the fields of trade, communications and travel. According to these scholars, those transactions create a need for further supranational EU policies governing all MS. More generally, the neo-functionalist approach determines that the political decision power lies not on the national- but on the supranational level executed by supranational institutions (Haas, 1958). Considering the EU, this means that national states are hindered through the direction of supranational policies whenever the affected policy field is regulated according to a certain EU Treaty provision (Cini, 2010, p. 72-73).

Thus in case the EU's competences are supranational towards the EU member states, the Commission is able to decide on behalf of the latter. As a consequence the Commission is able to cultivate strong external ties on behalf of the EU member states.

Hence, if the EU's foreign economic policy framework towards Israel would be dominated by supranational EU policies, the approaches of the EU member states would be undermined. Therefore, the provisions of the EU foreign policy would be the only valid guideline in this field.

3.1.2 The Principle-Agent-Model

In the context of supranational governance the *Principle-Agent-Model* plays a crucial role. The Commission and the EU member states represent two actors standing in a contracting relationship to each other which can be illustrated through the *Principle-Agent-Model*. An agency relationship is defined by two parties, the *agent* and the *principle*; these parties shape such a relationship if they move into a contractual agreement. With the conclusion of a contractual agreement the principle is delegating responsibilities to the agent for carrying out certain functions or tasks on the principle's behalf. The actual problem within this approach is to motivate the *agent* to work in the best interest of the *principle* rather than working according to its own interests (Kassim & Menon, 2003, p. 122-124).

Although the delegation of power has been a crucial issue since the beginning of European integration, the Principle-Agent-Model has been applied first by Pollack in 1997 (Pollack, 1997). Considering the contractual framework of the EU towards its member states, *Principle-Agent ties* first of all exist between the Commission, the *agent*, and the national governments, the *principle*, when negotiating external policies. Additionally, there are several hierarchically organized *Principle-Agent ties* between *societal interest and voters to decision-makers, legislatures to executives* and finally between the *EU and International organizations* (Dür & Elsig, 2011, p. 324). Hence, the *Principle-Agent-Model* can be applied while explaining the execution of supranational governance in certain policy fields.

Based on these theories we could expect the following hypothesis:

The Commission is able to cultivate strong economic ties on behalf of the member states if Neofunctionalism and supranational governance dominate.

3.2 Intergovernmental approaches

3.2.1 Liberal intergovernmentalism

On the other hand this study considers the theory of *intergovernmentalism*. According to this theory the national states remain as the privileged actors within European integration (Cini, 2010, p. 87-90). Intergovernmentalism is characterized through state-centrism which means that 'Integration is driven by the interests and actions by the nation states' (Hix, 1999).

The theory claims that states are the key-actors in international affairs and bilateral relations are primarily executed through national authorities (Nugent, 1999). In the context of EU policy-making, intergovernmentalism implies the dominance of national policies. Hence, the Commission is limited by what the EU member states want to achieve and finally decide through the Council. Therefore, if a certain field is intergovernmental, the EU member states are able to act according to their individual national policies (Hoffmann, 1966).

3.2.2 The Committee 133 as an instrument for intergovernmental governance

Another relevant instrument that should be considered within this study is the so called *Committee 133* named after Article 133 TFEU⁴ on trade policy. The committee was established in order to provide an additional intergovernmental decision-making instrument for the EU's supranational competences on trade policy. It comprises trade experts from each EU member state and is appointed by the Council in order to consult the Commission in international economic and trade negotiations (Niemann, 2004, p. 388). As a subordinated body of the Council, it is functioning as a 'watchdog' over the Commission while dealing with foreign trade concerns (Ahearn, 2002). Although the committee is legally only a consultative body, it is de facto functioning as an adviser for the Commission.

The committee became an important partner of the Commission, which is communicating the Member states' views and interest to the Council. During its negotiations it is indicating how an agreement has to look like in order to be acceptable for the member states serving as the 'clearing house' for the Commission (Niemann, 2004, p. 388).

Nevertheless, the Commission is theoretically allowed to ignore the committee's recommendations and is allowed to hand in its proposals directly to the Council passing the *Committee of Permanent Representatives* (COREPER). According to Hayes-Renshaw and Wallace (1997), this almost never occurs since committee members generally have the same view as their ministers.

The *Committee 133* is chaired by the country currently holding the EU Council presidency. The EU presidency is able to determine the agenda for meetings. Thus, the particular government holding the presidency is de facto able to set new priorities or give particular projects new impulses (Meunier, 2005, p.35-35). In addition, there are subcommittees preparing the work for the main committee. These subcommittees deal with different trade fields such as textiles, services and steel. The *Committee 133* typically discusses until a consensus is achieved and no votes are published or recorded (Meunier, 2005, p. 35). Hence, the *Committee 133* plays a key role for the member states for taking influence on EU foreign policy-making.

Based on these theories we could expect the following hypothesis:

The Commission is limited by the actions and decisions of the EU member states' policies if intergovernmentalism and the influence through the Committee 133 dominate.

⁴ Treaty of the Functioning of the European Union (TFEU), Art. 133 (Ex Art. 113 EC), 2008

4. Analysis

The EU and Israel committed themselves to foster their economic and political ties since the establishment of bilateral relations in the 1950s (EU External Action Service, 2013). In order to research on a potential policy conflict this part will show the EU's economic framework of bilateral agreements with regard to Israel. Subsequently, the political and economic relations of France and Germany are illustrated as well.

Thereafter, it will be determined and evaluated how these policies are corresponding to each other and whether there is a conflict among EU and national level. In order to follow the question whether EU policies are undermined by French and German policies the influence of these countries within EU foreign economic policy-making is going to be elaborated.

4.1 EU foreign economic policy towards Israel

The EU is Israel's major economic partner with total trade amounting approximately € 29.6 billion in 2011. Moreover, the EU is the country's major source of imports (34.5 % of the import market) and the second-largest market for exports (26.1 % of the export market) only excelled by the United States (Eurostat, 2013).

Generally speaking, EU-Israel bilateral relations have a long history in terms of the EU's relations towards third countries. After establishing first diplomatic relations between the EU and Israel in 1959, both parties concluded non-preferential trade agreement in 1964, providing for a partial elimination of external tariffs duties on a limited number of products (Pardo & Peters, 2010, p. 47).

In 1975, both parties agreed on the establishment of a bilateral *free trade area* based on the *EC-Israel Cooperation Agreement* (Pardo, 2009, p. 52). With this step the EC and Israel eliminated existing import quotas, tariffs and introduced first trade preferences for manufactured products. Although the full implementation of this agreement was succeeded not earlier than 1989, Israel and the EU developed in between an ever-closer economic relationship characterized through a significant increase of imports and exports. Here, Israel took a privileged role among all Mediterranean countries outside the EU. Due to this fast development of economic interrelations the EU agreed on further reforms in order to upgrade existing bilateral economic ties (Pardo, 2009, p. 53). During the *Essen Summit* in 1994, the European Council proclaimed that 'Israel, on account of its high level of economic development, should enjoy special status in its relations with the EU on the basis of reciprocity and common interest' (Essen European Council, 1994).

As a consequence, the *EU-Israel Association Agreement* (AA) has been concluded, upgrading both economic and political co-operation. The agreement was signed in 1995 and entered into force in 2000 while replacing the earlier *EC-Israel Cooperation Agreement* of 1975. It involved a wide range of economic, political and social aspects (EU External Action Service, 2013). The AA is serving as the legal basis of today's bilateral relations including provisions on political dialogue, the freedom of establishment and liberalization of services, the free movement of capital, competition rules and the strengthening of economic cooperation and cooperation on social matters.

