



EUROPEAN PARLIAMENT

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION
DIRECTORATE B
- POLICY DEPARTMENT -

NOTE

THE EUROPEAN PARLIAMENT'S ROLE IN EU TRADE POLICY

Prepared for Members of the European Parliament's delegation to Hong Kong (December 2005)

This note was requested by the European Parliament's Committee on International Trade

This paper is published in the following languages: English

DGExPo/B/PolDep/Note/2005_317

5 December 2005

[PE N°]

EN

Author:

Levente CSÁSZI

Manuscript completed in December 2005

Copies can be obtained through: E-mail:

ccalvo@europarl.eu.int

Brussels, European Parliament,

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

1. The Common Commercial policy

The *Treaty Establishing the European Community* (EC Treaty) regulates the customs union and common commercial policy of the European Community. The trade-related provisions of the EC Treaty were amended by the *Treaty of Amsterdam* and the *Treaty of Nice*. The common commercial policy defines very important exclusive competences for the European Commission but very limited competences for the European Parliament. In most aspects of the common commercial policy (e.g. trade negotiations) the treaties do not require even consultation of the EP, however this has been standard practice since the last legislature.

It is worth noting that the proposed *Constitution* that was rejected in the French and Dutch referenda contains several provisions that would amend the trade-related competences of the European Community and would increase the European Parliament's powers significantly by introducing decision-making on an equal footing with the Council of Ministers in most areas under the common commercial policy.

The common commercial policy is defined by the following legal bases:

EC Treaty:

- **Customs Union** (Articles 25, 28, 29): "Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States." Quantitative restrictions on imports and exports between Member States are also prohibited.
- **Common Customs Tariff** (CCT, Article 26): "Common Customs Tariff duties shall be fixed by the Council acting by a qualified majority on a proposal from the Commission."
- **Trade promotion** (Article 27): The Commission shall carry out its tasks guided "by the need to promote trade between Member States and third countries".
- **Common commercial policy objectives** (Article 131): "By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers."
- **Export competition** (Article 132): "Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted."
- **Common commercial policy** (Article 133):

"The common commercial policy shall be based on **uniform principles**, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies."

"Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations." **The European**

Parliament has no formal role in formulating the negotiating mandate, but it can exert some influence on it through resolutions.

"The Commission shall conduct these negotiations in consultation with a **special committee** appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations." Although not required by the EC Treaty, Commissioner Pascal Lamy made it a practice during his term to report to Members of the European Parliament on the progress of negotiations.

"In exercising the powers conferred upon it by this Article, the Council shall act by **qualified majority**." However, the "Council shall act unanimously when negotiating and concluding an agreement ... in the fields of trade in services and the commercial aspects of intellectual property", where such an agreement represents a new area of rule-making. The *Treaty of Amsterdam* extended the provisions of Article 133 to trade in services and intellectual property, and the *Treaty of Nice* further refined this area by building in safeguard clauses for Member States.

"An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of laws or regulations of the Member States in an area for which the Treaty rules out such harmonisation." "[A]greements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the **shared competence** of the Community and its Member States."

It is important to note that while **no formal assent is required from the EP** following the conclusion of trade negotiations in the WTO, **it has some leverage through consultation and occasionally codecision (e.g. compulsory licensing) when adopting legislation** that is necessary to comply with the commitments made during the negotiations.

- **Trade defence** (Article 134): "[T]he Commission may authorise Member States to take the necessary protective measures" in the case of dumping or subsidies.
- **International agreements** (Article 300):

In this domain, parliament is more closely associated with the process and is granted a more important role by compulsory consultation and considerable leverage through the assent procedure in a number of cases.

"Where this Treaty provides for the conclusion of **agreements** between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it."

"[T]he signing ... and the **conclusion** of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission." "[T]he same procedures shall apply for a decision to suspend the application of an agreement."

"The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements."

"The Council shall conclude agreements after consulting the European Parliament".
"By way of derogation ..., [the following agreements] shall be concluded after the **assent** of the European Parliament has been obtained":

1. association agreements "involving reciprocal rights and obligations" between the Community and one or more States or international organisations (Article 310);
2. "agreements establishing a specific institutional framework";
3. "agreements having important budgetary implications for the Community";
4. "agreements entailing the amendment of acts adopted under the [codecision] procedure".

