



Organising for EU Enlargement

A challenge for member states and candidate countries

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National Strategies and Priorities

The Abolition of Duty Free Shops
The Slovenian Negotiations

OEUE PHASE I

Occasional Paper 6.2 – 11.03

Damjan Lajh

University of Ljubljana



FIFTH FRAMEWORK PROGRAMME



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ORGANISING FOR EU ENLARGEMENT:

Challenge for the Member States and the Candidate Countries

The Dublin European Institute, University College Dublin,¹ was awarded, in 2001, a research contract under the EU's Fifth Framework Programme² to carry out a comparative study of the impact of the EU on the structures and processes of public policy in six small countries: **Ireland, Greece, Finland, Estonia, Hungary** and **Slovenia**. The Project's partnership, under the direction of Professor Brigid Laffan, Dublin European Institute, University College Dublin³, includes: Professor Dr. Wolfgang Drechsler, University of Tartu; Professor Teija Tiilkainen, University of Helsinki; Professor Calliope Spanou, University of Athens; Professor Attila Ágh, Budapest University of Economic Sciences and Public Administration; and Professor Danica Fink-Hafner, University of Ljubljana.

The aim of the research project was to deepen our understanding of the processes of Europeanisation in a number of the existing member states and some of the candidate states.

The research project encompassed the following three objectives:

- The conduct of research which offers immediate policy relevance to key stakeholders in the enlarging Union;
- The conduct comparative, theoretical and empirical research on the management of EU public policy making in three existing member states – Ireland, Greece and Finland – and three candidate states – Estonia, Hungary and Slovenia;
- The shedding light on the capacity of smaller states to adjust and to adapt to the increasing demands of Europeanisation on their systems of public policy-making and thus to identify the barriers to effective, efficient and accountable management of EU business.

Research Strategy

The research design consisted of two phases and within each phase, two levels of analysis. **Phase I** analysed the management of EU business at the macro level of the core executive and was complemented by a micro case study of a recent policy negotiation using decision analysis. **Phase II** of the research broadened the analytical focus to encompass other levels of government – the EU and sub-state – through multi-levelled governance. Here attention was centred upon the emergence of policy networks and the interaction between public actors and the wider civil society in specific, discrete policy sectors.

¹ National University of Ireland, Dublin (University College Dublin).

² European Commission, Community Research Fifth Framework Programme (Socio-Economic Research).

³ This project forms part of the Governance Research Programme, Institute for the Study of Social Change, University College Dublin, www.ucd.ie/issc/ and www.ucd.ie/govern/intex.htm.

Methodology

The study employed two specific methodologies: historical institutionalism and rational institutionalism in a new and innovative fashion. The use of combined perspectives provided a theoretically innovative and new approach to the study of the Europeanisation process. Both approaches could be used as they were applied to different elements of the empirical research.

Academic and Policy Implications

This study's findings provide insight into the manner in which diverse state traditions, institutions and political and administrative cultures influence national adaptation to EU governance and how the interface between national policy processes and the Brussels arena is managed. It is expected that these findings will assist those making and managing policy, thus facilitating adjustments to the changing European Union while also contributing to the growing academic debate on Europeanisation.

At various stages during the course of this project the research findings and analysis were presented to a range of stakeholders and academics to facilitate feedback and enhance the analytical process. Further details about the Organising for EU Enlargement (OEUE) project are available on the project web site www.oeue.net, along with i) the Project Report, ii) the OEUE Occasional Papers and iii) a selection of papers by the research partners which draw on various aspects their project research.

AUTHOR

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Damjan Lajh is a postgraduate at the Faculty of Social Sciences, University of Ljubljana. National core executive structures, the EU and its enlargement, and implementation of the EU structural policy feature among his areas of research. Damjan Lajh's recent publications include "Stability Pact: Slovenia – NGO's", Peace Institute, Ljubljana (2001); co-author with Danica Fink Hafner "Managing Europe from Home: the Europeanisation of the Slovenian Core Executive", Faculty of Social Sciences, Ljubljana (2003); co-author with Danica Fink Hafner "Institucionalno prilagajanje slovenske izvršilne oblasti povezovanju Slovenije z ES/EU: mednarodno primerjalni pogled" [*Institutional Adjustment of the Slovenian Executive Power in the Context of Slovenian Cooperation with EC/EU: International Comparative View*], *Teorija in praksa*, 39(6), 970-99 (2002); co-author with Alenka Krašovec "The Slovenian EU Accession Referendum: A Cat-and-Mouse Game", *West European Politics*, 27(4), 603–23 (2004).

ABSTRACT

This paper examines the negotiations on the abolition of duty free shops in Slovenia during the course of the accession negotiations. The focus was on the negotiations at the national level given the belief that these are often the most difficult and sensitive. The model guided research revealed the issues to be of significant, though conflicting, importance to political, economic and societal actors. Recognising the unique nature of the accession negotiations the case illustrated the superior power of the EU, the Slovenian government's resolve to overcome national obstacles to complete the requirements of the 'acquis communautaire' saw the agreement to a transitional period, if somewhat 'artificial' to accommodate the interests of the 'duty free' interests.

ABBREVIATIONS

Com	European Commission
Aus	Austria
Ita	Italy
PM	Prime Minister
GOEA	Government Office for European Affairs
MF	Ministry of Finance
MFA	Ministry of Foreign Affairs
NA	National Assembly
NC	National Council
DFS	Duty Free Shops Section at Chamber of Economy
SNP	Slovenian National Party
NP	The New Party
Local	Border Local Communities
TU	Trade Unions
IER	Institute for Economic Researches at Faculty of Economy
BK	Bogomir Kovač (individual expert)
MP	Miha Pogačnik (individual expert)

INTRODUCTION

The *acquis communautaire* encompassed the whole body of legislation, principles, political orientations and obligations of the member-states. It was divided into 31 chapters and the negotiations on membership followed this scheme of division. Slovenia as a candidate-country had to adopt and implement the *acquis*. This required the alignment of national legislation, the restructuring of public administration and changes within a considerable number of policy fields. Slovenia's position concerning adoption of the *acquis* was set out in documents called 'negotiating positions' which served as the grounds for the considered selection of priorities and weighing up of the interests Slovenia sought to protect as a full member. They thus presented the regulation of individual sectors in Slovenia, problems anticipated in implementing the *acquis*, and the ways of eliminating inconsistencies either through transitional periods or derogations that Slovenia could request in the negotiations. The negotiating position formed the basis of drafting the Accession Treaty, which included the results of the negotiations: the harmonisation of Slovenian legislation with Agreements of the European Union with third countries, harmonisation of Slovenian legislation with the *acquis*, transitional periods, derogations, technical adaptations and all other measures.

SLOVENIAN CORE-EXECUTIVE MANAGEMENT FOR ACCESSION

In the context of EU enlargement, national co-ordination mechanisms for managing EU business have been identified as extremely salient (Payne 2002). The need to install the structures and processes for managing relations between the national policy process and the Brussels arena, as well as managing relations at the national level among sectoral ministries to cope with European affairs, thus applied not only to member-states of the EU but also to new member states negotiating full EU membership. At this point, it is important to emphasise that member-states have arranged their internal co-ordination (institutional) structures and procedures in the direction of the EU's policy-making process, while the new member states institutionally adapted their national structures and procedures in the direction of efficient co-ordination in the circumstances of the negotiating process – 'policy taking'. Nevertheless, both groups – the 'old' member-states and new member states – adopted various approaches to manage the policy co-ordination processes, mostly based on their already existing national policy styles.

The institutional adaptations of new member states' national-level structures were necessary because neither the *acquis communautaire* nor the particular negotiating chapters were organised in the same way as a new member state's own political systems (Fink Hafner and Lajh 2002). Due to significant inter-sectoral involvement, the accession process required the establishment of effective co-ordination mechanisms for handling EU affairs at the national levels of new member states, including both the structures and processes for co-ordinating and managing EU business. Moreover, institutional adaptations at various levels of governmental systems of new member states required adjustments in the inter-departmental as well as intra-departmental co-ordination of EU matters.

New member states differently organised their national structures and processes for handling EU affairs, established diverse reconciliation and decision-making bodies and committees and assigned to different policy players (both public and private) various responsibilities and tasks in the negotiating process. Based on these premises, the key aims of the present study are to assess how accession negotiations in selected policy field in Slovenia (as a candidate-country negotiating full membership of the EU) took place; and how outcomes are determined between different types of stakeholders involved in two stages of decision-making – European and national.

With respect to achieving these aims we apply a modelling approach of collective decision-making to examine the abolition of duty-free shops in Slovenia. Various alternative models of collective decision-making exist in political science, including the two most contending ones (de Mesquita and Stokman 1995): the Co-operative Exchange Model and the Challenge Model. The first one encompasses the view that the nature of politics can be seen as a co-operative game (collective decision-making within an exchange framework), while the second represents the non-co-operative nature of politics (collective decision-making as a process of conflict resolution). This modelling approach offers a deep insight into how the policy decision on the abolishing of duty-free shops in Slovenia came about, and to what extent the policy outcome was supported by the different stakeholders participating in the decision-making process.

To link the analysis of the selected case study to a broader institutional analysis we supplemented the above mentioned aims with particular research questions.

how do the stakeholders at the Slovenian core executive organise themselves at the national and European levels to ensure the preparation of an effective policy position?

How do the stakeholders at the Slovenian core executive negotiate their policy positions at the national and European levels?

What was the role and responsibility of the Slovenian National Assembly?

What roles were played and interests held by Slovenian civil society actors?

How did European players (re)act? What kinds of coalitions were built on the issue in question?

What might the accession negotiations offer to candidate-countries?

We suggest the following propositions that an overly transparent and 'open' negotiating style (i.e. the relatively large involvement of civil society actors) might lead to a lack of governmental control and act as a constraint during the negotiating process. Moreover collective policy decisions within the first part of the accession negotiations ('negotiating harmonisation') are based on conflict rather than compromise or exchange across the issues being 'negotiated'.

Slovenia's 'EU' institutional structure

Due to significant inter-sectoral involvement the accession process required the establishment of effective co-ordination mechanisms for handling EU affairs at the national level. Institutional adaptation during Slovenia's preparations for first, its application to join the EU and second, EU membership, embraced both the structures and processes for co-ordinating and managing EU

business, especially cross-cutting issues. This primarily included the establishment of (i) a Slovenian core executive on EU matters and (ii) the division of labour and co-ordination of EU affairs across the government system. In addition, institutional adaptation required adjustments to the internal structures of various departments at different operating levels.

In Slovenia practically all sectoral ministries were involved in EU business since the *acquis communautaire* impacted on the work of all departments to varying degrees. The extent of a department's involvement with EU business is determined by the level of Europeanisation in its respective policy domain. Consequently, a significant number of civil servants in every department do, to some extent, handle EU matters. Of course, the extent of involvement of particular departments in EU business was not the same for them all but was determined by the degree of Europeanisation found in its respective policy domain.