Today, there are two main bodies maintaining bilateral dialogue: *The EU-Israel Association Council* and the *EU-Israel Association Committee*. Furthermore, there are ten additional sub-committees which are based on the provisions of the European Neighborhood Policy Action Plan. These subcommittees are the committee of *Industry trade and services*;

Internal market; Research, innovation, information society education and culture; Transport, energy and environment; Political dialogue and co-operation; Justice and legal matters; Economic and financial matters; Customs cooperation and taxation; Social and migration affairs and Agricultural and fisheries.

Next to an economic dimension, the AA also includes the principles of the *United Nations Charter*, in particular the observance of human rights and democracy, forming the basis of their bilateral cooperation⁵.

The AA takes predominantly Israel's advanced level of economic development into account as it includes a large scale of provisions which are not part of other *Euro-Mediterranean Agreements*. It also includes provisions on the preparation of the reciprocal opening of government procurement markets and the mutual recognition of certificates and laboratory tests (Del Sarto & Tovias, 2001, p. 63). However, all these achievements since the establishment of the first bilateral economic ties only consider 'trade in goods' and leave 'trade in services' out of their scope.

In 1996, Israel became the first and so far only non-EU country participating in the *EU's fourth research and development program*. The program is the EU's major instrument for funding research and development projects and provides Israel the access to the European science community (Ahlsweide, 2008, p. 147).

In 2002, the EU began to reform its foreign policies towards its eastern and southern neighbors due to the upcoming EU-enlargement in 2004 (Lavenex, 2004). Through the establishment of the *Wider Europe Initiative* or better known as the *European Union Neighborhood Policy* (ENP), EU-Israel economic relations have been upgraded again. Following the EU's intention to create a 'ring of friends', the EU is stimulating the ENP initiative in order increase its neighbors' wealth and stability (Smith, 2005, p. 757). The ENP includes the *EU-Israel Action Plan* (2004) granting 'new energy and focus' to their bilateral ties (EU External Action Service, 2013). According to the Commission (2004), the AP aims to 'increase economic integration particularly with the EU, inter alia, by developing trade and investment flows, by liberalizing trade in services, in particular financial services with a view to preparing for participation in the EU market, as well as deepening and enhancing the existing economic dialogue and identifying areas relevant for regulatory approximation with EU legislation based on shared objectives'. Hence, the AP includes a major disregarded part of bilateral trade, the liberalization of 'trade in services'. However, these provisions have not been put into effect until today (Munin, 2010, p. 81). According to Herman, the AP between the EU and Israel is by far the 'most ambitious and advanced' agreement the EU has concluded with a neighboring country disregarding candidate countries (Herman, 2006, p. 375).

In 2004, Israel has been fully integrated within the EU's *Galileo Program* developing a *European Global Position System* fostering technological and scientific co-operation. (Herman, 2006, p. 374). In 2007, this field of bilateral ties has been upgraded through the *Agreement on scientific and technological cooperation* giving Israel's research institutes, universities and companies access to the *EU Seventh Framework Program* (EU External Action Service, 2013) Along with the declaration of the *Union for the Mediterranean* (UfM) and the *Euro-Mediterranean Partnership* (EMP or *Barcelona Process*) in 2008, the EU and all neighboring Mediterranean countries including Israel agreed on free trade for industrial

⁵ Euro-Mediterranean Agreement (EU-Israel Association Agreement), 21/06/200 Retrieved from: http://eeas.europa.eu/delegations/israel/documents/eu_israel/asso_agree_en.pdf

products (Del Sarto, 2011). Furthermore, both actors agreed on the conclusion of a new preferential trade agreement on the reciprocal liberalization of agricultural products, processed agricultural products and fish and fishery products in 2009 which entered into force in 2010⁶. The agreement is expected leading to a liberalization of 95 % in trade of all agricultural products (European Commission, 2009).

In order to support bilateral business cooperation, the EU ratified the *Agreement of Conformity Assessment and Acceptance of Industrial Products*⁷ (ACAA) as an additional protocol to the AA. It contains the recognition of Israel's industrial standards as equivalent to those in the EU. It contributes to the elimination of technical barriers of trade and simplifies the access of Israeli companies to the EU market (EU External Action Service, 2013). Thus, pharmaceutical products produced in Israel are allowed to be imported without any conformity assessments. These regulations are aimed to facilitate imports of 'high-quality, low-cost products' into the EU. The agreement is considered as Israel's first real step into the Single Market (Inbar, 2013 p. 17). In 2013, Israel and the EU signed the *Open Skies Agreement*⁸ liberalizing the bilateral aviation market in terms of routes and capacity. The agreement will come into effect in 2018 and will supersede existing ties between Israel and single member states (Commission, 2013).

In conclusion, the EU and Israel established a comparably strong framework of economic agreements which has been continuously upgraded since the beginning of their bilateral relations. Moreover, the Commission argues about the 'everything but institutions' concept which could 'fit well for a future model of closer bilateral ties' illustrating the EU's intention to further upgrade its integration with Israel (Commission, 2005). This statement and the rapid development of bilateral economic and political ties imply a dynamic process of the strengthening their bilateral relationship. Hence, the EU follows a distinctive foreign policy approach: The EU's foreign policy is characterized through its ambitious attitude to strengthen its economic ties, but also through its willingness to contribute to the resolving of the *Arab-Israeli conflict*. However, the latter seems hard to follow due to the member states' disagreement in regard to this matter. In the following, this study will argue about the French and German foreign relationships with Israel.

⁶ Council Decision 2012/.../EU Retrieved from:

<http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%207433%202012%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F12%2Fst07%2Fst07433.en12.pdf>

⁷ Council Decision 2013/1/EU Retrieved from:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:001:0001:0001:EN:PDF>

⁸ Council Decision 2013/398/EU Retrieved from

http://ec.europa.eu/transport/modes/air/international_aviation/country_index/doc/eu-israel_agreement.pdf

4.2 French foreign relationship with Israel

Political perspective

This section will deal with the French foreign relationship towards Israel focusing on the political and economic scene. Additionally, it will outline and summarize the existing bilateral ties between France and Israel.

According to Müller (2010), French foreign policy towards Israel is characterized through a rather changeful history. The nature and strengths of foreign policy has been highly dependent on the political party to be in power which led to several shifts in direction (Eytan, 2004). During the presidency of Chirac (1995-2007), France supported the Palestinian president Arafat during the first stages of the *Second Intifada* creating tensions among the two countries (Hershco, 2007). In contrast, Sarkozy's foreign policy with regard to Israel (2007-2012) is characterized through the improvement of bilateral ties (Veit, 2008, p. 36). In this context, Sarkozy stated that the traditional strong partnership with Arab countries needs to be counterbalanced with moderate Franco-Israeli ties (Terpan, 2010, p. 11) However, not only French foreign policy has been rather critical, also different groups called for economic boycotts or the freezing of bilateral co-operation. In 2009, French participants of the international campaign BDS⁹ comprised of leftwing politicians and members of the Arabic lobby called to boycott Israeli products including international corporations that do business in Israel, French branches of Israeli companies and French retailers selling Israeli products. Due to the campaign's comparably strong impact in France, the initiative led to a ruling by the *Cour de Cassation* declaring these actions as illegal since they constitute discrimination on the basis of nationality (Laval Mader, 2006, p. 445).

Economic perspective

France remains an important economic partner of Israel within the EU. In 2010, Israel imported goods amounting € 1.016 billion representing 3% of the country's total imports. According to this, France is Israel's 10th largest trading partner considering the member states as individual countries (Israel Central Bureau of Statistics, 2013).

