European Business Law Review

KLUWER LAW INTERNATIONAL

A WoltersKluwer Company

Published by:
Kluwer Law International
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Kluwer Law International
Prospero House
Lower Ground Floor
241 Borough High Street
London SE1 1GA
United Kingdom

Sold and distributed by:
Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive
Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
E-mail: kluwerlaw@turpin-distribution.com

Subscription enquiries and requests for sample copies should be directed to Turpin Distribution Services Ltd.

Subscription prices, including postage, for 2006 (Volume 17):
EUR 621.00 / USD 733.00 / GBP 435.00.
This journal is also available online. Online and individual subscription price are available upon request. Please contact our sales department for more information at +31 (0)172 641562 or at sales@kluwerlaw.com.

European Business Law Review is published bimonthly.

For information or suggestions regarding the indexing and abstracting services used for this publication, please contact our rights and permissions department at permissions@kluwerlaw.com.

© 2006 Kluwer Law International BV, The Netherlands

ISSN: 0959 6941

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission of the publishers.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, United States of America.
E-mail: permissions@kluwerlaw.com.

Adapting the European Community Legal Structure to the International Trade[1]

JULIEN CHAISSE*

Summary: Since the origin, the EC has had to change and develop its institutional law (or primary legislation), which defines the concept and the scope of the Common Commercial Policy, to follow as much as possible the protean mutations of the international trade system governance. Our study relates to the very causes that have come about from the standards resulting from World Trade Organisation agreements and which induce an adaptation of the primary legislation. We will focus on the evolution of the CCP which shows a strong and progressive increase in the EC competence, as well as simultaneously presumes an accepted erosion in the sovereignty of the EC Member States sovereignty. The CCP evolution highlights the deepening of the European integration process through the elaboration of new decision-making mechanisms in matter of commercial policy. In this connection, the pivotal question is: according to the WTO frame, how to allocate power between the EU institutions and governments of the Member States on the one hand, and between different parts of the EU institutions on the other? Indirectly then, the WTO, in the light of the questions raised, is contributing to the EU past, present and future structural evolution.

Introduction

The objective of the European Economic Community (EEC), created by the Treaty of Rome (1957), was to establish a common market between the Member States of the Community in which goods, people, services and capital could move freely[2].

---

* Lecturer at the Institut d'Etudes Politiques Aix-en-Provence, Paul Cézanne University (France) at julien.chaisse@iep-aix.fr

[1] This paper results of previous communications presented at the *"European Union seminar – International Business Research Conference Athens 2005"*, organised par Aryan Hellas and the European Commission, American School of Classical Studies, Athens (Greece), 11–13 November 2005 and at the international conference *"The WTO and Beyond: Global Governance and State Power in the Twenty-First Century"*, organized by the Centre for Global Political Economy, Simon Fraser University (SFU), Vancouver (Canada), 15–16 July 2004.

[2] The implementation of a common trade policy by the European Community (EC) was historically at the heart of the original plan that led to the founding of the European Union (EU) by the Treaty of Maastricht in 1992.

In order to achieve this, a twelve-year transitional period up to 31 December 1969 was introduced. Up to 1970, it was for Member States to coordinate their trade relations with non-Community countries. Since the transitional period ended, the Community has had sole competence for the commercial policy: the so-called Common Commercial Policy (CCP). Gradually, the expansion of international trade, essentially through the General Agreement on Tariffs and Trade of 1947 (GATT47), made the CCP into one of the Community's most important policies. At the same time, the successive enlargements of the Community and the consolidation of the common market strengthened the Community's position as a centre of attraction and influence for trade negotiations, conducted bilaterally with other countries and multilaterally in the GATT era (1947–1994), and thereafter (1995 onwards) in the World Trade Organization (WTO).

Undoubtedly, the EC (EC) has had (and still have) to enforce[3] the material rules of GATT47 and WTO which has led to the wide transformation of its secondary legislation[4]. However, since 1957, the EC has had to change and develop its institutional law (or primary legislation), which defines the concept and the scope of the CCP, to follow as much as possible the protean mutations of the international trade system governance[5]. The primary legislation of the EC consists of the constitutive Treaties[6], the protocols and declarations which were appended to them, the treaties amending budgetary rule and institutional system and finally the treaties relating to the accession of new Member States[7].

This adaptation of the primary Community legislation to the GATT47, and later to the WTO does not find its cause in a strictly hierarchical articulation. Actually, our study relates to the very causes that have come about from the standards resulting from WTO agreements and which induce an adaptation of the primary legislation. More precisely, the operating mode of the WTO, the rules of negotiations... impose on its members (in particular on the EC and the EC Member States) the requirement of adapting their institutional law in the field of the commercial policy are all measures that would guarantee the effectiveness of its participation

---

[3] See for a profound analysis, Steve Charnovitz, "The World Trade Organization and Law Enforcement," (2003) 37(5) Journal of World Trade Volume 817–837.

[4] Secondary legislation is based on the Treaties and implies a variety of procedures defined in different articles thereof. In the framework of the Treaties establishing the European Communities, Community law may take the different forms: regulations, directives… See Pierre Didier, *WTO trade instruments in EU law – Commercial policy instruments: dumping, subsidies, safeguards, public procurement* (London: Cameron May, 1999).

[5] Notably the inclusion of new sectors in the WTO (Public procurement, services, intellectual property…) combined with the weight of constraint incarnated in the Dispute Settlement Mechanism.

[6] The Treaties notably define the role and responsibilities of EU institutions and bodies involved in the decision-making processes and the legislative, executive and juridical procedures which characterize Community law and its implementation.

[7] The Maastricht Treaty was a crucial "constitutional moment" in many ways, notably because it converted an international treaty into something approaching a Constitution, in Joseph H. Weiler, *The Constitution of Europe: Essays on the Ends and Means of European Integration* (Cambridge: Cambridge University Press, 1999).

in the governance of the international trade. We will focus on the evolution of the CCP which shows a strong and progressive increase in the EC competence (i. e. its legal authority to negotiate and conclude international commercial agreements), as well as simultaneously presumes an accepted erosion in the sovereignty of the EC Member States sovereignty. The CCP evolution highlights the deepening of the European integration process through the elaboration of new decision-making mechanisms in matter of commercial policy. In this connection, the pivotal question is: according to the WTO frame, how to allocate power between the EU institutions and governments of the Member States on the one hand, and between different parts of the EU institutions on the other? Indirectly then, the WTO, in the light of the questions raised, is contributing to the EU past, present and future structural evolution[8].

