


**The Chinese University of Hong Kong**  
**Faculty of Law**


**The Common Commercial Policy under the Treaty of Lisbon:  
 The Legitimacy and Functionality of Exclusivity**

Dr Gonzalo Villalta Puig FHEA  
 Professor of Law  
 Director of the International Economic Law Programme

Jean Monnet Seminar  
 University of Macau  
 6 May 2011

**Article 206 TFEU**

By establishing a **customs union** in accordance with Articles 28 to 32, the **Union** shall contribute, in the common interest, to the harmonious **development of world trade**, the progressive **abolition of restrictions on international trade and on foreign direct investment**, and the lowering of customs and other barriers.

Analysis and Reflections 287

**The Common Commercial Policy after Lisbon: An Analysis of the Reforms**

**Gonzalo Villalta Puig**  
The Chinese University of Hong Kong

**Bader Al-Haddad**  
Legal Researcher

**Abstract**

*The Common Commercial Policy (CCP) is the most significant application of European Union external economic relations. In recent years, the CCP has developed rapidly in response to the challenge of globalisation. This article critiques the latest developments, namely, the reforms of the Treaty of Lisbon. These reforms have broadened the concept of trade to incorporate not only goods but also services and the commercial aspects of intellectual property, as well as including foreign direct investment within the scope of the CCP. The European Union now has the exclusive competence to negotiate and manage the CCP. Indeed, the reforms leave the European Union, as the collection of its Member States, as the only participant in the negotiation and conclusion of Joint World Trade Organization agreements and amendments. The article analyses the implications that exclusivity could have on the legitimacy and functionality of the CCP.*

**Introduction**

The Common Commercial Policy (CCP) is the most significant application of European Union external economic relations. It functions as a means for the European Union not only to exercise its exclusive competence over external economic affairs but also to assure its internal economic integration. Thus the CCP relies on the economic constitution of the European Union as a customs union. In that respect, the European Court of Justice (ECJ) has held that the proper operation of the customs union, as the principal objective of the process of European economic integration, entails an expansive and dynamic interpretation of the provisions of the CCP.<sup>1</sup>

Indeed, over the last decade, the CCP has rapidly developed in response to the challenge of globalisation.<sup>2</sup> However, the areas within the scope of the CCP have, historically, not had an exhaustive

<sup>1</sup> Gonzalo Villalta Puig, Professor of Law and Director of the International Economic Law Programme, Centre of the International Association of Constitutional Law Research Group for Constitutional Studies of Free Trade and Public Economic Relations of the European Court of Justice and Public, Business and Relations of the High Court of Justice, Barometer and Solicitor of the High Court of New Zealand.

<sup>2</sup> Bader Al-Haddad and Gonzalo Villalta Puig, Council of Ministers, Kingdom of Saudi Arabia. Mr Al-Haddad writes in a personal capacity.

<sup>3</sup> J. L. Garret, 'The Common Commercial Policy: The Expanding Competence of the European Union in the Area of International Trade' (2005) 32 *Journal of International Law* 217.

<sup>4</sup> Opinion 1/76 (EEC) [1976] E.C.R. II 413, Opinion 1/78 (International Agreement on Mutual Relations) [1978] E.C.R. II 375, and Opinion 1/92 (WTO Agreements) [1992] E.C.R. II 3207, *see also* P. Koutoulas, *EU International Relations Law* (Oxford: Hart Publishing, 2006) at 79.

<sup>5</sup> M. Kappeler, 'External Trade Law and the Constitution Treaty: Towards a Federal and More Democratic Common Commercial Policy?' (2005) C.M.L. Rev. 51.

© 2011 W.I.L. Rev. April © 2011 Thomson Reuters (Publishing) UK Limited and Contributors

**Article 207 TFEU**

- The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and **trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment**, 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. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.
- The **European Parliament** and the Council, acting by means of **regulations** in accordance with the **ordinary legislative procedure**, shall adopt the measures defining the framework for implementing the common commercial policy.

**Treaty on the Functioning of  
 the European Union**

Part Five  
 The Union's External Action

Title II  
 Common Commercial Policy

**Article 207 TFEU**

- Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union 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 and to the European Parliament on the progress of negotiations.

## Article 207 TFEU

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, **the Council shall act by a qualified majority**.  
For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, **the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules**.  
**The Council shall also act unanimously** for the negotiation and conclusion of agreements:
- (a) in the field of **trade in cultural and audiovisual services**, where these agreements risk prejudicing the Union's cultural and linguistic diversity;
  - (b) in the field of **trade in social, education and health services**, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

## Introduction

- An Overview of the Treaty of Lisbon
- An Overview of the Reforms to the Common Commercial Policy

## Article 207 TFEU

5. The negotiation and conclusion of international agreements in the field of **transport** shall be subject to Title VI of Part Three and to Article 218.
6. The exercise of the competences conferred by this Article in the field of **the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation** of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation.

## Substantive Reforms to the Common Commercial Policy

- Trade in Services and Commercial Aspects of Intellectual Property
  - Trade in Services
  - Commercial Aspects of Intellectual Property
- Foreign Direct Investment
- Limitation of European Union Competences

## Seminar Paper

## Procedural Reforms to the Common Commercial Policy

- Voting Requirements in the Council
- The Role of the European Parliament

Questions and Comments