The *France-Israel Chamber of Commerce* provides support and assistance to the business communities in Israel and France while facilitating and accelerating bilateral trade and investment among the two nations (France-Israel Chamber of Commerce, 2013).

Moreover, France and Israel try to boost bilateral economic cooperation among research institutes, universities and laboratories through the *France-Israel Industrial R&D Cooperation framework* which is based on an agreement concluded in 1992. Its aims to promote co-operation between the public and private sectors of both countries meaning to cooperate in developing and commercializing new products, applications or services (Israeli Center for Industry Center for R&D, 2013)

However, also these actions have been disputed during the past years. A respective number of French university boards called for a boycott of Israeli institutions, research centers and universities (Gerstenfeld, 2003). The prevailing motivation of these actions is to raise attention throughout the international community to Israel's ongoing violations of human

⁹ *Boycott, Divestment and Sanctions*

rights and international law (Rose & Rose, 2008).

In conclusion, the French approach to the foreign relationship to Israel is characterized through an incoherent direction. Though, the actual climate of French-Israel foreign relations is basically dependent on the political party being in power and the occurrence of political incidents among Israel and the Palestinians.

4.3 German foreign relationship with Israel

Political perspective

Germany's relationship to Israel may stand as a cornerstone of Germany's foreign policy and enjoys special consideration (German Foreign Ministry, 2013). Based on Germany's reconciliation policy, German-Israel bilateral ties have been continuously deepened since the establishment of first economic and political relations in the 1950s (Feldman, 1999, p. 333). The conclusion of the *Luxembourg Restitution Agreement* (1952) marked the beginning of bilateral economic relations between West Germany and Israel containing annual payments of financial means and manufactured goods.¹⁰ During the first years these payments became a vital part of Israel's economy compromising 87.5 percent of the state's income in 1956 (Lewan, 1975, p. 46).

Moreover, Germany's moral commitment to Israel became a vital part of the country's foreign policy. German policy initiatives towards Israel have been centered on compensations, military support, intelligence-cooperation and economic boost (Müller, 2010, p. 389). In addition, Cole argues that Germany has often used its own strong ties with Israel to 'bridge the distrust and distance between Europe and Israel' making Germany Israel's most ardent supporter on the continent (Cole, 2011, p. 54).

According to Müller (2010), German governments have generally opposed to link further economic integration on Israel's conduct within the *Arab-Israeli Peace Process*. In this context, Germany's foreign policy distinguishes between economic and political relations (Müller, 2010, p. 400). In order to boost bilateral trade and economic cooperation the *German-Israel Intergovernmental Consultations* was initiated. The focus of this annual governmental conference of German and Israeli politicians and industry representatives remains on stepping up bilateral cooperation while focusing on the renewable energy sector, the transport sector and infrastructure projects (German Foreign Ministry, 2013). Global campaigns as the BDS also have participants in Germany but did not lead to any substantial incidents or rulings. The rise of critical voices on the political level seems comparably low.

Economic perspective

Considering Germany as an individual actor, the country is Israel's most important economic partner throughout the EU. In 2012, Israel imported goods amounting € 3.657 million representing 7% of its total imports. Also Germany is Israel's third largest importing country worldwide only exceeded by the United States and China (Israel Central Bureau of

¹⁰ Luxembourg Restitution Agreement, 1952, Retrieved from: <http://dip21.bundestag.de/dip21/btd/01/041/0104141.pdf>

Statistics, 2013). Bilateral relations between Israel and Germany also contain an increasing number of technological and scientific cooperation projects. The basis for this economic and industrial cooperation is the *Agreed Minutes of the German Federal Ministry of Education and Research and of the Office of Chief Scientist of the Israel Ministry of Industry, Trade and Labor* which was concluded in 2000. The target groups for this initiative are small- and medium-size companies as well as research institutes (Israeli Industry Center for R&D, 2000). According to the German Foreign Ministry (2013), active cooperation in science and technology gives ‘bilateral economic exchange additional impetus’. Similar to the French approach, Germany initiated a legally independent business community addressing the Israeli market through a particular organization: The *German-Israel Chamber of Commerce* intends to support bilateral cooperation focusing on public and private actors in both countries (German Foreign Ministry, 2013).

Concluding, Germany’s approach to the foreign relationship with Israel seems less contested than the French approach. Concrete programs issued by the German government strengthen the German-Israeli relationship since the establishment of bilateral relations. Hence, Germany’s foreign policy approach seems to follow a trend characterized by increasing economic corporation and partnerships which is less affected by national and international politics than the French approach.

4.4 EU vs. Member state foreign policy

4.4.1 Is there a conflict among the EU’s and Member state approaches?

After reviewing the EU’s foreign economic relationship to Israel we can immediately determine that the EU is regulating all external economic activities. As an exception, agreements dealing with scientific and technological corporation have been concluded on both national and European level. Apart from that, the majority of bilateral ties of France and Germany are supplemental and supportive to the EU’s regulations.

The EU’s approach to the foreign relationship is characterized through Israel’s gradual integration into the common market by the conclusion of far-reaching preferential economic agreements. EU-Israel ties seem to be comparably strong in relation to other countries of the ENP. Besides, also their historical relatedness, Israel’s politically isolated position in the Middle East and the share of democracy as a common basic principle seem to play a major role. In fact, it also seems that Israel is often treated in a special way being allowed to enter EU programs and co-operations exclusively or earlier than other neighboring countries. Overall, the EU’s ties with Israel seem comparably sophisticated among the EU’s ties with other countries of the ENP and among its foreign relations to third countries in general.

Nevertheless, the relationships of France and Germany to Israel are not as coherent as the European approach. In fact, the member states’ relationship to Israel differs with regard to the EU’s approach. The French foreign relationship towards Israel seems to be rather incoherent in its direction. Considering the history of bilateral ties among the two countries, the direction of French foreign policy seems to be highly dependent on the political party being in power. In general, the French approach has been strongly affected by the country’s relations to the Arabic world and the comparably influential Arabic lobby. For one thing,

France introduced policies boosting economic and business corporations among the two countries. On the other hand, a number of incidents such as the *BDS campaign* and the call for an academic boycott towards Israeli universities and research institutes enforced significant political discussions within the country and required a ruling by the highest French court.

Germany is Israel's most important economic partner among all member states. The German approach seems to be highly influenced by the German-Jewish history, especially the Shoah, indicating a comparatively benevolent policy structure of government programs and less contestation among political parties and groups. Hence, the direction of Germany's Israel policy seems less dependent on the political party being in power but rather as a vital part of Germany's general foreign policy.

Comparing the French foreign policy approach to the EU's approach one can observe a conflict within its degree of recognizing and criticizing Israel's violation of international law. More specifically, the EU seems less sensitive to political incidents with regard to its policy approach towards Israel. In addition, both approaches differ in the efforts and willingness made to boost further integration. France seems to be less in line with the EU's significant efforts to integrate Israel into EU frameworks. Hence, one can argue about a conflict among the French and the EU's approach with regard to Israel.

Comparing Germany's approach to the foreign relationship with the EU's approach one can argue that the former is more or less in line with the latter. Both the EU and Germany seem rather liberal and ambitious to strengthen its bilateral ties and grant Israel entrance to the European community programs. The foreign policy made on EU level seems to be a comprehensible foreign policy framework with regard to Germany's foreign policy approach.