Therefore, according to the level of Europeanisation in a particular field we distinguished between the core-core, the inner core and the outer circle of Slovenia's macro-management of EU business.

The 'core-core' was represented by (1) the Slovenian Prime Minister and his Office, (2) the Council of Ministers, and (3) the Government Office for European Affairs, together with the Negotiating Team of the Republic of Slovenia. They all played a crucial role in Slovenia's integration into the EU and were involved in practically all of the key decisions and responsible for handling EU matters as a whole. The Slovenian Prime Minister led, directed and co-ordinated the work and was responsible for the functioning of the whole government. Therefore, he was, among other duties, also responsible for the Republic of Slovenia's accession to the EU. He was in charge of co-ordination at the highest level. Further, the role of the Council of Ministers was also critical as it remained the ultimate national decision-making unit on EU policies. Last but not least, the Government Office for European Affairs was founded in December 1997 and formally given the leading role in handling European business. It carried out various relevant tasks within the ministerial (horizontal) co-ordination of relations with the EU.

As part of the Slovenian 'inner core' we identified the following three departments: (1) the Ministry of Foreign Affairs; (2) the Ministry of Finance; and (3) the Ministry of Interior. They were also involved in a huge number of key decisions (especially on foreign affairs and finance, and to a lesser extent the interior) and their representatives were found in almost all working groups. Otherwise, on the basis of its diplomatic network (including the Mission of the Republic of Slovenia to the EU) the Foreign Ministry mostly took care of vertical co-ordination between Ljubljana and Brussels, the Finance Ministry had extensive responsibilities in the fields of financial and budgetary provisions, financial control, taxation and negotiations on EMU, whereas the Interior Ministry, especially its Office for the Organisation and Development of the Public Administration, ensured the development and adjustment of Slovenia's public administration during the country's accession to the EU.

Finally, the outer circle of Slovenia's macro-management of EU business shaped all other sectoral ministries, among which significant levels of Europeanisation were found in (1) the Ministry of the Economy, (2) the Ministry of Agriculture, Forestry and Food, and (3) the Ministry of the Environment and Spatial Planning.

In Slovenia, three levels of inter-ministerial co-ordination were identified. The *meetings of the Working Groups* represented the main inter-ministerial co-ordination of EU affairs. Each of the 31 working groups was comprised of representatives from relevant ministries and other institutions. Therefore, they were all - some more and others less - inter-sectorally comprised. At the meetings of Working Groups, inter-ministerial co-ordination for the preparation of negotiating positions as well as other platforms for negotiations in a particular negotiating chapter was harmonised and carried out.

The next level of inter-ministerial co-ordination involved the *Inter-departmental Committee*. The Committee was comprised of State Secretaries who were within individual ministries responsible for European affairs and the leaders of respective Working Groups and the Directors of government offices. The Committee was led by the European Minister, who reported to the Committee on progress made since the last meeting and the main problems and dilemmas that appeared. Initially, the Committee was established to monitor implementation of the Europe Agreement but over time the negotiating issues prevailed and became the core of its meetings. The Committee met on an unfixed yet regular basis depending on the extent of EU activities at a particular time. The Inter-ministerial Committee also had its sub-committees, which were convened once a year to discuss the progress made in particular policy fields.

The peak of the 'co-ordination pyramid' was the Prime Minister with his authority. In the context of inter-ministerial co-ordination of EU business at the national level, the Prime Minister was responsible for resolving inter-ministerial conflicts and interposing himself among ministries in their different viewpoints and positions on specific EU issues. In this context, whenever the pre-accession or negotiation process required inter-ministerial co-ordination he convened a '*European meeting of the government*' for all ministers in question. This European meeting was convened *ad hoc*, as required, and was composed of the Prime Minister, the Foreign Minister, the European Minister, the Finance Minister and the Head and respective member of the Negotiating Team. Any other members to attend the meeting were invited in accordance with a particular emphasis on selected or upcoming issues on the EU agenda.

The Slovenian negotiating style was strongly determined with a broad consensus on the process of joining the EU. There was a general consensus among all relevant Slovenian political parties that Slovenia should become an EU member-state. With the exception of one parliamentary political party - the Slovenian National Party - no other (parliamentary) political party publicly opposed this. On 3 July 1997 the leaders of all Slovenian parliamentary political parties (including the Slovenian National Party which later changed its opinion) signed a special agreement on co-operation during Slovenia's accession to the EU. In addition, the Slovenian

National Assembly decided on priority proceedings of European legislation to accelerate the process of adopting the *acquis*.

Slovenia was also quite idiosyncratic in comparison with other new member states. This was reflected in its (1) stress on Parliament's role in managing EU affairs (namely, it is the National Assembly that discussed and adopted all of the negotiating positions before they were sent to Brussels), (2) public presentations of the negotiating positions, and (3) at least at the normative level, the importance of the role of civil society in preparing the negotiation positions was stressed. Based on such ascertainment we could conclude that the Slovenian negotiating style was characterised by a high degree of formalisation, prioritisation and transparency. Formalisation was reflected mostly in clearly defined steps and precise developed procedures for the preparation of negotiating positions. Slovenian negotiating positions defined and shaped relatively clear strategic priorities, as shown in the relatively high prioritisation of Slovenian interests and objectives. Finally, one of Slovenia's distinctive features was its commitment to the principle of the full transparency of integration. In this context, the Slovenian political elite decided to publish all the negotiating positions and to invite civil society and external experts to co-operate in preparing the negotiating positions. In addition, a great contribution to the transparency of the Slovenian negotiating style also came from the discussion and approval of negotiating positions by the National Assembly (Fink Hafner and Lajh, 2002).

ACCESSION NEGOTIATIONS: WHAT KIND OF NEGOTIATIONS?

Accession negotiations were formally conducted at two levels – domestic and European. In practice, they were very closely interconnected.

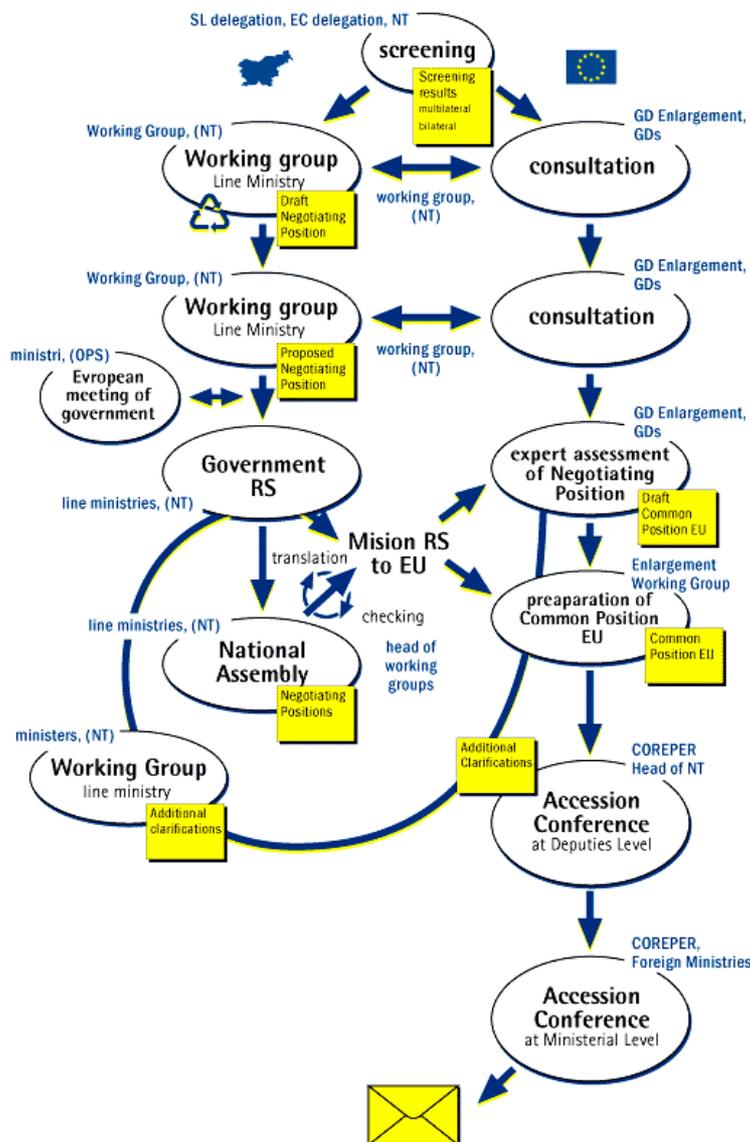
Preparing Slovenian negotiating positions at the national level

The preparation of a negotiating position started within the relevant Working Group. The Working Group first prepared a draft negotiating position based on the results of multilateral and bilateral screenings and the current situation in an individual negotiating chapter. Already in this initial phase of preparation, external experts and institutions were invited to take part in preparing the draft negotiating position by providing their expert opinions and positions on a particular substantive area. Because the main responsibility of preparation a negotiating position stayed with the line ministries, the minister responsible for an individual area confirmed the draft negotiating position. After that confirmation, pressure groups (alternatively) also became involved in preparing this negotiating position by submitting their opinions and proposals.

On the proposal of the relevant minister, the draft negotiating position was then submitted to the Negotiating Team. The representatives of the relevant Working Group and the Negotiating Team then prepared together, on the basis of several working meetings and other (also informal) forms of co-operation (usually about five meetings and several discussions, depending of the complexity of the chapter), the proposed negotiating position. The Head of the Negotiating Team, a member of the Negotiating Team responsible for the chapter in question,

and the editing group of the Department for Negotiations within the Government Office for European Affairs participated in editing the negotiating position. External experts in individual fields were again invited to co-operate in this phase of preparation. If the drafting of a proposed negotiating position required inter-ministerial co-ordination, the Prime Minister mediated and convened a 'European Meeting' of the government for all ministers concerned. At this point of preparation, the Mission of the Republic of Slovenia made another important contribution to the negotiating position to the EU which provided substantive as well as editorial comments on the negotiating position.

Figure 1: Formal view of the Slovenian–EU negotiating process



Resource: <<http://www.gov.si/ops/ang/index.html>>, September 2002.

The proposed negotiating position was then discussed in two government committees: the Committee for Economic Affairs and the Committee for State Administration and Public Affairs. After being adopted by the government, the negotiating positions were presented to non-governmental organisations and the representatives of trade unions. After this, the government submitted a negotiating position to the National Assembly where it was discussed by the relevant working bodies and eventually approved by the Committee on Foreign Policy. This verification followed just after the translation of the negotiating position into English, prepared within the Department for Negotiations or the Translation Unit of the Government Office for European Affairs. Therefore, the negotiating positions were packed and prepared for their 'journey' to Brussels. The Negotiating Team and the Government Office for European Affairs then submitted through the Slovenian Mission in Brussels the English version of the negotiating positions to the Council.