This desired and very present reinforcement of the position of the Community at the international level depends on the achievement of a dual objective, of two adaptations: on the one hand, the adaptation of the definition and scope of the CCP, in other words of a Community competence (Part I), on the other hand, *ipso facto* the adaptation of the decision-making process as regards CCP, i. e. institutions and procedures of decisions (Part II).

I. The Progressive Adaptation of the Community Competence in Commercial Policy

This rise to power of the commercial policy as a significant sector of the EC external action concretized itself in the evolution of its legal competence in this field. Because the sectors negotiated at the international level were increasing, the stake for the EC was to increase its competence. That has been made as much through the jurisprudence of the Court of Justice of the European Communities (CJEC) (A) as well as the Treaty amendments (B).

A . The Phase of Jurisprudential Extension of Community Competence

The term common commercial policy is nowhere defined in the Treaty of Rome. The ordinary meaning of the word commercial suggests that from the outset, the policy had a potentially wide coverage. Article 133(1) of the Treaty, however, contains a series of illustrations of the uniform principles on which the policy is to be based, namely: Changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade including those to be taken in the event of dumping

---

[8] To see how WTO norms are affecting and taking into account in EU governance, Grainne De Burca and Joanne Scott, “The Impact of the WTO on EU Decision-Making”, in *EU and the WTO: Legal and Constitutional Aspects,* eds. Graine De Burca and Joanne Scott (Oxford: Hart Publishing, 2002), 1–30.

or subsidies. These examples were viewed at the onset as limiting the coverage of Article 133 to trade in goods and related issues only. It was accepted as a matter of practice that the Commission's exclusive rights of proposal, of spokesmanship and as negotiator for the Community were likewise restricted. However, due to the need of evolution and the timidity of the legislative branch, the CJEC has to interpret and develop the CCP (1), within the limits as defined in (2).

1) Extension through the Decisions of the Court of Justice of the European Communities

Independently of Treaty Amendments, the negotiating competence of the Community as a whole and on the Commission by Article 133 has been progressively extended by a series of decisions of the CJEC. It has to be clear that the question of competence is central from the legal point of view: any institution is essentially defined from the competence perspective[9]. In the seventies, the CJEC had thus concluded that where power exists for the Community to adopt internal rules, relevant external negotiations are to be concluded centrally by the Commission even though the Council may not have exercised the internal rule-making power (application of the principle *in foro interno in foro externo*)[10]. Indeed, it was clear that "a restrictive interpretation of the concept of common commercial policy would risk causing disturbances in intra-community trade by reason of the disparities which would then exist in certain sectors of economic relations with non-member countries"[11].

The Court's decisions extended the central negotiating authority of the Community and of the Commission into areas such as financial and other services, since that was the trend of the world trade and even though by convention they were not previously treated as falling within the ambit of Article 133 itself.

2) The 1994 Paradoxical Stage: Increase of WTO Competences and the End of the EC Competences Extension

The *Uruguay Round* of Multilateral Trade Negotiations in the GATT (1986–1994) covered a far wider range of subjects than had ever been attempted before, including the so-called new topics of trade in services and the trade-related aspects of intellectual property protection and international investment. The negotiations on goods (tariffs, non-tariffs barriers, customs procedures, standards and the like) were a matter of established Community competence, but the same was not true of the new topics, in spite of implications of the CJEC jurisprudence. When the

[9] See Pieter-Jan Kuijper, "The EC's Common Commercial Policy: Which Way the Swing of the Pendulum?", (1994) 88 American Society of International Law Proceedings 294–300.

[10] The authority to enter into international agreements "arises not only from an express conferment by the treaty…] but may equally flow from other provisions of the treaty and from measures adopted, within the framework of those provisions, by the community institutions". Court of Justice of the European Communities, Judgment of 31/3/1971, Commission / Council (Rec.1971, point 16).

[11] Court of Justice of the European Communities, Opinion of 4/10/1979, *Opinion 1/78* (Rec.1979, Point 45).

Uruguay Round package was complete and the agreements establishing the WTO were ready to be signed at Marrakech in April 1994, the Commission requested that only the Community as a whole should sign the legal texts, and not individual Member States. This was contested by several Member States which considered that they retained legal competence in important elements of the package, namely the new subjects. In the end it was pragmatically agreed that the Presidency and the Commissioner responsible for external trade should sign for the Community, while the individual Member States also signed.

The Commission referred the issue of principle to the CJEC for resolution. The Court's Opinion, given on 15 November 1994[12], held that important areas of the WTO Agreements on services and intellectual property[13] fell outside the common commercial policy, and that accordingly, competence in these matters was shared between the Community and the Member States. At first sight, this was a surprising decision, since the trend of CJEC decisions on such issues over the years has been to extend Community competence[14]. To that extent, *Opinion 1/94* reflects the Court's views on the need for a political consensus within and among the Member States[15]. However, the Court's definition of the extent of competence as set out in the opinion was explicitly based on Treaty provisions[16]. For political reasons the Court's Opinion was welcome to some Member States. It preserved their right in principle to negotiate at the national level in sectors which are sensitive, not least because they represent dynamic and fast-growing areas of national economies.

As a result, of many factors, such as the recent evolution of the structure of the world trade, the birth of its legal face through WTO and the limits posed by the European case law with the extension of Community competence in commercial matters; it was necessary to carry out an adaptation of the primary legislation in order to guarantee the effectiveness of the Community action within WTO.

---

[12] Court of Justice of the European Communities, Opinion of 15/11/1994, Opinion 1/94 (Rec.1994, p I-5267)

[13] General Agreements on Trade in Services (GATS) and Agreement on trade-related aspects of intellectual property rights (TRIPs).

[14] See for a general assessment of the jurisprudence, Marise Cremona "EC External Commercial Policy after Amsterdam: Authority and Interpretation within Interconnected Legal Orders", in *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade*, ed. Joseph H. H. Weiler (New York: Oxford University Press, 2000), 9.

[15] Professor Hilf affirms even that "in the delicate post-Maastricht climate one could hardly have expected to see the Court decide against all Member States having submitted written observations", in Meinhard Hilf, "The ECJ's Opinion 1/94 on the WTO: no surprise, but wise?", *European Journal of International Law* 6 (1995): 256. In this sense also Anthony Arnull, "The Scope of the Common Policy: A Code on Opinion 1/94", in *The European Union and World Trade Law – After the Uruguay Round*, ed. Nicholas Emiliou et David O'Keeffe (London: Wiley, 1996), 359.

[16] See for a legal analysis of this Opinion Pierre Pescatore, "Opinion 1/94 on Conclusion of the WTO Agreement: Is There an Escape from a Programmed Disaster?", (1999) Common Market Law Review 401–402.