However, since this study also aims to find out whether EU's economic policy towards Israel is undermined by German and French policies, the actual policy-making process on the EU level is going to be analyzed. Since the EU member states are able to directly influence foreign policy-making through the Council and the *Committee 133*, there are two possible ways to restrain the common foreign policy initiatives by the EU. How these competences are exactly divided and whether EU foreign economic policy is undermined by member state policies of France and Germany is going to be elaborated in the following.

4.4.2 Commercial negotiations with Israel

Reflecting the two competing hypotheses this section will elaborate whether EU foreign economic policy is undermined by German and French foreign policies when negotiating with Israel.

In this context, this study's hypotheses indicate two possible outcomes based on the chosen theory. On the one hand, the Commission might be able to cultivate strong economic ties on behalf of the member states if Neofunctionalism and principle-agent ties dominate. On the other hand, the Commission might be limited by the actions and decisions of the EU member states' policies if intergovernmentalism and their influence through the *Committee 133* dominate.

Following this approach, this section is going to outline the influence of the member states during EU foreign policy-making. First of all, the general division of competences is analyzed while indicating the role of both, Council and Commission, according to the *Principle-Agent-Model*. Moreover, it will argue about the balance of power according to different scholars dealing with this field of research. Subsequently, this section will analyze

the negotiation processes of certain bilateral agreements between the EU and Israel while indicating the power of France and Germany to undermine the Commission's actions.

The economic framework among the EU and Israel is regulated through the EU's regulations on foreign trade policy. The majority of these agreements are organized as the EU's *Common Commercial Policy* (CCP). According to Woolcock (2005), foreign trade policy is a field in which the EU, as opposed to the member states, has considerable influence on the international scene based on its exclusive competence for trade and the size and depth of the *Single European Market*. The scope of these competences not only cover trade in goods but also trade in services, commercial aspects of intellectual property and foreign direct investment. EU external economic policy-making relies entirely on the 'Community method', in which the 'Commission makes proposals, the member states decide and the Commission executes' (Baldwin, 2006, p. 928).

The Commission is the central body which is entitled to negotiate with the trading partner on behalf of the member states. It represents the *agent* which is authorized by the Council representing the member states and serving as the *principle*. The negotiation process of commercial agreements is conducted through the Commission, the Council (Known as *Foreign Affairs Council* since 2009) and the EP. Council and EP are finally empowered to approve the agreement in order to take into effect. Before starting negotiations on a trade agreement, the Commission has to request *formal authorization* from the Council which is also setting out the objectives to achieve and the directives to be followed. This 'negotiation mandate' is granted by the Council's decision applying qualified majority or unanimity. The number of votes necessary for an approval is dependent on the type of commercial agreement (Meunier, 2005, p. 35). The approval of a GATT (General Agreement on Tariffs and Trade) requires qualified majority. Since the *Treaty of Amsterdam*, all other types of trade agreements require unanimity in order to authorize the Commission to engage. This applies with regard to TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) and GATS (General Agreement on Trade in Services). Moreover, during the negotiations with the external trading partner, the Commission is required to regularly report about the process to the Council and the EP (Commission, 2013). In addition, the Council may formulate new directives for the Commission as trade negotiations already began. Hence, in case the Commission is acting in a way the Council does not agree with, it has the right to intervene (Reichert & Jungblut, 2007, p. 409). When negotiations between the Commission and the trading partner have been completed, the former forwards a policy proposal to the Council and the EP. Subsequently, the Council approves the results of the negotiations by qualified majority or unanimity (Again this depends on the type of agreement) after receiving consent from the EP (Dür & Elsig, 2011, p. 325). As a final step, Council and EP also prepare the proposal for its ratification and conclusion. Along with the ratification of the *Lisbon Treaty* in 2009, the consent of the EP became a compulsory step within the conclusion of trade policy.

Regarding the conclusion of association agreements with third countries, the Council has to decide unanimously as well meaning that every member state has to approve the agreement before it can be ratified (Article 310 TFEU)¹¹. The ratification on national level follows individual mechanisms depending on the legislation of the member state.

Considering the negotiation process of EU foreign policy, the Council embodies the intergovernmental approach; meaning it represents national interests of the member states (Meunier, 2005, p. 33). The Commission follows supranational interests and is formally the

¹¹ Treaty of the Functioning of the European Union (TFEU), Art. 310, 2008

active decision-maker when negotiating on trade policy. However its decisions are strongly supervised by the Council. Due to the requirement of a negotiation mandate and the final approval by the Council, the Commission retains in most of the cases under strong political control of the member states (Meunier, 2005, p. 34). Baldwin describes the regulations of Article 133 TFEU as a system that does not ‘give all the power to the Commission’ (Baldwin, 2006, p. 92). Hence, the Council is empowered to shape foreign policy-making both in the beginning and within the conclusion of an agreement. In contrast, Vahl describes the relationship between the Council and the Commission as a ‘mutual constraint’. Member states tend to control and limit the Commission due to its influence as agenda-setter and approving body. Nevertheless, the Commission does not restrict itself to being the *agent* of the Council by only following the Council’s agenda and directives. Accordingly, the Commission also follows its own supranational preferences which might counter the *principle’s* directives (Vahl, 1997, p. 257). In general, the balance of power between Commission and Council seems also dependent on the individual case and the type of agreement being negotiated.

Concentrating on the principle-agent-relationship between the Commission and the Council, the Commission holds a considerable independence from national political pressures due to the appointment of individual commissioners (Reichert & Jungblut, 2007, p. 412).

This fact contributes to the Commission’s role as the supranational stakeholder within trade policy-making. On the other hand, the Council retains a strong controlling body of the Commission. Especially, the *Committee 113* as a subordinated body seems to ensure constant monitoring during negotiations. The fact that the Council is empowered to alter the Commission’s negotiation mandate at any point of time contributes to this assessment.

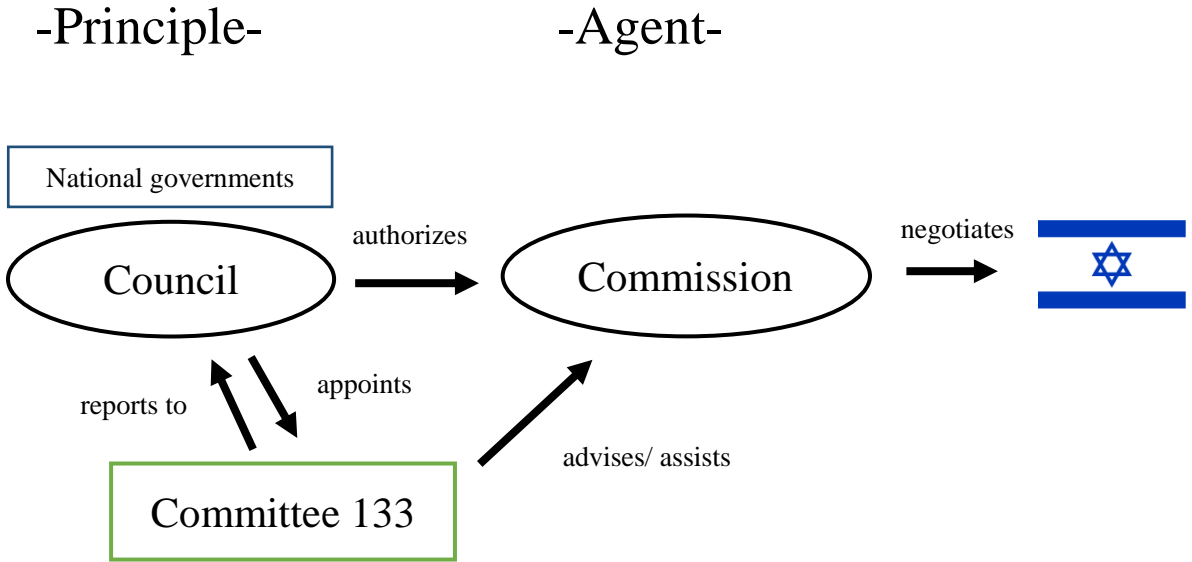


Figure 1: The Principle-Agent-Model applied on commercial negotiations with Israel

In order to argue about the extent of French and German support or hindrance to the Commission’s negotiations with Israel, these mechanisms are going to be applied on concrete EU policies on Israel.