"Agreements ... shall be **binding** on the institutions of the Community and on Member States."

- **Trade sanctions** (Article 301): The Council, acting by qualified majority on a proposal from the Commission, may "interrupt or reduce, in part or completely, economic relations with one or more third countries".

2. Mandate of the International Trade Committee

In this legislature, a separate International Trade Committee has been established. On 29 January 2004, the European Parliament adopted a *decision on the number, powers and responsibilities of committees* (P5_TA (2004) 0050), which set out the mandate of the new International Trade Committee. The section on the Committee on International Trade reads as follows:

"III. Committee on International Trade

Committee responsible for: matters relating to the establishment and implementation of the Union's common commercial policy and its external economic relations, in particular:

1. financial, economic and trade relations with third countries and regional organisations;
2. measures of technical harmonisation or standardisation in fields covered by instruments of international law;
3. relations with the relevant international organisations and with organisations promoting regional economic and commercial integration outside the Union;
4. relations with the WTO, including its parliamentary dimension.

The committee liaises with the relevant interparliamentary and ad-hoc delegations for the economic and trade aspects of relations with third countries."

3. Interinstitutional Agreement:

The European Parliament and the Commission jointly adopted a *Framework Agreement on relations between the European Parliament and Commission* on 29 June 2000 and this was

amended on 25 May 2005. The objective of the interinstitutional agreement is to update the two codes of conduct, adopted in 1990 and 1995, that guided relations between the two institutions; to strengthen the responsibility and legitimacy of the Commission; to extend constructive dialogue and political cooperation; to improve the flow of information; and to consult and inform the European Parliament on Commission administrative reforms.

The agreement regulates the involvement of the European Parliament in the conclusion of international agreements and enlargement.

- **Defining the negotiating mandate, consultation during negotiations and follow-up:** "In connection with international agreements, including trade agreements, the Commission shall provide **early and clear information to Parliament** both during the phase of preparation of the agreements and during the conduct and conclusion of international negotiations. This information covers the draft negotiating directives, the adopted negotiating directives, the subsequent conduct of negotiations and the conclusion of the negotiations.

The information referred to in the first subparagraph shall be provided to Parliament in sufficient time for it to be able to express its point of view if appropriate, and for the **Commission to be able to take Parliament's views as far as possible into account**. This information shall be provided through the relevant parliamentary committees and, where appropriate, at a plenary sitting.

The Commission shall take the necessary steps to ensure that Parliament is immediately and fully informed of:

- (i) decisions concerning the provisional application or the suspension of agreements; and
- (ii) a Community position in a body set up by an agreement.

In relation to international agreements, including trade agreements (the preparation phase for such agreements, draft negotiating directives and the adopted negotiating directives) the **Commission shall provide early and clear briefing of the European Parliament in order to be able to take due account of the European Parliament's views in so far as possible.**"

- **Delegations:** "Where the Commission represents the European Community, it shall, at Parliament's request, **facilitate the inclusion of Members of Parliament as observers in Community delegations negotiating multilateral agreements**. Members of Parliament may not take part directly in the negotiating sessions. The Commission undertakes to keep Members of Parliament who participate as observers in Community delegations negotiating multilateral agreements **systematically informed**.

4. Note on the use of legal terms in the trade context:

There is a plethora of legal terms in use in the trade context, which invites further clarification. As can be seen from above, the **European Community** is the legal person with which other international actors, such as states and international organisations, negotiate and conclude trade agreements.

In the World Trade Organization (WTO), the European Community is known as the **European Communities**. This is because the European Communities that became a party to the *General Agreement on Tariffs and Trade* had comprised the European Economic Community (EEC or Common Market), the European Coal and Steel Community (ECSC), and the European Atomic Energy Community (Euratom). Between 1967 and 1993, i.e. between the entry into force of the Merger Treaty (which unified the institutions of the three communities) and the Maastricht Treaty (which replaced the 'European Economic Community' with the 'European Community'), the Commission negotiated trade agreements on behalf of the European Communities.

Indeed, the European Communities, along with Member States of the European Union, became founding Members of the WTO under the *Agreement Establishing the World Trade Organization* (Marrakesh Agreement, Article XI). With the adoption of the Constitution, however, the name of the European Communities would change to **European Union** in the WTO.