Negotiations with the European Union

Negotiations with the EU began with a Draft Common Position, which was prepared by the European Commission based on Slovenia's negotiating position. The prepared Draft Common Position was then submitted to the Council. After discussing it with member-states, the Enlargement Working Group within the Council prepared the Common Position of the EU and submitted it to Slovenia as a basis for discussion at the Inter-governmental Conference on Accession. The Slovenian Negotiating Team in collaboration with the responsible line ministries prepared additional clarifications concerning individual problems exposed in the common position, and submitted them to the relevant EU bodies.

Negotiating chapters were discussed at meetings of Inter-governmental Conferences on accession at the deputy level (Slovenia is represented by the Head of the Negotiating Team Janez Potočnik), and at the ministerial level (the Slovenian Foreign Minister). At these meetings, the Committee of Permanent Representatives of the Council and the Slovenian representatives discussed the negotiating positions on both sides and brought their positions into line on the substance of individual negotiating chapters. For Slovenian representatives there was a significantly high degree of consistency and coherence in presenting and defending national interests, especially due to the great care and accuracy relative to the development and articulation of Slovenian negotiating positions at the national level. When there were no outstanding issues with regard to a given chapter, negotiators on both sides established that negotiations on that chapter may be temporarily closed. All temporarily closed chapters may be re-opened due to any amendments or novelties in the *acquis* after the screening or due to difficulties in its implementation. This reflects the principle applying to the negotiations that 'nothing is agreed until everything is agreed'.

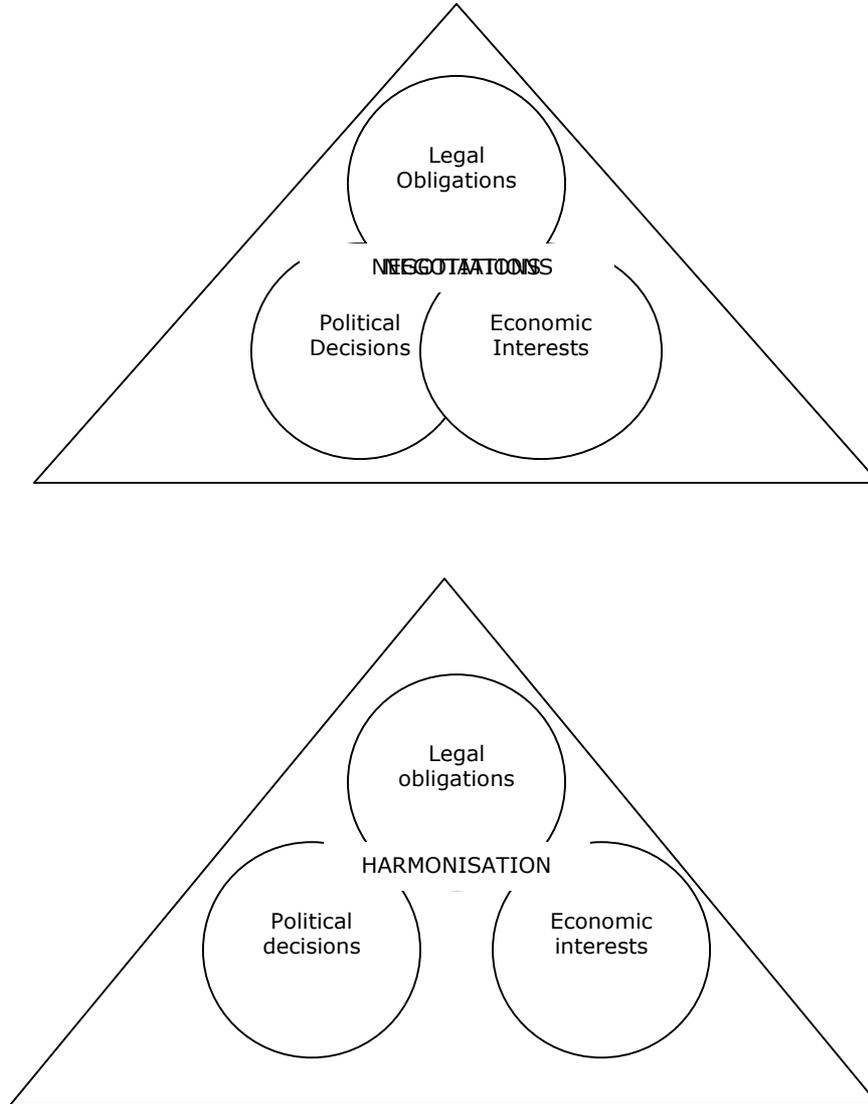
EU ACCESSION NEGOTIATIONS: HARMONISATION OR NEGOTIATION?

It is important to ask what the 'accession negotiations' actually mean for candidate countries? While 'negotiations' suggests opportunities for discussion and compromise, was this reflected during the process of the accessions negotiations between the EU and the candidate countries.

The reality of the relationship suggests not. It should be borne in mind that the candidate states applied to join the EU and not *vice versa*. Hence, it is better to describe the whole process as the harmonisation or synchronisation of a new member states' systems with the EU system at the time of joining. The *acquis communautaire* represents 50 years of agreements and compromises reached by the member states which include the leading European political and economic actors. It would, therefore, be hard and impossible for the candidate states' systems to be accommodated through changes to the 'acquis' and unrealistic to expect the negotiations to present such an opportunity. At most the candidate states could negotiate transitional periods and the accommodation of a few additions to the 'acquis' addressing features unique to the applicant state (Potočnik 2000). Furthermore, the EU has had superior bargaining power imposing demands, which on occasion the existing member states have not met, while also addressing the economic interest of the member states through stimulations outside the confines of the *acquis* (Bučar and Brinar 2002). The aforementioned factors left the candidate states with little room for negotiation in the accession process while the EU held the 'take it or leave it' card. Therefore the story of the candidate states' fulfilment of the 'acquis' and legislative alignment is best observed in terms of national reforms designed to prepare for EU membership. The national discussions on structural and legislative reform along with the preparations of the states negotiation position form a key part of the accession process.

These observations suggest that a qualified form of negotiations constituted the accession process where policy taking was the objective rather than policy making with the candidate states having few policy alternatives available to them if any. Therefore, the accession negotiations were determined by three key attributes of negotiation – legal obligations, political decisions and economic interests; collectively the 'accession negotiating triangle'. The legal obligations stemmed from the required compliance with the 'acquis'. Two perspectives influenced political decisions – for the EU there was a unique historical opportunity to unite Europe while for the candidate states the EU provided an opportunistic framework in which to address the challenge of furthering of their democratic and economic development. The economic interests of the EU, member states and candidate states were varied, complex and on occasion specific to a particular state. If at least two of the above mentioned attributes were contested in a particular case then the process involved unqualified 'negotiations' but in the absence of any dispute 'harmonisation' is the more appropriate term to represent these qualified 'negotiations'.

Figure 2: The 'Accession Negotiation' Triangle



The negotiation process associated with the Accession Partnership between the European Commission and the candidate states can be divided into two parts. First, the least contentious 'chapters', which proved to be the majority, involved a negotiation process that is best called 'negotiating harmonisation', as the candidate states sought to achieve a smooth and efficient compliance with the *acquis*. Second, the negotiations on the most contentious 'chapters' on agriculture, structural funds, budgetary matters pertaining to the *acquis* combine with the negotiation on the conclusion of accession. These negotiations are the most politically and economically sensitive with success judged in terms of the financial and budgetary conditions secured by the candidate states. 'Membership status negotiations' best describes this final phase of the accession negotiation process. The research for this paper was being conducted in 2002 and the capabilities and power of the candidate states during the 'membership status

negotiations' remained to be seen hence the focus here is on Slovenia's 'harmonisation negotiations'.

THE METHODOLOGICAL FRAMEWORK

The Modelling Approach

In political science, a number of quantitative modelling approaches to the analysis of collective decision-making have been elaborated using the methodological concept of policy networks (Payne 2002: 8). Within these approaches three different theoretical models have been developed: the compromise model, the exchange model and the challenge model. All of these collective decision-making models have their origin in the broad school of rational choice theory and share a number of similar basic model assumptions. The starting point is the idea that the final decisions on policy measures or policy issues come about as a result of policy-making processes that take place within a social system of actors (Baarda 1996).

The models used to simulate the outcomes of a selected policy-making process are based on four elements (Payne and Bennett 2003);

- (i) defining the most controversial policy issues over which negotiations took place;
- (ii) determining the key policy positions of each stakeholder on each issue;
- (iii) assessing the salience of each stakeholder to their position on each issue; and
- (iv) assessing the power or capability of each stakeholder to influence the outcome.

Political controversies in the models developed are conceptualised as issue continua. Each issue is identified with a unique collective decision outcome, and for each issue there is a set of relevant stakeholders. Three variables – policy position, salience and power – make it possible to describe the underlying process of policy-making situations.

In the introductory chapter we noted that in political science the most contending models are two alternative models of collective decision-making – the Co-operative Exchange Model and Challenge Model. For the purpose of our study, we have at least two objective reasons to choose the Challenge (conflict-oriented) approach. The first one is practical, as in our study we consider only one issue. And the second one is the nature of the issue. Namely, during the selected decision-making process two strong (fundamental) coalitions or groups of stakeholders had formed, between which an exchange of policy positions was (generally, at least in short term) not likely to occur. Namely, both groups of stakeholders at the two levels of decision-making (European and national) had within the selected policy domain their own vital, and *vis-à-vis* other actors, conflicting interests. Therefore, in our analysis we make use of the (conflict-oriented) Challenge model of Bueno de Mesquita, also called the Expected Utility Model, to analyse the process that underlies the decision-making process on the abolition of duty-free shops in Slovenia (Bueno de Mesquita and Stokman 1994).

Selection of the Case Study

The selection of the case study from the accession negotiations proved challenging, primarily for the following reasons:

- the absence of 'real negotiations' (due to the unequal negotiating positions because of the EU superior position);
- issues related to particular problems were few; and
- the lack of policy alternatives available to the candidate states.

Two criteria formed the basis for the selection of the case study, namely, the available time scale and the extent of political controversy. Given that the concluding phase 'membership-status negotiations' had not opened at the time of the case study being selected and executed, the focus lay with 'negotiating harmonisation' on questions related to the adoption of the *acquis*. As discussed above 'negotiating harmonisation' provided the candidate states with little scope for negotiation yet it was necessary to identify a case with at some identifiable level of political controversy in order to test the application of the theoretical model.