B. *The Phase of Treaty Amendment: When the Legislator Seizes the Initiative Again*

Hemmed within an inappropriate primary legislation, the CCP could have, however, benefited from a conciliating jurisprudence of the Court of Justice of the European Communities. Irrespective of the flexibility of the concept of CCP, there are some orientations and definitions that the legislator only can elaborate given a judiciary reluctant to rule on controversial issues. The first attempt to amend the primary legislation was made by the Treaty of Amsterdam (1) and the second by the Treaty of Nice (2).

1) *The Disappointing Attempt of the Treaty of Amsterdam or the Resistance of the States*

During the negotiations which have led to the adoption of the Treaty of Amsterdam (1997), the Commission pressed hard to get Article 133 extended to cover all services and intellectual property matters. Extending the legal coverage could have brought real practical advantages in the continuing WTO negotiations on services and TRIPs, but when it concerns to national commercial interests, even countries which strongly support the principle of European integration tend to resist further erosion of their national competence. As a result, the Treaty of Amsterdam brought just a new Paragraph (5) which was added to the Article in the following terms: "The Council, acting unanimously on a proposal from the Commission and after consulting the EP, may extend the application of Paragraphs (1) to (4) to international negotiations and agreements on services and intellectual property insofar as they are not covered by these Paragraphs". Thus, there was no direct grant of Treaty-making power in relation to services and intellectual property. The Treaty of Amsterdam left the decision with regards to the scope of Article 133 to the political institutions with all the foreseeable risks. To that extent, the "pragmatic solution in Article 133(5) is, of course, at least in part an agreement to disagree (or rather an agreement to postpone decision to a future unspecified date) in the sense that it reflects the lack of consensus between the Member States at the time of Amsterdam concerning the potential scope of the Community's common commercial policy and its effects on internal decision-making powers"[17]. This was partly a face-saver for the Commission, partly a recognition that in the long run the Community would have to find a consistent basis for its negotiations in all areas of international trade.

---

[17] Marise Cremona, "EC External Commercial Policy after Amsterdam: Authority and Interpretation within Interconnected Legal Orders", in *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade*, ed. Joseph H. Weiler (New York: Oxford University Press, 2000), 33–34.

2) The Changes in Article 133 EC at the Nice Summit: the Choice of Reason

The Treaty of Nice has brought a new Article 133[18] and a new extended CCP which is not without its critics[19], as we will try to demonstrate. Indeed, the main cause to these modifications emphasized upon the necessity of the EC to have a more efficient trade policy within the WTO.

a) Outline of the new provisions

- A new transfer of competences: Article 133(5)(1)

Pursuant to Article 133(5)(1), the paragraphs one to four will apply to the negotiation and the conclusion of agreements concerning trade in services and the commercial aspects of intellectual property that are not covered by the said paragraphs. Therefore, the supply of services, in the form of supply of services abroad, commercial presence and the presence of natural persons, as well as the trade related aspects of intellectual property other than protection against counterfeit goods at the external borders of the Community will now be covered by the regime of Paragraphs one to four.

The previous legal situation is therefore obsolete. This concretely signifies that the negotiation and conclusion of agreements relating to services and intellectual property no longer require unanimity in the Council. Further, a ratification of such agreements by the Member States is no longer necessary. Such agreements therefore do not need to be concluded as "mixed agreements", because the first sub-paragraph establishes a Community competence. In the fields of services and commercial aspects of intellectual property rights, the general rule now is the competence of the Community. Nevertheless there are some exceptions. Indeed, beyond this extension of the CCP, sub-paragraphs two and three of Article 133(6) remove certain services sectors from the scope of the first sub-paragraph. These include cultural and audiovisual services, educational services, social and human health services and transport services. The said services are not within the exclusive competence of the EC; instead there is a shared competence between the Community and the Member States.

- Trade agreements of the EC Member States persist: Article 133(5)(4)

Article 133(5) fourth sub-paragraph relates to the agreements of the Member States with third countries or international organizations. The scope of this provision is restricted to agreements relating to trade in services or the commercial aspects of intellectual property. This Paragraph only concerns trade in services and the commercial aspects of intellectual property, but not trade in goods. This

---

[18] Taking into account the complexity of this Article, we present it in the annex of this paper, see Annex 1.

[19] Christoph Herrmann, "Common Policy after Nice: Sisyphus would have done a better job", (2002)Volume 39 Nr.1 Common Market Law Review 14.

interpretation results from the fact that trade in goods falls within the exclusive competence of the Community; the Member States therefore may not conclude any agreements in this area with third countries or international organizations[20]. Nevertheless, this article protects the position of the Member States in relation to agreements already entered into and has to be understood as a kind of mechanism of transition.

- Maintenance of a Exemption to the Extension of Competence: Article 133(7)

In its manner of regulation, the new Paragraph 7 of Article 133 corresponds to the old Paragraph 5, with the difference that the new Paragraph 7 does not focus on trade in services or commercial aspects of intellectual property, but rather on those areas of intellectual property which are not related to trade. The competence for negotiation and concluding agreements in these areas therefore remains mainly with the Member States, as these areas are not covered by the new Paragraph 5. However, through a unanimous decision the Council may include these areas in Paragraphs 1–4, and therefore "communitarise" them through an autonomous Treaty amendment. Nevertheless, considering the experience with the previous Article 133(5), it is doubtful whether the Council will actually reach such a decision[21].

b) A modest contribution

To sum up, it can be stated that the Treaty of Nice only represents a small step forward in strengthening the Community's capacity to act on the international scene, which remains a major stake for the future years. Many negative aspects of the Court's opinion have been codified by the new Article 133. The negotiation and conclusion of significant agreements (be they of a bilateral or multilateral character) are notably subject to a unanimous decision within the Council and ratification by the Member States. The requirement unanimity[22] gives a tool to each and every Member State in the internal decision-shaping procedure on the conclusion of international agreements to demand concessions that are non-related to trade. Furthermore, it enables third countries to exert influence on single Member States. This could be detrimental to an enlarged Community's capacity to act internationally. National sovereignty has gained the upper hand over efficiency in foreign trade. It is hard to see how the outcome of the Treaty of Nice will enable the Community to respond to the challenges of globalization and the multilateral trading system[23]. In this light, the European Convention drew up a **Treaty establishing a**

[20] For a profound analysis see Eleftheria Neframi, "La politique commerciale commune selon le traité de Nice", *Cahiers de Droit Européen* Nr. 5 (2001): 627.

