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Trade Policy Monitoring

Formation of EU Trade Policy: A Primer

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Report Highlights:

This report is intended to provide the reader with a basic introduction to the EU's process for developing and implementing trade policy. Readers are encouraged to review this report and other reports produced by USEU on basic EU institutions.

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Treaty Provisions

The basis of the European Union's (EU) trade policy is stated in article 113 of the Treaty of Rome of 1957. Article 113 provides the basic text, which throughout the evolution of the EU institutions, has been amended by both the Treaty of Amsterdam and the Nice Treaty. The text provides the basic principles and process for creating legislation in the commercial field. The Treaty of Rome states,

- "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 liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.
- The Commission shall submit proposals to the Council for implementing the common commercial policy.
- Where agreements with one or more States or international organizations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. 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.
- In exercising the powers conferred upon it by this Article, the Council shall act by qualified majority".

When the Treaty of Rome was drafted, the Community's economy and external trade were mainly geared to production and trade in industrial products. However, this no longer applies today as the services sector has risen as a key source of jobs within the EU and accounts for a substantial proportion of international trade (currently more than a quarter of EU world trade – imports and exports). In order to maintain a leading role in world trade relations, the Amsterdam Treaty of 1997 revised Article 113 (hereafter referred to, by virtue of renumbering of Treaty articles, as Article 133) in order to extend the scope of common commercial policy to include both services and intellectual property. However, it managed to do so only by subjecting decisions regarding both sectors to unanimity voting in the Council.

The Nice Treaty of 2000 (effective February 1, 2003) introduced, another slight alteration, in that agreements in the area of trade in services and commercial aspects of intellectual property, are to be concluded by qualified majority vote except when the agreement includes provisions for which unanimity is required for the adoption of internal Community rules, or when the agreement concerns an area on which the EU has not yet exercised its responsibilities. Some Commission officials have commented that this tortured formulation has erected only greater confusion about the handling of these trade policy issues. Qualified majority voting refers to the process whereby different member states have different amounts of votes based roughly on size of population – currently 62 out of 87 votes are needed for a qualified majority, though this will change with the entry of new members. Agreements concerning the harmonization of cultural and audiovisual services, education services, social services and health services continue to be the subject of responsibility shared with Member States (unanimity still required). At a recent symposium in Brussels (February 2003), Commissioner Lamy highlighted the rather urgent need to dissolve the application of unanimity voting for trade dossiers, as in an enlarged Europe of 25 member states, it will make it even more difficult to agree on commercial policy. "The legal rules

have not kept pace with the economic reality...the Nice Treaty is a step in the right direction, but still too many pockets of unanimity survive”, Lamy emphasized.

Trade DG and the Article 133 Committee

The Directorate General (DG) for Trade of the European Commission, headed by Commissioner Pascal Lamy, takes the lead on most of the community’s trade policy, with the exception of agricultural trade. Comprised of 6 divisions, ranging from bilateral trade relations to sectoral trade questions and market access, DG Trade is responsible for conducting the community’s commercial policy, in accordance with the objectives of Article 133 of the Treaty. The role of DG Trade covers the initiation and negotiation in all main aspects of international trade in goods and services, as well as intellectual property, investment and competition. It should be noted however, that in the case of agricultural trade negotiations, it is DG Agriculture which is the lead initiator and negotiator, working in close consultation with DG Trade.

In formulating policy, DG Trade consults closely with the Council and the Article 133 Committee. The Treaty of Rome, refers to “a special committee appointed by the Council” which is to be consulted and is to assist the Commission in the commercial legislation-making process. This special committee is today known as the Article 133 Committee. It is comprised of EU member state representatives. The Committee is advisory in nature, and therefore no formal votes are recorded and deliberations not usually published. Issues tend to be discussed in this forum until there is a consensus. The Committee generally meets monthly at the “titulaire” level (usually Undersecretary or Assistant Secretary equivalents) with Brussels-based 133 “deputies” meeting weekly. In addition, special sessions on services issues are held occasionally. The monthly 133 titulaires meetings usually involve a closed-door lunch, at which Member State representatives are briefed by the Director General of Trade (currently Mogens Peter Carl). These “133 lunches” hold a somewhat legendary aura as “the place where the real horse-trading happens”.

The Commission is the executive body of the EU, and has the right to initiate legislation under the EU’s first pillar (European Community). The Commission is responsible for negotiating agreements for the Community with third countries and international organizations. It submits proposals to the Council for implementing the EU trade policy. However, the Commission needs a mandate from the Council (the ministerial body composed of EU government representatives) to present a negotiating position on the EU’s behalf at international trade bodies. Within the Commission, Directorate General (DG) Trade drafts the proposed legislation, and then forwards it to the other relevant Commission DGs (there are 24 in total) for review under the “inter-service” consultation process. During the inter-service consultation process, DGs generally have 10 working days to respond to a draft proposal. Once agreement is reached amongst the DGs, the text is forwarded for review to a committee of high-level member state trade officials known as the Article 133 Committee. The Committee then verifies if the proposal conforms with the original mandate given by the member states (the Council). Often the text will undergo modifications. In cases where an EU member state representative believes that the proposed piece of legislation goes beyond the auspices of the mandate, or agreement can not be reached at the 133 Committee level, the dossier is sent to the EU ministers (Foreign or Foreign Trade ministers meeting as the General Affairs and External Relations Council [GAERC]). For example, the Commission proposal on modalities for the Doha Round agricultural negotiations, by the request of France was forwarded to the GAERC. However, in many cases the Article 133 Committee reaches consensus on the texts proposed.

Among the EU member states, there is often a “north-south” divide on dossiers, which sometimes cause a rift within the Article 133 Committee deliberations. Key issues that fall into this category are agriculture negotiations, and trade defense instruments, with the

"north" generally being more supportive of liberalization of EU trade policies, while the "south" is inclined to be more "protectionist", which is best demonstrated in negotiations on agricultural trade.

European Parliament and EU trade policy

The Treaty does not provide for any involvement by the European Parliament (EP) in the negotiation of trade agreements, with the exception of only being consulted (providing an Opinion which is non-binding). The Treaty of Nice has not extended the EP's powers to trade policy measures under the qualified majority rule. This situation is particular only to trade policy as the EP has become basically a co-legislator with the Council in many policy areas under the co-decision process. To appease the EP somewhat, DG Trade has a strong policy of formally informing the EP on commercial matters. Commissioner Lamy in particular has stressed the need to increase the legitimacy of EU trade policy by better incorporating the democratically-elected European Parliament in the process. To date, very little debate has taken place on the so-called "democratic deficit" in this sector. Trade is the only EU common policy, within which the European Parliament has no role. A more direct EP role would increase the Commission's legitimacy when negotiating international trade agreements on behalf of the community.

Convention on the Future of Europe

To date, the Convention on the Future of Europe, which is providing the basis for discussions to take place at the next Intergovernmental Conference (IGC) of late 2003 or 2004, has not addressed the issue of decision-making for EU trade policy legislation. The Commission has been consistently pushing for an extension of the scope of Article 133 and qualified majority voting in the trade policy area, arguing that such reforms are vital to ensure effectiveness and the promotion of EU interests in international trade negotiations. In addition, some non-governmental organizations (NGOs) are however, increasing pressure to have the EP's role in trade policy addressed in the Convention.

Comments

The U.S. Mission to the EU (USEU) monitors Commission initiatives regularly as well as Commission attempts to obtain mandates in a variety of areas. We try to share this information with you as quickly as possible.

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