A general review of the Slovenian negotiations suggested that the selection of a specific issue of policy would prove more valuable than considering a whole 'chapter'. Given that some of the 'chapters' in the Slovenian negotiations were very broad and addressed numerous and often exclusive policy fields a large number of stakeholders with no mutual interest in the negotiation on a 'chapter' may have been involved thus posing problems in the application of the selected methodology. Therefore the selection of a specific issue or problem of policy as the case study offered the opportunity to gain an insight into how first, the negotiations took place, second, policy decisions came about and third, the policy outcome was supported by the various stakeholders who participated in the decision making process on the issue in question.

On this basis the abolition of duty free shops was selected as the case study for three reasons; first, the issue been on the 'negotiation agenda' for almost five years and posed a problem; second, the issue attracted the attention of the mass media; and third a variety of stakeholders were involved in the negotiations. The exceptional features in the case of the abolition of duty free shops should be noted, the issue was not originally on the agenda but added on and the problem had been negotiated at a European level before being considered at the national level. Notably to some extent there had been no Slovenian negotiating position prepared at national level prior to the European level negotiations.

Collection of Data

The research and data collection on the abolition of duty free shops involved three parts. First, a selection of literature, EU and Slovenian official documents and web sites, and the archives of the daily newspaper 'Dnevnik' provided useful background information. Second, the identification of the main facts of the case and the identification of the relevant experts and stakeholders was facilitated by the interviews previously conducted for the OEUE project research into Slovenia's core executive management of EU business. Return visits to the

Government Office for European Affairs and the Ministry of Foreign Affairs for preliminary informal discussions regarding the case of the abolition of duty free shopping allowed the identification of the officials and stakeholders directly involved in the case with whom interviews were subsequently requested.

Third, five detailed interviews were conducted with three key stakeholders, an official from the Ministry of Finance, an official from the Government Office for European Affairs who had been of responsible for the negotiations at the national level, and an interested party from civil society. Preparation for these interviews included the collection of data on these actors' policy positions, salience and power.

THE NEGOTIATION OF THE ABOLITION OF DUTY FREE SHOPPING

A brief historical overview

The problem of abolishing duty-free shops in Slovenia can be formally discussed as part of the negotiating process with the EU, as well as part of implementing the provisions of the *'Europe Agreement establishing an association between the European Communities and their member-states, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part'* (Europe Agreement).

The existence of duty-free shops at Slovenian land borders had been particularly contentious for two member-states – Austria and Italy – which had first raised the problem of duty-free shops in bilateral relations with Slovenia and demanded Slovenia close down its duty-free shops along their borders immediately. They both claimed that the existence of Slovenian duty-free shops along their borders had serious adverse effects on their economies, especially in their border regions. Because Slovenia rejected the idea of abolishing its duty-free shops along the land borders of EU member-states before Slovenia's full membership in the EU, Austria and Italy made it a 'European problem' and thus ensured that in the Europe Agreement some kind of equivocal provision was included, understood differently by different parties.

The question of Slovenian duty-free shops at land borders with EU member-states was thus first included in a Joint Declaration concerning Article 94 of the Europe Agreement, which stated: *'In accordance with international commitments the Parties will take the necessary steps to implement, before 1 July 1998, the recommendation adopted by the Customs Cooperation Council on 16 June 1960'*. In 1960 the Customs Co-operation Council of the European Economic Community (EEC) had – due to the high likelihood of smuggling – adopted a recommendation that member-states of the then EEC should open duty-free shops only in international harbours and airports.

Pressures from Brussels for Slovenia to abolish its duty-free shops (according to its commitment arising from the Europe Agreement) grew ever more intensive. Therefore, the Slovenian government prepared a programme in June 1999 for the gradual remodelling of duty-free shops

by 1 January 2003, but Brussels rejected this proposal. Moreover, the Commission included the question of duty-free shops in the 1999 Accession Partnership as a short-term priority and intermediate objective that Slovenia should fulfil and, in the Slovenian negotiating process with the EU, even in two negotiating chapters: Chapter 10 (Taxation) and Chapter 25 (Customs Union).

Due to fears that inclusion of the question of duty-free shops in the negotiating process would seriously threaten Slovenia's accession to the EU, or at least significantly slow its progress down, Slovenia sought to find a way out from the deadlock and to seek a satisfactory solution. To make the decision on the future of duty-free shops easier, and to find out the actual impacts of abolishing or remodelling duty-free shops, the Slovenian government ordered several studies on the economic effects of abolishing duty-free shops to be conducted by the Institute for Economic Research at the Faculty of Economics. The first study, based merely on data of the owners of duty-free shops, predicted that abolition would cause enormous damage to the national economy (more than 1000 people would lose their jobs, there would be huge negative implications for the national budget, according to the study remodelling of duty-free shops would actually mean their closure), while the next studies, based on independently collected data, estimated that the remodelling of duty-free shops would even be profitable for the state and have positive effects on the national economy (budget), despite the fact that the Slovenian state should cover the costs arising from the predicted unemployment (estimates that around 300 people would still lose their jobs).

Notwithstanding these expert estimates and the ever increasing pressures from Brussels, some governmental actors were still sceptical and argued for cautiousness in decision-making on the future destiny of duty-free shops. As a consequence, the Slovenian Prime Minister convened the European meeting of the government, as the highest political co-ordination mechanism to deal with strategic issues of Slovenia's accession to the EU and to direct preparations for negotiations for European business. As a result of the outcome of this meeting, and on the basis of the latest analyses and studies, the Slovenian government (official policy) gradually indulged the Brussels pressures and shifted in its position on abolishing duty-free shops. Therefore, the Slovenian government took a final decision to abolish duty-free shops at land borders with EU member-states before its full membership of the EU, and undertook to implement this as soon as possible. In accordance with this, only a few days after the European meeting held by the Prime Minister, on 27 January 2000 the Council of Ministers finally decided to remodel duty-free shops.

Yet, due to conflict in the internal political situation, the Slovenian government was unable to fulfil this commitment immediately because (domestic) opponents were using all measures and mechanisms to maintain the existence of duty-free shops until Slovenia's full membership in the EU or at least to drag out the negotiations as long as possible, and thus to keep duty-free shops 'alive'. The common position of all 'opponent' domestic players was that there is no legal obligation (in the Europe Agreement) for Slovenia to abolish its duty-free shops before full

membership in the EU. In addition, they all argued that abolishing duty-free shops would have excessive, negative multi-sided implications.

At least three events are important in the context of the struggle for the existence of duty-free shops at the national level:

- a) on 2 February 2000 the Slovenian National Party (the only Slovenian 'euro-sceptic' parliamentary party) took the lead of the government by putting before Parliament a draft law on the remodelling of duty-free shops at land borders with EU member-states, which predicted the existence of duty-free shops until full membership in the EU, including an appropriate transitional period (four years). In accordance with the National Assembly's Rules of Procedure, the National Assembly is bound to vote for any proposal first put into the legislative procedure. As a consequence, the National Assembly had to vote on the Slovenian National Party's proposal, and the legislative procedure was thus blocked for any other (governmental) proposals. This situation can be particularly problematic in Slovenia due to the slowness and rigidity of the legislative procedure.
- b) After rejecting the proposal, the National Assembly finally passed the Law on Remodelling Duty-free Shops at Land Borders with EU Member-states, which was later proposed by the Slovenian government and which predicted that duty-free shops would remodel themselves by 1 June 2001. But the National Council vetoed this law as it its right. As a result, the National Assembly had to vote again, but this time – to overturn the National Council veto – an absolute majority (46 votes) was needed to pass the law. This was not a fatal obstacle and the National Assembly succeeded to pass the law a second time.
- c) But even the second successful adoption of this law did not conclude the 'negotiations'. The non-parliamentary political party 'Nova' ('New Party') put before the President of the National Assembly an initiative to call a referendum. Namely, according to the Slovenian Constitution the National Assembly must call a referendum to decide on its own legislative initiatives if at least forty thousand voters demand it. The 'New Party' thus started collecting forty thousand signatures of voters. However, in the constitutionally prescribed time (one month) they failed to collect the demanded number of signatures (they collected about twenty-two thousand signatures). Yet, with their initiative they succeeded in keeping duty-free shops alive for a few more months.

Slovenian duty-free shops at land borders with EU member-states were finally remodelled on 21 September 2001. This means that the defenders of duty-free shops (in the first stage of negotiations at the EU level also the Slovenian government) had during the negotiations (and not as a result of negotiations!) achieved an over three-year-long 'artificial' transitional period (given the initial EU demand was for Slovenia to abolish its duty-free shops before 1 July 1998).

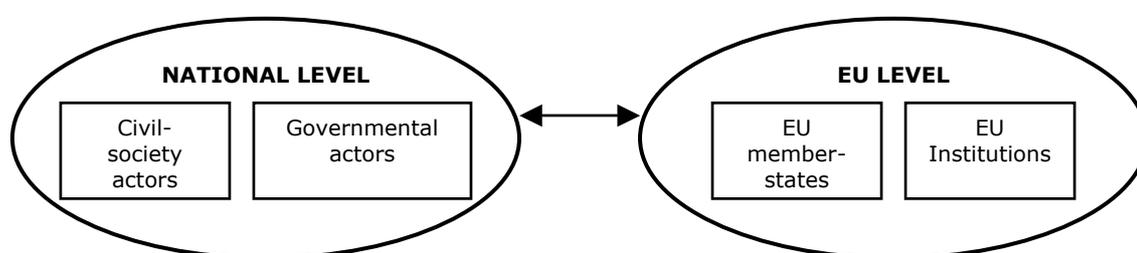
Stakeholders struggling for their interests at the EU level

The negotiating process between Slovenia and the EU on the abolishing of Slovenian duty-free shops at land borders with EU member-states was very complex, after all it lasted for almost five years, attracted the widespread attention of the mass media, and included a wide range of stakeholders in the negotiations. But despite its complexity, there was just one crucial issue that determined the whole decision-making situation and represented the political problem: when should Slovenia (according to the legal obligation from the Europe Agreement) abolish its duty-free shops. This issue later appeared in two different forms at the European and national levels⁴.

At the European level the main problem was the interpretation of the provision included in the Joint Declaration concerning Article 94 of the Europe Agreement. The EU side understood this equivocal provision as Slovenia's commitment to abolish all duty-free shops at land borders with EU member-states by 1 July 1998. In contrast to the EU interpretation, the Slovenian side understood the provision as an obligation that from 1 July 1998 Slovenia would not be allowed to open any new duty-free shops, while the existing ones could exist until Slovenia's full membership in the EU. Namely, duty-free shops for Slovenia represented a significant resource of income and their existence was thus in Slovenian national-economic interest.

In this study we have identified a number of key stakeholders whose involvement was important in achieving decision-making on the abolishing of duty-free shops. Stakeholders are identified as individuals or groups that have power resources (large or small amount) that can be used to exert influence on the decision-making process (Payne, 2002). Each stakeholder involved in the problem of doing away with Slovenian duty-free shops represented its own interests and had its own policy preferences. In the framework of this case study we have identified two sets of actors, one at the European level and the other at the national level. Three types of actors played the main roles in the established policy network: governmental actors, non-governmental or civil-society actors, and supranational actors.