[21] In this sense also Christoph Herrmann at n19 at 26.

[22] In other words, as long all the fields of the CCP would not be an exclusive competence of the EC.

[23] Certain authors are pessimist like M. Hermann who uses the myth of Sisyphus and concludes by saying that "until thenthe next Intergovernmental conference] it will need our best efforts to stop the stone from rolling back" Christoph Herrmann, at n19 at 29.

Constitution for Europe[24]. But the potential new Articles III-314 and III-315 of the Constitution do not change much from the existing situation, except however that the Article III-314 would remove any shared competence in EC trade policy (services and commercial aspects of intellectual property rights), what constitutes to some extent a clarification of the CCP scope.

We made an attempt to show the extension of the European competence in the field of the commercial policy coinciding with the rise to power of the international trade governance represented by the GATT 47 and above all the WTO Agreements. The international agreements give rise to a difficult situation for the EC to which the European Member States responded by giving more powers to the Community[25], the relevant regional entity which is able to negotiate more effectively than each isolated State within the WTO. The process is going on and the question of the EC competence remains a very important topic. The project of European Constitution proposed by the European Convention confirmed this tendency[26]. However it seems now that it will just remain a failed attempt to strengthen the European capacity action on the international scene. But the debate concerns at the same time the implementation (at the European internal level) of this CCP, ie the role of EC institutions.

II. The Implementation of the CCP or the Unfinished Adaptation of the Role of the Community Institutions

The structure of the EU[27] can be described in a few words as an "institutional triangle" composed by the European Parliament, which represents the EU's citizens and is directly elected by them; the Council of the European Union, which represents the individual member states; the European Commission, which seeks to uphold the interests of the Union as a whole. Each of these plays a role determined by the Treaty in the elaboration of the CCP. In brief, the Treaty of Nice does not bring any radical inversion of tendency in the work of the institutions for the matter which concerns us. On one hand, it validates the preeminent role of the Commission a little more than before (A). On the other hand it refuses once again to associate

---

24 See for a general assessment of the draft Constitution Simon Duke, *The Convention, the draft Constitution and External Relations: Effects and Implications for the EU and its international role* (Maastricht: European Institute of Public Administration Press, 2003): 1–39.

25 To that extent the WTO has been presented as the "Trojan Horse of The EC" via-à-vis the European Member States, see Olivier Cattaneo, *Quelles ambitions pour la puissance commerciale de l'Union européenne?* (Paris: Documentation française – Notes de l'Institut Français des Relations Internationales, 2002).

26 See Olivier Blin, «L'apport de la Constitution européenne à la politique commerciale de l'Union», *Revue du Marché Commun et de l'Union Européenne*, n° 485 (2005): 89.

27 To go further see Graine de Burca and Paul Craig, *European Union Law*, 3rd ed. (London: Oxford University Press, 2002): 1388 p

the European Parliament (EP) (the main trends of the CCP, materialized to a large extent), in Community engagement within WTO (B).

A) The Predominant Role of the Commission in International Negotiations

The instituted negotiator, the Commission always carried out the trade negotiations on behalf of the Community. Within the framework of GATT 1947, whereas the EC was not the Contracting Party, the Commission had already taken part in the tariff negotiations of Article XXIV, then with those of *the Kennedy Round* (1964–1967). In an official manner, the Commission largely contributed to the evolution of the *Uruguay Round*. We will analyse the role it played there and how it will be brought to play in the current Cycle of Doha (1). Thereafter, we will concentrate on the limited elements of framing brought by the new Treaty of Nice (2).

1) The Negotiation Mandate

In its official phase, the international negotiation is opened by a Council Decision (Article 300 European Community Treaty)[28], which justifies the Commission to organize negotiation meetings. That being the case, the room for work of the Commission is clearly circumscribed, especially when they are negotiations carried out within the framework of WTO which functions according to *a give and take* basis. Thus, the Council Decision is accompanied by a negotiating brief and designation by the special committees charged to support the Commission[29].

2) Appearance of elements framing of the action of the Commission

Broadly the purpose of reinforcement of co-operation (a) and framing of the Commission (b) are to avoid any dispute by the Member States due to the results of the negotiations. But these elements of framing remain limited enough and the new drafting seems all the same a success for the Commission, which for a long time wished to have more powers in order it more able to carry out negotiations on services.

a) Reinforcement of the co-operation between the Council and the Commission

In the field of the procedure, the co-operation between the Council and the Commission are reinforced and explicitly weigh on them the duty to take care that "the agreements negotiated are compatible with internal Community policies and rules" (Article 133(3)(1)). The objective of this provision is to support legal safety by giving to the Council/Commission co-operation a preventive role compared to the

---

[28] Axel Moberg, "The Nice Treaty and Voting Rules in the Council", (2002)Volume 40 Nr. 2 Journal of Common Market Studies 262.

[29] See for a historical perspective Sophie Meunier and Kalypso Nicolaidis, "Who speaks for Europe? The Delegation of Trade Authority in the EU", (1999)Volume 37 Nr 3 Journal of Common Market Studies 479.

possibility to refer the case to the judge who can intervene on the base of Article 300(6) or within the framework of the litigation. It tends, moreover, to reinforce the legal safety of the third parties which can be shaken at the time of the indirect jurisdictional control of the agreements operated through the act of conclusion and measures of application. But in any event it is only about one recall of the principles relating to the hierarchical relationship between international law and Community legislation. This co-operation touches two points: on the one hand compatibility with the internal rules and on the other hand the policies.

- In order to take care of the compatibility of the agreements with the internal rules: These internal rules indicate as much the basic provisions as well as of procedure. It is a question of ensuring the internal integrity and of avoiding any encroachment on the sphere of competence retained of the States. However, the new provision's implication could be the modification of secondary law before the conclusion from an international agreement.
- In order to take care of the compatibility of the agreements with the policies, the "monitoring exerted by the Council and the Commission...] also consists of a confrontation, in terms of equality and opportunity, agreements negotiated with the contents of the Community action"[30]. In my opinion, this provision is an echo to the "double reference" evoked by the Court in the *Dürbeck* case[31] and which aims "to maintain a reasonable balance between the objectives of the common agricultural policy and the interests of world trade to which reference is made in article 110"[32]. By extension, one can imagine that it is more necessary in the future to take into account of the intra-community orientations (support for the developing countries through the GPS and the policy of association, multi-functionality of agriculture et al.) before engaging with the WTO on agreements which in the long term call into question the Community legislation.