4.4.2.1 France and Germany within the EU's common foreign economic policy on Israel

EC-Israel Cooperation Agreement (1975)

Regarding the negotiations of the first cornerstone of EU-Israel bilateral relations, the *EC-Israel Cooperation Agreement*, one can argue about a rather smooth negotiation process. The EC aimed to negotiate a package deal with Spain, Morocco, Algeria, Tunisia, Malta and Israel for which the EC member states held different preferences. According to the Jewish Virtual Library (2008), France gave all its support to Spain and the North African countries while stressing out its friendship with the Arab countries. Previous to the agreement's negotiation, French foreign Minister Schumann stated that every preferential treatment offered to Israel must be offered to any Arab country as well. In contrast, Germany stressed its interest to integrate Israel into the EC's economic area while helping to remove obstacles during the Commission's negotiations.¹² However, since the agreement has been almost exclusively an economic achievement, the negotiations seemed less affected by political incidents. In fact, the EC did not have a political position on the *Arab-Israeli conflict* in the 1970s (Terpan, 2010, p.2). This condition seems to have contributed to a lower degree of disagreement and contestation among the member states.

Israel's Call for 'Special Status' and European Council Meeting 1994 (Essen Summit 1994)

Previous to the *Essen Summit*, Israel aimed to revise its institutional framework with the EC as a reaction to the EC's Southern enlargement and the *Single European Act*. Through the entry of Greece (1981), Spain and Portugal (1986), Israel's main competitors to the EC's import markets have been exempted from any external tariffs (Ahlsvede, 2008, p. 116). In this context, Israel sought to upgrade its economic ties in order to secure its competitive position. Following this, the EC discussed to anchor Israel institutionally to the EU similar to its ties with EFTA countries (Tovias, 1998). However, these discussions led to no concrete actions or negotiations. The Commission followed the French position arguing that Israel could not be 'singled out for special treatment'. French foreign minister Dumas stressed out that these actions could have negative repercussions for the EC's relations with other Mediterranean countries (Tovias, 1998).

Nevertheless, during the *Essen Summit* in December 1994, the European Council decided that Israel should enjoy 'special status' within the EU's accession strategy (Pardo, 2009, p. 53). The fact that the summit has been under German EU presidency seems to demonstrate the country's support to upgrade the EU's ties with Israel. Subsequently to the summit's conclusions, the negotiations of the *EU-Israel Association Agreement* as part of the EU's Mediterranean Policy have been initiated.

The EU-Israel Association Agreement (1995)

In terms of the EU's bilateral economic ties with Israel, the *EU-Israel Association Agreement* (1995) is the central legal basis of all economic activities. Regarding this policy's ratification process, one observes a significant delay of almost four years before it could enter

¹² Jewish Virtual Library, The European Community. Retrieved from:
http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0006_0_06146.html

into force. Whereas almost all actors gave their approval until 1997 (The EP, the Knesset and almost all 15 EU member states), the Council's ratification has been blocked by the refusal of the French National Assembly to take a decision on the agreement. The French government aimed to delay the ratification process in order to put pressure on Israel to fulfill its obligations with regard to the *Arab-Israeli Peace Process* (Liew, 2005, p. 63). Following this, the French refusal also seems to coincide with Chirac's distant Israel policy. Contrary to France, Germany has been among the first states ratifying the agreement after the Bundestag has given its consent in early 1997¹³. Moreover, Müller argues that Germany played a 'critical role' within the AA's negotiation (Müller, 2011, p. 393).

Finally, France hindered the Commission's plan to conclude the agreement in January 1997 (Commission, 1995). However, France eventually decided to ratify the AA in 1999. Consequently, the French hindrance only led to a delay and not to the policy's fail. The fast approval of the German Bundestag and Germany's 'critical role' within the negotiation process seems to show coherent support of the German government.

EU framework for Research and Development (1996)

The EU's decision to grant Israel 'special status' has been reflected in the countries association to the *EU framework for research and development*¹⁴ (Sadeh, 2010, p. 29). During the negotiation process, Germany has been Israel's 'chief advocate' (Müller, 2010, p. 393). Today, Germany's support is reflected through a large number of German-Israeli co-operations representing the majority of projects between EU member states and Israel (German Federal Ministry of Education and Research, 2012).

The EU-Israel Action Plan (2004)

The *EU-Israel Action Plan* as part of the *European Neighborhood Policy* is next to the AA the cornerstone of EU-Israeli economic relations including provisions on *free trade in services* (Munin, 2010, p. 82). The policy is legally based on the AA meaning that a new ratification process has been not required (Herman, 2006, p. 372). This fact offered greater flexibility to the EU in general and to the Commission following supranational interests in particular. In fact, by not altering the existing bilateral agreements, the Commission is more powerful and less dependent on the Council and the EP for receiving a 'negotiation mandate' (Herman, 2006, p. 373). Hence, regarding this study's context the Commission has been able to upgrade its ties without consultation of the member states. As a consequence, French and German policies have not been able to affect or undermine the policy-making process due to the EU's strategic decision to base the new agreement on an already existent and ratified agreement.

¹³ Beschlussempfehlung und Bericht des Ausschusses für Wirtschaft. 10/04/1997 Retrieved from: <http://dip21.bundestag.de/dip21/btd/13/073/1307393.pdf>

¹⁴ Agreement on Scientific and Technical Cooperation between the EC and Israel. Retrieved from: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=676>

The ACAA (2010)

The *Agreement on Conformity Assessment and Acceptance of Industrial Products* (ACAA), a commercial agreement on pharmaceutical products, has been signed in 2010 and entered into force in January 2013. During the negotiation process, the Commissioner for External Relations Ferrero-Waldner argued to separate the EU-Israel economic relationship from the political dimension in order to ensure an unhindered ratification¹⁵. This statement seems to demonstrate the Commission's wish to conclude the agreement without the interaction of political objections by the member states. Thus, different political groups in both France and Germany (Most leftwing politicians) highly criticized the conclusion of the ACAA with regard to Israel's actions in the Gaza strip¹⁶.

Finally, the Commission's proposal has been ratified by the Council in November 2012¹⁷. Also, the EP ratified the agreement by a narrow majority in 2012¹⁸ after the debate has been blocked for nearly two years (Inbar, 2013, p. 17). Both, France and Germany supported the agreement's conclusion through their ratification within the Council.

Arguing about the potential power of France and Germany to undermine the EU's foreign economic policies with regard to Israel, the regulations of Article 133 and 310 TFEU imply the Council's right to reject a trade agreement negotiated by the Commission. Overall, the member states are strong actors within negotiations influencing and monitoring the Commission during the whole process. The rejection of a single member state within the Council is able to freeze the whole process when negotiating an association agreement, a GATS or a TRIPS. In contrast, a simple trade agreement dealing with the liberalization of tariffs (GATT) only requires the Council's qualified majority. Hence, in this case single member states are not able to reject the agreement (Reichert & Jungblut, 2007, p. 409).