Figure 3: Policy network on the abolishing of duty-free shops in Slovenia – narrow point of view



⁴ There were indeed at least two other relevant issues that emerged at the domestic level: what kind of implications would the abolishing of duty-free shops have (on the state budget, rate of unemployment, owners of duty-free shops, border local communities etc.), and what would be the future 'destiny' of duty-free shops (to close down, to remodel as normal shops with normal taxation, to remodel into specialised shops etc.). But these were just a kind of 'expert' issues which did not shape different policy alternatives,

In the first phase of the negotiating process at the European level, three sets of stakeholders played the key role in negotiations (Table 1).

Table 1: Stakeholders at the EU level

EU Institution	EU member-states	Candidate-country's Governmental Institutions
-European Commission	- Austria - Italy	- Government Office for European Affairs - Ministry of Finance - Ministry of Foreign Affairs

At the European level, the problem of the existence of duty-free shops was first identified in bilateral relations between Slovenia on one side, and Austria and Italy on the other. Later on, after Austria and Italy succeeded in 'Europeanising' the problem and achieving its inclusion in the Slovenian pre-accession process to the EU, the question of Slovenia's duty-free shops was initially discussed within the bodies established under the Association Agreement (Association Council, Association Committees). Finally, in the last phase of negotiations at EU level the problem was also discussed as part of the Slovenian-EU negotiating process.

There were two elements to the Commission's demand that Slovenia abolish its duty-free shops at land borders with EU member-states. First, abolishing the duty-free shops in Slovenia would ensure the effects of the EU's single market principles. Namely, the existence of duty-free shops infringes the EU single market principles as, due to their untaxability, such 'duty-free' sales are actually subsidised and therefore in conflict with the EU's competition policy rules. Second, the Commission was protecting the economic interests of two member-states (Austria and Italy), which had claimed the existence of Slovenian duty-free shops along their borders had serious adverse effects on their economies. They had both argued that in their border regions economic activities had been suffering significantly, threatening existing jobs in those places.

Austria and Italy had the greatest objections to Slovenia's rejections of calls to immediately abolish its duty-free shops along their land borders. Therefore, with the intention of increasing pressure on Slovenia they both adopted certain measures. Austria limited imports of tobacco products from Slovenia to a minimum (200 cigarettes), while Italy reduced petrol prices for Italian residents in the border regions. At the time Slovenia probably had the lowest petrol prices in Europe and many Italians combined their visits to Slovenia with shopping in the duty-free shops and stops to refuel their cars. As a consequence, both measures had a negative impact on the operations of Slovenia's duty-free shops.

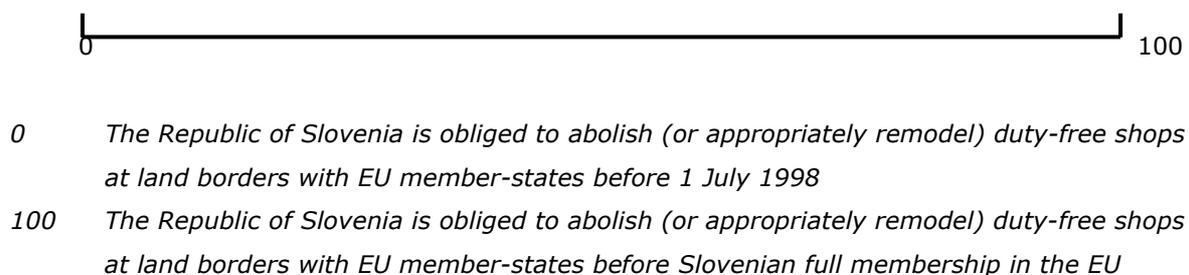
The main Slovenian actors at EU level were three governmental ministries that also formed the Slovenian core executive on EU affairs: the Government Office for European Affairs, the Ministry

but merely stimulated expert debate. Therefore, we decided to include in our analysis just the above mentioned issue.

of Finance and the Ministry of Foreign Affairs. The Government Office for European Affairs managed and co-ordinated the whole process of Slovenia's accession to the EU, carried out relevant tasks within the ministerial co-ordination of relations with the EU, and acted in the framework of co-ordinating Slovenia's harmonisation with the *acquis* and relevant EU standards (Fink Hafner and Lajh, 2002). Thereby, the Office also acted here: it represented the central co-ordinating unit for negotiating with EU, and technically and expertly supported the negotiating team and all other governmental actors that co-operated in discussions. The Foreign Ministry's greatest importance was its key role in managing vertical relations with Brussels. This included the Mission of the Republic of Slovenia to the EU, which is within the jurisdiction of the Foreign Ministry (in the study, the Mission is not considered a separate actor since it does not take its own positions on particular questions). Finally, the Finance Ministry was the main player in negotiations on Chapter 10 – Taxation, and one of the leading players in negotiations on Chapter 25 – Customs Union. The EU side had included the question of duty-free shops in these two negotiating chapters. All these governmental actors at the EU level argued that Slovenia had no legal obligation (deriving from Europe Agreement) to abolish its duty-free shops before full membership in the EU, and they all protected the Slovenian national economic interest because duty-free shops represented a significant source of income for Slovenia.

Issue at the European level:

What were the preferences of the stakeholders regarding interpretation of the Joint Declaration concerning Article 94 of the Europe Agreement?



With regard to a given policy issue, the instrumental goals stakeholders strive towards during the decision-making process are reflected in their most favoured policy positions. The way in which a policy position is specified depends on the nature of the issue. As regards the problem of doing away with duty-free shops in Slovenia, the policy positions of the stakeholders involved are specified over time. In addition, in view of the stakeholders' policy positions on the issue at hand it is important to find out what was so special about duty-free shops and to then estimate the interests held by different stakeholders.

Generally speaking, the existence of duty-free shops at the start of negotiations had negative implications for European actors, while for (all) Slovenian actors it had positive ones⁵. As already noted, Austria and Italy had experienced negative economic effects in their border regions, while Slovenian actors had been advocating different, above all economic and social, interests. For example, for the Slovenian economy the existence of duty-free shops was relatively important for the following reasons:

- it boosted gross product (income);
- it supported employment;
- it had an indirect impact on trade and employment for suppliers (caterers);
- it made direct contributions to the national budget;
- it established a net inflow of foreign currency; and
- there was a link between duty-free shops and daily tourism in Slovenia.

Table 3 shows the stakeholders involved in the decision-making process and the corresponding numerical data for their policy positions on the issue at the European level.

Table 3: Stakeholders' policy positions on abolishing duty-free shops – EU level

STAKEHOLDER	POSITION
European Commission	0
Austria	0
Italy	0
Government Office for European Affairs	100
Ministry of Finance	100
Ministry of Foreign Affairs	100

As can be seen from the above table, all stakeholders are grouped either at one or other extreme. In fact, they are grouped into two clusters – European and national. At this point of

⁵Duty-free sales in passenger traffic developed in the nineteenth century, firstly in international maritime traffic between Europe and the United States, later also carrying over into international air, street and rail traffic. In 1960 the Council for Customs Union of the European Economic Community (EEC) – due to the high likelihood of smuggling – adopted a recommendation that member-states of the then EEC should open duty-free shops only in international harbours and airports. Further, the recommendation stated such goods free of customs and other duties could only be bought in by passengers travelling abroad by air or sea. The member-states of the then EEC and the current European Union (EU) had for the most part respected these recommendations and thereby adopted measures to abolish duty-free sales in the hinterland and at land borders. In any event, the economic importance of duty-free sales in the world and Europe is still considerable. According to figures from the publication 'Duty-Free Database and Directory 1998/99' (in Damijan *et al.*, 1999), total turnover of duty-free sales at the global level in 1997 amounted to USD 21 billion. In that year, European duty-free shops turned over USD 9.8 billion; more than 70% of this being created in EU member-states. Besides that, the existence of duty-free shops in Europe had great direct and indirect positive effects on employment, as well as positive effects on lower air ticket and maritime passenger ticket prices. Duty-free shops were also very important in former Yugoslavia, when Slovenia was still part of it. In 1963, Yugoslavia also adopted the recommendation of the Council for Customs Union of the European Economic Community, but the modification of customs legislation in 1985 led to the establishing of duty-free shops at land borders, as well as in hotels and other tourist sites. The main reason for this was the chronic shortage of foreign currency in Yugoslavia, while the official shallow argument was to offer a more diverse tourist offer. In 1990 the duty-free shops in the hinterland were abolished, while they continued at land borders.

analysing the abolition of duty-free shops in Slovenia at two points in time we get a better picture of the evolution of the related decision-making process. The issue specified at both levels of decision-making was contested because it was the most politically sensitive and revealed interesting relationships and dichotomies between political decisions (of EU member-states to expand, as well of Slovenia to join the EU), economic interests (of two EU member-states – Austria and Italy, one candidate-state – Slovenia, and the owners of duty-free shops in Slovenia) and legal obligations (deriving from Slovenia's accession to the EU).

The issue at both levels was politically sensitive especially for the Slovenian government (and especially after it estimated that insisting on not abolishing duty-free shops might seriously threaten Slovenia's accession to the EU, or at least significantly slow down its progress – in the second phase of decision-making), which had to decide between the political decision to join the EU (as an absolute priority and the key strategic goal of Slovenian foreign policy), and national as well as particular economic interests. Namely, the Slovenian government at the same time had to:

- (1) preserve its credibility in negotiations with the EU (to fulfil its obligations of legislative approximation and implementation of the *acquis* in accordance with commitments made under the Europe Agreement – after the prevalence of the 'Commission interpretation' of Europe Agreement that Slovenia should abolish its duty-free shops as soon as possible); and
- (2) achieve a consensus at the domestic level that abolishing Slovenian duty-free shops was not only necessary, but also useful (as some studies had shown). At this point, it is also necessary to emphasise that at the time of these negotiations public support in Slovenia to join the EU had dropped drastically, with a significant share of the public strongly arguing that Slovenia did not have any legal obligation to abolish duty-free shops before its full membership of the EU.

In the second phase of negotiations (at the national level) we excluded EU actors from the analysis and included a wide range of civil-society actors. In a democratic system, not only the final decision-makers within a legislative and executive body have a role in the policy-making process, but also societal actors with a stake in the decisions are able to participate. An important feature of these societal actors or groups as well as the final decision-makers is that they have diverging and sometimes even conflicting preferences with regard to the (outcome of the) policy issue at stake. So, for a final outcome to emerge a process had to take place where these different preferences of individuals were transformed into one collective outcome (Baarda 1996: 2).