In a general way, it is however probable that the function of the new Article 133(3) is only declaratory, in the sense that the aforementioned provision points out the limited competence of the Community institutions under the terms of the principle of attribution, as well as the rule of the originating law under the terms of Article 300(6).

---

[30] Josiane Auvret-Finck, "Commentaire de l'Article 133 TCE", in *Union européenne – Commentaire des traités modifiés par le traité de Nice du 26 février 2001*, ed Joël Rideau (Paris: Librairie Générale de Droit et Jurisprudence, 2001), 235.

[31] Court of Justice of the European Communities, Judgment of 5/5/1981, Dürbeck / Hauptzollamt Frankfurt a. M. (Rec.1981, p 1095)

[32] Court of Justice of the European Communities, Judgment of 5/5/1981, Dürbeck / Hauptzollamt Frankfurt a. M. (Rec.1981, point 43).

b) Framing limited to the capacities of negotiation of the Commission

The framing of the capacities of negotiation of the Commission is specified by the new Article 133(3)(2) which provides that "The Commission shall report regularly to the special committee on the progress of negotiations".

The will to frame the Commission in its operations of negotiations is not new. One finds besides, in the history of the European negotiations, some errors which have more than once placed the Commission in an inconvenient situation. For example, certain observers noted that "it was not rare that Sir Leon Brittan, European Commissioner in charge of the Economic Relations, takes or accepts projections of negotiations without preliminary discussion, either with the College of the Commissioners or of the Council of Ministers"[33]. In this respect, it is necessary to remember the ministerial WTO Conference in Singapore (December 1996) during which the European Trade Commissioner negotiated and concluded with Mrs. Charlene Barshefsky (USA Trade Representative) the first version *Information Technology Agreement (ITA)*. The initial version of this Agreement included the electronic products such as the television sets, but also CDRom audio and video, which concern the ultra-sensible topic of the famous *cultural exemption* (exemption during, in theory, 10 years of the applicability of the rules of the GATS to the audio-visual field). The Council of Ministers rejected this initial version. This attitude of the Commission is not specific to WTO, as Mr. Warêgne underlines it, this one "with a propensity to want to conclude a series from agreements of free trade (South Africa, Cooperation Council of the Gulf, Mercosur, Mexico, Russia and Yemen for example), which is considered excessive by the Council which wonders about the capacities of management of those, on their adequacy with the common agricultural policy or on the fact that they reduce the preferences already granted to the close relations"[34]. One could find other illustrations, in particular the famous preliminary agreement of *Blair House*, which negotiated by the Commission, was denounced by the majority of the Member States.

In any event, whereas the negotiating brief defined by the Member States should be final, it is often used as starting mandate. I.e. that the European Commission allots a room for political manoeuvre to make concessions higher than those initially authorized by the Member States, simultaneously exceeding its capacities and generating certain tensions. The partners countries of the Community are conscious of this political play and, for lack of a sufficient confidentiality of the negotiating brief of the Commission, regard this mandate as an objective to be exceeded rather than to reach.

---

[33] Jean-Marie Warêgne, *L'Organisation mondiale du commerce: règles de fonctionnement et enjeux économiques* (Brussels: Centre de Recherche et d'Information Socio-politiques, 2000), 212.

[34] Ibid, 213.

B) The Absence of Involvement of the EU Parliament in the Orientations of the CCP

Already, at the time of the Intergovernmental Conference 1996/1997[35], certain authors supported the idea of a greater participation of the European Parliament in the negotiations and the conclusion of the trade agreements. Admittedly, the powers of the national parliaments are very variable on the matter. And in spite of everything it is very striking to note, for example, that the Parliament is completely excluded from old Article 113 (today 133) on the agreements on the common commercial policy[36]. Indeed, this situation is surprising, taking into account, the importance of Article 133 and the accentuated role granted to the Parliament by the treaties of Maastricht and Amsterdam[37].

Formally, the European Parliament does not hold advisory capacity with regard to the commercial policy of Article 133. It would thus be advisable to register the consultation of the Parliament in the text of Article 133. In the same way, the quality of this advisory capacity could be improved, for example, by removing the cases in which the Council decides unanimously in the external field. The agreements are thus aimed at what the Council concludes on this basis at the same time from Article 133 and Article 235. Why not create in the Treaty new categories of agreements, of co-operation types, which would avoid calling upon Article 235 and, consequently, unanimity?[38] But none the IGCs managed to formulate a participation (proof of a democratic control mechanism[39]) fit for the Parliament and the work of Convention on Europe did not bring changes to this question. In fact, with regards to international trade agreements, and thus particularly concerning the activities of WTO, the Parliament is put at the margin of the discussions (1), with information about the negotiations trickling down through modest means of information (2).

---

35 Archives of this IGC are available online: http://europa.eu.int/en/agenda/igc-home/index.html

36 In this sense also Francis Jacobs, "IGC 2000: Challenges for the European Parliament", in *Rethinking the European Union: IGC 2000 and Beyond*, eds. Edward Best, Mark Gray and Alexander Stubb (Maastricht: European Institute of Public Administration Press, 2000), 62.

37 In this sense also Allan Rosas, "Les relations internationals commerciales de l'Union européenne – Un aperçu juridique et développements actuels", in *Liber Amicorum Bengt Broms*, ed. Matti Tupamäki (Helsinki: Finnish Branch of the International Law Association, Print Oy, 1999), 444.

38 In this sense also Jean-Claude Gautron, "La fonction parlementaire – Le rôle du Parlement européen", in *La révision du Traité sur l'Union européenne : Perspectives et réalités, ed.* Philippe Manin (Paris: Pédone, 1996), 95.

39 Democratic control mechanisms are those which implement the characteristic principles of democratic systems. These consist first and foremost of the right of supervision and control exercised by an elected parliament, supplemented by procedures ensuring separation and limitation of powers, the legality of acts of the institution, and transparency and efficiency", in Roland Bieber, "Democratic Control of European Foreign Policy", (1990)Volume 1 Nr. 1 European Journal of International Law 150.

1) The Marginalization of The European Parliament in the Decision-Making Process

The Treaty of Nice must be criticized on grounds that it perennializes the ostracism of the representatives of the people of the States and this at a time when the legitimacy of the decision-making power on economic matters is being questioned because of globalization. Indeed, the combined readings of Articles 133 and 300 show that the primary legislation expressly excludes the European Parliament from the procedure of development of the trade agreements. As a result, the Parliament called on the Member States "to revise the provisions of the EC Treaty concerning the common commercial policy so as to guarantee full involvement of the European Parliament in this sphere, by providing for the European Parliament to be consulted on the negotiating mandates to be given to the Commission, opening up the 133 Committee to the European Parliament's representatives, and requiring the European Parliament's assent to all trade agreements"[40]. However, till now, the Parliament is excluded from the procedure of negotiation (a) and conclusion of the trade agreements (b).

a) Exclusion of the European Parliament in the negotiating procedure

Previous version of Article 133 did not recognize any role for the Parliament, except for ex-sub-paragraph 5, which laid down simply a consultation, on the assumption that the council taking a decision unanimously on Commission proposal may extend the application of paragraphs 1 to 4 of Article 133 to the negotiations and international agreements relating to the services and the rights of intellectual property insofar as they are not covered by these paragraphs.