Regarding the EC's negotiations in the 1970s, one can argue that France and Germany seem to differ in terms of their preferences but the final agreement has been concluded without any significant problems. Considering Israel's efforts to achieve an EFTA-like status, the Commission followed the critical French position. However, this cannot be classified as an undermining, since the discussions have been still rather informal. Concentrating on the *EU-Israel Association Agreement*, the French opposition to the EU's foreign policy finally led to the delay of the ratification process. Regarding the conclusion of the *EU-Israel Action Plan*, the EU's approach increases the Commission's power and flexibility and limits the member states' influence to its codetermination on the previous agreement. According to Herman (2006), this attitude to introduce new policies over existing ones, without 'discarding old and occasionally irrelevant policies' is a common decision to avoid time-consuming, costly and incalculable ratification processes (Herman, 2006, p.4). All remaining agreements between the EU and Israel do not show any significant undermining approaches during the

¹⁵ Palestine Papers, Memorandum 14/10/2009, Retrieved from: <http://transparency.aljazeera.net/files/4872.PDF>

¹⁶ Die Linke im Europaparlament: 'ACAA zwischen EU und Israel – ein falsches Signal zur falschen Zeit' Retrieved from: <http://www.dielinke-europa.eu/article/8276.acao-zwischen-eu-und-israel-ein-falsches-signal-zur-falschen-zeit.html>

¹⁷ Council Decision 2012/11/EU Retrieved from: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:001:0001:0001:EN:PDF>

¹⁸ EP Decision, 20/10/2012 Retrieved from: <http://www.europarl.europa.eu/oeil/popups/printsummary.pdf?id=1244934&l=en&t=F>

negotiations process, neither by France nor by Germany.

After reflecting the particular influence of France and Germany on concrete EU foreign policies one can observe a slight tendency of French hindrance and German support. However, regarding this study's scope, this statement cannot be sufficiently proved. Nevertheless, there are a number of cases when France tried to undermine the common EU foreign policy, but finally did not complete or succeed. Germany, in contrast, remains in all cases a clear supporter for further economic integration with Israel and supports or even boosts the EU's approaches during negotiations.

In conclusion, there has been no undermining by France and Germany of EU foreign policy with regard to Israel although they have been technically able to do so. Hence, the Commission has been able to conclude its external agreements even though France did not fully comply with the common policy in some cases.

Next to policy conflicts occurring in line with the formal division of competences, there have been several disputes how to interpret these competences during the last decades. Most of these conflicts occurred due to the lack of a clear definition of *trade policy* within the *Treaty of Rome*. However, through the provisions of the *Treaty of Amsterdam* (1997) and the *Treaty of Nice* (2001) the EU finally made explicit that the competence of the negotiation and conclusion of agreements relating to trade, services and intellectual property rights is exclusively supranational (Dür & Elsig, 2011, p. 326).

However, the Council is not the only instrument for the member states to restrain EU foreign policy-making. Also the *Committee 133* is a vital part of negotiations. The role of France and Germany within this committee is going to be elaborated in the following section.

4.4.3 France and Germany within the Committee 133

Through the *Committee 133* EU member states are able to influence EU-level-policy-making before the actual negotiation process starts. But how far does this influence go in practise? In order to argue about the influence of this committee, the procedure is shortly reconsidered in the following: As a general regulation EU trade policy concerns have to be discussed within the *Committee 133* and in certain cases within the *General Affairs and External Relations Council* (GAERC). Only after fulfilling this step, the Council can authorize the Commission to start negotiations on a certain economic agreement with a third country. Although foreign economic policy falls under the EU's exclusive competences, the member states have indirect influence through the *Committee 133* in which they are consulted by the Commission. The latter can use the committee as 'a sounding board to ensure that it is on the right track' (Shaffer, 2003). Hence, every proposal passed by the Commission to the Council already includes intergovernmental interests by the member states. Kiewiet & McCubbins argue that the existence of the Committee 133 prevents the Commission from withholding information and acts from the Council. (Kiewiet & McCubbins, 1991, p. 25)

Since the deliberations of the committee are not published, this study considers France's and Germany's particular influences and common attitudes based on scientific sources. In practice, the interest of the EU's economic leaders tends to play a privileged role within the committee (Mildner, 2008, p. 649). French representatives of the *Committee 133* are required to report to the French government about any positions and decisions made. This regulation of French law may increase the control of the French representatives through the French government. When talking about liberalizing trade barriers. France is known to be as one of the most non-liberal countries among all EU member states. Besides, the country tends to consider itself as a 'backbone' for EU trade policy delimiting the positions of the liberal

member states (Woolcock, 2005, p. 15). Especially, France has shown major critics on the achievement of the *Common Agricultural Policy* (CAP) which is considered as 'gone too far' (Baldwin, 2006, p. 931). Hence, France seems to be an influential member within the committee representing a rather conservative attitude.

According to *Agreement between the Bundestag and the Federal Government on cooperation in matters concerning the EU in implementation on section 6 of the Act on cooperation between the Federal Government and the Bundestag in matters concerning the EU*, the German government has to inform the German parliament about the process and positions taken within the *Committee 133*. Similar to the French regulation, the German approach might increase control over the Commission's foreign policy concerns.

In contrast to France, Germany tends to act rather liberal when negotiating on foreign trade concerns. According to Woolcock (2005), the German position is generally 'liberal on trade in goods, but less so in the 'liberalization on agriculture and services' when negotiating within the *Committee 133*. Furthermore, Baldwin considers Germany as one of the committee's 'swing states' determining process and direction of foreign trade negotiations. He also argues that 'What do the Germans think?' is a key question in nearly every debate emphasizing that Germany takes a preferential role. This circumstance is primarily based on the fact that Germany's foreign trade accounts more than the half of the EU's total international trade.

Since protocols of committee meetings are not published one can only estimate whether French and German committee members constrain the EU's foreign trade approaches towards Israel within commercial negotiations. Both, Germany and France seem to have significant influence on the committee's discussion. Nevertheless, Meunier is arguing that the committee almost never agrees without a final vote based on qualified majority. As a consequence, it might be rather difficult for a single member state to restrain the committee's decisions. Apart from that, the committee retains a consultative body meaning that the Commission is not obliged to follow the committee's proposal. Elsig even argues that the *Committee 133* does not have any decision-making power in practice. The committee may only modify minor technical points of the Commission's negotiating mandate (Elsig, 2002, p. 33).

Concluding, the exact influence of France and Germany within *Committee 133* is ambiguous. Also the committee's overall influence seems to be dependent on the individual agreement being negotiated. The question whether French and German foreign policies undermine EU foreign policies with regard to Israel through the *Committee 133* is consequently hard to determine.