At the domestic level the key 'negotiations' (i.e. the 'struggle' for the existence of duty-free shops) took place above all between Slovenian stakeholders – from the government and civil-society. However, in this second phase of negotiations EU actors still constantly exerted

(informal) pressure, but only on Slovenian governmental actors (official policy) and on civil-society actors. In fact, this is also the main argument why we decided to exclude EU actors from the analysis at the domestic level. At the national level, we also included in the analysis the Prime Minister as he played one of the key roles during the negotiations. Namely, he convened the so-called European meeting of the government (the highest political co-ordinating mechanism to deal with strategic issues of Slovenia's accession to the EU), at which the final decision to remodel duty-free shops as soon as possible was adopted. Otherwise, due to its high level of controversy discussions at the domestic level took place practically at all levels of decision-making. In this second phase of negotiations, Slovenian governmental actors (as part of the executive body) changed their initial position on abolishing duty-free shops. At the national level a political decision to join the EU as an absolute priority and key strategic goal of Slovenian foreign policy prevailed over national and particular economic interests. So we could argue that at the national level Slovenian governmental actors *de facto* took over the role the Commission had played at the European level.

In Slovenia, the National Assembly played a very important role in the accession process as it followed EU business closely and exerted quite a large influence on the Slovenian government. Two of the most influential tasks of the National Assembly in the process of Europeanisation have been alignment of Slovenia's legislation with the common EU rules, and discussion and approval of the proposed negotiating positions before they were sent to Brussels (Fink Hafner and Lajh, 2002). A very important role was also played by the National Assembly here. The National Assembly had the greatest power at the national level as it was the National Assembly's responsibility to adopt legislation making it possible to abolish the controversial duty-free shops. Moreover, some of its deputies represented the bearers of various particular interests. As a result, the National Assembly was not a single-voice actor because particular deputies had different policy preferences. In any case, it has to be treated as a single entity because it takes decisions (either by a relative or absolute majority vote) as a whole. In our study we consider the position of the National Assembly as reflecting the majority preference then in it.

Table 2: Stakeholders at the national level

GOVERNMENTAL ACTORS		
Executive body actors	Legislative body actors	Parliamentary political party
<ul style="list-style-type: none"> - Prime Minister - Government Office for European Affairs - Ministry of Finance - Ministry of Foreign Affairs 	<ul style="list-style-type: none"> - National Assembly - National Council 	<ul style="list-style-type: none"> - Slovenian National Party
NON-GOVERNMENTAL ACTORS		
Bearers of particular interests	Experts	Non-parliamentary political party
<ul style="list-style-type: none"> - Duty-free shops section at the Chamber of Commerce and Industry - Border local communities - Trade unions 	<ul style="list-style-type: none"> - Institute for Economic Research at the Faculty of Economics - Bogomir Kovač (individual economics expert) - Miha Pogačnik (individual legal expert) 	<ul style="list-style-type: none"> - The New Party

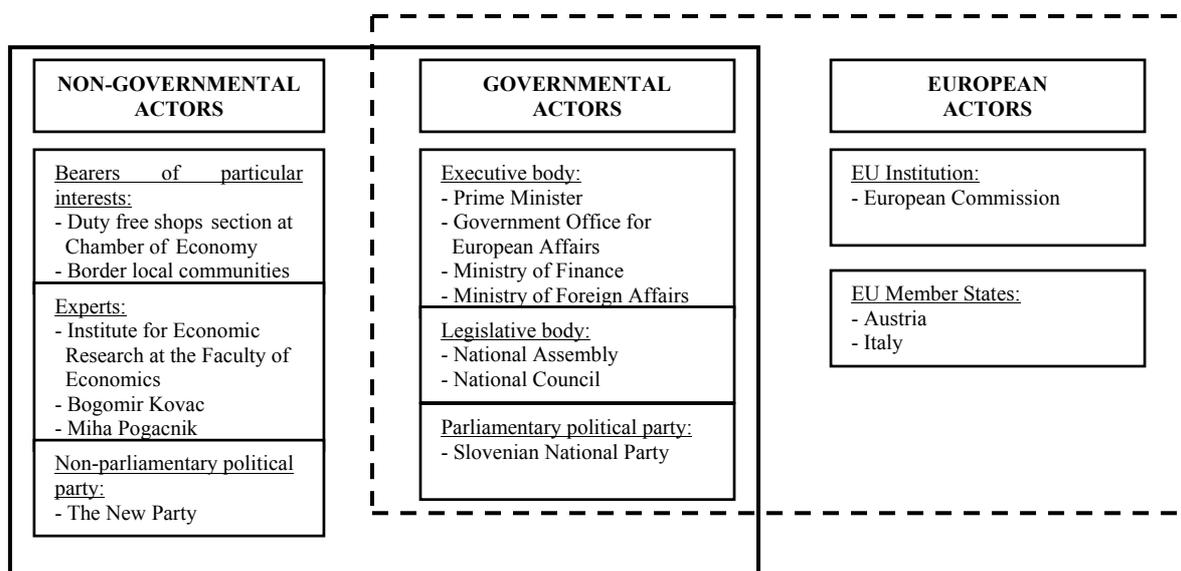
The National Council also played a visible role in the negotiations, putting a veto on the 'Law on Remodelling of Duty-free Shops at Land Borders with EU member-states' passed by the National Assembly. The National Council has 40 members representing different local and functional interests. It was founded as an advisory body, whose members are elected indirectly for five years in order to bring functional and regional interests into the policy-making process independent of political parties. The 40 seats are divided up among local interests (holding 22 out of 40 seats), employers, employees, farmers, craftsmen and independent professions, and non-economic activities. The National Council effectively creates a 'one and a half' chamber system in Slovenia since the National Council has such limited powers. These include the power to make policy proposals and advisory opinions to the National Assembly, to require a referendum on actions of the National Assembly, to call for the establishment of a parliamentary inquiry and require that the National Assembly reconsider a law passed by the National Assembly (Fink Hafner and Lajh, 2002).

The bearers of particular economic and other interests in this case study were the owners of duty-free shops, associated in the 'Duty-free shops section at the Chamber of Commerce and Industry', border local communities, and trade unions. The owners of duty-free shops represented their own economic interests and had enormous assistance in defending their interests from other 'opponent players'. The border local communities argued that the existence of duty-free shops was in their vital interest. Namely, duty-free shops employed many people and had positive effects on 'daily tourism', which had a significant impact on the development of these border local communities. Finally, trade unions represented the interests of those people who would potentially lose their jobs as a result of abolishing duty-free shops.

Two political parties (one parliamentary – Slovenian National Party, and one non-parliamentary – the New Party) persistently argued that there was no legal obligation for Slovenia to abolish its duty-free shops before its full EU membership. They also became aware that opposing the

government proposals might be a big opportunity for their own promotion as much of the Slovenian public also opposed the EU demands. Finally, a significant role in the negotiations was also filled by three experts: the Institute for Economic Research at the Faculty of Economics, Bogomir Kovac as an individual economics expert, and Miha Pogacnik as an individual legal expert. The Slovenian government ordered expert studies on the implications of abolishing duty-free shops with the Institute for Economic Research at the Faculty of Economics, while the two individual experts were advisers to the owners of duty-free shops on specific legal and economic issues.

Figure 4: Policy network on abolishing duty-free shops in Slovenia – broader point of view



Stakeholders' policy positions

In the second phase of the negotiations (at the domestic level), the main issue became the actual (final) closing down of duty-free shops in Slovenia. This issue was reflected in the 'struggle' between the Slovenian government's national interest and the particular interests of civil-society actors. Below, Table 4 reveals the actors involved in the decision-making process and the related numerical data for their policy preferences on the issue at the domestic level.

Table 4: Stakeholders' policy positions on abolishing duty-free shops – national level

STAKEHOLDER	POSITION
Prime Minister	0
Government Office for European Affairs	0
Ministry of Finance	0
Ministry of Foreign Affairs	30
National Assembly	75
National Council	85
Duty Free Shops Section	100
Slovenian National Party	75
The New Party	75
Local Communities	75
Trade Unions	25
Institute for Economic Studies	75
Bogomir Kovač	60
Miha Pogačnik	

The most extreme positions at the domestic level were taken up by governmental actors of the core executive on one hand, and the Slovenian National Party on the other. All other stakeholders took intermediate positions. The key feature of negotiations at the national level is the strategic move of the Slovenian core executive – from one extreme position at the European level (arguing Slovenia has to abolish duty-free shops no earlier than its full membership in the EU) to another at the national level (arguing Slovenia does in fact have to abolish its duty-free shops as soon as possible). By doing this, Slovenian governmental actors took over the role played at the national level by the Commission at the European level. Meanwhile, the Slovenian National Party took an isolated extreme position that, during the negotiations, Slovenia had to provide an appropriate transitional period giving the owners of duty-free shops enough time to successfully restructure their shops. This extreme position was unrealistic even for the owners of duty-free shops, who adopted a less extreme position. The great majority of other stakeholders – especially the bearers of particular interests, took position 75, arguing the continuing existence of duty-free shops until Slovenia had become a full member of the EU.

Stakeholders' salience and capabilities

In the decision-making process the capability of stakeholders to influence a policy outcome so as to achieve their preferred policy positions is significant. This depends much on the amount of power they possess (Baarda 1996: 8). This *power* refers to the potential, not the actual, mobilisation of capabilities (Stokman *et al.* 2000: 135), and reflects both formal decisional power and informal weight in the decision-making process. In addition, the interests of stakeholders are not only represented in the positions they take, but also in the degree to which they are interested in a particular issue. The extent to which the outcome of a decision is valuable for the stakeholders is expressed in the salience they attach to their preferred policy position. The salience thus indicates the willingness of the stakeholders to mobilise their power resources (Baarda 1996: 8; Stokman *et al.* 2000: 135).

Within the above discussed policy domain, the different stakeholders had different capabilities or amounts of potential power to influence decision outcomes. This was reflected in the availability of means like the formal authority to take decisions, financial resources, access to other important stakeholders, bargaining skills and related trustworthiness, the amount of information they possess within a particular policy field etc. In our case study, we assessed the capabilities of the stakeholders involved with regard to three viewpoints:

- the formal authority to take final decisions *vis-à-vis* (a mere) indirect influence on final decision outcomes;
- financial resources; and
- access to other important stakeholders.

Therefore, in the analysis we did not include the trustworthiness of the stakeholders and the amount of information the stakeholders possessed within this policy domain. Namely, all stakeholders during the negotiations had the same level of trust in each other, as they had been dealing with each other on other occasions and as such had been acquainted with other stakeholders' expected patterns of behaviour. In addition, due to the long duration of the issue on the negotiating agenda, the high degree of importance of the negotiations, and the huge attention paid to the problem by the mass media, all actors possessed a very high amount of information here.