The Treaty of Nice does not bring, by itself, any progress. At the time of the IGC 2000[41], the Parliament had however proposed that the Commission regularly informs it of the course of the negotiations. Such a refusal is justified if one takes into account certain aspects (speed and confidentiality) relating to the negotiation of trade agreements.

Indeed, it is necessary that the institutions (and in particular the Commission) have procedures enabling them to carry out their actions quickly, to face the swiftness which characterizes the international economic scenario. In addition, this requirement of confidentiality relevant for the trade partners, combined with the sluggishness of the Community procedures utilizing multiple bodies (Community or intergovernmental) still come to reinforce the solution chosen by the Treaty.

The information given to the European Parliament would be likely to compromise this requirement of confidentiality, while in the second, the intervention of a new body in an already cumbersome procedure and source of conflicts between the

[40] European Parliament, Resolution on openness and democracy in international trade, 25 October 2001, (2001/2093(INI)): paragraph 34. See on this point .Josiane Auvret-Finck, "Commentaire de l'Article 133 TCE", in *Union européenne – Commentaire des traités modifiés par le traité de Nice du 26 février 2001*, ed. Joël Rideau (Paris: Librairie Générale de Droit et Jurisprudence, 2001), 237.

[41] Online archives of this IGC: http://europa.eu.int/comm/archives/igc2000/index_en.htm

Commission and the Council, would be certainly an additional factor compromising the emergence of a strong and coherent Community position in the negotiations.

b) Exclusion of the European Parliament in the procedure of conclusion

Article 300(3) explicitly excludes the European Parliament from the phase of conclusion of the trade agreements rules by Article 133(3). Article 300 sub-paragraph 2 only requires the European Parliament consent for four types of agreements, which constitute the only agreement of trade recognizing an active role in the European Parliament in their procedure of conclusion[42]. The definition of the agreements stated by these provisions (introduced by the Treaty of Maastricht) constituted a significant stake for the European Parliament[43]. However, in any event, the agreements concluded within the framework from WTO escape this legal basis and, because they can be concluded only on the basis from Article 133, it is clear that the Parliament is deprived of direct consultation. This rejection of any involvement of the Parliament in the procedures concerning the trade agreements is action of the Council, in other words the Member States[44]. Commission on its side chose to inform the Parliament of its activities.

However, three arguments militated in favour of the joint decision of the Parliament as regards the concluding of trade agreements.

- First, according to a position defended by the Commission at the time of the IGC 2000, "the Commission believes that where legislative decisions are concerned, a link should be established between qualified-majority voting and the co-decision procedure. This applies both to legislative decisions in areas currently subject to qualified-majority voting and to any future extension. The consequence of this approach would be to strengthen Parliament's role as co-legislator"[45].
- Certain current provisions of the Treaty relating to the implementation of the policies of the Union do not envisage any intervention of the Parlia-

---

[42] European Parliament consent is required in case of:
- agreements covered by Article 310,
- agreements which create a specific institutional framework by organizing procedures of co-operation,
- agreements having significant budgetary implications for the Community,
- agreements implying a modification of an act adopted according to the procedure of Article 251.

[43] Being understood that a definition either extensive, or restrictive can extend the field of the exclusion aimed to Article 300(3), or on the contrary extend the exemption covered by Article 300(3)(2).

[44] « The EC Parliament has no role under the common commercial policy...] The Council has consistently resisted. It is wary of conferring on the Parliament powers like those which the US Congress has to control trade Policy », in Mickael Johnson, *European Community Trade Policy and the Article 113 Committee* (London: Royal Institute of International Affairs, 1998), 13.

[45] Conference of Representatives of the Governments of the Member States to amend the Treaties, Commission Opinion in accordance with Article 48 of the Treaty on the European Union, "Adapting the institutions to make a success of enlargement", (Brussels: 26 January 2000): 9.

ment. The Commission considers that this situation must be corrected, in particular with regard to the concluding of trade agreements. The extension of the joint decision to the legislative decisions as regards common commercial policy implies the extension of the trade agreements with one or more States or international organizations (the consultation procedure envisaged in Article 300, sub-paragraph 3 of Treaty EC). It is indeed about the only exception from the rule of consultation of the European Parliament before the concluding of international agreements[46].

- Lastly, "it would moreover be necessary to make sure that agreements with important economic and commercial implications worldwide could only be concluded following the assent of the European Parliament"[47]. This last argument was the one that went furthest. Indeed, how can one be satisfied with a situation where the agreements of WTO upset both sides of the legal orders Community and nationals are not subjected to the control and potential censure of the Parliament?

Those arguments seems have inspired the project of Constitution. Indeed, Article III-325 paragraph 6 requires the consent of the European Parliament agreements covering fields to which the legislative procedure applies. This is directly related to conclusion procedure of international agreements. It is another real improvement brought by the Constitution and we can just, from this point of view, regret its rejection.

2) Means of Information of the European Parliament

While waiting for a desirable evolution to take place, the Parliament manages all the same to keep a glance on the evolution of the CCP and, in particular, on the agreements subscribed within WTO. Indeed it is now empowered to obtain an opinion by the CJEC under Article 300(6), which enhances the ability of the EP to protect its rights concerning international agreements. It can be based on the policy of information in which the Commission (a) engaged, but also on work of the parliamentary committees (b).

a) Policy of information of the Commission

In a code of conduct of 1995 between the Commission and the Parliament, the Commission committed itself to informing the responsible committee of the Parliament as well of the draft recommendations for directives for negotiations as to the unfolding of the negotiations[48]. Moreover, the Commission politically committed

---

[46] Ibid, 27.

[47] Ibid, 28.