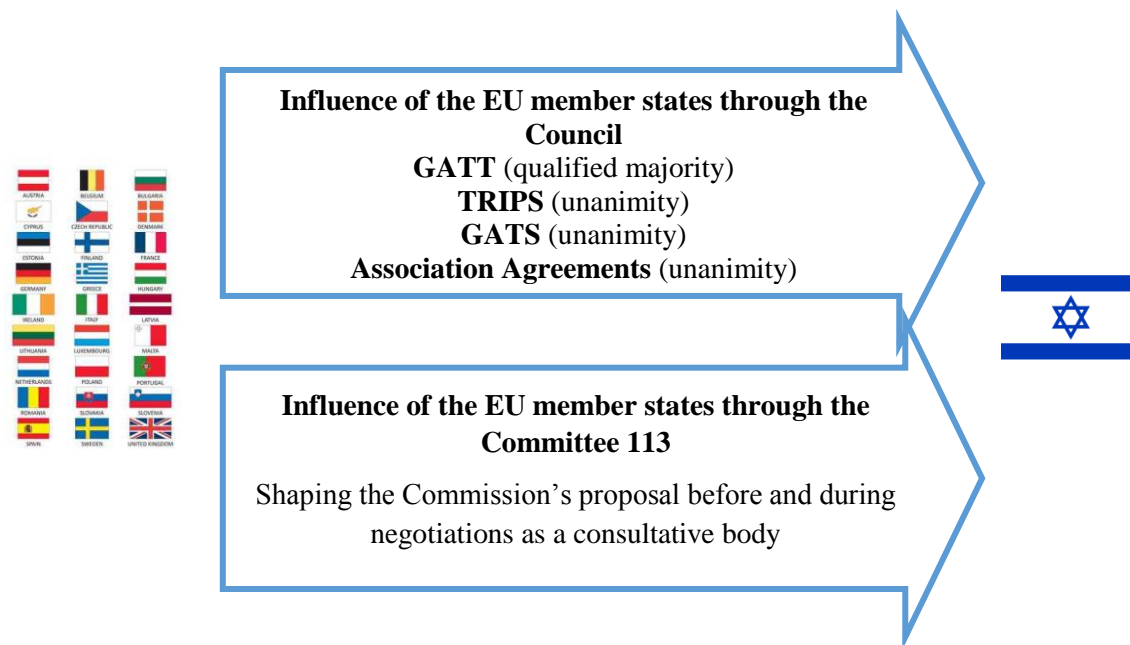


Figure 2: Mechanisms of member state restraints towards EU foreign economic policy-making¹⁹

4.4.4 Goods from Israeli Settlements – A special dispute

When dealing with foreign economic policy towards Israel one has to take the country's complicated political situation into account. Israel's geographical borders are contested within the international community, meaning that certain regions are not recognized as part of the State of Israel. The EU considers Israeli settlements beyond the green line in the West Bank, the Golan Heights and East Jerusalem as illegal under international law (Alpher, 1998, p. 84). This basically legal and political dispute is also affecting bilateral trade between the EU and Israel. Since the Israeli government promotes industrial location and economic development throughout its settlements, there are an increasing number of companies exporting their products to the EU (Hauswaldt, 2003, p. 599).

The actual dispute concerns the interpretation of the *EU-Israeli Association Agreement*. The AA provides free trade to products 'produced or substantially modified' within Israel (Protocol 4 of the AA). Since this formulation can be interpreted in different ways a conflict about the *Rules of Origin* (ROO) of goods produced beyond the green line occurred. The ROO determine the 'nationality' of a product for custom purposes (Gordon & Pardo, 2013, p. 109). ROO distinguish between preferential and non-preferential goods stating which goods are eligible and which goods are not eligible for preferential trade agreements. Regarding Israel, this means that there is a difference between goods produced in Israel and goods produced in the settlements of the West Bank, the Golan Heights and East Jerusalem.

After a bunch of legal conflicts how to interpret the *EU-Israel Association Agreement* which exempts Israel from custom duties, the Commission decided that goods produced in the settlements do not fall under the AA's scope. Hence, these products are not qualified for

¹⁹ GATT (General Agreement on Tariffs and Trade); GATS (General Agreement on Trade in Services); TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) according to the WTO

preferential treatment according to the AA or any certificate issued by the Israeli government declaring a certain production location as a part of the state. Consequently, the EU is imposing tariffs on these goods (Gordon & Pardo, 2013, p. 110). The decision was made by the European Court of Justice as a response to *Finanzgericht Hamburg*²⁰. Since this case required the interpretation of an existing agreement, the Commission had the capacity to rule independently meaning without consultation of the Council or the EP.

Although the Commission finally decided on this dispute, the national governments of the member states still hold different views on this subject. Thus, certain EU member states continuously discuss concrete political actions, as imposing sanctions or to generally boycott Israeli products (Müller, 2011). Germany has been a clear opponent to any economic sanctions against Israel, as it was called by the EP as a reaction to Israel's military *Operation Defensive Shield* in the Palestinian territories in 2002 (Müller, 2011, p. 393).

Concluding, one observes disagreement among the EU, the member states and private actors how to deal with the economic relationship to Israel and whether there should be more consideration on imposing economic sanctions. In the context of EU economic policy-making, this case implies general requirements for the conclusion of policies with regard to Israel: In order to avoid any legal actions from private actors or member states all recent commercial agreements contain a provision excluding economic activities within the West bank, East Jerusalem and the Golan Heights from any preferential treatment.

²⁰ *Brita GmbH v Hauptzollamt Hamburg-Hafen*, Judgment in Case C-386/08, 25/02/2010

5. Prospects for EU foreign economic policy-making

Although this study only considers a rather small scope we can argue about certain prospects for EU foreign economic policy-making. Due to the EU's exclusive competences in its *Common Commercial Policy*, the supranational Commission dominates foreign economic policy towards third countries. Although there is disagreement between EU and member state approaches to the foreign relationship with Israel, the EU is acting according to a rather independent foreign policy towards Israel. This attitude is characterized through an economically oriented action plan liberalizing bilateral trade and cooperation.

After analyzing the EU's foreign economic policy with regard to Israel, the Commission's disposition of foreign economic policy seems to be rather liberal. Moreover, it seems much less affected by political motivations and incidents than national governments. Brügge (2010) argues about an exceptionally depoliticized nature of EU trade governance. As a consequence, one can argue that EU foreign policy-making seems primarily economic and business oriented. According to Brügge (2010), the Commission remains as a political body which is primarily 'driven by economic and business interests' liberalizing trade barriers in order to increase the EU's access of international market. In this context, the EU follows different strategies, such as the 'Market Access Strategy' of 1996 focusing on service liberalization, trade and investment and government procurement. This strategy has been upgraded by the 'Global Europe' Strategy in 2006 (Brügge, 2010, p. 4).

Concentrating on the overall development of EU-Israel bilateral ties in relation to the history of the Arab-Israeli conflict, it seems that the final conclusion of economic agreements is rather independent from any militant or contested occasion within Israel. Especially within the 1990s, economic integration has been increasingly accelerated through new preferential agreements. In the same time, Israel has been involved in certain military actions against the Palestinians creating criticism across the international community. In this respect, the EU did not suspend any economic agreements, even at their lowest point of bilateral relations during the *Second Intifada*, and although the EP and member state governments called to do so (Herman, 2006, p. 391).

6. Conclusion

6.1 Introduction

The following section will conclude about the main findings of this study. This research is aimed at answering the question whether there is a conflict between EU and Member state approaches to the foreign relationship to Israel. In addition, it was asked whether EU foreign economic policies are undermined by the foreign economic policies and initiatives by the EU member states France and Germany. Finally, this study asked what might prospect for EU foreign economic policy-making.

6.2 Main findings

Considering this study's first basic problem asking whether there is a conflict among the EU's and the member states' approaches to the foreign relationship to Israel, we can argue about the following findings. After reflecting the foreign policies of the EU, France and Germany it seemed that the EU's approach implies a constantly deepening bilateral relationship indicating strong willingness to upgrade economic and political co-operation. In fact, EU-Israeli economic relations seem to be rather strong in comparison to the EU's ties with other countries of the *European Neighborhood Policy*. The EU's approach seems very much in line with Germany's benevolent and sophisticated foreign policy. The French approach in contrast seems to be less linear and more critical. The rather distant stance of France towards Israel conflicts with the EU's liberal motivated efforts to integrate Israel economically and politically within the EU.