Table 5 provides figures on stakeholders' salience and capabilities at the European level. On the European side, much 'noise' was made by the Austrians, who were also 'the hardest nut to crack' for the Slovenians. Throughout the negotiations the Austrians exerted a very strong influence on the Commission. In addition, with the intention of increasing pressure on Slovenia they adopted certain measures by limiting imports of tobacco products from Slovenia to a minimum. The Italians negotiated poorly and did not have such a great influence on the Commission. Nonetheless, by reducing petrol prices for Italian residents in the border regions Italians also put pressure on Slovenia.

Table 5: Stakeholders' salience and capabilities on abolishing duty-free shops – EU level

STAKEHOLDER	SALIENCE	CAPABILITIES
European Commission	70	100
Austria	80	70
Italy	30	50
Government Office for European Affairs	80	40
Ministry of Finance	60	40
Ministry of Foreign Affairs	20	20

Slovenian governmental actors also attached relatively high levels of salience to the issues in the negotiations. They had for a long period rejected the EU's demands and pressures. However, due to the nature of the accession negotiations and relatively small amount of (relative and effective) power resources *vis-à-vis* EU stakeholders, Slovenia gradually gave in to

the Brussels pressures. Therefore, with regards to the stakeholders' salience and capabilities this case reveals two main things: (1) the *de facto* less formal power possessed by the new member states; and (2) the *de facto* superior bargaining power (reflected mostly in the economic interests of EU member-states) the EU actors possess(ed) in accession negotiations.

Table 6: Stakeholders' salience and capabilities on abolishing duty-free shops – national level

STAKEHOLDER	SALIENCE	CAPABILITIES
Prime Minister	80	100
Government Office for European Affairs	100	80
Ministry of Finance	60	80
Ministry of Foreign Affairs	20	70
National Assembly	70	90
National Council	60	40
Duty Free Shops Section	100	50
Slovenian National Party	60	30
The New Party	50	20
Local Communities	60	20
Trade Unions	40	30
Institute for Economic Studies	20	20
Bogomir Kovač	50	20
Miha Pogačnik	20	20

At the national level the key distinction is between stakeholders who had the authority to take the final decision, and those that exerted a more indirect influence. The first group of stakeholders included the Prime Minister, the Government Office for European Affairs, the Ministry of Finance, the Ministry of Foreign Affairs and the National Assembly, while all other stakeholders were in the group that exerted influence indirectly.

The highest level of interest on this particular issue was held by the Government Office for European Affairs and the owners of duty-free shops. The Government Office for European Affairs is a central co-ordinating unit for handling European business at the Slovenian national level and as such (at least formally) responsible for uninterrupted and smooth accession with the EU. Its high level of interest was also determined by the commitment Slovenia gave to the EU during the first phase of negotiations at the European level. Namely, abolishing duty-free shops as soon as possible would preserve Slovenia's credibility in the negotiations with the EU. Strong interest and high authority at the national level was also shown by the Slovenian Prime Minister, who had the greatest influence on Slovenia's final decision to close duty-free shops down at the earliest convenience. The Ministry of Finance, as the leading ministry in this policy domain, also held considerable capabilities and was recognised as an effective negotiator. The Ministry of Foreign Affairs however exercised very little influence and did not really negotiate. Such reproaches (from the standpoint of the Government Office for European Affairs and other line ministries), were incurred by the Ministry of Foreign Affairs many times during Slovenia's accession to the EU. However, the greatest capability at the national level was reserved for the National Assembly, as it was the National Assembly's responsibility to adopt legislation making

it possible to abolish the controversial duty-free shops. Moreover, some of its deputies were the bearers of various special interests.

Greatest power as well as interest among non-governmental stakeholders and stakeholders with an indirect influence was held by the owners of duty-free shops. They represented a very strong and wealthy lobby with strong access to other important stakeholders. They found strong levels of support in all stakeholders opposed to the abolishing of duty-free shops. In fact, they had the highest degree of salience. They were the hardest negotiators for the Slovenian governmental actors, unwilling to make compromises as they had nothing to lose in the negotiations. Their main goal was to keep their profitable and remunerative business alive as long as possible. Border local communities also had relatively high salience in duty-free shops continuing in their areas. Duty-free shops had positive effects on employment and daily tourism, both having a significant impact on the development of these border local communities. However, they were not very good negotiators but merely assistants to or supporters of the owners of duty-free shops. The National Council also had quite a high level of interest since it represented the local interests, employers and employees. But its formal power was (and is generally) very low. By putting a veto on the 'Law on Remodelling of Duty-free Shops at Land Borders with EU Member-states', the National Council was able to delay the process of abolishing duty-free shops for just a few weeks. Much more successful in delaying the decision on abolishing duty-free shops were both political parties (the Slovenian National Party and The New Party). Neither had any direct interest in the negotiations but were constantly arguing that Slovenia had no legal obligation to abolish its duty-free shops. During the negotiations they took advantage of this for their own promotion. However, in 'normal' circumstances they did not possess much formal power *vis-à-vis* other actors, but where the decision outcome was expressed in a 'time period' (as in our case study), their capabilities could be much more significant. They both succeeded to drag the negotiations out. Finally, trade unions were the only flexible non-governmental negotiators. They represented the interests of those people who would potentially lose their job as a result of the closure of duty-free shops. They thereby were trying to achieve a compromise with the government to cover the costs arising from the predicted unemployment. The results of these negotiations were that trade unions did not support the non-parliamentary political party "Nova" (The New Party) in collecting the forty thousand signatures of voters needed to call a referendum.

The effective power of stakeholders

Capabilities and salience together determine the effective power of stakeholders. Salience can be interpreted as the fraction of capabilities a stakeholder is willing to mobilise to realise his position in the outcome of a decision. A graphic representation of the distribution of capabilities and effective power over the positions often generates much insight into the decision-making setting (Stokman *et al.*, 2000: 136, 137).

Figure 5: Relative and effective power of the stakeholders – EU level

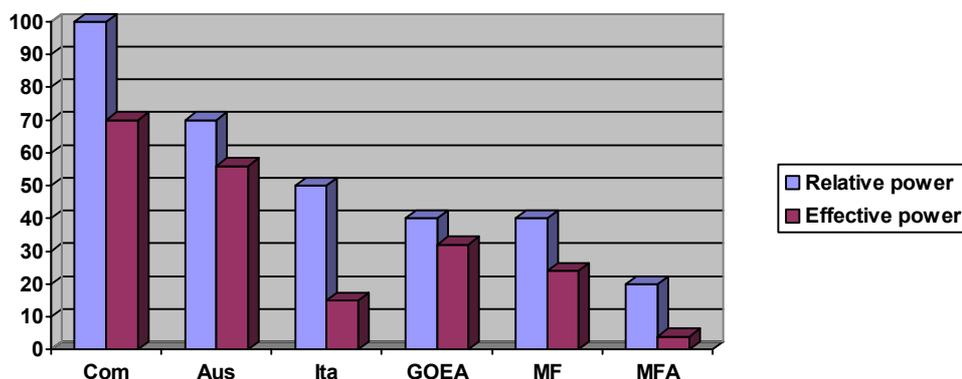
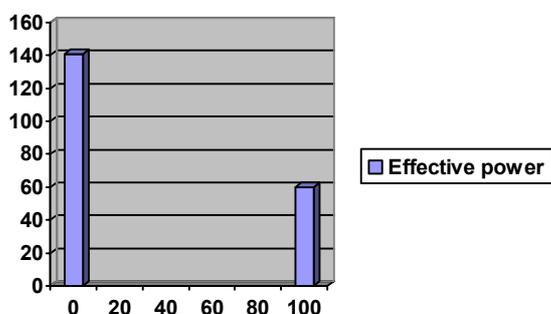


Figure 6: Distribution of the effective power of stakeholders over the different policy positions – EU level



In Figures 5 and 6 we can see that the (effective) power distribution on the issue at hand at the European level is sloped to the left. The policy alternative expressed in numerical term 0 (meaning Slovenia is legislatively obliged to abolish its duty-free shops before 1 July 1998) attracts the most effective power. In fact, this accumulation of effective power is brought by the European actors. On the other side of the graphic presentation we have the accumulation of effective power brought by the Slovenian actors. Therefore, two power blocs can be distinguished. The central question here is therefore whether both clusters of stakeholders can come to a compromise or which of the two will be able to more or less force its policy position. With regard to the distribution of the effective power of stakeholders this should be the European cluster.

In Figures 7 and 8 we can see that the (effective) power distribution on this issue at the domestic level is again sloped to the left. The policy alternative expressed in numerical term 0 (meaning Slovenia should abolish its duty-free shops as soon as possible after the end of January 2000) attracts the most effective power. If at the European level the case was that effective power was distributed on the basis of European actors *vis-à-vis* Slovenian actors, then at the domestic level effective power was distributed on the basis of Slovenian governmental actors *vis-à-vis* Slovenian non-governmental or civil-society actors (with the exception of the National Council and the Slovenian National Party).

Figure 7: Relative and effective power of the stakeholders – national level

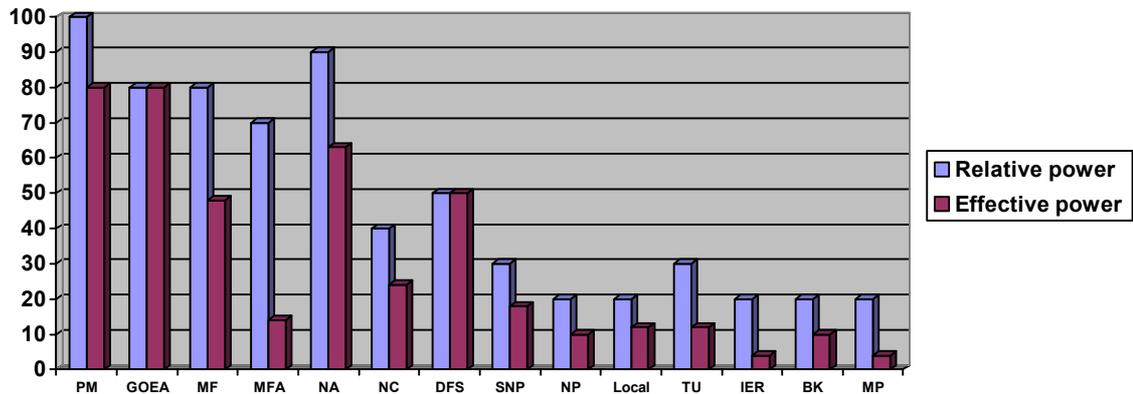
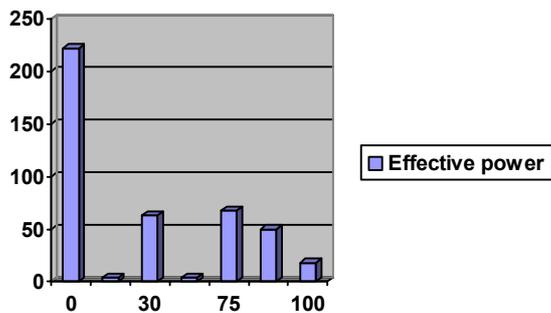


Figure 8: Distribution of the effective power of stakeholders over the different policy positions – national level



This strong slope to the left in the effective power distribution is due to the authority of governmental actors to take a final decision. The central question in this second (domestic) phase of negotiations is again whether governmental and civil-society actors can reach a compromise or if governmental actors are able to take advantage of their strong and predominant (effective) power.