[48] For further discussion see Allan Rosas, "Les relations internationales commerciales de l'Union européenne – Un aperçu juridique et développements actuels", in *Liber Amicorum Bengt Broms*, ed. Matti Tupamäki (Helsinki: Finnish Branch of the International Law Association, Print Oy, 1999), 444.

itself consulting the Parliament as far as the conclusion of the significant agreements are concerned. Lastly, if the agreement (commercial or not) concerns the framework of Article 300, Paragraph 3, second sub-paragraph, its conclusion is not only subject to the opinion, but, also subject to the assent of the Parliament. Beyond the *Luns-Westerderp* procedure[49], the information of the Parliament as regards trade agreements reached a new stage in the *Framework Agreement on relations between the European Parliament and the Commission*. It is about an engagement of co-operation, approved by the presidents of the two institutions which provides, in particular, that the Commission "shall, within its abilities, ensure that the European Parliament is kept quickly and fully informed at all stages of the preparation, negotiation and conclusion of international agreements, in such a way as to enable the Commission to take account of the European Parliament's views"[50]. Such a step was effectively implemented recently concerning with the negotiations of the GATS during the last months. It must added that the Treaty establishing a European Constitution brings an official recognition of this practice since "the Commission shall report regularly to the…] European Parliament on the progress of negotiations"[51]. It is a real constitutionalization of a well established practice.

b) The Role of Vigil operated by the parliamentary Committees

The parliamentary committees play a predominant role in the functioning of the European Parliament. They have "prominent rights and are well-structured. They provide the infrastructure that qualifies the EP as a working parliament, able to seriously scrutinize the executive"[52]. In general, all texts, questions, and other Commission proposals are examined by a parliamentary committee before being introduced during the meeting. As regards foreign trade, it is necessary to underline the functioning of the commission of industry, the foreign trade, research and industry. A report of 1999 allowed the later adoption of a resolution of the Parliament carrying a rather strong criticism of the WTO functioning. Thus it made a clear objection to what "there is still a democratic deficit within the European Union in the area of trade policy, in that Article 133 of the EC Treaty excludes the European Parliament from defining and genuinely scrutinizing the common commercial policy"[53]. Moreover, the resolution underlined that "the Trade Policy Review Mechanism (TPRM) in its current form does not satisfy the requirements of informed

---

[49] This *Luns-Westerterp* procedure was originally introduced to involve Parliament at an early stage by means of an information procedure whereby the Commission and Council notify the parliamentary committees responsible at regular intervals of the progress of the negotiations.

[50] Conference of Presidents, Framework Agreement on relations between the European Parliament and the Commission, 29 June 2000, point 15.

[51] Article III-315 paragraph 3.

[52] Philipp Dann, "Looking through the federal lens: The Semi-parliamentary Democracy of the European Union", *Harvard Jean Monnet Working Paper* 5 (2002): 32.

[53] European Parliament, Resolution on openness and democracy in international trade, 25 October 2001, (2001/2093(INI)): paragraph 33.

public debate" and, therefore, the Parliament advocated "reform of the TPRM to include the social, environmental and development impact of trade policies and an evaluation of how trade policy is formulated and monitored, including the role of parliaments and civil society; calls for the participation of the European Parliament and civil society in the review process"[54].

Conclusion

The EC constitutes a real innovative entity as much from the legal point of view as from the political point of view. The necessity *to exist* in the international trade scene made it imperative for the EC to have a fast and exemplary growth (for the other policies) in this field. As the constitutional history of the federal States demonstrates, a distribution of competences is a highly complex and political exercise, where there is a temporary balance of the forces between those who intend to increase competences of the center and those who take care of the integrity of competencies of the periphery. The legal perspective translate into political goodwill: it is initially important to know which great functions should be given to the Union, and which functions should be withdrawn from it. From this point of view the recent evolution must be considered as a success not for the EC itself but also for the governance of the international trade: "The European Union (EU) plays a vital role in the WTO and its support for the rules-based multilateral trading system is crucial to the ability of the system to deliver the benefits from trade to all its Members. The EU's position as the world's leading exporter of goods and the second-largest importer is testimony both to the importance of trade to the European consumer and producer, and to the significance of the EU as a market for most WTO Members"[55]. However an important stake still lies in improving the European internal decision making process in order to assure greater transparency and democracy. Perhaps the present deceleration of the WTO negotiations (failure of Seattle, save face of Doha, few enthusiastic Cancun and Hong Kong) and the immediate challenges of the recent European enlargement could provide the time for a debate as wide as possible which could bring about innovative solutions reconciling the quest of effectiveness with the imperative democratic character of the European decision-making procedure.

---

[54] Ibid. paragraph 35.

[55] *World Trade Organization, Trade Policy Review Mechanism*, European Union – Report by the Secretariat, WT/TPR/S/102 (26 June 2002), p vii.

Annex I: Article 133, Treaty of Nice

1. 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.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. 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 Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

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.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, insofar as those agreements are not covered by the said Paragraphs and without prejudice to Paragraph 6.

By way of derogation from Paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first sub-paragraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding sub-paragraph or the second sub-paragraph of Paragraph 6.

This Paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Community law and other relevant international agreements.

6. 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 the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.

In this regard, by way of derogation from the first sub-paragraph of Paragraph 5, agreements 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. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first sub-paragraph of Paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of Paragraphs 1 to 4 to international negotiations and agreements on intellectual property insofar as they are not covered by Paragraph 5."

Bibliography

I . Primary Sources

Court of Justice of the European Communities, Opinion of 4/10/1979, *Opinion 1/78* (Rec.1979, Point 45).

Court of Justice of the European Communities, Opinion of 15/11/1994, *Opinion 1/94* (Rec.1994, p I-5267).

Court of Justice of the European Communities, Judgment of 5/5/1981, *Dürbeck / Hauptzollamt Frankfurt a. M.* (Rec.1981, p 1095).

European Parliament, Resolution on openness and democracy in international trade, 25 October 2001, (2001/2093(INI)).

World Trade Organization, *Trade Policy Review Mechanism, European Union – Report by the Secretariat*, WT/TPR/S/102 (26 June 2002).

II – Secondary Sources

Anthony Arnull, "The Scope of the Common Policy: A Coda on Opinion 1/94", in *The European Union and World Trade Law – After the Uruguay Round*, ed. Nicholas Emiliou et David O'Keeffe (London: Wiley, 1996).

Josiane Auvret-Finck, «Commentaire de l'Article 133 TCE», in *Union européenne – Commentaire des traités modifiés par le traité de Nice du 26 février 2001*, ed. Joël Rideau (Paris: Librairie Générale de Droit et Jurisprudence, 2001).

Roland Bieber, «Democratic Control of European Foreign Policy», *European Journal of International Law* Volume 1 Nr. 1 (1990).

Olivier Blin, «L'apport de la Constitution européenne à la politique commerciale de l'Union», *Revue du Marché Commun et de l'Union Européenne*, n°485 (2005).