Addressing this study's major problem, the division of competences in foreign commercial negotiations, one can argue about the following findings: In order to answer whether the EU's foreign economic policy with regard to Israel is undermined by French and German foreign policy, this study analysed the policy-making process of EU external ties. Within this process the Commission and Council represent the *Agent* and *Principle* while the former serves as the active negotiation partner of the third country and the latter as the agenda setter and controlling body. The intergovernmental Council represents the national interests of the member states whereas the Commission follows supranational preferences. The Council's influence during foreign policy-making is strong being the body authorizing and approving the Commission's proposal before and after negotiations. The Council's decisions are based on qualified majority (GATT) and unanimity (AA, GATS, TRIPS). Hence, when concluding a simple trade agreement a single member state is not able to reject the agreement through its countering within Council. Regarding the other types of agreements, a single member state is able to freeze the ratification process.

Considering the negotiation processes of the most relevant EU-Israel bilateral ties, there has been no undermining by French and German policies through their rejection within the Council. During the negotiation of the *EU-Israel Association Agreement* (1995), France only delayed the process through its refusal to approve the policy. Germany gave its approval shortly after the national ratification has been requested. Concluding, also in this case when the institutional structure of the EU offered single member states the possibility to restrain the Commission's proposal neither France nor Germany finally did so. Considering the *EU-Israel Action Plan* (2004) as a cornerstone of today's bilateral relations, supranational competences dominate as well. Since this foreign policy has been grounded on the effective association

agreement between the EU and Israel, there has been no new ratification process ‘bypassing’ the member states. Hence, the Commission has been more flexible leaving actual French and German policies unquestioned.

As influential members of the *Committee 133* both countries are additionally able to introduce their national preferences into the Commission’s proposal before and during negotiations. However, the strength of this influence remains rather ambiguous due to the consultative role of the committee and the lack of published protocols making the exact influence non-transparent.

The overall influence of the member states on EU foreign policy-making is significantly strong. The power of single member states to undermine the Commission is limited to the conclusion of association agreements, GATS and TRIPS.

When dealing with legal concerns including the interpretation of an existent EU foreign policy, the influence of the member state’s remains limited as well. The economic dispute how to handle products from Israel’s occupied territories required a ruling of the European Court of Justice whose judgment has been enforced by the Commission.

In order to answer this study’s central question, EU foreign economic policy with regard to Israel is not undermined by French and German policies. The Commission is able to cultivate foreign ties on behalf of the member states while taking the Council’s common preferences into account.

Finally this study argued about prospects for EU foreign economic policy-making. In this connection, the Commission’s ambitious actions in integrating with its neighbors seem to be driven by its economic interests aiming to increase the EU’s access of international markets. Regarding Israel as a conflict-affected country generating disagreement among the member states, this study clearly shows that the EU’s disposition to expand its external economic ties seems to be driven by its economic strategies. Hence, it seems less dependent on political motivations.

6.3 Outlook

This study clearly illustrates the EU’s economic relationship towards Israel since its establishment until today. It also provides the distribution of policy fields and decision-making competences among the EU member states France and Germany with the EU. The sophisticated and dynamically increasing number of bilateral ties and cooperations towards Israel demonstrates the EU’s economic and business oriented attitude when formulating foreign policies. The EU’s prospective intention to abolish even more trade barriers can be seen within the current negotiations of an *EU-US free trade agreement*.

Ironically, Israel is so far the only country in the world cultivating free trade agreements with both the US and the EU. We also concluded that the vibrant economic development between the EU and Israel seems to be rather independent from the increasingly difficult political relation towards Israel. It would be stimulating to do research whether the EU is acting the same way towards other conflict-affected countries.

Annex

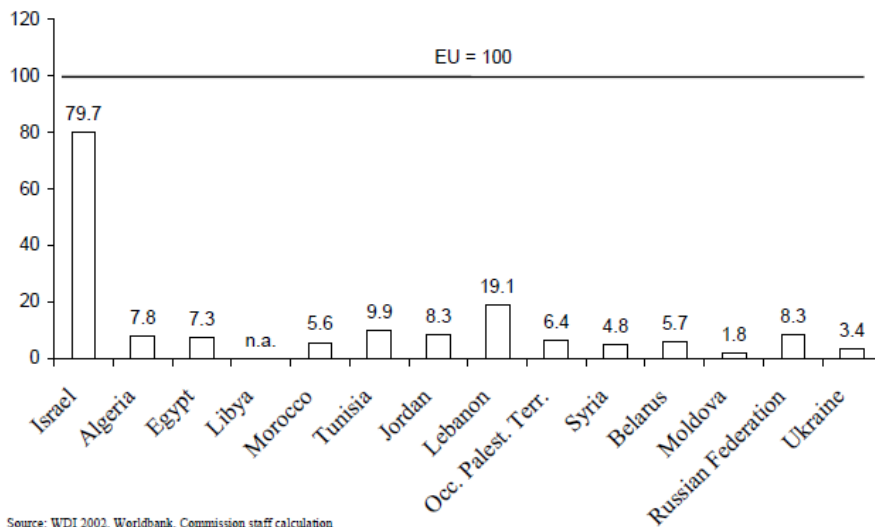


Figure 3: Gross Domestic Product per capita in % of EU (Source: WDI 2002, Worldbank, Commission staff calculation)

European Union, Trade with Israel							millions of euro, %	
Period	Imports	Variation (% , y-o-y)	Share of total EU Imports (%)	Exports	Variation (% , y-o-y)	Share of total EU Exports (%)	Balance	Trade
2008	11,224	-0.8	0.7	14,062	-1.6	1.1	2,837	25,286
2009	8,886	-20.8	0.7	11,484	-18.3	1.0	2,598	20,370
2010	11,118	25.1	0.7	14,522	26.4	1.1	3,404	25,640
2011	12,739	14.6	0.7	16,884	16.3	1.1	4,145	29,624
2012	12,634	-0.8	0.7	17,023	0.8	1.0	4,388	29,657
2012Q1	3,286	-	0.7	4,508	-	1.1	1,222	7,793
2012Q2	3,224	-	0.7	4,154	-	1.0	930	7,377
2012Q3	2,931	-	0.6	4,038	-	0.9	1,107	6,969
2012Q4	3,194	-	0.7	4,323	-	1.0	1,129	7,517
2013Q1	-	-	-	-	-	-	-	-
2013Q2	-	-	-	-	-	-	-	-
2013Q3	-	-	-	-	-	-	-	-
2013Q4	-	-	-	-	-	-	-	-
Average annual growth (2008-2012)		3.0			4.9			4.1

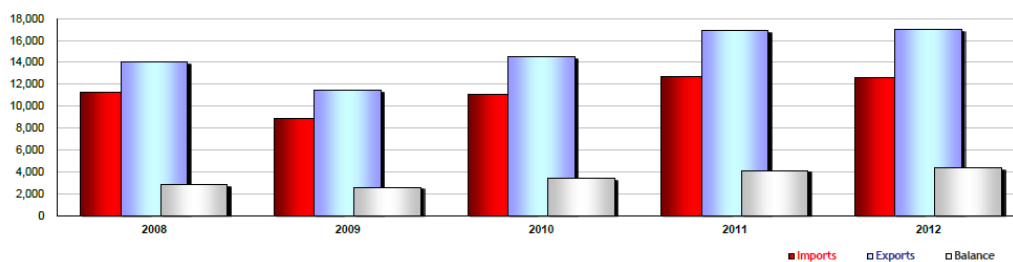


Figure 4: European Union, Trade with Israel (Source: Eurostat (2013))

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