DATA ANALYSIS

Simulation of the decision-making process

For the purpose of our study, we chose the Challenge (conflict-oriented) model of Bueno de Mesquita, also called the Expected Utility Model, to analyse the process that underlies the decision-making process on the abolition of duty-free shops in Slovenia.

Table 7 gives us the results of the Challenge model simulation of the decision-making process on abolishing duty-free shops at the European level. In the first column, the original (initial) policy positions of the actors are given, while the following columns show us the changes in policy positions made during the negotiations. The last row of the table is the forecasted

collective decision outcome, after round of simulated negotiation between the stakeholders involved.

Table 7: Results of the Challenge Model simulation – European level

Actor	Initial	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7	Round 8	Round 9	Round 10	Round 11
Aus	0	63,58	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74
Com	0	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74
GOEA	100	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00
Ita	0	0,29	10,36	24,39	34,71	42,13	49,94	55,46	57,77	58,71	59,16
MF	100	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00	100,00
MFA	100	100,00	83,49	73,74	67,99	64,37	61,97	60,66	60,08	59,85	59,77
Forecast	0	63,58	59,74	59,74	59,74	59,74	59,74	59,74	59,74	59,74	

During this theoretical model-guided simulation of European-level negotiations, the Commission with the greatest power and a relatively high salience (resulting in the greatest effective power) takes up the key role. Yet this happened only after the second round, i.e. after the radical alteration of its position. Namely, the simulation predicted the outcome in the first round at zero. That prediction made the actors at zero very risk averse, while the actors on the other side were very risk accepting because they had nothing to lose. As a result, the zero actors got challenges they did not expect and altered their positions in the first round. After the second round, the Commission was able to persuade firstly Austria, and later on also (gradually) Italy and the Ministry of Foreign Affairs. At the other end of the continuum of policy alternatives, the Government Office for European Affairs and the Ministry of Finance were able to maintain their initial positions. The forecast or expected outcome of the simulation is thus around 60. Yet, the prediction of the simulation is very extreme and does not reflect the real outcome. In reality, formally the final decision was taken on 27 January 2000, which we have estimated as an outcome of 30-35.

Table 8 gives us the results of the simulation of the decision-making process on abolishing duty-free shops at the national level.

Table 8: Results of the 'Expected Utility Model' simulation – national level

Actor	Initial	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7	Round 8	Round 9	Round 10	Round 11
BK	75	75,00	81,86	82,83	79,15	82,17	82,35	82,42	82,53	79,15	80,09
DFS	85	85,00	85,00	85,00	85,00	85,00	85,00	85,00	85,00	85,00	85,00
GOEA	0	79,15	79,15	79,15	79,15	79,15	79,15	79,15	79,15	79,15	79,15
IER	25	25,80	41,45	70,90	71,23	72,32	73,12	72,35	74,06	72,53	74,24
Local	75	75,00	83,07	79,15	83,59	84,20	79,15	79,42	79,15	83,34	79,15
MF	0	30,00	41,00	79,15	82,47	55,85	55,85	55,85	55,85	55,85	55,85
MFA	0	20,90	28,89	28,89	37,78	39,24	40,67	43,14	43,65	44,02	44,31
MP	60	0,00	85,00	79,15	81,81	81,84	80,64	81,25	81,60	82,33	82,61
NA	30	84,48	84,48	84,48	84,48	79,15	84,82	84,82	84,82	84,82	84,82
NC	75	75,00	82,46	79,15	83,24	83,38	79,15	82,99	79,15	82,90	79,15
NP	75	75,00	81,86	82,83	79,15	82,17	82,35	82,42	82,53	79,15	80,09
PM	0	63,42	63,42	63,42	63,42	63,42	63,42	63,42	63,42	63,42	63,42
SNP	100	100,00	91,10	88,99	87,00	86,99	80,06	84,93	79,15	85,00	79,15
TU	75	75,00	80,78	81,63	81,64	83,20	79,15	79,33	79,15	81,50	81,53
Forecast	0	75,00	79,15	79,15	82,47	79,15	79,15	79,15	79,15	79,15	

The simulation of negotiations at the national level is almost identical with the simulation at the European level. The stakeholder with the greatest salience and relatively high power (resulting in the greatest effective power, including the Prime Minister) – the Government Office for European Affairs – (again) takes up the key role. As at the European level this happened (again) only after the second round, i.e. after (even more than at the European level) the radical alteration of its position. The simulation (again) predicted the outcome in the first round at zero. This prediction (again) made the actors at zero very risk averse, while the actors on the other side were very risk accepting because they had again nothing to lose. As a result, the zero actors altered their positions in the first round. After the second round, the Government Office for European Affairs was able to persuade most actors close to it. The simulation of the decision-making process shows that the stakeholders with the most extreme policy positions turned out to be relatively powerless. The final expected outcome of the simulation is around 80. The prediction of the simulation is (again) very extreme and (again) does not reflect the real outcome. In reality, formally the final decision was taken on 21 September 2001, which we have estimated as an outcome of 25-30.

Yet, the results of the model predictions are not in accordance with the true decision outcomes at both levels. Indeed, on the basis of acknowledgements we could argue that the final solution at the European level was found through an alternative compromise, while at the national level it came through a challenge strategy. On the basis of the prediction that the final solution at the European level was found through an alternative compromise, it is very interesting to compare the Challenge model predictions with those of the Compromise model (Table 9).

Table 9: Predictions of the Compromise Model

European level	National level
30	31

The predictions of the Compromise model are almost totally correct and in accordance with the real outcome; indeed, not only at the European level but also at the national one. Namely, the Compromise model works well if the controversies as reflected in the issues with a variety of positions occur in a setting in which there are strong common interests to find a common solution. This was also the case in the negotiations at the European level between Slovenia and the EU, as both parties had a high stake in arriving at a common position. What is surprising is the correct prediction at the national level, where we were unable to identify any strong common interests among governmental and civil-society actors to find a common solution. However, the Compromise model was performed much better than the Challenge model.

CONCLUSION

The key aims of the present study were to assess how accession negotiations in the selected policy field in Slovenia (as a candidate-country negotiating full EU membership) took place, and how outcomes were determined between different types of stakeholders involved in two levels of decision-making – European and national. With respect to achieving these aims, we applied a theoretical modelling approach of collective decision-making to examine the abolition of duty-free shops in Slovenia. For certain objective reasons we chose the conflict-oriented approach (challenge model) of Bueno de Mesquita, also called the Expected Utility Model.

On the basis of the case study analysis we conducted and with respect to linking this analysis to a broader institutional context, we can confirm the following:

- the Slovenian core executive on European business played a crucial role in both phases of negotiations – European and national. A particularly important role was played by the Prime Minister and the Government Office for European Affairs, to some degree also by the Ministry of Finance, and only to a lesser extent by the Ministry of Foreign Affairs.
- The Slovenian Prime Minister actually held the key role as he convened the so-called European meeting of the government (the highest political co-ordinating mechanism to deal with strategic issues of Slovenia's accession to the EU), at which the final decision to remodel duty-free shops as soon as possible was adopted. This acknowledged our theoretical presumption that the Prime Minister does not pay much attention to day-to-day EU issues but mostly focuses on strategic issues and intervenes as circumstances require.
- Our case study also showed the Government Office for European Affairs to be a central co-ordinating unit for negotiating with the EU, as well as for negotiating at home. As such, the Government Office for European Affairs possessed the greatest level of salience in the negotiations.
- We also noted the National Assembly as being one of the most crucial actors (if not even the most crucial) at the national level. This is not only reflected in Parliament's role of discussing and adopting all of the negotiating positions before they are sent to Brussels, but also in the National Assembly's responsibility to adopt legislation making it possible to abolish the controversial duty-free shops. The National Assembly was thereby the ultimate national decision-making unit in the selected issue.
- Finally, our case study acknowledged the *de facto* significant role of civil-society actors. One might argue that the selected case is too specific to properly describe the actual role of civil-society actors in the process of the accession negotiations. However, we believe that the role of civil-society is to appear as circumstances require. Such an instance was the problem of abolishing duty-free shops in Slovenia.

We also ascertained that accession negotiations are a unique type of negotiations, determined by three key negotiating attributes – the so-called 'accession negotiating triangle'. Our case study shows that, in the case of conflict between political and economic interests in a candidate-

country, there is a strong likelihood that the political decision to join the EU will prevail over an (particular or even national) economic interest. Otherwise, during the negotiations in the most politically and economically controversial issues the highest values were represented by the economic interests of EU member-states.

Accession negotiations were also determined by the superior bargaining power of EU actors and thereby also by the unequal negotiating stances. Nevertheless, our case study shows that, irrespective of the result of the negotiations, the new member state, Slovenia, was able to achieve a kind of 'artificial' transitional period.

At the beginning of the analysis we suggested that an overly transparent and 'open' negotiating style (i.e. the relatively large involvement of civil society actors) might lead to a lack of governmental control and act as a constraint during the negotiating process. Our case has to some extent confirmed this. But it is important to emphasise that the civil-society actors merely used the constitutionally determined possibilities to have an impact on decision-making process. Therefore, these 'constraints' during the negotiating process were (are) only for the good of democracy. As such, it is questionable whether we can speak about a lack of governmental control. In any case, this also confirms the fact that the key and hardest part of the accession negotiations takes place at home.

We also suggested that collective policy decisions within the first part of the accession negotiations ('negotiating harmonisation') are based on conflict rather than compromise or exchange across the issues being 'negotiated'. The model predictions did not support argument. However, we still believe that this presumption is valid to the same extent as it is invalid. Namely, it is true that in accession negotiations there are strong common interests to find a common solution, and both negotiating parties have a high stake in arriving at a common position. But it is also true that, due to any kind of strong interest on the EU side, the EU will take advantage of its superior bargaining power and 'coerce' a candidate-country to give in to the EU's interests.

To conclude, the negotiations on abolishing duty-free shops in Slovenia can best be described with the proverb *to run with the hare and hunt with the hounds*. Namely,

- the European actors were finally satisfied that Slovenia had abolished its duty-free shops;
- the Slovenian governmental actors overcame an obstacle in the accession negotiations;
- the owners of duty-free shops achieved an almost three-year-long artificial transitional period, and (with only a few exceptions) have successfully remodelled their shops and (on a non-duty-free basis) continued operating;
- the experts 'buried their hatchets'; and
- both political parties gained from increased publicity.

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