Grainne De Burca and Joanne Scott, «The Impact of the WTO on EU Decision-Making», in *EU and the WTO: Legal and Constitutional Aspects,* eds. Graine De Burca and Joanne Scott (Oxford: Hart Publishing, 2002).

Graine de Burca and Paul Craig, *European Union Law*, 3rd ed. (London: Oxford University Press, 2002).

Olivier Cattaneo, *Quelles ambitions pour la puissance commerciale de l'Union européenne?* (Paris :

Documentation française – Notes de l'Institut Français des Relations Internationales, 2002).

Julien Chaisse, «Process and Implications of the 2004 European Union Enlargement: A Legal Perspective», in *India and the New Europe,* ed. I. P. Khosla (New Delhi: Konark Publishers (2004).

Steve Charnovitz, "The World Trade Organization and Law Enforcement," *Journal of World Trade Volume* 37 Nr. 5 (2003).

Marise Cremona "EC External Commercial Policy after Amsterdam: Authority and Interpretation within Interconnected Legal Orders", in *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade*, ed. Joseph H. H. Weiler (New York: Oxford University Press, 2000).

Philipp Dann, "Looking through the federal lens: The Semi-parliamentary Democracy of the European Union", *Harvard Jean Monnet Working Paper* 5 (2002).

Pierre Didier, *WTO trade instruments in EU law – Commercial policy instruments: dumping, subsidies, safeguards, public procurement* (London: Cameron May, 1999).

Simon Duke, *The Convention, the draft Constitution and External Relations: Effects and Implications for the EU and its international role* (Maastricht: European Institute of Public Administration Press, 2003).

Jean-Claude Gautron, "La fonction parlementaire – Le rôle du Parlement européen", in *La révision du Traité sur l'Union européenne : Perspectives et réalités, ed.* Philippe Manin (Paris: Pédone, 1996).

Christoph Herrmann, "Common Policy after Nice: Sisyphus would have done a better job", *Common Market Law Review* Volume 39 Nr.1 (2002).

Meinhard Hilf, "The ECJ's Opinion 1/94 on the WTO: no surprise, but wise?", *European Journal of International Law* 6 (1995).

Francis Jacobs, "IGC 2000: Challenges for the European Parliament", in *Rethinking the European Union: IGC 2000 and Beyond*, eds. Edward Best, Mark Gray and Alexander Stubb (Maastricht: European Institute of Public Administration Press, 2000).

Mickael Johnson, *European Community Trade Policy and the Article 113 Committee* (London: Royal Institute of International Affairs, 1998).

Pieter-Jan Kuijper, "The EC's common commercial policy: which way the swing of the pendulum?", *American Society of International Law Proceedings*, 88 (1994).

Sophie Meunier and Kalypso Nicolaidis, "Who speaks for Europe? The Delegation of Trade Authority in the EU", *Journal of Common Market Studies* Volume 37 Nr. 3 (1999).

Axel Moberg, "The Nice Treaty and Voting Rules in the Council", *Journal of Common Market Studies* Volume 40 Nr. 2 (2002).

Eleftheria Neframi, "La politique commerciale commune selon le traité de Nice", *Cahiers de Droit Européen* Nr. 5 (2001).

Pierre Pescatore, «Opinion 1/94 on Conclusion of the WTO Agreement : Is There an Escape from a Programmed Disaster?», *Common Market Law Review* (1999).

Allan Rosas, "Les relations internationals commerciales de l'Union européenne – Un aperçu juridique et développements actuels", in *Liber Amicorum Bengt Broms*, ed. Matti Tupamäki (Helsinki: Finnish Branch of the International Law Association, Print Oy, 1999).

Jean-Marie Warêgne, *L'Organisation mondiale du commerce: règles de fonctionnement et enjeux économiques* (Brussels: Centre de Recherche et d'Information Socio-politiques, 2000).

Joseph H. Weiler, *The Constitution of Europe: Essays on the Ends and Means of European Integration* (Cambridge: Cambridge University Press, 1999).

Kluwer Law International is a renowned publisher of books, journals, and looseleafs in areas of international legal practice.

We publish important and interesting titles in the following areas:

- Air & Space Law
- Arbitration
- Banking and Finance Law
- Business Law
- Commercial law
- Company/Corporate law
- Competition Law
- Environmental Law
- European Community Law
- Intellectual Property
- International Trade Law
- Labour Law
- Maritime Law
- Taxation

Please browse our website for information on all our books, journals, looseleafs and electronic products: www.kluwerlaw.com

KluwerLawOnline: One of the most complete libraries on the web

Kluwer Law Online is your online gateway to Kluwer Law International publications.
Completely revamped, the Kluwer Law Online is packed with new functionality.

Improved functionality includes:

- inclusion of product types other than journals
- regularly updated homepage texts to keep you informed about us and our products
- a homepage for every publication
- improved Browse Topics
- suggestions for related titles
- informative and regularly updated site texts (About Us, Contact Us)

At www.kluwerlawonline.com, you will find all our journals online. Feel free to browse the site and view a sample copy of the journal of your interest.

European Business Law Review

European Business Law Review specializes in business law, broadly defined and including both European Community Law and the laws of the member States and other European countries. The editors attempt to identify issues which are of interest to practitioners and scholars and to strike a balance between scholarship, policy discussion and the needs of the practitioner. These issues may concern public or private law, domestic, European or international law. In this wide area, the *Review* moves freely over the boundaries that divide the law.

The pace of reform and developments in European business law is such that drawing a distinction between policy, legal scholarship and service to the practising legal community would be a mistake. The *European Business Law Review* has traditionally primarily responded to the demand for exposition and analysis in sufficient depth to provide the answers, or further references, to the questions arising in practice. This coincides with the needs of the academic community which provides most of the articles for a law review of excellence, a review which practitioners also prefer to read. Practitioners and academics share the wish to involve policy makers in dialogue. Regulators, on a national or Community level, have a need for a forum where they can develop this kind of dialogue.

The *European Business Law Review* offers current authoritative scholarship on a wide range of issues and developments in European business law. With contributors providing an international as well as a European perspective, the *Review* proves an invaluable source of current scholarship, information, practical analysis, and expert guidance for all practicing lawyers, advisers, and scholars dealing with European business law on a regular basis. It aims at promoting the understanding and developments of law on a supranational rather than merely national basis.

Editors-in-Chief: Mads Andenas, Guido Alpa

For more information about *European Business Law Review*, please visit www.kluwerlawonline.com/europeanbusinesslawreview